

1. Agenda 9/7/2017

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[AGENDA 9_7_2017.PDF](#)

2. Minutes

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[ST MEETING MINUTES AUGUST 16 2017.PDF](#)

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3. Continue Workshop On Draft Pesticide Ordinance

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[ST COMMITTEE WORKING DRAFT PESTICIDE ORDINANCE.PDF](#)

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CITY OF PORTLAND, MAINE

Standing Committee Sustainability and Transportation

Councilor Spencer Thibodeau (D2), Chair

Councilor Belinda Ray (D1)

Councilor Jill Duson (A/L)

Agenda

9/7/2017, 2017

5:45 PM

Council Chambers

1. Review and approve minutes from July 26 and August 17, 2017
2. Sustainability Updates
3. Continue workshop on draft pesticide ordinance
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
August 16, 2017

Members Present: Councilor Thibodeau, Councilor Ray, Councilor Duson
Other Councilors Present: Mayor Ethan Strimling
Staff Present: Troy Moon, Melissa Graffam, Chris Branch, Mike Murray

Committee Updates

Recycling Carts - Carts are currently being delivered. They have distributed carts to the Monday, Tuesday and Friday trash routes. Currently working on Thursday routes and then will finish with Wednesday trash routes. We will be sending carts to Peaks Island next week. Other islands will not be receiving the carts as they have their trash/recycling collected differently.

Mike Murray mentioned a minor amendment to the city ordinance; Section 12-16 Definitions. Changing the definition from rectangular plastic bins to lidded, rolling plastic carts. Will be in the City Council Agenda for either August 21 or September 6 (1st read).

Councilor Ray mentioned some concerns on the Munjoy Hill area with limited space for the residents to store their carts. She asked if they could leave them on the sidewalk/esplanade. Unfortunately, they cannot.

Chris Branch, Director of Public Works, said that they are currently having a problem with residents putting their purple bags in the recycling cart. We have also had issues with co-mingling in the carts that have been delivered to ecoMaine.

The Committee wanted to pass on their thanks to everyone associated with this program for their continued hard work.

Street Lights - Continuing to work with TEN Connected Solutions. Will be having demo LED lights on Cedar and Casco Streets. Councilor Duson mentioned that sending notices to the residents in the neighborhood about these lights would be a good idea.

Ocean Avenue Solar - Staff is working with Maine DEP on testing the landfill. There was landfill gas; will incorporate venting system with the landfill cap.. Public Works is working with Sargent Construction to use their material from the State Street project for fill. Our consultant

has filed a plan with the Department of Environmental Protection to make sure that the material is acceptable.

Workshop Draft Pesticide Ordinance

The Committee worked on the wording of the draft pesticide ordinance. Some items that were discussed were:

Councilor Duson wants to make sure that the City is documenting all of its standard operating principles, so that it is a public document. This way the city (and its employees) are able to plan and track what they are or are not using. Such as, have a management plan documented for the Heritage Elm trees.

Councilor Thibodeau asked members how they felt about phasing in the ordinance, like South Portland does. He suggested the City would go first (just like South Portland) for March 1, 2018 (not including the municipal golf course or the five (5) high-use fields); January 1, 2019 for private homes (residentials, not including the municipal golf course or the five (5) high-use fields); and January 1, 2020 for the municipal golf course and the five (5) high-use fields either by waiver or organic. It was also mentioned to allow private schools (i.e. Cheverus, Waynflete, college fields) time to make the change over to organic.

Councilor Duson asked about any use by the Audubon? Would also like to see that the golf course disclosure as to what and why the pesticides are being used.

Committee then discussed the PMAC. Councilor Duson feels that we have enough city staff who could handle this task. We have the capacity to oversee our ordinances. This would create another route for staff. Councilor Ray likes the PMAC format (that South Portland uses) where two (2) members of the oversight committee to review waivers and the City Manager approves or disapproves. Councilor Ray would like to see it be combined with city staff and outsiders.

At the next meeting items to be discussed/looked at will be the waiver process;, notifications and signage; enforcement and penalties; and PMAC.

