

Proposed by:	Health, Education & Welfare Committee
Attorney Review:	06/26/2014
First Reading:	07/03/2014
Second Reading:	07/17/2014
Postponed to:	08/21/2014
Tabled to:	09/04/2014
Vote: 4 Aye 0 Nay 2 Absent	

MUNICIPALITY OF SKAGWAY, ALASKA ORDINANCE NO. 14-15

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING TITLE 8 HEALTH AND SAFETY TO LIMIT THE APPLICATION OF RESTRICTED HERBICIDES FOR THE PURPOSE OF VEGETATIVE MAINTENANCE, AND NEONICOTINOIDS, ONTO LANDS WITHIN THE BOROUGH OF SKAGWAY—THAT ARE NOT STATE OF ALASKA LANDS—TO PROTECT SKAGWAY'S QUALITY OF LIFE, AND THE HEALTH OF ITS CITIZENS, ANIMALS, ECOSYSTEMS, AND WATERSHED.

WHEREAS, the Municipality of Skagway is concerned about the use of pesticides and herbicides and the risk that pesticides and herbicides may pose to the community and natural environment; and

WHEREAS, pesticides and herbicides have been linked to various forms of cancer, child developmental disorders, endocrine disruption; and

WHEREAS, pesticides and herbicides cannot be necessarily confined to a single location but move through the environment in the air, land and water and may have an impact on non-target species and plants; and

WHEREAS, the municipality wishes to limit all potential applications, drift, and runoff of pesticides or herbicides into the waters, tributaries, and lands bordering the Skagway and Taiya Rivers at this time in order to maintain water quality for consumption and other domestic purposes by residents of the Skagway and Dyea, Alaska; and

WHEREAS, the municipality wishes to limit all potential applications, drift, and runoff of pesticides or herbicides onto forested, wildlife, aquatic areas within the Borough of Skagway in order to protect environment, marine and fresh water organisms, wildlife, and habitat(s); and

WHEREAS, alternatives to the application of pesticides and herbicides exist, the Municipality of Skagway, in a letter to ADOT&PF dated July 19, 2013, declared their support for the use of mechanical methods of vegetation maintenance that include mowing, brush cutting, hydro-axing, and burning in the Skagway Borough; and

WHEREAS, chemical control methods (pesticide or herbicide) have the potential to create super weeds that exhibit a resistance to pesticides or herbicides, or could bioaccumulate in living organisms; and

WHEREAS, in 2009, the Borough Assembly approved the 2020 Comprehensive Plan which outlined ten (10) goals; two (2) of those goals were to help direct Skagway's future in a manner that:

2.4 Preserves and protects the beauty and clean environment of the Skagway area.

2.5 Protects and enhances the health, safety and well-being of all residents; and

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WHEREAS, the Precautionary Principle supports local governments anticipating and preventing threats of harm to the environment;

NOW, THEREFORE BE IT ORDAINED BY THE ASSEMBLY OF THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Skagway Municipal Code.

Section 2. Purpose. The purpose of this ordinance is to amend Title 8 Health and Safety by adding Chapter 8.10 Pesticides and Herbicides, to protect public health and safety, quality of life, water quality, subsistence food sources, natural surroundings, local ecosystem, and the watershed, by limiting most point source and non-point source applications of restricted herbicides for the purpose of vegetative maintenance, and prohibiting neonicotinoids and persistent herbicides, onto private and municipal lands within the boundaries of the borough.

