



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

ROGER BERLINER
COUNCILMEMBER
DISTRICT 1

CHAIRMAN
TRANSPORTATION, INFRASTRUCTURE
ENERGY & ENVIRONMENT COMMITTEE

May 28, 2015

Attorney General Brian Frosh
Office of Attorney General
200 St. Paul Place
Baltimore, MD 21202

Dear Attorney General Frosh:

As you are aware, on April 1, Assistant Attorney General Kathryn M. Rowe wrote an opinion to Delegate Kirill Reznik on Montgomery County Bill 52-14, introduced by Council President Leventhal and currently being reviewed by the T&E Committee that I chair. I am writing today to obtain further guidance in light of your office's legal conclusion.

Ms. Rowe states that the provision of the bill that "bars application of a non-essential pesticide to a lawn...[is] the provision that is *most likely* to be found to be preempted" (emphasis added). She reaches this conclusion on the basis that the Secretary of Agriculture "has the power to regulate the sale, distribution, and use of pesticides," among other powers.

Given this finding, I believe it is appropriate and proper for our Council to explore the full range of otherwise available legal options that could result in significantly reducing the use of pesticides. To that end, I would ask for your analysis of whether the following measures would *not* be preempted by state law:

- A requirement that applicators in Montgomery County report the amount of pesticide they apply yearly in the County, for the purposes of establishing a pesticide-reduction goal;
- A requirement that residents sign a document that identifies the reported health risks associated with pesticides, acknowledges that organic alternatives exist, and directs (or not) a lawn care provider to adhere to Integrated Pest Management practices that calls for the use of pesticides as a last resort;
- A requirement that condo associations or homeowners associations be required to have an affirmative vote of the membership in order to apply pesticides;
- A requirement for additional reporting specifically for properties where children are frequently present, such as playgrounds and daycare facilities.

As our Council considers this significant issue, it is obviously important to know the scope of our authority. Your guidance in this regard is tremendously appreciated.

Thank you for your attention to this matter. I look forward to your reply.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Berliner', with a long horizontal flourish extending to the right.

Roger Berliner
Councilmember, District 1
Chair, Transportation, Infrastructure, Energy, and
Environment Committee

CC: Marc Hansen, County Attorney
Josh Hamlin, Legislative Attorney, Montgomery County Council
Councilmembers