



CITY OF SOUTH PORTLAND

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City Manager

EMILY F. SCULLY  
City Clerk

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CLAUDE V.Z. MORGAN

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District Two  
KATHERINE W. LEWIS

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District Three  
MISHA C. PRIDE

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District Four  
APRIL L. CARICCHIO

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District Five  
DEQA DHALAC

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At Large  
KATELYN S. BRUZGO

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At Large  
SUSAN J. HENDERSON

**IN CITY COUNCIL**

**ORDINANCE #8-20/21**

**(as amended at first reading on 11/05/20)**

THE COUNCIL of the City of South Portland hereby ordains as follows:

**Section 1. Findings related to the Fertilizer Ordinance.**

WHEREAS, the City of South Portland (the "City") wishes to protect the health of Casco Bay and other waterways that support the economic vitality of local fisheries and businesses; and

WHEREAS, the City recognizes that healthy soils serve as the foundation for vibrant ecosystems and plant life; and

WHEREAS, healthy soils play an important role in climate change mitigation by storing carbon (carbon sequestration) and decreasing greenhouse gas emissions in the atmosphere; and

WHEREAS, vegetation plays a vital role in both storing carbon and preventing soil erosion by slowing down water as it flows over the land allowing much of the rain to soak into the ground, and plant roots hold the soil in position and prevent it from being blown or washed away; and

WHEREAS, the City wishes to promote organic landcare practices that support the development of healthy soils to minimize the need for applying fertilizers, curtail the use of synthetic fertilizers, and ultimately support organic landcare practices; and

WHEREAS, the City recognizes that, in certain circumstances, synthetic fertilizers may play a role in boosting the growth of plants, and organic fertilizers may boost the health of soil; and

WHEREAS, the City also recognizes that organic fertilizers feed soil microbes, which cycle nutrients naturally as food for plants, while synthetic fertilizers expedite plant growth with water soluble synthetic nutrients that may deplete the health of the soil; and

WHEREAS, having adopted a Pesticide Use Ordinance, the City and a growing number of municipalities have embraced a precautionary approach to the application of landcare products in order to protect the health of people and the environment from their harmful effects; and

WHEREAS, the City has 16 miles of coastline and 143 coastal waterfront parcels that comprise 944 acres of land area; and

WHEREAS, excess and misapplied fertilizers are apt to run off into streams and coastal waters; and

WHEREAS, the City has five streams designated by the Maine Department of Environmental Protection as “urban impaired” for failing to meet State water quality standards primarily due to the adverse effects of stormwater runoff from surrounding development; and

WHEREAS, an algal bloom (algae bloom) is a rapid increase or accumulation in the population of many types of aquatic photosynthetic, microscopic, unicellular organisms, in freshwater or marine water systems, often recognized by the discoloration from their pigments in the water or on shorelines; and

WHEREAS, algal blooms are the result of nutrients, such as phosphorus and/or nitrogen from fertilizer runoff, pet waste, sewage, and other sources, entering aquatic and marine systems and causing excessive growth of the algal population; and

WHEREAS, nuisance algal blooms are an excessive population of algae that is characterized by obvious green or blue-green pigmentation in the water, settled or floating mats of algae, reduced light transparency, oxygen deprivation, aesthetic degradation, loss of recreational use, and possible harm to the aquatic community; and

WHEREAS, harmful algal blooms occur when algal populations grow out of control while producing toxic or other harmful effects on people, fish, shellfish, marine mammals, and birds; and

WHEREAS, the decomposition of algal blooms in the coastal environment contributes to coastal acidification; and

WHEREAS, when these algal blooms die and decay, decomposing bacteria

consume oxygen and release carbon dioxide in bays and coves, and the increase in carbon dioxide lowers the pH of the water and the mudflats, and exacerbates ocean acidification caused by the mixing of carbon dioxide from tailpipes and smokestacks, with seawater; and

WHEREAS, while nitrogen is essential to the health of marine ecosystems, too much nitrogen leads to nuisance and harmful algal blooms, coastal acidification, and degradation of water quality which can impact eelgrass and harvestable marine resources; and

