

1. 6:15 P.M. Agenda 11/01/2016  
**Agenda for Pesticide and Fertilizer Task Force**  
**November 1, 2016**  
**Room 24, 6:15 PM**

1. Welcome and Introductions
2. Review and approve minutes
3. Presentation of Draft Ordinances
4. Discuss Draft Ordinances
5. Discuss Agenda for Next Meeting
6. Adjourn

Documents:

[AGENDA 11\\_1\\_2016.PDF](#)  
[MINUTES 10\\_11\\_2016.PDF](#)  
[PESTICIDES DRAFT \(NO COMMITTEE OR WAIVER\).PDF](#)  
[PESTICIDES DRAFT \(WAIVER\).PDF](#)

**City of Portland**  
**Pesticide and Fertilizer Task Force**

November 1, 2016

6:15 PM

Council Chambers

**AGENDA**

1. Welcome and Introductions (5 minutes)
2. Review and approve minutes (5 minutes)
3. Presentation of Draft Ordinances (15 minutes)
4. Discuss Draft Ordinances (85 minutes)
5. Discuss Agenda for Next Meeting (10 minutes)
6. Adjourn

Please refer to the committee web page for background documents:

<http://www.portlandmaine.gov/1774/Pesticide-and-Fertilizer-Task-Force>

# Pesticide and Fertilizer Task Force

## Minutes

October 11, 2016

Task Force Members Present: Councilor Mavodones, Joe Staples, Avery Kamila, Rachel Bouvier, Jesse O'Brien, Seana Cullinan, Cathy Ramsdell, Wendy Harmon, Bob Searle, Fred Dillon, Tom Estabrook

Task Force Members Absent: Deven Morrill

Staff Present: Troy Moon, Amanda Methot (Law School Extern)

Councilor Mavodones welcomed the Task Force members to the meeting and noted that the majority of the time would be spent discussing the draft ordinance prepared by staff. He asked for a motion to approve the minutes from the previous meeting. All were in favor.

Troy Moon presented the draft ordinance. He indicated he and Amanda Methot worked with Corporation Counsel Danielle West-Chuta to create the draft and based it on comments from previous meetings. Members discussed various elements of the draft as follows. (The numbers next to the headers indicate how many members brought up the specific topic, bullet points provide an overview of what was discussed.)

IPM definition (4)

- What are the thresholds for resulting to using pesticides
  - Need to look at accepted IPM protocols/ threshold guidelines
- Do we want to continue using IPM or change to OPM and adopt those principles
  - Group was divided on this
    - Some said they are one in the same
    - Others believe that OPM is safer/better/more environmentally conscious

Legal citations (1)

- Wants background on where the citations to state statutes are coming from and what they mean
- Wants an explanation on why we are using these citations over the citations in the South Portland ordinance

Waiver provision/ review board (7)

- Section IV(b)(3) was seen as a loophole by some members and believe a waiver provision would be better
- Addition of a waiver provision
  - No clear consensus on who would make decisions on these waivers
    - PMAC
    - City manager
- Review board/PMAC
  - Group divided on if this is needed and what the makeup would be
    - Combo of residents and elected officials/ city employees
  - More committees are not necessarily efficient, require training for the decision makers may make more sense
- Waiver may provide remedy to private land owner that cannot afford a licensed applicator
  - Exemptions allow for a remedy to some extent

#### Exemptions (4)

- Some confusion on the difference between exemptions and waivers
- Upset that athletic fields are exempt because this is where children play
- Does not like exemptions for trees because of fumigating
- Blanket exemptions for particular areas of the City, not supported by some members
- If pesticides are used under exemptions there should be documentation of the use
- Our exemptions should mirror South Portland's ordinance section 32-5

#### Lists we have chosen to use (2)

- Members want more information on what is included on these lists as well as other potential lists that could be featured in addition or instead of OMRI and FIRFA
- OMRI products are very expensive and not always available in stores because they are not purchased often

#### Licensed applicators (2)

- Concerned that licensed applicators don't use the best practices
- Providing more education to applicators could be a possibility to ensure they are meeting standards
  - This is already set by the board of pesticide control
- School IPM coordinators

#### Education (4)

- Include a findings section to touch upon what education program will look like and what it will be based on
- Look at the board of pesticide control's mission and draw from those principles
- Include STS information with purchase at point of sale
- Team up with other organizations that already educate to ensure the consumer is not being inundated with signs at the store.
- School IPM coordinators

#### Want data from MBPC (2)

- Number of complaints made as well as enforcement done by the MBPC
- Numbers on sales and education efforts

Miscellaneous feedback (these points were mentioned by one person with little to no follow up from any other members)

