

1. Agenda 8/16/2017

Documents:

[AGENDA 8_16_2017.PDF](#)

2. Minutes From July 26, 2017

Documents:

[ST MEETING MINUTES JULY 26 2017.PDF](#)

3. Draft Pesticide Ordinances

Documents:

[DRAFT BASED ON SOUTH PORTLAND ORDINANCE.PDF](#)
[PESTICIDE AND FERTILIZER TF REPORT _ ORDINANCE.1.PDF](#)

CITY OF PORTLAND, MAINE

Standing Committee Sustainability and Transportation

Councilor Spencer Thibodeau (D2), Chair

Councilor Belinda Ray (D1)

Councilor Jill Duson (A/L)

Agenda

8/16/2017, 2017

4:45 PM

Council Chambers

1. Review and approve minutes from July 26, 2017
2. Sustainability Updates
 - a. Carts
 - b. Ocean Ave Landfill / Solar
 - c. Streetlights
3. Workshop Draft Pesticide Ordinances
4. Adjourn

CITY OF PORTLAND, MAINE

Standing Committee on Sustainability and Transportation
Councilor Spencer Thibodeau (D2), Chair
Councilor Belinda Ray (D1)
Councilor Jill Duson (A/L)

Draft Minutes
July 26, 2017

Members Present: Councilor Thibodeau, Councilor Ray, Councilor Duson
Other Councilors Present: Mayor Ethan Strimling
Staff Present: Troy Moon, Melissa Graffam, Ethan Hipple, Jeff Tarling

Councilor Duson makes a motion to approve the minutes. Seconded by Councilor Ray. All in favor, 3-0.

Committee Updates

Recycling Carts - Postcards have started arriving to residents in the mail today. Carts will begin being delivered to homes the week of August 7, 2017.

Street Lights - Continuing to work with TEN Connected Solutions. More information will be available at the August meeting.

Ocean Avenue Solar - Held the neighborhood meeting two weeks ago. Planning Board meeting was held last night. Planning Board approved the cap and solar panels. Currently, working with Sargent Construction to use their material from the State Street project for fill. Working with the Department of Environmental Protection to make sure that the material is acceptable.

Panel Discussion Regarding Pesticide Use

The panelist were; Chip Osborne, Osborne Organics; Jason Billings, Lawn Dawg; Ethan Hipple, Portland Parks Director; Julie Rosenbach, City of South Portland; and Jeff Tarling, Portland's Arborist.

Councilor Thibodeau let everyone know that they tried to get someone from the Maine Poison Control Center and a Doctor for the panel; but there were some scheduling conflicts. If the Councilors or the panel have any questions for them, we could forward any questions to them for their consideration.

Councilor Thibodeau started the meeting by having the panel introduce themselves.

Chip Osborne, is the founder and President of Osborne Organics. Has over ten (10) years experience in natural turf management and 35 years experience as a professional horticulturist. Is a consultant nationally. He was involved in helping South Portland with their ordinance.

Ethan Hipple, Portland Parks Director. Oversees 63 parks. 30 parks, sixteen (16) cemeteries and 20,000 inventoried trees within the city. There are 721 acres of park land/open spaces, with 710 acres free of any regular use (no pesticides). Currently using organic fertilizer and pesticides on about eleven (11) acres (high-use areas, ball fields). Also, uses pesticides when there are health and safety issues (wasps, hornets, poison ivy). These are the unique circumstances they would like to have the limited use to use pesticides.

Julie Rosenbach, Sustainability Director in South Portland. Worked on their city's pesticide ordinance for fourteen (14) months. When doing so, they looked at many other towns/cities ordinances; including Ogunquit, Maine. Their ordinance is being phased in. In May 2017, it went in effect for all city property. In May of 2018, private property will begin and in May 2019, the municipal golf course will be included. They are currently working on the education and outreach program; with a plan to look also look at how the ordinance is working in the near future.

Jason Billings, Operations Manager at Lawn Dawg. Lawn Dawg has 3,200 customers in Maine; 600 in Portland. He has been a licensed pesticide applicator for nine (9) years. The industry has evolved over the years, they are regulated by State and Federal laws and guidelines. Feels that there is no need for an ordinance; if there is one, would want exemptions for licensed applicators.

