PEST MANAGEMENT ADVISORY COMMITTEE (PMAC)
AGENDA - Monday, April 2, 2018
5-6:30PM – South Portland Community Center Conference Room

1. Review, revise or approve 3/5/18 meeting notes (ATTACHMENT)

2. Brief summary of LD 1853 (ATTACHMENT)

3. Exemption & Waiver Updates
   a. Corporation Counsel’s recommendations on various questions related to PMAC (ATTACHMENT)
   b. Tues. 4/10/18 at 7PM: City Council will consider request by oil tank companies to exempt broadcast application of synthetic pesticide around oil tanks (ATTACHMENT)
   c. Other discussion topics?

4. E&O Campaign Status
   a. Status / update for following materials
      i. Calendar status
      ii. Poster for posting in all municipal departments
      iii. Directly mailed post card out to all residents in April
      iv. Brochure on ordinance basics: what you need to know to comply
   b. Consider public event / publicity for Tues 5/1 to coincide with applicability of ordinance to private properties?
   c. Web site review: try to have comments to Julie by 4/6
   d. Other discussion topics?

5. Other Discussion Topics?

6. Adjourn – next meeting Mon. 5/7
SOUTH PORTLAND PEST MANAGEMENT ADVISORY COMMITTEE MEETING NOTES

3/5/18 (5-6:30 PM) – COMMUNITY CENTER

ATTENDEES

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<tr>
<th>Residents / Taxpayers</th>
<th>MBPC-Licensed Professionals</th>
<th>Agronomist</th>
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<td>Bret LeBleu</td>
<td>Mike Hughes</td>
<td>Jesse O’Brien (acting Chair)</td>
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<td>Justin Nichols</td>
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<th>City Staff</th>
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<td>Fred Dillon (notes)</td>
<td>Andrew Capelluti – Energy &amp; Recycling Committee Chair</td>
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1. **Review 2/5/18 meeting notes**
   - Accepted as written followed by brief discussion on future consideration for more detailed notes if/as PMAC proceedings generate more public interest – esp. in relation to deliberations for waiver requests.

2. **E&O Campaign Status**
   - Summary of logo, calendar, web site and materials to be ready by 5/1 (as stated in agenda).
     - Question about whether “Ordinance Basics” brochure will replace “10 tips” brochure – Fred will check with Julie to be sure.
   - **Update on EPA’s Environmental Education Grant**
     - Jesse and Fred met with Julie, Lucy and Friends of Casco Bay’s Mary Cerullo earlier today to discuss partnership opportunities for grant proposal.
     - Given upcoming grant app deadline and limited staff capacity, decision not to apply; however, ensuing discussion on holding 2 public events in 2018 as described below:
       - “Lawn Demo Day” or “Lawn Care TLC” (event name, location and date/time still TBD): provide residents with “hands-on” opportunities to learn about fundamental lawn care practices including aeration, seeding and topdressing (both fertilizers and lime). Could be held at Wainwright, city park or on residential property and include demonstrations of core aeration, slice seeding and top dressing (among others).
       - “Ask the Expert” (event name, location and date/time still TBD): an evening gathering that would allow the public to ask local professionals about various aspects of land care practices that are consistent with the ordinance. Including involvement of some PMAC members, City could also partner with Coop. Ext. and other local land care professionals.
- Check with SPCTV on videoing both events and consider setting rain date for outside event.
- Jesse recently attended 2 local events for land care professionals that generated very little feedback from them about the City’s pesticides ordinance.
  - Discussion that there may lots of input once the ordinance goes live on 5/1/18. Some contractors will “adapt & adopt” while others might be more inclined to resist based on customer feedback since organic land care will likely be more expensive than conventional management practices.
  - Higher-end clients of PMAC members in neighboring community have expressed concerns that mature trees may be adversely affected by ordinance - even though their community doesn’t (yet) have an ordinance and the City’s ordinance would likely exempt the use of synthetic pesticides for many/most invasive insects.

3. Exemption & Waiver Considerations
- Ordinance exemption for petroleum tank companies: 3/27/18 Council workshop to consider exemption request for use of synthetic pesticides around petroleum tanks due to concerns with public safety and potential conflict with Fire Protection & Prevention Ordinance.
  - Discussion about what other mechanical or chemical alternatives to the use of synthetic pesticides have been considered.
    - Apparently, gas-powered equipment cannot be used in areas immediately adjacent to petroleum tanks though reel-type mowers might be an option.
    - There are also a variety of organic pesticide alternatives and products that could be effectively used with multiple applications throughout the growing season (e.g., horticultural vinegar, clove oil, citrus oil, etc.).
    - PMAC consensus that various alternative methods should be attempted before exemption is considered and that sufficient documentation is provided to justify exemption request (e.g., types and durations of alternative methods used and demonstration that these methods were ineffective).
  - Discussion about concerns with precedent setting aspect of potentially granting exemption request.
    - Absent clear demonstration and documentation that alternative methods were attempted and proven to be ineffective, PMAC concluded that granting request would create public perception of partiality towards large landowners while holding smaller land owners to higher standard.
o PMAC will investigate whether organic methods have been used successfully in similar settings elsewhere.
o PMAC will also draft letter to Council recommending that alternative methods be tried before considering exemption request for petroleum tank farms.

