

CITY OF PORTLAND, MAINE
Standing Committee on Sustainability and Transportation
Councilor Andrew Zarro, District 4, Chair
Councilor Roberto Rodriguez, At-Large
Councilor Victoria Pelletier, District 2

Agenda
July 13, 2022
5:00 PM

The Sustainability and Transportation Committee 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.

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1. Review and approve minutes from June 8, 2022
 - a. Minutes from June 8
2. Sustainability Program Updates
Sustainability Updates for July
 - a. Sustainability Updates
3. Presentation and Discussion
 - a. Amendments to Chapter 34 -- regulating the use of fertilizers on landscapes and turf
Presenters: Troy Moon, Sustainability Director, and Kari Twaite, Associate Counsel
Public comment will be taken
4. Other Business

CITY OF PORTLAND, MAINE
Committee on Sustainability and Transportation
Councilor Andrew Zarro (D4), Chair
Councilor Victoria Pelletier (D2)
Councilor Roberto Rodriguez (At-Large)

Draft Minutes June 8, 2022

Members Present: Councilor Zarro, Councilor Rodriguez

Staff Present: Troy Moon, Erin Ferrell, Mike Murray, John Peverada, Jeremiah Bartlett

Meeting called to order.

May 11 Minutes

Councilor Rodriguez moves to approve the May 11th meeting minutes. Councilor Zarro seconds the motion. May 11th minutes passed unanimously, 2-0.

Sustainability Update

Presented by Troy Moon

EV charging is going well with a large increase in usage of charging stations. There were 1500 vehicles charged Jan- May 2022 which is over 500 more than the same months last year. The City's recycling rate is still about 37% which is good and 2nd in the ecomaine service area. There have been about 140 energy benchmarking reports so far although it is not clear how many are required to report this year. Once CMP releases new technology, all buildings 20,000 sq ft or more will be required to report. This would be about 600 buildings in total. Electrify Everything! Is continuing with residents signing up for home visits from ReVision Energy. Sustainability Office staff is growing with Erin moving to full-time hours as well as a Resilience Corps member starting full time in October. The Office will hold an Organic Landcare event in September.

Committee Comment on Sustainability Update

Councilor Zarro noted the benefit of having a follow up survey for Electrify Everything! signups.

Adjusting Tow Fees

Presented by Mike Murray

The City of Portland regulates the fees paid to tow companies/operators for services provided to the City of Portland. Private towing companies are an integral component to safe streets in the City of Portland as they provide services to accidents, illegally parked vehicles, and assist in achieving snow ban compliance. Representatives of the towing companies have requested that the tow fees be increased as a result of increased costs since the fees were last adjusted. Recently, the City Manager's Office received a request from the tow operators to review and increase tow fees, as the last increase took place in November, 2017. The Department of Public Works reached out to the tow operators for more details on the request, and representatives of the Portland Police Department, Portland Parking Division, and Public Works reviewed the requests and have established a list of recommendations. Additionally, Portland Parking Division

provided staff with survey results of parking fees paid by other Maine cities to tow company operators.

Public Comment on Adjusting Tow Fees

No comment.

Councilor Comment on Adjusting Tow Fees

Councilor Rodriguez notes that the adjustment would make the fees higher than other municipalities. Would like to keep in mind possible outcomes.

Councilor Zarro asks how the adjustment came to be higher than surrounding municipalities. *Every community does it differently. Wanted to find an amount higher than what is currently being paid at the request of tow companies while still keeping in mind those affected.*

Recommendation of Adjusting Tow Fees

Councilor Rodriguez motions to recommend to the council. Councilor Zarro seconds. The recommendation is approved 2-0.

Thames Street Parking

Presented by Jeremiah Bartlett and John Peverada

Presently, there is no parking allowed on Thames Street Extension, (which runs approximately from the entrance to the Amethyst Lot to Freedom Way, a private drive). The road has not yet been accepted as a City Street; as such, both sides have been signed for No Parking as it is technically a City-owned parcel at this time. At the request of Island Residents, the Manager's office has proposed to establish the south side of Thames St. Ext. as One Hour parking to be included in Residential Parking Zone 11-IR. This would add approximately eight (8) spaces for Islanders with a residential permit to use. It is likely that the north side will be established as two-hour metered parking, in order to serve incoming and future development. This would come into effect with the street being accepted. Noted maps located in the agenda packet.

