

To: Council in Committee of the Whole

From: Tracy Adams, Commissioner,  
Corporate Services Department

Ron Diskey, Commissioner,  
Community Services Department

Report Number: CNCL-20-122

Date of Report: June 17, 2020

Date of Meeting: June 22, 2020

Subject: Dust and Mud Control Related to Construction and  
Development Activities

File: D-2200

---

## **1.0 Purpose**

This report responds to City Council's ("Council") June 25, 2018 direction:

1. That pursuant to Report DS-18-127 dated June 14, 2018, Corporate Services staff be authorized to consult with the public, the Oshawa Environmental Advisory Committee and the City's Building Industry Liaison Team to obtain input on whether the City should pass a by-law under the Municipal Act to control nuisance dust and report back to the Corporate Services Committee; and,
2. That pursuant to Report DS-18-127 dated June 14, 2018, Community Services staff be authorized to consult with the public, the Oshawa Environmental Advisory Committee and the City's Building Industry Liaison Team to obtain input on whether the City should pass a by-law to address fouling of roads and report back to the Community Services Committee.

Additionally, this report details findings from the public and industry consultation process related to controlling dust and mud as a result construction and development activities and presents two (2) draft by-laws for Council's consideration.

**Attachment 1** – Report DS-18-127 “Dust Control Related to New Development”

**Attachment 2** – Correspondence dated May 21, 2020 from D.G. Biddle & Associates Limited

**Attachment 3** – Correspondence dated May 25, 2020 from Central Lake Ontario Conservation Authority

**Attachment 4** – Correspondence dated May 26, 2020 from Durham Region Home Builders Association

**Attachment 5** – Correspondence dated May 26, 2020 from Midhaven Homes

**Attachment 6** – Draft Dust and Mud Control By-law

**Attachment 7** – Draft Fouling of Roads By-law

**Attachment 8** – Draft By-law to Amend the General Fees and Charges By-law 13-2003

## **2.0 Recommendation**

It is recommended to City Council:

1. That Council pass a Dust and Mud Control By-law generally in the form of Attachment 6 to Report CNCL-20-122, dated June 17, 2020, to control the impacts of dust and mud related to building and development on adjacent properties; and,
2. That Council pass a Fouling of Roads By-law generally in the form of Attachment 7 to Report CNCL-20-122, dated June 17, 2020, to control the impacts of dust and mud related to building and development on City roads; and,
3. That Council pass a by-law generally in the form of Attachment 8 to Report CNCL-20-122 dated June 17, 2020, to further amend General Fees and Charges By-law 13-2003, as amended to establish a fee to recover the costs associated with remedial work related to dust and mud control related to construction and development activities undertaken by the City; and,
4. That the by-laws be in a form and content acceptable to the City Solicitor and the Commissioners, Corporate Services and Community Services Departments; and,
5. That the requirements of Notice By-law 97-2000 regarding notice to the public for amendments to the General Fees and Charges By-law 13-2003 be waived.

## **3.0 Executive Summary**

Not applicable.

## **4.0 Input From Other Sources**

The following sources provided input in the preparation of this report:

- Legal Services
- Commissioner, Development Services
- Corporate Communications

- Members of the Public as detailed in Section 5.2
- Building Industry Liaison Team (B.I.L.T.) as detailed in Section 5.2

Additionally, due to the COVID-19 pandemic and the cancellation of the Oshawa Environmental Advisory Committee (O.E.A.C) meetings, O.E.A.C. members were requested to provide their individual comments through Connect Oshawa.

## **5.0 Analysis**

### **5.1 Background**

In April 2018, the Development Services Committee (DS-18-81) directed staff to report on the impacts of dust control on the construction of new housing and construction builds, the City's process for addressing dust control in construction areas, and possible enhancements to the process to provide protection for nearby residents.

Subsequently, Report DS-18-127 (**Attachment 1**) was brought to Council on June 25, 2018 to respond to the previous direction and staff were then directed as follows:

“That pursuant to Report DS-18-127 dated June 14, 2018, Corporate Services staff be authorized to consult with the public, the Oshawa Environmental Advisory Committee and the City's Building Industry Liaison Team to obtain input on whether the City should pass a by-law under the Municipal Act to control nuisance dust and report back to the Corporate Services Committee; and,

That pursuant to Report DS-18-127 dated June 14, 2018, Community Services staff be authorized to consult with the public, the Oshawa Environmental Advisory Committee and the City's Building Industry Liaison Team to obtain input on whether the City should pass a by-law to address fouling of roads and report back to the Community Services Committee.”

As noted in Report DS-18-127, the approach the City uses to control dust and mud appears to be consistent, if not more comprehensive, than some municipalities surveyed at the time. The introduction of two (2) new by-laws to address the fouling of roads and nuisance dust was identified as potential opportunities to provide the City with additional tools to assist with addressing mud and dust complaints. This report responds to Council's June 25, 2018 direction; provides findings from the public and industry consultation process; and presents two (2) draft by-laws for Council's consideration.

### **5.2 Public and Industry Consultation Process**

Staff undertook an 11-day public consultation process beginning on Tuesday, May 12, 2020 and concluding on Friday, May 22, 2020 to engage community members on whether the City should pass by-laws under the Municipal Act, 2011 to control nuisance dust and dirt on roads and properties in Oshawa due to construction and development projects.

The consultation process was comprised of various engagement initiatives including a feedback form available online on Connect Oshawa ([www.connectoshawa.ca](http://www.connectoshawa.ca)), the City's online engagement platform. Community members who preferred to complete the

feedback form in another format were asked to call Service Oshawa at 905-436-3311 during regular business hours to complete the questions over the phone. In addition to engaging the public, the City requested comments from B.I.L.T.

### 5.2.1 Public Response

In total, 220 completed the feedback form. Standardized questions were used in the online feedback form and over the phone to ensure consistency.

### 5.2.2 Findings: Public Responses

Three (3) questions were asked as part of the feedback form; the questions were as follows:

1. Should the City pass a by-law to control dust and mud from construction / development projects from impacting adjacent properties?
2. Should the City pass a by-law to control dust and mud from construction / development projects from impacting City roads?
3. Do you have any other feedback?

The results to questions #1 and #2 are detailed in **Figure 1** and **Figure 2** respectively.

**Figure 1**

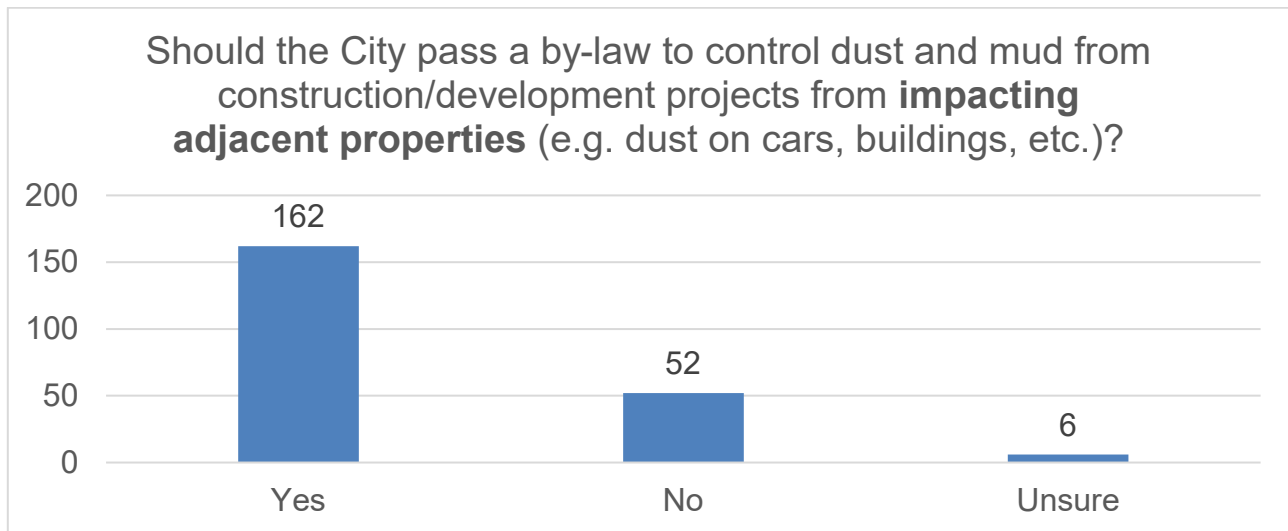
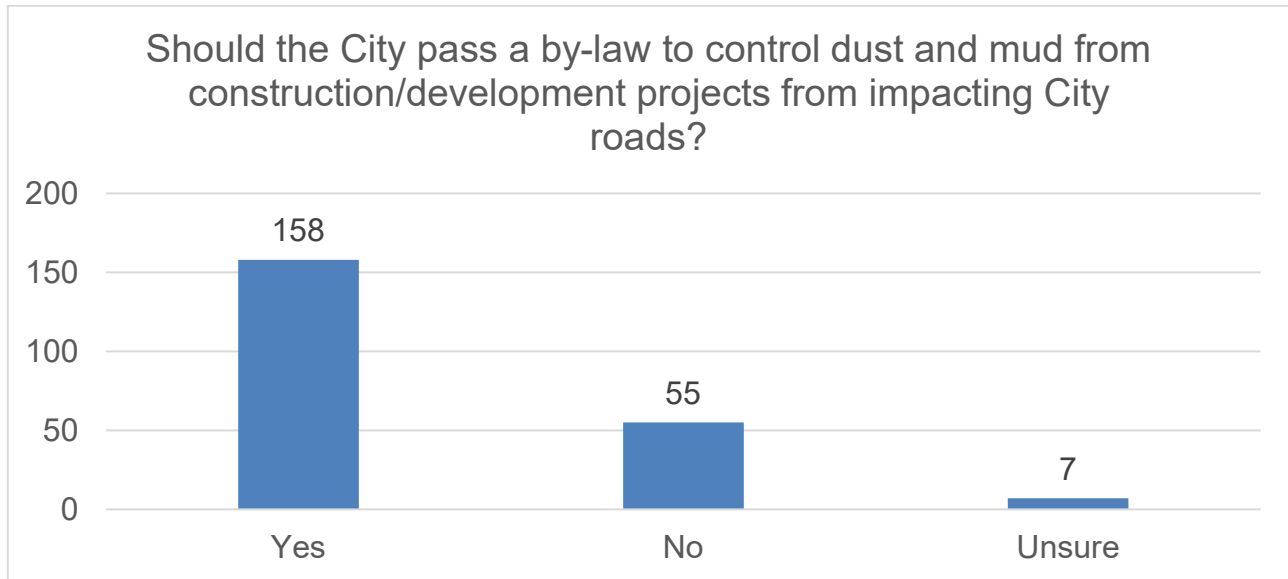


Figure 2



The findings of the public responses show significant support for establishing by-laws that control dust and mud from construction / development projects considering:

- **Seventy-four per cent (74%)** supported establishing a by-law to control construction / development-related dust and mud from impacting adjacent properties; and,
- **Seventy-two percent (72%)** supported establishing a by-law to control construction / development-related dust and mud from impacting City roads.

