

ORDINANCE NO. 13-20 N.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND
AMENDING CHAPTER 9.48 OF THE CITY OF RICHMOND MUNICIPAL
CODE ENTITLED "INTEGRATED PEST MANAGEMENT (IPM)" BY
REPEALING SECTIONS 9.48.035 (SALE OF PESTICIDES) AND 9.48.045
(ENFORCEMENT OF PESTICIDES) TO COMPLY WITH CALIFORNIA FOOD
AND AGRICULTURE CODE SECTION 11501.1**

SECTION 1.

Chapter 9.48 entitled "INTEGRATED PEST MANAGEMENT" of the City of Richmond Municipal Code is hereby amended to read as follows:

Sections:

9.48.010	Definitions.
9.48.020	Applicability.
9.48.030	Exclusions and exemptions.
9.48.040	Enforcement and appeal for Contractors.

9.48.010 - Definitions.

Whenever used in this chapter, the following terms shall have the meanings set forth below.

- (a) "City Department" means any department of the City of Richmond and includes any contractor hired by a City Department to control pests on City property. City Department does not include any other local agency or any federal or state agency.
- (b) "City property" means property owned, leased or managed by the City of Richmond.
- (c) "Contractor" means a person, firm, corporation or other entity, including a governmental entity, which enters into a contract with a City Department or with a tenant leasing City property for the management of pests.
- (d) "Integrated Pest Management [IPM]" means a decision making process for managing pests that uses monitoring to determine pest injury levels and combines biological, cultural, physical, and chemical tools to minimize health, environmental and financial risks. The method uses extensive knowledge about pests, such as infestation thresholds, life histories, environmental requirements and natural enemies to complement and facilitate biological and other natural control of pests. This method uses the least toxic synthetic pesticides only as a last resort to controlling pests.
- (e) "IPM Coordinator" means the City of Richmond staff member designated by the City Manager who is responsible for the oversight of this ordinance as well as pest control activities on City property.
- (f) "Least-toxic" means if treatment is necessary, non-chemical means are given priority. Traps and enclosed baits, beneficial organisms, freezing and flame or heat treatments, among others, are all examples of non-chemical or least-toxic pest treatment strategies. When it is deemed necessary to apply a pesticide, chemicals used must pose the least possible risk of toxicity to humans and the environment.
- (g) "Pest" means any animal, plant, or plant pathogen (virus, fungi, bacteria or other microorganism) that is, or is liable to become, dangerous, detrimental to public health, or posing a serious economic hardship.
- (h) "Pesticide" has the meaning set forth in Section 12753 of the California Food and Agricultural Code but does not include antimicrobial agents. Pesticide includes the following:
 - (1) Any substance or combination of substances which is intended to be used for

defoliating plants, retarding plant growth, or for preventing, destroying, repelling, or mitigating any pest which may infest or be detrimental to beneficial species, wildlife, pets, people, or the built environment, or be present in any agricultural or nonagricultural environment whatsoever;

(2) Any spray agent that modifies the effects of other agents for the control of pests (also known as a "spray adjuvant").

(i) "Riparian Area" means an area characterized by vegetation that thrives in the interface between dry land and the wet environment of a stream, creek, pond, or other water body. Riparian Area includes wetlands, floodplains, and all area within a minimum of fifteen feet from the top of a stream or creek bank, whether or not riparian vegetation is observed within that area.

(j) "Signal word" means the applicable word—"Danger," "Warning," "Caution," or some other word signifying the level of toxicity designated by federal law under 40 C.F.R. 156.64.

9.48.020 - Applicability.

A. Restricted Use of Pesticides. Pesticides shall be used only as a last resort following other feasible IPM efforts including cultural, mechanical, and biological methods. When it is deemed necessary to use pesticides the least-toxic pesticides shall be used.

B. Ban on the Use of Any Pesticide Containing Organophosphates or Carbamates. Except for pesticides granted an emergency exemption pursuant to Section 9.48.030, no City Department or Contractor shall use any material containing any organophosphates or carbamates as listed by the U.S. Environmental Protection Agency. No exemptions of pesticides containing organophosphates or carbamates shall be for granted use in a riparian area.

- (c) Ban the Use of Any Pesticide That is a Known Carcinogen. Except for pesticides granted an emergency exemption pursuant to Section 9.48.030, no City Department shall use any pesticide, as listed by the U.S. Environmental Protection Agency, which is a known carcinogen.
- (d) Ban the use of any pesticides as defined in RMC Section 9.48.010(h) for the eradication of invasive or noxious weeds.
- (e) Riparian Areas, Playgrounds, and Picnic Areas are Pesticide-Free Zones. Except for pesticides granted an emergency exemption pursuant to Section 9.48.030, no pesticides shall be used on Riparian Areas, within playgrounds, or within picnic areas located on City property. The pesticide-free zone shall extend a minimum of 15 feet from top of bank in Riparian Areas, and a minimum of 15 feet from the perimeter of a playground or picnic area.
- (f) Notification of Pesticide Use. In those areas in which pesticides are used, the City shall provide notification in the following manner:
- (1) Signs of a standard design and size, easily recognizable by the public and workers, shall be posted at public access points to the targeted area 72 hours in advance of the application and remain in place for 72 hours following the application.
 - (2) Signs shall contain the following information: Pesticide product name; active ingredient; target pest; dates of anticipated pesticide application; signal word (such as "Danger" or "Warning") indicating toxicity level; timeline for re-entry of staff and public; name and contact information for the IPM Coordinator.
 - (3) Exemptions to the advance notification requirements may be granted by the IPM Coordinator pursuant to Section 9.48.030, subsection (b) or (c). However, in areas accessible to the public, signs shall be posted within five days prior to the time of application stating that, weather permitting, pesticides will be applied in the area within the next five days and shall remain in place for a minimum of 72 hours following the application.

