

COUNCIL OF THE COUNTY OF MAUI
CLIMATE ACTION, RESILIENCE, AND
ENVIRONMENT COMMITTEE

August 6, 2021

Committee
Report No. 21-56

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Climate Action, Resilience, and Environment Committee, having met on July 21, 2021, makes reference to County Communication 16-37, from Councilmember Elle Cochran, relating to integrated pest and environmental management on County property.

By correspondence dated February 4, 2021, Councilmember Shane M. Sinenci transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 2.50, MAUI COUNTY CODE, RELATING TO PESTICIDE AND FERTILIZER USE ON COUNTY PROPERTY."

The purpose of the proposed bill is to exercise the County's proprietary function, as a property owner and manager, by determining the categories of pesticide and fertilizer allowed for use on County property.

Your Committee notes that the Council's Infrastructure and Environmental Management Committee (2015-2017 Council term) met on this matter on March 22, 2016, and November 28, 2016.

Your Committee also notes that the Council's Infrastructure and Environmental Management Committee (2017-2019 Council term) met on this matter on December 3, 2018.

Your Committee further notes that the Council's Environmental, Agricultural, and Cultural Preservation Committee (2019-2021 Council term) met on this matter on September 8, 2020, and November 17, 2020.

COUNCIL OF THE COUNTY OF MAUI

CLIMATE ACTION, RESILIENCE, AND ENVIRONMENT COMMITTEE

Page 2

Committee
Report No. 21-56

Your Committee noted that although pesticide use has significantly declined in recent years, continual efforts are needed to protect County employees, residents, keiki, visitors, and the environment from the harmful effects of its use.

Your Committee clarified that pesticide and fertilizer restrictions will only apply to County-owned land, but will not apply to County agricultural parks or County property used for agricultural purposes. Your Committee further clarified that the County will maintain the right to manage its properties as needed.

Your Committee received a computer-generated presentation from Jay Feldman, Executive Director of Beyond Pesticides. According to their website, the goal of the organization is to “protect healthy air, water, land, and food for ourselves and future generations,” and “provides hands-on services to the public and supports local action by identifying and interpreting hazards; and, designing safe pest management programs.”

Mr. Feldman’s presentation provided an overview of pesticides and their potential negative impacts on health, water and soil quality, and habitats. He suggested organic practices to eliminate petroleum-based pesticides and synthetic fertilizers, and manage soil health to maximize carbon sequestration.

Mr. Feldman noted Maui County has begun a successful program of roadside vegetation management utilizing weed mats, steam weeders, mowing, and weed whacking.

The Director of Public Works questioned whether the County’s Department of Agriculture, once formed, should adopt administrative rules to implement Chapter 2.50, Maui County Code.

COUNCIL OF THE COUNTY OF MAUI

CLIMATE ACTION, RESILIENCE, AND ENVIRONMENT COMMITTEE

Page 3

**Committee
Report No. 21-56**

The Director expressed concerns about the effectiveness of pesticide and fertilizer alternatives in hard-to-reach areas, cracks in roads, and under guardrails.

The Director requested your Committee consider allowing the Department to develop and implement an Integrated Pest and Vegetation Management Plan, and referenced examples from other municipalities.

Representatives from the Department of Parks and Recreation noted that for the 3,000-plus acres of County land they manage, chemical pesticides and fertilizers have been reduced to less than 86 acres of parks and 175 acres of golf courses.

The Department expressed concerns relating to the cost of implementing the proposed bill, noting additional equipment and staffing would be required, particularly for golf courses.

A Deputy Corporation Counsel referred to Chapter 165, Hawai'i Revised Statutes, which regulates agricultural activity, and discussed what is allowed under agricultural use, including the appropriate use of pesticides.

Your Committee noted the proposed bill outlines a waiver process for instances when pesticide use may be the only option. The bill also provides for transparency as to the type of pesticide being used, where and when it is being used, and the quantity being used.

Your Committee noted the agency applying for a waiver would be responsible to provide their own experts when making their case to the Council.

Following these discussions, your Committee recommended that the proposed bill be revised to take effect two years after approval for pesticide and fertilizer use at the War Memorial Stadium Complex and Ichiro "Iron"

COUNCIL OF THE COUNTY OF MAUI

CLIMATE ACTION, RESILIENCE, AND ENVIRONMENT COMMITTEE

Page 4

Committee
Report No. 21-56

Maehara Baseball Stadium, and three years after approval for pesticide and fertilizer use at the Waiehu Municipal Golf Course.

Your Committee further revised the proposed bill to automatically approve waiver applications or waiver extension requests if the Council fails to approve or disapprove them within 180 days.

Your Committee voted 6-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair King, Vice-Chair Sinenci, and members Johnson, Molina, Paltin, and Sugimura voted "aye." Committee member Lee was excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Climate Action, Resilience, and Environment Committee **RECOMMENDS** the following:

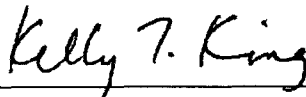
1. That Bill 72 (2021), attached hereto, entitled "A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 2.50, MAUI COUNTY CODE, RELATING TO PESTICIDE AND FERTILIZER USE ON COUNTY PROPERTY," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 16-37 be FILED.

