

SUBCHAPTER VII – LANDCARE MANAGEMENT ORDINANCE

DIVISION A – PROVISIONS ABOUT MANAGEMENT OF BOTH PESTICIDES AND FERTILIZERS

SECTION 4-701 OVERALL GOAL, NEED, AND PURPOSES

The ten-year Hallowell Comprehensive Plan, adopted by the City Council in 2022, includes a climate and pollution focus area, which states that the City will “create a healthy environment by decreasing the prevalence of synthetic pesticides and herbicides and other pollutants.”

The EPA, the Committee on Environmental Health of the American Academy of Pediatrics, the National Academy of Sciences, and the President’s Cancer Panel have concluded that exposure to many synthetic pesticides is linked to reproductive disorders, birth defects, learning disabilities, neurological disease, endocrine disorders, and cancer.

The EPA and Mt. Sinai Children’s Environmental Health Center acknowledge that children, with their still developing bodies and brains, are especially vulnerable to the harmful effects of lawn and garden pesticides and that children’s behavior (e.g., hand to mouth interactions, proximity to the ground, walking or running through lawns) exposes children to far more contact with lawn pesticides than adults.

The Landcare Management Ordinance (LMO) applies to the use of pesticides on both public and private property in the City of Hallowell. By curtailing the use of synthetic pesticides for outdoor pest and plant management, the purposes of Division B are to safeguard the health and welfare of the City’s residents and their pets and to conserve and protect the Vaughan Brook Watershed, waters of the Kennebec River, and the City’s wildlife, plants, and soils.

[Derivation: Ord. No. 23-03, effective 10/06/2023]

SECTION 4-702 ENABLING LEGISLATION

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

Pursuant to 22 M.R.S. § 1471-U, Maine municipalities may enact ordinances that apply to Pesticide storage, distribution, or use.

[Derivation: Ord. No. 23-03, effective 10/06/2023]

SECTION 4-703 CONFLICT WITH OTHER PROVISIONS; INVALIDITY

If a conflict or inconsistency is found between the LMO and other provisions of the City of Hallowell’s Code of Ordinances or the City Charter, the terms of the stricter provisions shall prevail. The invalidity of a provision of the LMO shall not invalidate any other provision of the LMO.

[Derivation: Ord. No. 23-03, effective 10/06/2023]

SECTION 4-704 **ENFORCEMENT**

The Code Enforcement Officer (CEO) shall be responsible for enforcing the provisions of the LMO. Upon determining that a violation of any provision of the LMO has occurred, the CEO shall provide written notice to the violator to identify the violation and designate a third party to provide education and guidance about how to achieve desired results in a manner compatible with organic landcare management practices. The CEO may choose to designate other review functions to the third party. Subsequent violations of the LMO shall be subject to the penalties prescribed in 30-A M.R.S. § 4452.

1. Effective dates:
 - a. January 1, 2024: All Divisions with any violation enforced by written notice only and will include Education and Guidance for future compliance.
 - b. January 1, 2025: Division B – Pesticide Use enforced per Section 4-704.

[Derivation: Ord. No. 23-03, effective 10/06/2023]

SECTION 4-705 **DEFINITIONS**

The following words and terms are defined and used in the LMO as follows:

1. Application. The spreading of pesticides over an area by any means in liquid or dry form including but not limited to broadcasting, pasting, ground spraying, aerial spraying, soil injection, and surface utilization.
2. C.F.R. The United States Code of Federal Regulations.
3. CEO. The Code Enforcement Officer of the City of Hallowell.
4. Commercial agriculture. The production of crops for sale, including crops intended for distribution to wholesalers or retail outlets and any non-food crops.
5. Foliar application. An application that involves the use of equipment to coat the leaves of large plants with herbicide.
6. EPA. The United States Environmental Protection Agency.
7. Herbicide. See definition for “pesticide” in Section 4-705, Subsection 26.
8. 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 often contains add-ins such as fertilizer and certain mulches.

