



Helena Citizens' Council
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Date: November 15, 2022
To: The Helena City Commission
From: The Helena Citizens' Council
Title: Recommendation Regarding a Motion to Enact a City Ordinance Titled, "Pesticide Notification and Contamination Prevention"

Greetings Mayor and Helena City Commissioners:

Let it be known that the Helena Citizens' Council, at its regular full board meeting on November 15, 2023, voted and passed the following recommendation for your consideration.

1. The HCC recommends that beginning with Parks, and then extending to other City departments, a review of all pesticide and herbicide use within the City be conducted and, where possible, identify and use less harmful alternatives to the application of such chemicals.
2. The HCC recommends that the City enact an ordinance regulating notification of pesticide application similar to language found in the City of Missoula's ordinance found in Title 8.62 of Missoula City Code. However, one specific change that the HCC recommends beyond the City of Missoula's regulation is to provide in City of Helena Code specific timelines governing how far in advance of the application of the chemicals a notification must be posted and how long after the application the signs and notification must remain. HCC recommends that online notification of the application be posted at least 72 hours in advance and that notification at the application site be posted at least 24 hours in advance. Regarding how long after application the notification must remain at the site, the HCC recommends that notification be left in place for a minimum of 48 hours.
3. In the alternative to a City Ordinance or in the interim between finalizing a City Ordinance, the HCC recommends that departments utilizing pesticides/herbicides adopt policies regarding notification procedures, including specific timelines governing how far in advance of the application a notification must be posted and how long after the application the signs and notification must remain. HCC

recommends online notification of application be posted at least 72 hours in advance and that notification at the application site be posted at least 24 hours in advance and that the notification remain at the site, for a minimum of 48 hours.

This recommendation was moved by the Helena Citizens' Council based upon the findings presented in this document submitted by District 3 Representative Lowell Chandler. The referenced document is attached in order to supplement your consideration.

We appreciate your consideration of this recommendation,

Helena Citizens' Council Members



Ben Kuiper, HCC Chair

DATE: November 8, 2023

TO: Helena Citizens' Council

FROM: Lowell Chandler – HCC District 3, Vice Chair

RE: Recommendation Regarding a Motion to Enact a City Ordinance Titled, "Pesticide Notification and Contamination Prevention"

SUMMARY

On September 14, 2023, a city resident reached out to the HCC regarding a concern of a lack of notice to the public regarding application of chemicals (a broad leaf weed control herbicide) in Centennial Park in July of 2023. The citizen attended the HCC meeting of September 27, 2023, and expressed her concerns. Craig Marr, Parks Superintendent attended the HCC's following meeting on October 25, 2023, and explained the Parks Department procedures and requirements for chemical application. Mr. Marr acknowledged the incident in question and explained it was an isolated event and that application at that time and place and in that manner was in error. He also explained that there is no Parks Department policy in place addressing notice to the public of chemical application. He further acknowledged that such a policy has merit and should be explored so citizens would be aware chemicals were in use and could act accordingly. He also indicated his support of the idea of enacting a City ordinance governing the notification process.

From a public health standpoint Helenans deserve the right to be informed of chemical application so they can make the choice regarding their exposure to such chemicals. It should first be the policy of the City to avoid the application of such chemicals whenever possible but when, and, if unavoidable, the secondary policy should be one of ensuring adequate, precautionary notice to Helenans regarding pesticide/herbicide application.

RECOMMENDATION

Consistent with the Findings discussed herein, I recommend the following recommendations:

1. The HCC recommends that beginning with Parks, and then extending to other City departments, a review of all pesticide and herbicide use within the City be conducted and, where possible, identify and use less harmful alternatives to the application of such chemicals.

2. The HCC recommends that the City enact an ordinance regulating notification of pesticide application similar to language found in the City of Missoula's ordinance found in Title 8.62 of Missoula City Code. However, one specific change that the HCC recommends beyond the City of Missoula's regulation is to provide in City of Helena Code specific timelines governing how far in advance of the application of the chemicals a notification must be posted and how long after the application the signs and notification must remain. HCC recommends that online notification of the application be posted at least 72 hours in advance and that notification at the application site be posted at least 24 hours in advance. Regarding how long after application the notification must remain at the site, the HCC recommends that notification be left in place for a minimum of 48 hours.
3. In the alternative to a City Ordinance or in the interim between finalizing a City Ordinance, the HCC recommends that departments utilizing pesticides/herbicides adopt policies regarding notification procedures, including specific timelines governing how far in advance of the application a notification must be posted and how long after the application the signs and notification must remain. HCC recommends online notification of application be posted at least 72 hours in advance and that notification at the application site be posted at least 24 hours in advance and that the notification remain at the site, for a minimum of 48 hours.

