

**Bill No. 126**

**CITY OF HAMILTON**

**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** Council deems it necessary to enact a by-law for prohibiting or regulating the alteration of property grades within the City of Hamilton, to limit interference and damage to watercourses, drainage systems and water supplies, to limit unanticipated drainage and site alterations, to limit the use of improper fill, and to limit erosion arising from such changes;

**AND WHEREAS** Sections 142 through 144 of the Municipal Act, S. O. 2001 Chapter 25, as amended, provide for the Council of a Municipality to pass by-laws prohibiting or regulated the placing or dumping of fill, the removal of topsoil, the alteration of the grade of land, and requiring a permit for such site changes with or without conditions, and requiring restoration and rehabilitation of the site in the event of contravention of the by-law;

**AND WHEREAS** Sections 2, 8 through 11, and 97 of the Municipal Act, S. O. 2001 Chapter 25, as amended, provide for the Council of a Municipality to pass by-laws for purposes which include the provision of services and things necessary and desirable for the municipality and fostering the current and future economic, social and environmental well-being of the municipality, and powers which include the authority to regulate, prohibit and impose requirements on persons, and to differentiate between persons, and specifically to enact by-laws dealing with drainage and flood control and the inspection, testing and sampling of land drainage systems;

**AND WHEREAS** Council considers that reasonable notice of the by-law has been given, pursuant to section 251 of the Municipal Act, S. O. 2001, c. 25 as amended;

**AND WHEREAS** the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Sched. C, did incorporate, as of January 1<sup>st</sup>, 2001, the municipality "City of Hamilton";

**AND WHEREAS** the City of Hamilton is the successor to the following former area municipalities: The Corporation of the Town of Ancaster; The Corporation of the Town of Dundas; The Corporation of the Town of Flamborough; The Corporation of the Township of Glanbrook; The Corporation of the City of Hamilton; and The Corporation of the City of Stoney Creek; (hereinafter referred to collectively as the “former area municipalities” and individually as a “former area municipality”);

**AND WHEREAS** the City of Hamilton Act, 1999, provides that the By-laws of the former municipalities continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

**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”.

### **DEFINITIONS AND INTERPRETATION**

2. In this By-law,
  - (a) “**Aggregate Resources Act**” means the Aggregate Resources Act, R. S. O. 1990, c. A.8;
  - (b) “**Council**” means the **Council** of the City of Hamilton;
  - (c) “**construction site control measures**” means controls on construction imposed by the **Director** under this by-law;
  - (d) “**Director**” means the **Director** of Building and Licensing of the City of Hamilton or his/her designate(s);
  - (e) “**drainage**” means the movement of water to a place of disposal, whether by way of the natural characteristics of the ground surface or by artificial means;
  - (f) “**dump**”, “**dumped**” and “**dumping**” mean the depositing of **fill** in a location other than where the **fill** was obtained, or the movement and depositing of **fill** from one location on a property to another location on the same property;
  - (g) “**erosion**” means the wearing or washing away of **soil**, sediment or rock fragments by water, wind, ice or gravity;

- (h) “**fill**” means any type of material capable of being removed from or deposited on lands;
- (i) “**grade**” means the elevation of the ground surface and shall be more particularly defined as follows:
  - (i) “**existing grade**” means the elevation of the existing ground surface of the lands upon which **dumping, placing of fill**, altering the **grade**, or removing of **topsoil** is proposed, except that where such activity has occurred in contravention of this by-law, **existing grade** shall mean the ground surface of such lands as it existed prior to the said activity;
  - (ii) “**finished grade**” means the approved elevation of the ground surface of lands after **fill** has been **placed or dumped**, the **grade** altered or **topsoil** removed, in accordance with this by-law;
  - (iii) “**proposed grade**” means the proposed elevation of the ground surface of land upon which **fill** is proposed to be **placed or dumped**, the **grades** altered or **topsoil** removed;
- (j) “**Inspector**” means any person designated by this or any other by-law of the City of Hamilton as an **Inspector** for the purposes of this by-law, and includes such **Inspectors** as are so designated pursuant to Schedule “C” to this by-law;
- (k) “**owner**” means the registered owner of the land;
- (l) “**Permit**” means a **site alteration Permit** issued pursuant to this by-law;
- (m) “**placing**” and “**place**” mean the distribution of **fill** on lands to establish a **finished grade** higher than the **existing grade**;
- (n) “**Planning Act**” means the **Planning Act**, R.S.O. 1990, c. P.13;
- (o) “**ponding**” means the accumulation of surface water in an area not having adequate **drainage** where the lack of **drainage** is caused by the **placing or dumping of fill**, or altering of **grade**;
- (p) “**retaining wall**” means a wall designed to contain and support **fill** which has a **finished grade** higher than that of adjacent lands;
- (q) “**site**” means the parcel of land under one ownership, which is the subject of an application for a **Permit** pursuant to this by-law;
- (r) “**site siltation control measures**” means siltation control measures imposed by the **Director** under this by-law;
- (s) “**soil**” means material commonly known as clay, earth, gravel, loam, sand, subsoil or **topsoil**;

- (t) “**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; and
- (u) “**watercourse**” means an identifiable depression in the ground in which a natural flow of water occasionally, regularly or continuously occurs.

### **PLACING DUMPING AND ALTERING GRADE**

- 3.1 No person shall **place** or **dump fill** or remove **fill** from land, or cause or permit the **placing** or **dumping** of **fill** or removal of **fill** on any lands in the City of Hamilton, including any lands which are submerged under any **watercourse** or other body of water, without having first obtained a **permit** issued by the **Director**, unless this by-law states it does not apply or that such a **permit** is not required.
- 3.2 No person shall alter or cause or permit the alteration of the **grade**, on any lands in the City of Hamilton, including any lands which are submerged under any **watercourse** or other body of water, without having first obtained a **permit** issued by the **Director**, unless this by-law states it does not apply or that such a **permit** is not required.
- 3.3 Subsections 3.1 and 3.2 do not apply where the quantity of **fill** or **topsoil** removed or **dumped** on any one lot does not, in any consecutive three month period exceed 8 cubic meters for each 0.125 hectares of lot area or part thereof, provided the following requirements are met:
  - (a) the placement or removal of **fill** does not or will not alter the **grade** of any part of the lot at any location by more than .5 meters;
  - (b) the placement or removal of **fill** does not alter the **grade** of the lot within 3 meters of the property line by more than 0.2 meters;
  - (c) the placement or removal of **fill** does not obstruct the flow of water in a **watercourse**;
  - (d) the placement or removal of **fill** does not cause water normally contained on the lot to drain off **site**; and
  - (e) all **fill placed** or **dumped** includes only soil, stone, sod or other material acceptable to the Director and that such material is clean and free of any glass, plastics, rubber, metals, termites, liquid other than water, garbage or contaminants.

