



MONTGOMERY COUNTY DEPARTMENT OF PARKS
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB Date 1/8/15
Agenda Item # 8

MEMORANDUM

DATE: January 6, 2015
TO: Montgomery County Planning Board
VIA: Michael F. Riley, Director of Parks *MR 7/15*
FROM: David Vismara, Chief, Horticulture, Forestry and Environmental Education *David A. Vismara*
SUBJECT: County Council Bill 52-14 to prohibit the use of certain pesticides

Recommendations:

Submit recommended revisions to the Montgomery County Council to amend Bill 52-14 to:

- 1) Require Parks representation on the work group that will draft a non-essential pesticide list.
- 2) Require Parks representation on the work group that will draft a list of invasive plants.
- 3) Require glyphosate as an essential pesticide.
- 4) Require language changes in the legislation that clearly defines legislation's intent.
- 5) Require language changes that exempt from the legislation athletic playing fields, gardens and noxious insects and plants harmful to people.
- 6) Allow neonicotinoid insecticides.

Background:

Montgomery County Council introduced Bill 52-14 to prohibit the use of non-essential cosmetic pesticides and neonicotinoid insecticides on lawns in Montgomery County following concerns that any exposure may potentially harm children. A series of meetings was held with park and athletic field managers to discuss the potential impacts of the legislation and use of alternative practices on athletic field and turf areas. Staff has concluded that the legislation will adversely impact the Parks ability to maintain current athletic field standards, create athletic field hazards and significantly increase maintenance costs for existing fields and capital costs for new and renovated athletic fields. The outcome will increase the frequency of field closures and athletic team and park patron complaints, and will decrease revenues. These outcomes have occurred in other jurisdictions (Colorado, Connecticut

and Canada) where similar legislation has been in effect for 1-5 years. Reported outcomes included; expenditure increases from 20 to 65%, reduced turf density unacceptable for safe play, additional staffing and closure of fields.

Montgomery Parks manages more than 35,000 acres of parkland consisting of 420 parks which include 300 local and 40 highly used regional athletic fields. For the past twenty years, Montgomery Parks has been one of the leaders in the Mid-Atlantic region regarding stewardship of the land and alternatives to pesticides. Highly trained Park staff have followed principles of Integrated Pest Management, a scientific approach, to address, weed, insect, and disease pests that threaten the health of park plants, forests and ecosystems. Parks has over 50 certified and over 200 registered pesticide applicators with the Maryland Department of Agriculture. Significant reductions in pesticides have been achieved over the last several years and use of alternatives to pesticides has increased.

Because of the difficulty and challenges posed by maintaining highly used athletic fields, park staff need a wide array of options to properly maintain fields. Glyphosate is an essential herbicide that effectively and efficiently is used in weed control on infields and warning tracks, and to rid fields of weeds and grasses prior to field renovation. Neonicotinoid products are also essential to maintaining athletic fields and target insects directly. They are an important class of insecticides due to their low use rate, flexible application methods (safer for the applicators), excellent efficacy, long-lasting residual activity systemic in the plants and safety to mammals.

Insects and fungal pathogens attack athletic playing field turf causing extensive damage in our wet climate. Swift actions and multiple fungicide, herbicide and insecticide options are needed to effectively minimize turf damage and the need for field closure. There are no known effective alternatives or methods.

On December, 19, 2014, staff met with Chris Gilles, aide to Councilmember Levanthal, and Josh Hamlin, legislative attorney for the Council, to get clarification on the pesticide legislation language. Staff suggested changes and language that will make clearer the legislation's main intent which is lawn areas. Staff also requested park representation on work groups that will be developing lists for non-essential pesticides and invasive plants. These lists will have a direct impact on park operations.

Conclusion:

Parks and especially athletic playing fields cannot be maintained to safe and functional standards without some use of pesticides particularly in our climate area and with the heavy use of the local and regional athletic fields. Montgomery County Council Bill 52-14 as drafted will adversely impact athletic playing fields, increase maintenance and capital costs and decrease revenues. Staff requests the Board's approval to transmit the proposed language changes (highlighted) to the County Council.

Attachments:

Montgomery County Council Bill 52-14, Draft 9 with proposed language changes

Bill No. 52-14
Concerning: Pesticides - Notice
Requirements - Non-essential
Pesticides - Prohibitions
Revised: October 16, 2014
Draft No. 9
Introduced: October 28, 2014
Expires: April 28, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: January 1, 2019
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council Vice President Leventhal

AN ACT to:

- (1) require posting of notice for certain lawn applications of pesticide;
- (2) prohibit the use of certain pesticides on lawns;
- (3) prohibit the use of certain pesticides on certain County-owned **property lawn**
- (4) require the County to adopt an integrated pest management program for certain County-owned property; and
- (5) generally amend County law regarding pesticides.

