

COMMITTEE OF THE WHOLE JUNE 16, 2008

THE COSMETIC PESTICIDES BAN ACT

Recommendation

The Commissioner of Legal and Administrative Services and City Solicitor recommends:

1. That Council adopts the attached Resolution indicating support of the Province's efforts in banning the use and sale of cosmetic pesticides in Ontario, and requesting that the *Cosmetic Pesticides Ban Act* (Bill 64) be amended so that more restrictive municipal by-laws be allowed to prevail.

Economic Impact

There is no economic impact of this Report.

Communications Plan

A copy of the Resolution will be forwarded to the Ministry of Municipal Affairs and Housing, the Ministry of Environment, the MPP for Vaughan, all York Region municipalities and municipalities in Ontario with a population over 100,000.

Purpose

This Report provides an overview of the *Cosmetic Pesticides Ban Act* (Bill 64), which proposes to amend the *Pesticides Act* to prohibit the use and sale of cosmetic pesticides in the Province of Ontario.

Background – Analysis and Options

On April 22, 2008, the *Cosmetic Pesticides Ban Act* (Bill 64) received first reading in the Ontario Legislature. Bill 64 will amend the *Pesticides Act* to prohibit the sale and use of cosmetic pesticides in the Province of Ontario. It will also provide an exemption for uses related to golf courses, uses related to agriculture, uses related to forestry, and uses related to the promotion of public health or safety.

Bill 64 will render a municipal by-law "inoperative if it addresses the use, sale, offer for sale or transfer a pesticide that may be used for a cosmetic purpose". Bill 64, however, does not itemize those pesticides that are considered "cosmetic". The term "cosmetic" will be defined in the Regulations passed under the *Pesticides Act*, once Bill 64 becomes law, which is anticipated to occur in the spring of 2009. Such a definition will likely capture those pesticides that the City already considers "cosmetic" in the City's Pesticides By-law 88-2008 (hereinafter the Pesticides By-law). However, it is also possible that the Pesticides By-law deals with pesticides which the Province will not consider as "cosmetic". In such a case, the City's Pesticide By-law would be more restrictive than the Provincial legislation, yet the entire Pesticide By-law would be declared inoperative by virtue of the fact that it touches upon provincially defined cosmetic pesticides. Given that these Regulations have not been passed, it is not known at this time what effect that Bill 64 will have upon the City's Pesticide By-law 88-2008. It should be noted that Bill 64 will also amend the *Pesticides Act* to allow the Lieutenant Governor to pass Regulations exempting municipal by-laws from Bill 64.

Based on the foregoing, Staff are recommending that the City request the Province to amend Bill 64 so that municipal by-laws that are more restrictive are allowed to prevail. The Province has legislated a similar provision in the *Smoke-Free Ontario Act*. Attached to this Report is a draft resolution.

Relationship to Vaughan Vision 2020

The recommendation in this Report is consistent with the principles previously set by Council.

Regional Implications

None

Attachments

Attachment 1 - *Cosmetic Pesticides Ban Act*, Bill 64
Attachment 2 – Draft Resolution

Conclusion

Bill 64 has only received first reading in the Legislature, and may be amended before it becomes law. However, if Bill 64 remains as is, it will likely render the Pesticides By-law inoperative, even if the Pesticides By-law is more restrictive than Bill 64. The effect that Bill 64 will have on the Pesticides By-law will not be known until the Regulations have been passed. In the interim, the City may make submissions to the Province with respect to the content of Bill 64. Accordingly, the City should request the Province amend Bill 64 so that a more restrictive municipal by-law would prevail.

Report prepared by:

Chris G. Bendick
Solicitor

Respectfully submitted,

Janice Atwood-Petkovski
Commissioner of Legal and Administrative Services and City Solicitor



1st SESSION, 39TH LEGISLATURE, ONTARIO
57 ELIZABETH II, 2008

1^{re} SESSION, 39^e LÉGISLATURE, ONTARIO
57 ELIZABETH II, 2008

Bill 64

Projet de loi 64

**An Act to amend the
Pesticides Act to prohibit the use
and sale of pesticides that may be used
for cosmetic purposes**

**Loi modifiant la Loi sur les pesticides
en vue d'interdire l'usage et la vente
de pesticides pouvant être utilisés
à des fins esthétiques**

The Hon. J. Gerretsen
Minister of the Environment

L'honorable J. Gerretsen
Ministre de l'Environnement

Government Bill

Projet de loi du gouvernement

1st Reading April 22, 2008
2nd Reading
3rd Reading
Royal Assent

1^{re} lecture 22 avril 2008
2^e lecture
3^e lecture
Sanction royale



EXPLANATORY NOTE

The Bill amends the *Pesticides Act* to prohibit the use and sale of certain pesticides that may be used for cosmetic purposes.

