

Item No. 11.1.9ii
Halifax Regional Council
April 15, 2014

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed

SUBMITTED BY: _____
Peter Stickings, Acting Director, Planning & Infrastructure

DATE: April 2, 2014

SUBJECT: Repeal of By-Law P-800

SUPPLEMENTARY INFORMATION REPORT

ORIGIN

Regional Council, March 18, 2014 Item 11.1.4

LEGISLATIVE AUTHORITY

The power to regulate the application and use of pesticides is set out in the *Halifax Regional Municipality Charter* (the “*Charter*”) at section 188 (1)(j):

Power to make by-laws

188 (1) The Council may make by-laws, for municipal purposes, respecting

.....

(j) regulation of the application and use of pesticides, herbicides and insecticides for the maintenance of outdoor plants and turf on the part of a property used for residential purposes and on property of the Municipality and, without restricting the generality of the foregoing,

(i) requiring the posting of notices when pesticides, herbicides or insecticides are to be so used and regulate the form, manner and time of the notice and the area in which the notice must be posted,

(ii) establishing a registration scheme, that is open to the public, in which a resident may file with the clerk an objection to pesticides, herbicides and insecticides being so used in the vicinity of the property on which the person resides,

(iii) requiring that notices be served on the residents of properties registered pursuant to the registration scheme within the distance specified in the by-law when pesticides, herbicides or insecticides are to be so used and regulate the form, time and manner of the notice,

- (iv) providing that pesticides, herbicides and insecticides may not be so used within the distance of a registered property established by the by-law, the requirements respecting notices to residents or owners of properties within the distance of a registered property established by the by-law and the effective date of the prohibition,
- (v) specifying the circumstances in which posting or serving of notices is not required or the prohibition does not apply,
- (vi) providing for all other matters necessary or incidental to the establishment of the registration scheme, but, for greater certainty, not applying to property used for agricultural or forestry purposes;

BACKGROUND

On March 18, 2014 Halifax Regional Council gave First Reading of Proposed By-law R-107, An Amendment to By-law R-100 Respecting the Repeal of By-laws and Ordinances. By-law R-107 proposes the repeal of a number of by-laws and one administrative order. Amongst the proposed by-laws for repeal is By-law P-800, *Respecting the Regulation of Pesticides, Herbicides, and Insecticides*, and Administrative Order 23 *Respecting Pesticides, Herbicides, and Insecticides excluded from the By-law*.

Following First Reading of By-law R-107, the Municipality received correspondence from a number of residents, summarized by the March 27, 2014 letter from Pesticide Free Nova Scotia. The submission and comparable communication have articulated three primary concerns:

1. The desire for the pre-notification of the use of toxic pesticides;
2. The desire for signage requirements different than Provincial standards; and,
3. The desire for buffer zones around certain places.

DISCUSSION

To assist in responding to the concerns outlined above, it is helpful to place By-law P-800 within its historical context.

History: The fundamental principles behind By-law P-800 include human health and environmental protection. Discussions towards the creation of a municipal pesticide bylaw began in earnest in 1997 when a Regional Councillor raised a question at Council on behalf of his constituents regarding regulating “toxic” products. In 1998, Regional Council lobbied to make the regulation of pesticide type products a municipal responsibility through the Municipal Government Act. In the spring of 1999 the Province granted authority to the HRM to regulate pesticide use within the municipality, with the enabling legislation specific to residential property and property owned by the Municipality. Regional Council then requested that an Advisory Committee be set up to provide advice on a pesticide related bylaw. Following a number of reports on consensus and non-consensus items, and three public hearing sessions, By-law P-800, *Respecting the Regulation of Pesticides, Herbicides, and Insecticides* was adopted by Regional Council and became effective on August 19, 2000. At the time of adoption, the Province was not regulating the use of pesticides in the municipality.

The by-law balanced the restriction of pesticide products with a notwithstanding clause that enabled pesticide use under specific conditions and incorporated a process to notify neighbouring properties. The by-law was implemented in stages as follows:

Year 1: Ban on use on municipal property

Year 2 & 3: Ban on use on residential properties registered as medically sensitive

Year 4: General ban on all residential properties.

Regional Council recognized the need for Provincial restriction on the sale of pesticides at the retail level and from early days directed efforts to the transition of this matter to one of Provincial control. The Municipality documented this direction in the annual Pesticide Reports provided to Regional Council.

The *Charter* gives the Municipality the power to make by-laws “regulating the application and use of pesticides, herbicides, and insecticides for the maintenance of outdoor plants and turf on the part of a property used for residential purposes...” It is important to note that the *Charter* and by-law give no authority to regulate with respect to pests such as ants, spiders, and ticks. There are, at times, a misunderstanding on this fact.