An analysis of comments received from respondents on question #3 found the following key themes:

- There is a general concern about dust and mud related to construction and development activities.
- Some respondents were concerned about the health impacts related to construction / development dust.
- There is desire for increased accountability for individuals and companies to control and mitigate dust and mud on adjacent properties and the road.
- There is recognition that while there are challenges to fully mitigating dust, individuals and companies should make more of an effort to address dust and mud.
- There is a desire to require construction sites to be regularly watered down to control dust.

### 5.2.3 Findings: Responses from B.I.L.T.

The following correspondence were received from B.I.L.T.:

- D.G. Biddle & Associates Limited (**Attachment 2**)
- Central Lake Ontario Conservation Authority (**Attachment 3**)
- Durham Region Home Builders Association (**Attachment 4**)
- Midhaven Homes (**Attachment 5**)

The following were the key themes from the correspondence:

- Existing process established in the City's Site Alteration By-law 85-2006, the Mud Control Policy, and through conditions on site plan and subdivision approval are acceptable and function adequately with minor economic impact.
- It is perhaps more effective to connect the private property homeowner with the developer to seek direct resolution as opposed to enacting new by-laws.
- Proposed by-laws will increase overall development costs which will in turn raise costs to the end user e.g. prospective homebuyer.

### 5.3 Proposed By-laws and Approach to Compliance

The proposed by-laws, detailed in **Table 1**, are being presented as an additional tool to augment existing processes for remediating nuisance dust and mud from developments and other sources (e.g. landscaping activities, other-construction activities, etc.).

Staff appreciate the comments from the building and development industry and will always work with the industry to address dust and mud issues. The City's approach to remediating dust and mud related to developments (detailed in DS-18-127 **Attachment 1**), and working with developers and builders, has generally been effective and will continue. However, where compliance is not achieved through existing controls and working with a developer and builder to achieve compliance, the proposed by-laws will enhance the City's ability to achieve compliance.

Due to the potential risk and liability on the City, it should be noted that the proposed by-laws will not result in remedial activities on private properties of third parties impacted by dust and mud. These issues will continue to be managed as a civil matter. The proposed process is consistent with other City remedial work order processes (e.g. Property Standards By-law 01-2002, Lot Maintenance 127-2007, etc.) whereby the corrective work is undertaken on the property that is the source of the non-compliance. In these cases, the City would be relying on the goodwill of builder and developer to undertake remedial activities on private properties of third parties.

**Table 1 Proposed By-laws**

<b>Proposed By-law</b>	<b>Application</b>	<b>Branch(s) Responsible</b>
Dust and Mud Control By-law ( <b>Attachment 6</b> )	Dust and mud deposited onto <b>adjacent properties</b> (private and public)	<ul style="list-style-type: none"> <li>• M.L.E.L.S.</li> <li>• Engineering Services</li> </ul>
Fouling of Roads By-law ( <b>Attachment 7</b> )	Dust, mud, and other materials deposited onto <b>City roads</b>	<ul style="list-style-type: none"> <li>• Operations Services</li> <li>• M.L.E.L.S.</li> <li>• Engineering Services</li> </ul>
By-law to amend General Fees and Charges By-law 13-2003 ( <b>Attachment 8</b> )	Establish fees to recover the costs associated with remediating dust/mud on behalf of an individual or company pursuant to the proposed Dust and Mud Control and Fouling of Roads By-laws	<ul style="list-style-type: none"> <li>• Operations Services</li> <li>• M.L.E.L.S.</li> <li>• Engineering</li> </ul>

**6.0 Financial Implications**

There are no financial implications directly related to the recommendations in this report.

**7.0 Relationship to the Oshawa Strategic Plan**

The recommendations in this report respond to the Oshawa Strategic Plan Goals:

- 4.1 Economic Prosperity and Financial Stewardship;
- 4.2 Accountable Leadership; and,
- 4.5 Environmental Responsibility.



Brenda Jeffs, Director,  
 Municipal Law Enforcement and Licensing Services



Tracy Adams, Commissioner,  
 Corporate Services Department



Mike Saulnier, Director,  
 Operations Services



Ron Diskey, Commissioner,  
 Community Services Department

Attachments

To: Development Services Committee

From: Paul D. Ralph, BES, RPP, MCIP, Commissioner,  
Development Services Department

Report Number: DS-18-127

Date of Report: June 14, 2018

Date of Meeting: June 18, 2018

Subject: Dust Control Related to New Development

File: D-1000

---

## **1.0 Purpose**

The purpose of this report is to respond to the following April 16, 2018 direction of the Development Services Committee (DS-18-81) that was referred to staff for a report:

“Whereas residents have complained to staff about the process to implement dust control on the construction of new housing and construction builds, and

That staff investigate the present process and advise as to the impacts of dust etc. especially in the area of Grandview Street North and if the dust control process can be enhanced to provide protection for the nearby residents and report back to Committee and Council”.

Attachment 1 is a copy of the City of Oshawa Site Alteration By-law 85-2006.

Attachment 2 is a copy of Appendix 13, titled Mud Control Policy, of the City of Oshawa’s Engineering Design Criteria Manual.

Attachment 3 is a copy of Town of Ajax’s Fouling of Roads By-law 69-2002.

Attachment 4 is a map of the Grandview Street North area showing the location of the subdivision developments along the west side of Grandview Street North south of Conlin Road East.

Attachment 5 is a copy of the Town of Leamington By-law 333-13 that addresses dust as a nuisance.



## **2.0 Recommendation**

That the Development Services Committee recommend to City Council:

1. That, pursuant to Report DS-18-127 dated June 14, 2018, Corporate Services staff be authorized to consult with the public, the Oshawa Environmental Advisory Committee and the City's Building Industry Liaison Team to obtain input on whether the City should pass a by-law under the Municipal Act to control nuisance dust and report back to the Corporate Services Committee.
2. That, pursuant to Report DS-18-127 dated June 14, 2018, Community Services staff be authorized to consult with the public, the Oshawa Environmental Advisory Committee and the City's Building Industry Liaison Team to obtain input on whether the City should pass a by-law to address fouling of roads and report back to the Community Services Committee.

## **3.0 Executive Summary**

Not applicable.

## **4.0 Input From Other Sources**

### **4.1 Other Departments**

The following have been consulted in the preparation of this report:

- Commissioner of Community Services
- Commissioner of Corporate Services
- Legal Services

### **4.2 Other Municipalities**

Staff surveyed several Durham lakeshore municipalities (Clarington, Whitby and Ajax), and reviewed the following information: Engineering Design Criteria, Site Alteration By-laws and any other By-laws relating to dust control.

In addition, municipal nuisance by-laws that related to dust were reviewed such as the Town of Leamington.

## **5.0 Analysis**

### **5.1 Background**

Dust and mud are primarily caused by site alteration in new development areas, beginning with the stripping or filling of the development site. Stripping consists of removing the top layer fill (i.e. vegetated layer, native soil or top soil) whereas, filling is bringing material onto the site to get to the required development elevation. Once a development site is stripped or filled there is greater opportunity for the generation and movement of dust as there is no longer any vegetation to keep soil from migrating off site. Dust does affect the air quality.

Site stripping or filling is followed by installation of services and roads and the construction of the development. The development can take on different forms such as; homes for a residential development or a new commercial building in a plaza. New residential construction is currently the largest type of development across the City and is a contributor of dust after the site is stripped or filled due to the uncontrolled equipment circulating through the site and roads. As the equipment navigates through the construction site, mud, dust and debris are then tracked onto the road. These activities continue to pollute the roads and cause further migration into the existing developed areas adjacent to the development site. Site development is also a contributor of dust because large areas of land are now subject to wind.

All of the above-mentioned activities follow an approval process within the Development Services Department. Dust control is one of many matters addressed through the development approval process and is generally managed through staff's implementation of the Site Alteration By-law and Engineering Design Criteria during the subdivision approval, site plan approval and building permit processes.

Dust can also be created through other ways such as new landscaping (e.g. cutting stones for the installation of new walkways, patios, etc.) and demolition of buildings.

## **5.2 Engineering Design Criteria**

Engineering Design Criteria provides standards, criteria and policies to be used as a guideline for the preparation and processing of all engineering submissions presented to the approving City or Municipality.

Staff completed a survey of Engineering Design Criteria from Clarington, Whitby and Oshawa. The purpose of the survey was to review how their Engineering Design Criteria Manual addressed dust and mud control.

### **5.2.1 City of Oshawa Engineering Design Criteria**

Of all the Engineering Design Criteria reviewed in the Region of Durham, Oshawa's was the most detailed around mud and dust controls as there is a specific Appendix in the Oshawa Engineering Design Criteria Manual (see Attachment 2).

Appendix 13, titled Mud Control Policy, defines a procedure for the cleaning of streets where a development activity has resulted in the deposition of mud and dust. The Policy clearly defines the procedure for cleaning the streets and for associated penalties issued by the City in the event a developer, builder or contractor fails to maintain the minimum levels of service.

