



BY-LAW 2008-37

SHOPPING CART BY-LAW

A By-law to prevent and control the abandonment of shopping carts on public lands in the Town of Markham

WHEREAS subsection 127(c) of the *Municipal Act, 2001*, S.O. 2001, c. 25 authorizes municipalities to prohibit the depositing of refuse or debris on land without the consent of the owner or occupant of the land;

AND WHEREAS section 128 of the *Municipal Act, 2001*, S.O. 2001, c. 25 authorizes municipalities to prohibit and regulate public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances;

AND WHEREAS the Council of The Corporation of the Town of Markham has determined that shopping carts which are deposited, disposed of or abandoned within the Town of Markham, including but not limited to land owned or occupied by the Town, constitute a public nuisance in that they may be a traffic hazard, impede sidewalks and street maintenance and may be a risk to public safety or become unsightly;

AND WHEREAS subsection 446 of the *Municipal Act, 2001*, S.O. 2001, c. 25 provides that, if a municipality has authority by by-law or otherwise to direct or require that a matter or thing be done, the municipality may, in the same or another by-law direct that in default of it being done by the person directed or required to do it, such matter or thing shall be done at the person's expense

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

1.0 DEFINITIONS

1.1 For the purposes of this By-Law,

- a. "Cart Management System" shall mean any physical structure or device, signage, service, or other demonstrable measure that prevents unauthorized removal of shopping carts from the owner's premises during business hours and ensures that all shopping carts are secured from public access after close of business;
- b. "Owner" shall mean a person who owns or operates a business that provides shopping carts in connection with said business;
- c. "Person" shall include an individual, partnership or corporation;
- d. "Premises" means the physical location at which the business of the owner is conducted and includes the parking area provided in relation to such business;
- e. "Public lands" are those lands owned by the Town, the Regional Municipality of York, the Toronto Region Conservation Authority, or any provincial or federal government or agency;

- f. “Shopping cart” shall refer to any device made available by the owner or operator of a business, to the customers of that business, for the conveyance of goods purchased from said business premises; and
- g. “Town” shall refer to The Corporation of the Town of Markham.

2.0 PROHIBITIONS

- 2.1 No person shall deposit or permit the deposit of any shopping cart on any public lands within the Town.
- 2.2 No owner shall allow a shopping cart to be taken from the premises for which it is provided without recourse for its prompt return.

3.0 BUSINESS OWNER OBLIGATIONS

- 3.1 Every owner is required to implement a Cart Management System.
- 3.2 The owner's name shall be affixed, permanently and easily visible, on each shopping cart.

4.0 ENFORCEMENT PROVISIONS

- 4.1 Upon discovery of a shopping cart on public lands in the Town, the Town may, at its sole discretion, either collect and remove the shopping cart, or contact the owner of the abandoned shopping cart identified on the shopping cart and require that the owner collect the abandoned shopping cart by a date and time specified by the Town.
- 4.2 Where the Town collects the shopping cart, the Town shall return the shopping cart to the owner identified on the shopping cart at the owner's expense.
- 4.3 If the Town cannot determine the identity and the contact information of the owner of the shopping cart with a visual inspection of the shopping cart, the Town may dispose of or recycle the abandoned shopping cart.
- 4.4 The owner of a shopping cart that is returned to it by the Town shall be responsible for payment of a collection fee as provided for in the Town's Fee By-Law No. 2002-276, as amended.
- 4.5 Any collection fees charged under By-Law No. 2002-276 that remain unpaid for a period of thirty (30) days from the date upon which they were incurred and communicated to the owner of the abandoned shopping cart or carts, may be collected and recovered by the Town in accordance with section 398 of the *Municipal Act, 2001*, S.O. 2001, c.25 or any other applicable authority.

- 4.6 For the purpose of this By-Law, notice from the Town to the owner may be by facsimile transmission, telephone, prepaid registered mail or in person, by leaving a copy of the notice with a person apparently in charge of the business premises. Service of such notice shall be deemed to be the date of delivery, other than for prepaid registered mail, in which case service shall be deemed to be five (5) days from the date of mailing.
- 4.7 Any person who fails to comply with the requirements of this By-Law is guilty of an offence, and shall upon conviction be liable to a penalty of not more than \$5,000, for each offence, exclusive of costs. Each day that such offence is committed, or permitted to continue, shall constitute a separate offence and may be punishable as such. Such fines shall be recoverable under the *Provincial Offences Act*, R.S.O. 1990, c. P.33. as amended, or any successor thereof.
- 4.8 Where a person has been convicted of an offence under this By-Law, the Court may, in addition to any other penalty imposed on the person convicted, issue an Order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted, directed toward the cessation of the continuation or the repetition of the offence.

5.0 GENERAL PROVISIONS

- 5.1 If a court of competent jurisdiction declares any provision or part of any provision of this By-Law to be invalid or to be of no force and effect, it is the intention of the Town in enacting this By-Law, that each and every other provision of this By-law be applied and enforced to the extent possible according to law.
- 5.2 This By-Law shall be known as the “Shopping Cart By-Law”.
- 5.3 All references in this By-law to the singular are to be read as the plural, and vice versa, as the context requires.

6.0 EFFECTIVE DATE

- 6.1 The effective date of this By-law shall be September 2, 2008.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS
4TH DAY OF MARCH, 2008.

SHEILA BIRRELL, TOWN CLERK

FRANK SCARPITTI, MAYOR