

ORDINANCE NO. NS-517.70

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
ADDING DIVISION B28
OF THE SANTA CLARA COUNTY ORDINANCE CODE
RELATING TO INTEGRATED PEST MANAGEMENT AND PESTICIDE USE**

Summary

This ordinance adds provisions regarding the establishment of an Integrated Pest Management Program and regulates the use of pesticides on County property.

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:

The Ordinance Code of the County of Santa Clara is hereby amended by the addition of a new Division, to be entitled and to read as follows:

Division B28

INTEGRATED PEST MANAGEMENT AND PESTICIDE USE

Chapter 1. General Provisions

Section B28-1. Intent and Purpose.

The County, in carrying out its operations, finds it necessary from time to time to use pesticides on County property. The intent of this Division is to protect the health and safety of County employees and the general public, the environment, and water quality, as well as to provide sustainable solutions for pest control on County property. The Board of Supervisors hereby finds and declares that it shall be the policy of the County of Santa Clara to eliminate or reduce pesticide applications on County property to the maximum extent feasible. Preference shall be given to available non-pesticide alternatives, where feasible, before considering the use of pesticides on County property.

This Division concerns the application of pesticides to property owned by the County of Santa Clara only, and does not concern the application of pesticides to property that is not owned by the County of Santa Clara.

Section B28-2. Definitions.

Whenever used in this Division, the following terms shall have the meanings set forth below:

(a) “Antimicrobial pesticides” are pesticides, such as disinfectants and sanitizers, that are intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or protect inanimate objects (for example floors and walls), industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

(b) “Approved List” is the list of pesticides authorized by the County IPM Coordinator for use on County Property developed in accordance with section B28-5.

(c) “Carbamates” means esters on N-methyl carbamic acid, which inhibit cholinesterase.

(d) “Contract” is a binding written agreement, including but not limited to a contract, permit, license or lease between a person, firm, corporation or other entity, including a governmental entity, and the County of Santa Clara which grants a right to use or occupy property of the County or which provides pest management services.

(e) “County Executive” is the County Executive or his or her designee of the County of Santa Clara.

(f) “Demonstration site” is a specific area or site designated by a department to evaluate the use of a pest management strategy.

(g) “Department” is any agency or department of the County of Santa Clara. Department does not include the Vector Control District or any other local, state, or federal agency.

(h) “Departmental IPM Coordinator” is someone designated by a department head to coordinate the Department's IPM program.

(i) “County IPM Coordinator” is the person designated by the County Executive to implement and oversee the County of Santa Clara’s IPM Program.

(j) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(k) “Integrated Pest Management (IPM)” is a decision-making process for managing pests using monitoring to determine pest-caused injury levels and combining

biological control, cultural practices, mechanical and physical tools, and chemicals to minimize pesticide usage. The method uses extensive knowledge about pests, such as infestation thresholds, life histories, environmental requirements, and natural enemies to complement and facilitate biological and other natural control of pests. The method uses the least hazardous pesticides only as a last resort for controlling pests.

(l) “IPM Technical Advisory Group (IPM TAG)” is the technical advisory group to the County for the IPM Program and is further described in section B28-9.

(m) “Organophosphates” means organophosphorus esters, which inhibit cholinesterase.

(n) “Pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except certain insects, viruses, bacteria, or other microorganism on or in living man or living animals).

(o) “Pesticide” is any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest, which may infest or be detrimental to vegetation, man, animals, or households, or be present in any agricultural or nonagricultural environment. Pesticide for purposes of this Division does not include antimicrobial agents.

(p) “Posting” is to place signs as identified in section B28-7 to inform employees and the public of pesticide use at a given site.

(q) “Signal Words” are the words used on a pesticide label--Danger, Warning, Caution--to indicate level of toxicity.

(r) “Toxicity Category I Pesticide Product” is any pesticide product that meets United States Environmental Protection Agency criteria for Toxicity Category I under Section 156.10 of Part 156 of Title 40 of the Code of Federal Regulations.

(s) “Toxicity Category II Pesticide Product” is any pesticide product that meets United States Environmental Protection Agency criteria for Toxicity Category II under Section 156.10 of Part 156 of Title 40 of the Code of Federal Regulations.

Section B28-3. General Exemptions.

(a) This Division shall not apply to the use of any pesticide for the purpose of improving or maintaining water quality at any County owned or operated drinking water treatment plants, wastewater treatment plants, reservoirs, and related collection, distribution, and treatment facilities.

(b) This Division shall not apply to any use of pesticides on County property by any department when performing pest management or pesticide activities authorized by state or federal laws or regulations.

