

Order 176-15/16

Passage: 7-0 (Mavodones, Duson absent) on 3/7/2016

Effective 3/17/2016

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CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
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**ORDER REFERRING PESTICIDES ORDINANCE TO THE
SUSTAINABILITY AND ENERGY COMMITTEE**

ORDERED, that the City Council hereby refers the attached Pesticides Ordinance to the Sustainability and Energy Committee; and

BE IT FURTHER ORDERED, that the Sustainability and Energy Committee review the attached ordinance, as well as any other relevant materials regarding pesticides, vote and provide its final recommendation on this issue to the City Council.

Purpose

The purpose of this article is to safeguard the health and welfare of the residents of the City of South Portland and to conserve and protect the City's water and natural resources. South Portland strives to make organic pest management the primary management tool in our community so that synthetic pesticide use and its damaging effects on the health and welfare of residents and the environment are significantly curtailed.

Findings

WHEREAS, The State of Maine is one of only 7 states, and the District of Columbia, that uphold the rights of localities to restrict pesticides, and this should be seen as an opportunity to affect positive change;

WHEREAS, the EPA, the Committee on Environmental Health of the American Academy of Pediatrics, the National Academy of Sciences, and the 2010 President's Cancer Panel have all concluded that pesticide exposure is linked to reproductive disorders, birth defects, learning disabilities, neurological disease, endocrine disorders, and cancer;

WHEREAS, the EPA acknowledges, along with esteemed Mt. Sinai Children's Environmental Health Center, that children, with their developing bodies and brains, are especially vulnerable to the harmful effects of lawn and garden pesticides. Children's behavior (hand to mouth interactions, proximity to the ground, walking or running through lawns instead of paved sidewalks, especially where there are none), dispose children to far more contact with lawn pesticides than adults;

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

WHEREAS, the City of South Portland has five streams designated by the Maine Department of Environmental Protection (MEDEP) as "urban impaired" for failing to meet state water quality standards primarily due to adverse impacts from surrounding development. All of these streams drain to Casco Bay, which is widely recognized as a natural asset of significant ecological and economic value. The Bay faces long-term threats from stormwater runoff and the use of pesticides has the potential to exacerbate these threats;

WHEREAS, the use of hazardous pesticides is not necessary to create and maintain green lawns and landscapes given the availability of viable non-toxic alternative practices and products;

WHEREAS, people have a right not to be involuntarily exposed to pesticides in the air, water or soil that inevitably result from chemical drift and contaminated runoff;

WHEREAS, recognizing that if an emergency public health situation warrants the use of pesticides, which would otherwise not be permitted under this ordinance, the Pest Management Advisory Committee shall have the authority to grant a temporary waiver on a case-by-case basis after an evaluation of all alternative methods and materials.

WHEREAS, numerous communities and municipalities are embracing a precautionary approach to the use of toxic pesticides in order to adequately protect people and the environment from pesticides' harmful effects.

Definitions

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

Golf course: an area of land laid out for golf with a series of 9, 18 or more holes. Mini-golf courses are not considered golf courses.

Inert ingredient: Any substance (or group of structurally similar substances if designated by the Environmental Protection Agency), other than an active ingredient, which is intentionally included in a pesticide product, except as provided by EPA 40 CFR §174.3.

Invasive Species: An invasive plant is defined as a plant that is not native to a particular ecosystem, whose introduction does or is likely to cause economic or environmental harm or harm to human health. For purposes of this ordinance, invasive species include those listed by the Maine Bureau of Agriculture, Conservation and Forestry as currently invasive, potentially or probably invasive, and highly likely but not currently invasive.

Natural, organic or "Non-synthetic": A substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic process as defined in section 6502(21) of the Organic Foods Production Act (7 U.S.C. 6502(21)).

Organic pest management: An extension of the principles and practices of organic agriculture to the care of turf and landscape.

Pests: are considered undesirable terrestrial or aquatic plants, insects, fungi, bacteria, viruses, nematodes, rodents, birds, animals, or other micro-organisms (except viruses, bacteria or other micro-organisms on or in living

persons or other living animals) declared to be a pest under federal or state laws.

Pesticide: 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 U.S. Environmental Protection Agency. Herbicides, fungicides, insecticides and rodenticides are considered pesticides.

Pest Management Advisory Committee (PMAC): shall act in an advisory capacity to develop and oversee the ordinance, and advise the City Manager or his/her designee of any problems encountered or amendments required to achieve the full and successful implementation of this article including granting waivers.

Synthetic: 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.

Provisions

The following provisions shall be applicable to all turf, landscape and outdoor pest management activities conducted within the City of South Portland, on both public and private land.

(a) *Permitted:*

Use or application of natural, organic land care protocols.

