IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 1203
September Term, 2017

MONTGOMERY COUNTY, MARYLAND,
Appellant

v.

COMPLETE LAWN CARE, INC., *et al.*,
Appellees

On Appeal from the Circuit Court for Montgomery County, Maryland
(Hon. Terrence J. McGann, Judge)

BRIEF OF *AMICI CURIAE* MARYLAND ASSOCIATION OF COUNTIES and MARYLAND MUNICIPAL LEAGUE

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INTERESTS OF *AMICI CURIAE*

Amicus Maryland Association of Counties (MACo) is a non-profit, non-partisan organization that serves Maryland's 23 counties and Baltimore City by articulating the needs of local government to the General Assembly. Although MACo does not regularly advocate in the courts, it has chosen to make an exception in this case because of the acute ramifications of the circuit court's decision for MACo's member jurisdictions. The circuit court's opinion takes an overly broad view of the implied preemption and conflict preemption doctrines that, if not reversed, will significantly and negatively impact the ability of MACo's members to address issues impacting their residents' health and welfare.

Amicus Maryland Municipal League ("MML") is a voluntary, non-profit, non-partisan association controlled and maintained by city and town governments throughout the State of Maryland. MML was founded in 1936 and represents 157 municipal governments and two special taxing districts across the State. Since its inception, MML has consistently worked to strengthen the role and capacity of municipal government by providing research, legislative advocacy, technical assistance, training and education to its members. MML is the only statewide organization in Maryland composed solely of municipal officials and devoted to the promotion of all branches of municipal administration, and it shares the concerns of *amicus* MACo regarding the circuit court's ruling.

STATEMENT OF THE CASE

Amici accept and adopt this portion of the Appellant's Brief filed by Montgomery County, pp. 1-2.

QUESTIONS PRESENTED

Amici accept and adopt this portion of Montgomery County's brief, pg. 2.

STATEMENT OF FACTS

Amici accept and adopt this portion of Montgomery County's brief, pp. 2-9.

STANDARD OF REVIEW

Amici accept and adopt these portions of Montgomery County's brief, pg. 9.

ARGUMENT

I. The ruling below gives insufficient deference to Maryland's longstanding recognition of concurrent State-local authority, and its reluctance to preempt local safeguards that augment State health and safety protections.

In finding Montgomery County Bill 52-14 ("the Ordinance") preempted, the circuit court failed to fully credit the latitude Maryland long has afforded local legislation that provides residents with additional health and welfare safeguards above and beyond those of State law. A proper respect for the role of county and municipal authority, asserted by the People over themselves through these *amici* and their constituent members, requires reversal of the court's preemption ruling.

A. Background

"As a charter county exercising home rule powers, Montgomery County is governed by the Express Powers Act," now codified at Md. Code Ann., Local Gov't Art. § 10-101 *et seq* (West 2018 supp.). *E. Diversified Properties, Inc. v. Montgomery Cty.*,

319 Md. 45, 49, 570 A.2d 850, 852 (1990).[1] The Express Powers Act was enacted pursuant to § 2 of Article XI-A of the Maryland Constitution and enumerates the powers granted to charter counties. *Id.*, 319 Md. at 49-50, 570 A.2d at 852. A charter county's exercise of legislative home rule powers is "subject at all times to provisions of the Constitution and general law, and is limited to those matters allocated by the express powers which the Legislature has delegated under [the Act]." *Id.*, *quoting Ritchmount P'ship v. Board*, 283 Md. 48, 57, 388 A.2d 523 (1978) and *Montgomery Citizens League v. Greenhalgh*, 253 Md. 151, 252 A.2d 242 (1969).

The Act grants charter counties broad powers to "pass any ordinance, resolution, or bylaw not inconsistent with state law that…may aid in maintaining the peace, good government, *health, and welfare* of the county." Md. Code Ann., Local Gov't Art. § 10-206 (West 2018 supp.) (emphasis added); *see also E. Diversified Properties, Inc.*, 319 Md. at 50, 570 A.2d at 852-53 (1990).[2] The Court of Appeals has characterized that provision "as a broad grant of power to legislate on matters not specifically enumerated in [the Act], in pursuance of which necessary and beneficial ordinances may be enacted consonant with the general powers of the charter county," and has recognized that it

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[1] Prior to its 2013 recodification, this provision was found at Md. Code, Art. 25A, § 5.

[2] The prior version was found at Art. 25A, § 5(S).