Section 3. Amendment. The Skagway Municipal Code is hereby amended; (~~strike through~~) indicates text to be deleted from and (**bold underscore**) indicates text added to the current code. Title 8 Health and Safety is hereby amended as follows:

Chapter 8.10

PESTICIDES AND HERBICIDES

Sections:

- 8.10.010 Definitions.**
- 8.10.020 Outreach and education.**
- 8.10.030 Applicability.**
- 8.10.040 Register of restricted pesticides.**
- 8.10.050 Prohibited applications.**
- 8.10.060 Exceptions.**
- 8.10.070 Powers and authority for inspection.**
- 8.10.080 Waiver process.**
- 8.10.085 Appeal to borough assembly.**
- 8.10.090 Administration.**
- 8.10.100 Penalty.**

8.10.010 Definitions.

- 1. "application" means the placement for effect of any pesticide or herbicide at or on the site where pest control or other response is desired.**
- 2. "creek" means a stream, brook, or minor tributary of a river within the Borough of Skagway, including but not limited to:**
 - Pullen Creek;**
 - Dewey Creek;**
 - Snyder Creek;**
 - Burro Creek;**
 - Kasidaya Creek.**
- 3. "drainage ditch" means a channel in the ground, typically used for drainage alongside a road, railway, trail, or edge of a field.**

4. "drift" means to be carried slowly by a current of air or water.
5. "fertilizer" means a chemical or natural substance added to soil or land to increase its fertility.
6. "forest" means a large area covered chiefly with trees and undergrowth.
7. "herbicide" means a pesticide designed to control or kill plants, weeds, or grasses.
8. "infest" or "infestation" means that (insects or animals) be present (in a place or site) in large numbers, typically so as to cause damage or disease.
9. "lakes" means a considerable inland body of standing water within the Borough of Skagway, inlet (filled) or outlet (emptied) by creeks or streams, including but not limited to:
 - Black Lake;
 - Lower Dewey Reservoir;
 - Lower Dewey Lake;
 - Icy Lake;
 - Upper Dewey Lake;
 - Devils Punch Bowl;
 - Goat Lake;
 - Lost Lake;
 - Summit Lake;
 - Pump House Lake.
10. "neonicotinoid" means a class of neuro-active insecticides chemically related to nicotine.
11. "non-target species" means any organism for which the pesticide was not intended to control.
12. "non-point source" means a source of pollution that comes from many diffuse sources. Non-point source pollution is caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into lakes, rivers, wetlands, coastal waters and ground waters.
13. "organism" means any living being, whether plant, mammal, bird, insect, amphibian, reptile, fish, crustacean, aquatic or estuarine animal, or bacterium.
14. "pesticide," for the purpose of this ordinance, means substances intended to repel, kill, or control any species designated a "pest" including plants, weeds, insects or other organisms. The family of pesticides includes herbicides and insecticides. This includes any fertilizer mixture which contains insecticides or herbicides within it.
15. "plant" means a living organism of the kind exemplified by trees, shrubs, herbs, grasses, ferns, and mosses, typically growing in a permanent site, absorbing water and inorganic substances through its roots, and synthesizing nutrients in its leaves by photosynthesis using the green pigment chlorophyll. Does not include algae or fungi.
16. "point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill, leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.

17. "poison" means a substance that, when introduced into or absorbed by a living organism, causes death or injury.
18. "pollutant" means a substance that pollutes something. For the purposes of this ordinance, pesticides and herbicides may be considered pollutants.
19. "residence" means a person's home; the place where someone lives.
20. "resident" means a person who lives somewhere permanently or on a long-term basis.
21. "right-of-way" means the right to build and operate a railroad line, road, or utility on land belonging to another. The land on which a railroad line, road, highway, or utility is built.
22. "runoff" means the draining away of water (or substances carried in it) from the surface of an area of land, a building or structure, etc.
23. "spray" or "spraying" means to treat (a plant or area) with pesticide or herbicide that can be forced out of a can or other container.
24. "stream" means a small, narrow river.
25. "Tributary" means a stream of water feeding a larger stream or a lake. Refers to Tributaries of the Skagway or Taiya Rivers.
26. "Tributaries of the Skagway River" means, including but not limited to, those streams and/or drainage systems that flow heaviest during the spring and early summer including, but not limited to the following:
 - White Pass Fork;
 - East Fork Skagway River;
 - Warm Valley;
 - Captain William Moore Creek;
 - Porcupine Creek;
 - Pitchfork Falls;
 - Reid Creek.
27. "Tributaries of the Taiya River" means, including but not limited to, those streams and/or drainage systems that flow heaviest during the spring and early summer including, but not limited to the following:
 - West Creek;
 - Nelson Creek;
 - Johnson Creek;
 - Nourse River.
28. "Vegetative maintenance" means to remove trees, shrubs, herbs, grasses, ferns, moss or weeds from an outdoor environment. Does not include the removal of mosses or mildews from buildings or vehicles.
29. "Weeds" means a plant growing where it is not wanted.

