

Town of Whitby Staff Report

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Report Title: Review of Residential Construction Dust Permit Program

Report to: Committee of the Whole

Date of meeting: June 5, 2023

Report Number: LS 05-23

Department(s) Responsible:

Legal and Enforcement Services

Submitted by:

Francesco Santaguida, Commissioner of
Legal and Enforcement Services/Town
Solicitor

Acknowledged by M. Gaskell, Chief Administrative Officer

For additional information, contact:

Andre Gratton, Manager of Enforcement
Services

1. Recommendation:

1. That Report LS 05-23 be received for information;
2. That Enforcement Services not implement a permit system to regulate dust from private residential construction projects,
3. That Enforcement Services continues to actively promote dust control through an annual communication strategy; and
4. That New and Unfinished Business – General Government Item No. GG-0013 be removed.

2. Highlights:

- In 2020, the Town of Whitby enacted the Residential Construction Dust By-law # 7652-20 to address the control of dust and the application of dust prevention measures for residential construction projects such as interlocking, walkways, stonework and retaining walls.

- Since the by-law's enactment, Enforcement Services promotes dust control on an annual basis through various mediums including the addition of mobile signage in 2022;
- The Town of Whitby is one (1) of two (2) municipalities in the Region which have enacted stand-alone dust control by-laws;
- Staff were not able to find any municipalities within Ontario that require a "dust permit" for residential construction projects;
- Currently residential construction dust complaints account for less than 1% of annual formal written complaints;
- The implementation of a permit system would create additional staffing pressures for Enforcement Services and add an extra layer of complication for contractors and residents to complete projects in Whitby

3. Background:

The Town has a Residential Construction Dust By-law

In 2020, The Town of Whitby passed the Residential Construction Dust By-law # 7652-20 (the "By-law") to address the control of dust and the application of preventative measures for residential construction projects such as interlocking, walkways, stonework and retaining walls.

The Residential Construction Dust By-law does not apply to dust emanating from the following:

- (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.

A contravention of the Residential Construction Dust By-law would result in a fine of approximately \$615.00.

The existing by-law outlines required dust prevention measures

The Town was the first municipality within Durham Region to enact a stand-alone by-law with specific provisions requiring one, or a combination of the following preventative 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.

Enforcement Staff receive few residential construction dust complaints

Since the enactment of the By-law, Enforcement Services has received the following number of complaints about residential construction dust:

Year	Number of complaints
2020	12
2021	13
2022	10

The total number of complaints received for residential construction dust account for less than 1% of the complaints received on an annual basis.

Current education/promotion of the By-law

In an effort to promote education and voluntary compliance, staff have implemented an annual awareness campaign through live advertising and social media. In 2022, staff added a mobile sign campaign to further promote the control of dust regulated under the By-law.

Council directed staff to evaluate the merits and financial implications of a residential construction dust permit system

On April 11, 2022, Council adopted the following motion;

Resolution # 90-22

1. That Correspondence # 2022-133 received by C. Harris, Town Clerk, from John Semjan dated February 28, 2022 regarding Dry Saw Cutting Asphalt, Stone, and Concrete on Residential Home Improvement Projects be received for information; and,
2. That Council shall direct staff to further investigate and research to determine best practices in neighbouring municipalities and report back to Council through a report on the merits and financial implications of a residential construction dust permit system.

Staff provide the following report in response to the above motion and direction of Council.

4. Discussion:**The *Municipal Act, 2001* allows for a municipality to enact a permit system for controlling dust**

Sections 128 and 129 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the “Act”), allow for a municipality to prohibit and regulate public nuisances. The Act further specifies that a municipality may prohibit and regulate “noise, vibration, odour, dust and outdoor illumination...,” and includes the authority to require a permit to undertake those activities, subject to conditions which the municipality may determine. A permit under this section would be separate from a building permit under the *Building Code Act, 1992*.

Regional and provincial review of Dust by-laws

Within Durham Region, the City of Oshawa has enacted a by-law to control dust through its [Dust and Mud By-law](#), which creates an offence for migration of dust onto neighbouring properties, but does not specifically require preventative measures. Many of the remaining municipalities in the Region regulate residential dust through their respective Public Nuisance by-laws, although Pickering and Ajax noted that they do not enforce residential dust concerns. No Durham Region municipality requires a dust permit for small-scale residential construction projects.

In addition, staff have also researched whether other Ontario municipalities have implemented a permit system for small-scale residential construction works. This included reviewing the City of Toronto’s Dust Control Regulations (Municipal Code, Chapter 417) to determine if a permit system has been implemented since the regulations were enacted in 2018. Staff did not find a municipality in Ontario that had implemented a dust permit system for residential construction works.