### **5.2.2 Durham Lakeshore Municipalities Engineering Design Criteria**

The Municipality of Clarington's Engineering Design Criteria manual leaves mud and dust mitigation to the Developer and/or Consulting Engineer to monitor and ensure conformance.

The Town of Whitby's Engineering Design Criteria includes the following:

“The applicant shall be responsible for removing mud and other debris that accumulates on the public streets during construction. If the applicant does not comply with the Town of Whitby's notification to clean the affected streets within twenty-four (24) hours, then the Public Works Department shall have the right to clean the affected streets at the sole expense of this applicant by use of a corresponding portion of the aforementioned financial security”.

The Town of Ajax's Engineering Design Criteria does not mention mud and dust control, but they do have a specific by-law that addresses the issue: By-law 69-2002 – Fouling of Roads (see Attachment 3). This by-law outlines what is considered fouling roads (i.e. building materials, materials from construction, waste, earth and soil in the form of dust, dirt and mud) along with an enforcement policy.

### **5.3 Site Alteration By-laws**

Staff completed a survey of the Site Alteration By-laws from Clarington, Oshawa, Whitby and Ajax.

#### **5.3.1 City of Oshawa Site Alteration By-law**

The City of Oshawa's Site Alteration By-law (see Attachment 1) controls dust and mud generation by having the applicant submit the documents that cover the following:

- “the location, dimensions, design details and design calculations of all construction site erosion control measures that may be necessary to minimize the impact of the proposal”
- “provisions for the maintenance of the construction site erosion control and dust control measures during construction and after as required”

Additionally, under section 6.4 of the by-law, the Director of Engineering Services, “may require an Applicant to install such site remediation measures, including Topsoil, seeding, sodding and installation of berms and landscaping, as are necessary to minimize the visual impact of Fill or Grade alterations”.

The By-law also includes possible significant monetary penalties (see Section 10: Remedies and Penalties in the By-law).

### **5.3.2 Durham Lakeshore Municipalities Site Alteration By-law**

The Municipality of Clarington has a very similar By-law to the City of Oshawa's Site Alteration By-law related to dust and mud control. The Town of Whitby and Town of Ajax's By-laws use different language, but are written and focused around the same core requirements with regards to mud and dust. Consistent among all municipalities listed above, is the requirement to satisfy the following conditions prior to the issuance of a Site Alteration permit:

1. Provisions for the maintenance of the construction site erosion control and dust control measures during construction and after as required;
2. If the site remains dormant at any time for more than 365 days, the owner shall seed, mulch and designate a contact person directly for such program;
3. Maintain all roads in the same or better condition, and;
4. The permit holder may be required to install site remediation measures including topsoil, seeding, sodding and the installation of berms and landscaping, as necessary, to minimize the visual impact of fill or grade alteration works and to provide for stabilization of altered grades

Finally, Clarington has the following enforcement clause:

"The Director may, without notice, have such mud or dust controlled by Municipal forces or a third party contractor and such costs, including a 30% management and administration charge, shall be paid by the applicant upon invoicing."

## **5.4 Dust Complaint Resolution Process**

### **5.4.1 Site Alteration through Site Plan Approval and Building Permit for Infill Development Processes**

When a dust related complaint is received during the Site Alteration process, outside new subdivision agreements, the complaint is forwarded to Engineering Services where one of two Engineering Technologist staff will review the complaint and then visit the site to review the conditions. If the complaint is deemed to be valid, the Engineering Technologist will contact the developer and or the owner/developer's consultant with suggested remediation measures. These measures typically involve a combination of sweeping, flushing and scraping of the roads. In the event the developer is not compliant with the request, Municipal Law Enforcement and Licensing Services (M.L.E.L.S.) is notified so a Site Alteration By-law infraction can be investigated and an order issued, as appropriate.

The process for building permits such as infill residential development and site plan approvals is the same as Site Alteration. The City's Site Plan Agreement makes reference to the requirement to comply with the Site Alteration By-law 85-2006 (see Attachment 1).

#### **5.4.2 Subdivision Development**

When a dust related complaint is received for new subdivision developments the complaint would be passed along to Engineering Services. The City's Construction Supervisor would review the complaint and visit the site to review the conditions. If the complaint is deemed to be valid, the Construction Supervisor will contact the developer and or the developer's consultant with suggested remediation measures. These measures consist of sweeping, flushing and scraping of the roads.

The Site Alteration By-law 85-2006 does not apply to subdivision agreements for new subdivision developments as the dust and mud policies and procedures are outlined in the City's Engineering Design Criteria Manual. If the developer elects not to comply with the requirements, Engineering staff have the ability to engage City Operations staff to perform the work at the developers cost. In the event the developer doesn't pay the invoice for the work, after 45 days, the developer's letter of credit will be drawn down to cover any unpaid amount.

Pre-servicing requests for new subdivisions prior to the execution of a subdivision agreement are governed by the Site Alteration By-law and pre-servicing conditions approved by the Director of Engineering Services.

#### **5.5 Grandview St North Dust Control Process**

Staff have received a number of complaints from residents on the east side of Grandview Street North between Salmers Drive and Conlin Road East on the north limit, with regards to dust and mud being generated by the adjacent subdivision developments on the west side of Grandview Street North by Metrontario/Tribute Communities, Delpark Homes and Upperview Homes (see Attachment 4). Currently there are five subdivision phases underway. The two newest phases are just south of Conlin Road East and working under a Site Alteration permit, whereas the other three phases are being governed by Subdivision Agreements.

The prevailing wind from the west has also contributed to dust going into residential area on the east side of Grandview Street North.

There was a unique opportunity to deal with the mud and dust for the development in this area as all five phases are all being inspected by the same consultant for the developers. Engineering Services staff met with the consultant to discuss how to address the ongoing mud and dust control complaints. At the meeting it was agreed to do the following:

- As a reactive approach, all driveway aprons (i.e. between the sidewalk and the travelled portion of the road) along Grandview Street North between Conlin Road East and Salmers Drive will be thoroughly cleaned, this includes sweeping and power-washing of the driveway aprons and raking of the boulevards to address the deposit of dirt on the grass.
- As a proactive approach, it was agreed that a daily sweeping of Grandview Street North is to be put into place to ensure accumulations do not become excessive and a flushing at the end of the week (weather conditions permitting). The limits of

Grandview Street North cleaning are from Conlin Road East to Salmers Drive including all curb gutters and the first 50 metres (164 ft.) of each side street off Grandview Street North within the north/south limits. Streets internal to the new subdivision developments are to be cleaned as per the City's mud control policy.

All developers share the costs to implement both the reactive and proactive program and alternate weeks for the responsibility of the street flushing.

This agreement has been in place since April 30, 2018 and improvements in the area have been noticed since this program took effect.

Any program will not totally (i.e. 100%) prevent dust from going onto public streets or private properties adjacent to new developments. City staff do the best we can to control mud and dust on City streets and within new developments. In cases where dust migrates onto adjacent privately owned properties staff try to connect the developer to the private property owner making the complaint to hopefully resolve the issue. In this case, it is a private matter between the developer and private property owner.

## **5.6 Summary of Analysis and Opportunities for Enhancements**

The approach the City uses to control dust and mud as defined in the Engineering Design Criteria appears to be more comprehensive than the surveyed municipalities. With regards to Site Alteration, the approach used is consistent with the surveyed municipalities as the wording for all surveyed municipalities was very similar.

There are two potential opportunities that could be reviewed to better address dust and mud control and related complaints:

1. The City could consider passing a by-law similar to the intent of the Town of Ajax's Fouling of Roads By-law (see Attachment 3) or amending the City's Road Occupancy By-law which does make one reference to fouling of roads.
2. The City could also consider passing a by-law to address nuisance dust similar to the Town of Leamington's By-law (see Attachment 5).

The possible use of administrative monetary penalties related to the above should also be investigated.

The above by-laws could provide the City with additional tools that could assist to address mud and dust complaints.

As part of the review process City staff should consult with the public, the Oshawa Environmental Advisory Committee and the City's Building Industry Liaison Team to get input before any decision is made on any new by-law or by-law amendment. The consultation on the fouling of roads, the nuisance and dust matters can occur at the same time, if approved, and coordinated by both Community Services and Corporate Service staff.

## 6.0 Financial Implications

There are no financial implications associated with the recommendation in this report.

## 7.0 Relationship to the Oshawa Strategic Plan

The Recommendation advances Accountable Leadership and Environmental Responsibility goals of the Oshawa Strategic Plan.



Ilmar Simanovskis, Director,  
Engineering Services



Paul D. Ralph, BES, RPP, MCIP, Commissioner,  
Development Services Department



**By-Law 85-2006  
of The Corporation of the City of Oshawa**

being a by-law to control the dumping of fill, removal of topsoil and alteration of grades.

