

Authority: Item ,
Report
CM:

Bill No.

**CITY OF HAMILTON
BY-LAW NO.**

WHEREAS the *Municipal Act, 2001*, particularly section 142, authorizes the City of Hamilton to pass by-laws respecting these matters;

WHEREAS ; and,

WHEREAS .

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

SHORT TITLE

1 This By-law may be cited as the Site Alteration By-law.

PURPOSES

2 The purposes of this By-law are,

- (a) to control and regulate site alteration on lands within the City of Hamilton;
- (b) to ensure site alteration is undertaken for necessary or beneficial purposes, not primarily for financial gain;
- (c) to minimize adverse impacts on infrastructure, environment and community in respect of site alteration undertakings; and
- (d) to promote and protect agricultural resources.

DEFINITIONS

3 In this By-law:

“agricultural operation” has the same meaning as under the *Farming and Food Production Protection Act, 1998*, which is, for ease of reference, an agricultural, aquacultural, horticultural or silvicultural operation that is carried on in the expectation of gain or reward;

“building” has the same meaning as under the *Building Code Act, 1992*;

“City” means the City of Hamilton;

“Director” means the Senior Director of Growth Management or designate;

“fill” means earth or rock fill or material of a similar nature;

“land” includes land covered by water;

“normal farm practice” has the same meaning as under the *Farming and Food Production Protection Act, 1998*, which is, for ease of reference, a practice that,

(a) 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

(b) makes use of innovative technology in a manner consistent with proper advanced farm management practices;

“qualified person” has the same meaning as in section 5 of Ontario Regulation 153/04;

“topsoil” means those horizons in a soil profile, commonly known as the “O” and the “A” horizons, containing organic material and includes deposits of partially decomposed organic matter such as peat;

APPLICATION

4 The provisions of this By-law regarding “site alteration” apply to all land within the City of Hamilton in respect of

- (a) excavating, depositing or stockpiling fill or topsoil,
- (b) removing topsoil, and
- (c) altering the grade of land.

5 (1) This By-law does not apply to site alteration undertaken,

- (a) as a condition to the approval of or a condition of or a requirement of any of the following, imposed after December 31, 2002 pursuant to the *Planning Act*.
 - (i) a site plan or site plan agreement under section 41;
 - (ii) a plan of subdivision or a subdivision agreement under section 51;
 - (iii) a consent under section 53;
 - (iv) a development permit or agreement under a regulation made under section 70.2;
- (b) by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- (c) on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;
- (d) on land in order to lawfully establish and operate or enlarge any pit or quarry on land;
 - (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and
 - (ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*;
- (e) as an incidental part of drain construction under the *Drainage Act* or the *Tile Drainage Act*; or
- (f) as part of the use, operation, establishment, alteration, enlargement or extension of a waste disposal site within the meaning of Part V of the *Environmental Protection Act*.

(2) Subject to subsection (3), this By-law does not apply to the removal of topsoil as an incidental part of a normal farm practice including such removal as an incidental part of sod-farming, greenhouse operations and nurseries for horticultural products undertaken as a permitted or legal non-conforming use of land.

(3) The removal of topsoil as an incidental part of a normal farm practice does not include the removal of topsoil for sale, exchange or other disposition.

(4) This By-law does not apply to the stockpiling of fill or topsoil for sale or exchange or use as an incidental part of a commercial operation undertaken as a permitted or legal non-conforming use of land, provided that any such stockpiles,

- (a) are used, depleted and refreshed on a continuous basis while the commercial operation is operational;
- (b) are removed and the existing grade restored while the commercial operation is suspended; and
- (c) no stockpile remains substantially unchanged for longer than six (6) months.

6 (1) This By-law does not apply to site alteration undertaken by the City or a local board of the City on lands owned by the City or local board.

(2) For clarity, where the City or a local board of the City deposits fill on a site not owned by the City or local board, the owner of the site shall be required to obtain a site alteration permit in accordance with this By-law.

