

COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 64

ORDINANCE NO. 13 108

(DRAFT 3)

AN ORDINANCE AMENDING CHAPTER 20, ARTICLE 2, OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION, AS AMENDED), RELATING TO CLEARING OCCUPIED AND UNOCCUPIED LOTS.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Purpose. The purpose of this ordinance is to provide relief to property owners that are impacted by unsafe flora on properties adjacent to or abutting their properties. High winds and rain compound the problem of falling branches and trees onto power lines, phone lines, fences, houses, and other private property. There is also a high percentage of property owners that do not reside on the island of Hawai'i that allow their properties to become overgrown and unsafe. Currently individuals must seek relief in the civil courts, which is lengthy and costly. It is the duty of the Council of the County of Hawai'i and all government officials to enact and enforce policies that promote and ensure public health and safety. This ordinance will allow for prompt responses and action in cases of emergencies and threats to public health, safety, and private property.

SECTION 2. Chapter 20, article 2, of the Hawai'i County Code 1983 (2005 Edition, as amended) is amended by amending the title to read as follows:

"Article 2. Clearing Occupied and Unoccupied Lots."

SECTION 3. Chapter 20, article 2, of the Hawai'i County Code 1983 (2005 Edition, as amended) is amended by adding a new section to be appropriately designated and to read as follows:

"Section 20- . Definitions.

As used in this article:

"Refuse" means any discarded or disposable matter, including garbage, rubbish, and swill as defined in section 20-31.

"Undergrowth" means any bush, small tree, or other vegetation.

“Unsafe flora” means any or any part of a tree, bush, vine, or grass that poses an imminent danger for fire, health, safety, property damage, or criminal threat to persons or adjacent property and structures including buildings, roofs, rain gutters, antennae, driveways, landscaping, privacy structures (including gates, fencing, and stone walls), tents, garages, automobiles, power lines, phone lines, playground equipment, water catchment tanks, swimming pools, or any other structures and property not identified here.”

SECTION 4. Chapter 20, article 2, section 20-21 through section 20-23, of the Hawai‘i County Code 1983 (2005 Edition, as amended) are amended to read as follows:

“Section 20-21. Removal of refuse, ~~and~~ undergrowth, and unsafe flora required.

Every owner of any occupied or unoccupied lot the frontage of which abuts or adjoins any public street or highway within the County, shall clear the lot of all refuse, ~~and~~ uncultivated undergrowth, and unsafe flora thereon to a depth of not exceeding one hundred feet from any street or highway adjoining, whenever on the lot there is refuse, ~~or~~ uncultivated undergrowth, or unsafe flora to an extent that the lot ~~[has become]~~ poses or is likely to ~~[become-a]~~ pose an imminent danger for fire, health, safety, property damage, or crime hazard.

Section 20-22. Complaint by adjacent or abutting ~~owners~~ owner(s); request to clear.

- (a) If a majority of all the adult residents within a radius of five hundred feet from any boundary of, or the property owner of a property adjacent to or abutting, ~~or~~ any occupied or unoccupied lot, in writing to the mayor requests that the lot be cleared~~;~~ of refuse, uncultivated undergrowth, or unsafe flora, the mayor shall investigate the complaint. If the mayor certifies that there is refuse, ~~or~~ uncultivated undergrowth, or unsafe flora on the lot complained about to an extent that the lot ~~[has become]~~ poses or is likely to ~~[become-a]~~ pose an imminent danger for fire, health, safety, property damage, or crime hazard, the mayor shall notify the owner of the lot to clear the occupied or unoccupied lot of the refuse, ~~or~~ uncultivated undergrowth, or unsafe flora.
- (b) If the offending uncultivated undergrowth or unsafe flora is registered as an endangered or protected species or is listed as “exceptional” pursuant to chapter 14, article 10 of this Code, or if the owner wants to keep the offending uncultivated undergrowth or unsafe flora, the owner shall submit in writing a treatment plan for its continued safe existence to the mayor’s office, the department of public works, the arborist advisory committee, the offended property owner(s), and, if applicable, the homeowners association. The treatment plan shall be approved by the department of public works and, if applicable, the homeowners association.
- (c) If a building is constructed in close proximity to an existing stand of trees used for wind block, boundary markers or ornamentals, the property owner may not file a complaint under this section and may seek other legal remedies should an emergency situation arise.

- (d) If a person files three unsubstantiated complaints about the same refuse, uncultivated undergrowth, or unsafe flora, that person may not file a complaint for that same property, providing that property is under the same ownership at the time that the three unsubstantiated complaints were filed.

Section 20-23. Clearance by County; costs.

