

BY-LAW NO. 2007-

A BY-LAW TO REGULATE THE USE OF PESTICIDES ON LAWNS WITHIN THE CITY OF KINGSTON

PASSED:

WHEREAS section 10(2), paragraph 5 of the *Municipal Act* provides that municipalities may pass by-laws for purposes respecting the environmental well-being of the municipality; and

WHEREAS section 10(2), paragraph 6 of the *Municipal Act* provides that municipalities may pass by-laws for purposes related to the health, safety and well-being of inhabitants of the municipality; and

WHEREAS section 8 of the *Municipal Act* provides that the powers granted to a municipality shall be interpreted broadly to confer authority on the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues; and

WHEREAS the House of Commons' Standing Committee on the Environment and Sustainable Development recommended in a May 2000 Report entitled "*Pesticides: Making the Right Choice for the Protection of Health and the Environment*" that municipalities develop a strategy for the gradual phase-out of pesticides used for cosmetic purposes; and

WHEREAS the Report asserts that the protection of human health and the environment must be paramount and that measures dealing with pesticide use ought to be guided by the precautionary principle that "*Appropriate preventive measures are to be taken where there is reason to believe that a pesticide is likely to cause harm, even when there is no conclusive evidence to prove a causal relation between the pesticide and its effect.*" (Executive Summary to the Report); and

WHEREAS on 28 June, 2001, the Supreme Court of Canada upheld the Town of Hudson, Quebec, by-law banning the use of pesticides on private property for cosmetic purposes; and

WHEREAS the Kingston Environmental Advisory Forum (KEAF) in November 2001 encouraged Kingston City Council to introduce a by-law that banned pesticides for cosmetic use and gave their reasons for so doing, which reasons the Council of the City of Kingston hereby adopts; and

WHEREAS the Environment, Infrastructure and Transportation Policies Committee of the City of Kingston consulted with the public and stakeholders and received delegations and information on pesticide use; and

WHEREAS the weight of the information provided to the Committee supports a by-law to ban the use of pesticides for cosmetic use;

NOW THEREFORE the Council of the Corporation of the City of Kingston hereby enacts as follows:

Definitions:

1. In this by-law, the following words have the following meanings:
 - a. "Integrated Pest Management" means a process where all methods of pest control are considered in order to control the pest. It may involve monitoring, educational programs, sanitation, house keeping, biological control, non-chemical Pest controls or even the use of Pesticides. If Pesticides are used, only the least toxic and effective are considered and at the minimum concentration and area to be effective. Proper IPM practices must be intended to reduce the need for Pesticide use;
 - b. "I.P.M. Accredited Agent" means a person who obtains and maintains full accreditation in a recognized integrated pest management program from IPM – PHC Council of Ontario, or equivalent as determined by the Municipality;
 - c. "Lawn" means an area of property covered or partly covered with grasses, clover and other similar plants which is usually cultivated and mowed at an even height and includes turf. For purposes of this definition, lawn also includes ornamental shrubs and plants, vegetables, and flowers located on or in immediate proximity to a Lawn;
 - d. "Municipality" means the Corporation of the City of Kingston;
 - e. "Pest" means an animal, an insect, a plant or other organism that is injurious, noxious or troublesome, whether directly or indirectly, to any person or property;
 - f. "pesticide" means any organism, substance or thing that is manufactured, represented, sold or used as a means of directly or indirectly controlling, preventing, destroying, mitigating, attracting or repelling any pest or of altering the growth, development or characteristics of any plant life that is not a pest and includes any organism, substance or thing registered under the *Pest Control Products Act* (Canada), but excludes the following:
 - i. A product that is or contains as its only active ingredient(s) any of the following, alone or in combination:
 1. a soap;
 2. a mineral oil, also called dormant or horticultural oil;
 3. silicon dioxide, also called diatomaceous earth;

4. biological pesticides including Bt (*Bacillus thuringiensis*), nematodes and other biological control agents;
5. Borax, also called boric or boracic acid;
6. Ferric or ferrous phosphates
7. acetic acid;
8. pyrethrum or pyrethrins.
9. fatty acids
10. sulphur (lime sulphur and other sulphur compounds used horticulturally)
11. corn gluten meal

Application:

2. This By-law applies to all property within the territory of the Municipality.
3. This By-law applies to all property owned by the Municipality.

