

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

BY-LAW NUMBER 2024-XXX

Being a by-law to regulate the placing or dumping of fill, removal of topsoil, and the alteration of the grade of land

WHEREAS subsection 142(2) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, authorizes the Municipality of Clarington to prohibit or regulate the placing or dumping of fill, the removal of topsoil, or the alteration of the grade of land;

AND WHEREAS subsection 142(2) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, further authorizes the Municipality of Clarington to require that a permit be obtained for the placing or dumping of fill, the removal of topsoil, or the alteration of the grade of land;

AND WHEREAS the Municipal Council has adopted the recommendations contained in staff report **LGS-XXX-XX**;

NOW THEREFORE the Council of the Corporation of the Municipality of Clarington enacts as follows:

DEFINITIONS

1. In this By-law:

“Adversely Effect” has a meaning that includes, but is not limited to:

- a) impairment of the quality of the natural environment for any use that can be made of it;
- b) injury or damage to Property or to plant or animal life;
- c) harm or material discomfort to any person;
- d) detriment to human health;
- e) impairment of the safety of any person;
- f) rendering any Property or plant or animal life unfit for human use;
- g) loss of enjoyment of normal use of Property; or
- h) interference with the normal conduct of business;

"Aggregate" means a collective term for the mineral materials such as sand, gravel and crushed stone that can be used with a binding medium to form compounds such as concrete;

"Applicant" means the Owner of a Property and includes a Person authorized in writing to act on behalf of the Owner to apply for a Permit;

"Application" means a written submission to request or amend a Permit;

"Chief Building Official" means the Chief Building Official appointed by the Municipality under the Building Code Act, 1992;

"Compost" means a mixture of various decaying organic substances such as dead leaves or manure;

"Condition(s)" means the mandatory performance requirements outlined in a Permit or Order and may include the requirement for monetary deposits or securities in connection with the Application;

"Conservation Authority" means the Central Lake Ontario Conservation Authority, the Ganaraska Region Conservation Authority, the Kawartha Lakes Conservation Authority, or the Otonabee Region Conservation Authority as the context requires;

"Contamination" means any substance or material in a concentration that exceeds the limits established under any applicable legislation;

"Deputy CAO" means the Deputy CAO of Planning and Infrastructure Services for the Municipality, or designate, or equivalent;

"Dump" means activity that includes, but is not limited to, stripping, removing, moving, transporting, importing, exporting or placing of any Fill or Topsoil into, out of or upon lands within any single or adjacent properties within the Municipality;

"Enforcement Officer" means an individual whose duties include the enforcement of this By-law;

"Fill" means any type of material removed from or Placed on lands and includes, but is not limited to:

- a) Aggregate;
- b) concrete;
- c) Compost;

d) Flock;

e) sod; or

f) Soil;

"Finished Grade" means the elevation of the ground surface of land upon which Fill has been Placed or Dumped or after alteration of the Grade has occurred;

"Flock" means an aggregation of one or more naturally occurring minerals that is 2 millimetres or larger in size or that does not permeate the US No. 10 sieve;

"Grade" means the elevation of an existing ground surface, except where the Placing or Dumping of Fill or the alteration of the then existing ground surface has occurred in contravention of this By-law in which case Grade means the elevation of the ground surface as it existed prior to the occurrence of such Placing or Dumping of Fill on or alteration of the existing ground surface;

"Guidelines" means the Application, supporting documentation and Conditions applicable to a Permit, as determined by the Deputy CAO, to be used for the purpose of administering this By-law;

"Inspector" means the Deputy CAO, or an Enforcement Officer;

"Large Fill Operation" means an operation that involves Placing, Dumping, or removing more than 500 cubic metres of Fill;

"Liquid Soil" means Soil that has a slump of more than 150 millimetres using the Test Method for the Determination of "Liquid Waste" (slump test) set out in Schedule 9 of the Waste Management Regulation, R.R.O. 1990, Reg. 347;

"Minor Fill Operation" means an operation that involves Placing, Dumping, or removing less than 100 cubic metres of Fill;

"Municipality" means The Corporation of the Municipality of Clarington, or its geographical area, as the context requires;

"Owner" means the registered owner of a Property;

"Permit" means a formal written authorization issued by the Municipality pursuant to this By-law;

"Person" means an individual or a corporation;

"Place" means the distribution of Fill on lands to establish a Finished Grade higher or lower than the Existing Grade and "Placement", "Placing", and "Placed" in relation to Fill have the same meaning;

