

BY-LAW NUMBER

2014-141

OF THE

CORPORATION OF THE CITY OF KITCHENER

(Being a by-law to with respect to
prevention and control of termites)

WHEREAS it is deemed expedient to repeal Chapter 689 of The City of Kitchener Municipal Code as adopted by By-law 88-100 and to replace it with this by-law;

NOW THEREFORE the Council of the Corporation of the City of Kitchener enacts as follows:

Definitions

1. In this by-law:

"approved mulch" means the following mulch or soil amendment materials: 100% bark mulch, cocoa shell mulch, decorative landscape stone or gravel, pine bark nuggets, Rubberific mulch (redwood), peat moss, coffee bean husk, or Original soil block (coconut husk).

"City" means The Corporation of the City of Kitchener.

"Council" means the Council of the City.

"direct contact with the soil" shall include a situation where a wooden or cellulose object has been kept or stored in contact with another wooden or cellulose object in direct contact with the soil.

"kept" shall mean left outside at a property for periods exceeding 72 hours.

"non-approved mulch" means mulch or soil amendment materials other than approved mulch.

"Officer" means a building inspector for the City or the City's Chief Building Official.

"Order" shall mean an Order issued pursuant to section 5 or 6 of this by-law.

"Owner" includes:

- (a) any registered owner of the property;
- (b) the person, for the time being, managing or receiving the rent of the property or premises in connection with which the word is used whether on the person's own

account or as an agent or trustee of any other person or who would so receive the rent if such property and premises were let; and

- (c) a lessee or occupant of the property who, under the terms of a lease, is required to repair and maintain the property in accordance with the standards for the maintenance and occupancy of the property.

"Termite Prevention Area" means an area identified by an Officer as being within 150 metres of a Termite Control Area.

"Termite Control Area" means an area identified by an Officer as having a known population of termites.

Duties of Owner

2. Where termites or evidence of termite activity or infestation are present on a property, or when a property is within a Termite Control Area, every owner shall ensure that buildings and structures thereon are adequately protected from termite infestation by taking the following measures:

- (a) rendering each building or structure containing wood components resistant to termites by treatment of the soil adjacent thereto by a licensed pest or termite exterminator unless such buildings or structures are built in accordance with termite and decay protection regulations under the Building Code or have been adequately chemically treated to deter termites to the satisfaction of an Officer;
- (b) removing any infested material, dead tree, stump, non-approved mulch, or other wooden or cellulose material not being part of a building or structure and being or having been kept or stored outside in direct contact with the soil and having it destroyed by delivery to a sanitary landfill or by such other means as may be permitted by an Officer;
- (c) ensuring that no infested material, dead tree, stump, non-approved mulch, or other wooden or cellulose material not being part of a building or structure and being or having been kept or stored outside in direct contact with the soil or any structure containing wooden components be removed or transported from the property without permission of the officer, except to a sanitary landfill; and
- (d) repairing any building or structure that has been damaged by termites by removing and destroying all infested material and replacing the same with sound material.

3. Where a property is within a Termite Prevention Area every owner shall ensure that the following requirements are met:

- a) that any infested material, dead tree, stump, non-approved mulch, or other wooden or cellulose material not being part of a building or structure and being or having been kept or stored outside in direct contact with the soil be removed and destroyed by delivery to a sanitary landfill or by such other means as may be permitted by an officer; and

- b) that no infested material, dead tree, stump, non-approved mulch, or other wooden or cellulose material not being part of a building or structure and being or having been kept or stored outside in direct contact with the soil or any structure containing wooden components be removed or transported from the property without permission of the officer, except to a sanitary landfill.
4. No person shall interfere with or remove a trap or device set up by an agent, representative, or Officer of the City to monitor termite populations.

