

THE CORPORATION OF THE CITY OF CAMBRIDGE

BY-LAW 23-103

Being a by-law to regulate or prohibit placing or dumping of fill, the removal of topsoil and the alteration of the grade of land, within the City of Cambridge and to repeal By-law 160-09

**WHEREAS** section 142 of *Municipal Act*, S.O. 2001, c.25, as amended (the “Act”), provides that, without limiting section 9, 10 and 11 of *Municipal Act*, a local Municipality may enact a by-law prohibiting or regulating the placing and dumping of fill, the removal of topsoil and/or the alteration of grade of the land;

**WHEREAS** section 142 (2)(d) and (e) of the *Municipal Act* further provide that a municipality may require that a permit be obtained for the placing or dumping of fill, the removal of topsoil and the alteration of the grade of land, and may impose conditions to a permit, including requiring the preparation of plans acceptable to the municipality relating to the grading, filling or dumping, the removal of topsoil and the rehabilitation of the site;

**WHEREAS** section 436 of the *Municipal Act* provides that a municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not a by-law passed by the municipality, a direction or order of the municipality or an order made under section 431 has been complied with;

**WHEREAS** section 444 of the *Municipal Act* provides that a municipality may make an order requiring a person who contravened a by-law or who caused or permitted the contravention or the owner or occupier of the land on which a contravention occurred to discontinue the contravening activity.

**WHEREAS** section 445 of the *Municipal Act* provides that a municipality may make an order requiring a person who contravened a by-law or who caused or permitted the contravention or the owner or occupier of the land on which a contravention occurred to do work to correct the contravention.

**WHEREAS** section 446 of the *Municipal Act* provides that if a municipality directs or requires a person to do a matter or thing, the municipality may provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person’s expense, and the municipality may recover the costs of doing the matter or thing from the person by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

**WHEREAS** section 425 of the *Municipal Act* authorizes a municipality to pass a by-law providing that a person who contravenes a by-law of the municipality is guilty of an offence;

**WHEREAS** section 429 of the *Municipal Act* authorizes a municipality to establish a system of fines for the offences under a by-law;

**WHEREAS** section 431 of the *Municipal Act* provides that if any by-law of a municipality is contravened and a conviction is entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted and, in the case of a by-law described in section 135, requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate;

**WHEREAS** section 391 of the *Municipal Act* authorizes a municipality to impose fees or charges on persons for services or activities provided or done by or on behalf of it, for costs payable by it for services or activities done by or on behalf of any other municipality or any local board and for use of its property including property under its control;

**AND WHEREAS** Council of the Corporation of the City of Cambridge is desirous of enacting such a by-law,

**NOW THEREFORE BE IT RESOLVED THAT** The Corporation of the City of Cambridge enacts as follows:

### **DEFINITIONS**

1. For the purpose of this by-law:

“Agricultural Land” means the use of land for apiaries, animal husbandry or the cultivation of trees, shrubs, flowers, grains, sod, fruits, vegetables and other crops or ornamental plants;

“Applicant” means a person applying for the permit under this by-law;

“City” means the Corporation of the City of Cambridge;

“Council” means Council of the Corporation of the City of Cambridge;

“Deputy City Manager” means the Deputy City Manager – Community Development or their designate;

“Director of Engineering” means the City’s Director of Engineering or their designate;

“Director of Operations” means the City’s Director of Operations or their designate;

“Ditch” means a linear depression, swale, or open channel, all of which convey storm water runoff from public or private properties in the same manner as does a piped sewer system;

“Drain” means a culvert, rainwater leader, sewer, swale, ditch, or storm sewer, all of which collect and carry rainwater, groundwater, surface water or subsurface water, and

includes appurtenances such as maintenance holes and catch basins but does not include any drainage works created under the *Drainage Act*, R.S.O. 1990, c. D.17;

“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;

“Dumping” means the depositing of fill in a location other than where the fill was obtained and includes the movement and depositing of fill from one location on a site to another location on the same site;

“Erosion” means the detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity;

“Erosion, Sediment and Dust Control” means measures to control any erosion, sediment and dust generated as part of the Site Alteration;

“Existing grade” means the elevation of the existing ground surface of the lands upon which site alteration of the grade is proposed and of abutting ground surface within three meters surrounding such lands, except that where activity has occurred in contravention of this by-law, existing grade shall mean the ground surface of such lands as it existed prior to said activity;

“Fill” includes, but is not limited to, mineral or organic soil, earth, topsoil, stone, aggregate, asphalt, sod turf or any combination thereof;

“Land disturbance” means any physical change or alteration of the land surface including permanently removing vegetative cover, excavating and filling and grading;

“Lot” means a parcel of land, described in a deed or other document legally capable of conveying land, or shown as a Lot or Block on a registered plan of subdivision;

“Normal Farming Practice” means a practice that is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar Agricultural Operations under similar circumstances, including drainage work on agricultural land for the purpose of improving the productivity of the land drained in accordance with the *Tile Drainage Act*, R.S.O. 1990, c. T.8 or *Drainage Act*, R.S.O. 1990, c. D.17.

