

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 Subdivision Approving Officer. 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.

This bylaw is a 'consolidated' version and includes amendments up to the date listed in the bylaw heading. It is placed on the Internet for convenience only, is not the official or legal version, and should not be used in place of certified copies which can be obtained through the Office of the City Clerk's at City Hall. Plans, pictures, other graphics or text in the legal version may be missing or altered in this electronic version.

**CITY OF KELOWNA
BYLAW NO. 9612**

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

BL11647 amended this section:

WHEREAS Section 8 (3) (h) 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 protection and enhancement of the well-being of its community in relation to the matters referred to in Section 64 [nuisances, disturbances and other objectionable situations]

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

- b) 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;
- c) 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:

BL12489 amended this section:

1. TITLE

1.1 This Bylaw may be cited as “Soil Removal Deposit and Improvement 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

BL11647 & 12489 amended this section:

3. **DEFINITIONS**

3.1 In this Bylaw, unless the context otherwise requires:

“**Blasting**” means the use of explosives to fragment rock or hard soil as regulated by WorkSafe BC;

“**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;

Soil Improvement” or “Improvement” means the use of construction equipment or tools to manipulate or improve the characteristics or engineering properties of soil in a manner that is able to generate noise or vibrations sufficient to be disruptive to the public or damaging to nearby structures or infrastructure, and which may include but not be limited to soil compaction, ground densification, rock hammering, or pile driving.

“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.

BL12489 amended this section:

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.
- 4.2 Except as otherwise permitted in this Bylaw, no person shall undertake any soil improvement activities on any land within the City until a Permit for such soil improvement is approved by the Subdivision Approving Officer pursuant to the provisions of this Bylaw.

BL11647 amended sub-section 5.1:

5. EXEMPTIONS FROM PERMIT REQUIREMENT

The following permit exemptions do not apply to **Blasting**: a, b, e, f, h and i:

- 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;

5.2 Notwithstanding Section 4, A Permit is not required where soil improvement activities:

- a) Do not generate noise or vibration that is disruptive to the public, and

Are not occurring within 30m of any structures or City Infrastructure and the risk of damage to adjacent structures or City infrastructure, in the opinion of a Qualified Professional and the Subdivision Approving Officer, is negligible.

6. PERMIT REQUIREMENTS

BL11647 amended sub-section 6.1 and BL12489 replaced sub-section 6.1:

6.1 REQUIRED INFORMATION

6.1.1 Unless a requirement is waived by the **Subdivision Approving Officer**, every application for a **Permit** to **deposit** or **remove soil** 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) A complete application form as amended by the **City** from time to time.
- (b) The legal description of the property including the name and address of the registered **owner**.
- (c) 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**.
- (d) 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.
- (e) A site grading plan including the proposed slopes which will be maintained upon project completion of the **soil deposit** or **removal**.
- (f) The methods proposed to control the erosion of the banks after the **removal** or the **deposit**.
- (g) The proposed methods of drainage control for the site during and after the **deposit** or **removal** operation.
- (h) The proposed methods of access to the site during the **deposit** or **removal** operation, the proposed truck route for moving the **soil** and the frequency of trucking operations.
- (i) The proposed methods of noise and dust control during the **deposit** or **removal** operation.
- (j) 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**.
- (k) 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.
- (l) Where **Blasting** is proposed the following shall apply:
 - 1. **Blasting** shall adhere to WorkSafe BC Regulations and Requirements;
 - 2. **Blasting** shall follow the recommendations for community notification and monitoring contained within the Best Practices Guide for Urban

Blasting Operations produced by the Western Canada Chapter of the International Society of Explosives Engineers;

3. **Permit** Application submission to include:
 - a. Plan of the area to be blasted including separation distances from adjacent **lands** and buildings;
 - b. Blasters contact information;
 - c. Proof of WorkSafe BC certification;
 - d. Proof of insurance;
 - e. Proposed Community Notification Plan and copies of proposed notices; and
 - f. Blast Monitoring Plan including submission of monitoring results to the **City**.