9. Invasive species. A plant or insect that is not native to a particular area and whose presence there is likely to cause economic or environmental harm or harm to human health. The Maine Department of Agriculture, Conservation, and Forestry website lists the invasive plants and insects in Maine.
10. LMO. The Landcare Management Ordinance of the City of Hallowell, Maine.
11. MOFGA. The Maine Organic Farmers and Gardeners Association.
12. M.R.S. Maine Revised Statutes.
13. 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.
14. Non-synthetic (organic). 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 may be amended from time to time.
15. NOP. The National Organic Program, a regulatory program of the USDA.
16. OMRI. The Organic Materials Review Institute, an international nonprofit organization that determines which products are allowed for use in organic production and processing. Listed products are allowed for use in certified organic operations under the USDA NOP.
17. Organic landcare. A management technique integrating 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. This can reduce, if not eliminate, the need for toxic pesticides and synthetic fertilizers.
18. Organism. Any living thing, whether plant, mammal, bird, insect, amphibian, reptile, fish, crustacean, aquatic or estuarine animal, bacterium, virus, fungus, or microorganism.
19. Person. Any 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 for herself or himself or for any other person under personal appointment or pursuant to law.
20. Pest. Any organism declared to be a pest under circumstances that make it deleterious to living beings or the environment, as defined by 40 C.F.R §152.5.
21. Integrated Pest management. The act of managing or controlling pests through use of chemical, mechanical, cultural, biological, or genetic measures.

Integrated Pest management (IPM) is an environmentally sound approach to managing pests such as insects, weeds, plant pathogens, and wildlife on farms and forests, in our communities and in our homes. IPM relies on proper pest identification, monitoring, and combinations of pest avoidance and management strategies to protect people, crops, and the environment while minimizing pesticide use.

22. Pesticide. Any substance or mixture of substances intended to kill, repel, control, or desiccate species designated as a pest, including plants, insects, or other organisms, including but not limited to herbicides, fungicides, insecticides, rodenticides, disinfectants, and antibiotics, and any fertilizer mixture which contains any of the foregoing.
23. Repellent. A substance that deters insects or other pests from approaching or settling.
24. Synthetic. A substance formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that this term does not apply to substances created by naturally occurring biological processes.
25. USDA. The United States Department of Agriculture.
26. Water Body. Any lake, pond, river, stream and their tributaries, marsh, tidal area, and ocean.
27. Wetlands. Land, or areas that are covered, often intermittently, with shallow water or have soil saturated with moisture.
28. Weed. A plant considered undesirable growing in a particular location.

[Derivation: Ord. No. 23-03, effective 10/06/2023]

DIVISION B – PESTICIDE USE

SECTION 4-711 TITLE

This Division of the LMO shall be known as the City of Hallowell Pesticide Use Ordinance.

[Derivation: Ord. No. 23-03, effective 10/06/2023]

SECTION 4-712 PROVISIONS

This Section shall apply to outdoor pesticide application activities conducted within the City of Hallowell on both public and private land. This Section does not apply to commercial

agriculture.

1. Permitted. The following substances and practices are permitted:
 - A. All pesticide products and soil amendments shall be in keeping with products permitted by MOFGA, OMRI, or NOP. Non-synthetic (organic) substances are allowed, unless specifically listed as prohibited on the USDA National List of Allowed and Prohibited Substances (“NOP List”). 7 C.F.R. § 205.602.
 - B. Pesticides determined to be “minimum risk pesticides” pursuant to the Federal Insecticide, fungicide, and Rodenticide Act and listed in 40 C.F.R. §152.25 (f) (1) or (2), as may be amended from time to time.
 - C. Only those synthetic substances specifically listed as “allowed” in 7 C.F.R. §205.601, or that are OMRI- or MOFGA-approved.
 - D. Any pesticide that is permitted by the LMO must be applied in accordance with the instructions included on the manufacturer’s label.

2. Prohibited. The following substances and practices are prohibited:
 - A. Application of synthetic substances.
 - B. Application of non-synthetic (organic) substances specifically listed as “prohibited” in the USDA NOP list.
 - C. Application of any pesticide (whether organic, synthetic, or otherwise) within seventy-five feet of the Kennebec River, Vaughan Brook Stream and all other tributaries, wetlands, and water bodies.
 - D. Pre-emptive treatment with synthetic substances (i.e., there must be a current active problem.)