## EXEMPTIONS

3.4 This by-law does not apply to,

- (a) the **placing** or **dumping** of **fill**, removal of **topsoil** or alteration of the **grade** of land imposed after December 31, 2002 as a condition to the approval of a **site** plan, a plan of subdivision or a consent under section 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;
- (b) the **placing** or **dumping** of **fill**, removal of **topsoil** or alteration of the **grade** of land imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the **Planning Act** or as a requirement of an agreement entered into under that regulation;
- (c) 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, S. O. 1998, c. 15 as amended, for the purpose of constructing and maintaining a transmission system or a distribution system as those terms are defined in that section;
- (d) the **placing** or **dumping** of **fill**, removal of **topsoil** or alteration of the **grade** of land undertaken 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**;
- (e) 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,
  - (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**.
- (f) 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, R. S. O. 1990, c. D.17 or the Tile Drainage Act, R. S. O. 1990, c. T.8; or
- (g) activities or matters undertaken by a municipality or by a local board of a municipality on lands owned by the municipality or local board.

## EXCEPTIONS

- 3.5 Subject to subsection 3.6, this by-law does not apply to the removal of **topsoil** as an incidental part of a normal agricultural practice including such removal as an incidental part of sod-farming, greenhouse operations and nurseries for horticultural products.

## EXCLUSION

- 3.6 For greater certainty the exception in subsection 3.5 above respecting the removal of **topsoil** as an incidental part of a normal agricultural practice does not include the removal of **topsoil** for sale, exchange or other such disposition.

## BY-LAW CEASES TO HAVE EFFECT

- 3.7 If a regulation is made under section 28 of the Conservation Authorities Act, R.S.O. 1990, c.27 respecting the **placing** or **dumping** of **fill** or **topsoil** or the alteration of the **grade** of land in any area of the municipality, this by-law is of no effect in respect of that area provided relevant approvals have been obtained and submitted to the **Director**.

## FURTHER EXCEPTIONS

### Building Permit Obtained

- 3.8 A **permit** under this by-law is not required where the **placing, dumping** or removal of **fill** or **topsoil**, or the alteration of **grade** is in conjunction with the construction of a building or structure for which a building **permit** has been issued by the Chief Building Official and the accompanying building **permit** application provides sufficient information to determine that the **placing** or **dumping** of **fill** conforms with this by-law.

### Acceptance of Fill on Private Property from Municipal Operations

- 3.9 A **permit is** not required under this by-law where the **placing** of **fill** is carried out on private property by the City or a local board as defined in the Municipal Affairs Act, R.S.O. 1990, c. M.46 as amended, or any successor legislation thereto in compliance with section 3.10 below.
- 3.10 The owner or applicant shall submit to the **Director**, an original signed copy of Schedule "D" to this by-law bearing the signatures of the owner(s) and

applicant(s), and indicating the City's Drainage Superintendent's approval and signature, prior to **dumping** of **fill** on private property.

#### Common Statutory Authorizations

- 3.11 A **permit** under this by-law is not required where the **placing, dumping** or removal of **fill** or **topsoil** or the alteration of **grade** is carried out as an incidental part of construction or operations authorized by:
- (a) the Mining Act, R.S.O. 1990, c. M.14 as amended, or any successor legislation thereto;
  - (b) the Ontario Energy Board Act, *S.O.*1998, c. 15, Schedule B, or any successor legislation thereto;
  - (c) a Crown agency as defined in the Crown Agency Act, R.S.O. 1990, c. C.48 as amended, or any successor legislation thereto, or by Ontario Hydro; or
  - (d) Section 26 of the Public Transportation and Highway Improvement Act, 1990, c. P.50 as amended.

#### Waste Management

- 3.12 A **permit** is not required under this by-law where the **placing, dumping** or removal of **fill** or **topsoil** or alteration of **grade** is permitted as part of the use, operation, or construction of a waste management system or waste disposal **site** authorized or approved under Part V of the Environmental Protection Act, R.S.O. 1990, c. E.19 or its regulations, as amended.

#### Underground Services or Utilities

- 3.13 A **permit** is not required under this by-law where the **placing, dumping** or removal of **fill** or **topsoil** or alteration of **grade** is an incidental part of any construction of any form of underground services where the **topsoil** is removed and held for subsequent replacement.

#### Commercial Storage Permitted Under Zoning

- 3.14 A **permit** is not required under this by-law where the **placing, dumping** or removal of **fill** or **topsoil** or alteration of **grade** is part of the stockpiling and use of **fill**, loam or **topsoil** for commercial landscaping purposes where such use is in conformance with the applicable zoning and land use by-laws.

## Limited Exceptions for Planning and Development

- 3.15 This by-law does not apply to the extent that it would prevent the construction of any building, structure, driveway, loading or parking facilities permitted or required on a lot pursuant to:
- (a) a by-law passed by a municipality pursuant to Section 34 of the **Planning Act**;
  - (b) an order made by the Minister of Municipal Affairs pursuant to Section 47 of the **Planning Act**; or
  - (c) a development permit issued under the Niagara Escarpment Planning and Development Act, R.S.O. 1990, c. N.2 as amended, or any successor legislation thereto, or an exemption granted pursuant to the said Act.

## PERMITS AND PLANS

- 4.1 The process for considering an application for a **permit**, shall include prior notice by the applicant and City in the manner provided for in this section.
- 4.2 The applicant shall prepare a notice of the application, in the form and content required by the **Director**, and the applicant shall post the notice on such suitable frontages to the property as determined by the **Director**, at the applicant's expense and in a manner so that the notice is visible to passersby for a period of not less than **14** days prior to the date on which the **Director** indicates is the date of consideration of the application.
- 4.3 The **Director** shall so far as practical cause notice of the application and date the application will be considered to be mailed to adjacent property owners within 600 meters of the subject property, unless the **Director** determines that such notice is unnecessary.
5. A person applying for a **Permit** shall submit the following to the **Director**:
- (a) a completed application, in writing, on forms prescribed by and available from the **Director**;
  - (b) consent of the **owner** of the subject lands;
  - (c) the prescribed fee for a **permit** as established from time to time by **Council** and detailed in Schedule "A" to this by-law;

- (d) a control plan, the requirements of which are set out in Section 6 of this by-law;
- (e) a plan showing the design details to proper scale of any **retaining wall** that the applicant proposes or that may be required by the **Director** including the dimensions thereof and any materials to be used in construction of any such **retaining wall**; and
- (f) security in an amount determined by the **Director** under this by-law, and the execution of a security agreement by the applicant and the registered **owner** of the **site** in a form determined by the **Director** in accordance with Schedule “E” of this by-law, to ensure proper rehabilitation, prevent fouling or tracking of earth, mud, or debris on highways of the City, and to secure performance of the applicant’s and owner’s obligations under this by-law and any **permit** that is issued, including as may be needed returning the **site** to its original condition so far as possible, carrying out the work under the **permit**, and complying with other provisions of this by-law including rehabilitation of the **site**.

