

1. Agenda 12/6/2016

Documents:

[AGENDA 12_6_2016.PDF](#)

1.1. Minutes From November 1

Documents:

[MEETING MINUTES 11.1.2016.PDF](#)

2. Staff Memo For December 6 Meeting

Documents:

[MEMO DEC 6.PDF](#)

2.1. Draft Pesticide Ordinance Similar To South Portland's

Documents:

[DRAFT BASED ON SOUTH PORTLAND ORDINANCE.PDF](#)

2.1.i. IPM Codifying IPM

Documents:

[DRAFT IPM PESTICIDE ORDINANCE.PDF](#)

City of Portland
Pesticide and Fertilizer Task Force

December 6, 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 Next Steps (10 minutes)
6. Adjourn

Please refer to the committee web page for background documents:

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

City of Portland
Pesticide and Fertilizer Task Force
November 1st, 6:15 – 8:30 PM
Room 24 Minutes

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

Task Force members absent: Tom Estabrook and Seana Cullinan
Staff Present: Troy Moon and Danielle West-Chuhta

1. Welcome and Introductions

Councilor Mavodones called the meeting to order at 6:15 PM. Task Force members and staff introduced themselves.

2. Review of Minutes

Deven Morrill asked about the format of the minutes, Troy Moon explained that different people have been the minute keepers throughout the task force and therefore formatting looks different. Deven Morrill moved to approve the minutes, it was second, all in favor.

3. Introduction of the Revision to Pesticide Ordinance (Troy Moon)

Troy introduced the changes that were made to the draft presented on 11/1. The changes included removing certain pesticide lists from the ordinance specifically the OMRI lists. The definition of Integrated Pest Management was made more robust and clear. Lastly, there are 2 versions of the draft presented tonight, one with a waiver provision and process and another without the waiver provision and process. The group is divided on many issues, therefore two drafts seemed warranted.

4. Discussion, Comments, and Questions regarding the new draft(s)

General comments

- Would like to see the IPM sustainability ordinance incorporated into the new ordinance more.
- Would like to see a draft that has more "tooth".

Purpose

- It was explained to the group that the purpose does not have an impact on the effect of the ordinance.

Definitions

- Some words that are defined are not found elsewhere in the ordinance and therefore should be taken out .
- Discussion of whether IPM should be replaced with OPM as well as the benefits of an organic pest management ordinance over an integrated pest management ordinance.
 - The group is very split on this.

- Invasive species was discussed as the term that should be used rather than invasive species, pest, and insect. There was group consensus on using an all encompassing term.

National List

- There are issues between the group on what pesticide lists should be referenced in the ordinance, many lists have different standards and products are always changing.
 - A sub committee was formed including Avery, Deven, and Jesse to determine which list would be best.
 - The committee will meet before the next meeting and make a determination.

Advisory Committee

- Group agreed that the language of the advisory committee is an improvement from the last meeting.
- Some members would like the education portion of the committees duties to be fleshed out more.
- Everyone agrees that education and awareness is important.
 - People use pesticides because they feel a threat to their property, but it is not always as big of a problem as they think it is, or they spray not understanding the pest problem fully.
- Group is asking for a fiscal note regarding the committee.
 - Fiscal note will differ if the committee is responsible for deciding on waivers or not .

Applicability

- Group members were in favor of increasing the shoreline buffer zones .
- There is disagreement about the applicability being too broad and others saying it is not applicable to enough.

Exemptions

- Many members found issue that a lot of city property was exempt.
 - City is protecting its own interests.
 - City is not leading by example by exempting their own lands.
- Some of the exemptions are justified because they have different use/needs than residential lawns.
- Eliminating right of way praying will require a fiscal note, because the city will need to manage those areas rather than the state or utility companies.

Waivers

- This process should be expedient.
- Group members wanted more information on the criteria that would result in a waiver being granted.
- Some group members believe that if a resident is denied a waiver they will do something about the pest problem anyway.

