

THE CORPORATION OF THE CITY OF KAWARTHA LAKES

BY-LAW 2005 - 286

A BY-LAW PROHIBITING TOPSOIL REMOVAL AND GRADE ALTERATION

Recitals

1. Section 142 of the *Municipal Act, 2001* authorizes municipal councils to pass by-laws respecting site alteration, including by-laws prohibiting the removal of topsoil and the alteration of the grade of land.
2. Council considers it advisable to enact a by-law prohibiting the removal of topsoil and the alteration of the grade of land within the City.

Accordingly, the Council of The Corporation of the City of Kawartha Lakes enacts this By-law 2005-286.

Section 1.00: Definitions and Interpretation

- 1.01 **Definitions:** In this by-law,

“**City**”, “**City of Kawartha Lakes**” or “**Kawartha Lakes**” means The Corporation of the City of Kawartha Lakes;

“**Council**” or “**City Council**” means the Council of the City of Kawartha Lakes;

“**grade**” means the elevation of the ground surface;

“**Manager of Building and Municipal Law Enforcement**” or “**Manager**” means the person who holds that position and his or her delegate(s) or, in the event of organizational changes, another person designated by Council;

“**municipal law enforcement officer**” means a person appointed by Council under the *Police Services Act* to enforce the City’s by-laws;

“**officer**” means a person designated by Council in accordance with subsection 142(4) of the *Municipal Act, 2001* to enforce the provisions of this by-law;

“**person**” includes a corporation as well as an individual; and

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

- 1.02 **Interpretation:**

- (a) Schedule “A” - Exemptions - is attached to and forms part of this by-law.
- (b) Except as otherwise provided, the provisions of this by-law apply to topsoil removal and grade alteration throughout the City.
- (c) The words “include” and “including” are not to be read as limiting the meaning of a word or term to the phrases or descriptions that follow.

- 1.03 **Statutes:** References to laws in this by-law are meant to refer to the statutes, as amended from time to time, that are applicable within the Province of Ontario.

- 1.04 **Severability:** If a court or tribunal of competent jurisdiction declares any portion of this by-law to be illegal or unenforceable, that portion of this by-law shall be considered to be severed from the balance of the by-law, which shall continue to operate in full force and effect.

Section 2.00: Regulations

- 2.01 **Topsoil Removal:** No person shall remove or cause or permit the removal of topsoil from any land.

- 2.02 **Grade Alteration:** No person shall alter or cause or permit the alteration of the grade of any land.

- 2.03 **Exemptions:** The regulations established by this by-law do not apply to the activities and matters described in Schedule “A”.
- 2.04 **Limitations:** The exemptions described in Schedule “A” do not apply to work that is not completed in accordance with the terms of the applicable exemption.
- 2.05 **Conservation Authorities Act:** If a regulation is made under section 28 of the *Conservation Authorities Act* respecting the removal of topsoil or alteration of the grade of land in any area of the City of Kawartha Lakes, the regulations established by this by-law are of no effect in respect of that area.

Section 3.00: Enforcement and Penalties

- 3.01 **Enforcement:** This by-law may be enforced by every officer who has been designated by Council under section 4.02.
- 3.02 **Orders:** Every officer who has been designated by Council under section 4.02 is authorized to make orders in accordance with subsections 144(5) and 144(6) of the *Municipal Act, 2001* requiring any person who is removing topsoil or altering the grade of land in contravention of this by-law to discontinue the activity or to do work to correct the contravention.
- 3.03 **Obstruction:** No person shall hinder or obstruct, or attempt to hinder or obstruct, any officer exercising a power or performing a duty under this by-law or under section 144 of the *Municipal Act, 2001*.
- 3.04 **Offence and Penalty:** Every person who contravenes this by-law or an order made by an officer under the authority of subsection 144(4) or 144(5) of the *Municipal Act, 2001* is guilty of an offence and, upon conviction, is liable to a fine in accordance with subsections 144(16) and 144(17) of the *Municipal Act, 2001* and to any other applicable penalty.
- 3.05 **Multiple Offences:** The conviction of a person for the contravention of any provision of this by-law shall not operate as a bar to the prosecution against the same person for any subsequent or continued contravention of this by-law.
- 3.06 **Court Order:** If a person is convicted of an offence for contravening this by-law or an order made by an officer under the authority of subsection 144(4) or 144(5) of the *Municipal Act, 2001*, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may order the person, in such manner and within such period as the court considers appropriate,
- (a) to rehabilitate the land; or
 - (b) to restore the grade of the land to its original condition.

Section 4.00: General Provisions

- 4.01 **Administration:** The Manager of Building and Municipal Law Enforcement is responsible for the administration of this by-law.
- 4.02 **Designation of Officers:** The Manager and all Municipal Law Enforcement Officers who report to the Manager are designated as officers for the purpose of this by-law.
- 4.03 **Effective Date:** This by-law comes into force on the date that it receives third reading and is passed.

By-law read a first, second and third time, and finally passed, this 15th day of November, 2005.

Mayor

Clerk

**SCHEDULE “A”
EXEMPTIONS:**

1. This by-law does not apply to,
 - (a) activities or matters undertaken by, on behalf of the City of Kawartha Lakes or a local board of the City of Kawartha Lakes;
 - (b) the removal of topsoil or alteration of the grade of land undertaken pursuant to an agreement with the City of Kawartha Lakes;
 - (c) the 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;
 - (d) the 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;
 - (e) the 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;
 - (f) the 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*;
 - (g) the 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 zoning by-law passed under section 34 of the *Planning Act*;
 - (h) the removal of topsoil or alteration of the grade of land undertaken on land on which the removal of topsoil or alteration of the grade is a permitted use under a zoning by-law passed under section 34 of the *Planning Act*;
 - (i) the removal of topsoil or alteration of the grade of land undertaken as a necessary part of drain construction under the *Drainage Act* or the *Tile Drainage Act* or of agricultural drain construction other than under the *Drainage Act* or the *Tile Drainage Act*;
 - (j) the removal of topsoil or alteration of the grade of land undertaken as a necessary part of constructing a building or a sewage system for which a permit has been issued under the *Building Code Act*;
 - (k) the removal of topsoil or alteration of the grade of land undertaken as a necessary part of the lawful construction of a swimming pool or pond; or
 - (i) the removal of top soil or alteration of grade of land undertaken as an incidental part of creation, expansion or alteration of a private parking lot or area.
2. This by-law does not apply to the removal of topsoil or alteration of the grade of land undertaken as a necessary part of rehabilitating land or restoring the grade of land to its original condition.
3. The provisions of this by-law respecting the removal of topsoil do 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.
4. The exception in section 3 of this Schedule respecting the removal of topsoil as an incidental part of a normal agricultural practice does not include the removal of topsoil for sale, exchange or other disposition.
5. This by-law does not apply to the removal of topsoil or alteration of the grade of land undertaken as an incidental part of normal gardening, landscaping or maintenance activities, provided that existing drainage patterns are not affected.