



December 21, 2021

**VIA ELECTRONIC MAIL**

Mr. Lawrence Daniels

[Larry.Daniels@doj.ca.gov](mailto:Larry.Daniels@doj.ca.gov)

Re: Opinion 21-1001

Dear Mr. Daniels,

The League of California Cities (Cal Cities) is aware that Robert H. Pittman, County Counsel of Sonoma County, has requested an opinion from the Attorney General on the following questions:

1. May a county adopt policies to address the environmental impacts of pesticides in a Local Coastal Program without violating Food and Agriculture Code section 11501.1?
2. May a county adopt ordinances to regulate pesticides in the coastal zone to implement Local Coastal Program requirements?

We write to convey Cal Cities' position that the answer to these questions must be no because (a) express statutory preemption applies to regulation of pesticides and exceptions to that preemption requires legislative action to amend the law; (b) the Coastal Act does not expand the authority of local governments to adopt policies that conflict with state law; and (c) these are matters of concern for both coastal and inland areas of the State.

**Cal Cities' interest in this opinion**

Cal Cities is an association of 479 California cities united to expand and protect local control for cities in order to enhance the quality of life in California communities. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys representing the 16 divisions of Cal Cities from every part of California. The Committee monitors legal developments affecting municipalities and identifies those cases or opinions, such as the matter at hand, that are of statewide significance.

With respect to the implementation of the Coastal Act, cities and counties with territory located within the Coastal Zone are similarly situated; the Coastal Act's provisions governing the statutory responsibilities and authorities are the same for local governments, county or city. Thus, Cal Cities' interest in this matter is the same as California counties.



## **Express statutory preemption applies to the regulation of pesticides and exceptions to that preemption requires legislative action to amend**

State law explicitly bars local governments from regulating or prohibiting pesticide use.<sup>1</sup> This bar is codified in the California Food and Agricultural Code, section 11501.1(a), which reads as follows:

This division and Division 7 . . . are of statewide concern and occupy the whole field of regulation regarding the registration, sale, transportation, or use of pesticides to the exclusion of all local regulation. Except as otherwise specifically provided in this code, no ordinance or regulation of local government, including, but not limited to, an action by a local governmental agency or department, a county board of supervisors, or a city council, or a local regulation adopted by the use of an initiative measure, may prohibit or in any way attempt to regulate any matter relating to the registration, transportation, or use of pesticides, and any of these ordinances, laws or regulations are void and of no force or effect.

State law also authorizes the state to take action against any local entity that promulgates an ordinance or regulation that violates section 11501.1(a). (Food and Agric. Code § 11501.1(b).)

The statute was specifically adopted to overrule a 37-year old court decision in *People v. County of Mendocino* (1984) 36 Cal.3d 476, which had upheld a local regulation prohibiting aerial application of phenoxy herbicides because the court concluded that state law at that time did not preempt such a prohibition by local government. (See *IT Corp. v. Solano County Bd. Of Supervisors* (1991) 1 Cal.4th 81, fn. 9; *Turner v. Chevron USA Inc.*, 2006 WL 1314013, fn. 14 (unpublished).) Subsequently, the state Legislature enacted section 11501.1 specifically to preempt local regulation of pesticides.

Given the express language, Cal Cities concluded that relief from preemption in the area of pesticide regulation is in the hands of the Legislature. Cal Cities has sought revisions to the law to allow local control over this important public health issue. Exhibit A to this letter is a resolution adopted by the organization's membership, which addresses this topic. However, as discussed below, the Coastal Act does not overcome the preemptive effect of section 11501.1.

## **The Coastal Act does not expand the authority of local governments to adopt policies in conflict with state law**

The Coastal Act requires local governments to implement state coastal policies (set forth in Public Resources Code §§30210-30265.5) by preparing local coastal programs that, once certified by the Coastal Commission, govern development in the coastal zone of that local government's jurisdiction. (See Pub. Res. Code §§30500, 30519, 30600.)

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<sup>1</sup> While Cal Cities' mission is to expand local control, the organization and its members are equally committed to the California constitution and the rule of law. We recognize that the state Legislature may enact laws that preclude local governments from enacting policies or laws that conflict with the state law. (Cal. Const. art. XI, §7.)



Section 30519 gives a local government with a certified local coastal program (LCP) permitting authority under the Coastal Act. Aside from creating that authority, the Coastal Act explicitly states that it does not expand the powers of local government:

Nothing in this division shall be construed to authorize any local government, or to authorize the commission to require any local government, to exercise any power it does not already have under the Constitution and laws of this state or that is not specifically delegated pursuant to Section 30519.

(Pub. Res. Code § 30005.5.)

The Coastal Act requires local governments – within the scope of their constitutional police powers – to adopt programs to implement the policies in the Coastal Act. The statute defines the LCP as follows:

“Local coastal program” means a local government’s (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of, this division at the local level.