Jeff Tarling, City Arborist. Currently, we have 20-25 Heritage Elm trees that we treat with pesticides to ward off Dutch Elm disease. To do this we don't spray the trees, the trees are drilled into the root cap of the tree and the pesticide is injected. Never have really gone out to spray trees. Have taken care of pests manually.

Councilor Ray asked why did we chose not to include trees in the ordinance? Troy Moon responded that turf management was the main issue in most of the conversations that the task force had. Also, a vast majority of applications are on the turf. Chip Osborne also mentioned that by injecting the pesticide into a tree it goes into its vascular system of the tree and not the leaves. It does not harm a pollinator. A flowering tree could be different as the pesticide goes to the flower, thus harming a pollinator. Jason Billings also mentioned that with a spray for trees there is a great risk of drifting.

Councilor Duson questioned if the city is currently doing it now (following best practices), why the exception? The city needs to document their best practices. She wants you to celebrate your success and by documented what you are doing.

Ethan Hipple replied that the areas that the Parks Department would need the exception would be on the fields that currently are high-end users. Regular fields have 350 hours of use per field. The five (5) fields that we have that are in constant use, see 1,000 to 1,200 hours of use. There is no time for those fields to rest and encourage healthy growth. The turf fields are fine, they can be use all day long.

Chip Osborne said that he found that using oils are better at control then some of the heavy hitters he used to use. Reminded them that just because something is EPA registered, doesn't mean it's safe. Would like to see the city try other ways before asking for an exception.

Councilor Ray asked about the transition period shift. How does the transition evolve; easing into organic? Chip Osborne said that staff would need to take it slow and educate employees. Generally, he does not see it getting worse. Maintain status quo and it would be a three (3) year transition period.

Councilor Ray mentioned the two (2) lists of pest management products that is on the South Portland Ordinance. Julie Rosenbach said not to go to those list, they are too confusing. They are currently working with Beyond Pesticide to narrow down those lists. They used those as a city (South Portland) because they didn't want to come up with their own list.

Councilor Duson mentioned signage needed in stores identifying the organic items. Julie Rosenbach responded that the items are not banned in South Portland, the goal is to educate. Jason Billings said that leaves the homeowners to get what they want to use; and it's the homeowners that use more than needed. This takes it out of the hands of the licensed applicators who know what they are doing. Jason also reminded them that they have to document what they used and how they use it.

Councilor Thibodeau asked Jason Billings if Lawn Dawg is prepared to go organic in South Portland. Jason responded, absolutely. It is costing the company more to explore these new methods. Does not see the need since they follow the rules regarding all pesticide applications. Their employees are constantly training on new methods.

Councilor Ray asked about South Portland's ordinance Section 32-8 Reporting by State of Maine Licensed Applicators. A report needs to be filed by February 1st, what is the goal? What do you want to get from that? Julie Rosenbach responded that they did it due to the lack of local data. Everything that is in it is what Maine Licensed Applicators already have to send to the State of Maine.

In wrapping up the discussion, Councilor Thibodeau asked the panel what they're parting thoughts were.

Chip Osborne - Most important thing is education for employees, service providers and residents. There will be a learning curve. He has the opportunity to bring to the city, at no cost, a guide to help with training.

Ethan Hipple - Agrees that education is key. Would also like to see Section C (page 13) Uses - Health and Safety is struck out along with invasive species. Have this change if possible to have a waiver but not an use exception.

Julie Rosenbach - This isn't a product for product swap. This is very product specific. Changing cultural practices.

Jason Billings - Give some consideration to giving exception to licensed applicators. Atleast, research this idea. There are some people that like the aesthetics and will do what they need to do to get it; and use what they need. Get it out of the hands of those who would over apply.

Jeff Tarling - Let's not over complicate it. Focus on what people can do. The environment and health is the two (2) main reasons why we are doing this. Include a strong education component.

Next steps: Have Corporation Counsel come to the next meet to start giving guidance.

Motion was made by Councilor Thibodeau to adjourn the meeting at 7:10 pm. Motion was seconded by Councilor Duson. All in favor. 3-0.

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.

