



FILED
OFFICE OF THE CITY CLERK
OAKLAND

19 MAY 16 PM 4:08

AGENDA REPORT

TO: City Council and members of the Public

FROM: Dan Kalb, Nikki Fortunato Bas, & Rebecca Kaplan, City Councilmembers

SUBJECT: Neonicotinoid Restriction to Protect Pollinators

DATE: May 16, 2019

RECOMMENDATION

ADOPT AN ORDINANCE: (1) PROHIBITING THE USE OR PURCHASE OF NEONICOTINOID PESTICIDES (NEONICOTINOIDS) BY THE CITY OF OAKLAND OR ON CITY PROPERTY; (2) URGING THE ADOPTION OF STATE AND FEDERAL RESTRICTIONS ON NEONICOTINOIDS; AND (3) URGING RETAILERS OPERATING IN THE CITY OF OAKLAND TO NOT SELL NEONICOTINOIDS

SUMMARY

This legislation would (1) prohibit the City's use or purchase of neonicotinoid pesticides or plants or materials treated with such pesticides, (2) have the City strive to use pollinator friendly methods of weed and vermin control, (3) require the City to collaborate with community and conservation groups to priority the planting of pollinator attracting plants on City properties, (4) require the City to post information on its website regarding the risks of neonicotinoids and the City's policy on neonicotinoids, (5) require the City Administrator or her designee to report in 2019 to the Parks and Recreation Advisory Committee regarding the City's plan to never knowingly purchase plants or materials treated with neonicotinoids, (6) require the City Administrator or her designee to send a letter about the ordinance to nurseries, hardware stores and other retailers to encourage them to not sell neonicotinoids, and (7) require the City Administrator or her designee to send a copy of the ordinance to various local, state, and federal governments and officials.

BACKGROUND/LEGISLATIVE HISTORY

On April 19, 2016, the City Council adopted a resolution introduced by Councilmember Dan Kalb in support of Senate Bill 1282, introduced by State Senator Mark Leno, which would have (1) required labeling of seeds and plants sold at retail establishments that have been treated with a neonicotinoid pesticide and (2) designated such pesticides as restricted materials under California law. On May 16, 2017, the City Council adopted a resolution introduced by Councilmember Dan Kalb and Council President Pro Tempore Abel Guillen in support of Senate Bill 602, introduced by State Senators Ben Allen and Scott Wiener, that

would have required labeling of seeds and plants sold at retail establishments that have been treated with a neonicotinoid pesticide.

ANALYSIS

Bees and other insect pollinators are critical to agricultural production of certain types of crops. According to the U.S. Department of Agriculture, honey bee pollinators (*apis mellifera L.*) play a critical role in producing one-third of the nation's food supply. The monetary value of such pollination is estimated to be \$18 to \$27 billion in annual agricultural production in the United States. Moreover, the maintenance of healthy, biodiverse ecosystems depends upon the significant environmental services provided by pollinator species.

Bees and other insect pollinators are under great environmental stress. Bee species have been experiencing global die-offs and diminishing populations, driven by a number of factors including habitat loss, pesticide exposure, lack of forage, and climate change.

Neonicotinoids are a class of nicotine-like pesticides, which include acetamiprid, imidacloprid, clothianidin, dinotefuran, nitenpyram, nithiazine, thiacloprid and thiamethoxam. First patented in the 1980s for commercial use, neonicotinoids have become frequently used in agriculture and are now the most widely used class of pesticide in the world. In agriculture, neonicotinoids are used to coat seeds or applied to the plant. Neonicotinoids are absorbed by plants to which they are applied and are described as "systemic," which means they travel throughout a plant via its vascular system, spreading to all parts of a plant, including pollen and nectar, which are consumed by bees, greatly increasing the likelihood that animals that come into contact with the plant are contaminated. Applied neonicotinoids are also slow to break down and can remain persistent in plants, soil, and the environment for long periods of time.

