

**AN ORDINANCE AMENDING CHAPTER 14, GENERAL WELFARE, HAWAI'I COUNTY CODE 1983 (2005 EDITION, AS AMENDED), BY ADDING A NEW ARTICLE RELATING TO THE RESTRICTION OF GENETICALLY MODIFIED ORGANISMS.**

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

**SECTION 1.** Chapter 14 of the Hawai'i County Code 1983 (2005 Edition, as amended), is amended by adding a new article to be appropriately designated and to read as follows:

**“Article \_\_\_\_ . Genetically Modified or Engineered Organisms Prohibited.**

**Section 14-\_\_ . Purpose.**

The purpose of this article is to:

- (1) Protect human, animal, and plant life, and the land, water, and air on or under, in or over the Island of Hawai'i, including the ocean with its marine life that surrounds the Island of Hawai'i, from the adverse effects of biotechnical modification of any organism's genome;
- (2) Maintain the Island of Hawai'i as a heritage seed bank and gene bank to preserve the biodiversity of plants, animals, and other organisms in case reserves of such organisms are destroyed elsewhere; and
- (3) Safeguard honeybees, which pollinate at least thirty percent of our food crops, from pesticides placed in some organisms through the use of genetic modification thereby threatening that portion of our food supply pollinated by honeybees.

**Section 14-\_\_ . Definitions.**

As used in this article, unless the context clearly requires otherwise:

“Cultivate” means to propagate, raise, plant, or grow flora or fauna, whether for ornamental or consumption purposes.

“Department” means the department of environmental management.

“Develop” means to test, modify, or genetically manipulate the genomes of an organism.

“Director” means the director of the department of environmental management, or the director's authorized representative(s).

“Genetic engineering” means the biotechnology used to introduce, remove, or modify specific parts of an organism's genome. Genetic engineering is also known as genetic modification.

“Genetically modified organism” means any microorganism, plant, or animal whose genetic material (genome) has been altered, modified, or changed using the bio-techniques of genetic engineering so that the organism can produce more product, different chemicals, or perform completely new functions. A genetically modified organism is also known as a transgenic organism or a transgenetic organism.

“Genome” means the organism’s hereditary information encoded in the organism’s deoxyribonucleic acid, also known as DNA.

“Person” includes natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts, or corporations or any officer, agent, employee, factor, or any other personal representative thereof, in any capacity, acting either for himself or for any other person, under personal appointment or pursuant to law.

“Register” or “Registration” means an official recording of locations where the cultivation, development, or use of genetically modified organisms occurs.

“Use” means to provide genetically modified animal feed to domestic or cultivated animals in the course of animal husbandry, which animal feed shall include, but not be limited to: grains, fodder, forage, silage, poultry feed, or food for aquatic life, whether that aquatic life is raised in fresh or marine water. “Use” shall not mean the delivery, distribution, or sale of a genetically modified organism for human consumption, or the act of consumption of a genetically modified organism by a human being.

#### **Section 14-\_\_ . Prohibitions.**

It shall be unlawful for any person to cultivate, develop, or use any genetically modified organism or to genetically modify any specific or non-specific parts of an organism’s genome.

#### **Section 14-\_\_ . Exemptions.**

Nothing in this article shall make it unlawful for state or federally licensed medical or agricultural research institutions to conduct licensed medical or agricultural research or production involving genetically modified organisms, provided all activity relating to genetically modified organisms is located in a biosafety level 3 containment facility and no genetically modified organism is released outside of a biosafety level 3 containment facility. Any exempted activity shall comply with the registration provisions of this article.

#### **Section 14-\_\_ . Sunset date.**

Persons engaged in the cultivation, development, or use of genetically modified organisms prior to the effective date of this article may continue such cultivation, development, or use for a period not to exceed thirty months after the effective date of this article; provided that the cultivation, development, or use of genetically modified organisms may not be increased or expanded in any way beyond the amount of cultivation, development, or use occurring as of the effective date of this article. Any increase or expansion of the cultivation, development, or use of genetically modified organisms after the effective date of this article shall constitute a violation.

#### **Section 14-\_\_ . Registration.**

- (a) All persons engaged in the cultivation, development, or use of genetically modified organisms of any kind shall register annually with the department, beginning within sixty days of the effective date of this article.
- (b) There shall be an annual registration fee of \$100 per location, payable to the director of finance. All contiguous land shall be treated as a single location.

**Section 14-\_\_.** **Notice of violation.**

- (a) Whenever the director determines that there exists a violation of any provision of this article, the director shall serve a notice of violation upon the parties responsible for the violation, which may include, but shall not be limited to the owner and any lessee of the property where the violation is located, to make the location where the cultivation, development, or use of genetically modified organisms is occurring compliant with this article. Such notice of violation shall include:
  - (1) The date of the notice;
  - (2) The name and address of the person noticed, and the location of the violation;
  - (3) The section number of the ordinance, code or rule which has been violated;
  - (4) The nature of the violation; and
  - (5) The deadline for compliance with the notice.
- (b) Proper service of such notice shall be by personal service, registered mail, or certified mail upon the owner of record, provided, that if such notice is by registered mail or certified mail, the designated period within which the owner or person in charge is required to comply with the order of the director shall begin as of the date the owner or person in charge receives such notice.

