

The Corporation of the City of Thorold

By-law No. XX-2021

Being a Site Alteration By-law to regulate the removal, placing or dumping of fill in the City of Thorold.

WHEREAS section 142 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a local municipality may pass by-laws to prohibit or regulate the placing or dumping of fill, the removal of topsoil and the alteration of the grade of land, to require that a permit be obtained for the placing or dumping of fill, the removal of topsoil and the alteration of the grade of land and for imposing conditions to a permit, including requiring the preparation of plans acceptable to the municipality relating to grading, filling or dumping, the removal of topsoil and the rehabilitation of the site;

AND WHEREAS sections 8, 9 and 11 of the *Municipal Act, 2001* permit a municipality to pass by-laws necessary or desirable for municipal purposes, and paragraphs 11(2) 5, 6 and 8 authorize by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons, and the protection of persons and property;

AND WHEREAS section 23.2 of the of the *Municipal Act, 2001*, authorizes a municipality to delegate its powers to an officer, employee, or agent of a municipality;

AND WHEREAS section 425 of the of the *Municipal Act, 2001* permits a municipality to pass by-laws providing that any person who contravenes any by-law of the municipality enacted under the statute is guilty of an offence;

AND WHEREAS subsection 426(4) of the of the *Municipal Act, 2001* provides that any person that hinders or obstructs, or attempts to hinder or obstruct, any person who is exercising or performing a duty under a by-law enacted under the statute is guilty of an offence;

AND WHEREAS subsection 444(1) of the *Municipal Act, 2001* permits a municipality, if satisfied that a contravention of a by-law of the municipality passed under the statute has occurred, to make an order requiring the person who contravened the by-law or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity;

AND WHEREAS section 446 of the *Municipal Act, 2001*, provides a municipality with the authority to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense;

AND WHEREAS Council for the City of Thorold approved the recommendations of Report PWCS2020-68 at a Council meeting held on December 15, 2020.

AND WHEREAS Council for the City of Thorold deems it expedient and in the public interest to enact this By-law;

NOW THEREFORE, Council of the Corporation of the City of Thorold enacts as follows:

PART I — DEFINITIONS

1. In this By-law:

(a) "Agricultural Lands" includes:

(i) land upon which agriculture is a permitted use pursuant to the applicable zoning by-law(s), and

(ii) land which is being used for agriculture at the time of application of a Permit;

- (b) "Conservation Authority" means the Niagara Peninsula Conservation Authority;
- (c) "Commercial Fill Operation" means the removal, placing or dumping of Fill involving remuneration paid, or other compensation, to an owner of land whether or not the remuneration or compensation to the Owner is the sole reason for the removal, placing or the Dumping of Fill;
- (d) "Complete Application" means an application and contents described in Part VII of this By-law;
- (e) "Director" means the Director of Public Works and Community Services and shall include any person authorized by the Director to carry out any of the powers or duties of the Director pursuant to this By-law;
- (f) "Dump", "Dumped" or "Dumping" means the placing or depositing of Fill in a location other than where the Fill was obtained and includes the movement and depositing of Fill from one location to another on the same property;
- (g) "Fill" means any type of material removed from or deposited or placed on lands and, without limiting the generality of the foregoing, includes soil, subsoil, topsoil, stone, sod, turf, clay, sand, gravel or other such similar material, either singly or in combination thereof to the discretion of the Director;
- (h) "Haul Route" means Roads designated or approved by the City for the purposes of ingress or egress to a Site Alteration as a condition of a Permit;
- (i) "Lot" shall mean a parcel of land which can be legally conveyed;
- (j) "MOE" means the Ministry of the Environment, Conservation and Parks;
- (k) "Municipal Law Enforcement Officer" means a person appointed by Council to enforce the provisions of this By-law and a Police Officer;
- (l) "Normal Farm Practice" means a practice that is conducted in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural operations under similar circumstances and includes the use of innovative technology used with advanced management practices;
- (m) "Order" means an order issued under this By-law;
- (n) "Owner" means the registered owner of land;
- (o) "Permit" means a permit issued pursuant to the provisions of this By-law which is, subject to Sections 42 and 43, valid for a period of twelve (12) consecutive months;
- (p) "Public Open House" means a meeting that is open to the public for the purposes of Section 27 of this By-law;
- (q) "Qualified Person" means a person who meets the qualifications as set out in section 5 or 6 of O. Reg. 153/04 - Records of Site Condition - Part XV.1 of the *Environmental Protection Act*;
- (r) "Road(s)" means a common and public highway, and includes a street, bridge or other structure forming part of a highway over or across which a highway passes and includes the whole of a road allowance under the jurisdiction of the City;
- (s) "Security" means financial security in the form of a cash deposit or an irrevocable letter of credit to ensure fulfillment of the terms of a Permit or to secure the cost of repairing damage to municipal property as a result of work

undertaken under a Permit which is posted under this By-law or pursuant to a Site Alteration Agreement;

