

From: Leventhal's Office, Councilmember
Sent: Tuesday, May 13, 2014 4:15 PM
To: Criss, Jeremy
Subject: Discussion Draft of Possible Pesticide Legislation

Dear Jeremy,

Attached to this email are a cover memo and discussion draft of possible legislation which would generally amend County law affecting the application of pesticides within the county. I would appreciate your feedback on the draft, while recognizing that it is still a work in progress.

Please feel free to share the draft with any other stakeholders, but I would ask that you not disseminate it widely at this time.

Best regards,
George Leventhal
Vice President, Montgomery County Council



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

GEORGE LEVENTHAL
COUNCILMEMBER
AT-LARGE

May 6, 2014

Dear Friend,

Unfortunately, we live in a world full of pollutants. They can be found in the foods we eat, the air we breathe, our treasured waterways such as the Chesapeake Bay and Potomac River, and even our own front yards. Federal, state and local jurisdictions, including Montgomery County, have worked in the past to curb the amounts of pollutants in most of these impacted areas. A notable exception is that of pesticides and their use or overuse on our yards, schools, businesses, and public and private property.

I believe it is paramount to start a conversation on pesticides by clearly defining what they are. The American Academy of Pediatrics (AAP) defines pesticides as:

“...a collective term for chemicals intended to kill unwanted insects, plants, molds and rodents.”

As Chair of the County Council’s Health and Human Services committee, I take very seriously my responsibility to protect the public’s health. We as a County must be especially vigilant to protect the health of those who are the most vulnerable in our community, namely, our children, who are frequently exposed to pesticides at playgrounds, schools and recreational facilities. The AAP says the following on childhood exposure to pesticides:

“...children encounter pesticides daily and have unique susceptibilities for their potential toxicity. Acute poisoning risks are clear, and understanding of chronic health implications from both acute and chronic exposure are emerging. Epidemiologic evidence demonstrates association between early life exposure to pesticides and pediatric cancers, decreased cognitive function, and behavioral problems...recognizing and reducing problematic exposures will require attention to current inadequacies in medical training, public health tracking, and regulatory action on pesticides...Policies that promote integrated pest management, comprehensive pesticide labeling, and marketing practices that incorporate child health considerations will enhance use.”

Strong evidence exists that certain industrial chemicals are contributing significantly to the increase in neurodevelopmental disorders. Exposure occurring in utero, infancy and early childhood is silently eroding intelligence, disrupting behaviors, and diluting future achievements. Chemicals that were once thought to be safe are now being discovered to be hazardous to human health. As our scientific understanding of pesticides evolves, so must our public policy.

To that end, I have been working over the course of the last several months to draft legislation which would update the county's laws affecting the application of pesticides in order to minimize exposure to children.

As drafted, the bill would do the following:

- 1) Require the Executive to designate, by regulation, lists of pesticides classified as:
 - a) "non-essential pesticides," which include all pesticides registered by the U.S. Environmental Protection Agency and labeled pursuant to FIFRA for use on lawn, garden, or ornamental sites and any other pesticides which the Executive determines are not critical to pest management in the County; and
 - b) "restricted-use pesticides," which when used as directed or in accordance with commonly recognized practice require additional restrictions for that use to prevent or reduce a hazard to human health, the environment, or property, or which the Executive finds have a significant, scientifically sound basis for additional restrictions on use.
- 2) Require the posting of notice when a property owner applies a pesticide to a lawn with an area of more than 100 square feet;
- 3) Prohibit the application of a non-essential pesticide to the lawn of a children's facility, family day care home or school, or to a playground or recreational field, and permit restrictions on the application of restricted-use pesticides to these areas;
- 4) Require that a unit owner in a common ownership community be given the opportunity each year to "opt out" of the application of non-essential pesticides to the owner's unit;
- 5) Require that application of non-essential pesticides to the common elements in a common ownership community be approved each year by a majority of the owners voting;
- 6) Prohibit the application of a non-essential pesticide to certain County-owned property;
- 7) Require the County to adopt an Integrated Pest Management (IPM) program; and
- 8) Stagger the effective dates for the notice requirement and restrictions on application:
 - a) notice requirement (Item 2) and prohibition/IPM requirement applicable to the County (Items 6 and 7) would be effective in late 2014;
 - b) prohibition applicable to the lawn of a children's facility, family day care home or school, or to a playground or recreational field (other than those owned by the County) (Item 3) would take effect in late 2015; and
 - c) opt-out/approval requirements for common ownership communities (Items 4 and 5), would take effect in late 2015.