Public Comment on Thames Street Parking

No Comment

Councilor Comment on Thames Street Parking

Councilor Rodriguez asks who can apply for the island parking stickers? *Anyone with an island address that can be verified can purchase the parking pass.*

Councilor Zarro notes that including island residents in the decision making is important.

Recommendation of Thames Street Parking

Councilor Rodriguez motions to recommend the proposed Thames St Parking. Councilor Zarro seconds. Passed unanimously, 2-0.

Presentation regarding regulation of gasoline powered small equipment

Presented by Troy Moon

Concerns related to leaf blowers include noise level concerns with leaf blowers, high levels of air pollution, destructive to topsoil. 16 states have communities with some kind of restriction related to leaf blowers. Most restrictions concern the time of day or the noise level of the leaf blower. Dc banned leaf blowers; Brookline, MA limited time of year with exemption for DPW; Burlington, VT limited by time of year and time of day. California banned small gas powered engines which would include leaf blowers.

Councilor Comment on Presentation regarding regulation of gasoline powered small equipment

Councilor Zarro asks for the presentation to be accessible to the public. This policy would be in line with One Climate Future goals. Why are municipalities looking at leaf blowers and not lawn mowers? *It is less common, likely due to the noise level. Leaf blowers are much louder and produce noise pollution.* Councilor Zarro notes interest in discussing this further. The Sustainability Office will do more background research and look into ordinance possibilities.

Councilor Rodriguez asks if our DPW uses gas powered leaf blowers. *Yes, DPW uses leaf blowers. The Parks Dept is starting to use battery equipment for small parks and playgrounds.* Would DPW be exempt if we were to move forward with banning leaf blowers? *We would need to consider the options and include the Parks Dept in the conversation.* Is there concern about battery time and efficiency? *Landscaping companies using battery powered lawn tools noted the tools have improved drastically.*

Status Update on committee actions and requests

Presented by Troy Moon

Rapid Transit resolution will go to the council in July.

PMAC recommendations on fertilizer should be ready to be taken up in the July S&T meeting although the site plan recommendations will need to go to the Planning Board.

Bird friendly glass ordinance - Troy has been working with the PSA and Maine Audubon to create a working group and draft ordinance language. This is on track to be taken to the council this year.

Councilor Comment on Status update on committee actions and requests

Councilor Zarro asks if the bird safe glass ordinance would be connected with the lights out initiative. *This would need to be reviewed.*



CITY OF PORTLAND

Sustainability Office

Troy Moon

Sustainability Director

Sustainability Updates

June 8, 2022

Staffing

We now have Resilience Corp member Courtney Crossgrove working with us for 15 or so hours per week. She is also with another agency who did not have enough work to keep her busy full time. We are happy to have her on the team and she is primarily focused on making sure the community composting program is running smoothly. We submitted an application to GPCOG for a full time Resilience Corp member who would start in October, if we're successful.

Erin Ferrell was promoted to full time on July 3.

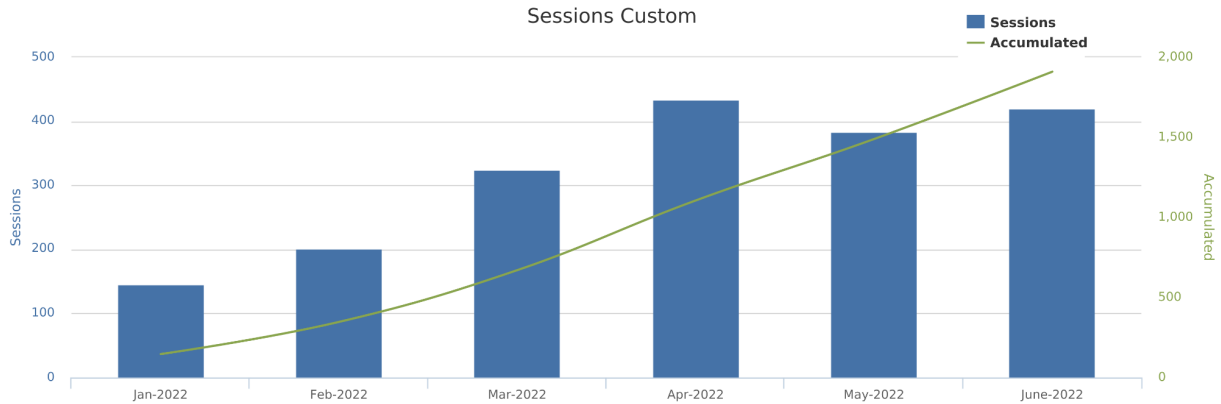
We received 67 applications for our new position and have begun reviewing the applications. There are many strong applicants so it will be a difficult decision.

