

City of Portland

Landcare Management Advisory Committee



Tuesday, February 4, 2025 at 6:30 PM The LMAC will conduct this meeting remotely via Zoom. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live either in person or via Zoom, a recording will be available in the [Agenda Center](#) following the meeting.

For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

To submit written public comment on an agenda item, email landcare@portlandmaine.gov. Submissions must be received by 12:00 pm the day before the LMAC meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the name of the agenda item (see below).

REMOTE ACCESS INFORMATION:

For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

<https://portlandmaine-gov.zoom.us/j/88652986949?pwd=mgaAiPTjR3MbmksS6QZIZQA8LBU4Tzc.1>

1. Welcome and Check Ins
2. Review and Approve Minutes from October 1, 2024
 - a. October 1 Minutes
3. Staff Update
4. Amendments to Chapter 34 Landcare Ordinance
 - a. Back up material
5. Set Next Meeting Date
6. Adjournment

CITY OF PORTLAND, MAINE
Landcare Management Advisory Committee
October 1, 2024
Start time: 6:30 PM

DRAFT Minutes October 1, 2024

Attendance: Jesse O'Brien, Melissa Runstrom, Carol Laboissonniere, Avery Kamila, Troy Moon, Erin Ferrell, Noah Tucker

Review and Approve April 2 Minutes

April 2 minutes unanimously approved.

Review Outreach Efforts

Erin will send out the pamphlet to the committee along with the link to the landcare lunchbreak recordings.

Kayley Weeks planned four Landcare Lunch Breaks webinars covering soil tests, Urban Run-Off, Healthy Lawncare Made Easy, Preparing Your Lawn for Winter with knowledgeable guest speakers. The webinars were all recorded and now live on the landcare website. The Office is seeing success with the yard signs. The webinar series created impactful content to live on the landcare website. The Committee will continue to brainstorm ideas for next year's outreach efforts. We may lean away from the webinars and move to other outreach efforts including in-person presentations.

Jesse recommends connecting with homeowners associations. We are open to ideas on how to contact homeowners associations. Possibly realtors, landlords groups.

When we have the contacts, what is the ask? Why would they do this? What is the benefit to them? Jesse recommends March or April for an outreach event for landcare professionals.

Waiver Committee Follow Up

There were two waiver applications from the same applicant over the summer to treat knotweed. The first waiver was denied because the knotweed had become too tall to treat in the proposed application. The second waiver was heard and the committee was split in decision. The applicant appealed to the City Manager and the waiver did end up being approved.

Avery notes that the residents were not aware of the ordinance or organic landcare and notes the emphasis on a need for more education efforts.

Updates on State Level Activity

Jesse notes it was a very active summer. Pesticide pick-up program is in effect to collect unused pesticides from residents. Mosquito borne illness is on the rise and we will stay on top of the recommendations. EPA is developing programs to protect endangered species and will affect labels over the next 5 years. University is hiring a horticulture specialist and UMaine Extension is offering a horticulture program. Agriculture apprentice program is also coming soon.

Agriculture Council of Maine sponsored bus rides to Augusta, blueberry fields, and farms. Jesse reports this effort was successful. DACF tabled with IPM council at Common Ground Fair.

Set Next Meeting Date

Avery and Melissa volunteered to meet with staff before the next meeting. The next full committee meeting will be January 7th.

Adjourned at 7:30 PM

City of Portland | Sustainability Office

Troy Moon, *Director*

To: Jesse O'Brien, Chair, and Members of the Landcare Management Advisory Committee

From: Troy Moon, Director of Sustainability

Date: January 29, 2025

Re: Proposed Amendments to Chapter 34



Proposed Action – Amending Chapter 34 to:

- Exempt the use of EPA reduced-risk pesticides such as Acelepryn (*chlorantraniliprole*) to control grubs when applied by a licensed applicator following instructions on the product label;
- Amend the waiver process so that waiver requests are reviewed by the LMAC as whole

Background/Analysis: Grub Treatment

On December 3, 2024, the Sustainability Office received a waiver request from Cheverus High School to treat a widespread grub infestation on their athletic fields. The request noted that school staff and contractors had found that the infestation had led to significant turf damage. Over the course of two years, school personnel implemented extensive cultural practices to control grubs and deployed several strategies to deter birds, raccoons, and other animals from entering the athletic fields to feed on the grubs. School personnel and contractors attempted two treatments of an organic product based on the bacterium *Bacillus thuringiensis* (Bt) that proved unsuccessful in controlling the grub infestation.

School officials have conducted testing to demonstrate that the turf grass is poorly connected to the soil because of the grub damage and could fail during athletic events. They also provided photographs of damage caused to the fields by animals foraging for the grubs. The poorly bonded turf grass combined with the holes and rough patches caused by the animals has created an unsafe playing surface that threatens the safety of student athletes.

To address the grubs, Cheverus proposed the use of Acelepryn, a product classified as “reduced risk” by the EPA. The proposed application method was use of a spreader to apply the product to the surface of the playing fields impacted by the grub infestation. Their scouting and analysis showed that the infestation impacts all of the playing surface. A copy of the application and photographs documenting the presence of grubs, field damage, and equipment used to deter animals is in the packet.

