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IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. 9-03

IN THE MATTER OF AMENDING LANE CODE
CHAPTER 15 TO ESTABLISH A LAST RESORT
POLICY FOR RIGHT-OF-WAY HERBICIDE
APPLICATION (LC 15.500-15.530) (HHS/Public
Health version)

The Board of County Commissioners of Lane County ordains as follows:

AN ORDINANCE of Lane County Oregon, establishing policy, procedures and practices for the Department of Public Works relating to roadside vegetation management and herbicide use as a last resort.

WHEREAS, the County would like to strengthen its integrated vegetation management approach on roadsides; and

WHEREAS, the County has determined that the use some herbicides if used inappropriately can be hazardous to the health of the citizens and the environment; and

WHEREAS, the County wishes to maintain a healthy environment for its current citizens, wildlife, and future generations, now, therefore

Chapter 15 of Lane Code is hereby amended by removing, substituting and adding new sections as follows:

REMOVE THIS SECTIONS

NONE

INSERT THIS SECTIONS

15.500 through 15.530
located on page 15-35 through 15-39
(a total of 5 pages)

Said section is attached hereto and incorporated herein by reference. The purpose of this substitution and addition is to establish a Last Resort Policy for Right-of-Way Herbicide Application (LM 15.500 – 15.530) (HHS/Public Health version).

ENACTED this _____ day of _____ 2003.

Peter Sorenson, Chair
Lane County Board of Commissioners

Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM
Date 7-8-03 Lane County

OFFICE OF LEGAL COUNSEL

15.320

Lane Code

15.510

(5) Requests by property owner, or authorized agent, for assignment of an address in situations other than above will be reviewed by the Department to insure compliance with land use guidelines before processing. *(Revised by Ordinance No. 13-84, Effective 11.9.84)*

15.320 Correction of Address.

Address corrections may be initiated at the request of the property owner, or authorized agent, or the Department when it is demonstrated that incorrect addresses jeopardize the safety of the dwelling(s) affected. *(Revised by Ordinance No. 13-84, Effective 11.9.84)*

15.325 Exceptions.

The County may choose not to assign addresses in certain areas adjacent to any municipality where the municipality has extended its numbering system beyond its incorporated limits. *(Revised by Ordinance No. 13-84, Effective 11.9.84)*

15.330 Responsibility.

The Department shall be charged with the responsibility of notifying affected agencies of assigned addresses. *(Revised by Ordinance No. 13-84, Effective 11.9.84)*

15.335 Fees.

All applications and requests for address assignment shall be accompanied by the fee amount established by separate order of the Board. *(Revised by Ordinance No. 13-84, Effective 11.9.84)*

ROADSIDE VEGETATION MANAGEMENT AND LAST RESORT HERBICIDE USE POLICY

15.500 Purpose.

(1) The County promotes environmentally sensitive roadside vegetation management that protects the health and safety of the public and County's employees. The County policy is to reduce the use of herbicides through a last resort policy.

(2) The County shall use prevention as its primary tool for roadside vegetation management. When vegetation problems occur, mechanical or biological methods shall be the preferred control methods. Least toxic herbicides shall be used only as a last resort when other options have been proven ineffective.

(3) The listing of Willamette River Steelhead and Chinook Salmon under the Endangered Species Act has heightened awareness of the impact that common practices have on the environment. Recent studies documenting the presence of herbicides in area streams and effects of herbicides on salmon point to the need for public agencies to serve as models of environmental stewardship in landscape management.

15.505 Definitions.

As used in this chapter, the following terms have the following meanings:

Herbicide means any substance registered as an herbicide by the Oregon Department of Agriculture.

High Hazard Herbicide means an herbicide that does not meet the least toxic herbicide criteria in this chapter.

15.510 Roadside Vegetation Management Plan.

(1) Prevention Techniques. The County's first preference and most actively pursued method of vegetation management on county roadsides shall be the use of

prevention techniques. Vegetation prevention techniques encourage the desired plants, animals, and other organisms and discourage unwanted ones. Prevention techniques and least-toxic pest controls include:

(a) Good planting techniques, mulching, composting, irrigating, fertilizing, and use of native and pest-resistant plant species to avoid conditions where undesirable plant species, disease, and pests can develop into problem conditions.

(b) Mechanical pest control techniques like hand pulling weeds, string trimming, flaming weeding (where practical and allowed), mowing, aeration and thatching, vacuum removal, and hot water.

(c) Increasing vegetation tolerance thresholds.

(2) Mechanical, Manual, Biological, and Other Alternative Vegetation Control Methods. To evaluate and address existing vegetation problems or problems that may develop on county roadsides in spite of prevention techniques, the Department of Public Works shall follow the approach outlined below:

(a) Monitor roadside vegetation growth to determine if and when control is indicated.

(b) Establish threshold levels of vegetation below which control is not required.

(c) Use physical, mechanical, biological, and other alternative methods to keep vegetation amount and height low enough to prevent intolerable damage or annoyance.