“Noise By-law” means that by-law of the City passed pursuant to section 129 of the *Municipal Act* prohibiting or regulating noise within the municipality;

“Obstruct” means any act or inaction that has the effect of preventing or hindering the proper functioning of a ditch or drain including, but not limited to fill, topsoil, rocks, gravel, landscaping, pavement, interlock, fencing, a swimming pool, deck, shed or retaining wall;

“Officer” means a person appointed by Council to administer and enforce by-laws of the City, including employees in the City’s Engineering Services and Forestry & Horticulture

divisions, and includes a person appointed as a police officer within the meaning of the *Police Services Act*, R.S.O. 1990, c. P.15;

“Private Tree By-law” means that by-law of the City passed pursuant to section 135 of the *Municipal Act* regulating the destruction or injuring of trees located on private property;

“Site” means the lands which are the subject of an application for a permit pursuant to this by-law;

“Site Alteration” means activities such as the placement or dumping of fill on lands, the removal of topsoil from land, the alteration of grade of land, or extraction of any means, including the clearing or stripping of vegetation from the land, the compaction of soil or the creation of impervious surfaces, or any combination of these activities;

“Site Alteration Permit” means a Site Alteration Permit issued under this by-law;

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

“Zoning By-law” means that by-law of the City passed pursuant to section 34 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended from time to time.

## GENERAL PROHIBITIONS

2. No person shall carry out or permit a Site Alteration on land within the City without a Site Alteration Permit required pursuant to this by-law.

## EXEMPTIONS

3. This by-law does not apply to:
  - i) Any Site Alteration where the Site Alteration is a condition to the approval of a Pre-servicing Agreement, Subdivision Agreement, or Site Plan Control Agreement with the City which has been entered into and which provides for all grading work to be carried out in accordance with the approved plans.
  - ii) Activities or matters undertaken by the City of Cambridge, Region of Waterloo, Grand River Conservation Authority, or Crown Agency as defined in the *Crown Agency Act*.
  - iii) Any Site Alteration undertaken by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act*, 1998, as amended, for the purpose of constructing and maintaining a transmission system or distribution system.
  - iv) Any Site Alteration undertaken in accordance with Normal Farming Practices on designated agricultural land.

- v) Any Site Alteration undertaken in order to lawfully establish, operate or enlarge any pit or quarry on land,
  - (a) described in a license issued under the *Aggregate Resources Act*, or
  - (b) that has not been designated under the *Aggregate Resources Act*, or a predecessor of that Act, and on which a pit or quarry is a permitted land use under the Zoning By-law.
- vi) Any Site Alteration undertaken as an incidental part of a drain construction under the *Drainage Act* or the *Tile Drainage Act*.
- vii) Any Site Alteration undertaken as part of the excavation or restoration of existing grade in accordance with a demolition permit issued from the City.
- viii) Any Site Alteration undertaken as part of the lawful use, operation, establishment, alteration, enlargement, or extension of a waste management system or waste disposal site within the meaning of Part V of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, or a private waste disposal site or waste management system that is exempted by regulations made under that Part.

#### **PRESERVATION OF DRAINAGE**

- 4. No Person, Owner, or Occupant shall, or shall permit any Person to, alter or obstruct, or cause or contribute to the obstruction of a ditch, drain, or lot grade such that the flow of storm, rain, ground, surface or subsurface water is increased, impaired or deviates from the existing drainage pattern or approved grading and drainage pattern and causes or is likely to cause an adverse condition on any abutting property or municipal right-of-way.
- 5. No Person, Owner, or Occupant shall, or shall permit any Person to, alter any grade on a property, alter or obstruct, or cause or contribute to the obstruction of a ditch, drain, or lot grade such that the properties grading and drainage would no longer comply with the City of Cambridge's grading standards as defined in the Engineering Standards and Development Manual.
- 6. No Owner or Occupant shall allow a private ditch or drain to fall into disrepair such that the flow of storm, rain, ground, surface or subsurface water is increased, impaired or deviates from the existing drainage pattern or approved grading and drainage pattern and causes or is likely to cause an adverse condition on any abutting property or municipal right-of-way.

#### **ISSUANCE OF A SITE ALTERATION PERMIT**

- 7. A Site Alteration Permit is required for any Site Alteration where:

- i) The Site Alteration is required pursuant to a decision of the City's Committee of Adjustment;
- ii) The Site Alteration includes the removal of 10 or more trees having a diameter at breast height (DBH) equal to or greater than 20 centimetres; or
- iii) The land disturbance is 0.5 hectares or larger.