(Pub. Res. Code § 30108.6.) Thus, the LCP implements state policies at the local level and is comprised of laws enacted by local governments using their land use authority as defined and limited by the constitution. (See Pub. Res. Code §30500 [requiring preparation of LCPs and expressly preserving local government authority to determine “[t]he precise content of each”].)

The Coastal Commission’s role is defined in the Coastal Act §30512.2 and does not appear to confer on local governments the power to override state preemption:

(a) The commission’s review of a land use plan shall be limited to its administrative determination that the land use plan submitted by the local government does, or does not, conform with the requirements of Chapter 3 (commencing with Section 30200). In making this review, the commission is not authorized by any provision of this division to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan.

(b) The commission shall require conformance with the policies and requirements of Chapter 3 (commencing with Section 30200) only to the extent necessary to achieve the basic state goals specified in Section 30001.5.

### **It is unlikely the Legislature intended differential treatment of coastal and inland areas of the state**

Cal Cities is at a loss to explain how the environmental impacts of pesticides and rodenticides differs in the coast. It seems unlikely that, when Section 11501.1 was enacted, the Legislature would have accepted a ban on crop dusting along the coast while prohibiting the same in the rest of California. It is contrary to the statewide preemptive language of the law to now create a loophole to allow for greater and more permissible local regulation of pesticides in the coastal areas while leaving the inland areas of the state to remain subject to the preemption and without the same exemptions.



## Conclusion

While Cal Cities supports increased local control over pesticide regulation, as set forth in the text of Cal Cities Resolution on the subject which is enclosed as Exhibit A, Cal Cities acknowledges that the current text of California Food and Agricultural Code section 11501.1(a) compels only one answer to the questions above, and that answer is no.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink that reads "Corrie Manning". The signature is written in a cursive, flowing style.

Corrie Manning  
General Counsel  
League of California Cities

Encl.: Exhibit A (Cal Cities Resolution)

## Exhibit A

### **[Text of Cal Cities Resolution adopted on September 14, 2018]**

A RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES DECLARING ITS COMMITMENT TO SUPPORT THE REPEAL OF PREEMPTION IN CALIFORNIA FOOD AND AGRICULTURE CODE § 11501.1 THAT PREVENTS LOCAL GOVERNMENTS FROM REGULATING RODENTICIDES

WHEREAS, anticoagulant rodenticides are poisonous bait products that are poisoning 80 to 90% of predator wildlife in California. These poisons cause painful, internal hemorrhaging in non-target animals, including pets, that accidentally ingest the products. Approximately 10,000 children under the age of six are accidentally poisoned by anticoagulant rodenticides each year nationwide; and

WHEREAS, in response to these harms, the California Department of Pesticide Regulation banned the consumer purchase and use of second-generation anticoagulant rodenticides in July 2014. Despite collecting data for almost four years after this ban, the Department of Fish and Wildlife found no evidence supporting a decrease in poisonings by anticoagulant rodenticides; and

WHEREAS, the state of California currently only recognizes the harm posed by second-generation anticoagulant rodenticides, which are prohibited in state wildlife habitat areas but are still available for agricultural purposes and by certified applicators throughout the state of California; and

WHEREAS, first-generation anticoagulant rodenticides are still available to the public and used throughout California without limitation; and

WHEREAS, nonpoisonous rodent control methods, such as controlling trash, sealing buildings, setting traps, erecting raptor poles and owl boxes, and removing rodent nesting areas are also effective rodent control methods; and

WHEREAS, the state of California preempts cities from regulating pesticides; and

WHEREAS, many cities across California have passed resolutions restricting pesticide use on city property and have expressed the desire to ban the use of pesticides within their jurisdictions.

NOW, THEREFORE, BE IT RESOLVED by the General Assembly of the League of California Cities, assembled in Long Beach, California on September 14, 2018, to do as follows:

1. Encourage the state of California to fund and sponsor further research into the impacts of anticoagulant rodenticides.
2. Direct the League of California Cities staff to consider creating a task force with other organizations and jointly commission a report on the impact of anticoagulant rodenticides;



3. Encourage cities throughout California to eliminate use of anticoagulant rodenticides as part of their maintenance program in city-owned parks, lands, and facilities and to report on the effectiveness of other rodent control methods used in their maintenance program;
4. Encourage property owners throughout California to eliminate use of anticoagulant rodenticides on their properties;
5. Encourage cities throughout California to join in these advocacy efforts to mitigate the unintended negative impacts of anticoagulant rodenticides;
6. Endorse a repeal of California Food and Agriculture Code § 11501.1 to end local preemption of regulating anticoagulant rodenticides; and
7. Call for the Governor and the Legislature to work with the League of California Cities and other stakeholders to consider and implement this reform.