All pest control products that can be used on Maine Organic Farmers and Gardeners Association Certified Farms, and/or products certified by the Organic Materials Review Institute and/or the Washington State Dept. of Agriculture and/or permitted by the USDA National Organic Program.

(b) *Prohibited:*

Use or application of synthetic pesticides on City-owned and private property, other than pesticides classified by the US Environmental Protection Agency as exempt materials under 40 CFR 152.25, and those products permitted by the Organic Materials Review Institute and/or the Washington State Dept. of Agriculture.

Exemptions

The following applications are exempt from the provisions of this ordinance:

- a. Commercial agriculture;
- b. Pet supplies such as shampoos and tick and flea treatments;
- c. Disinfectants, germicides, bactericides, and virucides;
- d. Insect repellents;
- e. Rat and rodent control supplies;
- f. Swimming pool supplies;
- g. Aerosol products;
- h. General use paints, stains and wood preservatives and sealants.

Prohibited pesticides may also be applied for the following purposes:

1. **Health and Safety** – Pesticides can be used to control plants that are poisonous to the touch, such as poison ivy; insects that bite, sting, are venomous or are disease carrying, like mosquitoes; and animals or insects that may cause damage to a structure, such as carpenter ants or termites.
2. **Golf course playing surfaces** – including tees, fairways, greens and roughs are conditionally exempt from this ordinance if the owner or operator of the golf course submits and makes public an annual management plan. The plan shall include: a map or plan of the golf course showing all application areas, all measures taken to minimize use of synthetic pesticides on playing surfaces and their exposure to humans and waterways to date, and how the use of pesticide ingredients will be minimized in the next calendar year. These plans must be made public by posting on the golf course's website and a copy provided to the Pest Management Advisory Committee. Non-playing areas associated with golf courses such as lawns, driveways, paths, patios, trees, shrubs, ornamental plantings and gardens are not exempt from this ordinance.

Waivers

In cases that threaten the public health and safety by creating a hazardous situation, and for the control of invasive species that pose a threat to the environment, individuals and/or companies may apply for a waiver from the provisions of this ordinance.

A waiver application is a public record, stating the proposed location(s) and timing(s) of use, substance(s) and amounts to be applied, the date(s) of application, and the reason for requesting use of a synthetic pesticide. The Pest Management Advisory Committee shall decide whether to issue a waiver, and for what duration.

The Pest Management Advisory Committee must find all three (3) of the following conditions to exist in order to approve a waiver for the application of a prohibited pesticide:

- (1) That natural and organic methods have proven unsuccessful;
- (2) The application of pesticides will not occur within two hundred and fifty (250) feet of a tributary, creek, stream, river, lake, or drainage ditch;
- (3) That the granting of the waiver will not result in material damage to other properties in the vicinity, nor be detrimental to the public health, safety or welfare;

Public Notifications and Signs

If prohibited pesticides are applied through an exemption or waiver, the following posting requirements are to be followed. These requirements are in addition to licensed applicators complying with the Maine Board of Pesticide Control rules regarding public notification:

1. Whenever pesticides are to be applied to any land subject to this ordinance, the responsible individuals and/or companies shall post warning signs that meet the requirements of this ordinance. These signs must be posted before application activities commence and left in place for at least 48 hours after actual application or until expiration of the restricted entry interval or reentry time indicated by the pesticide label, whichever is longer.
2. All signs shall be at least five inches high and four inches wide in size. Signs shall be attached to the upper portion of a dowel or other supporting device so that the bottom of the sign is not less than 12" and the top of the sign is not more than 48" above the ground. The signs shall be of rigid, weather resistant material substantial enough to be easily read for at least 48 hours when placed outdoors.
3. All notification signs must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green). They shall have lettering that is conspicuous and clearly legible.
4. The sign must bear the following state requirements:
 - a. The word "CAUTION" in 72 point type;
 - b. The words "PESTICIDE APPLICATION" in 30 point type or larger;
 - c. The Maine Board of Pesticides Control designated symbol;
 - d. Any reentry precautions from the pesticide labeling;
 - e. The name and telephone number of the entity making the pesticide application;
 - f. The date and time of the application;

- g. A date and/or time to remove the sign.
5. All notification signs shall state the chemical and trade name of the pesticide, the date to be applied, the length of time to remain off the treated area as indicated by the pesticide label, and a phone number of the responsible party for more information.

Reporting

In addition to complying with the Maine Board of Pesticide Control rules regarding record keeping and reporting requirements outlined in Chapter 50, all licensed applicators are required to submit to the City of South Portland an annual summary report. The report shall contain the following information for EACH application in the City of South Portland: date of application, street address, site and size of area treated, quantity and type of synthetic pesticide and diluents applied, EPA#, application method, total undiluted pesticide, and an explanation of any differences in pesticide use or quantity used from the previous annual report submitted.