5. Additional Business

- Information was presented to the group regarding Maine Board of Pesticides complaint and violation rates.
 - Average 4 complaints per year resulting in 2 violations per year

Meeting Adjourned at 8:30pm



Gregory A. Mitchell
Director, Economic Development Department

Executive Department
Jon P. Jennings, City Manager

To: Councilor Mavodones and members of the Pesticide and Fertilizer Task Force
From: Troy Moon, Sustainability Coordinator
Re: Materials for the Pesticide Task Force Meeting, Dec. 6
Date: 12/2/2016

In preparation for our meeting on Tuesday staff has prepared two draft ordinances for the Task Force to review. The first represents an attempt to codify the principles of Integrated Pest Management for treatment of landscapes on both public and private property. The second closely mirrors the ordinance adopted by the City of South Portland that prohibits the use of synthetic pesticides unless an individual applies for and is granted a waiver from a City board designated for that purpose. For purposes of discussion, we have created a summary of the key aspects of each one:

IPM Approach:

- Applies to public and private property
- Only licensed applicators would be permitted to apply chemical pesticides
- Codifies a hierarchy of practices that prioritizes non-pesticide landcare treatments and allows use of pesticides only after other approaches have proved ineffective.
- Requires notification to the City whenever chemical pesticides are used to be reviewed by an IPM advisory committee
- The committee would also assist with the development of education and outreach material, review the efficacy of the ordinance, and develop threshold guidelines for treatment of common pests and invasives.
- Includes a significant education and outreach effort
- Exempts Riverside Golf Course, Hadlock Field, utility ROW

South Portland Style Approach:

- Applies to public and private property
- Prohibits the use of synthetic pesticides unless specifically allowed and allows the use of organic pesticides unless specifically prohibited
- Creates a waiver process where land managers can apply to use chemical pesticides in certain, limited circumstances
- Establishes a Pesticide Management Advisory Committee to create a robust educational program, develop a training program for retailers, provide advice to the City regarding

implementation of the ordinance, encouraging broad public participation in activities of the Committee, conduct evaluation of efficacy of the ordinance

- Establishes a subcommittee of the PMAC called the Waiver Committee that is required to rule on waiver requests within 5 days
- Includes a significant education and outreach effort
- Exempts applications of chemical pesticides used to protect public health and safety ; exempts Audubon Certified golf courses.

The Task Force requested information about the financial and staff resources that would be required to implement an ordinance. We have gone through the text of both ordinances prepared for the Dec. 6 meeting and attempted to create an estimate. Doing so has required us to make a number of assumptions which we have identified as part of the discussion.

IPM Ordinance

IPM Advisory Committee

6 meetings per year / 2 hours per meeting

Meeting prep and follow up / 3 hours per meeting

Estimated annual staff time required: **30 hours**

Enforcement

Complaint driven

1 complaint per month, April - October

Investigate / Respond to complainant and alleged offender / 2 hours each incident

Provide education and guidance to violators / 2 hours per month April - November

Estimated annual staff time required: **28 hours**

Administration

Receive, review, and manage reports of pesticide use

Unknown number of reports to process

Estimated annual staff time: **6 hours**

Outreach and education

Creation and distribution of materials, attending public meetings

Estimated annual staff time: **25 hours**

Total estimate of staff time commitment: 89 hours per year

South Portland Style Ordinance

PMAC meetings

Staff liaison assigned to committee (Stormwater Coordinator)

12 meetings per year / 2 hours each

Meeting prep and follow up / 3 hours each

Annual Staff Time Required: **60 hours** (assuming the Stormwater Coordinator is the only staffer)

Waiver Committee: Staff liaison assigned (Stormwater Coordinator)

2 meetings per month / April - October

14 meetings per year / 1 hour each

Meeting prep and follow up / 1 hour each

Annual Staff time required: **28 hours**

Appeals

1 per month / April - October

Staff liaison and City Manager

7 meetings per year / 30 minutes each

1 hour prep and follow up for each appeal

Annual Staff time required: **10.5 hours**

Enforcement

Complaint driven

(Assume 1 per month, April - November)

Investigate and report violations / 2 hours per month April - November

Provide education and guidance to violators / 2 hours per month April - November

Maintain database and website / 1 hour per month April - November

Estimated Annual Staff time required: **35 hours**

Administration

Maintaining list of licensed applicators in the City

Receiving and filing annual reports from Licensed Applicators

Following up with late filers

Estimated Annual staff time required: **6 hours**

Outreach and education

Creation and distribution of materials, attending public meetings

Estimated annual staff time: **25 hours**

Total estimated annual staff time: 164.5 hours

The South Portland ordinance would place a high demand on City staff because the PMAC would have fairly extensive duties and would require a large number of meetings. It would also impose a significant time commitment on individuals appointed to serve as members. As described in the text, the PMAC would meet "regularly." For the purpose of this document, we assumed one meeting per month. In addition, the Waiver Committee would need to meet at least twice per month during the growing season, possibly more often, to hear and respond to waiver requests within 5 days. (It is the opinion of our Corporation Counsel that the Waiver Committee would need to meet in person and properly notice each meeting in order to comply with State law.) Staff time would also be devoted to any appeals of decisions made by the Waiver Committee.

