



City of West Allis

Ordinance: O-2018-0020

File Number: O-2018-0020

Final Action:

Sponsor(s): Ald. Barczak

MAY 15 2018

An Ordinance to Create Section 7.19 of the West Allis Revised Municipal Code Regulating the Application and Sale of Coal Tar Sealant Products.

The Common Council of the City of West Allis do ordain as follows:

PART I. Section 7.19 of Revised Municipal Code of the City of West Allis is hereby created to read:

7.19 Coal Tar Sealant Products.

(1) Findings and Intent.

(a) Whereas, the City of West Allis finds that the City's water resources are a natural asset, which enhance the environmental, recreational, cultural and economic resources of the area and contribute to the general health and welfare of the public; and

(b) Whereas, the City finds that polycyclic aromatic hydrocarbons (PAHs), which are contained in coal tar sealants and other high PAHs sealants, volatilize off sealed pavement and can be inhaled by humans and animals; are broken down by sunlight and abraded by vehicle and foot traffic; can be carried off of sealed pavement as small particles by that same traffic and transported into homes and onto nearby soils; and can be carried by storm water and other run off into the water resources of the City; and

(c) Whereas, PAHs are an environmental concern because they are toxic to aquatic life, resulting in a loss of species and a lower number of organisms; and

(d) Whereas, PAH compounds have been proven to be carcinogenic, mutagenic, and teratogenic to humans according to the International Agency for Research on Cancer; individuals with lifelong exposure to coal tar sealcoat treated pavements and playgrounds have a 38-fold higher risk of cancer; and the American Medical Association therefore advocates for legislation to ban the use of pavement sealcoats that contain PAHs or require use of sealcoat products that contain minimal PAH; and

(e) Whereas, environmental impacts and human health risks can be minimized and pavements can be maintained by utilizing alternative products or methods, absent PAHs; and

1. That PAHs, which are contained in coal tar sealants and other high PAH sealants, volatilize off sealed pavement and can be inhaled by humans and animals; are broken down by sunlight and abraded by vehicle and foot traffic; can be carried off of sealed pavement as small particles by that same traffic and transported into

homes and onto nearby soils; and can be carried by storm water and other run off into the water resources of the City of West Allis.

2. PAHs are an environmental concern because they are toxic to aquatic life, resulting in a loss of species and a lower number of organisms.

3. Environmental impacts and human health risks can be minimized and pavements can be maintained by utilizing alternative products or methods, absent PAHs.

4. That regulating the amount of contaminants, including PAHs contained in coal tar sealant products and other high PAH sealant products, entering the water resources of the will improve and protect public health and the water quality of and neighboring water resources; and

(f) Whereas, the following studies support the City's findings with regard to PAHs:

1. PAH compounds have been proven to be carcinogenic, mutagenic, and teratogenic to humans according to the International Agency for Research on Cancer; individuals with lifelong exposure to coal-tar sealcoat treated pavements and playgrounds have a 38-fold higher risk of cancer; and the American Medical Association therefore advocates for legislation to ban the use of pavement sealcoats that contain PAHs or require use of sealcoat products that contain minimal PAH.

2. Baldwin AK, Corsi SR, Lutz MA, Ingersoll CG, Dorman R, Magruder C, Magruder M. (2017).

3. *Primary sources and toxicity of PAHs in Milwaukee-area streambed sediment*. Environmental Toxicology & Chemistry 36: 1622-1635.

4. US Environmental Protection Agency, Office of Research and Development, (2011), "*Assessment of Water Quality of Runoff from Sealed Asphalt Surfaces*".

5. Van Metre PC and Mahler BJ. (2014). *PAH concentrations in lake sediment decline following ban on coal-tar-based pavement sealants in Austin, Texas*. Environmental Science and Technology 48: 7222-7228.

6. Van Metre PC, Mahler BJ. (2010). *Contribution of PAHs from coal-tar pavement sealcoat and other sources to 40 U.S. lakes*. Science of the Total Environment 409: 334-344.

7. Williams ES, Mahler BJ, Van Metre PC. (2012). *Coal-tar pavement sealants might substantially increase children's PAH exposures*. Environmental Pollution 164: 40-41.