After reviewing the application and the ordinance, Sustainability Office staff determined that we could not accept the waiver request because Chapter 34 prohibits the use of broadcast

applications. We reviewed this issue with Corporation Counsel who indicated that an appropriate path to address this issue would be to pursue an amendment to the ordinance that exempts the use of Acelepryn to treat grub infestations. Counsel has provided draft language that is included in the meeting packet.

The Sustainability Office recommends adoption of the amendment to exempt Acelepryn when applied by a licensed applicator according to the label instructions for the following reasons:

1. Lack of an organic treatment method to address grub infestations

Healthy, organically maintained turf is highly resistant to grub infestation and damage, but grubs can become established even in healthy turf. When this happens, there are no organic methods that reliably control grub populations in Maine. Researchers continue to explore options such as Milky Spore, which is a type of bacteria that is harmful to grubs, application of nematodes, and application of another bacterium, *Bacillus thuringiensis* (BT). To date, they have shown to have significant limitations in our soils and/or they do not address all of the varieties of grubs that may be damaging turf in Maine.

2. Acelepryn presents minimal impact to the environment and to the public when used as directed on the product label

Acelepryn is classified as a reduced-risk pesticide by the EPA. As noted on its product label, “When used as directed, this product does not present a hazard to humans or domestic animals.” It is deemed safe enough that the EPA does not require a cautionary signal word such as Caution or Warning.

Acelepryn Label

2.0 PRECAUTIONARY STATEMENTS

2.1 Hazards to Humans and Domestic Animals

When used as directed, this product does not present a hazard to humans or domestic animals.

2.2 Personal Protective Equipment (PPE)

Applicators and other handlers must wear:

- Long-sleeved shirt and long pants.
- Shoes plus socks.

2.2.1 USER SAFETY REQUIREMENTS

After the product has been diluted in accordance with label directions for use, shirt, pants, socks, and shoes are sufficient Personal Protective Equipment (PPE). Follow manufacturer’s instructions for cleaning/maintaining PPE. If no such instructions for washables exist, use detergent and hot water. Keep and wash PPE separately from other laundry.

Organic products such as BT and Milky Spore, which are ineffective but currently allowed by our ordinance, must display a cautionary signal word of Caution and note hazards to humans and domestic animals.

Grub Gone (BT) label

PRECAUTIONARY STATEMENTS
HAZARDS TO HUMANS AND DOMESTIC ANIMALS
CAUTION
Harmful if absorbed through the skin, inhaled, or swallowed. Avoid contact with skin, eyes, or clothing and breathing dust. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, using tobacco, or using the toilet. Remove and wash contaminated clothing before reuse.
PERSONAL PROTECTIVE EQUIPMENT (PPE)

Milky Spore label

PRECAUTIONARY STATEMENTS:

Hazards to Humans and Domestic Animals:

CAUTION Harmful if inhaled or absorbed through skin. Causes moderate eye irritation. Avoid breathing dust. Avoid contact with skin, eyes or clothing. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, using tobacco or using the toilet. Remove and wash contaminated clothing before reuse.

Using organic practices to build and maintain soil health remains the first defense against grub damage, but in the event of an infestation that causes unacceptable levels of damage, Acelepryn is a low-risk way to control them.

3. Athlete safety

According to the Sports Field Management Association, natural turf fields with good quality turfgrass cover have higher traction, cushioning, and resiliency, and lower surface hardness than synthetic surfaces. This reduces the probability of injury in contact sports. Natural turf also provides cooler playing surfaces. However, these advantages are diminished when natural turf fields have damage from grub infestations such as bare spots, uneven playing surfaces, and loose grass surfaces. Such conditions can cause athletes to fall or slide unexpectedly, which can lead to serious injuries. Having a means to treat grubs will help field managers maintain high quality natural turf playing surfaces that reduce the likelihood of athlete injury.

Background/Analysis: Amending Waiver Process

Chapter 34 currently provides a waiver process where individuals may request a waiver from provisions of the ordinance in order to apply an otherwise prohibited pesticide or fertilizer. Currently, a waiver committee consisting of the Sustainability Director and one member of the LMAC hears the waiver request and determines whether the request should be granted or denied. It has been the practice of the committee to determine that tie votes constitute a denial of the waiver. Applicants who have been denied may appeal the decision to the City Manager, who makes a final decision. Amending the ordinance to require waivers to be heard by the entire LMAC would provide greater opportunity for members to participate in the work of the committee and benefit the waiver review process by bringing the broad professional knowledge of LMAC members to the discussion. It would reduce the likelihood of tie votes because the committee is made up of an odd number of members.

Summary:

I look forward to discussing these proposals with the committee during our next meeting.