A Dust Control Permit for small-scale residential projects may help reduce the emission of dust between residential properties

Staff recognize that the implementation of a permit system could increase awareness by informing/educating contractors and residents of the dust control requirements that must be adhered to while conducting small-scale residential projects. This could decrease dust as the permit system would create a pro-active approach by pushing out the information prior to projects beginning.

However, it is important to note that since there are no similar programs in the Province, staff were not able to find any direct evidence to show that a dust permit would reduce overall dust complaints.

Enforcement would continue to be a challenge

Like noise enforcement, the enforcement of the dust control by-law (and a potential permit) requires the officer to see the dust travelling beyond an individual property. As dust disperses quickly, the officer may not be able to issue a charge based on a complaint if the dust dissipates before the officer can inspect the site. As a result, enforcement may still need to rely on individual residents to collect evidence of an offence.

Staff are also concerned that many residents and contractors may not be aware of the requirement, and inadvertently contravene the By-law by not obtaining a permit. Further, enforcement of the lack of a permit, or contravention of a condition of a permit, is typically a fine. Contractors who chose to ignore the requirement for a permit or violate the conditions of a permit may see the fine as a “cost of doing business” and pass these costs to the individual homeowner, making the cost of such projects higher in Whitby relative to our neighbouring municipalities.

Lastly, the Town’s enforcement model is a “reactive” rather than “pro-active”. As a result, staff would still be reacting to complaints about dust and/or the lack of a dust permit. While an additional staff resource to enforce and administer the permit may have some capacity to monitor these projects, staff anticipate that enforcement will still largely be reactive and based on complaints received.

Overall, the burden and cost of implementing a Dust Control Permit System would outweigh the potential benefits

In looking at both the benefits and drawbacks of implementing a dust control permit system in the Town, staff have determined that the drawbacks outweigh the potential benefits. While the Town could see a reduction in residential construction dust due to the requirement for a permit with conditions requiring preventative measures, the challenges in enforcing compliance and financial implications would result in the Town being little further ahead than it would be today.

Staff anticipate that the additional administrative burden of obtaining a permit for a small-scale residential construction project would be viewed negatively in our community. Any additional costs related to the permit and enforcement would be passed onto the residents seeking to undertake the work. The Town encourages our community to maintain high property standards in order to create a clean and vibrant streetscape, and staff are concerned that this additional administrative and financial burden could discourage homeowners from undertaking renovation and beautification projects of their properties.

A Residential Dust Permit Program will require additional staff

Should Council direct staff to implement a dust permit system, staff recommend a cost-recovery model be adopted as outlined in the Financial Considerations section below. Staff believe that the Town would not receive the projected revenue for 2-3 years as residents and contractors become aware of the new requirement for a permit in the Town of Whitby. Should Council direct that a residential dust permit system be implemented in Whitby, Staff recommend an additional hybrid position that includes both administrative and enforcement duties be included as a part of the 2024 budget.

The hybrid-staffing model would entail a hybrid enforcement/administrative position that facilitates permitting, addresses any non-compliance arising from issued permits, pro-actively promotes the by-law through permit issuance, and responds to any additional complaints. This position would also address other

permitting and licensing activities for Enforcement Services, including pro-actively encouraging compliance and implementing strategies/programs to increase and promote licensing. This position may also assist with the implementation of other business licensing programs such as Short-Term Rental Accommodations.

5. Financial Considerations:

The recommendations in this report does not change current service levels and have no financial implications.

However, should Council direct staff to implement a permit system, staff have developed a preliminary cost model and determined that a permit fee of approximately \$350 to \$400 per permit would be required to recover the costs of administering a dust permit program. The dust permit fee would be in addition to other Town fees. For example, if a dust permit system were implemented, Whitby residents would see Town permit fees increase from \$450 to \$800 - \$850 for pool installations that involve interlock or stone works:

\$450	Town's current Pool enclosure permit fee
<u>\$350 to \$400</u>	Estimated dust permit fee
<u>\$800 to \$850</u>	

6. Communication and Public Engagement:

As noted in Section 3, staff have developed and implemented an annual awareness campaign in an effort to promote education and voluntary compliance. This has included a social media campaign and in 2022 the addition of a mobile signage campaign to further promote the control of dust through the use of preventative measures.

7. Input from Departments/Sources:

Legal and Enforcement Services worked collaboratively with Financial Services for this report.

8. Strategic Priorities:

Report LS 05-23 continues the Whitby tradition of responsible financial management and respect for taxpayers through the review of a potential residential construction dust permit program. The review also supports the Corporate Strategic Plan Objectives to continually improve how we do things by fostering innovation and focusing on making our processes better.

9. Attachments:

N/A