

1. Agenda

Documents:

[AGENDA 10_12_2017.PDF](#)

2. Draft Pesticide Ordinance

Documents:

[DRAFT COMPARING COMMITTEE DRAFT VS SOUTH PORTLAND DRAFT.PDF](#)
[S_AND_T DRAFT PESTICIDE ORDINANCE 10 12 2017.PDF](#)
[S_AND_T DRAFT PESTICIDE ORDINANCE 10 12 2017_CLEAN.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

October 12, 2017

5:00 PM

Council Chambers

1. Review and approve minutes from September 7, 2017
2. Public Hearing on Draft Pesticide Ordinance
3. Adjourn

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 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:~~

~~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-~~1416~~, 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:

Aggrieved party shall mean an individual or entity that applies for but is denied a waiver from provisions of this ordinance as described in Section 34-6.

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 Facilities means the following playing fields located in the following parks as listed in Chapter 18-11: Fox Field, Quinn Field and Deering Oaks Baseball Field at Deering Oaks Park, Back Cove Park, and Payson A Field in Payson Park. It shall also include Presumpscot Field at Deering High School.

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 act of managing or controlling pests through the use of mechanical, cultural, or, biological processes, or through the use of natural, organic, or non-synthetic substances. **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.

Pest Management means the act of managing or controlling pests through the use of chemical, mechanical, cultural, biological, or genetic measures.

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.

Comment [t1]: No corresponding section in the South Portland draft.

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

Comment [t2]: This corresponds with Sec. 34-6 of the Committee draft

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

- (1) ~~One member of city staff, designated by the City Manager; 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) Developing and implementing outreach and education as specified in Sec. 34-11 of this ordinance~~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 by March 31 to the Sustainability and Transportation Committee or whatever committee assigned an oversight role by the City Council; which includes, among other things, a summary of its educational outreach; recommendations on any necessary amendments to this Chapter; the number of waivers granted in the past year; 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; and,
- and

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~~

(87) Additional responsibilities as may be deemed necessary by the City Council.

(c) PMAC Officers, meetings and records~~Officers, meetings and records.~~

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- (1) The members shall annually elect a chair and a secretary 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 at least five (5) times annually~~The PMAC shall meet regularly;~~
- (5) Minutes shall be kept of all meetings and posted on the City web page~~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) An annual report of the PMAC's activities shall be submitted to the Sustainability and Transportation Committee by March 31 of each year.~~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.~~

D Waiver Subcommittee:

- (2) A subcommittee of the PMAC shall be established annually and consist of the ~~chair~~ designated city staff member and one other member of the PMAC designated by the Chair.
- (3) This subcommittee shall be authorized to review and decide waiver applications as described in section 34-7.

The PMAC shall schedule meetings of the Waiver Subcommittee frequently enough to be responsive to waiver requests. All meeting dates shall be posted in advance on the City calendar.

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

Comment [t3]: This section corresponds to Section 34-5 of the Committee draft

Subject to the applicability dates set forth in Sec. 34-14 herein, for all 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") or,
- (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; or,
- (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 seventy five 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/or,
- (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 applications

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 applications. Prohibited pesticides may be used on golf courses provided that the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary;

(3) Hadlock Field applications;

(4) Treatments for Heritage Elms;

(5) Applications on fields at High Use Athletic facilities (until January, 2021, unless this date is extended by the City Council,

(6) Invasive insect applications

(7) 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

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

(9) For any exempt use by the City, disclosure shall be made in the annual report described in Section 34-9 of this chapter.

(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.

(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

Comment [t4]: This section corresponds to Section 34-7 of the Committee Draft

following: the reason for requesting the use/application of a prohibited pesticide, 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) To the maximum extent possible The grant of the waiver will not be detrimental to the public health, safety or welfare.

(c) The Waiver Committee shall hear all complete waiver applications received withinten business days and shall issue a ruling within three business days of reviewing an application. ~~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 or his or her designee (who shall not be a member of the PMAC) shall act upon the appeal within five (5) business days of receipt of the appeal. The decision of the City Manager or designee shall be in writing, with copies provided to the appellant, the PMAC Waiver Committee, and the Sustainability Coordinator. The decision of the City Manager or his or her designee shall be final. 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.

