



MEMO

From: Office of the City Attorney

To: Members of the Environmental Commission

Date: August 21, 2019

Re: This is in response to an inquiry about whether the City can pass stricter pesticide standards than the state's.

MCL 324.8328(4) allows a city to pass pesticide standards that are different from the state's. It provides:

"A local unit of government may enact an ordinance prescribing standards different from those contained in this part and rules promulgated under this part and which regulates the distribution, sale, storage, handling, use, application, transportation, or disposal of pesticides under either or both of the following circumstances:

(a) Unreasonable adverse effects on the environment or public health will exist within the local unit of government. The determination that unreasonable adverse effects on the environment or public health will exist shall take into consideration specific populations whose health may be adversely affected within that local unit of government.

(b) The local unit of government has determined that the use of a pesticide within that unit of government has resulted or will result in the violation of other existing state laws or federal laws."

However, before any City ordinance with different pesticide standards can take effect, the ordinance must be approved by the state commission of agriculture. MCL 324.8328(5). If the state commission denies the ordinance, the state commission is required to give a detailed explanation within 60 days. Assuming the ordinance were approved by the state commission, the City would also have to ensure that the "persons enforcing the ordinance comply with the training and enforcement requirements as determined by director [of the department of natural resources]," which the City would be required to pay for. MCL 324.8328(8).

Whether subsection 8328(4)(b) might apply is beyond the scope of this memo. For subsection 8328(4)(a), there appears to be an intermediate step whereby the City Council can pass a resolution identifying the potential “adverse unreasonable effects” that would justify an ordinance and then submit this resolution to the state department of natural resources for review. The department would then issue a “detailed opinion regarding the existence of unreasonable adverse effects on the environment or public health as identified by the resolution.” MCL 324.8328(6). It appears that this step could be taken before an ordinance is passed.

Also please note that the statute defines “pesticide” as a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating pests or intended for use as a plant regulator, defoliant, or desiccant. MCL 324.8305(4).