(c) This Division shall not apply to the use of pesticides by the Vector Control District.

(d) This Division shall not apply to antimicrobial pesticides or pesticides used to control pests in or on living humans or animals.

(e) This Division shall not apply to existing Contracts except as provided in section B28-10.

(f) This Division shall not apply to Contracts under negotiation at the time this Division becomes effective for a period of five years.

Chapter 2. Pesticide Management

Section B28-4. County Integrated Pest Management (IPM) Program.

(a) The County IPM Coordinator shall oversee and coordinate implementation of the IPM Program.

(b) The IPM Program shall include, but not be limited to, the following:

(i) Identify staff member(s) responsible for program implementation;

(ii) Acquaint County workers with the IPM approach and new pest management strategies, as they become known;

(iii) Inform the public of the County's effort to reduce pesticide use;

(iv) Respond to questions about the County's pest management program and practices;

(v) Conduct ongoing educational programs, where appropriate;

(vi) Maintain records and evaluate program effectiveness;

(vii) Develop and maintain the Approved List of pesticides.

(c) Departments shall implement the IPM Program consistent with the IPM practices outlined below. Where feasible, departments shall consider a range of potential treatments for the pest problem and employ non-pesticide management tactics first, consider

the use of chemicals only as a last resort, and select and use chemicals in accordance with the provisions of this Division. The IPM practices shall include ways to:

- (i) Monitor pests to determine pest population size, occurrence, and natural enemy population, if present. Identify decisions and practices that could affect pest populations. Keep records of monitoring results;
- (ii) Set treatment levels for each pest at each site based on how much biological, aesthetic or economic damage the site can tolerate;
- (iii) Determine the most effective treatment time, based on pest biology and other variables, such as weather, seasonal changes in wildlife use and local conditions;
- (iv) Design construction and building remodels to reduce or eliminate pest habitats and improve efficiency in facility and landscape maintenance and sanitation;
- (v) Reduce pest incidences by modifying management practices such as watering, mulching, fertilizer use, and pruning;
- (vi) Modify pest ecosystems, including waste management and food storage, to reduce pest food, living space, and access;
- (vii) Use physical controls such as hand-weeding, traps and barriers, heat and cold;
- (viii) Use biological controls such as introducing or enhancing pests' natural enemies;
- (ix) When indoors, use baits or least toxic methods of pest control rather than sprays;
- (x) Monitor treatment to evaluate effectiveness;
- (xi) Maintain records as set forth in section B28-8.

Section B28-5. Pesticide Use.

(a) **Approved List.** The County IPM Coordinator shall develop the Approved List using a set of criteria that will be developed with the review and input of the IPM TAG. The criteria will take into account environmental and human health hazards, principles of the IPM approach, and technically based methods, conditions, and specifications for pesticide use. The County IPM Coordinator shall maintain the list of approved pesticides that may be used on County property. The Approved List shall be reviewed and updated at

least annually. The IPM Coordinator may amend this list as needed at any time as long as the products are consistent with the established criteria. These amendments shall be communicated to the IPM TAG in writing at the quarterly meetings.

(b) Specific Exemptions. An exemption may be obtained from the County IPM Coordinator for use of a product not on the Approved List as follows:

- (i) One-year exemptions. The County IPM Coordinator may grant a specific exemption, with limited conditions for use, for a one-year period upon a written request showing that a department has:
 - (1) Identified the need for use;
 - (2) Made a good-faith effort to find alternatives to the pesticide;
 - (3) Identified or demonstrated that effective economic alternatives to the pesticide do not exist for that particular use; and
 - (4) Developed a reasonable plan for investigating alternatives to the pesticide during the exemption period.
- (ii) An exemption may be continued beyond the one-year period by filing a new request for exemption as required in subsection (b)(i) above.
- (iii) The County Executive shall have the discretion to revoke any exemption.

(c) Emergency use of pesticides.

- (i) A department responsible for maintenance of a site or facility may apply to the County IPM Coordinator for an emergency pesticide use exemption in the event that a pest outbreak poses an immediate threat to public health or may cause significant economic damage.
- (ii) If the County IPM Coordinator cannot respond to the application in a timely manner, the Departmental IPM Coordinator submitting the application may authorize the one-time emergency use of the required pesticide and provide notice of the emergency application to the County IPM Coordinator in writing within 48 hours.
- (iii) Posting of emergency use of pesticides shall be at the time of pesticide application and comply with all other posting requirements.
- (iv) Reporting of the exemption and pesticide use will comply with all other reporting requirements as stated in section B28-8.