EV Charging

The Parking Division has installed 2 new EV charging stations in the Elm Street Garage and 1 new EV charging station at the Spring Street Garage. These are not part of our Chargepoint network and are available for use at no additional charge for parking garage patrons.

We collaborated with the Parking Division to improve the charging experience at the Spring and High Street parking lot. Previously, Parking Control Officers ticketed people at the chargers for more than 2 hours. We've agreed to collect the parking fees for EVs through the Chargepoint network and the PCOs no longer enforce the time limited parking for vehicles that are actively charging. This makes these charging stations more useful for neighborhood charging and for people traveling who may need a longer charging session than the time limit allows. Vehicles that are not actively charging may receive a ticket if they stay over time.

Usage of the networked charging stations remains strong with over 400 charging sessions in June. The total number of sessions for the year through June 30 was 1,909.



We are working with CMP and EVgo on the necessary easements and permits to install DC fast chargers on Commercial Street and in the Spring/High parking lot. We have indicated that these are our first priority.

Waste Reduction

We have expanded the community food scrap drop off program and it now includes 8 locations.

- North Street Community Garden
- Boyd Street Community Garden
- Payson Park Community Garden
- Brentwood Community Garden
- Libbytown Community Garden
- Riverton Community Garden (relocated from Riverside Recycling)
- Reiche Community Center (relocated from Clark Street Community Garden)
- Parkside (behind King MS in the Fitzpatrick Stadium Parking Lot)

We are pleased that the School Department agreed to support the drop of location at the Reiche Community Center. We also want to recognize Alex Marshall and Bob Weyer from the Parks Department for their support of this program. Alex has been instrumental in helping us find locations and Bob has installed all of the signs for us.



We want to make sure drop off sites are in good condition and have capacity for food scraps so we have created a report form to allow residents to let us know about conditions. Each location has a scannable code that brings up the form with a few questions about the site. The form is also accessible via our website.

We encourage residents to look at the form as well as the updated information about the program on our website:

<https://www.portlandmaine.gov/727/Composting-Food-Waste-Reduction>

Energy

As of the beginning of June, the Electrify Everything campaign spurred the installation of:

- 16 air source heat pumps
- 10 Solar PV systems

- 5 heat pump water heaters
- 2 home EV chargers
- 1 battery storage system (encouraged, but not technically part of the program)

Our program goal was to spur at least 75 - 100 residents to take some action to electrify their home so we are on track. (Our current data does **not** include sign ups for community solar.)

As new staff capacity comes on board we will increase promotion of the program to encourage more participation. This version of the program ends in October. We've begun imagining what Electrify Everything 2.0 will look like.

Education and Outreach:

On June 17 we attended the Maine Climate Council's conference at the Augusta Civic Center. Troy made presentations on two panels and discussed Electrify Everything! and our work to expand EV charging opportunities for residents and visitors.

On June 23 we made a presentation to the New England Municipal Sustainability Network about tree equity, including our work to increase the canopy in Bayside and the Heritage Tree Ordinance.

Erin and Courtney attended the Wayside Picnic at Payson Garden to join the conversation of food security and recovery food waste sustainably. They were able to demonstrate the new drop off location at the garden for attendees. We plan to have a presence at the other Wayside Picnics scheduled this summer.

Join us in Post Office Park on Wednesday, July 27 from 10:30 - 1:30 where we'll be tabling and talking about the work we're doing in our office.

We've had two Coffee and Climate sessions since the last Sustainability and Transportation Committee meeting – on June 10 we discussed EV charging with special guests from Efficiency Maine. On July 8 we discussed reducing emissions from waste with special guests Laura Marston from Go Go Refill and Dr. Cindy Isenhour from the University of Maine, who studies the environmental and climate impacts of consumer consumption.

Climate and Coffee events are community conversations that happen on the 2nd Friday of the month at 9 AM. We record sessions with guest speakers and post them on www.oneclimatefuture.org, along with other information about our work. The next Coffee and Climate will be held on May 13th and the topic is Food Waste.

