



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** February 20, 2024

**TO:** Paul Buddenhagen, City Manager

**FROM:** John Kennedy, City Attorney  
Christie Crowl, Special Counsel

**SUBJECT:** Protecting Pollinators Ordinances

**Introduction And First Reading Of An Ordinance Of The City Council Of The City Of Emeryville Adding Chapter 16, (“Prohibiting The Use Of Neonicotinoids And Rodenticides On City-Owned, Managed And Leased Property Except For The Use Of Rodenticides In City Parks”), To Title 6 Of The Emeryville Municipal Code And Authorizing The City Manager To Take Actions Related To Implementation And Enforcement; CEQA Determination: Exempt Pursuant To Guideline Section 15061(B)(3)**

**Introduction And First Reading Of An Ordinance Adding Section 9-4.503(J) (“Prohibiting The Installation Of Turf In New Development”) To The Emeryville Municipal Code And Amending Sections 9-4.303(B)(5a), 9-4.503, And 9-8.212 (“Open Space Standards: Public Park Requirements,” “Landscaping And Screening: General Provisions,” And “General Definitions: L Terms”) And Section 6-10.02 (“Nuisances: Weeds”) Of The Emeryville Municipal Code (Ord24-001); CEQA Determination: Exempt Pursuant To Guideline Section 15061(B)(3)**

### RECOMMENDATION

Staff recommends that the City Council introduce and waive first reading of the above-referenced ordinances prohibiting the use of neonicotinoids and rodenticides on City-owned, managed, and leased property except parks; and prohibiting installation of turf in new development projects and amending relevant sections of the Planning Regulations, amending the nuisance provisions of the Municipal Code to confirm that wildflower growth does not constitute a nuisance.

## **DISCUSSION**

### General Background

The State Water Resources Control Board (SWRC) has stated that drought is a recurring feature of our climate; California experienced the 5-year drought event of 2012-2016, and other notable historical droughts included 2007-2009, 1987-1992, 1976-1977, and off-and-on dry conditions spanning more than a decade in the 1920s and 1930. In fact, the State has been in a near-constant state of drought in the recent past with the Governor declaring states of emergency on April 21, 2021, May 10, 2021, July 8, 2021, and October 19, 2021, due to the existence drought conditions.

Recently, the Governor's Executive Order N-5-23 issued on March 24, 2023, relaxed some of the State's drought restrictions, but the Order noted that the "winter's hydrology is uncertain and the most efficient way to preserve the State's improved surface water supplies is for Californians to continue their ongoing efforts to make conservation a way of life." Accordingly, the California Department of Water Resources encourages all Californians to embrace wise water use as a daily habit, regardless of whether the State is experiencing a year of heavy or meager rain and has identified indoor and outdoor conservation methods including planting drought-tolerant and drought-resistant plants and trees and replacing grass with water-wise plants.

The California Department of Fish and Wildlife (CDFW) has also opined that over 80 percent of flowering plants require pollination services, and that pollinators such as bees, butterflies, flies, moths, beetles, and wasps are keystone species that help hold ecosystems together by supporting plant reproduction and plant diversity. As such, Californians should be cognizant of both the measures that can be taken to conserve water as well as those that can be taken to protect pollinators that are vital to our ecosystem.

### City Council Direction

At the June 20, 2023 City Council meeting, Mayor Bauters requested and received majority support to add a future study session agenda item considering potential ordinances to protect pollinators and the food web. The future agenda item request included four topics to study:

1. Prohibit Neonicotinoids
2. Prohibit Rodenticides
3. Amend the municipal code nuisance ordinance related to lawn maintenance for placement of wildflowers in-lieu of a lawn; and
4. Create a voluntary wildflower program

On October 17, 2023, the City Council held a study session to consider the above topics and provide direction to staff on preparation of one or more ordinances. The staff report for that study session is attached as Attachment 1 for your review. At that study session, the Council directed staff to prepare legislation that would:

1. Prohibit neonicotinoid products on City owned and leased property, and to

request current lessors of City property to voluntarily agree to comply with such a ban;

2. Limit the use of rodenticides to only City parks;
3. Prohibit grass in future residential projects; and
4. Develop a voluntary wildflower program and amend the existing Emeryville Municipal Code (“EMC”) nuisance provisions to confirm that wildflowers and wildflower planting does not constitute a nuisance.

Staff has prepared an ordinance prohibiting the use of neonicotinoids and rodenticides on City-owned, managed and leased property, excepting use of rodenticides in City parks in accordance with the direction provided in #1 and #2 above. If adopted by the City Council, that ordinance will add a new provision to the Emeryville Municipal Code (EMC) (i.e. a new Title 6, Chapter 16) to codify the prohibited uses. That ordinance is attached hereto as Attachment 2.

Staff has also prepared an ordinance prohibiting installation of turf in all future development projects and amending the nuisance provisions to confirm that wildflower growing is not a nuisance (through the amendment of Titles 6 and 9 of the EMC, respectively).

