

SUMMARY:

The Soil Deposit bylaw sets out the regulations for the deposit of soil on land where that soil did not previously exist including the requirement for a permit issued by the Director of Planning & Development Services. The bylaw provisions also include specific permit exemptions, permit conditions, security deposit requirements and details required for a permit application. There is no fee for a soil deposit permit.

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CITY OF KELOWNA
BYLAW NO. 8504
REVISED: February 28th, 2000

A bylaw to regulate the deposit of soil within the City of Kelowna

WHEREAS Section 723 of the *Municipal Act*, R.S.B.C. 1996, c.323 allows a local government to regulate or prohibit the deposit of Soil;

NOW THEREFORE, the Municipal Council of the City of Kelowna, in open meeting assembled, hereby enacts as follows:

1. TITLE

1.1 This Bylaw may be cited as "Soil Deposit Bylaw No. 8504".

2. APPLICABILITY

2.1 This Bylaw applies to all **lands** within the **City** of Kelowna.

2.2 Nothing in this Bylaw shall preclude anyone from complying with the provisions of any other local, provincial, or federal regulations or enactment.

2.3 Any enactment referred to herein is a reference to an enactment of British Columbia, and the regulations thereto, as amended, revised, consolidated or replaced from time to time, and any bylaw referred to herein is a reference to an enactment of the **Council** of the **City** of Kelowna, as amended, revised, consolidated, or replaced from time to time.

3. DEFINITIONS

3.1 In this Bylaw, unless the context otherwise requires:

"**City**" means the **City** of Kelowna;

"**Council**" means the Municipal **Council** of the **City** of Kelowna;

"**Deposit**" means to place, store, **stockpile**, spill, or release directly or indirectly, **soil** on any **land**, where that **soil** did not previously exist; or as the context requires, the actual **deposit** of **soil** on the **land**;

"**Director**" means the **Director** of Planning and Development Services, or a duly authorized representative;

"**Highway**" means any public street, road, lane, bridge, or walkway but does not include a private easement on private property;

"**Land**" means any **land** within the boundaries of the **City** including **land** covered by lakes, streams, wetlands or **watercourses**;

“**Parcel**” means any lot, block, or other area in which **land** is held or into which **land** is subdivided but does not include a **highway**;

“**Permit**” means a **Permit** issued by the **Director** in accordance with Section 6 of this Bylaw;

“**Private Service Corridor**” means **land** accommodating the servicing of a building or facility with any water, sewer, energy, or communications system, which connects directly to or from any **highway**, municipal or other right-of-way, or municipal property;

“**Public Service Corridor**” means **land** accommodating the collection or distribution of any water, sewer, energy, or communication system, but excludes **private service corridors**;

“**Qualified Professional**” means a person registered with a professional association including the Association of Professional Engineers and Geoscientists of BC, the Corporation of the Province of British Columbia Land Surveyors, or other person who is qualified because of knowledge, training and experience to organize, supervise and perform the duties required in this bylaw;

“**Soil**” means **soil**, topsoil, sand, gravel, rock, silt, clay, peat, or any other substance of which land is composed, or any combination thereof;

“**Stockpile**” means a man-made accumulation of **soil** held in reserve for future use, distribution or removal; and

“**Watercourse**” means a natural **watercourse** or source of water supply, whether usually containing water or not, groundwater, and a lake, river, creek, spring, ravine, wetland and gulch.

4. RESTRICTIONS

- 4.1 Except as otherwise permitted in this bylaw, no person shall **deposit soil**, or undertake any action which results in the **deposit of soil**, on any **land** within the **City** until a **Permit** for such **deposit** is approved by the **Director** pursuant to the provisions of this Bylaw.
- 4.2 No **Permit** shall be issued until the plans, data and specifications required by this Bylaw to be filed with the **Director** have been approved by the **Director**.
- 4.3 Application for the said **Permit** shall be in writing on the approved **City** application form, and shall be signed by the owner of the property on which the **soil** is to be deposited, or his authorized agent.

