

CITY OF KELOWNA
BYLAW NO. 9612

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

WHEREAS Section 8 (3) (m) of the *Community Charter*. 2003, c.26 provides that Council for the City of Kelowna may, by bylaw:

- a) regulate, prohibit and impose requirements in the removal of soil and the deposit of soil or other material

WHEREAS Section 195 (1) of the *Community Charter*. 2003, c.26 provides that Council for the City of Kelowna may, by bylaw:

- a) impose rates or levels of fees for a permit required under a municipal bylaw for
 - i. the removal of soil from, or
 - ii. the deposit of soil or other material on any land in the municipality or in any area of the municipality;
- b) impose rates or levels of fees for the activities referred to in paragraph (a)

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 Removal and Deposit Regulation Bylaw No. 9612".

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.
- 2.4 The following Schedules are attached to and form part of this Bylaw:
 - a) Schedule "A" - Application
 - b) Schedule "B" - Permit

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;

“**Director**” means the **Director** of Planning and Development Services, official signing authority 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**;

“**Owner**” means the registered owner or owners of an estate in fee simple of the **Lands**.

“**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, British Columbia Institute of Agrologists or other person who is qualified because of knowledge, training and experience to organize, supervise and perform the duties required in this bylaw;

“**Remove**” or “**Removal**” means the act of removing **Soil** from any **Lands** in the **City**, or from any area of the **City**, from where it existed or stood, which place or location shall include a **stockpile** or other storage facility;

“**Soil**” means **soil**, topsoil, sand, gravel, rock, silt, clay, peat, or any other substance of which **land** is composed, or any combination thereof that is clean, without contamination, natural, and non-compostable;

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

“**Subdivision Approving Officer**” means a person appointed by Council as **Subdivision Approving Officer** or **Deputy Subdivision Approving Officer**;

“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** or **remove soil**, or undertake any action which results in the **deposit** or **removal** of **soil**, on any **land** within the **City** until a **Permit** for such **deposit** or **removal** is approved by the **Subdivision Approving Officer** pursuant to the provisions of this Bylaw.

5. EXEMPTIONS FROM PERMIT REQUIREMENT

- 5.1 Notwithstanding Section 4, a **Permit** is not required where the **deposit** or **removal** of soil on that **land**:

- (a) involves the movement of existing **soil** within the boundaries of a single legal **parcel**;
- (b) involves less than 50 cubic metres of **soil** per **parcel** of **land** per calendar year;
- (c) 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;
- (d) 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;
- (e) is in accordance with a valid **Building Permit**, **Development Permit**, and/or approved **Site Grading Plan**;
- (f) is in accordance with a letter of **Preliminary Layout Review** as issued by the **City's** **Subdivision Approving Officer**;
- (g) is required for the regular operation and maintenance of a **nursery** or **golf course** and **nursery**;
- (h) 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;
- (i) occurs on a **highway** right-of-way, future **highway**, or **forest service road** as is necessary for the construction or maintenance of the **highway**;
- (j) 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**;
- (k) 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;
- (l) is required as part of the **clean-up** or **remediation** of **contaminated soils** as directed and approved by the **Ministry of Environment**;
- (m) is required for the construction or maintenance of an **on-site sewerage system** for which a **consultant's report** by and approved **industry professional** has been provided to the **City of Kelowna**;

6. PERMIT REQUIREMENTS

6.1 Unless a requirement is waived by the **Subdivision Approving Officer**, every application for a **Permit** shall include detailed plans, data and specifications, in a satisfactory form, and the application shall contain (but not limited to) information with respect to the following matters:

- (a) The legal description of the property including the name and address of the registered owner.
- (b) Description of the type of soil or other material and the purpose for which the soil is to be removed or the soil or other material is to be deposited.
- (c) A plot plan clearly identifying the area of land from which the soil is sought to be removed and deposited including all pertinent topographic features, including existing buildings, structures, **watercourses** and tree cover.
- (d) A site grading plan including the proposed slopes which will be maintained upon project completion of the **soil deposit** or **removal**.
- (e) The methods proposed to control the erosion of the banks after the **removal** or the **deposit**.
- (f) The proposed methods of drainage control for the site during and after the **deposit** or **removal** operation.
- (g) The proposed methods of access to the site during the **deposit** or **removal** operation, the proposed struck route for moving the **soil** and the frequency of trucking operations.
- (h) The proposed methods of noise and dust control during the **deposit** or **removal** operation.
- (i) Outline of the proposed grading and rehabilitation of the proposed soil removal or soil and other material deposit on site during and upon completion of the proposed soil removal or soil and other material deposit operation, showing the correlation with the grades and vegetation cover of all adjacent lands.
- (j) Copies of any permits and approvals of Federal or Provincial authorities required by statute or regulation in connection with the proposed soil removal or soil and other material deposit operation.