7 No site alteration permit shall be issued for a site which is the subject of or included within any outstanding application to the City for any of the approvals listed in clause 5(1)(a) on the date of application for a site alteration permit.

PROHIBITIONS AND REQUIREMENT FOR PERMIT

8 No person shall undertake site alteration or cause site alteration to be undertaken except with the consent of the owner of the site.

9 (1) No person shall undertake site alteration or cause site alteration to be undertaken unless a site alteration permit has been issued to undertake such site alteration.

(2) An owner of a site, or a person with the consent of an owner of a site, may apply to the Director for a site alteration permit to undertake site alteration on the site in accordance with section 13.

(3) The Director shall not issue a site alteration permit unless,

- (a) the application is complete;
- (b) the applicant, and any other required parties, have entered into a site alteration agreement required by section 16;
- (c) the applicant has paid all fees required by section 17;
- (d) the applicant has provided security required by section 18; and
- (e) the Director is satisfied the proposed site alteration will be undertaken in accordance with this By-law.

(4) In considering whether to issue a site alteration permit, the Director shall have regard to,

- (a) whether the primary use of the site is the depositing of fill on the site;
- (b) whether the proposed site alteration is necessary for the purpose identified in the application;

- (c) whether the proposed site alteration is part of a normal farm practice;
- (d) whether the proposed site alteration is likely to be completed within the term of the site alteration permit;
- (e) any effects on ground and surface water resources;
- (f) any effects on drainage;
- (g) if the use of the site is residential, whether the proposed site alteration complies with the City's Lot Grading Policy, Criteria and Standards;
- (h) any effects on agricultural resources;
- (i) any effects on the environment;
- (j) any planning and land use considerations;
- (k) any effects on nearby communities;
- (l) any comments provided by external bodies or agencies;
- (m) the suitability of the proposed erosion and sediment control measures;
- (n) the suitability of the proposed construction site control and security measures;
- (o) the final grading and rehabilitation plans for the site;
- (p) the main haulage routes and proposed truck traffic to and from the site;
- (q) the quality of the fill proposed to be transported to the site from any other source site or moved from one area of the site to another;
- (r) the applicant's history of compliance with this By-law or similar By-laws of other municipalities or similar Acts; and
- (s) such other matters as are considered appropriate.

(5) If an application is refused, the Director shall provide written reasons for the refusal.

(6) The Director may revoke a site alteration permit if,

- (a) it was issued on false or incorrect information;
- (b) it was issued in error; or
- (c) a provision of this By-law has not been complied with.

(7) No person shall make or cause a material change to be made to a plan, specification, document or other information on the basis of which a permit was issued without notifying, filing details with and obtaining the authorization of the Director.

(8) No person shall undertake site alteration or cause site alteration to be undertaken except in accordance with the plans, specifications, documents and any other information on the basis of which a permit was issued or any changes to them authorized by the Director.

10 The Director may circulate an application for comment by such external bodies or agencies as the Director determines to be necessary.

11 Despite subsection 9(1), no permit is required for site alteration undertaken,

- (a) for the purposes of lawn maintenance, landscaping or gardening, provided that:

- (i) the depth of fill deposited on the site does not exceed fifteen (15) centimetres at any location;
 - (ii) there is no change in the location, direction or rate of drainage to neighbouring properties; and
 - (iii) there is no change or blockage of any swale.
- (b) for the installation of a pool where a permit has been issued pursuant to By-law No. 16-184, provided that:
- (i) a minimum sixty (60) centimetre strip of undisturbed ground remains along the rear and side property lines, and
 - (ii) any retaining walls are limited to 0.5m in height, measured from existing ground elevations.
- (c) incidental to the construction of a building for which a building permit has been issued by the Chief Building Official, provided that the accompanying application provides sufficient information for the Chief Building Official to determine that such site alteration conforms with this By-law.

