



JOSIAH K. NISHITA
Deputy County Clerk

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

December 9, 2013

OFFICE OF THE
COUNTY CLERK

2013 DEC 9 AM 10 46

RECEIVED

Honorable G. Riki Hokama, Chair
Policy and Intergovernmental Affairs Committee
Council of the County of Maui
Wailuku, Hawaii 96793

Dear Chair Hokama:

Respectfully transmitted are copies of the following communications that were referred to your Committee by the Council of the County of Maui at its meeting of December 6, 2013:

COUNTY COMMUNICATIONS:

- No. 13-381 - Elle Cochran, Council Member
- No. 13-384 - Richelle M. Thomson, Deputy Corporation Counsel
- No. 13-385 - Richelle M. Thomson, Deputy Corporation Counsel
- No. 13-386 - Robert Carroll, Council Vice-Chair

Respectfully,

A handwritten signature in black ink, appearing to read "Josiah K. Nishita".

JOSIAH K. NISHITA
Deputy County Clerk

/jym

Enclosures

cc: Director of Council Services

Council Chair
Gladys C. Baisa

Vice-Chair
Robert Carroll

Presiding Officer Pro Tempore
Michael P. Victorino

Council Members
Elle Cochran
Donald G. Couch, Jr.
Stacy Crivello
Don S. Guzman
G. Riki Hokama
Mike White



Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

November 29, 2013

RECEIVED
2013 NOV 29 AM 10:05
OFFICE OF THE
COUNTY CLERK

The Honorable Gladys C. Baisa
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair Baisa:

**SUBJECT: BILL RELATING TO PESTICIDES AND GENETICALLY
MODIFIED ORGANISMS (PAF 13-300)**

May I please request that the attached a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 20, MAUI COUNTY CODE, RELATING TO PESTICIDES AND GENETICALLY MODIFIED ORGANISMS" be placed on the December 6, 2013, Council agenda.

Sincerely,

David M. Raatz
for ELLE COCHRAN
Council Member

paf:scj:13-300b

Enclosure

COUNTY COMMUNICATION NO. 13-301

ORDINANCE NO. _____

BILL NO. _____ (2013)

A BILL FOR AN ORDINANCE AMENDING TITLE 20, MAUI COUNTY CODE,
RELATING TO PESTICIDES AND GENETICALLY MODIFIED ORGANISMS

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

SECTION 1. Title 20, Maui County Code, is amended by adding a new chapter to be
appropriately designated and to read as follows:

“Chapter 20.40

PESTICIDES AND GENETICALLY MODIFIED ORGANISMS

Sections:

- 20.40.010 Findings.
- 20.40.020 Purpose.
- 20.40.030 Definitions.
- 20.40.040 Mandatory disclosure of pesticides and genetically modified organisms.
- 20.40.050 Pesticide buffer zones.
- 20.40.060 Environmental and public health impacts study
- 20.40.070 Penalties.
- 20.40.080 Administrative rules.

20.40.010 Findings. In order to establish provisions governing the use of pesticides and genetically modified organisms by large-scale commercial agricultural entities in Maui County, the Council finds that:

A. Section 1, chapter XI of the State Constitution states: “For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii’s natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people”.

B. The growth of commercial agricultural entities engaged in the use and development of genetically modified organisms and the widespread use of pesticides in the County has created a situation where residents live, work, and commute daily in close proximity to

areas where there is regular application of restricted use pesticides and general use pesticides.

C. There are increasing concerns about the direct and long-term impacts of the large-scale use of pesticides, and the impacts that the intense agricultural cultivation is having on the land, on the natural environment, and on human health.

D. Section 46-1.5(13), Hawaii Revised Statutes, states "Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of the County and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute where the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State".

E. The County has become a location of increasing commercial agriculture operations that utilize genetically modified organisms for the production of crop seed and field testing of new genetically modified organisms.

F. Genetically modified plants could potentially disperse into the environment of the County through pollen drift, seed commingling, and inadvertent transfer of seeds by humans, animals, weather events, and other means. This could have environmental and economic impacts.

G. Restricted use pesticides, have been used in Maui County by commercial agricultural entities.

H. Restricted use pesticides were used in Maui County by agricultural operations, government operations, and non-government operations for structural pest control termite treatment.

I. Pesticides have the ability to contaminate groundwater, and are often toxic to humans, animals, bees, and other insects. Some restricted use pesticides are banned by the entire European Union.

