

Committee of the Whole (2) Report

DATE: Tuesday, February 13, 2024

WARD(S): ALL

TITLE: NEW SITE ALTERATION BY-LAW

FROM:

Vince Musacchio, Deputy City Manager, Infrastructure Development

ACTION: DECISION

Purpose

To obtain Council's approval for a new Site Alteration By-law to prohibit and regulate site alteration and the movement of fill in the City of Vaughan. Staff are also seeking approval to complete the necessary administrative tasks to create an Applicant Guide for Site Alteration Permits as well as finalize the implementation of the online portal and new permit processes. Amendments to the Fees & Charges By-law 224-2023 and Administrative Monetary Penalties By-law 063-2019 are also required to enact new permit fees and monetary penalties for non-compliance.

Report Highlights

- New Site Alteration By-law to create a modern regulatory framework for site alteration and movement of fill.
- New permit management and enhanced monitoring, inspection, and enforcement authority to address non-compliance, including Administrative Monetary Penalties.
- New financial measures to provide better cost recovery for repeated and continued non-compliance.
- Summary of city-wide stakeholder engagement campaign.

Recommendations

1. THAT Council approve the new Site Alteration By-law to Prohibit and Regulate Site Alteration and Movement of Fill in the City of Vaughan (Attachment 1) and repeal Fill By-law 189-96 and all amendments;
2. THAT staff be authorized to complete the necessary tasks to implement the online permit portal and related processes, including the preparation of the Applicant Guide for Site Alteration Permits;
3. THAT Council approve Fees & Charges By-law 224-2023 Schedule K amendments (Attachment 2) to enact new permit and administrative fees; and
4. THAT Council make the Site Alteration By-law a designated by-law under the Administrative Monetary Penalties By-law 063-2019 (Attachment 3) and that non-compliance with the Site Alteration By-law have an Administrative Monetary Penalty of \$1000 for every offence.

Background

The current Fill By-law 189-96 has been in effect since 1996. It is out-of-date and does not align with provincial excess soil regulations, industry best practices or current issues. The current by-law also lacks the sufficient authority for the city to effectively monitor, inspect and address repeated and continued non-compliance.

With projected population growth driving development, the expected increase in excess soil generation and the associated challenges of site alteration, it was recognized that the city needed a new approach that:

1. Recognizes a landowner's right to alter land to enhance use or prepare for development.
2. Protects the environment, human health and limit potential impacts to adjacent properties and municipal infrastructure (local roads and stormwater systems).
3. Ensures landowners are held responsible to monitor site alteration on their property.
4. Provides the city with enforcement tools to address repeated and continued non-compliance.
5. Includes permit requirements, processes and administration that align with provincial excess soil regulations and industry best practices.
6. Addresses concerns on the source and quality of excess soil to protect agricultural lands, water, and the natural environment.
7. Limits potential nuisances to the local community.

8. Recognizes when site alteration or placement of fill on agricultural lands is not part of normal farming practices and that the city has tools to address these matters.

The new regulatory framework includes:

- A comprehensive Site Alteration By-law.
- Permit requirements that align with provincial excess soil regulations.
- Delegated authority including permit administration, imposing, or waiving conditions, or requirements, authorizing remedial action, and revoking permits when necessary.
- Enhanced inspection and enforcement authority and procedures to encourage compliance.
- Improved cost recovery mechanisms to provide the city with financial resources to address repeated and continued non-compliance.

On May 31, 2023, staff presented a draft Site Alteration By-law to Committee of the Whole (Working Session) to gather feedback on the new proposed approach. Staff reviewed the new permit requirements, delegated authority, enhanced inspection and enforcement authority and new cost recovery mechanisms. Overall, positive feedback was received from Members of Council. Staff then proceeded with a city-wide stakeholder engagement campaign to gather input from residents, the development community, and members of the public.

The stakeholder engagement campaign included:

- Launch of a [project webpage](#).
- Online survey.
- Presentation to the Development Liaison Committee.
- In-person open house held on September 28, 2023, at Maple Community Centre.

Previous Reports/Authority

[Draft Site Alteration By-law, Committee of The Whole \(Working Session\) May 31, 2023](#)

Analysis and Options

Overview of Draft Site Alteration By-law

Fill By-law 189-96 has been in effect since 1996 and does not align with provincial excess soil regulations or industry best practices. The proposed new Site Alteration By-law will overhaul the city's approach to site alteration and the movement of fill,

including excess soil. Key changes are summarized in the chart below.