12 The issuance of a site alteration permit pursuant to this By-law does not relieve a person from compliance with any other applicable legislation, regulations or permit requirements, including the requirements of the Niagara Escarpment Commission or a conservation authority.

APPLICATION REQUIREMENTS

13 (1) An application for a site alteration permit shall contain:

- (a) the address, legal description and registered owner of the site;
- (b) the area of the site in hectares;
- (c) up-to-date contact details of the owner of the site, and of the applicant, if not the owner of the site;
- (d) the past, current and intended future uses of the site;
- (e) the purpose of the proposed site alteration;
- (f) the volume of soil involved in the proposed site alteration in cubic metres;
- (g) intended start date and completion date for the proposed site alteration;
- (h) a control plan of the site and the area within 30 metres of the property lines of the site drawn to scale, prepared by a licenced surveyor, professional engineer or professional geoscientist, showing the property lines and all existing and proposed:
 - (i) elevation contours at 0.5 metre intervals or less;
 - (ii) spot elevations at 15 metre intervals along the property lines;
 - (iii) predominant native soil types;
 - (iv) buildings and other structures including retaining walls;
 - (v) highways, driveways and paths;
 - (vi) impermeable surfaces;
 - (vii) easements and rights-of-way;

- (viii) above- and below-ground private, municipal or utility infrastructure including the size and invert elevations of drainage swales, ditches, pipes and culverts;
- (ix) bodies of water and watercourses;
- (x) wetlands and floodplains;
- (xi) Conservation Authority regulation boundaries;
- (xii) trees measuring X mm or greater in diameter at breast height including species;
- (xiii) vegetation masses by canopy outline;
- (xiv) tree protection measures;
- (xv) erosion and sediment control measures;
- (xvi) construction site control and security measures;
- (xvii) locations of site alteration including temporary stockpiles, specifying the volumes, source and type of fill involved;
- (xviii) final ground covering;
- (i) design details and specifications for any proposed retaining walls;
- (j) design details and specifications for any proposed drainage or stormwater management systems;
- (k) if required by the Director, in a form satisfactory to the Director,
 - (i) an excess soil management plan prepared by a qualified person,
 - (ii) a dust management plan,
 - (iii) an erosion and sediment control plan,
 - (iv) a groundwater management plan,
 - (v) a stormwater management plan,
 - (vi) a traffic management plan; and
- (l) any other information, plans or studies the Director requires to determine whether the site alteration proposal complies with this By-law.

(2) If the proposed site alteration on a site involves fill being transported to the site from any other source site, the application shall contain:

(3) , for each source site, a letter from the registered owner of the source site or the registered owner's authorized agent containing:

- (a) the address and legal description of each source site;
- (b) a statement of the nature of the project on each source site that is generating the fill to be transported to the site;
- (c) the volume of fill to be transported to the site from each source site;
- (d) the contact details for the person responsible for the project on each source site;
- (e) the past uses of each source site;

- (f) a copy of the detailed sampling and analysis plan for all fill excavated from each source site, and confirmation from a qualified person retained by the registered owner of the source site stating that the fill to be transported to the site is suitable for use at the site;
- (g) a letter from the registered owner of the source site confirming (a) to (f);
- (h) the contact details of a person from the municipality in which the source site is located who has knowledge of any past uses of the source site and who is able to provide information with respect to Records of Site Condition of the source site; and
- (i) the proposed haul routes, daily truck volume and hours of operation of truck traffic to and from the site.

(4) If an application for a site alteration permit is made for a site where an agricultural operation is carried on or is intended to be carried on and the proposed site alteration is part of a normal farm practice, other than as described in subsection 5(2), the application shall contain:

- (a) the contact details of the farmer responsible for the agricultural operation;
- (b) a statement of nature of the agricultural operation;
- (c) the farm business registration number of the agricultural operation or proof of membership in an accredited farm organization;
- (d) a description of the normal farm practice; and
- (e) any plans or evidence supporting the normal farm practice, including the qualifications of any person providing such plans or evidence.

