



## By-law 2018-77

### Being a By-law to Address In-fill Construction Activities

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WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended (the “*Municipal Act*”), provides that a municipal power shall be exercised by by-law; and,

WHEREAS section 8 of the *Municipal Act* provides that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable it to govern its affairs as it considers appropriate, and to enhance the municipality’s ability to respond to municipal issues; and,

WHEREAS section 9 of the *Municipal Act* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act; and,

WHEREAS clause 11(2)6 of the *Municipal Act* provides that a lower tier municipality may pass by-laws respecting health, safety and well-being of persons; and,

WHEREAS section 128 of the *Municipal Act* provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances; and,

WHEREAS section 391 of the *Municipal Act* provides that a municipality may impose fees or charges on persons for services or activities provided or done by or on behalf of it; and,

WHEREAS subsection 398(1) of the *Municipal Act* provides that fees and charges imposed by a municipality on a person constitute a debt of the person to the municipality; and;

WHEREAS section 425 of the *Municipal Act* provides that a municipality may pass by-laws providing that a person who contravenes any by-law of the municipality is guilty of an offence; and,

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

WHEREAS section 435 of the *Municipal Act* provides for conditions governing the powers of entry of a municipality; and,

WHEREAS section 436 of the *Municipal Act* provides that a municipality has the power to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine compliance with a by-law; and,

WHEREAS section 441.1 provides that upon the request of a municipality that has entered into a transfer agreement under Part X of the *Provincial Offences Act*, the treasurer of a local 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* 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; and,

WHEREAS section 444 of the *Municipal Act* provides that a municipality may make an order requiring a person who contravened a by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity; and,

WHEREAS section 445 of the *Municipal Act* 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* provides that where a municipality has authority to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed to or required to do it, the matter or thing may be done at the person's expense, and further provides that the costs and interest calculated at a rate of 15% and be added to the tax roll and collected in the same manner as municipal taxes; and,

WHEREAS in the opinion of Council, enforcement options beyond those available in existing by-laws are necessary to address the negative impacts of in-fill construction activities in neighborhoods that cause but are not limited to, dust, noise, waste material, health and fire hazards and further,

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

## **1.0 DEFINITIONS**

**“Building”** means any structure consisting of a roof supported by walls or columns that is used or intended to be used for the shelter, accommodation or enclosure of persons, animals, goods, chattels or equipment;

**“City”** means The Corporation of the City of Markham;

**"Construction"** includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, land clearing, earth moving, grading, excavating, trenching, digging, boring, drilling, blasting or concreting, the installation of machinery or plants, and any work or undertaking in connection with a project and includes but not limited to new home construction, home renovations and landscaping;

**"Construction Equipment"** includes any equipment or device designed and intended for use in Construction, or material handling, including but not limited to, air compressors, pile drivers, pneumatic or hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, scrapers, pavers, generators, off highway haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders, or other material handling equipment;

**“Construction Information Sign”** means a sign approved by the Manager of By-law and Regulatory Services which includes the provisions and prohibitions of this By-law;

**“Construction Site”** means a Property where there is Construction;

**“Dust”** means any airborne particulate matter;

**“Highway”** includes a common and public highway, highway, avenue, parkway, driveway, laneway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles or persons, and includes the area between the lateral property lines thereof, including sidewalks and boulevards, and Highways shall have a corresponding meaning;

**“Infill Construction”** means demolition, construction or work on a property including but not limited to, new home construction, additions and landscaping where a Building Permit may or may not be required.

