

City of Markham Ontario



By-law 2025-XX

A By-law to regulate the use, alteration, and Occupancy of Highways
within the City of Markham.

~~(Consolidated for convenience only to January 1, 2024)~~

(Schedule/Attachment Included)

~~Schedule A Updated January 2019
By Law 2023-165 December 13, 2023~~



By-Law 2025-XX

To amend By-law 2018-109 a By-law to regulate the use, alteration, and Occupancy of Highways within the City of Markham

WHEREAS Section 8(1) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, hereinafter the ("Municipal Act, 2001") provides that the powers of a municipality under any Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues;

AND WHEREAS Section 9 of the Municipal Act, 2001, provides that a municipality has the capacity, rights, powers and privileges of a natural Person for the purpose of exercising its authority under the Municipal Act;

AND WHEREAS Section 11 (3) 1 of the Municipal Act, 2001, provides that a municipality may pass by-laws within the following spheres of jurisdiction: Highways, including parking and traffic on Highways;

AND WHEREAS Section 391(1) of the Municipal Act, 2001, provides that a municipality may pass by-laws imposing fees or charges on any Person for services or activities provided by the municipality or done on behalf of it;

AND WHEREAS Section 436 (1) of the Municipal Act, 2001, provides that a municipality may pass by-laws providing for the entry onto land at any reasonable time for the purpose of carrying out an inspection to determine compliance with a by-law;

AND WHEREAS section 429 (1) of the Municipal Act, 2001, provides that a municipality may establish a system of fines for a by-law passed under the Act;

AND WHEREAS section 434.1 of the Municipal Act, 2001 Act provides that a municipality may require a Person to pay an administrative penalty if the municipality is satisfied that a Person has failed to comply with a by-law of the municipality passed under the Municipal Act.

AND WHEREAS section 444 of the Municipal Act, 2001, provides that a municipality may make an order to require a Person to discontinue contravening a by-law and to do the work required to correct the contravention;

AND WHEREAS section 445 of the Municipal, 2001 provides that a municipality may make an order requiring the Person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention;

AND WHEREAS section 446 of the Municipal Act, 2001, provides that a municipality may proceed to do things at a Person's expense which that Person is otherwise required to do under a by-law but has failed to do and the costs incurred by a municipality may be recovered by adding the costs to the tax roll and collecting them in the same manner as taxes;

~~AND WHEREAS The Council of The Corporation of the City of Markham desires to repeal and replace By laws 2013 136 as amended, with an updated Road Occupancy By law.~~

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF MARKHAM ENACTS AS FOLLOWS:

1.0 SHORT TITLE

1.1 This By-law shall be known as the “Road Occupancy By-law

2.0 DEFINITIONS

2.1 In this By-law:

~~**Boulevard** means the portion of the *highway* between a property line and the edge of the curb, or where there is no curb, that portion of the *highway* which is travelled or designed to be travelled by motor vehicles.~~

Boulevard means the portion of the highway located between the property line and the curb. Where there is no curb, it refers to the area between the property line and the edge of the roadway designed for motor vehicles. This area may include features such as sidewalks, Multi-Use Paths (MUPs), and cycle tracks.

Boulevard Patio means a designated area within a *boulevard* or highway associated with an abutting eating establishment where food and drink are offered for sale and/or consumed, no wider than the width of the eating establishment’s storefront.

Banner means a temporary sign made from cloth, plastic or a similar lightweight non-rigid material that is suspended on or along a Highway or suspended from a rigid arm fixed to a light pole.

City means The Corporation of the City of Markham.

Construction means anything done in the erection, installation, extension or material alteration, demolition, or repairs of a building or structure, utility or surface, grading of property and includes the installation of building units fabricated or moved from elsewhere and installation of an in-ground/on-ground swimming pool including the installation of a hot tub, above ground-pool or landscaping.

Contractor means any person alone or with others undertaking *construction* on a property or a highway.

“**Damage**” means harm or injury to the street, including without limitation, harm, injury, disturbance, cracking, gouging, rutting or displacement of or to the pavement, curb, boulevard, landscaping, retaining walls, street furniture or sidewalk resulting from the use of the street to access work such that, in the sole opinion of the Director, the street is not in its pre-construction condition.

(Amended by By-Law 2023-165)

Device means camera, publication dispensing box, traffic measuring equipment, environmental monitoring instrument, or other appurtenances and ancillary facility as determined by the director.

Director means the Director of Operations for the *City* or designate.

Donation Bin ~~shall~~ mean any receptacle used for the purpose of collecting donated items, including but not limited to clothing, appliances, and toys.

Dumpster Bin mean any large outdoor receptacle used for the purpose of collection and temporary storage of waste or recyclable contents of any type.

Drive way means a define stable surface that provides access for motor vehicles from

a street, a private street or a lane to a private garage, carport, parking pad or parking space on a lot containing residential uses, including the portion of the driveway upon a boulevard, which is referred to as the Driveway Apron.

Emergency means an unforeseen situation or an impending situation where immediate action must be taken to preserve the environment, public health, safety or an essential service.