In instances where a Site Alteration does not require a permit pursuant to this section, the work remains subject to, and the person carrying out such work shall comply with, all other relevant provisions of this by-law and other applicable by-laws, legislation or regulation of any level of government.

8. The Deputy City Manager shall issue a Site Alteration Permit if the Deputy City Manager is satisfied that:
  - i) The requirements of this by-law are met;
  - ii) A complete Site Alteration Application has been submitted and approved by the Director of Engineering;
  - iii) That Grading Plans, Erosion and Sediment Control Plans, and any other Site Alteration Plans, meeting the requirements outlined in the City's Engineering Standards and Development Manual, have been submitted and approved by the Director of Engineering;
  - iv) The Tree Management Plan, meeting the requirements outlined in the City's Engineering Standards and Development Manual, has been submitted and approved by the Director of Operations;
  - v) A Stormwater Management Report has been submitted and approved by the Director of Engineering should any quantity control be required to achieve the preservation of drainage as outlined in sections 4, 5 and 6;
  - vi) Fill that will be placed or dumped is compliant with all provisions of the *Environmental Protection Act* and the regulations thereunder, including but not limited to *O. Reg. 406/19: On-Site and Excess Soil Management*;
  - vii) The applicant has provided the non-refundable application fee required under the City of Cambridge's Municipal Fees and Charges By-law, as amended from time to time; and
  - viii) The applicant has provided securities, in a manner acceptable to the City of Cambridge's Finance Department, in the amount of 100% of the estimated costs of the proposed erosion and sediment controls.

## CONDITIONS AND REGULATIONS

9. Site Alteration Permits will be valid for a period of 180 days from the date of issuance.
10. The Deputy City Manager may extend the Site Alteration Permit a maximum of two times at the applicable non-refundable extension fee, as required under the City of Cambridge's Municipal Fees and Charges By-law, as amended from time to time. Each extension will be for a maximum of 180 days.
11. A new permit application and fee will be required if either the initial permit has previously been extended twice or if an extension request is not submitted to Development Engineering ten (10) business days in advance of the current permit expiry date.
12. The Site Alteration Permit may be revoked by the Deputy City Manager if non-compliance with the approved Site Alteration Plans occurs.
13. The Site Alteration Permit may be revoked if it is revealed or discovered that an Applicant for a Site Alteration Permit pursuant to this by-law has provided misleading or false information on their application.
14. The Deputy City Manager may impose conditions of approval on the granting of a Site Alteration Permit.
15. All erosion and sediment control measures necessary to meet the requirements of this by-law shall be in place prior to the commencement of any Site Alterations which are unrelated to the installation of the erosion and sediment control measures.
16. Following issuance of a Site Alteration permit, a City inspection of the installed erosion and sediment controls and/or tree protection measures shall occur once the control measures are installed and prior to the commencement of any Site Alterations which are unrelated to the installation of the erosion and sediment control measures.
17. Requests for City inspection of the installed erosion and sediment controls and/or tree protection measures, as required in section 16, are to be submitted to Development Engineering or Forestry and Horticulture a minimum two (2) business days in advance of the desired inspection date and time.
18. Work under this by-law is permitted between the hours of 7:00 am and 7:00 pm. Requests to work overnight (from 7:00 pm to 7:00 am) Monday to Friday, on a Statutory Holiday, or until 8:00 pm on a Saturday requires written approval from the Director of Engineering, and such requests shall be submitted a minimum of 5 business days in advance of the work date.
19. Requests to work from 8:00 pm on a Saturday to 7:00 am on a Monday require an exemption from the City's Noise By-Law. These exemptions require Council approval and require a minimum of six weeks' notice.

20. The applicant is to obtain permission in writing from the Director of Engineering prior to modifying the approved Site Alteration plans.
21. The applicant is to ensure that a copy of the approved Site Alteration Plans are on site at all times when Site Alteration activities are occurring.
22. All erosion and sediment control measures, including dust control and sediment tracking, shall be monitored and maintained by the applicant in a manner satisfactory to the Director of Engineering until such time as the final restoration or rehabilitation of the site has occurred.
23. The applicant shall inspect the erosion and sediment control measures after each rainfall event of one (1) cm or more and at least once each week and undertake needed repairs and submit regular monitoring reports as requested by the Director of Engineering.
24. The applicant shall repair or remedy any siltation or erosion damage to adjoining surfaces, such as adjacent properties, roadways, drainage ways, and water courses, as a result of the Site Alteration activities to the satisfaction of the Director of Engineering.
25. Final restoration or rehabilitation of the land shall take the form of:
  - i) Leveling and regarding of effected lands; and,
  - ii) The replacement of topsoil (100mm depth for areas to be further developed and a minimum depth of 150mm for all other areas) and stabilization by either sodding, hydroseeding, mulching, planting of trees or such other methods as may be approved by the Deputy City Manager.
26. If the title of the site for which a Site Alteration Permit has been issued is transferred while the Permit remains in effect, the Permit shall be cancelled unless the new Owner of the site advises the Deputy City Manager within (30) days of the transfer and either;
  - i) Provides the City of Cambridge with an undertaking to comply with all the conditions under which the existing Permit was issued and also replaces the security provided by the original applicant; or,
  - ii) Applies for and obtains a new Site Alteration Permit in accordance with the provisions of this by-law.