You can also follow us on social media. Instagram @sustainableportlandme / Twitter @SustainPortME / FB @SustainablePortlandME

Sustainability Office

Troy Moon

Sustainability Director

July 8, 2022



To: Councilor Zarro and members of the Sustainability & Transportation Committee
Subject: Amendments to Chapter 34 – Land Care Ordinance
From: Troy Moon, Sustainability Director

On March 23, 2022 the Pesticide Management Advisory Committee (PMAC) presented its annual report to the Sustainability and Transportation Committee as required by Chapter 34 of City Code. The report documented the activities of the committee during the prior year, presented information gleaned from the annual reports submitted to the Sustainability Office by licensed pesticide applicators, and made several recommendations for amendments to the ordinance in fulfillment of the PMAC's responsibility to "advise the Sustainability Director and the Sustainability and Transportation Committee about pesticide use and recommending changes to achieve full and successful implementation of the ordinance." (Chapter 34-6)

Following discussion of the PMAC's recommendations, the Committee asked staff to evaluate the recommendations and draft amendments to Chapter 34 that restrict the use of fertilizers in Portland. The Sustainability Office, the Parks Department, and Corporation Counsel collaborated to create the attached draft ordinance.

In summary, the draft ordinance:

- Prohibits application of fertilizers within 75' of a water body or wetland or other environmentally sensitive area
- Prohibits application of fertilizers on frozen ground, impervious, or saturated surfaces
- Prohibits application of fertilizers when a heavy rain event is forecast or is occurring
- Prohibits fertilizer applications when plants are not taking up nutrients, such as during summer dormancy or when the ground is partially or wholly frozen
- Prohibits applications of phosphorus except when a soil test conducted within the last three years indicates a need for phosphorus, or phosphorus is being used for new development/re-establishment.
- Prohibits the application of fertilizers using prills/pellets on impervious surfaces

The ordinance applies to all types of landscape and turf including lawns, athletic fields, parks, gardens, and any other land use that relies on healthy soils. The only exceptions are for two properties that are also exempt from the provisions of the pesticide ordinance. These are Hadlock Field and Riverside Golf Course. The golf course, however, must maintain its status as

an Audubon Certified Sanctuary in order to maintain its exempt status. The ordinance also exempts the use of fertilizers used for deep root fertilization of trees. This is because urban trees often exist in degraded, compacted, or otherwise poor soils that are difficult to improve. Application of fertilizers directly to the roots is often required to maintain their health, thereby preserving the many benefits they provide, including carbon sequestration, storm water absorption, habitat for wildlife, and mitigating the urban heat island effect.

The ordinance recognizes that athletic fields and high performance turf require more fertilizer treatments than other types of landscapes because of their intense use and the need to maintain a safe playing surface. However, it provides standards to ensure that fertilizer applications use only the amount the soils can incorporate. This minimizes harmful nutrient runoff. The ordinance also provides for a waiver process for emergency application of fertilizers on high performance turf under extenuating circumstances when it is important to grow turf grass quickly to ensure safety and playability, particularly early in the growing season.

Finally, the draft ordinance renames Chapter 34 as “Landcare” to reflect that it governs pesticides, fertilizers, and promotes organic landcare practices. It also renames the PMAC as the Landcare Management Advisory Committee (LMAC) and adds responsibility for overseeing the use of fertilizers as well as pesticides.

The draft language does not cover two of the recommendations made by the PMAC in their annual report.

- **Establishment of soil standards for new construction** – discussion with Corporation Counsel and the Planning Department indicated that these standards belong in the Technical Design Manual that incorporates rules that developers must follow when building and developing new sites. Staff will work with the Planning Department to include requirements for improved soil quality in development standards.
- **Trees** – City staff continue to work on recommendations for amendments to Chapter 29, which includes the Heritage Tree Ordinance. We anticipate further discussion with the Committee on this topic later in the year.

Why regulate fertilizers:

The City first contemplated regulation of fertilizers in 2016 when the City Council empaneled the Pesticide and Fertilizer Task Force with the assignment to recommend policy changes to prevent harm to the environment and public health from these products. This group realized that addressing both pesticides and fertilizers was more than they would be able to accomplish in the time they had and chose to focus their efforts on pesticides. When making that decision they recommended that a subsequent group take up fertilizers.

