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CM: September 26, 2007

Bill No. 282

CITY OF HAMILTON

BY-LAW NO. 07-282

To Enact a By-law Limiting the Use of Pesticides

WHEREAS environmental protection has emerged as a fundamental value in Canadian society;

AND WHEREAS Council of the City of Hamilton wishes to enact a by-law regulating and limiting the use of pesticides to address public concern for the environmental well-being of the municipality, and the health, safety and well-being of its inhabitants;

AND WHEREAS reducing non-essential use of pesticides is consistent with the precautionary principle;

AND WHEREAS agriculture forms a significant component of Hamilton's economy and needs to be preserved and protected;

AND WHEREAS Council wishes to provide for the phasing in of requirements under the by-law, and intends that the by-law be combined with public education on pesticide reduction strategies;

AND WHEREAS the City of Hamilton wishes to promote pesticide reduction;

AND WHEREAS the City of Hamilton will endeavor to maintain all City parks and sports fields utilizing an Integrated Pest Management program;

AND WHEREAS the City of Hamilton as a single-tier municipality is entitled to pass by-laws for such purposes above, and for regulating, prohibiting and requiring persons to do things respecting the subject matter of its by-laws pursuant to the Municipal Act, S. O. 2001, Chapter 25, sections 2, 8, 9 and 10, and in particular clauses 5 and 6 of subsection 10(2);

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That this By-law be referred to as the **“Pesticide Use By-Law”**.
2. **Definitions**

In this By-law;

- (a) **“agricultural operation”** means an agricultural, which includes livestock and poultry operations, aquacultural, horticultural or silvicultural business, as all those terms are defined in the Farming and Food Production Protection Act, S. O. 1998, which operation is carried on with the expectation of financial gain;
- (b) **“application”** or **“apply”** means spreading, discharge or depositing of a substance, whether by spraying or any other method;
- (c) **“application area”** means land, hard landscape, horticultural landscape, vegetation growth or plantings on land on which a pesticide is discharged or intended to be discharged;
- (d) **“building”** means a structure fully enclosed by roof and walls, except for openings for windows, or having doors which are ordinarily closed except when in use for access;

- (e) **“City”** means either the municipal corporation of the City of Hamilton or its geographical boundary as the context requires;
- (f) **“commercial applicator”** means any person who applies pesticides for compensation and includes their employees;
- (g) **“farm land”** means land in use for an agricultural operation in conformance with City zoning by-laws, and including such a use that is legal non-conforming under such by-laws;
- (h) **“hard landscape”** means an area covered by asphalt, concrete, rocks, gravel, treated wood, brick pavers or similar materials;
- (i) **“horticultural landscape”** means an area covered by turf, or ornamental plantings;
- (j) **“health hazard”** means a pest which has or is likely to have an adverse effect on the health of a human;
- (k) **“infestation”** means the presence of pests in numbers or under conditions which meet a pesticide threshold level as itemized in Schedule “C” attached to and forming part of this By-law;
- (l) **“integrated pest management”** or **“I.P.M.”** means a decision making process for pest control intended to use all available techniques in an environmentally sound manner to sustain healthy horticultural landscapes;
- (m) **“I.P.M. accreditation”** means standards of recognition given to persons who demonstrate a commitment to integrated pest management and plant health care principles by successfully completing the I.P.M. certification course and examination administered by the I.P.M. Council of Ontario and by successfully passing an annual audit thereafter to retain such credential;

- (n) “**licensed applicator**” means a person who holds a pesticide applicators license as governed by the Ministry of the Environment of Ontario;
- (o) “**occupier**” means;
 - (i) a person residing on or in a property or in possession of a property; or
 - (ii) a person entitled to the possession of the property if there is no other person residing on or in the property or in possession of a property;
- (p) “**Officer**” means a person assigned or appointed by the City to administer or enforce this By-law and for the purposes of exercising any power of entry under this By-law includes a police officer;
- (q) “**owner**” means a person who has a right, title, estate or interest in a property, other than that of an occupier, and shall include the agent of any such person;
- (r) “**person**” includes a municipality or corporation and any agent thereof;
- (s) “**pest**” means an animal other than human, a plant or other organism that is injurious or noxious, whether directly or indirectly;
- (t) “**pesticide**” means a product, organism or substance that is a registered control product under the *Pest Control Products Act* (Canada) which is used as a means for directly or indirectly controlling, destroying, attracting or repelling a pest or for mitigating or preventing its injurious or noxious effect, but does not include products listed in Schedule “A” attached to and forming part of this By-law;
- (u) “**public land**” includes horticultural landscapes and hard landscapes located on land which is owned or under the control of the City, including a right of way or road allowance; and

- (v) **“warning notice”** means a sign made of rain resistant materials and sturdy enough to stand upright, containing information as shown on Schedule “B” attached to and forming part of this By-law.

