

CITY OF VAUGHAN - PESTICIDE BY-LAW

(Referred from the Committee of the Whole meeting of March 3, 2008)

Committee of the Whole, at its meeting of March 3, 2008, recommended the following:

- 1) That this matter be referred to the Committee of the Whole (Working Session) meeting of April 1, 2008, for staff to provide a further report addressing the concerns expressed by Members of Council; and
- 2) That the following deputations and written submission be received:
 - a) Mr. Carlo DeFrancesca, 18 Zucchet Court, Vaughan, L4L 7M5;
 - b) Mr. V. K. (Vince) Kishimoto, Regional Director, Central Ontario Chapter, National Golf Course Owners Association, Canada, 6267 Starfield Crescent, Mississauga, L5N 1X3, and written submission dated March 3, 2008;
 - c) Mr. Grant Murphay, The National Golf Club of Canada, 134 Clubhouse Road, Woodbridge, L4L 2W2;
 - d) Ms. Asifa Sheikh, on behalf of the Canadian Cancer Society, Major Mackenzie Unit;
 - e) Mr. Gideon Forman, Canadian Association of Physicians for the Environment, 130 Spadina Avenue, Suite 301, Toronto, M5V 2L4; and
 - f) Mr. Jerry Della Corte, President, Thornhill Golf and Country Club.

Report of the Commissioner of Legal and Administrative Services and City Solicitor, dated March 3, 2008.

Recommendation

The Commissioner of Legal and Administrative Services and City Solicitor, in conjunction with the Director of Enforcement Services, recommends:

- 1) That the Pesticide By-law be enacted; and,
- 2) That the Implementation Plan be approved.

Economic Impact

The cost of the educational material is still being calculated. The cost of the program is dependent on the extent of the program undertaken by the City.

Communications Plan

The communications plan is attached as Attachment #2.

Purpose

This report is to provide the Draft By-law to restrict the use of cosmetic pesticides in the City of Vaughan, as well as the implementation plan for the By-law.

Background - Analysis and Options

At its meeting of December 10, 2007, (Item 29, Report 58) Council approved the recommendation by the Environmental Committee to bring back a draft By-law and implementation plan.

As reported earlier, public consultation on a pesticide by-law was conducted through two evening meetings, on October 29 & 30, one in the east side of the City, and the other in the West. These meetings included information delivered by staff and external resources. The meetings were not heavily attended, with more residents at the east meeting. The questions and comments predominantly supported a pesticide ban, particularly in areas frequented by children and pets. Some concerns were raised about the proliferation of weeds, and information was provided by professionals as to safer alternative control methods. Public feedback was also solicited through an online survey. The survey consisted of 15 questions intended to obtain an accurate portrait of the individuals' views on restricting pesticides. Approximately 100 responses to the survey were received.

Staff met in November 2007 with industry representatives, including golf courses and cemetery operators. The space-expansive, heavily landscaped facilities expressed concern with the proposed restrictions. Subsequent to that meeting, several of the agencies represented have provided further written submissions relating to the restriction of use of pesticides.

The Draft By-law was developed after comparing a number of by-laws available from other municipalities. Attributes from these by-laws have been combined into the proposed by-law.

The Draft By-law was circulated in January 2008 to agencies in attendance at the November meeting, as well as the lawn care industry in Vaughan, and to those individuals that attended the consultation meetings and provided e-mail addresses. This advance circulation was to allow them to provide feedback prior to the Committee of the Whole meeting. A further meeting was held with the parties listed above on February 4, 2008. Approximately 20 people attended the meeting to provide feedback and opinions. Some of the comments and suggestions have been incorporated into the By-law. Subsequent to that circulation, additional comments have been brought to the City's attention, resulting in further modification to the Draft By-law.

Summary of Industry Stakeholder Comments

As indicated above, approximately 20 people from various industry stakeholder groups attended a meeting to discuss the Draft By-law. This group was also forwarded a copy of the Draft By-law included in this report. Many of the groups had expressed their positions in writing to the City. These comments are summarized below.

Cemeteries

Initially, the cemeteries were concerned about the impact of a total restriction would have on their properties. As a result of modifications made to the restrictions, the Ontario Association of Cemetery and Funeral Professionals has written to the City supporting the Draft By-law.