LANDCARE ORDINANCE WAIVER APPLICATION
Landcare Management Advisory Committee (LMAC)

APPLICANT INFORMATION

Applicant Name: Cheverus High School

Address: 267 Ocean Ave, Portland Maine 04103 Email

Address: komich@cheverus.org Telephone Number:

 (207) 774-6238 Submission Date:

I am a: Resident Landlord Business Municipality Landscape company

Are you a licensed commercial applicator? Yes No

REASON FOR REQUESTING THE USE OF A PROHIBITED FERTILIZER OR PESTICIDE: Is an emergency and threatens the public health and safety

For the control of invasive plants that pose a threat to the environment (*For a list of Maine Invasive Plants visit: http://www.maine.gov/dacf/mnap/features/invasive_plants/invsheets.htm*) Required to protect buildings or structures from damage

Using a synthetic fertilizer on performance turf or for new development, with one or more the following conditions:

- I. The soil temperature is less than 55 degrees Fahrenheit and reasonable grounds exist to justify fertilizer use at that location and at that time;
- II. The turf is experiencing high stress due to high use and must be ready for high performance play when the sports season(s) begin; or
- III. A suitable organic product that meets the nutrient needs of the soil as specified in a soil test is unavailable.

Making the right pest identification is important and can be difficult. Resources for pest identification are available at: <http://www.maine.gov/dacf/php/gotpests/invasive-pests.htm>. NOTE: Applications for poisonous plants such as poison ivy, pests of significant health importance such as ticks and mosquitos, and destructive pests such as carpenter ants and termites are exempted under the ordinance. No waiver is necessary to address these pests.

Please provide a detailed account of the problem you would like to address with the proposed fertilizer or pesticide application. Include photos of the problem/pest and of the extent of the problem (this may be number of pests or area covered):

-Japanese Beetle Larvae in the first and second stage instar have been found by three

professional applicators throughout the playing field grass. The fields are weakly rooted as demonstrated by the video of tensile strength. Some areas have been severely damaged from crows and ground animals foraging on the beetle larvae. This has created a UNSAFE PLAYING CONDITION.

What steps did you take to evaluate alternative methods to the proposed fertilizer or pesticide application, including but not limited to, non-fertilizer/pesticide management tactics, minimum risk fertilizers or pesticides, non-synthetic fertilizers or pesticides, and selecting the minimum amount of the least toxic, most effective fertilizer or pesticide necessary.

- Shiny bird deterrents, Fake dogs. - Organic Granular deterrent for ground animals. - Radio controlled devices to deter birds.
- Bacillus Thuriensis (Organic) treatment in August 2023
- Bacillus Thuriensis (Organic) treatment prior to April 2023

PROJECT INFORMATION

What are you treating? Turf Shrubs Trees Invasive Weeds Address of proposed application:

Please attach a map of the proposed application area (*this may be a sketch, however it should be to scale and include property boundaries, structures, and water bodies*).

Is this application within 75ft. of a waterbody? Yes No

Proposed fertilizer or pesticide: *Acelepryn-G Syngenta*

Amount to be applied: *(One (1) application: 2,082 Lbs for 9.25 Acres @100 lbs per acre*

Method of application: Liquid Granular Injection/systemic Cut stem treatment

Proposed timing(s)/frequency of use: *Once*

Proposed date of application: *Mid April to Mid July, depending on soil temperatures reaching a minimum of 55 degrees*

Please provide a detailed management plan for your proposed application, including how you will minimize the impact of this application on abutting properties and, to the maximum extent possible, ensure that the grant of the waiver will not be detrimental to the public's health, safety or welfare.

Broadcast applications: the spreading of pesticides over an entire area

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

-We would strictly follow Maine's BPC rules and regulations during applications.

- All fields would be closed for a minimum of 24hrs post application.

Broadcast Part: all the playing surface has been identified with grubs. A calibrated broadcast application will be used. **Preemptive Part...** Part of Integrated Pest Management, IPM is understanding the life cycle of the pest and developing a strategy to manage it. In this case since the organic controls have proved not effective the strategy is to use the safest synthetic insecticide, trade name Acelepryn. This product will not affect the grubs currently feeding on the field. These insects will complete their life cycle and undoubtedly lay eggs for a new generation of Japanese Beetles this coming July and in the same fields. The strategy is to focus on the generation of 2025 and 2026. The safest synthetic product to use works as a systemic process. Timing of the application is critical. The insecticide needs to be in the grass plant before the grubs start to feed in the roots.

NOTE: the following applications are prohibited:

- Broadcast applications: the spreading of pesticides over an entire area
- Preemptive applications: the application of pesticides as a measure against something possible, anticipated or feared, i.e., as a preventive or deterrent measure

-We would strictly follow Maine's BPC rules and regulations during applications.

- All fields would be closed for a minimum of 24hrs post application.

In order for the waiver to be considered, all of the fields above must be completed. For questions, please contact Troy Moon in the Sustainability Office at 207-756-8362.