Encroachment means any device, equipment, structure, object, banner, fence, construction material or landscaping placed or installed on, over, along, across, under or in a boulevard or highway, or any portion thereof by a person without the City's Road Occupancy Permit, but excluding any permitted device, equipment, structure, object, banner, fence or landscaping installed and maintained by the City.

~~**Highway** includes a common and public highway, street, avenue, parkway, lane, driveway, square, place, bridge, viaduct or trestle, including the area between the lateral property lines thereof and includes unopened and unassumed road allowances.~~

Highway includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.

Landscape or Construction Material includes gravel, soil, sod, bricks, and paving stones, landscaping rocks, decorative features, structures, wooden planks and boards or any other materials, machineries, motorized equipment and trailers used in implementation of landscaping or construction.

Landscaping includes trees, shrubs, flowers, grass or other horticultural elements, decorative stonework, interlocking, screening, irrigation system, snow melting system, light post or other landscape-architectural elements or combination of these, all of which are designed to enhance the visual amenity of a property and shall not be used for the parking of motor vehicles or outdoor patios.

Municipal Access Agreement means an existing written agreement established between the City and a ~~person~~ **utility company** related to construction and maintenance of utilities infrastructure deemed to be essential under the CRTC, ~~Energy Act~~ or other provincial or federal legislation.

~~**Municipal Law Enforcement Officer (“Officer”)** includes an employee of the City who has been appointed by Council to enforce the provisions of City by-laws **Notice of Obstruction** includes an order issued under this by-law.~~

Municipal Law Enforcement Officer (“MLEO”) means any officers employed by the City in the appropriate business unit or department and appointed pursuant to the Community Safety and Policing Act, 2019, s. 55, Provincial Offences Act R.S.O. 1990, c.P.33, and Bylaw 2018-74.

Multi-Use Path (MUP) means a path with multiple users of different types including pedestrians, bicycles, and similar user types.

Notice of Obstruction includes an Order issued under this by-law.

Obstruct(ion) includes encumber, damage, encroachment, foul, or alteration.

Occupant means a lessee, tenant, mortgagee in possession or any other *person* who appears to have care and control of any property.

Officer means:

- (a) A Municipal Law Enforcement Officer of the City or other person(s) appointed by or under the authority of a City by-law to enforce City by-laws; or
- (b) A Municipal Police Officer (York Regional Police), Ontario Provincial Police or the Royal Canadian Mounted Police.

Order includes notice, work order, order to comply, and notice of obstruction.

Over-Dimensional Vehicle means any combination of vehicle and load having a width, length, height or weight in excess of limits provided for in the Highway Traffic Act or in contravention to By-law 2012-53 Spring Load Restrictions on Town Roads and By-law-2012-54 Year-Round Load Restriction on Town Roads.

Owner means a person having any right, title, interest or equity in land or property, or any such person's authorized representative or agent.

~~Person includes a corporation and its directors, officers and designates unless the context otherwise requires.~~

Person includes an individual, a sole proprietorship, a business entity, a corporation, a non-profit corporation, a registered charity, and their respective heirs, executors, administrators, assigns, or other appointed representatives.

Publication means a newspaper or other similar printed document which is published at regular intervals.

Publication Dispensing Device- Box means a container placed, installed, used or maintained for the dispensing of a single publication to the public either for financial consideration or free of charge.

~~**Publication Dispensing Unit** means a single container placed, installed, used or maintained for the dispensing of two or more publications of the same or different publishers to the public, either for financial consideration or free of charge.~~

~~**Road Occupancy Permit ("Permit")** includes a *road occupancy permit* and any other *permit* as required to undertake work on a *highway*.~~

Road Occupancy Permit ("Permit") means a permit required for the temporary use or occupation of any portion of the highway or boulevard, or for undertaking any type of work on a highway or boulevard. This permit is inclusive of Curb Modification Permit, Culvert Modification Permit and Excess Load Permit.

Road Closure means temporary full closure of a highway for an approved duration.

Street Furniture includes benches, garbage containers, hand rails, tables, signs, posts, lighting infrastructure or any other above ground appurtenance that is owned and used for public purpose.

Winter Maintenance Season means the period of time annually between November 1 and April 15.

3.0 GENERAL PROVISIONS

3.1 No Person shall alter, *obstruct, damage*, or engage in any activities which may result in the alteration, *obstruction, encroachment* or *damage* of any *highway* without first having obtained a *Road Occupancy Permit*;

3.2 "No person shall undertake construction on land abutting ~~on~~ to a highway which may affect the drainage of the highway, or require alteration of street furniture without first having obtained a Road Occupancy Permit;"
(Amended by By-Law 2023-165)

3.3 No Person shall fail to comply with a *Notice of Obstruction* or an Order issued pursuant to this by-law;

3.4 Without limiting the generality of subsection 3.1, no *person* shall alter, *obstruct* or *damage*, or cause or permit the use, alteration, *obstruction, encroachment* or *damage* of any *highway* by any of the following:

3.4.1 the depositing, throwing, spilling or tracking or cause or permit the depositing, throwing, spilling or tracking of any material, waste or soil

onto any *highway*;