"Property" means land including any building or structures appurtenant thereto;

"Proposed Grade" means the proposed elevation of the ground surface of land upon which any Fill is proposed to be Placed;

"Qualified Person" has the same meaning as found in the Ontario *Environmental Protection Act*, R.S.O. 1990, c. E.19;

"Retaining Wall" means a wall designed to contain and support Fill which has a Finished Grade higher or lower than that of adjacent lands;

"Site Alteration" means alteration of the existing Grade of a Property through the removal, Placement, relocation, or movement of Fill;

"Small Fill Operation" means an operation that involves Placing, Dumping or removing between 100 and 500 cubic metres of Fill;

"Soil" means unconsolidated naturally occurring mineral particles and other naturally occurring materials resulting from the natural breakdown of rock or organic matter by physical, chemical or biological processes that are smaller than 2 millimetres in size or that permeate the US No. 10 sieve;

"Swale" means a shallow depression in the ground sloping to a place for disposal for the purpose of providing a method of drainage of surface water;

"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;

"User Fee By-law" means the Clarington User Fee By-law 2023-044, as amended, or its successor;

"Watercourse" means a natural or man-made channel or swale in which a flow of water occurs, either continuously or intermittently with some degree of regularity; and

"Zoning By-law" means any applicable by-law passed by the Municipality pursuant to section 34 of the Planning Act.

APPLICATION

2. This By-law applies to all Property within the geographical boundaries of the Municipality, unless otherwise specified in this By-law.

PROHIBITIONS

3. No Person shall Place or Dump Fill or Topsoil, or cause or permit Fill or Topsoil to be Placed or Dumped, except in accordance with a Permit issued under this By-law.
4. No Person shall Place or Dump Fill or Topsoil, or cause or permit Fill or Topsoil to be Placed or Dumped, if the Fill or Topsoil originates from outside the boundaries of the Municipality, except in accordance with a Permit issued under this By-law that expressly provides for the importation of such Fill or Topsoil.
5. No Person shall remove Soil, or cause or permit the removal of Soil, except in accordance with a Permit issued under this By-law.
6. No Person shall make an alteration to the Grade of land, or cause or permit the alteration to the Grade of land, except in accordance with a Permit issued under this By-law.
7. No Person shall fail to comply with the terms and conditions of a Permit.

EXEMPTIONS

8. This By-law does not apply to:
 - (a) activities or matters undertaken by the Municipality or a local board of the Municipality;
 - (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 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 a subdivision agreement executed and in good standing entered into under those sections;
 - (c) 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;
 - (d) the Placing or Dumping of Fill, removal of Topsoil, or alteration of the Grade of land undertaken by 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;
- (e) the Placing or Dumping of Fill, removal of Topsoil, or alteration of the Grade of land undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;
 - (f) 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*;
 - (g) 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* or the *Tile Drainage Act*;
 - (h) the Placing or Dumping of Fill, removal of Topsoil, or alteration of the Grade of land undertaken in accordance with an order issued pursuant to the Municipality's Property Standards By-law;
 - (i) the Placing or Dumping of Fill, removal of Topsoil, or alteration of the Grade of land undertaken for the purpose of lawn dressing, landscaping, adding to flower beds or vegetable gardens, provided that:
 - (i) there is no change in the location, direction, or elevation of any natural or artificial watercourse, open channel, Swale or ditch used to drain land; and
 - (ii) the functionality of any drainage infrastructure is not impeded;
9. Notwithstanding any other provision of the By-law, the Deputy CAO may, in their sole discretion, exempt an Applicant/Owner from the requirement for a Permit if there is a concurrent building permit application for the same Property, and if they are satisfied that the objectives of this By-law would not be unduly compromised;

10. Notwithstanding any other provision of this By-law, the temporary storage of Fill at business locations such as a garden center, contractors' yard, aggregate distribution yard, or Fill storage yard, or similar facility may be exempted from the requirement for a Permit at the sole discretion of the Deputy CAO provided the following conditions are satisfied:
- (a) the exemption is in writing from the Deputy CAO, which exemption may at any time be revoked by the Deputy CAO, acting reasonably;
 - (b) there are no Adverse Effects;
 - (c) the business is authorized pursuant to the relevant zoning regulations;
 - (d) there is no permanent alteration to the existing Grade;
 - (e) the period of temporary storage is reasonable in relation to the business activities;
 - (f) regular movement of Fill is actively occurring;
 - (g) Soil is not being processed on site;
 - (h) the Fill is not comprised of Liquid Soil;
 - (i) the activities comply with Ontario Regulation 406/19 On-Site and Excess Soil Management;
 - (j) A site plan is provided that illustrates storage pile locations, type of material, and volumes; and
 - (k) Storage piles do not exceed 4 metres in height.
11. 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 provided it does not include the removal of Topsoil for sale, exchange or other disposition.