J. Dust and drift from both restricted use pesticides and general use pesticides sometimes travel beyond commercial agricultural operations. Dust, pesticide drift, and long-term exposure to toxic chemicals are potential sources of pollution endangering human health and the natural environment.

K. Subject to certain exceptions, section 46-17, Hawaii Revised Statutes, permits any county to adopt and provide for the enforcement of ordinances regulating or prohibiting noise, smoke, dust, vibration, or odors which constitute a public nuisance. Section 46-17, Hawaii Revised Statutes, prohibits declaring such an ordinance invalid on the ground that it covers any subject or matter embraced within any statute or rule of the State, unless there is a conflict between a statute or rule and an ordinance, in which case the law affording the most protection to the public shall apply.

L. The impacts on the County of large-scale intensive cultivation and associated agricultural practices should be further evaluated.

M. Information pertaining to the intensive use of pesticides within the County, and the experimentation and growing of genetically modified organisms, is currently withheld from the public. Thus, the public is unable to evaluate the full extent of the impacts on the residents and environment of the County.

N. In the interest of protecting the health of the people and fragile natural environment of the County, the people of the County

have the right to know what pesticides are being used on a significant scale, and what genetically modified organisms are being grown within the jurisdiction of the County. The people of the County have the right to know the likely potential impacts on their human health, and the health of their environment.

O. It is the intent of the County to collaborate with the DOA to support the implementation and enforcement of this chapter.

20.40.020 Purpose. The purpose of this chapter is to establish provisions to inform the public, and protect the public from any direct, indirect, or cumulative negative impacts on the health and the natural environment of the people and place of the County by governing the use of pesticides and genetically modified organisms, and the penalties associated with any violation of this chapter, or the laws, rules, or any other requirement that may be authorized by this chapter.

20.40.030 Definitions. When used in this chapter, the following words or phrases shall have the meaning given in this section unless it shall be apparent from the context that another meaning is intended:

“Active ingredient” means:

A. In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;

B. In the case of a plant regulator, an ingredient that, through physiological action, will accelerate or retard the rate of growth or maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

C. In the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant; and

D. In the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissues.

“Adult family boarding home” means any family home providing for a fee, twenty-four hour living accommodations to no more than five adults, unrelated to the family, who are in need of minimal protective oversight care in their daily living activities, in compliance with State of Hawaii or County of Maui licensing requirements, or both.

“Adult family group living home” means any family home providing twenty-four hour living accommodations for a fee to five to eight elderly, handicapped, developmentally disabled, or totally disabled adults, unrelated to the family, who are in need of long-term minimal assistance and supervision in the adult’s daily living activities, health care, and behavior management, in compliance with State of Hawaii or County of Maui licensing requirements, or both.

“Agriculture” means the breeding, planting, nourishing, caring for, gathering and processing of any animal or plant organism for the purpose of nourishing people or any other plant or animal organism; or for the purpose of providing the raw material for non-food products. For the purposes of this chapter, “agriculture” shall include the growing of flowers and other ornamental crops and the commercial breeding and caring for animals as pets.

“Ahupuaa” means a land division usually extending from the uplands to the sea.

"Certified pesticide applicator" means any individual who is certified under section 149A-33(1), Hawaii Revised Statutes, as authorized to use or supervise the use of any pesticide that is classified for restricted use.

"Commercial agricultural entity" means a firm, corporation, association, partnership, or any organized group of persons, whether incorporated or not, that is engaged in growing, developing, cultivating, or producing agricultural products.

"Crop" means a plant or product thereof that can be grown and harvested for subsistence, profit, or research.

"Day care center" means any facility where seven or more children under the age of eighteen are cared for without overnight accommodations at any location other than their normal place of residence, in compliance with State of Hawaii or County of Maui licensing requirements, or both. This term includes child care services and other similar uses and facilities consistent with this definition, and not covered by the "Family child care home" definition.

"Department" means the County Department of Environmental Management.

"DOA" means the State of Hawaii Department of Agriculture.

"Dwelling" means a building or portion thereof designed or used exclusively for residential occupancy and having all necessary facilities for permanent residency such as living, sleeping, cooking, eating, and sanitation.

"Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships that exist among these.

"EPA" means the United States Environmental Protection Agency.

"Experimental genetically modified organisms" means organisms that have not received final approval by the FDA, United States Department of Agriculture, FDA, or the appropriate federal regulatory body for human consumption, release into the environment, or both.

"Family care home" means any care home occupied by not more than five care home residents, in compliance with State of Hawaii or County of Maui licensing requirements, or both.

