

PESTICIDE DRAFT ORDINANCE #5

WHEREAS, the State of Maine is one of only seven states, and the District of Columbia, that allows local governments to restrict the use of pesticides, and so this is an opportunity for the City to affect positive change; and

WHEREAS, the State of Maine allows for municipalities through their home rule authority to enact ordinances dealing with municipal affairs pursuant to 30-A M.R.S.A. §3001; and

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

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

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

WHEREAS, the City of Portland also recognizes that there may still be a need to manage pests to protect public health and safety, wildlife, our environment and City assets; and

WHEREAS, many synthetic pesticides are harmful to humans, pets, wildlife, including threatened and endangered species, soil microbiology, plants, and natural ecosystems; and

WHEREAS, many citizens desire to be protected from exposure to pesticides in the air, water or soil that **inevitably** may ~~result~~ from chemical drift and contaminated runoff; and

WHEREAS, the use of pesticides known or suspected to cause serious health problems is not necessary to grow and maintain green lawns and ornamental landscapes, given the availability of viable alternative practices and products; and

WHEREAS, a growing number of communities and municipalities including the City of Portland are embracing a precautionary approach to the use of pesticides in order to adequately protect people and the environment from their harmful effects:

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND *That the Portland City Code is hereby amended by adding a section, to be numbered Chapter 34, Sections 34-1 to 34-11, which said Sections read as follows:*

Pesticide Use Ordinance

34-1. Definitions.

When used in this Chapter, the following words, terms and phrases shall have the following meanings.

Application: The spraying, pouring, spreading and applying of any and all pesticides over property in order to mitigate, among **other** things, weeds, pests or plants.

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

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

Environmental Professional: Individual that has formal education in the field(s) of environmental science, environmental engineering, ecology, natural resources management, and/or other similar field of study.

FIFRA: Federal Insecticide, Fungicide, and Rodenticide Act; 7 U.S.C. §136 et seq.; as amended from time to time.

FIFRA Minimum Risk List: Pesticides that have active ingredients which are deemed minimum risk and therefore do not have to register with the Environmental Protection Agency. The Minimum Risk List is available on the web site of the Environmental Protection Agency (EPA) at: epa.gov/minimum-risk-pesticides/active-ingredients-allowed-minimum-risk-pesticide-products

Invasive Species: Aa species that is not native to a particular eco-system and whose introduction does or is likely to cause economic or environmental harm or harm to human health.

Licensed Applicator: An applicator of pesticides who is licensed by the State of Maine Board of Pesticides Control.

Natural, Organic, or Non-synthetic: A substance or mixture of substances that are derived from mineral, plant, or animal matter and do not undergo a synthetic process as defined in the Organic Foods Production Act, 7 U.S.C. §6502(21) as amended from time to time.

Non-synthetic Pesticide: This term means and includes any and all pesticides derived from natural sources, not synthetically manufactured.

Pest: Any insects, rodents, nematodes, fungi, weeds, and other forms of terrestrial or aquatic plant or animal life or viruses, bacteria, or other microorganisms, this definition specifically excludes viruses, bacteria or other microorganisms on or in living human beings or other living animals, that have been declared to be a pest under 7 M.R.S. §610(1)(A) as amended from time to time.

Pesticide: Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for used as a plant regulator, defoliant, or desiccant; and any nitrogen stabilizer. Herbicides, fungicides, insecticides and/or rodenticides are considered pesticides.

Privately Owned Land: All land and water bodies, including airspace and all plants, animals, structures, and/or buildings, within the limits of the City of Portland which are owned by private persons or entities.

Publicly Owned Land: All land and water bodies including all airspace and all plants, animals, structures, and/or buildings, within the limits of the City of Portland which are owned by a governmental entity including, but not limited to, the City of Portland.

Retailer: Any and all persons, entities, stores, shops, sales outlets or other establishments, located within the limits of the City of Portland that offers for sale, displays or sells pesticides, among other things, for personal or commercial at-home use.

Retail store: Any retailer, including, but not limited to, garden centers or shops, store or establishment located within the limits of the City of Portland that are self-service markets located in a building, and which sell or offer for sale pesticides for personal or commercial at-home use.

Synthetic: A substance or mixture of substances that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring sources.

Water body: Any great pond, river, stream or tidal area, coastal or shore land freshwater wetland as these terms are defined in Chapter 14 of the City of Portland Code of Ordinances.

34-2. Applicability.

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

34-3. Pesticide Application Near Water Bodies.

The use or application of any non-synthetic or synthetic pesticides on privately or publicly owned land shall not occur within seventy-five (75) feet of any water body or wetland.

34-4. Pest Management.

