

REPORT FOR ACTION

Strategy for Minimizing the Negative Impacts of Residential Infill Construction: Update

Date: May 13, 2019

To: Planning and Housing Committee

From: Chief Building Official and Executive Director, Toronto Building

Wards: All

SUMMARY

This report responds to the City Council direction that the Chief Building Official evaluate and report on the effectiveness of the most recent (2018) joint targeted inspection and enforcement program, including information on the use of tickets issued through the program. This report also provides an update on the Residential Construction Dust Control By-law (*Toronto Municipal Code Chapter 417, Dust*) and the Infill Construction Site Public Notice By-law (*Toronto Municipal Code Chapter 519, Infill Construction, Public Notice*), both of which came into effect on September 4, 2018. The report contains a recommendation which, if adopted, would make minor editorial amendments to Toronto Municipal Code Chapter 519, in order to clarify application of the Infill Construction Site Public Notice By-law for the public and Toronto Building staff. No further changes to the residential infill construction strategy are recommended at this time to support its continued implementation.

In 2016, Toronto Building launched a comprehensive inter-divisional strategy to minimize the negative impacts of residential construction in existing neighbourhoods. Through a collaborative effort, the strategy has been a success and will continue to have a positive impact in Toronto's neighbourhoods where construction is occurring. Because of the strategy, the City of Toronto now takes a proactive and co-ordinated approach to nuisance issues resulting from residential infill construction sites.

In May 2018, Toronto Building reported to City Council with an update on the residential infill initiative. That report provided an overview of the Targeted Inspection and Enforcement Program. The program, launched in 2017, involved staff from five divisions (Toronto Building, Municipal Licensing and Standards, Transportation Services, Parks, Forestry and Recreation and Toronto Water) visiting construction sites together in areas of the city with significant residential infill activity. It was intended, in part, to establish a benchmark of the current state of by-law and other infractions occurring on residential construction sites. However, the effectiveness of the program has extended beyond it being only an inspection and enforcement exercise.

The Executive Director, Municipal Licensing and Standards, General Manager, Toronto Water, General Manager, Parks, Forestry and Recreation, General Manager, Transportation Services and the City Solicitor were consulted in the preparation of this report.

RECOMMENDATIONS

The Chief Building Official and Executive Director, Toronto Building recommends that:

1. City Council adopt the proposed minor amendments to Toronto Municipal Code Chapter 519, Infill Construction, Public Notice set out in Appendix 3.

FINANCIAL IMPACT

The recommendations in this report have no financial impact.

DECISION HISTORY

At its meeting of July 23, 2018, City Council adopted, with amendments, the "Proposed By-law to Regulate Residential Construction Dust".

http://app.toronto.ca/tmmis/viewAgendaltemHistory.do?item=2018.LS27.2

At its meeting of May 22, 2018, City Council adopted, with amendments, the (April 23, 2018) report on Strategy for Minimizing the Negative Impacts of Residential Infill Construction - Update.

http://app.toronto.ca/tmmis/viewAgendaltemHistory.do?item=2018.PG29.1

(May 17, 2018) Supplementary report from the General Manager, Parks, Forestry and Recreation on Update on the Strategy for Minimizing the Negative Impacts of Residential Infill Construction - Tree Protection Fencing (PG29.1a) http://www.toronto.ca/legdocs/mmis/2018/cc/bgrd/backgroundfile-115338.pdf

Attachment 1 - Tree Protection Policy and Specifications for Construction Near Trees http://www.toronto.ca/legdocs/mmis/2018/cc/bgrd/backgroundfile-115340.pdf

(May 22, 2018) Supplementary report from the General Manager, Transportation Services on Strategy for Minimizing the Negative Impacts of Residential Infill Construction (PG29.1b)

http://www.toronto.ca/legdocs/mmis/2018/cc/bgrd/backgroundfile-115542.pdf

In March 2016, City Council adopted the (February 9, 2016) report from the Chief Building Official and Executive Director, Toronto Building and the Executive Director, Municipal Licensing and Standards to minimize the impact of residential infill construction activity on Toronto neighbourhoods.

http://app.toronto.ca/tmmis/viewAgendaltemHistory.do?item=2016.PG10.1

In June 2015, the Planning and Growth Management Committee considered the (June 3, 2015) report from the Chief Building Official containing a work plan to develop a strategy to deal with problem residential infill construction sites. http://app.toronto.ca/tmmis/viewAgendaltemHistory.do?item=2015.PG5.5