Hydro One

A representative from Hydro One has provided the City with an e-mail supporting the Draft By-law.

Canadian Cancer Society

The Canadian Cancer Society has written a letter in support of Council passing a By-law. The Society is concerned with permitting the use of pesticides for infestations as they feel the current wording could lead to abuse and therefore impact health.

Golf Courses

The golf industry was not in support of the initial drafts of the By-law presented to them. Through discussions, and review of other area by-laws, the Golf Course industry in Vaughan is now content with the provisions pertaining to golf courses.

By-law Highlights

The Draft By-law generally prevents the application of pesticides at anytime, anywhere within the boundaries of the City of Vaughan, subject to specific exemptions.

Health Exemptions

Specific exemptions relate to circumstances where immediate risk to health or property that significantly outweigh the intended benefits of the legislation.

Golf Courses

Section 2.2(l) of the Draft By-law contains specific exemptions for the golf courses, lawn bowling, and cemetery properties. During discussions with staff, the golf course industry indicated that they generally only spot spray with chemicals and the remainder of the courses are weed controlled using other methods. Any such use or application would have to be conducted only under the direction of an I.P.M. Accredited Agent.

Benchmarking discloses that all municipalities which have enacted Pesticide By-laws exempt golf courses provided all pesticide application is conducted exclusively under the direction of an Integrated Pesticide Management Accredited Agent. In addition, at least one municipality is moving towards requiring golf courses to submit pesticide use reduction plans. The Draft By-law contains a provision to this effect.

Cemeteries and Lawn Bowling

The cemetery companies provided feedback relating to restricting their use of pesticides and expressing objection to the outright banning of pesticide use on cemetery property. In discussing spot spraying practices, it was proposed to provide an exemption for cemeteries to spray up to 35% of the area within 30 days. Any such use or application would have to be conducted only under the direction of an I.P.M. Accredited Agent. This provides a major deterrent to blanket applications and provides these facilities with sufficient opportunity to maintain the appearance of their landscape. These facilities have indicated they can work within such restrictions. The City already exceeds these restrictions regarding its own cemeteries.

In cases outlined above, copies of all records submitted to the I.P.M. Auditor annually for accreditation under the I.P.M. program must also be submitted to the Director on or before January 31st of each year.

Canada's Wonderland

Canada's Wonderland also attended the consultation meeting and requested that they too be permitted similar exemptions. This organization has a requirement, as a premier tourist attraction, to maintain their grounds, especially in the immediate vicinity of the water park and other recreation areas. However, as a family-oriented facility, there is a particular sensitivity. Staff recommends that Canada's Wonderland be subject to our exemption similar to cemeteries, to permit spot spraying only, and encourage the use of alternative weed control methods.

Hydro Substations

Section 2.2(m) refers to exemptions at hydro substations, or utility distribution stations. The Hydro One representative provided information that vegetation growing inside stations poses a very serious health risk for power disruption due to interference with grounding systems. Also, staff working inside these stations are put at risk for the same reason. For these reasons staff recommends this exemption.

The penalties for violations of this By-law are established by the Municipal Act, 2001, Section 429. This provides not only set fines, but also fines for continuing offences, and special fines. In this case, staff is recommending a set fine of \$400.00 for violations of this By-law.

Implementation Plan

It is anticipated that enforcement of this By-law will commence in the Spring of 2008. Enforcement staff will respond to complaints. On initial response for the first six months Enforcement staff will attend the property and provide educational materials along with a Notice of Violation. Continued or repeated violations will, as evidence supports, be subjected to potential charges.

The implementation plan incorporates the comprehensive communications strategy developed by Corporate Communications. The strategy is attached to this report.

The number of complaints will be tracked and monitored. It is expected that this By-law will have a significant impact on the departmental service delivery models currently in place.

The Province has indicated that it will introduce legislation this spring or this fall, to regulate the cosmetic use of pesticides. A posting on the MOE Website sought input in February 2008. It is possible that such regulation would extend to controlling the retail sale of pesticide products. Where in the past, Provincial regulation has overlapped municipal regulation of certain activities (such as smoking in public places), the Provincial regulation has specifically authorized the more restrictive provisions to prevail.

