



BY-LAW NUMBER 2024-105

ELECTRIC KICK-SCOOTER BY-LAW

A BY-LAW TO REGULATE THE OPERATION AND USE OF ELECTRIC KICK-SCOOTERS IN THE CITY OF MARKHAM

WHEREAS Ontario Regulation 389/19 made under the Highway Traffic Act provides that no person shall operate an Electric Kick-Scooter on a highway, sidewalk, trail, path or walkway or in a public park or exhibition ground under the jurisdiction of a municipality unless such operation is permitted by and in accordance with a municipal by-law;

AND WHEREAS it is the desire of The Corporation of the City of Markham to permit persons to operate Electric Kick-Scooters within the City of Markham on a pilot project basis within the geographical boundaries set out in Schedule “A” and on the terms and conditions as set out in this By-law;

AND WHEREAS section 434.1 of the Municipal 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 434.2(1) of the Municipal Act provides that an administrative penalty imposed by a municipality on a person constitutes a debt of the person to the municipality; and,

NOW THEREFORE the Council of The Corporation of the City of Markham enacts as follows:

DEFINITIONS

1. In this by-law:

“Bicycle Lane” means those parts of the Highway set aside by the City for the use of cyclists and designated by Official Sign or pavement markings;

“Electric Kick-Scooter” means a vehicle that meets the requirements set out in the Highway Traffic Act and Ontario Regulation 389/19, as amended, including that it has:

- a. two wheels placed along the same longitudinal axis, one placed at the front of the kick-scooter and one at the rear,
- b. a platform for standing between the two wheels,
- c. a steering handlebar that acts directly on the steerable wheel,
- d. an electric motor not exceeding 500 watts that provides a maximum speed of 24 kilometres per hour, and
- e. a maximum weight of 45 kilograms (kg) and wheels with a diameter of not more than 430 millimetres (mm);

“Electric Kick-Scooter Parking Facilities” include ring and post racks, ring racks, charging stations, corrals that support Electric Kick-Scooters in an upright position or enable the frame to be secured, or an area designated by pavement marking, marked mat, or Official Sign for parking of Electric Kick-Scooters, but do not include light standards, utility poles, sign posts, fences, street furniture, or similar infrastructure within the City right-of-way;

“City” means the Corporation of the City of Markham or the geographic area as the context requires;

“City Property” means all Highways, Sidewalks, rights-of-way, trails, paths, walkways, parks, exhibition grounds or multi-use pathway trails, or other property within the jurisdiction of the City;

“Furniture Zone” means the portion of a Sidewalk that buffers Pedestrians from the adjacent Highway or Roadway and where elements such as trees, street lights, hydrants, parking meters, or street furniture are typically located;

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

“Highway Traffic Act” means the Ontario Highway Traffic Act, RSO 1990, c H.8 as amended;

“Municipal Act” means the Municipal Act, 2001, SO 2001, c 25, as amended or replaced;

“Municipal Law Enforcement Officer” means an employee of the City who has been appointed by By-law to enforce the provisions of City By-laws;

“Officer” means a Person designated by the City for the enforcement of this By-law and includes but is not limited to a Municipal Law Enforcement Officer employed by the City, Provincial Offences Officer, an Ontario Provincial Police Officer, a York Regional Police Officer, or any other Person authorized by the City to enforce or perform inspections pursuant to this By-law;

“Official Sign” means a sign on the Highway approved by the Ministry of Transportation of Ontario;

“Ontario Regulation 389/19” means the Ontario Regulation 389/19: Pilot Project – Electric Kick-Scooters under the Highway Traffic Act, as amended or replaced;

“Pedestrian” means,

1. a Person on foot;
2. a Person in a wheelchair; or
3. a child in a carriage, stroller or play vehicle;

“Person” includes an individual, a corporation, partnership, proprietorship or other form of business association and their heirs, executors, administrators, successors and assigns, or other legal representatives;

“Roadway” means that part of the Highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the Shoulder, and, where a Highway includes two or more separate roadways, the term “Roadway” refers to any one roadway separately and not to all of the roadways collectively;

“Shoulder” means that part of the Highway immediately adjacent to the Roadway and having a surface which has been improved for the use of Vehicles with asphalt, concrete or gravel;

“Sidewalk” means that portion of a highway between the curb lines, or the lateral lines of a Roadway and the adjacent property line, intended for the use of pedestrians;

“Vehicle” includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine, bicycle, Electric Kick-Scooter, and any vehicle drawn, propelled or driven by any kind of power, including muscular power;

APPLICATION OF BY-LAW

2. This by-law applies to all Highways, Sidewalks, trails, paths, walkways, parks, multi-use pathway trails or any other property under the jurisdiction of the City that are located within the geographical boundaries set out in Schedule "A".