- (a) If any owner, after notice to clear any occupied or unoccupied lot has been mailed to the owner and posted by the mayor, fails or refuses to comply with the order within thirty days after the notice, the County may proceed to clear the lot of the refuse, uncultivated undergrowth, or unsafe flora at the expense of the owner.
- (b) The collection of any expense that has been unpaid by the property owner for [of] clearing any unoccupied lot shall be a lien on the property so cleared, and the County may recover the amount of the lien and the expense and costs of the clearing by action at law in assumpsit, or by any action allowed by law in equity, or that may be prescribed by statute, including any proceeding allowed for the foreclosure of tax liens.
- (c) The collection of recoverable expenses that has been unpaid by the property owner for clearing any occupied lot shall proceed as follows:
- (1) The department of public works shall keep an itemized record of recoverable expenses. Promptly after completion of the lot clearing, the department shall certify those expenses to the office of the corporation counsel.
 - (2) The office of the corporation counsel, on behalf of the County, shall submit a written itemized claim for the total recoverable expenses incurred by the County to the responsible person or persons and a written notice stating that unless the amounts are paid in full within thirty days after receipt of the claim and notice, the County will file a civil action seeking recovery for the stated amount.
 - (3) The County may bring a civil action for the recovery of all recoverable expenses against any and all persons causing or responsible for the placement of the individual or individuals in a situation of imminent danger.
- (d) For the purposes of this section, "recoverable expenses" means those expenses that are reasonable, necessary, and allocable to the clearing of an occupied lot of refuse, uncultivated undergrowth, and unsafe flora pursuant to this article. Expenses allowable for recovery may include, but are not limited to:
- (1) Materials and supplies acquired, consumed, and expended specifically for the purpose of the lot clearing.
 - (2) Compensation of employees for the time and efforts devoted specifically for the purpose of the lot clearing.

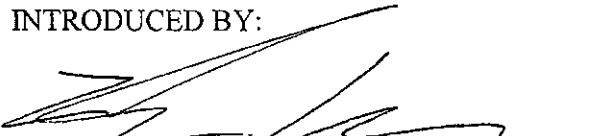
- (3) Rental or leasing of equipment used specifically for the lot clearing, such as protective equipment or clothing, bulldozers, or backhoes.
 - (4) Repair costs for equipment owned by the County that is damaged during the lot clearing.
 - (5) Replacement costs for equipment owned by the County that is damaged beyond use or repair, if the equipment was a total loss and the loss occurred during the lot clearing.
 - (6) Special technical services specifically required for the lot clearing, such as costs associated with the time and efforts of technical experts or specialists not otherwise provided by the County.
 - (7) Other special services specifically required for the lot clearing.
 - (8) Medical expenses that may be incurred as a result of the lot clearing.
 - (9) Legal expenses that may be incurred as a result of the lot clearing, including efforts to recover expenses pursuant to this article.
- (e) Nothing in this section shall be construed to create any liability to the County for any damages incurred as a cause of action or inaction."

SECTION 5. Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material, and underscoring need not be included.

SECTION 6. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 7. This ordinance shall take effect upon its approval.

INTRODUCED BY:



COUNCIL MEMBER, COUNTY OF HAWAI'I

Kona, Hawai'i
 Date of Introduction: September 5, 2013
 Date of 1st Reading: September 5, 2013
 Date of 2nd Reading: October 16, 2013
 Effective Date: November 6, 2013

OFFICE OF THE COUNTY CLERK
 County of Hawai'i
 Kona, Hawai'i

COUNTY CLERK
 COUNTY OF HAWAII

2013 NOV -6 PM 4: 25

(Draft 2)

Introduced By: Zendo Kern
 Date Introduced: September 5, 2013
 First Reading: September 5, 2013
 Published: September 14, 2013

REMARKS:

September 18, 2013 - Postponed
October 2, 2013 - Held over pursuant
to Council Rule 24(1)(e)

Second Reading: October 16, 2013
 To Mayor: October 24, 2013
 Returned: November 6, 2013
 Effective: November 6, 2013
 Published: November 14, 2013


REMARKS

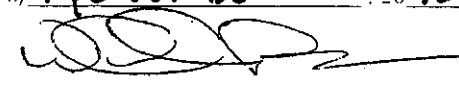
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Eoff	X			
Ford	X			
Ilagan	X			
Kanuha	X			
Kern	X			
Onishi	X			
Poindexter	X			
Wille	X			
Yoshimoto	X			
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(Draft 3)

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Eoff	X			
Ford	X			
Ilagan	X			
Kanuha	X			
Kern	X			
Onishi	X			
Poindexter	X			
Wille	X			
Yoshimoto	X			
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I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.


 COUNCIL CHAIRPERSON

 COUNTY CLERK

Approved/Disapproved this 6th day
 of November, 2013

 MAYOR, COUNTY OF HAWAII

Bill No.: 64 (Draft 3)
 Reference: C-246.19/EMC-3
 Ord No.: 13 108