

THE CORPORATION OF THE CITY OF BRANTFORD

BY-LAW NO. 28-2011

A BY-LAW TO PROHIBIT OR REGULATE THE REMOVAL OF TOPSOIL, THE PLACING OR DUMPING OF FILL AND, THE ALTERATION OF GRADE OF LAND IN AREAS OF THE CITY OF BRANTFORD.

WHEREAS Section 142 of the Municipal Act, 2001, S.O. 2001, c.25, as amended, authorizes local municipalities to pass by-laws which:

- (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 a Site;
- (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 a Site; and
- (e) impose conditions to a Permit, including requiring the preparation of plans acceptable to the City relating to Grading, Filling or Dumping, the Removal of Topsoil and the rehabilitation of a Site.

AND WHEREAS Council may also require that a Permit be obtained for the Placing or Dumping of Fill, the Removal of Topsoil, and the Alteration of the Grade of a Site within the City, and may prescribe the fees for such Permit, the circumstances under which a Permit may be issued, and the conditions that may be attached to such Permit;

AND WHEREAS Council considers it to be in the public interest to enact a by-law for prohibiting or regulating the Placing or Dumping of Fill, the Removal of Topsoil, and the Alteration of the Grade of a Site in order to ensure that:

- (a) Existing Drainage patterns are maintained;
- (b) Interference and damage to Watercourses or other bodies of water is limited;
- (c) Water quality is maintained;
- (d) Erosion and sedimentation are prevented;
- (e) Changes to Drainage or Grade are appropriate to protect natural heritage features and areas and archaeological resources;
- (f) The use of hazardous or improper Fill is prevented; and,
- (g) Unanticipated Drainage and Site Alteration changes are prevented;

AND WHEREAS it is in the interest of the community to protect significant cultural and natural heritage features and areas from unnecessary Alteration or destruction;

AND WHEREAS Council wishes to enact this by-law for these purposes;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE CITY OF BRANTFORD ENACTS AS FOLLOWS:

DEFINITIONS

1. In this by-law, the following definitions apply:

- (a) "Alteration" or "Site Alteration", for the purposes of this by-law, means the physical changing of Site conditions through the Placement or Dumping of Fill; the Removal of vegetative cover; the Removal of Topsoil; the excavation and/or movement of earth or rock; the compaction of Soil; the creation of impervious surfaces; the obstruction of drainage facilities; the modification of Watercourses; or any combination of the aforementioned activities.
- (b) "Applicant" or "Proponent" means the Person who submits an application to the City for a Site Alteration Permit pursuant to the provisions of this by-law.
- (c) "Archaeological Resources" includes artifacts, archaeological Sites, and marine archaeological Sites. The identification and evaluation of such resources are based upon archaeological fieldwork undertaken in accordance with the Ontario Heritage Act.
- (d) "Cease and Desist Order" means an Order issued under section 27 of this by-law.
- (e) "City" means the Corporation of the City of Brantford.
- (f) "Control Plan" means a drawing(s) and supporting report, stamped by a duly-qualified professional engineer, detailing the existing conditions, the proposed work, the proposed Grades, elevations and drainage pattern, the proposed Erosion and sedimentation control, and the environmental protection measures for a property. Such plan may also be known as an Erosion and Sediment Control Plan.
- (g) "Council" means the Council of the City.
- (h) "Designate" means a person who is an employee of the City and who has been appointed by the Director to administer all or part of this by-law on behalf of the Director.
- (i) "Director" means the Director of Environmental Services of the City,
- (j) "Drainage" means the movement of water to a place of disposal, whether by way of natural characteristics of the ground surface or by artificial means.
- (k) "Dump" means the depositing of Fill by any means, and includes the movement and depositing of Fill from one location on a property to another location on the same property, and "Dumping" and "Dumped" have corresponding meanings.

- (l) "Erosion" means the detachment and movement of Soil, sediment or rock fragments or the like by forces such as but not limited to water, wind, ice or gravity.
- (m) "Erosion and Dust Control" means measures to control erosion and dust generated as part of Site Alteration
- (n) "Fill" means any type of material deposited or placed on lands and includes, but is not limited to soil, stone, concrete, asphalt, rubbish, garbage, turf, dirt, earth, aggregate, and binder or any combination of such materials, as may be acceptable to the Director.
- (o) "Floodplain" means an area within the City as defined by the Grand River Conservation Authority (GRCA), as amended from time to time.
- (p) "Fish Habitat" means the spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out the life processes, as further identified by the Department of Fisheries and Oceans (Canada).
- (q) "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 land as of the date that this by-law is passed, including abutting ground surface up to three (3) metres wide surrounding such lands;
 - (ii) "Finished Grade" means the approved elevation of ground surface of lands upon which 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 ground surface of and upon which Fill is proposed to be Placed or Dumped, the Grade altered or Topsoil Removed.
- (r) "Officer" means an individual appointed by the City to enforce the provisions of this by-law, and includes a municipal by-law enforcement officer.
- (s) "Order for Removal" means an Order under section 33 of this by-law.
- (t) "Owner" means the Person(s) registered on the title of the land, that is the Site, in the Registry Office or Land Titles Office as the owner of such land.
- (u) "Permit" means a Permit that may be issued pursuant to this by-law.
- (v) "Permit Holder" means the Owner or the Person in possession of the property, and includes a lessee, a mortgagee in possession, or a person in charge of the property, to whom a valid Permit has been issued pursuant to this by-law.