BY-LAW SUBJECT TO THE HIGHWAY TRAFFIC ACT

3. The provisions of this by-law are subject to the provisions of the Highway Traffic Act and Regulations under that Act.
4. No Person shall operate, or cause to be operated, or use an Electric Kick-Scooter on a Highway, Sidewalk, trail, path, walkway, park, multi-use pathway trail or other City Property, unless:
 - a. permitted by and in accordance with the provisions of the Highway Traffic Act and Ontario Regulation 389/19, as amended or replaced;
 - b. permitted by and in accordance with the provisions of the City of Markham's Lane Designation By-law 2018-130, as amended, and the Traffic By-law 106-71, as amended; and
 - c. permitted by and in accordance with the provisions of this by-law.

WHERE ELECTRIC KICK-SCOOTER MAY BE OPERATED

5. Subject to sections 6 and 7 below, no person shall operate, or cause to be operated, or use an Electric Kick-Scooter anywhere but on:
 - a) A Bicycle Lane
 - b) The Shoulder of a Highway with a posted legal speed limit of 50 kilometers per hour or less if the Highway has no Bicycle Lane; or
 - c) The Roadway of a Highway with a posted legal speed limit of 50 kilometers per hour or less if the Highway has no Bicycle Lane or Shoulder.
6. Where a Bicycle Lane is provided on a Highway, an Electric Kick-Scooter shall only be operated in the Bicycle Lane unless prohibited by an Official Sign.
7. Where Bicycle Lanes are not provided or where the operation of Electric Kick-Scooters are prohibited by Official Sign from operating in a Bicycle Lane on a Highway with a posted legal speed limit of 50 kilometers per hour or less, an Electric Kick-Scooter shall only be operated:
 - a. if there is a Shoulder on the Highway, on the Shoulder as close to the right edge of the Shoulder as possible or
 - b. if there is no Shoulder on the Highway, on the right side of the Roadway as close to the edge of the Roadway or to the curb as possible.
8. No Person shall operate, or cause to be operated, or use an Electric Kick-Scooter:
 - a) on a Sidewalk,
 - b) anywhere where cycling, skateboarding or rollerblading is prohibited,
 - c) on or in any section of a Highway, Bicycle Lane, Roadway or Shoulder that is closed for maintenance, construction or emergency reasons, or
 - d) on City Property located outside of the geographical boundaries set out in Schedule "A".

GENERAL RULES RE OPERATION

9. No Person shall operate, or cause to be operated, or use an Electric Kick-Scooter while under the influence of drugs or alcohol.

10. No Person shall operate or cause to be operated, leave, or park an Electric Kick-Scooter on private property without the consent of the owner or the occupant of such property.
11. No Person under the age of 16 years shall operate an Electric Kick-Scooter.
12. No Person under the age of 18 years old shall fail to wear a helmet that complies with the Highway Traffic Act when operating an Electric Kick-Scooter.
13. No Person operating an Electric Kick-Scooter shall carry any other Person thereon.
14. No Person operating an Electric Kick-Scooter shall tow another Person, Vehicle or device.
15. No Person operating an Electric Kick-Scooter shall attach himself or herself to another Electric Kick-Scooter, Vehicle or device for the purpose of being drawn or towed.
16. No Person operating an Electric Kick-Scooter shall operate it in any position other than while standing at all times.
17. No Person operating an Electric Kick-Scooter shall carry cargo on an Electric Kick-Scooter.
18. No Person shall park or leave an Electric Kick-Scooter or permit an Electric Kick-Scooter to remain parked or left on City Property, except where Electric Kick-Scooter Parking Facilities are provided, or where parking is permitted within the Furniture Zone.
19. No Person shall park or leave an Electric Kick-Scooter or permit an Electric Kick-Scooter to remain parked or left within a Furniture Zone, unless the Furniture Zone is located within a Sidewalk that is at least (2) meters wide.
20. No Person shall park, stop, or leave an Electric Kick-Scooter or permit an Electric Kick-Scooter to remain parked, stopped, or left on a Highway, Sidewalk, trail, path, walkway, park, multi-use pathway trail or other City Property in such a manner that obstructs the flow of Pedestrian, vehicular or cyclist traffic.

SAFE OPERATION

21. The operator of an Electric Kick-Scooter shall keep a safe distance from Pedestrians and other users of the Bicycle Lane, Shoulder, or Roadway at all times and shall give way to a Pedestrian or bicycle by slowing or stopping, as necessary, where there is insufficient space for the Pedestrian or bicycle and the Electric Kick-Scooter to pass.
22. The rider of an Electric Kick-Scooter shall not drive at a speed that is markedly greater than the speed of the Pedestrians who are proximate to the Electric Kick-Scooter.
23. The rider of an Electric Kick-Scooter shall ensure the Electric Kick-Scooter is equipped with a bell or horn which shall be kept in good working order and sounded whenever it is reasonably necessary to notify cyclists, Pedestrians or others of its approach.
24. When operated at any time from one-half hour before sunset to one-half hour after sunrise and at any other time when, due to insufficient light or unfavourable atmospheric conditions, Persons and Vehicles are not clearly discernible at a distance of 150 metres or less, every operator of an Electric Kick-Scooter shall carry a lighted lamp displaying a white or amber light at the front and a lighted lamp displaying a red light at the rear. The lamps may be attached to the Electric Kick-Scooter or may be carried or worn by the operator on his or her Person.

