

**49-O-17**

**AN ORDINANCE**

**Amending City Code Title 7 by Adding Chapter 18, "Pavement Sealant Applicators"**

**WHEREAS**, the Illinois Supreme Court provides that "[i]f a subject pertains to local government and affairs, and the [Illinois] legislature has not expressly preempted home rule, municipalities may exercise their power." *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 988 N.E.2d 75, 82-83 (2013), citing *City of Chicago v. StubHub, Inc.*, 979 N.E.2d 844 (2011). The powers of a home rule unit such as Evanston are to be construed liberally pursuant to Article VII, § 6(m) of the Illinois Constitution, and Evanston's powers as a home rule authority are: "...to be given the broadest powers possible." *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 174 (1992). Home rule municipalities are constitutionally conferred with tremendous authority and latitude to address local issues and concerns.

**WHEREAS**, the Illinois Constitution provides that a home rule unit may: exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals, and welfare; to license; to tax; and to incur debt. Ill. Const. art. VII, § 6. A city's power to regulate and license for the protection of public health and safety is drawn directly from the Constitution, and any such power must be expressly limited by the General Assembly. See Ill. Const. art. VII, § 6(i). Evanston's police power also authorizes it to adopt ordinances and to promulgate rules and regulations that pertain to

its government and affairs and that protect the public health, safety, and welfare of its citizens.

**WHEREAS**, based on the recommendation and information from the City's Environment Board, on May 1, 2017, the City's Human Services Committee ("HSC") directed staff to create said Ordinance.

**WHEREAS**, the City Council finds that polycyclic aromatic hydrocarbons ("PAHs"), which are contained in coal tar sealants, can be carried by stormwater and other run-off into the water resources of the City.

**WHEREAS**, the U.S. Geological Survey ("USGS") Information Sheet titled "Coal-Tar-Based Pavement Sealcoat – Potential Concerns for Human Health and Aquatic Life" found that PAHs are an environmental concern because many cause cancer, mutations, birth defects, or death in fish, wildlife, and invertebrates. In this same study, the USGS found that the excess cancer risk for people living adjacent to coal-tar-sealcoated pavement was 38 times higher, on average, than for people living adjacent to unsealed pavement.

**WHEREAS**, environmental and health impacts can be minimized and pavements can be maintained by using alternative products that are free of PAHs.

**WHEREAS**, the City Council finds that there is a compelling governmental interest in the protection of the public health of Evanston citizens to enact the reasonable regulations contained herein. The City Council finds that the passage of this ordinance is in the interests of the health, safety, and welfare of Evanston citizens.

**WHEREAS**, the City Council held meetings in compliance with the provisions of the Illinois Open Meetings Act, considered the statements, points and authorities made in the legislative Record, and received additional input from the public.

**NOW BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

**SECTION 1:** The foregoing recitals are hereby found as facts and incorporated herein by reference.

**SECTION 2:** Title 7 of the Evanston City Code of 2012, is hereby amended to add Chapter 18 as follows:

**CHAPTER 18 – PAVEMENT SEALANT APPLICATORS**

**7-18-1. – LICENSE – PAVEMENT SEALANT APPLICATORS.**

No person shall apply pavement or pavement sealing products ("sealant") to any public or private property within the City 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 City Manager or his/her designee, 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 City Manager or his/her designee.

**7-18-2. – CERTIFICATION; PREVIOUS SERVICES.**

All persons applying for a Pavement Sealant License shall: (i) sign a certification on a form provided by the City, certifying, at a minimum, that neither the licensee nor any person acting under the Pavement Sealant 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 City; and (ii) upon the City's request, provide a written list of locations where the licensee or any person acting under the licensee has applied sealant to any public or private property within the City within the preceding 365 days.

**7-18-3. – FEE.**

All applications for a Pavement Sealant License shall be accompanied by the annual license fee of one hundred dollars (\$100.00).

**7-18-4. – REVIEW AND APPROVAL.**

The Director of the Community Development Department or his/her designee shall review all applications for Pavement Sealant Licenses and shall make a recommendation to the City Manager or his/her designee for each application. The City Manager or his/her designee shall grant a Pavement Sealant License if the application complies with all applicable provisions of this Chapter and the Code.

**7-18-5. – SALE OF SEALANTS CONTAINING COAL TAR PRODUCTS.**

No person shall sell, offer to sell, or display for sale any sealant product within the City that is labeled as containing Coal Tar Products.

**7-18-6. - VIOLATION AND PENALTY.**

Every person who in any way, directly or indirectly, applies pavement or sealant to any public or private property without first obtaining a Pavement Sealant License and paying a fee to do so in accordance with this Chapter, or any person or licensee violating the provisions of this Chapter will be fined one hundred and fifty dollars (\$150.00) for each such offense. Every day a violation continues will be deemed a separate offense.

**7-18-7. – ENFORCEMENT.**

The City of Evanston Community Development Department is authorized to enforce this section.

**SECTION 3:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 4:** If any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

**SECTION 5:** The findings and recitals herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

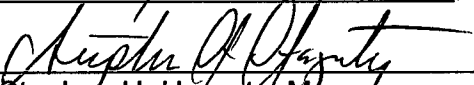
**SECTION 6:** This ordinance shall be in full force and effect on January 1, 2018, after its passage, approval and publication in the manner provided by law.

Introduced: June 26th, 2017

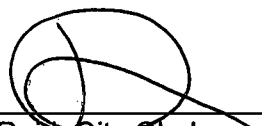
Adopted: July 10th, 2017

Approved:

July 25, 2017

  
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Stephen H. Hagerty, Mayor

Attest:

  
\_\_\_\_\_  
Devon Reid, City Clerk

Approved as to form:

  
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W. Grant Farrar, Corporation Counsel