- (w) "Person" means a company, corporation, partnership, individual or a person as defined in subsection 29(1) of the Interpretation Act, R.S.O. 1990, c.I-11 as amended.
- (x) "Place" or "Placing" means the distribution of Fill on lands which has the effect of establishing a Finished Grade higher or lower than the Existing Grade, and includes Soil stripping.
- (y) "Ponding" means the accumulation of surface water in an area not having Drainage caused by the Placing or Dumping of Fill, Altering of Grade or Removing of Topsoil, or the Alteration of the grade of land.
- (y) "Removal" means the excavation or extraction of any Fill that lowers the Existing Grade, and includes soil stripping.
- (z) "Reinstate" means the restoration of an altered site to its original pre-disturbed condition or a condition acceptable to the Director;
- (aa) "Retaining Wall" means a wall designed to contain and support Fill, which has a Finished Grade higher than that of adjacent lands.
- (bb) "Site" means the lands which are the subject of an application for a Permit pursuant to this by-law.
- (cc) "Soil" means material commonly known as earth, Topsoil, loam, subsoil, clay, sand or gravel or any combination of such materials.
- (dd) "Swale" means a shallow depression in the ground sloping to a place of disposal of surface water and providing a method of Drainage.
- (ee) "Topsoil" means those horizons in a Soil profile containing organic material and includes deposits of partially decomposed organic material such as peat, such horizons being technically known as the 'O' and 'A' horizons.
- (ff) "Vegetation" means any woody plant or contiguous cluster of plants, including shrubs, hedgerows, and trees.
- (gg) "Watercourse" means a natural or man-made channel or Swale in which water flow occurs, either continuously or intermittently with some degree of regularity.
- (hh) "Work Order" means an Order issued under section 28 of this by-law.
- (ii) "Work" means any physical change made to land and a noun synonymous with "Alteration"

APPLICATION OF THE BY-LAW

2. This by-law applies to all lands within the geographic limits of the City other than that portion of any property that is subject to regulations made under Section 28 of the Conservation Authorities Act, R.S.O. 1990, c.27, as amended;

PROHIBITIONS

3. No person shall cause or permit to cause Alteration of a Site in the City, including any lands submerged under a Watercourse or other body of water, without having first obtained a Site Alteration Permit in accordance with this by-law. Site Alteration activities include but are not limited to:
 - (a) the physical changing of Site conditions through the Placement or Dumping of Fill; the Removal of Vegetation; the Removal of Topsoil; the excavation and/or movement of earth or rock; the compaction of Soil; the creation of impervious surfaces; the obstruction of Drainage facilities; the modification of Watercourses; or any combination of the aforementioned activities;
 - (b) any Work performed on private property causing a blockage to a Drainage course and potential flooding on a neighboring property;
 - (c) any change to an approved subdivision grading and/or services plan that affects the intended Drainage patterns and design on a property;
 - (d) the construction of swimming pools;
 - (e) infilling on lots;
 - (f) building additions.

EXEMPTIONS

4. The provisions of this by-law shall not apply to:
 - (a) activities or matters undertaken by a municipality or local board of a municipality in accordance with the Municipal Act, 2001;
 - (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 subdivision agreement 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 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;

- (e) 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;
- (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. 2001, c. 25, s. 142 (5); 2002, c. 17, Sched. A, s. 30 (2, 3);
- (h) as part of the construction, extension, Alteration, maintenance, or operation of works under Section 26 of the Public Transportation and Highway Improvement Act, R.S.O. 1990, c. P.50, as amended.
- (i) topdressing of lawns with Topsoil;
- (j) cultivation or tilling of garden beds so long as such work does not have an adverse effect on existing Drainage patterns on neighbouring properties;
- (k) The removal of topsoil from a lot the area of which is less than one half (1/2) hectare in size, unless the site includes or is adjacent to a body of water;
- (l) excavation of Soil involving an area of less than nine square metres and a depth of less than 0.5 meters having no significant impact on trees, ground cover, Vegetation, Watercourses, or storm Swales and not altering or creating a slope at greater than 8 percent;
- (m) minor landscaping works which require less than 20 cubic metres of soil within any one year period and; are at least 0.5 metres from any property line and; do not impact Drainage patterns on neighbouring properties; or
- (n) 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 however that this provision shall not exempt from the provisions of this by-law the Removal of Topsoil for sale, exchange or other disposition.