At its meeting of June 19, 2014, the Planning and Growth Management Committee referred the item "Residential Infill Construction Sites – Improving our Response" to staff for a report back.

http://app.toronto.ca/tmmis/viewAgendaltemHistory.do?item=2014.PG34.23

COMMENTS

Background

In 2016, City Council directed Toronto Building to proceed with implementing a comprehensive inter-divisional strategy to address the complex and wide-ranging issues associated with the construction and demolition of residential buildings in existing neighbourhoods. At that time, staff identified that the public was sometimes faced with confusion when they encounter multiple issues on a residential infill construction site which resulted in difficulty when seeking assistance from the City of Toronto. Similarly, staff in the various divisions faced challenges in their ability to provide a timely and effective response to the public's concerns. Despite the fact that issues were often interrelated, the City was lacking a co-operative framework for information sharing, issue monitoring and developing an effective response.

For the purposes of the initiative, "residential infill housing" consists of the following scenarios:

- Construction of a new house on a vacant lot;
- Demolition of an existing house and construction of a new house on an existing lot;
- Demolition where there is no proposed construction of a replacement new house;
- and the construction of an addition or additions to an existing house where the combined total area of the additions is 100m² or more.

These scenarios include, for example, single-detached houses and semi-detached houses but exclude duplexes, triplexes and townhouses. Toronto Building is also now including laneway suites and the construction of second-suites in existing houses within the scope of the initiative.

Framework & Principles

The strategy's overall objective of minimizing the negative impacts of residential infill construction activity was to be achieved by undertaking actions grouped into the three strategic areas:

• Improve the City's complaint management strategy to manage and respond to complaints more quickly and effectively;

- Improve communication with residents to provide clear, understandable information, so that they can have issues resolved in a timelier manner; and
- Encourage good construction practices in the building industry through education, more effective enforcement, increased use of tickets, an additional mandatory inspection and increased building inspector knowledge.

The 2018 <u>status report</u> to City Council on the strategy provided a detailed analysis of the actions under these strategic areas, which were completed by the end of 2018. A full list of actions is contained in Attachment 1.

A number of key principles guided the development of strategy and its implementation:

- All of the City divisions must work together co-operatively;
- The strategy should not create additional layers of regulation or slow down the process for builders who follow the rules;
- The actions should include preventative measures and introduce processes which are able to more effectively solve problems; and
- The public needs clear, accessible and easy to understand information on residential infill construction-related matters.

Infill Notice By-law: Minor Amendments Recommended

On September 4, 2018, *Toronto Municipal Code Chapter 519, Infill Construction, Public Notice* (Infill Notice By-law) took effect. The Infill Notice By-law, passed pursuant to the City of Toronto Act (not the Building Code Act) sets out the requirements that a public notice be posted on-site where there is a permit to construct or demolish a building which meets the residential infill criteria. The objective of the Infill Notice By-law is to provide the public with a gateway to "real time" information concerning the City's approvals and enforcement activities.

Toronto Building staff are actively monitoring the implementation of the Infill Notice Bylaw. Since September 2018, more than 480 applicants have received a public notice for posting on their infill project site. Applicants are being reminded of their obligations to post the notice as part of the introductory inspection. However, if the information notice is not installed in accordance with the By-law, Building Inspectors may take enforcement action. Toronto Building now has the necessary approval from the Regional Senior Justice to issue tickets (as an administrative penalty) and to commence proceedings under the Provincial Offences Act, along with commencing Part III prosecutions, as appropriate when notices are not posted.

Minor editorial amendments to the By-law (see Appendix 2) are proposed in this report in order to clarify the public's understanding of when the requirements apply and to assist Toronto Building staff with consistent application of the By-law. The proposed revised By-law is contained in Appendix 3 to this report, reflecting the editorial changes.

Targeted Inspection and Enforcement Program

A program involving focused on-site inspections and enforcement of residential infill sites was not an initial strategic action of the Residential Infill Strategy. Staff identified,

however, that a program of this nature in areas of the city having high construction activity could have direct benefits to the overall success of the initiative, including:

- Establishing a benchmark of the current state of residential infill with respect to the number and type of infractions in order to measure the overall effectiveness of the program;
- Allowing staff from all divisions to determine key concerns in order to inform the future evolution of the program;
- Facilitating sharing of information and practices across divisions, including the identification of potential efficiencies and elimination of inspection duplication while educating inspectors across divisions on key issues, and
- Establishing a City presence on residential infill construction sites, reinforcing City expectations and consequences of non-compliance.