14 Despite section 13, the Director may waive any application requirement the Director determines to be unnecessary in the circumstances of the proposed site alteration.

15 An application shall be made in such form as may be determined by the Director from time to time.

AGREEMENT, FEES AND SECURITY

16 Prior to the issuance of a permit, the Director may require the applicant, registered owner of the site, and such other persons as the Director deems appropriate to enter into a site alteration agreement with the City, which may be registered on title to the site, which agreement may address any of the matters relevant to this By-law, including indemnification of the City and insurance.

17 (1) The Director shall determine the application fee to be paid by the applicant in accordance with Schedule "A".

(2) Where an applicant applies for a site alteration permit for a site where site alteration has occurred in contravention of this By-law, the application fee to be paid by the applicant shall be twice the amount otherwise payable, subject to the discretion of the Director.

18 (1) An applicant shall provide financial security to the City to ensure compliance with this By-law, including:

- (a) maintenance construction site control and security measures;
- (b) fouling or damage to municipal roads and other infrastructure; and
- (c) rehabilitation and restoration of the site to a condition consistent with this By-law.

(2) The Director shall determine the amount of the security to be provided to the City by the applicant in accordance with Schedule “B”, which shall remain in effect until released in accordance with subsection (6).

(3) Security shall be provided in cash or an irrevocable letter of credit issued by a financial institution or equivalent in a form satisfactory to the City Solicitor.

(4) The City may draw upon the security to remedy any breach of this By-law, including a breach of the terms of an issued site alteration permit or a site alteration agreement with the City.

(5) The City may draw upon the security for the payment of any costs set out in section 31;

(6) The City shall not release the security until,

- (a) site alteration is complete in accordance with the site alteration permit;
- (b) the permit holder has provided a certificate of compliance prepared by the person who prepared the control plan required by clause 13(1)(h), or a person of equivalent qualifications, confirming that site alteration has been completed in accordance with the approved control plan; and
- (c) the City has carried out a final inspection of the site, and the Director is satisfied that the site alteration is in accordance with this By-law, the site alteration permit and the site alteration agreement, if applicable.

Place a security deposit to be used by the City as in accordance with Section X of the Agreement, which amount is calculated to be the sum of 50% of the value earthworks and 100% of the value of restoration of the lands affected by earthworks

NOTICE

19 (1) At least fourteen (14) days prior to commencing site alteration pursuant to an issued site alteration permit, the permit holder shall provide written notice, at the permit holder’s expense, of the approved site alteration undertaking to neighbouring property owners likely to be impacted by the site alteration undertaking in a form approved by the Director.

(2) Prior to commencing site alteration pursuant to an issued site alteration permit, the permit holder shall provide certification to the Director that subsection (1) has been complied with, including a list of the addresses or a map showing the properties where the written notice has been delivered.

CONDITIONS

20 No person shall undertake site alteration pursuant to a permit without first participating in pre-construction meeting with Growth Management Division staff and obtaining the approval of the Director to commence site alteration.

21 No person shall undertake site alteration or cause site alteration to be undertaken except in accordance with the following conditions:

- (a) no fill deposited on the site shall contain garbage, asphalt, glass, plastic, metals, petroleum products, putrescible material, soluble or decomposable chemical substances, or similar materials;
- (b) no fill transported to the site from any other source site or moved from one area of the site to another shall exceed the soil quality standards determined in accordance with section 22;

