

Being a By-law to regulate the Fouling of Highways.

WHEREAS the Council of the Corporation of the City of Oshawa is authorized to pass a By-law pursuant to the *Municipal Act, 2001*, R.S.O. 1990 to prohibit or regulate the obstruction, encumbering, injuring or fouling of Highways, for prohibiting the throwing, placing or depositing of dirt, refuse or any other debris on Highways.

AND WHEREAS the Council of the Corporation of the City of Oshawa deems it expedient to pass a By-law to ensure safe passage along all Highways, and to reduce the inconvenience and nuisance to all residents or the general traveling public.

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 "Fouling of Highways 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) "Clean" / "Cleaning" means to clear away and completely remove, or cause to be cleared away and completely remove by a self-propelled mechanical street-cleaning vehicle and/or in combination with common earth moving and construction equipment and/ or any other means acceptable to the City.
- (c) "Council" means the Council of The Corporation of the City of Oshawa.
- (d) "Debris" means refuse, rubbish, junk, or disused material of any kind whatsoever and without limiting the generality of the foregoing includes building materials, material from construction or demolition projects, waste, earth and soil in the form of dust, dirt, mud, oil and grease.
- (e) "Director" means the City's Director, Municipal Law Enforcement Licensing Services, the City's Director of Engineering Services and the City's Director of Operations Services, including their designates.
- (f) "Foul" / "Fouled" / "Fouling" means to throw, place, track, spill, or deposit any Debris on a Road; including the generation of airborne dust caused by the deposition of Debris on a Highway;
- (g) "Highway" means a common and public highway, road, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, whether assumed or unassumed by the City, designed and intended for, or used by, the general public for the passage of vehicles or persons, under the jurisdiction of the City, and including any surface, grassed area, boulevard, ditch, curb, gutter, and sidewalk within the lateral property lines of the Highway.
- (h) "Inspector" means a person appointed as an inspector by the City;
- (i) "Land Disturbance" means any human-made change to the land surface of a Property through construction activities including removal of trees, vegetation, excavating, trenching, filling, grading and sodding or landscaping;
- (j) "Mud Mat" means a stabilized area or pad consisting of a minimum 100-150 mm angular stone, constructed at vehicle access and egress points, and is of a sufficient size and dimensions as required by the City's Director of Engineering Services so that mud and other debris can be stripped off tires prior to leaving the Property on which the Land Disturbance is occurring and

entering onto a Highway, and which must be regularly maintained and/or washed at regular intervals;

- (k) "Officer" has the same meaning as defined in Paragraph 1(h) of the City's Inspection By-law 64-2008.
- (l) "Owner" means each registered owner of Property and 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 Land Disturbance, including any contractor or subcontractor retained by the Owner, as well as any permitted assigns and/or respective successors.
- (m) "Person" means a natural individual and their heirs, executors, administrators or other legally appointed representatives, a corporation, partnership, association, agents, or any combination thereof;
- (n) "Property" means land, buildings and structures
- (o) "Work Order" means a work order given pursuant to section 6.

3. General Provisions

- 3.1 No Person shall Foul, or cause or permit to be Fouled, a Highway within the City.
- 3.2 An Owner of a Property or Person carrying out or causing to be carried out any Land Disturbance, shall keep all Highways free of Fouling emanating from the Land Disturbance.
- 3.3 An Owner shall comply with a Work Order.
- 3.4 Prior to carrying out any Land Disturbance on a Property, an Owner shall construct a Mud Mat, or take alternate measures as approved by the Director.

4. Maintenance Standards

- 4.1 During Land Disturbance on a Property, the Owner shall:
 - (a) Clean all Highways that have been Fouled at least once per calendar day, as often or as necessary to completely remove the Debris.
 - (b) Take action to eliminate Debris from blowing on to a Highway from any construction activity on the Property.
 - (c) Construct and ensure that the Mud Mat, or an alternative measure as approved by the Director, is used by all trucks or other construction vehicles leaving the Property.
- 4.2 An Owner or Person shall keep a Mud Mat free of mud or dirt, which would prevent the proper stripping of mud from tires.
- 4.3 No Person employing, using or operating a vehicle to haul earth, sand, stone, rubbish or other substances on a Highway shall:
 - (a) Fail to cover the load or fail to cause the load to be covered in a manner which prevents the escape of any part of the contents from the vehicle onto a highway; or,
 - (b) Load the vehicle or cause the vehicle to be loaded in a manner which causes or permits the contents or any part thereof to fall, spill or be deposited on a Highway; or,
 - (c) Employ, use or operate the vehicle in a manner which causes or permits the contents or any part thereof to fall, spill or be deposited on a Highway.
- 4.4 The Owner or Person shall not permit Debris to be deposited, flushed or washed into any sewer or catch basin.

- 4.5 The City may require the Cleaning of any sewer or catch basin that is Fouled by Debris from the Property of the Owner at their expense and subject to the City's supervision, direction and/or control.
- 4.6 Generally in seasons where ambient temperatures exceed below the freezing point of water (November 1st to April 1st); if after Cleaning the Highway and any portion of the Highway remains or becomes slippery as a cause of Cleaning the Highway, the Owner or Person responsible for the Foul shall immediately and as often as necessary, apply or cause to apply de-icing materials so as to completely cover the slippery surface.

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 and the location at or on the Highway 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 at or on the Highway 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 Person 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 to Clean the Foul from the Highway 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 The City's Administrative Penalty Process By-law 63-2013, as amended, applies to each administrative penalty issued pursuant to this By-law.
- 8.2 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 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.

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.
- 9.2. 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) when a copy is delivered to the Person and/or Owner to whom it is addressed;
 - (b) on the fifth (5th) day after a copy is sent by mail to the last known address of the Person and/or Owner;
 - (c) upon the conclusion of the transmission of a copy by facsimile transmission to the last known facsimile transmission number of the Person and/or Owner;
 - (d) upon the sending of a copy by e-mail transmission to the last known e-mail address of the Person and/or Owner; or,
 - (e) by posting a copy on the door of any building or structure on the Property or, where no building or structure exists, on a stake erected by the Officer on the Property in which case service shall be deemed to have been effective at the moment of posting on the door or stake.

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, including Highways, 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 Highway conditions shall apply.

By-law passed this twenty-second day of June, 2020.



Mayor



City Clerk