"Family child care home" means providing child care services and other similar uses consistent with this definition where six or fewer children under the age of eighteen are cared for in a private dwelling unit without overnight accommodations at any location other than the children's normal place of residence, in compliance with State of Hawaii or County of Maui licensing requirements, or both.

"FDA" means the United States Food and Drug Administration.

"General use pesticide" means a pesticide other than one designated as a restricted use pesticide.

"Genetically modified" means produced from an organism or organisms in which the genetic material has been genetically engineered through the application of:

A. In vitro nucleic acid techniques, which include, but are not limited to: recombinant deoxyribonucleic acid (DNA) techniques; direct injection of nucleic acid into cells or organelles; encapsulation; gene deletion; and doubling; or

B. Methods of fusing cells beyond the taxonomic family that overcome natural physiological reproductive or recombinant barriers, and that are not techniques used in traditional breeding and selection such as conjugation, transduction, and hybridization.

For purposes of this definition:

C. "In vitro nucleic acid techniques" include, but are not limited to, recombinant DNA or RNA techniques that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as micro-injection, macro-injection, chemoporation, electroporation, micro-encapsulation, and liposomefusion.

D. An animal that has not itself been genetically modified, regardless of whether such animal has been fed or injected with any food or any drug that has been produced through means of genetic modification, shall not be considered "genetically modified" for purposes of this chapter.

"Genetically modified organism" means an organism or organisms whose genetic material has been genetically modified.

"Ground cover" means small plants such as salal, ivy, ferns, mosses, grasses, or other types of vegetation that normally cover the ground and includes trees and shrubs less than six inches in diameter.

"Medical facility" means a facility licensed by the State of Hawaii to provide medical services.

"Nurse practitioner" means a person licensed as an advanced practice registered nurse under chapter 457, Hawaii Revised Statutes.

"Nursing home" means a facility established for profit or nonprofit, which provides nursing care and related medical services on a twenty-four hour per day basis to two or more individuals because of illness, disease, or physical or mental infirmity, in compliance with State of Hawaii or County of Maui licensing requirements, or both.

"Orchard" means the establishment, care, and harvesting of over twenty-five fruit-bearing trees, including, but not limited to, banana, coffee, guava, papaya, or persimmon, for the purpose of selling the fruit to others.

"Organism" means any biological entity capable of replication, reproduction, or transferring genetic material.

"Park" means any park, park roadway, playground, beach right-of-way, or other recreational areas under the control, management, and operation of the County of Maui or State of Hawaii.

"Perennial waterway" means a natural waterway that has continuous flow in parts of its waterway bed year round during years of normal rainfall.

"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 EPA determines to be a pest.

"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 an attractant, plant regulator, defoliant, or desiccant. A product shall be deemed to be a pesticide regardless of whether it is intended for use as packaged, or as a dilution or mixture with substances such as carriers or baits. Products not considered pesticides include:

A. Deodorants, bleaching agents, and cleaning agents for which no pesticidal claims are made or implied;

B. Embalming fluids;

C. Building materials that have been treated to protect the material itself against any pest and bear no claims for protection of other surfaces or objects;

D. Fabrics that have been treated to protect the fabric itself from insects, fungi, or any other pests;

E. Fertilizer and other plant nutrients; and

F. Products intended only for use after further processing or manufacturing such as grinding to dust or other operations.

“Physician” means an individual authorized to practice medicine or osteopathy under chapter 453, Hawaii Revised Statutes.

“Public roadway” means a roadway on which the public is allowed to generally travel in a vehicle without obtaining special permission, or providing advance notice.

“Registered beekeeper” means a person registered with the Hawaii Apiary Program, through the DOA.

“Residential care home” means any care home facility occupied by more than five care home residents, in compliance with State of Hawaii or County of Maui licensing requirements, or both.

“Restricted-entry interval” means the time after the end of a pesticide application during which entry into the treated area is restricted, as contained within the worker protection standard and specified on all agricultural plant pesticide product labels.

“Restricted use pesticide” means:

A. A pesticide or pesticide use classified by the Administrator of the EPA for use by certified pesticide applicators or competent persons under their direct supervision and so designated on the label of the pesticide; or

B. A pesticide or pesticide use classified by the Hawaii Board of Agriculture for use by certified pesticide applicators or competent persons under their direct supervision.

“School” means an institution with an organized curriculum offering instruction.

“Shoreline” means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

“Significant effect” means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State’s environmental policies or long-term environmental goals as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and State.