WHEREAS s. 142 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, authorizes a municipality to prohibit or regulate the dumping of fill, removal of topsoil and alteration of grades;

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

<b>1. Interpretation .....</b>	<b>1</b>
<b>2. General Prohibitions .....</b>	<b>3</b>
<b>3. Exceptions .....</b>	<b>3</b>
<b>4. Specific Prohibitions and Regulations .....</b>	<b>4</b>
<b>5. Issuance of a Permit.....</b>	<b>5</b>
<b>6. Permit Requirements.....</b>	<b>7</b>
<b>7. Permit Expiry .....</b>	<b>7</b>
<b>8. Permit Revocation .....</b>	<b>7</b>
<b>9. Enforcement .....</b>	<b>8</b>
<b>10. Remedies and Penalties.....</b>	<b>8</b>
<b>11. General Provisions .....</b>	<b>8</b>

**1. Interpretation**

- 1.1. "Applicant" means each Person who seeks or obtains a Permit.
- 1.2. "City" means The Corporation of the City of Oshawa and includes all areas within its territorial limits.
- 1.3. "Dumping" means the movement and depositing of Fill from one location to a different location and includes the movement and depositing of Fill from one location on a property to another location on the same property and "Dump" and "Dumped" in relation to Fill have the same meaning.
- 1.4. "Fill" means any type of material deposited or Placed on lands and includes Soil, stone, concrete, construction materials, asphalt, sod or turf either singly or in combination.
- 1.5. "Director" means the City's Director of Engineering Services.
- 1.6. "Grade" means the elevation of a ground surface and includes:
  - (a) "Existing Grade", meaning the elevation of an existing ground surface, except that where the Placing or Dumping of Fill or the alteration of the ground surface has occurred in contravention of this By-law, "Existing Grade" shall mean the Grade as it existed prior to the Placing or Dumping of Fill or alteration of the Grade;
  - (b) "Finished Grade", meaning the elevation of the ground surface of land upon which Fill has been Placed or Dumped or after alteration of the Grade has occurred; and



- (c) "Proposed Grade", meaning the proposed elevation of the ground surface of land upon which any Fill is proposed to be Placed.
- 1.7. "Inspector" means any of the Director, the City's Development and Water Resources Manager, the City's Manager, Water Resources, the City's Design Supervisor, Water Resources, the City's Engineering Technologist, Water Resources, and such municipal law enforcement officers as may be appointed by the City from time to time.
- 1.8. "Normal Agricultural Practice" includes sod-farming, greenhouse operations and nurseries for horticultural products but does not include the sale, exchange or other disposition of Topsoil.
- 1.9. "Owner" means each registered owner of land
- (a) for which a Permit is sought or obtained; or
  - (b) in respect of which there is or may be contravention of
    - i) this By-law;
    - ii) an order made pursuant to subsection 144(5) of the Municipal Act, 2001; or
    - iii) a court order made pursuant to subsection 144(18) of the Municipal Act, 2001.
- 1.10. "Permit" means a permit issued by the Director pursuant to the provisions of this By-law.
- 1.11. "Person" includes a natural individual and their heirs, executors, administrators or other legally appointed representatives, a corporation, partnership or other form of business association.
- 1.12. "Placing" means the distribution of Fill on lands to establish a Finished Grade higher or lower than the Existing Grade and "Place" and "Placed" in relation to Fill have the same meaning.
- 1.13. "Ponding" means the accumulation of surface water in an area not having drainage therefrom where the lack of drainage is caused by the Placing or Dumping of Fill or the alteration of the Grade.
- 1.14. "Retaining Wall" means a wall designed to contain and support Fill which has a Finished Grade higher than that of adjacent lands.
- 1.15. "Soil" means material commonly known as earth, Topsoil, loam, subsoil, clay, sand or gravel or any combination thereof.
- 1.16. "Swale" means a shallow depression in the ground sloping to a place for disposal for the purpose of providing a method of drainage of surface water.
- 1.17. "Topsoil" means those horizons in a Soil profile, commonly known as the "O" and the "A" horizons, containing organic material and includes deposits of partially decomposed organic matter such as peat.
- 1.18. "Zoning By-law" means a City by-law passed pursuant to s. 34 of the Planning Act and includes the City's Zoning By-law 60-94, as amended or superseded.

## 2. General Prohibitions

- 2.1. No Person may Place or Dump Fill or cause or permit Fill to be Placed or Dumped in the City except in accordance with this By-law.
- 2.2. No Person may remove Topsoil or cause or permit the removal of Topsoil except in accordance with this By-law.
- 2.3. No Person may alter the Grade or cause or permit the Grade of any land in the City to be altered except in accordance with this By-law.
- 2.4. Where a Permit has been issued, no Person may, except in accordance with the provisions of that Permit,
  - (a) Place or Dump Fill or cause or permit Fill to be Placed or Dumped;
  - (b) remove Topsoil or cause or permit the removal of Topsoil; or
  - (c) alter the Grade of any land or cause or permit the Grade of any land in the City to be altered.

## 3. Exceptions

- 3.1. The provisions of this By-law do not apply to the extent that the Placing or Dumping of Fill, removal of Topsoil or alteration of the Grade of land is:
  - (a) undertaken by a municipality or a local board of a municipality;
  - (b) imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under sections 41, 51 or 53, respectively, of the Planning Act or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
  - (c) imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the Planning Act or as a requirement of an agreement entered into under that regulation;
  - (d) undertaken by a transmitter or distributor, as those terms are defined in section 2 of the Electricity Act, 1998, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
  - (e) undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the Aggregate Resources Act;
  - (f) undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
    - i) that has not been designated under the Aggregate Resources Act or a predecessor of that Act, and
    - ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the Planning Act; or
  - (g) undertaken as an incidental part of drain construction under the Drainage Act or the Tile Drainage Act.
  - (h) undertaken in accordance with a licence or permission obtained under applicable provincial or federal legislation;

- (i) undertaken in accordance with a permit issued by the City's Chief Building Official pursuant to the Building Code Act, 1992, for the erection or demolition of a building or structure, provided the Director and the Chief Building Official are satisfied that the permit application provides sufficient information to determine compliance with the provisions of this By-law; or
  - (j) undertaken in accordance with an order issued pursuant to the City's Property Standards By-law as from time to time amended.
- 3.2. The provisions of this By-law do not apply to the extent that Fill is Placed on lands zoned for residential use within the meaning of the Zoning By-law for the purpose of lawn dressing, landscaping, adding to flower beds or vegetable gardens, provided that:
- (a) the elevation of the land within 0.6 metre of the property line is not changed;
  - (b) there is no change in the location, direction or elevation of any natural or artificial watercourse, open channel, Swale or ditch used to drain land;
  - (c) the functionality of any drainage infrastructure is not impeded; and
  - (d) the volume of such Fill does not exceed 20 cubic metres.
- 3.3. The provisions of this By-law do not apply to the extent that Topsoil is removed as an incidental part of a Normal Agricultural Practice.
- 3.4. The provisions of this By-law do not apply in an area to the extent of any conflict with a regulation made under section 28 of the Conservation Authorities Act respecting the Placing or Dumping of Fill, removal of Topsoil or alteration of the Grade of land in such area.

#### **4. Specific Prohibitions and Regulations**

- 4.1. No Person may Place or Dump Fill or cause or permit Fill to be Placed or Dumped and no Person may remove Topsoil or cause or permit the removal of Topsoil and no Person may alter the Grade of any land or cause or permit the Grade of any land to be altered within the City in the following circumstances:
- (a) where the Owner has not consented in writing to the Placing or Dumping of Fill or to the removal of Topsoil or to alteration of the Grade;
  - (b) where the Fill is Placed or Dumped or the Grade is altered for storage purposes and such storage is not permitted pursuant to the Zoning By-law;
  - (c) where the Placing or Dumping of Fill or alteration of the Grade will result in changing any Grade established by a grading and drainage plan approved by the City including, without limitation, a grading and drainage plan approved by the City in relation to any subdivision, re-zoning, site plan or building permit approval, and such Placing or Dumping of Fill or alteration occurs without a Permit;
  - (d) where the Fill includes material from the demolition of any structure or includes "refuse" as that term is defined within the meaning of the City's By-law 60-79, as amended or includes toxic or hazardous materials, glass or sewage;
  - (e) where the Placing or Dumping of Fill or alteration of the Grade would result in Soil erosion or Soil pollution, blockage or siltation of any watercourse, pollution of any

watercourse, flooding or Ponding on any land or detrimental effect on any environmentally significant area or wetland complex;

- (f) where the Placing or Dumping of Fill or alteration of the Grade does not accord with City design standards;
- (g) where the Placing or Dumping of Fill or alteration of the Grade is on any land zoned within any of the Open Space zoning designations pursuant to the Zoning By-law, unless approval therefor has been issued by the Central Lake Ontario Conservation Authority or a Permit has been issued pursuant to this By-law.

- 4.2. No Person may Place or Dump Fill or cause or permit Fill to be Placed or Dumped and no Person may alter the Grade of any land or cause or permit the Grade of any land to be altered in the City without a Permit where the volume of the Fill being Placed or Dumped or the volume of Fill involved in the alteration exceeds 50 cubic metres.

## **5. Issuance of a Permit**

- 5.1. The Director is hereby authorized and directed to issue a Permit where an Applicant has satisfied the requirements of this By-law.
- 5.2. An Applicant shall submit the following to the Director:
- (a) a completed application in the form prescribed from time to time by the Director in accordance with the information required in this By-law;
  - (b) the Permit fee prescribed by the City's General Fees and Charges By-law as from time to time amended;
  - (c) when required by the Director in order to assess the impact of the Fill or alteration on the environment affected, a Fill-control plan, which shall include any or all of the following as shall be specified by the Director and to the Director's satisfaction:
    - i) a key map showing the location of each lot, including the nearest major intersection and north arrow;
    - ii) the lot boundaries and area (expressed in hectares) of each lot;
    - iii) the existing and proposed use of the land and the location and use of the buildings and other structures adjacent to each lot;
    - iv) the location, dimensions and use of any building and other structures existing or proposed to be erected on each lot;
    - v) the location of lakes, streams, wetlands, channels, ditches, other watercourses and other bodies of water on and within a minimum of 30 metres beyond each lot boundary;
    - vi) the location of all Regulatory Flood Lines and Conservation Authority Fill Regulation lines;
    - vii) the location and identification of the predominant existing Soil types;
    - viii) the species, Grade at base and size of all trees greater than 250 millimetres in caliper, all shrubs, trees and hedges within three (3) metre(s) of the property line and driveways on each lot and all easements and rights-of-way over, under, across or through each lot;

