

Regular Meeting

Agenda Item #	9
Meeting Date	July 22, 2013
Prepared By	Suzanne Ludlow Deputy City Manager
Approved By	Brian Kenner City Manager

Discussion Item	Second Reading Ordinance, Safe Grow Act
Background	<p>The Safe Grow Act of 2013 seeks to have the City Council enact a series of public education requirements and ultimately a ban on certain lawn pesticides on public and private property within the City. The Council held a public forum and a series of work sessions to discuss the proposed ordinance. The Ordinance was considered at First Reading on July 15, 2013.</p> <p>Several minor amendments have been proposed by City Attorney Kenneth Sigman, changing the publication date of the Register of Restricted Pesticides to on or before March 1 of each year.</p>
Policy	<p>Section 401(a) of the City Charter:</p> <p><i>(a) The Council shall have the power to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland or this Charter as it may deem necessary for the good government of the City; for the protection and preservation of the City's property, rights, and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger, or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of and visitors in the City.</i></p>
Fiscal Impact	Ordinance: FY 14 - \$15,000; FY 15 - \$20,000; FY 16 - \$28,000; future years - \$25,000 per year
Attachments	Second Reading Ordinance
Recommendation	Adopt ordinance at second reading
Special Consideration	

Introduced by: Councilmember Smith

First Reading: July 15, 2013

Second Reading:

Effective Date:

City of Takoma Park, Maryland

Ordinance 2013-28

“Safe Grow Act of 2013”

**Amending the *Takoma Park Code* Title 14, Health and Safety,
to Add Restrictions on the Use of Pesticides on Public and Private Property.**

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

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”; and

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, and the City has consistently, before and since, acted in society’s environmental and health best interests; and

WHEREAS, the State of Maryland does not preempt municipal restriction of pesticide use, which indicates state recognition that localities are permitted and may wish to act beyond State law, and further, the State of Maryland itself goes beyond State law: A collaborative effort that includes the Maryland Departments of General Services and Natural Resources is transitioning the State House grounds to a “Bay-friendly, pesticide-free lawn and landscape care program” and instructs Marylanders, “Try Pesticide-free organic land care to protect the Bay and your family's health”; and

WHEREAS, the Environmental Protection Agency (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; and

WHEREAS, the EPA acknowledges, along with the 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 exposes them to far more contact with lawn pesticides than adults receive; and

WHEREAS, a study in 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”; and

WHEREAS, the EPA states pesticides are chemical irritants that can trigger asthma attacks in sufferers. One in ten children suffers from asthma, more in urban areas, where building managers routinely contract with lawn pesticide applicators; and

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; and

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; and

WHEREAS, Friends of Sligo Creek asks people not to overuse pesticides and herbicides and also to “Encourage civic leaders to implement policies that reduce... 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; and

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 its Sustainable Land Care Policy of 2011; and

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 THAT:

SECTION 1. Title 14, Health and Safety, of the Takoma Park Code, is hereby amended to include a new Chapter 14.28, as follows:

Chapter 14.28

Restricted Lawn Care Pesticides

14.28.010 Declaration of policy

The application of certain pesticides, including the use of certain pesticides approved for use by the federal, state, or county governments, in manners and by persons allowed by those governments to apply them, nonetheless present an unacceptable risk of harm to public and animal health, the environment, and the region's watershed.

The City of Takoma Park prioritizes education of property owners and the businesses that serve them on the demonstrated and potential dangers posed by the use of certain pesticides for lawn care purposes, and on alternative, effective, safe means of promoting healthy lawns.

Education is important, but education alone is insufficient to protect the health of Takoma Park residents and visitors and the integrity of our environment and the region's watershed from the harm posed by the use of certain pesticides for the purposes of maintaining the cosmetic appearance of lawns. Certain pesticides are harmless to humans and non-pest species, and certain applications of potentially harmful pesticides may be justified by the need to eradicate invasive species and restore the environment. However, the desire to control purported pests such as clover, grubs, and black spot, to maintain a homogenous lawn does not merit the use of harmful pesticides.

This Chapter accordingly establishes public education requirements and phases in restrictions on the use of harmful pesticides for lawn care on public and private property within the City. It establishes an administrative framework for the implementation of educational steps, restrictions, and enforcement.

14.28.020 Definitions

As used in this Chapter,

"Commercial pesticide applicator" means any person that performs pesticide application for hire.

