

NO: **R226**

COUNCIL DATE: **October 22, 2012**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **October 16, 2012**

FROM: **General Manager, Parks, Recreation
and Culture**

FILE: **3900 – 20/F**

SUBJECT: **Pesticide Use Control By-law Review**

RECOMMENDATION

The Parks, Recreation and Culture Department recommends that Council receive this report as information.

INTENT

The purpose of this report is to provide information related to amendments to the Pesticide Use Control By-law that were recommended to Council by the Environmental Advisory Committee.

BACKGROUND

The Pesticide Use Control By-law No. 17160 (the “By-law”) was adopted by Council in May 2010. It was amended by Council in January 2011. A copy of the current By-law is attached as Appendix “A” to this report. The By-law sets out conditions and regulations related to the use of pesticides within the City of Surrey. Generally, the By-law restricts the application of pesticides on outdoor trees, shrubs, flowers and other plants and turf on City Lands and on single family residential lots.

In May 2012 the Environmental Advisory Committee (the “Committee”) carried out a review of the By-Law and adopted the following resolutions at its May 23, 2012 meeting:

1. *“The Environmental Advisory Committee recommends that Council recommend that, in view of reported difficulties with the enforcement of the Pesticide By-law #17160, that staff develop a procedure to be put in place prior to the application of a pesticide on private lands under the conditions stipulated in Section 4(a) of the Pesticide By-law #17160.”*
2. *“The Environmental Advisory Committee recommends that Council recommend that Section 4(b) of the Surrey Pesticide Use Control By-law, 2010, No. 17160 be removed in its entirety.”*

At its Regular meeting on July 9, 2012 Council received as information the stated resolutions of the Environmental Advisory Committee.

DISCUSSION

Pesticide Use on Private Lands

Section 4(a) of the by-law states:

“Despite Section 2, a Pesticide may be applied to Private Lands or Public Lands for controlling or destroying a Pest which has caused an Infestation.”

With respect to this section of the by-law:

“Infestation” is defined to mean “the presence of a Pest in numbers or under conditions that involves an immediate risk of damage to property or significant financial loss in respect of the use of the property.”

Staff has taken the position that provincially-certified pesticide applicators may make the decision as to whether an outbreak of pests on a property constitutes an “Infestation”. Year to date in 2012, staff has received less than ten complaints relating to the By-law and no tickets have been issued or other legal action taken in relation to the By-law.

The Committee has expressed concern that the definition of “Infestation” is too subjective, and that provincially-certified pesticide applicators may be in a conflict of interest position when judging properties to be infested, as most applicators are associated with landscape maintenance companies who may be prone to satisfying the demands of their clients in relation to spraying for pests.

The Committee discussed mechanisms to eliminate or reduce the subjectivity associated with determining whether there is an Infestation. The following was generally favoured by the Committee:

1. If a property owner holds the view that they have an Infestation and wish to apply a pesticide to control or eradicate the Infestation, they would apply to the City for a permit;
2. The Permit application would include:
 - i. address of the Infestation;
 - ii. a map of the area to be treated;
 - iii. a description of the Infestation (including proper identification, Infestation levels and photographic evidence); and
 - iv. a quantitative evaluation of risk/loss and a treatment plan prepared by a provincially-certified pesticide applicator;
3. A City staff person, knowledgeable about Pests, Pesticides and Integrated Pest Management, would evaluate the application and, if deemed necessary, visit the site to substantiate the information on the application;
4. Subject to the application review process, a Permit would either be issued, with requirements and/or restrictions (e.g. posting of spray notification signage - 24 hour and 48 hours post spraying), or withheld, depending on the results of the evaluation;
5. An audit by staff of the treatment processes; and
6. An appeal process would be in place in the event that the applicant disagreed with the results of the permit application evaluation.

The City does not have an Integrated Pest Management Coordinator or Integrated Pest Management Technician who could carry out permit application reviews, approvals and treatment auditing. It is unknown how many such applications would be filed annually in Surrey. There are few cities that have such an application process that might assist in assessing the demand that might be experienced by Surrey. Kamloops has a permit requirement, which can be renewed annually; however, Kamloops provides permits to any provincially-licensed pesticide applicator that makes application to the City. Kamloops relies on the provincial licensing system to ensure that applicators are knowledgeable about applying pesticides under the requirements of the *Integrated Pest Management Act* and related Regulations. Kamloops' system generates revenue for the City, but does not prevent the potential for conflict of interest as discussed by Surrey's Environmental Advisory Committee.