- (c) topsoil shall be removed and stockpiled on the site from all areas likely to be disturbed by any other site alteration, and shall be replaced on the site to the extent practicable;
- (d) [stockpiles – size, how long they can be there]
- (e) the permit holder shall maintain such written or electronic records of fill transported to the site from any other source site as the Director may require;
- (f) fill transported to the site from any other source site or moved from one area of the site to another shall be finally placed in accordance with the approved control plan within fourteen (14) days of being deposited or moved, except as stockpiled in accordance with clause (d);
- (g) fill deposited on the site shall be compacted in accordance with good engineering practices;
- (h) site alteration shall not cause adverse impacts, on the site or any other lands, on:
 - (i) surface water drainage;
 - (ii) groundwater or a water source intended for agricultural use or human consumption;
 - (iii) bodies of water or watercourses;
 - (iv) private, municipal or utility infrastructure;
 - (v) buildings or other structures;
 - (vi) trees or vegetation;
 - (vii) wildlife;
 - (viii) agricultural production;
- (i) no site alteration shall be undertaken:
 - (i) on any Saturday, Sunday, or statutory holiday;
 - (ii) using highways to transport fill to or from the site except those highways approved as a haul route by the Director, and in accordance with Traffic By-law No. 01-215;
 - (iii) in contravention of the Noise By-law No. 11-285;
 - (iv) at any time when a wind warning issued by Environment Canada is in effect for the area of the site; or
 - (v) during or within forty-eight (48) hours of the site receiving fifteen (15) mm or more of precipitation within a 24-hour period.

22 (1) If, at any time, any person performing site alteration, or an employee, agent or contractor of a person performing site alteration makes an observation of the site or any fill being excavated, moved, transported or deposited on the site, including any visual or olfactory observation, that the fill may be affected by contaminants, the site alteration shall stop immediately.

(2) The permit holder shall immediately notify the Director if there has been an observation described in subsection (1).

(3) The permit holder shall take steps to remove and remediate the potentially contaminated fill to the satisfaction of the Director.

(4) No person shall resume site alteration until authorized by the Director.

23 The soil quality standards referred to in clause 21(b) shall be the standards set out in Table 1 of the Soil, Ground Water and Sediment Standards, referenced in O. Reg. 153/04, as applicable to the use of the site described in the permit application unless the applicant submits an excess soil management plan prepared by a qualified person and demonstrates to the satisfaction of the Director that a less stringent standard is appropriate.

24 (1) In addition to the general conditions set out in section 21, the Director may impose such conditions to the issuance of a permit as in the Director's opinion are reasonable to ensure compliance with this By-law.

(2) The Director may vary any of the conditions set out in section 21 provided that the general intent of this By-law is still met.

(3) The Director may impose as a condition to the issuance of a permit a requirement that the applicant and any other persons the Director determines enter into an agreement with the City to ensure compliance with this By-law, and the Director is authorized to enter into such agreement.

25 If a permit is revoked by the Director or the permit holder is unable to or determines not to complete the approved site alteration, the permit holder shall promptly restore the site to a condition consistent with this By-law to the satisfaction of the Director.

TRANSFER AND EXPIRY

26 (1) A site alteration permit shall be valid for a period of one (1) year from the date of issuance.

(2) A site alteration permit may be renewed for a period of one (1) year upon application within ninety (90) days of the date of expiry.

(3) A site alteration permit is issued for a particular site and is not transferrable to another site.

(4) A site alteration permit shall be deemed to be revoked upon the transfer of ownership of the site unless the new owner provides a written undertaking to comply with all of the terms of the site alteration permit, including assuming any agreement executed by the former owner, and the requirement to provide security.

INSPECTION AND ENFORCEMENT

27 This By-law shall be administered and enforced by the Director, who may designate inspectors for the purposes of this By-law from time to time.

28 (1) The Director may engage such persons possessing special or expert knowledge, including legal counsel, that the Director requires to

- (a) evaluate or peer review a site alteration permit application;
- (b) provide advice as to any matter relevant to a site alteration permit application, site alteration permit or site alteration agreement;
- (c) perform inspections, testing or sampling required to enforce this By-law;
- (d) provide advice or project management with respect to work carried out by the City pursuant to subsection 301(3); or
- (e) otherwise enforce this By-law.