- (t) "Site" means the Lot or Lots altered or proposed to be altered by a Site Alteration;
- (u) "Site Alteration" means temporary or permanent removal or Dumping of Fill on land originating from the Site or from elsewhere by any means;
- (v) "Site Alteration Agreement" means an agreement between an Owner and the City required by the Director as a condition of obtaining a Permit under this By-law;
- (w) "Site Plan" means a set of drawings that clearly indicates the area on the Site subject to Site Alteration along with the property lines of the Lot or Lots;
- (x) "Topsoil" means those horizons in a soil profile, commonly known as "O" and "A" horizons, containing organic material and includes deposits of partially decomposed organic material such as peat;
- (y) "City" means The Corporation of the City of Thorold;
- (z) "Zoning By-law" means a by-law passed under section 34 of the *Planning Act*, R.S.O. 1990, c. P.13, applicable to lands within the City.

PART II – SHORT TITLE

- 2. This By-law may be cited and known as the "Site Alteration By-law".

PART III – SCOPE

- 3. This By-law shall apply to all Site Alterations within the City, unless the Conservation Authority has made a regulation under section 28 of the *Conservation Authorities Act*, R.S.O. 1990, c.C.27, applicable to the Site, or unless specifically excluded pursuant to this By-law.

PART IV – ADMINISTRATION AND DELEGATED AUTHORITY

- 4. The Director shall be responsible for the administration of this By-law.
- 5. The Director is authorized and has the delegated authority to:
 - (a) approve, exempt/waive, issue, revoke, extend, renew, amend, or close a Permit and/or grant approvals of Site Alteration and impose conditions on the issuance of a Permit;
 - (b) determine and deem an application for Permit as abandoned, expired, or closed;
 - (c) approve and coordinate any remediation works;
 - (d) approve amendments to Site Alterations;
 - (e) appoint a peer review consultant or other engineering, scientific and technical experts to fulfill the role or duties of Municipal Law Enforcement Officer for purposes of this By-law;
 - (f) require or exempt works from the requirements of this By-law;
 - (g) authorize any person to carry out any of the powers or duties of the Director pursuant to this By-law;
 - (h) approve forms and documents to be used under this By-law;
 - (i) to hear and consider appeals of decisions to deny a Permit;

- (j) authorize and/or to hire such agents, contractors and other persons to perform the work, as required; and
- (k) to take any actions or steps incidental to or ancillary to the Director's authority under this By-law.

PART V — GENERAL PROHIBITIONS

6. No person shall cause, permit, perform or carry out a Site Alteration without first obtaining a Permit from the City to do so.
7. No person shall import any Fill onto any land where the quality of the imported soil is not acceptable for the intended use and betterment of the land.
8. Where a Permit has been issued under this By-law authorizing a Site Alteration, no person shall undertake or permit a Site Alteration except in accordance with:
 - (a) the plans, documents or other material filed in support of the issuance of the Permit;
 - (b) the conditions attached to the Permit;
 - (c) compliance with the terms of any agreement with the City entered into under this By-law; and
 - (d) the provisions of this By-law.
9. No person shall modify an approved Site Alteration without approval of the Director.
10. No person shall operate a Commercial Fill Operation in the City of Thorold.
11. No person shall remove or Dump Fill, or cause or permit the removal or Dumping of Fill unless such Fill complies with the Ministry of Environment standards for clean Fill, as described in the *Environmental Protection Act*, R.S.O. 1990, c.E.19.
12. No person shall import any Fill onto any property with the use of a hydro excavation truck, being any truck that excavates, removes or moves Fill with water and/or air, except where approval has been given by Council.
13. No person shall fail to obey an Order issued under this By-law.
14. No person shall obstruct a Municipal Law Enforcement Officer carrying out an inspection under this By-law.