“Worker protection standard” means the worker protection standard for agricultural pesticides regulation established by the EPA, which is aimed at reducing the risk of pesticide poisonings and injuries among agricultural workers and pesticide handlers, and contains requirements for pesticide safety training, notification of pesticide applications, use of personal protective equipment, restricted-entry intervals after pesticide application, decontamination supplies, and emergency medical assistance.

20.40.040 Mandatory disclosure of pesticides and genetically modified organisms. A. It shall be mandatory for all commercial agricultural entities that purchased or used in excess of five pounds or fifteen gallons of any single restricted use pesticide during the prior calendar year to disclose the use of all pesticides of any kind during the following calendar year. Disclosure requirements include:

1. Worker protection standard. Posting of warning signs in the area in which pesticides are to be applied no sooner than twenty-four hours before the scheduled application of any pesticide. Posting of warning signs during and after the application of any pesticide shall conform to the official label of the pesticide. Posting of warning signs at the time of application shall conform to the worker protection standard established by the EPA, and shall remain posted until expiration of the applicable restricted-entry interval established by the EPA. The size of all signs, and the symbols and wording on all signs, shall conform to the worker protection standard established by the EPA. A posting notification area shall be provided daily for workers, and shall conform to the worker protection standard established by the EPA, and the State of Hawaii.

2. Pesticide pre-application "good neighbor courtesy notices." Pesticide pre-application notification must be provided to any of the following requesting persons within one thousand five hundred feet from the property line of the commercial agricultural entity where any pesticide is anticipated to be applied: registered beekeeper, property owner, lessee, or person otherwise occupying property within one thousand five hundred feet. Pre-application notification must also be provided to any revocable permit holder authorized to enter the property of the commercial agricultural entity. A mass notification list shall be established and maintained by each commercial agricultural entity, and shall include access to a legible map showing all field numbers and any key, legend, or other necessary map descriptions. Any interested person as described in this subsection shall submit contact information to the relevant commercial agricultural entity. These interested persons may submit up to three local telephone numbers, and two e-mail addresses. All mass notification messages shall be sent via telephone, text message, or e-mail, with the method or methods of transmittal to be determined by each commercial agricultural entity. Each commercial agricultural entity shall provide an alternative method of transmittal for any recipient who does not have access to the technology necessary for the method or methods of transmittal selected by the commercial agricultural entity. Requests to be included on, or removed from, the mass notification list must be processed within three business days. These "good neighbor courtesy notices" shall contain the following information regarding all anticipated pesticide applications: pesticide to be used, active ingredient of pesticide to be used, date, time, and field number.

a. Scheduled weekly applications. Each commercial agricultural entity shall send regular mass notification messages at least once during every seven day week period summarizing the anticipated application of any pesticide for the upcoming seven day week.

b. Unforeseen pest threat necessary applications. Whenever a pesticide application that was unforeseen and therefore not contained in the weekly "good neighbor courtesy notice" is deemed by the commercial agricultural entity to be necessary to alleviate

a pest threat, an additional "good neighbor courtesy notice" shall be generated to all recipients of the mass notification list within twenty-four hours after the application.

3. Pesticide post-application weekly public disclosure. Each commercial agricultural entity shall submit regular public disclosure reports once during every seven day week period compiling the actual application of all pesticides during the prior week. These weekly public disclosure reports shall contain the following information regarding all actual pesticide applications: date; time; field number; total acreage; trade name of pesticide used; EPA registration number; active ingredient of pesticide used; gallons or pounds of pesticide used; and temperature, wind direction, and wind speed at time of pesticide application. Each commercial agricultural entity shall submit all public disclosure reports to the department, and shall include online access to a legible map showing all field numbers and any key, legend, or other necessary map descriptions for all applicable commercial agricultural entities. All public disclosure reports shall be posted online, and available for viewing and download by any interested persons. The department shall develop a standardized reporting form.

4. Pesticide post-application urgent/emergency care disclosure. Each commercial agricultural entity shall establish an emergency response hotline to be made available to any licensed physician or nurse practitioner practicing in association with a clinic, medical facility, or emergency center. Within six hours of a request from any such licensed physician or nurse practitioner who provides a documented medical need, the commercial agricultural entity must provide the following information regarding all actual pesticide applications related to the alleged incident: date; time; field number; total acreage; trade name of pesticide used; EPA registration number; active ingredient of pesticide used; gallons or pounds of pesticide used; and temperature, wind direction, and wind speed at time of pesticide application.