WHEREAS, phosphorus is a naturally occurring mineral nutrient that is an essential part of photosynthesis necessary for plant growth, but excessive phosphorus concentrations in freshwater bodies can lead to algal and aquatic plant growth that harm aquatic life and impair recreational uses; and

WHEREAS, elevated phosphorus levels can cause toxic algal blooms, reduce water clarity and deplete oxygen levels, which can stress or kill fish and other aquatic animals; and

WHEREAS, excess nitrogen can enter marine waterways from a variety of sources, compelling the need to limit nitrogen inputs from any and all elective sources; and

WHEREAS, in recent years, the community has seen an increase in the occurrence of nuisance and harmful algal blooms in the region; and

WHEREAS, the remediation and restoration of impaired streams and marine waters can be cost prohibitive, and the City can make a difference by using and promoting organic landcare practices; and

WHEREAS, the City has already demonstrated leadership in sustainability and climate action through the adoption of the Clear Skies Ordinance, Pesticide Use Ordinance, and Climate Emergency Resolve, the implementation of the State's largest municipal solar array, the installation of energy upgrades in municipal buildings, the deployment of electric vehicles and charging infrastructure, the implementation of an Energy Benchmarking Ordinance, the establishment of a citywide Food Waste Recycling Program, and the advocacy for state energy policies;

NOW, THEREFORE, the Fertilizer Ordinance is a continuation of those processes.

**Section 2.** The text of Chapter 32, “Pesticide Use Ordinance,” of the “Code of Ordinances of the City of South Portland, Maine” be and hereby is amended as shown below (deletions are ~~struck out~~; additions are underlined):

## Chapter 32

### LANDCARE MANAGEMENT~~PESTICIDE USE~~ ORDINANCE

#### ARTICLE I. PESTICIDE USE

##### **Sec. 32-1. Title.**

This Article ordinance shall be known as the “City of South Portland Pesticide Use Ordinance.”

##### **Sec. 32-2. Purpose.**

The purpose of this ordinance is to safeguard the health and welfare of the residents of the City and to conserve and protect the City’s waterways and natural resources by curtailing the use of pesticides for turf, landscape and outdoor pest management.

##### **Sec. 32-3. 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:

***Broadcast application.*** The spreading of pesticides over an entire area.

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

***EPA.*** The United States Environmental Protection Agency.

***FIFRA.*** The Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

***Golf course.*** An area of land laid out for playing the game of golf with a series of 9, 18 or more holes. Mini-golf courses are not considered golf courses.

**Golf course playing surfaces.** The tees, fairways, greens and roughs of a golf course.

**Golf course non-playing areas.** Areas of golf courses that are not golf course playing surfaces, such as lawns, driveways, paths, patios, trees, shrubs, ornamental plantings and gardens.

**Inert ingredient.** Any substance (or group of structurally similar substances if designated by the EPA), other than an active ingredient, that is intentionally included in a pesticide product.

**Invasive Species.** 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.

**[Landcare Management Advisory Committee \(LMAC\). The Landcare Management Advisory Committee as described in this Chapter.](#)**

**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 the Organic Foods Production Act, 7 U.S.C. § 6502(21), as the same may be amended from time to time.

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

**[Performance turf. Grounds devoted to athletic fields and golf courses.](#)**

**Person.** 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.** This term 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.

**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 EPA. Herbicides, fungicides, insecticides and rodenticides are considered pesticides.

**Pests of significant public health importance.** 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.** The application of pesticides as a measure against something possible, anticipated or feared, *i.e.*, as a preventive or deterrent measure.

**Public utility.** 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.

**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.

**Waiver Committee.** The Waiver Committee as described in this Chapter.

**Water body.** Any great pond, river, stream or tidal area as those terms are defined in the City's Zoning Ordinance, Chapter 27 of the Code of Ordinances.

**Wetland.** A coastal or shoreland freshwater wetland as those terms are defined in the City's Zoning Ordinance, Chapter 27 of the Code of Ordinances.