### **HINDRANCE OR OBSTRUCTION**

27. No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this by-law.

### **POWERS OF INSPECTION**

28. An Officer, may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- i) This by-law;
  - ii) A direction or order of the City made under this by-law; or,
  - iii) An order made under section 431 of the *Municipal Act*.
29. For the purposes of conducting an inspection pursuant to section 28 of this by-law, an Officer may, in accordance with the provisions of section 436 of the *Municipal Act*:
- i) Require the production for inspection of documents or things relevant to the inspection;
  - ii) Inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
  - iii) Require information from any person concerning a matter related to the inspection; and,
  - iv) Alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.

#### **ORDER TO DISCONTINUE ACTIVITY**

30. Where an Officer is satisfied that a contravention of this by-law has occurred, the Officer may make an order requiring the person who contravened this by-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity.
31. An order under section 30 of this by-law shall set out:
- i) Reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and,
  - ii) The date by which there must be compliance with the order.
32. Any person who contravenes an order under section 30 of this by-law is guilty of an offence.

#### **WORK ORDER**

33. Where an Officer is satisfied that a contravention of this by-law has occurred, the Officer may make an order requiring the person who contravened this by-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to do work to correct the contravention.
34. An order under section 33 of this by-law shall set out:

- i) Reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and,
  - ii) The work to be done and date by which the work must be done.
35. An order under section 33 may require work to be done even though the facts which constitute the contravention of this by-law were present before this by-law came into force.
36. Any person who contravenes an order under section 33 of this by-law is guilty of an offence.

### **REMEDIAL ACTION**

37. If a person fails to do a matter or thing, including comply with an order under this by-law, as directed or required this by-law, the City may, in default of it being done by the person directed or required to do it, do the matter or thing at the person's expense. The City may recover the costs of doing a matter or thing from the person directed to do it by action or by adding the costs to the tax roll and collecting the same manner as municipal taxes.
38. The costs outlined in section 37 of this by-law shall include interest calculated at a rate of 15 per cent per annum, calculated for the period commencing on the day the City occurs the costs and ending on the day the costs, including the interest, are paid in full.
39. The amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien. The lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date the payment is made. Upon receiving payment of all costs payable plus interest accrued to the date of payment, the City shall register a discharge of the lien in the proper land registry office.

### **ENFORCEMENT**

40. This by-law may be enforced by Officers.

### **OFFENCE AND PENALTY**

41. Every person who contravenes any of the provisions of this by-law is guilty of an offence and pursuant to section 429 of the *Municipal Act*, all contraventions of this by-law are designated as continuing offences.
42. Every person, excluding a corporation, who is convicted of an offence is liable to a fine not exceeding \$50,000.
43. Every corporation who is convicted of an offence is liable to a fine not exceeding \$100,000.

- 44. In addition to the fine amounts set out in sections 42 and 43 for each day or part of a day that an offence continues, the person shall be liable to a fine not exceeding \$10,000.00.
- 45. The fine amounts set out in sections 42, 43, and 44 are exclusive of costs and are recoverable under the *Provincial Offences Act*.

**SEVERABILITY**

- 46. It is hereby declared that each and every of the foregoing sections of this by-law is severable and that, if any provisions of the by-law should for any reason be declared invalid by any court, it is the intention and desire of Council that each and every of the then remaining provisions hereof shall remain in full force and effect.

**APPLICATION OF OTHER LAWS AND APPROVALS**

- 47. The issuance of a Site Alteration Permit by the Deputy City Manager does not relieve the applicant of the responsibility of obtaining and complying with all other approvals that may be required by the City, or any other level of government or agencies thereof.
- 48. Any reports required by the City of Cambridge or external agency (e.g. archeological report, environmental impact assessment, heritage impact assessment, and/or geotechnical report etc.) shall be submitted and approved by the City of Cambridge and/or external agency prior to issuance of a Site Alteration permit. All archeological reports will be circulated to the Region of Waterloo for their review and approval.

**REPEAL**

- 49. By-law 160-09 is hereby repealed.

**ENACTMENT**

- 50. This by-law shall come into full force on the day it is passed.

**ENACTED AND PASSED** this 28<sup>th</sup> day of November 2023

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MAYOR

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CLERK