The United States Geological Survey has highlighted the growing use of neonicotinoids in the United States and found significant neonicotinoid contamination in our nation's waters and studies show that neonicotinoids are highly toxic to aquatic invertebrates. In the late 1990s, neonicotinoids came under increasing scrutiny over their environmental impacts. Neonicotinoid use was linked in a range of studies to adverse ecological effects, including honey-bee colony collapse disorder and loss of birds due to a reduction in insect populations. Recent research suggests that there is a possible link between pesticides that contain neonicotinoids and the die-off of plant pollinators, including honey bees, native bees, butterflies, moths and other insects. The Global Taskforce on Systemic Pesticides, a group of 29 independent scientists, examined over 800 peer-review papers on the effects of neonicotinoids on wildlife, as well as water and soil quality, over a four year period and published a report in 2014 that concluded that neonicotinoids are toxic to bee populations. Neonicotinoids are known to have acute and chronic effects that are highly damaging to bees, butterflies and other pollinator species, and even nonlethal exposure can affect bee navigation, reproduction, survival rates, and foraging. A large and growing body of independent, peer-reviewed scientific studies demonstrate that existing neonicotinoid

contamination in the environment can also adversely impact birds, aquatic organisms and the ecosystems they support.

On May 19, 2015, the White House Pollinator Health Task Force under President Barack Obama issued its report, focusing on increasing habitat for pollinators and called for further extensive research into all aspects of pollinator health. Following lawsuits against the U.S. Environmental Protection Agency (EPA) and the introduction of ultimately unsuccessful legislation banning certain neonicotinoids in 2012-2013, the Obama administration issued a blanket ban in 2014 on the use of neonicotinoids on National Wildlife Refuges, a decision which was overturned in 2018 by the Trump Administration. In January of 2018, California's Department of Pesticide Regulation announced that it would no longer consider any applications by pesticide companies that would expand the use of neonicotinoids in the state, to be lifted once the agency finishes an ongoing evaluation, in conjunction with the EPA, of the pesticides.

Cities, states, and countries are increasingly banning neonicotinoids. Some national and other retailers have taken steps to stop selling pesticides with neonicotinoids.

The Oakland City Council adopted an Integrated Pest Management (IPM) policy in 1995. The IPM policy was amended by the Council in 2005 to include exemptions for the purpose of wildfire mitigation in addition to the existing exemptions. While the implementation of the IPM plan has the potential to benefit or harm pollinators, Oakland currently does not have any language directly addressing neonicotinoids or bees.

Residents and groups in the City of Oakland have shown valuation of and interest in protecting pollinators and sustainability in various ways. For example, there is an Oakland Pollinator Posse community group, and Oakland is home to apiaries, pollinator gardens, the Bee Hotel at the Gardens at Lake Merritt, and residents and organizations who care and work on the health of our environment and food supply. In addition, bees have been the focus of various Oakland garden workshops, walking tours, and an Oakland Museum *Bees* exhibit.

Neonicotinoids are included in pesticide products that are readily available to the public and application of the products in home gardens has been found to occur at a rate that is 32 times higher than what has been approved for agricultural crops. Urban use of pesticides is often for mere cosmetic purposes and is not necessary to create and maintain attractive landscapes, gardens or open spaces, given the availability of viable alternative practices and products. Educating the public and promoting the discontinuance of pesticide products containing neonicotinoids would benefit bees and other insect pollinators and agricultural production within the city and the surrounding region.

FISCAL IMPACT

The restrictions on the City of Oakland provided by this legislation have no negative fiscal impact on the City. The fiscal impact of the various noticing requirements of this ordinance is minimal and largely temporary.

PUBLIC OUTREACH / INTEREST

The office of Councilmember Kalb discussed this legislation with interested residents and environmental groups.

COORDINATION

The City Attorney's office was extensively consulted on the legislation. The Public Works Department confirmed that the City of Oakland does not utilize neonicotinoids.