3. **Restrictions**

3.1 No person shall apply or cause or permit the application of a pesticide within the geographical boundaries of the City of Hamilton.

3.2 Despite the prohibition set out in Subsection 3.1, a person may apply a pesticide for any of the following purposes, under the conditions as specified below:

3.2.1 For a purpose outside the scope of the By-law, as listed in Schedule “D” attached to and forming part of this By-law; or

3.2.2 For the following reasons, provided the conditions for use as specified in this section have been met, the application of the pesticide is done in accordance with manufacturer or label directions, and in compliance with applicable Provincial and Federal laws and regulations:

(a) To control or destroy poison ivy, pursuant to Property Standards By-law 03-118 as amended;

(b) To comply with the *Weed Control Act* R.S.O. 1990, and the regulations made thereunder;

(c) To control or destroy Pests which have caused an infestation to a horticultural landscape, based on the infestation meeting the threshold limits in Schedule “C” and provided that:

(i) A Warning Notice in a form required by Schedule “B” to this By-law has been conspicuously posted 24

hours prior to the time of the application of the pesticide on the perimeter of the application area at all ordinary points of access to the application area and the Warning Notice(s) shall remain posted for 48 hours following the application of the pesticide;

- (ii) The person, if a commercial applicator, is both a licensed applicator and, subject to section 6.3, has current I.P.M. accreditation;
 - (ii) The pesticide is applied only to those areas identified as being infested; and
 - (iv) The pesticide is applied at a time other than any day designated by the Ontario Ministry of the Environment as a Smog Alert or Smog Advisory Day;
- (d) To maintain public land, provided that any such application is consistent with written City policy, the application is carried out by a licensed applicator, and subject to section 6.3 the application is conducted under the direction of an I.P.M. accredited person;
- (e) For the purpose of marking athletic fields for sports activities including, but not limited to, football, soccer, and baseball field markings;
- (f) On a golf course, or lawn bowling green provided the application is carried out by a licensed applicator and any such use or application is permitted under the direction of an I.P.M. accredited person subject to section 6.3; or
- (g) On farm land, provided any such use or application is a normal farm practice carried on as a part of an agricultural

operation pursuant to the *Farming and Food Production Protection Act*, S.O. 1998.

4. Administration and Enforcement

- 4.1 The Director of Parking and By-law Services, herein referred to as “the Director”, is authorized to administer and enforce this By-law and has delegated authority granted by Council to execute the provisions of the By-law, including the imposition of conditions as necessary to ensure compliance with this By-law.
- 4.2 The Director may assign or appoint Officers to enforce this By-law who shall have the authority to carry out inspections, make orders to discontinue contravening activities or to do work to correct contraventions, give immediate effect to any order and otherwise enforce this By-law, and the Director may assign duties or delegate tasks under this By-law whether in his or her absence or otherwise.
- 4.3 In accordance with the conditions set out in sections 435 and 437 of the *Municipal Act, 2001*, including the provision of notice to an occupier, an Officer may enter on a property at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (a) this By-law;
 - (b) a direction, requirement or order made under this By-law; or
 - (c) an order made under section 431 of the *Municipal Act, 2001* in respect of a contravention of this By-law.
- 4.4 An Officer may, for the purposes of an inspection under section 4.3:

- (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information from any person concerning a matter related to the inspection; or
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- 4.5 An inspection order made under section 4.4 may be served personally or by registered mail to the last known address of such persons affected by it as the Officer making the order determines. Service by registered mail shall be deemed to have taken place five (5) business days after the date of mailing.
- 4.6 An Officer may, pursuant to an order under section 438 of the *Municipal Act, 2001*, undertake an inspection for a purpose described in section 4.3 and exercise powers described in section 4.4 where he or she has been prevented or is likely to be prevented from carrying out an inspection under sections 4.3 or 4.4, provided that:
- (a) unless otherwise provided in the order, the conditions set out in section 435 of the *Municipal Act, 2001* are applicable; and
 - (b) in the case of an order authorizing an inspection of a room or place actually being used as a dwelling, the occupier is given notice concerning the inspection in accordance with subsection 438(5) of the *Municipal Act, 2001*.