The IPM advisory committee would be required to meet at least 5 times. For the purposes of this document we assumed they would meet 6 times per year in order to conduct their business. The IPM advisory would be required to periodically review documents submitted by firms or individuals who applied chemical pesticides but would not hear waiver requests. This greatly reduces the time commitment of staff and appointed members.

For discussion purposes, we have assumed that education and enforcement contemplated in each ordinance would require similar levels of effort. However the South Portland style ordinance requires maintenance of a web page noting the locations of properties where ordinance violations occurred so this accounts for the additional hours estimated for administration.

Financial Resources

The members of the Pesticide Task Force have all noted the importance of a robust public education campaign to educate the public and retailers about best practices related to low impact landscape maintenance. For that reason, we assume that both ordinances would require the same level of financial investment.

Professional Design Services:	\$5,000
Printing of Brochures, Poster, Flyers, and other materials	\$5,000
Fees and stipends for consultants and trainers	\$5,000
<hr/>	
Total	\$15,000

We look forward to reviewing these drafts with you on December 6 and working toward a recommendation to the Energy and Sustainability Committee.

DRAFT PESTICIDE USE ORDINANCE
(Based on South Portland Ordinance)

WHEREAS, the State of Maine is one of only seven states, and the District of Columbia, that allows local governments to restrict the use of pesticides, and so this is an opportunity for the City to affect positive change; and

WHEREAS, the State of Maine allows for municipalities to enact ordinances dealing with municipal affairs pursuant to 30-A M.R.S.A. §3001; and

WHEREAS, the City of Portland recognizes that there is an ongoing need to manage pests to protect public health and safety, wildlife, our environment and City assets; and

WHEREAS, many synthetic pesticides are harmful to humans, pets, wildlife, including threatened and endangered species, soil microbiology, plants, and natural ecosystems; and

WHEREAS, many citizens desire to be protected from exposure to pesticides in the air, water or soil that inevitably results from chemical drift and contaminated runoff; and

WHEREAS, the use of pesticides known or suspected to cause serious health problems is not necessary to grow and maintain green lawns and landscapes, given the availability of viable alternative practices and products; and

WHEREAS, a growing number of communities and municipalities are embracing a precautionary approach to the use of pesticides in order to adequately protect people and the environment from their harmful effects:

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND *That the Portland City Code is hereby amended by adding a section, to be numbered Chapter 34, Sections 34-1 to 34-14, which said Sections read as follows:*

Chapter 34

PESTICIDE USE ORDINANCE

Sec. 34-1. Title.

This ordinance shall be known as the City of Portland Pesticide Use Ordinance.

Sec. 34-2. Purpose.

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

Sec. 34-3. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the following meaning:

Broadcast application means the spreading of pesticides over an entire area.

Commercial Agriculture means the production of crops for sale, crops intended for widespread distribution to wholesalers or retail outlets and any non-food crops.

EPA means the United States Environmental Protection Agency.

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.

Golf course means an area of land laid out for playing the game of golf with a series of 9, 18 or more holes. Mini-golf courses are not considered golf courses.

Golf course playing surfaces means the tees, fairways, greens and roughs of a golf course.

Golf course non-playing areas means the areas of golf courses that are not golf course playing surfaces, such as lawns, driveways, paths, patios, trees, shrubs, ornamental plantings and gardens.

Inert ingredient means any substance (or group of structurally similar substances if designated by the EPA), other than an active ingredient, that is intentionally included in a pesticide product.

Invasive Species means a plant or insect that is not native to a particular ecosystem, and whose introduction does or is likely to cause economic or environmental harm or harm to human health. Invasive species include those plants listed under the Maine Department of Agriculture, Conservation and Forestry's Natural Areas Program as currently invasive, potentially or probably invasive, and highly likely but not currently invasive, as well as those insects listed by the Maine Forest Service as threats to Maine's forests and trees.

Natural, organic or "non-synthetic" means a substance that is derived from mineral, plant, or animal matter and does not undergo a "synthetic" process as defined in the Organic Foods Production Act, 7 U.S.C. § 6502(21), as the same may be amended from time to time.

Organic pest management means the extension of the principles and practices of organic agriculture to the care of turf and landscape.

Person means any individual natural person, partnership, joint venture, society, association, company, club, trustee, trust or corporation; or any officer, agent, employee, or personal representative of any thereof, in any capacity acting either for her or himself or for any other person under either personal appointment or pursuant to law.