- 3.4.2 the depositing of snow or ice on travelled portion of the *highway* or onto a *boulevard* not contiguous with the property from the snow was moved from;
- 3.4.3 the placement of any snow or ice, or any materials or equipment, or any structures within 1.2m, in any direction of a fire hydrant;
- 3.4.4 the placement of leaves, grass clippings, and debris from private property to the portions of the *highway* normally used for pedestrian or vehicular traffic;
- 3.4.5 the landscaping or altering of the grade on any *boulevard* without having first obtained a *Road Occupancy Permit*, pursuant to this by-law;
- 3.4.6 the parking of equipment, motorized equipment other than motorized equipment permitted and licensed under the regulations of the Ministry of Transportation of Ontario, containers, trailers, or any *Landscape or Construction Material* on a *highway* without having obtained a *Road Occupancy Permit*;
- 3.4.7 the cutting, altering, extending, in any manner whatsoever of a portion of highway, boulevard, concrete curb, driveway open or contained culvert, culvert overpass, or similar structure or landscape without having obtained a *Road Occupancy Permit*;
- 3.4.8 the allowance of a crane boom or any portion of a stationary tower crane to travel over, hoist, or otherwise occupy the space above a *highway* or any part thereof without having obtained a *Road Occupancy Permit*;
- 3.4.9 “the excavation, ~~or~~ damage or encroachment to any portion of a highway, including sod, street furniture, light poles, street signs, or other objects within the highway without having obtained a Road Occupancy Permit;”
- (Amended by By-Law 2023-165)
- 3.4.10 the placement of donation bins, dumpster bins, landscape or construction material, moving containers, device and banner on a *highway*;
- 3.4.11 the placing or depositing of sporting equipment, including but not limited to basketball nets, hockey nets, skateboard ramps and bicycle ramps, children’s play structures on a *highway*;
- 3.4.12 Place, ~~or~~ move, alter any *street furniture* or affix device(s) on any street furniture on a highway without having obtained a *Road Occupancy Permit*;
- 3.4.13 allow the discharge of irrigation systems onto a sidewalk or the travelled portion of a *highway*;
- 3.5.4.14 No person shall use ~~or~~ or occupy a *highway* for the purpose of the sale, or offering to sale, of any goods and services, without having obtained a *Road Occupancy Permit*;
- 3.5.4.15 No person shall use or occupy a *highway* for the purposes of the sale of event tickets.
- 3.4.16 Enter an area within a highway or a portion of highway that has been closed to the public for construction, maintenance, emergency or other similar purposes;
- 3.4.17 move or remove a barricade, street sign, traffic sign or traffic control

devices, within a highway.

4.0 USE OF A BOULEVARD

4.1 No person shall in relation to a *boulevard*:

4.1.1 create or establish vehicle or trailer access to a property across a *boulevard* without approval of the *Director or his or her designate*;

4.1.2 modify the curb, construct or widen a driveway apron crossing the *boulevard* at width greater than the allowable depressed curb ~~cut~~ at the road edge and greater than the width of the driveway, as permitted under the applicable Comprehensive Zoning By-law and Curb cut Modification Standard Policy;

4.1.3 modify the ditch or culvert and construct or widen a driveway apron crossing the culvert and ditch to a width greater than the existing culvert, as permitted under the Culvert/Ditch Modification Policy;

4.1.4 item 4.1.2 and 4.1.3 above shall apply to driveways on rural roads with ditches, with the driveway width determined at the ditch centreline;

4.1.5 construct a raised curb or similar obstruction within 45cm of a sidewalk, Multiple Use Path (MUP) and cycle track;

4.1.6 construct, install, or place any fence, post, light post, irrigation components, snow melting equipment, rock(s), and decorative retaining wall, landscaping or modify on a boulevard sod to different material or enhance driveway apron surface material on a boulevard to a non-standard material that are not permitted and approved by the City;

~~4.1.6 construct, install, or place any snow melting system/equipment on a boulevard without first obtaining an encroachment agreement with the City;~~

4.1.7 erect or maintain, without permission of the *City*, any projections of any kind beyond the main wall of buildings, if such projections will encroach upon a *highway* and without restricting the generality of the foregoing, projections include air conditioners, cornices, eaves, awnings, containers, awning covers, sills, brackets and other similar obstructions extending beyond the main walls of a building.

4.2 No Person shall fail to comply with provisions as set out in By-law 2024-50 Keep Markham Beautiful (Maintenance).

Section 5.0 to 5.4 (BOULEVARD TREES) repealed by By-law 2023-164.