## **CONTROL PLANS**

6. A control plan required under this by-law shall include the following:
- (a) the stamp and certification of a Professional Engineer licensed to practice in the Province of Ontario, or any other qualified person approved by the **Director**;
  - (b) a key map showing the location of the **site**, and including a minimum of 30 meters beyond the **site**;
  - (c) the number of hectares of the **site** and depict the **site** boundaries;
  - (d) specifics on the use of the **site**, and the location and use of the buildings and other structures adjacent and within 30 meters of the **site** if the use is known;
  - (e) the location, dimensions and use of the buildings and other structures existing or proposed to be erected on the **site**;
  - (f) the location of lakes, streams, wetlands, channels, ditches, other **watercourses** and other bodies of water on the **site** and within 30 metres beyond the **site** boundary;
  - (g) the limits of flood plain and Conservation Authority **Fill** Regulation lines and the applicable Conservation Authority setbacks from these lines both on the **site** and within 15 metres of the boundaries of the **site**;
  - (h) the location of the predominant **soil** types;

- (i) the species, diameter and location of all trees with a caliper measuring 150 mm or greater at breast height, all other vegetation is to be identified in masses showing the outline of canopy created by the massing in the areas of disturbance on the **site**;
- (j) all easements and right(s)-of-way over, under, across or through the **site**;
- (k) the location and dimensions of any existing or proposed storm water **drainage** systems and natural **drainage** patterns on the **site** and within **30** metres of the **site** boundaries;
- (l) the locations and dimensions of utilities, structures, roads, highways and paving both on the **site** and at a minimum of 30 meters from the **site**, including the location, size and invert elevations of all existing **drainage** pipes, culverts and inlet chambers;
- (m) the existing **site** topography at a contour interval not to exceed 1 metre and to extend a minimum of 30 metres beyond the **site** boundaries;
- (n) the proposed **grade** and **drainage** system to be used upon completion of the work which is the subject of the **Permit**, including the information on proposed pipes, culverts and inlet chambers under clause (k) above;
- (o) the location and dimensions of all proposed work which is the subject of the application for a **Permit**;
- (p) the approximate location and dimensions of all proposed temporary **topsoil** or **fill** stockpiles;
- (q) the location, dimensions, design details and specifications of all work which is the subject of the application including all **site** siltation control measures or **retaining walls** necessary to meet the requirements of this by-law and the estimated cost of same;
- (r) a schedule of the anticipated starting and completion dates of all proposed work which is the subject of the application for a **Permit** including the installation of construction **site** control measures needed to meet the requirements of this by-law;
- (s) provisions for the maintenance of the construction **site** control measures during construction;
- (t) a description of the proposed **fill** material including its location of origin;
- (u) the scale of the drawing; and,

- (v) any other information with respect to the **site** required by the **Director**.
7. Notwithstanding any other provisions of this by-law, the **Director** may waive the requirement for a Control Plan or waive any part of the requirement for the content of the control plan, where the requirement is unnecessary considering the limited extent of the proposed works impact on the **site** and the surrounding environment.

## SECURITY

8. The **Director** may, prior to the issuance of a **Permit** under this by-law, require the applicant and registered **owner** of the **site** to provide security in a specified form and to require the entering into of an agreement, in the form acceptable to the **Director** in accordance with Schedule "E" of this by-law, with the City to provide security for an applicant's and owner's obligations under this by-law and any **Permit** issued. The agreement may include such requirements as the **Director** considers necessary to ensure that the work is completed in accordance with good engineering standards and practice, the terms and conditions of this by-law and **Permit**, and may be registered on title, which agreement and related documents the **Director** is hereby authorized to execute on behalf of the City.

## ISSUANCE OF A PERMIT

- 9.1 **A permit** shall be issued where the **Director** is satisfied:
- (a) that the applicant has complied with or will comply with all requirements of this by-law;
  - (b) that the proposed **grade** and resulting **drainage** pattern, the proposed design of any **retaining wall**, the type of **fill** proposed to be used, if any, and the proposed method of the **placing** and **dumping** of **fill** or **topsoil**, or altering of the **grade** are all in accordance with good engineering standards and practice;
  - (c) that any fill proposed to be **placed** or **dumped** includes only soil, stone, sod or other material acceptable to the Director and that such material is clean and free of any glass, plastics, rubber, metals, termites, liquid other than water, garbage or contaminants;
  - (d) that the proposed **placing** or **dumping** of **fill**, altering of the **grade** or removing or **placing** of **topsoil** will not result in:
    - (i) **erosion**;
    - (ii) blockage, siltation or contamination of a **watercourse**;
    - (iii) flooding or **ponding**;
    - (iv) a detrimental effect on any trees located on the lands or adjacent lands having a breast height diameter of 150 millimeters or more;

- (v) an undue detrimental effect on the natural environment, including but not restricted to lands designated as Environmentally Significant Areas by the City's Official Plans, Lake Ontario Shoreline, Hamilton Harbour Shoreline, Niagara Escarpment and Areas of Natural or Scientific Interest as identified by the Ministry of Natural Resources;
  - (vi) the **placing** or **dumping** of **fill** or **topsoil**, or the alteration of **grade** of the land in or within 120 metres of a Provincially Significant Wetland identified by the Ministry of Natural Resources, or
  - (vii) unsafe conditions for the abutting lands;
- (e) that the **site** will be rehabilitated, including replanting, to a condition which is substantially similar to or improved from the condition of the **site** prior to the undertaking of the work which is the subject of the **Permit**, immediately upon completion of grading or construction;
- (f) that the applicant, if required by the **Director**, has entered into an agreement as referred to in Section 8 of this by-law and has agreed to perform all of the required obligations under the agreement prior to the issuance of the **Permit**; and
- (g) that the work proposed under the **permit** does not involve contravention of the Environmental Protection Act, R.S.O. 1990, c. E.19, the Ontario Heritage Act, R. S. O. 1990 c. 0.18, zoning or land use by-laws, the Building Code Act, S. O. 1992 c. 23, the Planning Act, R.S.O. 1990, c. P.13, Municipal Act, S. O. 2001, c. 25, the Drainage Act, R.S.O. 1990 c. D.17, and the Federal Fisheries Act, R.S.C. 1985, c. F-14 and where such acts or by-laws require approval such approval is obtained and proof submitted or will be obtained and submitted before the work under the **permit** is carried out.

9.2 **Permits** shall be subject to the terms and conditions set out in Schedule "B", attached to and forming a part of this by-law, unless exempted in writing by the **Director**.