Relationship to Vaughan Vision 2008

This report is in keeping with the Vaughan Vision in that it speaks to enhancing community safety, health, and wellness, as well as leading and promoting environmental sustainability.

Regional Implications

Properties under the ownership or control of York Region would be impacted by this by-law as it is anticipated that the by-law would apply to all lands within the boundaries of the City of Vaughan.

In 2002, York Region released a report and guidelines for reducing the use of pesticides on public lands. It is still only a guideline and does not related to private property.

Conclusion

The Draft By-law restricts the use of pesticides in the City of Vaughan.

Attachments

1. Draft By-law
2. Communications Plan

Report prepared by:

Tony Thompson, Director of Enforcement Services

City of Vaughan

By-law -2008

A By-law to regulate the use of pesticides on public and private property in the City of Vaughan.

WHEREAS pursuant to Section 8(1) of the *Municipal Act*, S.O. 2001, c.25, as amended (the "*Municipal Act*") the powers granted to a municipality shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS pursuant to subsection 11(2), of the *Municipal Act*, municipalities may pass by-laws respecting the environmental well-being of the municipality;

AND WHEREAS pursuant to subsection 11(2) (6) of the *Municipal Act*, municipalities may enact by-laws for purposes related to the health, safety and wellbeing of its inhabitants;

AND WHEREAS Council has determined through the consultation and review of third party research that pesticide use has potential negative health and environmental effects on the well-being of its inhabitants and that the use of pesticides should be regulated to mitigate the injurious impacts of pesticides on health and the environment;

AND WHEREAS regulating the non-essential use of pesticides will help to promote and protect the physical environment and the health of the City's residents;

AND WHEREAS regulating the non-essential use of pesticides respects the "precautionary principle" of international law which provides that to achieve sustainable development, environmental policy must anticipate, prevent and attack the causes of environmental degradation and that lack of scientific certainty should not be used as a reason for postponing measures that would prevent environmental degradation;

AND WHEREAS the regulation of pesticide use by this By-law will enhance and will not conflict with existing federal or provincial legislation;

AND WHEREAS Council intends to undertake public education programs on the safe use of pesticides and alternative methods to control pests and to reduce pesticide use as part of its pesticide use regulatory scheme;

NOW THEREFORE the Corporation of the City of Vaughan (the "City") hereby enacts as follows:

1. DEFINITIONS

In this by-law, the following terms shall have the meanings indicated:

"Accredited I.P.M. Agent" shall mean a person who:

- (a) obtains and maintains accreditation in a recognized integrated pest management program from IPM-PHC Council of Ontario, or equivalent, as determined by the City; and

(b) who provides proof of current I.P.M. accreditation to the Director on or before April 30th of each year;

“City” means the geographical area of the City of Vaughan.

“Commercial applicator” means any person who applies pesticides for compensation;

“Corporation” means the Corporation of the City of Vaughan;

“Council” means the Council of the Corporation of the City of Vaughan;

“Director” means the Director of Enforcement Services;

“Enclosed” shall mean closed in by a roof or ceiling and walls with an opening or openings for ingress or egress, which openings are equipped with doors which are kept closed except when actually in use for egress or ingress;

“Health Hazard” shall mean a Pest (as hereinafter defined) which has or is likely to have an adverse effect on the health of any person;

“Infestation” shall mean the presence of Pests in numbers or under conditions which involve an immediate or potential risk of substantial loss or damage as specifically defined by Pest type and in action threshold levels specified on Schedule “B” attached to this By-law;

“Pest” shall mean an animal, a plant or other organism that is injurious, noxious or troublesome, whether directly or indirectly, or an injurious, noxious or troublesome condition or organic function of an animal, a plant or other organism;

“Person” includes an individual, owner or owners, lessees or occupants, firm, corporation, association, partnership, and includes the owner of a vehicle, including Commercial Vehicles, as defined in the *Highway Traffic Act*, R.S.O. 1990, c.H.8, as amended.

“Pesticide” shall include any product, organism or substance that is a registered control product as defined under the federal *Pest Control Products Act* which is used as a means for directly or indirectly controlling, destroying, attracting or repelling a pest or for mitigating or preventing its injurious, noxious or troublesome effects, except that products listed on Schedule “A” to this By-law shall not be considered pesticides for the purposes of this By-law..

