

REQUEST FOR LEGAL SERVICES


Date: July 24, 2020
From: Shane M. Sinenci, Chair
Environmental, Agricultural, and Cultural Preservation Committee

TRANSMITTAL
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Stephanie Chen, Esq.

Subject: INTEGRATED PEST AND ENVIRONMENTAL MANAGEMENT ON COUNTY PROPERTY (EACP-1)

Background Data: Please review the revised proposed bill and, if appropriate, approve as to form and legality.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Shane M. Sinenci	Contact Person <u>Kasie Apo Takayama or James Forrest</u> (Telephone Extension: <u>7665 or 7137, respectively</u>)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): _____
REASON: _____

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____ (Rev. 7/03)

eacp:ltr:001acc01:kmat

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2020)

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. The purpose of this ordinance is to prohibit the County's purchase or use of certain pesticides and fertilizers to safeguard the health and welfare of County of Maui employees, residents, and visitors; conserve and protect the County's waterways and natural resources. The Council's intent is for the County to be a responsible steward and curtail the use of pesticides for turf, landscape, and outdoor pest management on County property, while maintaining safety for those who use or maintain County-owned public spaces, roadways, and parks.

SECTION 2. 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 | Prohibited pesticide and fertilizer use on County property. |
| 2.50.050 | Vegetation management plan. |

- 2.50.060 Waivers and waiver extensions.
- 2.50.070 Public notifications and signage.
- 2.50.080 Violations.

2.50.010 Purpose. A. The use of certain pesticides and fertilizers on County-owned property poses risks to County of Maui employees, public health, and welfare.

B. The purpose of this ordinance is to prohibit the County's purchase or use of certain pesticides and fertilizers to safeguard the health and welfare of County of Maui employees, residents, and visitors; conserve and protect the County's waterways and natural resources. The Council's intent is for the County to be a responsible steward and curtail the use of pesticides for turf, landscape, and outdoor pest management on County property, while maintaining safety for those who use or maintain County-owned public spaces, roadways, and parks.

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

"Natural" or "non-synthetic" means a substance that is derived from mineral, plant, or animal matter and does not undergo a "synthetic" process as defined in the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).

"Organic fertilizer" means fertilizer that is made from materials that are allowed in organic production in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.).

"Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or any other microorganism—except viruses, bacterium, or any other microorganisms on or in living humans or other living animals—which the administrator of the United States Environmental Protection Agency determines to be a pest under the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended (7 U.S.C. 136 et seq.).

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the United States Environmental Protection Agency). Herbicides, fungicides, and insecticides are pesticides.

"Synthetic" means a substance formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or

mineral sources, except that such term will not apply to substances created by naturally occurring biological processes.

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

2.50.040 Prohibited pesticide and fertilizer use on County property. A. Synthetic pesticides are prohibited from use on County property unless listed as “allowed” on the national list of allowed and prohibited substances or as “approved” on the national list of petitioned substances, both maintained by the United States Department of Agriculture.

B. Non-synthetic pesticides are prohibited for use on County property only if specifically “prohibited” on the national list of allowed and prohibited substances maintained by the United States Department of Agriculture.

C. Fertilizer use is prohibited on County property except for natural organic fertilizer.

D. The following are exempt from this section’s prohibitions:

1. Pesticides determined to be “minimum risk pesticides” in accordance with Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (7 U.S.C. 136 et seq.) and listed in title 40 Code of Federal Regulations sections 152.25(f)(1) or (2).

2. The following products when used in the manner specified by the manufacturer: (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; and (f) citric acid.

3. The following applications of otherwise prohibited pesticides when used to control: (a) mosquitoes; (b) animals or insects, such as fire ants or termites, that may cause damage to buildings and structures; and (c) alien species whose introduction does, or is likely to, cause economic or environmental harm or harm to human health or when the treatment is applied by a crew of the by Maui Invasive Species Committee or similar organization support by the County.

E. This section’s prohibitions do not apply to the cultivation and production of both food and non-food crops on County-owned agricultural parks for sale or distribution to wholesalers or retail outlets.

F. Subsections A, B, and C take effect two years from this chapter’s establishment, except they take effect three years from this

chapter's establishment at Waiehu Golf Course, War Memorial Complex, and Ichiro "Iron" Maehara Baseball Stadium.

2.50.050 Vegetation management plan. A. The department of public works, the department of parks and recreation, and any other agency that uses pesticides or fertilizer on County property must submit a vegetation management plan to the council for approval by resolution within two years of this chapter's establishment.

