



**As amended by By-law 43-2022 and 127-2022
By-law 64-2020
of The Corporation of the City of Oshawa**

Being a By-law to Control Nuisance Dust and Mud

WHEREAS Section 129 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (*"Municipal Act, 2001"*), authorizes a municipality to pass a by-law for regulating dust;

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

1. Short Title

1.1 The short title of this By-law is the "Dust and Mud Control By-law" ("By-law").

2. Interpretation

2.1 In this By-law,

- (a) "City" means the Corporation of the City of Oshawa and includes all areas within its territorial limits.
- (b) "Council" means the Council of The Corporation of the City of Oshawa.
- (c) "Director" means the City's Director, Municipal Law Enforcement and Licensing Services including his or her designate, or the City's Director, Engineering Services including his or her designate.
- (d) "Dust" and "Mud" mean any solid particulate matter which may become airborne as a result of any and all construction, landscaping, site alteration, and renovation-related activities, including but not limited to, trimming, blasting, drilling, crushing, grinding, sawing, screening, cutting, altering or moving of clay, mortar, stone rock, stucco, concrete, tile and/or insulation, and which may be caused by new developments and construction activities.
- (e) "Nuisance" means any Dust and Mud that is of such persistence or volume that it has a detrimental impact on the use and enjoyment of Property, and which includes Dust and/or Mud arising out of activities as defined in subsection 2.1(d) of this By-law.
- (f) "Officer" has the same meaning as defined in Paragraph 1(h) of the City's Inspection By-law 64-2008.
- (g) "Owner" means each registered owner of Property and which may include any Person for the time being managing or receiving the rent of Property, including land or premise, a designated representative or a Person carrying out or causing to be carried out a Nuisance, including any contractor or subcontractor retained by the Owner, as well as any permitted assigns and/or respective successors.
- (h) "Person" means a natural individual and their heirs, executors, administrators or other legally appointed representatives, a corporation, partnership, association, agents, or any combination thereof.
- (i) "Property" means land, buildings, structures and fences.
- (j) "Public Authority" means any level of government or agency including but not limited to the Government of Canada, the Government of Ontario, and municipal corporations, as well as any department or board established thereby, including Hydro One Inc., the Oshawa Power and Utilities Corporation and its subsidiaries, any Crown Agency and any college, university or other post-secondary institution created by the Province of Ontario.
- (k) "Work Order" means a work order given pursuant to section 6.

3. General Prohibitions

3.1 No Person shall create or permit a Nuisance caused by Dust and/or Mud.

4. Exceptions

4.1 The provisions of this By-law do not apply to a Nuisance caused by Dust and/or Mud arising out of and/or created by the following activities:

- (a) Emergency measures undertaken for the immediate health, safety, or welfare of inhabitants;
- (b) Any normal farm practice as determined pursuant to the *Farming and Food Production Act*, 1998 S.O. Chap. 1; or,
- (c) An activity carried on by the City or any other Public Authority.

5. Order to Discontinue Activity

5.1 Where an Officer is satisfied that a Person and/or Owner has contravened this By-law, the Officer 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 Property on which the contravention occurred to discontinue the contravening activity.

5.2 An order under subsection 5.1 shall set out:

- (a) Reasonable particulars of the contravention adequate to identify the contravention, including the location of the Property on which the contravention occurred; and,
- (b) The date by which there must be compliance with the order.

5.3 Any Person or Owner who contravenes an order issued under subsection 5.1 is guilty of an offence.

6. Work Orders

6.1 Where an Officer is satisfied that an Owner has failed to comply with any provision of this By-law, the Officer may make a Work Order requiring the Owner to do work to correct the contravention.

6.2. A Work Order under subsection 6.1 shall set out:

- (a) Reasonable particulars of the contravention adequate to identify the contravention, including the location of the Property on which the contravention occurred; and,
- (b) The work to be done and the date by which there must be compliance with the Work Order.