Comment [t5]: This section corresponds with Section 34-10 of the Committee Draft

~~If prohibited pesticides are to be used/applied the following posting requirements shall be complied with by any person 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) ~~A warning sign shall be posted on the privately or publicly owned land. 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 the duration of the placement.~~

(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.

| F) For licensed applicators, 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.

Comment [t6]: This section corresponds with Section 34-8 of the Committee draft.

Sec. 34-9. Management plan and annual reporting 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. The City Manager or designee shall provide an annual report the PMAC describing efforts to reduce the use of chemical pesticides, a description of synthetic pesticides used during the previous year, the reason for their use, and the cost of such pesticides.

Comment [t7]: There section is new in Committee draft and did not exist in the South Portland draft.

Sec. 34-9. Outreach and Education.

Comment [t8]: This corresponds with Section 34-11 of the Committee draft.

(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 chapter 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.

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.

Comment [t9]: This section corresponds with Section 12 of the Committee draft.

Sec. 34-11. 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 by providing education to a person or entity that has violated a provision of this Chapter or pursuant to Portland City Code, Chapter 1, § 1-15 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

Comment [t10]: This section corresponds to Section 34-13 of the Committee draft.

~~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.

Comment [t11]: This section corresponds with Section 34-14 of the Committee draft

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.

Comment [t12]: This section corresponds with Section 34-15 of the Committee draft

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

~~In order to allow time for residents and businesses to become familiar with the requirements of this chapter, the prohibitions on the use of certain products and/or applications (and the related public notification, signage and reporting requirements) shall be effective as follows:~~

Comment [t13]: This section corresponds with Section 34-16 of the Committee draft.

~~(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 outdoor pest management activities shall apply to City-owned property (but not to high use athletic fields or golf courses).~~

~~(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 outdoor pest management activities shall apply to private property (but not high use athletic fields or golf courses).~~

~~(c) Phase Three: Commencing no later than January 1, 2021, the provisions set forth in Sec. 34-5 on the use or application of certain pesticides on high use athletic fields, public or private, however, the City Manager or designee may request that the City Council extend this date if he or she~~

determines more time is needed to transition to organic management practices for these facilities.

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

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

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

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

DRAFT PESTICIDE USE ORDINANCE
Sustainability and Transportation Committee Draft
Based on comments from 9/7/2017

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 Chapter, 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 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:

Aggrieved party shall mean an individual or entity that applies for but is denied a waiver from provisions of this ordinance as described in Section 34-6.

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

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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.

High Use Athletic Facilities means the following playing fields located in the following parks ~~that are as~~ listed in Chapter 18-11: Fox Field, Quinn Field and Deering Oaks Baseball Field at Deering Oaks Park, Back Cove Park, and Payson A Field in Payson Park. It shall also include ~~the athletic~~ Presumpscot, ~~field~~ Field at Deering High School.

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 act of managing or controlling pests through the use of mechanical, cultural, or, biological processes, or through the use of natural, organic, or

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~~non-synthetic substances. means the approach to eliminate pests using only natural, organic, or non-synthetic substances.~~

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.

Pest Management means the act of managing or controlling pests through the use of chemical, mechanical, cultural, biological, or genetic measures.

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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 all 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") or,
- (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; or,
- (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 seventy five 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/or,
- (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 applications
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 applications. Prohibited pesticides may be used on golf courses provided that the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary;

(3) Hadlock Field applications;

(4) Treatments for Heritage Elms;

(5) Applications on fields at High Use Athletic facilities (until January, 2021, unless this date is extended by the City Council,

(6) Invasive insect applications

(7) 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

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

(9) For any exempt use by the City, disclosure shall be made in the annual report described in Section 34-9 of this chapter.

~~(8)~~

(e) Exempt Uses. The following uses are exempt from the provisions of this ordinance (and therefore are allowed):

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- (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. Pest Management Advisory Committee (PMAC).

