



## Legislation Text

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**File #:** 16-0808, **Version:** 1

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An Ordinance to Amend the Code of the City of Ann Arbor by Adding a New Chapter, Which Chapter Shall Be Designated Chapter 71, Pavement Sealant, of Title VI, Food and Health, of Said Code (Ordinance No. ORD-16-12)

Attached for your review and consideration is an ordinance to regulate pavement sealants. This ordinance was developed by the City Attorney office based on a resolution approved by the Environmental Commission on August 27, 2015 recommending that the City create an ordinance to regulate the application of pavement sealcoats containing above 0.1% polycyclic aromatic hydrocarbons (PAHs) on driveways, roads, parking lots, and other city surfaces.

The Environmental Commission has reviewed the nature of coal tar and other high PAH sealcoat hazards to the Huron River and the citizens of Ann Arbor. The damaging ingredient in coal tar sealcoats and similar products is polycyclic aromatic hydrocarbons (PAHs), which are 1000 times more prevalent in coal tar sealcoat products (5% PAH by weight, 50,000ppm) than in asphalt-based sealcoat products (less than 0.005% PAH, 50ppm). PAHs have been shown to be toxic to aquatic organisms. Coal tar sealcoats have been shown to contribute 50-75% of PAHs in sediments in the Great Lakes region. The Huron River Watershed Council is collecting data on the extent of PAH contamination in sediment in the Ann Arbor area. PAH compounds are toxic, mutagenic, teratogenic (causing birth defects) and/or probable human carcinogens. Asphalt-based sealcoats are as effective as coal tar sealcoats in places where they are commonly applied, such as driveways. Asphalt-based sealcoats are readily available for purchase over the counter or through application contractors and a cost comparable to coal tar sealcoats. Other alternatives exist as well.

The states of Washington and Minnesota, the District of Columbia and dozens of municipalities throughout the US have banned coal tar sealcoats. City, county and UM facilities have already reduced or halted use of coal tar sealcoats. The Commission based its recommendation on the need to reduce human and aquatic exposure to PAHs.

Prepared by: Kristen Larcom, Senior Assistant City Attorney

Sponsored by: CM Briere and Smith

ORDINANCE NO. ORD-16-12

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Public Hearing: June 20, 2016

Approved: June 20, 2016

Published: June 23, 2016

Effective: July 3, 2016

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF ANN ARBOR BY ADDING A NEW CHAPTER, WHICH CHAPTER SHALL BE DESIGNATED CHAPTER 71, PAVEMENT SEALANT, OF TITLE VI, FOOD AND HEALTH, OF SAID CODE

The City of Ann Arbor Ordains:

Section 1. That a new Chapter 71, Pavement Sealant, be added to Title VI of the Code of the City of

Ann Arbor to read as follows:

## CHAPTER 71

### PAVEMENT SEALANT

#### **6:500. Title.**

This chapter shall be known as the “Pavement Sealant Ordinance” of the City of Ann Arbor.

#### **6:501. Intent and Purpose.**

- (1) The Ann Arbor City Council finds that lakes, rivers, streams and other bodies of water are natural assets which enhance the environmental, recreational, cultural and economic resources and contribute to the general health and welfare of the community.
  
- (2) The Ann Arbor City Council finds that the use of sealers on asphalt driveways is a common practice. However, scientific studies on the use of driveway sealers have demonstrated a relationship between the use of coal tar-based sealers and certain health and environmental concerns, including increased cancer risk to humans and impaired water quality in streams.
  
- (3) The purpose of this ordinance is to prohibit the use and sale of pavement sealant products containing >0.1% Polycyclic Aromatic Hydrocarbons (PAHs) by weight, including coal tar-based sealer in the City of Ann Arbor in order to protect, restore, and preserve the quality of its waters and protect the health of its residents.
  
- (4) It is the further purpose and intent of this chapter to regulate the use and application of coal tar sealant products, to require the registration of commercial and institutional applicators of coal tar sealant products within the city, and to require the distribution of informational literature to consumers about the use and effect of coal tar sealant products.

#### **6:502. Definitions.**

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (1) *Applicator.* Any person who applies pavement sealant product in the city including, but not limited to, homeowners, occupants of rental property, and property managers.
  
- (2) *Asphalt-Based Sealant Product.* A surface applied, petroleum-based pavement sealing product that typically contains less than 0.1% PAHs, by weight.