Report of the Pesticide and Fertilizer Task Force



June 11, 2017

Order 263-15/16

Passage as an Emergency: 9-0 on 5/16/2016

Effective 5/16/2016

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER ESTABLISHING THE PESTICIDE AND FERTILIZER TASK FORCE

WHEREAS, the overuse of pesticides and fertilizers can create hazards for all forms of life and can pollute bodies of water, degrade the soil and spread through the atmosphere; and

WHEREAS, chemical pesticides and fertilizers, when used appropriately, can provide benefits for the control of pests, weeds and invasive species; and

WHEREAS, the City of South Portland has proposed an ordinance that regulates the use of pesticides within its City limits to limit misuse and overuse; and

WHEREAS, the Portland City Council wants to learn how pesticides and fertilizers are now impacting residents, pets, wildlife and the land and water in and around the City of Portland, so that it may best improve and protect the health, safety and the quality of the environment in the City;

THEREFORE, BE IT ORDERED, that the Pesticide and Fertilizer Task Force is hereby established to review the South Portland draft ordinance and assess its appropriateness for adoption in the City of Portland; evaluate whether chemical fertilizers should also be addressed; consider other measures from other jurisdictions regulating pesticide and fertilizer use; and consider the costs and benefits of adopting new regulations; and

BE IT FURTHER ORDERED, that the following representatives shall be appointed to the Pesticide and Fertilizer Task Force by the Mayor subject to approval by the City Council at the next regularly scheduled City Council meeting:

One Portland City Councilor, who is not a member of the Energy and Sustainability Committee, to be Chair;
One individual involved in the development of the South Portland Pesticide ordinance;
One Licensed Pesticide and Fertilizer Applicator;
One Advocate for Pesticide and Fertilizer Reform;
One Pesticide and Fertilizer Retail Representative;
One Representative from the Friends of Casco Bay and/or Casco Bay Estuary Partnership; and

One Researcher or Academic with expertise on the efficacy, environmental effects, and cost/benefits of pesticide and/or fertilizer use;
One commercial property owner;
Two residential property owners;
One individual with experience in the upkeep of Golf Courses, Recreational fields and/or Athletic fields; and
One Master Gardener;

BE IT FURTHER ORDERED, that the Pesticide and Fertilizer Task Force shall report back to the City Council's Energy and Sustainability Committee by July 11, 2016 and formally present to the Committee at its July 20, 2016 meeting a draft Pesticide and Fertilizer Ordinance and any other related recommendations, however the Task Force may request extension by the City Council of both dates, which request, if reasonable, shall not be denied; and

BE IT FURTHER ORDERED, that the Pesticide and Fertilizer Task Force will terminate on October 18, 2016 unless its term is extended by order of the City Council, however the Task Force may request extension by the City Council of the termination date, which request, if reasonable, shall not be denied; and

BE IT FURTHER ORDERED, that this order is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately and allow the Task Force to begin work promptly.

Order 264-15/16

Passage as an Emergency: 9-0 on 5/16/2016

Effective 5/16/2016

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPOINTING MEMBERS OF THE
PESTICIDE AND FERTILIZER TASK FORCE**

ORDERED, that the following representatives shall be appointed to the Pesticide and Fertilizer Task Force:

Nicholas M. Mavodones, Jr., Portland City Councilor and Task Force Chair;
Fred Dillon, involved in the development of the South Portland Pesticide ordinance;
Devon Morrill, licensed pesticide and fertilizer applicator;
Avery Yale Kamila, advocate for pesticide and fertilizer reform;
Tim Currier, manager of Maine Hardware;
Cathy Ramsdell, executive director of Friends of Casco Bay;
Dr. Joe Staples, lecturer in the Department of Environmental Science, University of Southern Maine;
Wendy Harmon, commercial property owner;
Jesse O'Brien, Portland residential property owner;
Dr. Rachel Bouvier, Portland residential property owner;
Bob Searle, Maine Golf Course Superintendents Association; and
Seana Cullinan, professional gardener.

BE IT FURTHER ORDERED, that this order is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately.

REPORT: Elected officials, City staff, and residents have long been concerned about the impact pesticides may have on the environment in Portland. The City Council's Sustainability Committee discussed it several times under the chairmanship of then Councilor Marshall and later under the chairmanship of then Councilor Hinck. During these discussions councilors heard concerns raised by residents that pesticide use is detrimental to the environment, threatens pollinators, and that applications on one property can impact neighboring properties due to runoff and drift. These residents argued that existing regulations at the State level do not provide adequate protection to City residents. City staff also presented extensive information about their efforts to reduce the use of pesticide by utilizing landscape management practices that do not rely on pesticide applications. These discussions culminated in the adoption of a formal landscape management plan authorized by the City Manager and endorsed by the Energy and Sustainability Committee in early 2016. There was still concern, however, about the use of pesticides on private property and how treatment of lawns and other open spaces around the City may be impacting the environment and the health and safety of Portland residents.