6.2 In addition to the above mentioned requirements, the **Subdivision Approving Officer** may require the following:

- (a) An erosion and sediment control plan prepared by a qualified professional.
- (b) An Environmental Assessment and/or a geotechnical and/or a hydrology report prepared by a qualified professional.
- (b) Environmental or geotechnical monitoring contract to document compliance with the conditions of the soil deposit or removal permit.
- (e) A performance security deposit in the amount of 125% of the estimated cost to implement monitoring plans and recommendations of the qualified professional.

- (f) Information pertaining to the proximity of drinking water sources and third party oversight for activities conducted in sensitive drinking water source areas.
- 6.3 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 if applied for prior to soil placement or removal. A permit fee of \$250 will be applicable to those who apply for a permit after soil removal or deposit activities have already commenced.
- 6.4 Application for a Permit shall be made to the **Subdivision Approving Officer**, and the **Subdivision Approving Officer** may refuse to issue a Permit if the plans, data and specifications do not meet satisfactory requirements of this Bylaw or if the proposed removal or deposit of soil or other material will or is reasonably likely to:
- a) damage, destroy, obstruct, divert or impede the flow of or otherwise injuriously affect any **watercourse**, ditch, drain, sewer or other water utility, existing statutory right-of-way, covenant areas, structures or other improvements on the land or on any adjoining or reasonably adjacent land, whether privately or publicly owned;
 - b) contravene any Bylaw of the City;
 - c) threaten the health of drinking water, health, safety or welfare of the public or be otherwise contrary to the public interest;
 - d) result in the use of the lands in a manner inconsistent with the current zoning or the future land use as designated in the Official Community Plan for the lands;
 - e) adversely affect the air, light or view of adjoining or adjacent properties, or it substantially alters the appearance and nature of the surrounding area.
- 6.5 Unless a provision is waived or modified by the **Subdivision Approving Officer**, a Permit issued pursuant to this Bylaw shall be subject, at minimum, 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 **removal** or **deposit**, or any activities related directly to the **removal** or **deposit**, shall be repaired by the Permittee.
 - (b) 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 movement of soil and causing obstruction to such drainage or natural **watercourses**.
 - (c) The **deposit** or **removal** operations shall not encroach upon, undermine or physically damage any property.
 - (d) No natural **watercourse** shall be altered or diverted, except with the approval of the Ministry of Environment.
 - (e) The finished slope of the **deposit** shall have a maximum slope of 2:1
 - (f) The finished slope of the **deposit** or **removal** shall respect the natural contour of the surrounding area.
 - (g) No person engaged in the soil **removal** or **deposit** operation shall cause or permit dust or dirt to escape therefrom so as to constitute a nuisance to any other person.

- (h) Only clean, non-contaminated, natural and non-compostable soil may be **removed** or **deposited**.
 - (i) The size and configuration of the **removed** or **deposited** soil 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.
 - (j) Except as certified by a Registered Professional with expertise in geotechnical engineering or except as provided on an accepted Lot Grading Plan, a cut on a parcel that is steeper than one vertical to one horizontal with a total height greater than 1.2 metres that is created by excavation is prohibited
 - (k) Except as certified by a registered professional with expertise in geotechnical engineering or except as provided on an accepted Lot Grading Plan, a fill placed on a parcel that is steeper than one vertical to two horizontal with a total height greater than 1.2 metres that is created by fill is prohibited
 - (l) 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 Subdivision Approving Officer for flood protection.
- 6.6 No permit issued pursuant to this Bylaw or any interest herein shall be transferred or assigned. Where a permit holder sells, transfers or otherwise disposes of his/her interest in the land in respect of which a subsisting permit has been issued, he/she shall forthwith cease the soil **removal** or material **deposit** operations thereon and the permit shall become void and of no effect and shall be returned to the **Subdivision Approving Officer**.
- 6.7 The **Subdivision Approving Officer** 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**.
- 6.8 A **Permit** only applies to the deposit area(s) as specifically set out and described in the **Permit**.
- 6.9 During the currency thereof, each permit issued pursuant to this Bylaw shall be visibly displayed in a protected, accessible, conspicuous position upon the lands referred to therein and shall be made available upon request.
- 7. ENFORCEMENT**
- 7.1 In the event of a breach of any provision of this Bylaw or any permit issued pursuant hereto, the **City** or its agents may issue a fine to:
- a) the permit holder;
 - b) the owner or occupier of lands from or upon which soil is being **removed** or **deposited**;
 - c) any person engaged in the soil **removal** or deposit operation or either of them, a notice of such breach. Every person receiving such notice shall forthwith cease and desist from all soil **removal** or material **deposit** operations, and every owner or occupier of land upon receiving a notice of a breach shall thereupon cease to permit any further **removal** of soil or **deposit** of soil or other material from or upon the soil lands, until such breach is remedied to the satisfaction of the **City**.
- 7.2 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.

- 7.3 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.
- 7.4 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.
- 7.5 Where an offence is a continuous one, each day that the offence is continued shall constitute a separate offence.

