

REQUEST FOR BOARD ACTION

18-25

Agenda Item: _____

Subject: Report and Recommendation of Staff re: Coal Tar Sealant Ban

Action Requested: Acceptance

Originated By: Village Manager's Office

Referred To: Village Board of Trustees

Summary of Background and Reason for Request

At the February 20, 2018, meeting, the Village Board directed staff to prepare a report and recommendation to implement a ban on the sale and use of coal tar products in the Village. Staff has prepared the enclosed report based on ordinances banning coal tar in neighboring north shore communities.

Staff recommends requiring Pavement Sealant Professionals to obtain an annual license from the Village in the amount of \$100. As a condition of receiving their license, applicants would need to sign a statement acknowledging that they understand the applicable ordinances, including those prohibiting the use of coal tar products. Pavement Sealant Professionals would then be issued a vehicle decal as evidence that they are licensed to operate in the Village. Pavements Sealant Professionals and property owners that violate the ordinance would be subject to penalties and fines including revocation or suspension of their license.

Staff recommends that the ordinance take effect May 1, 2018.

Staff has been advised that representatives from the Pavement Coating Technology Council will be present at the meeting.

Reports and Documents Attached:

Memorandum dated February 28, 2018
Coal Tar Ordinance from City of Highland Park and Village of Winnetka

March 5, 2018

Date Referred to Board: _____

Action Taken: _____

Memorandum



DATE: February 28, 2018
TO: Mayor and Board of Trustees
FROM: Andrew Lichterman, Assistant Village Manager
SUBJECT: **Report and Recommendation of Staff re: A Ban on the Use and Sale of Coal Tar Products**

Introduction

Asphalt based sealants are a readily available alternative to coal tar based sealants and numerous studies by the United States Geological Survey, amongst other governmental entities have shown that asphalt based sealants have significantly lower concentrations of Polycyclic Aromatic Hydrocarbons (PAHs) and lower potential for contributing harmful organic material into the environment. At the February 20, 2018 meeting the Village Board directed staff to prepare a report and recommendation to implement a ban on the use of coal tar products in the Village. In preparation of this report, staff researched various ordinances banning coal tar products in neighboring north shore communities.

Recommendation

Prohibiting the sale and use of coal tar products of any kind, and on any paved surface within the Village requires an amendment to the Village's Municipal Code. Staff recommends that a licensing program be implemented, effective May 1, 2018, as this would be the most efficient and effective means of regulating the use of coal tar products.

Application

Specifically, staff recommends that Pavement Sealant Professionals be required to apply for and purchase an annual license before they are permitted to perform any pavement sealing in the Village. The pavement sealant application would be made to the Village Manager and include:

- Name and address of applicant
- Criminal record, if any
- Location of applicants office(s) and facilities
- Company name and contact information
- Description of each vehicle including the year, make, model and VIN of the vehicle
- A statement that the applicant has received copies of, reviewed and understands the applicable ordinances of the Village, including those prohibiting the use of coal tar products
- Evidence that the applicant has sufficient insurance coverage; and,
- Such other information as may be required from time to time by the Village Manager

Identification

Staff recommends that each approved Pavement Sealant Professional be required to display a unique vehicle sticker decal in their front driver side window of each company vehicle operating in the Village as a means of providing evidence to Village code enforcement staff that they are licensed to operate in town.

License Term and Price

The license would expire on December 31 of each calendar year for which it is issued, unless sooner revoked. Staff recommends charging an annual license fee in the amount of \$100.00

Denial, Suspension or Revocation

The Village Manager would be able to refuse to issue or renew, and may suspend or revoke a license if a Pavement Sealant Professional used a coal tar product in the Village, or provided false or misleading statements on the application. If a license is revoked the Pavement Sealant Professional would not be able to apply for reissuance for a period of one year following the date of the revocation.

Additional Regulations and Fines

Pavement Sealant Professionals would be required to abide by the Village's established construction hours. Additionally, it is recommended that staff have the ability to issue fines to Pavement Sealant Professionals who violate the terms of the ordinance as well as to the owners or occupants of the property that permit violations to occur.