"Infestation" means the presence of a pest in numbers or quantities large enough to be harmful.

"Lawn" means an area of grass or other vegetation of at least 25 square feet that is kept mowed.

"Pest" means any undesirable insect, animal, plant, fungi, bacteria, virus, or microorganism;

“Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, including insecticides, herbicides, and fungicides.

“Restricted pesticide” means a pesticide identified in the register of restricted pesticides developed under section 14.28.040 of this Chapter.

14.28.030 Outreach and Education

A. The City shall identify or prepare, and then periodically disseminate, materials designed to educate the community about the role of pesticides in our local environment, compliance with restrictions imposed by the Safe Grow Act, and earth-friendly practices and alternatives to the use of harmful pesticides.

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1. Education may take the form of pamphlets and brochures, whether produced and distributed on paper or electronically, and classes and seminars, involving City staff, non-City governmental agencies, community and advocacy groups, and other resources.

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2. Materials shall include information about and links to the U.S. Environmental Protection Agency’s list of minimum risk pesticides. The City Manager shall publish the EPA’s list of minimum risk pesticides on or before ~~January~~ March 1 of each year and ensure that the publication reflects any changes to the EPA’s list during the preceding ~~twelve month~~ calendar year.

B. The City Manager shall publish notice of this Chapter and a list of restricted pesticides and alternative, less environmentally damaging, products and cultural practices or methods of pest control and provide periodic notice regarding this Chapter to local lawn and garden retailers and contractors, and businesses, churches, schools, and other institutions located in the City, upon adoption of administrative regulations pursuant to section 14.28.080 and subsequently every two years or more frequently.

14.28.040 Register of Restricted Pesticides

A. The City Manager shall create and issue, by ~~January~~ March 1, 2014, a Register of Restricted Pesticides.

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1. The Register shall identify restricted pesticides.

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2. Persons applying pesticide products are responsible for determining whether the product contains a restricted pesticide.

B. The Register of Restricted Pesticides shall include the following pesticides:

1. Any pesticide classified as “Carcinogenic to Humans” or “Likely to Be Carcinogenic to Humans” by the U.S. Environmental Protection Agency;

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2. Any pesticide classified by the U.S. Environmental Protection Agency as a “Restricted Use Product”;

3. Any pesticide classified as a “Class 9” pesticide by the Ontario, Canada, Ministry of the Environment; and

4. Any pesticide classified as a “Category 1 Endocrine Disruptor” by the European Commission.

C. The City Manager shall publish an updated version of the Register of Restricted Pesticides that reflects any changes to the classifications in subsection (B) of this section on or before ~~March~~January 1 of each year that will remain in effect for one year.

14.28.050 Prohibited Applications

A. **Use by City Agents and Employees.** City agents or employees shall not use restricted pesticides for lawn care in the performance of their duties unless the City Manager determines, after considering the pertinent criteria developed for waiver decisions pursuant to section 14.28.070, that the restricted use of a pesticide is necessary to promote the public interest.

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B. **Use by Other Government Entities.** The City of Takoma Park shall inform governmental entities that own or control land within the City of its policy regarding restricted pesticides and encourage voluntary compliance with the pesticide use restrictions and notice requirements.

C. **Use on Private Property and Public Rights-of-Way.**

1. Commercial Pesticide Applicators.

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a. Commencing March 1, 2014, it shall be illegal for a commercial pesticide applicator to apply restricted pesticides for lawn care purposes on private property or public rights-of-way in the City.

b. Commencing March 1, 2014, a commercial pesticide applicator applying a pesticide for lawn care purposes must post a written notice, readable and visible from the public right-of-way at the point closest to the area of application, providing information as specified in Administrative Regulations. The notice shall remain in place for at least 2 days following application.

c. Penalties.

i. From March 1, 2014, through June 30, 2014, the City shall issue a written warning to a commercial pesticide applicator that violates paragraphs (a) or (b) of this subsection.

ii. Commencing July 1, 2014, each prohibited application of a restricted pesticide for lawn care purposes is a violation and shall be a Class D municipal infraction for the initial offense and shall be a Class B municipal infraction for the second offense. The third and any subsequent offenses shall be repeat Class B offenses.

iii. Commencing July 1, 2014, failure to post and maintain the written notice required under paragraph (1)(b) of this subsection is a violation and shall be a Class G municipal infraction.