(Amended by By-Law 2023-165)

6.0 BOULEVARD PATIOS

6.1 No person shall in relation to a Boulevard Patio:

6.1.1 place, permit, install, operate or maintain a Boulevard Patio on a highway without having obtained a Road Occupancy Permit pursuant to this by-law and related policies;

6.1.2 place, permit, install, operate or maintain on a highway within the City a Boulevard Patio at a location that is not approved by the Director or installed in a manner that is not in conformity with the requirements established by the Director;

6.1.3 place, permit, install, operate or maintain on a highway within the City a Boulevard Patio that is not in conformity with the

Comprehensive Zoning by-law or the size, dimension and other technical or physical requirements established by the Director;

- 6.1.4 place, permit, install, operate or maintain on a highway within the City a Boulevard Patio that is not maintained in accordance with the maintenance requirements established by the Director;
 - 6.1.5 place, permit, install, operate on a highway within the City a Boulevard Patio in contravention of the terms and conditions of the Road Occupancy Permit and requirements established by the Director;
 - 6.1.6 place, permit, install, operate or maintain on a highway within the City a Boulevard Patio prior to April 4th- 15th each year and use or maintain a Boulevard Patio past October 31st each year;
 - 6.1.7 place, permit, install or allow the encroachment of any furniture, umbrella, post or any other equipment within a Boulevard Patio past the approved barriers or the area of encroachment as established by the Director;
- 6.2 A Boulevard Patio may be removed from a highway by the City in accordance with by-law provisions where:
- 6.2.1 the placement, installation and maintenance of a Boulevard Patio does not comply with all requirements, terms and conditions contained in a Road Occupancy Permit, this by-law, Comprehensive Zoning by-law, Ontario Traffic Council Patio Guidelines, Ontario Traffic Manual (OTM) Book 7, Accessibility for Ontarians with Disabilities Act (AODA), Ontario Heritage Act or any policy established by the Director regulating Boulevard Patios and a Road Occupancy Permit and the non compliance is not cured by the permit holder within forty-eight (48) hours of the City advising the permit holder of such non-compliance;
- 6.3 The Director may, at the sole expense of the applicant, and in accordance with the Comprehensive Zoning By-law or a policy established by the Director regulating Boulevard Patios, require the temporary relocation of a Boulevard Patio, or suspension or revocation of a permit if such temporary relocation of a Boulevard Permit or suspension or revocation of a Road ~~Occupation~~ Occupancy Permit is necessary for:
- 6.3.1 the interests of pedestrian, cyclist, vehicular or public safety;
 - 6.3.2 to accommodate a special event; or
 - 6.3.3 to accommodate the construction, maintenance or repair of a highway, transit facilities or a public utility or service.

7.0 PLACEMENT OF DEVICES WITHIN HIGHWAY ~~PUBLICATION- DISPENSING DEVICES~~

~~7.1 No person shall place, maintain or operate a public dispensing device or unit without having obtained a road occupancy permit;~~

7.1 No person shall place, affix, maintain, or operate device(s), banner or other ancillary facilities within highway without obtaining a Road Occupancy Permit; except for agencies approved by the City and subject to the discretion of director. The approved agencies are still required to comply with the permit application process.

~~7.2 The placement, maintenance and operation of *publication dispensing devices* shall be in accordance with *Publication Dispensing Box Policy*;~~

7.2 The placement, maintenance and operation of device(s) shall be in accordance with policies established by the director, as amended.

8.0 OVER-DIMENSIONAL VEHICLES

8.1 No *person* shall operate an *over-dimensional vehicle* on any *City highway* without having obtained a *Road Occupancy Permit*.

9.0 REMOVAL OF HIGHWAY OBSTRUCTION

9.1 If an *Officer* determines that an *obstruction* of a *highway* exists, the *Officer* may issue a *Notice of Obstruction* requiring the *owner, occupant* and/or *contractor* of the property from which the *obstruction* comes from, relates to, or was created for, to discontinue causing the *obstruction* and to remove the *obstruction* and repair, as necessary, at the expense of the *owner, occupant* and/or *contractor* so that the *highway* is brought back to its former condition prior to the *obstruction*;

9.2 Where the *Notice of Obstruction* described in subsection 9.1 is not complied with within the time period stipulated therein, the *City* may remove the *obstruction* and repair, as necessary, the *highway* and all the costs incurred by the *City* in undertaking this work shall be ~~expenses~~ owed to the *City* by the *owner, occupant* and/or *contractor* of property from which the *obstruction* comes from, relates to, or was created for.

10.0 REMOVAL OF HAZARDOUS CONDITION

10.1 Where an *Officer* determines that an *obstruction* of a *highway* is, or may create, a hazardous condition to the safety of any *person* using the *highway*, the *Officer* may take any action necessary to have the *obstruction* immediately removed and the *highway* repaired, if necessary, and all the costs incurred by the *City* in undertaking this work shall be ~~expenses~~ owed to the *City* by the *owner, occupant* and/or *contractor* of the property from which the *obstruction* comes from, relates to, or was created for.

11.0 ROAD OCCUPANCY PERMITS- ADMINISTRATION

11.1 A *person* may apply for a *permit* under this by-law if the *person*:

11.1.1 completes an application for the *permit* on the forms as provided by the *Director*;

11.1.2 Submits the application along with the applicable fees and charges as provided for in Schedule ~~‘A’~~ to this by-law By-law2012-137 Licensing, Permit and Service Fees;

11.1.3 Provides any documentation, deposit or security as set out in Schedule ‘B’ to this by-law, or insurance certificates, as required by the *Director* as prerequisites and requirements for the issuance of the *permit*;

11.2 The issuance of a *permit* under this by-law does not relieve any person from the necessity of acquiring any other license or permit or complying with any other applicable laws, by-laws, regulations and requirements of other governmental authority;

11.3 A *permit* is the property of the *City* and is not transferable unless otherwise authorized by the *Director*;

11.4 A *permit* may be terminated at any time under the sole descretion of the *Director*;

11.5 Every applicant shall post with the *City* the required deposit or security, by way of ~~cash, certified cheque, debit card, or~~ letter of credit only, in a form

satisfactory to the *City*. The *City* does not accept payments for deposits or securities by credit card.