2. RESTRICTIONS

2.1 No person shall apply, cause, or permit the application of any Pesticide within the boundaries of the City of Vaughan.

2.2 The prohibition set out in Subsection 2(1) does not apply when pesticides are used in the following situations:

- a) to disinfect swimming pools, whirlpools, spas or wading pools;
- b) to purify water intended for the use of humans or animals;

- c) within an enclosed building;
- d) to control termites and carpenter ants;
- e) to control or destroy a health hazard;
- f) to control or destroy pests which have caused infestation to property as defined in Schedule "B";
- g) to exterminate or repel rodents;
- h) as a wood preservative;
- i) for injection into tree stumps or wooden poles;
- j) to comply with the *Weed Control Act* R.S.O. 1990 c. W-5, as amended and the regulations made thereunder;
- k) as an insect repellent for personal use;
- l) on lawn bowling green, cemetery, or recreational areas of Canada's Wonderland, provided any such use or application is conducted only under the direction of an I.P.M. Accredited Agent, and the application does not exceed 35% of the horticultural landscape calculated within a 30 day period; and that copies of all records submitted to the I.P.M. Auditor annually for accreditation under the I.P.M. program be submitted to the Director on or before January 31st of each year;
- m) on a golf course provided any such use or application is conducted only under the direction of an I.P.M. Accredited Agent; that copies of all records submitted to the I.P.M. Auditor annually for accreditation under the I.P.M. program be submitted to the Director on or before January 31st of each year, and that the golf course submit a plan by which it will reduce the use of pesticides;
- n) at a hydro substation, utility distribution station or Hydro Right of Way;
- o) In furtherance of a normal farm practice carried on as part of an agricultural operation as defined by and pursuant to the *Farming and Farm Production Protection Act*, 1998, S.O. 1998, c. 1, as amended;

2.3 The provisions of Section 2.1 do not apply where Council, has determined that the pesticide application is necessary, and the application is conducted by a commercial applicator licensed under the *Pesticide Act*, in accordance with all applicable legislation.

3. OFFENCES

3.1 The provisions of this By-law shall be enforced by municipal enforcement officers duly appointed by the City and may also be enforced by members of York Regional Police and the Ontario Provincial Police.

3.2 Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided in the *Municipal Act*.

3.3 Any person who contravenes any provision of this By-law or an order issued pursuant to Section 4.1 of this By-law is guilty of an offence. Pursuant to Subsection 429(2)(a) of the *Municipal Act*, all contraventions of this By-law or notice issued under Section 4.1 of this By-law are designated as multiple offences and continuing offences. A multiple offence is an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of a by-law.

4. FINES

4.1 On conviction of an offence under this By-law a person is liable to a fine in accordance with Section 429 of the *Municipal Act* as follows:

- (a) the minimum fine for any offence is \$400.00;
- (b) the maximum fine for an offence as set out in Subsections (c) and (d) below does not apply to special fines as provided for in Section 5.1 of this By-law;
- (c) in the case of a continuing offence, for each day or part of a day that the offence continues, the minimum fine shall be \$400.00 and the maximum fine shall be \$10,000.00. The total of all daily fines for the offence is not limited to \$100,000.00; and
- (d) In the case of a multiple offence, for each offence included in the multiple offence, the minimum fine shall be \$400.00 and the maximum fine shall be \$10,000.00. The total of all fines for each included offence is not limited to \$100,000.00.

5. SPECIAL FINES - NO MAXIMUM

5.1 On conviction of an offence under this By-law a person is liable to a special fine in accordance with subsection 429(2)(d) of the *Municipal Act*. The amount of the special fine will be the minimum fine as provided for in Section 4.1 of this By-law to which may be added the amount of economic advantage or gain that the person has obtained or can obtain from the contravention of the By-law and/or order issued pursuant to Section 4.1 of this By-law. Pursuant to subsection 429(3)(1) of the *Municipal Act* a special fine may exceed \$100,000.00.

6. EFFECTIVE DATE

This By-law shall come into force and effect on _____, _____, 2008.

