



## By-law 2023-106

A by-law to Prohibit the Use of Land or the Erection or Use of Buildings or Structures unless Municipal Services are Available

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WHEREAS it is considered desirable for the control of development within the City of Markham to prohibit the use of land or the erection or use of buildings or structures, unless such municipal services as may be set out in the by-law are available to service the land, buildings or structures, as the case may be, in accordance with the provisions of subsection 34 (5) of the Planning Act, R.S.O. 1990, c. P. 13, as amended (the "*Planning Act*");

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF MARKHAM HEREBY ENACTS AS FOLLOWS:

1. In this by law,
  - a. "Applicant" means the applicant who has applied to the City to develop a proposed subdivision, Residential Unit, Multiple-Unit Building, Institutional Building, Commercial Building, or Industrial Building.
  - b. "Commercial Building" means a building or part of a building that is used for commercial purposes, including but not limited to buildings containing offices, retail stores, personal service shops and restaurants.
  - c. "Industrial Building" means a building or premises or part of a building or premises used for the warehousing of goods and materials, the assembly of manufactured goods, the manufacturing of goods, the processing of goods, the repair and servicing of goods and similar uses.
  - d. "Institutional Building" means a building or part of a building containing uses such as places of worship, community centres, libraries, educational facilities or government offices.
  - e. "Multiple-Unit Building" means a building containing three or more Residential Units.
  - f. "Municipal Services" means any municipal services, infrastructure or facilities, and appurtenances thereto, required to service or support a Residential Unit, Multiple-Unit Building, Institutional Building, Commercial Building, or Industrial Building, including but not limited to: water, storm sewer, sanitary sewer, stormwater management, streetlights, roads, sidewalks, streetscape improvements, multi-use pathways (MUP), bicycle lanes or cycle tracks, traffic control devices, signage, and access connections for pedestrians, cyclists, and motor vehicles, all of which municipal services are located within municipal property, the municipal right-of-way or the municipal boulevard.
  - g. "Private Sewage Disposal System" means a Private Sewage Disposal System as defined in Division A – Part 1, Section 1.4.1.2 of the *Building Code Act*, S.O. 1992, c. 23.
  - h. "Private Water Supply System" means a Private Water Supply System as defined in Division A – Part 1, Section 1.4.1.2 of the *Building Code Act*, S.O. 1992, c. 23.
  - i. "Residential Unit" means a unit that consists of one or more rooms, which contains cooking, eating, living and sanitary facilities.
  - j. "Subdivision" means a plan of subdivision, draft approved or registered in accordance with section 51 of the *Planning Act* or

similar legislation, where the public highways and lanes within the plan have not been assumed by the agency having jurisdiction.

- k. "Subject Property" means the property on which the proposed Residential Unit, Multiple-Unit Building, Institutional Building, Commercial Building or Industrial Building is to be located.
  - l. "Operational" means a municipal service in a condition of readiness for active service or where it can be utilized for its designed and intended purpose without physical or safety limitations, i.e. fit for use.
2. For the purposes of this by-law, Municipal Services are deemed to be available within a Subdivision to a Residential Unit, Multiple-Unit Building, Institutional Building, Commercial Building, or an Industrial Building, when the Municipal Services required to service the Residential Unit, Multiple-Unit Building, Institutional Building, Commercial Building, or Industrial Building satisfy the following requirements:
- a. the public highways, roads and lanes in the Subdivision have been constructed to base course asphalt;
  - b. the watermains, sanitary sewers and associated appurtenances, storm sewers and stormwater management facilities necessary to service the Residential Unit, Multiple-Unit Building, Institutional Building, Commercial Building, or Industrial Building have been constructed and are Operational;
  - c. where any watermain, sanitary sewers and associated appurtenances, storm sewers and stormwater management facilities external to the Subdivision, required to service the uses within the Subdivision, have not been constructed and/or have insufficient capacity to support the application, confirmation of the following has been provided to the Director of Engineering:
    - i. all property and/or easements required for the Municipal Services have been conveyed to The Corporation of the City of Markham (the "City") or other agencies having jurisdiction, if applicable;
    - ii. all property required for external roads has been conveyed to the City or alternative arrangements have been made to the satisfaction of the City's Director of Engineering and the City Solicitor.
    - iii. the contract for the construction of the Municipal Services and/or upgrade of the existing Municipal Services has been awarded;
    - iv. a construction schedule, confirming that the Municipal Services will be complete and Operational prior to occupancy, has been provided to the satisfaction of the City's Director of Engineering;
    - v. the City or other agencies having jurisdiction have received security for the construction of the external Municipal Service, satisfactory to the Director of Engineering or other agency official, if it is intended to be constructed by a private party; and
    - vi. all required approvals and permits have been obtained by the Applicant, from the City or other agencies having jurisdiction, for the construction of the Municipal Service;
  - d. where municipal sanitary sewers or watermains are not available to the Subdivision, satisfy all requirements, including the payment of fees and provision of plans, for the issuance of

permits for a Private Sewage Disposal System and/or Private Water Supply System;