2. Property Owners and Tenants.

a. After July 1, 2014, the City shall distribute educational materials developed under section 14.28.030 to all single-family homes, duplexes, and townhouses in the City.

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b. Commencing January 1, 2015, it shall be illegal for a property owner or tenant to apply restricted pesticides for lawn care purposes on private property or public rights-of-way in the City.

c. Commencing January 1, 2015, a property owner or tenant applying a pesticide for lawn care purposes must post written notice. The notice shall be readable and visible from the public right-of-way at the point closest to the area of application, providing information as specified in Administrative Regulations. The property owner or tenant shall maintain the notice for at least 2 days following application.

d. Penalties.

i. From January 1, 2015, to June 30, 2015, the City shall issue a written warning to a property owner or tenant that violates the pesticide application restrictions and posting requirements of paragraphs (2)(b) and (c) of this subsection.

ii. Commencing July 1, 2015, each prohibited application of a restricted pesticide for lawn care purposes is a violation and shall be a Class D municipal infraction for an initial offenses and shall be a Class B municipal infraction for the second offense. The third and any subsequent offenses shall be repeat Class B offenses.

iii. Commencing July 1, 2015, failure to post and maintain a written notice as required by paragraph (2)(c) of this subsection is a violation and shall be a Class G municipal infraction.

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14.28.060 Exceptions

A. The City encourages the use of cultural, physical, biological, and mechanical methods of pest control, instead of restricted pesticide use, but this Chapter does not prohibit the use of restricted pesticides for the purposes set forth in subsection (C) of this section.

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B. Any person using a restricted pesticide for lawn care purposes pursuant to an exception set forth below must post a written notice readable and visible from the public right-of-way at the point closest to the area of application that states the address of the pesticide application, substance applied, and date of application, and the exception under which the pesticide is being applied. The property owner or tenant shall maintain the notice for at least 2 days following application.

C. Restricted pesticides may be applied for the following purposes:

1. **Noxious growths.** The control of plants identified in Section 12.08.040, Noxious Growths, of the Takoma Park Code, including poison ivy (*Rhus radicans* or *Toxicodendron radicans*), poison oak (*Rhus toxicodendron* or *Toxicodendron quercifolium*), poison sumac (*Rhus vernix* or *Toxicodendron vernix*), ragweed (*Ambrosia artemisiifolia*), bamboo, kudzu-vine (*Pueraria lobata*), non-native honeysuckle, wisteria, and multi flora rose (*Rosa multiflora*).

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2. **Noxious weeds.** The control of noxious weeds as defined in section 9-401 of the Agriculture Article of the Maryland Code, including thistles belonging to the asteraceae or compositae family, such as Canada, musk, nodding, plumeless, and bull thistle, johnsongrass (*sorghum halepense*) or hybrids that contain johnsongrass as a parent, and shatter cane and wild cane (*sorghum bicolor*).

3. **Invasive species.** The control of invasive species that may be detrimental to the environment, in accordance with a license issued by the City of Takoma Park or Montgomery County.

4. **Mandatory applications.** Use of pesticides mandated by state or federal law.

5. **Health and safety.** The control of insects that are venomous or disease carrying.

14.28.070 Waiver

A. Persons that have exhausted all reasonable alternatives to the use of restricted pesticides for lawn care may request a waiver from the City Manager allowing the use of one or more of the restricted pesticides under this Chapter. In deciding waiver requests, the City Manager shall balance the need for the use of restricted pesticides against the risks of such use.

B. **Posting requirements.** Persons granted a waiver must post a written notice readable

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and visible from the public right-of-way at the point closest to the area of application, providing information specified in Administration Regulations. The property owner or tenant shall maintain the notice for at least 2 days following application.

14.28.080. Administration.

A. The City Manager shall promulgate regulations for the implementation and enforcement of this Chapter. The regulations shall include the following:

1. Procedures and criteria for notices; and
2. Procedures and criteria for waiver applications.

B. The City Manager may recommend to the Council one or more methods of assessing the effectiveness of this Chapter, which may include the development of metrics on volume and types of use of pesticides in the City or testing of local waters for pesticide contamination.

Section 2. This ordinance shall become effective on August 12, 2013.

Adopted by the Council of the City of Takoma Park this ____ day of _____ by roll-call vote as follows:

AYE:

NAY:

ABSTAIN:

ABSENT:

Note:

Changes made to the ordinance since first reading are indicated by underline or ~~striketrough~~.