8. STOP WORK ORDER

- 8.1 The Subdivision Approving Officer may direct the immediate suspension or correction of all or a portion of the soil deposit activities by attaching a stop work order notice on the property whenever it is found that the work is not being performed in accordance with the requirements of Soil Bylaw No. 9612 or of this of any bylaw of the City.
- 8.2 The notice referred to in section 8.1 shall remain posted on the property until that which is contrary to the regulations has been remediated to the satisfaction of the Subdivision Approving Officer.

9. RE-CONSIDERATION

- 9.1 Where an applicant or **owner** of property subject to a decision made by the **Subdivision Approving Officer** 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.
- 9.2 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 **Subdivision Approving Officer** is inappropriate and what, if any, requirement or decision the applicant considers the **Council** ought to substitute.
- 9.3 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.
- 9.4 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 **Subdivision Approving Officer** or **Designate** or substitute its own requirement or decision.

10. SEVERABILITY

- 10.1 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.

11. REPEAL

11.1 City of Kelowna Soil Deposit Bylaw No. 8504 and No. 6933, and all amendments thereto, are hereby repealed.

12. EFFECTIVE DATE

12.1 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 September, 2009.

Deposited with the Minister of Health this 6th day of October, 2009.

Re-Deposited with the Minister of Health this 24th day of November 2009.

Amended at third reading this 14th day of December, 2009.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

APPLICATION FOR PERMIT SOIL DEPOSIT OR REMOVAL

FILE # _____

For a list of exemptions from this Permit refer to section 5 of Bylaw 9612.

If your property is located within the Agricultural Land Reserve it may be necessary to first gain approval from the BC Agricultural Land Commission.

1. Applicant Information

Name: _____ Phone: _____ Fax: _____ Address: _____
E-mail _____

2. Legal Description of Land

Legal Description: _____
Civic Address: _____

3. Land Ownership (if different from above)

Name/Address: _____ Phone: _____

4. Fill Origin - Please provide address of property where soil is originating from

5. Soil Removal / Deposit Information

Estimated quantity of soil to be removed/deposited: _____ cubic metres.

Date(s) on which removal/deposit will occur: _____

6. The subject property IS / IS NOT located within the ALR (please circle).

7. Is this a permanent deposit? _____ YES _____ NO (please check)

Submission Requirements - Please attach to the Soil Removal/Deposit Application Form

- A letter outlining why and where the soil is to be removed and deposited.
- A site plan clearly identifying the area of land from which the soil is sought to be removed and deposited including all pertinent topographic features (structures, watercourses, roads, trees)
- The proposed methods of access to the site during the removal and deposit operation, the proposed truck route for moving the soil and the frequency of trucking operations. (Please contact the City's Transportation Division for designated truck route information).

- The proposed methods of noise and dust control during the removal and deposit operation.
- A site grading plan including the proposed slopes which will be maintained upon project completion.
- The methods proposed for drainage and erosion control for the new contours of the land.

SIGNATURE: _____ DATE: _____

Schedule B - Soil Deposit and Removal Permit

Soil Deposit and Removal Permit (Bylaw No. 9612)

Authorization is Hereby Given To:

Applicant Name : _____

Applicant Address: _____

1. To Place / Remove _____ cubic metres fill on/from _____ (short legal Address) to _____ (Purpose of deposit / removal) _____.

In accordance with the terms and conditions of the Soil Deposit Bylaw, and the following additional terms and conditions prescribed by the:

A) Local Authority:

1.0 Location

This approval only applies to placement / Removal of fill material on Lot __, Section __, Township __, O.D.Y.D., Plan ____, located at (Civic address) _____, as described on the site plan attached to this permit.

2.0 Term

The approval is valid for _____ months from the date of the issuance of the permit, or until completion of the project, whichever occurs first.

3.0 General 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 removal or deposit, or any activities related directly to the removal or deposit, shall be repaired by the Permittee.
- (b) 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 movement of soil and causing obstruction to such drainage or natural watercourses.
- (c) The deposit or removal operations shall not encroach upon, undermine or physically damage any property.

- (d) No natural watercourse shall be altered or diverted, except with the approval of the Ministry of Environment.
- (e) The finished slope of the deposit shall have a maximum slope of 2:1
- (f) The finished slope of the deposit shall respect the natural contour of the surrounding area.
- (g) No person engaged in the soil removal or deposit operation shall cause or permit dust or dirt to escape there from so as to constitute a nuisance to any other person.
- (h) The size and configuration of the removed or deposited soil 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.
- (i) 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 Subdivision Approving Officer for flood protection.

I HEREBY UNDERSTAND AND AGREE TO ALL THE TERMS AND CONDITIONS SPECIFIED IN THIS PERMIT.

Signature of Owner/Authorized Agent

Date

Print Name in Bold Letters

This permit is issued by the City of Kelowna by its authorized signatory

Subdivision Approving Officer

On the __ day of _____, 20__, and is to expire on the ____ day of _____ 20__.

This permit shall be prominently displayed at the place of business/residence and a copy at the site of soil removal.

Attachments: Site Plan