5. EXEMPTIONS FROM PERMIT REQUIREMENT

- 5.1 Notwithstanding Section 4, a **Permit** is not required where the **deposit** on that **land**:
 - (a) is by a florist, nurseryman, or horticulturist and such **soil** is required and used on **lands** upon which that person occupies and carries on such trade, purpose or use;

- (b) is required for the erection of a building or structure provided a valid Building Permit has been issued for that building or structure;
- (c) is in accordance with a valid Development Permit;
- (d) is in accordance with a valid Soil Placement Permit for **land** within the Agricultural Land Reserve, pursuant to the *Soil Conservation Act*;
- (e) is required to create or maintain a **private service corridor**, a driveway, or a paved parking area for which a building Permit or development Permit is not required, and which is necessary to accommodate a permitted use on the **land** in question;
- (f) is required for the regular operation and maintenance of a golf course;
- (g) occurs on a **highway** right-of-way, future **highway**, or forest service road and is required for construction or maintenance of the **highway**;
- (h) occurs on a **public service corridor** and is required for its creation or maintenance;
- (i) involves less than 50 cubic metres of **soil** per **parcel** of **land** per calendar year;
- (j) is in accordance with a letter of Preliminary Layout Review as issued by the **City's** Subdivision Approving Officer;
- (k) involves **stockpiles** on **land** where such use is permitted under the **City** of Zoning Bylaw No. 8000, and a valid business license for that use exists;
- (l) is performed by an employee or agent of the **City** in the creation or maintenance of a public trail, park or recreation facility, in the reclamation of a disturbed area, or in association with any other public works function;
- (m) is required as part of a solid waste processing and disposal operation, including composting facilities, which has approval pursuant to federal, provincial or municipal regulations or bylaws;
- (n) is required as part of the clean-up or remediation of contaminated **soils** as directed and approved by the Ministry of Environment, Lands and Parks;
- (o) is required as part of a concrete and asphalt plant operation where such use is permitted under the **City** of Kelowna Zoning Bylaw No. 8000, and a valid business license for that use exists;
- (p) involves the movement of existing **soil** within the boundaries of a single legal **parcel**;
- (q) is in accordance with an approved site grading plan;
- (r) is required for the construction or maintenance of a private sewage disposal system for which a sewage disposal permit pursuant to the *B.C. Health Act* has been issued; or

- (s) involves the open storage of **soils** which are intended to be processed and removed in connection with a present lawful use of the **land** on which they are stored.

6. PERMIT REQUIREMENTS

- 6.1 Unless a requirement is waived by the **Director**, every application for a **Permit** shall include detailed plans, data and specifications prepared by a registered Professional Engineer for the Province of British Columbia, or any other **qualified professional**, in a satisfactory form, and the application shall contain information with respect to the following matters:
 - (a) The legal description of the property including the name and address of the registered owner.
 - (b) All pertinent topographic features, including existing buildings, structures, **watercourses** and tree cover.
 - (c) The proposed slopes which will be maintained upon completion of the **soil deposit**.
 - (d) The methods proposed to control the erosion of the banks of the **deposit**.
 - (e) The proposed methods of drainage control for the site during and after the **deposit** operation.
 - (f) The proposed methods of access to the site during the **deposit** operation, including the routing of truck and vehicular traffic supplying the **soil**.
 - (g) The proposed methods of noise and dust control during the **deposit** operation.
 - (h) The proposed progressive stages of **deposit**, depicting contours at no greater than 1 metre intervals, grades and slopes, on separate plans for each stage including specific completion dates for each stage.
 - (i) The proposed contour of the ground in its final state upon completion of the **deposit**, with contours at no greater than 1 metre intervals, showing the methods of access and positive methods of permanent drainage on a separate plan.
- 6.2 A **Permit** shall allow the holder thereof to deposit on **land** described in the **Permit** for a period of time, and subject to the conditions outlined in the **Permit**. There is no fee for the **Permit**.
- 6.3 Application for a **Permit** shall be made to the **Director**, and the **Director** shall refuse to issue a **Permit** if the plans, data and specifications do not meet satisfactory requirements of this Bylaw.
- 6.4 Unless a provision is waived or modified the **Director**, a **Permit** issued pursuant to this Bylaw shall be subject to the following conditions:

