

THIS IS A PROPOSED DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED ORDINANCE OR RESOLUTION ADOPTED BY THE CITY COUNCIL.

AN ORDINANCE

AMENDING CHAPTER 26 OF THE CITY CODE OF THE CITY OF SAN ANTONIO, TEXAS, BANNING COAL TAR SEALANT PAVEMENT PRODUCTS IN THE CITY LIMITS, WITH AN EFFECTIVE DATE OF JANUARY 1, 2017, ESTABLISHING A PENALTY AND DIRECTING THE CITY CLERK TO PUBLISH NOTICE.

* * * * *

WHEREAS, on November 18, 2014, Councilman Ron Nirenberg issued a Council Consideration Request to consider a prohibition on coal tar based sealants, the black liquid sprayed or painted on many parking lots, driveways, and playgrounds, which contains polycyclic aromatic hydrocarbons (PAHs) which are known cancer causing chemicals; and

WHEREAS, since 2005, 16 municipalities and two counties within the States of Minnesota, New York, Texas, and Wisconsin, the District of Columbia, and the States of Washington and Minnesota, the Edwards Aquifer Authority, the City of Austin and most recently the City of Annapolis, Maryland and the City of San Marcos, all have enacted some type of ban; several national home improvement and hardware stores have discontinued coal tar-based sealants; and

WHEREAS, City staff has reviewed and analyzed over eighty white papers, independent studies and articles published by universities, independent researchers, the National Oceanic and Atmospheric Administration and the Environmental Protection Agency stating that coal tar sealants are a major source of PAHs; the US Environmental Protection Agency and National Institute of Environmental Health Sciences state that “PAHs are known or probable human carcinogens and toxic to aquatic life”; and

WHEREAS, City staff requested public input and actively engaged stakeholders such as commercial property owners and developers, manufacturing, industrial sites, environmental organizations and the pavement industry; on June 14, 2016, staff presented the Transportation Technology and Utilities Committee a recommendation to ban Coal Tar Sealant Pavement Products in the City, with an effective date of January 1, 2017; and

WHEREAS, this Ordinance amends Chapter 26, Pollution Control, of the City Code by adding a new Article IV – Coal Tar Sealant Pavement Products, which would ban the use and sale of coal tar based pavement sealant products within the City of San Antonio, with an effective date of January 1, 2017; provides for education and outreach to property owners and the pavement industry; and provides for a penalty, with enforcement provided through the Transportation & Capital Improvements and Development Services Departments, and the San Antonio Water System; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Findings: The City Council finds that coal tar based sealant pavement products pose a public health and safety threat as outlined above to the citizens and environment of the City, and therefore establish and enact this prohibition on the use and sale of coal tar based sealant pavement products within the City of San Antonio. The City Council recognizes that lakes, rivers, streams and other bodies of water are natural assets which enhance the environmental, recreational, cultural and economic resources of the City and contribute to the general health, safety and welfare of the community. The prohibition on the use and sale of coal tar based sealant pavement products will serve to help protect the health and safety of the citizens and those natural resources.

SECTION 2. Chapter 1 - General Provisions, Section 1-5 - General penalty; continuing violations, of the City Code of San Antonio, Texas is hereby amended by adding the underlined text below, to read as follows:

* * * *

Sec. 1-5. - General penalty; continuing violations.

Except for Chapters 5, 11, 12, 13, 15, 17, 19, Article IV of Chapter 26 and Articles III and IV of Chapter 34 and the Unified Development Code [Chapter 35], wherever in this Code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinance shall be punished by a fine not exceeding five hundred dollars (\$500.00); however, violations of traffic laws codified in Chapter 19 of the City Code of San Antonio, Texas, shall be punished by a fine not exceeding five hundred dollars (\$500.00). Unless otherwise specified therein, violations established by ordinance and made part of the City Code under Chapters 5, 11, 12, 13, 15, 17, Article IV of Chapter 26 and Articles III and IV of Chapter 34 shall be punished by a fine not to exceed two thousand dollars (\$2,000.00). Each day's violation of any ordinance or any provision of this City Code shall constitute a separate offense.

* * * *

SECTION 3. Chapter 26, Pollution Control, Article III – Green Events Certification, of the City Code of San Antonio, Texas is hereby amended by adding the underlined text below, to read as follows:

* * * *

Section 26-39 to 26-40. Reserved.

