

PROPERTY MAINTENANCE

Chapter 633 FILL - DUMPING ALTERATION OF GRADE

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SCHEDULE

Schedule 'A' - Information required for a complete application

WHEREAS pursuant to section 142 of the *Municipal Act, 2001*, c. 25, as amended, authorizes that the Council of The Corporation of the City of Kitchener may prohibit or regulate the placing or dumping of fill, the removal of soil and/or the alteration of the grade of land;

AND WHEREAS Council may require that a permit be obtained to place or dump fill, remove soil or to alter the grade of land in the City of Kitchener, and may impose fees for the permit, the circumstances under which a permit may be issued, and the conditions to such a permit;

AND WHEREAS, it may be desirable to permit limited placing or dumping fill, removal of soil or alteration of the grade of land in advance of a de-

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velopment application being permitted under section 41 of the *Planning Act*, R.S.O. 1990, c. P.13;

AND WHEREAS the City of Kitchener deems it desirable to prohibit placing or dumping fill, removal of soil or alteration of the grade of land to ensure that:

1. unanticipated drainage and site alteration is prevented;
2. existing drainage patterns are maintained;
3. interference and damage to watercourses or water bodies is limited;
4. water quality is maintained;
5. the use of hazardous and/or improper fill is prevented;
6. erosion and sedimentation is prevented;
7. natural heritage features and areas of archaeological resources are protected;
8. building and site planning practices are consistent with the City's natural topography, soils, and vegetative features.

**Article 1
INTERPRETATION**

633.1.1 Adjacent lands - defined

“adjacent lands” means those lands contiguous to a specific natural heritage feature or area where it is likely that development or site alteration would have a negative impact on the feature or area.

633.1.2 Agricultural - defined

“agricultural” means the use of land and buildings for apiaries, animal husbandry or the cultivation of trees, shrubs, flowers, grains, sod, fruits, vegetables and other crops or ornamental plants. Agriculture shall include a farm related single detached dwelling.

633.1.3 City - defined

“City” means The Corporation of the City of Kitchener.

633.1.4 Conservation authority - defined

“conservation authority” means the Grand River Conservation Authority.

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633.1.5 Contaminated fill - defined

“contaminated fill” means material which contains any solid, liquid, gas, odour, waste product, radioactivity or any combination thereof which is present in a concentration greater than that which naturally occurs in the location of the site in question and which has the potential to have adverse effect on the natural environment, human activity, and/or health and safety as defined under the *Environmental Protection Act*.

633.1.6 Director - defined

“Director” means the Director of Engineering for the City, or his/her designate.

633.1.7 Director of Enforcement - defined

“Director of Enforcement” means the Director of Enforcement for the City, or his/her designate.

633.1.8 Drainage work - defined

“drainage work” means a drainage system constructed of tile, pipe or tubing of any material beneath the surface of agricultural land, including integral inlets and outlets, for the purpose of improving the productivity of the land drained.

633.1.9 Dumping - defined

“dumping” means the depositing of fill in a location other than where the fill was obtained and includes the movement and depositing of fill from one location on a site to another location on the same site.

633.1.10 Erosion - defined

“erosion” means the detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity.

633.1.11 Fill - defined

“fill” means any type of material deposited or placed on lands and includes, but is not limited to soil, stone, concrete, asphalt, rubbish, sod or turf either singly or in combination.

633.1.12 Grade - defined

“grade” means the elevation of the ground surface and shall be more particularly defined as follows:

- (a) “existing grade” means the elevation of the existing ground surface of the lands upon which dumping and/or placing of fill, altering of the grade, or removing of soil is proposed and of abutting ground surface up to three metres wide surrounding such lands, except that where such activity has occurred in contravention of this Chapter, existing grade shall mean the ground surface of such lands as it existed prior to said activity;

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- (b) “finished grade” means the approved elevation of ground surface of land upon which fill has been placed, dumped, the grade altered or soil removed.

633.1.13 Permit - defined

“permit” shall mean a site alteration permit issued pursuant to this Chapter.

633.1.14 Proposed grade - defined

“proposed grade” means the proposed elevation of ground surface of land upon which fill is proposed to be placed, dumped, the grade altered or soil removed.

633.1.15 Owner - defined

“owner” means the person having the right, title, interest or equity in the land, or his/her agent authorized in writing, and includes any partnership, organization or corporation who or which is the registered owner of or controls, maintains or occupies lands.

633.1.16 Permit - defined

“permit” means a permit to place or dump fill, remove soil or alteration of the grade of land issued by the Director.