- e. two separate accesses into the Subdivision have been provided and kept open for the purposes of emergency services access and egress, to the satisfaction of the City's Fire Chief;
- f. notwithstanding clause (e) above, a single access into a Subdivision, to the satisfaction of the City's Fire Chief, may be permitted where the Residential Unit or any Multiple-Unit Building to be constructed is not more than 100 metres, measured along the said access, from an existing, assumed public highway that is connected to the said single access; and
- g. transportation facilities external to the Subdivision have been secured to the satisfaction of the Director of Engineering, including the following:
  - i. Conveyance of additional lands to the City or other agencies having jurisdiction, needed to achieve the designated right-of-way widths of external roads abutting the subdivision in accordance with the applicable Official Plan;
  - ii. All required approvals and permits have been obtained by the Applicant from the City or other agencies having jurisdiction for the construction of access to the Subdivision, including implementation of geometric improvements to the municipal roadway required to accommodate the access, and that security satisfactory to the Director of Engineering has been provided for the work;
  - iii. All required approvals and permits have been obtained by the Applicant from the City or other agencies having jurisdiction for the construction of traffic control devices signage required for access to the Subdivision, and streetlights, and that security satisfactory to the Director of Engineering has been provided for the work;
  - iv. All required approvals and permits have been obtained by the Applicant from the City or other agencies having jurisdiction for the construction of access connections for pedestrians, cyclists and motor vehicles, sidewalks, streetscape improvements, and alternative active transportation, which may include MUPs, bike lanes or cycle tracks, abutting the Subdivision, and that security satisfactory to the Director of Engineering has been provided for the work;
  - v. All required easements in favour of the City have been provided and all required mutual access easements where an access is shared by multiple properties have been obtained, to the satisfaction of the City's Director of Engineering.

- 3. For the purposes of this by-law, Municipal Services are deemed to be available to a Residential Unit, Multiple-Unit Building, Institutional Building, Commercial Building, or Industrial Building that is not within a Subdivision when the Municipal Services required to service the Residential Unit, Multiple-Unit Building, Institutional Building, Commercial Building, or Industrial Building satisfy the following requirements:
  - a. where the Residential Unit, Multiple-Unit Building, Institutional Building, Commercial Building, or Industrial Building does not front directly on an assumed public highway, an access route for Fire and Emergency Services Department use has been provided to the satisfaction of the Fire Chief;

- b. where any watermain, sanitary sewers, storm sewers and stormwater management facilities and associated facilities external to the Subject Property, have not been constructed and/or have insufficient capacity to support the application, confirmation that the following have been provided to the Director of Engineering:
  - i. all property and/or easements required for the Municipal Services have been conveyed to the City or other agencies having jurisdiction, if applicable;
  - ii. the contract for the construction of the Municipal Service and/or upgrade of the existing Municipal Services has been awarded;
  - iii. a construction schedule, confirming that the Municipal Services will be complete and Operational prior to occupancy, has been provided to the satisfaction of the City's Director of Engineering;
  - iv. the City or other agencies having jurisdiction have received security for the construction of the Municipal Service, satisfactory to the Director of Engineering or other agency official, if it is intended to be constructed by a private party; and
  - v. all required approvals and permits, have been obtained by the Applicant from the City or other agencies having jurisdiction for the construction of the Municipal Service;
  
- c. where municipal sanitary sewers or watermains are not available to the Subject Property, satisfy all requirements, including the payment of fees and provision of plans, for the issuance of permits for a Private Sewage Disposal System and/or Private Water Supply System;
  
