TOWN OF MARKHAM

ONTARIO

BY-LAW 2007-146

A BY-LAW TO REGULATE THE NON-ESSENTIAL USE OF PESTICIDES ON PUBLIC AND PRIVATE PROPERTY IN THE TOWN OF MARKHAM

This By-law is printed under and
by authority of the Council of
the Town of Markham

(Consolidated for convenience only
to February 15, 2008)

As amended by:
By-law 2008-16 – February 12, 2008

Clause 8, Report No. 40, 2007

BY-LAW 2007-146

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;

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 31st of each year.

OFFICER shall mean a person appointed by the Town to enforce this by-law.

(Amended by By-law No. 2008-16)

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;
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" and this clause shall expire on January 1st, 2009;

(Amended by By-law No. 2008-16)

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 31st 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;
xv. On electrical substations.

(Amended by By-law No. 2008-16)

(c) No one shall apply a Pesticide pursuant to s. 2(b)(v) or (vi) without first completing and filing with the Town an application to apply Pesticides. The application must be completed and filed by the property owner or occupant or their authorized agent, or by

the licensed pesticide applicator 48 business hours in advance of the Pesticide application.

(Amended by By-law No. 2008-16)

3. In accordance with the conditions set out in the *Municipal Act, 2001*, an Officer may enter on a property at any reasonable time for the purpose of carrying out an inspection to determine whether or not this By-law or any related requirement of this By-law is being complied with.

(Amended by By-law No. 2008-16)

4. 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.

(Amended by By-law No. 2008-16)

5. Effective Date

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

(Amended by By-law No. 2008-16)

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS 26TH DAY OF JUNE, 2007.

"Sheila Birrell"	"Frank Scarpitti"
SHEILA BIRRELL, TOWN CLERK	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.

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