8.10.020 Outreach and education.

The municipality may identify or prepare, then then periodically disseminate, materials designed to educate the community about the role of pesticides in our local environment, compliance with restrictions imposed by this chapter, and earth-friendly practices and alternatives to the use of harmful pesticides.

1. Education may take the form of pamphlets and brochures, whether produced and distributed on paper or electronically, or other methods deemed necessary by the borough manager.
2. Materials may include information about and links to the U.S. Environmental Protection Agency's list of minimum risk pesticides.

3. Alternatives solutions for vegetative maintenance that should be exhausted before resorting to the use of restricted herbicide may include, but are not limited to, the use of:
 - a. Cultural methods; and
 - b. Physical methods; and
 - c. Mechanical methods such as mowing, brush cutting, hydro-axing, or steaming. Burning is also allowed subject to SMC 15.08.055; and
 - d. Education may encourage that if pesticide or herbicide use is necessary, pesticide or herbicides must be used in a manner that does follow the printed instructions on the packaging.
4. Education may encourage that if pesticide or herbicide use is necessary, pesticide or herbicides must be used in a manner that does follow the printed instructions on the packaging.
5. The Municipality of Skagway may inform State of Alaska entities, that own or lease land to others within the borough, of its policy regarding restricted pesticides and herbicides and encourage voluntary compliance with the pesticide and herbicide use restrictions and notice requirements.

8.10.030 Applicability.

This ordinance is applicable to all lands within the boundaries of the Borough of Skagway that are not lands owned by the State of Alaska or leased to others by the State of Alaska. This ordinance is not applicable to State of Alaska rights-of-way.

8.01.040 Register of restricted pesticides.

- A. The borough manager shall create and issue, by December 1, 2014, a Register of Restricted Pesticides.
 1. The Register shall identify restricted pesticides.
 2. Persons applying pesticide products are responsible for determining whether the product contains a restricted pesticide.
- B. The Register of Restricted Pesticides shall include the following pesticides:
 1. Any herbicide classified as "Carcinogenic to Humans" or "Likely to Be Carcinogenic to Humans" by the U.S. Environmental Protection Agency;
 2. Any herbicide classified by the U.S. Environmental Protection Agency as a "Restricted Use Product";
 3. Any herbicide classified as a "Class 9" pesticide by the Ontario, Canada, Ministry of the Environment; and
 4. Any herbicide classified as a "Category 1 Endocrine Disruptor" by the European Commission.
 5. The neonicotinoid family of pesticides.
 6. Any herbicide that is identified as persistent by the U.S. Composting Council.
- C. The borough manager shall publish an updated version of the Register of Restricted Pesticides that reflects any changes to the classifications in the subsection (B) of this section on or before March 1 of each year that will remain in effect for one year.