- 4.7 If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to discontinue the contravening activity.
- 4.8 An order under section 4.7 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and
 - (b) the date by which there must be compliance with the order.
- 4.9 If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the property on which the contravention occurred to do work to correct the contravention.
- 4.10 An order under section 4.9 shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;
 - (b) the work to be done, which may include but is not limited to requiring that:
 - (i) prior to performing any work, all necessary permits or other approvals be applied for and obtained; and

- (ii) examinations or tests be conducted or samples be taken for the purpose of determining what damage or remedial measures are necessary, and that such examinations, tests or samples be supplied to the Director together with any accompanying reports required in the order; and
 - (c) the date or dates by which the work must be done.
- 4.11 An order to discontinue contravening activity made under section 4.7 or an order to do work made under section 4.9 may be served personally or by registered mail to the last known address of:
 - (a) the owner or occupier of the property where the contravention occurred; and
 - (b) such other persons affected by it as the Officer making the order determines.

Service by registered mail shall be deemed to have taken place five (5) business days after the date of mailing.

- 4.12 Where service cannot be given in accordance with section 4.5 or 4.11, sufficient service is deemed to have taken place when the Officer places a placard containing the order in a conspicuous place on the property where the contravention occurred.

Failure to Comply and Cost Recovery

- 4.13 Where a person does not comply with a direction, requirement or order under this By-law to do a matter or thing, an Officer, with such assistance by others as may be required, may carry out such direction, requirement or order at the person's expense.

- 4.14 The City may recover the costs of doing a matter or thing under section 4.13 by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes and such costs shall include an interest rate of 15 per cent commencing on the day the City incurs the costs and ending on the day the costs, including the interest, are paid in full.
- 4.15 The Director is authorized to give immediate effect to any direction, requirement or order carried out under section 4.13 where the costs of carrying out the direction, requirement or order do not exceed \$10,000 and, where the costs do exceed \$10,000, in such amount as the City may authorize.

5. **Penalty**

- 5.1 Any person who contravenes any provision of this By-law or of any provision of an order made under this By-law, is guilty of an offence and upon conviction is liable to a fine or penalty as follows:
- (a) for a first offence, up to a maximum of \$5,000.00;
 - (b) for a second offence, up to a maximum of \$20,000.00; and
 - (c) for a third or subsequent offence, up to a maximum of \$100,000.00.

6. **Commencement**

- 6.1 Subject to subsections 6.2 and 6.3, this By-law shall come into force on September 1, 2008.
- 6.2 Section 5.1 of this By-law comes into force and effect on September 1, 2009

6.3 Persons who under clause (c), (d) or (f) of section 3.2.2 require I.P.M. accreditation will have until April 1, 2010 to obtain such accreditation.

7. Review

7.1 Schedule "A" attached to this By-law will be reviewed at least once per year, to ensure newly registered reduced risk pesticides are evaluated for inclusion on the list of allowed pesticides.

7.2 The By-law will be reviewed and evaluated every five years.

PASSED and ENACTED this 26th day of September, 2007.



David L. Mitchell
Acting Mayor



Kevin C. Christenson
City Clerk

Schedule "A"
List of allowed pesticides

- 1) A product that uses pheromones to lure pests, sticky media to trap pests, or snapping or other quick-kill mechanical traps for vertebrate species considered pests such as mice and rats;
- 2) 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;
- 3) A product that is or contains only the following active ingredients:
 - i. Insecticidal and herbicidal soaps;
 - ii. A mineral oil, also called dormant or horticultural oil;
 - iii. Silicon dioxide, also called diatomaceous earth;
 - iv. Bt (*Bacillus thuringiensis*), nematodes and other biological control organisms;
 - v. Borax, also called boric acid or boracic acid;
 - vi. Bordeaux mixture or their sulphur compounds;
 - vii. Ferric phosphate;
 - viii. Lime sulphur;
 - ix. Acetic acid, also called horticultural vinegar;
 - x. Pyrethrum or pyrethrins;
 - xi. Fatty acids;
 - xii. Rodenticides; or
 - xiii. Corn gluten.