Before you read the discussion draft, I would like to answer some questions which are likely to arise. This bill completely exempts our agricultural community. As a vital cog in the economy of Montgomery County, we must protect our farmers and their reliance on measures used in keeping their crops alive. This bill also does not apply to Montgomery County Public Schools, as we have no authority to regulate actions taken on their property. However, the bill does apply to private schools and child care facilities. This bill also exempts golf

courses. This bill will change nothing for professional landscapers and their daily business as they are licensed experts and their usage is closely monitored.

The purpose of this memo and discussion draft is about engaging you in the process. I am inviting your feedback and wish to solicit your thoughts on this measure before its introduction. I am doing so because I believe it is important that we understand concerns and possible ramifications that council staff has not yet considered.

If you have any questions, please feel free to contact me or my staff.

I look forward to hearing your thoughts.

Best regards,

A handwritten signature in black ink that reads "George Leventhal". The signature is written in a cursive, flowing style.

George Leventhal
Vice President, Montgomery County Council

DISCUSSION DRAFT

ATTACHMENT A

AN ACT to:

- (1) require posting of certain lawn applications of pesticide;
- (2) prohibit the use of certain pesticides on certain children's facilities, recreational fields, and playgrounds;
- (3) require common ownership communities to give notice and obtain certain approvals before using certain pesticides on units or common elements;
- (4) prohibit the use of certain pesticides on certain County-owned property
- (5) require the County to adopt an integrated pest management program for certain County-owned property; and
- (6) 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, 33B-13, 33B-14, and 33B-15

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>

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1 **Sec. 1. Sections 33B-1, 33B-2, 33B4, 33B-5, 33B-6 and 33B-7 are amended, and**
2 **Articles 2, 3, 4, and 5 are added as follows:**

3 ARTICLE 1. General Provisions

4 **33B-1. Definitions.**

5 In this [chapter] Chapter:

6 Children's facility means a building or part of a building which, as part of its
7 function, is regularly occupied by children under the age of 6 years and is
8 required to obtain a certificate of occupancy as a condition of performing that
9 function. Children's facility includes a child day care center and children's
10 gymnasium.

11 Custom applicator means a person engaged in the business of applying
12 pesticides.

13 Department means the Department of Environmental Protection.

14 Director means Director of the Department of Environmental Protection[,] or
15 the Director's designee.

16 Family day care home means a dwelling in which child day care services are
17 provided, regardless of whether a certificate of occupancy is required.

18 Integrated pest management means a process for managing pests that:

19 (1) uses monitoring to determine pest injury levels;

20 (2) combines biological, cultural, mechanical, physical, and chemical
21 tools and other management practices to control pests in a safe,
22 cost effective, and environmentally sound manner that
23 contributes to the protection of public health and sustainability;

24 (3) uses knowledge about pests, such as infestations, thresholds, life
25 histories, environmental requirements, and natural control of
26 pests; and

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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 Non-essential pesticide means a pesticide designated under Section 33B-4 that
36 is not critical to managing pests that threaten health, property, or the
37 environment.

38 Park means an area of land or a recreation center that is owned or operated by
39 a public entity and open to the public for recreational use.

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

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

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

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

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51 Playground means an outdoor children’s play area that is on the premises of a
52 children’s facility, family day care home, school, or park, or is open to the
53 public.

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

- 57 (1) applying a pesticide for the purpose of producing an agricultural
58 commodity;
- 59 (2) applying a pesticide around or near the foundation of a building
60 for purpose of indoor pest control;
- 61 (3) applying a pesticide to a golf course or turf farm.