During the past year members of the PMAC have studied the use of fertilizers and examined the fertilizer ordinance recently adopted in South Portland. Based on this work, the PMAC believes prohibiting the use of synthetic fertilizers and ensuring appropriate use of organic fertilizers is important for several reasons:

- **Protecting water quality:** Improperly applied fertilizer – particularly fast release, synthetic fertilizer – is frequently transported by stormwater from the property where it is applied. When it enters local waterways, including Casco Bay, it contributes excessive nutrients into the water which results in algae blooms. It also contributes to acidification of our coastal waters. Both of these seriously impact marine life and threaten the marine ecosystem.
- **Preventing soil degradation:** Fast acting synthetic fertilizers strip soil of nutrients by causing the microbes in the soil to consume organic matter faster than plants can replenish them. This leads to soil degradation, which requires further inputs of fertilizers to grow plants.
- **Reducing carbon emissions:** Production of synthetic fertilizers uses large amounts of natural gas, a fossil fuel. This is incompatible with efforts to mitigate the worst impacts of climate change. Further, reliance on synthetic fertilizers impedes the ability of soils to sequester carbon thereby contributing to global warming.

We look forward to discussing the draft amendments with the members of the Sustainability and Transportation Committee. Associate Counsel Kari Twaite and staff from the Parks Department will be on hand to participate in the discussion and to answer questions.

Chapter 34

~~PESTICIDE USE~~LANDCARE

Sec. 34-1. Title.

This chapter shall be known as the City of Portland ~~Pesticide Use~~Landcare Ordinance (hereinafter, the "Ordinance").
(Ord. No. 110-17/18, 1-3-2018)

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 excessive use and/or misapplication of pesticides and fertilizers for turf, landscape and outdoor pest management.
(Ord. No. 110-17/18, 1-3-2018)

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.

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 mayto 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 technique can reduce, if not eliminate, the need for 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.

Penetrometer means an instrument used to give a quantitative measurement of the consistency or hardness of a substance by measuring the depth or rate of penetration of a rod or cone-shaped into it.

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 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 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 a test designed to analyze soil acidity, organic matter, and essential nutrients available for plant growth. A "standard soil test" indicates soil pH, levels of essential nutrients such as potassium, phosphorus, calcium, magnesium, and sulfur, level of organic matter, whether there is lead contamination, and it will provide recommendations for corrective amendments to address deficiencies. A "comprehensive soil test" includes all the elements of a standard soil test, plus an analysis of the available nitrogen in the soil.

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 containing no 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)

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)

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

~~(a)~~ 1. Permitted Pest Management Activities and/or Materials, except as provided in (b) (3) below:

- i. ~~1.~~ Organic Pest Management, except as provided in (b) 2 below;
- ii. ~~2.~~ 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. ~~3.~~ 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.

Prohibited Pest Management Activities and/or Materials:

2.

- i. ~~1.~~ Use or application of Synthetic substances other than those described in (a)(2) above;
- ii. ~~2.~~ Use or application of Non-synthetic substances specifically listed as "prohibited" on the National List; and/or
- iii. ~~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)3.~~ Exempt Pest Management Activities and/or Materials. The following are exempt from the provisions of this ordinance (and therefore are allowed):

- ~~—1.~~ Use or application of Pest Management Activities and/or Materials in connection with Commercial agriculture;
- i.
- ii. ~~2.~~ Pet supplies, such as shampoos and tick and flea treatments, when used in the manner specified by the manufacturer;
- iii. ~~3.~~ Disinfectants, germicides, bactericides, miticides and virucides, when used in the manner specified by the manufacturer;
- iv. ~~4.~~ Insect repellents when used in the manner specified by the manufacturer;
- v. ~~5.~~ Rat and rodent control supplies when used in the manner specified by the manufacturer;
- vi. ~~6.~~ Swimming pool supplies when used in the manner specified by the manufacturer; and/or
- vii. ~~7.~~ General use paints, stains, and wood preservatives, and sealants when used in the manner recommended by the manufacturer.

~~(d)4.~~ Exempt Applications. The following applications are exempt from the provisions of this ordinance (and therefore are allowed):

- i. ~~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;
 - ii. ~~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;
 - iii. ~~3.~~ Hadlock Field applications;
 - iv. ~~4.~~ Treatments for Heritage Elms;
 - v. ~~5.~~ Applications on fields at High Use Athletic facilities (until January, 2023, unless this date is extended by the City Council);
 - vi. ~~6.~~ 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. ~~7.~~ Right-of-way applications. Prohibited pesticides may be used by a public utility that maintains a right-of-way through the City; and/or
 - ~~8.~~ Invasive plant applications on city property. Applications to control plants categorized as *currently considered invasive in Maine* by the Maine Department of Agriculture, Conservation, and Forestry.
 - viii. ~~For any exempt applications by the City, disclosure shall be made in the annual report described in Section 34-9 of this ordinance.~~
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.