PLANNING AND DEVELOPMENT PROCESS

5. The provisions of this Site Alteration By-Law, as amended from time to time, may form part of the development approval process governed by the Planning Act.
6. An application for a Site Alteration Permit may be processed concurrently with an application submitted pursuant to the Planning Act and may form part of the technical information requested in order to consider the planning application complete.
7. Where there is a development application involving a planning approval, there shall be no Site Alteration as a result of any Site preparation until the issuance of a Site Alteration Permit and/or the receipt of the final approval of the applicable planning applications.

APPLICATION REQUIREMENTS

8. Any person intending to undertake any Site Alteration within the limits of the City, through their own actions or through the actions of any other Person, shall apply for and obtain a Site Alteration Permit in accordance with the provisions of this by-law, unless otherwise exempted by Section 4, prior to undertaking any Site Alteration.
9. A Person applying for a Permit shall submit the following to the Director:
 - (a) A completed application in the form attached hereto as Schedule "E" which may be amended from time to time by the Director;
 - (b) Such completed application shall include:
 - (i) The names and addresses of the Owner of the land(s) upon which Site Alteration is intended, the proposed Permit Holder and the Applicant (if different), contractor, and consulting engineer (if applicable);
 - (ii) The municipal address and legal description of the land upon which Site Alteration is intended;
 - (iii) A schedule for the proposed Works, including the start and end dates and the construction period;
 - (iv) A description of the proposed Works;
 - (v) A description of the Fill and the source of the Fill, where applicable;
 - (vi) Identification of any Watercourse, any other body of water, shoreline, Fill or flood regulated area under Ontario Regulation 150/06 as determined after pre-consultation with the Grand River Conservation Authority;
 - (vii) All required signatures of such Persons as are named within the application in subsection 9(b)(i) above.;
 - (c) Payment of the prescribed fee as set out in Schedule 'B'; which fee may be changed from time to time by Council;

- (d) A Control Plan conforming to the requirements set out in Section 11 of this by-law;
 - (e) A plan showing the design, to proper scale, of any Retaining Wall that the Applicant proposes or that may be required by the Director and/or is a requirement of the Ontario Building Code including the dimensions thereof and any materials to be used in construction of any such Retaining Wall;
 - (f) Provision of security, if required, in a form and amount to be determined in accordance with Schedule "B" to this by-law, to secure performance of the Applicant's obligations under this by-law and any Permit that is issued hereunder;
 - (g) Provision of any required permit or approval that may be required by any external agency or governmental agency having jurisdiction regarding the Site or the proposed Works.
 - (h) Confirmation of permission, in writing, from all property owners that will be receiving Fill generated in accordance with the Permit and the Works.
 - (i) Provision of any report or study deemed necessary, by the Director or his/her designate, city department or any external agency / governmental agency having jurisdiction including, but not limited to, an environmental impact assessment, archaeological study, vegetation analysis, environmental or geotechnical report; and;
 - (j) Confirmation of any existing Official Plan designations, zoning, and the status of any planning applications on the property as determined after pre-consultation with the Director of Planning (regarding Official Plan) and Chief Building Official (regarding zoning) or his/her designate; and,
10. Notwithstanding Section 9(b), The Director may, in writing, waive the requirements for any of the application items listed, after taking into consideration the nature and scale of the proposed Works and the anticipated impact on the Site and surrounding environment.

CONTROL PLANS

11. A Control Plan, acceptable to the Director and conforming to Appendix V-C "Erosion and Sedimentation Control Plan Design Requirements" of the Official Plan for the City, as amended, shall accompany each Permit Application unless written direction is issued otherwise by the Director in accordance with Section 10 above.

SUPPORTING DOCUMENTATION

12. Further to section 9 (i), the Director may require the Applicant to undertake any of the following as part of the Application for a Site Alteration Permit:
- (a) The preparation and submission of an Environmental Impact Statement (EIS), which shall be prepared by a professional qualified in the relevant environmental field of study and conform to the following requirements:
 - (i) The EIS shall be acceptable to the Director and all other authorities

having jurisdiction;

- (ii) The EIS shall include, but is not limited to, the following:
 - (1) An outline of the location, the size of the property, and the amount of Fill to be Placed or Dumped, Topsoil to be Removed, or Grade to be Altered;
 - (2) A description of the type of feature(s) present and their significance, including reference to all natural heritage features and ecological functions;
 - (3) A discussion and evaluation of the compatibility of the proposed Placement or Dumping of Fill, Removal of Topsoil, or Alteration of the Grade of the land with the existing natural heritage features and ecological functions;
 - (4) The identification of any portion of the property where Placing or Dumping Fill, Removing Topsoil, or Altering the Grade of the land should be precluded, and an outline of the need for and type of mitigation required to protect identified natural heritage features and areas and ecological functions; and,
 - (5) The impact that the Site Alteration would have on any adjacent lands.
- (iii) The EIS shall demonstrate that there will be no negative impacts on any natural heritage features or area, any adjacent lands, or on their ecological functions.
- (iv) In the event that a property is identified as containing archaeological resources, or as being an area of archaeological potential, the Applicant or Owner shall be required to complete a Stage 1 Archaeological Assessment, as well as any subsequent assessments or recommendations as identified within the Stage 1 Archaeological Assessment. These assessments shall be prepared by an archaeologist holding a license from the Province of Ontario, in accordance with all relevant legislation and policy, including, but not limited to, the Ontario Heritage Act, the Archaeological Assessment Technical Guidelines, Standards and Guidelines for Consulting Archaeologists, or any other document(s) or requirements as published by the Province of Ontario.

