
**An Ordinance Creating Chapter 420 of the
Weyauwega Code of Ordinances
Coal Tar and Other High-PAH Sealant Products**

WHEREAS, the City of Weyauwega, finds that water resources within the City of Weyauwega are a natural asset, which enhance the environmental, recreational, cultural and economic resources of the area and contribute to the general health and welfare of the public; and

WHEREAS, the City of Weyauwega, finds that polycyclic aromatic hydrocarbons (PAHs), contained in coal tar sealants and other High-PAH sealants, volatilize off sealed pavement that can be inhaled by humans and animals and that such sealed surfaces are eroded by weathering, foot and vehicle traffic, and snow plowing, creating PAH-contaminated particles that are transported into homes and onto nearby soils and can be carried by storm water and other run off into the water resources within the City of Weyauwega; and

WHEREAS, PAHs are an environmental concern because they are toxic to aquatic life, causing deformities and other reproductive and developmental problems, cancer, and death that results in a loss of species and fewer organisms; and

WHEREAS, PAH compounds cause cancer, mutations, and birth defects in humans according to the International Agency for Research on Cancer; individuals with lifelong exposure to coal-tar sealed surfaces have a 38-fold higher risk of cancer; and the American Medical Association therefore advocates for legislation to ban the use of pavement sealants that contain PAHs or require use of sealant products that contain minimal PAHs; and

WHEREAS, environmental impacts and human health risks can be minimized and pavements can be maintained by utilizing alternative products or methods, absent PAHs; and

WHEREAS, the City of Weyauwega finds that regulating the amount of contaminants, including PAHs contained in coal tar sealant products and other high-PAH sealant products, entering the water resources of the State will improve and protect public health and the water quality of City of Weyauwega and those of neighboring communities;

NOW THEREFORE: THE CITY COUNCIL OF THE CITY OF WEYAUWEGA, WAUPACA COUNTY, WISCONSIN, DOES ORDAIN AS FOLLOWS:

SECTION 1: That Chapter 420 of the City Code of the City of Weyauwega, entitled Coal Tar and Other High-PAH Sealants is hereby Created to Read as Follows:

Chapter 420 Coal Tar Sealant and other High-PAH Sealants

§ 420-1 Definitions

A. COAL TAR is a byproduct of the process used to refine coal. Coal tar contains high levels of polycyclic aromatic hydrocarbons (PAHs).

B. COAL TAR SEALANT PRODUCT means a pavement sealant product that contains coal tar, coal tar pitch, coal tar pitch volatiles, RT-12, Refined Tar or any variation assigned the Chemical Abstracts Service (CAS) numbers 65996-92-1, 65996-93-2, 65996-89-6, or 8007-45-2 or related substances_

C. HIGH-PAH SEALANT PRODUCT means any pavement sealant product that contains greater than 0.1 % polycyclic aromatic hydrocarbons (PAHs) by weight, including, but not limited to, coal tar sealant products and sealant products containing steam-cracked petroleum residues, steam-cracked asphalt, pyrolysis fuel oil, heavy fuel oil, ethylene tar, or any variation of those substances assigned the chemical abstracts service number 64742-90-1 , 69013-21-4 or related substances.

D. PAVEMENT SEALANT PRODUCT, or sealcoat, is any substance that is typically applied on paved surfaces to protect the surfaces_ This may include but is not limited to sealant products that are coal tar or asphalt based.

E. POLYCYCLIC AROMATIC HYDROCARBONS (PAHs) are a group of organic chemicals that are formed during the incomplete combustion of coal, oil, gas, or other organic substances, are present at high levels in coal tar, and are known to be harmful to humans, fish, and other aquatic life.

F. DIRECTOR means the director of the Director of Public Works.

§ 420-2 **Enforcement**

A. Limited Citation Power. The Director is hereby authorized to issue municipal court citations for violations of this Chapter.

B. Injunction and Abatement. The Director, upon consultation with the City Attorney and authorization by the Common Council is authorized to act a complainant on behalf of the City of Weyauwega in legal actions to enjoin or abate an actual or contemplated violation of this code.

C. Compliance with §530-57 of this code. All applications of Pavement Sealant Products on any off street parking facilities shall be subject to review and approval as provided by § 530-57 of this code. The Director or his designee is authorized to issue stop work orders upon observing a violation of any provision of this Chapter or to halt construction/repair activities until the proposed new off street parking facility or repair to an existing parking facility has been reviewed by the plan commission as provided at § of this code.