- **Ordinance waiver for management of geese:** contractor for Texas Instruments would like some early indication from the PMAC on the likelihood a waiver can be granted for the use of the goose repellent Flight Control.
  o While the City’s Corporation Counsel recently advised that the PMAC cannot pre-judge a waiver request before it is submitted, she also suggested that meeting the ordinance’s waiver conditions would likely be a challenge in this situation.
o Waiver provisions in ordinance would require reapplication for repeated and ongoing use of Flight Control.
o PMAC discussed type of evidence needed to demonstrate serious use of alternative methods that have proven to be ineffective (i.e., alternative method types and duration of use along with documentation of ineffective results).
o PMAC will check with FAA and Maine Inland Fisheries & Wildlife for their recommendations; will also check with other airports in similar settings.
o Question about whether the TI contractor can submit waiver application before ordinance takes effect to be ready ASAP for whichever method will be needed (Fred will check with Corporation Counsel).

- **Waiver Committee Composition:** ordinance states that PMAC Chair and 1 other member will comprise Waiver Committee for 1-year period.
o Because PMAC members have variety professional experiences (e.g., turf, trees, landscapes), the committee would like to allow for “rotating” members to serve opposite Chair depending on types of waiver requests. Also, in cases where a committee member may not be available, the waiver review process would be much more timely if an alternate member could be used. Fred will check with Corporation Counsel.

4. **Other Discussion Topics**
- Energy & Recycling Committee Chair Andrew Capelluti provided his recommendations for a municipal plant palette.

5. **Adjourn**

**NEXT MEETING:** April 2, 2018 from 5-6:30 PM at the Community Center
An Act To Ensure the Safe and Consistent Regulation of Pesticides throughout the State by Providing Exemptions to Municipal Ordinances That Regulate Pesticides

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

Presented by Senator SAVIELLO of Franklin. (GOVERNOR'S BILL)
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §1471-U, sub-§4, as repealed and replaced by PL 1989, c. 93, §1, is amended to read:

4. Intent. It is the intent of this section to provide information on municipal ordinances. This section shall not affect municipal authority to enact ordinances.

Sec. 2. 22 MRSA §1471-U, sub-§6 is enacted to read:

6. Ordinance applicability. A municipal ordinance specifically regulating the use of pesticides may not apply to:

A. A person licensed or certified under section 1471-D. A person licensed or certified under section 1471-D shall maintain accurate records on product use and applications to property, which must be available at any time for audit or inspection by the board; or

B. A private applicator applying a pesticide, subject to restrictions under a municipal ordinance, when that private applicator is producing an agricultural or horticultural commodity on property owned, leased or rented by the private applicator in accordance with board rules.

SUMMARY

This bill provides that municipal ordinances that regulate the use of pesticides do not apply to commercial applicators and spray contracting firms and to private applicators when the private applicators are producing agricultural or horticultural commodities.
Hi Julie, My responses are in red below. Sorry for the delay in getting back to you, but I have been digging out all week and when we spoke earlier this week you didn’t seem to think this was urgent. Thanks, Sally

Sally J. Daggett, Esq.
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Portland, ME 04112
(207) 775-7271

Hi Sally, a few questions about how to interpret the pesticide ordinance....

1. Can we accept an early waiver application from the TI contractor (i.e., before the ordinance takes effect on 5/1/18)? I see no issue with this. The ordinance does not prohibit it. However, any waiver granted should be in writing and state on its face its effective date(s). See Sec. 32-6(D) of the Pesticide Use Ordinance re conditions are to be in writing.

2. Can we “rotate” Waiver Committee members with the Chair to allow for greater specialization, flexibility and responsiveness in considering waiver requests (e.g., Jesse specializes in turf, Mike specializes in trees, and Justin specializes in landscape care)? I think this would require an ordinance amendment, as Sec. 32-4(C)(vi) provides that “[t]he PMAC shall annually designate the two members who shall serve as the Waiver Committee for the ensuing year.”

