

City of Kingston

Ontario

By-Law Number 2016-XXX

Site Alteration By-Law

Passed:

INDEX

	Page Number
DEFINITIONS	3
APPLICATION OF THE BY-LAW	8
GENERAL PROHIBITIONS	8
EXEMPTIONS	8
PLANNING AND DEVELOPMENT PROCESS	11
SITE ALTERATION PERMITS – Permit Application Process	11
Term of a Site Alteration Permit	16
Permit Conditions	16
Agreements	18
APPEALS TO CITY COUNCIL	19
ENFORCEMENT	19
ORDERS	20
PENALTIES	22
ADMINISTRATION	23

By-Law Number 2016-XXXX

A By-Law to Prohibit or Regulate the Placing or Dumping of Fill, the Removal of Topsoil, and the Alteration of the Grade of the Land Within the City of Kingston.

Passed:

Whereas Section 142 of the *Municipal Act, 2001*, SO 2001, c. 25, as amended, authorizes the Council of a local municipality to pass a by-law prohibiting or regulating the placing or dumping of fill, the removal of topsoil, and the alteration of the grade of the land within the City of Kingston;

And Whereas Section 425 of the *Municipal Act, 2001* authorizes the council of every municipality to pass by-laws providing that a person who contravenes a by-law of the municipality passed under the Act is guilty of an offence;

And Whereas Section 429 of the *Municipal Act, 2001* authorizes the council of every municipality to establish a system of fines for offences under a by-law of the municipality passed under the Act;

And Whereas Council may also require that a permit be obtained for the placing or dumping of fill, the removal of topsoil, and the alteration of the grade of the land within the City of Kingston, and may prescribe the fees for a permit, the circumstances under which a permit may be issued, and the conditions to such a permit;

And Whereas it is in the interest of the community to protect significant cultural and natural heritage features and areas from unnecessary alteration or destruction;

Now Therefore the Council of The Corporation of the City of Kingston hereby enacts as follows:

DEFINITIONS

1. In this By-Law, the following definitions apply:
 - (1) “Adjacent Lands” means those lands contiguous to a specific natural heritage feature or area or archaeological resource where it is likely that development or site alteration would have a negative impact on the feature, area, or resource.

- (2) “Agricultural Operation” means the conduct of Agriculture as a business activity that is carried out with the expectation of gain or reward, and includes the production of maple syrup, honey, eggs, milk or cream, and the operation of machinery and equipment, and may include a hobby farm.
- (3) “Agriculture” means the science, art, or practice of preparing and cultivating the soil; growing field crops, greenhouse crops, mushrooms, nursery stock, and turf grass; and growing, producing or raising livestock, poultry, ratites, fur-bearing animals, cultured fish, deer and elk, game animals and birds, and honey bees.
- (4) “Alter” means to change the grade of the land either through the depositing of fill or the excavation of land, or a combination thereof, and “altering” has a corresponding meaning.
- (5) “Applicant” means the person who submits an application to the City for a Site Alteration Permit pursuant to the provisions of this By-Law.
- (6) “Archaeological Resources” include artifacts, archaeological sites, and marine archaeological sites. The identification and evaluation of such resources are based upon archaeological fieldwork undertaken in accordance with the *Ontario Heritage Act*, RSO 1990, c 0.18.
- (7) “City” means The Corporation of the City of Kingston.
- (8) “Control Plan” means a drawing or drawings and supporting report detailing the existing conditions, the proposed work, the proposed grades, elevations and drainage pattern, the proposed erosion and sedimentation control, and the environmental protection measures for a property.
- (9) “Designate” means a person who is an employee of the City and who has been appointed by the Director to administer all or part of this By-Law on behalf of the Director.
- (10) “Development” means the creation of a new lot, change in land use or the construction of buildings and structures, requiring approval under the *Planning Act*, RSO 1990, c P.13, but does not include:
 - (a) activities that create or maintain infrastructure authorized under an environmental assessment process;
 - (b) works subject to the *Drainage Act*, RSO 1990, c D.17;

