



Legislation Details (With Text)

**File #:** 161306      **Version:** 2  
**Type:** Ordinance      **Status:** Passed  
**File created:** 1/18/2017      **In control:** COMMON COUNCIL  
**On agenda:**      **Final action:** 2/7/2017  
**Effective date:**

**Title:** A substitute ordinance relating to the use of coal tar sealants.  
**Sponsors:** ALD. BOHL, ALD. KOVAC, ALD. MURPHY, ALD. PEREZ, ALD. WITKOWSKI, ALD. STAMPER, ALD. JOHNSON, ALD. ZIELINSKI  
**Indexes:** PARKING LOTS, STREET IMPROVEMENTS

**Attachments:** 1. Fiscal Impact, 2. Bans Coal Tar Free America, 3. Coal tar main source of toxicity in streams, 4. Toxipedia Polycyclic Aromatic Hydrocarbons, 5. Health Concerns Over Common Driveway Sealant Continue to Prompt Local Bans.docx, 6. Update PAHs Coal Tar Sealants, 7. Coal-Tar-Sealant a Major Source of PAH Contamination in Milwaukee Streams, 8. MMSD Coal Tar Support, 9. Ban North Barrington IL, 10. DPW Coal-Tar Ban email, 11. Requested Amendment to High-PAH Sealant Ord..., 12. PCTC Email, 13. USGS organization, 14. USGS Fact sheet, 15. Public health concerns prompt physician policy \_ AMA Wire, 16. ECO Support for Coal Tar ban, 17. Riverkeeper Email, 18. SEWRPC Email, 19. Motion, 20. Pavement Council email, 21. USGS brochure, 22. Notice Published on 2-23-17

Date	Ver.	Action By	Action	Result	Tally
1/18/2017	0	COMMON COUNCIL	ASSIGNED TO		
1/25/2017	0	PUBLIC WORKS COMMITTEE	SUBSTITUTED	Pass	4:0
1/25/2017	0	PUBLIC WORKS COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	4:0
2/7/2017	1	COMMON COUNCIL	SUBSTITUTED	Pass	15:0
2/7/2017	2	COMMON COUNCIL	PASSED	Pass	15:0
2/16/2017	2	MAYOR	SIGNED		
2/23/2017	2	CITY CLERK	PUBLISHED		

161306  
SUBSTITUTE 2

ALD. BOHL, KOVAC, MURPHY, PEREZ, WITKOWSKI, STAMPER, AND JOHNSON  
A substitute ordinance relating to the use of coal tar sealants.

- 61-23 cr
- 66-30 cr
- 66-31 cr
- 66-32 cr
- 66-33 cr
- 115-22.7 cr
- 200-08-68.5 am
- 252-74-2-c am

This ordinance bans the use and sale of coal tar sealants and other pavement sealant products that contain greater than 1% polycyclic aromatic hydrocarbons (PAHs) by weight. It also amends the allowable paving materials for parking lots, areas, and spaces.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1 Section 61-23 of the code is created to read:

**61-23. Class Q.** Upon conviction of a Class Q violation, the violator shall forfeit not less than \$1,000 nor more than \$10,000. Each incidence of a violation shall constitute a separate offense. Upon default of payment, the violator shall be subject to imprisonment not less than 30 days nor more than 100 days.

Part 2. Subchapter 3 of Chapter 66 of the code is created to read:

**SUBCHAPTER 3  
COAL TAR SEALANT AND OTHER HIGH PAH PAVEMENT SEALANT PRODUCTS USE AND  
SALE PROHIBITED**

**66-30. Definitions.** In this subchapter:

1. COAL TAR SEALANT PRODUCT means a material that contains coal tar, coal tar pitch, coal tar pitch volatiles, or any variation, and is for use on an asphalt or concrete surface, including a driveway, playground, or parking area.
2. HIGH PAH SEALANT PRODUCT means any pavement sealant product that contains greater than 1% polycyclic aromatic hydrocarbons (PAHs) by weight, including, but not limited to, coal tar, coal tar pitch, coal tar pitch volatiles, tar, fuel oil, petroleum, or asphalt.
3. COMMISSIONER means the commissioner of the department of public works or a designated representative.
4. DEPARTMENT means the department of public works.

