

DRAFT

PESTICIDE ORDINANCE

(Based on Integrated Pest Management Practices)

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 recognizes that there is an ongoing need to manage pests to protect public health and safety, wildlife, our environment and City assets; and

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

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

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

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

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

Pesticide Use Ordinance

34-1. Purpose.

The purpose of this Chapter is to safeguard the health, safety and welfare of the residents of the City of Portland and to conserve and protect the City's water bodies and natural resources by curtailing the use of pesticides for turf, landscape, and outdoor pest management.

34-2. 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.

Economic injury level: The smallest number of insects (amount of injury) that will cause yield losses equal to the insect management costs.

Economic injury threshold: The pest density at which management action should be taken to prevent an increasing pest population from reaching the economic injury level.

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

Integrated Pest Management or IPM: The selection, integration, and/or implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences including, but not limited to the following:

1. Understanding the system in which the pest exists;
2. Establishing dynamic economic injury threshold and determining whether the organism or organism complex warrants control;
3. Monitoring the pests and natural enemies;
4. When needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression; and/or
5. Systematically evaluating the pest management approaches utilized.

Invasive Species: a 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.

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, 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.

34-3. 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 and all privately or publicly owned land.

34-4. Pesticide Application Near Water Bodies.

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

34-5. Integrated Pest Management.

(a) It is hereby the policy of the City of Portland to ensure that the minimum amount of pesticides needed to effectively control pests in all areas of application on privately and publicly owned land within the City shall be used, and that any and all pest management activities within the City shall be conducted by a licensed applicator in accordance with the following IPM practices:

1. Non-pesticide management tactics shall be used first;
2. If non-pesticide management tactics prove ineffective, pesticides listed on the FIFRA Minimum Risk List may then be used; and
3. If the pesticides listed on the FIFRA Minimum Risk List prove ineffective, other synthetic or non-synthetic pesticides may be used so long as the following steps are taken:
 - i. Monitor for pest presence or conditions conducive to a pest outbreak;
 - ii. Identify the pest specifically;
 - iii. Determine that the pest population exceeds acceptable safety, economic or aesthetic threshold levels;
 - iv. Utilize control measures that have been demonstrated to be practicable, effective and affordable; and

- v. A written document describing how the licensed applicator treated the problem is kept and submitted annually in the month of _____ to the Integrated Pest Management Advisory 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.

34-6. Integrated Pest Management Advisory Committee.

(a) There is hereby created the following Integrated Pest Management Advisory Committee (the "Committee").

(b) The Committee shall be comprised of five (5) members, including two (2) licensed applicators, two (2) environmental professionals, and one (1) at-large resident representative who is neither a licensed applicator or environmental professional. 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 co-chaired by one (1) licensed applicator representative and one (1) environmental professional representative, as agreed to by 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 IPM, 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 Energy and Sustainability 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; and comprehensive data taken from the written documents provided by 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.

34-7. 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 the role of pesticides in the local environment and the benefits of IPM. 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.

(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. 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.
- (a) 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-way
 - i. Pesticides may be used in, on, over, under, abutting or along a right-of-way located in and/or through the city limits of the City of Portland.
- (b) Uses:
1. of pesticides mandated by state or federal law or an order or decision from a state or federal agency.

34-9. 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.

34-10. 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.

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