- (c) underground or surface mining of minerals or advanced exploration of mining lands in significant areas of mineral potential where advanced exploration has the same meaning under the *Mining Act*, RSO 1990, c M.14.
- (11) “Director” means the Director of Engineering for the City, or his/her Designate, who is responsible for the administration and interpretation of this By-Law.
- (12) “Drainage” means the movement of water across a property, whether by way of the natural characteristics of the ground surface or by an artificial method.
- (13) “Dump” means depositing fill by any means, and includes the movement and depositing of fill from one location on a property to another location on the same property, and “dumping” and “dumped” have a corresponding meaning.
- (14) “Ecological Function” means the natural processes, products or services that living and non-living environments provide or perform within or between species, ecosystems and landscapes. These may include biological, physical and socio-economic interactions.
- (15) “Environmental Impact Assessment” means an analysis performed by a Qualified Person which assesses the impact of a proposed development on natural heritage features and areas, and their ecological function and makes recommendations for measures to ensure that the proposed development has no negative impacts.
- (16) “Environmental Protection Areas” means areas of natural and scientific interest (ANSIs), fish habitat or significant wildlife habitat areas, provincially significant wetlands, coastal wetlands and locally significant wetlands and their immediately related water bodies and shown on the Official Plan.
- (17) “Farm” means a tract of land devoted to an Agricultural Operation.
- (18) “Fill” means any type of material deposited or placed on lands and includes, but is not limited to, soil, stone, concrete, asphalt, rubbish, garbage, turf, dirt, earth, aggregate, and binder either singly or in combination, whether originating on the site or elsewhere, used or capable

of being used to raise, lower, or in any other way affect or alter the contours of ground.

- (19) “Floodplain” means the area, usually low lands adjoining a watercourse or water body, which has been or may be subject to the 1:100 year flood hazard.
- (20) “Grade” means the elevation of the ground surface, and shall be more particularly defined as follows:
- (a) “Existing Grade” means the elevation of the existing ground surface of the land prior to any site alteration, including abutting ground surface up to three (3) metres wide surrounding such lands;
 - (b) “Finished Grade” means the approved elevation of ground surface of land upon which fill has been placed or dumped, topsoil removed, or the grade altered in accordance with this By-Law; and,
 - (c) “Proposed Grade” means the proposed elevation of ground surface of land upon which fill is proposed to be placed or dumped, topsoil removed, or grade altered.
- (21) “Natural Heritage Features and Areas” means features and areas, including significant wetlands, significant coastal wetlands, other coastal wetlands, fish habitat, waters supporting aquatic species at risk, significant woodlands, significant valleylands, significant habitat of endangered species and threatened species, significant wildlife habitat, and significant areas of natural and scientific interest, which are important for their environmental and social values as a legacy of the natural landscapes of an area.
- (22) “Negative Impacts” means that in regard to natural heritage features and areas, degradations that threaten the health and integrity of the natural features or ecological functions for which an area is identified due to single, multiple or successive development or site alteration activities.
- (23) “Normal Farm Practice” means a practice, as defined in the *Farming and Food Production Protection Act, 1998*, SO 1998, c.1, as amended, that is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances; or makes use of innovative

technology in a manner consistent with proper advanced farm management practices.

- (24) “Officer” means an individual appointed by the City to enforce the provisions of this By-Law, and includes a municipal by-law enforcement officer.
- (25) “Official Plan” means the document in which the City sets out its land use planning goals and policies that guide: physical development and redevelopment, protection of natural and cultural heritage, resource management, and the necessary supporting infrastructure.
- (26) “Owner” means the person(s) or corporation(s) registered on the title of the land in the Land Registry Office.
- (27) “Permit Holder” means the Owner or the person in possession of the property, and includes a lessee, a mortgagee in possession, or a person in charge of the property, to whom a valid Site Alteration Permit has been issued.
- (28) “Place” or “Placing” means the distribution of fill on lands to establish a Finished Grade higher or lower than the Existing Grade.
- (29) “Ponding” means the accumulation of surface water caused by the placing or dumping of fill, the removal of topsoil, or the alteration of the grade of the land.
- (30) “Qualified Person” means an individual with current knowledge in the field of biology, ecology or other specialty as required by the specific circumstances.
- (31) “Removal” means the excavation or extraction of any fill that lowers the Existing Grade, and includes soil stripping.
- (32) “Retaining Wall” means a wall that is designed and used to contain and support fill between adjoining lands of different elevations.
- (33) “Rural Area” means the area defined as Rural in the Official Plan.
- (34) “Site Alteration” means activities, such as the grading, excavation and the placement of fill that would change the landform and natural vegetative characteristics of the site.