12.0 PERMIT CONDITIONS

- 12.1 A *permit* holder shall comply or ensure compliance with all provisions and conditions of the *permit* and this By-law and other related Acts, By-laws and policies;
- 12.2 A permit holder shall provide and maintain a contact phone number and email address that the *Director* or an *Officer* may reach the permit holder at all time;
- 12.3 Failure to comply with any provision or condition of a *permit* or this by-law and related policies may result in the revocation of the *permit* by the *Director*, in addition to any other enforcement proceedings against the *permit* holder as permitted by law;
- 12.4 The *permit* holder of a revoked *permit* shall immediately cease or ensure the immediate cessation of all the activities for which a *permit* has been issued upon revocation of the *permit* under subsection 12.3;
- 12.5 Every Permit holder and every owner and occupier of land shall forthwith rectify damaged conditions on a *highway*, on land or to municipal services and shall reinstate the *highway*, the land and the municipal services, as the case may be, to the satisfaction of the *Director*;
- 12.6 Every Permit holder and every owner and occupier of land shall provide all signs, barricades, traffic control devices, flag persons, paid duty officers and other persons and equipment required by the Director and in accordance with current provincial legislation;
- 12.7 Every Permit Holder shall maintain access to all private and public properties during any *highway* closure and occupancy;
- 12.8 No permit holder, owner or occupier shall fail to seek a time extension of a permit from the director minimum two weeks prior to the permit expiry date as specified in the Road Occupancy Permit. When seeking a time extension of a permit, the permit holder, owner or occupier shall state the reason for the time extension.
- 12.9 When required by the Director, ~~P~~permit holder shall provide a Letter of Credit/ Security Deposit as required in Schedule 'B' to this By-law.
- 12.10 During Winter Maintenance Season, the director at his/her sole discretion may restrict construction activities within highway and/or require special conditions to be satisfied for permitting any type of works on a highway.

13.0 ENFORCEMENT

- 13.1. ~~Municipal Law Enforcement Officers and York Regional Police Officers~~ Officers are hereby authorized and empowered to enforce the provisions of this By-law;
- 13.2 No *person* shall hinder or obstruct, or attempt to hinder or obstruct, any *person* who is exercising a power or performing a duty under this by-law;
- 13.3 ~~Municipal Law Enforcement Officers~~ Officers and *persons* under their direction may at any reasonable time enter onto any lands within the *City* to determine if the provisions of this by-law are being complied with or may enter onto ~~to~~ any lands within the *City* to carry out the remedial actions required to bring the property into conformity with the by-law;
- 13.4 require the production for inspection of documents or things relevant to the

inspection, including the removal of the documents for the purposes of making copies or extracts;

13.5 require information from any person concerning a matter related to the inspection.

14.0 NOTICE OF OBSTRUCTION

14.1 A ~~Municipal Law Enforcement Officer~~ Officer may enter upon any *land* or *property* at any reasonable time with proper identification to determine if the *owner, contractor or permit holder* is complying with the provisions of this by-law and may take photographs of the *property's* and *highway's* condition;

14.2 Where a *highway* is not maintained in accordance with the requirements of this bylaw or a *permit* issued under this by-law:

14.2.1 the *City* may serve the *owner, contractor, or permit holder* a *Notice of Obstruction* in writing directing the *owner, contractor, or permit holder* to bring the *highway* into conformance with the requirements of this by-law;

14.2.2 the *owner, contractor, or permit holder* shall repair, remove or clean up all contraventions identified on the *Notice of Obstruction* within the time period specified.

15.0 NOTICE OF OBSTRUCTION – DELIVERY- WHEN DEEMED SERVED

15.1 The *Notice of Obstruction* from the *City* may be:

15.1.1 served personally upon the *owner, occupier, contractor, or permit holder*;

15.1.2 posted on site; or

15.1.3 mailed by regular mail or sent by email to the last known address of the *owner, occupier, contractor, or permit holder* according to the current assessment rolls;

15.2 If served by regular mail, a *Notice of Obstruction* under subsection 15.1.3. shall be deemed to have been served on the fifth day after mailing.

16.0 DISPOSING OF MATERIAL AND EQUIPMENT

16.1 Any Landscape or Construction Material or encroachment removed by the *City* from a *highway or boulevard* under this By-law may be directly deposited onto the property from which the *obstruction* comes from, relates to, or was created for, or the material may be treated as refuse by the *City* or become property of the *City* which can be disposed of in any manner or used for any *City* purpose;

16.2 Any motorized equipment, containers, trailers, or motorized tools removed by the *City* may, at the discretion of the *Director*, be deposited at the property from which the *obstruction* comes from, relates to, or was created for, or be stored at a *City's* facility for sixty (60) days at the owner's expense;

16.3 Any item in subsection 16.2 shall only be released to its owner after the owner has paid the *City* any applicable expense for the removal and storage of the item;

16.4 Any item in subsection 16.2 that is stored at a *City's* facility for more than sixty (60) days and for which an owner has not been identified may be disposed of by the *City* in any manner that it deems appropriate;

16.5 Any item in subsection 16.2 that is stored at a *City's* facility for more than sixty

(60) days and for which the owner, having been notified, has failed to pay the applicable expenses and claim the item, may be disposed of pursuant to the provisions of the Repair Storage and Liens Act, R.S.O. 1990, c.R.25, as amended.