**66-31. Regulations. 1. USE.** a. No person shall:

a-1. Apply any coal tar sealant product or high PAH sealant product on any public or private property within the city.

a-2. Allow a coal tar sealant product or high PAH sealant product to be applied upon property that is under that person's ownership or control.

a-3. 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.

b. 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.

**2. SALE.** No person shall sell, offer to sell, or display for sale any coal tar sealant product or high PAH sealant product within the city.

**3. SPECIAL SIGNAGE.** Any person who sells pavement sealcoat products shall prominently display, in the area where such pavement sealcoat products are sold, a notice that contains the following language: "The application of coal tar sealcoat products and high PAH sealant products on driveways, parking lots, playgrounds, and all other paved surfaces in the City of Milwaukee is prohibited by section 66-31 of the Milwaukee Code of Ordinances. Coal tar is a significant source of polycyclic aromatic hydrocarbons (PAHs), a group of organic chemicals that can be carried by storm water and other runoff into the City of Milwaukee's lakes and streams. PAHs are an environmental concern because they are toxic to aquatic life."

**66-32. Exemptions.** The commissioner may exempt a person from the requirements of s. 66-31 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:

1. The person is conducting research concerning the effects of a coal tar sealant product or high PAH sealant product on the environment.
2. 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.

**66-33. Enforcement; Penalty. 1. ENFORCEMENT.** The commissioner shall enforce this subchapter.

**2. PENALTY.** Any person who violates this subchapter or fails to obey an order of the commissioner to conform to this subchapter shall be liable upon conviction for a Class Q penalty under s. 61-23. Each and every act of violation, disobedience, omission, neglect, or refusal shall constitute a separate offense.

**3. CITATIONS.** Citations may be issued for all violations of this subchapter with or without prior order or notice. The stipulation, forfeiture, and court procedure set forth in s. 50-25 shall apply.

Part 3. Section 115-22.7 of the code is created to read:

**115-22.7. Coal Tar Sealants and High PAH Sealants Prohibited.** No person shall apply any coal tar sealant product or high PAH sealant product, as defined in s. 66-30-1 and 2, on any public way or public place in the city.

Part 4. Section 200-08-68.5 of the code is amended to read:

**200-08. Definitions.** In this code:

**68.5.** PERMEABLE PAVING means porous concrete, porous asphalt>><sub>1</sub><< or other systems designed to allow water to pass through voids in the paving material or between paving units while providing a stable, durable load-bearing system. >>Use of a coal tar sealant product as defined in s. 66-30-1 or high PAH sealant product as defined in s. 66-30-2 is prohibited.<<

Part 5. Section 252-74-2-c of the code is amended to read:

**252-74. Paving of Parking Lots, Areas>><sub>1</sub><< and Spaces.**

**2. COMPLIANCE.**

c. In the case of one and 2-family dwellings constructed prior to July 17, 1973, parking spaces constructed prior to July 17, 1973, may be covered with the following paving material notwithstanding any other provision of this code: concrete, asphalt macadam, ~~[[tar macadam,]]~~ crushed stone, paving blocks, traffic bond>><sub>1</sub><< or other paving material approved by the commissioner. Areas on properties constructed prior to July 17, 1973, that are covered with crushed stone, paving blocks less than 3 inches thick, traffic bond>><sub>1</sub><< or other paving material not listed in sub. 1, shall not be converted to parking spaces by the installation of drives or lanes to gain access to such areas.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: \_\_\_\_\_

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

---

Office of the City Attorney

Date: \_\_\_\_\_

LRB 167358-4

Tea Norfolk

02/07/2017