Pest shall have the same meaning as the term set forth in 40 C.F.R. § 152.5, as the same may be amended from time to time.

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

Pests of significant public health importance means the pests listed by the EPA, in conjunction with the U.S. Department

of Health and Human Services and the U.S. Department of Agriculture, as pests of significant public health importance.

Preemptive application means the application of pesticides as a measure against something possible, anticipated or feared, i.e., as a preventive or deterrent measure.

Public utility means any transmission and distribution utility, telephone utility, water utility, gas utility, or natural gas pipeline utility that is subject to the jurisdiction of the Maine Public Utilities Commission.

Synthetic means a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring sources, except that such term shall not apply to substances created by naturally occurring biological processes.

Water body means any great pond, river, stream or tidal area as those terms are defined in the City's Zoning Ordinance, Chapter 27 of the Code of Ordinances.

Wetland means a coastal or shoreland freshwater wetland as those terms are defined in the City's Zoning Ordinance, Chapter 27 of the Code of Ordinances.

Sec. 34-4. Pest Management Advisory Committee (PMAC).

(a) The Pest Management Advisory Committee (PMAC) is hereby established. The PMAC shall consist of seven members as follows:

- (1) The City's Stormwater Program Coordinator;
- (2) One practicing agronomist appointed by the City Council;
- (3) Two Maine Board of Pesticides Control-licensed landscape professionals, at least one of whom has experience in organic land care management and is accredited by the Northeast Organic Farming Association in Organic Land Care, each appointed by the City Council; and
- (4) Three resident or taxpayer representatives appointed by the City Council.

The terms of office of the six PMAC members appointed by the City Council shall be three year terms, except that the initial appointments after the establishment of the PMAC

shall be such that the terms of office of no more than two members shall expire in any single year. The terms of office for the City employee PMAC member shall be for as long as the employee holds said employment position.

(b) The duties of the PMAC include serving in an advisory capacity to the City Council and the Sustainability Coordinator to oversee this ordinance through the following:

- (1) Advising the City Council and the Sustainability Coordinator of any problems encountered or amendments that may be required to achieve the full and successful implementation of this ordinance;
- (2) Reviewing and acting upon waiver applications when applicable;
- (3) In coordination with the Sustainability Coordinator, developing and implementing outreach and education as specified in this ordinance;
- (4) Seeking the participation, advice and counsel of experts in the fields of organic turf and landscape management, maintenance of trees and shrubs, and organic pest protocol;
- (5) Encouraging broad community participation, from parents, schools, advocates, and local arboriculture and landscaping businesses, in the activities of the PMAC;
- (6) Reviewing annual data and issuing a summary report annually to the City Council;
- (7) On or before May 1, 2019, and every three years thereafter, conducting an evaluation of this ordinance, including a review of pilot project results and reporting data, and providing recommendations to the City Council and the Sustainability Coordinator for any ordinance amendments it deems appropriate; and
- (8) Additional responsibilities as may be deemed necessary by the City Council.

(c) Officers, meetings and records.

- (1) The members shall annually elect a chair from their membership. If not provided to the PMAC by the City Manager, the members shall also annually elect a secretary for the purpose of taking minutes and related duties;

- (2) All meetings of the PMAC shall be open to the public. Notice of each meeting shall comply with the City's notice policies and Maine's Freedom of Access Act;
- (3) A quorum shall consist of four members;
- (4) The PMAC shall meet regularly;
- (v) Minutes shall be kept of all meetings and posted on the City web page. An annual report of the PMAC's activities shall be submitted to the Energy and Sustainability Committee in March of each year; and
- (5) The chair and one other member, at least one of whom must be a Maine Board of Pesticides Control-licensed landscape professional, shall serve as the Waiver Committee, authorized to review and decide waiver applications. The PMAC shall annually designate the two members who shall serve as the Waiver Committee for the ensuing year.

Sec. 34-5. Allowed and exempt pesticides.

(a) Subject to the applicability dates set forth in Sec. 34-14 herein, for turf, landscape and outdoor pest management activities in the City, the following shall apply:

- (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; and
- (4) The use or application of pesticides (whether natural, organic, "non-synthetic," synthetic or otherwise) within 75 feet of of a water body or wetland is prohibited.

