



DRAFT!!---PESTICIDE AND FERTILIZER RESTRICTION ORDINANCE---DRAFT!!

Purpose and Applicability

The purpose of this ordinance is to safeguard the health and welfare of the residents of Falmouth and to conserve and protect Falmouth's environment, water, and natural resources by ensuring the proper use of outdoor pesticides and fertilizers in Falmouth. This ordinance is applicable to all lands in Falmouth with the following exceptions:

1. Rights of way owned by the Maine-Public-Utilities-Commission-(PUC)-regulated utilities; and
2. Rights of way managed by the Maine Department of Transportation or the Maine Turnpike Authority.

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:

Combination product: A product that combines fertilizers, pesticides, and/or herbicides into a single entity.

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.

Fertilizer: Any material of synthetic, natural, or organic origin that is applied to soils or to plant tissues to supply one or more plant nutrients that facilitate the growth of plants.

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 or fertilizer 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

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.

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, miticides, 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.

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.

Stakeholder: A party with an interest or concern.

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.

Water body: Any great pond, river, stream, or tidal area as those terms are defined in the Town's Zoning and Floodplain Management Ordinance.

Watercourse: The channel followed by a flowing body of water, including those rivers that are dry for part of the year.

Wetland: A coastal or shore area that is saturated with water, either permanently or seasonally, as those terms are defined in the Town's Zoning and Floodplain Management Ordinance.

Prohibition of Pesticides and Limitation of Fertilizers for Outdoor Use

1. Any synthetic or non-synthetic pesticide that is prohibited on the U.S. Department of Agriculture's National List of Allowed and Prohibited Substances (the "National List") is prohibited from sale or use in Falmouth. (Any synthetic substance that is specifically allowed on the National List is allowed in Falmouth.)
2. Any fertilizer that is not compatible with organic landscape management or any synthetic fertilizer that is water-soluble and/or with less than 50% slow release nitrogen is prohibited from sale or use in Falmouth.
3. Application of pesticides and fertilizers is prohibited within 75 feet of any water body or watercourse.
4. Between 75 and 250 feet of any water body or watercourse, only non-water-soluble fertilizer, compost, or composted manure may be applied.

Restrictions on the Outdoor Use of Pesticides and Fertilizers

1. General



- a. Disposal of pesticides and fertilizers: Pesticides and fertilizers shall be disposed in accordance with Best Management Practices as may be established by the Maine Board of Pesticides Control.
2. Property owners
 - a. Shall abide by Best Management Practices for safe lawn care as may be established by the Maine Board of Pesticides Control.
3. Golf Courses
 - a. Shall meet the standards of the Audubon Cooperative Sanctuary Program for Golf Courses within five (5) years of the adoption of this Ordinance.
4. Professional Pesticide Applicators (including those who work on Falmouth's schools and parks)
 - a. Must use Best Management Practices for safe lawn care immediately;
 - b. Must use Integrated Pest Management (IPM) Techniques immediately (see below); and
 - c. Must be licensed through the State of Maine.

Integrated Pest Management (IPM) Techniques and Activities

Integrated Pest Management (IPM) must be done in accordance with the Town's restrictions as presented in this ordinance.

Prior to any pesticide application, the following steps must be taken and recorded:

1. Monitor for pest presence or conditions conducive to a pest outbreak;
2. Identify the pest specifically;
3. Determine that the pest population exceeds acceptable safety, economic, or aesthetic threshold levels; and
4. Use control measures that have been demonstrated to be practicable, effective, and affordable.

Prior to any fertilizer application, the following steps must be taken and recorded:

1. Collect and analyze soil samples to assess soil fertility and pH;
2. Make amendments to the soil only as recommended by the analysis reports;



3. If recommended by the analysis reports, use only organic fertilizers or synthetic fertilizers with 50% slow release nitrogen; and
4. If recommended by the analysis reports, apply fertilizer only after spring green-up and before September 15; do not apply fertilizer in mid-summer.

Pesticide and Fertilizer Use Exemptions

1. The following activities or materials are exempt from the provisions of this ordinance (and therefore are allowed):
 - a. Commercial agriculture and commercial horticulture;
 - 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, wood preservatives, and sealants when used in the manner specified by the manufacturer.
2. The following applications are exempt from the provisions of this ordinance (and therefore are allowed):
 - a. Specific health and safety application: 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: Pesticides and fertilizers may be used on golf course playing surfaces *provided that* the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary;



- c. Invasive insect application: 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 Maine's Department of Agriculture, Conservation, and Forestry;
- d. Invasive terrestrial plant application: Where invasive species pose a threat to the environment, pesticides may be used to control 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 in addition to those listed in the Div. 11-19-1-2 Definitions in the Code of Ordinances for the Town of Falmouth; and
- e. Right-of-way spraying: Pesticides may be used by a public utility (or its hired contractors) that maintains a right-of-way through the Town.

Waivers

Designated staff assigned by the Town Manager is authorized to grant waivers from the provisions of this ordinance when a pest presents: a) an immediate threat to human health, or b) an immediate threat of substantial property damage or loss.

Timeline

Once this ordinance is adopted, education of the different stakeholders will take place for at least two years, a report will be made to the Town Council, and the ordinance will become effective.

Administration and Enforcement

This Ordinance shall be administered by staff as assigned by the Town Manager. Education is paramount to its enforcement. Fines per occurrence may be imposed as allowed by State of Maine law.

Professional applicators must register with the Town free of charge so that data can be collected. In addition to complying with the Maine Board of Pesticides Control rules regarding recordkeeping 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 Falmouth Town 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 Town in the preceding calendar year: target site, pesticide and fertilizer 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.

Severability

To the extent any provision of this Ordinance is deemed invalid by a court of competent jurisdiction, the balance of the Ordinance shall remain valid.

Evaluation

The Falmouth Conservation Commission will annually evaluate the progress that has been made, seeking soil and water samples in addition to input from directors of golf courses, department representatives of the schools and community parks, property owners, licensed pesticide applicators, the designated staff person, the Code Enforcement Officer [??], and the Board of Pesticides Control [??]. Appropriate changes may be suggested and presented to the Town Council.



We recommend that the following information also be included.

Public Education

Working with the different stakeholders, the designated staff person shall prepare and publish materials designed to educate the community about the role of pesticides and fertilizers in our local environment, the benefits of Integrated Pest Management, and the resources maintained by the Maine Board of Pesticides Control. This outreach may include:

1. A community-based social marketing campaign targeting Falmouth property owners;
2. Encouragement of property owners to take a proper-application-of-pesticides-and-fertilizers course offered free of charge through Falmouth Community Programs;
3. Distribution of information and news about Town practices through public internet and web-based resources and especially on the website of the Conservation Commission;
4. TV public service announcements;
5. News releases and news events;
6. Inserts in tax bills;
7. Posters and brochures made available at Town events, the Town Hall, the Falmouth Memorial Library, and applicable locations that serve the public;
8. Workshops, training, and demonstration projects; and
9. Any additional methods deemed appropriate.

Resources

Attached to the final ordinance there will be a list of current applicable URLs. If one of these changes over the years, perhaps it can be updated without necessitating a complex review and amendment process.