

The Corporation of the City of Peterborough

By-Law Number 25-108

Being a by-law to prohibit or regulate the removal of topsoil, placing of fill and site alteration

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Recitals

1. Section 142 of the Municipal Act, 2001 provides that the Council of a local municipality may pass by-laws to:
 - a) prohibit or regulate the placing or dumping of fill;
 - b) prohibit or regulate the removal of topsoil;
 - c) prohibit or regulate the alteration of the grade of the land;
 - d) require that a permit be obtained for the placing or dumping of fill, the removal of topsoil or the alteration of the grade of the land; and
 - e) impose conditions to a permit, including requiring the preparation of plans acceptable to the municipality relating to grading, filling or dumping, the removal of topsoil and the rehabilitation of the site.

Now therefore, The Corporation of the City of Peterborough by its Council hereby enacts as follows:

Short Title

1. This By-Law may be referred to as the "Site Alteration By-law".

Interpretation

2. Unless otherwise stated:
 - a) a reference to any statute or regulation refers to a statute or regulation of Ontario as it may be amended or replaced from time to time;

- b) a reference to a by-law refers to a by-law of the City as it may be amended or replaced from time to time; and
 - c) a reference to a section, paragraph, clause or schedule is a reference to this By-law's section, paragraph, clause or schedule.
3. The table of contents and headings in this By-law are for convenience only and do not form part of this By-law.
 4. If any part of this By-law is determined to be invalid by a court of competent jurisdiction, the invalid part is severed and the remainder continues to be valid.
 5. In the event of any inconsistency between a provision of this By-law and of any other City by-law, the provision that, in the opinion of the Manager, more restrictively regulates prevails to the extent of the inconsistency.
 6. This By-law applies within the territorial limits of the City.

Definitions

7. In this By-law:
 - a) "Administrative Order" means each of the orders described in paragraphs 29.a) and 29.b).
 - b) "Applicant" means each Person who or that submits an Application.
 - c) "Application" means an application for a Permit.
 - d) "By-law" means this By-law including its schedules.
 - e) "City" means The Corporation of the City of Peterborough or the geographic area of the City of Peterborough as the context requires.
 - f) "Council" means the City's Council.
 - g) "Existing Grade" means the elevation of the existing ground surface of each part of a Property prior to any Site Alteration.
 - h) "Fill" includes Soil, stone, concrete, sod, turf or any other material, either singly or in combination, whether originating on a Property or elsewhere, used or capable of being used to raise, lower, or in any way affect the contours of the ground surface of a Property.
 - i) "Hearing Officer" means a hearing officer appointed pursuant to Hearing Officer By-law 20-077.
 - j) "Manager" means each of the following City employees:
 - i) Manager, Water Resources Systems; and
 - ii) Manager, Development Engineering.
 - k) "Officer" means
 - i) the Manager;
 - ii) each individual from time to time appointed as a municipal law enforcement officer to enforce all or any of the City's by-laws;
 - iii) each assistant to the Fire Marshal employed by the City; and
 - iv) a police officer employed by Peterborough Police Service, the Ontario Provincial Police or the Royal Canadian Mounted Police.
 - l) "Owner" includes each Person who or that has any right, title, interest or equity in a Property.
 - m) "Permit" means a permit issued pursuant to this By-law.
 - n) "Permit Decision Notice" means a notice described in section 17.
 - o) "Permit Revocation Notice" means a notice described in section 25.
 - p) "Permittee" means a Person to whom or to which a Permit has been issued.
 - q) "Person" includes an individual, corporation or partnership.
 - r) "Property" means land within the City designated as a property pursuant to

- i) subsection 141(2) or (4) of the Land Titles Act, R.S.O. 1990, c. L.5; or
 - ii) subsection 21(2) or (4) of the Registry Act, R.S.O. 1990, c. R.20.
- s) "Site Alteration" means any activity that:
- i) alters the Existing Grade;
 - ii) involves the placing or dumping of Fill; or
 - iii) involves the removal of Topsoil.
- t) "Soil" includes material commonly known as earth, Topsoil, loam, subsoil, clay, sand or gravel.
- u) "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.