(b) The following pesticide activities or pesticide materials are exempt from the provisions of this ordinance (and so are allowed):

- (1) Commercial agriculture;
- (2) Pet supplies, such as shampoos and tick and flea treatments, when used in the manner specified by the manufacturer;
- (3) Disinfectants, germicides, bactericides, miticides and virucides, when used in the manner specified by the manufacturer;
- (4) Insect repellents when used in the manner specified by the manufacturer;
- (5) Rat and rodent control supplies when used in the manner specified by the manufacturer;
- (6) Swimming pool supplies when used in the manner specified by the manufacturer; and
- (7) General use paints, stains and wood preservatives and sealants when used in the manner specified by the manufacturer.

(c) The following applications are exempt from the provisions of this ordinance (and so are allowed):

- (1) Specific health and safety application - Prohibited pesticides may be used to control plants that are poisonous to the touch, such as poison ivy; pests of significant health importance such as ticks and mosquitoes; and animals or insects that may cause damage to a structure, such as carpenter ants or termites;
- (2) Golf course playing surfaces application - Prohibited pesticides may be used on golf course playing surfaces and on the tees and greens provided that the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary;
- (3) Invasive insect application - Prohibited pesticides may be used to control the Emerald Ash Borer, Asian

Longhorned Beetle, Hemlock Woolly Adelgid, Browntail Moth and other insects identified as invasive by the Maine Forest Service; and

- (4) Right-of-way spraying - Prohibited pesticides may be used by a public utility that maintains a right-of-way through the City.

Sec. 34-6. Waivers.

(a) In situations that threaten the public health and safety or for the control of invasive species that pose a threat to the environment, persons may apply to the PMAC for a waiver from the provisions of this ordinance prior to the use of a prohibited product or prior to the conduct of a prohibited application.

(b) The waiver application shall be filed with the PMAC, on a form prescribed by the PMAC, and shall include the following: the proposed location(s); details on the timing(s) of use, substance(s) and amounts to be applied; date(s) of application; management plan that excludes broadcast and preemptive applications; a pest identification and threshold report; and reason for requesting the use/application of a prohibited pesticide. In order to approve a waiver application, the PMAC must first find that all of the following criteria are met:

- (1) A situation exists that threatens the public health and safety and/or where invasive species pose a threat to the environment;
- (2) The applicant has carefully evaluated all alternative methods and materials;
- (3) The applicant will, to the greatest extent practical, minimize the impact of the application on abutting properties; and
- (4) The grant of the waiver will not be detrimental to the public health, safety or welfare.

(c) Waiver applications must be filed with the Waiver Committee, with a copy provided to the Sustainability Coordinator. The Waiver Committee shall act upon a waiver application within five business days of receipt of a completed

application. Both members of the Waiver Committee must agree that approval of the application is appropriate in order for the application to be approved; otherwise, the application is deemed denied.

(d) In approving any waiver application, the Waiver Committee may prescribe conditions and safeguards as are appropriate to further the purposes of this ordinance. The decision of the Waiver Committee shall be in writing, with copies provided to the applicant, PMAC, Sustainability Coordinator and City Clerk.

(e) A person aggrieved by a decision of the Waiver Committee shall have five business days to appeal the decision of the Waiver Committee to the City Manager. The appeal shall be in writing and shall state the basis for the appeal. The City Manager shall act upon the appeal within three business days of receipt of the appeal. The decision of the City Manager shall be in writing, with copies provided to the appellant, PMAC, and the Sustainability Coordinator.

Sec. 34-7. Public Notifications and Signage.

If prohibited pesticides are to be used/applied through an exemption pursuant to Sec. 34-5(B)(ii) or through an approved waiver application pursuant to Sec. 34-6, the following posting requirements shall be complied with by the property owner or applicator.

(a) The owner or applicator shall post warning signs in compliance with this ordinance. These signs must be posted before application activities commence and left in place for at least 48 hours after actual application or until expiration of the restricted entry interval or reentry time indicated by the pesticide label, whichever is longer.

(b) All signs shall be at least five inches high and four inches wide in size. Signs shall be attached to the upper portion of a dowel or other supporting device so that the bottom of the sign is not less than 12" and the top of the sign is not more than 48" above the ground. The signs shall be of rigid, weather resistant material substantial enough to be easily read for at least 48 hours when placed outdoors.

(c) All notification signs must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or

green). They shall have lettering that is conspicuous and clearly legible.

(d) The sign must include the following:

(1) The word "CAUTION" in 72 point type;

(2) The words "PESTICIDE APPLICATION" in 30 point type or larger;

(3) The Maine Board of Pesticides Control designated symbol;

(4) Any reentry precautions from the pesticide labeling;

(5) The name and telephone number of the entity making the pesticide application;

(6) The date and time of the application; and

(7) A date and/or time to remove the sign.