633.1.17 Person - defined

“person” includes a company, a corporation, a partnership, an individual, a public utility and a person as defined in subsection 29 (1) of the *Interpretation Act*, R.S.O. 1990, c. I.11.

633.1.18 Place or placing - defined

“place” or “placing” means the distribution of fill on lands to establish a finished grade higher or lower than the existing grade.

633.1.19 Ponding - defined

“ponding” means the accumulation of surface water in an area not having drainage therefrom where the lack of drainage is caused by the placing or dumping of fill or altering of the grade.

633.1.20 Removal - defined

“removal” means excavation or extraction of any fill which lowers the existing grade, and includes soil stripping.

633.1.21 Retaining wall - defined

“retaining wall” means a wall designed to contain and support fill which has a finished grade higher than that of adjacent lands.

633.1.22 Site - defined

“site” means parcels of land altered or proposed to be altered as permitted.

633.1.23 Site alteration - defined

“site alteration” means any physical change or alteration of the site, such as placing or dumping of fill, removing soil, or the alteration of the grade that changes the site and natural vegetative characteristics.

633.1.24 Soil - defined

“soil” means any material commonly known as earth, topsoil, loam, subsoil, clay, sand and or gravel.

633.1.25 Swale - defined

“swale” means a shallow depression in the ground sloping to a place for disposal for the purpose of providing a method of drainage of surface water.

633.1.26 Vegetation - defined

“vegetation” includes herbaceous and woody plants or contiguous cluster of plants including trees, shrubs, and hedgerows.

633.1.27 Watercourse - defined

“watercourse” means a natural or man-made channel or swale in which water flows, either continuously or intermittently with some degree of regularity.

**Article 2
GENERAL PROHIBITIONS**

633.2.1 Site alteration - without - permit - prohibited

No person shall carry out any activity connected to site alteration within the City except in accordance with a permit.

**Article 3
STATUTORY EXEMPTIONS**

633.3.1 Activity - municipality - local board

Article 2 does not apply to activities or matters undertaken by a municipality or a local board of a municipality.

633.3.2 Conditions of approval - developed under Planning Act

Article 2 does not apply to site alteration in accordance with a condition to the approval of a site plan, a plan of subdivision, consent or development permit under section 41, 51, 53 or 70.2 respectively, of the *Planning Act*, R.S.O. 1990, c. P.13 or as a requirement of a site plan agreement or subdivision agreement entered into under those sections.

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633.3.3 Electricity transmitter - distributor

Article 2 does not apply to site alteration undertaken by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, c. 15, Schedule 'A' for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section.

633.3.4 Pit or quarry licensed

Article 2 does not apply to site alteration 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*.

633.3.5 Pit - quarry - enlargement - licensed

Article 2 does not apply to site alteration undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land:

- (a) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act; and
- (b) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*, R.S.O. 1990, c. P.13.

633.3.6 Tile drainage construction - alteration incidental

Article 2 does not apply to land on which the placing or dumping of fill, removal of soil or alteration of the grade of land undertaken as an incidental part of drain construction under the *Drainage Act* or the *Tile Drainage Act*.

633.3.7 Agricultural practices

Article 2 does not apply to a by-law respecting the removal of soil 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.

633.3.8 Soil removal - for sale - prohibited

The exception in Section 633.3.7 respecting the removal of soil as an incidental part of a normal agricultural practice does not include the removal of soil for sale, exchange or other disposition.

633.3.9 Conservation Authority site alteration - approval

If a regulation is made under section 28 of the *Conservation Authorities Act*, R.S.O. 1990, c. C.25 respecting site alteration in any area of the municipality, a by-law passed under this Chapter is of no effect in respect of that area.

**Article 4
SPECIFIC EXEMPTIONS**

633.4.1 Land - less than 0.405 hectares

In addition to Article 3 the provisions of this Chapter do not apply to lands less than 0.405 hectares in size.

633.4.2 Lawn - garden - landscaping - restrictions

In addition to Article 3, the provisions of this Chapter do not apply to site alteration for the purpose of lawn dressing, landscaping, or adding to flower beds or vegetable gardens and provided that:

- (a) no soil in excess of 30 centimetres in depth is placed on the lands;
- (b) the elevation of the land within 60 centimetres of any site limit is not changed; and
- (c) there is no change in the location, direction or elevation of any watercourse.

633.4.3 Swimming pool construction - with permit

In addition to Article 3, the provisions of this Chapter do not apply to site alteration on residential properties for the purpose of swimming pool installations, provided a pool permit is obtained from the City.

