

Ordinance 0021-19 – Sale, Application, and Use of Coal Tar and High-PAH Sealant Products

An ordinance to amend Chapter 42 of the Municipal Code of the City of Racine, Wisconsin.

WHEREAS, Coal-tar based seal coat is a black, viscous liquid sprayed or painted on asphalt pavement, such as parking lots, driveways, and playgrounds; and

WHEREAS, according to the United States Geologic Survey, polycyclic aromatic hydrocarbons (PAHs), which are contained in coal tar sealants and other high-PAH sealants, volatilize off sealed pavement and can be inhaled by humans and animals; and sealed surfaces are eroded by weathering, foot and vehicle traffic, and snow plowing, creating PAH-contaminated particles that are transported into homes and onto nearby soils and can be carried by storm water and other run off into the water resources of the City of Racine and surrounding areas; and

WHEREAS, lakes, rivers, streams, and other bodies of water are natural assets that enhance the environmental, recreational, cultural, and economic resources and contribute to the general health and welfare of the community; 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; individuals with lifelong exposure to coal-tar sealed surfaces have a 38-fold higher risk of cancer; and the American Medical Association therefore advocates for legislation to ban the use of pavement sealants that contain PAHS or require use of sealant products that contain minimal PAHs; and

WHEREAS, 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 City of Racine finds that regulating the amount of contaminants, including PAHs contained in coal tar sealant products and other high-PAH sealant products, entering the water resources of the City of Racine will improve and protect public health and the water quality of Racine and neighboring water resources;

NOW THEREFORE, the Common Council of the City of Racine, Wisconsin, do ordain as follows:

Part 1: Create Chapter 42, Article VIII, of the Municipal Code of the City of Racine, Wisconsin, as follows:

Article VIII. – REGULATION OF THE SALE, APPLICATION, AND USE OF COAL TAR AND HIGH-PAH SEALANT PRODUCTS

Sec. 42-221. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings given in this section, except where the context clearly indicates a different meaning.

Asphalt-based sealer means a petroleum-based pavement sealant product that is commonly used on driveways, parking lots, and other surfaces and does contain polycyclic aromatic hydrocarbons.

Coal tar is a byproduct of the process used to refine coal. Coal tar contains high levels of polycyclic aromatic hydrocarbons.

Coal tar sealant product means a material that contains coal-tar and is for use on asphalt or concrete surfaces including a driveway or parking lot. These surface applied sealing product contain coal tar, coal tar pitch, coal tar pitch volatiles, RT-12, refined tar, or any variation assigned the chemical abstracts service numbers 65996-92-1, 65996-93-2, 65996-89-6, or 8007-45-2.

High-PAH sealant product means any pavement sealant product that contains greater than 0.1% polycyclic aromatic hydrocarbons 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.

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.

Polycyclic aromatic hydrocarbons or 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.

Sec. 42-222. – Regulation.

(a) It shall be unlawful:

- (1) for any person to use or apply any coal tar sealant product or high-PAH sealant product within the city, except as provided in sec. 42-223.
- (2) for any person to allow a coal tar sealant product or other high-PAH sealant product to be applied upon property that is under that person's ownership or control.
- (3) for any person to 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.
- (4) for any commercial applicator, residential or commercial developer, or other similar individual or organization to 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.

(b) It shall be unlawful for any person to sell, offer to sell, or display for sale any coal tar sealant product or high-PAH sealant product within the city.

(c) Any person who sells pavement sealant products within the city shall prominently display, in the area where such pavement sealant products are sold, a notice that contains the following language: "The application of coal tar sealant products or other high PAH sealant products on driveways, parking lots, and all other paved surfaces in in the City of Racine is prohibited by Chapter 42, Article VIII, of the Municipal Code of the City of Racine, Wisconsin. Polycyclic Aromatic Hydrocarbons (PAHs) are a group of organic chemicals that are known to cause cancer and are toxic to aquatic life. Coal tar and other high-PAH sealant products are a major source of PAHs that can travel into homes, buildings, and soils, or be carried by storm water and other run off into the water resources of the City of Racine."

(d) The provisions of this ordinance shall only apply to coal tar sealant product or high-PAH sealant product within the city and shall not affect the use of asphalt based sealer products within the city.

Sec. 42-223. – Exemptions.

The commissioner of public works may exempt a person from the requirements of sec. 42-222 if a request for exemption is made to the commissioner in writing, including an

explanation of why the exemption is needed for research or the development of an alternative technology, and if the commissioner determines that one or both of the following apply:

(a) The person is conducting research concerning the effects of a coal tar sealant product or high-PAH sealant product on the environment.

(b) The person is developing an alternative technology and the use of a coal tar sealant product or high-PAH sealant product is required for research or development.

Sec. 42-224

Upon conviction, any person found to be in violation of this article shall forfeit an amount as provided in section 1-15. For purposes of this section, each incidence of a violation shall constitute a separate offense.

Part 2: This ordinance shall take effect upon passage by a majority vote of the members-elect of the City of Racine Common Council and publication or posting as required by law.

Fiscal Note: N/A