* * * *

SECTION 4. Chapter 26, Pollution Control, of the City Code of San Antonio, Texas is hereby amended by adding a new Article IV, entitled Coal Tar Sealant Pavement Products, to read as follows:

* * * *

ARTICLE IV. COAL TAR SEALANT PAVEMENT PRODUCTS

SECTION 26-40. DEFINITIONS.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

ASPHALT BASED SEALER. A petroleum based sealer material that is commonly used on driveways, parking lots, and other surfaces and does not contain polycyclic aromatic hydrocarbons.

COAL TAR. A byproduct of the process used to manufacture steel.

COAL TAR SEALANT PAVEMENT PRODUCT. A material that contains coal tar and is for use on asphalt or concrete surfaces including a driveway or parking lot. These surface applied sealing products contain coal tar, coal tar pitch, coal tar pitch volatiles, or any variation assigned the Chemical Abstracts Service (CAS) numbers 65996-93-2, 65996-89-6, or 8007-45-2.

CITY. The City of San Antonio, Texas.

POLYCYCLIC AROMATIC HYDROCARBONS. A group of organic chemicals formed during the incomplete burning of coal, oil, gas, or other organic substances. Present in coal tar and believed harmful to humans, fish, and other aquatic life.

DIRECTOR. The Director of the Transportation and Capital Improvements Department of the City of San Antonio.

SECTION 26-41. PROHIBITIONS.

(a) No person shall apply a coal tar sealant product on asphalt paved surfaces within the City of San Antonio.

(b) No person shall sell a coal tar sealant product that is formulated or marketed for application on asphalt paved surfaces within the City of San Antonio.

(c) No person shall allow a coal tar sealant product to be applied upon property that is under that person's ownership or control.

(d) No person shall contract with any commercial sealer product applicator, residential or commercial developer, or any other person for the application of any coal tar sealant product to any driveway, parking lot, or other surface within the City of San Antonio.

(e) No commercial sealer product 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 to any driveway, parking lot, or other surface within the City of San Antonio.

SECTION 26-42. Reserved.

SECTION 26-43. ASPHALT BASED SEALCOAT PRODUCTS.

The provisions of this ordinance shall only apply to coal tar sealant products and shall not affect the use of asphalt based sealant products within the City of San Antonio.

SECTION 26-44. ENFORCEMENT AND PENALTY.

(a) All officials duly authorized, including but not limited to peace officers of the state, and those authorized by statute to issue citations for Class C criminal misdemeanors, may assist the city in enforcement of this Article.

(b) Additionally, the directors of the departments of Transportation and Capital Improvements, the Metropolitan Health District, Development Services and the president/CEO or designee of the San Antonio Water System, is hereby authorized to designate trained personnel to enforce this Article in the manner and to the extent allowed by law, including, but not limited to, filing complaints with the city municipal prosecutor's office for such violations, serving notices of violations of this article and filing civil enforcement actions, in coordination with the office of the city attorney, the municipal courts, and the police department.

(c) Each person suspected to be in violation of this Article shall allow, during normal business hours, an authorized representative or representatives of the city to conduct an inspection of their place of business for purposes of determining compliance with this Article.

(d) Nothing in this section shall limit any and all other criminal, civil or administrative remedies available to the city in seeking to enforce the provisions of this Article. The city attorney's office is hereby empowered to secure injunctive relief to enforce the provisions of this Article. This shall be in addition to, and not in lieu of, the criminal penalties provided for in this Article.

Sec. 26-45 to 26-49. Reserved.

* * * *

SECTION 5. A person commits an offense if the person performs an act prohibited by this Ordinance or fails to perform an act required by this Ordinance. Each instance of a violation of this Ordinance is a separate offense.

SECTION 6. All other provisions of Chapter 1 and Chapter 26 of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this Ordinance.

SECTION 7. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this Ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 8. The City Clerk is directed to publish notice of this Ordinance in accordance with Section 17 of the Charter of the City of San Antonio. The penalty, fine or forfeiture provisions in this Ordinance shall apply five days after publication.

SECTION 9. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing code.

SECTION 10. Funding for this ordinance is contingent upon approval of the Fiscal Year 2017 Budget for Fund 11001000, Cost Center 5556030001 and General Ledger 5201040.

SECTION 11. If approved by council, payment not to exceed the budgeted amount is authorized to San Antonio Water System and should be encumbered with a purchase order.

SECTION 12. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 203000000027 and General Ledger 4401343.

SECTION 13. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 14. This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage. The penalty provisions provided in this Ordinance shall be effective January 1, 2017.

PASSED and APPROVED this 30th day of June, 2016.

M A Y O R
Ivy R. Taylor

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek, City Clerk

Martha G. Sepeda, Acting City Attorney

DRAFT