~~(e)~~ 6. Exempt Uses. The following uses are exempt from the provisions of this ordinance (and therefore are allowed):

- i. ~~1.~~ 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.
- (a) 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 comprehensive soil test conducted within the same calendar year 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 starter 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.

(b) 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.

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

Sec. 34-6. ~~Pest Management~~Landcare Management Advisory Committee.

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

1. ~~(i) The City's Sustainability Director or a City employee appointed by the Sustainability Director; One (1) member of city staff, designated by the City Manager, who shall be accredited by the Northeast Organic Farming Association in Organic Land Care or shall receive such accreditation within a reasonable time frame;~~
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) PMACLMAC members appointed by the City Council shall be three-year terms, except that the initial appointments after the establishment of the PMACLMAC 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 PMACLMAC member shall be for as long as the employee holds said employment position.

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

1. Advising the Sustainability and Transportation Committee and the City's 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 PMACLMAC;
 6. Reviewing annual data and issuing a summary report annually by 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; 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 and fertilizers within the City of Portland including, but not limited to:
 - i. a.—The amount of pesticides and fertilizers used on privately or publicly owned land in the City of Portland;
 - ii. b.—The reasoning for such use of pesticides and fertilizers; and
 - iii. e.—The specific pesticides and fertilizers that were used.
 7. Any additional responsibilities as may be assigned and deemed necessary by the City Council.
- (d) PMACLMAC Officers, meetings and records.
1. The members shall annually elect a chair and a secretary from their membership;

2. All meetings of the PMACLMAC 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 PMACLMAC 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 PMACLMAC's activities shall be submitted to the Sustainability and Transportation Committee by 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.

~~(e)~~ (f) _____ Waiver Subcommittee:

1. A subcommittee of the PMACLMAC shall be established annually and consist of the designated City staff member and one (1) other member of the PMACLMAC 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 PMACLMAC 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)

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 ~~PMA~~CLMAC Waiver Committee for a waiver from the provisions of this ordinance prior to the use/application of a prohibited fertilizer or prohibited pesticide or prior to the conduct of a prohibited application.

(b) In addition, Persons may apply to the 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:

- 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.

~~(a)~~

~~(b)~~ (c) The waiver application shall be filed with the ~~PMA~~CLMAC 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 ~~PMA~~CLMAC 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.

~~(e)~~(d) The 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.

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

~~(e)~~(f) An Aggrieved Party may appeal a written decision of the PMACLMAC Waiver Committee to the City Manager or his or her 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 his or her designee (who shall not be a member of the PMACLMAC) 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 PMACLMAC Waiver Committee, and the Sustainability Coordinator. The decision of the City Manager or his or her designee shall be final.

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

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, all State of Maine licensed applicators are required to submit to the PMACLMAC 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 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)

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 his or her designee shall provide an annual report to the ~~PMA~~CLMAC 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)

34-10. Public Notification.

Any person shall comply with the following posting requirements.

(a) —For all prohibited pesticide uses or applications:

1. ~~(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 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. ~~(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;

3. ~~(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;

4. ~~(d)~~—The sign must include the following:

- i. ~~1.~~—The word "CAUTION" in 72-point type;
- ii. ~~2.~~—The words "PESTICIDE APPLICATION" in 30-point type or larger;
- iii. ~~3.~~—The Maine Board of Pesticides Control designated symbol;
- iv. ~~4.~~—Any reentry precautions from the pesticide labeling;
- v. ~~5.~~—The name and telephone number of the entity making the pesticide application;
- vi. ~~6.~~—The date and time of the application;
- vii. ~~7.~~—A date and/or time to remove the sign;
- viii. ~~8.~~—the chemical and trade name of the pesticide; and
- ix. ~~9.~~—the length of time to remain off the treated area as indicated by the pesticide label; and

5. ~~(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, as may be amended from time to time, regarding public notification.

(b) 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)

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 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 PMACLMAC 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 PMACLMAC.

(c) The PMACLMAC 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. a.—federal, state, and local pesticide and fertilizer regulations;
 - bii.—principles of organic landcare, including pest management and use of fertilizers~~pest management~~;
 - iii. e.—pesticide and fertilizer toxicity and health and environmental concerns;
 - iv. d.—proper pesticide display and storage; and
 - v. 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 and fertilizers.

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

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 his or her designee issued hereunder shall be subject to enforcement action as provided in §34-13.

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

Sec. 34-13. Enforcement and Remedies.

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

(b) 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 ordinance;

(c) The ~~Permitting Department~~ City Manager or his or her designee 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

(de) 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)

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 he or she determines 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)