9.3 The **Director** may impose additional terms and conditions upon the issuance of a **Permit**:

- (a) to deal with particular grading or **drainage** concerns for the work proposed, for the purpose of limiting negative effects or potential harm to proper **drainage** and other property;
- (b) to require proof of testing of fill or **soil** to ensure the materials **dumped**, **placed** or used to alter **grade** are free of contaminants;

- (c) to require temporary **construction site control measures** to limit **drainage** and **erosion** during a period of construction or the period of a **permit** issued under this by-law; and
  - (d) to require temporary **site siltation control measures** to control **drainage** and **erosion** and ensure **soil** stabilization until the work under the **permit** is complete or until permanent **erosion** control measures have been supplied.
- 9.4 The **Director** may require, as a condition of any **permit** issued pursuant to this by-law, that a **retaining wall** be constructed where:
- (a) **erosion** on abutting lands may occur as a result of the work which is the subject of the **Permit**; or
  - (b) the **finished grade** of the **site** is of a higher elevation at a property line than that of the **existing grade** at the same property line of abutting lands.
- 9.5 Where a **permit** has been issued, no person shall undertake any **dumping, placing** or removal of **fill** or alteration of **grade** except in accordance with the **permit**, and in particular in accordance with the plans, documents or other information submitted to the City upon which basis the **permit** was issued, and in accordance with all applicable terms and conditions.
- 9.6 Where an **owner** makes a material change to a plan, specification, document or other information following the issuance of a **permit**, the **Director** may require payment of one-half of the original **permit** fee and submission of revised drawings, which shall be approved by the **Director** prior to any **dumping, placing** or removal of **fill** or alteration of **grade**.
10. Notwithstanding the issuance of a **permit**, an applicant or **owner** shall comply with this by-law. Where non-compliance with this by-law is discovered following issuance of a **permit**, the **Director** may revoke it, and the **permit** holder shall forthwith cease all work, which was the subject of the revoked **permit**.
11. Where a **permit** has been issued, an applicant or authorized agent shall request the **Director** to make inspections at the commencement and completion of the work, and shall request such further inspections as may be required by the **Director** or the conditions of the **permit**.
- 12.1 Subject to subsection 12.2, a **permit** shall be valid for a period of 1 year from the date of issuance.
- 12.2 Notwithstanding subsection 12.1 above, a **permit** shall expire at an earlier date in the following circumstances and events:
- (a) a **permit** shall expire 180 days after the date of issuance if in the opinion of the **Director** the **site** alterations have not been commenced; and

- (b) a **Permit** shall expire upon the transfer of ownership of the **site** unless the new **owner** provides written commitment to comply with all conditions under which the **permit** was issued, prior to transfer of the **site**, including in particular, compliance with this by-law, and to provide security in a form and amount acceptable to the **Director**, at which time any security previously provided by the original **permit** holder pursuant to this by-law shall be released.
- 13. An expired **permit** may be renewed once, for a period not longer than one year, within a 6 month period from the expiry date, upon the applicant making a written request to the **Director** accompanied by the payment of one-half of the original **permit** fee.
- 14. A **permit** is non-transferable to another **site**.
- 15. In addition to the other requirements of this by-law, no person shall remove, **place** or **dump**, or cause or permit the removal, **placing** or **dumping** of **fill** on, or alter or cause or permit the altering of the **grade** of any lands in the City of Hamilton, including any lands which are submerged under any **watercourse** or other body of water, unless:
  - (a) it is done at the request of or with the consent of the **owner** of the **site** where the **fill** or **soil** is to be removed, **placed** or **dumped**, or the **grade** altered;
  - (b) all **fill placed** or **dumped** includes only soil, stone, sod or other material acceptable to the Director and such material is clean and free of any glass, plastics, rubber, metals, termites, liquid other than water, garbage or contaminants;
  - (c) the **drainage** system for the **site** is provided in accordance with this by-law and any **Permit** issued pursuant thereto and as otherwise required by law, in accordance with good engineering standards and practice and in such a condition that it will not result in **erosion**, blockage, siltation or contamination of a **watercourse**, flooding or **ponding**; and
  - (d) the **fill** or **soil** is removed, **placed** or **dumped**, any **retaining wall** containing such **fill** or **soil** is erected, or the **grade** is altered in such a manner that no flooding, **ponding**, or other adverse effects are caused on other lands.
- 16. Every person to whom a **Permit** is issued shall:
  - (a) provide a **retaining wall**, where required by the **Director**, which does not encroach upon abutting lands either above or below **existing grade**,

and such **retaining wall** shall be constructed to the satisfaction of the **Director**;

- (b) ensure that the **finished grade** surface is protected by sod, turf, seeding for grass, vegetation, asphalt, concrete or other similar means, or a combination thereof;
- (c) ensure that **fill** shall not be **placed** or **dumped** around the perimeter of any existing building to an elevation higher than 150 millimeters below the top of the foundation wall of such building unless the building and its foundation are constructed in a manner which will prevent water penetration into the building and unless such building and its foundation are designed to withstand the lateral loads that the additional **fill** may impose on the structure;
- (d) Ensure that **fill, placed** or **dumped** around the perimeter of any existing building is sloped away from the building so as to cause water to drain away from such building;
- (e) ensure that no trench, in which piping forming part of the **drainage** system is laid, shall be covered and backfilled until the work has been inspected and approved by the **Director** or an **Inspector**;
- (f) provide and maintain such protection for trees as may be required by the **Director**;
- (g) provide and maintain siltation control measures as may be required by the **Director**;
- (h) ensure that the work which is the subject of the **Permit** does not contaminate or otherwise foul any municipal roads and in the event that this occurs, ensure that any immediate safety hazard is removed or brought to the attention of the City and all road users and that the road or roads affected are cleaned to the satisfaction of the **Director** within 24 hours of any request by the **Director** for such cleaning;
- (i) permit entry by the **Director, Inspectors** and agents of the **Director, Inspector** or City to carry out reasonable inspections or to carry out work provided for under this by-law or for an inspection under an order issued by the Court under section **144** of the Municipal Act, S. 0.2001, c. 25 as amended, but this does not include the requirement to permit entry to any building;
- (j) ensure that all **fill** placed or dumped includes only soil, stone, sod or other material acceptable to the Director and such material is clean and free of any glass, plastics, rubber, metals, termites, liquid other than water, garbage or contaminants;
- (k) provide documentation showing the origin of all fill that is placed or dumped if not disclosed in the control plan submission; and

- (l) ensure that all conditions of the **Permit** and any requirements of this by-law are fulfilled to the satisfaction of the **Director**.