**Sec. 32-45. Applicability of Pesticide Use Ordinance.**

(A) Allowed and prohibited pesticides.

~~Subject to the applicability dates set forth in Sec. 32-14 herein, f~~For turf, landscape and outdoor pest management activities in the City, the following shall apply:

- (i) Synthetic substances are prohibited unless specifically listed as "allowed" on the U.S. Department of Agriculture's National List of Allowed and Prohibited Substances (the "National List");
- (ii) Non-synthetic substances are allowed unless specifically listed as "prohibited" on the National List;
- (iii) 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) or (2), as may be amended from time to time, are allowed; and
- (iv) The use or application of pesticides (whether natural, organic, "non-synthetic," synthetic or otherwise) within 75 feet of of a water body or wetland is prohibited.

(B) Exempt pesticides.

- (i) The following activities or materials are exempt from the provisions of this ordinance (and so are allowed):
  - (a) Commercial agriculture;
  - (b) Pet supplies, such as shampoos and tick and flea treatments, when used in the manner specified by the manufacturer;
  - (c) Disinfectants, germicides, bactericides, miticides and virucides, when used in the manner specified by the manufacturer;
  - (d) Insect repellents when used in the manner specified by the manufacturer;
  - (e) Rat and rodent control supplies when used in the manner specified by the manufacturer;
  - (f) Swimming pool supplies when used in the manner specified by the manufacturer; and
  - (g) General use paints, stains and wood preservatives and sealants when used in the manner specified by the manufacturer.
  
- (ii) The following applications are exempt from the provisions of this ordinance (and so are allowed):
  - (a) Specific health and safety application – 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;
  - (b) Golf course playing surfaces application – Prohibited pesticides may be used on non-City owned golf course playing surfaces and on the tees and greens of City-owned golf courses *provided that* the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary;
  - (c) Grub control on performance turf application - Products with only the active ingredient chlorantraniliprole are permitted for the control of root feeding white beetle grubs on performance turf; provided, however, that such applications are limited to one every other year on performance turf; and provided further that this exemption shall expire on December 31, 2023;
  - (d) Invasive insect application – 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; and
  - (~~ed~~) Right-of-way spraying – Prohibited pesticides may be used by a public utility that maintains a right-of-way through the City.

**Sec. 32-56. Waivers.**

- (A) In situations that threaten the public health and safety or for the control of invasive species that pose a threat to the environment, persons may apply to the Waiver Committee ~~PMAC~~ for a waiver from the provisions of this ordinance prior to the use of a prohibited product or prior to the conduct of a prohibited application.
- (B) The waiver application shall be filed with the Waiver Committee ~~PMAC~~, on a form prescribed by the PMAC, and shall include the following: 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.
- (C) In order to approve a waiver application, the Waiver Committee ~~PMAC~~ must first find that all of the following criteria are met:
  - (i) A situation exists that threatens the public health and safety and/or where invasive species pose a threat to the environment;
  - (ii) The applicant has carefully evaluated all alternative methods and materials;
  - (iii) The applicant will, to the greatest extent practical, minimize the impact of the application on abutting properties; and
  - (iv) The grant of the waiver will not be detrimental to the public health, safety or welfare.
- ~~(C) Waiver applications must be filed with the Waiver Committee, with a copy provided to the Sustainability Coordinator. The Waiver Committee shall act upon a waiver application within five business days of receipt of a completed application. Both members of the Waiver Committee must agree that approval of the application is appropriate in order for the application to be approved; otherwise, the application is deemed denied.~~
- ~~(D) In approving any waiver application, the Waiver Committee may prescribe conditions and safeguards as are appropriate to further the purposes of this ordinance. The decision of the Waiver Committee shall be in writing, with copies provided to the applicant, PMAC, Sustainability Coordinator and City Clerk.~~
- ~~(E) A person aggrieved by a decision of the Waiver Committee shall have five business days to appeal the decision of the Waiver Committee to the City Manager. The appeal shall be in writing and shall state the basis for the appeal. The City Manager shall act upon the appeal within three business days of receipt of the appeal. The decision of the City Manager shall be in writing, with copies provided to the appellant, PMAC, Sustainability Coordinator and City Clerk.~~



**Sec. 32-67. Public Notifications and Signage.**

If prohibited pesticides are to be used/applied through an exemption pursuant to Sec. 32-45(B)(ii) or through an approved waiver application pursuant to Sec. 32-56, the following posting requirements shall be complied with by the property owner or applicator.

