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Title: A Local Law to amend the administrative code of the city of New York, in relation to opting in to the State Neighbor Notification Law concerning the application of pesticides.

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Indexes:

Attachments: 1. Committee Report 11/17/04, 2. Hearing Transcript 11/17/04, 3. Committee Report 4/19/05, 4. Hearing Transcript - Stated Meeting 4/20/05, 5. Fiscal Impact Statement - A, 6. Hearing Transcript 4/19/05, 7. Local Law

Date	Ver.	Action By	Action	Result
4/21/2004	*	City Council	Introduced by Council	
4/21/2004	*	City Council	Referred to Comm by Council	
11/17/2004	*	Committee on Health	Hearing Held by Committee	
11/17/2004	*	Committee on Health	Laid Over by Committee	
4/19/2005	*	Committee on Health	Hearing Held by Committee	
4/19/2005	*	Committee on Health	Amendment Proposed by Comm	
4/19/2005	*	Committee on Health	Amended by Committee	
4/19/2005	A	Committee on Health	Approved by Committee	Pass
4/20/2005	A	City Council	Approved by Council	Pass
4/20/2005	A	City Council	Sent to Mayor by Council	
5/9/2005	A	Mayor	Hearing Held by Mayor	
5/9/2005	A	Mayor	Signed Into Law by Mayor	
5/11/2005	A	City Council	Recved from Mayor by Council	

Int. No. 328-A

By Council Members Gennaro, Quinn, Clarke, Gerson, Gioia, Koppell, Liu, Lopez, Martinez, Nelson, Perkins, Sanders, Stewart, Vallone, Weprin, Moskowitz, Reyna, Foster, McMahon, Recchia, Monserrate, Gentile, Brewer, Yassky, Fidler, DeBlasio, Baez, James, The Speaker (Council Member Miller), Palma, Katz, Avella, Jackson, Sears, Rivera, Barron and The Public Advocate (Ms. Gotbaum)

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A Local Law to amend the administrative code of the city of New York, in relation to opting in to the State Neighbor Notification Law concerning the application of pesticides.
e it enacted by the Council as follows:

Section 1. Legislative Findings. The Council finds that individuals and their personal property are, or can be, unwittingly exposed to pesticides applied on their neighbor's property. The Council further finds that pesticides may pose health and safety risks to people, particularly children, pregnant women, the elderly and people with infirmities. Such potential risks include short-term impacts, such as headaches, nausea, seizures and respiratory problems, and long-term impacts, such as neurological damage, hormone disruption, reproductive disorders and various cancers. The intent of this local law is to provide information to City residents about certain pesticide applications to which they may be exposed, so that they can take steps to minimize such exposure to themselves, their families, pets, backyard wildlife and property.

Accordingly, this Council adopts the special notice requirements for commercial and residential applications of pesticides as set forth in Section 33-1004 of the New York Environmental Conservation Law. It is intended that this local law be read and applied consistently with that section and all other applicable provisions of the Environmental Conservation Law and regulations promulgated thereunder.

§ 2. Title 17 of the administrative code of the city of New York is amended by adding thereto a new Chapter 11 to read as follows:

Chapter 11

Neighbor Notification of Pesticide Application

§ 17-1101 Definitions

§ 17-1102 Notification requirements for commercial and residential lawn applications

§ 17-1103 Enforcement

§ 17-1104 Civil and criminal penalties

§17-1101 Definitions. For the purposes of this chapter only, the following terms shall have the following

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meanings:

1. “Abutting property” means any property which has any boundary or boundary point in common with the property on which the pesticide is to be applied.

2. “Agricultural commodity” means any plant or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturalists, floriculturists, orchardists, foresters or other comparable persons) primarily for sale, consumption, propagation or other use by man or animals.

3. "Agency" means any state agency; municipal corporation; public authority; college, as that term is defined in the education law; railroad, as that term is defined in the railroad law; or telegraph, telephone, telegraph and telephone, pipeline, gas, electric, or gas and electric corporation, as those terms are defined in the transportation corporations law, which applies pesticides.

4. “Commercial lawn application” means the application of pesticide to ground, trees or shrubs on public or private outdoor property. For the purposes of this section, the following shall not be considered commercial lawn application:

i. the application of pesticide for the purpose of producing an agricultural commodity;

ii. residential application of pesticides;

iii. the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;

iv. the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 of the environmental conservation law where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and

v. the application of pesticides on golf courses or turf farms.

5. “Dwelling” means any building or structure or portion thereof which is occupied in whole or in part

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as the home, residence or sleeping place for one or two families.