- (35) "Site Alteration Permit" means the written authorization from the Director to perform work regulated by this By-Law.
- (36) "Soil" means any material commonly known as earth, topsoil, soil, loam, subsoil, clay, sand, or gravel.
- (37) "Swale" means a depression in the ground sloped for the purpose of providing drainage of surface water.
- (38) "Topsoil" means those horizons in a soil profile, commonly known as the "O" and the "A" horizons, containing organic material and including deposits of partially decomposed organic matter such as peat.
- (39) "Woodlands" mean trees defined in the *Forestry Act* that are more than one hectare in area. This includes both Contributory and Significant Woodlands.
 - (a) "Contributory Woodlands" means woodlands as defined in the Official Plan.
 - (b) "Significant Woodlands" means woodlands as defined in the Official Plan.

APPLICATION OF THE BY-LAW

- 2. (1) This By-Law applies to all lands within the geographic limits of the City of Kingston, other than those areas which are subject to regulations made under Section 28 of the *Conservation Authorities Act*, RSO 1990, c C.27.

GENERAL PROHIBITIONS

- 3. (1) No person shall place or dump fill, remove topsoil, or alter the grade of the land in the City of Kingston unless:
 - (a) exempted by Section 4 of this By-Law; or
 - (b) in possession of a Site Alteration Permit issued by the Director in accordance with this By-Law and in accordance with its terms and conditions.
- (2) No person shall contravene the terms or conditions of a Site Alteration Permit issued under this By-Law.

EXEMPTIONS

4. Despite Section 3, this By-Law does not apply to:
- (1) activities or matters undertaken by a municipality or a local board of a municipality;
 - (2) the placing or dumping of fill, removal of topsoil or alteration of the grade of land as a condition to the approval of a site plan, a plan of subdivision or a consent under Sections 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
 - (3) the placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken by a transmitter or distributor, as those terms are defined in Section 2 of the *Electricity Act, 1998*, SO 1998, c.15, Schedule A, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
 - (4) the placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*, RSO 1990, c A.8;
 - (5) the placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
 - (a) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and
 - (b) on which a pit or quarry is a permitted land use under a by-law passed under Section 34 of the *Planning Act*;
 - (6) the placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken as an incidental part of drain construction under the *Drainage Act* or the *Tile Drainage Act*, RSO 1990, c T.8;
 - (7) the placing or dumping of fill, removal of topsoil or alteration of the grade of land on lots less than or equal to one (1.0) hectare in size, with the exception of vacant lots, lands designated as Environmental Protection Area or Open Space in the Official Plan, and Adjacent Lands;

- (8) the placing or dumping of fill, removal of topsoil or alteration of the grade of land for the installation of a swimming pool, provided a pool permit is obtained from the City;
- (9) the placing or dumping of fill, removal of topsoil or alteration of the grade of land for the purpose of lawn dressing, landscaping, or adding to flower beds or vegetable gardens and provided that:
 - (a) No soil in excess of thirty (30) centimeters (12 inches) in depth is placed on the lands;
 - (b) The elevation of the land within sixty (60) centimeters (24 inches) of any property line is not changed; and,
 - (c) There is no change in the location, direction, or elevation of any natural or artificial watercourse, waterbody, open channel, swale, or ditch used to drain land;
- (10) the placing or dumping of fill, removal of topsoil or alteration of the grade of land as part of a Normal Farm Practice, including, but not limited to, sod-farming, greenhouse operations, nurseries, and Agricultural Operations, but not including the removal of topsoil for sale, exchange, or other disposition;
- (11) the placing or dumping of fill, removal of topsoil or alteration of the grade of land as part of the excavation or restoration of the Existing Grade following the demolition or removal of a building or structure;
- (12) the placing or dumping of fill, removal of topsoil or alteration of the grade of land pursuant to a building permit for the erection of a building or structure, and provided that the drawings that accompany the building permit application provide sufficient information for the Director to determine that the placing or dumping of fill, removal of topsoil, or alteration of the grade of the land conforms to the provisions of this By-Law;
- (13) the placing or dumping of fill, removal of topsoil or alteration of the grade of land by the Cataraqui Region Conservation Authority, a utility provider, or a Ministry of the Provincial or Federal Government; or;
- (14) the placing or dumping of fill on a property in the Rural Area for landscaping, provided the property is not designated as Environmental