62 Recreational field means an athletic playing field or other open space that is on
63 the premises of a children’s facility, school, or park and is used primarily for
64 play. Recreational field does not include a golf course.

65 Restricted-use pesticide means a pesticide designated under Section 33B-4 as
66 requiring additional restrictions on use to prevent or reduce a hazard to human
67 health, the environment, or property.

68 School means a private school offering instruction up to 12th grade.

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

71 **[33B-4.] 33B-2. Signs with retail purchase of pesticide.**

72 A person who sells at retail a pesticide or material that contains a pesticide
73 must make available to a person who buys the pesticide or material that contains a
74 pesticide:

- 75 (a) [Notice] notice signs and supporting information that are approved by
76 the [department] Department; and

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77 (b) [The] the product label or other information that the federal Insecticide,
78 Fungicide, and Rodenticide Act (FIFRA) [, 7 U.S.C. 136 et seq.,]
79 requires for sale of the pesticide.

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

82 **[33B-5] 33B-3. Storage and handling of pesticides.**

83 Any person who sells at retail a pesticide or material that contains a pesticide
84 must:

85 (a) transport, display, and store each pesticide in a secure, properly labeled
86 container that resists breakage and leakage, and promptly clean up and
87 either repackage or properly dispose of any pesticide that escapes from
88 its container;

89 (b) display and store each pesticide separately from any food, medicine, or
90 other product that a human being or animal may ingest;

91 (c) transport each pesticide separately from any food, medicine, or other
92 product that a human being or animal may ingest unless the pesticide is
93 in a secure container that resists breakage and leakage; and

94 (d) offer to each buyer of a pesticide materials approved or distributed by
95 the Department that:

96 (1) explain the dangers of contamination that may occur from
97 pesticide use; and

98 (2) inform buyers of the availability of alternative products.

99 The Department, the Health and Human Services Department, and any other
100 agency designated by the County Executive, must enforce this Section.

101 **[33B-6] 33B-4. Regulations.**

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- 102 (a) The County Executive must adopt regulations to carry out this Chapter
103 under method (2).
- 104 (b) The Executive must include in the regulations adopted under this
105 [section] Section the minimum size or quantity of pesticide subject to
106 [section 33B-4] Section 33B-2.
- 107 (c) The Executive must designate in the regulations adopted under this
108 Section a list of non-essential pesticides, including all pesticides
109 registered under FIFRA with the U.S. Environmental Protection Agency
110 and labeled for use on lawn, garden, or ornamental sites and any other
111 pesticides which the Executive determines are not critical to pest
112 management in the County.
- 113 (1) Critical pest management includes controlling:
- 114 (A) plants that are poisonous to touch or may cause damage to
115 a structure or infrastructure; or
- 116 (B) insects that bite or sting, are venomous or disease-carrying,
117 or that may cause damage to a structure or infrastructure.
- 118 (2) A pesticide should not be designated as non-essential if it is
119 intended primarily for use for:
- 120 (A) agriculture;
- 121 (B) forestry;
- 122 (C) promotion of public health or safety; or
- 123 (D) another prescribed use specified by regulation.
- 124 (d) The Executive must designate in the regulations adopted under this
125 Section a list of restricted-use pesticides which:
- 126 (1) when used as directed or in accordance with commonly
127 recognized practice require additional restrictions for that use to

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128 prevent or reduce a hazard to human health, the environment, or
129 property; or

130 (2) the Executive finds have a significant, scientifically sound basis
131 for additional restrictions on use.

132 [33B-7] **33B-5. Penalty for violating chapter.**

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

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

135 **ARTICLE 2. Notice Requirements.**

136 [33B-2] **33B-6. Notice about pesticides to customer.**

137 (a) In this [section] Section:

138 (1) Customer means a person who makes a contract with a custom
139 applicator to have the custom applicator apply a pesticide to a
140 lawn.

141 (2) New customer includes a customer who renews a contract with a
142 custom applicator.