(e) All notification signs shall state the chemical and trade name of the pesticide, the date to be applied, the length of time to remain off the treated area as indicated by the pesticide label, and a phone number of the responsible party for more information.

These requirements are in addition to any requirements that may also apply to State of Maine licensed applicators subject to the Maine Board of Pesticides Control rules regarding public notification.

Sec. 34-8. Reporting by State of Maine Licensed Applicators.

In addition to complying with the Maine Board of Pesticides Control rules regarding record keeping and reporting requirements outlined in Chapter 50 of the Code of Maine Rules, all State of Maine licensed applicators are required to submit to the Sustainability Coordinator an annual summary report on or before February 1 relating to the preceding calendar year. The report shall contain the following information for applications performed in the City in the prior calendar year: target site, pesticide brand name, EPA registration number, total undiluted formulation (in pounds or gallons), and total area treated as listed and as amended on the Commercial Applicator Annual

Summary Report required by the Maine Board of Pesticides Control.

Sec. 34-9. Outreach and Education.

(a) The Sustainability Coordinator or his or her designee shall publish notice of this ordinance in a newspaper of general circulation in the City upon adoption of this ordinance and shall provide periodic notice of this ordinance to identified retailers and lawn, garden, and tree-care providers serving Portland as well as to churches, schools, and other institutions in Portland.

(b) The PMAC shall prepare and publish materials designed to educate the community about the role of pesticides in the local environment and the benefits of organic pest management. This outreach may include: a community-based social marketing campaign targeting City households and businesses; promotion of professional education and training for State of Maine licensed applicators; distribution of information and news about City practices through Portland internet and web-based resources; public service announcements; news releases and news events; tax bill inserts; posters and brochures made available at City events and applicable locations that serve the public; workshops, trainings, and demonstration projects; targeted outreach to schools; and any additional methods deemed appropriate by the PMAC.

(c) The PMAC shall also develop a program to work directly with retailers that sell pesticides in Portland to:

- (1) Provide educational training for all retail store employees who recommend and sell pesticides for use in the home and garden, highlighting the following:
 - a. federal, state, and local pesticide regulations;
 - b. principles of organic pest management;
 - c. pesticide toxicity and health and environmental concerns;
 - d. proper pesticide display and storage; and
 - e. the role of personal protective equipment, pesticide poisoning symptoms, and emergency procedures in case of spills; and

- (2) Implement a toolkit consisting of educational materials and signage (i.e., posters, signs, stickers) that can be customized, printed, and placed in stores to help consumers understand this ordinance and alternatives to prohibited pesticides.

Sec. 34-10. Violations.

Any person violating any of the provisions of this ordinance or failing or neglecting or refusing to obey any order or notice of the Sustainability Coordinator and/or the PMAC issued hereunder shall be subject to enforcement action as provided herein.

Sec. 34-11. Enforcement.

It shall be the duty of the Code Enforcement Officer to provide investigative assistance and to enforce the provisions of this ordinance in collaboration with the City's Sustainability Coordinator. The Sustainability Coordinator shall work with alleged violators of this ordinance to bring them into compliance by providing the individual(s) with educational materials and advice on the use of less toxic chemicals to achieve their desired results. The Sustainability Coordinator will maintain a listing of complaints of alleged violations of this ordinance and how they were resolved. The listing will include the nature of the complaint, a summary of the situation and a brief description of how each complaint was resolved. This information will be reported on the City's website in aggregate by Assessor's tax map number and not by specific property address or Assessor's lot number.

Sec. 34-12. Severability.

Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this ordinance.

Sec. 34-13. Conflicts with Other Ordinances.

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.

Sec. 34-14. Effective date; Applicability dates.

This ordinance shall become effective pursuant to Section 225 of the City Charter. In order to allow time for residents and businesses to become familiar with the requirements of this ordinance, the prohibitions on the use of certain products and/or applications (and the related public notification, signage and reporting requirements) shall be phased in as follows:

(a) Phase One: Commencing May 1, 2017, the provisions set forth in Sec. 34-5 on the use or application of certain pesticides for turf, landscape and outdoor pest management activities shall apply to City-owned property (but not to any golf course).

(b) Phase Two: Commencing May 1, 2018, the provisions set forth in Sec. 34-5 on the use or application of certain pesticides for turf, landscape and outdoor pest management activities shall apply to private property (but not to any golf course).