- ix) the location and dimensions of any existing and proposed storm water drainage systems and natural drainage patterns on and within a minimum of 30 metres beyond each lot boundary;
  - x) the location and dimensions of utilities, structures, roads, highways and paving located within a minimum of 30 metres beyond each lot boundary;
  - xi) the existing topography on each lot and extending a minimum of 30 metres beyond each lot boundary;
  - xii) the Proposed Grades of each lot;
  - xiii) the location and dimensions of all proposed land disturbance activities, including construction of access roads;
  - xiv) the location and dimensions of all temporary Soil, dirt or Fill stockpiles;
  - xv) the location, dimensions, design details and design calculations of all construction site erosion control measures that may be necessary to minimize the impact of the proposal;
  - xvi) a schedule of the anticipated starting and completion dates of each land disturbance or land development activity;
  - xvii) provisions for the maintenance of the construction site erosion control and dust control measures during construction and after as required;
  - xviii) the scale of drawing, ranging from 1:250 to 1:1000 as deemed appropriate (each drawing control plan to be in metres);
  - xix) an indication on the drawing of directions of overland water flow and overland flow route;
- (d) Proposed Grades and drainage system to be used upon completion of the filling operation;
  - (e) a description of the proposed Fill, including a list of the sources and geotechnical reports as to content and quality, prepared by qualified experts in that regard;
  - (f) a certificate of the Owner, Applicant and each qualified expert referenced in paragraph (e) certifying that the Fill contains no contaminants as defined in the Environmental Protection Act, R.S.O. 1990, c. E.19;
  - (g) a plan showing the design details to proper scale of any Retaining Wall that may be required and the dimensions of any materials to be used in construction of such Retaining Wall; and
  - (h) security in a form and amount to be determined by the Director to secure performance of the work for which the Permit is being applied.
- 5.3. The Director may draw upon the security posted pursuant to paragraph 5.2(h) to recover the cost of the City performing any required work which the Owner or the Applicant has failed to perform.
- 5.4. The issuance of a Permit does not relieve the Owner or the Applicant from the obligation to secure all other applicable approvals.

## 6. Permit Requirements

- 6.1. The Director may, prior to the issuance of a Permit, require the Owner or Applicant or both to enter into an agreement which may be registered on title to the subject lands containing such requirements of this By-law as the Director considers necessary to ensure that the Placing or Dumping or removal of Fill is done in accordance with the prevailing City design standards and proper engineering principles.
- 6.2. Requirements contained in an agreement may include the Owner or Applicant releasing and indemnifying the City, certifying that the Fill contains no contaminants as defined in the Environmental Protection Act, posting with the City the required security and where, in the opinion of the Director, extensive activities are proposed, certification by a geotechnical engineer or other similarly qualified Person, both prior to the issuance of a Permit and upon completion of the work. All such certification shall state that the Owner or Applicant can and has complied with all of the obligations and conditions contained in the applied for and issued Permit.
- 6.3. The Director may, from time to time and at the Applicant's expense, require the testing of any Fill by a qualified expert retained by the City.
- 6.4. The Director may require an Applicant to install such site remediation measures, including Topsoil, seeding, sodding and installation berms and landscaping, as are necessary to minimize the visual impact of Fill or Grade alteration proposals.
- 6.5. For the purpose of this section 6, the Director and the City Clerk may execute on the City's behalf the agreement in a form acceptable to the Director and to the City's Director, Legal Services.

## 7. Permit Expiry

- 7.1. A Permit shall expire on the earliest of the following dates:
  - (a) the expiry date as specified on the Permit by the Director;
  - (b) the date which is twelve (12) months following the date on which the Permit was issued; and
  - (c) the date on which an Owner at the time of issuance of the Permit ceases to be an Owner.
- 7.2. A Permit which expires pursuant to section 7.1 of this By-law may be renewed within a two (2) month period from the date of expiry by making of written application to the Director accompanied by a payment of 50% of the original Permit fee, provided that the proposed work has not been revised.

## 8. Permit Revocation

- 8.1. It is a condition of each Permit that the Permit may be revoked by the Director under the following circumstances:
  - (a) if it was obtained on mistaken, false or incorrect information;
  - (b) if it was issued in error;
  - (c) if the Owner or Applicant requests in writing that it be revoked;

- (d) if the terms of an agreement under this By-law have not been complied with; or
- (e) if an Owner or an Applicant fails to comply with the provisions of this By-law or with an order requiring work to be done to correct contraventions of this By-law.

## **9. Enforcement**

- 9.1. Inspectors are hereby authorized to carry out inspections in relation to this By-law and are delegated such powers as are within the jurisdiction of the City in order to administer and enforce this By-law including, without limitation, the power to make orders requiring the discontinuance of activities and requiring work to be done to correct contraventions of this By-law.

## **10. Remedies and Penalties**

- 10.1. Each Person who Places or Dumps Fill or who causes or permits Fill to be Placed or Dumped contrary to this By-law or to a Permit shall forthwith remove such Fill and restore the Existing Grade of the land.
- 10.2. Each Person who removes Topsoil contrary to this By-law or to a Permit shall forthwith rehabilitate the land from which the Topsoil was removed including the replacement on the land of Topsoil and the restoration of the Existing Grade of the land.
- 10.3. Each Person who alters the Grade of land or who causes or permits the alteration of the Grade of land contrary to this By-law or to a Permit shall forthwith restore the land to its original condition including the Existing Grade of the land.
- 10.4. Where an Owner fails to do any work required in an order issued pursuant to this By-law within the period specified, the Director may cause the work to be done at the Owner's expense and, for this purpose, the Director, Inspectors and the City's employees and agents may enter on the Owner's land at any reasonable time.
- 10.5. Each Person who contravenes any provision of this By-law or an order under subsections 144(4) or 144(5) of the Municipal Act, 2001, is guilty of an offence and is liable
- (a) on a first conviction, to a fine of not more than \$10,000; and
  - (b) on any subsequent conviction, to a fine of not more than \$25,000.
- 10.6. Despite subsection 10.5, where the Person convicted is a corporation, the maximum fines in paragraphs 10.5(a) and 10.5(b) are \$50,000 and \$100,000, respectively.

## **11. General Provisions**

- 11.1. The provisions of this By-law shall apply to all lands and premises within the City.
- 11.2. 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.
- 11.3. 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.

11.4. The short title of this By-law shall be the "Site Alteration By-law".

11.5. This By-law shall be administered by the Director.

11.6. The provisions of this By-law shall come into force and effect on the date of its passing.

By-law approved this twelfth day of June, 2006.

Mayor

Acting City Clerk



**DEPARTMENT OF DEVELOPMENT SERVICES**

**POLICY & PROCEDURE No. 3.2.2-009**

DIVISION: <b>ENGINEERING SERVICES</b>	DATE: April 30, 2001
SECTION: <b>INSPECTION</b>	ESTABLISHED: April 17, 2001
PAGE NO.: <b>1 OF 2</b>	APPROVED BY:
REVISION NO.:	DATE:

**TITLE: MUD CONTROL POLICY**

**PURPOSE**

To establish a policy and procedure for the cleaning of streets required as a result of the deposition of mud and dust due to development activities.

**Definitions**

- 1) 'Clean' means to sweep and/ or flush streets with a mechanical street-cleaning piece of equipment.
- 2) 'Improved Street' means any street fully maintained by and under the jurisdiction of the City of Oshawa and the Region of Durham.
- 3) 'Inspector' means an employee of the City of Oshawa.
- 4) 'Scrape' means to remove mud and dirt from the road by either hand operation or a machine using a bucket or blade.
- 5) 'Stage 1 Subdivision Street' means any subdivision street having first stage curb and gutter and base asphalt only.
- 6) 'Stage 2 Subdivision Street' means any subdivision street having second stage curb and gutter and final asphalt.
- 7) 'Subdivision Street' means any street, the construction of which is included in a development agreement with the City of Oshawa, and has not yet been assumed by the City.

**SOURCE**

City Council, April 17, 2001.

**POLICY**

Where land disturbance as a result of building or construction creates mud or dust on streets, the developer of the lands shall ensure their builder(s), contractor(s) or themselves clean the streets in accordance with the following minimum levels of service:

**Improved Street and Stage 2 Subdivision Street**

Where required:

- Shall be scraped at least once per day, but with a higher frequency as required.
- Shall be cleaned at least once per week on Friday, but with a higher frequency as required.

### **Stage 1 Subdivision Street**

Where required:

- Shall be scraped at least once per day once house occupancies commence.
- Shall be cleaned (swept) once per week on Friday once occupancies on the street are 25% or more.

Use of calcium as a dust control measure may be considered on asphalt surfaces provided that application rates do not create a slippery surface.

### **PROCEDURE**

It is intended that the above minimum levels of service shall be initiated by the developer and their builders or contractors without formal request from the City.

1. Inspection of improved streets will be carried out by the City on a regular basis to ensure the minimum level of service is provided.
2. Inspection of subdivision streets will be initiated upon receipt of a complaint or in an area with a history of complaints. Follow-up action with the developer, builder or contractor will occur where the above minimum levels of service are not consistently met.
3. The developer, builder or contractor shall carry out scraping requested by the City inspector within 24 hours.
4. Cleaning requested by the City inspector shall be carried out within 24 hours.
5. Where a developer, builder or contractor does not have a regular program established to maintain the minimum levels of service and does not react to the City inspector's request within the required time frames, the City will perform the work at the developer's cost. The developer will be invoiced for all City costs including administration. Where any invoice is unpaid after 45 days, the developer's letter of credit will be drawn down to cover any unpaid amount.

**THE CORPORATION OF THE TOWN OF AJAX**

**BY-LAW NUMBER 69-2002**

Being a By-law to regulate the fouling of Roads.

WHEREAS the Council of the Corporation of the Town of Ajax is authorized to pass a By-law pursuant to the Municipal Act, R.S.O. 1990 to prohibit or regulate the obstruction, encumbering, injuring or fouling of roads and bridges, for prohibiting the throwing, placing or depositing of dirt, refuse or any other debris on any road or bridge.

