

City of Takoma Park, Maryland

Ordinance No 2012-XX

The “Safe Grow Zone Act of 2013 “

Amending the *Takoma Park Code* Title 14. Health and Safety, to add restrictions on the use of cosmetic pesticides on public and private property in Takoma Park.

WHEREAS, Title 14 Health and Safety protects the public health, safety, comfort, and general welfare of the residents and businesses of the City;

WHEREAS, Takoma Park’s Strategic Plan for FY2010-15, adopted May 18, 2009, articulates concern for clean water and safe neighborhoods and working environments and calls for “use of alternative, less environmentally damaging products”;

WHEREAS, The State of Maryland is one of only 9 states, and the District of Columbia, that uphold the rights of localities to restrict pesticides, and this should be seen as an opportunity to affect positive change. Preemption laws in the remaining 41 states undermine local authority regarding pesticide regulations;

WHEREAS, The City of Takoma Park can and should implement the Precautionary Principle, as outlined in the Wingspread Statement of 1998, when regulating the use of cosmetic lawn pesticides or any issue that affects human and ecological health,

WHEREAS, it is the 50th anniversary of the publication of Rachel Carson’s *Silent Spring*, which in 1962 decried the indiscriminant use of pesticides in the environment;

WHEREAS, in 2004, the City Council of Takoma Park proclaimed May 27 as Rachel Carson Day, a day in which residents are encouraged to consider the dangers from pesticides, and to refrain from pesticide use;

WHEREAS, the EPA, the Committee on Environmental Health of the American Academy of Pediatrics, the National Academy of Sciences, and the 2010 President’s Cancer Panel have concluded that pesticide exposure is linked to reproductive disorders, birth defects, learning disabilities, neurological disease, endocrine disorders, and cancer;

WHEREAS, the EPA acknowledges, along with esteemed Mt. Sinai Children’s Environmental Health Center, that children, with their developing bodies and brains, are especially vulnerable to the harmful effects of lawn pesticides. Children’s behavior, (hand to mouth interactions,) proximity to the ground, walking or running through lawns instead of in the street, (especially where there are no sidewalks), dispose children to far more contact with lawn pesticides than adults;

WHEREAS, The Journal of the National Cancer Institute finds that home and garden pesticide use can increase the risk of childhood leukemia by up to seven times. Dr. Philip Landrigan, the Director of Mt.

Sinai Children’s Environmental Health Center states, “Case-control epidemiologic studies have found consistent, modest associations between pesticide exposures in utero and in early childhood and acute lymphocytic leukemia, childhood brain cancer and childhood non-Hodgkin’s lymphoma. Rates of childhood leukemia are consistently elevated among children who grow up on farms, among children whose parents used pesticides in the home or garden, and among children of pesticide applicators.”

WHEREAS, The EPA states pesticides are chemical irritants that can trigger asthma attacks in sufferers. 1 in 10 children suffer from asthma, more in urban areas, where building managers routinely contract with lawn pesticide applicators;

WHEREAS, The National Institute of Environmental Health Sciences at NIH, and the Harvard School of Public health have confirmed that exposure to pesticides raises the risk of Parkinson’s Disease;

WHEREAS, lawn pesticides have sub-lethal effects on animal life, including pets, aquatic organisms, and wildlife. A 2012 study by biologists at Harvard University concludes that pesticides are lethal to many pollinators and have been linked to Colony Collapse Disorder in honeybees;

WHEREAS, the Maryland Department of Natural Resources since 2004 have given Sligo Creek a rating of Poor; and the local advocacy group, Friends of Sligo Creek, on their website, ask people not to overuse pesticides and herbicides and also to “Encourage civic leaders to implement policies that reduce stormwater volumes, sewer leaks, nutrients, toxic chemicals, and other impediments to water quality,” and;

WHEREAS, the Chesapeake Bay Foundation’s 2010 State of the Bay Report observes that non-point source pollution from residential and commercial lawn pesticides in surrounding towns pollute the watershed and ultimately Chesapeake Bay;