By amending

Montgomery County Code
Chapter 33B, Pesticides
Sections 33B-1, 33B-2, 33B-3, 33B-4, 33B-5, 33B-6, and 33B-7

By adding

Montgomery County Code
Chapter 33B, Pesticides
Articles 2, 3, 4, and 5
Sections 33B-8, 33B-9, 33B-10, 33B-11, 33B-12, and 33B-13

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

27 (4) uses non-chemical pest-control methods and the careful use of
 28 least-toxic chemical methods when non-chemical methods have
 29 been exhausted or are not feasible.

30 Larvicide means a pesticide designed to kill larval pests.

31 *Lawn* means an area of land, except agricultural land, that is:

- 32 (1) [Mostly] mostly covered by grass, other similar herbaceous
 33 plants, shrubs, or trees; and
 34 (2) [Kept] kept trim by mowing or cutting.

35 Lawn includes an athletic playing field other than a golf course. Lawn does
 36 not include a garden, a golf course or an athletic playing field.

37 Neonicotinoid means a class of neuro-active pesticides chemically related to
 38 nicotine. Neonicotinoid includes acetamiprid, clothianidin, dinotefuran,
 39 imidacloprid, nitenpyram, nithiazine, thiacloprid, and thiamethoxam.

40 Non-essential pesticide means a pesticide designated as a non-essential
 41 pesticide under Section 33B-4.

42 *Pest* means an insect, snail, slug, rodent, nematode, fungus, weed, or other
 43 form of plant or animal life or microorganism (except a microorganism on or
 44 in a living human or animal) that is normally considered to be a pest or defined
 45 as a pest by applicable state regulations.

46 *Pesticide* means a substance or mixture of substances intended or used to:

- 47 (1) prevent, destroy, repel, or mitigate any pest;
 48 (2) be used as a plant regulator, defoliant, or desiccant; or
 49 (3) be used as a spray adjuvant, such as a wetting agent or adhesive.

50 However, *pesticide* does not include an antimicrobial agent, such as a
 51 disinfectant, sanitizer, or deodorizer, used for cleaning that is not considered a
 52 pesticide under any federal or state law or regulation.

53 Private lawn application means the application of a pesticide to a lawn on
 54 property owned by or leased to the person applying the pesticide. Private
 55 lawn application does not include:

- 56 (1) applying a pesticide for the purpose of engaging in agriculture;
- 57 (2) applying a pesticide around or near the foundation of a building
 58 for purpose of indoor pest control;
- 59 (3) applying a pesticide to a garden, athletic playing field, a golf
 60 course or turf farm.

61 Vector means an animal, insect, or microorganism that carries and transmits an
 62 infectious pathogen into another organism.

63 **[33B-4.] 33B-2. Signs with retail purchase of pesticide.**

64 A person who sells at retail a pesticide or material that contains a pesticide
 65 must make available to a person who buys the pesticide or material that contains a
 66 pesticide:

- 67 (a) [Notice] notice signs and supporting information that are approved by
 68 the [department] Department; and
- 69 (b) [The] the product label or other information that the federal Insecticide,
 70 Fungicide, and Rodenticide Act (FIFRA) [, 7 U.S.C. 136 et seq.,]
 71 requires for sale of the pesticide.

72 The Department must enforce this Section and must annually inspect each
 73 person who sells at retail a pesticide or material that contains a pesticide.

74 **[33B-5] 33B-3. Storage and handling of pesticides.**

75 * * *

76 **[33B-6] 33B-4. Regulations.**

- 77 (a) The [County] Executive must adopt regulations to carry out this Chapter
 78 under method (2).

79 (b) The Executive must include in the regulations adopted under this
 80 [section] Section the minimum size or quantity of pesticide subject to
 81 [section 33B-4] Section 33B-2.

82 (c) The Executive must include in the regulations adopted under this
 83 Section a list of non-essential pesticides. The list of non-essential
 84 pesticides must include:

85 (1) all pesticides classified as “Carcinogenic to Humans” or “Likely
 86 to Be Carcinogenic to Humans” by the U.S. Environmental
 87 Protection Agency;

88 (2) all pesticides classified by the U.S. Environmental Protection
 89 Agency as a “Restricted Use Product”;

90 (3) all pesticides classified as a “Class 9” pesticide by the Ontario,
 91 Canada, Ministry of the Environment;

92 (4) all pesticides classified as a “Category 1 Endocrine Disruptor” by
 93 the European Commission; and

94 (5) any other pesticides which the Executive determines are not
 95 critical to pest management in the County.

96 (d) The Executive must include in the regulations adopted under this
 97 Section a list of invasive species that may be detrimental to the
 98 environment in the County.