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

NOW THEREFORE the Council of the Corporation of the Town of Ajax hereby enacts as follows:

**1. DEFINITIONS**

In this By-law,

- 1.2 “Clean” means to sweep and/or flush the roads with a mechanical street cleaning vehicle. Clean shall not include flushing during times when safety could be compromised due to freezing or near freezing temperatures;
- 1.2 “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 and mud;
- 1.3 “Expense” means the cost of carrying out work to be done pursuant to Section 4.1 and Section 4.4 plus an additional 25% administrative charge;
- 1.4 “Exterior Road” means a road exterior to the property on which the Land Disturbance is occurring;
- 1.5 “Foul” means to throw, place or deposit Debris on a Road; including the generation of air borne dust caused by the deposition of debris on a Road;
- 1.6 “Inspector” means a person appointed as an inspector by the Town;
- 1.7 “Interior Road” means a road within a property on which the Land Disturbance is occurring;
- 1.8 “Land Disturbance” means any man-made change to the land surface through construction activities including removal of trees, vegetation, excavating, trenching, filling, grading and sodding or landscaping;
- 1.9 “Mud Mat” means an area of 100 millimeter diameter clear crushed stone, 6 metres in width minimum, 20 metres in length minimum and 150 millimetres in depth minimum, designed to strip mud off truck tires prior to leaving the property on which the Land Disturbance is occurring and entering onto a Road;
- 1.10 “Notice” means a Notice issued under Section 4 of this Bylaw and may be delivered by personal service, by posting on the Property, by mail or by facsimile transmission to an Owner;
- 1.11 “Owner” includes the Person for the time being managing or receiving the rent of 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;
- 1.12 “Person” includes an individual, firm, corporation, association, or partnership
- 1.13 “Property” means any grounds, yard or vacant lot;

- 1.14 “Road” includes the entire right of way of a common and public highway, street, avenue, bikeway, parkway, driveway, square, place and bridge designed and intended for, or used by, the general public for passage of vehicles or pedestrian traffic whether assumed by the Town or not;
- 1.15 “Scrape” means to remove mud, dirt and debris from a Road by either hand operation or by common earth moving or construction equipment; and,
- 1.16 “Town” means the Corporation of the Town of Ajax.

### **GENERAL PROVISIONS**

- 2.1 No Person shall Foul, or cause or permit to be Fouled, a Road within the Town.
- 2.2 An Owner, carrying out or causing to be carried out any Land Disturbance, shall keep all Roads free of Debris and Dust emanating from the Land Disturbance.
- 2.3 An Owner shall comply with a Notice.
- 2.4 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 Town.

### **MAINTENANCE STANDARDS**

- 3.1 During Land Disturbance on a Property, the Owner shall:
- (a) Scrape all Interior Roads that have been Fouled at least once per day, or as necessary to maintain safe passage.
  - (b) Clean all Interior Roads at least once per week or more frequently as required by the Town if occupancy of buildings on the Road has taken place.
  - (c) Scrape all Exterior Roads that have been Fouled as often as required to keep the road surface free of Debris.
  - (d) Clean all Exterior Roads at least once per week or more frequently as required by the Town.
  - (e) Take action to eliminate dust from blowing on to an Exterior Road from any construction activity on the property.
  - (f) Ensure that the Mud Mat is used by all trucks or other construction vehicles leaving the Property.
- 3.2 An Owner shall keep a Mud Mat free of mud or dirt which would prevent the proper stripping of mud from tires.
- 3.3 The Owner shall not permit Debris to be deposited, flushed or washed into any sewer or catchbasin. The Owner will be required to clean any sewer or catchbasin that is fouled by Debris from the Property of the Owner.

### **ENFORCEMENT**

- 4.1 In the event of a contravention of this Bylaw, an Inspector may:
- (a) Cause the Debris to be removed or Cause the Road to be Scraped or Cleaned at the Owner’s Expense if the Fouling is deemed by the Inspector to be an immediate danger to health and safety of any person;
  - (b) Deliver a Notice requiring an Owner to remove the Debris or to Scrape or Clean the Road;
  - (c) Deliver a Notice requiring the Owner to cease any operation causing Fouling of a Road; or

- (d) Deliver A Notice requiring the Owner to cease any operation causing dust to blow on to an Exterior Road from the Land Disturbance site.
- 4.2 If a Mud Mat requires renewal, an Inspector may Deliver a Notice requiring an Owner to repair or replace the Mud Mat.
- 4.3 A Notice shall contain the particulars of the contravention, the remedial measures to be taken and the time permitted to comply with the measures set forth in the Notice. In the event measures were taken by the Town pursuant to Section 4.1 (a) the Notice shall set out the measures taken by the Town and providing details of the amount expended in taking the measures.
- 4.4 If an Owner fails to comply with a Notice, the Town may carry out the work required by the Notice at the Owner's Expense.
- 4.5 The Town may recover an Expense by:
  - (a) Presenting an invoice to an Owner;
  - (b) Recovering the Expense in the like manner as municipal taxes; or,
  - (c) Recovering the Expense from any securities held for performance and maintenance guarantee.
- 4.6 This By-law shall be administered by Planning and Development Services or Operations and Environmental Services and enforced by a Municipal Law Enforcement Officer.
- 4.7 If a Court of competent jurisdiction should declare any section or part of a section of this By-law invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this By-law and it is hereby declared that the remainder of the By-law shall be valid and shall remain in force.
- 4.8 Every Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine or penalty for each offence, exclusive of costs as prescribed in the Provincial Offences Act, R. S. O. 1990.
- 5. That By-law Number 16-2000 be repealed.

READ a first and second time this Tenth day of June, 2002.

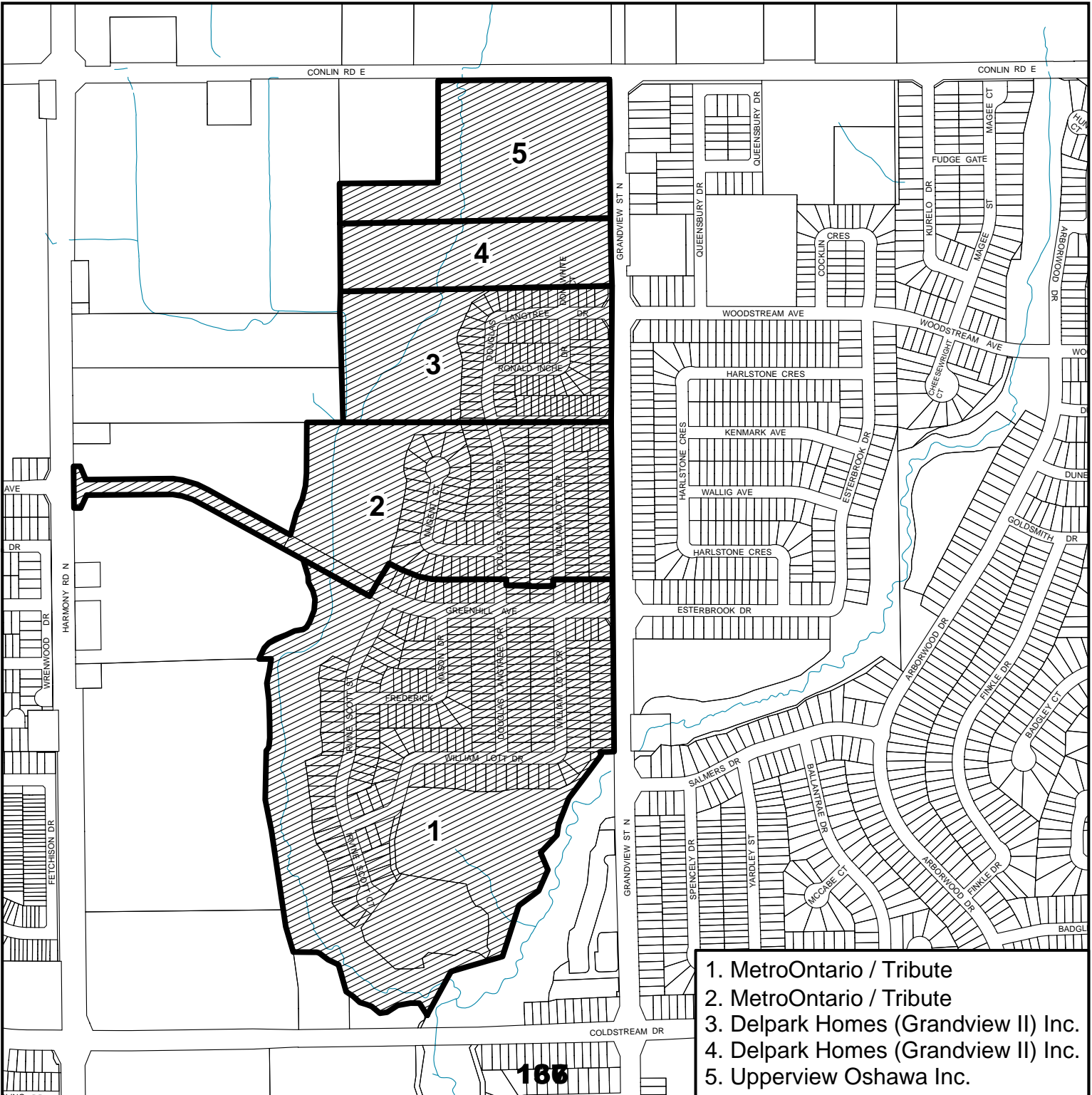
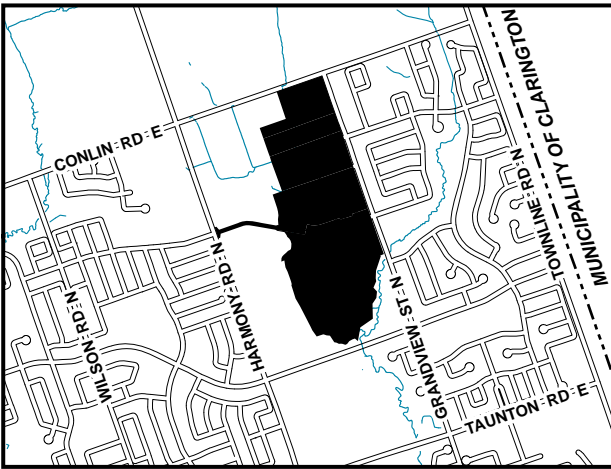
READ a third time and finally passed this Tenth day of June, 2002.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

Subject: Dust Control Related to New Development  
Address: Grandview Street North Area  
File: D-1000

Subject Sites 



# The Corporation of the Municipality of Leamington

## By-law 333-13

Being a by-law to control nuisance dust

**Whereas** Section 129 of the Municipal Act, 2001, S.O. 2001, c.25 provides that the councils of local municipalities may pass a by-law for regulating dust.

