



Takoma Park City Council Meeting – January 10, 2018 Agenda Item 2

Voting Session

Resolution requesting that the Maryland Municipal League (“MML”) file an amicus curiae (friend of the court) brief in support of Montgomery County’s appeal of the court ruling striking down the County’s law regulating the use of hazardous pesticides for lawn care purposes.

Recommended Council Action

Consider proposed Resolution.

Context with Key Issues

The City’s Safe Grow Ordinance prohibits the use of pesticides containing chemicals that are harmful to human health, pets, and the environment for lawn care purposes. Montgomery County enacted a similar law, which was challenged by the pesticide and lawn care industry and found to be unconstitutional by the Circuit Court for Montgomery County. Although the Circuit Court ruling does not technically apply to the City’s Safe Grow Ordinance, the County has appealed the ruling to the Court of Special Appeals, and the appellate court’s decision would apply to the Safe Grow Ordinance. In addition, an adverse appellate ruling could also limit the authority of the City and other local governments in Maryland to provide greater health and safety and environmental protections in subject matter areas subject to State regulation.

The proposed resolution would request that MML, an organization that represents the interests of Maryland municipalities such as the City of Takoma Park, file an amicus curiae brief in support of Montgomery County’s authority to regulate pesticides that would highlight the importance of the issue of concurrent local government regulatory authority and present legal argument in support of limiting the preemptive effect of State regulations on local government authority. The City would have to pay at least \$500, but not likely more than \$2,500, to have a panel of attorneys appointed by the MML Executive Board to consider the City’s request.

Council Priority

Environmentally Sustainable Community; Livable Community for All

Environmental Impact of Action

If MML accepts the City’s request and if MML’s amicus curiae brief influences the outcome of the litigation, it could preserve the City’s Safe Grow ordinance, thereby reducing the introduction of harmful chemicals into the environment.

Fiscal Impact of Action

Submitting the request to MML will cost between \$500.00 and \$2,500.00.

Racial Equity Impact of Action

The ordinance would affect all residents of the City equally.

Attachments and Links

- Proposed resolution

Introduced by:

CITY OF TAKOMA PARK, MARYLAND

RESOLUTION NO. 2018-__

A Resolution Requesting that the Maryland Municipal League file an *Amicus Curiae* Brief in the Court of Special Appeals regarding Montgomery County, Maryland v. Complete Lawn Care, Inc. *et al*

WHEREAS, the City of Takoma Park enacted an ordinance in 2013 that prohibits the use of pesticides that are harmful to human and pet health and the environment for lawn care purposes; and

WHEREAS, Montgomery County enacted an ordinance in 2015 that, like the 2013 Takoma Park ordinance, prohibits the use of pesticides that are harmful to human and pet health and the environment for lawn care purposes; and

WHEREAS, the Circuit Court for Montgomery County, in *Complete Lawn Care, Inc. et al v. Montgomery County, Maryland*, ruled that Maryland State law impliedly preempts Montgomery County from regulating the use of pesticides both because the County ordinance conflicts with the State law and because the State's pesticide regulations are so comprehensive that the State has occupied the entire field of pesticide regulation, leaving no room for supplemental local regulations; and

WHEREAS, Montgomery County appealed the ruling of the Circuit Court, and the appeal is now pending before the Maryland Court of Special Appeals; and

WHEREAS, under the reasoning of the Circuit Court's decision, Maryland State law would preempt any local government, including counties and municipal corporations, from imposing any regulations on the use of pesticides; and

WHEREAS, if the Court of Special Appeals affirms the decision of the Circuit Court, local governments in Maryland would not have the authority to protect the health and safety of residents or the environment by regulating the use of pesticides containing harmful chemicals; and

WHEREAS, if the Court of Special Appeals adopts the reasoning of the Circuit Court, the historic judicial reluctance to deem state statutes that do not include express preemption language to impliedly preempt local legislative authority could reduce local legislative authority in other subject matters where local governments traditionally have exercised legislative authority concurrent with the State; and

WHEREAS, the Maryland Association of Counties has already recognized the importance of Montgomery County's appeal and intends to file an *amicus curiae* (friend of the court) brief and has expressed interest in filing a joint brief with MML.

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND THAT the City of Takoma Park requests that the Maryland Municipal League file an *amicus curiae* brief in *Montgomery County Maryland v. Complete Lawn Care, Inc. et al*; and

BE IT FURTHER RESOLVED THAT the City Manager is authorized to pay the cost of submitting an *amicus curiae* request to the Maryland Municipal League.

THIS RESOLUTION IS ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK THIS ____ DAY OF _____, 2018.

ATTEST:

Jessie Carpenter, CMC
City Clerk



Maryland Municipal League
The Association of Maryland's Cities and Towns

MARYLAND MUNICIPAL LEAGUE

Litigation Participation Policy

Statement of Purpose

The Maryland Municipal League deems it to be consistent with its purpose of serving as a representative organization of its member municipalities to advocate its views in those matters of litigation or other proceedings where the interests of the State's municipalities may be substantially affected. The purpose of this policy is to establish procedures and criteria to govern the League's participation in such matters.

Scope of League's Participation

Where desirable and appropriate the League may participate in matters of litigation in the trial or appellate courts, as well as in administrative proceedings which are adjudicatory in nature. However, a compelling reason or extraordinary circumstances must be presented to warrant the League's participation in any proceeding at other than an appellate level.

Interest to be Represented

In any matter of litigation or other proceeding in which the League determines to participate, the participation in the proceedings shall advance the interests and arguments of the League, and shall not constitute the legal representation of any municipality which may be involved in the proceeding.