Protection Area or Open Space in the Official Plan, and that the final grade has a maximum slope of 3:1.

PLANNING & DEVELOPMENT PROCESS

5. An Owner who has made an application for the approval of a site plan, a plan of subdivision or a consent under Sections 41, 51 or 53, respectively, of the *Planning Act*, may, prior to approval, make an application for a Site Alteration Permit, subject to:
 - (a) Provision of financial securities in accordance with Section 8 of this By-Law; and
 - (b) Such other terms and conditions as determined by the Director.

SITE ALTERATION PERMITS

Permit Application Process

6. (1) Every person that intends to undertake any Site Alteration within the limits of the City of Kingston, either personally or through another person or corporation shall:
 - (a) Complete and submit an application for a Site Alteration Permit in the form prescribed by the City from time to time;
 - (b) Pay the required fee, as set out in the City's Fees and Charges By-Law in place at the time of application;
 - (c) Provide a description of the proposed works;
 - (d) Provide a description of the fill and source of the fill and the identification of any watercourse, water body, shoreline, wetland and/or floodplain as determined after pre-consultation with the Cataraqui Region Conservation Authority;
 - (e) Provide confirmation of the requirement to conduct an Environmental Impact Assessment as determined after pre-consultation with the Cataraqui Region Conservation Authority and the Director;
 - (f) Provide confirmation of the requirement to conduct a Stage 1 Archaeological Report as determined after pre-consultation with the Heritage Planner, or his/her designate;

- (g) Provide confirmation of existing Official Plan designations, zoning, and the status of any planning applications on the property as determined after pre-consultation with the Director of Planning, Building and Licensing Services or his/her designate;
- (h) Submit a Control Plan including drawings and a supporting report to the satisfaction of the Director, and containing any information the Director deems necessary. At a minimum, the Control Plan shall contain the following information provided on a drawing to a scale acceptable to the Director:
 - i. Property boundaries and easements, area and size of the site to be disturbed;
 - ii. Drainage routes and slopes;
 - iii. Location of waterbodies or watercourses on, or within thirty (30) metres of, the property;
 - iv. Location of shorelines, wetlands and floodplains, cultural heritage and natural heritage features and areas;
 - v. Existing buildings, roads, highways, utilities, structures, paving, sidewalks, walkways, catch basins and vegetation;
 - vi. Location and dimension of all areas to be filled or altered, with Existing and Proposed Grades;
 - vii. Location and dimensions of all proposed temporary stock piles for soil and other materials;
 - viii. Location and dimensions for all proposed staging areas for equipment;
 - ix. Provision for the maintenance of construction site control measures during construction including a mud tracking prevention program which describes the procedures for mud tracking prevention and road clean up and designates a contact person for such a program throughout each land development activity; and,
 - x. Location, dimensions, design details and design calculations of all construction site control measures necessary to meet the

requirements of this By-Law, including details of the proposed sediment and erosion control measures, and details of any drainage system to be used upon the completion of the Site Alteration.