The 2018 report to City Council on the infill strategy recommended that the Chief Building Official, in consultation with the participating divisions, evaluate and report on the effectiveness of the Targeted Inspection and Enforcement Program.

In order to conduct this evaluation, Toronto Building, Municipal Licensing and Standards, Transportation Services, Parks, Forestry and Recreation and Toronto Water revisited five of the wards in July and August, 2018 which were the focus in 2017. In 2017, the Targeted Inspection and Enforcement Program had visited 615 construction sites in five wards having high infill construction activity (former Wards 5, 23, 31, 32 and 36) in each of the City's Community Council areas.

An additional four wards (former 6, 16, 25 and 29) were included in 2018, as they were found to contain a high level of infill activity and could provide a point of comparison to the 2017 results. In total, 796 sites were reviewed through the program in July and August, 2018.

Toronto Building: Enforcement Tools

The Targeted Inspection and Enforcement Program supports the initiative's broad objective of *Encouraging Good Construction Practice*. Toronto Building inspectors, similar to enforcement staff in other divisions, have a range of enforcement tools which are progressively used as non-compliance escalates (see Figure 1). However, the introductory inspection is an important tool to proactively identify issues which may arise (such as when to call Toronto Building for an inspection, requirements to post the permit placard, site fencing requirements, prohibitions on construction noise and the Tree Protection Policy, among others). The Inspector outlines the City's expectations to builders and the consequences of non-compliance at the introductory inspection. Homeowners are also encouraged to attend. When a contravention is identified, the enforcement begins with a verbal warning and reminder of the consequences of noncompliance. An Order may follow if there is non-compliance, or a significant safety issue is present. If the Order is not complied with, a ticket may be issued. However, often just the threat of the issuance of a ticket is a motivating factor which may result in compliance and without the need for further enforcement. Toronto Building further works with Legal Services to pursue prosecution and/or other avenues when warranted.

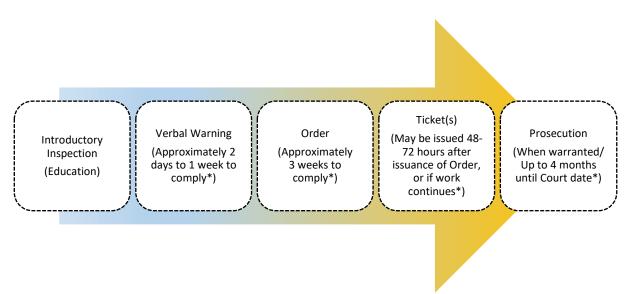


Figure 1: Escalating Path to Compliance (Enforcement Tools)

*Note: These are general timelines only. Exact timeline for use of enforcement tools will vary depending on circumstances.

Enforcement tools to encourage good construction practices are not intended to be a stand-alone strategy to minimize the negative impacts of construction in the City's neighbourhoods. The Infill Strategy is comprised of three objectives, working together. Enforcement is preceded and supported by education and improved management of complaints by the City's divisions.

Toronto Building: As-Built Surveys

Toronto Building used the Targeted Inspection and Enforcement Program as an opportunity to increase permit holder compliance with the as-built survey requirements. Toronto Building now requires builders to submit an as-built survey (completed by an Ontario Land Surveyor) prior to the construction of the first floor walls of the new house in order to confirm location and height of the house as per the approved building permit plans. Requiring this survey information early provides the opportunity for a property owner/builder to address compliance issues relating to height and setbacks well before the house is completed.

In 2017, submission of an as-built survey was identified not as yet received on 139 (22.5%) of the 617 sites visited. As a result, staff identified this as a priority area for residential infill enforcement action that would be supported by an internal quality assurance program. The quality assurance program, launched in late-summer 2018, includes changes to the electronic management system which now require that inspectors confirm receipt of the survey prior to proceeding with subsequent inspections.