- (A) The owner or applicator shall post warning signs in compliance with 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.
- (B) 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.
- (C) 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.
- (D) The sign must include the following:
  - (i) The word "CAUTION" in 72 point type;
  - (ii) The words "PESTICIDE APPLICATION" in 30 point type or larger;
  - (iii) The Maine Board of Pesticides Control designated symbol;
  - (iv) Any reentry precautions from the pesticide labeling;
  - (v) The name and telephone number of the entity making the pesticide application;
  - (vi) The date and time of the application; and
  - (vii) A date and/or time to remove the sign.
- (E) 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.

These requirements 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.

**Sec. 32-78. 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 outlined in Chapter 50 of the Code of Maine Rules, all State of Maine licensed applicators are required to submit to the City Clerk an annual summary report on or before February 1 relating to the preceding calendar year. The 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.

**Sec. 32-8. Other Applicable Provisions.**

The generally applicable landcare management provisions of Article V of this Chapter are incorporated into this ordinance by reference.

**Secs. 32-9--32-19. [RESERVED]**

**ARTICLE II. FERTILIZER USE**

**Sec. 32-20. Title.**

This Article shall be known as the “City of South Portland Fertilizer Ordinance.”

**Sec. 32-21. Purpose.**

The purpose of this ordinance is to safeguard and protect the environmental health of the City’s soils and waterways by curtailing nutrient run-off from the excessive use and/or misapplication of fertilizers on turf.

**Sec. 32-22. 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:

**Compost:** A 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.

**Environmentally sensitive areas:** 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 as those terms are defined in Chapter 27 of the Code of Ordinances (especially those impaired for nutrients), areas within the Shoreland Area Overlay District pursuant to Chapter 27 of the Code of Ordinances, areas with steep topography, and areas with exposed bedrock.

**Fertilizer:** A substance containing one or more recognized 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.

**Heavy rain event:** A rain event producing 0.5 inch or more of precipitation in an one hour period.

**Hydro-seeding:** 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 Management Advisory Committee (LMAC):** The Landcare Management Advisory Committee as described in this Chapter.

**New development:** Any alteration of land for the purposes of construction or reconstruction that results in soil disturbance and/or compaction, vegetation removal, and/or regrading.

**Organic fertilizer:** Fertilizer derived from either plant or animal products that contain nutrients for plant growth. It is acceptable for the materials in these fertilizers to 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:** 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.

**Over-seeding:** The application of additional turfgrass seeding to existing turf.

**Performance turf:** Grounds devoted to athletic fields and golf courses.

**Prills:** 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.

**Re-establishment:** A procedure involving complete turf removal and seeding or laying sod to establish new turf. Does not encompass renovation.

**Renovation:** Improvement of turf involving replanting into existing live and/or dead vegetation. Does not encompass re-establishment.

**Slope:** 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:** 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:** 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:** Living organisms in soil (such as bacteria and fungi), which feed on organic matter and decompose rapidly.

**Soil test:** 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:** 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:** Slope lengths exceeding 50 feet (horizontal distance) on slopes greater than 15%.

**Summer dormancy:** 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 fertilizer:** 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:** 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:** 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:** The Waiver Committee as described in this Chapter.

### **Sec. 32-23. Applicability of Ordinance.**

The following provisions shall apply to the use of fertilizer on turf within the territorial limits of the City, on both public and private property.