If an Integrated Pest Management position was needed for processing applications and issuing permits, the budget required to support the position, including with wages, benefits and training, would be in the order of \$80,000 per year. Given that fewer than ten complaints were received in 2012, it is difficult to justify creating a position for this purpose.

Staff holds the view that developing and implementing a program to issue permits for pesticide application in the City of Surrey is not necessary at this time.

Pesticide Use on City Sport Fields

The Section 4(b) of the By-law states:

“Despite Section 2, a Pesticide may be applied to Private Lands or Public Lands for ensuring the safety of pedestrian surfaces or sport surfaces.”

Surrey is well known in the sporting community for its high quality natural grass athletic fields. To achieve these results, Surrey uses cultural practices to promote healthy, high density turf. These practices, which include top dressing with sand, over-seeding, fertilization, aeration, irrigation and regular cutting with reel mowers, generally ensures that the grass outgrows the weeds, reducing the need for herbicides to control weeds that can cause turf grass to become lumpy or slippery, conditions which can lead to player injury.

The City undertakes an annual weed infestation count to track the effectiveness of other controls. The results of this quantitative sampling helps target fields that are incurring higher levels of weed infestation and helps to inform the turf culture program. As weed infestations are not normally evenly distributed throughout fields, weed counts are supplemented by analysis of weed distribution. While the City has the authority under the Section 4(b) of the Pesticide Use Control By-law to spot-spray and treat weeds that may cause player injury, herbicides used to treat weed infestations, have not been used on natural grass sport fields for the last three years, except for the City's one bowling green and a very small amount used to mark the corners of playing fields to facilitate field lining by sport groups.

For baseball and softball diamonds, the soil areas along the base paths and the infields are drag-floated to keep weeds from becoming established. However, from time to time, this practice is insufficient to keep weeds from germinating and growing, which resulting in trip hazards and the potential for erratic ball bounces, both of which can lead to player injury. In these cases, herbicides may be applied sparingly as spot-treatments during the off-season when the diamonds

are not booked for play. Signs are erected 24 hours before pesticide application, and are left in place for a minimum of 48 hours after application to provide information to park users about the treatments that have taken place.

Surrey has only one natural grass lawn bowling green. The bent-grass surface of the bowling green, which is cut very short during the season of use, is highly subject to infection by fungal turf diseases that can cause the surface to become pitted. Should this happen, the surface damage to the turf not only renders the bowling green unplayable, but also results in increased risk of tripping for the seniors who are the predominant users of the facility. To ensure a good quality playing surface, free of trip hazards, the green is treated annually in the off-season with fungicides to prevent damage from fungal pathogens such as snow mould.

In 2009, the Parks, Recreation and Culture Committee reviewed this issue and passed the following resolution:

“That explicit exemptions for playing fields be retained in the by-law, for reasons of player safety, and reduction of risk and liability for both the amateur sport associations that use the fields, and also for the city which manages the fields.”

In view of the EAC recommendation to ban the use of herbicides on sport fields, some clubs have written to the City to express their concern that fully eliminating the use of herbicides may increase the risk to field users. Sports field user groups comments have indicated support to continue the current practices associated with sport field maintenance.

Based on the foregoing, staff holds the view that on balance an amendment to the By-law to eliminate Section 4(b) is not warranted.

SUSTAINABILITY CONSIDERATIONS

The Pesticide Use Control By-law supports the objectives of the City’s Sustainability Charter’s; move particularly objective No. EN16 (5), which states “Reduce the use of harmful pesticides, particularly for cosmetic uses.”

CONCLUSION

The By-law in its current form is addressing in a reasonable manner the use of pesticides in Surrey. Staff will continue to monitor the By-law and its outcomes and will provide further reports to Council as necessary.

Laurie Cavan
General Manager
Parks, Recreation and Culture

Appendix “A”: Pesticide Use Control By-law, 2010, No. 17160

APPENDIX 'A'

CITY OF SURREY

BY-LAW NO. 17160

A by-law to control the use of pesticides on City Lands
and on Residential Lands.

Amended by By-law 17346; 01/24/11

WHEREAS Council of the City of Surrey deems it expedient to regulate the use of pesticides for non-essential purposes within the City of Surrey; and

WHEREAS Council of the City of Surrey, pursuant to Section 8 (3) (j) and Section 9 of the *Community Charter*, S.B.C. 2003, c. 26, as amended, may pass a by-law regulating the use of pesticides.

