

PART II CODE OF ORDINANCES

CH. II-21 PESTICIDE AND FERTILIZER REGULATION

ART. II-21-1.

Sec. 21-1. Purpose.

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 applies to all pesticide and fertilizer users including but not limited to residents, commercial entities, and professional applicators. The ordinance also includes additional requirements for professional applicators.

Sec. 21-2. 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:

Commercial agriculture: The production of crops for sale, crops intended for widespread distribution to wholesalers or retail outlets, and any non-food crops.

Commercial horticulture: The production and management of ornamental plants and turfgrass, as well as fruits and vegetables for sale.

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.

Integrated Pest Management (IPM): A sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health,

and environmental risks. For more information refer to the Maine Department of Agriculture Conservation and Forestry.

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.

Lawn: A piece of residential, commercial, or industrial land on which grass grows and is maintained.

Natural, organic, or "non-synthetic" matter: 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.

Natural turf: A community of herbaceous plants that are mowed and maintained to receive a high level of foot traffic or to obtain a specific performance quality.

Neonicotinoid pesticide: A class of neuro-active pesticides that are similar to nicotine in structure.

Organic Landscape Management: An extension of the principles and practices of organic agriculture to the care of natural 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.

Retailer: Any person or entity that is licensed by the State of Maine to sell pesticide and fertilizer products

Storm Drain: Municipally owned and maintained infrastructure designed to drain excess rain and ground water from impervious surfaces.

Substance: A unique form of matter with constant chemical composition and characteristic properties.

Synthetic matter: 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: Highland Lake; the Presumpscot River; the Piscataqua River; the East Branch and West Branch of the Piscataqua River; waters affected by tidal action; and any stream as that term is defined in the Zoning and Floodplain Management Ordinance.

Sec. 21-3. Prohibition and Limitation of Pesticide Use and Application.

1. Any non-synthetic substance that is specifically listed as “prohibited” on the U.S. Department of Agriculture’s National List of Allowed and Prohibited Substances (the “National List”) is prohibited from use in Falmouth. Synthetic substances are prohibited from use in Falmouth unless specifically listed as “allowed” on the National List.
2. The outdoor application of neonicotinoid pesticides is prohibited in Falmouth.
3. Application of all pesticides is prohibited within 75 feet of any water body and within 20 feet of any storm drain.
4. Allowed pesticides shall be applied according to the manufacturer's instructions.

Sec. 21-4. Prohibition and Limitation of Fertilizer Use and Application.

1. The outdoor application of fertilizers is prohibited between December 1 and March 31.
2. Application of fertilizer is prohibited within 75 feet of any water body and within 20 feet of any storm drain. Only non-water-soluble fertilizer, compost, or composted manure may be applied between 75 feet and 250 feet of any water body.
3. Fertilizer containing nitrogen and phosphorus shall be applied on lawns and natural turf in Falmouth as follows:

A maximum of 2 pounds of nitrogen per 1000 square feet per year on established turf and new development. A maximum of 1 pound of phosphorus per 1000 square feet per year for new lawns or with a soil test that states phosphorus is needed.

Application is limited to two times per year.

4. Professional Applicators who apply fertilizers shall follow Best Management Practices (BMP) for their respective industries.
5. Allowed fertilizers shall be applied according to the manufacturer's instructions.

Sec. 21-5. Pesticide and Fertilizer Applicator Registration Required.

No sole proprietor or business entity, whose use or application of pesticide and/or fertilizer is provided as a service for which compensation is received shall engage in the application of pesticides and/or fertilizers within the Town without first having registered to do so. Public utilities may register the staff contact for vegetation management, instead of the contracted applicator. Registrations must be renewed annually and are valid from February 1 through January 31 of the following year. Registration forms and processes will be administered by the Town Manager or the Town Manager's designee. Registration shall include, at a minimum, the following information:

1. Personal name or company name and address; and
2. Copy of State of Maine Commercial Master Pesticide applicator license, where applicable.

Annual registration fees shall be as described on a fee schedule established by the Town Council. Said fee schedule may be amended by Council order from time to time.

Sec. 21-6. Retailer Requirements.

All retailers in the Town of Falmouth that sell pesticide and fertilizer products for lawn, garden, and landscape applications must clearly mark such products that are permitted for use within the town. Each retailer is required to display signs in a prominent location with such products, ensuring they are easily visible to customers at the point of purchase.

The Town may determine allowable sign dimensions and materials by Council Order.

Sec. 21-7. Pesticide and Fertilizer Use Exemptions.

1. Notwithstanding the provisions in Sec. 21-3 and 21-4 above, the following materials or applications are exempt from the prohibitions outlined in those sections, and therefore are allowed, with the exception of Sec. 21-3 subsection 2 (neonicotinoid use):
 - 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;
- g. General use paints, stains, wood preservatives, and sealants when used in the manner specified by the manufacturer.
- h. Pesticides determined to be “minimum risk pesticides” pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and listed in 40 C.F.R. § 152.25(f)(1) or (2), as may be amended from time to time.
- i. 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 public health importance such as ticks and mosquitoes; and animals or insects that may cause damage to a structure, such as carpenter ants or termites;
- j. Golf course playing surfaces application: Pesticides and fertilizers may only be used on golf course playing surfaces provided that applicators follow the Golf Course Superintendents Association of America Maine Chapter *Best Management Practices for Maine Golf Courses*;
- k. Grub control application: Pesticides may be used to control grubs through the preventative application of chlorantraniliprole only by a Professional Applicator.
- l. Invasive insect application: Pesticides may be used only to control the Emerald Ash Borer, Asian Longhorned Beetle, Hemlock Woolly Adelgid, Browntail Moth, nematodes, and other insects identified as invasive by the Maine Department of Agriculture, Conservation, and Forestry;
- m. 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;
- n. Rights of way spraying by a public utility (or its hired contractors) that maintain a right of way through the Town;

- o. Rights of way managed by the Town of Falmouth, Maine Department of Transportation or the Maine Turnpike Authority; and
 - p. Applications on athletic fields managed by the Town of Falmouth and Falmouth School Department provided Integrated Pest Management (IPM) techniques and Best Management Practices (BMP) are utilized.
2. Professional Applicators who apply pesticides for exempt uses 1.h, 1.i, 1.j, 1.k, 1.l, 1.m, 1.n, 1.o, and 1.p above must use Integrated Pest Management (IPM) Techniques.

Sec. 21-8. Effective Date.

This ordinance will become effective on April 1, 2025.

Sec. 21-9. Administration and Enforcement.

This Ordinance shall be administered by staff as assigned by the Town Manager. Violators of this Ordinance may be subject to a penalty of \$250 for the first violation and shall be subject to a penalty, per violation, of not more than \$1,000 for each subsequent violation. The Town shall be entitled to recover its costs of enforcement, including its reasonable attorneys' fees.

Sec. 21-10. 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.