3. When we met with oil tank companies it seemed clear to me that what they are looking for needs to be in the form of an exemption from the ordinance or some sort of change to the ordinance, not a waiver. This is because they see the pesticide ordinance as being in conflict with the fire code (FROM JIM WILSON: “Section 8-8.8 paragraph (a) of the city code of ordinances states that the City shall use NFPA 30 (latest edition) as the standard. Attached is NFPA 30. Chapter 21 section 21.6.6.3 is the area they need to comply with that they will be referencing today.”) They would like to be able to continue to use synthetic pesticides for preemptive, broadcast applications in order to ensure that there are no weeds in the dikes adjacent to the tanks and the ordinance precludes any broadcast and preemptive applications, even with a waiver. > Given all of this, is the correct course of action to go to council for a change in the ordinance or go through PMAC committee first? I do not view NFPA 30 Sec. 21.6.6.3 as being in conflict with the Pesticide Use Ordinance, as NFPA 30 says nothing about the method to be used to keep the ground areas free of weeds. It is up to the property owner(s) to decide whether to seek a waiver and/or an ordinance amendment. The PMAC/Waiver Committee can’t prejudge any waiver application not yet even filed, but it appears that an ordinance amendment is more likely to provide the relief being sought by the property owner(s).

Hope you’re well!

Julie
Hi everyone – Last night City Council agreed to “fast track” your request for an ordinance amendment to be heard. Thus, they will take up this item at their Tues., April 10th workshop, which begins at 7 pm. This will be the second item on the agenda. I will give a very brief overview of this issue and then turn it over to you all, as the requesting parties, to make your case.

Here are a couple of things that Council will want to see:

1 – A list of alternatives to preventive, broadcast spraying and the reason why these will not work for you (i.e. cost, time, unproven effectiveness, etc)
2 – The actual change to the existing ordinance that you would like to see. City staff cannot create this proposal for you. However, attached please find a copy of the Pesticide Ordinance. To me, it would make sense to propose a language amendment to Sec. 32-5(B)(ii) by adding an exemption that allows your desired spraying to occur within the berms of your oil tanks.

Please provide me with these items – and anything else you may wish to provide Councilors – no later than next Thursday, April 5 at noon. These items will then be included in the Council’s meeting packet, which gets emailed to them and posted on our website on Friday morning.

A reminder that this is a Council workshop, which means that this is your chance to convince a majority of Councilors to move this item forward to an actual vote at a business meeting. If a majority agree to move it forward for a vote, a first read would likely be held on April 17 and, assuming it passes, a second read would occur on May 8. It then takes 20 days to become effective.

If you have questions, feel free to reach out to me. I suspect there will be members of the public speaking in opposition to your request, as an FYI.

Look forward to receiving your info by Thurs. 4/5 and seeing you in Council Chambers here at City Hall on Tues. 4/10 at 7.

Scott

Scott Morelli, CMM, ICMA-CM
City Manager | City of South Portland
Hi everyone –

This is a follow-up to our meeting from Feb. 26. While we are still waiting for some info back from our City attorney, I suspect she is going to recommend that the best path forward is to place your request for a temporary exemption from the Pesticide Ordinance on an upcoming Council workshop.

Assuming that is the case, we have a fairly formal process for doing that here, so at our meeting next week, I am going to request Council “fast-track” this and place it on their April 10th agenda FOR DISCUSSION ONLY. Now, I understand that date isn’t as “fast” as you’d like as you all need to sign contracts, etc. But that is the earliest date I can get this on the agenda. Assuming Council ok's this, I would need at least one of you to attend in order to “make your case” as to why an exemption is necessary. As I discussed before, if you have an idea of a cost of the alternatives to the blanket, pre-emptive spraying that you usually do, that would be helpful information for the Council to know. So the meeting would start, you would present your case, Council would ask questions, the public would weigh in, and then if the consensus of the Council is to move forward with an amendment, this issue would then need to go to a business meeting for action. The earliest business meeting after April 10 is April 17. There’s no guarantee that even if they move forward with this that we could make that agenda but we would try. Whenever the issue gets placed on a business meeting agenda, there will be another chance for you to pitch your case, for questions to be asked, and then for public comment before a vote by the Council. Assuming the vote is favorable, you’d be all set.

Unfortunately, given the current ordinance language, that is the best outcome for now. Absent an ordinance change, you would need to still comply with both NFPA and the pesticide ordinance, which would mean you’d need to employ a different tactic to combat growth. As a reminder, our ordinance does not go into effect until May 1, so if you were to do a blanket application prior to that date, you would not be in violation. That doesn’t solve your problem long-term, but it at least could buy you some time while Council considers your request.

I will plan to follow up next week to confirm Council’s decision about whether to even add this for a discussion topic on April 10 and also with the advice from our attorney. In the meantime, please let me know who from your companies would be available to attend the meeting on 4/10 assuming one gets scheduled.

Thank you,
Scott

Scott Morelli, CMM, ICMA-CM
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"We will ever strive for the ideals and sacred things of the city, both alone and with many; we will unceasingly seek to quicken the sense of public duty; we will revere and obey the city's laws; we will transmit this city not only not less, but greater, better and more beautiful than it was transmitted to us.”