To address this concern, the City Council voted in May, 2016 to create the Pesticide and Fertilizer Task Force, and asked it:

to review the South Portland draft ordinance and assess its appropriateness for adoption in the City of Portland, evaluate whether chemical fertilizers should also be addressed, consider other measures from other jurisdictions regulating pesticide and fertilizer use, and consider the costs and benefits of adopting new regulations. (Order 263-15/16)

The task force was comprised of a diverse group of stakeholders including members of environmental and citizen groups, an entomologist, property owners, retailers, and landscaping professionals. Led by Councilor Mavodones, they met regularly between June, 2016 and January, 2017. They reviewed the South Portland pesticide ordinance, policies in other jurisdictions, existing State regulations, as well as the City's policy regarding applications on public property. Many of the resources discussed are available on the Task Force website: <http://www.portlandmaine.gov/1774/Pesticide-and-Fertilizer-Task-Force>.

During their deliberations members discussed the merits of a wide range of approaches to regulating pesticide use, from requiring a strictly organic approach to pest management, such as the one described in the South Portland ordinance, to codifying landscape management techniques elaborated in the integrated pest management (IPM) strategy. Their work resulted in a recommended ordinance that **prohibits the use of pesticides (organic or synthetic) on any turf, walkway, driveway, or patio unless the owner or property manager applies for and receives a waiver**. This approach prioritizes land care practices that promote healthy soil, encourages homeowners and land managers to consider the proper plant for specific conditions, and encourages turf care practices such as those suggested by the Yardscaping program promoted by the Cumberland County Soil and Water Conservation District. (<http://cumberlandswcd.org/site/yardscape-2/>) The draft ordinance was endorsed by the members of the task force by a vote of 10 - 1. One member was absent on the day of the vote.

Throughout the course of discussions it was clear that members of the Task Force agreed that pesticides, if used inappropriately and/or in excess, pose a threat to the environment and to human health. Consequently, there was agreement that homeowners and turf managers should use techniques that do not require pesticide inputs before they consider the use of a pesticide. Consequently, much of the Task Force's deliberations focused on identifying the circumstances and conditions when the application of a pesticide might be appropriate and how these applications should be regulated.

Some Task Force members advocated the approach taken in the South Portland. Their ordinance allows homeowners and land managers to use organic pesticides and certain pesticides that contain substances deemed "minimum risk" at their own discretion but prohibits the use of synthetic pesticides unless the City grants a waiver. To determine whether or not a substance is acceptable the South Portland ordinance refers to substances identified on the U.S. Department of Agriculture's National List of Allowed and Prohibited Substances and substances listed as "minimum risk" by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These two Federal resources list the constituent parts of pesticides but do not identify products by their retail name. Individuals who wish to determine whether a product they wish to use contains any of these substances must refer to product labels, marketing materials, environmental groups (such as Beyond Pesticides), or retail staff for guidance. Some members of the Task Force argued that this puts a burden on the general public who lack training about specific pesticides and are not well equipped to determine which ones contain allowed or forbidden substances. These members also pointed out that the Maine law does not distinguish between organic and synthetic pesticides but rather regulates them in the same way based on the premise that products derived from naturally occurring materials may still pose hazards to the environment or to an applicator, especially if not used properly.

As an alternative to the South Portland model, these members of the Task Force advocated for the creation of an ordinance codifying elements of a practice known as Integrated Pest Management (IPM). As described in professional literature and in documents distributed by agencies such as the Maine Board of Pesticide Control, this practice establishes a decision making hierarchy for managing pests that begins with non-pesticide approaches but allows the use of organic or synthetic pesticides if, at the discretion of the applicator, conditions warrant their use. Under IPM, pesticides are supposed to be used only as a last resort and the applicator is supposed to select the least toxic substance that will have the desired effect. Opponents of OPM questioned its effectiveness as a method to reduce pesticide use by suggesting that, in practice, many of its practitioners do not rigorously follow its tenets. They cited the practice of some lawn care companies that sell service packages that offer specific treatments at various times of the year without any evidence that they have studied conditions on the ground to determine whether any pests exist or what the most effective treatment might be. The opponents of IPM also pointed out that homeowners who lack training in the principles of IPM are ill equipped to follow them. Instead, they rely on the advice of marketing materials for pesticides and on sales pitches by lawn care companies that make money selling treatments to guide their decisions making.