17.0 EXEMPTIONS

~~17.1 Work occurring within the highway that has been authorized through Municipal Consent by the City through a *Municipal Access Agreements* shall be considered as having obtained a *road occupancy permit*. Persons having obtained such authorization shall abide by all requirements of the *road occupancy by-law* as if a separate road occupancy permit had been granted for construction or maintenance activities occurring on the highway;~~

17.1 Utility work occurring within the highway (but not requiring full road closure) that has been authorized through a Municipal Consent Permit by the City through a Municipal Access Agreements shall be considered as having obtained a Road Occupancy Permit unless Municipal Access Agreement provides otherwise. For works requiring a full road closure, the person shall obtain a separate Road Occupancy Permit for road closure. Persons having obtained such authorization shall abide by all requirements of the road occupancy by-law as if a separate Road Occupancy Permit had been granted for construction or maintenance activities occurring on the highway;

17.2 Inspection, maintenance and repair work within the highway that is undertaken directly by City staff does not require a road occupancy permit. Activities shall however abide by all requirements of this by-law. ~~Exemption does not extend to third party activities undertaken by the City through contracted services;~~

17.3 The City's contractors are obligated to obtain a Road Occupancy Permit. However, the director under this by-law may grant an annual blanket Road Occupancy Permit subject to an annual fee for the City's regular operations and maintenance projects undertaken through the City's contractors.

17.4 A *road occupancy permit* is not required for highways traveling through areas of the municipality not yet assumed by the City provided:

17.4.1 A subdivision is under the direct management and control of a developer or builder where municipal services are not yet provided by the City and;

17.4.2 The roadway has not been adopted as an established route for private or commercial vehicles as determined by the Director;

17.5 Subject to section 17.1 when any utility or their respective agent closes or occupies a *highway* or a portion of a *highway* as a result of an emergency, telephone notice shall be given immediately to the *City* and on the next working day application for a permit as required by this by-law shall be made.

18.0 REBUTTABLE PRESUMPTION

18.1 An Owner or Occupant shall be presumed to have created, caused, allowed, permitted or continued a Road Obstruction that has occurred on the City's property abutting to the Owner or Occupant's Property, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

19.0 FEES AND CHARGES FOR RECOVERY OF COSTS OF ENFORCEMENT

- 19.1 The City may impose a fee or charge upon any Person creating, causing, or permitting a contravention of this By-law where any Person has caused a contravention of the By-law;
- 19.1.1 The amount of said fee or charge shall be the amount of administrative costs, costs of enforcement and all other costs incurred by the City in accordance with City By-law 2012-137, as amended in responding to and addressing contraventions pursuant to this By-law;
- 19.1.2 Fees and charges imposed on a Person pursuant to this By-law constitute a debt of the Person to the City;
- 19.1.3 Where all the Owner(s) of a certain Property are responsible for paying certain fees and charges pursuant to this By-law, the City may add such fees and charges to the tax roll for the Property and collect them in the same manner as municipal taxes;
- ~~19.1.4 Fee schedule may be adjusted annually to reflect changes in the Consumer Price Index;~~
- 19.2 Where the City, its employees or authorized agents have performed the work required for compliance with this by-law, all expenses incurred by the City in doing the work as well as any related fees, shall be deemed to be a debt to the City and may be collected ~~by action or the costs may~~ being added to the tax roll for the property and collected in the same manner as taxes.
- 19.3 The director under this by-law may authorize to waive permit application processing fees and allow fee exemptions for Post Secondary Institutes located in Markham, York Regional Police (YRP), Ontario Provincial Police (OPP), Royal Canadian Mounted Police (RCMP) or government agencies as approved by the director.

20.0 ADMINISTRATIVE PENALTIES

- 20.1 Instead of laying a charge under the *Provincial Offences Act, R.S.O. 1990, c.P.33* for a breach of any provision of this By-law, an Order, a Work Order, or any other order issued pursuant to this By-law, an Officer may issue an Administrative Penalty to the Person who has contravened this By-law;
- 20.2 The Officer has the discretion to either proceed by way of an Administrative Penalty or a charge laid under the *Provincial Offences Act, R.S.O. 1990, c.P.33*. If an Administrative Penalty is issued to a Person for the breach, no charge shall be laid against that same Person for the same breach;
- 20.3 The amount of the Administrative Penalty for a breach of a provision of this By-law, a Work Order or Order issued under this by-law is fixed as set out in ~~By-Law No. 2016-84, A By law to Implement an Administrative Monetary Penalty System for Non Parking Offences, as amended, or any successor by-law~~ 2024-137, as amended, A By-law to establish an Administrative Monetary Penalty System (AMPS) for Contraventions of Designated By-laws in the City of Markham;
- 20.4 A Person who is issued an Administrative Penalty shall be subject to the procedures as provided for in ~~By-Law 2016-84, A By law to Implement an Administrative Monetary Penalty System for Non Parking Offences, as amended,~~ 2024-137, as amended, A By-law to establish an Administrative Monetary Penalty System (AMPS) for Contraventions of Designated By-laws in the City of Markham or any successor by-law.