Section B28-6. Restriction on the Use of Pesticides.

Except for the use of pesticides exempted pursuant to section B28-3, pesticides granted an exemption pursuant to section B28-5(b) or 5(c) or pesticides on the Approved List per section B28-5(a), no department shall use any of the following types of pesticides. A list of the pesticides and pesticide products identified in (b) through (g) below shall be on file with the County IPM Coordinator.

- (a) Toxicity Category I or II pesticide products.
- (b) Any pesticide containing a chemical identified by the State of California as a chemical known to the State to cause cancer or reproductive or developmental toxicity pursuant to the California Safe Drinking Water and Toxic Enforcement Act of 1986.
- (c) Pesticides identified by the State of California on the Groundwater Protection List (Section 13145 (d), Food and Agricultural Code, Division 6. Pest Control Operations).
- (d) Pesticides classified by active ingredient as organophosphate type pesticides as identified by the United States Environmental Protection Agency (Office of Pesticide Programs, document 735-F-99-14, May 1999), or California Environmental Protection Agency, Department of Pesticide Regulation, Chemical Inquiries Database.
- (e) Pesticides containing carbamate-type chemicals (California Environmental Protection Agency, Department of Pesticide Regulation, Chemical Inquiries Database.)
- (f) Any pesticide classified as a human carcinogen, probable human carcinogen or possible human carcinogen by the United States Environmental Protection Agency, under procedures established in "Proposed Guidelines for Carcinogen Risk Assessment," EPA/600/P-92/003C, April 1996, or equivalent documents.
- (g) Any pesticide group officially designated by the California Environmental Protection Agency Department of Pesticide Regulation or by the United States Environmental Protection Agency as posing significant hazard to human health or the environment.

Section B28-7. Posting of Pesticide Use.

(a) Except as provided for in section B28-5(c) and section B28-7(b), any department that uses or authorizes the use of a pesticide shall comply with the following posting procedures:

- (i) Signs shall be posted at least three days before application of the pesticide and remain posted at least four days after application, except for baits and emergency use of pesticides, which are posted at the time of treatment in accordance with section B28-5(c)(iii) above and subsection (b)(iii) below;
 - (ii) For buildings and/or landscaped areas adjacent to buildings, signs shall be posted at main entry points where the pesticide is applied;
 - (iii) For open areas, signs shall be posted in highly visible locations around the perimeter of the area where the pesticide is applied;
 - (iv) For vehicles used primarily by county staff, signs shall be posted at areas where vehicles are obtained or posting information shall be given to the primary drivers.
 - (v) Signs shall contain the:
 - (1) Trade name and active ingredient of the pesticide product;
 - (2) Target pest;
 - (3) Date of posting;
 - (4) Date(s) of anticipated pesticide use; the date(s) of actual pesticide use will be posted at the main entrance, park office, or designated site;
 - (5) Signal word indicating the toxicity category of the pesticide product;
 - (6) Date for re-entry of staff and the public to the area treated if applicable;
 - (7) Name and contact number for the department responsible for the application.
 - (vi) Signs shall have a standard design that is easily recognizable by the public and workers;
- (b) Exemptions to posting.
- (i) Departments shall not be required to post signs in accordance with section B28-7(a) in right-of-way locations and other areas that the general public does not use for recreational purposes.

- (1) Each department that uses pesticides in such locations shall provide a public access telephone number for information about pesticide applications. The public access telephone number shall be posted in a prominent location at the department's main office building. Information provided shall include all the items in subsection (a)(v) above.
- (ii) Any pesticide granted an emergency exemption by the County IPM Coordinator shall not be required to be posted prior to treatment. However, all other requirements for posting as set forth in section B28-7(a) shall be followed.
- (iii) Any pesticide bait placed in a container or trap, or applied as a gel or paste in a crack or crevice shall not be required to post signs prior to treatment. Baits, used indoors, shall be posted in the vicinity of application. Baits, used outdoors, shall be posted in the main office, park office, or a designated site. Signs shall be posted according to the requirements as set forth in section B28-7(a).
- (iv) The County IPM Coordinator may in his or her discretion grant necessary exemptions to the posting requirements.

Section B28-8. Record Keeping and Reporting.