The pesticide ordinance proposed by the Task Force attempts to reconcile the differences in the two approaches by prohibiting the use of any pesticide, organic or synthetic, on any turf or hardscape in the City of Portland. This approach requires homeowners and land managers to utilize best management practices that do not rely on the use of pesticides in order to discourage the outbreak of pests and to manage them if they appear. If, despite the application of these BMPs, a property owner experiences a severe problem with pests the ordinance allows him or her to apply to the City Manager for a waiver under these specific conditions:

- Emergency situations (defined as a serious, unexpected situation, often requiring immediate action)
- Threats to public health, safety, or welfare
- Control of invasive species that threaten the environment
- Threats to buildings or structures

In order for the City Manager to grant a waiver the request must be for a circumstance that meets the criteria established by the ordinance and the applicant must provide documentation describing the course of action proposed. The waiver request must also demonstrate that the applicant has considered non-pesticide options and is using the least toxic, most effective pesticide for the given circumstance. Under the provisions of the ordinance, waivers cannot be granted for cosmetic purposes, for pre-emptive applications, or for broadcast applications. Additionally, the City Manager may prescribe conditions or limitations to an otherwise approved use. The ordinance requires a response from the City Manager to a waiver request within three days. Following any application, the applicator would be required to submit documentation detailing the type of pest treated for, steps taken prior to treatment, and any information required about the application as specified on the Maine Board of Pesticides Control Board log.

Task Force members recognized that an ongoing education campaign to educate the public about best practices regarding turf and landscape management is vital. They recommend that such a campaign be adequately funded, utilize a variety of channels including social media and posters in retail stores, amongst others. For source material the campaign should draw on a variety of resources including organizations promoting organic management practices as well as information from City and State sources. Task Force members also recommended that the City collaborate with partners such as other municipalities and environmental groups in the development and distribution of educational material. This is because retailers throughout the region sell pesticides and because pesticide use impacts the environment, particularly waterways, on a regional level.

Providing a robust education program about the ordinance and its requirements would hopefully spur compliance with its provisions. If this is not the case, the draft ordinance provides the City Manager with the authority to take enforcement action under the City Code, Chapter 1, § 1-15, which provides for a fine in an amount between \$50 and \$500 per offense. In practice, the Task Force would anticipate that City staff would seek to provide additional education in order to gain compliance as allowed by the ordinance.

In order to provide citizen participation and oversight in the pesticide program, the proposed ordinance would establish the Pesticide Oversight Committee. This group would be comprised of seven members including two licensed pesticide applicators, two environmental professionals, and three at-large members who are neither licensed applicators nor environmental professionals. Amongst their duties, they would be responsible for assisting with the development of educational material for the outreach campaign and, perhaps more importantly, for providing an annual report to the Sustainability and Transportation Committee recommending any necessary amendments to the ordinance.

Toward the end of their deliberations, the Task Force decided to limit the scope of the draft ordinance to turf areas -- such as lawns, athletic fields and open spaces -- and hardscapes -- such as driveways, walks, and patios. Most members agreed that the vast majority of pesticide use for cosmetic purposes occurs in these areas. Most members also agreed that pest control in other areas may offer significantly different challenges than posed on turf. An example of this is care of urban trees that face daunting conditions including compacted soils, salt runoff from winter operations, and limited areas for their roots because of paved streets and sidewalks.

As drafted, the ordinance recommended by the Pesticide and Fertilizer Task Force would take strong action to protect the environment and the public from the misuse of pesticides. It prioritizes non-pesticide approaches to caring for lawns, parks, and athletic fields by prohibiting the thoughtless use of potentially harmful chemicals. It also creates a process to carefully regulate the application of pesticides in situations when the preferred methods are not successful. Finally, it creates a citizen oversight committee charged with monitoring the efficacy of the ordinance and reporting its findings to the City Council on an annual basis. This ensures an ongoing review the City's pesticide policy and provides opportunities for thoughtful amendments in the future.