- 13. (a) If required, an Applicant shall submit a plan for a Retaining Wall. The plan submitted shall include construction details and be accompanied by a building permit where required. No Retaining Wall shall encroach, either above or below Existing Grade, upon abutting lands unless authorized in writing by the owner of such abutting lands.
- (b) The Director may require that a Retaining Wall be constructed in the event that:
 - (i) Erosion of Fill onto abutting lands may occur; or,
 - (ii) The Finished Grade of the lands at the property line is higher or lower

than that of the Existing Grade of the abutting lands.

14. An Applicant shall provide any other information, document, or plan that may be required by the Director to determine if the proposed Work conforms to this by-law and to any other applicable statute, regulation, or by-law.

ISSUANCE OF PERMIT

15. (a) The Director shall issue a Site Alteration Permit in the event that;
- (i) The Director is satisfied that the Applicant has complied with or will comply with all requirements of this by-law;
 - (ii) The Director is satisfied 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, Altering of the Grade, or Removing of Topsoil, are all in accordance with proper engineering standards and practice, and compliant with the Ontario Building Code;
 - (iii) The Director is satisfied that any Fill to be used, as defined in this by-law, conforms with the requirements of all current environmental legislation and is clean and free of any glass, plastics, rubber, metals, liquid, roofing shingles, large pieces of concrete rubble, garbage or other contaminants;
 - (iv) The Director is satisfied that the proposed Control Plan mitigation measures to be implemented prior undertaking any Site Alteration activities will minimize the potential for and provide reasonable assuredness against:
 - i) Erosion;
 - ii) blockage of a Watercourse;
 - iii) siltation in a Watercourse;
 - iv) contamination of a Watercourse;
 - v) flooding or Ponding;
 - vi) a detrimental effect on any Vegetation that has been designated for preservation; or
 - vii) a detrimental effect on the natural environment of the area
 - (v) The Director is satisfied that the Site will be rehabilitated 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 subject to the Permit;
 - (vi) The Director is satisfied that all required permits and approvals from other governmental agencies having jurisdiction have been granted and issued to the Owner;

- (vii) The Director is satisfied that the design and installation of a Retaining Wall has been certified by a structural engineer who is licensed to practice in the Province of Ontario; and
- (viii) The Director is satisfied that any and all conditions of planning approval have been satisfied and cleared by appropriate authorities.
- (b) Where a Permit has been issued pursuant to this by-law, no Person shall undertake the Work which is the subject of the Permit except in accordance with the Permit Applications, plans, documents, and other information submitted to the City upon which the Permit was issued and in accordance with the terms and conditions of the Permit.
- (c) Notwithstanding the issuance of a Permit pursuant to this by-law, the Permit Holder or Owner shall comply with all other applicable legislation, including but not limited to all other municipal by-laws.

TERMS AND CONDITIONS

- 16. The Director may impose terms and conditions upon the issuance of any Permit. In addition to any other terms or conditions that may be imposed by the Director, Permits shall be issued subject to the terms and conditions set out in Schedule "C" to this by-law unless exempted in writing by the Director.
- 17. A copy of the Site Alteration Permit, issued by the Director, shall be posted in a conspicuous location on the subject property, being located adjacent to a public road and visible to all Persons, or at such other location designated by the Director, prior to the Placement of any Fill, the Removal of any Topsoil, or the Alteration of the Grade of land allowed by the Permit.

REFUSAL TO ISSUE PERMIT

- 18. The Director shall refuse to issue a Permit when the requirements of this by-law have not been satisfied. In the event that the Director refuses to issue a Site Alteration Permit, the Applicant shall be informed in writing of the refusal by the Director and the reasons for such refusal. The Director may reconsider the Application if additional information or documentation required by the Director is submitted by the Applicant.

REVOCAION OF PERMIT

- 19. (a) A Site Alteration Permit may be revoked by the Director under any of the following circumstances:
 - (i) If it was issued on mistaken, misleading, false, or incorrect information;
 - (ii) If it was issued in error;
 - (iii) If the Owner, Applicant, or Permit Holder requests, in writing, that it be revoked;

- (iv) If the terms of an agreement under this by-law are not complied with; or,
 - (v) If an Owner fails to comply with any provision of the Site Alteration Permit or this by-law or any other applicable statute, regulation or policy regarding the Site, the Site Alteration Permit or the Work.
- (b) When a Site Alteration Permit is revoked, the Owner, Applicant, and/or Permit Holder shall immediately cease all operations and Work being conducted under the authority of the revoked Permit and shall immediately rehabilitate and stabilize the land so as to prevent adverse impacts from erosion and sedimentation.