§ 420-3 **Prohibitions**

A. Application Prohibited. Except as provided in Section 420-4 (Exceptions). No person shall apply any coal tar sealant product or high PAH sealant product within the City of Weyauwega.

B. Sale Prohibited. No person shall sell, offer to sell, or display for sale any coal tar sealant product or high PAH sealant product within the City of Weyauwega.

C. Display of Prohibition. Any person who sells pavement sealant products shall prominently display, in the area where such pavement sealant products are sold, a notice that contains the following language:

"The application of coal tar sealant products or other high PAH sealant products on driveways, parking lots and all other paved surfaces in the City of Weyauwega is prohibited by Chapter 420 of the City of Weyauwega Code of Ordinances. Polycyclic Aromatic Hydrocarbons (PAHs), are a group of organic chemicals that are known to cause cancer and are toxic to aquatic life. Coal tar and other high-PAH sealant products are a major source of PAHs that can travel into homes, buildings, and soils, or be carried by storm water and other run off into the water resources of the City of Weyauwega."

D. Owner Application Prohibition. No person shall allow a coal tar sealant product or other high-PAH sealant product to be applied upon property that is under that person's ownership or control.

E. Contract to Apply Prohibited. No person shall contract with any commercial applicator, residential or commercial developer, or any other person for the application of any coal tar sealant product or high PAH sealant product to any driveway, parking lot, or other surface within the City of Weyauwega.

F. Direction to Apply Prohibited. No commercial 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 or high P AH sealant product to any driveway, parking lot, or other surface within the City of Weyauwega.

420-4: **Exceptions**

The Director may exempt a person from the requirements of this chapter if the Director in the following circumstances:

A. Testing. The Director may exempt a person from the requirements of section 420-3 of this code if the person is conducting bona fide research concerning the effects of a coal tar sealant product or high-PAH sealant product on the environment; the use of the coal tar product, or high-PAH sealant product is required for said research; and the DIRECTOR determines that said research will not cause significant contamination of the surrounding environment, including soils and aquatic ecosystems, and will not unduly endanger human health.

B. Outside of City. The Director may exempt a person from the requirements of section 420-3 if the person does not intend to apply the sealant within municipal boundaries of the City of Weyauwega.

420- 5: **Penalties**

A. Penalty for Application. Any person who violates 420-3 by applying a coal tar sealant product or high-PAH sealant product at his or her residence shall be subjected to a forfeiture not to exceed \$500.

B. Recurring Violations. Each day that a violation occurs or continues is a separate offense and subject to an additional fine.

C. Commercial Violations. Any commercial sealant product applicator, residential or commercial developer, industrial or commercial owner, or any other person, other than a person identified under sub. A above, who violates 420-3, shall be subject to a forfeiture of not less \$500.00. Each incidence of a violation shall constitute a separate offense.

D. Failure to Pay. Upon default of payment, the violator shall be subject to imprisonment for not less than 30 days nor more than 100 days.

E. Penalty Not Exhaustive. Nothing in this chapter shall limit the ability of the City to pursue injunction, abatement or any other remedies allowed by law for any violation of this code.

SECTION 2: That Section 357-3 of the City Code of the City of Weyauwega, entitled Public Nuisances Affecting Health; is hereby amended by repealing and recreating Section 357-3 I; Street Pollution; to read as follows:

I Street and Parking Lot Pollution: Any use of property which shall cause any nauseous or unwholesome liquid or substance to flow into or upon any street, gutter, alley, sidewalk or public place within the City. Any violation of § 420-3 is presumed a violation of this Section.

SECTION 3. That Section 530-57 of the City Code of the City of Weyauwega, entitled Parking Requirements shall be amended by creating Section 530-57 I to read as follows:

I Coal Tar and High-PAH compliance. Any applicant for an authorization or permit for the construction or alteration of any off street parking or drive under this section shall provide evidence satisfactory to the Common Council of compliance with Section 420-3 of this code.

SECTION 4. Ordinances or parts of ordinances conflicting with or contravening the provisions of this ordinance are hereby repealed.

SECTION 5. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 6. This ordinance shall take effect upon passage and publishing as provided by law.

PASSED AND ADOPTED by the City Council of the City of Weyauwega, Waupaca County, Wisconsin this 16th day of April, 2019.

CITY OF WEYAUWEGA

BY: _____
Jack Spierings, Mayor

ATTEST:

Rebecca Loehrke, Clerk

Introduced by: Shani Appleby
Seconded by: Keith Najdowski

Date Adopted: April 16, 2019
Date Published: May 2, 2019