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CITY OF BALTIMORE

BERNARD C. “JACK” YOUNG  
Mayor



DEPARTMENT OF LAW  
DANA P. MOORE, ACTING CITY SOLICITOR  
100 N. HOLLIDAY STREET  
SUITE 101, CITY HALL  
BALTIMORE, MD 21202

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April 30, 2020

The Honorable President and Members  
of the Baltimore City Council  
Attn: Executive Secretary  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

Re: City Council Bill 20-0495 – Pesticide Control and Regulation

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 20-0495 for form and legal sufficiency. The bill would require certain notices at the time of purchase of a pesticide, before and after pesticide application, require marker placement after certain pesticide application, prohibit the use of certain pesticides in specified areas, prohibit the use and application of glyphosate and chlorpyrifos, prohibit neonicotinoid pesticide use on City property, establish certain penalties and provide for a special effective date.

The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. §§ 136-136y, provides the federal regulatory scheme for pesticide control and charges the EPA with the responsibility of determining the safety of pesticide products. Generally speaking, all pesticides sold in the United States must be registered with the EPA. FIFRA does not, however, preempt state or local control of pesticides. *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 607 (1991).

Maryland’s Pesticide Registration and Labeling Law and Pesticide Applicator’s Law provide the state’s regulatory scheme. Md. Code, Agric., § 5-101 *et seq.*; §§ 5-201-5-211. State law does not expressly preempt local pesticide control. In a recent case involving a Montgomery County ordinance that is very similar to this bill, although different in some respects, the Maryland Court of Special Appeals upheld the law against a preemption challenge. *Montgomery Co. v. Complete Lawn Care, Inc.*, 240 Md. App. 664, 688-89 (2019), *cert. denied*, *Goodman v. Montgomery County*, 464 Md. 585 (2019). The court held that the local law was not preempted by Maryland’s pesticide laws, because although it prohibited activities that are permitted under State law, the County’s prohibitions were not expressly permitted under Maryland law allowing the County to go further in its restrictions.

City Council Bill 20-0495 is similar in many respects to the Montgomery County law examined in that case and is, therefore, likely not preempted. Sections 19-303 and 304 of the Bill prohibit, in addition to Neonicotinoid that is prohibited by Montgomery County, the use of

Glyphosate and Chlorpyrifos, unless authorized by the Commissioner. Neither of these pesticides are expressly permitted under Maryland law and the City would likely not be preempted by these additional prohibitions. The bill also provides less time to report an emergency application to the Department (24 hours) than the Montgomery law's counterpart (7 days after private application). This difference would not subject the law to preemption, as it is within the City's authority to enact stricter laws in this area. *Complete Lawn Care, Inc.*, 240 Md. App. at 710 (holding that the state's regulations set a floor, not a ceiling, and local laws can go further in their restrictions (citing *Mayor and City Council of Baltimore v. Hart*, 395 Md. 394, 396-97 (2006) (upholding the City's more stringent standard for emergency vehicles)).

The Law Department recommends further elaboration on several of the bill's terms to avoid a vagueness challenge. *See, e.g., A.B. Small Co. v. American Sugar Refining Co.*, 267 U.S. 233, 238-239 (1925) (courts have held a civil "provision invalid as contravening the due process of law clause of the Fifth Amendment, among others, because it required that the transactions named should conform to a rule or standard which was so vague and indefinite that no one could know what it was") (citations omitted); *see also Johnson v. U.S.*, 135 S.Ct. 2551, 2570 (2015) (Thomas, J., concurring). The terms that need clarification are: "lawn" and "playing field." Specifically, the term "lawn" should be defined to exclude a "playing field," which should itself be clarified to exclude artificial surfaces that would not require pesticides (like turf fields or concrete basketball courts). Suggested amendments are attached to this report, but any further definition that makes these words less vague would suffice.

Subject to these amendments, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,



Ashlea Brown  
Hilary Ruley

cc: Dana P. Moore, Acting City Solicitor  
Matthew Stegman, Mayor's Office of Government Relations  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Victor Tervalá, Chief Solicitor

**AMENDMENTS TO COUNCIL BILL 20-0495**  
(1<sup>st</sup> Reader Copy)

Proposed by: Law Dep't  
{To be offered to the Health Committee}

**Amendment No. 1** to clarify “lawn”

On page 3, after line 13, insert “ “LAWN” DOES NOT INCLUDE: A PLAYING FIELD, GOLF COURSE, GARDEN, TREE OR SHRUB.”

**Amendment No. 2** to clarify “playing field”

On page 10, after line 25, insert ““PLAYING FIELD” DOES NOT INCLUDE ANY ARTIFICIAL SURFACE SUCH AS ASTRO TURF OR CONCRETE”