Motion was made by Councilor Thibodeau to adjourn the meeting at 6:20 pm. Motion was seconded by Councilor Duson. All in favor. 3-0.

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
Sustainability and Transportation Committee Working Draft
9/1/2017

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 may result 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:*

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 on publically and/or privately owned turf, walkways, driveways, and/or patios, 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.

High Use Athletic Facility means the athletic fields in the following locations: Fox Field, Deering Oaks, Deering High School, Preble Street, Payson A.

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. Applicability

The following provisions shall be applicable to all turf, landscape and outdoor pest management activities conducted within the City, on both public and private land.

Sec. 34-5 Permitted, prohibited, and exempt pesticides

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:

(a) Permitted Pest Management Activities and/or Materials:

- (1) Use or application of natural, organic land care protocols;
- (2) Synthetic substances specifically listed as "allowed" on the U.S. Department of Agriculture's National List of Allowed and Prohibited Substances (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;

(b) Prohibited Pest Management Activities and/or Materials:

- (1) Synthetic substances other than those described in (a)(2) above;
- (2) Non-synthetic substances specifically listed as "prohibited" on the National List;
- (3) The use or application of pesticides (whether natural, organic, "non-synthetic," synthetic or otherwise) within 75 feet of a water body or wetland.

(c) Exempt Pest Management Activities and/or Materials. The following are exempt from the provisions of this ordinance (and therefore 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 recommended by the manufacturer.
- (d) Exempt Applications. The following applications are exempt from the provisions of this ordinance (and therefore 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 provided that the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary.
 - (3) Hadlock Field;
 - (4) Heritage Elms, except that the City shall provide disclosure on the City's website, stating the pesticide used, date of application, and reason for use;

- (5) 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
 - (6) Right-of-way spraying - Prohibited pesticides may be used by a public utility that maintains a right-of-way through the City.
- (e) Exempt Uses. The following uses are exempt from the provisions of this ordinance (and therefore are allowed):
- (1) Any use of pesticides mandated by state or federal law or required by an order or decision from a court or state federal agency.

Sec. 34-6. Waivers.(from Task Force)

(a) In situations that are an emergency, threaten the public health, welfare and/or safety, 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, applicators or licensed applicators shall apply to the City Manager or his or her designee for a waiver from the provisions of this Chapter.

(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, 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 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; 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;

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;
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 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 (3) 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.

Sec. 34-7. Pesticide Oversight Committee. (from Task Force)

(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 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.

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.

NEW Sec. 34-9. Management plan for publicly owned parks and open spaces.

The City shall maintain a management plan for public open spaces that shall be posted on the City website.

Sec. 34-10. 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 POC shall assist the Sustainability Coordinator in the preparation and distribution of 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 POC.

(c) The POC shall also assist in the development 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 Code Enforcement official 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 no later than March 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 City-owned property (but not to any (i) golf course or (ii) high use athletic fields).

(b) Phase Two: Commencing no later than January 1, 2019, 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 (i) golf course or (ii) high use athletic fields).

(c) Phase Three: Commencing no later than March 1, 2020, the provisions set forth in Sec. 34-5 on the use or application of certain pesticides on (i) golf courses designated as a Certified Audubon Cooperative Sanctuary and (ii) high use athletic facilities, public or private.

Notwithstanding the foregoing and during the term of Phase One and Phase Two in this Section, the City shall provide public notice on the City's website (in addition to the notice required herein) of the pesticides being applied, the date of application and purpose of application at least two (2) weeks prior to use of any pesticide thereon.

Memo

To: Sustainability and Transportation Committee: Councilors Jill Douson, Belinda Ray, Spencer Thibodeau

From:

Sally DeLuca, *Director of Parks, Recreation and Facilities Department*

Ethan Hipple, *Parks Director*

Jeff Tarling, *City Arborist*

Ethan Owens, *Assistant Parks Director*

Joe Dumais, *Cemetery Manager*

Date: August 24, 2017

Subject: Pesticide Ordinance Exemptions

Summary:

City Parks Staff are writing to advise that any proposed Pesticide Ordinance include exemptions for the following areas and/or uses on city properties. Omission of these exemptions from the ordinance could result in significant field replacement costs, threats to our highly-valued heritage trees and street trees, spread of invasive species, and prolonged responses to public safety issues.