COUNCIL OF THE COUNTY OF MAUI
**CLIMATE ACTION, RESILIENCE, AND
ENVIRONMENT COMMITTEE**

Page 5

Committee
Report No. 21-56

This report is submitted in accordance with Rule 8 of the Rules of the Council.



KELLY TAKAYA KING, Chair

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ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 2.50, MAUI COUNTY
CODE, RELATING TO PESTICIDE AND FERTILIZER USE ON COUNTY
PROPERTY

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Title 2, Maui County Code, is amended by adding a new
chapter to be appropriately designated and to read as follows:

“Chapter 2.50

PESTICIDE AND FERTILIZER USE ON COUNTY PROPERTY

Sections:

- | | |
|-----------------|---|
| 2.50.010 | Purpose. |
| 2.50.020 | Definitions. |
| 2.50.030 | Administrative rules. |
| 2.50.040 | Pesticide and fertilizer use on county
property. |
| 2.50.050 | Waiver. |
| 2.50.060 | No conflict with federal or state law. |

2.50.010 Purpose. The purpose of this chapter is to exercise the County’s proprietary function, as a property owner and manager, by determining the categories of pesticide and fertilizer allowed for use on county property.

2.50.020 Definitions. Whenever used in this chapter, unless the context otherwise requires:

“County property” means the same as in section 13.04A.030 of this code, but does not include property subject to State executive order, county agricultural parks, or county property used for agricultural purposes.

2.50.030 Administrative rules. The director of public works may adopt administrative rules to implement this chapter.

2.50.040 Pesticide and fertilizer use on county property. A. The following are allowed for use on county property:

1. Pesticides and fertilizers listed as "allowed" on the National List of Allowed and Prohibited Substances as listed in title 7 Code of Federal Regulations 205.601, 205.603, 205.605, and 205.606.

2. "Minimum risk pesticides" exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act, as provided in title 40 Code of Federal Regulations section 152.25(f).

3. The following, when used in compliance with manufacturer specifications:

a. Disinfectants, germicides, bactericides, miticides, and virucides.

b. Insect repellents.

c. Rat and rodent extermination products.

d. Swimming pool supplies.

e. General use paints, stains, and wood preservatives, and sealants.

f. Citric acid.

B. Unless a waiver is approved under section 2.50.050, use of pesticides and fertilizers on county property not allowed under section 2.50.040(A) is prohibited, except that otherwise prohibited pesticides may be used to control:

1. Mosquitoes.

2. Animals or insects, such as fire ants or termites, that may cause damage to buildings and structures.

3. Invasive species whose introduction does, or is likely to, cause economic or environmental harm or harm to human health.

2.50.050 Waiver. A. Agencies may apply to the council for a waiver from section 2.50.040 prior to the use of a prohibited pesticide or fertilizer.

B. The waiver application must include:

1. A location map for the proposed usage area.

2. A landscape plan.

3. Photographs of areas and vegetation.

4. A summary of the existing plants, soils, and environmental conditions for each area.

5. A history of vegetation management practices, including fertilizer and pesticide application amounts, and frequency.

6. Cost estimates and a timeline.

7. Information on how the public's health and safety is threatened.

8. An evaluation and list of the results of alternative methods and materials.

9. An explanation of how the application of otherwise prohibited substances will, to the greatest extent practical, minimize the impact of the application on abutting properties, human health, and the environment.

C. The council may approve a waiver or waiver extension by resolution upon finding the following:

1. A situation exists that threatens the public's health and safety.

2. Alternative control methods and allowed substances have been evaluated and determined to be insufficient.

3. The application of otherwise prohibited substances will, to the greatest extent practical, minimize the impact of the application on abutting properties.

D. Waivers may be granted for a period of up to two years, and may include conditions such as signage to protect public health and safety.

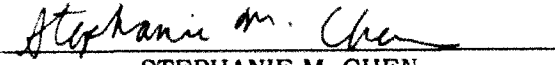
E. Waiver extension requests must be submitted at least ninety days prior to the expiration date and must include the same information as a waiver application.

F. If the council fails to approve or disapprove a waiver application or waiver extension request by resolution within one hundred eighty days, the application or request will be automatically approved.

2.50.060 No conflict with federal or state law. Nothing in this chapter will be interpreted or applied so as to create any requirement or duty in conflict with any federal or state law."

SECTION 2. Except for pesticide and fertilizer use at the War Memorial Stadium Complex, Ichiro "Iron" Maehara Baseball Stadium, and Waiehu Municipal Golf Course, this Ordinance takes effect one year after its approval. This Ordinance takes effect two years after its approval for pesticide and fertilizer use at the War Memorial Stadium Complex and Ichiro "Iron" Maehara Baseball Stadium. This Ordinance takes effect three years after its approval for pesticide and fertilizer use at the Waiehu Municipal Golf Course.

APPROVED AS TO FORM AND LEGALITY:



STEPHANIE M. CHEN

Deputy Corporation Counsel
Department of the Corporation Counsel
County of Maui
LF 21-0007/2021-0161
2021-07-26 Ord Establishing Ch 2.50