Note regarding fertilizers:

The members of Pesticide and Fertilizer Task Force agree that the widespread use and misuse of fertilizers contributes significantly to degraded water quality in our waterways. Nutrient runoff causes algal blooms that reduce the amount of oxygen in the water, harming aquatic life. It also contributes to increased acidification of coastal waters which harms shellfish by making it more difficult to grow their shells. They feel, however, that discussion of this issue should be addressed by a subsequent committee as the methods of addressing the problem may be quite different than those proposed for regulating pesticide use.

PESTICIDE DRAFT ORDINANCE #6

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 wishes to protect the quality of Casco Bay and other waterways that support the economic vitality of local fisheries and the working waterfront; and

WHEREAS, the City of Portland recognizes that healthy soils serve as the foundation for vibrant ecosystems and pest-resistant plant life; and

WHEREAS, the City of Portland wishes to promote land care practices that promote the development of healthy soils to minimize the need to apply pesticides to control unwanted pests; and

WHEREAS, the City of Portland also recognizes that there may still be a 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~~ may result~~s~~ 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 ornamental landscapes, given the availability of viable alternative practices and products; and

WHEREAS, a growing number of communities and municipalities including the City of Portland 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 34-12, which said Sections read as follows:*

Pesticide Use Ordinance

34-1. 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.

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Applicator: Any person, individual or entity without a license who applies pesticides to privately or publicly owned land located within the limits of the City of Portland.

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

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.

Emergency: A serious, unexpected, and often dangerous situation requiring immediate action.

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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

Invasive Species: Aa 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.

Non-synthetic Pesticide: This term means and includes any and all pesticides derived from natural sources, not synthetically manufactured as registered with the State of Maine Board of Pesticides Review available: maine.gov.

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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, whether synthetic or non-synthetic, 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, including, but not limited to, garden centers or shops, 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.

Turf: Grass, lawn, sod or the surface layer of the earth held together by roots.

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.

34-2. Applicability.

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

34-3. Pesticide Application Near Water Bodies.

The use or application of any non-synthetic or synthetic pesticides on privately or publicly owned turf, walkways, driveways and/or patios ~~land~~ shall not occur within seventy-five (75) feet of any water body or wetland.

34-4. Pest Management.

(a) It is hereby the policy of the City of Portland to prioritize turf ~~land~~ care practices that do not use pesticides to control pests. In circumstances where pesticides must be used a waiver pursuant to § 34-8 shall be granted, and the minimum amount of pesticides, and the least toxic pesticide, needed to effectively control pests in all areas of application on privately and publicly owned land within the City shall be used. As such, applicators and licensed applicators by pest management activities shall use non-pesticide management tactics ~~shall be used on publicly and privately owned land located within the City of Portland shall be used first.~~ These tactics include mowing high, leaving lawn clippings in place, top dressing compost, and proper irrigation. If these non-pesticide management tactics are ineffective, a waiver for such use is granted by the City Manager or his or her designee, pursuant to § 34-8, shall be conducted in accordance with the following:

1. Non-pesticide management tactics shall be used first. These include mowing high, leaving lawn clippings in place, top dressing compost, and proper irrigation.;
2. If non-pesticide management tactics prove ineffective, 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)(1-6), as may be amended from time to time;
3. If the pesticides listed on the FIFRA Minimum Risk List prove ineffective, other 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;

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- ~~iii. Determine that the pest population exceeds acceptable safety, economic or aesthetic threshold levels (except in instances where pests threaten public or ecological health);~~
- ~~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 Pesticide Oversight 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; and~~

~~4. Synthetic pesticides shall be used only as a last resort so long as for such use. If synthetic pesticides must be used, such use shall be allowed only if a waiver is granted for such use by the City Manager or his or her designee as described in §34-8.~~

(b) The following steps shall be taken by an applicator or licensed applicator in all cases:

1. Monitor for pest presence or conditions conducive to a pest outbreak;
2. Identify the pest specifically;
3. Determine that the pest population exceeds acceptable safety, economic or aesthetic threshold levels (except in instances where pests threaten public or ecological health);
4. Utilize control measures that have been demonstrated to be practicable, effective and affordable and in accordance with the hierarchy outlined in subsection (a) above;
5. Compile and submit a written document to the Pesticide Oversight Committee describing how the pest problem was treated. Information in the written document

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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; and

6. If a pesticide is used notice shall be posted on the privately or publicly owned land in accordance with § 34-6.

34-5. Pesticide Oversight Committee.