(3) Use of Herbicide Products.

(a) The Board of Health shall adopt by resolution a least toxic products list for use by the Department of Public Works for roadside management. The Board of Health shall solicit review and comment from the Public Health Administrator who will work with the Public Health Advisory Committee.

(b) When and if an herbicide is deemed necessary by the Department of Public Works, it will first attempt to use herbicides on the Least Toxic Products list.

(c) The Board of Health may periodically review the Least Toxic Products list and after receiving public comment, add products to that list that meet the criteria for Least Toxic Herbicides in this chapter or delete products if new information becomes available indicating that the products do not meet those criteria.

(d) The Board of Health may authorize the use of a high hazard herbicide on county roadsides when the director of Public Works has determined that the proposed use is a last resort after less toxic remedies have been tried without satisfactory result. Prior to the authorization, the director of Public Works shall review in writing the following criteria with the Board of Health. The Board of Health shall solicit review, and comment from the Public Health Administrator who will work with the Public Health Advisory Committee.

i. The nature of the problem, the reason to use a high hazard herbicide.

ii. Information received after consulting with toxicologists in agencies such as the Oregon Health Division, the Department of Environmental Quality and the University Extension Services to determine the least toxic and least persistent herbicide currently available to address the problem, and to ascertain the currently designated level of toxicity and level of persistence of the proposed herbicide.

iii. Description of the specific high hazard herbicide, persistence in the environment (length of soil half-life), currently designated toxicity levels, and all known potential risks with regard to public health and safety, and/or to the environment.

iv. Proposed date and method of application, notification and posting provisions, and specific steps that will be taken to minimize risks to human health and the environment.

v. An evaluation of all feasible alternatives including non-chemical and no action alternatives.

vi. Any legal requirements that are applicable.

The Board of Health shall approve or deny the use of high hazard herbicides when the use of less toxic chemicals which has proven to be ineffective in particular applications, either on a one-time basis, or for a limited time to be specified by the Board of Health.

(e) After the effective date of this chapter:

i. No routinely scheduled (i.e., monthly or annually) herbicide applications shall be made on county roadsides.

ii. No herbicides shall be applied to county roadsides within at least 100 feet (ground applications) and 200 feet (aerial applications) of a lake, stream, or wetland.

iii. Within 200 feet of rural school bus stops or stations.

iv. Other areas determined to present risk to children or the environment as determined by the director of Public Works.

(f) The County's Department of Public Works staff shall continue to conduct and review research about alternative vegetation control methods to evaluate their effectiveness and potential for use in county roadside vegetation management operations.

(4) Least Toxic Herbicide Criteria. Least toxic herbicides must meet all of the following criteria (all ingredients should be identified so that they can be screened using these tests):

(a) Product contains no known carcinogens:

i. Not classified as a known or probable carcinogen by the US EPA;

ii. Not classified as a known, likely, or probable carcinogen by the International Agency for Research on Cancer (IARC); and

iii. Not listed by the state of California (Prop 65 list) or the National Toxicology Program as known or reasonably anticipated to be human carcinogens.

(b) Product contains no reproductive toxicants (CA Prop 65 list).

(c) Product contains no ingredients listed by Illinois EPA as known or probable endocrine disruptors.

(d) Active ingredient has soil half-life of 30 days or less (exception for minerals).

(e) Active ingredient has extremely low or very low mobility in soils.

(f) Product is not hazardous to fish or wildlife:

i. Not labeled as toxic to fish, birds, bees, wildlife, or domestic animals;

ii. Not found in US EPA Office of Pesticide Programs Registration Eligibility Decisions (REDs, IREDs, and TREDs) to exceed a level of concern for fish, aquatic insects, aquatic and semi-aquatic plants, or wildlife; and

iii. Product has not been detected in salmon waters at a level harmful to aquatic life.

(g) Product is not acutely toxic to humans; product is not labeled as DANGER or POISON (Toxicity Class I or II).

(h) Product contains no nervous system toxicants (ingredients that are cholinesterase inhibitors and/or are listed as neurotoxic by the Toxics Release Inventory).

(5) Use of Herbicide Products.

Within one year after the effective date of this chapter, herbicide use along county roadsides will be reduced by five percent. It is the intent of Lane County to reduce herbicide use along county roadsides by 80 percent within twenty years after the effective date of this chapter. Herbicide use reduction will be measured by the percent of roads treated with herbicides as well as with the actual amount of herbicide products applied along roadsides.

15.515 Training, Education, and Implementation.

(1) The Department of Public Works staff involved in roadside vegetation management shall attend at least once a year available trainings in prevention and other vegetation management techniques outlined in this chapter if appropriate to their area of work.

(2) The County shall designate a staff member to be responsible for the implementation of this chapter.

