

**Authority:** Item 6, Planning Committee  
Report 19-018 (PED19201)  
CM: November 27/28, 2019  
Ward: City Wide

**Bill No. 286**

## **CITY OF HAMILTON**

### **BY-LAW NO. 19-286**

#### **To Repeal and Replace By-law No. 03-126, Being a By-law for Prohibiting and Regulating the Alteration of Property Grades, the Placing or Dumping of Fill, and the Removal of Topsoil**

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

**WHEREAS** Council deems it necessary to enact this by-law for the purposes set out in section 2 of this by-law.

**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*;

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- (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*.

### **Normal Farm Practices**

(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.

### **Removal of Topsoil**

(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.

### **Stockpiling for Agricultural or Commercial Operations**

6 (1) Despite subsection 11(1), this By-law does not prohibit or require a site alteration permit for the stockpiling of fill or topsoil on land for sale or exchange or use as an

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incidental part of an agricultural or commercial operation undertaken as a permitted use of the land, provided that any such stockpiles,

- (a) are used, depleted and refreshed on a continuous basis during periods when the stockpiles are actively in use in the agricultural or commercial operation;
- (b) are removed and the existing grade restored while the agricultural or commercial operation is suspended or during periods when the stockpiles are not actively in use in the agricultural or commercial operation; and
- (c) no stockpile remains substantially unchanged for longer than 6 months.

### **Existing Commercial Stockpiles**

(2) Subsection (1) applies to stockpiles existing on the date this By-law comes into force that were exempt from the requirement for a permit pursuant to section 3.14 of By-law No. 03-126.

### **Exceptions from Permit Requirement**

- 7 (1) Despite subsection 11(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 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) any previously approved grading plan is maintained or if there is no previously approved grading plan applicable to the property, a minimum 60-centimetre strip of undisturbed ground remains along the rear and side property lines within the rear yard; and
    - (ii) any retaining walls are limited to 0.5 metres 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

### **No Permit Granted for *Planning Act* Applications**

9 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 Permit Requirements**

#### **Consent of Owner**

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

#### **Permit Required**

11 (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.

#### **Permit Application**

(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 14 or 15.

#### **Issuance of Permits**

(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 19;
- (c) the applicant has paid all fees required by section 20;
- (d) the applicant has provided security required by section 21; and
- (e) the Director is satisfied the proposed site alteration will be undertaken in accordance with this By-law.

#### **Criteria**

(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;

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- (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.

### Reasons

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

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ITEM	COLUMN 1 DESIGNATED BY-LAW & SECTION		COLUMN 2 SHORT FORM WORDING	COLUMN 3 EARLY PAYMENT	COLUMN 4 SET PENALTY
1	19-286	11(1)	Site alteration without permit	\$400.00	\$500.00
2	19-286	25	Transporting Fill to a site from a source site that is located outside the City of Hamilton	\$400.00	\$500.00

**Transition**

42 (1) Despite section 44, the provisions of By-law No. 03-126, as amended, continue to apply to a permit issued pursuant to that By-law.

**No Renewals**

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

**Schedules**

43 (1) The following Schedules are attached to and form part of this By-law:

- (a) Schedule "A" – Site Alteration Permit Application Fees
- (b) Schedule "B" – Financial Security

(2) Schedule "A" and any other fees arising from this By-law may be amended by Council through the City's User Fees and Charges By-law from time to time.

(3) Schedule "B" may be revised by the Director.

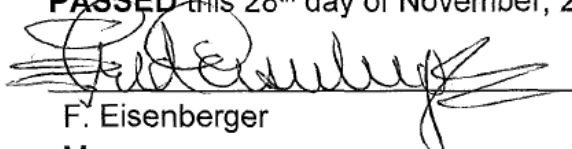
**Repeal**


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

**Coming Into Force**

45 This By-law comes into force on the day it is passed.

**PASSED** this 28<sup>th</sup> day of November, 2019.

  
F. Eisenberger  
Mayor

  
A. Holland  
City Clerk