



President Markham, Members of the Bexley City Council, my name is Tony Seegers and I represent OhioPLANT (Pesticide, Landscape, Agriculture, Nursery, and Turf professionals). OhioPLANT was founded in 1984 and has since grown to include members from all sectors of the nutrient and pesticide application industries, as well as nurseries and golf courses. OhioPLANT serves as the single voice of the pesticide and fertilizer industries in Ohio. Our members vary from trade associations such as the Ohio Green Industry Association (formerly the Ohio Nursery and Landscape Association), the Ohio Pest Management Association, Ohio Lawn care Association, Ohio Turfgrass Foundation, Ohio Agribusiness Association, Ohio Farm Bureau Federation, golf course owners and management associations, as well as companies such as TruGreen, Tigersul, and companies providing extermination services.

I am testifying this evening on behalf of OhioPLANT in opposition to the Proposed Amended Ordinance 33-23 (“the Ordinance”), specifically the amendment to Bexley Codified Ordinance 1456.01 that would require registration of “mosquito control contractor(s)” and the creation of new ordinance 1494, the mandatory mosquito notification requirement. If enacted, both provisions will be in conflict with state law and therefore will be unenforceable by the City of Bexley.

Per the Federal Insecticide, Fungicide and Rodenticide Act, commonly known as “FIFRA”, no one is allowed to apply restricted use pesticides unless that person has been certified/licensed to be a commercial applicator. A state is authorized by FIFRA to certify applicators of restricted use pesticides only in accordance with a state certification plan approved by the United States Environmental Protection Agency. For Ohio, that agency is the Ohio Department of Agriculture (“ODA”), and the General Assembly has established a statewide, comprehensive licensing scheme for the training and licensure of pesticide applicators under the sole authority of the ODA director in Chapter 921 of the Ohio Revised Code (“R.C.”). The laws in Chapter 921 are general laws with uniform application throughout the state and the amendments to the Ordinance are contrary to the statutes in Chapter 921. Specifically, R.C. 921.26(C)(1) states:



No person who is licensed, regulated, or registered under section 921.02, 921.03, 921.06, 921.08, 921.09, 921.11, or 921.13 of the Revised Code shall be required to obtain a license or permit to operate or to be otherwise regulated in such capacity by any local ordinance, or to meet any other condition except as otherwise provided by statute or rule of the United States or of this state.

Additionally, division (C)(2) of the same section states:

No political subdivision shall regulate or ban the packaging, registration, labeling, sale, storage, distribution, use, or application of a pesticide registered under section 921.02 of the Revised Code on private property, including private property that is open to the public. As used in this section, "political subdivision" has the same meaning as in section 905.503 of the Revised Code.

R.C. 921.16(C) also gives the director of ODA the sole authority to set rules for pesticide applicators, including notice requirements, “[t]he director shall adopt rules that set forth the conditions under which the director: (1) Requires that notice or posting be given of a proposed application of a pesticide * * *.” “Pesticides are comprehensively regulated by the state of Ohio in R.C. Chapter 921. R.C. 921.16(C)(1) specifically delegates authority to the Director of the Department of Agriculture to adopt rules establishing notice requirements for proposed applications of pesticides by state-licensed pesticide applicators.” *Fairview Park v. Barefoot Grass Lawn Service, Inc.*, 115 Ohio App.3d 306, 311, 685 N.E.2d 300 (8th Dist.1996). “The Ohio General Assembly expressly delegated the authority to the Department of Agriculture to determine the adequacy of pesticide preapplication notice. The proper way to change the pesticide application notice requirements is through the Ohio General Assembly or Department of Agriculture, not by enacting a conflicting local ordinance.” *Id.* at 312.

The issue of municipal regulation of licensed pesticide applicators, like the current Ordinance, and the regulatory scheme in Chapter 921 were the subject of an attorney general’s opinion in 1985. Then ODA Director Dale Locker requested



an attorney general opinion from Attorney General Anthony Celebrezze, Jr. to determine if R.C. 921.23(C)¹ preempted “a municipality from imposing registration, notice, or other requirements on commercial pesticide applicators operating within the municipality.” 1985 Ohio Op. Atty Gen. No. 101. AG Celebrezze concluded that “that pursuant to R.C. 921.23(C), a municipality is without authority to enact ordinances imposing registration, notice or other requirements on persons who have been licensed as pesticide applicators under R.C. 921.06, R.C. 921.07, R.C. 921.08, or R.C. 921.12.” *Id.*

It is for these reasons that the amendments in the Ordinance that would mandate licensed pesticide applicators applying mosquito pesticides to first be registered with the City of Bexley and to provide notice, the manner and contents of which are also proscribed, are in conflict of state law and therefore would be invalid.

Thank you for your time and consideration.

¹ R.C. 921.23 was renumber to the current R.C. 921.26 with the enactment of Amended Substitute Senate Bill 217 during the 124th General Assembly.