Planning Commission Consideration of Turf Prohibition and Wildflower Ordinance  
Changes to Title 9 (the City’s Planning Regulations) require a recommendation from the Planning Commission and final approval by the City Council (see EMC Section 9-7.103(i)). Because the proposed turf prohibition involves changes to the Planning Regulations, the Planning Commission considered that draft ordinance.

While the Planning Commission generally supported the concept of the turf prohibition, the Commissioners expressed concerns about:

- Potential redundancy and/or conflict with new state law;
- Unintended consequences of the prohibition, such as installation of more artificial turf; and
- The lack of exception for residential development projects with common areas.

Commissioner Rod Henmi also submitted written comments detailing his outreach to landscape architects which opposed the turf prohibition, and one landscape architect made a public comment at the meeting opposing the prohibition. Several of these comments cited new state law – AB 1572 (Friedman, 2023) – in support of their assertions that the City’s ordinance was unnecessary.

Staff explained that AB 1572 prohibits the use of potable water to irrigate turf. The bill regulates water usage, not installation of turf, so the proposed ordinance is not redundant nor does it conflict with the bill. Staff also noted that the bill’s water restrictions go into effect on a rolling basis, beginning with usage by state and local government properties in 2027 followed by commercial and industrial properties in 2028, homeowners associations in 2029, and all other state and local government

properties located in disadvantaged communities in 2031.

After discussion of these concerns, the Planning Commission voted 7-0 to recommend the ordinance with changes that would except residential development projects with common areas from the turf ban and allow such areas to install “functional turf” as defined in AB 1572. The ordinance has been amended to reflect that recommendation, and is included for your consideration as Attachment 3.

Finally, the Planning Commission requested that once Community Services staff has developed the wildflower seed program that it be brought to the Commission for consideration and comment. Staff therefore plans to bring that program to both the Planning Commission and the City Council.

## **PROPOSED CHANGES**

### Neonicotinoid and Rodenticide Ordinance

Neonicotinoids are a class of synthetic, neurotoxic insecticides that are used on agricultural crops, lawns, gardens, golf courses, and in flea and tick pet treatments. Rodenticides are products indented to kill and control certain rodents.

In 2021, the State of California prohibited the use of second-generation anticoagulant rodenticides, with certain exceptions, and there is a pending bill (AB 1322) that would expand on those regulations. In 2022, the Environmental Protection Agency confirmed that three widely used neonicotinoid insecticides likely harm roughly three-fourths of all endangered plants and animals. The State of California’s Department of Pesticide Regulation has the authority to regulate the sale, use, and handling of pesticides, but cities may still enact ordinances that regulate or restrict pesticide use in their own operations. For additional information on neonicotinoids and rodenticides and their state regulation, please see the staff report prepared for the City Council’s October 17, 2023 study session included as Attachment 1.

Per the Council’s prior direction, the proposed ordinance would prohibit the use of neonicotinoids and rodenticides on City-owned, managed, and leased property, except that rodenticides may still be used in City parks.

### Turf Prohibition and Wildflower Ordinance

The first section of the proposed ordinance (“Ordinance”; included as Exhibit A to the draft Resolution) adds a new subsection (j) to Section 9-4.503 of the Planning Regulations which is entitled “General Provisions” under Article 5 “Landscaping and Screening”. That new subsection defines “Turf” as “a ground cover surface of mowed grass” and prohibits the installation of Turf in all new development projects. The Ordinance’s prohibition on turf does not apply to parks or open space areas open to the public. And in accordance with the recommendation from the Planning Commission, the prohibition does not apply to residential projects with common area.

Staff’s recommendation to use the term “Turf” as opposed to “grass” is to ensure consistency with the City’s Water Efficiency Landscape Ordinance (“WELO”). The City Council originally directed staff to prepare an ordinance prohibiting turf installation for residential developments, but after additional research, Staff’s recommendation is to prohibit the installation of turf in all development projects (with the exception of residential projects with common area as requested by the Planning Commission) because commercial projects actually install turf more frequently than recent residential projects, and requiring all project types to comply would further the objective of reducing water use. Should City Council wish to limit the prohibition of turf to residential developments, staff can easily accommodate such a request.

The other proposed amendments to the Planning Regulations would remove references to “lawn” and replace them with “turf” for consistency. Finally, the proposed amendment to Title 6 adds a clarifying sentence to the existing nuisance provisions in Section 6-10.02 (“Nuisances: Weeds”) that states that growing native plants and wildflowers is not a nuisance unless doing so creates a fire hazard.

## **ENVIRONMENTAL REVIEW**

This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that these amendments to the Planning Regulations and the EMC will have a significant effect on the environment. The amendments do not authorize construction or other activities that could impact the environment; instead, these amendments are intended to protect the environment by conserving water resources and protecting pollinators.

## **RECOMMENDATION**

1. Open the public hearing and take testimony on the proposed ordinances.
2. Close the public hearing and consider the Staff Report and proposed ordinances.
3. Introduce and waive first reading of the attached ordinances.

## **APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Paul Buddenhagen, City Manager

## **ATTACHMENTS**

1. Staff Report from City Council Study Session on October 17, 2023
2. Draft neonicotinoid and rodenticide prohibition ordinance

3. Draft turf prohibition and wildflower-related nuisance ordinance