

SUMMARY:

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CITY OF KELOWNA

BYLAW NO. 9920

A bylaw to regulate the use of Pesticides

WHEREAS the Municipal Council of the City of Kelowna wishes to regulate the use of pesticides for non-essential purposes within Kelowna;

NOW THEREFORE the Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

PART 1 - GENERAL PROVISIONS

Title

1. This bylaw may be cited for all purposes as "Pesticide Use Regulation Bylaw No. 9920".

Effective Date

2. This bylaw shall be effective as of January 1, 2009.

Severability

3. If any portion of this bylaw is held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision shall not affect the validity of the remaining portions of this bylaw.

Definitions

4. In this Bylaw:

"Farm" means land classified as farm land under the *Assessment Act*;

"Land Used for Agriculture" means land designated as agricultural land under the *Agricultural Land Commission Act* or any predecessor legislation to that Act;

"Environment Manager" means the person in charge of the City of Kelowna Environment Division, or designate.

"Excluded Pesticide" means a Pesticide listed in Schedule 2 to the Integrated Pest Management Regulation, BC Reg. No. 604/2004.

"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* (Canada); and
- (c) a substance that is classified as a pesticide under the *Integrated Pest Management Act* (British Columbia).

PART 2 - REGULATIONS

Prohibition

- 5. Except as permitted in this Bylaw, no person may apply or otherwise use a Pesticide on a parcel or part of a parcel used for residential purposes, for the purpose of maintaining outdoor trees, shrubs, flowers, other ornamental plants or turf, or for the purpose of controlling unwanted insects or plant growth. In this section “maintaining” includes controlling, suppressing or eradicating a Pest.
- 6. Section 5 does not apply to the application of a Pesticide that is:
 - (a) an Excluded Pesticide;
 - (b) applied for the management of Pests that transmit human diseases or constitute a danger to people or that may impact agricultural or forestry uses by virtue of the location of the Pest in relation to the location of Land Used for Agriculture or land used for forestry uses;
 - (c) applied to a building, or inside a building or greenhouse, or to the residential area of a Farm;
 - (d) applied to fruit or vegetable gardens;
 - (e) applied to a public or private swimming pool;
 - (f) applied to land owned or held by the City of Kelowna for public purposes;
 - (g) applied on Land Used for Agriculture or a Farm, or land used for forestry, highway or transit facilities, public utility corridors or pipelines; or
 - (h) applied to control a noxious weed or noxious insect designated by bylaw of the City of Kelowna.

Application for Exemption

7. A person may apply to the City of Kelowna's Environment Manager for an exemption from section 5, in the form prescribed for that purpose by the Environment Manager, and for that purpose the Environment Manager may prescribe different forms for different classes of applicants.
8. The Environment Manager:
 - (a) shall grant an annual exemption under section 8 where the application is made, for the exemption for that calendar year, by a person certified, or by a person on behalf of a licensed company which employs person(s) certified, pursuant to the *Integrated Pest Management Act* (British Columbia) and the Integrated Pest Management Regulation, BC Reg No. 604/2004, to use the Pesticide, and is for application of a Pesticide as part of the activity of a business which applies Pesticides; and
 - (b) shall grant an exemption under section 8 where the application is made by a person for the purpose of application of the Pesticide on a property where the following conditions have been met:
 1. Existence of a pest infestation has been verified by Environment Manager
 2. Confirmation that non-pesticide treatment(s) have been undertaken.
9. When granting an exemption under section 8(b), the Environment Manager may impose one or more conditions relating to:
 - (a) the species of Pest to which the Pesticide may be applied;
 - (b) the Pesticide that is allowed to be applied;
 - (c) the area of land on which the Pesticide may be applied; and
 - (d) an application prescription that outlines information such as the frequency and the period of time in which the Pesticide may be applied.
10. A person who has obtained an exemption to use a Pesticide pursuant to section 8 must provide notice of the use of the Pesticide in accordance with sections 11 and 12.

11. Written notice must be posted on the land on which the Pesticide will be used and must comply with the following requirements:

- (a) the notice must contain:
 - (i) a description of the treatment area;
 - (ii) the name of the targeted pest;
 - (iii) the registration number under the Pest Control Products Act of the pesticide to be used and its active ingredient;
 - (iv) the date and start time of the pesticide use;
 - (v) precautions, including a statement that indicates the period of time following treatment during which people should not enter the treated area and any additional precautions needed to minimize exposure to pesticides or residues;
 - (vi) the name of licensee and licence number (for Section 8(a)); and
 - (vii) a phone number at which the licensee or an employee can be reached for more information about the pesticide use (for Section 8(a)).

- (b) the notice must have the following characteristics:
 - (i) be at least 550 cm² in size;
 - (ii) be constructed of water resistant material;
 - (iii) use type or letters that are clearly legible to a person approaching the treatment area;
 - (iv) contain a cautionary symbol, like a stop sign or a raised hand, that will draw the attention of a person approaching the treatment area; and
 - (v) display, in bold, block letters, the words "NOTICE OF PESTICIDE USE" or, in place of the word "pesticide", the word "insecticide", "heribicide" or another category of pesticide;

- (c) if the treatment area is fenced the notices must be posted at each gate or opening that provides access to the area;

- (d) if the treatment area is not fenced the notices must be posted at intervals around or along the area as necessary so that a notice is clearly visible and will provide notice of the Pesticide use to any person approaching the area;

- (e) the notice must not be removed for at least 48 hours after the Pesticide use;

and

- (f) where the exemption has been granted pursuant to subsection 8(b) the notice must include the following phrase: "Permission to undertake this activity was obtained from the City of Kelowna. Further details may be viewed at www.kelowna.ca or obtained by calling _____" with the insertion of the telephone number supplied by the Environment Manager when granting the exemption.

Commercial Pesticide Notification Registry

12. A licenced company must provide verbal notice by telephone or in person:

- (a) to persons in occupation of property that is abutting the land where the Pesticide will be used, so long as the residents have provided the City of Kelowna with a contact telephone number for the purpose of receiving such notice as part of the Commercial Pesticide Notification Registry; and
- (b) to the application of the Pesticide, either on the same day as the application or the day before the application, depending on the time frame requested by the residents when providing the City with the contact telephone number.

In this section, "property that is abutting" includes property that is separated by a lane or public pathway.

PART 3 - OFFENCE AND PENALTY

- 13. A person commits an offence who violates a provision of this Bylaw, or who consents, allows or permits an act or thing to be done in violation of a provision of this Bylaw, or who neglects to or refrains from doing anything required to be done by a provision of this Bylaw.
- 14. A person is guilty of a separate offence each day that a violation occurs or continues to exist.
- 15. A person who commits an offence is liable upon summary conviction to a minimum fine of \$500.00 and a maximum fine of \$10,000.00.

Read a first, second and third time by the Municipal Council this 17th day of March, 2008.

Adopted by the Municipal Council of the City of Kelowna this 31st day of March, 2008.

"Sharon Shepherd"

Mayor

"Allison Flack"

City Clerk