633.4.4 Building permit issued - conditions

In addition to Article 3, the provisions of this Chapter do not apply to site alteration pursuant to the issuance of a building permit for the erection of a building or structure, and provided that the drawings that accompany the building permit application provide sufficient information for the Chief Building Official to determine site alteration conforms to the provisions of the Chapter.

633.4.5 Demolition permit - restoration to existing grade

In addition to Article 3, the provisions of this Chapter do not apply to site alteration as part of the excavation or restoration of the existing grade pursuant to the issuance of a demolition permit.

**Article 5
PLANNING AND DEVELOPMENT PROCESS**

633.5.1 Provisions part of approval process

The provisions of this Chapter as amended from time to time, shall form part of the development approval process governed by the *Planning Act*.

633.5.2 Application - part - technical information - Planning Act

An application for a permit may be processed concurrently with an application submitted pursuant to the *Planning Act* and may form part of the technical information requested in order to consider the planning application complete.

633.5.3 Approval pending - no alteration of site permitted

Where there is a planning application involving an approval no physical change or alteration of the site such as placing or dumping of fill, removing soil, or the alteration of the grade shall occur, until the issuance of a permit pursuant to this Chapter and/or the receipt of final approval of any applicable planning applications.

**Article 6
ADMINISTRATION**

633.6.1 Director - responsibility

The Director is responsible for the administration of this Chapter and is hereby delegated the authority to receive applications and the required fees and to issue permits and to attach conditions thereto in accordance with this Chapter.

**Article 7
APPLICATION FOR PERMIT**

633.7.1 Director - information - fee - required

Subject to Sections 633.7.2 to 633.7.4 inclusive, every person that intends to carry out any activity connected to site alteration personally or through another person is required by this Chapter to apply to the Director for a permit by submitting all of the information necessary to determine compliance with this Chapter and paying the fee prescribed.

633.7.2 Deemed incomplete - conditions - set out

An application for a permit shall be deemed incomplete, and no permit shall be issued if:

- (a) the application has not been completed in full;
- (b) the owner has not signed the application and submitted the original signature as part of the application;
- (c) the owner's agent, if applicable, being the party who will be undertaking the works or whom is responsible for the site alteration has not signed the application and submitted the original signature as part of the application; or
- (d) the application fee has not been paid.

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633.7.3 Additional information - as requested - time limitation

Where, in the determination of the Director, additional information is necessary to evaluate the application, the Director may require the applicant to submit such additional information within a specified period of time. If the requested information is not submitted within the specified period of time, the application may be refused.

633.7.4 Director - authority to confer with others

Following receipt of an application, the Director may confer with such persons and agencies as he/she considers necessary for the proper review of the application, whether or not a permit should be issued, and any condition thereto.

633.7.5 Permit refused - in writing - reconsideration

Where the Director refuses to issue a permit, the applicant shall be informed in writing of the refusal by the Director. The Director may reconsider the application if additional information or documentation required by the Director is submitted by the applicant.

Article 8

REQUIREMENTS FOR PERMIT ISSUANCE

633.8.1 All requirements - met

Following receipt of an application, the Director may issue a permit where the Director is satisfied that the applicant has complied or will comply with all requirements of this Chapter.

633.8.2 External permissions and approvals granted

Following receipt of an application, the Director may issue a permit where the Director is satisfied that all required external permission and approval has been granted to the applicant.

633.8.3 Site alterations - conditions met

Following receipt of an application, the Director may issue a permit where the Director is satisfied that the site alteration will not cause or contribute to:

- (a) soil erosion;
- (b) blockage of a storm drainage system;
- (c) blockage, siltation or pollution of a watercourse;
- (d) flooding or ponding on abutting land;
- (e) flooding or ponding caused by a watercourse overflowing its banks;

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- (f) an undue detrimental effect on the natural environment of the area;
- (g) public safety concerns;
- (h) injury or destruction of trees, which in the opinion of the director, could be reasonably avoided; or
- (i) hindering the orderly development of any lands.

**Article 9
PERMIT CONDITIONS**

633.9.1 Set out

A permit may be subject to conditions imposed by the Director, which may include requirements for:

- (a) the construction of a retaining wall or berm;
- (b) erosion, siltation or construction control measures;
- (c) tree protection measures; and
- (d) the location of access routes or staging and storage areas.

633.9.2 Financial security - requirement

The Director may require the owner to provide financial security in a form and in an amount determined by the Director to secure performance of the work for which the permit is to be issued and the maintenance of any sediment and erosion controls, roads or highways that are used to deliver fill in a state of repair that is satisfactory to the City, and without limiting the foregoing, to ensure that such roads and highways are free of dust and mud.

