

MEETING NOTICE

OPEN SPACE AND ENVIRONMENTAL MANAGEMENT COMMITTEE

COMMITTEE MEMBERS: DuWayne Federwitz, Chair (Waupaca Co.), Hope Karth (Calumet Co.), Daniel Rettler (Outagamie Co.), Jeremy Johnson (Menominee County), Larry Timm (Waushara Co.), and Bob Schmeichel (Winnebago County)

Please contact our offices at least 48 hours in advance if you are unable to attend or arrange for an alternate, as a quorum is needed to conduct Committee business.

Happy New Year!

DATE: Wednesday, January 9, 2019

TIME: 1:30 P.M.

PLACE: Elisha D. Smith Public Library, 440 1st Street, Menasha, WI, Gegan Room, Downstairs

Agenda

- 1) Welcome & Introductions
- 2) Statement of Compliance with Wis. Stats. Ch. 19, Subchapter V, Sec. 19.84 regarding Open Meetings
- 3) Pledge of Allegiance
- 4) Approval of Agenda / Motion to Deviate
- 5) Public Comment pertaining to items on agenda

ACTION ITEMS:

- 6) Approval of October 10, 2018 Open Space & Environmental Management Committee Summary of Proceedings (*Attachment #1*)
- 7) **PROPOSED RESOLUTION NO. 42-18: A Commitment to Restrict the Use of High-PAH Pavement Sealants** (*Attachment #2*)
- 8) Review & Approval of the 2019 ECWRPC Work Program & Budget: 1400 and 1600 Elements (*to be sent separately or distributed at the meeting*)

INFORMATIONAL ITEMS

- 9) News and Announcements
 - a) Statewide Comprehensive Outdoor Recreation Plan (SCORP) 2019-2023 now released.
<https://dnr.wi.gov/topic/Lands/scorp/>
 - b) New Secretary of the Department of Natural Resources Named
 - c) Other

- 10) Program/Project Updates & Discussion Items:
 - a) Water Management Issue Updates (Todd V.)
 - i) Weigh in on the Winnebago Waterways Update
 - ii) Lower Fox River TMDL
 - iii) Lake Michigan Stakeholders

 - b) Open Space and Recreation Planning Activities (Trish N.)
 - i) Status Report, Carry Overs and New Projects
 - ii) Safe Routes to Parks Program

 - c) NR-135 Non-metallic Mining Reclamation Program Report (Scott K.)

 - d) Fox-Wisconsin Heritage Parkway (Tom B.)

 - e) Wisconsin Brownfields Coalition Update (Eric F.)

 - f) Niagara Escarpment Management Update (Eric F.)

- 11) ECWRPC Steering Committee Update (Eric F.)

- 12) County Round Table Sharing/Discussion (as time permits)

- 13) 2019 Meeting Times and Schedule
 - a) Next meeting: April 10, 2019 at 1:30 p.m., location TBD

- 14) Adjourn

Upcoming Meeting dates: This Committee meets on the 2nd Wednesday of the month at 1:30 p.m. in the afternoon. Locations may vary by season and ECWRPC conference room availability.

Tentative Upcoming 2019 Meeting Dates:

2019 Dates: April 10, 2019, July 10, 2019, and October 9, 2019

Public Meeting Notice has been sent to media outlets and Open Space & Environmental Committee Members were notified via mail and email.

Accommodation Notice: Any person requiring special accommodation & who wishes to attend this meeting should contact ECWRPC Offices at 920-751-4770 at least 48 hours in advance.



SUMMARY OF PROCEEDINGS

Open Space and Environmental Management Committee

Matsche Farms, Wittenberg, WI

October 10, 2018

Committee Members Present:

DuWayne Federwitz, Chair Waupaca County
 Bob Schmeichel, Vice Chair Winnebago County
 Ed Kleckner, alternate for Hope Karth Calumet County
 Jeremy Johnson (perm alt. for Elizabeth Moses) Menominee County
 Larry Timm Waushara County
 Dan Rettler Outagamie County

Staff Present:

Eric Fowle Executive Director
 Todd Verboomen Associate Planner
 Trish Nau Principal Park and Recreation Planner

1. Welcome and Introductions: Chair DuWayne Federwitz facilitated the meeting and everyone went around the table and introduced themselves.

