

Introductory Local Law No. 6 Of 2009

County Of Ulster

A Local Law Requiring Non-Toxic Landscape Maintenance On Land Owned Or Leased By The County Of Ulster, With Exceptions And Waivers In Appropriate Circumstances

BE IT ENACTED, by the Legislature of the County of Ulster, as follows:

SECTION 1. NAME OF LOCAL LAW.

This law shall be known as “The Ulster County Non-Toxic Landscape Maintenance Act.”

SECTION 2. DEFINITIONS.

For the purpose of this local law the following are defined as follows:

“Natural, Non-Toxic, Least Toxic or Biological Pesticide” shall mean a pesticide that is a naturally occurring substance or microorganism that controls pests in a non-toxic manner, or, if approved by the Department of the Environment or EMC, the least toxic method possible.

“Integrated Pest Management” shall mean technique for agricultural disease and pest control in which as many pest control methods as possible are used in an ecologically harmonious manner to keep infestation within manageable limits.

“Non-toxic Pest Management (“NPM”)” shall mean a problem-solving strategy that prioritizes a natural, non-toxic approach to turf grass and landscape management without the use of toxic and synthetic pesticides. It mandates the use of natural, non-toxic, or, as a last resort with EMC approval, least toxic cultural practices that promote healthy soil and plant life as a preventative measure against the onset of turf and landscape pest problems.

Essential NPM practices include, but are not limited to:

- regular soil testing;
- addition of approved soil amendments as necessitated by soil test results, following, but not limited to, the recommendations of the Northeast Organic Farmers’ Association Massachusetts and Connecticut Chapters Organic Land Care Program and/or the Organic Material Review Institute of Eugene, or;
- selection of plantings using criteria of hardiness; suitability to native conditions; drought, disease and pest-resistance; and ease of maintenance;

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- using, with EMC approval, the least toxic organic, or non-toxic non-organic, products as some organic products are toxic;
- modification of outdoor management practices to comply with organic horticultural science, including scouting, monitoring, watering, mowing, pruning, proper spacing, and mulching;
- the use of physical controls, including hand-weeding and over-seeding;
- the use of biological controls, including the introduction of natural predators, and enhancement of the environment of a pest's natural enemies;
- through observation, determining the most effective treatment time, based on pest biology and other variables, such as weather and local conditions; and
- eliminating pest habitats and conditions supportive of pest population increases.

“Pest” shall mean (1) any insect, rodent, fungus, weed or (2) any other form of terrestrial or aquatic or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria or other micro-organisms ordinarily present on or in humans or living animals) which the commissioner of the New York State Department of Environmental Conservation declares to be a pest.

“Pesticide” shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and any substance or mixture of substances intended for use as a plant regulator, defoliator or desiccant. It shall include all pesticide products registered as such by the United States Environmental Protection Agency and the New York State Department of Environmental Conservation, and all products for which experimental use permits and provisional registrations have been granted by the United States Environmental Protection Agency and the New York State Department of Environmental Conservation.

“Toxic” shall mean any substance that is harmful to humans. It is recognized that, by their very nature, pesticides and herbicides are toxic to those pests they are designed to eliminate. Obviously, the concern of this local law is to limit pesticides' toxicity to humans while preventing pests from multiplying and thereby endangering humans. A pesticides' relative toxicity to humans is the

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standard that should govern the determination as to which pesticides should be utilized. Measures of relative toxicity have been determined by measuring their effect upon adult humans, who have greater mass and weights than children. Thus, children are at greater risk from exposures to even low levels of pesticides.

SECTION 3. LEGISLATIVE INTENT.

The County of Ulster agrees with the U.S. Environmental Protection Agency (EPA) that “all pesticides are toxic to some degree..., and the commonplace, widespread use of pesticides is both a major environmental problem and a public health issue.”

The County of Ulster recognizes that all residents, (particularly children), as well as other inhabitants of our natural environment, have a right to protection from exposure to hazardous chemicals and pesticides in particular.

The County of Ulster recognizes that a balanced and healthy ecosystem is vital to the health of the town and its citizens; and as such is also in need of protection from exposure to hazardous chemicals and pesticides, in particular.

Furthermore, the County of Ulster recognizes that it is in the best interest of public health to eliminate the use of toxic pesticides on County-owned land; to encourage the reduction and elimination of the use of toxic pesticides on private property; and to introduce and promote natural, non-toxic, or as a last resort and with EMC approval, least toxic management practices to prevent and, when necessary, control pest problems on County-owned and leased land.

Therefore, the County of Ulster seeks to implement non-toxic pest management (NPM) on County-owned and leased lands.

SECTION 4. DECLARATION OF PHILOSOPHY AND PRINCIPLES.

The County of Ulster hereby adopts the precautionary principle (as defined by the Wingspread statement) as the basis for its non-toxic pest management (NPM) policy. The precautionary principle states:

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“When an activity raises threats of harm to the environment or human health, precautionary measures should be taken, even if some cause and effect relationships are not yet fully established.”