6. “General use pesticide” means a pesticide which does not meet the state criteria for a restricted pesticide as established under authority of section 33-0303 of the environmental conservation law.

7. “Multiple dwelling” means any dwelling which is to be occupied by or is occupied as the residence or home of three or more families living independently of each other.

8."Pesticide" means:

i. any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; and

ii. any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

9.“Premises” means land and improvements or appurtenances or any part thereof.

10.“Residential lawn application” means the application of general use pesticides to ground, trees, or shrubs on property owned by or leased to the individual making such application. For the purposes of this section, the following shall not be considered residential lawn application:

i. the application of pesticides for the purpose of producing an agricultural commodity;

ii. the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;

iii. the application of pesticides by or on behalf of agencies, except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 of the environmental conservation law where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and

iv. the application of pesticides on golf courses or turf farms.

§ 17-1102 Notification requirements for commercial and residential lawn applications. a. (1) All retail

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establishments that sell general use pesticides for commercial or residential lawn application shall display a sign meeting standards, established by the New York state commissioner of environmental conservation pursuant to subdivision one of section 33-1005 of the environmental conservation law, in a conspicuous place, and such sign shall be placed as close as possible to the place where such pesticides are displayed.

(2) The signs required to be displayed pursuant to paragraph one of this subdivision shall contain, at a minimum, pursuant to section 33-1005 of the environmental conservation law:

i. a warning notice directing consumers to follow directions on labels;

ii. a provision to inform the customer of the posting requirements set forth in subdivision c of this section; and

iii. a recommendation that the customer notify neighbors prior to the application of pesticides so that such neighbors may take precautions to avoid pesticide exposure.

b. (1) At least forty-eight hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply written notice, as defined in subdivision three of section 33-1005 of the environmental conservation law, to:

i. occupants of all dwellings on abutting property with a boundary that is within one hundred fifty feet of the site of such application; and

ii. owners, owners' agents or other persons in a position of authority for all other types of premises that are on abutting property with a boundary that is within one hundred fifty feet of the site of such application. Owners or owners' agents of multiple family dwellings shall supply such written notice to the occupants of such multiple family dwellings and for all other types of premises, owners, owners' agents or other persons in a position of authority shall post such written notice in a manner specified by the New York state commissioner of environmental conservation.

(2) The written notice required pursuant to paragraph one of this subdivision shall contain, at a minimum, pursuant to section 33-1005 of the environmental conservation law:

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i. the address of the premises where application is to be done;

ii. the name and telephone number and pesticide business registration number or certified applicator number of the person providing the application;

iii. the specific date of each pesticide application and two alternative dates to the proposed date of application when, due to weather conditions, the pesticide application on the proposed date is precluded;

iv. the product name or names and the United States environmental protection agency registration number or numbers of the pesticide or pesticides to be applied; and

v. a prominent statement that reads: "This notice is to inform you of a pending pesticide application to neighboring property. You may wish to take precautions to minimize pesticide exposure to yourself, family members, pets or family possessions. Further information about the product or products being applied, including any warnings that appear on the labels of such pesticide or pesticides that are pertinent to the protection of humans, animals or the environment, can be obtained by calling the National Pesticides Telecommunications Network at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158."

(3) The prior notification provisions of paragraph one of this subdivision shall not apply to the following:

i. the application of anti-microbial pesticides and anti-microbial products as defined by the federal insecticide, fungicide and rodenticide act (FIFRA) in 7 U.S.C. sections 136(mm) and 136q(h)(2);

ii. the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets. This section shall not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area;

iii. the use of non-volatile insect or rodent bait in a tamper resistant container;

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iv. the application of a pesticide classified by the United States environmental protection agency as an exempt material under section 152.25 of title forty of the code of federal regulations;

v. the application of a pesticide which the United States environmental protection agency has determined satisfies its reduced risk criteria, including a biopesticide;

vi. the use of boric acid and disodium octaborate tetrahydrate;

vii. the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;

viii. the application of a granular pesticide, where granular pesticide means any ground applied solid pesticide that is not a dust or powder;

ix. the application of a pesticide by direct injection into a plant or the ground;

x. the spot application of a pesticide, where spot application means the application of pesticide in a manually pressurized or non-pressurized container of thirty-two fluid ounces or less to an area of ground less than nine square feet;

xi. the application of a pesticide to the ground or turf of any cemetery; and

xii. an emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided, however, that prior to any such emergency application, the person providing such application shall make a good faith effort to supply the written notice required pursuant to this chapter. Upon making an emergency application, the person making such application shall notify the New York state commissioner of health, using a form developed by such commissioner for such purposes that shall include minimally the name of the person making such application, the pesticide business registration number or certified applicator number of the person making such application, the location of such application, the date of such application, the product name and United States environmental protection agency registration number of the pesticide applied and the reason for such application.

c. (1) All persons performing residential lawn applications treating an area more than one

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hundred square feet shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Such markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size.