SUSTAINABLE OPPORTUNITIES

Economic: While the direct economic impacts of this legislation are likely limited, the goal of this legislation to encourage government institutions, businesses and residents operating in Oakland and beyond to cease usage of neonicotinoids may create some minor economic stimulus, such as reducing toxic risks to apiarists operating in Oakland. Ultimately, much of agriculture relies on pollinators, so safeguarding pollinators is critical for humanity's food supply.

Environmental: This ordinance is intended to promote environmental protection by safeguarding pollinators in Oakland and drawing public and governmental attention to substances that put pollinators at risk.

Social Equity: While this ordinance has limited implications for social equity, restricting the City of Oakland from applying neonicotinoids on medians and its properties ensures that Oakland's residents will not be exposed to these pesticides.

ACTION REQUESTED BY THE CITY COUNCIL

Councilmembers Kalb, Fortunato Bas, and Kaplan recommend the City Council:

Adopt an Ordinance: (1) Prohibiting the Use of or Purchase of Neonicotinoid Pesticides (Neonicotinoids) by the City of Oakland or on City Property; (2) Urging the adoption of state and federal restrictions on neonicotinoids; and (3) urging retailers operating in the City of Oakland to not sell neonicotinoids

For questions regarding this report, please contact Oliver Luby, Chief of Staff, Office of Councilmember Dan Kalb, at 510-238-7013.

Respectfully submitted,



Dan Kalb
Council President Pro Tempore, District 1



Nikki Fortunato Bas
Councilmember, District 2



Rebecca Kaplan
Council President, At Large

Prepared by: Oliver Luby, Chief of Staff,
Office of Council President Pro Tempore Dan Kalb

19 MAY 16 PM 4:09

Armas J. J. J.
CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCIL PRESIDENT PRO TEM DAN KALB,
COUNCILMEMBER NIKKI FORTUNATO BAS, AND COUNCIL PRESIDENT
REBECCA KAPLAN

ORDINANCE: (1) ESTABLISHING THE CITY OF OAKLAND'S (CITY) POLICY PROHIBITING THE CITY'S USE OF NEONICOTINOID PESTICIDES (NEONICOTINOID) IN ORDER TO PROTECT HONEY BEES AND OTHER POLLINATORS; (2) URGING THE ADOPTION OF STATE AND FEDERAL RESTRICTIONS ON NEONICOTINOID; AND (3) URGING RETAILERS OPERATING IN THE CITY OF OAKLAND TO NOT SELL NEONICOTINOID

WHEREAS, bees and other insect pollinators are critical to agricultural production of certain types of crops. According to the U.S. Department of Agriculture, honey bee pollinators (*apis mellifera L.*) play a critical role in producing one-third of the nation's food supply. The monetary value of such pollination is estimated to be \$18 to \$27 billion in annual agricultural production in the United States; and

WHEREAS, the maintenance of healthy, biodiverse ecosystems depends upon the significant environmental services provided by pollinator species; and

WHEREAS, bees and other insect pollinators are under great environmental stress and experiencing global die-offs and diminishing populations, driven by a number of factors including habitat loss, pesticide exposure, lack of forage, and climate change; and

WHEREAS, neonicotinoids are a class of nicotine-like pesticides, which include acetamiprid, imidacloprid, clothianidin, dinotefuran, nitenpyram, nithiazine, thiacloprid and thiamethoxam. First patented in the 1980s for commercial use, neonicotinoids have become frequently used in agriculture and are now the most widely used class of pesticide in the world. In agriculture, neonicotinoids are used to coat seeds or applied to the plant; and

WHEREAS, neonicotinoids are absorbed by plants to which they are applied and are described as "systemic," which means they travel throughout a plant via its vascular system, spreading to all parts of a plant, including pollen and nectar, which are consumed by bees, greatly increasing the likelihood that animals that come into contact with the plant are contaminated. Applied neonicotinoids are also slow to break down and can remain persistent in plants, soil, and the environment for long periods of time; and

