

Chapter 12.48

ROADSIDE VEGETATION MANAGEMENT PROGRAM

Sections:

12.48.010 Minimization of herbicide use – Goals and timetables.

12.48.020 Use of certain herbicides approved – Conditions.

12.48.030 Long-range integrated vegetation management plan.

12.48.040 Additional conditions.

12.48.050 Violation – Penalty.

12.48.060 Severability.

12.48.010 Minimization of herbicide use – Goals and timetables.

Whatcom County shall minimize the use of herbicides for vegetation control along maintained road rights-of-way, and shall set specific goals and timetables for minimizing the use of herbicides. (Ord. 2012-031 (Exh. A); Ord. 94-044).

12.48.020 Use of certain herbicides approved – Conditions.

The Whatcom County council approves the use of certain herbicides to be utilized in the public works annual integrated roadside vegetation management program in accordance with Chapter 17.21 RCW under the following conditions:

A. The only herbicides authorized for use by an applicator shall be those currently registered by the Environmental Protection Agency and the Washington State Department of Agriculture.

B. All herbicides shall be applied in accordance with the standards set forth by the State Department of Agriculture and chemical labels.

C. Anyone responsible for and applying the herbicides shall be licensed by the Washington State Department of Agriculture. Further, the public works department, maintenance and operations division, shall engage in an ongoing program to upgrade the expertise of its personnel in integrated vegetation management alternatives and in the selection and safe application of herbicides. The public works department, in consultation with the county industrial safety officer, shall develop a program to protect the safety of employees and others who work or come in contact with the county's herbicides, and shall develop a written procedures manual covering the selection, storage, transportation, application and disposal of herbicides used by the program.

D. (Applies to all persons applying herbicides on maintained county road rights-of-way.) At least one week prior to actual chemical treatment, the public works department, roads division of maintenance

and operations, shall give due notification through the news media (radio, local newspapers), and post notices at various public places, including, but not limited to, post offices, stores, grange halls, fire stations, etc. The notices shall contain the areas, the names of the herbicides to be utilized, the approximate number of miles to be treated, and the person and telephone number to contact for further information or to register protests. The notices shall also provide information on the right to enter into "owner will maintain" agreements. Noncounty applicators shall notify public works roads division of maintenance and operations division of Whatcom County at least two weeks prior to application of herbicides.

E. (Applies to county only.) In addition, signs shall be conspicuously posted in the area(s) to be sprayed or chemically treated at least one week prior to actual treatment. Signs shall include information regarding the anticipated date of chemical treatment, the herbicide(s) to be used, and the roads to be treated. Following the use of herbicides, the notices along the maintained roadways shall be changed or altered with a sign stating that chemical treatment has occurred, naming the chemical used. A faithful record of comments and protests received shall be made, preserved and made available to the public.

F. The integrated vegetation management plan will be reviewed annually by the county engineer or as requested by the county executive or a majority of the county council. Any significant changes to the plan as deemed necessary by the county engineer shall be reviewed and approved by the Whatcom County council. (Ord. 2012-031 (Exh. A); Ord. 94-044).

12.48.030 Long-range integrated vegetation management plan.

The county engineer shall prepare, update and adhere to a long-range integrated vegetation management plan. An "integrated roadside vegetation management plan" is one that advances the commitment to implement a variety of vegetation control measures, such as biological, mechanical, manual and chemical. It seeks to minimize chemical solutions when possible based upon the level of vegetation infestation, its economic impacts, and an assessment by the roadside/vegetation crew leader of the economic and ecologic consequences of each type of control. The plan shall assess the results of the previous year and identify additional sensitive geographical areas within the county where spraying shall not take place. Such areas presently include:

A. Lake Whatcom watershed;

B. Lummi Island;

C. North Fork Road;

D. Cornell Creek Road;

E. All areas within the jurisdiction of the Whatcom County shorelines management program;

F. All areas that may be exempted from chemical treatment by the county council now or in the future.

Identification of areas as being sensitive may be initiated by petition of at least 51 percent of property owners in the area; or 60 percent of the citizens of the area. Exemptions may be granted by the executive in writing within 30 days of request or de facto exemption shall apply and shall be limited to the hand treatment of fresh cut stumps and hand treatment of noxious weeds as defined by the

noxious weed board. The criteria for reviewing such petitions shall include such factors as the presence of groundwater, relatively high use by pedestrians or children, and any other criteria the executive or designee deems appropriate. Treatment shall be allowed under new asphalt. Hand treatment within the listed sensitive geographical areas shall be limited to application by licensed applicators and persons registered with the public works roads division of maintenance and operations of Whatcom County on an annual basis to apply herbicides in the sensitive areas. Whatcom County shall prepare maps showing areas exempted above for distribution to applicators.