633.9.3 Work agreement - may be required

The Director may, in his/her sole and absolute discretion, require that, as a condition of the issuance of a permit, the registered owner of the land and any other persons deemed appropriate enter into an agreement respecting the work contemplated by the permit containing such terms and conditions as the Director considers appropriate.

**Article 10
RENEWAL OR TRANSFER OF PERMIT**

633.10.1 Permit - duration - ninety days

Any permit issued pursuant to this Chapter shall be valid for a period of ninety calendar days from the date of issuance.

633.10.2 Renewal - extension - requirement - fee

An owner shall apply to renew a permit where the work authorized will not be complete prior to the expiration of the permit. A permit may be extended where an application to renew is filed at least thirty calendar days before the date of expiry and upon making of a written request to the director accompanied by a payment of one-half of the original permit fee, provided that the proposed work which was the subject of the permit, has not been revised.

633.10.2.1 Land ownership transfer - conditions

If registered ownership of the site for which a permit has been issued is transferred while the permit remains in effect and outstanding, the new owner shall, prior to the closing of the transfer, provide the City with its written undertaking to comply with the permit and any conditions under which the permit was issued. If the necessary undertaking is not provided prior to closing of a transfer the permit shall be deemed to be cancelled as of the date of the transfer.

**Article 11
REVOCATION OF PERMIT**

633.11.1 Reasons - set out

A permit may be revoked by the Director under any of the following circumstances:

- (a) if it was issued on mistaken, misleading, false, or incorrect information;
- (b) if it was issued in error;
- (c) if the owner requests, in writing, that it be revoked; or
- (d) if an owner fails to comply with any provision of the permit or this Chapter.

633.11.2 Operations ceased - immediately

When a permit is revoked, the owner shall immediately cease all operations being conducted under the authority of the revoked permit and shall immediately rehabilitate and stabilize the land so as to prevent adverse environmental impacts.

**Article 12
ORDERS**

633.12.1 Compliance - required

Any person to whom an order is issued pursuant to this Chapter shall comply with the terms of such order, within the time set out therein.

633.12.2 Contravention - order issued - work ceased

Where an owner or any other person is in contravention of the Chapter, or any term or condition of a permit issued under this Chapter, the Director may make an order directing the owner or such person to cease any or all work immediately.

633.12.3 Contravention - order complete - previously approved

Where a permit has been issued and an owner is in contravention of this Chapter or any term or condition issued under this Chapter, the Director may issue an order directing the owner, within the time set out in the order, to take such steps as are necessary so that the work which was the subject of the permit is completed in accordance with the approved permit, plans, documents and other information upon which the permit was issued under this Chapter and in accordance with the terms and conditions of the permit.

633.12.4 Contravention - no permit issued - site restored

Where a permit has not been issued and an owner is in contravention of the Chapter, the Director may issue an order requiring the owner to restore the site to a condition to the satisfaction of the Director, within the time set out in the order.

Article 13

WORK COMPLETED BY THE CITY

633.13.1 Owner - expense

If the work required by an order issued under Article 12 is not completed within the specified period, the City, in addition to all other remedies it may have, may do the work at the owner's expense and any of the City's employees, officers or agents may enter upon the land, at any reasonable time, for the purpose of carrying out the work.

633.13.2 Notice to owner - methods - prior to work

Before the City enters on land to do the work, it shall provide notice to the owner or occupier of the land personally, by prepaid registered mail to the last known address of the registered owner of the land, or by the posting of a notice in a conspicuous place on the land and is entitled to enter on the land for this purpose.

**Article 14
RECOVERY OF COSTS**

633.14.1 Collected as taxes

The City may recover the costs incurred by the City under Article 13 plus interest accrued to the date payment is made at the rate of 15 per cent or such lesser rate as may be approved by the Director, from the owner of the land by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

633.14.2 Cost - lien on land - registered

The costs incurred by the City under Section 633.14.1, including interest, constitute a lien on the land upon the registration in the proper land registry office of a notice of lien and the lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date the payment is made.

633.14.3 Discharge of lien - registered - upon payment

Upon payment of all costs payable plus interest accrued to the date payment is made to the City, the City shall register a discharge of the lien in the proper land registry office.

**Article 15
ENFORCEMENT**

633.15.1 Director of Enforcement - authority

The City's Director of Enforcement shall be responsible for overseeing the enforcement of this Chapter.

633.15.2 Inspection - entry upon land - at any reasonable time

The Director and the City's Director of Enforcement and designates may, at any reasonable time, enter and inspect any land for the purpose of carrying out an inspection to determine whether this Chapter, an order to discontinue activity, a work order, or an order under section 431 of the *Municipal Act, 2001*, c. 25 is being complied with.

633.15.3 Inspection - methods permitted

For the purposes of an inspection, the person inspecting pursuant to this Chapter may:

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;

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- (c) require information from any person concerning a matter related to the inspection; and
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples, or photographs necessary for the purpose of the inspection.

633.15.4 Inspection - hindering - obstruction - prohibited

No person shall hinder or obstruct or attempt to hinder or obstruct any person who is carrying out an inspection pursuant to this Chapter, and any person who so obstructs an officer is guilty of an offence pursuant to this Chapter.

**Article 16
PENALTIES**

633.16.1 Fine - for contravention - person

Any person other than a corporation who contravenes any provision of this Chapter, contravenes the terms or conditions of any permit, or contravenes an order issued under this Chapter is guilty of an offence and is liable:

- (a) on first conviction, to a fine of not more than \$25,000; and
- (b) on any subsequent conviction, to a fine of not more than \$50,000.

633.16.2 Fine - for contravention - corporation

A corporation that contravenes any provision of this Chapter, the terms or conditions of any permit, or an order issued under this Chapter, is guilty of an offence and upon conviction is liable:

- (a) on a first conviction, to a fine not exceeding \$50,000; and
- (b) on a subsequent conviction to a fine not exceeding \$100,000.

633.16.3 Fines - exclusive of costs

The fine amounts in Sections 633.16.1 and 633.16.2 are exclusive of costs and are recoverable under the *Provincial Offences Act*.

**Article 17
VALIDITY OF BY-LAW**

633.17.1 Validity

In the event a court of competent jurisdiction declares any Section or part of this Chapter invalid, the remainder of this Chapter shall continue in force and effect.

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633.17.2 Severability

It is hereby declared that each and every of the foregoing Sections of this Chapter is severable and that, if any provisions of this Chapter should for any reason be declared invalid by any court, it is the intention and desire of Council that each and every of the then remaining provisions hereof shall remain in full force and effect.

**Article 18
SCHEDULES**

633.18.1 Set out - form part of Chapter

The following schedules attached to this Chapter form and are part of this Chapter:

- (a) Schedule 'A' information required for a complete application

**Article 19
ENACTMENT**

633.19.1 Effective date

This Chapter shall take effect and come into force upon its final passing.
By-law 2010-043, 8 March, 2010.

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SCHEDULE

**Schedule 'A'
Information Required
for a Complete Application**

1. Receipt of prescribed fees;
2. Name, address and telephone number of all owners;
3. Name, address and telephone number of the authorized qualified professional to the owner;
4. Signature or authorization of all owners;
5. Municipal address of property (if assigned);
6. Legal description of property;
7. A detailed plan or survey of the subject site clearly identifying:
 - (a) property boundaries;
 - (b) details and specifications of all work which is the subject of the permit;
 - (c) location and dimensions of existing and proposed buildings;
 - (d) location and dimensions of utilities, roadways, driveways and parking areas;
 - (e) existing topography of the land, showing contour lines;
 - (f) location and type of existing vegetative cover;
 - (g) the location and dimensions of overland flow paths; and
 - (h) any and all significant features of the lands including but not limited to rivers, streams, steep slopes (greater than 20 per cent), and wetlands;

AND (if required, one or more of the following):

8. Fisheries Impact Assessment;
9. Environmental Impact Study (EIS) and/or Environmental Implementation Report (EIR) or equivalent;

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10. Hydrogeological Assessment;
11. Studies and/or Plans required by Kitchener's Tree Management Policy (General Vegetation Overview, Detailed Vegetation Plan, Tree Preservation/Enhancement Plan);
12. Analysis of fill contents and/or Soils or Geotechnical Study;
13. Slope Stability/Erosion Hazard Study and Report;
14. Grading and Drainage Control Report and Plan;
15. Environmental Site Assessment and/or Record of Site Condition;
16. Stormwater Management Report and Plan;
17. Erosion and Siltation Control Plan;
18. Archaeological Assessment;
19. Heritage Impact Assessment (HIA);
20. Noise Study;
21. Dust Impact Assessment;
22. Vibration Study; or
23. Estimate of all the works including the cost of implementing and maintaining all erosion and siltation control measures as per standards acceptable to the City.

By-law, 2010-043, 8 March, 2010, Schedule 'A'.