By-law's Objectives

8. This By-law's objectives are to prohibit or to regulate Site Alteration so as to ensure that a Site Alteration does not impair drainage, water quality or the natural features of Properties.

Application of By-law

9. This By-law does not apply to:

- a) activities or matters undertaken by a municipality or a local board of a municipality; or to
- b) 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.

10. This By-law does not apply to a Site Alteration:

- a) 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) 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) undertaken by a transmitter or distributor, as those terms are defined in section 2 of the Electricity Act, 1998, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- d) 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) 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) undertaken as an incidental part of drain construction under the Drainage Act or the Tile Drainage Act;
- g) undertaken pursuant to an administrative order issued by the City including an Administrative Order;
- h) undertaken pursuant to an administrative order or a permit issued by the City's Chief Building Official;
- i) subject to section 11, involving the placement of Fill of a volume of less than 10 m³ to a height of less than 150 mm above Existing Grade and within an area of less than 500 m²; or

- j) subject to section 11, involving the removal of Soil of a volume of less than 10 m³ to a depth of less than 150 mm below Existing Grade and within an area of less than 500 m².
11. The applicability of each of paragraphs 10.i) and 10.j) is subject to the Manager's determination that:
- a) there is no change to the Property's Existing Grade within 60 cm of any boundary of the Property;
 - b) there is no significant change in the location, direction or elevation of any natural or artificial watercourse (including of any element of a stormwater system), open channel, swale or ditch used to drain the Property or any adjacent Property;
 - c) there is no significant change to the drainage of neighbouring Properties; and
 - d) no sediment will move from the Property to adjacent Properties.

Site Alteration Prohibited

12. No Person may undertake a Site Alteration except pursuant to a Permit and in accordance with applicable law.
13. No Owner may permit a Site Alteration on the Owner's Property except pursuant to a Permit and in accordance with applicable law.

Permit Applications

14. The Manager may refuse to accept an Application unless the Manager is satisfied that:
- a) the Application is complete, legible and submitted on forms from time to time established by the Manager;
 - b) an individual Applicant is not a minor;
 - c) the Application is by or on behalf of all Owners;
 - d) a corporate Applicant is incorporated pursuant to the laws of Ontario and is in good standing; and
 - e) the Application is accompanied by payment in full of any fee established by Council.
15. The Manager may issue a Permit to an Applicant if the Manager is satisfied that the Application complies with section 14, that the Applicant has complied and will comply at all times with this By-law and that the issuance of the Permit is not inconsistent with this By-law's objectives. The Manager may otherwise refuse to issue a Permit.
16. In addition to conditions otherwise imposed pursuant to this By-law, the Manager may, at any time and from time to time, impose conditions to a Permit as the Manager determines are necessary in relation to this By-law's objectives.
17. If the Manager issues a Permit with conditions pursuant to section 16 or refuses to issue a Permit pursuant to section 15, the Manager must give to the Applicant as soon as is reasonably practicable a Permit Decision Notice that includes the following information:
- a) where a Permit is issued with conditions pursuant to section 16, particulars of the conditions;
 - b) where a Permit is refused, particulars of the reasons for refusing to issue the Permit;
 - c) information respecting the process by which the Applicant may exercise the Applicant's right to appeal to the Hearing Officer against the conditions or the refusal to issue the Permit; and
 - d) a statement that the Manager's decision, unless modified or rescinded by a Hearing Officer, is final and not subject to review including review by any Court.
18. An Applicant who or that receives a Permit Decision Notice may appeal the conditions or the refusal to the Hearing Officer pursuant to section 33.