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

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

145 [a.](A) [The] the trade name of each pesticide that might be
146 used;

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

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

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

152 [a.](A) [The] the trade name of each pesticide actually used;
153 and

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- 154 [b.](B) [The] the generic name of each pesticide actually
155 used; and
- 156 (3) [A] a written notice about pesticides prepared by the [department]
157 Department under subsection (c) [of this section].
- 158 (c) The [department] Department must prepare, keep current, and provide
159 to a custom applicator a written notice about pesticides for the custom
160 applicator to give to a customer under subsection (b) [of this section].
- 161 (d) The notice prepared by the [department] Department under subsection
162 (c) [of this section] must include:
- 163 (1) [Government] government agency phone numbers to call to:
- 164 [a.](A) [Make] make a consumer complaint;
- 165 [b.](B) [Receive] receive technical information on
166 pesticides; and
- 167 [c.](C) [Get] get assistance in the case of a medical
168 emergency;
- 169 (2) [A] a list of general safety precautions a customer should take
170 when a lawn is treated with a pesticide;
- 171 (3) [A] a statement that a custom applicator must:
- 172 [a.](A) [Be] be licensed by the Maryland Department of
173 Agriculture; and
- 174 [b.](B) [Follow] follow safety precautions; and
- 175 (4) [A] a statement that the customer has the right to require the
176 custom applicator to notify the customer before each treatment of
177 the lawn of the customer with a pesticide.

178 **[33B-3] 33B-7. Posting signs after application by custom applicator.**

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- 179 (a) Immediately after a custom applicator treats a lawn with a pesticide, the
180 custom applicator must post a sign on the lawn.
- 181 (b) A sign posted under this [section] Section must:
- 182 (1) [Be] be clearly visible from the principal place of access to the
183 property;
- 184 (2) [Be] be a size, form, and color approved by the [department]
185 Department;
- 186 (3) [Be] be made of material approved by the [department]
187 Department; and
- 188 (4) [Have] have wording with content and dimensions approved by
189 the [department] Department.

33B-8. Posting of private lawn applications.

- 191 (a) A person who performs a private lawn application treating an area
192 more than 100 square feet must place markers within or along the
193 perimeter of the area where pesticides will be applied.
- 194 (b) A marker required under this Section must:
- 195 (1) be clearly visible to persons immediately outside the perimeter of
196 the property;
- 197 (2) be in place on the day that the pesticide is applied;
- 198 (3) be a size, form, and color approved by the Department;
- 199 (3) be made of material approved by the Department; and
- 200 (4) have wording with content and dimensions approved by the
201 Department.

ARTICLE 3. Application restrictions.

33B-9. Prohibited application.

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204 (a) Beginning October 1, 2015, a person must not apply a non-essential
205 pesticide to:

206 (1) the lawn of a children's facility, family day care home, or school;

207 (2) a recreational field; or

208 (3) a playground.

209 (b) The Director may establish restrictions on the use of restricted-use
210 pesticide on the lawn of a children's facility or family day care home, a
211 recreational field, or a playground.

212 **33B-10. Exemptions.**

213 (a) A person may apply to the Director for an exemption for a restricted-use
214 pesticide from Section 33B-9. The Director may grant an exemption if
215 the applicant shows that:

216 (1) the applicant has made a good-faith effort to seek effective and
217 economical alternatives to the restricted-use pesticide, and they
218 are unavailable;

219 (2) granting an exemption will not violate State or federal law; and

220 (3) use of the restricted-use pesticide is necessary to protect health,
221 the environment, or property.

222 (b) A person may apply to the Director for an exemption for a non-essential
223 pesticide from Section 33B-9. The Director may grant an exemption to
224 apply a non-essential pesticide on property where application is
225 prohibited under Section 33B-9 if the applicant shows that:

226 (1) effective alternatives are unavailable;

227 (2) granting an exemption will not violate State or federal law; and

228 (3) use of the non-essential pesticide is necessary to protect human
229 health or prevent imminent and significant economic damage.