FINDINGS

1. *The Helena City Public Park's Department Lacks a Policy Governing Public Notice of Pesticide Application.*

On September 14, 2023, a concerned citizen reached out to the HCC regarding a concern of a lack of notice to the public from the Helena Parks Department regarding application of pesticides and herbicides in city parks and public spaces. The HCC invited the concerned citizen to attend the HCC's next regularly scheduled meeting to discuss the issue further and at the HCC's September 27, 2023, meeting the HCC heard directly from the concerned citizen regarding her concerns and what she witnessed. The concerned citizen discussed that she had witnessed chemicals being sprayed at Centennial Park without any public notification by the City. She later found out from City of Helena Public Information Officer Jake Garcin that the chemical being sprayed was Hi-Dep Broadleaf Herbicide with active ingredients of

dimethylamine salt of 2,4-dichlorophenoxyacetic acid (33.2%), diethanolamine salt of 2,4-dichlorophenoxyacetic acid (16.3%), and inert ingredients (50%).

The concerned citizen then researched the federal regulations enacted by the U.S. Environmental Protection Agency (“EPA”) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act regarding application of those chemicals and discovered that the chemicals at issue have strict requirements regarding their application and precautionary statements regarding “hazards to humans and domestic animals.” EPA’s label for the ACME ® Hi-Dep® Herbicide is attached to this recommendation.

At the HCC’s October 25, 2023, meeting, the HCC obtained additional information from City of Helena Parks Superintendent Craig Marr regarding the Park’s Department’s use of pesticide and herbicide application in city parks and public spaces. Mr. Marr informed the HCC that there is currently no internal policy within the Park’s Department regarding a public notification process when the Park’s Department applies pesticides or herbicides. Mr. Marr also stated that the Park’s Department takes its application of pesticides and herbicides very seriously and always follows the labelling instructions of a given pesticide or herbicide, and that the incident at Centennial Park was an isolated incident. He noted that all of the Department’s applicators are licensed applicators pursuant to federal and state law and that, importantly, the Department is currently reviewing and working on an internal policy regarding public notification of pesticide and herbicide application on public parks and spaces. In response to questioning from an HCC member regarding a City Ordinance enacting a notification requirement in City Code, Mr. Marr was supportive of the idea.

2. Pesticides and Herbicides, particularly 2,4-D (2,4-dichlorophenoxyacetic acid), Are Linked to Impacts on Public Health.

Concerningly, 2,4-dichlorophenoxyacetic acid (“2,4-D”), a chemical used in Agent Orange,¹ has a troubling impact on public health for those exposed to it, including being linked

¹ National Library of Medicine, *Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam*, Institute of Medicine (US) Committee to Review the Health Effects in Vietnam Veterans of Exposure to Herbicides. Washington (DC): National Academies Press (US), 1994, available at: <https://www.ncbi.nlm.nih.gov/books/NBK236351/#:~:text=Agent%20Orange%20was%20the%20most,4%2C5%2D> D).

to cancers, birth defects, hormonal imbalances, and other general health issues.² In 2015, the International Agency for Research on Cancer declared 2,4-D a possible human carcinogen (see Declaration [here](#)) due to evidence that it damages human cells and in certain studies caused cancer in laboratory animals.³ The U.S. Center for Disease Control's Agency for Toxic Substances and Disease Registry ("ATSDR") in its fact sheet (attached to this recommendation) notes several concerns with the chemical, including, while noting the doses given were "generally much higher than levels usually found in the environment," that lab animals exposed to 2,4-D in large doses "showed harmful effects on the blood, liver, kidney, and thyroid gland." Additionally, the ATSDR provides that exposure to 2,4-D of pregnant lab animals had impacts on the offspring and that applicators of herbicides containing 2,4-D have "reported increased risk of lymphatic system (part of the immune system) cancers, especially Non-Hodgkins Lymphoma."

Furthermore, in a 2016 article titled, "2,4-D: The Most Dangerous Pesticide You've Never Heard Of," the Natural Resources Defense Council ("NRDC"), a non-profit organization that advocates for public health among other issues, provides that "there's a growing body of scientific evidence that the chemical poses a danger to both human health and the environment."⁴ The NRDC article notes that 2,4-D is in a class of compounds called "endocrine disrupting chemicals" and that "laboratory studies suggest that 2,4-D can impede the normal action of estrogen, androgen, and most conclusively, thyroid hormones," which is critical to "ensur[ing] the proper timing and development of the brain."⁵ The article also mentions that 2,4-D can decrease fertility and raise the risk of birth defects.⁶ A further troubling aspect of 2,4-D noted by the NRDC article is that "2,4-D sticks around in the environment" and is detectable in groundwater and surface water, as well as drinking water.⁷

² See The Guardian, Nina Lakhani, *One in Three Americans Have Detectable Levels of Toxic Weedkiller, Study Finds*, February 9, 2022, available at: <https://www.theguardian.com/environment/2022/feb/09/toxic-herbicide-exposure-study-2-4-d>.

