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Inquiry re: local regulation of pesticides

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Thu, Nov 11, 2021 at 9:44 AM

To: "leana@ci.stevenson.wa.us" <leana@ci.stevenson.wa.us>

Hello Leana,

You wrote:

Our council wants to discuss a potential ban on the use of pesticides in city limits. Have other city jurisdictions adopted a similar ban? If so, which cities and how do they enforce the ban?

I asked our Research Librarian, Gabrielle Nicas, to look for examples of local pesticide regulation in Washington State. She provided the following:

I have not found any cities that have banned pesticides outright and I'm not sure there are any. I think most places take an Integrated Pest Management approach because it seems that in certain circumstances pesticides are unavoidable. I didn't find anything on total bans, but I found some information that I think may be of use.

- [Kirkland Pesticide Application Guidelines](#)
- [Kirkland October 2019 City Council Meeting Discussion of Pesticide Reduction Strategies](#) – I think might have a lot of useful information include information on cities and agencies that have significantly reduced pesticide use
- See Chapter 3 Integrated Pest Management in the [Bellevue 2020 Environmental Best Management Practice Manual](#)
- [The Washington State Integrated Pest Management \(IPM\) Extension Implementation Program](#)
- [Seattle Integrated Pest Management Fact Sheet](#)
- [Eastern Washington – County Use Restricted Pesticide Rules](#)
- MRSC Custom Search results for [Integrated Pest Management policies](#)

- [Bainbridge Island County Resolution No. 2019-22](#) supporting a countywide ban on aerial spray of glyphosate
- [Metro Parks Tacoma Pesticide-Free Parks Program](#)
- [Eugene, OR Pesticide-Free Parks Program](#)

And I found the following using a custom search of city codes using the term “pesticides” (for example "[surface water](#)" ,[site:codepublishing.com/wa](#) and "[surface water](#)" [site:library.municode.com/wa](#)). There are more results if you want to repeat the searches.

- Bainbridge Island, [Chapter 16.30 PEST MANAGEMENT AND \(codepublishing.com\)](#) (related to use of pesticides on city-owned property).
- Town of Index, [Protection of Water Supply](#) provisions

There are also legal considerations to think about in consultation with your City Attorney. I'm pasting below a research memo written by another legal consultant at MRSC in 2014 regarding local regulation of neonicotinoids—a pesticide linked to harmful impacts on bees. I think a similar analysis would apply to any pesticides or herbicides that fall within the federal and state definitions. See [RCW 15.58.030\(29\)](#) for the state definition of “pest” for all of the relevant state statutes; and see [7 U.S.C. section 136 Definitions](#) (t) for the federal definition of “pest” and the relevant federal statutes.

RESEARCH MEMO:

RE: Does a city in Washington State have the authority to ban the use and sale of pesticides and other products containing neonicotinoids within its jurisdiction?

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In short, cities have the authority to regulate the sale and use of products containing neonicotinoids.

Neonicotinoids are a class of pesticide—virtually all corn in the United States is treated with them. Carl Zimmer, *2 Studies Point to Common Pesticide as a Culprit in Declining Bee Colonies*, N.Y. TIMES, March 29, 2012, <http://goo.gl/9GYsru>. Opposition to Neonicotinoids is based on increasing evidence that the pesticide adversely affects bee populations, which in turn adversely affects agriculture activity as bees are the chief pollinators of crops for much of the country. *Id.*

[7 U.S.C. § 136v\(a\)](#) gives states the power to regulate the sale or use of any federally registered pesticide. The only limitation to this authority is that a state cannot permit any sale or use prohibited by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), [7 U.S.C. 136 et seq.](#) Although the text of 7 U.S.C. § 136v(a) only mentions states, the Supreme Court has held that 7 U.S.C. § 136v and FIFRA in general do not preempt local governments from also regulating the sale or use of federally registered pesticides. *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 606 (1991) (holding that a small town in Wisconsin had the authority to regulate the use of pesticides).

Multiple federally registered pesticides include neonicotinoids. See EPA, RESTRICTED USE PRODUCTS (RUP) Report (2013), available at <http://www.epa.gov/opprd001/rup/rupreport.pdf>. (The neonicotinoid family includes acetamiprid, clothianidin, imidacloprid, nitenpyram, nithiazine, thiacloprid, and thiamethoxam). Therefore, FIFRA gives both state and local governments the power to regulate the sale or use of pesticides that contain neonicotinoids.

In addition, Washington law does not appear to preempt local governments from regulating the sale or use of pesticides containing neonicotinoids: Neither the Washington Pesticide Control Act, [Ch. 15.58 RCW](#), The Washington Pesticide Application Act, [Ch. 17.21 RCW](#), nor the provisions of [Ch. 70.104 RCW](#) appear to limit the ability of local governments to regulate the sale and use of such pesticides.

Several Pacific Northwest jurisdictions have already acted to regulate the sale and use of pesticides containing neonicotinoids. The City of Spokane banned its city departments from purchasing or using any products or products in packaging that contain neonicotinoids. [SMC § 07.06.171](#). The City of Eugene, Oregon, banned the sale and use of several types of pesticides within city limits. [EMC § 6.710\(3\)](#). However, the city only banned the use and not the sale of products containing neonicotinoids on city property. [Council Resolution 5xxx](#).

See also *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597 (1991) on this issue.

END OF RESEARCH MEMO.

There is also an Attorney General's Opinion (AGO) about local authority with regard to licensure of pesticides, written in 1993, that I recommend reviewing with your City Attorney. [AGO 1993 No. 5](#) - Apr 14 1993. The summary statements from the AGO provide:

Chapter 17.21 RCW authorizes the Department of Agriculture to regulate pesticide application and use. This chapter preempts cities and counties from regulating pesticide application and use, except the first class cities and the counties in which they are located can regulate structural pest control operators, exterminators, and fumigators.

Chapter 15.58 RCW authorizes the Department of Agriculture to regulate formulation, distribution, storage, and disposal of pesticides. This chapter does not preempt cities and counties from regulating these activities, so long as the local regulations do not conflict with state law.

You may also be interested in reaching out to someone with the state Department of Agriculture. [Pesticides | Washington State Department of Agriculture](#) to discuss further.

I hope this helps. Please feel free to call if you would like to discuss this further.

Thank you,

Jill

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