



Town of Whitby

By-law # 7652-20

Residential Construction Dust By-law

Being a By-law to regulate the emission of dust from residential construction in the Town of Whitby.

Whereas pursuant to Section 129 of the Municipal Act, 2001, the Town may pass by-laws to prohibit and regulate the emission of dust in the municipality; and

Whereas pursuant to subsection 11(2) of the Municipal Act, 2001, the Town may pass by-laws in respect of the health, safety and well-being of persons and the economic, social and environmental well-being of the Town; and

Whereas Council wishes to regulate the public nuisance of dust from residential construction;

Now therefore, the Council of The Corporation of the Town of Whitby hereby enacts as follows:

1. Definitions

- 1.1. “**commercial property**” means any property which is zoned for commercial use by an applicable Zoning By-law or which is used in whole or in part for commercial use.
- 1.2. “**construction equipment**” means any equipment or device designed and intended for use in construction or material handling, including, but not limited to, hand tools, power tools, pneumatic or hydraulic tools, or other material-handling equipment.
- 1.3. “**dust**” means solid particles which may become or be airborne as a result of residential construction 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 insulation.
- 1.4. “**industrial property**” means any property which is zoned for industrial use by an applicable Zoning By-law or which is used in whole or in part for industrial use.
- 1.5. “**multi-residential**”
 - (a) means land used for residential purposes that has seven or more self-contained units located on it, or
 - (b) means vacant land principally zoned for multi-residential development.
- 1.6. “**necessary municipal work**” means construction, rehabilitation, or maintenance processes using construction equipment conducted by, or on behalf of, the Town of Whitby, the Region of Durham, the Province of Ontario, the Government of Canada, or any of their respective agencies or agents.

- 1.7. “**officer**” means a police officer or a municipal law enforcement officer appointed by the Town for the purpose of enforcing this by-law;
- 1.8. “**premises**” means a property, multi-residential, or mixed-use building, or a part of a property, multi-residential, or mixed-use building owned or occupied by any person, including a corporation.
- 1.9. “**residential construction**” means anything to do in the erection, installation, extension, or material alteration or repair of a residential property, including decorative stonework, retaining walls, and walkways.
- 1.10. “**residential property**” means land, a building, or structure used, capable of being used, designed, or intended for residential use, excluding a multi-residential building.

2. Interpretation

- 2.1. The provisions of this by-law apply to the entire Town of Whitby.
- 2.2. Unless otherwise specified, references in this by-law to parts, sections, subsections, clauses and schedules are references to parts, sections, subsections, clauses and schedules in this by-law.
- 2.3. References in this by-law to any statute or statutory provision include references to that statute or statutory provision as it may from time to time be amended, extended or re-enacted.
- 2.4. This by-law shall be read with all changes in gender or number as the context requires.
- 2.5. References in this by-law to items in the plural include the singular, and references to the singular include the plural, as applicable.
- 2.6. If a court of competent jurisdiction declares any section, or any part of any section of this by-law to be invalid or to be of no force or effect, it is the intention of the Town that every other provision of this by-law be applied and enforced in accordance with its terms to the extent possible according to law.
- 2.7. This by-law and the provisions contained within are intended to be complementary to other by-laws passed by Council and in the event that any other applicable law requires a higher standard than the provisions contained in this by-law, the higher standard shall apply.

3. Dust, General Requirements

- 3.1. No person shall cause or permit dust that occurs as a result of residential construction activities to escape a residential property onto another premises.

- 3.2. No person shall direct or cause a person to cause or permit dust that occurs as a result of residential construction activities to escape a residential property onto another premises.
- 3.3. It is an offence for any person to contribute to, take any action or fail to take any action that would result in the commission of an offence under subsection 3.1 or 3.2.

4. Exceptions

- 4.1. Section 3 of this by-law does not apply if reasonable preventative measures were taken to prevent dust from escaping a residential property.
- 4.2. Reasonable preventative measures required in subsection 4.1 must include one or a combination of the following dust control measures:
 - (a) wetting the construction material;
 - (b) using a wet saw;
 - (c) using dustless saw technology;
 - (d) tarping or otherwise containing the source of dust;
 - (e) installing wind fencing or a fence filter;
 - (f) using a vacuum attachment when cutting; or
 - (g) any other preventative measure that deemed by the Town to be adequate in the mitigation of dust escaping a residential property based on the nature of the activity.
- 4.3. Section 3 of this by-law does not apply to:
 - (a) necessary municipal work;
 - (b) work occurring on commercial and industrial properties; and
 - (c) the construction of a multi-residential building, subdivision, or mixed-use development; and
 - (d) a residential demolition project for which an approved demolition permit has been issued.

5. Enforcement, Offences and Penalties

Enforcement

- 5.1. This by-law may be enforced by an officer.
- 5.2. Pursuant to the Municipal Act, 2001, an officer may enter upon any property at any reasonable time without a warrant for the purpose of inspecting a property to determine whether or not there is compliance with the standards

prescribed in this by-law, or to determine if there is compliance with a notice of violation or direction or order issued in accordance with this by-law.

- 5.3. When conducting an inspection pursuant to Section 5.2. of this by-law and the Municipal Act, 2001, an officer may,
- (a) require the production for inspection of documents or things, including
 - (b) drawings or specifications, that may be relevant to the residential construction, the property or any part thereof;
 - (c) inspect and remove documents or things relevant to the property or part thereof for the purpose of making copies or extracts;
 - (d) require information from any person concerning a matter related to a property or part thereof;
 - (e) be accompanied by a person who has special or expert knowledge in relation to a property or part thereof;
 - (f) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs for the purposes of the inspection; and
 - (g) order the owner of the property to take and supply at the owner's expense such tests and samples as are specified in the order.
- 5.4. In addition to the issuance of an immediate notice of violation, an officer who finds a contravention of this by-law may make one or more orders requiring discontinuance of the contravening activity or to do work to correct the contravention.
- 5.5. If there is evidence that the occupant of the land is not the registered property owner, the order or notice of violation shall be served on both the registered property owner and the occupant of the land.

Offences

- 5.6. Every person is guilty of an offence who:
- (a) Hinders or obstructs or attempts to hinder or obstruct any person exercising a power or performing a duty under this by-law.
 - (b) Neglects or refuses to produce or provide any information or thing to an officer.
 - (c) Knowingly makes, participates in, assents to or acquiesces in the provision of false information in a statement, affidavit, application or other document prepared, submitted or filed under this by-law;

Penalties

- 5.7. Every person who contravenes any provision of this by-law, or a notice of violation or direction or order issued in accordance with this by-law, is guilty of an offence and upon conviction is liable to a maximum fine of \$100,000.00, and in the case of a continuing offence, for each day or part of a day that the offence continues, an additional maximum fine of \$10,000.00.
- 5.8. In addition to a fine or fines provided for in this by-law, every person who gains an economic advantage from contravening this by-law, or a notice of violation or direction or order issued in accordance with this chapter, is liable to a special fine in an amount equal to the fair market value of the economic advantage obtained from the contravention.
- 5.9. Where a corporation contravenes any of the provisions of this by-law, or a notice of violation or direction or order issued in accordance with this by-law, every director or officer who concurs in such contravention is guilty of an offence and on conviction is liable to a fine of no more than \$100,000.00.

6. Short Title

- 6.1. This by-law may be referred to as the Residential Construction Dust By-law.

7. Effective Date

- 7.1. This by-law shall come into full force and effect on the date that it is passed.

By-law read and passed this 20th day of July, 2020.

Original Approved and Signed.

Don Mitchell, Mayor

Original Approved and Signed.

Christopher Harris, Town Clerk