### **Sec. 32-24. Prohibitions & Allowed Applications**

(A) The following prohibitions apply for all fertilizer applications on all turf types:

- (i) Applications within 75' 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 forecast or is occurring are 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. 32-25 below.
  - (viii) Applications of organic fertilizer not in compliance with subsection (B) below are prohibited.
- (B) 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 on turf, 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 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. In addition, sub-soil compaction at the site must be broken up to a depth of at least 10 inches below the surface. The site must have at least 6 inches of topsoil containing a minimum of 5% organic material and a pH level between six (6) and six and a half (6.5) for turf, vegetation, and/or plantings.
  - (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.

### Sec. 32-25. Waivers.

- (A) 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.
- (B) The waiver application shall be filed with the Waiver Committee, on a form prescribed by the LMAC, and shall include the following: the proposed location(s), preferably in map format; photo of proposed location(s); type(s) and amounts of synthetic fertilizer to be applied; date(s) of application; management plan; and reason for requesting the use/application of synthetic fertilizer. The management plan shall identify the soil testing results, and, if applicable, organic landcare practices and implementation schedule; fertility practices and implementation schedule; and application of other inputs (e.g., pesticides, soil supplements) and application schedule.
- (C) In order to approve a waiver application, the Waiver Committee must first find that all of the following criteria are met:
- (i) The application submitted is complete;
  - (ii) The applicant has demonstrated that at least one of the conditions that would necessitate the use of synthetic fertilizers on performance turf or new development as set forth in subsection (A) above exists;
  - (iii) The applicant has demonstrated that reasonable grounds exist to justify use of synthetic fertilizer on performance turf or for new development at the proposed location and time; and
  - (iv) The applicant has demonstrated a commitment to the organic landcare practices detailed in their management plan.
- (D) Any person granted a waiver for synthetic fertilizer use shall include the synthetic fertilizer use applications within the total allowable limits for nitrogen and phosphorus set forth in Sec. 32-24(B) above.

### **Sec. 32-26. Other Applicable Provisions.**

The generally applicable landcare management provisions of Article V of this Chapter are incorporated into this ordinance by reference.

### **Secs. 32-27--32-49. [RESERVED]**

ARTICLE III. [RESERVED]

ARTICLE IV. [RESERVED]

ARTICLE V. LANDCARE MANAGEMENT GENERALLY

**Sec. 32-504. LandcarePest Management Advisory Committee (LPMAC).**

(A) Composition; appointment; terms of office.

The LandcarePest Management Advisory Committee (LPMAC) is hereby established. The LPMAC shall consist of seven members as follows:

- (i) The City's Stormwater Program Coordinator or a City employee with experience in landcare management, as determined by the City Manager and Sustainability Director;
- (ii) One practicing agronomist appointed by the City Council;
- (iii) Two Maine Board of Pesticides Control-licensed landscape professionals, at least one 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
- (iv) Three resident or taxpayer representatives appointed by the City Council.

The terms of office of the six LPMAC members appointed by the City Council shall be three year terms, except that the initial appointments after the establishment of the LPMAC shall be such that the terms of office of no more than two members shall expire in any single year. The terms of office for the City employee LPMAC member shall be for as long as the employee holds said employment position.

(B) Duties.

The duties of the LPMAC include serving in an advisory capacity to the City Council and the Sustainability DirectorCoordinator to oversee this ordinance through the following:

- (i) Advising the City Council and the Sustainability DirectorCoordinator of any problems encountered or amendments that may be required to achieve the full and successful implementation of this Chapterordinance;
- (ii) Reviewing and acting upon waiver applications when applicable;



- (iii) In coordination with the Sustainability ~~Director~~Coordinator, developing and implementing outreach and education as specified in this Chapter ordinance;
- (iv) 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;
- (v) Encouraging broad community participation, from parents, schools, advocates, and local arboriculture and landscaping businesses, in the activities of the LPMAC;
- (vi) Reviewing annual data and issuing a summary report annually to the City Council;
- (vii) On or before May 1, 2019, and every three years thereafter, conducting an evaluation of this Chapter ordinance, including a review of pilot project results and reporting data, and providing recommendations to the City Council and the Sustainability ~~Director~~Coordinator for any Chapter ordinance amendments it deems appropriate; and
- (viii) Additional responsibilities as may be deemed necessary by the City Council.