WHEREAS, Most provinces in Canada have banned the use of cosmetic lawn chemicals, and subsequent studies show a dramatic increase in stream health; Washington DC has enacted the Pesticide Education and Control Amendment Act of 2012; and Greenbelt, MD, strictly prohibits the use of synthetic chemical pesticides on all city-owned land with their Sustainable Land Care Policy of 2011;

WHEREAS, non-toxic lawn care products are affordable and available to purchase in Takoma Park, and several local landscaping businesses offer pesticide-free lawn care.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND:

SECTION 1. Title 14, Health and Safety, Chapter 14, Cosmetic Lawn Pesticide Regulation, of the *Takoma Park Code* (2004 edition) is amended as follows:

14.28.010 Declaration of policy

The Council of the City finds that the use of pesticides for the cosmetic purposes of maintaining the aesthetic condition of lawns and gardens creates health risks to residents, especially children, and affects the quality of our environment and Chesapeake Bay. The intent of this ordinance is to clarify

what is meant by the cosmetic use of a pesticide, immediately prohibit the use of cosmetic pesticides on city property, and phase in a public education campaign and restrictions on the use of cosmetic lawn pesticides on private property within the City.

14.28.20 Definitions

As used in this chapter, subject to such extensions as may be given to any of these definitions under Section XXX of this chapter:

“Pesticide” refers to any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest. Though often misunderstood to refer only to insecticides, the term also applies to herbicides, fungicides, and various other substances used to control pests.

“Cosmetic use” means a pesticide applied for aesthetic purposes, E.g., to achieve a homogenous appearance, in the maintenance of lawn, turf, flowers, and ornamental plants, trees, or shrubs; unnecessary. An infestation of pests, (such as clover, grubs, black spot,) in these areas does not merit the use of pesticides. Exceptions include pesticides used for the purposes of controlling noxious weeds or to protect human health (see exceptions).

“Noxious weeds” shall include those described in Section 12.08.040 of Takoma Park Code.

“Health Risks” in this case, refers to the potential to suffer injury from chemical factors, such as exposure to cosmetic lawn pesticides

“Quality” means the state that is optimal for soil, water, air, flora, and fauna to thrive in Takoma Park and in all the connected environments where our activity has lasting impact

“Precautionary Principle” is the tool governments can employ when there is indication of potential harm to people or the environment, rather than proof of harm, as a result of human activity. It is clearly defined for use by American governments in the Wingspread Statement of 1998.

<http://www.sehn.org/wing.html>

14.28.30 Register

The City Manager shall create and issue, by April 1, 2013, and shall thereafter maintain a register of restricted pesticides and uses and administrative regulations necessary for enforcement of this ordinance. The initial register shall include the following pesticides and their associated products:

| Pesticide | Product |
|------------------------------------|----------------------------|
| • 2, 4-D | Ortho Max and Weed N’ Feed |
| • Bifenthrin | Ortho Bug B Gone Max |
| • Dicamba | Ortho Max and Weed N’ Feed |
| • Dichlorprop-p Dimethylamine Salt | Scott’s Turf Builder |
| • Diquat Dibromide | Spectracide and Roundup |
| • Fenoxycarb | Bayer Weed Control |
| • Fluazifop-butyl | Spectracide |
| • Glyphosate | Roundup |
| • Imazethapyr | Ortho Ground Clear |
| • Imazipic | Round Up Extended Control |
| • Imazipyr | Ortho Ground Clear |

- Imidacloprid Bayer Rose and Flower Care, Bayer Advantage Complete Insect Killer Turf and Soil (Banned in parts of New York State)
- Isoxaben Bayer Weed Control
- Lambda-cyhalothrin Terro Ant Killer and Ace Insect
- Mecoprop (MCP) Ortho Max, Weed N Feed, Ace Green Turf, many
- Metaldehyde Ortho Bug Geta Snail and Slug Killer
- Permethrin Ace, Bayer, many brands
- Propiconazole Bayer Fungus Control
- Quinoxifen, Quinchorac Ortho Crab Grass
- Sulfentrazone Spectracide Weed Stop for Lawns
- Tebuconazole Bayer Rose and Flower
- Trichlorfon, Trichloro Ortho Weed B Gone
- Triclopyr Ortho Chickweed, Clover, Oxalis and Ortho Poison Ivy