Reports shall be submitted to the City Clerk's office by December 31 of each year.

Phase In

Phase One: Effective (Date - 1yr) Prohibits the use or application of pesticides on City-owned property, other than pesticides classified by the US Environmental Protection Agency as exempt materials under 40 CFR 152.25, and those products permitted by the Organic Materials Review Institute.

Phase Two: Effective (Date - 2yrs) Prohibits the use or application of pesticides on private property. It shall be illegal to apply pesticides on private property in the City, whether by the property owner or a tenant, service provider, or other agent. other than pesticides classified by the US Environmental Protection Agency as exempt materials under 40 CFR 152.25, and those products permitted by the Organic Materials Review Institute.

Phase Three: Effective (Date - 3yrs) Conduct an evaluation of this ordinance including a review of pilot project results and reporting data, and provide recommendations for any revisions deemed appropriate.

Outreach and Education

The City Manager or his/her designee shall publish notice of this ordinance and shall provide periodic notice to identified retailers and lawn, garden, and tree-care providers serving South Portland and to churches, schools, and other institutions in the City, upon adoption of this ordinance.

The Pest Management Advisory Committee shall prepare and publish materials designed to educate the community about the role of pesticides in our local environment and the benefits of organic pest management. This outreach should include:

- A. A community-based social marketing (CBSM) campaign targeting City households
- B. Distribution of information and news about City practices through South Portland internet and web-based resources
- C. SPC-TV public service announcements
- D. News releases and news events
- E. Tax and water bill inserts
- F. Posters and brochures made available at City events and applicable locations that serve the public
- G. Workshops, trainings, and demonstration projects
- H. Targeted outreach to schools
- I. Any additional methods deemed appropriate

The Pest Management Advisory Committee shall also develop a program to work directly with retailers who sell synthetic pesticides in the City of South Portland to:

- A. Provide educational training for all retail store employees who recommend and sell pesticides for use in the home and garden highlighting
 - (a) federal, state, and local pesticide regulations
 - (b) principles of organic pest management
 - (c) pesticide toxicity & health and environmental concerns
 - (d) proper pesticide display and storage
 - (e) the role of personal protective equipment, pesticide poisoning symptoms, and emergency procedures in case of spills
- B. 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 the pesticide ordinance and alternatives to prohibited products/synthetic pesticides.

There are a variety of options for different levels of professional and municipal employee education and training based on the Northeast Organic Farming Association's (NOFA) *Standards for Organic Land Care*, which extends the principles of organic agriculture to land care practices:

- A. Accreditation through a three- to five-day course
- B. Certificate course online
- C. Trainings & webinars targeting organic management of turf and lawn

Authority

The South Portland City Manager or his/her designee shall oversee the implementation of the synthetic pesticide ordinance. A Pest Management Advisory Committee shall be created to act in an advisory capacity to oversee the ordinance through

- (1) Advising the City Manager or his/her designee of any problems encountered or amendments required to achieve the full and successful implementation of this ordinance.
- (2) Reviewing and granting waivers when applicable.
- (3) Developing and implementing outreach and education as specified in the ordinance.
- (4) Reviewing annual data and issuing a summary report annually.
- (5) Additional responsibilities as deemed necessary by the City.

The Pest Management Advisory Committee will seek 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. Broad community participation, from parents, schools, advocates, and local arboriculture and landscaping businesses, will be encouraged. The committee will work closely with the City's Sustainability Office to develop and implement outreach and education.

The Pest Management Advisory Committee shall include:

1. City Stormwater Coordinator
2. City Parks & Recreation Superintendent or his/her designee
3. Two Maine Board of Pesticide Control-licensed landscape professionals; at least one having experience in organic land care management; appointed by the City Manager or his/her designee.
4. Two resident or taxpayer representatives, at-large; appointed by the City Council.

The Pest Management Advisory Committee shall meet regularly and waivers shall be reviewed at scheduled committee meetings. Waiver applications must be submitted at least two (2) weeks before a scheduled meeting date in order to be reviewed. Minutes shall be kept of all meetings with a copy filed with the City Clerk. An annual report of the data submitted by all licensed applicators and a review of the committee's activities shall be submitted to the City Council in March of each year.

Fines and Enforcement

Any law enforcement or Code Enforcement Officer may issue a municipal complaint ticket or citation for offenses of this section.

- A. A first offense of any provision of this ordinance shall warrant a letter of warning.
- B. A second offense shall be punishable by a fine of two hundred dollars (\$200.00).
- C. The third offense shall be punishable by a fine of five hundred dollars (\$500.00).

- D. Any subsequent offense shall be punishable by a fine of one thousand dollars (\$1,000).