25. No Person shall operate or use an Electric Kick-Scooter in such a manner that it may harm, injure or damage, either directly or indirectly, any Person or property.

REMOVAL AND IMPOUNDING OF ELECTRIC KICK-SCOOTER

26. The City may remove or cause to be removed any Electric Kick-Scooter placed, left, deposited or stopped on City Property in contravention of the provisions of this by-law and may impound such Electric Kick-Scooter.
27. Upon the impoundment of any Electric Kick-Scooter, the City shall provide written notice to the owner, if identified, by means of electronic transmission, regular mail or notice delivered to the owner to indicate that the owner's Electric Kick-Scooter has been impounded and setting out a reasonable period of time for the owner to retrieve the Electric Kick-Scooter at the storage facility.
28. A storage fee as set out in Schedule "B" shall apply to every Electric Kick-Scooter impounded and stored pursuant to this by-law, and such fee shall become due and payable by the owner on the date the Electric Kick-Scooter is impounded.
29. The City shall release or cause to be released an Electric Kick-Scooter to its owner or the owner's agent upon presentation by the owner or the owner's agent of satisfactory identification and full payment of the storage fee set out in Schedule "B".
30. If an Electric Kick-Scooter has been impounded for at least 60 days and its owner cannot be identified by the City, the City may dispose of the Electric Kick-Scooter.
31. If notice has been provided to an owner and the Electric Kick-Scooter remains unclaimed by the owner for at least 60 days, the City may dispose of the Electric Kick-Scooter pursuant to the Repair and Storage Liens Act, RSO 1990, c. R.25, as amended.

OFFENCES AND PENALTIES

32. No Person shall hinder or obstruct, or attempt to hinder or obstruct, an Officer who is exercising a power or performing a duty under this By-law.
33. Every Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.
34. 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:
- a) Upon a first conviction, to a fine of not less than \$300.00 and not more than \$100,000.00, except that a special fine may exceed \$100,000.00;
 - b) Upon conviction for a continuing offence, to a fine of not less than \$100.00 and not more than \$10,000.00 for each day or part of a day that the offence continues. The total of the daily fines may exceed \$100,000.00.
 - c) Upon a second or subsequent conviction for the same offence, or conviction for a multiple offence, to a fine of not less than \$400.00 and not more than \$10,000.00. The total of the daily fines may exceed \$100,000.00.

- d) Where a Person convicted of an offence is a corporation, the corporation is liable to a fine not less than \$500.00 and not exceeding \$100,000.00.
35. When a Person has been convicted of an offence under this by-law, the Ontario Court of Justice and any court of competent jurisdiction thereafter may, in addition to any penalty imposed on the Person convicted, issue an order:
- a. prohibiting the continuation or repetition of the offence by the Person convicted; and
 - b. requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

ENFORCEMENT

36. The provisions of this By-law may be enforced by an Officer.
37. An Officer who has reasonable grounds to believe that a Person has contravened any provision of this By-law may require that Person to provide their identification to the Officer.
38. Every Person who is required by an Officer to provide identification shall identify themselves to the Officer. Giving their correct name, date of birth, and address shall constitute sufficient identification. Failure to provide sufficient identification shall constitute obstruction of the Officer as set out in this By-law.

ADMINISTRATIVE PENALTIES

39. Instead of laying a charge under the Provincial Offences Act for a breach of any provision of this By-law, an Officer may issue an Administrative Penalty to the Person who has contravened this By-law.
40. The Officer has the discretion to either proceed by way of an Administrative Penalty or a charge laid under the Provincial Offences Act. 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.
41. The amount of the Administrative Penalty for a breach of a provision of this By-law, is fixed as set out in the City's Administrative Monetary Penalty By-law, as amended.
42. A Person who is issued an Administrative Penalty shall be subject to the procedures as provided for in the City's Administrative Monetary Penalty By-law, as amended.
43. Any fees, charges and administrative costs associated with this By-law are non-refundable and are set out in the Fee By-law.

SEVERABILITY

44. If any provision or part of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect

EFFECTIVE DATE

45. This by-law shall come into force and take effect on the date this by-law is passed by Council and shall be repealed on the revocation of Ontario Regulation 389/19.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 29th DAY OF MAY, 2024.

KIMBERLY KITTERINGHAM
CITY CLERK

FRANK SCARPITTI
MAYOR

Schedule A: Geographical Boundaries of Pilot Project

The area inside of the outer boundaries of Highway 7 to the north (excluding Highway 7) and Highway 407 to the south (excluding Highway 407), and between Warden Avenue to the west (excluding Warden Avenue) and Kennedy Road to the east (excluding Kennedy Road).

Schedule B: Storage Fee

1. Fee for: removal of an Electric Kick-Scooter from a Highway, Sidewalk, other City Property, or private property if an abandoned Electric Kick-Scooter is left on private property and the property owner requests the City to remove it; impoundment and storage; administration and management of notices, retrievals; and enforcement.
2. \$100 for each Electric Kick-Scooter