(C) Officers, meetings and records.

- (i) The members shall annually elect a chair from their membership. If not provided to the LPMAC by the City Manager, the members shall also annually elect a secretary for the purpose of taking minutes and related duties.
- (ii) All meetings of the LPMAC shall be open to the public. Notice of each meeting shall comply with the City's notice policies and Maine's Freedom of Access Act.
- (iii) A quorum shall consist of four members.
- (iv) The LPMAC shall meet regularly.
- (v) Minutes shall be kept of all meetings with a copy filed with the City Clerk. An annual report of the LPMAC's activities shall be submitted to the City Council in March of each year.
- (vi) The chair and one other member, at least one of whom must be a Maine Board of Pesticides Control-licensed landscape professional, shall serve as the Waiver Committee, authorized to review and decide waiver applications. The LPMAC shall annually designate the two members who shall serve as the Waiver Committee for the ensuing year.

**Sec. 32-51. Process for Consideration of Waiver Applications.**

- (A) Waiver applications must be filed with the Waiver Committee, with a copy provided to the Sustainability Director. The Waiver Committee shall act upon a waiver application within five business days of receipt of a completed application. Both members of the Waiver Committee must agree that approval of the

application is appropriate in order for the application to be approved; otherwise, the application is deemed denied.

- (B) In approving any waiver application, the Waiver Committee may prescribe conditions and safeguards as are appropriate to further the purposes of this ordinance. The decision of the Waiver Committee shall be in writing, with copies provided to the applicant, LMAC, Sustainability Director and City Clerk.
- (C) A person aggrieved by a decision of the Waiver Committee shall have five business days to appeal the decision of the Waiver Committee to the full LMAC. The appeal shall be in writing and shall state the basis for the appeal. The LMAC shall act upon the appeal within ten business days of receipt of the appeal. The appellant shall be given an opportunity to provide oral and documentary evidence to the LMAC without regard to whether it was presented to the Waiver Committee. Waiver Committee members may participate in any appeal to the LMAC. A decision to grant an appeal shall be by majority vote of those LMAC members present and voting. The decision of the LMAC shall be in writing, with copies provided to the appellant, City Manager, Sustainability Director and City Clerk. Decisions of the LMAC may be appealed to Superior Court within thirty (30) days of the LMAC's written decision.

### **Sec. 32-529. Outreach and Education.**

- (A) The Sustainability ~~Director~~Coordinator or his/her designee shall publish notice of this ~~Chapter ordinance~~ in a newspaper of general circulation in the City upon adoption of this ~~Chapter ordinance or any amendments thereto~~ and shall provide periodic notice of this ~~Chapter ordinance~~ to identified retailers and lawn, garden, and tree-care providers serving South Portland as well as to churches, schools, and other institutions in South Portland.
- (B) The ~~L~~PMAC shall work with the Sustainability Director to prepare and publish materials designed to educate the community about the role of fertilizers and pesticides in the local environment and best practices regarding pesticide and fertilizer use as well as organic landcare practices~~the benefits of organic pest management~~. ~~This e~~Outreach methods may shall include:
- Development of a recognition or certification program for organic properties;
  - Healthy soils campaign (wrapping together pesticides and fertilizers);
  - Website and social media;
  - Press releases and newspaper articles;
  - Posters and brochures made available at City events and applicable locations that serve the public;
  - Workshops, trainings, and demonstration projects;
  - A toolkit for retailers consisting of educational materials and signage that can be customized, printed, and placed in stores, and training for

all retail employees who recommend and sell pesticides and fertilizers highlighting the following:

- a) South Portland's local pesticide and fertilizer regulations;
- b) principles of organic landcare; and
- c) proper use/application of pesticides and fertilizers;

and

- Any additional methods deemed appropriate by the LMAC.  
~~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 South Portland internet and web-based resources; SPG-TV 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 any additional methods deemed appropriate by the PMAC.~~