INSPECTIONS

20. Every Permit Holder shall ensure that a request is made to the Director by the Permit Holder or an authorized agent to make inspections at the commencement and completion of the work that is subject to the Permit, and to make any such further inspection(s) as may be required by the Director.

TERM OF PERMIT AND PERMIT RENEWAL

21. Any Permit issued pursuant to this by-law shall be valid for a period of one year from the date of issuance unless revoked in accordance with this by-law.
22. A Permit which has expired may be renewed by the Director prior to the date of expiry by making a written request to the Director accompanied by a payment of one-half of the original Permit fee, provided that the proposed Work which was the subject of the Permit has not been revised. A Permit that has been renewed in accordance with this section shall therefore be treated as a new Permit except that it shall not again be renewed.
23. No Permit shall be renewed in the event that the Permit Holder is in breach of any of the terms of this by-law or the Site Alteration Permit.

TRANSFER OF SITE

24. If the registered ownership of the Site for which a Permit has been issued is transferred while the Permit remains in effect and outstanding, the new Owner shall, prior to the commencement or continuation of any Work
- (a) provide the City with a written undertaking to comply with all of the conditions and provisions of the Permit; and
 - (b) provide security in a form and amount acceptable to the Director, at which time any security previously provided by the prior Permit Holder pursuant to this by-law shall be released;

and failing which, the Permit shall be deemed to be cancelled as of the date of the transfer of ownership.

REGULATIONS

25. In addition to the other requirements of this by-law, and notwithstanding any Permit issued under this by-law, no Person shall cause or permit to cause a Site Alteration in the City, including any lands which are submerged under any Watercourse or other body of water unless:
- (a) it is done with the consent of the Owner of the Site;
 - (b) all Fill to be used includes only Soil, stone, sod or other material acceptable to the Director, conforms with the requirements of all current environmental laws, is clean and such Fill is free of any glass, plastics, rubber, metals, liquid, roofing shingles, large pieces of concrete rubble, garbage or other contaminants;
 - (c) the Drainage system for the Site is provided in accordance with this by-law and any Permit issued hereunder and as otherwise required by law, and in accordance with proper engineering standards and practices and will not result in Erosion, blockage, siltation or contamination of a water course, flooding or Ponding;
 - (d) the Fill is Placed or Dumped, any Retaining Wall containing such Fill is erected, the Grade is Altered, or the Topsoil is removed, in such a manner that no flooding, Ponding, or other adverse effects are caused on other lands.
26. Every Person to whom a Permit is issued pursuant to this by-law shall, in addition to any conditions of the Permit:
- (a) ensure that all Work is carried out in accordance with the approved Control Plan;
 - (b) ensure that all environmental protection measures specified in the Control Plan, including erosion and sediment control, are installed and maintained in good repair throughout the duration of the Permit;
 - (c) ensure that all Work is carried out in accordance with all applicable legislation relating to the environment;
 - (d) 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, and comply with the requirements of the Ontario Building Code;
 - (e) ensure that the Finished Grade surface is protected from erosion with appropriate cover;
 - (f) ensure that Fill shall not be Placed or Dumped around the perimeter of any existing building in contravention of the requirements of the Ontario Building Code;

- (g) ensure that no trench in which piping is laid forming part of the Drainage system shall be covered and backfilled until the Work has been inspected and approved by the Director;
- (h) provide and maintain such protection for trees as may be required by the Director;
- (i) ensure that the Work pursuant to the Permit does not soil or otherwise foul any municipal roads. In the event that this occurs, the Person to whom the Permit was issued shall, in accordance with the City's by-law to prohibit the obstructing, encumbering, injuring or fouling of highways and bridges, as amended from time to time, ensure that the road(s) affected are cleaned to the satisfaction of the Director;
- (j) ensure that all conditions of the Permit issued pursuant to this by-law and any requirements of this by-law are fulfilled to the satisfaction of the Director;
- (k) ensure that the Work that is the subject of the Permit does not occur in areas regulated by a Conservation Authority or other approval agency without written approval of the respective regulatory or approval agency, and, in the event that such Work is undertaken without such approval, ensure that the affected areas are restored to the satisfaction of the Director.

CEASE AND DESIST ORDER

27. Where an Owner or any other Person is in contravention of the by-law, or any term or condition of a Permit issued under this by-law, the Director or an Officer will make an Order (a "Cease and Desist Order") directing that the Owner or such Person cease any or all of the Work immediately.

