

# BLUE HILL HEALTHY ECOSYSTEM ORDINANCE

## A. PURPOSE

The Town of Blue Hill wishes to protect the environmental and economic viability of Blue Hill, Blue Hill Bay and other waterways that support the economic vitality of local farmland, forests, fisheries and the working waterfront. The intent of this ordinance is that the use of pesticides will not be detrimental to public health, safety, and welfare, or to natural ecosystems.

## B. AUTHORITY

Pursuant to 30-A M.R.S. §3001, the State of Maine allows municipalities, through their home rule authority, to enact ordinances dealing with municipal affairs.

Pursuant to 22 M.R.S. §1471U, Maine municipalities may enact ordinances that apply to pesticide storage, distribution, or use.

Pursuant to 38 M.R.S. §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. §1301-1319-Y), the Natural Resources Protection Act (38 M.R.S. §480-A-480-Z), the Site Location of Development Act (38 M.R.S. §481-490).

## C. DEFINITIONS

**Application** The spreading of pesticides over an area by any means including but not limited to, in liquid or dry form: broadcasting, pasting, ground spraying, aerial spraying, soil injection, surface utilization.

**CFR** Code of Federal Regulations

**Commercial Agriculture** The production of crops for sale, including crops intended for distribution to wholesalers or retail outlets and any non-food crops.

**Cultural Management** Manipulation of growing conditions such as sanitation, the environment, or production timing to achieve disease, insect, or weed management.

**Emergency** A serious, unexpected, and often dangerous situation requiring immediate action.

**Endocrine Disruptors** Chemicals that can damage the hormone system, leading to cancer, birth defects, and other diseases and birth defects.

**EPA** The United States Environmental Protection Agency.

**FIFRA** The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 et seq.)

**Herbicide** A pesticide that is toxic to plants, used to destroy vegetation.

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**Integrated Pest Management** The use of least toxic pest management practices employing cultural, mechanical, biological or chemical methods.

**Invasive Species** An animal, plant or insect that is not native to a particular ecosystem, and whose introduction does or is likely to cause economic or environmental harm or harm to human health. Invasive species include those plants listed under the Maine Department of Agriculture, Conservation and Forestry's Natural Areas Program as currently invasive, potentially or probably invasive, and highly likely but not currently invasive, as well as those insects listed by the Maine Forest Service as threats to Maine's forests and trees.

**Neonicotinoid** A class of synthetic, neurotoxic insecticides that are known to be harmful to bees and other pollinators.

**Natural, Organic or Nonsynthetic** A substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic process as defined in the Organic Foods Production Act (7 U.S.C. § 6502(21)).

**Organic Pest Management** The act of managing or controlling pests through the use of mechanical, cultural, or biological processes, or through the use of natural, organic, or nonsynthetic substances.

**Persistent Pesticides** Are stable in the environment and resist being broken down

**Person** means any individual natural person, partnership, joint venture, society, association, company, club, trustee, trust or corporation; or any officer, agent, employee, or personal representative of any thereof, in any capacity acting either for her or himself or for any other person under either personal appointment or pursuant to law.

**Pest** Any organism declared to be a pest under circumstances that make it deleterious to living beings or the environment, as defined by U.S. Federal Code of Regulations (40 C.F.R. 152.5).

**Pest Emergency** is an urgent need to eliminate or mitigate a pest situation that poses a significant risk to the health and welfare of humans, animals or the environment, or poses an immediate threat of substantial property damage or loss. The existence of a pest emergency shall be determined by the Blue Hill Public Health Officer, and does not depend on whether the State of Maine has declared a pest emergency.

**Pesticide** Any substance or mixture of substances including but not limited to herbicides, insecticides, rodenticides, disinfectants, and antibiotics, and any fertilizer mixture which contains any of the foregoing intended to kill, repel, or mitigate species designated as pests, including plants, insects, or other organisms.

**Synthetic** A substance formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring sources. The term shall not apply to substances created by naturally occurring biological processes.

**Water Body** Any pond, lake, river, stream, or tidal area.

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**Wetlands** Areas where water covers the soil, or is present either at or near the surface of the soil all year or for varying periods of time during the year.