Prohibition:

4. Except as provided for in section 5, no person shall apply or cause or permit the application of a Pesticide:
 - a. on any Lawn, as defined in this By-law;
 - b. on any driveway or lane;
 - c. on any walkway, sidewalk or path; or
 - d. on any patio.

Exceptions:

5. Notwithstanding section 3 above, Pesticides may be used or applied:
 - a. To control, reduce or repel, directly or indirectly, a Pest which is harmful to public health, as determined by the Medical Officer of Health;
 - b. To control termites;

- c. On a golf course or lawn bowling green only until December 31, 2017, provided that:
 - i. The golf course or lawn bowling green existed as of the date this By-law was passed; and
 - ii. After January 1, 2009, any Pesticide is applied by or under the direction of an I.P.M. Accredited Agent. For purposes of this section, a golf course or bowling green may apply Pesticides until January 1, 2009 without an I.P.M. Accredited Agent provided that the Pesticide is applied in accordance with I.P.M. management practices and provided that the applicator has made application for I.P.M. Accreditation or is supervised by a person who has made application for I.P.M. Accreditation.
- d. To control vegetation adjacent to infrastructure on Municipal property or property owned by utility companies; and
- e. Where the Lawn is cultivated for the commercial sale of sod.

Application Requirements:

- 6. Any person permitted to apply a Pesticide pursuant to section 5 shall comply with the following:
 - a. Any person applying Pesticides shall hold a valid license to apply Pesticides issued by the Province of Ontario pursuant to the applicable legislation;
 - b. Notice of intent to apply a Pesticide shall be posted on the property in a conspicuous place visible to the public a minimum of twenty four (24) hours prior to the application and said notice shall include the date of application, type of Pesticide used and all other information required to be posted by law;
 - c. All Pesticide applications shall conform to the Pesticide manufacturer's specifications and directions as well as all applicable laws.

Enforcement:

- 7. An officer appointed by the Municipality to enforce this by-law may, at any reasonable time, enter onto any public or private land and be accompanied by experts in order to determine whether this By-law is being complied with and, for this purpose, may make such examinations, investigations and inquiries as are necessary.
- 8. The Municipality may request that any person holding themselves out to be an I.P.M. Accredited Agent provide the Municipality with copies of all records submitted by the I.P.M. Accredited Agent to the I.P.M. Auditor annually for accreditation under the I.P.M. program.

9. No person shall obstruct or interfere with an officer or anyone accompanying them in the performance of their duties under this By-law.

Offence and Penalty:

10. Every person who contravenes any provision of this By-law is guilty of an offence.
11. Any officer or director of a corporation who knowingly concurs in the contravention of any provision of this By-law is guilty of an offence.
12. Each day or part of a day that a person contravenes any provision of this by-law constitutes a separate offence.
13. Any individual who contravenes this By-law is guilty of an offence and, upon conviction, is liable to the following fines:
 - a. On first conviction, a minimum fine of one hundred twenty five dollars (\$125), to a maximum fine of one hundred thousand dollars (\$100,000); and
 - b. On any subsequent conviction, a minimum fine of five hundred dollars (\$500), to a maximum fine of one hundred thousand dollars (\$100,000).
14. Any corporation that contravenes this By-law is guilty of an offence and, upon conviction, is liable to a minimum fine of five hundred dollars (\$500), to a maximum of one hundred thousand dollars (\$100,000).
15. This By-Law shall be enforced by an Officer appointed by Council for the purposes of enforcing by-laws within the City of Kingston.

Severability:

16. If a portion of this By-law is held invalid by a court of competent jurisdiction then the invalid portion must be severed and the remainder of this By-law is deemed to have been adopted without the severed section.
17. This By-Law shall come into force and take effect on October 15, 2008.

GIVEN FIRST AND SECOND READINGS

GIVEN THIRD READING AND FINALLY PASSED

CITY CLERK

MAYOR