- (a) The Pest Management Advisory Committee (PMAC) is hereby established. The PMAC shall consist of seven (7) members as follows:
 - (1) ~~The City's Stormwater Program Coordinator~~ One member of city staff, designated by the City Manager;
 - (2) One practicing agronomist ~~(landscaping professional)~~ 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 (6) 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 (2) 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 the following: serving in an advisory capacity to the City Council and the Sustainability Coordinator to oversee this chapter through the following:
 - (1) Advising the Sustainability and Transportation Committee 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) Developing and implementing outreach and education as specified in Sec. 34-11 of this ordinance (in coordination with the Sustainability Coordinator);
- (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 ~~[insert date, coordinated with 34-7 (e)(5) below]~~ by March 31; to the Sustainability and Transportation Committee or whatever committee assigned an oversight role by the City Council; which includes, among other things, a summary of its educational outreach; recommendations on any necessary amendments to this Chapter; the number of waivers granted in the past year; 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; and,
- (7) Any additional responsibilities as may be assigned and deemed necessary by the City Council.

(c) **PMAC Officers, meetings and records.**

- (1) The members shall annually elect a chair and a secretary from their membership.
- (2) All meetings of the PMAC shall be noticed and open to the public in accordance 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 at least five (5) times annually;

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- (5) Minutes shall be kept of all meetings and posted on the City web page;
- (6) An annual report of the PMAC's activities shall be submitted to the Sustainability and Transportation Committee in by March 31 of each year. ~~(need to determine date and coordinate with 34-7 (b) (6) above); and~~

(d) Waiver Subcommittee:

- (1) A subcommittee of the PMAC shall be established annually and consist of the ~~chair~~ designated city staff member and one other member of the PMAC designated by the Chair. At least one of must be a Maine Board of Pesticides Control licensed landscape professional.

- (2) This subcommittee shall be authorized to review and decide waiver applications as described in section 34-7.

- ~~(2)~~(3) The PMAC shall schedule meetings of the Waiver Subcommittee frequently enough to be responsive to waiver requests. All meeting dates shall be posted in advance on the City calendar.

Comment [t1]: Need flexibility so the chair can appoint alternates if the primary member is not able to attend a meeting.

Comment [t2]: This restriction would greatly restrict the pool of PMAC members who could serve on the Waiver committee – if the City staff person is not a licensed applicator one of the two licensed applicators would have to be on the committee and the other one would have to be the alternate. A meeting could not be held if neither of them were available or if one or both of the positions for licensed applicators were to be vacant.

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Comment [t3]: This may be a standing meeting as discussed at S&T but this gives flexibility if there are not that many waiver requests. It could start with a series of standing meetings but more (or fewer) meetings could be scheduled if necessary.

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Sec. 34-7. Waivers.

- (a) In situations that are an emergency, threaten the public health, safety or welfare, for the control of invasive species that pose a threat to the environment persons shall apply to the PMAC Waiver Committee for a waiver from the provisions of this Chapter prior to the use/application of a prohibited pesticide or prior to the conduct of a prohibited application.
- (b) The waiver application shall be filed with the PMAC Waiver Committee, on a form prescribed by the Committee and shall include the following information: the reason for requesting the use/application of a prohibited pesticide; the proposed location(s) of the proposed application(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; and a pest

identification and threshold report. In order to approve a waiver application, the PMAC Waiver Committee 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; involves an invasive species;— which poses a threat to the environment; or requires a non-permitted pest management activity and/or material to protect buildings or structures from damage;
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 Waiver Committee shall ~~act~~hear all complete waiver applications received within fifteen ten business days of receipt of a and shall issue a ruling within three business days of reviewing an application. completed waiver application.

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

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Comment [t4]: This time frame allows the bi-monthly meeting schedule contemplated by the committee at the last S&T meeting but would not prevent faster action.

(e) A person aggrieved by a decision of the PMAC Waiver Committee shall have five (5) business days to appeal the decision of the Committee to the City Manager or designee. The appeal shall be in writing and shall state the basis for the appeal. The City Manager or his or her designee (who shall not be a member of the PMAC) shall act upon the appeal within ~~fifteen~~ five (15) business days of receipt of the appeal. The decision of the City Manager or designee shall be in writing, with copies provided to the appellant, the PMAC Waiver Committee, and the Sustainability Coordinator. The decision of the City Manager or his or her designee shall be final.

