

TOWN OF MARKHAM

ONTARIO



BY-LAW 2008-17

A BY-LAW TO LICENSE, REGULATE AND GOVERN PESTICIDE APPLICATORS WITHIN 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 May 16, 2008)

AMENDED BY:

By-law 2008-84 – May 13, 2008



BY-LAW 2008-17

A By-law to license, regulate and govern Pesticide Applicators
within the Town of Markham

WHEREAS the Town of Markham has passed By-law 2007-146, being a By-law to regulate the non-essential use of pesticides on public and private property;

AND WHEREAS s. 2 (a) of By-law 2007-146 provides that no person shall apply or cause or permit the application of any pesticide within the boundaries of the Town of Markham;

AND WHEREAS s. 2(b) of By-law 2007-146 provides that the prohibition set out in subsection 2(a) does not apply when pesticides are used in the situations stated in clauses (i)-(xiv);

AND WHEREAS pesticides may be applied in the Town of Markham by pesticide applicators in the situations stated in subsection 2(b) i-xiv and the Council of The Town of Markham deems it expedient to licence, regulate and govern the business of pesticide applicators in the interest of health and safety, consumer protection and public nuisance;

AND WHEREAS section 150(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, authorizes a municipal council to pass by-laws for the licensing, regulating and governing any business carried on within the municipality;

NOW THEREFORE THE COUNCIL OF THE TOWN OF MARKHAM ENACTS AS FOLLOWS:

DEFINITIONS

1. In this By-law

“Applicant” means the person applying for a licence or renewal of a licence under this by-law and application has corresponding meaning;

“Applicator” means a Pesticide Applicator;

"Council" means the Council for The Corporation of the Town of Markham;

"Licence" means the certificate issued under this by-law as proof of licensing

under this by-law;

“Licensee” means the person licensed under this by-law or the person required to be licensed under this by-law;

“Licensing Committee” means a committee of Council designated by Council for the purpose of hearing appeals under this by-law;

"Licensing Officer" means a person appointed by the Town to issue Licences and enforce this by-law;

“LOW IMPACT PEST CONTROL PRODUCT NOTICE” shall mean a lawn sign, in the form prescribed by the Town of Markham, notifying of the application of low impact pest control products as permitted by Schedule A of By-law 2007-146;

(Amended by By-law 2008-84)

“Pesticide” means 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. Pesticide does not include the products listed on Schedule “A” of By-law 2007-146.

“PESTICIDE APPLICATION NOTICE” shall mean a lawn sign in the form prescribed by the Town of Markham notifying of the application of pesticides for an infestation as permitted by s.2(b)(vi) of By-law 2007-146;

(Amended by By-law 2008-84)

“Pesticide Applicator” means a person who, personally or through employees, assistants or agents, applies or enters into a contract to apply pesticides and who holds a pesticide exterminator licence and a pesticide operator (business) licence from the Province of Ontario ;

"Town" means The Corporation of the Town of Markham, in the Regional Municipality of York.

2. Every person who carries on the business of an Applicator in the Town shall be licensed under this by-law.

APPLICATION FOR LICENCE

3. Every application for a Licence shall include:
 - 1) a completed application form provided to the licensing officer;
 - 2) the fee in the appropriate amount as set out in by-law 2002-284, as amended;

- 3) in the case of a corporate applicant, a copy of its articles of incorporation;
 - 4) in the case of a partnership, the names and addresses of all partners;
 - 5) a copy of the applicant's Ontario Master Business Licence;
 - 6) proof of current pesticide operator (business) licence and pesticide exterminator licence from Province of Ontario.
 - 7) Other documentation as required by the Licensing Officer
4. Every application for renewal of a licence shall be completed and delivered to the Licensing Officer before the expiry date of the licence as set out in section of this by-law.