Schedule "B" Warning Sign

1) Content on the front of sign:

- a) Has the word "WARNING" at the top in red capital letters;
- b) Below has a pictogram showing a black silhouette of an adult person on a white background within a red circle crossed by an oblique red bar;
- c) Below the pictogram has the words "PESTICIDE USE" in red capital letters;
- d) Below "PESTICIDE USE" the words "FOR INFORMATION CONTACT" in capital letters with the name and telephone number of the person responsible, who can provide more information; and
- e) Below "PESTICIDE USE" the words "DATE APPLIED" and the date the pesticide use commenced.

2) On the back:

- a) The word "PESTICIDE" at the top in capital letters followed by the name of the pesticide intended to be used;
- b) Below "PESTICIDE" the words "REGISTRATION NUMBER" in capital letters followed by the number assigned to the pesticide under the Pest Control Products Act (Canada) or the Fertilizer Act (Canada); and
- c) Below the words "REGISTRATION NUMBER" the words "TO CONTROL" in capital letters followed by the name of the pest to be controlled.

Schedule “C”
City of Hamilton – Pesticide Action Threshold Level Guideline

Pesticide Action Threshold levels are the minimum area coverage or number of pests which must be present before pesticide application is allowed under the exemption for infestation (subsection 3.2.2 (c)). Pesticide Action Thresholds are intended to encourage non-pesticide controls where pest conditions are below the thresholds, and do not restrict the use of natural controls or the pesticides itemized in Schedule “A” in conditions above or below the thresholds. The pesticide action thresholds listed are not applicable to those lands under the ownership or management of the City. All municipally owned and managed properties will be subject to the City of Hamilton Action Threshold Policy for Pesticide Use on Municipal Parks and Properties or any successor policies and the requirements for public lands provided in this by-law.

A) PESTICIDE ACTION THRESHOLD - BROADLEAF WEEDS

The pesticide action threshold for broadleaf weed infestation is 30% ground cover by area, being 30% coverage by broadleaf weeds in a given area of landscape and provided that an area of at least one meter square shall be used for the measurement of the percentage. More than one area may be measured on a horticultural landscape provided each area is at least one meter square or larger. Where any area of at least one meter square meets or exceeds the pesticide action threshold, the application of pesticides may be carried out in that area under the terms of this by-law. The intent of such a measurement and application process is to encourage pesticide use only in areas where threshold levels have been reached and to provide for spot application of pesticides under clause 3.2.2(c) of this By-law.

PESTICIDE ACTION THRESHOLDS – INSECTS

Insect Type	Action Threshold
European Cranefly	Non-irrigated turf: more than 10 larvae per 0.1m ² Irrigated turf: more than 5 larvae per 0.1m ²
Black Turfgrass Ataenius	More than 35 larvae per 0.1m ²
Sod Webworm	2 or more larvae per 0.1m ²
White Grubs (June Beetle)	3 or more grubs per 0.1m ²
European Chafer	Non-irrigated turf: 10 or more grubs per 0.1m ² Irrigated Turf: More than 20 grubs per 0.1m ²
Hairy Chinch Bug	25 or more per 20 cm diameter sample
Sod Webworm (Lawn Moth)	6 or more caterpillars per 0.1m ²
Black Cutworm	5 or more cutworms per m ²

Schedule "D"
General Pesticide Applications Outside the Scope of the By-Law

- i. To disinfect swimming pools, whirlpools, spas or wading pools;
- ii. To purify water intended for the use of humans or animals or to treat sewage effluent;
- iii. Within a building;
- iv. To control aphids, gypsy moths, termites, ants, bees, wasps, hornets, cockroaches, mosquitoes, fleas and ticks, or to exterminate or repel rodents;
- v. Application on a person as an insect repellent for personal use;
- vi. Direct application of a wood preservative on wood, or by injection into trees, stumps or wooden poles;
- vii. To control or destroy a Health Hazard; or
- viii. Application to trees to prevent or manage pests which threaten the health of the trees or the fruit produced by such trees.