Mr. Federwitz called the meeting to order at 1:38 p.m.

2. Statement of Compliance with Wis. Stats. Ch. 19, Subchapter V, Sec. 19.84 Regarding Open Meetings Requirements

It was determined that the meeting was in compliance with Wisconsin § Chapter 19, Subchapter V, Section 19.84 regarding Open Meeting Requirements and a quorum was present.

3. The pledge of allegiance was deferred to the Quarterly Commission meeting per the Chair.

4. Approval of Agenda & Motion to deviate

A motion to approve the agenda and to deviate as needed was made by Mr. Rettler and seconded by Mr. Timm, passing unanimously.

5. Public / Guest Comment

Heather Matsche, Public Relations Specialist was present to give an overview about the Matsche Farm operations. She explained the business end of things and that there were over 5,000 cows on the farm including cash cropping and approximately 50 employees who run the farm. Mrs. Matsche also showed a short YouTube video of the farm in action.

Announcements:

- a) Mr. Fowle gave an update on the 2018 RPC & DNR Great Lakes Basin Tree Planting Grant Awards and the award winners. There will also be applications for 2019.
- b) Mr. Verboomen gave a synopsis of the upcoming Oct. 26 EC/Bay-Lake Mini-conference on PAH's. This will be held the morning of the Quarterly Meeting and will highlight Clean Wisconsin on petroleum based products as well as Sea Grant on green infrastructure ordinances.
- c) Mr. Fowle also relayed to the Committee that the DNR will be hosting tree planning workshops.
- d) Ms. Nau noted that today was National Walk to a Park Day, 10-10, and encouraged commissioners to take a 10 minute walk to their favorite park.

ACTION ITEMS:

- 6. Approval of July 27, 2018 Open Space & Environmental Management Committee Summary of Proceedings (*Attachment #1*)

A motion to approve the summary of proceedings was made by Mr. Schmiechel with a second by Mr. Johnson. Motion passed unanimously.

INFORMATIONAL AND DISCUSSION ITEMS:

Review of 2019 Technical Assistance Project Requests -

Mr. Fowle handed out a table of 2019 technical assistance projects that are probable and potential. With the new fees in place, the Commission received about 20 requests, half of what is normally sent in. This will cover a big part of the budget windfall and weed out the serious projects from those that are just asking for assistance because it is available.

Review of 2019 Work Program Elements 1400 and 1600 –

Mr. Fowle directed the committee to the two elements for new and carryover projects in the upcoming work program. He went through each element and explained new, carryovers and completions.

STAFF ITEMS:

Water Management Issues

- i) Lower Fox River TMDL: Mr. Verboomen stated that TMDL study and plan is in the works through the WDNR. Comments are now closed and timeline to completion is unknown at this time.
- ii) Weigh in on the Winnebago Waterways Update: Mr. Verboomen gave a quick report and stated that the Lake Management Plan is nearing completion and should be wrapping up by year's end or early next year according to Ted Johnson.

- iii) White Clay Lake, Shawano County Lake Planning Grant: The planning committee approved the draft grant application with much liberation. This will move forward according to Mr. Verboomen's diligence in working with the committee to agree on necessary items.
- iv) Lake Michigan Stakeholders: Mr. Verboomen's stated that the full meeting for the stakeholders will be held in Milwaukee this year.
- v) Healing Our Waters Great Lakes Coalition Washington D.C. Fly-In: In asking to attend the fly-in, Mr. Verboomen stated that the team was impressed by his knowledge of "place making" in his area of the Great Lakes and engaged in learning activities with the coalition.

Groundwater Management Issues:

Mr. Fowle relayed to the committee the importance of monitoring the aquifers within the Fox Cities area. He connected with a professor from UWGB on developing a program to see how the draw down is affecting the Fox Cities water supply. Well monitoring units are looking at being purchased to measure this affect and a study to determine what needs to be done to improve the situation. This could be an upcoming 2019 work program item and asked the committee if they had any objection as well as determining this worthwhile project. The committee agreed it was important.