21.0 OFFENCES

~~21.1 Every person who contravenes any of the provision of this by law or fails to comply with a Notice of Obstruction or an Order issued under this by law or who obstructs or attempts to obstruct an Officer or an employee or agent of the City in carrying out his or her duties under this By law is guilty of an offence and is liable, upon conviction to a maximum fine as established pursuant to the Provincial Offences Act, R.S.O.,1990, c.P.33.~~

21.1 Every person who contravenes any of the provisions of this by-law or fails to comply with a Notice of Obstruction or an order issued under this by-law or who obstructs or attempts to obstruct an officer or an employee or agent of the City in carrying out his or her duties under this By-law is guilty of an offence and is liable to a fine as established pursuant to the Provincial Offences Act, R.S.O., 1990, c.P.33, or committed a contravention and responsible to pay an administrative monetary penalty pursuant to By-Law No. 2024-137, A By-law to establish an Administrative Monetary Penalty System (AMPS) for Contraventions of Designated By-laws in the City of Markham.

22.0 PENALTIES

22.1 Pursuant to Section 429 of the *Municipal Act*, every Person who is guilty of an offence under this By-law shall be subject to the following penalties:

- 22.1.1 Upon a first conviction, to a fine of not less than \$500.00 and not more than \$50,000.00;
- 22.1.2 Upon a second or subsequent conviction for the same offence, to a fine of not less than \$500.00 and not more than \$100,000;
- 22.1.3 Upon conviction for a continuing offence, to a fine of not less than \$100.00 and not more than \$10,000 for each day or part of a day that the offence continues. The total of the daily fines may not exceed \$100,000.00;
- 22.1.4 Upon conviction for a Multiple Offence, for each offence included in the Multiple Offence, to a fine of not less than \$100.00 and not more than \$10,000. The total of all fines for each included offence is not limited to \$100,000;
- 22.1.5 Where a Person convicted of an offence is a corporation, the corporation is liable to a fine not less than \$500.00 and not more than \$100,000.00.

23.0 COLLECTION OF UNPAID FINES

23.1 Pursuant to Subsection 441.1 of the *Municipal Act*, the treasurer of a municipality may add any part of a fine for a commission of a provincial offence that is in default under Section 69 of the *Provincial Offences Act*, R.S.O. 1990, c.P.33 to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the fine, and collect it in the same manner as municipal taxes.

23.2 An Administrative Penalty that is not paid within fifteen (15) days after the day it becomes due and payable constitutes a debt of the person to the City and may be added to the tax roll and collected in the same manner as municipal taxes.

24.0 ADMINISTRATION AND INTERPRETATION

24.1 The *Director* shall be responsible for the administration of this by-law;

24.2 Unless the context otherwise requires, words importing the singular shall include the plural, and words importing the masculine gender shall include the feminine;

24.3 The headings inserted in this by-law are for convenience only;

24.4 ~~“Schedules ‘A’ and ‘B’~~ attached to this by-law shall form part of this by-law.
(Amended by By-Law 2023-165)

25.0 SEVERABILITY

25.1 Notwithstanding that any section or sections of this by-law, or any part, or any part thereof, may be found by any court of law to be invalid or beyond the power of the Council to enact, such clause, Schedule or parts thereof shall be deemed to be severable, and all other clauses and Schedules of this by-law or parts thereof, are separate and independent therefrom and enacted as such.

~~26.0 REPEAL~~

~~25.1 By law 2013-136 as amended, is hereby repealed.~~

27.0 INTERPRETATION

27.1 The provisions of the Legislative Act 2006, shall apply to this by-law.

28.0 FORCE AND EFFECT

~~28.1 This by-law shall come into force and effect on the date of enactment and passage.~~

Read a first, second and third time and passed on June XX, 2025.

"Kimberley Kitteringham"

Kimberley Kitteringham
City Clerk

"Frank Scarpitti"