WHEREAS, the United States Geological Survey has highlighted the growing use of neonicotinoids in the United States and found significant neonicotinoid contamination in our nation's waters and studies show that neonicotinoids are highly toxic to aquatic invertebrates; and

WHEREAS, in the late 1990s, neonicotinoids came under increasing scrutiny over their environmental impacts. Neonicotinoid use was linked in a range of studies to adverse ecological effects, including honey-bee colony collapse disorder and loss of birds due to a reduction in insect populations. Recent research suggests that there is a possible link between pesticides that contain neonicotinoids and the die-off of plant pollinators, including honey bees, native bees, butterflies, moths and other insects. The Global Taskforce on Systemic Pesticides, a group of 29 independent scientists, examined over 800 peer-review papers on the effects of neonicotinoids on wildlife, as well as water and soil quality, over a four year period and published a report in 2014 that concluded that neonicotinoids are toxic to bee populations; and

WHEREAS, neonicotinoids are known to have acute and chronic effects that are highly damaging to bees, butterflies and other pollinator species, and even nonlethal exposure can affect bee navigation, reproduction, survival rates, and foraging; and

WHEREAS, a large and growing body of independent, peer-reviewed scientific studies demonstrate that existing neonicotinoid contamination in the environment can also adversely impact birds, aquatic organisms and the ecosystems they support; and

WHEREAS, neonicotinoids are included in pesticide products that are readily available to the public and application of the products in home gardens has been found to occur at a rate that is 32 times higher than what has been approved for agricultural crops. Educating the public and promoting the discontinuance of pesticide products containing neonicotinoids will benefit bees and other insect pollinators and agricultural production within the city and the surrounding region; and

WHEREAS, on May 19, 2015, the White House Pollinator Health Task Force under President Barack Obama issued its report, focusing on increasing habitat for pollinators and called for further extensive research into all aspects of pollinator health; and

WHEREAS, following lawsuits against the EPA and the introduction of ultimately unsuccessful legislation banning certain neonicotinoids in 2012-2013, the Obama administration issued a blanket ban in 2014 on the use of neonicotinoids on National

~~Wildlife Refuges, a decision which was overturned in 2018 by the Trump Administration;~~
and

WHEREAS, cities, states, and countries are increasingly banning neonicotinoids;
and

WHEREAS, some national and other retailers have taken steps to stop selling pesticides with neonicotinoids; and

WHEREAS, urban use of pesticides is often for mere cosmetic purposes and is not necessary to create and maintain attractive landscapes, gardens or open spaces, given the availability of viable alternative practices and products; and

WHEREAS, the Oakland City Council adopted an Integrated Pest Management (IPM) policy in 1995. The IPM policy was amended by the Council in 2005 to include exemptions for the purpose of wildfire mitigation in addition to the existing exemptions. While the implementation of the IPM plan has the potential to benefit or harm pollinators, Oakland currently does not have any language directly addressing neonicotinoids or bees; and

WHEREAS, the City's IPM policy prohibits the City from using pesticides on City owned property or facilities with limited exceptions; and

WHEREAS, the City does not currently use neonicotinoid pesticides on its properties; and

WHEREAS, on April 19, 2016, the Oakland City Council approved Resolution No. 86114 C.M.S. introduced by Councilmember Dan Kalb in support of Senate Bill 1282 (Leno), unsuccessful legislation that would have required labeling of seeds and plants sold at retail establishments that have been treated with a neonicotinoid pesticide and designated neonicotinoid pesticides as restricted materials pursuant to state law; and

WHEREAS, on May 16, 2017, the Oakland City Council approved Resolution No. 86736 C.M.S. introduced by Councilmembers Dan Kalb and Abel Guillen in support of Senate Bill 602 (Allen & Wiener), unadopted legislation which, in its original form, would have required labeling of commercially available seeds and plants treated with neonicotinoid pesticide; and