Read a FIRST, SECOND and THIRD time and finally PASSED this _____ day of _____, 2008.

Linda D. Jackson, Mayor

Sybil Fernandes, Deputy City Clerk

DECLARATION

SCHEDULE 'A'

For the purposes of this by-law the following products are not considered to be pesticides:

1. A product that uses pheromones to lure pests, sticky media to trap pests or "quick-kill" traps for vertebrate species considered pests, such as mice and rats.

2. A product that is or contains only the following active ingredients:

- (a) A soap;
- (b) A mineral oil, also called "dormant or horticultural oil";
- (c) Silicon dioxide, also called "diatomaceous earth";
- (d) Biological pesticides, including Bt (*Bacillus thuringiensis*) and nematodes;
- (e) Borax, also called "boric acid" or "boric acid";
- (f) Ferric phosphate;
- (g) Acetic acid;
- (h) Pyrethrum or pyrethrins;
- (i) Fatty acids;
- (j) Sulphur; or
- (k) Corn gluten meal;

SCHEDULE `B`

The Action Threshold is the minimum number of pests that must be present before a pesticide application is permitted as defined in this by-law.

Type of Pest	Turf Conditions	Action Threshold
Grubs	Irrigated turf	15 larvae/0.1 m ² (approx. 1 sq ft)
	Non-irrigated turf	5-10 larvae/0.1 m ² (approx 1 sq ft)
Chinch Bugs	Any Condition	20 chinch bugs per 20 cm to 25 cm (8 inch to 9 inch) diameter can

Pesticide Use By-Law

COMMUNICATIONS STRATEGY

Updated February 20, 2008

OBJECTIVES

1. Publicize the City's new by-law regulating the non-essential use of pesticides on public and private property in the City of Vaughan to key stakeholders through the media, printed materials, website content, and other communications vehicles.
2. Promote the benefits of a pesticide-free Vaughan to all stakeholders through the City's website and printed materials, as appropriate, including information on natural lawn care programs and related topics.

TARGET AUDIENCES

External –

Residents
Ratepayers' Associations
Community Groups
Media
Business Community
Other levels of government

Internal –

City staff

KEY MESSAGES

1. The City of Vaughan is committed to promoting the health of all residents by ensuring a safe and sustainable environment.
2. The City of Vaughan is a "green city" that has demonstrated its commitment to environmental stewardship by maintaining pesticide-free parks and other public properties since 2005.
3. Public consultation has been a key element in creating and implementing this by-law.
4. A public education process will encourage residents and businesses to learn about the benefits of a pesticide-free community.

ACTION STEPS

ACTIVITY	DESCRIPTION	DATES
Approval of by-law	<ul style="list-style-type: none"> • News release • Post to website 	March
Website content	<ul style="list-style-type: none"> • Update current content on City's website, to include: <ul style="list-style-type: none"> ○ By-law and introduction ○ Contact information for further inquiries • Produce new website content to include: <ul style="list-style-type: none"> ○ Q & A document ○ Tips on natural lawn and garden care • Research: implementing a blog/chatroom forum for citizens to exchange information • Publicize new website content (media, City Page, City website homepage, etc.) • City to maintain website 	March/April/May
Printed materials	<ul style="list-style-type: none"> • Produce pamphlet to promote compliance with new by-law and natural lawn care. <u>BUDGET</u>: Dependent on size of press run and extent of distribution. Production and mail drop to all households will cost approximately \$10,000. • Distribution of educational/informational pamphlets at libraries and other City facilities (in cooperation with other organizations and agencies) 	TBD – Corp Comm
Other media opportunities	<ul style="list-style-type: none"> • Media event and photo-op in spring (planting season) • Promote feature story ideas to media and facilitate interviews with City spokespeople 	TBD – Corp Comm
Other communications opportunities	<ul style="list-style-type: none"> • Feature pesticide-free community approach in all environmental materials • City Page advertisement to promote pesticide-free program and direct readers to the City's website • Educational forums – experts to speak on effects of pesticide use and natural lawn and garden care • Publicize program through City e-newsletters 	TBD – Corp Comm

PERFORMANCE MEASUREMENTS

- Monitor media coverage
- Track website visits
- Track telephone inquiries