The overarching premise behind By-law P-800 was a response to environmental and health concerns related to the products that the market offered at the time for the management of weeds (dandelions): most often glyphosate and 2, 4-Dichlorophenoxyacetic acid. At the time, both products were regularly used in the marketplace in popular consumer and commercial offerings. Both of those products are no longer permitted by Provincial and HRM regulations, with the exception being for use to manage invasive species such as Giant Hogweed and Japanese Knotweed. Product availability was reduced, commercially, starting in 2003, as a result of the HRM permitting operations with respect to pesticides, and completely in 2010 with the outright removal of the product for sale by the Provincial *Non-essential Pesticides Control Act*. The Provincial and Municipal permitted products list offered alternatives.

The means in which HRM affected the enforcement of By-law P-800 was through a Permitting System. The administration of the Permit Operation consisted of HRM receiving requests for an inspection of an infestation, normally of Chinch Bug, the verification of the infestation, and the provision of a permit which included requirements for:

- Pre-notification of neighbouring properties
- Signage
- Adhering to atmospheric restrictions

The number of applications and permits dropped from over 3500 in year one to 47 in the final 2010. The primary reason for this drop was the market development of acceptable alternative products such as Safers Trounce, which negated the need for most of the more toxic products. With the alignment of the Provincial Permitted list and the Municipal Permitted list, the permitting system operated by HRM is completely redundant as there are no longer any available products in Nova Scotia which HRM can permit which are not restricted already by the Province of Nova Scotia.

Comparison of Administration: The primary means in which the municipal by-law was administered was through a permitting process. While this process was ineffective at capturing the residential consumer use through retail sales, it was effective at changing the behaviour and activity of commercial applicators. The permitting process restricted the use of more toxic products by commercial applicators and permitted them under the restrictions of the permit. The Secondary means that the by-law was administered was through the receipt of public complaints. While by-law staff responded to all complaints, as a result of the practical inability to prove a violation, the effort would result in education to individual homeowners and was generally an ineffective enforcement means to achieve the desired outcomes of the by-law. The provincial legislation is administered through a more profound and effective primary means: that of simply not permitting the use of some products in Nova Scotia and the inspection of retail stores and management of licensed applicators. The result of this means is that the products simply are not available in Nova Scotia, with the exception of through licensed retailers that are allowed to dispense additional restricted products for the management of invasive species. It should be noted that the municipal by-law exempted the management of invasive species from the normal process as well. The secondary means that the provincial legislation is enforced is comparable to the municipal complaint process. All complaints are registered and managed through the environmental compliance operations of Nova Scotia Environment. It is understood that the compliance officers respond in the same manner as the municipal by-law officers did in generally providing educational materials to homeowners. As such, the Provincial means to administer enforcement is more effective than the former municipal means under the by-law. The current, and original, version of By-Law P-800 is not sufficient to enable municipal staff to provide an enforcement or compliance solution over and above the provincial framework.

In addressing the three concerns of the submissions, Regional Council may consider the following:

The desire for the pre-notification of the use of toxic pesticides
<ul style="list-style-type: none">• Provincial Applicator License Terms and Conditions require “Operators shall ensure that occupants of adjacent properties who have requested pre-notification of pesticide applications shall be advised of the approximate date and time of treatment prior to the application of the pesticide.”• The use of the historically concerning products in Nova Scotia:<ul style="list-style-type: none">○ are banned from store shelves; and○ any use is restricted under the <i>Non-essential Pesticides Control Act</i> and Regulations.• Notification is not required for products on the approved lists.
The desire for signage requirements different to Provincial standards
<ul style="list-style-type: none">• The Provincial Sign Posting Guidelines for Lawn care companies was developed in 2003, after the adoption of the By-law P-800.• The Provincial Sign Posting Guidelines are a condition of the Provincial Terms and Conditions for an Applicator License.
The desire for a buffer zones around certain places
<ul style="list-style-type: none">• The Provincial Applicator License Terms and Conditions address buffer zones with the setback requirements and wind speed restrictions.

Fundamentally, the adoption of By-law P-800 by Halifax Regional Council in 2000 achieved substantial outcomes:

1. Industry changed their product offerings
2. Industry changed their lawn care practices
3. The Province of Nova Scotia enacted legislation that transitioned from the impact By-law P-800 had on commercial applicators and removed consumer products from the shelf.

The by-law has achieved its objectives and no longer offers any practical environmental or health protection for residents. By-law P-800 is recommended for repeal for two reasons. Firstly, Provincial legislation has made this by-law redundant and unnecessary. Secondly, the repeal will eliminate any confusion with respect to what regulations HRM currently administers. Currently all calls to HRM regarding pesticides are referred to the Department of Environment. It should be noted that Pesticide Free Nova Scotia publicly supported the Provincial Legislation when announced in 2010.

FINANCIAL IMPLICATIONS

There are no implications to the 2014 / 2015 Operating or Project Budgets.

However, operationalization of the former By-law P-800 cost approximately \$150,000 per year.

COMMUNITY ENGAGEMENT

This report is in response to public submissions.

ATTACHMENTS

None

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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