3. Exemptions. While less toxic remedies also can be effective, the following applications are exempt when used in the manner specified by the manufacturer on the label:
 - A. Pet supplies for tick and flea treatment.
 - B. Disinfectants, germicides, bactericides, miticides, and virucides.
 - C. Insect repellents for bodily application.
 - D. Indoor pesticide use.
 - E. Rodent control supplies.

- F. Swimming pool and hot tub supplies.
- G. General use paints, stains, wood preservatives, and sealants, structural wood preservation.
- H. Products used to treat drinking water and wastewater.
- I. Poison ivy control in frequently used areas.
- J. Treatments used to eradicate carpenter ants (but not other species of ants) or termites that are causing external damage to a structure. European fire ants can be treated with Spinosad bait.
- K. Treatments used to eradicate wasps (including yellow jackets and hornets.)
- L. Treatments used to reduce infestations of deer-ticks.
- M. Treatments used to reduce mosquito-borne diseases when the Maine CDC reports credible evidence of the spread of a serious mosquito-borne disease.
- N. Brown Tail Moth infestations, which may be treated by injecting trees with a prohibited pesticide. A waiver application is required for the use of any foliar spray treatment.
- O. Right-of-way spraying. Prohibited pesticides may be used by a public utility that maintains a right of way through the city. Residents may request that their property be exempt from spraying by submitting a “No Spray” form to the Maine Department of Transportation or Central Maine Power.
- P. Treatments used to reduce infestations of invasive, woody plants that pose a significant threat to the environment and are listed as “very invasive:” or “severely invasive” by the Maine Natural Areas Program of the Department of Agriculture, Conservation and Forestry may be treated by strategic application of herbicide on cut stems. A waiver application is required for any broadcast spray treatment.
- Q. Treatments used to reduce infestations of invasive insects that pose a significant threat to the environment that are listed with the Maine Forest Service – Invasive Threats to Maine’s Forest and Trees. A waiver application is required for any broadcast spray treatment.
- R. Production of fruits, vegetables, or livestock.

Home grown fruits, vegetables, and livestock for personal use. A waiver application is required for any broadcast spray treatment. This exemption does not override local community garden rules, policies, or guidelines.

4. Waivers. The CEO may waive the provisions of section 4-712(2)(A)-(D) under the following circumstances:
 - A. In situations that threaten the public health and safety or for the control of invasive species that pose a serious threat to the environment, persons may apply to the CEO for a waiver to obtain authorization prior to the use of a prohibited pesticide.
 - B. The waiver application shall be filed on a City “Pesticide-use Waiver Form”.
 - C. In order to approve a waiver application, the CEO must first find that the following criteria are met:
 - (1) A situation exists that threatens the public health and safety and/or where invasive species pose a severe threat to the environment;
 - (2) The applicant has evaluated all alternative methods and materials;
 - (3) The applicant will, to the greatest extent practical, minimize the impact of the application on abutting properties; and
 - (4) The grant of the waiver will not be detrimental to the public health, safety, or welfare.
5. Notice and Signage. If prohibited pesticides are to be applied through a waiver or exemption, the following requirements shall be met by the property owner or applicator.
 - A. No fewer than 2 days in advance of applying synthetic pesticides on their property, the owner or applicator shall notify in writing any direct abutters (including owners and tenants) with whom they share a property line or who are within 250 feet of the spray area (including across the street),
 - B. The owner or applicator shall post warning signs with information specified by the City. These signage 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.
6. Water Quality Testing. The City of Hallowell shall conduct annual water quality testing to determine the prevalence of pesticides and fertilizers in the Vaughan Brook. These reports shall be made public.
7. Reporting by Licensed Applicators. In addition to complying with the Maine Board of Pesticides Control rules regarding recordkeeping and reporting, State of Maine licensed applicators doing business in Hallowell are required to submit an annual summary report to the City Clerk on or before February 1. The report shall contain the

following information for applications of pesticides performed in the City during 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.

[Derivation: Ord. No. 23-03, effective 10/06/2023]

DIVISION C – (RESERVED)