### D. PERMITTED AND PROHIBITED PEST MANAGEMENT ACTIVITIES AND/OR MATERIALS

This section shall apply to outdoor pesticide applications conducted within the Town of Blue Hill on both public and private land.

#### 1. Permitted Pest Management Activities

- a. Organic Pest Management.
  - b. Use or application of synthetic substances specifically listed as "allowed" on the U.S. Department of Agriculture's National List of Allowed and Prohibited Substances, National Organic Program (CFR Title 7 205.601), except for CFR Title 7 205.601 (b)(2)(ii) petroleum-based plastic mulch.
  - c. Use or application of pesticides determined to be "minimum risk pesticides" pursuant to the FIFRA and listed in 40 CFR 152.25 (f), provided that all of the associated criteria and limitations are met.
  - d. Application of a pesticide that is permitted by this ordinance must be applied in accordance with instructions included on the manufacturer's label.
- Notwithstanding the foregoing permitted activities listed above, if any of the materials to be used are listed in Section 3, below, such materials may not be used, stored or sold in the Town of Blue Hill.

#### 2. Prohibited Pest Management Activities

- a. Application, storage, or sale of prohibited pest management materials (see 3. below), or any products containing these materials, such as fertilizers, within the Town of Blue Hill.

#### 3. Prohibited Pest Management Materials

- a. Any insecticide in the neonicotinoid family of pesticides.
- b. Any pesticide classified as "carcinogenic to humans" or "likely to be carcinogenic to humans" by the California Office of Environmental Health Hazard Assessment, Proposition 65
- c. Any pesticide classified by the U.S. Environmental Protection Agency as a *restricted use pesticide*, 40 CFR 152.175.

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- d. Any pesticide classified as an *endocrine disruptor* by the California Department of Public Health.
- e. Any pesticide classified a *developmental toxin*, or a *reproductive toxin* by the California Office of Environmental Health Hazard Assessment, Proposition 65.
- f. Any herbicide identified as *persistent* by the U.S. Composting Council.
- g. Any pesticide identified as a *nonsynthetic substance* specifically listed as *prohibited* on the U.S. Department of Agriculture's National List of Allowed and Prohibited Substances, (National Organic Program), 7 CFR §205.602.
- h. Any pesticide identified as a *synthetic substance* other than those specifically listed as *allowed* in the U.S. Department of Agriculture's National List of Allowed and Prohibited Substances, (National Organic Program) CFR Title 7 205.601.

### 4. Pest Emergencies

- a. Prohibited pesticides may be used when a pest emergency exists. In such circumstances, a waiver is required from the Town of Blue Hill Public Health Officer.
- b. In case of a pest emergency, the Town of Blue Hill recommends the implementation of Integrated Pest Management practices before resorting to the use of prohibited pesticides.
- c. The presence of weeds or common fungal diseases in the usual course of turf maintenance shall *not* be considered a need for exemption.
- d. Financial difficulty is *not* considered a need for exemption.

### E. EXEMPTIONS

1. Commercial Agriculture.
2. Pet supplies for tick and flea treatment when used in the manner specified by the manufacturer.
3. Disinfectants, germicides, bactericides, miticides, and virucides, when used in the manner specified by the manufacturer.
4. Insect repellants for bodily or clothing application when used in the manner specified by the manufacturer.
5. Indoor pesticide use, when used in the manner specified by the manufacturer.
6. Rodent control supplies when used in the manner specified by the manufacturer.
7. Swimming pool supplies when used in the manner specified by the manufacturer.

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8. General use paints, stains, wood preservatives, and sealants, structural wood preservation, when used in the manner specified by the manufacturer.
9. Drinking water and wastewater treatment.
10. Injections of pesticides into trees to control Dutch elm disease, emerald ash borer, or browntail moth, by a licensed pesticide applicator and under the oversight of the Blue Hill Tree Warden.