**“Multiple Offence”** means an offence in respect of two or more acts or omissions, each of which separately constitutes an offence and is a contravention of the same provision of the By-law;

**“Municipality”** means the land within the geographic limit of the City;

**"Noise"** means a Sound that exceeds the level and/or quality set out in the quantitative provisions of this By-law;

**“Nuisance Caused by Dust”** means any dust that is of such persistence or volume that it is a detriment to the use or enjoyment of Property;

**“Officer”** includes 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, 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;

**“Owner”** means the registered owner of the Property, and includes but is not limited to any owner in trust, a mortgagee in possession, a Person who is managing or receiving the rent of the Property, a tenant, lessee or a person who is an occupier or in control of the Property, and includes a firm, partnership, corporation, company, association, or organization of any kind and its directors, officers and principal(s);

**“Order”** includes Notice, Work Order, Order to Comply and Order to Discontinue;

**“Person”** means an individual, association, organization, partnership, corporation, and includes an Owner;

**"Point of Reception"** means any location on a noise-sensitive land use where Noise from a Stationary Source is received. Noise-sensitive land use may have one or more points of reception;

**“Property”** means a Building or part of a Building, and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences and fixtures thereon whether heretofore or hereafter erected, and includes vacant Property;

**“Road Occupancy Permit”** means a Road Occupancy Permit and any other permit as required to undertake work on a highway;

**"Stationary Source"** means a source of sound, which does not normally move from place to place and includes Construction Equipment;

**"Sound"** means the A- Weighted sound pressure level reported in dBA;

**"Waste Material"** means any garbage, refuse, debris, litter, and yard waste and without limiting the generality of the foregoing, includes garbage, junk, tin cans, old or decayed lumber, discarded or inoperable machinery including automobiles and parts, furniture, household fixtures and construction materials;

**"Work Order"** means an order issued under this By-law to a Person who contravened the By-law or who caused or permit a contravention, or to the Owner of the Property where the contravention occurred, requiring the Person or Owner to do work to correct the contravention.

## **2.0 GENERAL PROVISIONS**

2.1 Every Person for whom this By-law applies shall erect and maintain a Construction Information Sign as provided by the City in a location approved by the Manager of By-law and Regulatory Services

## **3.0 PROHIBITIONS**

3.1 No Person shall emit, cause, or permit the emission of Sound resulting from:

- (a) any act listed in Schedule A - Prohibitions by Time and Place, if clearly audible at a Point of Reception;
- (b) a Stationary Source such that the level of resultant Sound is clearly audible at a Point of Reception located in a Residential Area.

3.2 No Person shall cause or permit a Nuisance Caused by Dust.

3.3 Section 3.2 of the Bylaw does not apply to a Nuisance Caused by Dust created by the following activities:

- (a) any normal farm practice as determined pursuant to the Farming and *Food Production Protection Act, 1998, S.O. 1999, C. 1*, or
- (b) emergency work carried on by the City or any other level of government.

3.4 No Person shall cause or permit a condition on a Property that creates or might create a health, fire or accident hazard.

3.5 No Person shall cause or permit the excessive accumulation of Waste Materials on a Construction Site.

3.6 No Person shall cause or permit the alteration, obstruction, damage, or engage in any activities which may result in the alteration, obstruction or damage of any Highway without first having obtained a Road Occupancy Permit.

3.7 No Person shall fail to comply with a Work Order or an Order issued pursuant to this By-law.

3.8 Without limiting the generality of subsection 3.7 no Person shall alter, obstruct or damage, cause or permit the use, alteration, obstruction or damage of any Highway by any of the following:

- (a) the depositing, throwing, spilling or tracking or cause to permit the depositing, throwing, spilling or tracking of any material, waste or soil onto any Highway.
- (b) the stacking or piling any materials or equipment, or any structures within 1.2 m, in any direction of a fire hydrant.
- (c) 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;
- (d) the excavation or damage to any portion of a Highway, including sod, boulevard trees, light poles, street signs or other objects within the Highway without having obtained a Road Occupancy Permit.

3.9 No Person shall remove or cause to be remove any tree protection identified by the City in a tree protection plan or other related document or direction.

3.10 No Person shall fail to erect or maintain a Construction Information sign.

#### **4.0 ORDER TO DISCONTINUE ACTIVITY**

4.1 An Officer may issue an Order requiring any Person to discontinue the contravention.

An Order under this section shall identify:

- (a) the location of the Property on which the contravention occurred;
- (b) the reasonable particulars of the contravention of the By-law; and,
- (c) the date and time by which there must be compliance with the Order.