Section	Current State	Recommendation	Benefit/Rationale
Definitions	Limited list of terms and definitions.	Add more terms related to site alteration, excess soil, permit requirements, enforcement authority, environmental and natural heritage features.	Expanded list of defined terms to establish clear understanding and scope of site alteration matters. Defined terms are also consistent with other bylaws and regulations.
Authority of the Director	Current Fill By-law has limited language related to Director authority.	New section to include specific authority granted to the Director of Development Engineering or designate, including permit administration, imposing/waiving conditions, or requirements, authorizing remedial action, and revoking permits when necessary.	Delegated authority to the Director allows for the timely administration of permit processes and effective review of site-specific issues and concerns. The delegated authority allows the Director to minimize risks to the city by taking appropriate action as required.
Prohibitions	Standard prohibitions applicable at the time by-law was enacted. Does not include sensitive land zones or protected areas.	Expand prohibitions to restrict or limit site alteration on agricultural lands, lands with natural heritage features, or protected land zones (for ex. Greenbelt, Oak Ridges Moraine, Conservation Authority etc.)	Provides the authority to prohibit site alteration in sensitive or protected areas unless approved as part of development planning or permit application process.
Exemptions	Standard exemptions applicable when by-law was enacted, including areas regulated by conservation authorities (CA) such as the TRCA.	Remove CA land exemption from new Site Alteration By-law.	Will enable the city to enforce complaints, illegal site alteration or permit non-compliance within CA lands. Enforcement powers granted to the TRCA under the <i>Conservations Authorities Act</i> are not as robust as municipal enforcement powers. Municipal enforcement officers have right of entry, remedial action authority and cost recovery mechanisms.

Section	Current State	Recommendation	Benefit/Rationale
	2004 amendment to exempt residential properties from the Fill By-law.	Staff strongly recommend maintaining the residential property exemption.	Residential properties should continue to be exempt from the by-law given homeowner's responsibility to maintain the grading of their property. Where a grading permit is issued as a requirement of a residential building permit, the city completes a grading inspection to ensure compliance with the permit. Any other complaints related to residential grading alteration is considered a civil matter between homeowners. The city will not intervene or conduct any enforcement.
Requirements for Issuance of Permit	Current by-law includes permit requirements.	Remove permit requirements from the By-law and create an Applicant Guide for Site Alteration as main reference for permit requirements and administrative processes.	Any change to permit requirements included in the Site Alteration By-law would trigger a by-law amendment. By creating a supplementary resource for permit requirements, such as the Applicant Guide, this would allow for timely updates without the need to amend the by-law. The Applicant Guide also includes a detailed explanation of permit requirements and administrative processes.

Section	Current State	Recommendation	Benefit/Rationale
Permit Management	Current Fill By-law includes limited permit status or administrative process details.	Introduce different permit status and administration including: <ul style="list-style-type: none"> • Incomplete or abandoned permit applications. • Expired permits • Permit renewal. • Permit amendments. • Permit transfers. • Permit revocation. • Permit closure 	Expanded permit status categories will improve permit files management from submission to issuance through to permit closure; including: <ul style="list-style-type: none"> • Authority to cancel abandoned or incomplete permit applications. • Permit expiry dates for timely completion of work. • New procedures for permit amendments and transfers, when required. • Permit closure process to review for compliance with conditions and orders prior to release of security deposit.
Enforcement and Orders	Current Fill By-law includes minimal details on inspection and enforcement authority or procedures. Some information on the preparation and delivery of orders.	New expanded section detailing: <ul style="list-style-type: none"> • Authority for enforcement. • Entry and Inspection • Duty to Identify • Obstruction • Presumption • Contravention • Order Served • Fines & Special Fines 	Expanded section strengthens city's authority for inspection, investigation, issuance of orders for bylaw contraventions and applicable fines. Introduction of a special fine for contraventions with economic advantage, including scenarios involving contaminated fill.
Administrative Monetary Penalties (AMPs)	No provision for AMPs.	Introduction of an administrative monetary penalty of \$1000 per contravention.	New enforcement tool to encourage compliance. AMPs can be issued for continued and repeated non-compliance.

Section	Current State	Recommendation	Benefit/Rationale
Cost Recovery Unpaid Fines & Penalties	Current Fill By-law does not include provision for cost recovery.	Add new cost recovery mechanisms including: <ul style="list-style-type: none"> • Additional Inspection Fee • Adding debt to municipal tax roll • Authority to request security deposit top-up. 	Implementing cost recovery mechanisms to ensure contravener is held accountable for additional costs incurred by the city to address non-compliance. The added authority helps ensure that the city has the financial resources available to take necessary action to restore site condition, repair damage to municipal infrastructure and recover incurred costs related to non-compliance.
Fees & Security Deposit	Current Fill By-law includes outdated permit fee and security deposit information.	New section detailing: <ul style="list-style-type: none"> • Permit Fee: to cover costs associated with permit administration and regular inspection and monitoring. • Additional Inspection Fee: new fee charged to permit holder to recover costs for deploying staff resources to address both repeated and continued non-compliance. • Administration Fees: new fee for the preparation of compliance and remediation orders for repeated and continued non-compliance. • Security Deposit: details on the calculation, collection, duration, replenishment, and release of security deposit. 	This detailed section outlines permit holder's financial obligations associated with site alteration. Provides the city with the financial resources for permit administration and any necessary recourse to address negative impacts or non-compliance.