(c) Phase Three: Commencing May 1, 2019, the provisions set forth in Sec. 34-5 on the use or application of certain pesticides on certain portions of golf courses for turf, landscape and outdoor pest management activities shall apply to all golf courses.

DRAFT

PESTICIDE ORDINANCE

(Based on Integrated Pest Management Practices)

WHEREAS, the State of Maine is one of only seven states, and the District of Columbia, that allows local governments to restrict the use of pesticides, and so this is an opportunity for the City to affect positive change; and

WHEREAS, the State of Maine allows for municipalities through their home rule authority to enact ordinances dealing with municipal affairs pursuant to 30-A M.R.S.A. §3001; and

WHEREAS, the City of Portland recognizes that there is an ongoing need to manage pests to protect public health and safety, wildlife, our environment and City assets; and

WHEREAS, many synthetic pesticides are harmful to humans, pets, wildlife, including threatened and endangered species, soil microbiology, plants, and natural ecosystems; and

WHEREAS, many citizens desire to be protected from exposure to pesticides in the air, water or soil that inevitably results from chemical drift and contaminated runoff; and

WHEREAS, the use of pesticides known or suspected to cause serious health problems is not necessary to grow and maintain green lawns and landscapes, given the availability of viable alternative practices and products; and

WHEREAS, a growing number of communities and municipalities are embracing a precautionary approach to the use of pesticides in order to adequately protect people and the environment from their harmful effects:

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND *That the Portland City Code is hereby amended by adding a section, to be numbered Chapter 34, Sections 34-1 to 34-___, which said Sections read as follows:*

Pesticide Use Ordinance

34-1. 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.

34-2. Definitions.

When used in this Chapter, the following words, terms and phrases shall have the following meanings.

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.

Economic injury level: The smallest number of insects (amount of injury) that will cause yield losses equal to the insect management costs.

Economic injury threshold: The pest density at which management action should be taken to prevent an increasing pest population from reaching the economic injury level.

Environmental Professional: Individual that has formal education in the field(s) of environmental science, environmental engineering, ecology, natural resources management, and/or other similar field of study.

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

FIFRA Minimum Risk List: Pesticides that have active ingredients which are deemed minimum risk and therefore do not have to register with the Environmental Protection Agency. The Minimum Risk List is available on the web site of the Environmental Protection Agency (EPA) at: epa.gov/minimum-risk-pesticides/active-ingredients-allowed-minimum-risk-pesticide-products

Integrated Pest Management or IPM: 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:

1. Understanding the system in which the pest exists;
2. Establishing dynamic economic injury threshold and determining whether the organism or organism complex warrants control;
3. Monitoring the pests and natural enemies;
4. 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
5. Systematically evaluating the pest management approaches utilized.

Invasive Species: a species 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 of pesticides 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) as amended from time to time.

Pest: Any insects, rodents, nematodes, fungi, weeds, and other forms of terrestrial or aquatic plant or animal life or viruses, bacteria, or other microorganisms, 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) as amended from time to time.

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. Herbicides, fungicides, insecticides and/or rodenticides are considered pesticides.

Privately Owned Land: All land and water bodies, including airspace and all plants, animals, structures, and/or buildings, within the limits of the City of Portland which are owned by private persons or entities.

Publicly Owned Land: All land and water bodies including all airspace and all plants, animals, structures, and/or buildings, within the limits of the City of Portland which are owned by a governmental entity including, but not limited to, the City of Portland.

Retailer: Any and all persons, entities, stores, shops, sales outlets or other establishments, located within the limits of the City of Portland that offers for sale, displays or sells pesticides, among other things, for personal or commercial at-home use.

Retail store: Any retailer, store or establishment located within the limits of the City of Portland that are self-service markets located in a building, and which sell or offer for sale 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, coastal or shore land freshwater wetland as these terms are defined in Chapter 14 of the City of Portland Code of Ordinances.

34-3. Applicability.

This Chapter shall apply to any and all outdoor non-synthetic or synthetic pesticide use or applications for turf, landscape and outdoor pest management, which are conducted on any and all privately or publicly owned land.

34-4. Pesticide Application Near Water Bodies.

The use or application of non-synthetic or synthetic pesticides on privately or publicly owned land shall not occur within seventy-five (75) feet of any water body.

34-5. Integrated Pest Management.