NATURE OF LICENCE

5. A Licence issued under the provisions of this by-law is the property of the Town and:
- (a) shall expire on the 31st day of December following issuance of the Licence, unless it is renewed or revoked in accordance with the provisions of this by-law;
 - (b) shall not be transferred, sold, leased, subleased, rented or assigned to any person other than the person named on the Licence;
 - (c) shall be returned to the Town upon revocation, suspension or non-renewal thereof;
 - (d) shall be conditional upon the ability of a Licensing Officer to inspect the vehicles or any equipment owned or operated by the Applicator and to inspect and obtain samples of substances being applied to property in the Town of Markham by the Applicator to determine compliance with By-law 2007-146.

CHANGE OF PARTICULARS

6. Where there is any change in any of the particulars relating to a person licensed under this By-law, which particulars are required to be filed with the Town on applying for a licence under this By-law, such person shall report the change to the Licensing Officer within seven days of the change.

REGULATIONS

7. Every person licensed or required to be licensed under this by-law, shall:

- (a) where pesticide is being applied pursuant to subsection 2(b)(v) or 2(b)(vi) of By-law 2007-146, complete and file an application as required by s. 2(c) of By-law 2006-146, 48 business hours prior to the application of the pesticide, or shall confirm with the Town that such application has been completed and filed within the relevant time limits by the owner or occupant of the property, or their authorized agent, where the pesticide is to be applied;
- (b) submit on bi-weekly basis to the Licensing Officer a Pesticide Application Report with respect to any land application of pesticide, in a form prescribed by the Licensing Officer, providing the location of the pesticide application, amount and type of pesticide applied, and the grounds under s.2(b) of By-law 2007-146 for the application; and
- (c) comply with the requirements of all Federal and Provincial laws, including Town of Markham By-laws as amended;
- (d) where pesticide is being applied for an infestation under s. 2(b)(vi) of By-law 2007-146, post in a conspicuous location in the application area, a PESTICIDE APPLICATION NOTICE immediately before the application begins, and shall not remove the Pesticide Application Notice until 48 hours have elapsed following completion of the pesticide application;
(Amended by By-law 2008-84)
- (e) where low impact pest control products permitted under Schedule A of By-law 2007-146, which are registered under the federal Pest Control Products Act are being applied, post in a conspicuous location in the application area, a LOW IMPACT PEST CONTROL PRODUCT NOTICE, immediately before application of the product, and shall not remove such notice until 48 hours have elapsed following completion of the application of the low impact pest control products;
(Amended by By-law 2008-84)
- (f) notwithstanding s.4(e), where pesticides have been applied pursuant to s.2(b)(vi) of By-law 2007-146, and low impact pest control products permitted under Schedule A of By-law 2007-146 have also been applied to the same property during the same time frame, post only the PESTICIDE APPLICATION NOTICE .
(Amended by By-law 2008-84)

PROHIBITIONS

8. No person shall:

- (a) carry on the business of an Applicator in the Town of Markham without a Licence;
- (b) hold themselves out as being licensed to carry on the business of an

Applicator if the person is not so licensed;

- (c) carry on business of an Applicator under any name other than the name for which the Licence is issued; and
- (d) permit a person to carry on the business of an Applicator in the Town without a Licence.

9. The Licensing Officer shall:

- (a) receive and process all applications for Licences and renewal of Licences to be issued under this by-law;
- (b) issue and renew Licences for persons who meet the requirements of this by-law;
- (c) perform all the administrative functions conferred upon the Licensing Officers by this by-law; and
- (d) coordinate the enforcement of this by-law.

10. Despite the foregoing section, upon review of a Licence application, including an application for renewal, the Licensing Officer shall prepare a report and seek Council's direction with respect to the issuance or renewal of a Licence where:

- (a) the past or current conduct of the applicant or Licensee affords reasonable grounds for belief that person is not carrying or will not carry on the trade, calling, business or occupation in respect of the Applicator in accordance with law and with integrity and honesty;
- (b) there are reasonable grounds for belief that the carrying on of the trade, calling or occupation of the Applicator by the applicant or licence holder has resulted or will result in a breach of this By-law or any other applicable law;
- (c) the applicant or Licensee is a corporation or a partnership and its conduct or the conduct of its officers, directors, employees, agents or partners affords reasonable grounds for the belief that its trade, calling business or occupation in respect of the Applicator has or will not be carried on in accordance with the law and with integrity and honesty;
- (d) there are reasonable grounds for belief that the premises, accommodations, equipment or facilities in respect of which the Licence is required to not comply with the provisions of this By-law or any other applicable law; or
- (e) the conduct of the applicant or Licensee or other related circumstances afford reasonable grounds for the belief that the carrying on by the applicant of the trade, calling, business or occupation for which the licence is sought would infringe the rights, or endanger the health of safety, of other members of the

public.