(a) It is hereby the policy of the City of Portland to prioritize land care practices that do not use pesticides to control pests. In circumstances where pesticides must be used, the minimum amount of pesticides, and the least toxic pesticide,

needed to effectively control pests in all areas of application on privately and publicly owned land within the City shall be used. As such, applicators and licensed applicators shall conduct any pest management activities on publicly and privately owned land located within the City of Portland shall be conducted in accordance with the following hierarchy of procedures:

1. Non-pesticide management tactics shall be used first. These tactics include mowing high, leaving lawn clippings in place, top dressing compost, and proper irrigation.
2. If non-pesticide management tactics prove ineffective, pesticides determined to be "minimum risk pesticides" pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") and listed in 40 C.F.R. § 152.25(f)(1-6), as may be amended from time to time (hereinafter referred to as "FIRFA Minimum Risk List" pesticides) may then be used;
3. If the pesticides listed on the FIFRA Minimum Risk List prove ineffective, then other non-synthetic pesticides may be used. ~~so long as the following steps are taken:~~
 - ~~2. i. Monitor for pest presence or conditions conducive to a pest outbreak;~~
 - ~~2. ii. Identify the pest specifically;~~
 - ~~2. iii. Determine that the pest population exceeds acceptable safety, economic or aesthetic threshold levels (except in instances where pests threaten public or ecological health);~~
 - ~~2. iv. Utilize control measures that have been demonstrated to be practicable, effective and affordable; and~~
 - ~~2. v. A written document describing how the licensed applicator treated the problem is kept and submitted annually in the month of _____ to the Pesticide Oversight Committee. Information in the written document shall include the type of pest treated for, steps taken prior to treatment, and all information~~

~~required by the Maine Board of Pesticides Control
Pesticide Applicator Log; and~~

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

(b) The following steps must be taken by an applicator or licensed applicator in all cases outlined in subsection(a) above before moving on to the next step in the hierarchy:

1. Monitor for pest presence or conditions conducive to a pest outbreak;
2. Identify the pest specifically;
3. Determine that the pest population exceeds acceptable safety, economic or aesthetic threshold levels (except in instances where pests threaten public or ecological health);
4. Utilize control measures that have been demonstrated to be practicable, effective and affordable and in accordance with the hierarchy outlined in subsection (a) above;
5. Compile and submit a written document to the Pesticide Oversight Committee describing how the pest problem was treated. Information in the written document shall include the type of pest treated for, steps taken prior to treatment, and all information required by the Maine Board of Pesticides Control Pesticide Applicator Log; and
6. If a pesticide is used notice shall be posted on the privately or publicly owned land in accordance with section 34-6.

- (c) In the case of an emergency, a waiver of the above provisions may be granted pursuant to section 34-8.

34-5. Pesticide Oversight Committee.

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

(b) The Committee shall be comprised of seven (7) members, including two (2) licensed applicators, two (2) environmental professionals, and three (3) at-large resident representatives who are neither licensed applicators or environmental professionals. All members shall be residents of the City of Portland and be appointed by the City Council for staggered two (2) year terms.

(c) The Committee shall be chaired by one (1) member, approved through a majority vote of the members of the Committee.

(d) The Committee shall meet at least five (5) times annually.

(e) The Committee shall have the following duties:

1. Create, develop and provide in conjunction with the City Manager or his or her designee educational materials for retailers, retail stores and the public, which, among other things, describe and educate about safe pesticide application and use, as well as the harms of and the existing alternatives to pesticides that are available for use;
2. Develop and recommend action threshold guidelines for common pests and invasive species; and
3. Provide the Sustainability and Transportation Committee with:
 - i. An annual report which includes, among other things, a summary of its educational outreach; recommendations on any necessary amendments to this Chapter; number of waivers granted by the City Manager or his or her designee; and comprehensive data taken from the written documents provided by ~~Licensed~~ Applicators and/or Licensed

Applicators about the use of pesticides within the City of Portland including, but not limited to:

- a. The amount of pesticides used on privately or publicly owned land in the City of Portland;
- b. The reasoning for such use of pesticides; and
- c. The specific pesticides that were used.

34-6. Public Notification.

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

(a) A warning sign shall be posted on the privately or publicly owned land ~~in compliance with this Chapter~~. These signs must be posted before application activities commence on the land and left in place for at least forty-eight (48) hours after actual application or until expiration of the restricted entry interval or reentry time indicated by the pesticide label, whichever is longer;

(b) All signs shall be at least five (5) inches high and four (4) inches wide in size. Signs shall be attached to the upper portion of a dowel or other supporting device so that the bottom of the sign is not less than 12" and the top of the sign is not more than 48" above the ground. The signs shall be of rigid, weather resistant material substantial enough to be easily read for at least 48 hours when placed outdoors;

(c) All signs must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green). They shall have lettering that is conspicuous and clearly legible;

(d) The sign must include the following:

1. The word "CAUTION" in 72-point type;

2. The words "PESTICIDE APPLICATION" in 30--point type or larger;
3. The Maine Board of Pesticides Control designated symbol;
4. Any reentry precautions from the pesticide labeling;
5. The name and telephone number of the entity making the pesticide application;
6. The date and time of the application; and
7. A date and/or time to remove the sign; and

(e) All signs shall state the chemical and trade name of the pesticide, the date to be applied, the length of time to remain off the treated area as indicated by the pesticide label, and a phone number of the responsible party for more information.