99 (e) The Executive must review and update the lists of non-essential
 100 pesticides and invasive species designated under subsections (c) and (d)
 101 by July 1 of each year.

102 **[33B-7] 33B-5. Penalty for violating chapter.**

103 (a) Any violation of this Chapter is a class C violation.

104 (b) Each day a violation continues is a separate offense.

105 **ARTICLE 2. Notice Requirements.**

106 **[33B-2] 33B-6. Notice about pesticides to customer.**

107 (a) In this [section] Section:

108 (1) Customer means a person who makes a contract with a custom
109 applicator to have the custom applicator apply a pesticide to a
110 lawn.

111 (2) New customer includes a customer who renews a contract with a
112 custom applicator.

113 (b) A custom applicator must give to a new customer:

114 (1) [~~Before~~] before application, a list of:

115 [a.](A) [~~The~~] the trade name of each pesticide that might be
116 used;

117 [b.](B) [~~The~~] the generic name of each pesticide that might
118 be used; and

119 [c.](C) [~~Specific~~] specific customer safety precautions for
120 each pesticide that might be used; and

121 (2) [~~After~~] after application, a list of:

122 [a.](A) [~~The~~] the trade name of each pesticide actually used;
123 and

124 [b.](B) [~~The~~] the generic name of each pesticide actually
125 used; and

126 (3) [A] a written notice about pesticides prepared by the [department]
127 Department under subsection (c) [of this section].

128 (c) The [department] Department must prepare, keep current, and provide
129 to a custom applicator a written notice about pesticides for the custom
130 applicator to give to a customer under subsection (b) [of this section].

131 (d) The notice prepared by the [department] Department under subsection
132 (c) [of this section] must include:

- 133 (1) [Government] government agency phone numbers to call to:
 134 [a.](A) [Make] make a consumer complaint;
 135 [b.](B) [Receive] receive technical information on
 136 pesticides; and
 137 [c.](C) [Get] get assistance in the case of a medical
 138 emergency;
- 139 (2) [A] a list of general safety precautions a customer should take
 140 when a lawn is treated with a pesticide;
- 141 (3) [A] a statement that a custom applicator must:
 142 [a.](A) [Be] be licensed by the Maryland Department of
 143 Agriculture; and
 144 [b.](B) [Follow] follow safety precautions; and
- 145 (4) [A] a statement that the customer has the right to require the
 146 custom applicator to notify the customer before each treatment of
 147 the lawn of the customer with a pesticide.

148 **[33B-3] 33B-7. Posting signs after application by custom applicator.**

- 149 (a) Immediately after a custom applicator treats a lawn with a pesticide, the
 150 custom applicator must [post a sign on the lawn] place markers within
 151 or along the perimeter of the area where pesticides will be applied.
- 152 (b) A [sign posted] marker required under this [section] Section must:
 153 (1) [Be] be clearly visible [from the principal place of access to] to
 154 persons immediately outside the perimeter of the property;
 155 (2) [Be] be a size, form, and color approved by the [department]
 156 Department;
 157 (3) [Be] be made of material approved by the [department]
 158 Department; [and]

159 (4) [Have] have wording with content and dimensions approved by
 160 the [department] Department[.]; and

161 (5) be in place on the day that the pesticide is applied.

162 **33B-8. Posting signs after application by property owner or tenant.**

163 (a) A person who performs a private lawn application treating an area
 164 more than 100 square feet must place markers within or along the
 165 perimeter of the area where pesticides will be applied.

166 (b) A marker required under this Section must:

167 (1) be clearly visible to persons immediately outside the perimeter of
 168 the property;

169 (2) be a size, form, and color approved by the Department;

170 (3) be made of material approved by the Department; and

171 (4) have wording with content and dimensions approved by the
 172 Department; and

173 (5) be in place on the day that the pesticide is applied.

174 **ARTICLE 3. Application restrictions.**

175 **33B-9. Prohibited application.**

176 A person must not apply a non-essential pesticide to a lawn.

177 **33B-10. Exceptions and Exemptions.**

178 (a) A person may apply a non-essential pesticide for the following
 179 purposes:

180 (1) for the control of weeds as defined in Chapter 58, Weeds;

181 (2) for the control of invasive species listed in a regulation adopted
 182 under Subsection 33B-4(d);

183 (3) for pest control while engaged in agriculture; and

184 (4) for the maintenance of a garden, athletic playing field, or a golf
 185 course.

186 **(b)** A person may apply to the Director for an exemption from the
187 prohibition of Section 33B-9 for a non-essential pesticide. The Director
188 may grant an exemption to apply a non-essential pesticide on property
189 where application is prohibited under Section 33B-9 if the applicant
190 shows that:

- 191 **(1)** effective alternatives are unavailable;
- 192 **(2)** granting an exemption will not violate State or federal law; and
- 193 **(3)** use of the non-essential pesticide is necessary to protect human
194 health or prevent significant economic damage.