6.1.2 Unless a requirement is waived by the **Subdivision Approving Officer**, every application for a **Permit** for **soil improvement** shall include a complete application form, as amended by the **City** from time to time, and a report prepared by a **Qualified Professional** containing:

- (a) The legal description of the property including the name and address of the registered **owner**;
- (b) **Soil** analysis (including properties of the **soil**) and borehole logs;
- (c) A site plan showing the extent of proposed works, the zone of influence for the **soil improvement** technique(s) proposed, the surveyed location of any structures or **City** infrastructure that are within the zone of influence of the **soil improvement** activities;
- (d) Appropriate values for acceptable vibration and settlement thresholds for structures and infrastructure within the zone of influence;
- (e) Expected impacts to nearby structures or **City** infrastructure from the **soil improvement** activities, including the quantitative predicted settlement and/or vibration expected, and recommended measures to mitigate impacts;
- (f) A Monitoring Program for vibrations, dust, and noise, including the number and location of gauges, interpretation of results, the frequency of measurement and reporting, triggering points, and proposed actions if prescribed limits are exceeded;
- (g) Proposed Community Notification Plan and copies of proposed notices; and
- (h) Contractors contact information, proof of WorkSafe BC certification, and proof of insurance coverage.

BL11647 amended sub-section 6.2:

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.

BL12489 amended 6.2 (g) and added 6.2 (h)

- (g) For **Blasting** or **Soil Improvement** additional notification including additional advance community notices and additional area signage.
- (h) For **Blasting** or **Soil Improvement**, a pre-work survey of nearby buildings and infrastructure, as well as monitoring at sites specified by the **Subdivision Approving Officer**.

BL12351 amended section 6.3

6.3 The Permit will identify conditions, including the time period and location of the activities being allowed by the Permit. A Permit fee is required as per the Development Application Fees Bylaw, as amended from time to time. Permit applications made after soil removal or deposit activities have commenced will be charged an application fee levied at twice the current year's application fee.

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, deposit, or improvement** 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.

BL12489 amended 6.5

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**, **deposit**, or **improvement** or any activities related directly to the **removal**, **deposit**, or **improvement**, 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**, **removal** or **improvement** 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**, **deposit**, or **improvement** 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**.

BL12489 amended 6.7

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** or **improvement** 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

BL12489 replaced 7.1 (c)

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**, **deposit**, or **improvement** operation or either of them, a notice of such breach. Every person receiving such notice shall forthwith cease and desist from all **soil removal**, **deposit**, or **improvement** operations, and every **owner** or occupier of **land** upon receiving a notice of a breach shall thereupon cease to permit any further **removal**, **deposit**, or **improvement** of **soil** or other material from or upon the **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.
- 7.6 **No Duty of Care**

This bylaw does not create a duty of care on the **City**, **Council** members, the Approving Officer, the Building Inspector, the **City** Engineer, or employees or agents of the **City** with respect to:

- i. the review of, verification of, or reliance on information received for the issuance of a **Permit** under this Bylaw;
- ii. the issuance of a **Permit** under this Bylaw;
- iii. the inspection of, or failure to inspect, work to **Deposit, Remove, or Improve Soil**; or
- iv. the enforcement, or failure to enforce the Local Government Act, Land Title Act, or the provisions of this Bylaw.

7.7 **No Cause of Action**

Neither a failure to administer or enforce, nor incomplete or inadequate administration or enforcement of the Local Government Act, Land Title Act, or the provisions of this Bylaw, nor any error, omission or other neglect in relation to any matter set out in Section 7.6 of this Bylaw will give rise to a cause of action in favour of any person including the **Owner**.

7.8 **No Warranty or Representation**

A review, or failure to review, by the **Subdivision Approving Officer** of technical information, specification requirements, design and construction drawings, and supporting documents provided as a condition of issuing a **Permit**, will not, in any way, constitute a representation, warranty or statement that the undertaking of work to **Deposit, Remove, or Improve Soil** complies with the standards as set out in this Bylaw, WorkSafe BC regulations, or safe practice, and no person, including the **Owner**, will rely on such review or failure to review as establishing compliance with this Bylaw, other applicable regulations, or safe practice.

The issuance by the **Subdivision Approving Officer** of a **Permit** will not, in any way, constitute a representation, warranty, or statement that the undertaking of work to **Deposit, Remove, or Improve Soil** in accordance with the conditions of the **Permit** may be completed in accordance with the provisions of this Bylaw, other applicable regulations, or safe practice.

Site visits made by the **Subdivision Approving Officer**, **City** Engineer, **Council** members, or any other officer, employee, or agent of the **City**, or the failure to make such site visits, will not, in any way, constitute a representation, warranty, or statement that

work to **Deposit, Remove, or Improve Soil** has been undertaken or completed in accordance with this Bylaw, other applicable regulations, or safe practice.

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 11th day of January, 2010.

"Sharon Shepherd"

Mayor

"Stephen Fleming"

City Clerk

BL11647 amended Schedule A
BL12489 deleted Schedule A & B