- Section IV(a)(5)
  - Moving that to the top of the section may make more sense
  - Right now it is read as a loophole rather than the standard/ guiding principle
- Add in section on water setbacks
- Effective date
  - Keep or make a phase in provision
- Ban the sale of pesticides we don't allow
- The board of pesticide control is not doing a good job enforcing pesticides, therefore the City should not rely on them

# **DRAFT**

## **Pesticide and Fertilizer Task Force:**

### ***An ordinance to limit the use of pesticides***

#### ***(Without Advisory Committee or Waiver)***

#### **I. Purpose**

The purpose of this chapter is to safeguard the health, safety and welfare of the residents of the City of Portland and to conserve and protect the City's water bodies and natural resources by curtailing the use of pesticides for turf, landscape, and outdoor pest management.

#### **II. Definitions**

The following words, terms and phrases when used in this ordinance shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

***Application:*** The spraying, pouring, spreading and applying of any and all pesticides over property in order to mitigate, among other things, weeds, pests or plants.

***Defoliant:*** Any substance or mixture of substances intended for causing leaves of foliage to drop from a plant, with or without causing abscission.

***Desiccant:*** Any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

***FIFRA:*** The Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq., as amended from time to time.

***Integrated Pest Management:*** The selection, integration, and/or implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences including, but not limited to the following:

- Understanding the system in which the pest exists;
- Establishing dynamic economic injury thresholds and determining whether the organism or organism complex warrants control;
  - Economic injury levels: The smallest number of insects (amount of injury) that will cause yield losses equal to the insect management costs.
  - Economic thresholds: The pest density at which management action should be taken to prevent an increasing pest population from reaching the economic injury level.
- Monitoring pests and natural enemies;

- When needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression; and
- Systematically evaluating the pest management approaches utilized.

***Invasive Insect:*** an insect that is not native to a particular eco system and whose introduction does or is likely to cause economic or environmental harm or harm to human health.

***Licensed Applicator:*** An applicator who is licensed by the State of Maine Board of Pesticides Control.

***Natural, Organic, or Non-synthetic:*** A substance or mixture of substances that are derived from mineral, plant, or animal matter and do not undergo a synthetic process as defined in the Organic Foods Production Act, 7 U.S.C. §6502(21).

***Pest:*** Any insects, rodents, nematodes, fungi, weeds, and other forms of terrestrial or aquatic plant or animal life or viruses, bacteria, or other microorganisms, except this definition specifically excludes viruses, bacteria or other microorganisms on or in living human beings or other living animals, that have been declared to be a pest under 7 M.R.S. §610(1)(A).

***Pesticide:*** Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for used as a plant regulator, defoliant, or desiccant; and any nitrogen stabilizer. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the Environmental Protection Agency. Herbicides, fungicides, insecticides and rodenticides are considered pesticides.

***Privately Owned Land:*** All land and water areas, including airspace and all plants, animals, structures, and/or buildings, within the city limits of the City of Portland that is owned by private individuals or entities.

***Publicly Owned Land:*** All land and water areas, including airspace and all plants, animals, structures, and/or buildings, within the city limits of the City of Portland which is also owned by the City of Portland.

***Retailer:*** Any and all persons, entities, stores, shops, sales outlet or other establishment, located within the City limits of the City of Portland that offers pesticides, among other things, for sale.

***Retail store:*** Any retailer or establishment located within the City limits of the City of Portland that are full-line, self-service market located in a permanent building, operating year-round, and which sells pesticides for at home or other use.

***Synthetic:*** A substance or mixture of substances that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring sources.

**Water body:** Any great pond, river, stream or tidal area, costal or shoreland freshwater wetland as these terms are defined in the City’s Zoning Ordinance, Chapter 14 of the City of Portland Code of Ordinances.

**III. Education.**

The City Manager or his/her designee shall:

1. Create, communicate and provide documents to retailers and the public which describe and educate them about safe pesticide application and use, as well as the harms of pesticides and the existing alternatives to pesticides, that are available for use; and
2. Provide the City Council with an annual report documenting the outcomes of the educational outreach and the pest management plan, the outcomes of each and any and all recommendations for modifications to this Article and/or the pest management plan in order to ensure that the City uses the best practices available.

**IV. Applicability**

The provisions of this Article are applicable to any and all outdoor pest management activities, conducted on any and all privately or publicly owned land as follows:

1. Synthetic substances are prohibited unless specifically listed as “allowed” on the U.S. Department of Agriculture’s National List of Allowed and Prohibited Substances (the “National List”);
2. Non-synthetic substances are allowed unless specifically listed as “prohibited” on the National List;  
Pesticides determined to be “minimum risk pesticides” pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and listed in 40 C.F.R. § 152.25(f)(1) or (2), as may be amended from time to time, are allowed.