- d. transportation facilities external to the Subject Property have been secured to the satisfaction of the Director of Engineering, including the following:
  - i. Conveyance of additional lands to the City or other agencies having jurisdiction, needed to achieve the designated right-of-way widths of external roads abutting the subdivision in accordance with the applicable Official Plan;
  - ii. All required approvals and permits have been obtained by the Applicant from the City or other agencies having jurisdiction for the construction of access to the Subject Property, including implementation of geometric improvements to the municipal roadway required to accommodate the access, and that security satisfactory to the Director of Engineering has been provided for the work;
  - iii. All required approvals and permits have been obtained by the Applicant from the City or other agencies having jurisdiction for the construction of traffic control devices, signage and streetlights required for access to the Subject Property, and that security satisfactory to the Director of Engineering has been provided for the work;
  - iv. All required approvals and permits have been obtained by the Applicant from the City or other agencies having jurisdiction for the construction of access connections for pedestrians, cyclists and motor vehicles, sidewalks, streetscape improvements, and alternative active transportation, which may include MUPs, bike lanes or cycle tracks, abutting the Subject Property, and that security satisfactory to the Director of Engineering has been provided for the work;

- v. All required easements in favour of the City have been provided and all required mutual access easements where an access is shared by multiple properties, have been obtained, to the satisfaction of the City's Director of Engineering.
4. Notwithstanding the provisions of any other by-law hereinbefore or hereinafter enacted pursuant to s. 34 of the *Planning Act*, or any predecessor thereof, by the City, no land shall be used and no building or structure shall be erected or used or occupied unless:
- a. with respect to the creation of any new or additional Residential Units, where the City has exempted the development or the class of development from the requirements of this by-law or the Applicant has executed an agreement with the City for the provision of required Municipal Services, and,
    - i. the City's Director of Engineering has confirmed that Municipal Services are available in accordance with Clauses 2(a) to (c) both inclusive, and Clause 2(g), or Clauses 3(b) and (d), as applicable, and
    - ii. the City's Fire Chief has confirmed that Clauses 2(e) and 2(f), or Clause 3(a), as applicable, have been complied with, and
    - iii. the City's Chief Building Official has confirmed that Clause 2(d) or Clause 3(c), as applicable, have been complied with.
  - b. with respect to Multiple-Unit Buildings, Institutional Buildings, Commercial Buildings, or Industrial Buildings, the City has approved a site plan under section 41 of the *Planning Act* and the Applicant has executed an agreement with the City for the provision of Municipal Services and
    - i. the City's Director of Engineering has confirmed that Municipal Services are available in accordance with Clauses 2(a) to (c) both inclusive, Clause 2(f) and Clause 2(j), or Clauses 3(b), (d), (e), and (g) as applicable, and
    - ii. the City's Fire Chief has confirmed that Clauses 2(g) to (i) both inclusive or Clauses 3(a) and (f), as applicable, have been complied with as applicable, and
    - iii. the City's Chief Building Official has confirmed that clause 2(d) or Clause 3(c) have been complied with, as applicable.
5. Nothing in this by-law shall prevent:
- a. The erection of buildings for uses incidental to construction, such as a construction camp or other such temporary work camp, tool shed, scaffold or other building or structure incidental to the construction only for so long as the same are necessary for work in progress which has neither been finished nor abandoned; and
  - b. The erection of model homes and sales offices, subject to such terms and conditions as established by the City.
6. Every person that contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to the fine(s) as provided in the *Planning Act* and, if the person is a corporation, every director or officer of the corporation who knowingly concurs in the contravention is guilty of an offence and on conviction is liable to the fine(s) as provided in the *Planning Act*. Where a conviction is entered under the Act, in addition to any other remedy or any penalty provided by By-law, the applicable court may make an order prohibiting the continuation or repetition of the offence by the person convicted.

Penalties imposed by conviction under this Section shall be recoverable under the *Provincial Offences Act*, R.S.O. 1990, c. P.33.

7. This by-law shall apply to all of the lands within the City of Markham.
8. Every person that contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to the fine(s) as provided in the Planning Act and, if the person is a corporation, every director or officer of the corporation who knowingly concurs in the contravention is guilty of an offence and on conviction is liable to the fine(s) as provided in the Planning Act.
9. Where a conviction is entered under the Act, in addition to any other remedy or any penalty provided by By-law, the applicable court may make an order prohibiting the continuation or repetition of the offence by the person convicted. Penalties imposed by conviction under this Section shall be recoverable under the Provincial Offences Act.
10. That By-law 2005-104 be repealed in its entirety and replaced with the Municipal Services By-Law 2023-106 herein; and further,
11. That this by-law come into force and effect on the date it is passed.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS 28<sup>th</sup> DAY OF JUNE, 2023.

  
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KIMBERLEY KITTERINGHAM  
CITY CLERK

  
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FRANK SCARPITTI  
MAYOR