14.28.40 Prohibited Applications

- A. Use on City-owned Property: It shall be unlawful for any City employee or contractor to apply or cause to be applied any pesticide use on City-owned property or in a City right-of-way.
- B. Use on Other Public Property: The City of Takoma Park shall inform governmental entities that own or control land within the city, and whose use of pesticides the city does not have power to restrict, of city restrictions on the use of pesticides within the city, in order to encourage and achieve compliance.
- C. Use on Private Property: Starting July 1, 2013, it shall be illegal to apply restricted pesticides on private property in the city, whether by the property owner or a tenant, service provider, or other agent.
- D. Notice Requirement: From the date of adoption of this ordinance until June 31, 2013, any party applying a pesticide that will be restricted by this ordinance must post public notice, readable and visible from the public right-of-way at the point closest to the area of application, stating the substance applied and the date of application.

14.28.xx Exceptions

Exceptions to the Safe Grow Zone Act include:

Public Health or Safety: Pesticides can be used to control plants that are poisonous to the touch, such as poison ivy; insects that bite, sting, are venomous or are disease carrying, like mosquitoes; and animals,

insects or plants that may cause damage to a structure or infrastructure, such as termites. Cultural, physical, biological, and mechanical methods of control are also effective, and encouraged. (Education about alternative methods of mosquito control would be very useful for residents of Takoma Park, where in recent years, the Tiger Mosquito, *Aedes albopictus*, has become an extreme pest.)

Noxious Weeds: Maryland law requires landowners to control the noxious weeds Johnson grass, shattercane, and thistles on all types of land. Cultural, physical, biological, and mechanical methods of control are effective and encouraged.

Natural resources: The City of Takoma Park or Montgomery County may issue a license to control an invasive species that may be detrimental to the environment, or to protect a native plant, animal or a rare ecosystem.

Trees: Since trees are so important to protecting our climate, licensed professionals can use otherwise restricted pesticides with the written opinion of an arborist that states the use of pesticide is necessary to protect the health of the tree.

Where no feasible alternatives exist, or use is mandated by the State of Maryland or another governing entity.

A. City Use: Should the City of Takoma Park seek to apply restricted pesticides to public or private land, the City Manager shall issue a public attestation stating the location(s) and timing of use, the substance(s) to be applied, the date(s) of application, and the unavailability of acceptable alternatives, for any use of restricted pesticides.

B. Waiver for Private Use: The City of Takoma Park will accept and review appeals from individuals or groups who have exhausted acceptable alternatives to cosmetic pesticides. An application is a public record, stating the proposed location(s) and timing(s) of use, substance(s) to be applied, the date(s) of application, and the unavailability of acceptable alternatives. Applications shall be published by the city, online and in other forms, and shall be posted by the property owner or the owner's agent, in a form readable and visible from the public right-of-way at the point(s) closest to the area(s) of application, at least seven days prior to date(s) of application. The City Manager shall accept and weigh public comment in deciding whether to issue a waiver, which shall be of limited duration.

14.28.xx Outreach and education

The City Manager shall publish notice of this ordinance, including lists of banned pesticides and of alternative, less environmentally damaging products and cultural practices or methods of pest control, to customary outlets, and shall provide periodic notice regarding this ordinance, to identified retailers and lawn, garden, and tree-care providers serving Takoma Park and to churches, schools, and other institutions in the city, upon adoption of administrative regulations and subsequently every two years or more frequently.

The City Manager shall prepare and publish materials designed to educate the community about the role of pesticides in our local environment, such as the Sligo Creek Watershed, and about earth-friendly alternatives to cosmetic lawn pesticides.

14.28.xx Enforcements and penalties

- A. Each act of illegal application of a restricted pesticide shall be a Class B misdemeanor.
- B. Failure to provide and post notice of an allowed application of a restricted pesticide shall be a Class C misdemeanor.

ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, THIS XX DAY OF XX, 2013, BY ROLL-CALL VOTE AS FOLLOWS:

AYE:

NAY:

ABSENT:

ABSTAIN:

Attest:

Jessie Carpenter, CMC
City Clerk