**(a) *Application Near Water Bodies.***

1. The use or application of non-synthetic or synthetic pesticides on public or privately owned land shall not occur within twenty-five (25) feet of any water body.

**(b) *Retail stores.***

1. Retailers that sell pesticides of any kind at a retail store or otherwise shall post educational signs to be provided by the City of Portland where pesticides are located.

**V. Exemptions**

The following are exempt from the provisions of the Article:

**(a) *Materials.***

1. Pet supplies; shampoos, tick and flea treatments;
2. Disinfectants, germicides, bactericides, miticides, and virucides;
3. Insect repellent;

4. Rat and rodent control supplies;
5. Swimming pool supplies; and/or
6. General use paints, stains, and wood preservatives and sealants.

***(b) Applications.***

1. Health and Safety Applications as follows:
  - a. Pesticides used to control plants that are poisonous to the touch (i.e. poison ivy);
  - b. Pesticides used to control plants that are invasive, as listed by the Maine Department of Agriculture, Conversation, and Forestry;
  - c. Pesticides used to control invasive insects, as listed by the Maine Department of Agriculture, Conversation, and Forestry;
  - d. Pesticides used to control pests of significant health important (i.e. ticks); and/or
  - e. Pesticides used to control animals and insects that may cause damage to a structure (i.e. termites).
2. Use on City Athletic and/or Recreation Fields as follows:
  - a. The City Manager or his/her designee may authorize the application of any and all pesticides on any and all City athletic or recreation fields in order to prevent damage to a field. (For example, a grub infestation or for high-use athletic fields, etc.).
3. Riverside Golf Course
  - a. Any and all playing and non-playing greens are exempt from the provisions of this Article.
  - b. The City Manager or his/her designee may authorize the application of any and all pesticides on any playing surface to prevent damage to the course. (For example, a grub infestation.)
4. Hadlock Field
  - a. Any and all playing surfaces located at Hadlock Field are exempt from the provisions of this Article.
5. Trees Located on Publicly Owned Land
  - a. The City Manager or his/her designee may authorize the application of any and all pesticides to trees located on publicly owned land, following a positive recommendation from the City Arborist.
6. Right-of-way spraying
  - a. Pesticides may be used in, on, over, under, abutting or along a right-of-way located in and/or through the city limits of the City of Portland.

7. Use of pesticides mandated by local, state or federal law or an order or decision from a state or federal agency.

**VI. Enforcement and Remedies.**

- (a) This Article shall be enforced by the City Manager or his/her designee;
- (b) The City Manager or his/her designee shall have the authority to enact rules and regulations in order to implement the provisions of this Article;
- (c) A violation of this Article may constitute a civil violation and may be enforced pursuant to Chapter 1, section 1-15 of the Portland City Code and/or by providing additional education to an individual or entity that has been found in violation of the Article. Additional education will be provided to an individual that has been found to violate the provisions of the ordinance; and
- (d) This Article shall not be construed or interpreted to allow an activity otherwise prohibited by law.

**VII. Severability.**

To the extent any provision of this Article is deemed invalid by a court of competent jurisdiction, the balance of the Article that shall remain is valid.

**VIII. Effective Date.**

The provisions of this Article shall become effective one year after adoption by the City Council.

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## **Pesticide and Fertilizer Task Force:**

### ***An ordinance to limit the use of pesticides***

#### ***(With Waiver Language)***

#### **I. Purpose**

The purpose of this Article is to safeguard the health, safety and welfare of the residents of the City of Portland and to conserve and protect the City's water bodies and natural resources by curtailing the use of pesticides for turf, landscape, and outdoor pest management.

#### **II. Definitions**

The following words, terms and phrases when used in this ordinance shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

***Application:*** The spraying, pouring, spreading and applying of any and all pesticides over property in order to mitigate, among other things, weeds, pests or plants.

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***Integrated Pest Management:*** The selection, integration, and/or implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences including, but not limited to the following:

- Understanding the system in which the pest exists;
- Establishing dynamic economic injury thresholds (as defined below) and determining whether the organism or organism complex warrants control;
  - **Economic injury threshold:** The smallest number of insects (amount of injury) that will cause yield losses equal to the insect management costs.
  - **Economic threshold:** The pest density at which management action should be taken to prevent an increasing pest population from reaching the economic injury level.
- Monitoring pests and natural enemies;

- When needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression, and/or;
- Systematically evaluating the pest management approaches utilized.

***Invasive Insect:*** an insect that is not native to a particular eco system and whose introduction does or is likely to cause economic or environmental harm or harm to human health.