PART VI — EXEMPTIONS

15. This By-law is not applicable to the following:
 - (a) a Site Alteration:
 - (i) that involves the Dumping or placing of Topsoil on a Site for improving the soil capability for agricultural purposes on Agricultural Lands as part of a Normal Farm Practice,
 - (ii) that is incidental to a grading requirement under the Ontario Building Code for the construction or demolition of a building or structure for which a building permit has been issued or for the purpose of constructing a driveway, parking lot or assembly area reasonably accessory to the building or structure for which a building permit has been

issued or is a septic disposal system where a permit has been issued by the City, Region of Niagara or MOE in accordance with Part 8 of Division B of the Ontario Building Code,

- (iii) on lands for the purpose of flood or erosion control to establish finished grade shown on a grading and drainage plan approved by the Conservation Authority, or
 - (iv) on lands for storage purposes either as a primary or accessory use provided that the use is permitted on the lands pursuant to the Zoning By-law;
- (b) public sector related activities or matters undertaken by the City or a local board of the City;
 - (c) the Dumping of Fill, removal of Topsoil or alteration of the grade of land imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under sections 41,51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision/severance agreement entered into under those sections;
 - (d) the Dumping of Fill, removal of Topsoil or alteration of the grade of land imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under that regulation;
 - (e) The Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
 - (f) the Dumping of Fill, removal of Topsoil or alteration of the grade of land 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*, R.S.O. 2990, c.A.8;
 - (g) the Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land;
 - (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that statute, and
 - (ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*,
 - (h) the Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken as an incidental part of drain construction under the *Drainage Act*, R.S.O. 2990, c.D.17 or the *Tile Drainage Act*, R.S.O. 1990, c.T.8;
 - (i) the use, operation, establishment, alteration, enlargement or extension of a waste management system or waste disposal site lawfully permitted under Part V of the *Environmental Protection Act*, or a waste disposal site or waste management system that is exempted by regulation from said Part V;
 - (j) the construction, extension, alteration, maintenance or operation of works under section 28 of the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c. P.50;

- (k) the construction of a building or structure, including a driveway and parking pad or pool, pursuant to a valid building permit which has been issued by the City for the erection of a building or structure, where the Site Plan accompanying the building permit application provides sufficient information to ensure that the Site Alteration proposed therein meets the guidelines established by the Director pursuant to this By-law;
 - (l) any filling of an excavation to the elevation of an existing grade following the demolition or removal of a building or structure for which a demolition permit has been issued, or for which no demolition permit is required under the *Building Code Act*, 1992, S.O. 1992, c. 23;
 - (m) any Site Alteration that is:
 - (i) determined to be a Normal Farm Practice, and
 - (ii) carried on by Owners or properties that have an active registration as a “farming business” as defined in the *Farm Registration and Farms Organization Funding Act* and are in good standing under that statute;
 - (n) the stockpiling of Fill in the ordinary course of the operation of a garden supply establishment that is legally established under the Zoning By-law, provided that such activity does not result in the permanent alteration of the existing grade of the land of the garden supply establishment. For this exemption to apply, the Owner must:
 - (i) maintain records from the material source sites indicating that the imported material meets the requirements of the site condition standards for agricultural property use, and
 - (ii) demonstrate, to the satisfaction of the Director, that the material is being exported regularly and not returning to the same property.
16. A Permit is not required for a Site Alteration if the size of the Site and total amount of Fill is:
- (a) 0.1 hectares or less - a maximum of 10 cubic metres of Fill;
 - (b) 0.2-0.5 hectares - a maximum of 100 cubic metres of Fill;
 - (c) 0.5 hectares or larger - a maximum of 500 cubic metres of Fill.

The maximum volumes noted above are permitted within any twelve (12) month period for betterment of and the permitted use of the Site.

Notwithstanding that, a Permit is not required under Sections 16(a), (b) and (c), every person carrying out a Site Alteration in the City shall provide notice of same to the Director as outlined in Schedule “D”.

PART VII - ADMINISTRATION AND REQUIREMENTS FOR ISSUANCE OF A PERMIT

Any Site Alteration involving Fill that exceeds the maximum volumes set out in Section 16 is prohibited unless a Permit is issued by the Director and such permitted works may not be performed in contravention of the City’s Noise By-law or anytime on Saturday, Sunday or on a statutory holiday.