Application as required for cut stumps shall be coordinated by anyone performing vegetation management in identified sensitive areas with the roadside/vegetation crew leader. The county shall limit the amount of material allowed in each sensitive area to a maximum of three gallons of material suitably mixed per crew and ready for application by a licensed applicator. Material shall be transported in an approved container and shall be protected from spillage by an outer liner or containment vessel. (Ord. 2012-031 (Exh. A); Ord. 94-044).

12.48.040 Additional conditions.

The following conditions shall be adhered to by the department:

- A. The use of herbicides by all persons, whether public or private entities or individuals, is hereby prohibited on all county owned and maintained road rights-of-way subject to use as permitted by Whatcom County franchise agreement within designated sensitive geographical areas.
- B. All property owners who do not wish herbicides to be used in front of their property shall sign an "owner will maintain" agreement. The roadside/vegetation crew leader shall be responsible for monitoring for compliance.
- C. Ditches will be cleaned by nonchemical means except where vegetation only is causing a blockage or if additional excavation would result in the unnecessary lowering of culverts. These areas may be treated with an aquatic registered herbicide only where other means are impractical and uneconomical.
- D. Backslopes and frontslopes will be treated by nonchemical means and maintained so as to retain grasses and other vegetation to prevent erosion, using herbicides for such maintenance only when other means are impractical and/or uneconomical.
- E. No public or private entity or individual shall commence any chemical treatment on any maintained county right-of-way without the prior written consent of the director of the public works department. A plan showing areas to be chemically treated shall accompany any request for approval.
- F. Ongoing testing sites will be established to evaluate various integrated vegetation management techniques.
- G. Ordinance 94-044 is hereby repealed and all other resolutions, or policies are superseded to the extent that they are in conflict with this chapter. (Ord. 2012-031 (Exh. A); Ord. 94-044).

12.48.050 Violation – Penalty.

Penalties and court enforcement shall be applied as follows:

A. Any person, firm or corporation who fails to comply with any of the conditions herein shall be guilty of a civil offense and shall be fined a sum not to exceed \$1,000.

B. The penalty provided in the above section shall be imposed by a written notice delivered, either by certified mail with return receipt requested or by personal service, to the person, firm or corporation involved in the activity. Said notice shall originate at the Whatcom County public works department. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity. It shall also order the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, require necessary corrective action to be taken within a specific and reasonable time.

C. After the notice is postmarked, the recipient has 30 days to either pay the amount designated or to make written application to the public works department for remission or mitigation of such penalty. Upon receipt of the application, said department shall review the penalty and make a written decision of that review. The public works department's decision shall be reviewed by the county council if the aggrieved party files a written appeal with the clerk of the county council within 10 days of its issuance. The decision of the county council regarding the penalty imposed shall be final. In calculating the time limits mentioned in this chapter, begin calculating the time the day after the decision is issued and include the last day. If the last day falls on a Saturday, Sunday or a legal holiday, then the time limit is extended to the next regular business day.

D. The prosecuting attorney may in his discretion bring such injunctive, declaratory or other actions as deemed necessary to ensure that violations of this chapter are prevented or cease, and to otherwise enforce the provisions of this chapter.

E. In the event any person, firm or corporation violates any of the provisions of this chapter, the public works department shall cause a notice of violation to be delivered to a person of suitable age at the site or place of business and order all work to cease until authorized to proceed. Failure to comply with the order to stop work shall be a gross misdemeanor punishable upon conviction by a minimum fine of \$500.00 up to a maximum fine of \$1,000 or one year in jail, or both. Under no circumstance may the court defer or suspend any portion of the minimum \$500.00 fine for any conviction under this section. Each day or part thereof of noncompliance with said order to stop work shall constitute a separate offense. (Ord. 2012-031 (Exh. A); Ord. 94-044).

12.48.060 Severability.

If any sentence, clause, phrase, or portion of this chapter or the ordinance adopted herein is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. (Ord. 2012-031 (Exh. A)).