1. **Exemption: 5 high-use Athletic Facilities:** The Parks Division supports organic-only practices on the majority of Portland's 42 athletic field facilities, with the exception of the following exempted areas:
 - a. Fox Field, Deering Oaks, Deering High, Preble St, Payson A. For optimal turf health, facility managers try to limit use of grass fields to between 200-500 hours of activity per year. Because of Portland's energetic and recreation-minded population, and a limited number of fields, use of our athletic fields is extremely high--upwards of 1,000 hours per year. This overuse puts stress on the soil and plants, which requires additional management tools. Overabundance of weeds or other pests in an athletic field can cause bumpy, unsafe playing surface, topsoil erosion and water quality issues, and uneven soil conditions that can be deemed unsafe or unplayable by game officials. The remaining 37 athletic facilities would continue to receive organic-only practices.
 - b. Providing an exemption for these 5 facilities will allow staff the time to research, develop, and monitor the effect of organic-only practices on the remaining fields. Depending on the outcomes at the organic-only fields, those practices could be applied to our exempted high-use fields in the future, once we have data and experience to apply best practices.
2. **Exemption: Trees.** Because of the high value that society places on trees for their shade, carbon sequestration, wildlife habitat, soil conservation, and natural beauty, even the most restrictive pesticide regulations (such as Ontario, Canada) have included exemptions to protect trees from known and unforeseen pests. Timeliness is critical for an effective response. We recommend that this use is exempted.
3. **Exemption: Threats to public health or safety on public property** (i.e: wasp nests near trails or recreational facilities, poison ivy, etc...). Adding a waiver request and delay to the elimination of harmful pests in public areas will delay staff response time to a level that may be unacceptable to the public. For example, if a parent calls in to report a wasp nest on a public trail, staff typically try to respond within 24 hours. With a waiver request process, the staff person would need to return to office, fill out

paperwork, submit to City Hall, wait up to 3 days for response, then respond within 24 hours--up to a 5 day response time for what is now a routine service request. We recommend that this use is exempted.

4. **Exemption: Invasive Species.** Pesticides are a key tool in fighting the spread of invasive species that harm native vegetation and wildlife, and they are routinely used by land trusts, wildlife managers and others who have the responsibility for maintaining native landscapes and wildlife habitat. The Casco Bay Invasive Species Network (Casco Bay Island Development Association, Maine Island Trail Association, Casco Bay Estuary Partnership, Maine Coast Heritage Trust, Fort Williams Park Foundation, and US EPA) have published guidelines for adaptive invasive management, which include use of synthetic pesticides as a tool. Other tools include manual removal, mechanical means, biological treatments and native plantings. Staff believe that the city should follow the guidance of experts on this topic and avoid a costly and time consuming waiver process for a process that is already well-defined and regulated. We recommend that this use is exempted.

Background Information

- 710 acres of 721 total Park acres are currently free of regular use of any pesticides (organic or synthetic).
- All city-managed properties are cared for using Best Management Practices for total soil and turf health: high-mowing, mulching, aeration, compost top-dressing, overseeding, slice-seeding.
- City staff have for many years used organic products and practices on a majority of city properties.
- Parks Division staff are leaders in reducing or eliminating the use of pesticides and maintain demonstration projects to educate public on how to reduce dependence on synthetic inputs:
 - [Yardscaping gardens at Back Cove](#)
 - [Urban Meadow Project](#)--throughout Portland
- No current pesticide use on playgrounds, garden beds, landscape areas, or lawn areas in parks, open spaces and cemeteries.
- Pesticides are never used for cosmetic or aesthetic purposes--the high amount of dandelions and other common weeds in our turf areas are testament to that.
- Organic and Synthetic Pesticides are currently used on a limited as-needed basis on high-use athletic fields to provide even, safe playing surfaces.
- All exempted applications are on an as-needed basis and conducted by Licensed Applicators with appropriate public notification as required by state law.