**Now therefore**, the Council of The Corporation of the Municipality of Leamington hereby enacts as follows:

### 1. Interpretation

In this by-law,

- (a) “Council” means the Council of The Corporation of the Municipality of Leamington;
- (b) “dust” means any airborne particulate matter;
- (c) “Municipality” means the land within the geographic limit of the Municipality of Leamington;
- (d) “nuisance caused by dust” means any dust that is of such persistence or volume that it has a detrimental impact on the use and enjoyment of property;
- (e) “person” means an individual, business, firm, corporation, association, partnership, or any combination thereof.

### 2. Scope

This by-law shall apply to the entire Municipality.

### 3. General Prohibitions

No person shall create or permit a nuisance caused by dust.

**4. Exemptions**

Section 3 (1) of the By-law does not apply to a nuisance created by the following activities:

- (a) Emergency measures undertaken for the immediate health, safety, or welfare of inhabitants or for the preservation or restoration of property; unless such dust is clearly more of a nuisance than is reasonably necessary for the accomplishment of such activity;
- (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 municipality or any other level of government.

**5. Grant of Exemption by Council**

**(1) Application to Council**

Notwithstanding anything contained in this By-law, any person may make an application to Council to be granted an exemption from any of the provisions of this By-law with respect to any source of dust for which the person might be prosecuted and Council, by resolution, may grant or refuse to grant the exemption applied for and any exemption granted shall specify the time period during which the exemption is effective and may contain such terms and conditions as Council deems appropriate.

**(2) Decision**

In deciding whether to grant the exemption, Council shall give the applicant and any person opposed to the application an opportunity to be heard and may consider such other matters as Council deems appropriate.

**(3) Breach**

A breach of any of the terms or conditions of any exemption granted by Council shall render the exemption null and void.



**6. Severability**

If a court of competent jurisdiction should declare any section or part of a section of this By-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the By-law and is hereby declared that the remainder of the By-law shall be valid and shall remain in force.

**7. Penalty**

Every person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is subject to a fine pursuant to the Provincial Offences Act, R.S.O. c. P.33, as amended.

**8. Continuing Offence**

Each calendar day a violation of Section 3 continues is deemed to a separate offence.

**9. Short Title**

This By-law may be referred to as the dust control by-law.

**10. Effect**

This By-law will take effect and come into force upon its enactment.

Read a first, second and third time and finally enacted this 28<sup>th</sup> day of October, 2013.

Signature on file

John Paterson, Mayor

Signature on file

Brian R. Sweet, Clerk

**ONTARIO COURT OF JUSTICE**

**PROVINCIAL OFFENCES ACT**

**PART I**

IT IS ORDERED pursuant to the provisions of the Provincial Offences Act and the rules for the Ontario Court of Justice that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 333-13, of the Municipality of Leamington, attached hereto are the set fines for those offences. This Order is to take effect November 21, 2013.

Dated at London this 21<sup>st</sup> day of November 2013.



Wayne G. Rabley  
Acting Regional Senior Justice  
West Region

**Set Fine Schedule**

Schedule "B" to Report CL/32/13

**The Corporation of the Municipality of Leamington**

**Part 1 Provincial Offences Act**

**By-law 333-13**     A by-law to Control nuisance dust

<b>Item</b>	<b>Column 1</b> Short Form Wording	<b>Column 2</b> Offense Creating Provision	<b>Column 3</b> Set Fine
1	Creating or permitting a nuisance caused by dust	Section 3	\$150.00

Penalty Provision for the offences indicated above is Section 7 of By-law 333-13 a certified copy of which has been filed.

**D. G. Biddle & Associates Limited**

consulting engineers and planners

96 KING ST. E., OSHAWA, ONTARIO L1H 1B6 PHONE (905) 576-8500 FAX (905) 576-9730  
e-mail: info@dgbiddle.com

May 21, 2020

**Re: Mud and Dust Control By-Law Memorandum**

---

To Whom it May Concern:

As a prominent engineering consultant in the City of Oshawa for over 40 years, this memorandum serves to express the thoughts of this office as it relates to the City of Oshawa request for feedback on whether it should pass by-laws related to nuisance mud and dirt on roads and properties in Oshawa due to construction and development project.

It is factual that within developments, including site alteration, that mud and dust are present. This is a reality of construction and will be the case for the foreseeable future. It is noted, as stated in the report prepared for council, that the City of Oshawa already has the most extensive policy related to mud and dust control within the Region.

Furthermore, City inspectors are actively inspecting development projects and do frequently report nuisance mud and dust to both Developers and their consultants. Under current City policy, the developer/consultant must rectify the situation in a timely manner, or the City undertakes the work and backcharges the Developer.

The current process is acceptable and does function adequately with minor economic impact.

Should the City pass a by-law which is more prescriptive, the results will be more intense precautions related to mud and dust control, which will increase overall development costs.

These increase in costs will ultimately be reflected in the development budgets and municipal securities, which in turn will raise costs to the end user: the prospective homebuyer.

Sincerely,

Brett Lewandowsky, P. Eng.  
Project Construction EngineerMichael B. Carswell, P. Eng.  
President



**Member of Conservation Ontario**

The Corporation of the City of Oshawa  
50 Centre Street South  
Oshawa, ON L1H 3Z7

May 25, 2020

**Attention: Michelle Whitbread, Manager, Operations Policy and Research**

Dear Ms. Whitbread,

**Subject: Feedback Requested - Dust and Mud Control By-laws  
Municipal Report no. DS-18-127: Dust Control Related to New Development  
CLOCA IMS File No. POFA20**

We understand that the City of Oshawa is considering passing a by-law under the Municipal Act, 2001, to control nuisance dust, dirt and debris on road and properties created as a result of construction and development activities. As part of this process, City staff are carrying out public consultation and has requested input from agencies, developers and other interested parties on the matter and provided for review Oshawa Staff Report No. DS-18-127 on Dust Control Related to New Development prepared for the City's Development Services Committee on June 14, 2018. Staff at the Central Lake Ontario Conservation Authority (CLOCA) have reviewed this report and have the following comments:

**The Erosion and Sediment Control Guide for Urban Construction, 2019**

The practice of erosion and sediment control (ESC) in Ontario has evolved significantly over recent decades. There is a growing awareness that of the negative impacts that dust and sedimentation can have on natural features and people's health. The *Erosion and Sediment Control Guide for Urban Construction, 2019*, was prepared by the Toronto and Region Conservation Authority in collaboration with conservation authorities in the Greater Golden Horseshoe, including CLOCA, and supersedes the earlier guiding document *Greater Golden Horseshoe Area Conservation Authorities Erosion and Sediment Control Guideline for Urban Construction, 2006*. These guidelines outline the technologies, standard practices and mitigating measures that can be applied to prevent the release of sediment, dust and debris from construction sites. Some of these best management practices that are specific to managing wind blown dust and mud control include, phased site grading, misting bare soil areas, vegetative filter strips, mulching, surface roughening and vehicle tracking controls.

Particularly relevant to preparing a dust control by-law, this document clarifies the responsibilities of all parties involved in managing erosion and sediment controls (ESCs) on site, includes plan and submission requirements, inspection details, and provides a summary of legislation that governs construction activities related to ESCs.

Establishing clear guidelines and standards for ESCs can result in significant improvements on site and increase the likelihood of compliance. CLOCA staff recommend municipal staff read the ESC Guidelines in detail and include the relevant methods, best management practices, and standards in the development of a dust and mud control by-law. The *Erosion and Sediment Control Guide for Urban Construction, 2019* can be found at: [https://sustainabletechnologies.ca/app/uploads/2020/01/ESC-Guide-for-Urban-Construction\\_FINAL.pdf](https://sustainabletechnologies.ca/app/uploads/2020/01/ESC-Guide-for-Urban-Construction_FINAL.pdf)



**City of Oshawa Site Alteration By-law 85-2006**

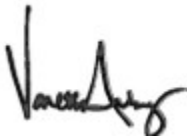
The City may also consider improvements to existing by-laws to address the negative impacts of dust and sediment created as result of construction activity. CLOCA staff have reviewed the City of Oshawa Site Alteration By-law 85-2006 that was included as an attachment within the staff report (DS-18-127) and have the following recommendations:

1. The City of Oshawa's Engineering Design Criteria Manual included a detailed Mud Control Policy that should be integrated or included as its own section within By-law 85-2006.
2. Inclusion of all Natural Heritage and Hydrologic Features listed in Section 5.1.2 and in line with the policy direction of Section 5.3 of the Oshawa Official Plan, including Headwater Drainage Features and Woodlands, as listed items when assessing the impact of fill or alteration on the environment in Section 5.2 (c)(v).
3. Section 5.2 (c)(viii) requires a tree inventory include all trees greater than 25 cm DBH. However, trees smaller than 25 cm DBH can also be impacted by grading and filling activities. The industry standard of 10 cm DBH should be applied here for all tree inventories.

**Conclusion**

We appreciate the opportunity to provide advisory comments on this matter and would be pleased to take part in any future discussions and/or comment on a future draft dust and sediment control by-law. Should you have any further questions regarding the above noted comments please contact the undersigned.