Comment [t5]: This is a short a time to respond. Staff recommends 10 days.

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 as outlined in Chapter 50 of the Code of Maine Rules, all State of Maine licensed applicators are required to submit to the PMAC an annual summary report on or before February 1 relating to the preceding calendar year. This 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. Management plan and annual reporting 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. The City Manager or designee shall provide an annual report the PMAC describing efforts to reduce the use of chemical pesticides, a description of synthetic pesticides used during the previous year, the reason for their use, and the cost of such pesticides.

34-10. Public Notification.

If prohibited pesticides are used or applied , the following posting requirements shall be complied with by any applicator and/or licensed applicator person:

(a) A warning sign shall be posted on the privately or publicly owned land. 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 the duration of the placement;

(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; and,

(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.

Sec. 34-1011. 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 attempt to provide information about this chapter 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-~~11~~12. Violations.

Any person violating any of the provisions of this chapter 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-~~12~~13. 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 by providing education to a person or entity that has violated a provision of this Chapter or pursuant to Portland City Code, Chapter 1, § 1-15 or.

| Sec. 34-~~13~~14. Severability.

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

| Sec. 34-~~14~~15. 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 chapter of the Portland City Code shall control.

| Sec. 34-~~15~~16. Effective date; Applicability dates.

In order to allow time for residents and businesses to become familiar with the requirements of this chapter, the prohibitions on the use of certain products and/or applications (and the related public notification, signage and reporting requirements) shall be effective 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 outdoor pest management activities shall apply to City-owned property (but not to high use athletic fields or golf courses).

(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 outdoor pest management activities shall apply to private property (but not high use athletic fields or golf courses).

(c) Phase Three: Commencing no later than January 1, 2021, the provisions set forth in Sec. 34-5 on the use or application of certain pesticides on high use athletic fields, public or private, however, the City Manager or designee may request that the City Council extend this date if he or she determines more time is needed to transition to organic management practices for these facilities.

DRAFT PESTICIDE USE ORDINANCE
Sustainability and Transportation Committee Draft
Based on comments from 9/7/2017

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

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

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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 Chapter, to be numbered Chapter 34, Sections 34-1 to 34-12, which said Sections read as follows:*

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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.

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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.

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- (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") or,
- (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; or,
- (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 seventy five 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/or,
- (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 applications
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 applications. Prohibited pesticides may be used on golf courses provided that the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary;
- (3) Hadlock Field applications;
- (4) Treatments for Heritage Elms;
- (5) Applications on fields at High Use Athletic facilities (until January, 2021, unless this date is extended by the City Council,
- (6) Invasive insect applications
- (7) 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
- (8) Right-of-way applications. Prohibited pesticides may be used by a public utility that maintains a right-of-way through the City.
- (9) For any exempt use by the City, disclosure shall be made in the annual report described in Section 34-9 of this chapter.

(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. Pest Management Advisory Committee (PMAC).

- (a) The Pest Management Advisory Committee (PMAC) is hereby established. The PMAC shall consist of seven (7) members as follows:

- (1) ~~The City's Stormwater Program Coordinator~~ One member of city staff, designated by the City Manager;
- (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 (6) 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 (2) 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 the following: serving in an advisory capacity to the City Council and the Sustainability Coordinator to oversee this chapter through the following:
 - (1) Advising the Sustainability and Transportation Committee 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) Developing and implementing outreach and education as specified in Sec. 34-11 of this ordinance (in coordination with the Sustainability Coordinator);
- (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 by March 31 to the Sustainability and Transportation Committee or whatever committee assigned an oversight role by the City Council; which includes, among other things, a summary of its educational outreach; recommendations on any necessary amendments to this Chapter; the number of waivers granted in the past year; 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; and,
- (7) Any additional responsibilities as may be assigned and deemed necessary by the City Council.