(a) Each department that uses pesticides shall keep records of pest management activities, including information about demonstration sites and exemptions. A copy of this information shall be placed in a centralized record keeping area in each department. Where feasible, this information shall be kept in a notebook or electronic equivalent maintained in each occupied building. Each pest management activity such as pesticide application, trapping or inspection shall be recorded and, when applicable, include at least the following information:

- (i) Target pest and extent of problem;
- (ii) Product name, active ingredients, EPA Registration number, formulation, and quantity of pesticide used;
- (iii) Site of the pesticide application;
- (iv) Date of pesticide application;
- (v) Name of person conducting pest management activity;
- (vi) Application equipment number, if applicable;

- (vii) Prevention and other non-chemical methods of control recommended or used, and;
 - (viii) Evaluation of effectiveness.
- (b) The Departmental IPM Coordinator shall keep the following:
- (i) Records of pesticide use;
 - (ii) A copy of the label of all pesticides used; and,
 - (iii) The material safety data sheet for each pesticide used.
- (c) Each department that uses pesticides shall submit a summary of pest management records required in section B28-8(a) and (b) to the County IPM Coordinator at least quarterly.
- (d) Pest management records, including pesticide use records, are all public records.
- (e) Pesticide use records shall be kept indefinitely until an electronic database tracking system has been established.

Chapter 3. IPM Implementation

Section B28-9. Implementation of County Integrated Pest Management Ordinance.

(a) This Division shall be phased-in over one to two years in order to provide adequate time for developing the Approved List, documenting current IPM practices and/or reductions, and identifying and implementing alternate pest management measures. The County IPM Coordinator shall develop a timetable and format for departments to each submit a plan for implementing this Division.

(b) A Technical Advisory Group (TAG) shall be formed and shall meet at least four times per year to review the County's IPM program and provide comments to the County Executive. The following representatives will be invited to participate on the TAG: two from Pesticide Alternatives of Santa Clara County; one from the Santa Clara Valley Water District; one from the County Agricultural Commissioner; one from the Santa Clara County Pollution Prevention Committee; one County employee representing a labor organization; and one representative from each of the following Santa Clara County agencies and departments: Roads and Airports, Parks and Recreation, the General Services Agency, Valley Health and Hospital System, and Occupational Safety and Environmental

Compliance. The Board of Supervisors may at their discretion make changes to the composition of the group as deemed necessary.

(c) The IPM Coordinator shall provide a quarterly report to one or more Board-designated committees on the status of the IPM Program including information about pest problems, pesticide use, list of exemptions, goals and progress, staff training and public education, and anticipated changes that may affect pesticide use.

Section B28-10. County Contracts and Easements.

(a) Except as provided in (i) below, when a department enters into a new Contract (see section B28-2(d)) or amends an existing Contract to extend the term of the Contract for more than six months beyond the current term and any optional extension periods, the Contract shall require compliance with the provisions of this Division including those relating to pesticide restrictions, record keeping, and reporting.

(i) The County Executive may grant an exemption for up to five years from Contract compliance with all or part of the provisions of this Division in the event compliance would negatively impact County revenues, prevent the highest and best use of an asset as determined by the County Executive, or where it is demonstrated that full compliance cannot be achieved. Notice of any exemption granted pursuant to this subsection (i) shall be given to the applicant and to the IPM TAG. The notice shall state that any person dissatisfied with the decision of the County Executive may file an appeal with the Clerk of the Board within fifteen (15) calendar days of the date of the notice. The appeal will first be heard before the County's Housing, Land Use, Environment, and Transportation Committee, which Committee shall make a recommendation to the Board of Supervisors. The decision of the Board of Supervisors shall be final.

(b) A contractor, or department on behalf of a contractor, may apply for exemptions authorized under section B28-5(b) and (c), and this section B28-10.

(c) When a department enters into a new lease in which the County is occupying or using property not owned by the County (and thus not within the definition of Contract in section B28-2(d)), the County shall use reasonable efforts to negotiate the use of IPM practices as part of that lease.

(d) In current leases in which the County is occupying or using property not owned by the County, the County shall encourage the use of IPM practices whenever practical.

(e) When the County is granted an easement, the maintenance of the easement shall be in compliance with this Division if consistent with the terms of the easement.

Section B28-14. No Civil Liability for Violations of this Chapter.

This Division and the provisions are directory, and are intended to set forth goals and program elements for management of pests and pesticide use. This chapter is not intended to create a standard of civil liability for the acts or failure to act of the County and its employees and contractors. No person, government official, board, commission, or agency shall be liable in any civil action or proceeding for damages for violation of any of the provisions of this Division.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on _____ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Donald F. Gage, Chairperson
Board of Supervisors

ATTEST:

PHYLLIS A. PEREZ
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

Kathy Kretchmer
Deputy County Counsel