(a) It is hereby the policy of the City of Portland to ensure that the minimum amount of pesticides needed to effectively control pests in all areas of application on privately and publicly owned land within the City shall be used, and that any and all pest management activities within the City shall be conducted by a licensed applicator in accordance with the following IPM practices:

1. Non-pesticide management tactics shall be used first;
2. If non-pesticide management tactics prove ineffective, pesticides listed on the FIFRA Minimum Risk List may then be used; and
3. If the pesticides listed on the FIFRA Minimum Risk List prove ineffective, other synthetic or non-synthetic pesticides may be used so long as the following steps are taken:
 - i. Monitor for pest presence or conditions conducive to a pest outbreak;
 - ii. Identify the pest specifically;
 - iii. Determine that the pest population exceeds acceptable safety, economic or aesthetic threshold levels;
 - iv. Utilize control measures that have been demonstrated to be practicable, effective and affordable; and

- v. A written document describing how the licensed applicator treated the problem is kept and submitted annually in the month of _____ to the Integrated Pest Management Advisory Committee. Information in the written document shall include the type of pest treated for, steps taken prior to treatment, and all information required by the Maine Board of Pesticides Control Pesticide Applicator Log.

34-6. Integrated Pest Management Advisory Committee.

(a) There is hereby created the following Integrated Pest Management Advisory Committee (the "Committee").

(b) The Committee shall be comprised of five (5) members, including two (2) licensed applicators, two (2) environmental professionals, and one (1) at-large resident representative who is neither a licensed applicator or environmental professional. All members shall be residents of the City of Portland and be appointed by the City Council for staggered two (2) year terms.

(c) The Committee shall be co-chaired by one (1) licensed applicator representative and one (1) environmental professional representative, as agreed to by the members of the Committee.

(d) The Committee shall meet at least five (5) times annually.

(e) The Committee shall have the following duties:

1. Create, develop and provide in conjunction with the City Manager or his or her designee educational materials for retailers, retail stores and the public, which, among other things, describe and educate about IPM, safe pesticide application and use, as well as the harms of and the existing alternatives to pesticides that are available for use;
2. Develop and recommend action threshold guidelines for common pests and invasive species; and

3. Provide the Energy and Sustainability Committee with:
 - i. An annual report which includes, among other things, a summary of its educational outreach; recommendations on any necessary amendments to this Chapter; and comprehensive data taken from the written documents provided by Licensed Applicators about the use of pesticides within the City of Portland including, but not limited to:
 - a. The amount of pesticides used on privately or publicly owned land in the City of Portland;
 - b. The reasoning for such use of pesticides; and
 - c. The specific pesticides that were used.

34-7. Education.

(a) The City Manager or his or her designee, in coordination with the Committee, shall prepare and publish materials including, but not limited to signs for retailers or retail stores as described in (c) below, which are designed to educate City residents and the public about the role of pesticides in the local environment and the benefits of IPM. These materials may also include information about the following:

1. City pesticide and pest management practices;
2. Resources maintained and available from the Maine Board of Pesticide Control including, but not limited to, resources related to enforcement of State laws and regulations overseen by the Board; and
3. Local, State or Federal laws and regulations regarding pest management activities.

(b) These materials may be conveyed to the public by and through the following means:

1. The internet including the City's website;
2. Social media;
3. Television;
4. News releases and events;
5. Tax bill inserts;
6. Brochures or other written materials;
7. Posters or signs;
8. Workshops, trainings, demonstration projects; and/or
9. Any other method deemed appropriate by the Committee.

(c) Any and all retailers and/or retail stores shall post these materials and/or signs in the location of a retail store where pesticides are located or offered for sale.

34-8. Exemptions.

The following materials, locations and uses are exempt from the provisions of this Chapter:

(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;

6. General use paints, stains, and wood preservatives and sealants; and/or
 7. Aerosol sprays.
- (a) Locations:
1. Riverside Golf Course.
 - i. Any and all playing and non-playing surfaces and/or greens.
 2. Hadlock Field.
 - i. Any and all playing surfaces in or on Hadlock Field.
 3. Right-of-way
 - i. 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.
- (b) Uses:
1. of pesticides mandated by state or federal law or an order or decision from a state or federal agency.

34-9. Enforcement and Remedies.

(a) The City Manager or his or her designee shall have the authority to enact rules and regulations in order to implement the provisions of this Chapter;

(b) This Chapter may be enforced by the City Manager or his or her designee; and

(c) Any violation of this Chapter may be considered a civil infraction and may be enforced pursuant to Portland City Code, Chapter 1, Section 1-15 or by providing education to a person or entity that has violated a provision of this Chapter.

34-10. Severability.

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

DRAFT