- (2) If the Site Alteration works will necessitate the injury or removal of trees, an application for a Tree Permit and supporting documents in accordance with the City's Tree By-Law may be required.
7.
 - (1) All Applicants shall conduct meaningful consultation with regards to site alteration proposals with the City and the Cataraqui Region Conservation Authority prior to applying for a Site Alteration Permit.
 - (2) Prior to the issuance of a Site Alteration Permit, the Applicant or Owner shall provide a security deposit in accordance with the following:
 - (a) Where the value of the works are estimated to be in excess of Fifty Thousand Dollars (\$50,000.00), a security deposit in the form of cash, certified cheque, or irrevocable letter of credit in an amount approved by the Director shall be deposited with the City. The security deposit may be drawn upon by the City, at its sole discretion, to remedy any deficiency in any work. Upon written application by the Applicant/Owner, and upon the satisfaction of the Director that all conditions and requirements of the Site Alteration Permit have been fulfilled, the City will return the security deposit or the remaining amount of any reduced security deposit.
 - (b) The amount of the security deposit:
 - i. Shall be valued at ten percent (10%) of the estimated value of the works, up to the first Two Hundred Thousand Dollars (\$200,000.00) estimated cost of the works and one percent (1%) of any additional amount in excess of Two Hundred Thousand Dollars (\$200,000.00); and,
 - ii. May be reduced, at the discretion of the Director, by an amount equal to the value of any work completed to the date of the reduction request, provided that the value of work completed is certified by a Professional Engineer, or other qualified professional.

- (3) The Director may require the Applicant to undertake the following as part of the application for a Site Alteration Permit:

If an Environmental Impact Assessment (EIA) is required, it shall be prepared by a Qualified Person, to the Director's satisfaction, and shall include:

- (a) A description of the proposal and rationale for undertaking the site alteration works;
 - (b) A survey illustrating the legal boundaries of the property, easements, rights-of-way or other encumbrances;
 - (c) An outline of the location, the size of the property, and the amount of fill to be placed or dumped, topsoil to be removed, or grade to be altered;
 - (d) An inventory and description of the type of the key features present and their significance, including a reference to all Natural Heritage Features and Areas and ecological functions;
 - (e) A discussion and evaluation of the compatibility of the proposed placement or dumping of fill, removal of topsoil, or alteration of the grade of the land with the existing Natural Heritage Features and Areas and ecological functions;
 - (f) The identification of any portion of the property where placing or dumping fill, removing topsoil, or altering the grade of the land should be precluded, and an outline of the need for and type of mitigation required to protect identified Natural Heritage Features and Areas and ecological functions; and,
 - (g) A professional conclusion as to whether the proposal is acceptable, considering potential impacts to natural heritage features and areas, related functions and any proposed measures needed to protect the Natural Heritage Feature(s) or Area(s) affected, consistent with the Provincial Policy Statement and the Official Plan.
- (4) Where a property is identified as containing Archaeological Resources, or as being an area of archaeological potential, the Applicant or Owner shall be required to complete a Stage 1 Archaeological Assessment, as well as any subsequent assessments or recommendations as identified within the Stage 1 Archaeological Assessment.

These assessments shall be prepared by an archaeologist holding a license from the Province of Ontario, in accordance with all relevant legislation and policy, including, but not limited to, the *Ontario Heritage Act*, the Archaeological Assessment Technical Guidelines, Standards and Guidelines for Consulting Archaeologists, or any superseding document(s) published by the Province of Ontario.

- (5) Where required, the Applicant shall submit a plan for a Retaining Wall. The plan submitted shall include construction details and be accompanied by a building permit where required. No Retaining Wall shall encroach, either above or below Existing Grade, upon abutting lands unless authorized in writing by the Owner of the abutting lands.
 - (a) The Director may require that a Retaining Wall be constructed where:
 - i. Erosion of fill onto abutting lands may occur; or,
 - ii. The Finished Grade of the lands at the property line is higher or lower than that of the Existing Grade of the abutting lands.
 - (b) The Applicant shall provide any other information, document, or plan that may be required by the Director to determine if the proposed work conforms to this By-Law and/or any applicable statute, regulation, or by-law.
8.
 - (1) When all the requirements have been provided, the Director will review the complete Site Permit Application and may:
 - (a) Issue a Site Alteration Permit;
 - (b) Issue a Site Alteration Permit with conditions; or,
 - (c) Refuse to issue a Site Alteration Permit.
 - (2) Where the Director refuses to issue a Site Alteration Permit pursuant to this By-Law, the Director will inform the Applicant in writing. The Director may reconsider the application if additional information or documentation is submitted by the Applicant, within thirty (30) days of the notification of the decision to refuse.
 - (3) If an Owner, Applicant or Permit Holder proposes to make a material change to a plan, specification, document, or other information related to the Site Alteration Permit following the issuance of a Site Alteration