Recreation Planning Activities Update

Ms. Nau relayed to the Committee on updates to the 2018 Park Plans. The CORP's in progress are the City of Clintonville, Village of Oakfield, Winnebago County and the City of Menasha. The first three communities are in the process of being completed by years end or early in spring of 2019. The City of Menasha as just started their process and is looking at getting an on-line survey released soon.

Ms. Nau also stated she has been working on park concepts for the Village of Bonduel, Village of Hilbert, and Village of Plainfield. She has also started work on Miller Park "On the Fox" for the City of Omro per a quick request for a grant application submittal in early 2019.

NR-135 Metallic Mining Program

In Mr. Konkle's absence, Mr. Fowle handed out a memo of program activities. Mr. Konkle continues to inspect sites and review of big scale reclamation operations. He looks at vegetative cover on reclaimed areas this time of year. Also working on the 2019 budget and scheduling meetings with the P & Z committees. , he is still charging \$40 per acre fees. He will be attending the Non-metallic Mining Advisory committee on October 18, 2018 in Madison.

Fox-Wisconsin Heritage Parkway:

In Mr. Baron's absence, Ms. Nau relayed to the Committee that work continues on a redevelopment plan map along the Fox River. A storymap has been created using ArcGIS Online to look at highlights along the river. They are looking at reaching out to communities to populate destinations to the map. The team is also assisting a videographer who has interest on the project and conducting interviews on the mapping project.

Niagara Escarpment Update

Mr. Fowle reported on the following:

- Unfortunately, long-time Niagara Escarpment Resource Network member Joanne Kluessendorf (Director of the Weis Earth Science Museum in Menasha) passed away in June. She was a passionate and dedicated person and will be missed dearly and NERN will be finding several ways to memorialize her work during 2018. Her husband has volunteered to take her spot on the network.
- The Niagara Escarpment Geotourism Program is taking shape – committee member and potential consultant Susan Kennedy has done reconnaissance work in the southern part of the corridor – Waukesha through Calumet – to make contacts and identify routes and features for inclusion. Corporate and business fundraising will commence soon so that the project can be initiated.
- The annual Wisconsin Ledge American Viticultural Area (AVA) Celebration was held on the afternoon of Saturday, August 18th at Trout Springs Winery in nearby southern Brown County. As part of the event, the Water's Edge Artists donated a special water color painting (valued at \$1,000+) for a silent auction of which 100% of the proceeds were donated to NERN.
- Lastly, Mr. Fowle informed the committee of an upcoming charity event “A Culinary Clash” cook-off on Saturday, Nov. 10 at FVTC. This will be a student chef competition to build awareness and be a fundraiser for the Niagara Escarpment.

County Round Table Discussion:

Items of importance from committee members regarding their perspective counties consisted of:

Calumet County - Mr. Kleckner reported that there was a brother/sister who was left some land in an inheritance just north of Calumet County Park. They are at the point of either donation vs. selling. The County would like to buy the land but for a reasonable price if the sister is selling. There was also some issues on Stewardship funding for ADA kayak launches not being eligible.

Winnebago County - Mr. Schmiechel relayed that a new dog park is still a subject of discussion with the County in looking for more property. Also the Town of Clayton annexing to a Village raised some sanitary district issues on a DNR Settlement on ponding.

Waupaca County – Mr. Federwitz stated that the Pigeon River Flow-way has been drained and dredged in Clintonville and looking at the options of reducing weeds in that area.

Menominee County – Mr. Johnson discussed the AIS efforts of milfoil in the Legend Lake Area. He is working with universities to look at testing of hybrids and five genotypes to rid the area.

Outagamie County – Mr. Rettler relayed that the County is working with the DNR in ditch dredging a portion of the Newton Blackmoor trail that gets flooded out.

Next Meeting Time & Agenda

The next meeting of the committee is tentatively scheduled for **Wednesday, January 10, 2019 at 1:30 p.m.** with the location TBD.