WORK ORDER

28. If, after inspection, an Officer is satisfied that there is a contravention of this by-Law, the Officer may make an Order (a "Work Order") requiring the Owner, Applicant, or Permit Holder or the Person who caused or permitted the Site Alteration in contravention of this by-Law to discontinue the activity and reinstate the land or otherwise correct the contravention. The Order shall set out:
- (a) The municipal address and the legal description of the land;
 - (b) The reasonable particulars of the contravention and the Work required to be done to correct the contravention and the period within which there must be compliance; and,
 - (c) A notice stating that if the Work is not done in compliance with the Order within the specified period, the City may have the Work done at the sole expense of the Owner.
29. If the Work required by an Order under Subsection 28 is not done within the specified period, the City and its agents, in addition to all other remedies the City

may have, may do the Work at the Owner's expense, and may enter upon the land at any reasonable time for this purpose.

30. An Order pursuant to Section 28 of this By-Law shall be served personally or by prepaid registered mail to the last known address of the Owner, Applicant, and/or Permit Holder as recorded in the tax rolls or other records of the City.
31. An Officer who is unable to effect service pursuant to Section 28 of this by-Law shall place a placard containing the terms of the Order in a conspicuous place on the property and the placing of the placard shall be deemed to be sufficient service of the Order on the Owner, Applicant, and/or Permit Holder.
32. Any costs incurred by the City under section 29 plus interest accrued to the date payment is made at the rate of 3% percent per annum or such lesser rate as may be approved by the City, may be recovered from the Owner by action in a like manner as taxes, and such costs are considered a lien on the land upon the registration in the proper land registry office of a notice of a lien, and:
 - (i) The lien is in respect of all costs that are payable at the time the Notice is registered, plus interest accrued to the date of payment; and,
 - (ii) Upon payment of all costs payable, plus interest accrued to the date of payment, a discharge of the lien shall be registered by the City in the proper land registry office.

ORDER FOR REMOVAL

33. Where a Permit has not been issued and any Person is in contravention of this by-law, the Director or an Officer may issue an Order for Removal requiring the Person to restore the property to the same condition as it was in prior to the commencement of such Work, to the satisfaction of the Director, within a period of time as set out in the Order.

COMPLIANCE WITH ORDERS

34. Any Person to whom a Cease and Desist Order, a Work Order or an Order for Removal is issued pursuant to this by-law shall comply with the terms of such Order, within the time set out therein.

ENFORCEMENT

35. The administration and enforcement of this by-law, including all Permits issued hereunder, shall be performed by the Director and by those Persons designated as Officers by by-law of the City, as may be amended from time to time.
 - (a) The Director and Officers may, at any reasonable time, enter and inspect any land to determine whether this by-law, a Cease and Desist Order, a Work Order or an Order for Removal, a condition to a Permit issued pursuant to this by-law, or a Court Order relating to this by-law is being complied with.

- (b) For the purposes of an inspection under (a), the Director and any Officer may:
- (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.
- (c) No Person shall obstruct the Director or any Officer in carrying out an inspection or exercising any powers or duties under this by-law
- (d) No Person shall fail to produce any information required by the Director or any Officer pursuant to clause 35 (b) of this by-law.

SERVICE

36. Any service required to be given under this by-law is sufficiently given if delivered personally or sent by registered mail to the Owner or other addressee at the last known address of such person of the land as recorded in the tax rolls or other records of the City.
37. Where service is effected by registered mail, it shall be deemed to be made on the fifth (5) day after the date of mailing.

OFFENCE AND PENALTY

38. Every Person who contravenes this by-law is guilty of an offence.
39. Every contravention of this by-law is hereby designated as a continuing offence.
40. Every Person who is convicted of an offence under this by-law is liable:
- (a) On first conviction, to a fine of not more than \$10,000.00; and
 - (b) On any subsequent conviction(s), to a fine of not more than \$25,000.00 for each subsequent conviction.
41. Despite section 40 of this by-law, where the Person convicted is a corporation the maximum fines are \$50,000.00 for a first conviction and \$100,000.00 for any subsequent conviction(s).

SCHEDULES

42. All schedules attached hereto shall form part of this by-law.

SEVERABILITY

43. If a court or a tribunal of competent jurisdiction declares any provision or part of a provision of this by-law to be illegal or unenforceable for any reason whatsoever, then that particular provision or provisions or part of the provision shall be severed and the remainder of this by-law shall continue to remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