19. A Permit Decision Notice that is not appealed pursuant to section 33 is final and is not subject to review including review by any Court.
20. A Permit expires on the earlier of:
- a) the first anniversary following the day on which it was issued; and
 - b) the day on which it is revoked.
21. Despite the expiry of a Permit, any conditions to the Permit continue to be effective.

Conditions Applicable to all Permits

22. Each of the following is a condition of obtaining and continuing to hold a Permit:
- a) the Permittee complies with all applicable law respecting the subject matter of the Permit including this By-law;
 - b) the Permittee notifies the Manager in writing of any change to the information provided in an Application within three (3) days of the change;
 - c) without limiting paragraph a), the Permittee complies with all conditions to the Permit imposed pursuant to section 16 as applicable;
 - d) the Permittee provides to the Manager such information as the Manager may from time to time require in relation to this By-law; and
 - e) the Permittee is not indebted to the City for any fee, fine or penalty.

Administration of By-law

23. The Manager may do such things as the Manager considers appropriate in the administration of this By-law including doing the things and making determinations and decisions expressly contemplated by this By-law to be done and made by the Manager. In the event of any disagreement between the Managers as to the administration of this By-law including any determination or decision to be made by a Manager, the determination of the Director, Planning, Development and Urban Design and the Director, Asset Management and Capital Planning prevails to the extent of such disagreement.
24. It is Council's opinion that the powers delegated pursuant to this By-law are of a minor nature having regard to the number of people, the size of geographic area and the time period affected by an exercise of the power.

Permit Revocation

25. In addition to any other remedy, where the Manager has reason to believe that a Permittee has not complied with this By-law, the Manager may give to the Permittee a Permit Revocation Notice that includes the following information:
- a) a statement that the Permit is revoked;
 - b) particulars of the reasons for which the Permit is revoked;
 - c) information respecting the process by which the Permittee may exercise the Permittee's right to appeal to the Hearing Officer against the Permit Revocation Notice; and
 - d) a statement that the Manager's decision to revoke the Permit, unless modified or rescinded by a Hearing Officer, will be final and not subject to review including review by any Court.
26. A Permittee that is given a Permit Revocation Notice may appeal to a Hearing Officer against the Permit revocation pursuant to section 33.
27. A Permit is revoked when a Permit Revocation Notice is given to the Permittee but may be reinstated only if and when so decided by the Hearing Officer pursuant to paragraph 33.g).
28. A Permit Revocation Notice that is not appealed pursuant to section 33 is final and not subject to review including review by any Court.

Administrative Orders

29. In addition to any other remedy, if an Officer is satisfied that a contravention of this By-law has occurred, the Officer may
- a) make an order requiring the Person who contravened this By-law to discontinue the contravening activity; and
 - b) make an order requiring the Person who contravened this By-law to do work to correct the contravention at the Person's expense.
30. A Person to whom or to which an Administrative Order has been given may appeal to the Hearing Officer against the order pursuant to section 33.
31. An Administrative Order that has not been appealed pursuant to section 33 is final and not subject to review including review by any Court.
32. In addition to any other remedy, the Officer may cause to be done the work set out in the order at the expense of the Person to whom or to which an Administrative Order described in paragraph 29.b) has been given if the Officer is satisfied that the Person has failed to comply with the order and:
- a) the Person has not appealed to the Hearing Officer pursuant to section 33; or
 - b) the Person has appealed to the Hearing Officer pursuant to section 33, the Hearing Officer has confirmed or modified the Administrative Order in whole or in part and the work done is consistent with the Administrative Order as confirmed or modified.