Adjournment

A motion to adjourn was made by Mr. Rettler and seconded by Mr. Timm. The motion passed unanimously and the meeting was adjourned at 3:35 p.m.

Upcoming Meeting dates: This Committee meets on the 2nd Wednesday of the month at 1:30 p.m. in the afternoon unless otherwise noted. Locations may vary by season and ECWRPC conference room availability.

Tentative Upcoming 2019 Meeting Dates:

January 10, 2019

April 10, 2019

July 10, 2019

October 9, 2019

PROPOSED RESOLUTION NO. 43-18: Expressing a Commitment by the East Central Wisconsin Regional Planning Commission to Restrict the Use of High-PAH Pavement Sealants

- WHEREAS,** Pavement sealants are commonly applied to parking lots, driveways, playgrounds, and other paved surfaces for aesthetic reasons or to increase the lifespan of the underlying surface; and
- WHEREAS,** Certain sealant products, in particular coal-tar-based sealants, contain high levels of polycyclic aromatic hydrocarbons (PAHs), which are persistent organic compounds toxic to humans and aquatic life; and
- WHEREAS,** PAHs have been proven to cause cancer, mutations, and birth defects in humans according to the International Agency for Research on Cancer, the US National Toxicology Program, and the US Environmental Protection Agency; and
- WHEREAS,** Young children living next to surfaces sealed with coal-tar-based sealants have a 14-fold increase in lifetime excess cancer risk due to the increased PAHs in house dust and yard soils; and the American Medical Association therefore advocates for policies restricting the use of pavement sealants that contain high levels of PAHs; and
- WHEREAS,** PAHs are an environmental concern because they are toxic to aquatic life, causing deformities and other reproductive and developmental problems, cancer, and death that results in a loss of species and fewer organisms; and
- WHEREAS,** The PAHs in pavement sealants volatilize off sealed surfaces and can be inhaled by humans and animals; and sealed surfaces are eroded by weathering, foot and vehicle traffic, and other abrasions, creating PAH-contaminated particles that are tracked or blown into nearby homes and soils or washed into nearby waterbodies with stormwater; and
- WHEREAS,** Due to weathering and abrasion, sealants need to be re-applied every several years, creating a continual source of PAHs to the environment; and
- WHEREAS,** Coal-tar-based sealants and other high-PAH sealants have 100s to 1,000s times more PAHs than widely-available alternative sealants such as asphalt-based, acrylic, or latex sealants that are comparable in cost and performance; and
- WHEREAS,** Coal-tar-based sealants have been repeatedly identified as the primary source of PAHs in urban waterways by numerous governmental and academic researchers including the United States Geological Survey, the City of Austin, Texas, the Minnesota Pollution Control Agency, University of Illinois, and Missouri State University; and
- WHEREAS,** Thirteen communities and one county in Wisconsin, and dozens of other jurisdictions throughout the country have already taken action to ban or otherwise restrict the use of high-PAH pavement sealants; and
- WHEREAS,** The East Central Regional Planning Commission recognizes that the protection of human health and safety is a primary purpose of government and that the protection, maintenance, and restoration of the natural environment is an important planning goal for governments; and

WHEREAS, The East Central Regional Planning Commission finds that regulating the amount of contaminants, including PAHs contained in high-PAH sealants, entering the environment of East Central Regional Planning Commission member communities will improve and protect public health and aquatic resources.

NOW, THEREFORE, LET IT BE RESOLVED BY THE EAST CENTRAL WISCONSIN REGIONAL PLANNING COMMISSIO:

That the East Central Regional Planning Commission encourages its member counties and municipalities to establish policies whereby officials, administrators, and public works personnel and their designees will not purchase and/or apply any coal-tar-based sealant or other high-PAH sealant on any county, city, village, or town-owned or maintained properties; and

BE IT FURTHER RESOLVED

That the East Central Regional Planning Commission encourages member counties and municipalities to implement within their respective jurisdictions ordinances, bans, or other restrictions on the use and sale of coal-tar-based and other high-PAH sealants similar to the model ordinance presented in Exhibit A.