~~(C) The PMAC shall also develop a program to work directly with retailers that sell pesticides in South Portland to:~~

- ~~(i) Provide educational training for all retail store employees who recommend and sell pesticides for use in the home and garden, highlighting the following:
  - ~~(a) federal, state, and local pesticide regulations;~~
  - ~~(b) principles of organic pest management;~~
  - ~~(c) pesticide toxicity and health and environmental concerns;~~
  - ~~(d) proper pesticide display and storage; and~~
  - ~~(e) the role of personal protective equipment, pesticide poisoning symptoms, and emergency procedures in case of spills.~~~~
- ~~(ii) 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.~~

### **Sec. 32-5310. Violations.**

Any person violating any of the provisions of this Chapter ordinance or failing or neglecting or refusing to obey any order or notice of the Sustainability Director Coordinator and/or the PMAC issued hereunder shall be subject to enforcement action as provided herein.

### **Sec. 32-5411. Enforcement.**

It shall be the duty of the Code Enforcement Officer, for whom the Sustainability Director shall provide investigative assistance, to enforce the provisions of this Chapter to provide investigative assistance and to enforce the provisions of this ordinance in collaboration with the City's Sustainability Coordinator. The Sustainability Director~~Coordinator~~ shall work with alleged violators of this Chapter~~ordinance~~ to bring them into compliance by providing the individual(s) with educational materials and advice on the use of organic landcare practices~~less toxic chemicals~~ to achieve their desired results. Any person who is found to be in violation of any provision of this Chapter shall be initially subject to a letter of warning. A second violation shall be punishable by a civil penalty of two hundred dollars (\$200); a third violation shall be punishable by a civil penalty of five hundred dollars (\$500); and any subsequent violation shall be punishable by a civil penalty of one thousand dollars (\$1,000). Each violation of a separate provision of this ordinance, and each day of violation, shall constitute separate offenses. Violators may be subject to legal action brought by the City seeking any and all remedies to which it is entitled pursuant to State and local laws, including, without limitation, declaratory and injunctive relief and reasonable attorney's fees pursuant to 30 A M.R.S. § 4452, as the same may be amended from time to time. All civil penalties shall inure to the benefit of the City of South Portland.The Sustainability Coordinator will maintain a listing of complaints of alleged violations of this ordinance and how they were resolved. The listing will include the nature of the complaint, a summary of the situation and a brief description of how each complaint was resolved. This information will be reported on the City's website in aggregate by Assessor's tax map number and not by specific property address or Assessor's lot number.

**Sec. 32-~~55~~12. Severability.**

Should any section or provision of this Chapter~~ordinance~~ be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Chapter~~ordinance~~.

**Sec. 32-~~56~~13. Conflicts with Other Ordinances.**

Whenever a provision of this Chapter~~ordinance~~ conflicts with or is inconsistent with another provision of this Chapter~~ordinance~~ or of any other ordinance, regulation or statute, the more restrictive provision shall control.

**Sec. 32-~~57~~14. ~~Effective date;~~ Applicability dates.**

This Chapter~~ordinance~~ first became effective as of September 27, 2016. Amendments to this Chapter as evidenced by Ordinance #8-20/21 shall become effective pursuant to Section 225 of the City Charter.~~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 phased in as follows:~~

~~**Phase One:** Commencing May 1, 2017, the provisions set forth in Sec. 32-5 on the use or application of certain pesticides for turf, landscape and outdoor pest management activities shall apply to City-owned property (but not to any golf course).~~

~~**Phase Two:** Commencing May 1, 2018, the provisions set forth in Sec. 32-5 on the use or application of certain pesticides for turf, landscape and outdoor pest management activities shall apply to private property (but not to any golf course).~~

~~**Phase Three:** Commencing May 1, 2019, the provisions set forth in Sec. 32-5 on the use or application of certain pesticides on certain portions of golf courses for turf, landscape and outdoor pest management activities shall apply to all golf courses.~~

Fiscal Note: Less than \$1,000

Date: November 5, 2020