NOW, THEREFORE, the Council of the City of Surrey, in open meeting assembled, HEREBY ENACTS AS FOLLOWS:

1. In this By-law:

“**Agricultural Land**” means land that is classified as a farm under the *Assessment Act*, R.S.B.C. 1996, c.20;

“**Agriculture**” means any activity carried out on Agricultural Land that falls within the definition of “farm operation” in the *Farm Practices Protection (Right to Farm) Act*, R.S.B.C. 1996, c.131;

“**Hard Landscape**” means any constructed surface typically used for landscaping such as asphalt, concrete, rocks, gravel, treated wood or brick pavers;

“**Infestation**” means the presence of a Pest in numbers or under conditions that involves an immediate risk of damage to property or significant financial loss in respect of the use of property;

“**Certified Applicator**” means a person who holds a valid Pesticide Applicator’s Certificate issued by the Province of British Columbia.

“**Non-essential**” means the use of a Pesticide for an aesthetic pursuit;

“**Noxious Weed**” means a weed that has been designated as Noxious under the Weed Control Regulation of the *Weed Control Act*, R.S.B.C. 1996, c 487;

“**Permitted Pesticide**” means a Pesticide listed in Schedule 2 of the Integrated Pest Management Regulation of the *Integrated Pest Management Act*, S.B.C. 2003, c 58;

“**Pest**” means an injurious, noxious or troublesome living organism, but does not include a virus, bacteria, fungus, or internal parasite that exists on or in humans or animals;

“**Pesticide**” means a micro-organism or material that is represented, sold, used or intended to be used to prevent, destroy, repel or mitigate a Pest, and includes:

- (a) a plant growth regulator, plant defoliator or plant desiccant;
- (b) a control product as defined in the *Pest Control Products Act* R.S.C 2002, c. 28;

“**Public Lands**” means lands vested in, owned or controlled by the City of Surrey;

“**Private Lands**” means lands designated as a separate and distinct parcel on a legally recorded subdivision plan or deed filed in the records of the Land Title Office that:

- (a) are zoned single family or multiple family residential under Surrey Zoning By-law, 1993, No. 12000 and contain one (1) or more dwelling units; or
- (b) contain one (1) or more dwelling units located in a manufactured home park, and in this definition the terms “dwelling unit” and “manufactured home park” shall have the same meaning as in Surrey Zoning By-law, 1993, No. 12000, as may be amended from time to time;

“**Sensitive Ecosystem**” means Private Lands or Public Lands with one or more of the following characteristics:

- a) areas or landscape features of Private Lands identified in a City of Surrey plan, map or zoning bylaw as environmentally sensitive, environmentally significant, environmental protection area, development permit area for protection of the

environment, or other similar purpose that is compatible with the conservation of ecological features and functions of the site; or

- b) City of Surrey parks and other protected areas designated or managed for the conservation of ecological features and functions.
2. Except as permitted in this By-law, no person shall apply a Pesticide on outdoor trees, shrubs, flowers, other ornamental plants, and turf on Public Lands or Private Lands within the City of Surrey.
 3. Section 2 of this By-law shall not apply to the application of a Pesticide used for:
 - (a) Agriculture and any other form of crop production on Agricultural Land;
 - (b) controlling a Pest on the residential portion of Agricultural Land;
 - (c) forestry operations;
 - (d) controlling or destroying a Pest which has caused an Infestation;
 - (e) controlling or destroying a Noxious Weed;
 - (f) controlling a Pest on buildings or structures, or inside buildings or structures;
 - (g) ensuring the safety of pedestrian surfaces or sport surfaces;
 - (h) low environmental and human health impact Pest control treatment with a Permitted Pesticide;
 - (i) managing of outbreaks of an introduced invasive exotic or foreign Pest;
 - (j) managing of Pests that threaten Sensitive Ecosystems;
 - (k) preventing the deterioration of hard landscapes;
 - (l) purifying water used for human or animal consumption; and
 - (m) responding to human or animal health issues.
 4. Any application of a Pesticide on Private Lands or Public Lands pursuant to Section 3 of this By-law, save for those Pesticides listed in Schedule "A", must be carried out only by Certified Applicator.
 5. Every person who violates any of the provisions of the By-law or who suffers or permits any act or thing to be done in contravention of this By-law or who neglects to

do or refrains from doing any act or thing which violates any of the provision of this By-law shall be liable to the penalties hereby imposed and each day that such violation is permitted to exist shall constitute a separate offence.

6. Any person who violates any of the provisions of this By-law shall, upon summary conviction, be liable to a penalty of not less than \$100 and not more than \$10,000 plus the cost of the prosecution, or to a term of imprisonment not exceeding six (6) months, or both.

7. This By-law may be cited as "Surrey Pesticide Use Control By-law, 2010, No.____".

PASSED THREE READINGS on the _____ day of _____, 2010.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the _____ day of _____, 2010.

_____MAYOR

_____CLERK