## ENFORCEMENT

- 17.1 The administration and enforcement of this by-law shall be performed by the **Director** and those persons designated as **Inspectors** under Schedule “C” to this by-law or as may be designated for the purposes of this by-law under other by-laws of the City.
- 17.2 No person shall hinder or obstruct, or attempt to hinder or obstruct any person exercising a power or performing a duty under this by-law or under the Municipal Act provisions relevant to this by-law.
- 18.1 Order to Discontinue Activity: Where an **Inspector** or the **Director** is satisfied that a contravention of this by-law has occurred, the **Inspector** or **Director** may make an order requiring the **owner** of the land or the person who caused or permitted the **placing or dumping of fill**, removal of **topsoil** or alteration of the **grade** of land in contravention of the by-law to discontinue the activity, and the order shall set out:
  - (a) the municipal address or the legal description of the land; and
  - (b) reasonable particulars of the contravention and the period within which there must be compliance.
- 18.2 Service of Order to Discontinue: An order made under subsection 18.1 may be served personally or by prepaid ordinary mail to the **owner’s** or persons last know address, and in the event such service is not possible, may be given by posting a placard on the property in the manner provided for in subsection 18.5, and Council deems such service to be sufficient, and in the case of service by mail, deemed sufficient seven days from the date such notice was mailed.
- 18.3 Work Order: Where an **Inspector** or the **Director** is satisfied that a contravention of the by-law has occurred, the **Inspector** or the **Director** may make an order requiring work to be done to correct the contravention, and the order shall set out:
  - (a) the municipal address or the legal description of the land;
  - (b) reasonable particulars of the contravention and the work to be done and the period within which there must be compliance with the order; and
  - (c) a notice stating that if the work is not done in compliance with the order within the period it specifies, the City may have the work done at the expense of the **owner**.
- 18.4 Service of Work Order: Before the City or its agents enters on land to do the work specified in subsection 18.3, the order shall be served on the **owner** of

the land personally or by prepaid registered mail to the last known address of the **owner** of the land. \*

- 18.5 Placard: If the City is unable to effect service on the **owner** under subsection 18.4, it may **place** a placard containing the terms of the order in a conspicuous **place** on the land and may enter the land for this purpose, which shall be deemed to be sufficient service of the order.
19. If the **owner** fails to do work required under this by-law, after the City has served an order requiring compliance and the time for compliance provided has expired, in addition to any other action the City may take or other remedy it may have the City may at any reasonable time and at the **owner's** expense, in the manner provided for in the Municipal Act, 2001, **S.O.** 2001, c. 25 including interest at the rate specified there, and using any security supplied, may carry out repairs on the property as follows:
- (a) where the City holds security to carry out the repairs, the City may carry out such repairs as are necessary to bring the property into compliance up to the amount of the security held;
  - (b) where the City does not hold security or the amount of the security under (a) is insufficient to complete the repairs, the City may carry out such repairs as are necessary to bring the property into compliance with the cost, subject to (c), not to exceed \$5000 excluding interest accrued; and
  - (c) where the costs of bringing the property into compliance exceeds the amounts authorized by (a) or (b), the City may carry out such repairs to an amount or manner as may be approved by Council.
20. Upon application for and issuance of a **Permit**, the property **owner** shall **permit** entry and inspection of the **site** at all reasonable times, to take **fill** samples for the purpose of determining whether material used for **fill**, includes only **soil**, stone, sod or other material acceptable to the Director and such material is clean and free of any glass, plastics, rubber, metals, termites, liquid, garbage or contaminants. For purposes of an inspection under this section the **Director** may:
- (a) 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;
  - (b) order the **owner** of the property to take and supply at the **owner's** expense such tests and samples as are specified in the order; and
  - (c) require the **owner** to provide mandatory third party testing of **fill** material, where the amount of **fill** to be **dumped** exceeds 100 cubic metres.

21. Costs incurred by the City under section 19 of this by-law may be registered as a lien on the land upon the registration in the proper land registry office of a notice of lien.
- 22.1 A **Permit** shall be revoked where it is discovered that it was issued as a result of misleading or false information supplied by the applicant or **owner**, or where it has been issued in error
- 22.2 Where a **permit** has been revoked under this subsection or for any other reason under this by-law, the **Permit** holder shall forthwith cease all work under the revoked **Permit**.

### **PENALTY**

- 23.1 Subject to subsection 23.2 below, every person who contravenes a provision of this by-law or an order issued under any subsection of section 18 of this by-law to discontinue activity or to carry out work is guilty of an offence, and upon conviction is liable:
- (a) On a first conviction, to a fine of not more than \$10,000; and
  - (b) On any subsequent conviction, to a fine of not more than \$25,000.
- 23.2 Where the person convicted under this by-law is a corporation, the maximum fines in clauses 23.1(a) and (b) are \$50,000 and \$100,000, respectively.

### **SEVERABILITY**

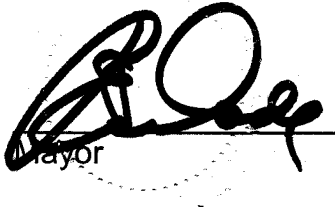
24. Should a court of competent jurisdiction declare a part or whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law, and it is the intention of **Council** that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under law.

### **REPEAL AND ENACTMENT**

25. The following By-laws, all as may be amended, of the named "former area municipalities" are hereby repealed:
- (a) By-law No. 99-119-D (Flamborough);
  - (b) By-law Nos. 471-92 and 471-1-94 (Glanbrook);
  - (c) By-law No. 4409-96 (Stoney Creek);
  - (d) By-law No. 4492-99 (Dundas); and
  - (e) By-law No. 02-052 (Amending By-law).

26. This by-law comes into force and effect upon the date of enactment.

**ENACTED and PASSED** this 28<sup>th</sup> day of May, A.D. 2003



Mayor



City Clerk

## SCHEDULE "A" TO BY-LAW No. 03-126

### FEES AND REQUIREMENTS FOR SITE ALTERATION PERMITS

- 1.1 The processing, administration and inspection fee for a **site** alteration **Permit** shall be \$200.00 for a property of less than 2 hectares in area and not used for commercial or industrial purposes; and \$500.00 for a property of 2 hectares in area or greater, plus \$25.00 per hectare of fill area.
  
- 1.2 Where an agreement is required by the **Director** pursuant to Section 8 of this By-law, and is required to be registered on title, it is the responsibility of the **owner** to register the agreement on title prior to the issuance of the **permit** and the **owner** or applicant shall be responsible for all costs of such registration or eventual discharge of the agreement from title to the lands.