WHEREAS, in January of 2018, California's Department of Pesticide Regulation announced that it would no longer consider any applications by pesticide companies that would expand the use of neonicotinoids in the state, to be lifted once the agency finishes an ongoing evaluation, in conjunction with the EPA, of the pesticides; and

WHEREAS, the City of Oakland values pollinators and sustainability, has had its own Pollinator Posse community group, and is home to apiaries, pollinator gardens, the Bee Hotel at the Gardens at Lake Merritt, and residents and organizations who care and

work on the health of our environment and food supply. And bees have been the focus of various Oakland garden workshops, walking tours, and an Oakland Museum *Bees* exhibit; and

WHEREAS, California law limits the ability of local jurisdictions to restrict or regulate pesticide usage; and

WHEREAS, the actions contemplated in this Ordinance do not constitute a project for the purposes of the California Environmental Quality Act (CEQA). Further, even such actions were to be construed as a project under CEQA, it is exempt pursuant to CEQA Guidelines section 15061(b)(3) (it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment), and 15308 (it is an action for the protection of the environment).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 18 of the Oakland Municipal Code is amended to add Chapter 18.04 **AN ORDINANCE ESTABLISHING THE CITY OF OAKLAND'S POLICY PROHIBITING THE CITY'S USE AND PURCHASE OF NEONICOTINOID PESTICIDES, URGING THE ADOPTION OF STATE AND FEDERAL RESTRICTIONS ON NEONICOTINOID, AND URGING RETAILERS OPERATING IN THE CITY OF OAKLAND NOT TO SELL NEONICOTINOID**, to read as follows:

18.04.010. Definitions

"IPM" means the City of Oakland's Integrated Pest Management Policy, enacted by Resolution Number 73963 C.M.S. and all subsequent amendments.

"Neonicotinoid" means a class of nicotine-like pesticides, which include acetamiprid, imidacloprid, clothianidin, dinotefuran, nitenpyram, nithiazine, thiacloprid and thiamethoxam.

"Nursery stock" means young plants grown at a nursery.

"Pollinator" means an insect that carries pollen from one plant or part of a plant to another.

18.04.020. Prohibition on City's Use and Purchase of Neonicotinoid Pesticides or Nursery stock, Trees, Plants, Seeds, or other plants or materials treated with or consisting of neonicotinoids

The City of Oakland (City) shall not use any neonicotinoid or neonicotinoid-like, systemic, persistent pesticides for any purpose, other than treatment of an animal by a veterinarian in accordance with the City's IPM Policy, on property owned or operated by

the City, including public rights-of-way. This prohibition applies, at a minimum, to seed dressings, soil treatments, foliar sprays, and other types of applications.

Further, the City shall not purchase neonicotinoids and other neonicotinoid-like, systemic, persistent pesticides other than for veterinarian purposes in accordance with the City's IPM Policy.

18.04.030. Pollinator-friendly Methods of Weed and Vermin Control

The City will strive to use only pollinator-friendly methods of weed and vermin control on any City-owned or operated property.

18.04.040. Collaboration with Community and Conservation Organizations

The City Administrator or designee shall ensure that the Departments of Public Works and Parks and Recreation, and other relevant City agencies, departments, and offices as established in Oakland Municipal Code Chapter 2.29 will seek to collaborate with Oakland community and conservation organizations, such as the Pollinator Posse, to prioritize planting and maintaining pollinator attracting plants on City-owned or operated properties.

18.04.050. Education of the Public on Effect of Neonicotinoids on Pollinator Populations

The City Administrator or designee shall post information on the City's website to educate the public regarding the effects of pesticides that contain neonicotinoids on bee and other pollinator populations and promote the use of other less-harmful pesticide products and/or alternative pest control practices, as well as planting bee-friendly plants. Residents should be advised that the City recommends avoiding spraying insecticides on plants and flowers on private property.