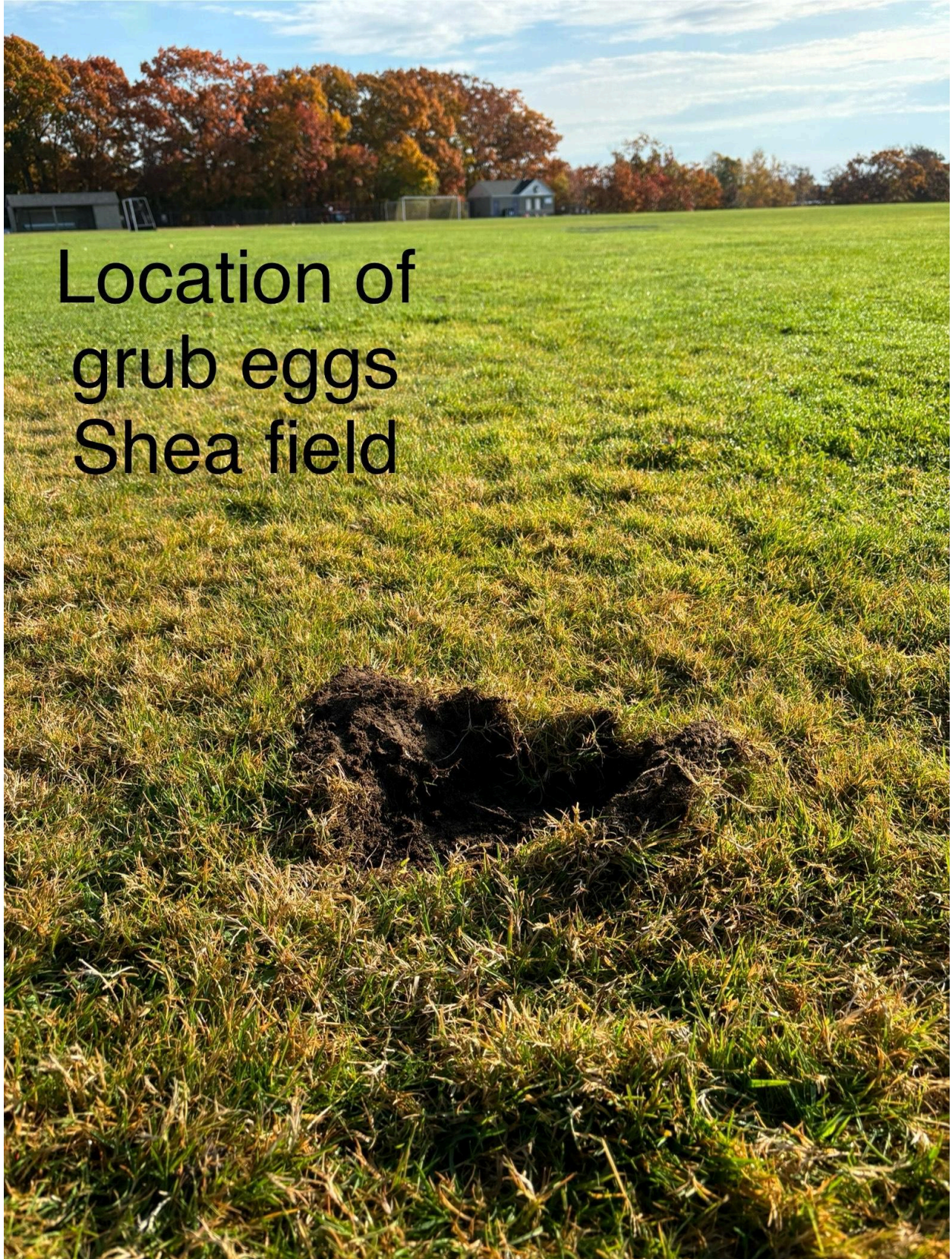
Completed forms may be emailed to landcare@portlandmaine.gov, or mailed or delivered to City Hall, 389 Congress Street, Portland, ME 04101.



Grub present on
baseball field



Grub egg



Location of
grub eggs
Shea field









(413) 863-4444 www.AtlanticGolfandTurf.com

Chapter 34

LANDCARE

Sec. 34-1. Title.

This chapter shall be known as the City of Portland Landcare Ordinance (hereinafter, the "Ordinance").
(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-2. Purpose.

The purpose of this ordinance is to safeguard the health, safety 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 and fertilizers for turf, landscape and outdoor pest management.
(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-3. Definitions.

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

Aggrieved party means 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, including crops intended for widespread distribution to wholesalers or retail outlets and any non-food crops.

Compost means soil amendment made from decomposing organic matter used to improve soil structure and nutrient holding capacity. For the purposes of this ordinance, compost is not considered a fertilizer.

Emergency means a serious, unexpected, and often dangerous situation requiring immediate action.

Environmentally sensitive areas means areas that are particularly vulnerable to fertilizer nutrient loss and/or where direct transmission of fertilizer nutrients to surface water or ground water is likely. This includes coastal and freshwater wetlands, beaches and sand dunes, streams and tributary streams

EPA means the United States Environmental Protection Agency.

Fertilizer means a substance containing one or more plant nutrients and used for its plant nutrient content. State law requires that all fertilizer products be registered with its department of agriculture prior to distribution.

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 and disc golf courses are not considered golf courses.

Heavy rain event means a rain event producing 0.5 inch or more of precipitation in a one hour period.

High Use Athletic Facilities means the following playing fields located in the following parks as listed in Chapter 18, section 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.

Hydro-seeding means the process of seeding by pumping seed in a mixture of water through a nozzle that sprays the mixture onto a seedbed. The water mixture may also contain add-ins such as fertilizer and certain mulches.