29 (1) An inspector may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not any of the following are being complied with:

- (a) this By-law;

- (b) a condition of a site alteration permit;
- (c) an order under the *Municipal Act, 2001* or this By-law;
- (d) a site alteration agreement.

(2) An inspector carrying out an inspection under subsection (1) 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.

30 (1) An inspector who is satisfied that a contravention of this By-law has occurred may make one or more orders requiring any person who contravened the By-law,

- (a) to discontinue the contravening activity, or
- (b) to do work to correct the contravention.

(2) An order under subsection (1) may take immediate effect.

(3) If a person fails to comply with an order under subsection (1), the Director or persons acting upon the Director's instructions may enter on land at any reasonable time to do the things required by the order at the person's expense.

31 The City may recover any of the following costs by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes:

- (a) its actual costs plus 15% for administration and staff costs plus interest at the rate of 15% per year to engage persons possessing special or expert knowledge pursuant to section 28;
- (b) its actual costs plus 50% for project management, administration and staff costs plus interest at the rate of 15% per year for work performed by the City pursuant to subsection 30(3).

OFFENCES AND PENALTIES

32 (1) Any person other than a corporation who contravenes any provision of this By-law or an order made under this By-law is guilty of an offence and on conviction is liable to a maximum fine of \$10,000 for a first offence, and \$25,000 for a subsequent offence.

(4) Any officer or director who knowingly concurs in the contravention of this By-law or an order made under this By-law is guilty of an offence and on conviction is liable to a maximum fine of \$10,000 for a first offence and \$25,000 for a subsequent offence.

(5) Any corporation which contravenes any provision of this By-law or an order made under this By-law is guilty of an offence and on conviction is liable to a fine of \$50,000 for a first offence and \$100,000 for any subsequent offence.

(6) In addition, if any person convicted of an offence under this By-law has gained economic advantage from the contravention of the By-law, they are liable to a special fine equal to the economic advantage gained.

33 Each day or a part of a day that a contravention of this By-law continues is deemed to be a separate offence.

34 In the alternative to a charge for the offences described in section 32, an inspector may issue an administrative penalty notice for any contravention of this By-law.

ADMINISTRATIVE PROVISIONS

35 In the event that any provision or part of a provision in this By-law is found to be invalid or unenforceable then the particular provision or part thereof shall be deemed to be severed from the remainder of the By-law and all other provisions or parts thereof shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

36 Administrative Penalty By-law No. 17-225 is amended by adding Table X:

TABLE X: BY-LAW NO. [XX-XXX] NAME				
ITEM	COLUMN 1 DESIGNATED BY-LAW & SECTION	COLUMN 2 SHORT FORM WORDING	COLUMN 3 EARLY PAYMENT	COLUMN 4 SET PENALTY
1	19-XXX			
2	19-XXX			
3	19-XXX			
4	19-XXX			
5	19-XXX			
6	19-XXX			

37 (1) Despite section 38, the provisions of By-law No. 03-126, as amended, continue to apply to a permit issued pursuant to that By-law.

(2) The Director shall not grant any extensions or renewals of permits issued under By-law No. 03-126.

38 City of Hamilton By-law No. 03-126, as amended, is repealed.

39 This By-law comes into force on [the day it is passed OR DATE].

PASSED this _____, _____

F. Eisenberger
Mayor

J. Pilon
Acting City Clerk

Schedule "A" to By-law No. 19-XXX

Site Alteration Permit Application Fees

Item	Fee	Fee Basis

DRAFT

Schedule "B" to By-law No. 19-XXX

Financial Security

Place a security deposit to be used by the City as in accordance with Section X of the Agreement, which amount is calculated to be the sum of 50% of the value earthworks and 100% of the value of restoration of the lands affected by earthworks

Item	Amount	Basis

DRAFT