Effective Date: January 25, 2019

Submitted By: Open Space and Environmental Management Committee

Prepared By: Todd Verboomen – Associate Environmental Planner

DuWayne Federwitz, Chair - Waupaca County

Hope Karth - Calumet County

Daniel Rettler – Outagamie County

Jeremy Johnson – Menominee County

Bob Schmeichel – Winnebago County

Larry Timm – Waushara County

1 EXHIBIT A: MODEL ORDINANCE NO. XXX

2
3 AMENDING CHAPTER XXX OF THE [CITY/VILLAGE OF MUNICIPALITY] CODE OF
4 ORDINANCES REGULATING THE APPLICATION AND SALE OF
5 COAL TAR AND OTHER HIGH-PAH SEALANT PRODUCTS
6

7 WHEREAS, the [CITY/VILLAGE OF MUNICIPALITY], finds that [CITY/VILLAGE OF MUNICIPALITY]'s
8 water resources are a natural asset, which enhance the environmental, recreational, cultural and
9 economic resources of the area and contribute to the general health and welfare of the public;
10 and

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12 WHEREAS, the [CITY/VILLAGE OF MUNICIPALITY], finds that polycyclic aromatic hydrocarbons
13 (PAHs), which are contained in coal tar sealants and other high-PAH sealants, volatilize off sealed
14 pavement and can be inhaled by humans and animals; sealed surfaces are eroded by weathering,
15 foot and vehicle traffic, and snow plowing, creating PAH-contaminated particles that are transported
16 into homes and onto nearby soils and can be carried by storm water and other run off into the
17 water resources of [CITY/VILLAGE OF MUNICIPALITY]; and

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19 WHEREAS, PAHs are an environmental concern because they are toxic to aquatic life, causing
20 deformities and other reproductive and developmental problems, cancer, and death that results
21 in a loss of species and fewer organisms; and

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23 WHEREAS, PAH compounds have been proven to cause cancer, mutations, and birth defects in humans
24 according to the International Agency for Research on Cancer; individuals with lifelong exposure to coal-
25 tar sealed surfaces have a 38-fold higher risk of cancer; and the American Medical Association therefore
26 advocates for legislation to ban the use of pavement sealants that contain PAHS or require use of sealant
27 products that contain minimal PAHs; and

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29 WHEREAS, environmental impacts and human health risks can be minimized and pavements
30 can be maintained by utilizing alternative products or methods, absent PAHs; and

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32 WHEREAS, the [CITY/VILLAGE OF MUNICIPALITY] finds that regulating the amount of
33 contaminants, including PAHs contained in coal tar sealant products and other high-PAH sealant
34 products, entering the water resources of the [CITY/VILLAGE OF MUNICIPALITY] will improve and
35 protect public health and the water quality of [CITY/VILLAGE OF MUNICIPALITY] and neighboring
36 water resources;

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38 NOW, THEREFORE, BE IT ORDAINED by the [CITY/VILLAGE OF MUNICIPALITY COMMON
39 COUNCIL/BOARD OF TRUSTEES], as follows:

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41 SECTION 1: [XXX] of the [CITY/VILLAGE OF MUNICIPALITY] Code is amended to add a new
42 Chapter [XXX] to read:

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CHAPTER [XXX]. COAL TAR SEALANT PRODUCTS

[XXX]-1: DEFINITIONS.

- (1) COAL TAR is a byproduct of the process used to refine coal. Coal tar contains high levels of polycyclic aromatic hydrocarbons (PAHs).
- (2) 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.
- (3) HIGH-PAH SEALANT PRODUCT means any pavement sealant product that contains greater than 0.1% polycyclic aromatic hydrocarbons (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.
- (4) 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.
- (5) 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.
- (6) DIRECTOR means the director of the **[INSERT DEPARTMENT NAME]**.

[XXX]-2: ENFORCEMENT.

Violations of this ordinance will be enforced by the **[CITY/VILLAGE OF MUNICIPALITY]**.

[XXX]-3: REGULATION OF THE APPLICATION AND SALE OF COAL TAR OR OTHER HIGH PAH SEALANT PRODUCTS.