Education

As previously outlined in the January 18, 2018 report from the Sustainability Commission, staff would pursue an education and awareness campaign to educate businesses, residents and contractors about the prohibition on coal tar products. This would include mailing letters, USGS and US EPA fact sheets regarding coal tar sealants to local area paving contractors as well as to other governmental entities such as the school districts, township, and park district and also sending these same materials to commercial property owners. Lastly, staff would pursue a robust campaign to inform residents on the topic that would utilize all of the Village's various publication mediums and platforms.

Conclusion

Studies by the U.S. Geological Survey, academic institutions, and state and local agencies have identified coal tar based pavement sealcoat as a major source of PAH contamination in the environment. Numerous states and municipalities have imposed bans on coal tar products including the States of Minnesota and Washington, the cities of Austin, TX, Suffolk County, NY, Dane County, WI, Montgomery County, MD, and the District of Columbia. Locally, bans have been imposed in the Villages of Wilmette, Winnetka, Vernon Hills, South Barrington and the Cities of Evanston and Highland Park.

The recommendations and methods to prohibit the sale and use of coal tar products outlined in this report are modeled off the City of Highland Park ordinance, which was approved in 2017. Highland Park staff reports the ordinance has been effective. Highland Park has licensed 12 Pavement Sealant Professionals and Winnetka has licensed 8 Pavement Sealant Professionals and neither municipality has issued a citation to date.

Assistant Village Manger Andrew Lichterman will be available at the March 5 Board meeting to answer questions.

CITY OF HIGHLAND PARK

ORDINANCE NO. O04-2017

AN ORDINANCE ADDING CHAPTER 104 TO "THE HIGHLAND PARK CODE OF 1968," AS AMENDED, REGARDING THE USE AND SALE OF COAL TAR PRODUCTS AND LICENSING OF PAVEMENT SEALING PROFESSIONALS

WHEREAS, the City is a signatory to the Greenest Region Compact 2, which recognizes that coal tar sealants should not be used in order to protect water quality; and

WHEREAS, numerous natural assets exist within the City, including ponds, streams, and Lake Michigan, which enhance the City's environmental, recreational, cultural, and economic resources, and contribute to the general health and welfare of the community; and

WHEREAS, during late 2015 and throughout 2016, the City's Natural Resources Commission ("*NRC*") researched the environmental impact of coal tar derived pavement sealants with the objective of improving storm water management and to address water pollution, and found that: (i) driveway sealants are widespread pollutants of water and major health threats; (ii) homeowners and businesses can easily use similar pavement sealer products without coal tar; and (iii) many municipalities and states have banned the use of coal tar products; and

WHEREAS, the NRC subsequently voted unanimously to recommend that the City Council consider the adoption of an ordinance amending "The Highland Park Code of 1968," as amended ("*City Code*"), to: (i) prohibit the sale and application of coal tar sealants within the City, and (ii) require that pavement sealant applicators obtain a license from the City; and

WHEREAS, having completed its review of the NRC's recommendations, pursuant to the home rule powers of the City, and in order to protect the health and welfare of the community, the City Council desires to amend the City Code to prohibit the use of coal tar sealants on public and private property within the City, to prohibit the sale of coal tar sealants by businesses located within the City, and to prohibit any professional pavement sealant applicator business from engaging in pavement sealant application work on public or private property within the City without first obtaining a license from the City; and

WHEREAS, the City Council has determined that it will serve and be in the best interest of the City and its residents to amend the City Code pursuant to this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF HIGHLAND PARK, LAKE COUNTY, STATE OF ILLINOIS, as follows:

SECTION ONE: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Ordinance as the findings of the City Council.

SECTION TWO: PAVEMENT SEALANT. Title IX, titled "General Regulations," of the City Code is hereby amended to add a new Chapter 104, which Chapter 104 hereafter reads as follows:

"CHAPTER 104: PAVEMENT SEALANT

SECTION

104.001	Definitions
104.005	Sale of Coal Tar Products Prohibited
104.010	Use of Coal Tar Products Prohibited
104.015	Required Licensing of Pavement Sealant Professionals
104.020	Denial, Suspension, or Revocation of Pavement Sealant Professional's License
104.025	Misdemeanors
104.999	Penalty

Sec. 104.001 Definitions.