"must be liberally construed to afford wide discretion to charter counties in the good faith exercise of their police powers in the public interest." *Id.*, 319 Md. at 50-51, 570 A.2d at 853, *citing Greenhalgh*, 263 Md. at 161, 252 A.2d 242, *Ritchmount P'ship*, 283 Md. at 57, 388 A.2d 523, and *County Council v. Investors Funding Corp.*, 270 Md. 403, 411, 312 A.2d 225 (1973). And the Court has made clear that the police power delegated to charter counties by Local Gov't Art. § 10-206 "includes the power to regulate private businesses to the extent necessary to promote the public health, safety, morals, and welfare." *E. Diversified Properties, Inc.*, 319 Md. at 51, 570 A.2d at 853, *quoting Prince George's Co. v. Chillum-Adelphi*, 275 Md. 374, 382, 340 A.2d 265 (1975) (Art. 25A, § 5(S)).

Like counties, Maryland municipal corporations are constitutional bodies exercising local "home rule" power. Maryland Constitution, Article XI-E, § 3; *Campbell v. City of Annapolis*, 44 Md. App. 525, 532, 409 A.2d 1111, 1115 (1980), *rev'd in part on other grds*, 289 Md. 300, 424 A.2d 738 (1981). "The intent of Article XI-E was specifically to grant to Maryland municipalities the power to control their own local affairs, and was designed to permit local legislation to be enacted solely by those directly affected without interference by representatives from other sections of the State." *Id.* Municipalities, via Charter, may assume responsibility to protect the health, safety, and welfare of their residents, *id.* at 530-31, 409 A.2d at 1114, and, once a municipality assumes such a responsibility, it becomes a mandatory duty. *Petrushansky v. State*, 182 Md. 164, 173, 32 A.2d 696, 700 (1943). Section 5-202 of the Local Government Article

of the Maryland Code grants municipal legislatures the authority to adopt ordinances to "protect the health, comfort, and convenience of the residents of the municipality." Because of Maryland municipalities' and counties' parallel status and authority under Maryland law, this Court's ruling will impact municipal and county authority in the same manner.

B. The concurrent power doctrine.

As Appellant Montgomery County notes, its Pesticide Law protects the public health and general welfare of county residents – the same end served by Maryland's statutory and regulatory regime – by taking the additional step of prohibiting the use of covered pesticides for cosmetic purposes in areas where children play. Brief, pg. 26, *citing* Mont. Cty. Code § 33B-10(a). This is fully consistent with the Court of Appeals' repeated recognition that home rule local governments "are free to provide for additional standards and safeguards in harmony with concurrent state legislation." *Mayor and Aldermen of City of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 393, 396 A.2d 1080, 1086 (1979), *citing Reed v. President and Comm'rs of Town of North East*, 226 Md. 229, 249, 172 A.2d 536 (1961) and *County Council for Montgomery Co. v. Montgomery Ass'n, Inc.* 274 Md. 52, 333 A.2d 596 (1975). Review of the case law underlying this "concurrent power doctrine" compels reversal of the circuit court's preemption finding.

In *Annapolis Waterfront Co.*, a developer seeking to build 42 boat slips argued that an Annapolis charter amendment allowing Port Wardens to consider environmental

impacts in the permitting process was preempted by the general grant of authority in Md. Code. Art. 23A, § 2 (1957, 1973 Repl. Vol.), which did not authorize consideration of such factors. 284 Md. at 386-390, 396 A.2d at 1082-85. The Court of Appeals found no conflict sufficient for the statute to preempt the charter amendment: the latter "merely permitted additional regulation of the construction of wharves and piers in Annapolis, consistent with the purpose of [the statute]." 284 Md. at 392, 396 A.2d at 1085-86. The empowerment of Port Wardens to consider environmental factors did not create a conflict with the State law lacking such a provision, the Court held, since "complementary municipal regulations are not struck down where they are in conformity with the plan or spirit of the State statutes." 284 Md. at 392, 396 A.2d at 1086, *quoting Reed*, 226 Md. at 249-250, 172 A.2d at 545. Moreover, beyond the "minimum requirements regarding municipal affairs" spelled out in the authorizing statute, "[m]unicipalities are free to provide for additional standards and safeguards in harmony with concurrent state legislation." *Id*., 284 Md. at 392-93, 396 A.2d at 1086, *citing Reed* and *County Council v. Montgomery Ass'n*.