SHORT TITLE

44. This by-law shall be referred to as the City of Brantford Site Alteration By-law.

READ A FIRST TIME: MARCH 7, 2011

READ A SECOND TIME: MARCH 7, 2011

PASSED: MARCH 7, 2011



MAYOR



CLERK

**SCHEDULE "B" TO BY-LAW 28-2011
THE CORPORATION OF THE CITY OF BRANTFORD
APPLICATION FOR SITE ALTERATION PERMIT**

1. Permit Fee Schedule

TYPES OF PROPERTY OF SITE ALTERATION	PERMIT FEE	REFUNDABLE SECURITY	RENEWAL FEE
RESIDENTIAL			
Infill Lot – Residential Construction	\$ 600.00	\$ 3,000.00	\$ 300.00
Grading – Property adjacent to or including a watercourse or shoreline	\$ 600.00	\$ 1,500.00	\$ 300.00
Grading – Property containing a drainage easement or catch basin	\$ 600.00	\$ 1,500.00	\$ 300.00
Construction of inground pool or pond – Assumed Subdivision	\$ 600.00	\$ 1,500.00	\$ 300.00
Construction of inground pool or pond – Unassumed Subdivision	\$ 350.00	Developer's letter of credit	\$ 175.00
Other site alterations to individual residential lots (grading associated with additions to buildings, removal/filling of pools, demolitions, etc.)	\$ 350.00	\$ 1,500.00	\$ 175.00
COMMERCIAL / INDUSTRIAL			
Extension to existing parking lot and/or building	\$ 900.00	Security under Site Plan, or otherwise to be determined by Director	\$ 450.00
Construction within an unassumed industrial/commercial subdivision	\$ 900.00		\$ 450.00
Other site alterations to commercial/industrial property (gas stations, excavations, etc.)	\$ 900.00		\$ 450.00
Other types of Site Alteration not included above (including site alterations outside the subdivision process)	\$ 1,100.00 (plus \$ 50.00 per hectare)	Determined by Director	\$ 600.00
CANCELLATION FEE	\$ 250.00		
AMENDMENT OF APPLICATION (NOT RESULTING IN A CHANGE IN CATEGORY OF APPLICATION)	Up to half the permit fee at the discretion of Director	Determined by Director	

SCHEDULE "C" TO BY-LAW 28-2011

1.0 SITE ALTERATION PERMIT FEES

The fee for processing, administration and inspection for a Permit shall be in accordance with the Permit Fee Schedule in Schedule 'B' plus all applicable taxes.

2.0 SECURITY FOR SITE ALTERATION MEASURES

- (a) Where required, security shall be in the form of cash, certified cheque or a letter of credit in a form acceptable to the City.
- (b) Any letter of credit must remain in effect for the full duration of the Permit. Any letter of credit and its subsequent renewal forms shall contain a clause stating that thirty (30) days written notice must be given to the City prior to its expiry or cancellation
- (c) In the event that the City receives notice that a letter of credit is expiring and will not be renewed, or if further or additional securities are not provided within the said thirty (30) days, the City may draw on the current letter of credit at the discretion of the Director.
- (d) Any interest accruing on realized cash security shall belong to the City and not to the Permit Holder.
- (e) Such security may be used for:
 - (i) cleanup of mud tracking of the road or restoration of any municipal works. The Owner will be notified of the required clean up, and if the work is not completed by the Owner, the City will carry out the work using the security to cover the cost plus 25% of the value of the work to cover administration costs;
 - (ii) the completion or rectification of Work required under the Permit;
 - (iii) the completion of Work required under an Order issued under this by-law
- (f) Such security may be reduced from time to time at the discretion of the Director, but shall otherwise be held pending the completion of all Works required under the Permit and any Order issued under this by-law.
- (g) Where the Permit Holder receives approval for a development application under the Planning Act and has entered into an agreement with the City, the securities provided for Work carried out under a Site Alteration Permit shall be returned to the Permit Holder or applied towards the security requirements specified in the Site Plan Approval or Subdivision Agreement.

3.0 It is the responsibility of the Permit Holder:

- (a) to provide proof satisfactory to the Director that the Site has been adequately reinstated and stabilized in accordance with this by-law and the Control Plan accompanying any Permit;
- (b) to provide a certificate of a consulting engineer or surveyor that the elevations have been completed in accordance with the plans submitted and the finished project does not detrimentally affect drainage on adjacent properties
- (c) to request that the City carry out a final inspection to confirm that all relevant terms of this by-law and any Permit have been complied with.

4.0 When the provisions of paragraph 9.0 of this by-law and all work required under the Permit or any Order has been fully complied with to the satisfaction of the Director, the Director shall release the Applicant's security.

5.0 Security held for the protection of trees shall be held until the Director is satisfied that no municipal or boundary tree was injured or destroyed as a result of the Site Alteration in accordance with applicable City policies for the protection of trees.

SCHEDULE "D" TO BY-LAW NUMBER 28-2011

PERMIT CONDITIONS

1.0 All Permit Holders shall:

- 1.1 Notify the Director in writing within 48 hours of commencing any land disturbance or Site Alteration;
- 1.2 Notify the Director in writing of the completion of any control measures within fourteen (14) days after their installation;
- 1.3 Obtain permission in writing from the Director prior to modifying any Control Plan;
- 1.4 Install all control measures as identified in the approved Control Plan;
- 1.5 Maintain all road Drainage systems, stormwater Drainage systems, Erosion and sediment control measures, environmental protection measures and other facilities identified in the Control Plan;
- 1.6 Repair any siltation or Erosion damage to adjoining surfaces and Drainage ways;
- 1.7 Inspect the construction control measures at least once per week and after each rainfall of at least 1 centimetre and make needed repairs and provide to the Director a written report documenting the condition of the construction control measures observed during each inspection and repair work undertaken or to be undertaken, complete with applicable timelines for completion;
- 1.8 Allow employees or agents of the City to enter the Site for the purpose of inspection, to assess compliance with the Control Plan or for performing any work necessary to bring the Site into compliance with the Control Plan; and
- 1.9 Maintain a copy of the Control Plan on the Site.