(a) There is hereby created the following Pesticide Oversight Committee (the "Committee").

(b) The Committee shall be comprised of seven (7) members, including two (2) licensed applicators, two (2) environmental professionals, and three (3) at-large resident representatives who are neither licensed applicators or environmental professionals. 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 chaired by one (1) member, approved through a majority vote of 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 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 Sustainability and Transportation 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; number of waivers granted by the City Manager or his or her designee; and comprehensive data taken from the written documents provided by ~~Licensed~~ Applicators and/or 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.

34-6. Public Notification.

If ~~synthetic~~ pesticides are used or applied ~~as the result of the granting of a waiver pursuant to §34-8~~, the following posting requirements shall be complied with by ~~an~~ the licensed applicator and/or licensed applicator:-

(a) A warning sign shall be posted on the privately or publicly owned land ~~in compliance with this Chapter~~. These signs must be posted before application activities commence on the land and left in place for at least forty-eight (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 (5) inches high and four (4) 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 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; and

(e) All 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.

(f) For licensed applicators, the requirements above 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.

34-7. Education.

(a) Within one (1) year of the adoption of this Chapter, 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 minimizing the role of pesticides in the local environment. 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; and/or
4. Resources about organic pest management including, but not limited to, resources from or available through Maine Organic Farmers and Gardeners Association ("MOFGA"), Northeast Organic Farming Association ("NOFA"), and/or Beyond Pesticides.

(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. Waivers.

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(a) In situations that are an emergency, threaten the public health, welfare and/or safety, ~~or~~ for the control of invasive species that pose a threat to the environment and/or buildings or structures or where pesticides are requested to be used as outlined in § 34-4, persons applicators or licensed applicators shall ~~may~~ apply to the City Manager or his or her designee for a waiver from the provisions of this Chapter ~~from the provisions of this ordinance prior to the use of a prohibited product, including, but not limited to, synthetic pesticides, or prior to the conduct of a prohibited application.~~

(b) The waiver application shall be in writing, be filed by the applicator or licensed applicator with the City Manager or his or her designee ~~with and on a form prescribed by the City Manager or designee~~, and shall include the following information: 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 City Manager or his or her designee shall ~~must~~ find that all of the following criteria are met:

1. A situation ~~exists that~~: is an emergency; threatens the public health, safety and/or welfare; ~~and/or is the result of an invasive species~~; poses a threat to the environment, is necessary to protect buildings or structures from damage, or is necessary as described in § 34-4 ~~where invasive species pose a threat to the environment~~;
2. The applicant has carefully evaluated all alternative methods and materials including, but not limited to, non-pesticide management tactics, minimum risk pesticides, non-synthetic pesticides, and is choosing to use the minimum amount of the least toxic, most effective pesticide necessary;

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3. The applicant will, to the greatest extent practical, minimize the impact of the application on abutting properties; and

4. To the maximum extent possible the~~he~~ grant of the waiver will not be detrimental to the public's health, safety or welfare.

(c) The City Manager or his or her designee shall act within ~~three~~five (35) business days of receipt of a completed waiver application.

(d) In approving any waiver application, the City Manager or his or her designee may also prescribe conditions and safeguards as are appropriate. The waiver decision of the City Manager or designee shall be in writing, with copies provided to the applicant, the Committee, and the Sustainability Coordinator. The decision of the City Manager or his or her designee shall be final.

34-9. 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 repellant;
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.

(b) 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-ways
 - i. Any and all land, on, over, under, abutting or along a City of Portland or State of Maine street or right-of-way located in and/or through the limits of the City of Portland.

(c) Uses:

1. Any use of ~~aof~~ pesticides mandated by state or federal law or required by an order or decision from a court or state or federal agency; or
2. Any use of pesticides necessary ~~in~~ in commercial agriculture.
- ~~3. in health and safety applications; and~~
- ~~4. in applications to reduce or eliminate invasive species.~~
- ~~5. in protection of buildings and structures from damage from pests.~~

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34-10. 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, S Section 1-15 or by providing education to a person or entity that has violated a provision of this Chapter.

34-11. 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.

34-12. Conflicts with Other Ordinances.

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

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