195 **(d)** A person may apply to the Director for an emergency exemption from
196 the prohibition in Section 33B-9 if a pest outbreak poses an imminent
197 threat to public health or if significant economic damage would result
198 from the inability to use a pesticide prohibited by Section 33B-9. The
199 Director may impose specific conditions for the granting of emergency
200 exemptions.

201 **33B-11. Outreach and Education Campaign.**

202 The Executive must implement a public outreach and education campaign
203 before and during implementation of the provisions of this Article. This campaign
204 should include:

- 205 **(a)** informational mailers to County households;
- 206 **(b)** distribution of information through County internet and web-based
207 resources;
- 208 **(c)** radio and television public service announcements;
- 209 **(d)** news releases and news events;
- 210 **(e)** information translated into Spanish, French, Chinese, Korean,
211 Vietnamese, and other languages, as needed;

- 212 (f) extensive use of County Cable Montgomery and other Public,
 213 Educational, and Government channels funded by the County; and
 214 (g) posters and brochures made available at County events, on Ride-On
 215 buses and through Regional Service Centers, libraries, recreation
 216 facilities, senior centers, public schools, Montgomery College, health
 217 care providers, hospitals, clinics, and other venues.

218 **ARTICLE 4. County Property**

219 **33B-12. Prohibition on County-owned property.**

220 (a) Prohibition. Except as provided in subsection (b), a person must not
 221 apply to any property lawn owned by the County:

- 222 (1) a non-essential pesticide; or
 223 ~~(2) a neonicotinoid.~~

224 (b) Exceptions.

225 (1) A person may use any larvicide or rodenticide on property owned
 226 by the County as a public health measure to reduce the spread of
 227 disease vectors under recommendations and guidance provided
 228 by the Centers for Disease Control and Prevention, the United
 229 States Environmental Protection Agency, or the State Department
 230 of Agriculture. Any rodenticide used must be in a tamper-proof
 231 product, unless the rodenticide is designed and registered for a
 232 specific environment inaccessible to humans and pets.

233 (2) A person may use a non-essential pesticide or neonicotinoid for
 234 the purposes set forth in Subsection 33B-10(a).

235 (3) A person may use a non-essential pesticide or neonicotinoid on
 236 property owned by the County if ~~the Director determines, after~~
 237 ~~consulting the Directors of General Services and Health and~~
 238 ~~Human Services, that the use of that pesticide is necessary to~~

239 protect human health or prevent imminent and significant
240 economic damage, and that no reasonable alternative is available.
241 If a pesticide is used under this paragraph, the Director must,
242 within 30 days after using the pesticide, report to the Council on
243 the reasons for the use of the pesticide.

244 **33B-13. Integrated pest management.**

245 (a) Adoption of program. The Department must adopt, by a method (2)
246 regulation, an integrated pest management program for property owned
247 by the County.

248 (b) Requirements. Any program adopted under subsection (a) must require:
249 (1) monitoring the turf or landscape;
250 (2) accurate record-keeping documenting any potential pest problem;
251 (3) evaluating the site for any injury caused by a pest and
252 determining the appropriate treatment;
253 (4) using a treatment that is the least damaging to the general
254 environment and best preserves the natural ecosystem;
255 (5) using a treatment that will be the most likely to produce long-
256 term reductions in pest control requirements and is operationally
257 feasible and cost effective in the short and long term;
258 (6) using a treatment that minimizes negative impacts to non-target
259 organisms;
260 (7) using a treatment that is the least disruptive of natural controls;
261 (8) using a treatment that is the least hazardous to human health; and
262 (9) exhausting the list of all non-chemical and organic treatments
263 available for the targeted pest before using any synthetic
264 chemical treatments.

265 (c) The Department must provide training in integrated pest management
266 for each employee who is responsible for pest management.

267 **Sec. 2. Initial Lists of Non-Essential Pesticides and Invasive Species.** The
268 Executive must submit the lists of non-essential pesticides and invasive species
269 required by Subsections 33B-4(c) and (d) to the Council for approval by October 1,
270 2015.

271 **Sec. 3. Effective Date.** The prohibitions on use of non-essential pesticides
272 contained in Section 33B-9 and the prohibitions on use of non-essential pesticides
273 and neonicotinoids contained in Section 33B-12 take effect on January 1, 2016.

274 **Sec. 4. Expiration.** This Act and any regulation adopted under it expires on
275 January 1, 2019.

276 *Approved:*

277

Craig L. Rice, President, County Council Date

278 *Approved:*

279

Isiah Leggett, County Executive Date

280 *This is a correct copy of Council action.*

281

Linda M. Lauer, Clerk of the Council Date