DELEGATION

12. The Deputy CAO is authorized to approve all policies, procedures, forms and other documents and to make such decisions and approvals, and to exercise such discretion on behalf of the Municipality as necessary to administer this By-law.

PERMITS

13. An Owner, or an authorized agent for an Owner, may apply to the Municipality for a Permit for activities that would otherwise be prohibited by this By-law by submitting a completed Application in a form required by the Deputy CAO.
14. An Applicant for a Permit under this By-law is subject to the fees contained in the User Fee By-law. The Deputy CAO is authorized to waive the fees if, in their sole discretion, it is appropriate and in the public interest to do so.
15. In addition to any other requirement of this By-law, the Deputy CAO may require an Applicant to submit with an Application, any information, or materials reasonably required to evaluate the Application, including but not limited to:
 - (a) details of the Proposed Grade and drainage system to be used upon completion of the work;
 - (b) a description of the proposed Fill, including its source location;
 - (c) geotechnical reports as to content and quality of the proposed Fill, prepared and certified by a Qualified Person in compliance with the requirements of Ontario Regulation 406/19 On-Site and Excess Soil Management;
 - (d) a written statement from a Qualified Person certifying that the Fill contains no Contamination;
 - (e) such other studies and reports as are necessary to properly assess the application, including studies and reports required under the Clarington Official Plan and the Oak Ridges Moraine Conservation Plan, and fees to cover the peer review of such studies and reports;
 - (f) details as to the species, Grade at base, height, and diameter, of any shrubs, trees and hedges in the vicinity of the subject Property together with a tree preservation plan;
 - (g) an identification and description of any natural heritage features, hydrologically sensitive features, or related vegetation protection zones, or lands designated as Environmental Protection situated on the subject Property;
 - (h) proof of Conservation Authority approval, if applicable;
 - (i) a plan showing the design details to proper scale of any Retaining Wall that may be required and the dimensions of any materials to be used in construction of such Retaining Wall; or

- (j) financial security in an amount reasonably required to ensure the Site Alteration and all work required as a condition of Permit issuance including erosion and sediment control, signage, mud cleanup, dust control and road damage, is undertaken in accordance with the requirements of the Permit.

16. In addition to any other requirement of this By-law, the Deputy CAO may require an Applicant to submit a Fill control plan that is satisfactory to the Deputy CAO and that shall include, but not necessarily be limited to, the following:

- (a) a key map showing the location of the proposed work, including the nearest major intersection and north arrow;
- (b) the area and dimensions of the subject Property;
- (c) information to confirm the existing and proposed land uses of the subject Property, and the location and use of buildings and other structures on the subject property or an adjacent property;
- (d) the location, dimensions and use of any building and other structures existing or proposed to be erected on the subject Property;
- (e) the location of any lakes, streams, wetlands, channels, ditches, or other watercourses or bodies of water situated on or near the subject Property;
- (f) information to confirm the location of any areas regulated under the *Conservation Authorities Act*;
- (g) the location and identification of the predominant existing Soil types in the vicinity of the subject Property;
- (h) the location and dimensions of any existing and proposed storm water drainage systems and natural drainage patterns in the vicinity of the subject Property;
- (i) the location and dimensions of utilities, structures, roads, highways and paving located in the vicinity of the subject Property;
- (j) the existing topography in the vicinity of the subject Property;
- (k) details of the Proposed Grade;
- (l) the location and dimensions of all proposed land disturbance activities, including construction of access roads;