(2) The markers required pursuant to paragraph one of this subdivision shall be in place on the day during which the pesticide is being applied and shall instruct persons not to enter the property and not to remove the signs for a period of at least twenty-four hours. Such instruction shall be printed boldly in letters at least three-eighths of an inch in height.

§ 17-1103 Enforcement. a. Pursuant to section 33-1004 of the environmental conservation law, the department and the department of environmental protection shall have concurrent authority with the state of New York to enforce the provisions of this chapter, provided that all penalties, which shall be assessed after providing a hearing or opportunity to be heard, shall be as specified in section 17-1104 of this chapter and shall be payable to and deposited with the city of New York.

b. Pursuant to section 33-1004 of the environmental conservation law, the department of consumer affairs shall have concurrent authority with the department, the department of environmental protection and the state of New York to enforce the provisions of subdivision a of section 17-1102 of this chapter, provided that all penalties, which shall be assessed after providing a hearing or opportunity to be heard, shall be as specified in section 17-1104 of this chapter and shall be payable to and deposited with New York city.

c. A proceeding to recover any civil penalty authorized pursuant to section 17-1104 shall be commenced by the service of a notice of violation returnable to the administrative tribunal established by the board of health pursuant to section 558 of the charter of the city of New York where the department issues such notice, the environmental control board established pursuant to section 1404 of the charter of the city of New York where the department of environmental protection issues such notice, or the adjudication division of the department of consumer affairs established pursuant to section 20-104(e) of the administrative code of the city

of New York where that department issues such notice. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein. The administrative tribunal of the board of health, the environmental control board and the adjudication division of the department of consumer affairs shall have the power to render decisions and orders and to impose the remedies and penalties provided for in section 17-1104, in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

§17-1104 Civil and criminal penalties. a. (1) Any person providing a commercial lawn application who violates any provision of subdivision b of section 17-1102 of this chapter or any rule promulgated pursuant thereto shall be liable for a civil penalty not to exceed five thousand dollars for a first violation, and not to exceed ten thousand dollars for a subsequent offense.

(2) Notwithstanding any provision of law to the contrary, an owner or owner's agent of a multiple dwelling or owner, owner's agent or a person in a position of authority for all other types of premises who violates any provision of subdivision b of section 17-1102 of this chapter or any rule or regulation promulgated pursuant thereto and any person who violates any provision of subdivision c of section 17-1102 of this chapter or any rule promulgated pursuant thereto shall, for a first such violation, in lieu of a penalty, be issued a written warning and shall also be issued educational materials pursuant to subdivision two of section 33-1005 of the environmental conservation law. Such persons shall, however, be liable for a civil penalty not to exceed one hundred dollars for a second violation, and not to exceed two hundred fifty dollars for any subsequent violation.

(3) Notwithstanding any provision of law to the contrary, any person who violates the provisions of subdivision a of section 17-1102 of this chapter shall be issued a warning for the first violation and shall be provided seven days to correct such violation. Such person shall, however, be liable for a civil penalty not to exceed one hundred dollars for a second violation and not to exceed two hundred fifty dollars for any subsequent violation.

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b. (1) Any person providing a commercial lawn application who, having the culpable mental states defined in subdivision one or subdivision two of section 15.05 or in section 20.20 of the penal law, violates any provision of subdivision b of section 17-1102 of this chapter, except an offense relating to the application of a general use pesticide, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for a subsequent offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed ten thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.

(2) Any person providing a commercial lawn application who violates any provision of subdivision b of section 17-1102 of this chapter relating to the use of a general use pesticide shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine not to exceed two thousand five hundred dollars. If the conviction is for a subsequent offense committed after a first such conviction of such person under this subdivision, punishment shall be by a fine not to exceed five thousand dollars.

§ 3. Within twenty days after the enactment of this local law, the clerk of the city of New York shall forward one certified copy of this law to the New York state commissioner of environmental conservation and one to the New York state attorney general.

§ 4. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 5. This local law shall take effect on the first day of January after it shall have been enacted into law.

GS 4/12/05
LS # 312