Landcare means a land management approach intended to prevent soil degradation and responsibly manage land resources, and cultivate environmental health.

Landcare Management Advisory Committee (LMAC) means the Landcare Management Advisory Committee as described in this Chapter.

New development means any alteration of land for the purposes of construction or reconstruction redevelopment that

results in soil disturbance and/or compaction, vegetation removal, and/or regrading.

Organic fertilizer means a fertilizer derived from either plant or animal products that contain nutrients for plant growth. It is acceptable for the materials in these fertilizers to have been subjected to biological degradation processes under normal conditions of aging, rainfall, suncuring, air drying, composting, rotting, enzymatic, or anaerobic/aerobic bacterial action, or any combination of these. In order to qualify as organic fertilizer, the materials in these fertilizers may not be mixed with synthetic materials or changed in any physical or chemical manner from their initial state except by manipulations such as drying, cooking, chopping, grinding, shredding, hydrolysis, or pelleting in order to qualify as organic fertilizer. Organic fertilizers are broken down by, and feed, the microbial life in the soil.

Organic landcare means a landcare management technique that integrates cultural, biological, and mechanical practices to build soil health, including practices such as mowing at higher levels, aeration, top dressing with compost, over-seeding, and watering deeply but infrequently, and without the use of toxic pesticides and synthetic fertilizers.

Organic material means the organic matter component of soil, consisting of plant and animal detritus at various stages of decomposition, cells and tissues of soil microbes, and substances that soil microbes synthesize.

Over-seeding means the application of additional turfgrass seeding to existing turf.

Performance turf means grounds devoted to athletic fields and golf courses.

Prills means a small aggregate or globule of a material, most often a dry sphere or pellet. Fertilizers and some detergent powders are commonly manufactured as prills.

Repellant means a substance that deters insects or other pests from approaching or settling.

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~~er, biological~~ processes, or through the use of 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.

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.

Re-establishment means a procedure involving complete turf removal and seeding or laying sod to establish new turf.

Restricted Entry Interval, also known as the re-entry interval or re-entry time, means the minimum amount of time that must pass after a pesticide is applied to an area before people or pets can safely go into that area. The labels on pesticides provide information about an individual pesticide's REI.

Slope means the ratio of elevation change to horizontal distance, expressed as a percentage. Slope is computed by dividing the vertical distance by the horizontal distance, and multiplying the ratio by 100. For purposes of this Chapter, a slope shall include only those areas with a horizontal distance of at least 50 feet.

Soil means the outer, weathered layer of the Earth's crust which can potentially support plant life and is made~~and made~~ up of inorganic particles, organic matter, organisms, water and air.

Soil amendment means a soil amendment is material added to soil to improve its physical properties, including, but not limited to, the substances listed on the National List of Allowed and Prohibited Substances, 7 C.F.R § 205.601, as the same may be amended from time to time. For the purposes of this ordinance, a soil amendment is not considered fertilizer.

Soil microbes means living organisms in soil (such as bacteria and fungi), which feed on organic matter and decompose rapidly.

Soil test means the standard soil test offered by the University of Maine Cooperative Extension or a comparable test identified by the City Manager or their designee.
(Ord. No. 245-23/24, 6-17-2024)

Starter fertilizer means a fertilizer formulated for a one-time application at planting or near that time to encourage root growth and to enhance the initial establishment of turf. This is typically a water-soluble product that contains high levels of phosphorus to allow for robust root growth.

Steep topography means slope lengths exceeding 50 feet (horizontal distance) on slopes greater than 15%.

Summer dormancy means the period during mid-summer most commonly observed in un-irrigated lawns when turf growth ceases. Dormancy is characterized by brittle texture and a loss of green color.

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.

Synthetic fertilizer means any fertilizer manufactured from one or more synthetic materials and may or may not contain animal parts, animal byproducts, manures or renderings. Synthetic fertilizer bypasses the microbial life in the soil and is taken up by the plant directly.

Total nitrogen means the sum of all fertilizer nitrogen species, including water soluble nitrogen forms, slow release nitrogen forms, and water insoluble nitrogen forms. The percentage of total nitrogen appears as the leftmost number of the grade on fertilizer labels.

Turf means a community of herbaceous plants that can be mowed, including grass and sod; a surface layer of the earth with grass growing on it, usually mowed, including lawns, grass covered medians, athletic fields, golf courses, outdoor event spaces, and the like.

Waiver Committee means the Waiver Committee as described in this Chapter.

Water body means any great pond, river, stream or tidal area as those terms are defined in Chapter 14 of the Portland Code of Ordinances.

Wetland means a coastal or shoreland freshwater wetland as those terms are defined in the City's Zoning Ordinance, Chapter 14 of the Code of Ordinances.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-4. Applicability

The following provisions shall apply to all outdoor pest management activities and use of fertilizer conducted within the boundaries of the City of Portland (hereinafter, the "City"), on both public and private land, excluding the exemptions provided in this Chapter.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

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

(a) Subject to the applicability dates set forth in Sec. 34-14 herein, the following provisions shall apply to all outdoor pest management activities in the City.