The Targeted Inspection and Enforcement Program carried out in July and August 2018 identified a marked improvement in compliance with the as-built survey requirements as a result of additional inspector training and the additional quality assurance measures. The 2018 site visits identified 77 of the 796 (9.6%) sites as having construction which proceeded beyond the first floor framing without submission of the as-built survey. Within two weeks of the inspection, 72 (of the 77) sites submitted the required surveys

and were in compliance. Tickets were issued and compliance achieved for the remaining five sites. The use of ticketing in these cases was used as an enforcement strategy to motivate the small percentage of builders that had not responded to verbal warnings or the use of orders. Toronto Building Inspection Managers are also carrying out an in-depth review of each inspector's activity related to residential infill projects. Inspection Managers are doing this review to verify compliance with the expectations set out in the introductory inspection, including the as-built survey requirements.

Tickets: Encouraging Good Construction Practices

In addition to in-person education and Orders (issued under the *Building Code Act*, 1992), ticketing is one of several tools used by building inspectors (as illustrated in Figure 1) to obtain compliance. Because tickets are issued in person, they are proving to be an effective way to encourage good construction practice. The threat of a ticket is often a strong motivator for compliance and is effective in ways which are difficult to measure.

Toronto Building did not historically make broad use of tickets as an enforcement tool prior to the residential infill strategy. Since early-2017, Toronto Building inspectors have issued 120 tickets (with a value of almost \$23,000.00). In 2018, Toronto Building inspectors issued 40 tickets (with a value of \$9,800.00). The majority of the tickets were for non-compliance with the requirement to submit an as-built survey. Should the circumstances warrant, Toronto Building will make greater use of tickets in order to obtain compliance.

Temporary Signs on Residential Construction Sites

In 2018, the Planning and Growth Management Committee requested that the Chief Building Official review the number, size and placement of signs on construction sites. Transportation Services responded directly to City Council (at its meeting of May 22, 2018) on the Committee's directions related to signs on construction hoarding in the public right-of-way.

Toronto Building Sign Unit staff used the 2018 Targeted Inspection and Enforcement Program to benchmark the current state of signs on residential infill construction sites. Sign Unit inspectors identified at least one temporary construction-related sign on 451 (56.6%) of the 796 sites visited, with an average of 3.61 signs per site. The average aggregate area of the signs was 2.61m². These temporary signs, placed on private property, by contractors and trades on construction sites are regulated by Article III (Temporary Signs) of Toronto Municipal Code Chapter 693, Signs, which is enforced by the Municipal Licensing and Standards Division.

This summer, Municipal Licensing and Standards Division is undertaking a comprehensive review of Article III (Temporary Signs) and will be reporting later this year to City Council with recommended amendments. The Municipal Licensing and Standards Division will be using this review (in consultation with Toronto Building and Transportation Services), to identify if there is public concern respecting temporary signs on infill construction sites, and determine whether any amendments to the current regulations are appropriate.

Toronto Building & Municipal Licensing and Standards - Construction Fencing

In the 2018 report, Toronto Building and Municipal Licensing and Standards staff identified an opportunity for greater efficiency in the enforcement of the City's construction fencing requirements (contained in Toronto Municipal Code, Chapter 363, Building Construction and Demolition). Under the current regulatory framework, the involvement of two divisions has resulted in inefficiencies and duplication.

In response to Council direction, Toronto Building (in consultation with Municipal Licensing and Standards) has prepared revisions to Toronto Municipal Code, Chapter 363, Building Construction and Demolition to streamline the enforcement of construction fencing requirements. The Chief Building Official is bringing these proposed changes to the Planning and Housing Committee for consideration in September of 2019, as part of a comprehensive update to Toronto Municipal Code, Chapter 363, Building Construction and Demolition. Building inspectors will then have the ability to address all fencing issues without the need to involve Municipal Licensing and Standards Inspectors.

Transportation Services

Transportation Services focused on enforcement of hazard and safety concerns within the road allowance during the Targeted Inspection and Enforcement Program. In 2018, Transportation Officers identified 478 of the 796 (60%) sites visited as having right-of-way infractions (i.e., placement of fencing on city property, mud on the roadway, improper storage of equipment/garbage on city property, damage to city infrastructure). A total of 776 violations were noted at the 478 sites. Upon follow up, 90% compliance was achieved within four to six weeks for non-emergent work and the remaining 10 % is currently being resolved through the court system with Legal Services.

A comparison to the 2017 Targeted Inspection and Enforcement Program identified that the overall percentage of sites with Transportation Services infractions has increased. In 2017, 292 of the 617 sites (47.3%) visited were flagged with violations. In 2018, this increased to 60%, which may be attributed to additional enforcement and investigations in Wards 6, 16, 25, and 29 which were not part of the 2017 program.