8.10.050 Prohibited.

1. No person, private company, or other entity under any circumstance, shall sell or use neonicotinoid products, or products containing neonicotinoid active ingredients, or any restricted herbicides that are identified as "persistent" by the U.S. Composting Council, within the boundaries of the Borough of Skagway. Neonicotinoids and persistent herbicides shall not be approved for use by the waiver process.
2. The use of defoliant, chemicals or compounds that kill brush or trees by means of removing their foliage within the boundaries of the Borough of Skagway.
3. There shall be no application of restricted herbicides for the purpose of vegetative maintenance, or poisons within three-hundred (300) linear feet of any drainage ditches, tributaries, lakes, streams, or rivers within the boundaries of the Borough of Skagway.
4. There shall be no water-based or aerial spraying of pesticides or herbicides within the boundaries of the Borough of Skagway.
5. No drift, runoff or application of any pesticide, herbicide, or fertilizer shall be permitted onto any adjacent land or property of another.
6. The use of pesticide and herbicide products in any manner on the grounds of the Skagway City School is prohibited except in the case of insect infestation(s). Pesticide shall only be used as a last resort when dealing with insect infestation problems, and shall not be used as a preventive measure.
7. Municipality agents or employees shall not use restricted or persistent herbicides for vegetative maintenance, or neonicotinoids, in the performance of their duties. The municipality may, in accordance with the waiver process, and under extreme circumstances, contract a licensed pesticide applicator to perform restricted herbicide application.
8. Use of more than the allowed values of restricted herbicide allowed by SMC 8.10.060(C) is prohibited unless the property owner receives a waiver pursuant to SMC 8.10.080.
9. The sale of all concentrate products containing a restricted herbicide(s) in liquid or dry form within the Borough of Skagway is prohibited.

8.10.060 Exceptions.

- A. The municipality encourages the use of cultural, physical, biological, and mechanical methods of vegetative maintenance previous to, and instead of restricted herbicide use, but this chapter does not prohibit the use of restricted herbicides for the purposes set forth in subsection (C) of this section.
- B. Any person using a restricted herbicide for the purpose of vegetative maintenance pursuant to an exception set forth below must post a written notice readable and visible from the public right-of-way at the point closest to the area of application that states the address of the pesticide application, substance applied, and date of application, and the exception under which the herbicide is being applied. The property owner or tenant shall maintain the notice beginning at least one (1) day in advance of spraying application. The property owner or tenant shall maintain notice for at least two (2) days following any application of liquid or dry herbicide.
- C. Restricted herbicides for the purpose of vegetative maintenance may be applied for the following reasons:

1. While the municipality encourages all methods noted under subsection (A), a property owner may themselves apply, or hire a licensed commercial applicator to apply, in accordance with the manufacturer's instructions, to the total sum of their properties, up to a yearly total amount of:
 - a. Two (2) gallons of liquid form pre-mixed restricted herbicide products; or
 - b. Ninety pounds (90 lbs) of dry form pre-mixed fertilizer containing restricted herbicide product; or
 - c. A combination of both liquid and dry pre-mixes may be used:
 - i. One (1) gallon of liquid shall be calculated to weigh eight-and-one-thirds pounds (8-1/3 lbs).
 - ii. No more than a total combined weight of ninety pounds (90 lbs) may be used.
 - Example: One (1) gallon (8-1/3 lbs) of liquid form pre-mixed restricted herbicide + 81-2/3 lbs of dry form pre-mixed fertilizer containing restricted herbicide = 90 lbs.
2. Use of restricted or persistent herbicides or neonicotinoids explicitly mandated by state or federal law.
3. Use of restricted herbicides after granting of a waiver under section 8.10.080.
- D. Chemicals or treatments used for aquatic or marine vessel maintenance, or in preventative building materials, is allowed.

8.10.070 Powers and authority for inspection.

- A. The borough manager or designee will maintain a license for pesticide application consistent with license and training provided to ADEC or EPA personnel or inspectors.

8.10.080 Waiver process.

If a person, company, or other entity discovers a vegetative emergency that they believe can only be remedied by the use of more than the allowed amount [8.10.060(C)] of restricted herbicides, they must submit a written application to the borough manager for a waiver of the limitations in this chapter in accordance with the requirements of this section before enacting the remedy. The borough manager or designee will investigate the matter, and may seek further information from an independent professional, in the sole discretion of the borough manager. The borough manager will make the determination as to whether the proposed remedy will be permitted. The determination by the borough manager will be provided to the applicant in writing within five (5) business days. If the proposed use area is greater than ten-thousand (10,000) square feet, a mandatory public hearing will be held before the investigation is completed. The borough manager or designee will advise the assembly of the results of the investigation.