City-wide Stakeholder Engagement Campaign

Upon receiving positive feedback on the draft Site Alteration By-law at the May 31, 2023, Committee of the Whole (Working Session), staff engaged with Third Party Public Inc. to design and deliver a city-wide stakeholder engagement campaign.

The stakeholder engagement campaign included:

- Online survey
- Presentation to the Development Liaison Committee,
- In-person open house held on September 28, 2023, at Maple Community Centre.

The stakeholder engagement campaign was promoted through social media, a public service announcement, City and councillor newsletters, roadside signs, the city's digital media platform, direct emails, and information pamphlets for identified key areas.

Campaign Results:

Open House:

An in-person open house was held on September 28, 2023, from 7-9pm at Maple Community Centre. Attendance at the open house was low. Display boards shared at the open house are included in the engagement summary report included as Attachment 4 of this report.

Presentation to Development Liaison Committee:

A presentation of the proposed new approach, including key changes and process improvements was made to the Development Liaison Committee on September 29, 2023. The Development Liaison Committee is a group of representatives from the development industry. No comments or questions were received during the presentation. Attendees were invited to the project webpage to review documents and participate in the online survey.

Online Survey:

The online survey was available on the site alteration project webpage for a period of 32 days (Sept 13 to Oct. 15, 2023). The online participation option received more interest with 33 participants sharing thoughts. Both qualitative and quantitative responses to the survey are included in the engagement summary report included as Attachment 4 of this report.

Overall, there is public support for the development of the new by-law. The general categories of the comments received include:

- need for strong enforcement policies, fines, and penalties.
- protection of agricultural lands and the natural environment.
- concerns over illegal land use.
- ensure that the public understands scope of the by-law.

Staff are confident that the new Site Alteration By-law provides enhanced inspection and enforcement tools, including monetary penalties and cost recovery mechanisms to address non-compliance. As well, updated permit requirements and processes ensure that the proposed site alteration is appropriate and holds project leaders accountable for compliance with provincial excess soil regulations.

Financial Impact

The new Site Alteration By-law provides better cost recovery of incurred expenses or additional staff resources required to address non-compliance and other liabilities. Permit administration process changes may impact staff workload, however, it is not anticipated to affect operational costs.

Operational Impact

Staff from Development Engineering and By-law Property Standards Enforcement have worked to establish coordinated inspection and enforcement procedures for complaints and non-compliance of the Site Alteration By-law and any issued permits. Standard operating procedures, manuals, inspection templates, shared technology, and joint training efforts are currently underway.

Consultation with internal stakeholders has ensured that the proposed regulatory framework and permit workflows are consistent with their processes and/or regulatory obligations. Collaborative work will continue as staff finalize the functions and features of the new online permit portal and administrative processes. Final implementation of online permit portal and updated processes to be completed by end of Q2 2024.

Broader Regional Impacts/Considerations

There are no broader regional implications or considerations as a result of the recommendations of this report.

Conclusion

The new municipal regulatory framework to prohibit and regulate site alteration and movement of fill supports the 2022-2026 Term of Council Service Excellence Strategic Plan for City Building and Environmental Sustainability goals.

In summary, the new approach has been designed to ensure:

1. That residents have confidence in the city's ability to monitor and enforce site alteration and the movement of fill within the City of Vaughan.
2. That landowners and project leaders, as the generators of excess soil, be held accountable for the management of excess soil until it is accepted at the appropriate receiving site, as well as assume full responsibility for compliance with provincial regulations.
3. That receiving sites within the City of Vaughan are appropriate locations to ensure that farmland and environmentally sensitive areas are protected.
4. That the Site Alteration By-law include the appropriate permit requirements, delegated authority and enforcement measures that are consistent and fair while leveraging modern regulatory and compliance approaches.

For more information, please contact: Frank Suppa, Director of Development Engineering.

Attachments

1. Draft Site Alteration By-law
2. Draft Fees and Charges By-law, Schedule K amendment
3. Draft Administrative Monetary Penalties By-law amendment
4. Third Party Public Inc. Site Alteration By-law Engagement Summary report

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