For the purposes of this Chapter 104, the following words and phrases have the following meanings:

(A) "Coal Tar Products" means pavement sealant or sealcoat products that contain coal tar, coal tar pitch, coal tar derivatives, coal tar pitch volatiles, coal tar mixtures or any variation assigned the Chemical Abstracts Service (CAS) numbers 65996-93-2, 65996-89-6, or 8007-45-2.

(B) "Licensee" means a holder of a Pavement Sealant Professional's license issued by the City of Highland Park. In the operation of Pavement Sealing the term "Licensee" shall include agents and employees of the licensee.

(C) "Pavement Sealant Professional" means any Person that employs one or more individuals for the purpose of providing Pavement Sealing for clients, including, without limitation, Pavement Sealing of any driveway, driveway approach, on or off-street parking area, playground, sidewalk, bike trail, patio, sports facility, loading area or facility, or roadway.

(D) "Pavement Sealing" means the application of sealant or sealcoat product to maintain any surface, including but not limited to: a driveway, driveway approach, on or off-street parking area, playground, sidewalk, bike trail, patio, sports facility, loading area or facility, or roadway.

(E) "Person" means any individual, partnership, firm, or corporation.

(F) "Vehicle" means any motor-driven vehicle used by the Licensee to transport employees or agents who work on Pavement Sealing, equipment, and/or debris.

104.005 Sale of Coal Tar Products Prohibited.

No Person may sell, offer or display for sale within the City, at wholesale or retail, Coal Tar Products of any kind.

104.010 Use of Coal Tar Products Prohibited.

On public and private property, no Coal Tar Products of any kind shall be applied or used on the surface of any street, driveway, driveway approach, on- or off-street parking area, playground, sidewalk, bike trail, patio, sports facility, loading space or facility, or paved surface within the City.

104.015 Licensing of Pavement Sealant Professionals.

(A) No Pavement Sealant Professional may perform any Pavement Sealing without first securing an annual license therefor from the City, in accordance with this Section 104.015.

(B) Application for the license shall be made to the City Manager on forms provided by the City and shall contain the following information:

(1) Name and address of the applicant; if the applicant is a partnership, the application shall show for each partner his name and address and interest, and all information required by paragraphs 2 and 7 of this Section 104.015(B); and if the applicant is a corporation, the application shall state the name and address of the registered agent, and with respect to each director, and each shareholder owning 5% or more of the corporation's shares, (i) his or her name and address, together with (ii) the information required by paragraph 2 of this Section 104.015(B).

(2) The criminal record, if any, of the applicant.

(3) The number and kind of vehicles owned and controlled by the applicant.

(4) The location of the applicant's office and garage.

(5) The color scheme, insignia, trade name, and telephone number located upon and used to designate the vehicles of the applicant.

(6) A complete description of each vehicle including the year, make, model and motor or factory number ("VIN") of the vehicle.

(7) A statement that the applicant has received copies of, reviewed and understands the applicable ordinances of the City (including, without limitation, those prohibiting the use and sale of Coal Tar Products) and will promulgate same and educate its employees thereof.

(8) Evidence that the applicant is covered by policies of: comprehensive general liability insurance, including bodily injury and property damage; and adequate workers' compensation and vehicle insurance; provided, however, that the City Manager may waive this requirement in his or her sole discretion if the Pavement Sealant Professional employs no more than two employees, including the Pavement Sealant Professional.

(9) Payment of the annual license fee, in the amount set forth in the Annual Fee Resolution.

(10) Such other information as the City Manager may require from time to time.

(C) Vehicle Identification. Each vehicle operated by the licensee must at all times display:

(1) The information required by Section 104.010(B)(5) of this Code; and

(2) The Pavement Sealant Professional's vehicle sticker issued by the City at the time a license is granted pursuant to this Chapter 104, which vehicle sticker must be placed in the front driver's side window of the vehicle.

(D) License Term. Each license issued pursuant to this Section 104.015 will expire on December 31 of the calendar year for which it is issued, unless sooner revoked as hereinafter provided.

