

Portland Pesticide Ordinance

Purpose

The purpose of this chapter is to safeguard the health and welfare of the residents of and the visitors to the City of Portland and to conserve and protect the City's terrestrial and aquatic environments, including all animal and plant life.

Provisions

The following provisions shall be applicable to all retail, commercial, institutional, residential and municipal turf, landscape and pest management activities conducted outdoors within the City of Portland, on both public and private land.

(a) Permitted:

1. Organic land care practices.
2. Sale or use of organic land care products.

2.1. All control products and soil amendments, including fertilizer and compost, used under the terms of this article shall be in keeping with products that can be used on Maine Organic Farmers and Gardeners Association certified farms, and/or products permitted by the Organic Materials Review Institute or the USDA National Organic Program.

(b) Prohibited:

Sale or use of synthetic fertilizers and pesticides, 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.

Outreach and education

(a) The City:

The City shall identify or prepare, and then periodically disseminate, materials designed to educate the community about the role of pesticides in our local environment, and the restrictions imposed by this ordinance. Education may take the form of pamphlets and brochures, whether produced and distributed on paper or electronically, and classes and seminars, involving City staff, non-City governmental agencies, community and advocacy groups and other resources.

(b) Commercial Pesticide Applicators:

In addition to the state-required training and license to apply pesticides, commercial pesticide applicators shall be required to be certified in organic land care management by one of the accredited organizations that provide this training, such as the Northeast Organic Farming Association or Rutgers University. Such courses should include information on soil testing and analysis, soil health, organic pest and disease management, organic fertilizers and amendments, and water management. In addition, a course should provide a framework for

defining what is organic or sustainable, such as *NOFA Standards for Organic Land Care 5th Edition*, which allows practitioners to know whether their practices are Preferred, Allowed or Prohibited in Organic Land Care.

Definitions

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

Organic land care: An extension of the principles and practices of organic agriculture to the care of turf landscape

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; and any nitrogen stabilizer. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the US Environmental Protection Agency. Herbicides, fungicides, insecticides, rodenticides and antimicrobial pesticides are pesticides.

Pest: Any undesirable insect, plant, fungi, bacteria, virus or microorganism.

Commercial Pesticide Applicator: Any person that performs pesticide applications for property owners.

Emergency waiver

If an emergency situation warrants the use of non-exempt pesticides, the City Council may grant a seven-day temporary waiver. The least-toxic material available must be used to address the emergency. Letters to abutters detailing the treatment plan and notice to city residents in the form of an advertisement placed in the city's newspaper of record must be given 48 hours in advance of any non-exempt pesticide applications. The presence of weeds, vegetative overgrowth or common fungal diseases in the usual course of landscape management shall not constitute an emergency.

(a) Waiver determination shall be based on the following criteria:

1. The pest situation presents (a) an immediate threat to human health or environmental quality, or (b) an immediate threat of substantial property damage or loss; and
2. Viable alternatives consistent with this ordinance do not exist. The City Council shall request the Transportation, Sustainability and Energy Subcommittee to review any waiver requests made under this section, and to recommend a course of action.

Enforcement and permits

This article shall be enforced by the Code Enforcement Officer, according to the policies governing enforcement of municipal ordinances in the City of Portland.

Conflict and invalidity

If a conflict or inconsistency is found between this article and other sections of the Zoning Ordinance or City Charter, the terms of the stricter provisions shall prevail. The invalidity of a provision of this article shall not invalidate any other provision of the article.

Authority

Pursuant to 30-A M.R.S.A. § 3001, municipalities may enact ordinances to protect the welfare of their inhabitants. Pursuant to 22 M.R.S.A. § 1471-U, Maine municipalities may enact ordinances that apply to pesticide storage, distribution or use. Pursuant to 38 M.R.S.A., § 1310-U, municipalities may enact ordinances with respect to solid waste facilities with standards that are not more strict than those contained in the Maine Hazardous Waste, Septage and Solid Waste Management Act 38 M.R.S.A. §§ 1301-1319-Y, the Protection of Natural Resources Act 38 M.R.S.A. §§ 480-A-480-Z, the Site Location of Development Act 38 M.R.S.A. § 481-490, and the rules adopted under those articles, as amended from time to time.