Determination of League's Participation

The League may participate in a matter of litigation or other proceeding only upon the affirmative two-thirds vote of those members of the Board of Directors present and voting. A determination to participate in a matter of litigation or other proceeding may be made by the Board upon the request of a member municipality or upon the Board's own initiative.

Requests from Member Municipalities

1. A member of the League may request the League's participation in a matter of litigation or other proceeding in which the member is involved. A request for the League's participation shall be by resolution of the municipality's governing body. The resolution must specifically identify the participation requested and why the municipality deems the League's participation necessary or desirable. The request for assistance shall also be accompanied by the payment as provided below.

2. Since the member municipality is requesting the League to lend its prestige and assistance to a matter of litigation or other proceeding in which the municipality is involved, the municipality shall assist in funding the League's review of the member's request for the League's participation. The requesting municipality shall be responsible for the payment of a review fee in an amount not less than five hundred dollars (\$500.00) nor more than twenty-five percent (25%) of the municipality's annual League dues.

3. A check in the amount of five hundred dollars (\$500.00) must accompany any request for the League's participation and the League shall bill the municipality for any balance due after completion of the review process as hereinafter set forth.

Request upon Initiative of the League

The Board of Directors, upon the affirmative vote of the majority of the members present and voting, may initiate a request for the League to participate in a matter of litigation or other proceeding. A request initiated by the Board shall be considered and acted upon in the same manner as a request initiated by a member municipality.

Review of Request and Recommendation to Board

1. Upon approval of the Executive Committee, a request for the League to participate in a matter of litigation or other proceeding shall be reviewed by a panel of not less than two nor more than three attorneys selected by the Executive Director of the League in consultation with the President of the League. The selection of attorneys may be made from a list of interested prospective panel members maintained from time to time by the Maryland Municipal Attorneys Association.

2. Members of the review panel shall be compensated from the legal fund for their time and expenses incurred in reviewing the request for the League's participation. The total amount to be paid to the panel of reviewing attorneys shall not exceed two thousand five hundred dollars (\$2,500.00) without prior approval of the Board of Directors. The League shall pay all costs of the review panel in excess of any review fee for which a member municipality is responsible, and the League shall pay all costs associated with requests initiated by the Board of Directors.

3. During the conduct of its review of the request for the League's participation, the review panel shall afford representatives of the municipality or the League, as the case may be, an opportunity to make an oral presentation as to why the League's participation is necessary or desirable.

4. After conducting its review, the review panel shall provide the Board of Directors with a written report which:

- a. Analyzes and evaluates the request for participation in accordance with each of the litigation case selection criteria set forth below;
- b. Address the desirability of the League's participation as requested; and
- c. Where the request is for the League's participation at lower than an appellate level, whether any extraordinary circumstances or compelling reasons are presented for the League's participation.

Board Action

1. A request for the League's participation shall be considered by the Board of Directors following receipt of the report and recommendations of the panel of reviewing attorneys.

2. During the Board's consideration of the request:

- a. The Chair of the review panel shall present the report and recommendations of the panel to the Board;
 - b. A requesting municipality may make an oral presentation of its request to the Board, notwithstanding that the review panel may have recommended that the request for participation be denied; and
 - c. Representatives of the requesting municipality, other than any member of the Board from that municipality, may not be present during the Board's deliberations on the request.
3. In determining whether the League should participate in a particular matter of litigation or other proceeding affecting the interests of municipalities in this State, the Board of Directors shall give consideration to the following litigation case selection criteria:
- a. One or more legal issues raised in the litigation or proceeding should be of potential significance to a substantial number of municipalities in the State.
 - b. The factual record must raise the legal issues to be argued by the League and support the outcome that the League desires.
 - c. The litigation or proceeding must be in a posture in which the court would likely be required to decide the legal issues which would be argued by the League.
 - d. The disposition of the litigation or administrative proceeding at its current level would serve as a persuasive precedent in similar future litigation or proceedings before the courts or other adjudicative bodies having jurisdiction in the State.
 - e. The legal issues to be argued by the League cannot readily and easily, or more appropriately, be resolved by legislation.
 - f. The legal issues to be argued by the League should represent positions upon which the League has not negotiated or supported compromise legislation.
 - g. There must be either a reasonable likelihood of success on the legal issues to be argued by the League; the issues need to be resolved, regardless of the outcome, to provide clear guidance to municipalities of the State; or a judicial or administrative decision is desirable to serve as a justification for remedial legislation from the General Assembly.
 - h. Other factors applicable to the particular litigation or administrative proceeding exist which the Board deems appropriate to justify the League's participation.
4. A request for the League's participation shall not be approved, except upon the affirmative vote of two-thirds of the members of the Board of Directors present and voting. Action of the Board approving the League's participation shall define, to the extent practicable, the scope of the League's participation, the issues or legal arguments to be advanced by the League, and any monetary limitations upon the amount to be expended in furtherance of the League's participation.

Selection of Legal Representative

The Executive Director of the League shall select legal counsel to represent the League and advance the League's interests and legal arguments in those matters of litigation or other proceedings where the Board of Directors has authorized the League's participation. The retention of counsel shall be made within any monetary restraints imposed by the action of the Board and shall be made only after receipt and approval by the Executive Director of cost estimates for legal services from potential legal representatives.

Legal Participation Fund

1. The League shall annually appropriate not less than ten thousand dollars (\$10,000) for advocacy in court actions.

2. Counsel retained to take action on behalf of the League may not expend resources on behalf of the League that exceed approved cost estimates without prior authorization by the Executive Director. Any costs exceeding annually authorized funding levels must be first approved by the Board of Directors.

Adopted by the Board of Directors, January 25, 1986

Amended , January 31, 2009

BD.amicus.curiae/lit.poly