6.3 Each Owner who contravenes a Work Order is guilty of an offence.

6.4 Despite any other provision of this By-law, the Director may rescind a Work Order at any time.

7. Remedial Action

7.1. Where an Owner contravenes a Work Order, the Director may, without notice to any Owner, cause the work to be done at each Owner's expense. For this purpose and in accordance with subsections 435 and 436 of the *Municipal Act, 2001*, the Director, Inspectors, Officers and/or City's employees and agents may enter onto the Owner's Property at any reasonable time without notice. Without limitation, the Director may retain such Persons (including, without limitation, the Owner) to assist in completing the work as the Director determines appropriate.

- 7.2. For the purpose of subsection 7.1, the Director, any Officer and each Person supervised by and assisting the Director or an Officer may enter upon the Property at any reasonable time.
- 7.3. Each Owner is jointly and severally liable to the City for all costs incurred in any way related to work done for the purpose of subsection 7.1.
- 7.4. The costs and interest may be added to the tax roll and collected in the same manner as property taxes.
- 7.5. The amount of the costs and interest constitute a lien on the Property upon the registration in the proper land registry office of a notice of lien.

8. Administrative Penalties

- 8.1 No Person shall fail to comply with any provision or standard of this By-law. (127-2022)
- 8.2 No Person shall fail to comply with an order issued pursuant to this By-law. (127-2022)
- 8.3 Administrative Penalty Process By-law 63-2013 applies to each administrative penalty issued pursuant to this By-law. (127-2022)
- 8.4 Each Person and/or Owner who contravenes any provision of this By-law shall, upon issuance of a penalty notice in accordance with Administrative Penalty Process By-law 63-2013, as amended, be liable to pay to the City an administrative penalty as per the following:
 - (a) \$250 for each day or part of the day on which the first contravention occurs;
 - (b) \$350 for each or part of the day on which the second contravention occurs; and,
 - (c) \$500 for each or part of the day on which the third and subsequent contraventions occur.(127-2022)

9. Offences

- 9.1 Any Person and/or Owner who contravenes a 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.
- 9.2 Each Person and/or Owner who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine of:
 - (a) not less than \$300 and not more than \$5,000;
 - (b) not less than \$400 and not more than \$10,000 for a second conviction of the same offence; and,
 - (c) not less than \$500 and not more than \$25,000 for a third or subsequent conviction of the same offence.
- 9.3 Prosecution under this By-law shall not preclude any other legal actions required.

10. Notice

- 10.1 Any notice or document respecting this By-law may be given in writing in any of the following ways and is effective:
 - (a) on the date a copy is personally delivered to the Person and/or Owner to whom it is addressed;
 - (b) on the third (3rd) day after a copy is sent by regular mail or by registered mail to the last known address of the Person and/or Owner;
 - (c) upon confirmation of the successful transmission of a copy by facsimile transmission to the last known facsimile transmission number of the Person and/or Owner;

- (d) upon sending a copy by e-mail transmission to the last known e-mail address of the Person and/or Owner; or
 - (e) upon a copy being posted on the door of any building or structure on the Property of the Person and/or Owner, or, where no building or structure exists, on a stake erected by the Officer on the Property of the Person and/or Owner.
- (43-2022)

11. General Provisions

- 11.1 For the purpose of Section 23.2(4) of the *Municipal Act, 2001*, it is the opinion of Council that the powers delegated to the Director pursuant to this By-law are of a minor nature.
- 11.2 The provisions of this By-law shall apply to all lands and premises within the City.
- 11.3 All references to legislation in this By-law are references to legislation of the Province of Ontario as amended from time to time, including successor legislation, whether enacted prior to or subsequent to the enactment of this By-law.
- 11.4 Should any section of this By-law be declared invalid by a court of competent jurisdiction, such section shall be construed as being severed from this By-law and the remainder of this By-law shall continue in full force and effect.
- 11.5 Notwithstanding the repeal of this By-law, any enforcement, legal, or collection actions arising from this By-law while this By-law was in effect shall survive its repeal.
- 11.6 This By-law shall be administered by the Director.
- 11.7 The provisions of this By-law shall come into force and effect on the date of its passing.
- 11.8 If there is a conflict between a provision of this By-law and a provision of any other City by-law, the provision that establishes the higher standard to protect the health and safety of the Public and maintain clean and tidy Property standards conditions shall apply.

By-law passed this day of , 2020.

Mayor

City Clerk