Permit, the Owner, Applicant or Permit Holder, as the case may be, shall first submit a revised application. The Director may require payment of up to one-half of the original Permit fee and submission of revised drawings or other information. Any revised application submitted pursuant to this sub-section shall be deemed to be a new application, which shall be approved by the Director in accordance with this By-Law.

Term of a Site Alteration Permit

9. (1) A Site Alteration Permit issued pursuant to this By-Law shall be valid for a period of not more than two (2) years from the date the Permit was issued.
- (2) A Site Alteration Permit may be renewed for a period of up to two (2) additional years, upon written request from the Owner at least thirty (30) days prior to its expiry, provided that the Director is satisfied that there are reasonable grounds for the renewal.
- (3) No Site Alteration Permit shall be renewed where the Owner or Applicant is in breach of any of the provisions of this By-Law or the terms and conditions of the Site Alteration Permit.
- (4) Every application to renew a Site Alteration Permit shall be accompanied by the applicable fee as set out in the City's Fees and Charges By-Law in place at the time of application.

Permit Conditions

10. (1) The Director may impose conditions on a Site Alteration Permit that are reasonable which may include, but are not restricted to:
 - (a) A requirement that the Owner, Applicant, and/or Permit Holder obtain all other approvals that may be required by any level of government or authority having jurisdiction or agencies thereof.
 - (b) If the ownership of the lands for which a Site Alteration Permit has been issued is transferred while the Permit remains in effect, the Permit Holder shall advise the Director and the new Owner in writing prior to property transfer and the new Owner of the lands shall forthwith advise the Director that such a transfer has been completed and either:

- i. Provide the City with an undertaking to comply with all the conditions under which the existing Site Alteration Permit was issued; or,
 - ii. Apply for and obtain a new Site Alteration Permit in accordance with the provisions of this By-Law.
- (c) All fill to be dumped or placed shall be clean and free of waste, asphalt, trash, rubbish, glass, liquid or toxic chemicals, hazardous waste or contamination;
- (d) No ponding or alteration of existing surface water flow resulting directly or indirectly from the site alteration shall be caused on abutting lands;
- (e) For disturbed areas, the Finished Grade surface shall be protected by sod, turf, seeding for grass, greenery, asphalt, concrete, or other means either singly or in combination, within two (2) months of completion of the work, or as specified by the Director;
- (f) All trenches in which piping is laid, forming part of the drainage system shall be inspected by the Director prior to back-filling the excavation;
- (g) Erosion and sedimentation control measures shall be provided around all disturbed areas in a manner satisfactory to the Director prior to the commencement of the placing or dumping of fill, the removal of topsoil, or the alteration of the grade of the land, and shall be maintained in good working order until the site has stabilized;
- (j) All fill shall be properly compacted using acceptable engineering practices, unless being stockpiled on site for future use;
- (k) The Permit Holder shall ensure that natural drainage or any natural or human-made watercourse or waterbody is not altered in such a manner that will negatively affect other property or the environment;
- (l) If Archaeological Resources are discovered or identified during the placement of any fill, the removal of any topsoil, or the alteration of the grade of the land, even after the issuance of a Site Alteration Permit, the Owner, Applicant and/or Permit Holder shall immediately cease all activity on the property and contact the Director;