Based on the high volume of Transportation Services-related infractions, the Division hired five additional Transportation Officers (related to residential infill) in 2018. Due to the timing of their hiring, the impact of the new Officers was not reflected in the findings of the 2018 Targeted Inspection and Enforcement Program. The additional resources have recently helped to alleviate the work volume from the existing enforcement staff and have allowed Transportation Services' enforcement team to be more proactive with investigations, inspections and follow-ups.

Toronto Water

Toronto Water's staff participated in the Targeted Inspection and Enforcement Program to address evidence of construction run-off during dry weather events being pumped into the city storm infrastructure, and sump pumps discharging and entering into the city storm infrastructure.

In 2018, Toronto Water found that the sites visited through the Targeted Inspection and Enforcement Program were largely in compliance with the City requirements, consistent with the 2017 experience.

In 2018, there was a slight decrease in (Toronto Water-related) non-compliance issues by one percent, compared to 2017. Toronto Water identified only 14 non-compliant sites out of 796 sites (1.7%) compared to 2017 where 15 non-compliant sites out of 617 sites (2.4%) were identified. On the sites where issues were observed, Toronto Water By-law staff immediately dealt with these issues through in-person education and providing immediate direction to the property owner, or contractor to rectify the issues. Anecdotally, the decrease from 2017 to 2018 may be attributable to this in-person presence.

Feedback from Toronto Water staff noted that the Toronto Water brochures were successful in their objective of providing public education on Toronto Water requirements. Toronto Water staff also conducted follow-up visits to confirm that the property owners or contractors were remaining in compliance with the By-law requirements and the measures that were implemented to prevent illegal discharges.

Urban Forestry

Urban Forestry used the Targeted Enforcement and Inspection Program to identify and respond to contraventions of the City's Tree By-laws. In early-2018, City Council approved the creation of seven permanent positions dedicated to by-law enforcement. As the Targeted Inspection and Enforcement Program took place in July and August 2018, the data does not directly identify the impact of new staff on the effectiveness of the Program. Of the 617 sites visited in 2017, there were 126 (20%) Tree By-law contraventions. In 2018, there were 169 non-compliant sites (21%).

Urban Forestry has identified that the implementation of the new permanent unit has resulted in further refinement of enforcement procedures, greater capacity for monitoring and follow-up of reported contraventions, shorter contravention inspection response times, increased opportunity for interaction with residents, and increased capacity to enforce orders and prosecute where required. One strategy under consideration is the introduction of a preliminary screening of the sites, allowing Urban Forestry to focus on sites that have Tree By-law concerns. This pre-screening would eliminate the number of inspection of sites that are compliant with the Tree By-law, providing additional time that staff can use toward responding to inspections generated by 311.

In addition to new permanent staff, Urban Forestry is using contractors to complete remedial work on site to correct contraventions where non-compliance was an issue and add the cost of this work and any outstanding contravention inspection fees to the property tax roll. Data collected through the targeted inspection program related to contravention volumes is assisting Urban Forestry, by improving the scheduling of contractors for remedial work to coincide with the timing of Targeted Inspection and Enforcement Program in future years. In turn, this will reduce the timeframes required to undertake corrective work.

Urban Forestry continues to monitor the ongoing impact of the additional enforcement staff while refining and improving its current procedures including issuance of orders and imposing cost-recovery fees. When a contravention occurs, Urban Forestry charges an inspection fee, issues orders requiring that the contravening activity be discontinued, and orders that work be done to correct the contravention. When warranted, Urban Forestry can also take legal action and pursue prosecution. No additional enforcement tools, such as the use of tickets, are being requested at this time.

Summary: 2018 Targeted Inspection and Enforcement Program

Over two years, the inter-divisional Targeted Inspection and Enforcement Program has proven to be an effective proactive tool for addressing construction-related issues in areas of the city where there is a high volume of residential infill activity.

One of the program objectives was to help inform the evolution of the overall infill strategy. For example, the program helped identify an opportunity to streamline enforcement of the Construction Fence By-law and reduce duplication between Toronto Building and Municipal Licensing and Standards. The two divisions will also be collaborating on assessing potential concerns about temporary signs on residential infill sites.