4.2 An Order under this section may be given orally or in writing, and if in writing, may be served personally on the Person to whom it is directed or sent by regular mail to the last known address of that Person. Service on a corporation can also be effected by regular mail to the corporate mailing address as shown on the Corporation Profile Report filed with the Ontario Ministry of Government Services for a Provincial Corporation, or on a Federal Corporate Search for a Federal Corporation, or on the assessment roll records of the City. If the Order is delivered by regular mail to the last known address of that Person, it shall be deemed to have been received on the third day after it is mailed. An Affidavit of Service shall be admissible in evidence in any proceeding as proof of service of mailing of the Order.

#### **5.0 POWERS OF ENTRY AND INSPECTION**

5.1 Officers and persons acting under their direction may, at any reasonable time, or at any time when a contravention is occurring or alleged to be occurring, enter onto any Property to determine if the provisions of this By-law are being complied with and may enter onto any Property to carry out any remedial actions required to bring the Property into conformity with the By-law.

5.2 Officers are authorized, for the purposes of inspection to determine compliance with the By-law, to:

- (a) require any Person to produce for inspection all documents or things relevant to the inspection. Officers may remove documents for the purposes of making copies or extracts;
- (b) alone or in conjunction with a person possessing special or expert knowledge, make examinations, take tests, samples, audio recordings, video recordings, or photographs necessary for the purposes of inspection; and,
- (c) require information from any Person concerning a matter related to the inspection.

## **6.0 WORK ORDERS**

- 6.1 If the City is satisfied that a contravention of this By-law has occurred, the City may issue a Work 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 the work to correct the contravention.
- 6.2 A Work Order shall set out:
- (a) the reasonable particulars of the contravention adequate to identify the contravention and the location of the Property on which the contravention occurred; and
  - (b) the work to be done and the date by which the work must be done.
- 6.3 If the work required to be done under a Work Order is not done by the Person directed or required to do it, the City may do the work at the Person's expense.
- 6.4 The City may enter upon the land at any reasonable time to do the work pursuant to subsection 6.3 above.
- 6.5 The City may recover the costs of doing the work pursuant to subsection 6.3 above by adding the costs to the tax roll and collecting them in the same manner as property taxes.
- 6.6 The costs recoverable by the City pursuant to subsection 6.5 above include interest calculated at a rate of 15 percent or such lesser rate as may be determined by the City, calculated for the period commencing on the day the City incurs the costs and ending on the date the costs, including interest are paid in full.
- 6.7 The amount of costs, including interest, constitutes a lien on the land upon the registration in the land registry office of a notice of lien.
- 6.8 The lien is in respect of all costs that are payable at the time the notice is registered plus interest at a rate of up to 15 percent to the date the payment is made.
- 6.9 A Work Order may be served personally on the Person to whom it is directed or sent by regular mail to the last known address of that Person. Service on a corporation can also be effected by regular mail to the corporate mailing address as shown on the Corporation Profile Report filed with the Ministry of Government Services for a Provincial Corporation, or on a Federal Corporate Search for a Federal Corporation, or on the assessment roll records of the City. If the Order is delivered by regular mail to the last known address of that Person, it shall be deemed to have been received on the third day after it is mailed. An Affidavit of Service shall be admissible in evidence in any proceeding as proof of service of mailing of the Order.

## **7.0 FEES AND CHARGES FOR RECOVERY OF COSTS OF ENFORCEMENT**

- 7.1 The City may impose a fee or charge upon any Person creating, causing, or permitting the contravention against an Owner of a Property where the contravention occurs, where the Owner has caused or permitted the contravention.
- 7.2 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 the construction activity pursuant to this By-law.
- 7.3 Fees and charges imposed on a Person pursuant to this By-law constitute a debt of the Person to the City.
- 7.4 Where all the Owners of the Property are responsible for paying 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.