- (a) All damage to municipally or privately-owned drainage facilities, **highways**, or **lands**, or other municipally or privately-owned property, or natural **watercourses**, resulting from the **deposit**, or any activities related directly to the **deposit**, shall be repaired by the Permittee. All drainage facilities and natural **watercourses** shall be kept free from silt, clay, sand, rubble, debris, gravel and any other matter or thing originating from any **deposit** and causing obstruction to such drainage or natural **watercourses**.
 - (b) The **deposit** operations shall not encroach upon, undermine or physically damage any property.
 - (c) No natural **watercourse** shall be altered or diverted, except with the approval of the Ministry of Environment, Lands and Parks as provided for in the *Water Act*.
 - (d) The finished slope of the **deposit** shall have a maximum slope of 2:1, or two (2) metres of run in one (1) metre of rise.
 - (e) The size and configuration of the **deposit** shall not adversely affect the air, light or view of adjoining or adjacent properties, nor shall it substantially alter the appearance and nature of the surrounding area.
 - (f) No person shall deposit **soil** so as to raise the elevation of a legal **parcel** more than 1.2 metres above the natural grade of an abutting property, except as required by the Ministry of Environment, Lands and Parks for flood protection.
- 6.5 The **Director** may require as-built drawings and a completion certificate prepared by a Registered Professional Engineer for the Province of British Columbia, for the **deposit** as a condition of the **Permit**.
- 6.6 A **Permit** applies only the deposit area(s) as specifically set out and described in the **Permit**.
- 6.7 Prior to the issuance of a **Permit**, the applicant is required to provide a security in the form of cash, or an unconditional, irrevocable letter of credit drawn on a Canadian chartered bank in a form acceptable to the **Director** in an amount equal to 30% of the estimated cost of the work to be performed under the **Permit** to a maximum of \$10,000, to ensure full and proper compliance with the provisions of this Bylaw and all terms and conditions of the **Permit**.
- 7. ENFORCEMENT**
- 7.1 Any person who does not comply with this bylaw or the conditions of a **Permit** shall, in addition to any penalties levied by this bylaw, be required to compensate for any resultant damage to **City** and Provincial drainage facilities, **highways**, or other **City** or Provincial property or facilities.
- 7.2 If a person does not comply with this bylaw or **Permit** conditions, the **City**, its agents, or contractors may enter upon the **lands** where the non-compliance has occurred and carry out any works required to remedy such non-compliance, or repair any resultant damage.

- 7.3 Any person who does not comply with this bylaw or **Permit** conditions shall, upon summary conviction, be liable to a penalty up to ten thousand dollars (\$10,000.00) for each offence.
- 7.4 Where an offence is a continuous one, each day that the offence is continued shall constitute a separate offence.

8. RE-CONSIDERATION

- 8.1 Where an applicant or **owner** of property subject to a decision made by the **Director of Planning & Development Services** pursuant to Section 4 or 6 of this bylaw is dissatisfied with the decision, the applicant or **owner** may apply to the **Council** for re-consideration of the matter within 30 days of the decision being communicated to them.
- 8.2 An application for re-consideration must be delivered in writing to the City Clerk and must set out the grounds upon which the applicant considers the requirement or decision of the **Director of Planning & Development Services** is inappropriate and what, if any, requirement or decision the applicant considers the **Council** ought to substitute.
- 8.3 The City Clerk must place each application for re-consideration on the agenda of a regular meeting of **Council** to be held not earlier than two weeks from the date the application for re-consideration was delivered, and must notify the applicant and any other party who the City Clerk reasonably considers may be affected by the re-consideration, of the date of the meeting at which the re-consideration will occur.
- 8.4 At the meeting, the **Council** may hear from the applicant and any other person interested in the matter under re-consideration who wishes to be heard, and may either confirm the requirement or decision of the **Director of Planning & Development Services** or substitute its own requirement or decision.

9. SEVERABILITY

- 9.1 If any section, subsection, clause or phrase of this bylaw is for any reason held to be invalid or illegal by a decision of any Court of competent jurisdiction it shall be severable. Such a decision shall not affect the validity of the remaining sections, subsections, clauses or phrases of this Bylaw.

10. EFFECTIVE DATE

- 10.1 This bylaw shall take full force and effect upon the date of adoption.

Read a first, second and third time by the Municipal Council this 21st day of February, 2000.

Adopted by the Municipal Council of the City of Kelowna this 28th day of February, 2000.

"Walter Gray"

Mayor

"D.L. Shipclark"

City Clerk