



City of San Antonio

Agenda Memorandum

File Number:16-3763

Agenda Item Number: 21.

Agenda Date: 6/30/2016

In Control: City Council A Session

DEPARTMENT: Office of Sustainability

DEPARTMENT HEAD: Douglas Melnick, Chief Sustainability Officer AICP CNU-A

COUNCIL DISTRICTS IMPACTED: City-Wide

SUBJECT:

Coal Tar Sealants

SUMMARY:

An Ordinance in the City of San Antonio city limits banning Coal Tar Sealant Pavement Products with an effective date of January 1, 2017 and establishing an administrative penalty.

BACKGROUND INFORMATION:

On November 18, 2014, Councilman Nirenberg submitted a Council Consideration Request to consider a prohibition on coal tar based sealants. Coal tar sealant is the black liquid sprayed or painted on parking lots, driveways, and playgrounds and contains polycyclic aromatic hydrocarbons (PAHs) which are known cancer causing chemicals. Since 2005, 16 municipalities and 2 counties within the States of Minnesota, New York, Texas, and Wisconsin, the District of Columbia, and the States of Washington, Minnesota, Edwards Aquifer Authority, City of Austin and most recently City of Annapolis, Maryland and City of San Marcos all have enacted some type of ban. A number of national home-improvement and hardware stores have discontinued coal tar-based sealants. 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 polycyclic aromatic hydrocarbons. The US Environmental Protection Agency and National Institute of Environmental Health Sciences states "Polycyclic aromatic hydrocarbons are known or probable human carcinogens and toxic to aquatic life".

On April 13, 2016, the Transportation Technology and Utilities Committee approved a recommendation by City staff to extend the communications and engagement strategy through May 31, 2016 for stakeholders such as commercial property owners and developers, manufacturing, industrial sites, environmental organizations and the pavement industry. Subsequently on June 14, 2016, staff presented the Transportation Technology and Utilities Committee a recommendation to ban Coal Tar Sealant Pavement Products with an effective date of January 1, 2017.

The City of San Antonio requested public input on the proposed coal tar policy from January 14, 2016-May 31, 2016. City staff has reached out to a variety of stakeholders including largest public/private property owners and developers, contractors, Chambers, members of the pavement industry, environmental organizations and residents. Office of Sustainability targeted eighty-seven public and private entities, of those respondents, 36% support the policy, 20% are indifferent and 9% oppose the policy. Supporters of the policy included citizen advocates, members of the pavement industry and the San Antonio River Authority Board. Policy development research was also reviewed by the Transportation Technology and Utilities Committee and was recommended for full Council consideration.

ISSUE:

This item is in response to a Council Consideration Request submitted by Councilman Nirenberg to consider a prohibition on coal tar sealants.

City staff from the Office of Sustainability, Health, Transportation & Capital Improvements, Development Services, in coordination with the San Antonio Water System, Edwards Aquifer Authority, and the San Antonio River Authority conducted research of scientific data and best practices available on the use of coal tar sealants.

The coal tar policy restrictions include:

- No person shall apply coal tar sealant product on asphalt paved surfaces within the city limits of the City of San Antonio;
- 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 and;
- 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.

Violations of this Ordinance will result in a fine not exceeding two thousand dollars (\$2,000.00). Each day's violation of this ordinance shall constitute a separate offense. The provisions of this ordinance shall only apply to coal tar sealant products in the City and shall not affect the use of asphalt based sealer products within the City.

Upon Council approval of this ordinance, City staff in coordination with the San Antonio Water System and the San Antonio River Authority will provide education and outreach to property owners and the pavement industry. The ordinance will go into effect no later than six months after adoption of this rule to allow the pavement industry to adjust their operations to comply with the ordinance. Enforcement will be handled through the Transportation & Capital Improvements Department, the San Antonio Water System and Code Compliance.

ALTERNATIVES:

This request can be postponed or cancelled. The cancellation of this request would result in not adopting a prohibition on the use of coal tar sealants.

FISCAL IMPACT:

Enforcement of this Ordinance may require testing by San Antonio Water System. It is estimated that annual testing costs would not exceed \$50,000. Funding for materials testing will be paid within the approved 2017 Stormwater Operations budget. Transportation & Capital Improvements will enter into an Interlocal Agreement with San Antonio Water System within the six-month grace period. Fines related to enforcement will be deposited into the City's General Fund.

RECOMMENDATION:

Staff recommends approval to ban Coal Tar Sealant Pavement Products with an effective date of January 1, 2017, establishing an administrative penalty, and directing the City Clerk to publish notice.