Orders

5. An Officer upon observation of termites on a property, observation of evidence of termite activity on property, or within a Termite Control Area, if satisfied the requirements of section 2 have not been met, may make a written Order requiring any of the following:
- (a) that any building or structure containing wood components be rendered resistant to termites by treatment of the soil adjacent thereto by a licensed pest or termite exterminator in such manner or by such means as is specified in the Order unless such building or structure is built in accordance with termite and decay protection regulations under the Building Code or has been adequately chemically treated to deter termites to the satisfaction of an Officer;
 - (b) that any infested material, dead tree, stump, non-approved mulch, or other wooden or cellulose material not being part of a building or structure and being or having been kept or stored outside in direct contact with the soil be removed and destroyed by delivery to a sanitary landfill or by such other means as may be permitted by an Officer;
 - (c) that no wooden or cellulose material that has been used or stored outside, infested material, soil, plant, tree, approved mulch, non-approved mulch, or structure containing wood components be removed or transported from the property without written permission of an Officer except to a sanitary landfill; and/or
 - (d) that any building or structure that has been damaged by termites be repaired by removing and destroying all infested material and replacing the same with sound material.
6. An Officer who is satisfied that the requirements of section 3 have not been met within a Termite Prevention Area may make a written Order requiring any of the following:
- (a) any infested material, dead tree, stump, non-approved mulch, or other wooden or cellulose material not being part of a building or structure and being or having been kept in direct contact with the soil be removed and destroyed by delivery to a sanitary landfill or by such other means as may be permitted by an Officer; and/or
 - (b) that no wooden or cellulose material that has been used or stored outside, infested material, soil, plant, tree, approved mulch, non-approved mulch, or structure

containing wood components be removed or transported from the property without written permission of an Officer except to a sanitary landfill.

7. An Order shall set out reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which it occurred.
8. An Order shall set out the date by which there must be compliance with the Order and the time for compliance with an Order shall be at least 30 days after giving such Order.
9. An Order shall be sufficiently served by any of the following methods:
 - a) personally;
 - b) by registered mail sent to the last known address of the person(s) to whom the Order is made or to that person(s)' agent for service; or
 - c) by posting it on what appears to be the primary entrance of the impacted property and by sending it by regular mail to the last known address of the person(s) to whom the Order is made or to that person(s)' agent for service.
10. If an Order is served by registered mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom the Order is given or that person's agent for service establishes that, acting in good faith, through absence, accident, illness or other unintentional cause the Order was not received until a later date.

Remedial Action

11. If a person fails to comply with an Order by the date specified therein, the City may cause the Order to be complied with at that person's expense.
12. The City may recover the costs of compliance with an Order from the person(s) directed or required to comply with that Order by action or by adding the costs to the tax roll for the property that is the subject of the Order and collecting them in the same manner as property taxes.

Powers of Entry and Inspection Powers

13. An agent, representative or an Officer of the City may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether this by-law or an Order made under this or any former by-law of the City with respect to termites is being complied with.
14. For the purposes of an inspection pursuant to this by-law, an agent, representative, or officer of the City may:
 - (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect documents or things relevant to the inspection;

- (c) require information from any person concerning a matter related to the inspection;
and
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examination or take tests, samples, or photographs necessary for the purposes of the inspection.

15. An agent, representative, or Officer of the City may enter land to set up, monitor, or remove a trap or device for monitoring termite populations. The agent, representative, or Officer of the City shall, where possible, accommodate reasonable preferences of the Owner with respect to placement of any such trap or device and shall give notice of the location of the trap or device to the Owner.

16. An agent, representative, or Officer of the City may enter land at any reasonable time for the purpose of effecting compliance with an Order that has not been complied with by the deadline specified therein.

17. Notwithstanding sections 13-16, inspections of a room or place actually being used as a dwelling unit shall comply with the requirements of the *Municipal Act, 2001*.

Offences and Penalties

18. Every person who contravenes any provision of this by-law or who contravenes an Order is guilty of an offence and is liable, upon conviction, to a fine for each offence, not exceeding:

- (a) on a first offence under this by-law, five thousand dollars (\$5,000);
- (b) on a second offence under this by-law, ten thousand dollars (\$10,000); and
- (c) on a third or subsequent offence under this by-law, twenty five thousand dollars (\$25,000).

19. The fine amounts in section 18 above are exclusive of costs and are recoverable under the Provincial Offences Act, R.S.O., 1990, c. P.33.

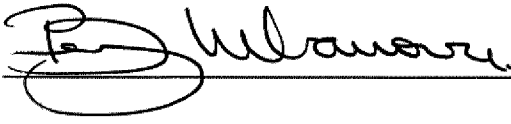
Administrative Provisions

20. This by-law shall be known as the "Termite Prevention and Control By-law".

21. It is hereby declared that each and every of the foregoing sections of this by-law is severable and that, if any provisions of this by-law should for any reason be declared invalid by any Court, it is the intention and desire of Council that each and every of the then remaining provisions hereof shall remain in full force and effect.

22. By-laws 89-111 and 91-191 and the contents of Chapter 689 are hereby repealed as of December 15, 2014 and this by-law comes into force and effect on December 15, 2014.

PASSED at the Council Chambers in the City of Kitchener this 15th day
of December, A.D. 2014.



Mayor



Clerk