1. Permitted Pest Management Activities and/or Materials, except as provided in (b) (3) below:
 - i. Organic Pest Management, except as provided in (b)2 below;
 - ii. Use or application of Synthetic substances specifically listed as "allowed" on the U.S. Department of Agriculture's National List of Allowed and Prohibited Substances (the "National List"); and/or
 - iii. Use or application of Pesticides determined to be "minimum risk pesticides" pursuant to the FIFRA and listed in 40 C.F.R. § 152.25(f) (1) or (2), as may be amended from time to time.
2. Prohibited Pest Management Activities and/or Materials:
 - i. Use or application of Synthetic substances other than those described in (a) (2) above;
 - ii. Use or application of Non-synthetic substances specifically listed as "prohibited" on the National List; and/or
 - iii. The use or application of pesticides (whether natural, organic, "non- synthetic," synthetic or otherwise) within seventy five feet of a water body or wetland.

3. Exempt Pest Management Activities and/or Materials. The following are exempt from the provisions of this ordinance (and therefore are allowed):
 - i. Use or application of Pest Management Activities and/or Materials in connection with Commercial agriculture;
 - ii. Pet supplies, such as shampoos and tick and flea treatments, when used in the manner specified by the manufacturer;
 - iii. Disinfectants, germicides, bactericides, miticides and virucides, when used in the manner specified by the manufacturer;
 - iv. Insect repellents when used in the manner specified by the manufacturer;
 - v. Rat and rodent control supplies when used in the manner specified by the manufacturer;
 - vi. Swimming pool supplies when used in the manner specified by the manufacturer; and/or
 - vii. General use paints, stains, and wood preservatives, and sealants when used in the manner recommended by the manufacturer.

4. Exempt Applications. The following applications are exempt from the provisions of this ordinance (and therefore are allowed):
 - i. 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;
 - ii. 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;
 - iii. Hadlock Field applications;
 - iv. Treatments for Heritage Elms;
 - v. Applications on fields at High Use Athletic facilities (until January, 2023, unless this date is extended by the City Council);

- vi. 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;
 - vii. Right-of-way applications. Prohibited pesticides may be used by a public utility that maintains a right-of-way through the City; and/or
 - viii. Invasive plant applications ~~on~~ on city property. Applications to control plants [on city property](#) categorized as *currently considered invasive in Maine* by the Maine Department of Agriculture, Conservation, and Forestry.
 - ix. Grub control application: Pesticides classified by the EPA as reduced risk, such as chlorantraniliprole, may be used to control grubs if applied as directed by the product label by a Professional Applicator.
5. Disclosures. For any exempt applications by the City, disclosure shall be made in the annual report described in Section 34-9 of this ordinance.
6. Exempt Uses. The following uses are exempt from the provisions of this ordinance (and therefore are allowed):
- i. Any use of pesticides mandated by state or federal law or required by an order or decision from a court or state or federal board or agency.

(b) Subject to the applicability dates set forth in Sec. 34-14 herein, the following provisions shall apply to all fertilizer applications in the City.

- 1. Prohibited Fertilizer Applications. The following prohibitions apply for all fertilizer applications on all turf types:
 - i. Applications within 75 feet of a water body or wetland or other environmentally sensitive area are prohibited.
 - ii. Applications on frozen ground or saturated surfaces are prohibited.
 - iii. Applications when a heavy rain event is occurring is prohibited.

- iv. Applications during summer dormancy or when the ground is partially or wholly frozen are prohibited.
- v. Applications on impervious surfaces are prohibited; if spills occur on impervious surfaces, they must be swept up immediately.
- vi. Applications with phosphorus are prohibited except where a soil test conducted within the last three years indicates a need for phosphorus, or phosphorous is being used for new development/re-establishment, as specified in subsection (B) below.
- vii. Applications of synthetic fertilizer are prohibited except where a waiver has been granted pursuant to Sec. 34-7 below.
- viii. Application of compost or fertilizers derived from wastewater treatment sludge or from organic residuals remaining after industrial processes (such as paper making) is prohibited within the boundaries of the City of Portland.
- ix. Applications of organic fertilizer not in compliance with subsection (2) below are prohibited.

2. Permitted Fertilizer Applications. The following applications of organic fertilizer are allowed within the limits for the specific application as set forth below:

- i. Except as specified in subsections (ii), (iii), and (iv) below, applications of organic fertilizer, including residential lawns, are allowed only when a soil test conducted within the last three years indicates a need for nitrogen. Applications of organic fertilizer may not contain nutrients in excess of the amount recommended by the completed soil test. Only phosphorus-free, organic fertilizer is allowed for these applications, unless the soil test indicates a need for phosphorus.
- ii. Applications of organic fertilizer on performance turf are allowed as necessary provided that total nitrogen does not exceed 4 lbs per 1,000 square feet per year.
- iii. Applications of organic starter fertilizer for new development may contain phosphorus without a

soil test. The fertilizer must be incorporated into top soil 2-3 inches deep. Two fertilizer applications are permitted for one calendar year from the date of first application only. For each application, total nitrogen and phosphorus may not exceed 1 lb. per 1,000 square feet.