## SCHEDULE "B" TO BY-LAW No. 03-126

### 1. All permit holders shall:

- (a) notify the Building and Licensing Division in writing within 48 hours of commencing any land disturbance;
- (b) notify the Building and Licensing Division in writing of the completion of any construction site control measures within 14 days after their installation(s);
- (c) obtain permission in writing from the **Director** prior to modifying the Control Plan;
- (d) install all construction site control measures as identified in the approved Control Plan;
- (e) maintain all road **drainage** systems, storm water **drainage** systems, construction site control measures and other facilities identified in the Control Plan;
- (f) repair any siltation or **erosion** damage to adjoining surfaces and drainageways resulting from grading changes, or the **dumping, placement** or removal of **fill**;
- (g) inspect the construction site control measures at least once per week and after each rainfall of at least 10 millimeters and make needed repairs;
- (h) allow employees or agents of the City to enter the **site** for the purpose of inspecting for compliance with the Control Plan and **Permit**, or for performing any work necessary to bring the **site** into compliance with the Control Plan or by-law;
- (i) maintain a copy of the Control Plan on the **site**;
- (j) Ensure compliance with all applicable terms of sections 15 and 16 of this by-law; and
- (k) Ensure compliance with all other applicable laws, regulations, by-laws of any sort, and obtain all other necessary approvals or **permits** needed for the activities carried out. The issuance of a **permit** under this by-law is not permission to breach a law, regulation or by-law. Where the work carried out under the **permit** of the condition of the **site** as a result of the activity carried out under the **permit** results in such a breach which is brought to the attention of the **Director**, the **Director** may revoke the **permit**.

2. The City may in its absolute discretion:

- (a) upon the failure by the **Permit** holder or **owner** to complete all or part of the works in the time stipulating in the Control Plan, carry out or arrange for the completion of the said works or any part thereof or otherwise return the sit to its original condition or modified condition in compliance with this by-law;
- (b) upon the failure by the **Permit** holder or **owner** to repair or maintain a specific part of the works as required, in the time requested by the City, at any time carry out or arrange for the repair or maintenance; or
- (c) in the case of emergency repairs or clean up, carry out or arrange for necessary repair or maintenance immediately; and
- (d) carry out or arrange for the above or other remedial work authorized in this by-law or by Council at the expense of the **owner**, and in doing so, may draw upon any security held under this by-law partially or to the full extent, or add such expense including interest in whole or such expenses and interest not covered by security so taken, to the real property tax roll for property held by the **owner**, to be collected in like manner as municipal taxes.

## SCHEDULE "C" TO BY-LAW No. 03-126

1. The following City employees or agents are hereby designated as **Inspectors** for the purposes of this By-law and are authorized to carry out the administration and enforcement of this By-law:
  - (a) the Director of Building and Licensing and his or her designate(s) for the purposes of this by-law;
  - (b) persons appointed by Council as Inspectors under authority of Section 3 subsection (2) of the "Building Code Act";
  - (c) persons appointed by Council as Municipal Law Enforcement Officers; and
  - (d) the person appointed by Council as the City's Drainage Superintendent and his or her designate(s) for the purposes of this by-law.

**SCHEDULE "D" TO BY-LAW No. 03-126**

**To: The City of Hamilton Drainage Superintendent**

**Re: Request for fill material at: \_\_\_\_\_ (address)**

**FULL AND FINAL RELEASE**

I/We the undersigned, hereby request the City of Hamilton (the City) to deposit fill material, at no cost to either the undersigned or the City, onto the property at the above noted address.

The undersigned represent and warrant to the City that we are respectively the registered owners of the subject property and the applicant, and in consideration of the City depositing the said fill material, I/We on behalf of ourself/ourselves and our officers, Directors, agents, heirs, successors and assigns, hereby remise, release, and forever discharge and hold harmless the City, its employees, servants and agents, together with its successors and assigns, from any and all claims, demands, actions, causes of action, debts, accounts, covenants, contracts and demands of every kind, known or unknown, whether presently existing or which we might have now or in the future however arising including, and without restricting the generality of the forgoing, all claims arising out of or in any way related to the fill material and its deposit aforesaid, including again with limiting the generality any such claims that may result from the operation of City machinery and equipment off of the travelled portion of any municipal roadway.

The undersigned further agree(s) not to make any claim or take any proceedings against any other person or corporation who might claim contribution and indemnity, under the provisions of the Negligence Act, Revised Statutes of Ontario 1990, Chapter N. 1 as amended, from the person, persons and corporation discharged by this release.

The undersigned further warrant and undertake to the City that we have inquired into and obtained all necessary clearances, permits and approvals required pursuant to all federal, provincial or municipal legislation including, but not limited to, those as may be required from the relevant Conservation Authorities, the Ministry of Natural Resources, the Niagara Escarpment Commission, the City of Hamilton and all of its appropriate departments, in order to approve and authorize the placing of fill material on the lands specified herein.

The undersigned further agree that the placing of fill material shall be performed in a continuous manner and shall be completed when specified by the City, and shall not include any leveling or grading of the said material by the City.

I/We have read, understand and agree with the provisions of this document, and in particular I/We acknowledge that the terms of this release are the sole consideration for the receipt of fill from the City.

\_\_\_\_\_/\_\_\_\_\_  
Owner 1 (Print Name) (Signature)

\_\_\_\_\_/\_\_\_\_\_  
Owner 2 (Print Name) (Signature)

\_\_\_\_\_/\_\_\_\_\_  
Applicant (Print Name) (Signature)  
(If not **owner**)

\_\_\_\_\_/\_\_\_\_\_  
Witness (Print Name) (Signature)

**Note:** Prior to placing fill at the above address, an owner or applicant requesting an exemption pursuant to Section 3.9 of this by-law, shall submit to the Director an original copy of this Schedule signed by the City of Hamilton Drainage Superintendent.

Drainage Superintendent: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
(Print Name) (Signature)

SCHEDULE "E" TO BY-LAW No. 03-126

**SITE ALTERATION SECURITY AGREEMENT**

THIS AGREEMENT made, in quadruplicate, this            day of            , 20

**B E T W E E N:**

**CITY OF HAMILTON**  
(hereinafter may be referred to as the "City")

**OF THE FIRST PART**

**- and -**

(hereinafter may be referred to as the "Owner")

**OF THE SECOND PART**

**WHEREAS** the Owner is the registered owner in fee simple of the property municipally known as \_\_\_\_\_ Hamilton, Ontario and described in Schedule "A" attached hereto (hereinafter referred to as the "Property") in this Agreement;

**AND WHEREAS** sections 142 through 144 of the *Municipal Act, R.S.O. 2007. C25* (hereinafter referred to as the "Act") authorizes Council of municipalities to pass a by-laws prohibiting or regulating the placing or dumping of fill, the removal of topsoil, the alteration of the grade of land and requiring the a Permit and requiring restoration and rehabilitation of the site in the event of contravention of the by-law;

**AND WHEREAS** the Owner intends to alter the grade of the Property in accordance with the Site Alteration By-law" and has applied for a Permit pursuant to that Site Alteration By-law;

**NOW, THEREFORE WITNESSETH** that in consideration of the application for the Permit and after review of the application and of the covenants hereinafter set forth the parties hereto mutually covenant and agree as follows:

**10 ALTERATION OF PROPERTY GRADES**

**1.1** The Owner agrees that, within one (1) year from the date of the Permit, issued pursuant to the Site Alteration By-law (hereinafter referred to as the "Permit"); all placing or dumping, or alteration of the grade of the Property shall be completed in accordance with the Site Alteration By-law and the control drawings as previously approved.