Frank Scarpitti
Mayor

SCHEDULE 'A' TO BY-LAW 2018-109**ROAD OCCUPANCY FEE DESCRIPTIONS**

FEE ITEM	TERM	CONDITIONS
<i>Road Occupancy</i>		
1. Minor work by resident	Day	5-day maximum i.e. bin, moving-pod or minor landscaping-materials storage on street
2. Road occupancy	Month	1-month minimum rounded to the next whole month
3. Full road closure	Day	In addition to road occupancy fee. Not applied to special events
4. Rush Fee	N/A	If permit required sooner than 5-business days
5. Encroachment on boulevard	m²/month	Where hoarding, covered-walkways or other temporary-structures extend onto public-lands or for areas used to store-materials, equipment or shelters
6. Encroachment on roadways	m²/month	Where the roadway is used to-facilitate activities related to the-development of adjacent lands i.e. loading/staging areas
7. Aerial crane trespass fee	Month	Where fixed crane booms-extend over public lands
8. Construction access	N/A	Crossing boulevard where-vehicular access is not intended-for temporary access to construction site
9. Street signage modification	N/A	Temporary modification of-existing street signage to-accommodate construction-activities. Fee to be the greater of minimum cost or actual costs-incurred
10. Security Deposit (refundable)	N/A	Charged when activities have a-likelihood of damaging public-property or when road-degradation fees will be levied. Based on value of assets at risk
11. Site Inspection (where security-deposit is required)	Up to 2-inspections	To conduct pre and post-inspection surveys where-security deposits are required
12. Special Events (Charity)	N/A	Small community events
13. Special Events (minor)	N/A	Involving local roads only
14. Special Events (major)	N/A	Involving non local roads
<i>Road Surface Degradation</i>		
15. Pavement <2 years old	m²	Penalty for decreasing pavement-service life when activities cut or-bore surfaces or otherwise degrades-surface. Minimum 12m² per-degradation. City of Markham contracts and work done by Power-Stream are exempt
16. Pavement between 2 & 4 years old	m²	
17. Pavement between 4 & 7 years old	m²	
18. Pavement between 7 & 10 years old	m²	
19. Pavement > 10 years old	m²	
<i>Excess Load</i>		

20. Single event	1 month- Maximum	May be multiple loads generated from or arriving at a single destination, within a one month period
21. Annual	Annual	Annual fee to cover activities of a single company

<i>Curb & Culvert Modifications</i>		
22. Curb Modification Application Fee	N/A	Charged per site
23. Curb Cutting (work within 15-business days)	m	Min. 4 m charge
24. Curb Cutting (work within 5 business-days)	m	Min. 4 m charge
25. Curb Infill	m	Min. charge 2 m
26. Concrete sidewalk remove/replace	m ²	Min. charge 4 m ²
27. Asphalt repair	m ²	Min. charge 4 m ²
28. Culvert Modification Application Fee	N/A	Charged when culvert installation is undertaken by applicant
29. Culvert Installation 450mm dia. max	m	Per meter installed, up to 450mm dia. 4m min charge
* Charge to be adjusted annually to reflect tendered prices for contracted services being provided		
<i>Publication Dispensing Boxes</i>		
30. Per box for < 50 placed	Calendar	Annual fee for box placement
31. Per box where > 50 placed	Calendar	Annual fee for box placement
32. Device/location Inspection	New-Application	Cost per location to assess new locations as proposed by applicant
Boulevard Trees (deleted – amended by By-Law 2023-165)		
<i>Boulevard Commercial Patios</i>		
33. New Application	N/A	Fee for initial review of application or in subsequent years when changes to a patio configuration are requested
34. Boulevard Patio Renewal	Calendar	Annual fee to renew a permit that was active in the prior year when no changes to configuration are requested
35. Boulevard Patio Encroachment Fee	Calendar per m ²	Annual fee in addition to permit fee for each m ² of public land occupied by the Patio
<i>Demolition</i>		
36. Demolition Fee	N/A	Operations Fee
37. Security Deposit	N/A	Minimum security deposit as per Item 10 above
<i>Miscellaneous</i>		
38. Banner Installation	N/A	
39. Street Cleaning - Sweeping	Hour	4 Hour Minimum
40. Street Cleaning - Flushing	Hour	4 Hour Minimum
41. Plan creation (discretionary)	Per Document	At the discretion of the Director, where an application is incomplete and it is in the City's interest to proceed with permit issue. Charge for each plan, drawing or document required to fulfil submission requirements

SCHEDULE 'B'TO BY-LAW 2018-109

LETTER OF CREDIT/ SECURITY DEPOSIT

1. Letter of Credit/ Security Deposit

Where activities may result in a deterioration of City assets, an irrevocable Letter of Credit/ Security Deposit in favour of the City shall be issued to cover 120% of the estimated cost for replacement of assets at risk for the anticipated duration of the project or minimum deposits of \$5,000, whichever is higher:

i.	Minor work carried out by residents	\$1,000.00
ii.	Construction duration less than a month	\$5,000.00
iii.	Construction duration over a month	\$10,000.00

- a) The Letter of Credit/ Security must remain in effect for the full duration of the permit. Any Letter of Credit/ Security Deposit and its subsequent renewal forms shall contain a clause stating that the thirty (30) days written notice must be given to the Director prior to its expiry or cancellation; and,
- b) In the event the Director receives notice that a Letter of Credit/ Security Deposit is expiring and will not be renewed, or, if further or additional securities are not provided within the said thirty (30) days, the Director may draw on the current Letter of Credit.

2. Prior to the release or reduction of the Security Deposit, the Permit Holder shall:

- a) Provide a proof satisfactory to the Director that the permitted area has been adequately reinstated in accordance with the requirements of the By-law; and,
- b) Request that the City carry out a final inspection to confirm that all relevant terms of this By-law have been complied with.

Schedules C and D (Deleted – amended by By-Law 2023-165)