- (1) Except as provided in Section XXX-4 (*Exemptions*), No person shall apply any coal tar sealant product or high PAH sealant product within **[CITY/VILLAGE OF MUNICIPALITY]**.
- (2) No person shall sell, offer to sell, or display for sale any coal tar sealant product or high PAH sealant product within **[CITY/VILLAGE OF MUNICIPALITY]**.
- (3) Any person who sells pavement sealant products shall prominently display, in the area

85 where such pavement sealant products are sold, a notice that contains the following
86 language: “The application of coal tar sealant products or other high PAH sealant
87 products on driveways, parking lots and all other paved surfaces in **[CITY/VILLAGE OF**
88 **MUNICIPALITY]** is prohibited by Chapter XXX of the **[CITY/VILLAGE OF MUNICIPALITY]** Code
89 of Ordinances. Polycyclic Aromatic Hydrocarbons (PAHs), are a group of organic
90 chemicals that are known to cause cancer and are toxic to aquatic life. Coal tar and
91 other high-PAH sealant products are a major source of PAHs that can travel into homes,
92 buildings, and soils, or be carried by stormwater and other run off into the water
93 resources of **[CITY/VILLAGE OF MUNICIPALITY]**.”
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- 95 (4) No person shall allow a coal tar sealant product or other high-PAH sealant product to be
96 applied upon property that is under that person’s ownership or control.
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- 98 (5) No person shall contract with any commercial applicator, residential or commercial
99 developer, or any other person for the application of any coal tar sealant product or high
100 PAH sealant product to any driveway, parking lot, or other surface within (County or
101 Municipality).
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- 103 (6) No commercial applicator, residential or commercial developer, or other similar
104 individual or organization shall direct any employee, independent contractor, volunteer,
105 or other person to apply any coal tar sealant product or high PAH sealant product to any
106 driveway, parking lot, or other surface within (County or Municipality).
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108 **[XXX]-4: EXEMPTIONS.**

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110 The DIRECTOR may exempt a person from a requirement of this chapter if the DIRECTOR
111 determines that:
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- 113 (1) The Director of **[INSERT TITLE OF APPROPRIATE DEPARTMENT]** may exempt a person
114 from the requirements of section XXX-3 if the person is conducting bona fide research
115 concerning the effects of a coal tar sealant product or high PAH sealant product on the
116 environment; the use of the coal tar product or high PAH sealant product is required for
117 said research; and the DIRECTOR determines that said research will not cause significant
118 contamination of the surrounding environment, including soils and aquatic ecosystems,
119 and will not unduly endanger human health.
120
- 121 (2) The Director of **[INSERT TITLE OF APPROPRIATE DEPARTMENT]** may exempt a person
122 from the requirements of section XXX-3 if the person does not intend to apply the
123 sealant within municipal boundaries.
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125 **[XXX]-5: PENALTY.**

- 126
127 (1) Any person who violates XXX-3 by applying a coal tar sealant product or high PAH
128 sealant product at his or her residence shall be subjected to a fine not to exceed

129 \$500.

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131 (2) Each day that a violation occurs or continues is a separate offense and subject to an
132 additional fine.

133 (3) Any commercial sealant product applicator, residential or commercial developer,
134 industrial or commercial owner, or any other person, other than a person identified
135 under sub. (1) above, who violates XXX-3, shall be subject to a fine of not less than
136 \$1,000 nor more than \$10,000. Each incidence of a violation shall constitute a separate
137 offense. Upon default of payment, the violator shall be subject to imprisonment for
138 not less than 30 days nor more than 100 days.

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140 **SECTION 2:** If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance
141 shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not
142 affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and
143 continue in full force and effect.

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145 **SECTION 3:** All ordinances or parts of ordinances in conflict herewith are hereby repealed to
146 the extent of such conflict.

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148 **SECTION 4:** This ordinance shall be in full force and effect ten (10) days after its passage, approval,
149 and publication in pamphlet form, as provided by law.

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152 Ayes:

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154 Nays:

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156 Absent:

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158 Abstain:

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APPROVED:

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166 (SEAL)

167 ATTEST: _____

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170 Passed: _____

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173 Approved: _____

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176 Published: _____