The positive feedback received from participating divisions by Toronto Building's Dedicated Enforcement Unit indicates that the program should continue. The joint presence of the four divisions on construction sites across the city has reinforced the proactive approach of the overall infill strategy. A visible presence on sites has, according to staff, helped contractors and trades understand City of Toronto expectations, their responsibilities and the consequences of non-compliance.

The 2017 program was intended to establish benchmark data on enforcement and compliance. In 2018, some inspection areas, (e.g., Toronto Building's as-built survey requirements) showed a significant improvement in compliance. In others, however, the improvement was marginal. This may be due in part to the fact that some of the resource and staffing changes identified in the 2018 report to City Council had not been fully implemented when the site visits occurred in July and August, 2018.

The program has proven in the two years to be an invaluable tool to facilitate the sharing of information and practices across the participating divisions. As a result, Toronto Building inspector knowledge has been strengthened to allow the inspectors to identify and follow-up on issues with other divisions while attending to sites.

The effectiveness of the program is apparent when data is compared from the areas visited in 2017 and 2018, to the areas added in 2018. There was clearly a higher

volume of non-compliance and deficiencies in the new wards, suggesting that the impact of the program carried over from 2017 to 2018 in areas where the Targeted Infill Inspection and Enforcement Program was already active. Through the Residential Infill Inter-Divisional Staff Team, Toronto Building continues to develop the Targeted Inspection and Enforcement Program in order to increase its effectiveness as a part of the infill strategy going forward.

Update on By-Law to Regulate Residential Construction Dust

In 2018, City Council directed that this status report provide an update on the implementation of the new Residential Construction Dust By-law. Municipal Licensing and Standards is the lead division on Toronto's by-law to regulate dust from residential construction activities (*Toronto Municipal Code Chapter 417, Dust*).

Toronto Municipal Code Chapter 417, Dust now makes it mandatory for every person engaging, directing, or permitting residential construction activities to take reasonable measures to mitigate the creation of dust and its impact on neighbouring properties. The By-law requires that specific actions be taken in order to minimize the generation and distribution of dust. These measures include using a wet saw, dustless saw technology, a vacuum attachment when cutting, and/or tarping to contain dust. Other measures include wetting construction material and installing wind fencing.

The By-law applies to residential properties only. It does not apply to necessary municipal work, large-scale construction projects such as the construction of multi-residential buildings, subdivisions, or mixed use developments, or commercial and industrial properties. It also excludes residential demolition projects that have an approved demolition permit.

Implementation

Toronto Municipal Code Chapter 417, Dust took effect on September 4, 2018. Since then, the Municipal Licensing and Standards Division has been receiving dust-related service requests. Residents who wish to make a complaint about residential construction dust are able to do so by contacting 311 to submit a service request.

Notice to Industry

City Council directed staff to advise the industry of the creation of this By-law. On August 29, 2018, Municipal Licensing and Standards staff sent a communication via email to the Toronto Construction Association, Laborers International Union of North America, Canada Local 183, Canada Local 506, Building Industry and Land Development Association, Toronto (BILD), Residential Construction Council of Ontario (RESCON), Landscape Ontario, Ontario Home Builders' Association, and the Council of Ontario Construction Associations. This communication included the Good Neighbour Guide, an update on the Dust By-law, and reference to the By-law on the infill public notice.

Complaint History

Between September 4, 2018 and February 14, 2019 Municipal Licensing and Standards received 71 complaints related to dust. No Notices of Violation or Orders were issued as a result of the complaints. Staff in Municipal Licensing and Standards have focused on compliance through educating the public and industry about the requirements under the By-law.

Conclusion

The Targeted Inspection and Enforcement Program has been a significant contributor to the overall success of the City's residential infill strategy. The strategy was established in 2016 to improve how the City manages complaints, improve communications with the public and encourage good construction practices in the building industry. By implementing a comprehensive set of strategic actions (completed at the end of 2018), the City now takes a different approach to nuisance issues resulting from residential infill construction sites. The overall impact is positive, representing a shift away from traditional reactive tactics to a more holistic and co-ordinated approach to addressing the negative impacts of construction-related activities.

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ATTACHMENTS

Appendix 1: Status of Actions to Implement Residential Infill Strategy

Appendix 2: Summary of Minor Amendments to Toronto Municipal Code Chapter 519,

Public Infill Notice

Appendix 3: Proposed Revised Toronto Municipal Code, Chapter 519, Public Infill

Notice