The borough manager must find all five (5) of the following conditions to exist in order to grant a waiver for application of a restricted herbicide:

- A. That a vegetative emergency exists that would result in a significant risk to the health of humans, the environment, or animals;

- B. That the strict application of the provisions of this title would result in practical difficulties or unnecessary hardship. Financial difficulty is not considered a hardship;
- C. The application of herbicide will not occur within three-hundred (300) linear feet of a tributary, creek, stream, river, lake, or drainage ditch;
- D. That the granting of the waiver for restricted herbicide use will not result in material damage to other properties in the vicinity, nor be detrimental to the public health, safety or welfare.
- E. Granting of a waiver for restriped herbicide application shall be terminated on a date certain and shall not be continuous.

Persons granted a waiver for application of a restricted herbicide must post a written notice readable and visible from the public right-of-way at the point closest to the area of application, providing information specified in Administration Regulations. The property owner or tenant shall maintain the notice beginning at least one (1) day in advance of application and for at least two (2) days following application.

8.10.085 Appeal to borough assembly.

- A. Any interested party, including but not limited to a municipal official, may file with the borough assembly a request for appeal, specifying in detail her/his objections to the issuance or denial by the borough manager of a waiver application. Only such objections as are specifically set forth in detail in the request for appeal will be considered. All such appeals shall be filed in writing with the borough clerk within ten (10) days of the date of the borough manager's determination. Any purported appeals filed after ten (10) days shall not be considered by the borough assembly.
- B. The borough assembly shall commence a public hearing on all appeals not later than thirty (30) days following the date the borough clerk receives the request for appeal; provided, however, the date of commencement of the hearing may be continued for a period not to exceed an aggregate total of thirty (30) additional days; and provided that public notice requirements outlined in section 8.10.085(C) can be met.
- C. At least seven (7) days' notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the municipality, and posted in two (2) public places in the municipality. In addition, at least seven (7) days' written notice of the time and place of the hearing shall be given to the appellant(s) and affected property owners within three-hundred (300) feet of the subject property.
- D. The borough assembly shall conduct the hearing informally and may reverse or affirm, wholly or partly, or may modify the determination appealed from, and may make such order, requirement, decision or determination as deemed by the assembly to be in the best interests of the municipality. The borough assembly shall issue a decision within fifteen (15) business days of the conclusion of the hearing.
- E. The borough assembly's written findings shall set forth the assembly's determination with respect to each of the grounds stated in the appeal from the waiver determination by the borough manager.
- F. A final decision of the borough assembly may be appealed to the Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska, as the

court with exclusive jurisdiction of any appeal, and the appeal shall be on the record and in accordance with the Alaska Rules of Appellate Procedure.

8.10.090 Administration.

- A. The borough manager shall promulgate regulations for the implementation and enforcement of this chapter. The regulations shall include the following:
 - 1. Procedures and criteria for notices; and
 - 2. Procedures and criteria for waiver applications.
- B. The borough manager may recommend to the Assembly one or more methods of assessing the effectiveness of this chapter, which may include the development of metrics on volume and types of use of pesticides in the borough or testing of local waters for pesticide contamination.
- C. For the purpose of simplifying consumer awareness, a notice referencing these regulations may be provided to local herbicide vendors for display in their places of business.

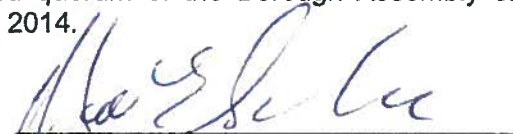
8.10.100 Penalty.

For violations of SMC 8.10 refer to chapter 1.20 General Penalties. Each violation of this chapter is subject to a civil fine of \$1,000.00. Each day of violation shall constitute a separate violation.


Section 4. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 5. Effective Date. Sections 8.10.050(1) and 8.10.050(9) of this ordinance shall become effective one (1) year from adoption. The rest of this ordinance shall become effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 4th day of September, 2014.


Mark Schaefer, Mayor

ATTEST:


Emily A. Deach, Borough Clerk

(SEAL)