Sec. 104.020 Denial, Suspension, or Revocation of Pavement Sealant Professional's License.

(A) The City Manager may refuse to issue or renew, and may suspend or revoke a Pavement Sealant Professional's License for any one or more of the following reasons, including but not limited to:

(1) Use or sale of Coal Tar Products within the City;

(2) Inaccurate, false or misleading statements having been made by the Licensee in any application for any such license;

(3) The Licensee having made substantial misrepresentation or false promise of a character likely to influence or induce another in connection with the business of Pavement Sealing; and/or

(4) Pursuit by the Licensee of a continued course of making false promises through advertising, salesmen, and/or agents or making other misrepresentations in connection with the business of Pavement Sealing.

(B) No person whose license has been revoked may apply for reissuance of such license for a period of one year following the date of such revocation.

Sec. 104.025 Misdemeanors.

It shall be unlawful for any person, firm, or corporation to:

(A) Engage in the business of the Pavement Sealing without first securing a Pavement Sealant Professional's License from the City of Highland Park;

(B) Violate other City ordinances by the Licensee, including, without limitation, ordinances concerning:

(1) The use and sale of coal tar products;

(2) Unauthorized dumping of debris;

(3) The performance of Pavement Sealing work by a Pavement Sealant Professional other than between the hours of 7:00 a.m. and 7:00 p.m. on Mondays through Fridays or between the hours of 9:00 a.m. and 5:00 p.m. on Saturdays.

(C) Make inaccurate, false or misleading statements in any application for any such license;

(D) Make substantial misrepresentation or false promise of a character likely to influence or induce another in connection with the business of Pavement Sealing; and/or

(E) Pursue a continued course of misrepresentations or making false promises through advertising, salesman, agents or otherwise in connection with the business of Pavement Sealing.

Sec. 104.999 Penalty.

(A) Any person found guilty of violating any terms of this Chapter shall be found guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not less than \$50.00 nor more than \$1,000.00 for each offense. Every day that a violation exists constitutes a separate offense.

(B) Any owner or occupant of property who permits a violation of Section 104.020(B)(1) of this Chapter to exist or continue upon the property shall be fined not less than \$200.00 nor more than \$500.00 for each offense. Each and every day that such violation is permitted to exist, or is maintained by the owner of occupant, shall be considered a separate offense under this Section 104.999(B)."

SECTION FOUR: PUBLICATION. The City Clerk is hereby directed to publish this Ordinance in pamphlet form pursuant to the Statutes of the State of Illinois.

SECTION FIVE: EFFECTIVE DATE. This Ordinance will be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

AYES: Mayor Rotering, Councilmen Smith, Stone, Kaufman, Knobel

NAYS: Councilman Holleman

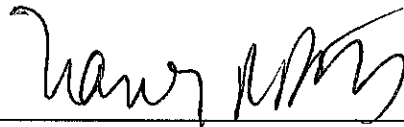
ABSENT: Councilman Blumberg

PASSED: January 09, 2017

APPROVED: January 09, 2017

PUBLISHED IN PAMPHLET FORM: January 10, 2017

ORDINANCE NO. 004-2017



Nancy R. Rotering, Mayor

ATTEST:



Ghida S. Neukirch, City Clerk

**AN ORDINANCE
AMENDING TITLE 5 AND SECTION 9.16.020
OF THE WINNETKA VILLAGE CODE REGARDING A BAN ON COAL TAR
PRODUCTS AND THE APPLICATION OF PAVEMENT
SEALANTS WITHIN THE VILLAGE**

WHEREAS, the Village of Winnetka is a home rule municipality in accordance with Article VII, Section 6 of the Constitution of the State of Illinois of 1970 and has the authority to exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, Title 5 of the Winnetka Village Code, as amended ("*Village Code*"), titled "Business Licenses and Regulations," sets forth certain regulations governing the licensing and operation of businesses within the Village ("*Business Regulations*"); and

WHEREAS, Section 9.16.020 of the Village Code, titled "Public nuisances defined," identifies certain activities that, when conducted within the Village, are deemed to be public nuisances punishable by certain penalties and that must be abated ("*Nuisance Regulations*"); and

