

ENVIRONMENT COMMITTEE APRIL 28, 2008

AUTHORITY TO BAN OR REGULATE SALE OF PESTICIDES

Recommendation

The Commissioner of Legal and Administrative Services and City Solicitor, in consultation with the Manager of Special Projects, Licensing & Permits recommends that this report be received.

Economic Impact

There is no economic impact of this Report.

Communications Plan

There is no communications plan required for this Report.

Purpose

This Report provides an overview of the City's ability to regulate the sale and commercial use of pesticides within the City.

Background – Analysis and Options

At the Committee of the Whole (Working Session) meeting on April 1, 2008, the Committee directed Staff to prepare a report outlining the City's authority with respect to banning the sale of pesticides in the City. Staff have reviewed the *Municipal Act* to determine whether the City could use its licensing powers to ban or restrict the sale of pesticides, as well as commercial exterminators. In the interim, the Province announced new legislation to ban the sale cosmetic pesticides.

The Cosmetic Pesticides Ban Act

On April 22, 2008, the *Cosmetic Pesticides Ban Act* (Bill 64) received first reading in the Ontario Legislature. Bill 64 would amend the *Pesticides Act* to prohibit the use and sale of cosmetic pesticides in the Province of Ontario. Bill 64 also states that the Lieutenant Governor can pass Regulations classifying pesticides as cosmetic, after the Bill receives Royal Assent. Given that Bill 64 is only at the first reading stage, there are no Regulations passed that itemize those pesticides that will be considered "cosmetic". Section 7.1(5) of Bill 64 also states that, "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". It should be noted that Bill 64 is only in the initial stages of the legislative process, and it is anticipated that it will become law in the spring of 2009.

The City's Authority to Ban or Restrict the Sale of Pesticides

Section 151 of the *Municipal Act* allows municipalities to establish a system of business licenses whereby municipalities can prohibit the carrying on of a business without a municipally issued license. The Court of Appeal for Ontario, however, has stated that the power to license a business does not confer the ability to prohibit a business. Therefore, the City can not utilize its licensing powers to prohibit the sale of pesticides.

Under section 151 of the *Municipal Act*, the City would have authority to license the sale of pesticides, which would include the ability to impose conditions as a requirement to obtain a license. However, section 14 of the *Municipal Act* states that a by-law is without effect to the extent that it conflicts with provincial or federal legislation. The Province already has a comprehensive licensing regime for pesticides in the *Pesticides Act*. Section 6 of the *Pesticides*

Act states that no person shall sell, offer to sell, or transfer any pesticide unless in accordance with a license. It should also be noted that section 152 of the *Municipal Act* prohibits a municipality from passing a licensing by-law with respect to the sale of goods by wholesale. Given this prohibition, as well as the comprehensive provincial licensing regime already in place in the *Pesticides Act*, the City has very little ability to further restrict in this area.

The City's Authority to License Commercial Exterminators

A commercial exterminator could be subject to the licensing provisions found in section 151 of the *Municipal Act*. However, as with the sale of pesticides, it is necessary to examine provincial and federal regulations in this area to determine the extent to which the City can regulate these individuals. The above comments with respect to prohibition are equally applicable in this context, in that the City can not use its licensing powers to prohibit exterminator businesses.

The Province has an extensive licensing regime for commercial exterminators. Section 5(1) of the *Pesticides Act* stated that for no person shall perform an extermination except in accordance with a provincially issued license.

The comprehensiveness of the provincial standards would limit the scope in which the City could impose further regulation.

Relationship to Vaughan Vision 2020

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Regional Implications

None

Conclusion

Bill 64, if it remains as is, will render inoperative any municipal by-law dealing with the use and sale of cosmetic pesticides. Therefore, any municipal licensing regime of cosmetic pesticides will be of no force or effect. However, it remains to be seen which pesticides the Province will classify as "cosmetic".

Given the narrow scope in which the City can license these areas, as well as the impending prohibition by the Province, Staff recommends that the City wait until Bill 64 becomes law before determining whether further restrictions are warranted.

Attachments

None

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Respectfully submitted,

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