18.04.060. Rules and Regulations

The City Administrator is authorized to promulgate any rules and regulations or administrative instruction, necessary to carry out the purposes of this Ordinance.

SECTION 2. Public Notification of City Policy Prohibiting Its Use and Purchase of Neonicotinoids

Within six months of the adoption of this Ordinance, the City Administrator or designee shall notify the public regarding the City's policy prohibiting its use and purchase of neonicotinoids through the City's, Public Works', and Parks and Recreation's websites and/or website pages to inform residents of the impacts and risks associated with the use of neonicotinoids on or near pollinators, the beneficial reasons for the protection of insects, birds, and water-related animals in the environment, and methods and alternatives the City is using for protection of pollinators.

SECTION 3. Presentation before the Parks and Recreation Advisory Commission

The City Administrator or designee shall, during the 2019 calendar year, present to the Parks and Recreation Advisory Commission information regarding this Ordinance and the City's plan to ensure that it never knowingly purchases commercial nursery stock, trees, plants, seeds, or other plants or materials treated with or consisting of neonicotinoids.

SECTION 4. Encouraging Businesses to Stop Selling and Using Neonicotinoids

The City strongly encourages retail businesses operating within the City of Oakland to take immediate steps to ensure no plants, seeds, or garden, landscaping, or agricultural products containing neonicotinoids are purchased, sold, or used within the City of Oakland.

The City Administrator or designee shall send a copy of this Ordinance with an accompanying letter to nurseries, hardware stores and other retailers operating in the City of Oakland that are believed to sell or likely to sell products to the public containing neonicotinoids.

SECTION 5. Notice to Local Public Agencies

The City Administrator or designee shall send a copy of this Ordinance to the Board of Directors and Superintendent of the Oakland Unified School District, the Board of Directors and General Manager of the East Bay Regional Park District, the Board of Directors and General Manager of the East Bay Municipal Utility District, and the Alameda County Board of Supervisors.

SECTION 6. Notice to State and Federal Legislators and Agencies

The City Administrator or designee is directed to send a copy of this Ordinance to Assemblymembers Rob Bonta and Buffy Wicks, State Senator Nancy Skinner, Governor Gavin Newsom, U.S. Representative Barbara Lee, and U.S. Senators Kamala Harris and Dianne Feinstein, the California Department of Pesticide Regulation, and the U.S. Environmental Protection Agency.

SECTION 7. California Environmental Quality Act

The City Council finds that the above actions do not constitute a project for the purposes of the California Environmental Quality Act (CEQA). Further, even if the above actions were to be construed as a project under CEQA, the City Council finds that it is exempt pursuant to CEQA Guidelines section 15061(b)(3) (it can be seen with certainty that there is no possibility that the activity in question may have a significant

effect on the environment), and 15308 (it is an action for the protection of the environment).

SECTION 8. CEQA Notice of Exemption

The City Administrator or designee shall file a Notice of Exemption with the appropriate agencies.

SECTION 9. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 10. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS

City Clerk and Clerk of the Council of the City of
Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE: (1) ESTABLISHING THE CITY OF OAKLAND'S (CITY) POLICY PROHIBITING THE CITY'S USE OF NEONICOTINOID PESTICIDES (NEONICOTINOIDS) IN ORDER TO PROTECT HONEY BEES AND OTHER POLLINATORS; (2) URGING THE ADOPTION OF STATE AND FEDERAL RESTRICTIONS ON NEONICOTINOIDS; AND (3) URGING RETAILERS OPERATING IN THE CITY OF OAKLAND TO NOT SELL NEONICOTINOIDS

This ordinance establishes a policy (policy) prohibiting the City from using Neonicotinoid pesticides. It also requires the City to urge state and federal legislators to take action to regulate Neonicotinoid pesticides and for the City to inform local public agencies and retailers about the policy.