NOTE EXPLICATIVE

Le projet de loi modifie la *Loi sur les pesticides* en vue d'interdire l'usage et la vente de certains pesticides pouvant être utilisés à des fins esthétiques.

**An Act to amend the
Pesticides Act to prohibit the use
and sale of pesticides that may be used
for cosmetic purposes**

**Loi modifiant la Loi sur les pesticides
en vue d'interdire l'usage et la vente
de pesticides pouvant être utilisés
à des fins esthétiques**

Note: This Act amends the *Pesticides Act*. For the legislative history of the Act, see the Table of Consolidated Public Statutes – Detailed Legislative History on www.e-Laws.gov.on.ca.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. (1) Subsection 1 (1) of the *Pesticides Act* is amended by adding the following definition:

“cosmetic” means non-essential; (“esthétique”)

(2) Section 1 of the Act is amended by adding the following subsection:

Use of pesticide

- (4) For the purposes of this Act,
- (a) the placement or application of a pesticide is a use of the pesticide; and
 - (b) the mixing, dilution or loading of a pesticide for the purpose of placing or applying it is a use of the pesticide.

2. The Act is amended by adding the following section:

Prohibitions – pesticides used for cosmetic purposes

7.1 (1) No person shall use or cause or permit the use in, on or over land of a pesticide that has been prescribed for the purpose of this subsection.

Excepted uses

(2) Subject to the regulations, subsection (1) does not apply to the following uses of a pesticide:

1. Uses related to golf courses, if any prescribed conditions have been met.
2. Uses related to agriculture.
3. Uses related to forestry.
4. Uses related to the promotion of public health or safety.
5. Other prescribed uses.

Remarque : La présente loi modifie la *Loi sur les pesticides*, dont l'historique législatif figure à la page pertinente de l'Historique législatif détaillé des lois d'intérêt public codifiées sur le site www.lois-en-ligne.gouv.on.ca.

Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, édicte :

1. (1) Le paragraphe 1 (1) de la *Loi sur les pesticides* est modifié par adjonction de la définition suivante :

«esthétique» Non essentiel. («cosmetic»)

(2) L'article 1 de la Loi est modifié par adjonction du paragraphe suivant :

Usage de pesticides

- (4) Pour l'application de la présente loi :
- a) la mise en place ou l'application d'un pesticide constitue un usage de celui-ci;
 - b) le mélange, la dilution ou le chargement d'un pesticide aux fins de sa mise en place ou de son application en constitue un usage.

2. La Loi est modifiée par adjonction de l'article suivant :

Usages interdits : pesticides utilisés à des fins esthétiques

7.1 (1) Nul ne doit utiliser dans ou sur un terrain, ou au-dessus de celui-ci, un pesticide qui est prescrit pour l'application du présent paragraphe, ni permettre ou faire en sorte que cela se fasse.

Usages : exceptions

(2) Sous réserve des règlements, le paragraphe (1) ne s'applique pas aux usages suivants d'un pesticide :

1. Les usages relatifs aux terrains de golf, si les conditions prescrites, le cas échéant, ont été remplies.
2. Les usages relatifs à l'agriculture.
3. Les usages relatifs aux activités forestières.
4. Les usages relatifs à la promotion de la santé ou de la sécurité publiques.
5. Les autres usages prescrits.

Requirements related to excepted uses

(3) A person who, pursuant to subsection (2), uses a pesticide prescribed for the purpose of subsection (1) shall comply with such requirements as may be prescribed.

Prohibition on sale, etc.

(4) Despite section 6, no person shall sell, offer to sell or transfer a pesticide that has been prescribed for the purpose of this subsection.

By-laws inoperative

(5) A municipal by-law is inoperative if it addresses the use, sale, offer for sale or transfer of a pesticide that may be used for a cosmetic purpose.

3. The definition of "offence" in subsection 23 (1) of the Act is amended by striking out "4, 6 or 7" and substituting "4, 6, 7 or 7.1".

4. Section 34 of the Act is amended by adding the following subsection:

Exception

(2) Subsection (1) does not authorize the Director to exempt a person from a provision of a regulation made with respect to section 7.1.

5. (1) Section 35 of the Act is amended by adding the following paragraphs:

38. prescribing pesticides for the purpose of subsection 7.1 (1) or (4);
39. defining golf courses for the purpose of paragraph 1 of subsection 7.1 (2);
40. defining agriculture for the purpose of paragraph 2 of subsection 7.1 (2);
41. defining forestry for the purpose of paragraph 3 of subsection 7.1 (2);
42. defining promotion of public health or safety for the purpose of paragraph 4 of subsection 7.1 (2);
43. prescribing uses for the purpose of paragraph 5 of subsection 7.1 (2);
44. prescribing conditions that must be met for paragraph 1 of subsection 7.1 (2) to apply;
45. prescribing requirements that must be complied with for the purpose of subsection 7.1 (3);
46. prescribing sales, offers to sell or transfers to which subsection 7.1 (4) does not apply;
47. providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in relation to section 7.1;
48. prescribing municipal by-laws to which subsection 7.1 (5) does not apply.