11. When an application for a Licence is made in accordance with the provisions of this By-law and the applicant meets all the requirements of this By-law or where the Licensing Officer has been so authorized by Council in response to a Report in this regard, the Licensing Officer shall issue a Licence certificate which shall set out the expiry date of the Licence in accordance with this By-Law and the applicant shall thereby be licensed, until such date, subject to any prior revocation, suspension or other termination of such Licence.
12. The Licensing Officer may suspend a Licence for any of the grounds set out in section 10. Such suspension shall take effect upon service of written notice thereof to the Licensee and the Licence shall remain suspended for no more than fourteen days from the date of service of this notice. In order to continue this suspension beyond the fourteen day period, the Licensing Officer must prepare a report and receive Council's decision to revoke the Licence. Where any Licence is suspended, it shall not be reinstated until the Licensing Officer is able to confirm that the conditions leading to the suspension have been remedied.
13. At any meeting of Council or of a Council Committee called in relation to a report to consider the issuance, renewal, suspension or revocation of a Licence, the Applicant shall be accorded its rights pursuant to the *Statutory Powers Procedures Act*, including the right to appear and speak to the matter, and when the Applicant has been provided with notice of the meeting and does not attend, Council may proceed with the meeting.
14. At any meeting of Council or of a Council Committee called in relation to a report to consider the issuance, renewal, suspension or revocation of a Licence, Council may:
 - (a) refuse to grant a Licence, revoke a Licence or suspend a Licence; or
 - (b) impose special conditions as a requirement in order to obtain, continue to hold, or renew a Licence.
15. Where Council concludes under section 14(a) that grounds exist upon which a Licence may be refused, suspended or revoked, Council may in lieu thereof issue a Licence for any period up to a full Licence period, on probation, or without a term of probation, subject to such conditions as Council may impose and are in accordance with law.

OFFENCE, PENALTY AND ENFORCEMENT

16. Every person licensed under this By-law shall produce the Licence upon demand of any Licensing Officer.
17. Every person who is licensed or required to be licensed pursuant to this By-law shall allow, at any reasonable time, any Licensing Officer, to inspect the places and premises used for the business, and the equipment, vehicles and other property used or kept for hire in the carrying on of the business.

18. No person shall hinder or obstruct a Licensing Officer.
19. Any person who contravenes the provisions of this By-law, or who fails to perform a duty imposed herein or performs an act prohibited herein, and every director or officer of a corporation, or partner of a partnership, who concurs in such a contravention, is guilty of an offence and on conviction is liable:
 - (a) To a fine of not more than \$50,000.00, in the case of a corporation; and
 - (b) To a fine of not more than \$25,000.00 or to imprisonment for a term of not more than one year, or to both, in the case of any other person.
20. The making of a false or intentionally misleading recital of fact, statement or representation in any agreement, statutory declaration or application form required by this By-law shall be deemed to be a violation of the provisions of this By-law.

MISCELLANEOUS

21. Should any section of this By-law be declared invalid by a court of competent jurisdiction, it is the intent of the Council that such section shall be severed here from and the remainder of the By-law shall continue in full force and effect.
22. Wherever notice or materials are required to be served upon or provided to any person pursuant to this By-law, such service or provision shall be deemed effective five days following the mailing of such materials by registered mail to the last address of that person as indicated upon licensing documents filed with the Town.
23. The short title of this By-law shall be the Pesticide Applicators' By-law.
24. This By-law will take effect and come into force on April 1, 2008.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS
12TH DAY OF FEBRUARY, 2008.

SHEILA BIRRELL, TOWN CLERK

FRANK SCARPITTI, MAYOR