- (m) the location, dimensions, design details and design calculations of all construction site erosion control measures that may be necessary to minimize the impact of the proposal;
 - (n) the anticipated starting and completion dates of each land disturbance or land development activity;
 - (o) provisions for the maintenance of the construction site, erosion control, vegetation retention or restoration, and dust control measures during and after construction, as required;
 - (p) a plan of proposed external haul routes and daily schedule for hauling, including a plan showing signage;
 - (q) the scale of drawing, ranging from 1:250 to 1:1000 as deemed appropriate (each drawing control plan to be in metres);
 - (r) an indication on the drawing of directions of overland water flow and overland flow route; or
 - (s) any information, plans or studies required by Ontario Regulation 140/02.
17. For greater clarity, the Deputy CAO shall refuse any Application in any of the following circumstances:
- (a) the Owner of the subject Property has not consented in writing to the Placing or Dumping of Fill or to the removal of Topsoil or to alteration of the Grade;
 - (b) the Placing or Dumping of Fill is in contravention of any Federal, Provincial or Municipal laws, by-laws, notices, regulations, permits or agreements;
 - (c) the Placing or Dumping of Fill or alteration of the Grade will result in a change to any Grade established by a grading and drainage plan approved by the Deputy CAO including, without limitation, a grading and drainage plan in relation to any subdivision, re-zoning, site plan or building permit approval;
 - (d) where reasonable grounds exist to believe that the work would result in any Adverse Effects, including any possible negative impact to Municipal pavement, ditches, culverts, sidewalks, facilities or other infrastructure or services; or
 - (e) the Fill includes demolition materials, toxic or hazardous materials, glass, raw sewage, Contamination, or construction refuse or debris.

18. An Application may be deemed abandoned and closed in the sole discretion of the Deputy CAO, if within 90 days from the date it was submitted to the Municipality, the Applicant has failed to provide any required information or materials.
19. A Permit shall expire 90 days after the day on which it is issued pursuant to this By-law, unless otherwise specified within a Permit.
20. A Permit may be renewed at any time prior to its expiry for an additional 90 day period subject to payment of the renewal fee in accordance with the User Fee By-law, provided that no other details of the Application are modified.
21. The Deputy CAO has the discretion to revoke a Permit in circumstances in which they deem it to be appropriate, including but not limited to:
 - (a) a Permit obtained on mistaken, false or incorrect information;
 - (b) a Permit issued in error;
 - (c) a request for revocation in writing from the Applicant; or
 - (d) non-compliance with any terms or conditions of the Permit or of this By-law.
22. The Deputy CAO may attach to any Permit such terms and conditions as considered by the Deputy CAO to be necessary and appropriate.
23. Without limiting the generality of other Sections of this By-law, as a condition of issuing a Permit, the Deputy CAO may, in their sole discretion, require an Applicant to enter into an agreement with the Municipality to ensure that the Site Alteration is done in accordance with the objectives of this By-law, and the Deputy CAO is authorized to execute such agreements on behalf of the Municipality.

ENFORCEMENT

24. Where any Person contravenes any provision of this By-law, an Enforcement Officer may direct such Person to comply with this By-law and every Person so directed shall comply with such direction without delay.
25. Where an Enforcement Officer has reasonable grounds to believe that an offence has been committed by a Person, the Enforcement Officer may require the name, address, and proof of identity of that Person, and the Person shall supply the required information.

26. If an Enforcement Officer is satisfied that a contravention of this By-law has occurred, the Enforcement Officer may make an order requiring the person who contravened the 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, and any person who contravenes an order under this section is guilty of an offence.
27. If an Enforcement Officer is satisfied that a contravention of this By-law has occurred, the Enforcement Officer may make an order requiring the person who contravened the 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, and any person who contravenes an order under this section is guilty of an offence.
28. An order may be served;
- (a) personally to whom it is directed;
 - (b) by regular mail to the last known address of the Person;
 - (c) by registered mail to the last known address of the Person; or
 - (d) by placarding the Order at the pertinent Property.
29. If an order is served personally or by way of placarding at the Property, service is deemed to have occurred on the date of the personal service or the placarding.
30. If an order is served via regular or registered mail service is deemed to have occurred 3 business days after the day it was sent.
31. No Person shall fail to comply with an order issued under this By-law.
32. If a Person is directed or required by the Municipality to do a matter or thing pursuant to the authority of this By-law, 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.

PRESUMPTION

33. Where any Site Alteration occurs, is undertaken, caused or permitted on any Property, the Owner of the Property is presumed to have undertaken, caused, or permitted the Site Alteration to occur, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.