B. A vegetation management plan means a plan that identifies all lands under the agency's jurisdiction and includes, at a minimum, the following: (1) location maps; (2) landscape plan for each area; (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) an analysis of how the proposed plan meets organic pest best management practices; (7) cost estimates and timeline for plan implementation; and (8) requests for waivers from section 20.50.040. Requests for waivers must be listed in a separate chapter and include the following: (a) explanation of how the public's health and safety are threatened; (b) a careful evaluation and list of the results of all allowed methods and materials; and (c) explanation of how the application of otherwise prohibited substances will, to the greatest extent practicable, minimize the impact of the application on abutting properties.

C. The council has final approval authority on and may amend each plan. To approve a vegetation management plan, the council must find that the following criteria are met:

1. For areas where a waiver from section 20.50.040 is being granted, a situation exists that threatens the public's health and safety.

2. The agency submitting the plan has carefully evaluated and listed the results of all alternative methods and materials.

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

C. In approving any waiver application through the vegetation management plan, the council may prescribe conditions and safeguards as are appropriate to further the purposes of this chapter, if the conditions do not conflict with State or federal law.

D. An approved vegetation management plans must be updated and submitted for approval to the council within five years.

E. Waivers granted through a vegetation management plan may be approved for a period up to two years.

F. Waiver extension requests must be submitted to the council ninety or more days prior to the extension date.

2.50.060 Waivers and waiver extensions. A. A waiver from section 2.50.040, to protect the public's health and safety, must be obtained prior to the adoption of a vegetation management plan or prior to the expiration date of a previously granted waiver.

B. Agencies may apply to the council for a waiver from section 2.50.040 prior to the use of a prohibited product or may apply to the council for the waiver extension.

C. The waiver application or waiver extension request shall be filed with the council and must include the following: (a) location map; (b) landscape plan for the area; (c) photographs of areas and vegetation; (d) a summary of the existing plants, soils, and environmental conditions for each area; (e) a history of vegetation management practices, including fertilizer and pesticide application amounts and frequency; (f) a proposed management plan that addresses organic pest best management practices; (g) cost estimates and a timeline; (h) information on how the public's health and safety is threatened; (i) an evaluation and list of the results of all alternative methods and materials; and (j) explanation of how the application of otherwise prohibited substances will, to the greatest extent practical, minimize the impact of the application on abutting properties.

D. To approve the initial waiver application and any subsequent waiver extension, the council must find that all the following criteria are met:

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

2. The agency submitting the plan has carefully evaluated and listed the results of all alternative methods and materials.

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

E. In approving any waiver application or waiver extension, the council may prescribe conditions and safeguards as are appropriate to further the purposes of this chapter, if the conditions do not conflict with State or federal law.

F. The council may grant a waiver or waiver extension by resolution.

G. Waivers may be granted for a period of up to two years.

H. Waiver extension requests must be submitted ninety or more days prior to the expiration date.

20.50.070 Public notifications and signage. A. If synthetic pesticides or fertilizers are used by an agency, the agency must conspicuously place notification signs in compliance with this chapter and in accordance with product labels. A notification sign must be posted forty-eight hours prior to product application and must remain in place until expiration of the restricted entry interval or reentry time indicated by the product label, but not less than seventy-two hours.

B. All notification signs must:

1. Be at least five inches high and four inches wide in size.

2. Be attached to the upper portion of a dowel or other supporting device so that the bottom of the sign is not less than twelve inches and the top of the sign is not more than forty-eight inches above the ground.

3. Made of rigid, weather-resistant material.

4. Be light colored (white, beige, yellow, orange, or pink) with dark, bold letters (black, blue, or green).

5. Have lettering that is conspicuous and clearly legible.

6. Include the following: (a) the word "CAUTION" in one hundred sixty point type or larger; (b) the words "PESTICIDE APPLICATION" in seventy-two point type or larger; (c) the County of Maui seal; (d) any reentry precautions from the pesticide labeling; (e) the name and telephone number of the agency or person making the pesticide application; (f) the date and time of the application; and (g) a date or time to remove the sign.

7. State the chemical and trade name of the pesticide or fertilizer, the date to be applied, the length of time to remain off the treated area as indicated by the pesticide label, and a phone number of the appropriate agency contact person for more information.

C. A schedule of pesticide applications and a contact phone number for additional information must be posted on the department of public works website and the department of parks and recreation website.

20.50.080 Violations. A. Any County employee who violates this chapter or any administrative rule issued under this chapter must be issued a written notice of violation by the employee's agency head, after first being given a warning, citing the specific violation and necessary corrective action, and may be subject to discipline in accordance with applicable personnel rules and collective bargaining agreements.

B. If applicable, the notice must be placed in the employee's employment file.

C. Each agency that uses pesticides or fertilizers on County property must submit an annual report to the council no later than January 15 of each year with a summary report listing the number of notices of violations issued, number of employees warned, and corrective actions taken.

SECTION 3. This ordinance takes effect sixty days after its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

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