- (m) A requirement that the Permit Holder, Owner, and Applicant to comply with all recommendations or conclusions of all or any parts of the studies, Control Plan and reports submitted as part of the application for a Site Alteration Permit.
11. (1) A copy of the Site Alteration Permit, issued by the Director, shall be posted in a conspicuous place on the subject property that is adjacent to a public road and visible to all persons, or at such other location designated by the Director, prior to the placement of any fill, the removal of any topsoil, or the alteration of the grade of the land allowed by the Site Alteration Permit.
12. (1) A Site Alteration Permit may be revoked by the Director under any of the following circumstances:
- (a) If it was issued on mistaken, misleading, false, or incorrect information;
 - (b) If the Owner, Applicant, or Permit Holder requests, in writing, that it be revoked;
 - (c) If the terms of an Agreement entered pursuant to this By-Law are not complied with; or,
 - (d) If an Owner, Applicant or Permit Holder fails to comply with any provision of the Site Alteration Permit or this By-Law.
- (2) Upon notice that a Site Alteration Permit has been revoked, the Owner, Applicant, and/or Permit Holder shall immediately cease all operations being conducted under the authority of the revoked Site Alteration Permit and shall immediately rehabilitate and stabilize the land so as to prevent adverse impacts from erosion and sedimentation.

Agreements

13. The Owner may enter into a Site Alteration Agreement that may be registered on title to the affected lands. A Site Alteration Agreement shall include, but not be limited to:
- i. Measures necessary to ensure that the placing or dumping of fill, the removal of topsoil, or the alteration of the grade of the land is undertaken in accordance with this By-Law, any approved Control

Plan, the Site Alteration Agreement, and the supporting information provided thereto proper engineering principles;

- ii. Security deposit requirements in accordance with Subsection 8(2) of this By-Law; and,
- iii. Requirements that a Professional Engineer, or other similarly qualified person, upon completion of the work, certify that that the Permit Holder has complied with all of the obligations and conditions contained in the Site Alteration Permit.

APPEALS TO CITY COUNCIL

- 14. (1) An Applicant may appeal in writing to the Council of the City if:
 - (a) The City refuses to issue a Site Alteration Permit, within thirty (30) days after the refusal; or,
 - (b) The Applicant objects to a term or condition in the Site Alteration Permit, within thirty (30) days after the issuance of the Permit.
- (2) An Applicant shall submit an appeal in writing to the Clerks Department, by way of registered mail to the City Clerk.
- (3) The Director shall prepare and forward a report to Council which will set out the reasons for the refusal of the Site Alteration Permit or the terms or conditions of the Site Alteration Permit as the case may be. At the Council meeting in which the report from the Director is presented, the Applicant will be permitted to appear as a delegation.
- (4) On appeal, Council has the same powers as the Director and may make a decision to:
 - (a) Confirm the refusal to issue the Site Alteration Permit;
 - (b) Issue a Site Alteration Permit, with or without conditions; or,
 - (c) Affirm, vary, or add any conditions to the Site Alteration Permit.
- (5) The decision made by Council on the appeal of the Site Alteration Permit is final. The Clerk shall notify the Applicant in writing of Council's decision within five (5) business days.

ENFORCEMENT

15. (1) Council hereby delegates to the Director the authority to enforce this By-Law, to issue Site Alteration Permits under this By-Law and to impose terms and conditions to such permits.
- (2) The Director may appoint from time to time, persons to act as Officers to administer and enforce the provisions of this By-Law.
- (3) An Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not this By-Law, an Order, or a condition of a Site Alteration Permit is being complied with.
- (4) An Officer in carrying out an inspection, pursuant to Section 15(3) may be accompanied by the Director, and any other person necessary to assist the Officer with his or her enforcement activities.
- (5) An Officer carrying out an inspection pursuant to Section 15(3) may:
- (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information from any person concerning a matter related to the inspection; and,
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- (6) No person shall hinder or obstruct, or attempt to hinder or obstruct any person who is exercising a power or performing a duty under this By-Law.

ORDERS

16. (1) Where the Director is satisfied that a contravention of this By-Law has occurred, the Director may issue an Order to Discontinue requiring the person who contravened the By-Law, or who caused or permitted the contravention, or the Owner or occupier of the land on which the contravention of the By-Law occurred, to discontinue the contravening activity.