- (3) *Coal Tar*. A byproduct of the process used to manufacture coke from coal.
- (4) *Coal Tar Sealant Product*. A surface applied pavement sealing product containing 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 containing more than 0.1% PAHs, by weight.
- (5) *Commercial Applicator*. Any person who applies pavement sealant product in the city in exchange for money, goods, services, or other valuable consideration.
- (6) *Commercial Seller*. Any person who sells or displays for sale any pavement sealant product in the city.
- (7) *High PAH Content Sealant Product*. A surface-applied pavement sealing product 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 containing more than 0.1% PAHs, by weight.
- (8) *PAHs (Polycyclic Aromatic Hydrocarbons)*. A group of organic chemicals formed during the incomplete burning of coal, oil, gas, or other organic substances. Present in coal tar and known to be harmful to humans, fish, and other aquatic life.
- (9) *Pavement Sealant*. Any surface-applied pavement sealing product used to maintain asphalt surfaces. This may include but is not limited to asphalt-based sealant products and coal tar sealant products
- (10) *Sealant Program Administrator*. The Water Quality Manager, or other person designated to administer this chapter by the City Administrator.

### **6:503. Prohibitions.**

- (1) No person shall apply a coal tar or other high PAH content pavement sealant product on surfaces within the City of Ann Arbor.

- (2) No person shall sell a coal tar or other high PAH content sealant product that is formulated or marketed for application on surfaces within the City of Ann Arbor.
- (3) No person shall allow a coal tar or other high PAH content sealant product to be applied upon property that is under that person's ownership or control.
- (4) No person shall contract with any commercial applicator, residential or commercial developer, or any other person for the application of any coal tar or other high PAH content sealant product to any driveway, parking lot, or other surface within the City.
- (5) 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 or other high PAH content sealant product to any driveway, parking lot, or other surface within the City.

**6:504. Registration and Reporting Requirements and Procedures for Commercial Applicators.**

- (1) All commercial applicators shall register with the city prior to applying pavement sealant in the city in any calendar year.
- (2) Registration under this chapter shall be valid until expiration. Registration shall begin on January 1 and shall expire on December 31 of each calendar year.
- (3) Commercial applicators shall submit a complete registration application to the Pavement Sealant Program Administrator on forms furnished by the City Clerk, along with the registration fee according to the schedule established by resolution of City Council. The fee shall be calculated to include the cost of registration application review and periodic field inspection.
- (4) The following information shall be included in a complete application for registration:
  - (a) The legal name of the commercial applicator, any other names used, the address, telephone number and contact person for the applicant.
  - (b) The product name, type of use, and PAH content including CAS numbers.
  - (c) A notarized, sworn statement signed by an owner or duly authorized representative of a commercial applicator indicating that the applicator will comply with the requirements of the Pavement Sealant Ordinance of the city throughout the registration period
  - (d) All other information requested on the application.
- (5) The Pavement Sealant Program Administrator shall approve a registration if the application is

complete, the applicator has complied with the previous year's reporting requirement, and the use of pavement sealant complies with this chapter.

- (6) The application for registration shall be approved or denied within 21 days by the Pavement Sealant Program Administrator.
- (7) The Pavement Sealant Program Administrator shall maintain a current list of all registered commercial applicators.
- (8) A registered applicator shall notify the Pavement Sealant Program Administrator in writing of any change in the information in the application for registration within 7 days of any such change.

### **6:505. Asphalt-Based Sealant Products.**

The provisions of this ordinance shall only apply to coal tar or other high PAH content sealant products in the City and shall not affect the use of asphalt-based sealer products within the City as long as those products contain less than 0.1% PAHs, by weight.

### **6:506 Penalty.**

A violation of any provision of this chapter shall be a civil infraction punishable by a civil fine of not more than \$10,000.00.

Section 2. In the event any court of competent jurisdiction shall hold any provision of this Ordinance invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision thereof.

Section 3. That This Ordinance shall take effect on the tenth day following legal publication.

### **CERTIFICATION**

I hereby certify that the foregoing ordinance was adopted by the Council of the City of Ann Arbor, Michigan, at its regular session of June 20, 2016.

Jacqueline Beaudry, City Clerk

Date

Christopher Taylor, Mayor

I hereby certify that the foregoing ordinance received legal publication on the City Clerk's webpage on June 23, 2016.

Jacqueline Beaudry, City Clerk