That is precisely what Montgomery County here has done. Though the state's pesticide-regulation regime sets forth myriad requirements regarding pesticides, Appellant's Brief, pp. 23-28, it does so in furtherance of the exact same end as the County's Pesticide Law: protection of health and welfare. Nothing in the various State laws or regulations declares that Montgomery County residents may not provide extra levels of protections regarding those areas within the County that children frequent. The

City of Takoma Park, a municipality within Appellant Montgomery County and a member of *amicus* Maryland Municipal League, likewise in 2013 adopted its Safe Grow Act, part of the Health and Safety Title of its City Code, to regulate certain restricted lawn care pesticides. *See* Addendum, City of Takoma Park Municipal Code Ch. 14.28.

Other cases support the notion of a concurrent powers doctrine sufficiently elastic to accommodate Montgomery County's local concerns. Thus, in *Reed*, a taxpayer challenged two town resolutions authorizing bond sales to build a new water-treatment plant. Opposing the taxpayer's argument that the second resolution was invalid because it was not published in two local newspapers, as its own terms required, the town argued that that requirement conflicted with a State statute requiring publication in only one paper. The Court of Appeals agreed with the taxpayer that the two-newspaper requirement did not conflict with the statute, but rather was "…a change that could reasonably be left to the determination of local authorities according to the particular needs of the community." 226 Md. at 249; 172 A.2d at 545. "The general principle underlying the various decisions is that complementary municipal regulations are not struck down where they are in conformity with the plan or spirit of the State statutes." *Id.* at 250-51. To the same end, *Caffrey v. Dep't of Liquor Control for Montgomery Co.*, 370 Md. 272, 805 A.2d 268 (2002) held that the County retained discretion to provide even greater access to public information than was mandated by the Maryland Public Information Act. Such access was in furtherance of the MPIA's purpose of affording wide-ranging access to public information regarding government's operation, and

consistent with the directive that "[m]unicipalities are free to provide for additional safeguards in harmony with concurrent state legislation." 370 Md. at 306-07, 805 A.2d at 288-89, *quoting Annapolis Waterfront Co.*, 284 Md. at 393, 396 A.2d at 1086. Again, this is what Appellant Montgomery County has done with regard to certain pesticides, under certain conditions. *See also*, *East Coast Welding & Const. Co. v. Refrigeration, Heating & Air Conditioning Bd.*, 72 Md. App. 69, 75-76, 527 A.2d 796, 799-800 (1987) (Prince George's County Code provision requiring licensing of persons wishing to install, repair or maintain heating systems in the County was a valid exercise of concurrent authority under *Annapolis Waterfront Co.* and *County Council*).

In *City of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969), a tavern owner argued that the State minimum-wage law occupied the field of minimum-wage regulation and preempted a Baltimore ordinance mandating a higher wage. Discussing the concurrent powers theory at length, the Court of Appeals recognized three instances where otherwise-valid local measures would run afoul of State legislation concerning the same area. The first is where the local ordinance permits what the statute prohibits, or prohibits what the statute permits. 254 Md. at 313, 255 A.2d at 380, *citing Rossberg v. State*, 111 Md. 394, 416, 74 A. 581 (1909). The second is where the ordinance deals with part of a subject matter for which the General Assembly has expressly reserved to itself the right to legislate. *Sitnick*, 254 Md. at 311, 317, 255 A.2d 376. And the third is where the legislature "so forcibly express[es] its intent to occupy a specific field of regulation that the acceptance of the doctrine of preemption by occupation is compelled." *Id* at 322-

23. The Court warned that that last theory should be applied only "with caution," lest it swallow the very notion of home rule:

> The rule as applied at the state-local level means that the mere existence of a single statute in a general field precludes local legislation on some specific subject in the field if the court finds, without any legislative expression, that the legislature intended to establish a basic policy or scheme. *Carried to this extreme, pre-emption would place units of local government in a vise and render worthless any form of home rule, including shared powers home rule*....[*Sitnick*, 254 Md. at 323, 255 A.2d at 385, *quoting* Moser, *County Home Rule – Sharing the State's Legislative Power With Maryland Counties*, 28 MD. L. REV. 327, 351 n.80 (Fall 1968) (emphasis added)].