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***Retailer:*** Any and all persons, entities, stores, shops, sales outlets or other establishments, located within the City limits of the City of Portland that offers pesticides, among other things, for sale.

***Retail store:*** Any retailer or other store or establishment located within the City limits of the City of Portland that are self-service markets located in a building, operating year-round, and which sell pesticides for personal or commercial at-home use.

***Synthetic:*** A substance or mixture of substances that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring sources.

**Water body:** Any great pond, river, stream or tidal area, costal or shoreland freshwater wetland as these terms are defined in the City’s Zoning Ordinance, Chapter 14 of the City of Portland Code of Ordinances.

**III. Pesticides Advisory Committee.**

1. There is hereby created the following Pesticides Advisory Committee:
  - (a) The Committee shall have five (5) members, all of which shall be residents of the City of Portland and be appointed by the City Council for terms as provided in City Council order;
  - (b) The Committee shall meet at least five (5) times annually; and
  - (c) The Committee’s duties shall be as follows:
    1. Review and act upon waiver applications;
    2. Develop and provide in conjunction with the Sustainability Coordinator outreach and education materials for retailers and the public, which describe and educate about safe pesticide application and use, as well as the harms of pesticides and the existing alternatives to pesticides that are available for use; and
    3. Provide the Energy and Sustainability Committee with an annual report on its educational outreach, the number of waivers requested and any recommendations on amendments to this Article.

**IV. Applicability**

The provisions of this Article are applicable to any and all outdoor pesticide applications for turf, landscape and outdoor pest management, which is conducted on any and all privately or publicly owned land as follows:

1. Synthetic substances are prohibited unless specifically listed as “allowed” on the U.S. Department of Agriculture’s National List of Allowed and Prohibited Substances (the “National List”);
  2. Non-synthetic substances are allowed unless specifically listed as “prohibited” on the National List;
  3. Pesticides determined to be “minimum risk pesticides” pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and listed in 40 C.F.R. § 152.25(f)(1) or (2), as may be amended from time to time, are allowed.
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***(b) Retail stores.***

1. Retailers that sell or offer for sale pesticides of any kind at a retail store or otherwise shall post educational signs to be created and provided by the Pesticides Advisory Committee in the location in the given store where the pesticides are located for sale.

**V. Exemptions**

The following are exempt from the provisions of the Article:

***(a) Materials.***

1. Pet supplies; shampoos, tick and flea treatments;
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***(b) Applications.***

1. Health and Safety Applications as follows:
  - a. Pesticides used to control plants that are poisonous to the touch (i.e. poison ivy);
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  - d. Pesticides used to control pests of significant health important (i.e. ticks); and/or
  - e. Pesticides used to control animals and insects that may cause damage to a structure (i.e. termites).
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  - a. Any and all playing and non-playing greens are exempt from the provisions of this Article.
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7. Use of pesticides mandated by local, state or federal law or an order or decision from a state or federal agency.

**VI. Waivers.**

- (a) In situations that threaten the public health, safety and welfare or if necessary to control invasive pests or species, or to prevent damage to property, individuals or entities may apply to the Pesticides Advisory Committee for a waiver from the provisions of this Article.
- (b) The waiver application shall be on a form prescribed by the Pesticides Advisory Committee, and shall include the following information:
  - (i) the proposed pesticide application location(s);
  - (ii) details on the timing(s) of use, substance(s) and amounts to be applied;
  - (iii) date(s) of the proposed pesticide application;
  - (iv) a pesticide management plan;
  - (v) a pest or weed identification and threshold report; and
  - (vi) reason for requesting the use/application of the pesticide.
- (c) In approving any waiver application, the Advisory Committee may prescribe conditions and safeguards as are appropriate to further the purposes of this Article. The decision of the Advisory Committee shall be in writing, with copies provided to the applicant, and the City's Sustainability Coordinator.
- (d) A person aggrieved by a decision of the Advisory Committee shall have five (5) business days to appeal the decision to the City Manager or his/her designee. The appeal shall be in writing and shall state the basis for the appeal. The decision of the City Manager shall be final.

**VII. Enforcement and Remedies.**

- (a) This Article shall be enforced by the City Manager or his/her designee;
- (b) The City Manager or his/her designee shall have the authority to enact rules and regulations in order to implement the provisions of this Article;

- (c) A violation of this Article may constitute a civil violation and may be enforced pursuant to Chapter 1, section 1-15 of the Portland City Code and/or by providing additional education to an individual or entity that has been found in violation of the Article. Additional education will be provided to an individual that has been found to violate the provisions of the ordinance; and
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**VIII. Severability.**

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**IX. Effective Date.**

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