**1.2** It is the responsibility of the Owner:

- 1.2.1** to obtain the approval of the Director, Building and Licensing of the City of Hamilton (hereinafter referred to as the "Director") that the Property has been adequately reinstated and stabilized in accordance with the Site Alteration By-law, the approved control drawings and the terms and conditions of the Permit; **and**
- 1.2.2** to request the City to carry out a final inspection of the Property and to obtain the approval of the Director that this By-law and the terms and condition of the Permit have been complied with.

**1.3** The Owner agrees that the works described in clause 1.1 and 1.2 above will be completed on or before \_\_\_\_\_, 20

## **2.0 SITE ALTERATION PERMIT**

**2.1** No Permit will be issued by the City:

- 2.1.1** until the Owner has paid all required fees;
- 2.1.2** until the Owner has shown that the realty taxes for the Property are in good standing; **and**
- 2.1.3** if the Owner is in default under the Site Alteration By-law or any other applicable law.

## **3.0 SECURITIES FOR PERFORMANCE**

**3.1** The Owner is to deposit with the City at the time of execution of this Agreement, securities, cash, or a Letter of Credit satisfactory in form to the City, and for a term of not less than one year, in the amount of \_\_\_\_\_ Dollars (\$) (hereinafter referred to as "Security") as security for;

- 3.1.1** All work which is the subject of the application including all site siltation control measures and retaining walls necessary to meet the requirements of the Site Alteration By-law; **and**
- 3.1.2** performance of any other provision of this Agreement.

**3.2** The described Security is to be renewed by the Owner until the City deems it is no longer required to guarantee the:

- 3.2.1** completion of the said works in conformity with the provisions of this Agreement; **and**
- 3.2.2** performance of any other provision of this Agreement.

**3.3** In the event the Owner:

- 3.3.1** fails or is negligent in performing the work required under the Site Alteration By-law to the satisfaction of the Director; *or*
- 3.3.2** fails to do any other act, matter or thing required to be done, including a renewal of the Security, under the provisions of this Agreement, the City at its discretion, at any time and from time to time, may realize upon the security described in subsection **3.1** of this section and may employ the same or the proceeds thereof, or any part thereof, in doing or completing any or all of the work or for any act, matter or thing

required to be done under this Agreement and may employ the proceeds thereof to hire legal counsel to prosecute any contravention of this Agreement or any other law.

- 3.4** In the event of default the Owner agrees and consents to permit forces hired by the City to enter upon the Property and undertake the works to be done under this Agreement, unencumbered and without restriction in any manner.

#### **4.0 COVENANTS TO RUN WITH THE LANDS**

- 4.1** All covenants and conditions set forth in this Agreement are and shall be deemed to be covenants running with the Property and it is hereby agreed between the parties of the First and Second Parts:

**4.1.1** that every covenant and condition herein enures to the benefit of and is binding upon the parties of the First and Second Parts hereto and their heirs, executors, administrators, successors and assigns; *and*

**4.1.2** that when the context so requires or Permits the singular number is to be read as if the plural were expressed and the masculine gender as if the feminine or neuter, as the case may be, were expressed.

#### **5.0 RELEASE OF SECURITY**

When the obligations set out in this Agreement have been fulfilled, including receipt, satisfactory to the Director, of a Letter of Compliance from the Professional Engineer or other qualified person responsible for the preparation of the control plan as previously approved, and when the Director is satisfied that the provisions of Section 1.1 and 1.2 of this Agreement have been fully complied with, the Owner's Security shall be released.

#### **6.0 FIPPA**

The Owner acknowledges that this Agreement and any information or documents provided by it to the City may be released pursuant to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. This acknowledgement shall not be construed as a waiver of any right to object to the release of this Agreement of any information.

**IN WITNESS WHEREOF** the parties hereto have duly set their hands and seals as of the day and year first above written.



**SCHEDULE "A"**

**LEGAL DESCRIPTION OF LAND**

**Authority:** Item 9, Planning and Economic  
Development Committee  
Report; 05-010 (PD05097)  
CM: May 11, 2005

**Bill No. 115**

**CITY OF HAMILTON**

**BY-LAW NO. 05-115**

**To Amend the Site Alteration By-law No. 03-126**

**WHEREAS** Council deems it necessary to amend By-law No. 03-126 dealing with site alteration, filling and removal of topsoil, to make housekeeping and other changes;

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

1. Clause (u) of Section 2 of By-law No. 03-126 is repealed and replaced with the following:

“(u) **“watercourse”** means an identifiable depression in the ground in which a natural flow of water regularly or continuously occurs”.

2. Clause (e) of section 3.3 of By-law No. 03-126 is repealed and replaced with the following:

“(e) all **fill placed** or **dumped** includes only soil, stone, sod or other material acceptable to the **Director** and that such material is clean and free of any glass, plastics, rubber, metals, termites, liquid other than water, asphalt, garbage or contaminates.”

3. Section 4.3 of By-law No. 03-126 is repealed and replaced with the following:

“4.3 The **Director** shall so far as practical cause notice of the application and of the date the application will be considered to be mailed to adjacent property owners within 150 meters of the subject property where the

subject property is in either the Urban Areas or Rural Settlement Areas both of which areas are as identified in the Regional Official Plan of the former Regional-Municipality of Hamilton-Wentworth as amended from time to time, and in the case where the subject property is not found in either of those two areas, then notices shall be mailed to the adjacent property owners within 600 meters of the subject property.”

4. Clause (c) of section 9.1 of By-law No. 03-126 is repealed and replaced with the following:

“(c) That any **fill** proposed to be **placed** or **dumped** includes only soil, stone, sod or other material acceptable to the **Director** and that such material is clean and free of any glass, plastics, rubber, metals, termites, liquid other than water, asphalt, garbage or contaminates.”

5. Section 13 of By-law No. 03-126 is repealed and replaced with the following:

“**13.** An expired **permit** may be renewed for a period of not longer than one year, within a six month period from the expiry date, upon the original applicant making a written request to the **Director** accompanied by the payment of one-half of the original **permit** fee.”

6. Clause (b) of section 15 of By-law No. 03-126 is repealed and replaced with the following:

“(b) all **fill placed** or **dumped** includes only soil, stone, sod or other material acceptable to the **Director** and such material is clean and free of any glass, plastics, rubber, metals, termites, liquid other than water, asphalt, garbage or contaminates.”