- iv. Applications of organic fertilizer for re-establishment of turf may contain phosphorus without a soil test. Unless the application is through hydro-seeding or overseeding, the organic fertilizer must be incorporated into the soil 2-3 inches deep. Fertilizer applications may not exceed 1 lb. of nitrogen and phosphorus per 1,000 square feet per application. Total nitrogen and phosphorus may not exceed 2 lbs. per 1,000 square feet per calendar year from the date of last application.
- v. Application of organic fertilizer to gardens, including vegetable, flower, and ornamental, may be applied without a soil test, although a soil test is highly recommended. Fertilizer must be incorporated into the soil with a rake or other tool so it is not left exposed on the topsoil.

3. Exempt Fertilizer Applications. Notwithstanding any other provision in this Chapter, the following applications of fertilizer are exempt from the provisions of this ordinance (and therefore allowed without restriction):

- i. Golf course applications. Fertilizers may be used on golf courses provided that the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary.
- ii. Hadlock Field applications.
- iii. Liquid deep root feeding of trees.
- iv. Fertilization of woody plants and shrubs so long as fertilizer is injected to the root or applied within the drip edge of the plant and incorporated into the soil with a rake or other tool.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 79-20/21, 9-21-2020; Ord. No. 60-22/23, 9-19-2022; Ord. No. 245-23/24, 6-17-2024)

Sec. 34-6. Landcare Management Advisory Committee.

(a) The Landcare Management Advisory Committee ("LMAC") is hereby established. The LMAC shall consist of seven (7) members as follows:

1. The City's Sustainability Director or a City employee appointed by the City Manager;
2. One (1) practicing agronomist appointed by the City Council;
3. Two (2) Maine Board of Pesticides Control-licensed landscape professionals, at least one (1) 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 at least one of whom has experience in organic land care management.

(b) The terms of office of the six (6) LMAC members appointed by the City Council shall be three-year terms, except that the initial appointments after the establishment of the LMAC shall be such that the terms of office of no more than two (2) members shall expire in any single year. The term of office for the City employee LMAC member shall be for as long as the employee holds said employment position.

(c) The LMAC shall advise the City Council and the City's Sustainability ~~Director~~Coordinator with respect to the following:

1. Advising the Sustainability and Transportation Committee and the City's Sustainability ~~Director~~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 ~~Director~~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 LMAC;
6. Issuing a summary report annually by June 30 ~~March 31~~ to the Sustainability and Transportation Committee, or whatever committee is 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; and the number of waivers granted in the past year;
7. Any additional responsibilities as may be assigned and deemed necessary by the City Council.

(d) ~~LMAC~~LMAC-Officers, meetings and records.

1. The members shall annually elect a chair and a secretary from their membership;
2. All meetings of the LMAC 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 LMAC shall meet at least five (5) times annually;
5. Minutes shall be kept of all meetings and posted on the City web page; and
6. An annual report of the LMAC's activities shall be submitted to the Sustainability and Transportation Committee by June 30 ~~March 31~~ of each year.

(e) LMAC may adopt procedural rules for the conduct of its business not inconsistent with this article. Such rules shall be filed with the City Clerk. All such rules shall be subject to veto, in whole or in part, by the Council within 45 days of such filing. The initial rules shall take effect when filed, subject to veto as provided above. Amendments to the rules shall take effect upon expiration of said veto period. Any rule may be waived by the chair upon good cause being shown.

~~(f) Waiver Subcommittee:~~

- ~~1. A subcommittee of the LMAC shall be established annually and consist of the designated City staff member, who shall be Chair, the City Arborist, and one (1) other member of the LMAC designated by the Chair;~~
- ~~2. This subcommittee shall be authorized to review and decide waiver applications as described in section 34-7; and~~
- ~~3. The LMAC 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.~~

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-7. Waivers.

(a) In situations that are an emergency, threaten the public health, safety or welfare, or for the control of invasive species that pose a threat to the environment, persons shall apply to the LMAC ~~Waiver Committee~~ for a waiver from the provisions of this ordinance prior to the use/application of a prohibited fertilizer or pesticide or prior to the conduct of a prohibited application.

(b) In addition, pPersons may apply to the LMAC~~Waiver Committee~~ for a waiver in order to use a synthetic fertilizer on performance turf or for new development, prior to the actual use of the synthetic fertilizer, if one or more the following conditions exists:

1. The soil temperature is less than 55 degrees Fahrenheit and reasonable grounds exist to justify fertilizer use at that location and at that time;
2. The turf is experiencing high stress due to high use and must be ready for high performance play when the sports season(s) begin; or
3. A suitable organic product that meets the nutrient needs of the soil as specified in a soil test is unavailable.

(c) The waiver application shall be filed with the LMAC ~~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; a management plan that includes the narrowest effective application, avoiding broadcast and preemptive applications when feasible.; ~~management plan that excludes broadcast and preemptive applications; and a pest identification and threshold report.~~ In order to approve a waiver application, the LMAC ~~Waiver Committee~~ must find that all of the following criteria are met:

1. A situation exists that: is an emergency; threatens the public health, safety and/or welfare; involves an invasive species; ~~that 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.