15.520 Notification.

Within 120 days of the effective date of this chapter, the Department of Public Works shall comply with the following notification procedures for all roadside herbicide applications:

(1) Notification signs shall be posted at least 5 days prior to any herbicide application. Signs shall remain in place for at least 7 days after herbicide application. Signs shall be posted along the treatment site. Signs shall be posted at half mile intervals.

(2) Notices shall begin with a header containing the signal word from herbicide label alongside the words "Herbicide Application." For example, "WARNING: HERBICIDE APPLICATION." Notices shall be at least 18 by 24 inches, and shall include the following information: the active ingredient; the date and time of application; the area treated; the rate of application; the name and phone number of the contact person for the application; the name and phone number of the responsible party where the herbicide label and material safety data sheets may be obtained; and a boxed-off warning stating: "CAUTION: Individuals taking medication, pregnant women, infants, children, and individuals with respiratory or heart disease, chemical sensitivities, or weakened immune systems may be particularly susceptible to adverse health effects due to herbicide exposure." The header should be readable to passing motorists.

(3) During the herbicide application process, additional signs shall be posted indicating herbicide application/usage ahead.

(4) Any high hazard application shall be listed on the county website and published in area newspapers as well as other appropriate electronic and published forums.

(5) Notices shall be sent to local hospital emergency departments of pending herbicide application, including locations, herbicide name and ingredients (including inerts), and the anticipated dates of application. A daily updated recording of specific roadside applications pending and completed.

15.525 Record Keeping.

The County shall maintain publicly accessible information with records of herbicides used on county roadsides for a minimum of 10 years. The information recorded shall include the date and location of the application; the product name, ingredients, and EPA registration number; the target pest or vegetation type and the amount and concentration

used, weather conditions (including rain predictions, temperature, wind speed, and direction) and the applicator's name and operator's license number. Records will include any problem with handling and storage; equipment cleaning; toxic waste; and off target drift, spills, runoff, or migration.

15.530 Annual Report.

On a yearly basis in the Fall at a public meeting of the Board of Health, the Department of Public Works shall present a report which: includes quantities of each herbicide product applied during the previous year, a list of any high hazard herbicides proposed for use in the coming year, and under what circumstances these uses might occur; control methods that have replaced herbicide use in the previous year; control methods that have been proven ineffective; what control methods other than herbicides the Department of Public Works intends to use in the plan year; information on how much the Department reduced herbicide use for the previous year and a reduction goal for the plan year; and an assessment of how the County is progressing toward the twenty-year roadside vegetation management goal of 80% herbicide use reduction. The report shall be made available to the public upon request and shall be posted on the County web site.

LEVYING, COLLECTING AND ENFORCING SPECIAL ASSESSMENTS

15.600 Authority.

The following provisions relating to the application of a special assessment policy for public improvements are hereby adopted pursuant to the authority granted to Lane County by the Lane County Home Rule Charter. Except as expressly modified in this subchapter, the provisions of ORS Chapter 371 are applicable in Lane County. *(Revised by Ordinance No. 11-73, Effective 9.28.73)*

15.605 Purpose.

The requirements set forth herein are for the purpose of defining policies, conditions and procedures whereby specially benefited property owners shall be assessed for the costs of road improvements. Remonstrance procedures included in Section 9 of the Lane County Home Rule Charter are not repeated herein, but apply in full. The procedures set forth in this subchapter shall constitute a determination by the Board of County Commissioners, absent the express determination inconsistent with these procedures, of the extent to which the cost of road improvements in Lane County is to be defrayed by special assessments on property to be specially benefited. *(Revised by Ordinance No. 11-73, Effective 9.28.73)*

15.610 Definitions.

(For LC 15.600 to 15.645).

Direct Cost. All costs, including design costs and engineering costs, associated with installation of improvements specified.

Local Road or Street. A road or street which is used primarily for access to abutting properties.

Major Collector. A road or street which is used primarily as a connector from neighborhood areas to commercial or industrial districts; should carry traffic to one or more arterials.

Minor Arterial. A route which provides for intra-community traffic and serves as a direct connection from communities to principal arterials.

Minor Collector. A road or street which collects traffic from local residential roads or streets and channels it into the major collector or minor arterial system.

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(5) Requests by property owner, or authorized agent, for assignment of an address in situations other than above will be reviewed by the Department to insure compliance with land use guidelines before processing. *(Revised by Ordinance No. 13-84, Effective 11.9.84)*

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persistent herbicide currently available to address the problem, and to ascertain the currently designated level of toxicity and level of persistence of the proposed herbicide.

iii. Description of the specific high hazard herbicide, persistence in the environment (length of soil half-life), currently designated toxicity levels, and all known potential risks with regard to public health and safety, and/or to the environment.

iv. Proposed date and method of application, notification and posting provisions, and specific steps that will be taken to minimize risks to human health and the environment.

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(e) Active ingredient has extremely low or very low mobility in soils.

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iii. Product has not been detected in salmon waters at a level harmful to aquatic life.

(g) Product is not acutely toxic to humans; product is not labeled as DANGER or POISON (Toxicity Class I or II).

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