- (4) Pesticide use in areas not readily accessible to the public, such as street medians or unimproved rights-of-way, shall not require the posting of signs.
- (g) Recordkeeping and Reporting.
 - (1) Each City Department and contractor that uses pesticides shall keep records of all pest management activities and submit monthly reports to the IPM Coordinator. Each record shall include the following information:
 - (A) The target pest;
 - (B) Prevention and other non-chemical methods of control used;
 - (C) Exemption granted by the IPM Coordinator (if any) to authorize use of pesticide;
 - (D) The type and quantity of pesticide used;
 - (E) A description of the exact location of the pesticide application, with a diagram if appropriate;
 - (F) The date the pesticide was used;
 - (G) The name of the pesticide applicator; and
 - (H) The application equipment used.
 - (2) All pesticide applications shall be reported as required by the California Department of Pesticide Regulation.
 - (3) All pest management records shall be made available to the public upon request.
- (h) City Contracts. As of the effective date of this chapter, when a City Department enters into a new contract or extends the term of an existing contract for pest management services on property owned managed or leased, the contract shall obligate the contractor to comply with provisions of this ordinance.
- (i) Planning and Design Practices. As of the effective date of this chapter, to the maximum extent possible, Integrated Pest Management strategies shall be incorporated into the planning and design of City buildings, landscapes, road rights-of-way, or other facilities. Design factors such as site selection, types of uses, soils, grade, slope, water table, drainage, and proximity to sensitive areas shall be evaluated and pest prevention strategies, such as native plant selection and construction of pest barriers incorporated.

9.48.030 - Exclusions and exemptions.

- (a) Exclusions.
 - (1) This chapter shall not apply to the use of chemical agents for the purpose of disinfecting water at:
 - (A) Public swimming pools;
 - (B) Drinking water treatment plants;
 - (C) Wastewater treatment plants;
 - (D) Reservoirs; and
 - (E) Related collection, distribution and treatment facilities.
 - (2) This chapter shall not apply to the use of chemical agents for the purpose of disinfecting child care centers; first aid or other health care facilities; crime or accident scenes; or for abating a public nuisance on private property pursuant to either Richmond Municipal Code Section 9.22.120 (Summary abatement) or a warrant issued by the court.
- (b) Emergency Exemption. The City Council may approve an emergency exemption to use a pesticide banned or restricted pursuant to Section 9.48.020 in the event that a pest outbreak poses an immediate threat to public health or a significant risk of severe and immediate damage to City property. The IPM Coordinator's request for approval by the City Council for an exemption shall be in writing, stating the reasons for the decision and all conditions attached to the exemption.

9.48.040 - Enforcement and appeal for contractors.

- (a) The IPM Coordinator shall have primary responsibility for enforcement of this chapter, and may promulgate regulations or guidelines to implement this chapter.
- (b) Any contractor who violates any provision of this chapter, or of any regulation or guideline that implements this chapter, shall be ordered immediately to stop all work. The IPM Coordinator will issue a written notice describing the violation and demanding that the contractor respond within three business days with a detailed written description of the pest management practice(s) used. If the contractor fails to respond, the contract may be terminated.
- (c) Within five business days after receiving a response to a Notice of Violation, the IPM Coordinator shall contact the contractor to discuss a plan of action for continued pest management in accordance with this chapter and all implementing regulations and guidelines. The agreed-upon plan of action will become an addendum to the contract. If the IPM Coordinator and the contractor are unable to agree upon a plan of action within a reasonable time, not to exceed 15 business days, the contract may be terminated.
- (d) If a contract is terminated because of a violation of this chapter or any regulation or guideline for the implementation of this chapter, the IPM Coordinator shall inform the contractor in writing that he or she shall be placed on a list of contractors ineligible to enter into pest management contracts with any City Department for a period of one year.
- (e) The contractor may appeal the IPM Coordinator's notice of ineligibility by filing a written protest with the City Manager within ten business days from the date of the notice. Within ten business days of receiving a contractor's appeal, the City Manager shall conduct a hearing at which the contractor and the IPM Coordinator may present evidence. The City Manager's decision on appeal shall be final.

SECTION 2. SEVERABILITY CLAUSE

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 3.

This ordinance shall be effective thirty days after passage and adoption.

First read at a regular meeting of the Council of the City of Richmond held June 23, 2020, and finally passed and adopted at a regular meeting thereof held June 30, 2020, by the following vote:

AYES: Councilmembers Choi, Johnson III, Martinez, Myrick, Willis, Vice Mayor Bates, and Mayor Butt.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:
TOM BUTT
Mayor

Approved as to form:
RACHEL SOMMOVILLA
City Attorney(Interim)

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 13-20 N.S., passed and adopted by the City Council of the City of Richmond at a regular meeting held on June 30, 2020.

Pamela Christian, City Clerk of the City of Richmond