In *County Council*, though a divided Court held preempted three Montgomery County ordinances aimed at regulating campaign finance and spending practices, it outlined the genesis and nature of the concurrent power doctrine. As the Court noted, the theory traces its roots to *Rossberg*, *supra*, which in 1909 upheld Baltimore City's imposition of penalties for selling cocaine that exceeded those under State law. 274 Md. at 57-58, 333 A.2d at 599. Over the ensuing decades, many other cases discussed and/or applied the theory. *Id* at 59 & fn. 4.[3] The 1969 *Sitnick* decision "thoroughly examined"

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[3] *E.g.*, *Wilson v. Bd. of Supervisors of Elections of Baltimore City*, 273 Md. 296, 328 A.2d 305, 309 (1974); *Investors Funding Corp.*, *supra*, 270 Md. at 419-420; *Vermont Fed. S. & L. v. Wicomico Co.*, 263 Md. 178, 183-184, 283 A.2d 384 (1971); *Am. Nat. Bldg. & Loan Ass'n v. City of Baltimore*, 245 Md. 23, 31-32, 224 A.2d 883 (1966); *Baltimore City v. Stuyvesant Co.*, 226 Md. 379, 392, 174 A.2d 153 (1961); *Heubeck v. Mayor and City Council*, 205 Md. 203, 208-09, 107 A.2d 99 (1954); *Eastern Tar Products Corp. v. State Tax Comm'n*, 176 Md. 290, 296-97, 4 A.2d 462 (1939); *Billig v. State*, 157 Md. 185, 191-93, 145 A. 492 (1929); *Levering v. Park Comm'rs*, 134 Md. 48, 52-53, 106 A. 176 (1919).

the doctrine's parameters, setting forth the three guideposts discussed above. 274 Md. at 58-59, 333 A.2d at 599-600 (discussing *Sitnick*). The *County Council* Court harmonized *Sitnick* by noting that in that case, Baltimore's higher minimum-wage ordinance – unlike Montgomery's campaign-finance ordinances – did not run afoul of any of the three categories:

> In *Sitnick*, the Court decided that the city minimum wage law was within the power delegated to the city and that the concurrent power theory was not made inapplicable by any of the three grounds listed above. In the instant case, we think that the county election ordinances fit squarely within the third ground on which the concurrent powers theory is inapplicable. The General Assembly has so forcibly expressed its intent to occupy the field of regulating election finances that an intent to preclude local legislation in the field must be inferred. [274 Md. at 59-60, 333 A.2d at 600 (footnote omitted)].

Notably, the *Sitnick* Court found "important" the fact that the General Assembly had known of Baltimore's minimum-wage law but had not inserted a provision in the State Minimum Wage Law repealing it. That, the Court held, was significant evidence that the General Assembly did not disapprove of it. 274 Md. at 60, fn. 5. That fact should be of equal import here: As the County points out, at least three other local governmental units *for 20 or more years* have regulated some aspect of pesticide application, and the General Assembly subsequently has amended various laws numerous times, without once expressing disapproval of such efforts. Appellant's Brief, pp. 17-18; App. 126-134 (excerpts from Prince George's County Code, City of Middletown Municipal Code, and City of Gaithersburg Code). As in *Sitnick*, this legislative silence is an "important factor" indicating consent to additional local regulatory efforts to boost

health and safety, such as those undertaken by Appellant Montgomery County and Takoma Park, a member of *amicus* Maryland Municipal League.

In discussing the concurrent authority between general (statewide) and local laws, the Court of Appeals repeatedly has taken care not to vest the former with exclusive primacy:

> It would appear that the tests of general laws was devised, not to draw an impermeable line between the authority of the City and the State, but rather merely to define the inclusive limits of the State's powers. "General" under this test merely means that the subject is of sufficient statewide effect to give the State authority to legislate. It does not mean that it is not of sufficiently local effect to give the City at least concurrent power to legislate. [*Sitnick*, 254 Md. at 315-316, 255 A.2d 381, *quoting Am. Nat. Bldg. & Loan Ass'n*, *supra* fn. 4, 245 Md. at 31, 32, 224 A.2d at 887].

Public health and safety, sanitation and parks and recreation long have been recognized first and foremost as issues of traditional local concern. *Johnson Controls, Inc. v. City of Cedar Rapids*, 713 F.2d 370, 378-79 (8th Cir. 1983), *citing National League of Cities v. Usery*, 426 U.S. 833, 851, 96 S. Ct. 2465, 2474, 49 L. Ed. 2d 245 (1976), *overruled on other grounds, Garcia v. San Antonio Metro. Tranit Auth.*, 469 U.S. 528 (1985); *see also Hillsborough Co., Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 105 S. Ct. 2371, 85 L. Ed. 2d 714 (1985). In *Hillsborough Co.*, the broad regulatory powers of the FDA, Department of Health and Human Services and other federal entities over the blood-plasma industry, did not pre-empt a county ordinance regulating plasma centers, because "the regulation of health and safety matters is primarily, and historically, a matter of local concern." 471 U.S. at 719, 105 S. Ct. at 2378, *citing Rice v. Sante Fe*