³ See World Health Organization, *IARC Monographs evaluate DDT, Lindane, and 2,4-D*, International Agency for Research on Cancer, June 23, 2015, available at: https://www.iarc.who.int/wp-content/uploads/2018/07/pr236_E.pdf; see also NRDC, *2,4-D: The Most Dangerous Pesticide You've Never Heard of*, March 15, 2016, available at: <https://www.nrdc.org/stories/24-d-most-dangerous-pesticide-youve-never-heard>.

⁴ NRDC, *2,4-D: The Most Dangerous Pesticide You've Never Heard of*, March 15, 2016, available at: <https://www.nrdc.org/stories/24-d-most-dangerous-pesticide-youve-never-heard>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Last, not only does 2,4-D have troubling links to human health impacts, but the Humane Society of the United States has also likewise found it has impacts on pets. The Humane Society’s article notes that “A 1991 study found that dogs whose owners used herbicide 2,4-D were up to 200% more likely to develop lymphoma, and despite a follow-up study with ties to the chemical industry refuting the claim, a 2012 study confirmed an increased risk.”⁸

3. *The City of Helena Has the Legal Authority to Protect Helenans from Unknown Pesticide Exposure through the Enactment of An Ordinance Governing Notification Procedures of Pesticide Applications.*

Under § 80-8-120, Mont. Code Ann., (attached to recommendation) the Montana Legislature has delegated to City’s the authority to enact local pesticide regulations. Section 120(1)(a) explicitly provides “a unit of local government may adopt an ordinance to require a commercial applicator, as defined in 80-8-102, to provide notification when applying a pesticide” then provides a list of compliance parameters that the local government must follow.

Under § 80-8-120, MCA’s authority, the City of Missoula has enacted a City regulation governing Pesticide Notification and Contamination Prevention. The City of Missoula’s ordinance is found in [Title 8.62 of Missoula’s City Code](#) and is attached as a pdf to this recommendation. The City of Missoula’s code can serve as a model for the City of Helena. Also attached are city code examples from Anchorage, Alaska and South Portland, Maine.

Regarding notification timelines, typical advanced notice appears to be between 24-48 hours⁹ and the timelines regarding how long after application notification should be left in place vary based on the pesticide used, but a 48-hour window appears to be the minimum timeline.¹⁰

POSITIVE OUTCOMES OF CITY ACTION

⁸ Humane Society of U.S., *Dogs, Lawn Care, and Cancer*, March 31, 2023, available at: <https://www.humanesociety.org/news/dogs-lawn-care-and-cancer>.

⁹ See attached Beyond Pesticides Fact Sheet for discussion of notification timelines by other states: *State Lawn Pesticide Notification Laws* (2012); see also e.g., New York Department of Health, *Neighbor Notification Law Fact Sheet*, (April 2015), available at: https://www.health.ny.gov/environmental/pests/public_notification_law.htm (requiring 24 to 48 hours advanced notice of pesticide spraying for counties that have assumed regulatory control).

¹⁰ See e.g., City of South Portland Pesticide Use Ordinance, Chapter 32 Art.1, § 32-6(A), (2023), available at: https://www.maine.gov/dacf/php/pesticides/documents2/municipal%20ordinances/South_Portland_Updated_2023.pdf (48-hr minimum); see also Municipality of Anchorage, Chapter 15.75 Pesticide Control, § 15.75.060, available at: <https://www.muni.org/departments/health/admin/environment/adobe%20documents%20for%20esd%20site/fss%20pest%20control%20ord15-75.pdf> (48-hr minimum).

First, a review of the pesticides and herbicides in use by the Park's Department will be beneficial for the Park's Department to understand the chemicals being used and the dangers posed by such chemicals to Park's Department employees, but also to Helenans, as Helenans will become informed as to what types of chemicals are being applied in public parks and spaces. Second, and most importantly, the enactment of a City of Helena ordinance regulating pesticide notification and contamination prevention will ensure that Helenans have information to be able to make a choice regarding their exposure to harmful chemicals. Notification will also alleviate the frustration that is created when Helenans feel like they have been unknowingly exposing themselves, children, and pets to potentially dangerous chemicals.

CONCLUSION

I look forward to working with the Commission to see this issue addressed and respectfully requests that the myself and the HCC be informed regarding any City Commission action on this Recommendation or on this issue.

Respectfully submitted,

/s/ Lowell J. Chandler

Lowell J. Chandler

Vice Chair

Representative of Neighborhood District 3

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