SECTION 5. ENACTMENTS.

The County of Ulster hereby adopts an NPM policy that mandates the following on all properties where the County is responsible to maintain the outside areas, including lawns and grassy areas:

1. that the use and application of toxic chemical pesticides, either by County of Ulster employees or by private contractors, for the purpose of turf and landscape maintenance, is prohibited on all lands maintained by the County of Ulster;
2. that, if toxic products must be used, based upon a waiver or exemption, then natural, least toxic turf and landscape cultural practices and maintenance shall be the method of choice to understand, prevent, and control potential pest problems;
3. that all control products used under the terms of this policy shall be in keeping with, but not limited to, those products on the approved list of the Northeast Organic Farming Association Connecticut and Massachusetts Chapters' Organic Land Care Program or approved by the Ulster County EMC;
4. that County of Ulster employees who work with turf grass and the landscape receive education and training in natural, least toxic turf and landscape management to be coordinated by the EMC, if, in its opinion and discretion, such training is necessary;
5. that a listing of all County-maintained lands affected by this policy be made available to the public by posting a list on the County website.

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SECTION 6. ADVISORY COMMITTEE ON NON-TOXIC PEST MANAGEMENT.

1. An Advisory Committee on Non-toxic Pest Management will be formed with the following members: Commissioner of Public Works or designee, Coordinator of the Department of the Environment or designee, Executive Director of the Soil and Water Conservation District or designee, Director of Cornell Cooperative Extension or designee, and the Chairman of the Environmental Management Council or designee.

The Advisory Committee will oversee and assist in the implementation of the NPM policy, to develop an NPM program consistent with this local law, and to advise the Chairperson of the Ulster County Legislature's Committee responsible for environmental issues of any problems encountered or amendments required to achieve the full and successful implementation of this policy.

2. The Advisory Committee shall seek the participation, advice, and counsel of experts in the fields of non-toxic turf and landscape management and NPM protocol. Broad community participation, including parents, schools, advocates, and local landscaping businesses shall be encouraged on a non-voting basis.

3. Any decision by the Advisory Committee, pursuant to this local law shall be by majority vote of the entire committee membership, and not merely a majority or those present and voting.

SECTION 7. EXEMPTIONS.

All turf and landscape pest management activities taking place on land maintained by the County of Ulster land shall be subject to this local law, except as follows:

1. Pesticides or classes of pesticides classified by the United States environmental protection agency as not requiring regulation under the federal insecticide, fungicide and rodenticide act under 40 CFR § 152.25, and therefore exempt from such regulation when intended for use, and used only in the manner specified.

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2. Biological pesticides, such as bacillus thuringiensis or milky spore, that are not genetically modified.
3. Pesticides in contained baits for the purpose of rodent control.
4. Poison ivy and poison oak that constitutes a health hazard.
5. Tick control.
6. Any property, or categories of properties, as recommended from time to time by the Ulster County coordinator of environmental resources and approved by the Ulster County Legislature by mere resolution.

SECTION 8. WAIVERS.

1. Any County agency or contractor may apply to the Advisory Committee for a single-use waiver of the restrictions established pursuant to this local law. Such application shall be in a form and manner prescribed by the Advisory Committee and shall contain such information as the committee deems reasonable and necessary to determine whether such waiver should be granted. The Advisory Committee may grant such waivers by a majority vote of the voting membership, not merely a majority of those present and voting. In determining whether to grant or deny a request for a waiver, the Advisory Committee shall consider (i) the magnitude of the infestation, (ii) whether the pest situation poses an immediate threat to public health, property, or the environment (iii) the availability of effective alternatives consistent with this local law, and (iv) the likelihood of exposure of humans to the pesticide.

No waiver shall be approved unless the following conditions have been met: (i) Any pesticide used of all available choices must have the least acute and chronic toxic effect on human health or safety; and, (ii) The applicant must submit a plan demonstrating how underlying causes of the pest outbreak will be addressed in a manner consistent with this local law to prevent future outbreaks.

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2. If a pest situation poses an immediate threat to human health and warrants the use of pesticides that would otherwise not be permitted under this local law, the Ulster County Commissioner of Health or Public Health Director shall have the authority to grant a temporary emergency waiver for a period of thirty days. Notice of the waiver request shall be given to the Advisory Committee for advice on resolving the problem without the use of pesticides. The Commissioner or Public Health Director may extend the waiver for one additional period not to exceed six months. Nothing in this waiver provision prohibits the County of Ulster from adopting additional waivers via resolution for as long as the condition exists.

Any County Department using a pesticide under such a waiver must comply with all applicable federal and state laws regarding pesticide use and the Ulster County pesticide neighbor notification law.

SECTION 9. SEVERABILITY.

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

SECTION 10. EFFECTIVE DATE.

This local law shall take effect immediately upon filing with the New York State Secretary of State.