2.0 The City:

- 2.1 Upon the failure by the Permit Holder to complete all or part of the Works in the time stipulated in the Control Plan, may draw the appropriate amount from the securities posted and use the funds to arrange for the completion of the said Works, or any part thereof;
- 2.2 Upon the failure by Permit Holder to repair or maintain a specific part of the Works as required by the City, and in the time requested, may at any time authorize the use of all or part of the securities to pay the cost of any part of the Works it may in its absolute discretion deem necessary; or
- 2.3 In the case of emergency repairs or clean-up, the City may undertake the necessary Works without notice at the expense of the Permit Holder and reimburse itself out of the securities posted by the Applicant or to add the cost of the Works to the real property tax roll to be collected in like manner as taxes.
- 2.4 Notwithstanding Sections 2.1, 2.2 and 2.3, the Director may exercise discretion with respect to extreme rainfall events and provide additional time to repair damaged construction control measures after such an event.

SCHEDULE "E" TO BY-LAW NUMBER 28-2011
Standards for Plans Application for Site Alteration Permit

Two (2) certified copies of a Site Alteration Control Plan are required. All plans are to be metric and printed from original drawings with all information legible and clear. All plans are to be folded to 8½ x 11" size with title blocks visible. All elevations shall be tied to existing City bench marks and be related to geodetic datum.

Site Alteration Control Plans, or accompanying documentation shall include the following information:

- (i) a key map showing the location of the Site;
- (ii) the Site boundaries;
- (iii) the number of hectares of the Site;
- (iv) the use of the land and any adjacent land;
- (v) the location, dimensions and use of buildings or structures existing or proposed to be erected on the Site;
- (vi) the location, dimensions and use of buildings or structures on adjacent property within 30 metres beyond the Site boundary;
- (vii) the location of any easements over the property;
- (viii) the location of lakes, streams, wetlands, channels, ditches, Swales, Watercourses, other bodies of water or other natural heritage features on the Site or within 30 metres beyond the Site boundary;
- (ix) the Regional Storm Flood Plan and Conservation Authority Fill Regulation lines;
- (x) the location of the predominant soil types;
- (xi) the location and type of vegetative cover on the Site, including the variety and dbh (diameter at breast height) of every tree on the Site;
- (xii) the location (including distance from the property line), variety, and dbh (diameter at breast height) for every tree located within 10 metres of the Site, any access route to the Site, or any proposed staging or storage area. Where access to boundary trees are not available, estimated dbh shall be provided;
- (xiii) such tree reports prepared by qualified tree consultants as may be required by the Director, through other City by-laws or policies.
- (xiv) The location and dimension of any existing and proposed storm water Drainage systems, and natural Drainage patterns on or within thirty (30) meters beyond the Site boundary;
- (xv) the location and dimensions of utilities, structures, roads, highways, paving, sidewalks, walkways, easements, catch basins;
- (xvi) the existing Grade elevations at contour intervals not to exceed one half of one metre and to extend a minimum of thirty (3) metres beyond the Site boundary with spot elevations along the property line at sufficient intervals to clearly show the existing Drainage patterns on the land and on abutting lands;
- (xvii) the proposed final Grade elevations of the Site;
- (xviii) the location and dimensions of all proposed land-disturbing activities;

- (xix) the location and dimensions of all proposed temporary stockpiles for Soil and other materials;
- (xx) the location and dimensions of all proposed access routes from highways;
- (xxi) the location and dimensions of all proposed staging areas for equipment;
- (xxii) the location, dimensions, design details and design calculations of all construction Site control measures necessary to meet the requirements of this by-law, including details of the proposed erosion and sediment control measures, and details of any Drainage system to be used upon the completion of the Site Alteration;
- (xxiii) a schedule of the anticipated starting and completion dates of each Site Alteration activity including the installation of Site control measures needed to meet the requirements of this by-law;
- (xxiv) provision for the maintenance of the construction Site control measures during construction including a mud tracking prevention program which describes the procedures for mud tracking prevention and road clean up and designates a contact person for such a program throughout each land-disturbing or land-developing activity;
- (xxv) the scale of drawing;
- (xxvi) details of the Site rehabilitation including the type and location of all interim and permanent stabilization measures;
- (xxvii) a certificate on the drawing, executed by a Licensed Professional Engineer or Registered Ontario Land Surveyor in the following form:
*" I have reviewed the plans for the construction of _____
located at _____
and have prepared this plan to indicate the compatibility of the proposal to existing adjacent properties and municipal services. It is my belief that adherence to the proposed grades as shown will produce adequate surface drainage and proper facility of the municipal services without any detrimental effect to the existing drainage patterns or adjacent properties."*
- (xxviii) Such further and other information with respect to the Site as may be required by the Director.