(2) Section 35 of the Act is amended by adding the following subsections:

Exigences : exceptions

(3) Quiconque utilise, conformément au paragraphe (2), un pesticide prescrit pour l'application du paragraphe (1) est tenu de satisfaire aux exigences prescrites.

Vente interdite

(4) Malgré l'article 6, nul ne doit vendre, mettre en vente ou transférer un pesticide qui est prescrit pour l'application du présent paragraphe.

Règlements municipaux sans effet

(5) Est sans effet le règlement municipal qui traite de l'usage, de la vente, de la mise en vente ou du transfert d'un pesticide pouvant être utilisé à une fin esthétique.

3. La définition de «infraction» au paragraphe 23 (1) de la Loi est modifiée par substitution de «4, 6, 7 ou 7.1» à «4, 6 ou 7».

4. L'article 34 de la Loi est modifié par adjonction du paragraphe suivant :

Exception

(2) Le paragraphe (1) n'autorise pas le directeur à exempter une personne d'une disposition d'un règlement pris à l'égard de l'article 7.1.

5. (1) L'article 35 de la Loi est modifié par adjonction des dispositions suivantes :

38. prescrire des pesticides pour l'application du paragraphe 7.1 (1) ou (4);
39. définir «terrains de golf» pour l'application de la disposition 1 du paragraphe 7.1 (2);
40. définir «agriculture» pour l'application de la disposition 2 du paragraphe 7.1 (2);
41. définir «activités forestières» pour l'application de la disposition 3 du paragraphe 7.1 (2);
42. définir «promotion de la santé ou de la sécurité publiques» pour l'application de la disposition 4 du paragraphe 7.1 (2);
43. prescrire des usages pour l'application de la disposition 5 du paragraphe 7.1 (2);
44. prescrire les conditions qui doivent être remplies pour que la disposition 1 du paragraphe 7.1 (2) s'applique;
45. prescrire les exigences auxquelles il doit être satisfait pour l'application du paragraphe 7.1 (3);
46. prescrire les ventes, mises en vente ou transferts auxquels le paragraphe 7.1 (4) ne s'applique pas;
47. prévoir les questions transitoires que le lieutenant-gouverneur en conseil estime nécessaires ou souhaitables relativement à l'article 7.1;
48. prescrire les règlements municipaux auxquels le paragraphe 7.1 (5) ne s'applique pas.

(2) L'article 35 de la Loi est modifié par adjonction des paragraphes suivants :

Pesticides prescribed for s. 7.1

(2) A regulation made under paragraph 38 of subsection (1) shall not prescribe a pesticide unless the pesticide may be used for a cosmetic purpose.

Municipal by-laws to which s. 7.1 (5) does not apply

(3) A regulation made under paragraph 48 of subsection (1) shall not prescribe a municipal by-law unless the passing of the by-law is required under an Act.

Commencement

6. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

7. The short title of this Act is the *Cosmetic Pesticides Ban Act, 2008*.

Pesticides prescrits pour l'application de l'art. 7.1

(2) Le règlement pris en application de la disposition 38 du paragraphe (1) ne peut prescrire un pesticide que si ce dernier peut être utilisé à une fin esthétique.

Règlements municipaux : non-application du par. 7.1 (5)

(3) Le règlement pris en application de la disposition 48 du paragraphe (1) ne peut prescrire un règlement municipal que si l'adoption de celui-ci est exigée aux termes d'une loi.

Entrée en vigueur

6. La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

Titre abrégé

7. Le titre abrégé de la présente loi est *Loi de 2008 sur l'interdiction des pesticides utilisés à des fins esthétiques*.

Attachment No. 2

RESOLUTION

WHEREAS on April 14, 2008 the City of Vaughan passed By-law 88-2008 to regulate the use of pesticides on public and private property in the City of Vaughan;

WHEREAS on April 22, 2008 the Ontario Minister of the Environment introduced into the Ontario Legislature Bill 64 – *An Act to amend the Pesticides Act to prohibit the use and sale of pesticides that may be used for cosmetic purposes*;

WHEREAS the City of Vaughan 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;

WHEREAS the regulation of cosmetic pesticides will help to promote and protect the physical environment and the health of the City of Vaughan's residents;

THEREFORE BE IT RESOLVED that City of Vaughan Council endorses the Ontario Government's initiative to prohibit the use and sale of cosmetic pesticides in Ontario and urge speedy passage of the Bill 64;

AND THAT City of Vaughan Council request that Bill 64 be amended to allow municipal by-laws that are more restrictive than Bill 64 to prevail;

AND THAT this resolution be copied to the Ministry of Municipal Affairs and Housing, the Ministry of Environment, the MPP for Vaughan, all York Region municipalities and municipalities in Ontario with a population over 100,000.