7. Clause (j) of section 16 of By-law No. 03-126 is repealed and replaced with the following:

“(j) ensure that all **fill placed** or **dumped** includes only soil, stone, sod or other material acceptable to the **Director** and that such material is clean

and free of any glass, plastics, rubber, metals, termites, liquid other than water, asphalt, garbage or contaminates.']

8. That the introductory words of section 20 of By-law No. 03-126, being all words prior to clause (a) of that section, are repealed and replaced with the following:

“20. Upon application for an issuance of a **permit**, the property **owner** shall permit entry and inspection of the **site** at all reasonable times, to take **fill** samples for the purpose of determining whether material used for fill includes only soil, stone, sod or other material acceptable to the **Director** and such material is clean and free of any glass, plastics, rubber, metals, termites, liquid other than water, asphalt, garbage or contaminates. For the purposes of an inspection under this section the **Director** may:”

9. Section 21 of By-law No. 03-126 is repealed and replaced with the following:

“21. Costs incurred by the City under section 19 of this By-law together with interest accrued may be registered against the land, collected by action or in like manner as taxes as is provided for the Municipal Act, S. O. 2001, chapter 25 as amended.”

10. Schedule "A" of By-law No. 03-126, respecting fees, is repealed and replaced with the following:

“Schedule “A” to By-law No. 03-126

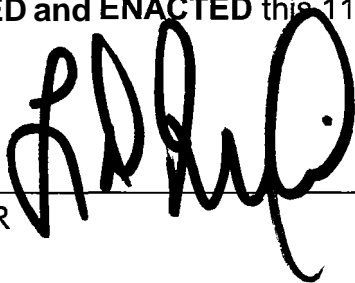
#### Fees and Requirements for Site Alteration Permits

- 1.1 Subject to clause 1.2 of this Schedule below, the processing, administration and inspection fees applicable to an application for a site alteration permit, due upon application, are \$200.00 for a property of less than two hectares in area and not used for commercial or industrial purposes; and \$500.00 for a property of two hectares or more in area plus \$25.00 per hectare of the area where the site is proposed to be altered.

- 1.2 Pursuant to section 13 of the By-law, the fee for an extension request made within six months of the expiry of a permit shall be one-half of the original permit fee, and if made beyond six months shall be calculated under clause 1.1 of this Schedule above.
- 1.3 Where an agreement is required by the Director pursuant to Section 8 of this By-law and is required to be registered on title, it is the responsibility of the owner to register the agreement on title prior to the issuance of the permit, and the owner or applicant shall be responsible for all costs of such registration or discharge of the agreement from the title.”
11. Clause 2(a) of Schedule “B” to By-law No. 03-126 is hereby amended by replacing the word “sit” with the word “site”.
12. In all other respects By-law No. 03-126 is confirmed without change.
13. This by-law comes into force and effect upon enactment.

**PASSED and ENACTED** this 11th day of May, 2005.

\_\_\_\_\_  
MAYOR



\_\_\_\_\_  
CLERK



**Authority:** Item 8, Planning Committee  
Report: 11-018, (PED10091(d))  
CM: October 26, 2011

**Bill No. 262**

**CITY OF HAMILTON**

**BY-LAW NO. 11-262**

**To Amend the Site Alteration By-law No. 03-126, as amended**

**WHEREAS** Council deems it necessary to further amend By-law No. 03-126 dealing with site alteration of property grades and the placing or dumping of fill and removal of topsoil;

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

1. Paragraph "u" of Section 2 of By-law No. 03-126, as amended, is hereby repealed and replaced with the following, namely:
  - (u) "**watercourse**" means an identifiable depression in the ground, such as; ditches, swales, and culverts, in which a natural flow of water regularly or continuously occurs;
2. Section 2 of By-law 03-126, as amended, is hereby amended by adding the following paragraphs thereto, namely:
  - (v) "**adjacent lands**" means any lot, block, section, or parcel of property, owned by a person other than the applicant, that shares a property boundary with the applicant;
  - (w) "**agricultural**" means all lands that are intended for use of farming as registered under *Farm Registration and Farm Organizations Act, 1993, S.O. 1993, c21*, as amended, for growing crops, including nursery and horticultural crops; raising livestock for the use of food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production;
  - (x) "**City**" means City of Hamilton;


- (y) "**Conservation Authority**" means a body corporate established pursuant to the provisions of the Conservation Authorities Act, R.S.O. 1990, c.27, as amended; and
  - (z) "**contaminated fill**" means impure or unsuitable materials including soil, stone, concrete, asphalt, sod or turf, etc. that is in contact with or mixed with something unclean, harmful, unusable or biodegradable;
    - (aa) "**drainage work**" means the implementation of a system intended for the control of water flow;
    - (bb) "**swale**" means a depressed tract of land that is sloped to channel storm water run-off in a desired direction; and,
    - (cc) "**vegetation**" means refers to trees, shrubs or other plant life found within a defined geographic location; i.e. the construction site;
3. The first paragraph of Subsection 3.3 of By-Law No. 03-126 is hereby deleted and the following substituted therefore, namely:
- Sub-sections 3.1 and 3.2 do not apply on any land in the City of Hamilton zoned for agricultural use, or any land zoned for residential use within the Urban Area of the City of Hamilton as designated in the City's Urban Official Plan, where the quantity of **fill** or **topsoil** removed or dumped on any one lot does not, in any consecutive three month period exceed 8 cubic meters for each 0.125 hectares of lot area or part thereof, provided the following requirements are met:
4. Section 3 of By-law No. 03-126 is hereby amended by adding thereto a new subsection 16 as follows, namely:
- 3.16 Notwithstanding Section 9.1 below, no permit shall be issued under this by-law for the placing, dumping or removal of any fill or topsoil, or the alteration of any grade on any land which, on the date of the application for the said permit, is the subject of or included within any application to the City of Hamilton under the Planning Act for approval of a site plan, a draft plan of subdivision or a draft plan of condominium.
5. Clause (vii) of paragraph 9.1(d) of By-law No. 03-126 is hereby amended by inserting the words "*or detrimental effects on amenities*" between the word "conditions" and the word "for" in the first line thereof.

6. Paragraph (d) of Sub-section 9.1 is hereby further amended by adding the following clauses thereto, namely:
- (viii) flooding or ponding on adjacent lands;
  - (ix) hindering the orderly development of adjacent lands;
  - (x) blockage of a storm drainage system;
  - (xi) unnecessary damage to or destruction of trees;" or
  - (xii) detrimental effect on quality or quantity of well water.
7. Paragraph (a) of Section 2 of Appendix "B" to By-law 03-126 is hereby amended by deleting the word "sit" from the fourth line thereof and replacing it with the word "site".
8. In all other respects By-law No. 03-126, as amended, is hereby confirmed without change.
9. This by-law shall come into force and effect upon enactment.

**PASSED** this 26<sup>th</sup> day of October, 2011.



R. Bratina  
Mayor

  
R. Caterini  
City Clerk