(c) **PMAC Officers, meetings and records.**

- (1) The members shall annually elect a chair and a secretary from their membership.
- (2) All meetings of the PMAC shall be noticed and open to the public in accordance 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 at least five (5) times annually;

- (5) Minutes shall be kept of all meetings and posted on the City web page;
 - (6) An annual report of the PMAC's activities shall be submitted to the Sustainability and Transportation Committee by March 31 of each year.
- (d) Waiver Subcommittee:
- (1) A subcommittee of the PMAC shall be established annually and consist of the ~~chair~~ designated city staff member and one other member of the PMAC designated by the Chair.
 - (2) This subcommittee shall be authorized to review and decide waiver applications as described in section 34-7.
 - (3) The PMAC shall schedule meetings of the Waiver Subcommittee frequently enough to be responsive to waiver requests. All meeting dates shall be posted in advance on the City calendar.

Sec. 34-7. Waivers.

- (a) In situations that are an emergency, threaten the public health, safety or welfare, for the control of invasive species that pose a threat to the environment persons shall apply to the PMAC Waiver Committee for a waiver from the provisions of this Chapter prior to the use/application of a prohibited pesticide or prior to the conduct of a prohibited application.
- (b) The waiver application shall be filed with the PMAC Waiver Committee, on a form prescribed by the Committee and shall include the following information: the reason for requesting the use/application of a prohibited pesticide; the proposed location(s) of the proposed application(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; and a pest identification and threshold report. In order to approve a waiver application, the PMAC Waiver Committee 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; involves an invasive species;— which poses a threat to the environment; or requires a non-permitted pest management activity and/or material to protect buildings or structures from damage;
 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 Waiver Committee shall hear all complete waiver applications received within ten business days and shall issue a ruling within three business days of reviewing an application. .
- (d) In approving any waiver application, the Waiver Committee may also prescribe conditions and safeguards as are appropriate to further the purposes of this chapter. The waiver decision of the Waiver Committee shall be in writing, with copies provided to the applicant, the PMAC, ~~and~~ the Sustainability Coordinator, and the City Clerk.
- (e) A person aggrieved by a decision of the PMAC Waiver Committee shall have five (5) business days to appeal the decision of the Committee to the City Manager or designee. The appeal shall be in writing and shall state the basis for the appeal. The City Manager or his or her designee (who shall not be a member of the PMAC) shall act upon the appeal within five (5) business days of receipt of the

appeal. The decision of the City Manager or designee shall be in writing, with copies provided to the appellant, the PMAC Waiver Committee, and the Sustainability Coordinator. The decision of the City Manager or his or her designee shall be final.

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 as outlined in Chapter 50 of the Code of Maine Rules, all State of Maine licensed applicators are required to submit to the PMAC an annual summary report on or before February 1 relating to the preceding calendar year. This 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. Management plan and annual reporting 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. The City Manager or designee shall provide an annual report the PMAC describing efforts to reduce the use of chemical pesticides, a description of synthetic pesticides used during the previous year, the reason for their use, and the cost of such pesticides.

34-10. Public Notification.

If prohibited pesticides are used or applied , the following posting requirements shall be complied with by any person:

(a) A warning sign shall be posted on the privately or publicly owned land. 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 the duration of the placement;

(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; and,

(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.

Sec. 34-11. 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 attempt to provide information about this chapter 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. 34-12. Violations.

Any person violating any of the provisions of this chapter 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. 34-13. 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 by providing education to a person or entity that has violated a provision of this Chapter or pursuant to Portland City Code, Chapter 1, § 1-15 or.

Sec. 34-14. Severability.

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

Sec. 34-15. 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 chapter of the Portland City Code shall control.

Sec. 34-16. Effective date; Applicability dates.

In order to allow time for residents and businesses to become familiar with the requirements of this chapter, the prohibitions on the use of certain products and/or applications (and the related public notification, signage and reporting requirements) shall be effective 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 outdoor pest management activities shall apply to City-owned property (but not to high use athletic fields or golf courses).

(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 outdoor pest management activities shall apply to private property (but not high use athletic fields or golf courses).

(c) Phase Three: Commencing no later than January 1, 2021, the provisions set forth in Sec. 34-5 on the use or application of certain pesticides on high use athletic fields, public or private, however, the City Manager or designee may request that the City Council extend this date if he or she determines more time is needed to transition to organic management practices for these facilities.

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