Kindest regards,



Vanessa Aubrey, Development Planner  
Central Lake Ontario Conservation Authority  
[vaubrey@cloca.com](mailto:vaubrey@cloca.com)

cc: Chris Jones, Director of Planning and Regulation, CLOCA ([cjones@cloca.com](mailto:cjones@cloca.com))  
Jamie Davidson, Director, Watershed Planning & Natural Heritage, CLOCA ([jdavidson@cloca.com](mailto:jdavidson@cloca.com))



**Durham Region Home Builders' Association**  
1-1255 Terwilligar Avenue  
Oshawa, Ontario L1J 7A4  
Tel. (905) 579-8080

May 26, 2020

Michelle Whitbread  
City of Oshawa  
50 Centre Street South  
Oshawa, Ontario L1H 3Z7

**Re: Dust and Mud Control By-laws**

---

The Durham Region Home Builders' Association (DRHBA) proudly represents over 170 member companies that are involved in the construction and renovation industry, and is the voice of the residential construction industry in Durham Region.

First, DRHBA would like to thank City staff for reaching out to us for feedback on the proposed dust and mud control bylaws. We really appreciate how the City of Oshawa involved the development community in their decision making processes.

We have reviewed the proposal to create and implement dust and mud control by-laws, and overall we don't believe that these bylaws are needed, as the content is already covered within existing policies and bylaws.

It should be noted that in the City Site Alteration bylaw, section 6.4 states "The Director may require an Applicant to install such site remediation measures, including topsoil, seeding, sodding and installation of berms and landscaping, as are necessary to minimize the visual impact of Fill or Grade alteration proposals." These onsite measures reduce dust creation and eventual migration, and as such, we feel there is no requirement to embed these in a bylaw.

For subdivisions, Section 6 of the City of Oshawa Engineering Design Criteria Manual, along with clause 10.3, which is further detailed in Appendix 13, titled 'Mud Control Policy' specifically addresses the issues associated with dust and mud control.

For site plans an infill developments, the process for building permits and site plan approvals is the same as Site Alteration. The City's site plan agreement also makes reference to the requirement to comply with the Site Alteration By-law 85-2006.

At a time when governments at all levels are trying to reduce red tape to expedite the construction of new homes, adding a redundant bylaw just adds to existing inefficiencies.

While we hope that the City of Oshawa ultimately deems a new dust and mud control bylaw unnecessary, if the decision is made to proceed, DRHBA would also like to address two points made in Report DS-18-127 Dust Control Related to New Development.

### **Section 5.3.2 Durham Lakeshore Municipalities Site Alteration Bylaw**

This section of the report highlights one of Clarington's enforcement clauses: "The Director may, without notice, have such mud or dust controlled by Municipal forces or a third party contractor and such costs, including a 30% management and administration charge, shall be paid by the applicant upon invoicing." Under any type of policy or bylaw, the developer/builder needs to have the opportunity to address the issue before the municipality steps in to rectify the situation.

### **Section 5.6 Summary of Analysis and Opportunities for Enhancement**

Similarly to the above point, this section of the report suggests "The possible use of administrative monetary penalties related to the above and should also be investigated." Penalties should only be considered as the cost of the municipality taking on the work with the addition of an administrative fee. This should only occur if the developer/builder was given an opportunity to address the concern prior to the municipality taking on the rectification of the issue.

The Durham Region Home Builders' Association appreciates the opportunity to provide the City of Oshawa with feedback on this matter, and we are available to answer any questions you may have or provide further comment.

Sincerely,



Stacey Hawkins  
Executive Officer  
Durham Region Home Builders' Association

cc:

Paul Ralph, City Manager, City of Oshawa  
Warren Munro, Commissioner of Development Service, City of Oshawa  
Ken Man, Manager, Policy and Research, City of Oshawa  
Johnathan Schickedanz, president, DRHBA  
Tiago Do Couto, vice-president, DRHBA



May 26<sup>th</sup>, 2020

**Item: CNCL-20-122**  
**Attachment 5**

Michelle Whitbread  
Manager, Operations Policy and Research

Ken Man  
Manager, Policy and Research

City of Oshawa

Development Services Committee

**Re: Item: DS-18-127. Dust control report, dated June 18, 2018.**

Thank you for the opportunity to give comments of the above noted report, albeit the timing of this request being somewhat strange as well as rushed considering the unprecedented environment that our community is experiencing.

I believe that the City of Oshawa, along with its development and building community partners have up to this point have been performing a reasonable job at controlling dust. Under the current City of Oshawa Mud Control Policy, the situation(s) being addressed in this report have been maintained and controlled in the vast majority of development sites, or so has been my experience. I therefore am not fully understanding the severity, or scope of the perceived problem. My school of thought has always been "if it is not broken, why are we fixing it?"

I am aware that there was a concern several years ago along Grandview Street North, and that those concerns were appeased by the developers in question in an expeditious and reasonable manner when brought to their attention. From my experience this has always seemed to be the case in Oshawa (a partnership) between the industry and the municipality for as long as I can recall. I would further comment that most developers, and builders that I know are community-conscious, and act as exemplary corporate citizens.

Upon careful review of the report, I find significant questions, as well as potential fallout that may occur depending on the direction or potential "new policies" that may be derived from it. I will attempt to share my concerns with your committee as best I can.

1. In this Covid time, we have learned to rely on "Data" to measure severity, and with this being said, is there data on the amount of annual complaints received by the City in the last 5 years?
2. If this data exists, is it reviewed or can it be analyzed by the development site complained about, and further to this, by the cause of the dust, i.e. road construction, excavation, road scraping, etc.?

3. In these cases what was the reaction time by the builder developer, and did it remedy the situation or complaint?
4. Of the complaints that were received, how many were deemed **valid**, a word I do not use lightly, as I realize that someone will comment that even one complaint is one too many, but it is a term that is used on page 6, section 5.4.2 of the report, and that I believe as not all complaints are of a rational nature.
5. Will there be a "**quantifiable metric**" adopted for "nuisance dust"? This may seem somewhat farfetched, but nuisance dust is a subjective term, and therefore, it will be perceived, and inspected in a subjective manner. Common sense should always prevail in these circumstances, but this is seldom the case, as common sense is that not common. Keeping this thought in mind, I have for the last several years found my lawn, landscaping shrubbery, and my windows coated in a white dust, I have come to realize that it is dust generated by traffic on my street, causing winter brine and salt to disseminate as this white dust. Is it a nuisance, yes, and more probable (?) of being dangerous? But it is a product of the environment that we live in.
6. With the example used above in mind, has there been thought given to different types of dust and where it was generated from? I get dust on my car driving around the City, could someone start a complaint when they get home that the dust was generated by my development? I get dust on my home windows from the winter, from the rain, can dust on a neighbour's windows instigate a complaint against me? How do we (The City) differentiate the source of the dust and the validity of the complaint? Ridiculous as it may seem, not all "nuisance dust" will be generated or caused by the development site.
7. The potential new policy seems to only address "New Home Development", what would the policy be for construction at the College, or University Campus's? I drive by these on a regular basis, and reside near one of the locations, where I have noticed a great deal of dust generation. On the same note, why would any infrastructure construction or refurbishment be excluded, do the aforementioned not generate any valid complaints?
8. The last paragraph in section 5.5 on page 7, speaks to dust that migrates onto adjacent private properties and that City staff attempts to connect the developer with the private property homeowner, so that the issue may hopefully be resolved. This has been the most direct and meaningful way that I have found that issues are resolved, in fact we send out letters to all adjacent homeowners advising them to please contact us with any questions, concerns or complaints with our contact information. Just as a point of information, we received a call from City staff just a few weeks ago stating that there was a dust complaint; we were not told the nature of the complaint, nor the address, or specifics. Upon investigation we discovered a clean site, no mud or dust, took pictures and provided them to City staff asking for more details. We learned that the complaint was from or through a City Councilor on behalf of a resident, but with no details. It is difficult if not impossible to act on complaints without relevant information, so we requested that the City Councilor if possible, ~~can~~ contact us directly and explain the

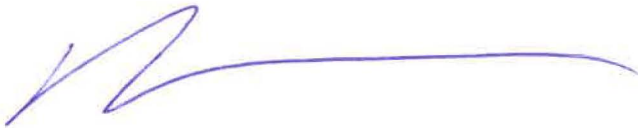
circumstances, but we have yet to hear anything on the matter. Operating under a cloak of anonymity is not the most useful way of resolving situations of this nature.

9. Has there been any thoughts, when circling back to the “data” on complaints, on the amount of resources that may be needed by the Municipality on these files? Another reason to have an accurate count on the number of complaints over the years.

Overall, I find that the proposal to enact a new bylaw to be very narrow in scope and without the proper data in place to justify its creation. It feels as though this has been put together very hastily and is far too subjective to be enforceable. The City of Oshawa and its staff have a great working relationship, and the majority, if not all, concerns and complaints regarding construction dust and mud have been resolved through a simple conversation with the developer/builder. These potential issues are also already addressed in the City's Site Alteration bylaw, the Mud Control Policy, and through conditions on site plan approval. It is for these reasons that the thought of just adding another layer of redundancy for reasons I cannot determine, is beyond my comprehension.

Thank you for your time.

Respectfully,



Peter Saturno



**By-law -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 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.
- 9.3. 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) when a copy is delivered to the Person and/or Owner to whom it is addressed;
  - (b) on the fifth (5<sup>th</sup>) 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,
  - (a) 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 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





**By-law -2020  
of The Corporation of the City of Oshawa**

**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 1<sup>st</sup> to April 1<sup>st</sup>); 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 (5<sup>th</sup>) 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            day of            , 2020.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**By-law -2020  
of The Corporation of the City of Oshawa**

Being a by-law to amend General Fees and Charges By-law 13-2003, as amended.

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

Schedule "A" to General Fees and Charges By-law 13-2003, as amended, is further amended by adding within the table "Municipal Law Enforcement – Property" the following rows:

Dust and Mud Control Cleanup (after confirmation of an order)	Full recovery of all costs including but not limited to staff, policing, agency time, contracted services, equipment charges and overhead costs.
Fouling of Roads Cleanup (after confirmation of an order)	Full recovery of all costs including but not limited to staff, policing, agency time, contracted services, equipment charges and overhead costs.

By-law passed this                      day of June, 2020.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk