

## **MEMORANDUM**

**TO:** Mayor and Members of Council

**FROM:** Mavis Urquhart, Manager, Environmental Leadership

**Prepared by:** Mavis Urquhart, Manager, Environmental Leadership

**DATE:** Wednesday, June 20, 2007

**SUBJECT:** Pesticide By-law Regulating the Non-Essential Use of Pesticides on Public and Private Property

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This memorandum is in response to a request for further information on the following issues which were raised by General Committee at their meeting on Monday, June 18, 2007:

1. *Does the Toronto and Region Conservation Authority have a position on the use of Bt (*Bacillus thuringiensis*)?* TRCA staff advises that they do not have an official position regarding Bt. They advocate avoidance of pesticide use.
2. *What is City of Toronto's procedure for residents applying pesticide to treat infestations?* City of Toronto staff advises that they provide educational information about what constitutes an infestation and an explanation for residents and others about how to test for an infestation. They encourage minimal pesticide use to treat infestations through their communications and work with people in the field to convey that message.

# **BY-LAW 2007-xxx**

## **A BY-LAW TO REGULATE THE NON-ESSENTIAL USE OF PESTICIDES ON PUBLIC AND PRIVATE PROPERTY**

**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 section 11(2), paragraph 5 of the *Municipal Act*, municipalities may pass by-laws respecting the environmental well-being of the municipality;

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

**AND WHEREAS** section 8(3) of the *Municipal Act* provides that the power to pass by-laws under section 11 includes the power to regulate or prohibit respecting the matter;

**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 Town’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;

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**NOW THEREFORE** the Corporation of the Town of Markham (the “Town”) hereby enacts as follows:

**1. Definitions.**

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

**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;

**ACCREDITED I.P.M. AGENT** shall mean a person who: (a) obtains and maintains full accreditation in a recognized integrated pest management program from IPM-PHC Council of Ontario, or equivalent, as determined by the Town; and (b) who provides proof of current I.P.M. accreditation to the Town Clerk on or before January 31<sup>st</sup> of each year.

**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;

**PESTICIDE** shall mean:

- (a) A product, an organism or a 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;
- (b) Notwithstanding subsection (a), a Pesticide does not include the products listed on Schedule “A” attached to this by-law.

**2. Restrictions.**

- (a) No person shall apply or cause or permit the application of any Pesticide within the boundaries of the Town of Markham.
- (b) The prohibition set out subsection 2 (a) does not apply when Pesticides are used in the following situations:
  - i. To disinfect swimming pools, whirlpools, spas or wading pools;
  - ii. To purify water intended for the use of humans or animals;
  - iii. Within an Enclosed Building;
  - iv. To control termites and carpenter ants;

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- v. To control or destroy a Health Hazard;
  - vi. To control or destroy Pests which have caused Infestation to property as defined in Schedule "B";
  - vii. To exterminate or repel rodents;
  - viii. As a wood preservative;
  - ix. As an insecticide bait which is enclosed by the manufacturer in a plastic or metal container that has been made in a way that prevents or minimizes access to the bait by humans and pets;
  - x. For injection into trees stumps or wooden poles;
  - xi. To comply with the *Weed Control Act* R.S.O. 1990 c. W. 5, as amended and the regulations made thereunder;
  - xii. As an insect repellent for personal use;
  - xiii. On a golf course or lawn bowling green provided any such use or application is permitted only under the direction of an I.P.M. Accredited Agent 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 Town Clerk on or before January 31<sup>st</sup> of each year;
  - xiv. 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;

### 3. Offences.

Every person who contravenes any provision of this By-law is guilty of an offence and is liable to a fine and any other penalties imposed pursuant to the *Provincial Offences Act*, R.S.O. 1990, c. P-33, as amended, and the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

### 4. Effective Date

This by-law shall come into force and effect on January 1, 2008.

**READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS  
DAY OF -----, 2007.**

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SHEILA BIRRELL, TOWN CLERK

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FRANK SCARPITTI, MAYOR

## 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 "boracic acid";
  - (f) Ferric phosphate;
  - (g) Acetic acid;
  - (h) Pyrethrum or pyrethrins;
  - (i) Fatty acids;
  - (j) Sulphur; or
  - (k) Corn gluten meal.

## **SCHEDULE `B`**

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

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