(f) The requirements above are in addition to any requirements that may also apply to State of Maine licensed applicators subject to the Maine Board of Pesticides Control rules regarding public notification.

34-7. Education.

(a) The City Manager or his or her designee, in coordination with the Committee, shall prepare and publish materials including, but not limited to, signs for retailers or retail stores as described in (c) below, which are designed to educate City residents and the public about minimizing the role of pesticides in the local environment. These materials may also include information about the following:

1. City pesticide and pest management practices;
2. Resources maintained and available from the Maine Board of Pesticide Control including, but not limited to, resources related to enforcement of State laws and regulations overseen by the Board; ~~and~~
3. Local, State or Federal laws and regulations regarding pest management activities; and

4. Resources about Maine Organic Farmers and Gardeners Association ("MOFGA"), Northeast Organic Farming Association ("NOFA"), and/or Beyond Pesticides.

(b) These materials may be conveyed to the public by and through the following means:

1. The internet including the City's website;
2. Social media;
3. Television;
4. News releases and events;
5. Tax bill inserts;
6. Brochures or other written materials;
7. Posters or signs;
8. Workshops, trainings, demonstration projects; and/or
9. Any other method deemed appropriate by the Committee.

(c) Any and all retailers and/or retail stores shall post these materials and/or signs in the location of a retail store where pesticides are located or offered for sale.

34-8. Waivers.

(a) In situations that are an emergency, threaten the public health, welfare and safety, or for the control of invasive species that pose a threat to the environment, persons applicators or licensed applicators may apply to the City Manager or his or her designee for a waiver from the provisions of this Chapter ~~from the provisions of this ordinance prior to the use of a prohibited product, including, but not limited to, synthetic pesticides, or prior to the conduct of a prohibited application.~~

(b) The waiver application shall be in writing, be filed by the applicator or licensed applicator with the City Manager or his or her designee~~with and on a form prescribed by the City Manager or designee~~, and shall include the following information: the proposed location(s); details on the timing(s) of use, substance(s) and amounts to be applied; date(s) of application; management plan that excludes broadcast and preemptive applications; a pest identification and threshold report; and reason for requesting the use/application of a prohibited pesticide. In order to approve a waiver application, the City Manager or his or her designee ~~shall~~must find that all of the following criteria are met:

1. A situation ~~exists~~ that: is an emergency; threatens the public health, safety and/or welfare; and/or is the result of an invasive species; or is necessary to protect buildings or structures from damage~~where invasive species pose a threat to the environment;~~
2. The applicant has carefully evaluated all alternative methods and materials as described in section 34-4(a);
3. The applicant will, to the greatest extent practical, minimize the impact of the application on abutting properties; and
4. To the maximum extent possible ~~the~~ grant of the waiver will not be detrimental to the public's health, safety or welfare.

(c) The City Manager or his or her designee shall act within ~~three~~five (~~3~~5) business days of receipt of a completed waiver application.

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

34-9. Exemptions.

The following materials, locations and uses are exempt from the provisions of this Chapter:

(a) Materials:

1. Pet supplies; shampoos, tick and flea treatments;
2. Disinfectants, germicides, bactericides, miticides, and virucides;
3. Insect repellent;
4. Rat and rodent control supplies;
5. Swimming pool supplies;
6. General use paints, stains, and wood preservatives and sealants; and/or
7. Aerosol sprays.

(b) Locations:

1. Riverside Golf Course.
 - i. Any and all playing and non-playing surfaces and/or greens.
2. Hadlock Field.
 - i. Any and all playing surfaces in or on Hadlock Field.
3. Right-of-ways
 - i. Any and all land, on, over, under, abutting or along a City of Portland or State of Maine street or right-of-way located in and/or through the limits of the City of Portland.

(c) Uses:

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

34-10. Enforcement and Remedies.

(a) The City Manager or his or her designee shall have the authority to enact rules and regulations in order to implement the provisions of this Chapter;

(b) This Chapter may be enforced by the City Manager or his or her designee; and

(c) Any violation of this Chapter may be considered a civil infraction and may be enforced pursuant to Portland City Code, Chapter 1, Section 1-15 or by providing education to a person or entity that has violated a provision of this Chapter.

34-11. Severability.

To the extent any provision of this Chapter is deemed invalid by a court of competent jurisdiction, the balance of the Chapter that shall remain is valid.