Elevator Corp., 331 U.S. 218, 230, 67 S. Ct. 1146, 1152, 91 L. Ed. 1447 (1947). This is so even where the regulated party complains that the local ordinance is foolish, or ill-advised. In *Sullivan v. City of Shreveport*, 251 U.S. 169, 40 S. Ct. 102, 64 L. Ed. 205 (1919), the superintendent of a railroad that acquired and operated a new type of streetcar requiring only a single operator challenged his conviction under a municipal ordinance mandating two-man crews. Rejecting that challenge, the Supreme Court noted that "every intendment is to be made in favor of the lawfulness of the exercise of municipal power, making regulations to promote the public health and safety…." *Sullivan*, 251 U.S. at 172-73, 40 S. Ct. at 103 (citation omitted). As the Court continued, "it is not the province of the courts, except in clear cases, to interfere with the exercise of the power reposed by law in municipal corporations for the protection of local rights and the health and welfare of the people in the community." *Id.* at 173 (citation omitted).

Nearly a century later, those words still ring true. Appellees may think measures like the County's Ordinance, or Takoma Park's Safe Grow Act, are misguided, or symptomatic of the "nanny state," or the product of helicopter parents run amok. But in our system of government, even were that the case, *amici* and their members throughout the State are free to give voice to the concerns of their residents. In the case of Montgomery County, those concerns resulted in an Ordinance that does even more to protect their children than does the State's regulatory regime. There is no sound reason to block County residents from exercising that authority, especially in so critical an area as the protection of their community's youngest, most vulnerable members.

CONCLUSION

The circuit court reversibly erred in holding Montgomery County Bill 52-14 preempted by and in conflict with Maryland law. This Court should vacate that court's August 3, 2017 Opinion, and remand these consolidated matters for entry of judgment in favor of Appellant Montgomery County.

Respectfully submitted,

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Dated: June 21, 2018

CERTIFICATION OF WORD COUNT & COMPLIANCE WITH RULE 8-112

This brief contains 3,191 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

RULE 8-504(a)(9) STATEMENT

This brief was printed in compliance with the font, spacing, and type size requirements stated in Rule 8-112, using Microsoft Word 2010 and a proportionally spaced font: Times New Roman, 13 point.

Michael F. Smith

Date: June 21, 2018

ADDENDUM - CITATION AND TEXT OF PERTINENT ORDINANCE

Pursuant to Maryland Rule 8-504(a)(8), *amici curiae* set forth the verbatim text of the Safe Grow Act, City of Takoma Park Municipal Code Ch. 14.28 (eff. Oct. 1, 2013)

Chapter 14.28

RESTRICTED LAWN CARE PESTICIDES

Sections:

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. (Ord. 2013-28 § 1, 2013)

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. (Ord. 2013-28 § 1, 2013)

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.

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.

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 March 1st of each year and ensure that the publication reflects any changes to the EPA's list during the preceding 12 months.

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. (Ord. 2013-28 § 1, 2013)

14.28.040 Register of restricted pesticides.

A. The City Manager shall create and issue, by March 1, 2014, a register of restricted pesticides.

1. The register shall identify restricted pesticides.

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;

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 1st of each year that will remain in effect for one year. (Ord. 2013-28 § 1, 2013)

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.

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.

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 two 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 subsection (C)(1)(a) or (b) of this section.

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 subsection (C)(1)(b) of this section 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 landlords, single-family homes, duplexes, and townhouses in the City.

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 two 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 subsections (C)(2)(b) and (c) of this section.

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 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, 2015, failure to post and maintain a written notice as required by subsection (C)(2)(c) of this section is a violation and shall be a Class G municipal infraction. (Ord. 2013-28 § 1, 2013)

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.

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 two 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, 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 multiflora rose (Rosa multifiora).

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. (Ord. 2013-28 § 1, 2013)

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 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 two days following application. (Ord. 2013-28 § 1, 2013)

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. (Ord. 2013-28 § 1, 2013)

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2018, in accordance with Maryland Rule 8-511(b)(3), I served a copy of this brief *amicus curiae* on:

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by enclosing a copy in an envelope addressed to each individual at his or her respective address and mailing it, first-class, with sufficient prepaid postage.

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Date: June 21, 2018