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230 (c) A person may apply to the Director for an emergency exemption from
231 the prohibition or restrictions in Section 33B-9 if a pest outbreak poses
232 an imminent threat to public health or if significant economic damage
233 would result from the inability to use a pesticide prohibited or restricted
234 by Section 33B-9. The Director may impose specific conditions for the
235 granting of emergency exemptions.

ARTICLE 4. Common Ownership Communities.

33B-11. Definitions.

238 In this article the terms *association document, common element, community*
239 *association, owner, and unit* have the meanings attributed to them in Section 10B-8.

33B-12. Application of pesticide to individual units.

241 (a) Beginning October 1, 2015, each year, a community association must
242 provide owners an opportunity to decline to have non-essential
243 pesticides applied to the owner's unit.

244 (b) If a unit owner declines to have non-essential pesticide applied, the
245 community association or its agent must not apply non-essential
246 pesticide to the unit.

33B-13. Application of pesticide to common elements.

248 (a) Beginning October 1, 2015, each year, the owners in a common
249 ownership community must approve, by a majority of votes cast, in
250 person or by proxy, the application of a non-essential pesticide to a
251 common element during the following year.

252 (b) A community association may apply to the Director for an emergency
253 exemption from the prohibition or restrictions under this Section if a
254 pest outbreak poses an imminent threat to public health or if significant
255 economic damage would result from the inability to use a non-essential

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256 pesticide. The Director may impose specific conditions on each
257 emergency exemption.

258 (c) A community association must post notice of each pesticide application
259 to the common elements. The notice required under this subsection
260 must consist of signs that:

261 (1) are clearly visible to persons immediately outside the perimeter
262 of the property;

263 (2) are in place on the day that the pesticide is applied;

264 (3) are of a size, form, and color approved by the Department;

265 (3) are made of material approved by the Department; and

266 (4) have wording with content and dimensions approved by the
267 Department.

268 **ARTICLE 5. County Property**

269 **33B-14. Prohibition on County-owned property.**

270 (a) *Prohibition.* Beginning October 1, 2014, except as provided in
271 subsection (b), a person must not apply a non-essential pesticide to any
272 property owned by the County.

273 (b) *Exceptions.*

274 (1) A person may use a larvicide or rodenticide on property owned
275 by the County as a public health measure to reduce the spread of
276 disease vectors under recommendations and guidance provided
277 by the Centers for Disease Control and Prevention, the United
278 States Environmental Protection Agency, or the State Department
279 of Agriculture. Any rodenticide used must be in a tamper-proof
280 product, unless the rodenticide is designed and registered for a
281 specific environment inaccessible to humans and pets.

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282 (2) A person may use a non-essential pesticide on property owned by
283 the County if the Director determines, after consulting the
284 Directors of General Services and Health and Human Services,
285 that the use of pesticide is necessary to protect human health or
286 prevent imminent and significant economic damage, and that no
287 reasonable alternative is available. If a pesticide is used under
288 this paragraph, the Director must, within 30 days after using the
289 pesticide, report to the Council on the reasons for the use of the
290 pesticide.

291 **33B-15. Integrated pest management.**

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

295 (b) Requirements. Any program adopted under subsection (a) must require:

296 (1) monitoring the turf or landscape;

297 (2) accurate record-keeping documenting any potential pest problem;

298 (3) evaluating the site for any injury caused by a pest and
299 determining the appropriate treatment;

300 (4) using a treatment that is the least damaging to the general
301 environment and best preserves the natural ecosystem;

302 (5) using a treatment that will be the most likely to produce long-
303 term reductions in pest control requirements and is operationally
304 feasible and cost effective in the short and long term;

305 (6) using a treatment that minimizes negative impacts to non-target
306 organisms;

307 (7) using a treatment that is the least disruptive of natural controls;

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- 308 (8) using a treatment that is the least hazardous to human health; and
309 (9) exhausting the list of all non-chemical and organic treatments
310 available for the targeted pest before using any synthetic
311 chemical treatments.
- 312 (c) The Department must provide training in integrated pest management
313 for each employee who is responsible for pest management.

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