(d) The ~~LMAC Waiver Committee~~ shall conduct a hearing on all complete waiver applications received within ten (10) business days of receipt of the complete application and shall seek to issue a written decision on the application within three (3) business days of reviewing an application.

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

(f) An Aggrieved Party may appeal a written decision of the LMAC on a waiver application ~~Waiver Committee~~ to the City Manager or designee within five (5) business days of the issuance of the committee's decision. The appeal shall be in

writing and shall state the basis for the appeal. The City Manager or designee (who shall not be a member of the LMAC) 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 aggrieved party, the LMAC ~~Waiver Committee~~, and the Sustainability ~~Director~~Coordinator. The decision of the City Manager or designee shall be final. (Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

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 01-026 C.M.R. Ch. 50, as amended from time to time, aAll State of Maine licensed applicators are required to submit to the LMAC an annual summary report on or before February 1st of each calendar year relating to the preceding calendar year. This report shall contain the following information for applications subject to this ordinance 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.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

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 to the LMAC describing efforts to reduce the use of synthetic pesticides, a description of synthetic pesticides used during the previous year, the reason for their use, and the cost of such pesticide usage.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

34-10. Public Notification.

Any person shall comply with the following posting requirements.

- (a) For all prohibited pesticide uses or applications:
 - 1. 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 be

left in place for at least forty-eight (48) hours after actual application or until expiration of the restricted entry interval indicated by the pesticide label, whichever is longer;

2. 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;
3. 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;
4. The sign must include the following:
 - i. The word "CAUTION" in 72-point type;
 - ii. The words "PESTICIDE APPLICATION" in 30-point type or larger;
 - iii. The Maine Board of Pesticides Control designated symbol;
 - iv. Any reentry precautions from the pesticide labeling;
 - v. The name and telephone number of the entity making the pesticide application;
 - vi. The date and time of the application;
 - vii. A date and/or time to remove the sign;
 - viii. the chemical and trade name of the pesticide; and
 - ix. the length of time to remain off the treated area as indicated by the pesticide label.~~and~~
5. 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, as may be amended from time to time, regarding public notification.

(b) All retailers in the City of Portland that sell pesticide and fertilizer products must clearly mark products that are permitted for use within the City. Each retailer is required to display signs in a prominent location with the

products, ensuring they are easily visible to customers at the point of purchase.~~All retailers selling pesticides or fertilizers subject to the provisions of this chapter shall post a sign at the point of sale that contains the following verbiage:~~

~~1. Application of synthetic pesticides and fertilizers within the City of Portland must comply with Chapter 34 of the City Code.~~

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-11. Outreach and Education.

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

(b) The LMAC shall prepare and publish materials designed to educate the community about the role of pesticides and fertilizers in the local environment and the benefits of organic fertilizers and 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/or any additional methods deemed appropriate by the LMAC.

(c) The LMAC shall also develop a program to work directly with retailers that sell pesticides and fertilizers in the City of Portland to

1. Provide educational training for all retail store employees who recommend and sell pesticides or fertilizers for use in the home and garden, highlighting the following:

- i. federal, state, and local pesticide and fertilizer regulations;
 - ii. principles of organic landcare, including pest management and use of fertilizers;
 - iii. pesticide and fertilizer toxicity and health and environmental concerns;
 - iv. proper pesticide display and storage; and
 - v. 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 and fertilizers.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-12. Violations.

Any person violating any of the provisions of this ordinance or failing, neglecting or refusing to obey any order or notice of the City Manager or designee issued hereunder shall be subject to enforcement action as provided in §34-13.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-13. Enforcement and Remedies.

(a) This ordinance may be enforced by the City Manager or designee;

(b) The City Manager or designee shall have the authority to enact rules and regulations in order to implement the provisions of this ordinance;

(c) The City Manager or designee ~~Permitting Department~~ is authorized to institute, or cause to be instituted by the corporation counsel, in the name of the city, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the provisions of this article; and

(d) Any violation of this chapter shall constitute a civil violation subject to the penalties contained in Portland City Code, Chapter 1, § 1-15.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 60-22/23, 9-19-2022)

Sec. 34-14. Severability.

If any section, paragraph, sentence, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court, such decision shall not affect the validity of the remaining provisions of this ordinance.

(Ord. No. 110-17/18, 1-3-2018;)

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, article or ordinance of the Portland City Code shall control.

(Ord. No. 110-17/18, 1-3-2018)

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

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 effective as follows:

(a) Phase One: Commencing no later than July 1, 2018, the provisions set forth in Sec. 34-5 on 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 outdoor pest management activities shall apply to private property (but not high use athletic fields or golf courses); and

(c) Phase Three: Commencing no later than January 1, 2023, the provisions set forth in Sec. 34-5 on outdoor pest management activities with respect to high use athletic fields shall apply to public or private property, except that the City Manager or his or her designee may request that the City Council extend this applicability date if they determine more time is necessary to transition to organic management practices for these properties and facilities.

(Ord. No. 110-17/18, 1-3-2018; Ord. No. 79-20/21, 9-21-2020)