WHEREAS, the Village desires to update: (i) the Business Regulations to require all persons engaged in the business of applying pavement sealing products to public or private property within the Village to obtain a Village license; and (ii) the Nuisance Regulations to declare a public nuisance the application of any pavement sealing product that contains coal tar, coal tar derivatives, or coal tar mixtures to any public or private property within the Village; and

WHEREAS, the Village Council has determined that amending the Business Regulations and the Nuisance Regulations as set forth in this Ordinance is in the best interests of the Village;

NOW, THEREFORE, be it ordained by the President and Board of Trustees of the Village of Winnetka as follows:

SECTION 1: The foregoing recitals are hereby incorporated as the findings of the Council of the Village of Winnetka, as if fully set forth herein.

SECTION 2: Title 5, titled "Business Licenses and Regulations," of the Village Code is hereby amended by adding a new Chapter 5.74, titled "Pavement Sealant Applicators," which new Chapter will read as follows:

Chapter 5.74
PAVEMENT SEALANT APPLICATORS

Section 5.74.010 License.

No person shall apply pavement or pavement sealing products ("Sealant") to any public or private property within the Village without a license ("Pavement Sealant License"), which License shall be renewed annually. A Pavement Sealant License shall not be required for a property owner applying Sealant to pavement on a single-family lot owned by the property owner. Application for a Pavement Sealant License shall be on a form provided by the Village and shall, at a minimum, state the name, address, and contact information of the person applying for the License and the person or persons who will be applying the Sealant, and such other information as may be required by the Village Manager.

Section 5.74.020 Certification; previous services.

All persons applying for a Pavement Sealant License shall (i) sign a certification on a form provided by the Village, certifying, at a minimum, that neither the licensee nor any person acting under the License will apply products that contain coal tar, coal tar derivatives, or coal tar mixtures ("Coal Tar Products") to any public or private property within the Village, and (ii) upon the Village's request, provide a written list of locations where the licensee or any person acting under the license has applied Sealant to any public or private property within the Village within the preceding 365 days.

Section 5.74.030 Fee.

All applications for a Pavement Sealant License shall be accompanied by the annual license fee, which shall be set from time to time by resolution of the Village Council.

Section 5.74.040 Review and approval.

The Director of Public Works shall review all applications for Pavement Sealant Licenses and shall make a recommendation to the Village Manager for each application. The Village Manager shall grant a Pavement Sealant License if the application complies with all applicable provisions of this Chapter and the Village Code.

SECTION 3: Subsection B, titled "Public Nuisances Affecting Health," of Section 9.16.020, titled "Public nuisances defined," of Chapter 9.16, titled "Nuisances," of Title 9, titled "Public Peace, Morals and Welfare," of the Village Code is hereby amended by amending a new Paragraph 17, which new Paragraph will read as follows:

17. The application after August 19, 2014, being the effective date of this Paragraph, of pavement or pavement sealing products that contain coal tar, coal tar derivatives, or coal tar mixtures ("**Coal Tar Products**") to any public or private property within the Village. Abatement of this nuisance shall consist, at a minimum, of sealing over the Coal Tar Products with an asphalt-based product free of coal tar.

SECTION 4: This Ordinance is passed by the Council of the Village of Winnetka in the exercise of its home rule powers pursuant to Section 6 of Article VII of the Illinois Constitution of 1970.

SECTION 5: This Ordinance shall take effect immediately upon its passage, approval, and publication as provided by law.

PASSED this 19th day of August, 2014, pursuant to the following roll call vote:

AYES: Trustees Braun, Kates, Krucks, McCrary

NAYS: Trustee Fessler

ABSENT: Trustee Prodromos

APPROVED this 19th day of August, 2014.

Signed:

s/E. Gene Greable
Village President

Countersigned:

s/Robert M. Bahan
Village Clerk

Published by authority of the President and Board of Trustees of the Village of Winnetka, Illinois, this 19th day of August, 2014.

Introduced: August 5, 2014

Passed and Approved: August 19, 2014