

City of Excelsior
Hennepin County, Minnesota

Ordinance No. 506

An Ordinance to Amend Chapter 16 to Add Article V,
Sections 16-171 through 16-177 – Prohibiting
the Sale and Use of Coal Tar Sealant Products
Within the City of Excelsior, Minnesota

THE CITY COUNCIL OF EXCELSIOR, MINNESOTA, HEREBY ORDAINS:

SECTION ONE: Amendment. That Chapter 16 of the Excelsior City Code be amended to add Article V, Sections 16-171 through 16-177 to read as follows:

Chapter 16

Article V – Coal Tar Sealant Products

Sec 16-171 Purpose of Chapter
Sec 16-172 Definitions
Sec 16-173 Prohibitions
Sec 16-174 Exemption
Sec 16-175 Asphalt Based Sealcoat Products
Sec 16-176 Penalty
Sec 16-177 Severability

Section 16-171. Purpose of Chapter

The City of Excelsior understands that lakes, rivers, streams and other bodies of water are natural assets which enhance the environmental, recreational, cultural and economic resources and contribute to the general health and welfare of the community.

The use of sealers on asphalt driveways is a common practice. However, scientific studies on the use of driveway sealers have demonstrated a relationship between stormwater runoff and certain health and environmental concerns.

The 2013 Minnesota Legislature enacted a statewide prohibition on the use and sale of coal tar sealant products. This new statewide prohibition has been codified under *Minnesota Statutes* section 116.202 and is effective on January 1, 2014.

The purpose of this ordinance is to prohibit violations of *Minnesota Statutes* section 116.202 in the City of Excelsior, Minnesota, in order to protect, restore, and preserve the quality of its waters.

Section 16-172. 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 ordinance, 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 contain PAHs.

COAL TAR. A byproduct of the process used to refine coal.

COAL TAR SEALANT PRODUCT. A surface applied sealing product containing 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 Excelsior, Minnesota.

MPCA. The Minnesota Pollution Control Agency.

PAHs. 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.

Section 16-173. Prohibitions

In accordance with *Minnesota Statutes* section 116.202

- A. No person shall apply a coal tar sealant product on asphalt paved surfaces within the City.
- B. No person shall sell a coal tar sealant product that is formulated or marketed for application on asphalt-paved surfaces within the City.
- 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.
- 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.

Section 16-174. Exemptions

Upon the express written approval from the MPCA and in accordance with *Minnesota Statutes* section 116.202, a person who conducts research on the environmental effects of coal tar sealant product or where the use of coal tar shall be exempt from the prohibitions provided in Section 3. Any person that is granted approval by the MPCA must provide a copy of the written approval from the MPCA to the City twenty days before conducting the research.

Section 16-175. Asphalt Based Sealcoat Products

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.

Section 16-176. Penalty

Any person convicted of violating any provision of this ordinance is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment for not more than ninety (90) days, or both, plus the costs of prosecution in either case.

Section 16-177. Civil Enforcement

Regardless of whether a violation of this ordinance is enforced via criminal prosecution under section 16-176, use of coal tar sealant products in violation of this ordinance shall constitute a nuisance subject to enforcement under section 16-37 of this Code.

Section 16-17~~8~~7. Severability

If any provision of this ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining provisions shall not be affected.

SECTION TWO: Effective Date. This ordinance shall be effective thirty (30) days after its passage and publication.

Adopted by the City Council of the City of Excelsior, Minnesota, this 18th day of November, 2013.

ATTEST:

Mark W. Gaylord, Mayor

Shirley Murphy, City Clerk

Cheri Johnson, Interim City Manager

First Reading of Ordinance:

November 4, 2013

Second Reading and Adoption:

November 18, 2013

Publication of Ordinance:

November 28, 2013

Effective Date:

December 27, 2013