- (2) The Order to Discontinue shall set out reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred and the date by which there must be compliance with the Order.
17.
 - (1) Where the Director is satisfied that a contravention of this By-Law has occurred, the Director may issue an Order requiring the person who contravened the By-Law or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to do the work specified in the Order that is necessary in the opinion of the Director to correct the contravention.
 - (2) The Order shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the contravention, and the date by which there must be compliance with the Order.
 - (3) The Order may provide that if the person named in the Order fails to comply with the Order by a date specified in the Order, that the City shall have the right to enter upon the land affected by the Order at any time, and to complete the work specified in the Order at the expense of the person named in the Order and may draw on any financial security provided by the Owner to complete the work.
18.
 - (1) An Order to Discontinue issued under Section 17, or an Order issued under Section 18, may be served personally by an Officer, may be posted in a conspicuous place on the property where the contravention occurred, or may be sent by registered mail to the person contravening this By-Law.
 - (2) Where an Order issued under this By-Law is served personally by an Officer, it shall be deemed to have been served on the date of delivery to the person(s) named.
 - (3) The posting of the Order on the property where the contravention took place shall be deemed to be sufficient service of the Order on the person or corporation named in the Order on the date it is posted.
 - (4) Where an Order issued under this By-Law is sent by registered mail, it shall be sent to the last known address of the person named in the Order and shall be deemed to have been served on the fifth day after the Order is mailed.

19. (1) If a person fails to comply with an Order issued pursuant to Section 18 of this By-Law, the City may enter the lands at any reasonable time for the purposes of doing the things described in the Order at the person's expense.
- (2) If the City enters on the lands and completes the work, the City may recover its costs to complete the work from the person named in the Order by drawing upon the financial security, or by action, or by adding the costs to the tax roll and collecting them in the same manner as property taxes.
- (a) The costs include interest calculated at a rate of fifteen percent (15%), calculated for the period commencing on the day the City incurs the costs and ending on the day the costs, including interest, are paid in full.
- (b) The amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien.
- (c) The lien shall be in respect of all costs that are payable at the time the notice is registered plus interest accrued at the rate of fifteen percent (15%) to the date the payment is made in full.

PENALTIES

20. (1) Every person who contravenes a provision of this By-Law is guilty of an offence, 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 all such offences are designated as continuing offences.
- (2) Every person who contravenes an Order under Section 17 or Section 18 of this By-Law is guilty of an offence, and all such offences are designated as continuing offences.
21. (1) A person who is convicted of an offence under this By-Law is liable, for each day or part of a day that the offence continues, to a maximum of Ten Thousand Dollars (\$10,000.00), and the total of all daily fines is not limited to One Hundred Thousand (\$100,000.00)
- (2) When a person or corporation is convicted of an offence under this By-Law, the conditions of a Site Alteration Permit, or an Order issued under this By-Law, the Court in which the conviction has been entered, and any

Court of competent jurisdiction thereafter, may, in addition to any fine imposed, make an order:

- (a) Prohibiting the continuation or repetition of the offence; and,
- (b) Requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate, including requiring the person to abide by any term or condition of the relevant Site Alteration Permit, rehabilitate the land, remove the fill dumped or placed contrary to this By-Law, or restore the grade of the land to its original condition.

ADMINISTRATION

19. (1) The short title of this By-Law is the “Site Alteration By-Law”.
- (2) References to any statute or any provision thereof include such statute or provision as amended, revised, re-enacted and/or consolidated from time to time, and any successor statute.
- (3) If any section or sections of this By-Law or parts thereof are found by any Court to be invalid or beyond the power of the Council to enact, such section or sections or parts thereof, shall be deemed to be severable and all other sections or parts of this By-Law shall be deemed to be separate and independent there from and continue in full force and effect.
- (4) If there is a conflict between this By-Law and a by-Law passed under the *Municipal Act*, the provision that is the most restrictive regarding site alteration shall prevail.
- (5) Nothing in this By-Law shall exempt any person or corporation from complying with the requirements of any other by-law in force, or from obtaining any license, permission, permit, authority or approval required under any other by-law or legislation.
- (6) Any application received prior to the passage of this By-Law would be processed in accordance with the provisions of By-Law Number 2008-128.

- (7) Any application received prior to the passage of this By-Law, will be processed in accordance with the provisions of By-Law Number 2008-128.

Given all Three Readings and Passed: [Meeting Date]

John Bolognone
City Clerk

Bryan Paterson
Mayor