Appeal to Hearing Officer

33. The following rules and conditions apply to appeals to the Hearing Officer:
- a) A Person's right to appeal expires if it has not been exercised in the manner prescribed in paragraph b) before 4:30 p.m. on the tenth (10th) day after the Permit Decision Notice, the Permit Revocation Notice or the Administrative Order has been given to the Person.
 - b) A right to appeal is exercised by:
 - i) giving to the Manager written notice of the appeal that includes particulars of all grounds upon which the appeal is made; and by
 - ii) paying the fee from time to time prescribed by Council.
 - c) The Manager will give to the Person no fewer than seven (7) days' notice of the date, time and place of the hearing of the appeal.
 - d) Where the Person fails to appear at the time and place scheduled for a hearing of the appeal, the Person's appeal is deemed to be dismissed and the Person must pay to the City an administrative fee as from time to time prescribed by Council.
 - e) Subject to paragraph d), the Hearing Officer may not decide the appeal unless the Hearing Officer has given each of the Person and the Manager an opportunity to be heard at the time and place scheduled for the hearing of the appeal.
 - f) The Person is only entitled to be heard to the extent of the particulars included in the Person's notice given pursuant to clause b)i).
 - g) The Hearing Officer may make any decision that the Manager could have made pursuant to this By-law.
 - h) The decision of the Hearing Officer is final and not subject to review including review by any Court.

Administrative Penalties

34. AMP System By-law 20-073 applies to each administrative penalty issued pursuant to this By-law.

35. Subject to section 36 and in addition to any other remedy, each Person that contravenes this By-law is, upon issuance of a penalty notice in accordance with AMP System By-law 20-073, liable to pay to the City an administrative penalty of:
- a) \$175 for the remainder of the first day on which the contravention occurs; and
 - b) \$275 for each subsequent day on which the contravention continues.
36. Each Person that contravenes this By-law by undertaking an activity without a required Permit is, upon issuance of a penalty notice in accordance with AMP System By-law 20-073, liable to pay to the City an administrative penalty of:
- a) \$500 for the remainder of the first day on which the contravention occurs; and
 - b) \$750 for each subsequent day on which the contravention continues.

Offences

37. Subject to section 38, each Person that contravenes this By-law is guilty of an offence and, upon conviction, is liable to a fine for each day or part of a day on which the offence occurs or continues of:
- a) not less than \$300 and not more than \$10,000;
 - b) not less than \$400 and not more than \$25,000 for a second conviction of the same offence; and
 - c) not less than \$500 and not more than \$50,000 for a third or subsequent conviction of the same offence.
38. A Person is not guilty of an offence for which a penalty notice has been issued pursuant to sections 35 or 36.

General

39. For the purposes of a prosecution under the **Provincial Offences Act**, a proceeding under this By-law and a proceeding under AMP System By-law 20-073, the holding out to the public that an activity for which a Permit is required is being undertaken without the required Permit is admissible in evidence as proof, in the absence of evidence to the contrary, that the activity is being undertaken without the required Permit.
40. Subject to section 34, any notice to be given to a Person other than the City is sufficiently given:
- a) when given verbally to the Person;
 - b) when delivered in writing to the Person;
 - c) on the third (3rd) day after it is sent by regular lettermail to the Person's last known address; or
 - d) when sent to the Person by e-mail or by other means of electronic transmission.
41. For the purpose of paragraphs 40.c) and 40.d), a Person's last known address, last known e-mail address and other means of electronic transmission are deemed to include those provided pursuant to paragraph 14.a) as they may be changed pursuant to paragraph 22.b).
42. Subject to section 34, any notice to be given to the City is sufficiently given:
- a) on the third (3rd) day after it is sent by regular lettermail to "Municipal Law Enforcement Services Division, City of Peterborough, 500 George St. N, Peterborough, ON K9H 3R9"; or
 - b) when sent by e-mail to by-laws@peterborough.ca.
43. No proceeding for damages or otherwise may be commenced against the City, a member of Council, or an officer, employee or agent of the City or a Person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this By-law or for any alleged neglect or default in the performance in good faith of the duty or authority.

44. This By-law is in effect on the day on which it is passed.

By-law passed this ____ day of _____, 2025.

Jeff Leal, Mayor

John Kennedy, City Clerk