CITY OF PLYMOUTH, WISCONSIN

Ordinance No. 16 of 2019

AN ORDINANCE CREATING SECTION 8-2-5 OF THE OF THE MUNICIPAL CODE OF THE CITY OF PLYMOUTH, WISCONSIN, REGULATING THE APPLICATION AND SALE OF COAL TAR SEALANT PRODUCTS

WHEREAS, the Common Council of the City of Plymouth finds that the City's water resources are a natural asset which enhance the environmental, recreational, cultural and economic resources of the area and contribute to the general health and welfare of the public; and

WHEREAS, the Common Council finds that polycyclic aromatic hydrocarbons (PAHs), which are contained in coal tar sealants and other high PAH sealants: volatilize off of sealed pavement and can be inhaled by humans and animals; are broken down by sunlight and abraded by vehicle and foot traffic; can be carried off of sealed pavement as small particles by the same traffic and transported into homes and onto nearby soils; and can be carried by storm water and other run off into the water sources of the City; and

WHEREAS, PAHs are an environmental concern because they are toxic to aquatic life, resulting in a loss of species and a lower number of organisms; and

WHEREAS, PAH compounds have been proven to be carcinogenic, mutagenic, and teratogenic to humans according to the International Agency for Research on Cancer; individuals with lifelong exposure to coal tar sealcoat treated pavements and playgrounds have a 38-fold higher risk of cancer; and the American Medical Association therefore advocates for legislation to ban the use of pavement sealcoats that contain PAHs, or which requires the use of sealcoat products that contain minimal PAH; 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 Common Council 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 will improve and protect public health and the water quality of the City and neighboring water sources.

NOW, THEREFORE, the Common Council of the City of Plymouth does hereby ordain as follows:

Section 1. **Creating Code.** Section 8-2-5 of the Municipal Code of the City of Plymouth is hereby created to read as follows:

"SEC. 8-2-5 COAL TAR SEALANT PRODUCTS.

(a) **Definitions**. As used herein below, the following terms shall have the meanings indicated:

(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 an variation of those substances assigned the Chemical Abstracts Service (CAS) numbers 64742-90-1, 69013-21-4, or related substances.

(4) "Pavement Sealant Product" also known as sealcoat, is any substance that is typically applied as a coating on paved surfaces to protect the surfaces from water, oils and/or damage from ultraviolet light. This may include, but is not limited to sealant products that are coal tar based or asphalt based.

(5) "Polycyclic Aromatic Hydrocarbons" also known as 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.

(b) **Enforcement**. This Ordinance shall be administered and enforced by the Building Inspector.

(c) **Regulation of Application and Sale of Coal Tar and Other High PAH Sealant Products.**

(1) Except for those exemptions provided for in paragraph (d), below, no person shall apply any coal tar sealant product or high PAH sealant product within the City.

(2) Any person who sells pavement sealant products shall prominently display, on the shelf, pallet, rack, display fixture or space where such pavement sealant products are sold, a legible written 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 the City is prohibited by Section 8-2-5 of the Municipal Code. 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 migrate into homes, buildings, and soils, or be carried by storm water and other run off into the water resources of the City."

(3) No person shall 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.

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

(5) No commercial applicator, residential or commercial developer, or other similar person or entity shall apply, or allow, cause or direct any employee, independent contractor, volunteer or other person to apply, a coal tar sealant product or high PAH sealant product to any driveway, parking lot or other surface within the City.

(d) **Exemptions.** The City of Plymouth Building Inspector may exempt a person from the restrictions or prohibitions under paragraph (c), above, if the Building Inspector makes the following determinations:

(1) the person is conducting bona fide research concerning the effects of a coal tar sealant product or high PAH sealant product on the environment; and the use of the coal tar product or high PAH sealant product is required for said research; and the Building Inspector determines that such research will not cause significant contamination of the surrounding environment, including soils and aquatic ecosystems, nor unduly endanger human health.

(2) The person does not intend to apply the sealant product within the City's boundaries.

(e) **Penalties.** In addition to other action or relief to which City may be entitled to prevent or remove a violation, penalties assessed for convictions of violating this Ordinance shall be as follows:

(1) Except as otherwise provided in subsection (2), below, any person who violates paragraph (c), above, shall be subject to a forfeiture of not less than $200.00 nor more than $500.00.

(2) Any commercial applicator, residential or commercial developer, industrial or commercial property owner or lessee, or any other person, who applies a coal tar sealant product or PAH sealant product in a commercial setting or for financial gain shall be subject to forfeiture of not less than $1,000.00 nor more than $2,000.00.

(3) Each violation, and each day that a violation occurs or continues, constitutes a separate offense and shall be punishable as such.

(4) In addition to the forfeitures provided for herein, persons violating this Ordinance shall be required to pay court costs, fees, surcharges and assessments, and may be required to pay the costs of prosecution; and, in the event of nonpayment of any of the foregoing amounts, may be imprisoned in the county jail until said sums are paid, except that the amount owed shall be reduced at the rate of $25.00 for each day of imprisonment and the maximum of period of imprisonment shall be ninety (90) days."

Section 2. **Severability**. Should any portion of this Ordinance or the affected Municipal Code Section be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder shall not be affected.

Section 3. **Effective Date**. This Ordinance shall take effect the day after publication.

Enacted on December 10, 2019.

CITY OF PLYMOUTH

By: _____
Donald O. Pohlman, Mayor

Date: 12·10·2019

CLERK'S CERTIFICATE OF ENACTMENT

I hereby certify that the foregoing Ordinance was duly enacted by the City of Plymouth Common Council and approved by the Mayor on the dates indicated above.

Dated: 12·10, 2019

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Sabrina Dittman, Clerk

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