(g) Whereas, the City also finds based on said studies that regulating the amount of contaminants, including PAHs contained in coal tar sealant products and other high PAH sealant products, entering the water resources of the City will improve and protect public health and the water quality of the City and neighboring water resources;

(h) Now, Therefore, the Common Council of the City of West Allis do ordain as follows:

(2) Definitions.

(a) COAL TAR is a byproduct of the process used to refine coal. Coal tar contains high levels of PAHs.

(b) COAL TAR SEALANT PRODUCT means a pavement sealant product that contains coal tar, coal tar pitch, coal tar pitch volatiles, RT-12, Refined Tar or any variation assigned the Chemical Abstracts Service (CAS) numbers 65996-92-1, 65996-93-2, 65996-89-6, or 8007-45-2 or related substances.

(c) HIGH PAH SEALANT PRODUCT means any pavement sealant product that contains greater than 0.1% PAHs by weight, including, but not limited to, coal tar sealant products and sealant products containing steam-cracked petroleum residues, steam-cracked asphalt, pyrolysis fuel oil, heavy fuel oil, ethylene tar, or any variation of those substances assigned the chemical abstracts service number 64742-90-1, 69013-21-4 or related substances.

(d) PAVEMENT SEALANT PRODUCT, or sealcoat, is any substance that is typically applied on paved surfaces to protect the surfaces. This may include but is not limited to sealant products that are coal tar or asphalt based.

(e) POLYCYCLIC AROMATIC HYDROCARBONS (PAHs) are a group of organic chemicals that are formed during the incomplete combustion of coal, oil, gas, or other organic substances, are present at high levels in coal tar, and are known to be harmful to humans, fish, and other aquatic life.

(f) DIRECTOR means the Health Commissioner of Health Department.

(3) Enforcement.

Violations of this ordinance will be enforced by the Health Department, Police Department and City Attorney's office.

(4) Regulation of the Application and Sale of Coal Tar or other High PAH Sealant Products.

(a) Except as provided in subsection (5), no person shall apply any coal tar sealant product or high PAH sealant product within the City.

(b) No person shall sell, offer to sell, or display for sale any coal tar sealant product or high PAH sealant product within the City.

(c) No person shall allow a coal tar sealant product or other high PAH sealant product to be applied upon property that is under that person's ownership or control.

(d) No person shall contract with any commercial applicator, residential or commercial developer, or any other person for the application of any coal tar sealant product or high PAH sealant product to any driveway, parking lot, or other surface within the City.

(e) No commercial applicator, residential or commercial developer, or other similar individual or organization shall direct any employee, independent contractor, volunteer, or other person to apply any coal tar sealant product or high PAH sealant product to any driveway, parking lot, or other surface within the City.

(5) Exemptions.

The Health Commissioner may exempt a person from a requirement of this chapter if the Health Commissioner determines that the person is conducting bona fide research concerning the effects of a coal tar sealant product

or high PAH sealant product on the environment; the use of the coal tar product or high PAH sealant product is required for said research; and the Health Commissioner determines that said research will not cause significant contamination of the surrounding environment, including soils and aquatic ecosystems, and will not unduly endanger human health.

(6) Penalty.

(a) Any person who violates this section shall be subjected to forfeiture not less than \$500 nor more than \$1,000.

(b) Each day that a violation occurs or continues is a separate offense and subject to an additional fine. Each incidence of a violation shall constitute a separate offense. Upon default of payment, the violator shall be subject to imprisonment in the Milwaukee House of Correction or Milwaukee County Jail until payment of such forfeiture and costs are paid but not in excess of the number of days set forth in section 800.095(1)(b)1 of the Wisconsin Statutes.

PART II. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

PART III. All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby repealed.

PART IV. This ordinance shall take effect and be in force from and after its passage and publication.

ATTO-CreateSec7.19RegulatingApplic&SaleofCoaltarProducts

PASSED MAY 15 2018

APPROVED 5/18/18



Steven A. Braatz, Jr., City Clerk



Dan Devine, Mayor