POWERS OF ENTRY

34. An Enforcement Officer, whether alone or accompanied by an individual possessing special or expert knowledge or skills, may enter on land that is subject to this By-law at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (a) this By-law;
 - (b) a direction or order of the Municipality made under the Municipal Act, 2001, S.O. 2001, c. 25 or this By-law; or
 - (c) an order made under section 431 of the Municipal Act, 2001, S.O. 2001, c. 25.
35. For the purposes of an inspection under this By-law, an Inspector may:
- (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information from any person concerning a matter related to the inspection; and
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
36. In addition to any other provision of this By-law, and subject to the provisions of the Municipal Act, 2001, S.O. 2001, c. 25, a provincial judge or justice of the peace may issue an order authorizing the Municipality to enter on land, including a room or place actually being used as a dwelling, for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (a) this By-law;
 - (b) a direction or order of the Municipality made under the Municipal Act, 2001, S.O. 2001, c. 25 or this By-law; or
 - (c) an order made under section 431 of the Municipal Act, 2001, S.O. 2001, c. 25.

OBSTRUCTION

37. No person shall hinder or obstruct, nor attempt to hinder or obstruct, either directly or indirectly, an Enforcement Officer, employee and/or agent of the Municipality in the lawful exercise of a power or duty under this by-law.

OFFENCES

38. Every person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.
39. Pursuant to the authority established in section 429(2) of the Municipal Act, 2001, S.O. 2001, c. 25, every person who contravenes any provision of this By-law is guilty of an offence and upon conviction pursuant to Part III of the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended, shall be subject to the following penalties:
- (a) Upon a first conviction is liable to a fine of not more than \$25,000; and
 - (b) Upon subsequent conviction(s) is liable to a fine of not more than \$100,000.
40. Each day on which a person contravenes any provision of this By-law shall be deemed to constitute a separate offence under this bylaw as provided for in section 429(2) of the Municipal Act, S.O. 2001, c. 25.
41. If any Person is in contravention of any provision of this By-law, and the contravention has not been corrected, the contravention of the provision shall be deemed to be a continuing offence for each day or part of a day that the contravention remains uncorrected.
42. Where any Person contravenes any provision of this By-law, such Person shall be responsible for all costs incurred by the Municipality directly related to the contravention.

SEVERABILITY

43. If any section or sections of this By-law, or parts thereof are found by any court of competent jurisdiction to be illegal or beyond the power of the Municipal Council to enact, such section or sections or parts thereof shall be deemed to be severable from this By-law and all remaining sections or parts of this By-law shall be deemed to be separate and independent therefrom and to be properly enacted and to be of full force and effect.

CONFLICT

44. In the event of a conflict between any provision of this By-law and any applicable Act or regulation, the provision that is the most restrictive prevails.

SCHEDULES

45. The following Schedules are attached to and form an integral part of this By-law:

Schedule “A” – Set Fines

SHORT TITLE

46. This By-law may be referred to as the “Site Alteration By-law”.

REPEAL

47. By-law 2008-114, as amended, is repealed on the date this By-law comes into force and effect.

EFFECTIVE DATE

48. This By-law shall come into force and take effect on the date it is enacted.

Passed in Open Session this day of , 2024

Mayor Adrian Foster

June Gallagher
Municipal Clerk

Schedule "A" – Set Fines

DRAFT

**Municipality of Clarington
PART I Provincial Offences Act
By-law #2024-XXX: Site Alteration By-law**

Page 1 of 1

Item	Column 1 Short Form Wording	Column 2 Provision creating or defining Offence	Column 3 Set Fine
1	Place or Dump Fill/Topsoil not in accordance with a Permit	s. 3.	\$ 500.00
2	Cause or permit Fill/Topsoil to be Placed or Dumped not in accordance with a Permit	s. 3.	\$ 500.00
3	Place or Dump Fill/Topsoil originating from outside the boundaries of the Municipality not in accordance with a Permit	s. 4.	\$ 500.00
4	Cause or permit Fill/Topsoil to be Placed or Dumped originating from outside the boundaries of the Municipality not in accordance with a Permit	s. 4.	\$ 500.00
5	Remove Soil not in accordance with a Permit	s. 5.	\$ 500.00
6	Cause or permit the removal of Soil not in accordance with a Permit	s. 5.	\$ 500.00
7	Make alteration to the Grade of land not in accordance with a Permit	s. 6.	\$ 500.00
8	Cause or permit alteration to the Grade of land not in accordance with a Permit	s. 6.	\$ 500.00
9	Fail to comply with terms and conditions of a Permit	s. 7.	\$ 500.00
10	Fail to comply with order	s. 31.	\$ 500.00
11	Hinder or obstruct/Attempt to Hinder or obstruct Enforcement Officer/employee/agent	s. 37.	\$ 500.00

“NOTE: The general penalty provision for the offences listed above is section 38 of By-law 2024-XX, a certified copy of which has been filed.”