B. It shall be mandatory for all commercial agricultural entities that intentionally or knowingly possess any genetically modified organism to disclose the growing of said genetically modified organism.

1. Annual public reports shall be provided to the department and the DOA and shall be posted on the County website. Direct notification to the department and the DOA documenting such disclosure shall occur no later than sixty days following the end of each calendar year, except that the first reports shall be due on the date this ordinance shall take effect.

2. Annual public reports shall include a general description of each genetically modified organism (e.g., "GMO Corn" or "GMO Soy"), a general description of the geographic location including at minimum the tax map key and ahupuaa where each genetically modified organism is being grown or developed, and dates that each genetically modified organism was initially introduced to the land in question.

20.40.050 Pesticide buffer zones. It shall be mandatory for all commercial agricultural entities that purchased or used in excess of five pounds or fifteen gallons of any single restricted use pesticide during the prior calendar year to restrict the growing of crops, except ground cover to which no pesticide is applied, and thereby restrict the application of all pesticides in the following areas:

A. No crops may be grown within five hundred feet of any adult family boarding home, adult family group living home, day care center, family care home, family child care home, medical facility, nursing home, residential care home, or school.

B. No crops may be grown within two hundred fifty feet of any park, except that, regarding a mature orchard, the crops of which grow in a hedge-like manner creating a windbreak effect, if pesticide application occurs between crop rows from a source no higher than two feet from the ground, for the purpose of eliminating weeds in the ground, then no crops may be grown within seventy-five feet of any park.

C. No crops may be grown within five hundred feet of any dwelling, unless:

1. The commercial agricultural entity has an approved soil and water conservation plan that explicitly demonstrates no pesticide drift on the dwelling, then no crops may be grown within one hundred feet of any dwelling; or

2. The dwelling is owned by the landowner, and occupied by the landowner or a family member of the landowner, and there are no other dwellings occupied by third parties within five hundred feet of the landowner dwelling, then there shall be no pesticide buffer zone restricting growing of crops in proximity to the landowner dwelling; or

3. Regarding a mature orchard, the crops of which grow in a hedge-like manner creating a windbreak effect, if pesticide application occurs between crop rows from a source no higher than two feet from the ground, for the purpose of eliminating weeds in the ground, then no crops may be grown within seventy-five feet of any dwelling.

D. No crops may be grown within one hundred feet of any public roadway, except that crops may be grown within one hundred feet of any public roadway if the commercial agricultural entity posts notification signage on land that is adjacent to the public roadway no sooner than twenty-four hours before the scheduled application. Roadway signs shall be located at the start and end of the field along the public roadway where application will occur, shall be of a size that is legible from vehicles traveling at the posted speed limit, and shall comply with all State of Hawaii Department of Transportation requirements.

E. No crops may be grown within one hundred feet of any shoreline or perennial waterway that flows into the ocean. This provision shall not apply to any irrigation ditch or drainage canal that does not directly flow to the ocean.

Section 20.40.060. Environmental and public health impacts study. The County shall complete an environmental and public health impact study (EPHIS) through a two-part community-based process to address key environmental and public health questions related to large-scale commercial

agricultural entities utilizing pesticides and genetically modified organisms. As determined by Council resolution, the first part shall utilize a joint fact-finding group (JFFG) convened and facilitated by a professional consultant to determine the scope and design of the EPHIS within twelve months of a notice to proceed. In the second part of the process, the EPHIS shall be conducted by a professional consultant with oversight by the JFFG and shall be completed within eighteen months of the relevant notice to proceed. The EPHIS may make recommendations that include, but are not limited to, possible actions the County may take in order to address any significant effects, public health impacts, or both.

Section 20.40.070. Penalties. A. Any person, whether as principal, agent, employee, or otherwise, violating, causing, or permitting the violation of any of the provisions of this chapter, shall be assessed a civil fine of not less than \$10,000 and not more than \$25,000 per day, per violation.

B. In addition to any penalty described in subsection A of this section, any person, whether as principal, agent, employee, or otherwise, violating, causing, or permitting the violation of any of the provisions of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$2,000, or imprisoned not more than one year, or both, for each offense. The continuance of any violation after conviction shall be deemed a new criminal offense for each day that the violation or violations continue.

Section 20.40.080. Administrative rules. In order to effectuate all provisions of this chapter, the department may adopt administrative rules pursuant to chapter 91, Hawaii Revised Statutes. In so doing, the department is authorized to collaborate with the DOA.”

SECTION 2. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

paf:kmh:13-300a