

TITLE II
OGUNQUIT MUNICIPAL CODE
HEALTH, SAFETY & WELFARE

CHAPTER 11 Pesticide/Herbicide Usages

1101 Purpose

The purpose of this chapter is to safeguard the health and welfare of the residents of the Town of Ogunquit and to conserve and protect the town's ground water, estuarine, marine and other natural resources, while ensuring preservation of the land.

1102 Provisions.

The following provisions shall be applicable to all turf, landscape and outdoor pest management activities conducted within the Town of Ogunquit, on both public and private land.

(a) Permitted:

1102.1 Use or application of natural, organic land care protocols.

1102.2 All control products and soil amendments, including fertilizer and compost, used under the terms of this article shall be in keeping with, but not limited to, products that can be used on Maine Organic Farmers and Gardeners Association Certified Farms, and/or products permitted by the Organic Materials Review Institute or the USDA National Organic Program.

1102.3 Use or application of sludge or sludge-derived products to the extent permitted by the Maine Hazardous Waste, Septage and Solid Waste Management Act 38 M.R.S.A. §§1301-1319-Y, the Protection of Natural Resources Act 38 M.R.S.A. §§ 480-A-480-Z, the Site Location of Development Act 38 M.R.S.A. § 481-490, and any rules related thereto, as amended from time to time.

(b) Prohibited:

1102.4 Use or application of chemical pesticides, other than pesticides classified by the US Environmental Protection Agency as exempt materials under 40 CFR 152.25, and those products permitted by the Organic Materials Review Institute.

1102.5 Use or application of sludge or sludge-derived products not listed as permitted above.

1103 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Natural, organic land care: An extension of the principles and practices of organic agriculture to the care of turf and landscape.

Pesticide: Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; and any nitrogen stabilizer. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the U.S. Environmental Protection Agency. Herbicides, fungicides, insecticides and rodenticides are considered pesticides.

Sludge: Defined in 38 M.R.S.A. § 1303-C (28-A), as amended from time to time.

Pest: Any undesirable insect, plant, fungi, bacteria, virus or micro-organism.

1104 Exemptions

The following situations are exempt from the provisions of this Ordinance:

- a. Commercial agriculture;
- b. Pet supplies such as shampoos, tick and flea collars and dusts;
- c. Disinfectants, germicides, bactericides, and virucides;
- d. Insect repellents;
- e. Outdoor animal repellants;
- f. Swimming pool supplies;
- g. Aerosol products;
- h. General use paints, stains and wood preservatives and sealants; and

- i. CMP, and other, routine vegetation maintenance programs on transmission sections that run through the Town of Ogunquit.

and the following processes are exempt: drinking water and wastewater treatment; indoor pesticide use; contained baits or traps for rodent control; use of pesticides classified by the US Environmental Protection Agency as exempt materials under 40 CFR 152.25 or pesticides permitted by the Organic Materials Review Institute; management of town-owned land not used or used infrequently by the public (roadway medians, for example).

A specific exemption is made for poison ivy control on the Marginal Way, using the least toxic product in accordance with the US Environmental Protection Agency under 40 CFR 152.5, the Maine State Regulations Title 7 and Title 22: "Use of Pesticides", and the *Best Management Practices for the Application of Turf Pesticides and Fertilizers* of the Maine Board of Pesticide Control.

Restricted pesticides may also be applied for the following purposes:

1. **Noxious Growths** – The control of plants, including and not limited to, poison ivy (*Rhus radicans* or *Toxicodendron radicans*), poison oak (*Rhus toxicodendron* or *Toxicodendron quercifolium*), and poison sumac (*Rhus vernix* or *Toxicodendron vernix*).
2. **Invasive Species** – The control of invasive species that may be detrimental to the environment.
3. **Mandatory Applications**- Use of pesticides mandated by state or federal law.
4. **Health and Safety** – The control of insects that are venomous or disease carrying.

1105 Emergency waiver

If an emergency situation warrants the use of non-exempt pesticides, the Code Enforcement Officer may grant a thirty (30) day temporary waiver. The waiver may be extended to a six (6) month total period. Waiver approval shall be subject to the use of the least toxic material available to address the given emergency. The presence of weeds or common fungal diseases in the usual course of turf maintenance shall not constitute an emergency.

(a) *Waiver determination shall be based on the following criteria:*

- 1105.1 The pest situation presents a) an immediate threat to human health or environmental quality, or b) an immediate threat of substantial property damage or loss; and

1105.2 Viable alternatives consistent with this article do not exist. The Select Board shall request the Conservation Commission to review any waiver requests made under this section, and to recommend a course of action.

1106. Enforcement and permits

This article shall be enforced by the Code Enforcement Officer, according to the policies governing enforcement of municipal ordinances of the Town of Ogunquit.

1107. Conflict and invalidity

If a conflict or inconsistency is found between this article and other sections of the Zoning Ordinance or Town Charter, the terms of the stricter provisions shall prevail. The invalidity of a provision of this article shall not invalidate any other provision of this article.

1108. Authority

Pursuant to 30-A M.R.S.A. § 3001, municipalities may enact ordinances to protect the welfare of their inhabitants. Pursuant to 22 M.R.S.A. § 1471-U, Maine municipalities may enact ordinances that apply to pesticide storage, distribution, or use. Pursuant to 38 M.R.S.A., § 1310-U, municipalities may enact ordinances with respect to solid waste facilities with standards that are not more strict than those contained in the Maine Hazardous Waste, Septage and Solid Waste

Management Act 38 M.R.S.A. §§ 1301-1319-Y, the Protection of Natural Resources Act 38 M.R.S.A. §§ 480-A-480-Z, the Site Location of Development Act 38 M.R.S.A. § 481-490, and the rules adopted under those articles, as amended from time to time.¹

IN WITNESS WHEREOF, UNDER SEAL OF THE TOWN, this Ordinance as duly approved by the voters acting on Article 2 at a Special Town Meeting held on November 4, 2014.

Ordinance Change Effective January 1, 2015.