## **8.0 ENFORCEMENT**

- 8.1 The provisions of this By-law may be enforced by an Officer.
- 8.2 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.
- 8.3 Every Person who is required by an Officer to provide identification under section 8.2 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 section 8.2 of this By-law.

## **9.0 OFFENCES**

- 9.1 Any Person who contravenes or fails to comply with any provision of this By-law or an Order or a Work Order issued pursuant this By-law is guilty of an offence.
- 9.2 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.
- 9.3 No Person shall fail to comply with any condition or term of any Order or a Work Order issued under this By-law. If there is a contravention of any provision of this By-law, and the contravention has not been corrected, the contravention of the provision shall be deemed to be a continuing offence for each day or part of a day that the contravention remains uncorrected.

## **10.0 REBUTTABLE PRESUMPTION**

- 10.1 An Owner shall be presumed to have created, caused, allowed, permitted or continued the contravention that has occurred on the Owner's Property, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

## **11.0 ADMINISTRATIVE PENALTIES**

- 11.1 Instead of laying a charge under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended, for a breach of any provision of this By-law, an Order or a Work Order issued pursuant this By-law, an Officer may issue an administrative penalty to the Person who has contravened this By-law.
- 11.2 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.
- 11.3 The amount of the administrative penalty for a breach of a provision of this By-law, a Work Order, or an 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.
- 11.4 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, or any successor by-law.
- 11.5 An administrative penalty imposed on a Person pursuant to this By-law that is not paid within 15 days after the day it becomes due and payable, constitutes a debt of the Person to the City and may be added to a municipal tax roll and collected in the same manner as municipal taxes.

## **12.0 PENALTIES**

- 12.1 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 \$400 and not more than \$50,000.
  - b) Upon a second or subsequent conviction for the same offence, to a fine of not less than \$500 and not more than \$100,000.
  - c) Upon conviction for a continuing offence, to a fine of not less than \$100 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.
  - d) Upon conviction for a Multiple Offence, for each offence included in the Multiple Offence, to a fine of not less than \$100 and not more than \$10,000. The total of all fines for each included offence is not limited to \$100,000.
- 12.2 Where a Person convicted of an offence is a corporation, the corporation is liable to a fine not less than \$500 and not more than \$100,000.

## **13.0 COLLECTION OF UNPAID FINES**

- 13.1 Where a fine is in default, the City may proceed with civil enforcement against the Person upon whom the fine has been imposed, pursuant to the *Provincial Offences Act*.



- 13.2 The City may make a request to the treasurer of a local municipality to add any part of a fine that is in default 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.

**14.0 SEVERABILITY**

- 14.1 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.

**15.0 CONTINUATION, REPETITION PROHIBITED BY ORDER**

- 15.1 The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the Person convicted, and such order shall be in addition to any other penalty imposed on the Person convicted.

**16.0 INTERPRETATION**

- 16.1 The provisions of Part VI of the *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F shall apply to this By-law.


**17.0 SHORT TITLE OF BY-LAW**


- 17.1 This By-law may be referred to as the “By-law to Address In-fill Construction Activities”.

**18.0 FORCE AND EFFECT**

- 18.1 This By-law shall come into force and effect on the day it is passed.

Read a first, second and third time and passed this 26<sup>th</sup> day of June, 2018.

  
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Kimberley Kitteringham  
City Clerk

  
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Frank Scarpitti  
Mayor

**SCHEDULE “A”**

**PROHIBITIONS BY TIME AND PLACE**

Noise Source	Prohibited Times
Loading, unloading, delivering, packing, unpacking, or otherwise handling any containers, products, materials, or refuse, whatsoever, unless necessary for the maintenance of essential services or the moving of private household effects.	All day Sundays & Statutory Holidays 7:00 PM one day to 7:00 AM the next day
The operation of any equipment in connection with construction.	All day Sundays & Statutory Holidays 7:00 PM one day to 7:00 AM the next day (Friday from 7:00 PM to 9:00 AM Saturday and after 5 PM on Saturday)