**Section 14-\_\_.** **Administrative enforcement.**

- (a) If the director determines that any person, firm or corporation is not complying with a notice of violation, the director may have the party responsible for the violation served, by mail or delivery, with an order pursuant to this section.
- (b) Contents of the order.
  - (1) The order may require the parties responsible for the violation, including but not limited to the owner/lessee of the property where the violation is located, to do any or all of the following:
    - (A) Correct the violation within the time specified in the order;
    - (B) Pay a civil fine not to exceed \$1,000 in the manner, at the place, and before the date specified in the order;
    - (C) Pay a civil fine not to exceed \$1,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.
  - (2) The order shall advise the party responsible for the violation that the order shall become final thirty calendar days after the date of its delivery. The order shall also advise that the director's action may be appealed through a contested case hearing process.
- (c) Effect of Order; Right to Appeal. The provisions of the order issued by the director under this section shall become final thirty calendar days after the date of the delivery of the order. The party responsible for the violation may appeal the order and request a contested case hearing under Chapter 91 of the Hawai'i Revised Statutes.
  - (1) The director shall establish administrative rules that shall include a contested case hearing process for an appeal by any aggrieved person.
  - (2) The environmental management commission shall conduct the contested case hearing, and shall thereby affirm the decision of the director, or it may reverse or modify the decision if the decision is:
    - (A) In violation of this article or other applicable law;
    - (B) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

- (C) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
- (3) An appeal and a request for a contested case hearing must be received in writing on or before the date the order becomes final. However, an appeal for a contested case hearing shall not stay any provision of the order.
- (4) A contested case hearing shall have a minimum of one and no more than three hearing officers at the discretion of the director.
- (d) Judicial Enforcement of Order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any final order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by such final order, the director need only show that the notice of violation and order was served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been paid.
- (e) If any section of this article conflicts with chapter 2, article 40 of this code, this article shall take precedence.

**Section 14. \_\_. Disposal of confiscated genetically modified organisms.**

Destruction of genetically modified crops or products containing genetically modified organisms shall require composting of the product for a minimum of six to twelve months to destroy the genetically modified organism and its genetically modified component. The time required for composting shall be determined by the director and should be dependent on the type of genetic modification and the time necessary to decompose the component and whether it includes herbicides, pesticides, viruses, etc. Best practices for decomposition by composting of such genetically modified organisms shall be used.

**Section 14. \_\_. Penal enforcement.**

- (a) General Provisions. The provisions of this section are in addition to any other applicable remedy or penalty provided by law.
- (b) The person/owner/leasee of the property shall be responsible for the costs of removal and destruction of any genetically modified organism, and remediation of property found to be in violation of this article. This includes testing to determine if any genetically modified organism or product containing genetically modified organisms exists on the property.
- (c) In case the parties responsible for violating any provisions of this article fail, neglect, or refuse to comply or correct a violation, the director may submit the matter to the proper authority for penal enforcement.
- (d) Any person, firm, or corporation violating any provisions of this article shall, upon conviction, be deemed guilty of a petty misdemeanor and each person so convicted shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provision of this article is committed, continued or permitted; and upon conviction of any such violation, such person shall be punishable by a fine of not more than \$1,000, or by imprisonment for not more than thirty days, or by both fine and imprisonment.
- (e) Any officer or inspector designated by the director or who has been deputized by the chief of police as a special officer for the purpose of enforcing the provisions of this code (hereinafter known as “authorized personnel”), pursuant to section 803-6, Hawai‘i Revised Statutes, may arrest without warrant alleged violators by issuing a summons or citation in accordance with the procedure specified in this section. Nothing in this section shall be

construed as barring such authorized personnel from initiating prosecution by warrant or such other judicial process as is permitted by statute or rule of court.

- (f) Any authorized personnel designated by the director, upon making an arrest for a violation of this article, may take the name and address of the alleged violator and shall issue to the violator in writing a summons or citation hereinafter described, notifying the violator to answer the complaint to be entered against the violator at a place and at a time provided in the summons or citation.
- (g) There shall be provided for use by authorized personnel a form of summons or citation for use in citing violators of this article which does not mandate the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed to include all necessary information to make the same valid within the laws and regulations of the State of Hawai'i and County of Hawai'i.
- (h) In every case when a citation is issued, the original of the same shall be given to the violator; provided, that the administrative judge of the district court may prescribe by giving to the violator a copy of the citation and provide for the disposition of the original and any other copies.
- (i) Every citation shall be consecutively numbered and each copy shall bear the number of its respective original.

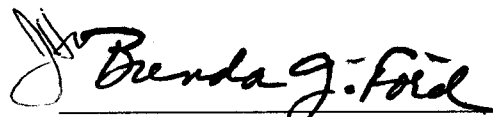
**Section 14-\_\_.** **Injunctive relief.**

Proceedings for injunctive relief in a court of competent jurisdiction may be heard for potential violations of this article.”

**SECTION 2.** Severability. 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 without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

**SECTION 3.** This ordinance shall take effect upon its approval.

INTRODUCED BY:



COUNCIL MEMBER, COUNTY OF HAWAI'I

\_\_\_\_\_, Hawai'i  
Date of Introduction:  
Date of 1<sup>st</sup> Reading:  
Date of 2<sup>nd</sup> Reading:  
Effective Date: