



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* 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 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, 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 Patio means a designated area within a boulevard 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.

Boulevard Tree means a woody perennial usually having one dominant trunk and a mature height greater than 5m, located on a highway and includes any tree having a portion of trunk or trunk flare located within the highway as measured at the grade line.

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, trees including *root zone*, 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.

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.

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.

Landscape or Construction Material includes gravel, soil, sod, bricks, and paving stones, landscaping rocks, wooden planks and boards or any other materials used in implementation of landscaping or construction.

Municipal Access Agreement means an existing written agreement established between the City and a *person* related to construction and maintenance of utilities 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.

Obstruct(ion) includes encumber, damage, 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.

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.

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

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

Publication Dispensing Device 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*.

Root Zone means the layer of soil where roots exist and typically extends beyond the drip line of the tree and subject to delineation by a qualified arborist.

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

3.0 GENERAL PROVISIONS

3.1 No Person shall alter, *obstruct*, *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*;

3.2 No *person* shall undertake *construction* on land abutting on a *highway* which may affect the drainage of the highway, require alteration of street furniture or impact a *boulevard tree* or *root zone* without first having obtained a *Road Occupancy Permit*;

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* 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 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 concrete curb, 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 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*;
- 3.4.10 the placement of donation bins on a *highway*;
- 3.4.11 the placing or depositing of sporting equipment, including but not limited to basketball nets, skateboard ramps and bicycle ramps, on a *highway*;
- 3.4.12 place or move 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*;
- 3.5.14 No person shall use 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*;
- 3.5.15 No person shall use or occupy a *highway* for the purposes of the sale of event tickets.

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 construct a driveway apron crossing the *boulevard* at width greater than the curb cut at the road edge and greater than the width of the driveway,

as permitted under the applicable zoning by-law or Curb Cut Standard Policy;

- 4.1.3 item 4.1.2 above shall apply to driveways on rural roads with ditches, with the driveway width determined at the ditch centreline;
- 4.1.4 construct a raised curb or similar obstruction within 45mm of a sidewalk;
- 4.1.5 construct, install, or place any fence, post, light post, irrigation components, rock(s), and decorative wall on a *boulevard*;
- 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.

5.0 BOULEVARD TREES

5.1 No person, in relation to *boulevard trees*, shall:

- 5.1.1 Engage in construction, excavate, alter grades, store materials or traverse by mechanical equipment directly under the canopy of a *boulevard tree* or within the area of the *root zone*;
 - 5.1.2 Where any activity as per item 5.1.1 above is undertaken adjacent to or in close proximity of a *boulevard tree*, regardless of whether the activity is undertaken on private or public lands, installation of Tree Protection Fencing, as per detail T-1, Schedule 'D' is required. Failure to install Tree Protection Fencing prior to the start of activities may result in the tree being designated as *damaged* and require compensation as per item 25 in Schedule 'A';
 - 5.1.3 plant, maintain or alter a *boulevard tree*;
 - 5.1.4 alter adjacent grades to create or allow conditions that result in prolonged standing water under a *boulevard tree*;
 - 5.1.5 hang or secure an object or allow injury by a domestic animal;
 - 5.1.6 remove or prune without having obtained a *Road Occupancy Permit*, pursuant to this by-law;
- 5.2 The costs of remedying any contravention of subsection 5.1 shall be at the expense of the person(s) causing the contravention and may be recovered in accordance with Schedule 'A';
- 5.3 The *City* may trim or remove any trees, hedges, plants or bushes planted on the *boulevard* and may trim the branches or remove any trees, hedges, plants or bushes planted on private property, that extend onto the *highway* and is deemed by the *Director* to create an unacceptable risk;
- 5.4 The *City* may plant, at the *City's* expense and with the consent of the owner of the lands, shade or ornamental trees on private property within 2.5m of a

highway, the property owner is responsible for the maintenance, repair, and removal of the trees.

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;
- 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 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 1st 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 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 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 of revocation of a Road Occupation Permit is necessary for:

- 6.3.1 the interests of pedestrian, 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 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;
- 7.2 The placement, maintenance and operation of *publication dispensing devices* shall be in accordance with Publication Dispensing Box Policy;

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; and,
- 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, 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;
- 12.2 A permit holder shall provide and maintain a contact phone number 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 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, 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 When required by the Director Permit holder shall provide a Letter of Credit/ Security Deposit as required in Schedule 'B' to this By-law.

13.0 ENFORCEMENT

- 13.1. *Municipal Law Enforcement Officers and York Regional Police 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* 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 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* 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, 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, 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 removed by the *City* from a *highway* 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* 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* 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* 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;
- 17.2 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 A *road occupancy permit* is not required for highways traveling through areas of the municipality not yet assumed by the City provided:
- 17.3.1 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;
- 17.3.2 The roadway has not been adopted as an established route for private or commercial vehicles as determined by the Director;
- 17.4 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 property abutting 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 Owners of 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 be added to the tax roll for the property and collected in the same manner as taxes.

20.0 ADMINISTRATIVE PENALTIES

20.1 Instead of laying a charge under the *Provincial Offences Act* for a breach of any provision of this By-law, an Order, a Work Order, or any other order issued pursuant 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*. 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;

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, 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.

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* 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.

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', 'B', 'C' and 'D' attached to this by-law shall form part of this by-law.

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

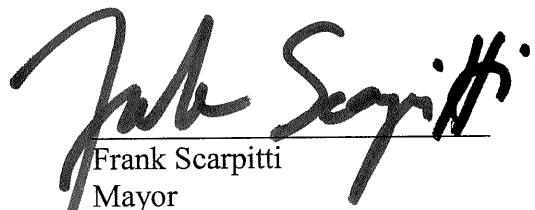
27.1 The provisions of the Legislative Act 2006, shall apply to this by-law.

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 26, 2018.



Kimberley Kitteringham
City Clerk

Frank Scarpitti
Mayor

SCHEDULE ‘A’ TO BY-LAW 2018-109
ROAD OCCUPANCY FEES

#	Description	Fee	Conditions
1	Minor work by resident	\$60	5 day maximum i.e. bin, moving pod or minor landscaping materials storage on street
2	Road occupancy	\$150/mth	1 month minimum rounded to the next whole month
3	Full road closure	\$75/day	In addition to Road Occupancy fee. Not applied to Special events
4	Rush Fee	\$75	If permit required sooner than 5 business days.
5	Encroachment on boulevard	\$2.50/m2/mth	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	\$15/m2/mth	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	\$550/mth	Where fixed crane booms extend over public lands
8	Construction access fee	\$150	Crossing boulevard where vehicular access is not intended for temporary access to construction site
9	Street signage modification	\$650 min.	Temporary modification of existing street signage to accommodate construction activities. Fee to be the greater of minimum cost or actual costs incurred
10	Excess Load (single occurrence)	\$250	May be multiple loads generated from or arriving at a single destination, within a one month period
11	Excess Load (annual)	\$1,500	Annual fee to cover activities of a single company
12	Security Deposit (refundable)	\$1,000 min	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
13	Road Degradation Fee		Penalty for decreasing pavement service life when activities cut or bore surfaces or otherwise degrades surface. Minimum 12m ² per degradation. City of Markham contracts and work done by Power Stream are exempt
		\$42/m ²	Road surfaces < 2 years old
		\$34/m ²	Road surfaces between 2 & 4 years old
		\$25/m ²	Road surfaces between 4 & 7 years old
		\$17/m ²	Road surfaces between 7 & 10 years old
		\$9/m ²	Road surfaces > 10 years old
14	Curb Modification Application Fee	\$150	Charged per site
15	Curb Cutting (work within 15 business days)	\$50/m*	Min. 4 m charge
16	Curb Cutting (work within 5 business days)	\$100/m*	Min. 4 m charge
17	Curb Infill	\$165/m*	Min. charge 2 m
18	Concrete sidewalk remove/replace	\$170/m ² *	Min. charge 4 m ²
29	Asphalt repair	\$55/m ² *	Min. charge 4 m ²
20	Culvert Modification Application Fee	\$250	Charged when culvert installation is undertaken by applicant.
21	Culvert Installation	\$170	Per meter installed, up to 450mm dia.
22	Publication Dispensing Device Permit	\$55/\$110	\$55 for first fifty (50) devices or units and \$110 per devise or unit thereafter
23	Publication Dispensing Device Inspection Fee	\$35/location \$250 min.	Cost per location to assess new locations as proposed by applicant.
24	Boulevard Tree Removal Application Fee	\$150	Application fee in addition to tree replacement costs as per item 25 below.

25	Tree replacement compensation	\$600 ea. 1-10 \$500 ea. 11-20 \$460 ea. >21	Quantity of replacement trees required to offset tree removal calculated by Progressive Aggregate Caliper Replacement Method (Schedule C)
26	Boulevard Patio- Permit Fee for a new application	\$410	Fee for initial review of application or in subsequent years when changes to a patio configuration are requested
27	Boulevard Patio- Renewal of Permit Fee	\$370	Annual fee to renew a permit that was active in the prior year when no changes to configuration are requested
28	Boulevard Patio- Encroachment Fee	\$35/m ²	Annual fee in addition to permit fee for each m ² of public land occupied by the Patio
29	Demolition Fee	\$250	Operations Fee as per Building By-law, 50% of table 1, section 'C'
30	Demolition Security Deposit	\$2,500	Minimum security deposit as per Item 12 above
31	Banner Installation	\$150	Per banner installed
32	Street Cleaning - Sweeping	\$140/hr*	Min. charge 4 hours
33	Street Cleaning - Flushing	\$120/hr*	Min. charge 4 hours
34	Special Events (Charity)	\$60	Small community events
35	Special Events (minor)	\$150	Involving local roads only
36	Special Events (major)	\$300	Involving non local roads
37	Plan creation (discretionary)	\$150/ document	At the descretion of the Director, where an application is incomplete and it is in the City's interst to proceed with permit issue. Charge for each plan, drawing or document required to fulfil submission requirments.

Notes

* Charges subject to change based on annual City tenders for services provided.

All prices subject to annual Consumer Price Index adjustments.

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, 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.

SCHEDULE ‘C’ TO BY-LAW 2018-109

City Tree Replacement Criteria
Progressive Aggregate Caliper Replacement Method

The following shall apply as a protocol for compensation for any City-owned tree, approved to be removed:

1. Assess existing tree for health and structure using a rating of:
 - Good (75%)
 - Fair (50%)
 - Poor (25%)
2. Use the formula:
 - $dbh \times ((\text{Health condition (\%)} + \text{Structure Condition (\%)})) / 2$
3. The result will show the total required number of centimetres required to be replaced.
4. The total will be divided by 5 for a number of replacement trees. (5cm is the average diameter of 60mm deciduous trees or 200cm tall coniferous trees.)

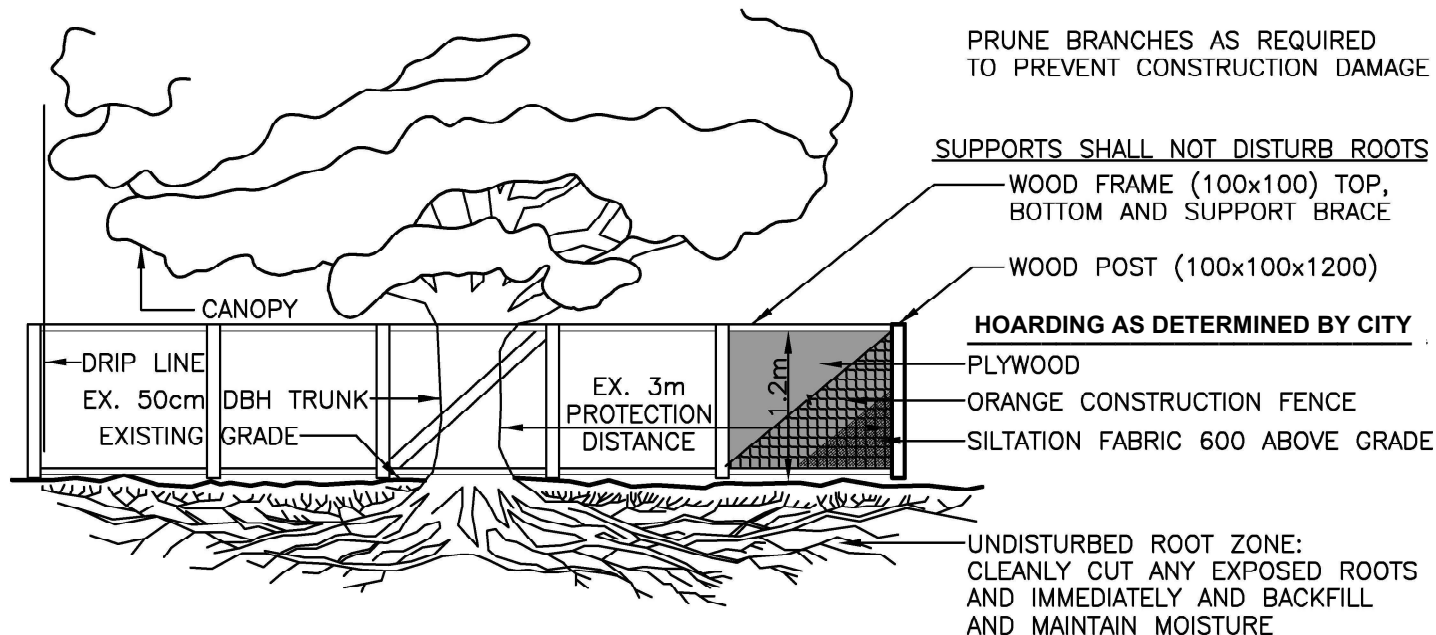
Examples

<p>1. 26cm dbh blue spruce Health – Good</p> <p>Structure – Fair</p> <p>a. $26 \times ((75\% + 50\%) / 2)$ b. $26 \times 62.5\%$ c. $16.25\text{cm} / 5$ d. 3 trees</p> <p>3 x 50-60mm trees will be required for replacement. Round to the nearest increment of 5. Based on \$600/tree, \$1,800 cash in lieu is acceptable.</p>	<p>2. 2 x 120cm dbh willow Health – Fair</p> <p>Structure – Poor</p> <p>a. $240 \times ((50\% + 25\%) / 2)$ b. $240 \times 37.5\%$ c. $90\text{cm} / 5$ d. 18 trees</p> <p>3 x 50-60mm approved trees (\$1,500) are requested to be planted on the property, therefore 15 trees remain at \$500/tree, \$7,500 cash-in-lieu will be required for the difference of the trees not planted.</p>
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Details

- Upon receipt of Road Occupancy Permit, a City approved tree planting contractor can plant the trees (species and locations to be approved by Supervisor of Forestry or designate). Large growing shade trees are preferred. Locates are the responsibility of the contractor.
- Details and Specifications are required to be adhered to and are available through the Supervisor of Forestry.
- Cash-in-lieu for all City-owned trees will be \$600/tree for up to 10 trees per site. 11-20 trees, the fee will be \$500/tree. Over 20 trees, \$460/tree.
- Exemptions will be made on a case by case basis, for trees assessed by a Qualified Tree Risk Assessor (ISA TRAQ, in good standing) rating the tree with a risk rating of High or Extreme and that cannot be reasonably mitigated.
- All removals must be justified and approved by the Supervisor of Forestry or designate prior to acceptance and after all design related possibilities have been exhausted.
- Compensation for naturalized trees will be subject to approval via proposal submitted by a qualified consultant.
- In naturalized areas, for otherwise non-suitable species (i.e. A. negundo, etc.) and significant sized ($\geq 30\text{cm dbh}$), and regardless of condition, a replacement criteria of 1:1 is amenable.

SCHEDULE D TO BY-LAW 2018-109 - TREE PROTECTION DETAIL



MINIMUM TREE PROTECTION DISTANCE FROM TRUNK:

< 10cm DBH	1.2m
10-29cm DBH	1.8m
30-40cm DBH	2.4m
41-50cm DBH	3.0m
51-60cm DBH	3.6m
61-70cm DBH	4.2m
71-80cm DBH	4.8m
81-90cm DBH	5.4m
91-100cm DBH	6.0m
> 100cm DBH	6cm/1cmØ

(DIAMETER AT BREAST HEIGHT) DBH = TRUNK DIAMETER AT 1.4m HEIGHT

40cmx60cm SIGN MOUNTED ON ALL SIDES OF BARRIER



TREE PROTECTION ZONE

NO WORK IS PERMITTED WITHIN THE TREE PROTECTION ZONE INCLUDING GRADING, CONSTRUCTION ACCESS AND MATERIAL STORAGE.

BREACH OF TREE PROTECTION ZONE IS SUBJECT TO A FINE OF \$_____

CONTACT CITY OF MARKHAM FOR MORE INFORMATION: 905-477-5530

TREE PROTECTION NOTES:

1. ALL TREE PROTECTION BARRIERS SHALL BE IN PLACE AND APPROVED BY THE CITY PRIOR TO CONSTRUCTION ACCESS.
2. ALL SUPPORTS AND STAKES SHALL BE OUTSIDE THE TREE PROTECTION ZONE AND SHALL MINIMIZE ROOT DAMAGE.
3. TREE PROTECTION BARRIERS SHALL REMAIN IN PLACE AND IN GOOD CONDITION UNTIL ALL CONSTRUCTION IS COMPLETE AND APPROVED BY THE CITY.
4. ALL ARBORICULTURE WORK SUCH AS PRUNING OF BRANCHES AND ROOTS, SHALL BE DONE BY A QUALIFIED TREE WORKER CERTIFIED WITH THE INTERNATIONAL SOCIETY OF ARBORICULTURE APPROVED BY THE CITY.

TREE PRESERVATION DETAILS



THE CORPORATION OF THE CITY OF MARKHAM

SCALE:

N.T.S.

DATE:

JUNE 2009

DRAWING No.

T-1