### F. WAIVERS

The Town of Blue Hill Public Health Officer is authorized to grant waivers from the provisions of this ordinance when a pest emergency exists. A waiver may be granted to a licensed applicator or homeowner only for a specific use of a specific pesticide. The waiver shall be approved for a period of not more than thirty (30) days. The Public Health Officer may grant a waiver renewal for a maximum of three (3) years if they find that the applicator has performed satisfactorily, that the location of the treatment, and the pesticide and method of application will be the same as the initial waiver, and that the need for the renewed waiver is the result of the same ongoing infestation or problem.

No waiver will be approved for storage or application of prohibited pest management materials within 250 feet of the maximum high water line of a water body, wetland, or drainage ditch.

1. The licensed applicator or homeowner who seeks a waiver shall submit a Pesticide Waiver Application (available at the Blue Hill Town Office or on the Town website) to the Public Health Officer.
2. The form shall include:
  - a. The reason for requesting the application of a prohibited pesticide;
  - b. Explanation of why other approaches for control of the pest cannot be utilized, or will create greater risk to the environment;
  - c. Identifying the pest;
  - d. Naming the pesticide for which the waiver is sought;
  - e. Listing the amounts to be applied;
  - f. Describing the proposed method of application;
  - g. Identifying the proposed location(s) of the application(s);
  - h. Noting the application date(s);
  - i. Listing the measures that will be taken to limit any adverse impacts on the environment.
3. Upon receipt of an application for a pesticide use waiver or the renewal of an existing waiver, the Public Health Officer shall consider the application within fifteen (15) days of

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its receipt. The Public Health Officer may obtain outside assistance in their review of the application.

4. The Public Health Officer shall approve the application only if they find that:
  - a. There is an immediate threat to human health, the environment or animals,
  - b. Control methods allowed by the ordinance are not adequate to address the threat, and
  - c. The licensed pesticide applicator or property owner has proposed an approach that presents the least risk to the marine and terrestrial environment and undertakes to limit the potential adverse impacts.
  
5. A decision of the Public Health Officer with respect to the granting or denial of a waiver may be appealed to the Select Board within fifteen (15) days of the Public Health Officer's decision. The Select Board shall act on an appellate basis in reviewing the decision and may affirm or modify the Public Health Officer's decision.

### **G. VIOLATIONS and ENFORCEMENT**

This ordinance will be enforced by the Blue Hill Public Health Officer, according to the policies governing enforcement of ordinances of the Town of Blue Hill.

Each day a violation occurs shall be deemed a separate violation.

Any Person violating this Ordinance shall be fined as follows:

1. A fine not exceeding \$100.00 for the first violation.
2. A fine not exceeding \$250.00 for the second and each subsequent violation.
3. Reimbursement of the Town's legal fees and costs for prosecution of each violation.

### **H. PUBLIC NOTIFICATION OF PROHIBITED PESTICIDE USE**

A property owner, commercial farmer, or person hired to apply a prohibited pesticide shall post notification of prohibited pesticide use if applied within 250 feet of abutting neighbor or public way. Areas treated shall be posted in a manner and at locations designed to reasonably assure that persons entering such area will see the notice. Such notice shall be posted 48 hours prior to the application date, and shall remain in place at least 48 hours following the completion of the application.

#### **Posting Requirements**

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1. The sign shall measure at minimum 8 1/2 x 11 inches, made of rigid, weather resistant material, with dark bold letters.
2. The sign must bear:
  - a. The word CAUTION in 72 point type,
  - b. The word PESTICIDE APPLICATION in 32 point type or larger,
  - c. The date and time of the application,
  - d. The common name, trade name, and Environmental Protection Agency registration number of the pesticide,
  - e. A detailed description of the location of the application of the pesticide, and
  - f. Any reentry precautions from the pesticide labeling.

### **I. SEVERABILITY**

If any section, paragraph, sentence, word, or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court, such decision shall not affect the validity of the remaining provisions of this ordinance.

### **J. CONFLICTS WITH OTHER ORDINANCES**

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive chapter, article, or ordinance of the Town of Blue Hill code shall control.

### **K. EFFECTIVE DATE**

The ordinance shall become effective immediately upon its adoption at a Town Meeting, and, upon such adoption, shall repeal and replace the ordinance entitled "Blue Hill Healthy Ecosystem Ordinance" as originally adopted on April 3, 2020 and amended through April 6, 2024.

