

ORDINANCE #20-21

CREATING CHAPTER 23 DE PERE MUNICIPAL CODE REGULATING THE APPLICATION
AND SALE OF COAL TAR AND OTHER HIGH-PAH SEALANT PRODUCTS

WHEREAS, the Common Council finds that the City's natural water resources enhance environmental, recreational, cultural and economic assets and opportunities in the City and contribute to the general health, safety and welfare of the public; and

WHEREAS, the Common Council further finds that polycyclic aromatic hydrocarbons (PAHs), which are found in coal tar sealants and other high-PAH sealants, volatilize off sealed pavement and can be inhaled by humans and animals; sealed surfaces are eroded by weathering, foot and vehicle traffic, and snow plowing, creating PAH-contaminated particles that are easily transported into homes and onto nearby soils and can be carried by storm water and other run off into the water resources of City of De Pere, increasing the cost of storm water pond sediment removal and disposal; 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, PAH compounds have been proven to cause cancer, mutations, and birth defects in humans according to the International Agency for Research on Cancer and the American Medical Association advocates for legislation to regulate the use of pavement sealants containing PAHs ; and

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

WHEREAS, the Common Council finds that regulating PAHs contained in coal tar sealant products and other high-PAH sealant products will protect water resources and will improve and protect the public health and natural water resources of City of De Pere.

NOW THEREFORE, THE COMMON COUNCIL OF THE CITY OF DE PERE DO ORDAIN AS

FOLLOWS:

Section 1: Chapter 23 Coal Tar Sealant Products is hereby created to read:

23-1. - DEFINITIONS.

(a) *Coal Tar* is a byproduct of the process used to refine coal. Coal tar contains high levels of polycyclic aromatic hydrocarbons (PAHs).

(b) *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.

(c) *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.

(d) *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.

(e) *Polycyclic Aromatic Hydrocarbons (PAHs)* means 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.

(f) *Director* means the Director of Public Works or his or her designee.

23-2. - REGULATION OF THE APPLICATION AND SALE OF COAL TAR OR OTHER HIGH PAH SEALANT PRODUCTS.

(a) No person shall apply any coal tar sealant product or high PAH sealant product within City of De Pere.

(b) No person shall sell, offer to sell, or display for sale any coal tar sealant product or high PAH sealant product within City of De Pere.

(c) No person shall allow a coal tar sealant product or other high-PAH sealant product to be applied upon property in the City that is under that person's ownership or control.

(d) No person shall contract with any commercial applicator, residential or commercial developer, or any other person for the application of any coal tar sealant product or high PAH sealant product to any driveway, parking lot, or other surface within the City.

(e) 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 sealant product or high PAH sealant product to any driveway, parking lot, or other surface within the City.

23-3. – EXEMPTIONS.

- (a) The Director may exempt a person from the requirements of section 23-2 if the person is conducting bona fide research concerning the effects of a coal tar sealant product or high PAH sealant product on the environment; the use of the coal tar product or high PAH sealant product is required for said research; and the Director determines that said research will not cause significant contamination of the surrounding environment, including soils and aquatic ecosystems, and will not unduly endanger human health.
- (b) The Director of Public Works may exempt a person or commercial applicator from the requirements of section 23-2 if the person/applicator does not intend to and does not apply the sealant within the City. In addition to the imposition of any other penalties under this chapter, any exemption granted under this paragraph shall terminate upon use of the sealant in the City.

23-4. - ENFORCEMENT AND PENALTIES.

- (a) Any person or entity that violates any provisions of section 23-2 by applying a coal tar sealant product or high PAH sealant product at his or her residence may be subjected to forfeiture as determined by resolution of the Common Council. Each day that application is made shall constitute a separate offense.

23-5. - SEVERABILITY.

If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance is determined by any Court of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

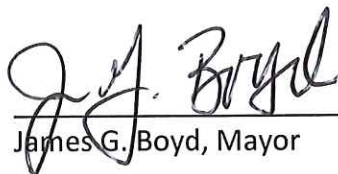
Section 2: All ordinances or parts of ordinances in conflict herewith are hereby

repealed to the extent of such conflict.

Section 3: This ordinance shall take effect on January 1, 2021.

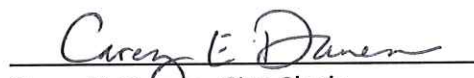
Adopted by the Common Council of the City of De Pere, Wisconsin, this 17th day of November,
2020.

APPROVED:



James G. Boyd, Mayor

ATTEST:



Carey E. Danen, City Clerk

Ayes: 7

Nays: 0

Board/Committee Approval: 6/11/2019

Publication Date: 11/20/2020

Effective Date: 01/01/2021