17. Every Owner applying for a Permit shall submit to the Director:
- (a) a completed application in the form provided in Schedule “A” to this By-law;
 - (b) payment of the fee for a Permit as set out in Schedule “B” of this By-law;

- (c) a Security in an amount satisfactory to the Director;
- (d) a description of the Fill proposed to be removed or Dumped including a detailed description of the destination or source of the Fill, the quantity of the Fill and the proposed placement of the Fill;
- (e) a certificate of commercial general liability insurance in the owner's name, in the amount of \$5,000,000, naming the City as an additional insured party, and maintain said liability insurance for the duration in which the Permit is valid;
- (f) a Site Alteration Plan satisfactory to the Director, accurately indicating the following:
 - (i) the property lines of the lands and location on the Site of the Site Alteration with dimensions,
 - (ii) location and details of any proposed sediment control measures,
 - (iii) all existing storm sewers, ditches, swales, creeks, watercourses and wetlands on the lands and on abutting lands and public Roads,
 - (iv) all woodlands on the Site and of all easements and right-of-ways over, under, across or through the Site,
 - (v) proof of permission with respect to the removal, placement or Dumping of the Fill from the grantee of any easement on the Site impacted by a Site Alteration,
 - (vi) all existing buildings and driveways on the Site,
 - (vii) all existing elevations with sufficient buffer onto adjacent properties to assess existing drainage patterns,
 - (viii) proposed grades and drainage systems upon completion of the Site Alteration,
 - (ix) proposed ground covering to be used upon completion of the Site Alteration,
 - (x) location and composition of any temporary or permanent entrances and/or access roads that will be constructed to facilitate access to the Site, and
 - (xi) location and composition of any temporary or permanent mud mat at the entrance to the Site to mitigate mud tracking onto the municipal right-of-way;
- (g) where applicable, copies of any approval required from any other agency, including, but not limited to, the Conservation Authority;
- (h) the proposed Haul Route;
- (i) a certificate stating that the Fill contains no contaminants with the meaning of the *Environmental Protection Act*;
- (j) an executed unconditional release and indemnity to save harmless the City, its elected officials, staff and agents, with respect to any and all liability which may arise directly or indirectly from the Site Alteration, including the presence of any fill that is determined to contain contaminants within the meaning of the *Environmental Protection Act*; and

- (k) any other study, report, plan or material related to the application as deemed necessary by the Director to constitute a Complete Application.
18. The certificate and release and indemnity required by Section 18(a) shall be in the form prescribed by the Director from time to time.

PART VIII – ISSUANCE OF A PERMIT BY THE DIRECTOR

19. The Director shall review or cause to be reviewed a Complete Application for a Permit. In carrying out its review the Director may seek comments from any other agency deemed necessary as part of a Complete Application.
20. The Director shall issue a Permit where:
- (a) the person has fulfilled all of the requirements of this By-law, including the payment of all applicable fees, charges and Security;
 - (b) the Site is not within an area where the Site Alteration is prohibited under this By-law or any other applicable law;
 - (c) the issuance of the Permit:
 - (i) will result in maintaining or improving the overall agricultural capability of the Site, or
 - (ii) is incidental to a Normal Farm Practice, or
 - (iii) is appropriate for the development and use of the Site and that the general intent and purpose of:
 - A. the Zoning By-law,
 - B. the Official Plan, and
 - C. this By-law,will be maintained.
21. The Director may require the Applicant to enter into a Site Alteration Agreement in the form set out in Schedule “C” to this By-law, which may include a requirement to provide additional Security.
22. Where the Director refuses to issue a Permit, any person who considers themselves aggrieved may appeal the decision of the Director in accordance with the following process:
- (a) file a notice of appeal in writing within twenty (20) days of the date of the decision to deny issuance of the Permit that shall contain the person’s name, address, email address (if applicable), phone number, and details concerning the reason for appealing the denial;
 - (b) serve the notice of appeal by prepaid ordinary or, registered mail, courier, or email addressed to the attention of the Director;
 - (c) the appeal shall be in writing only;
 - (d) the Director may request and require production of any further documents, reports and information to be provided by the person appealing and may consider any issue relevant to the issuance of the Permit, including legal issues and interpretation of the By-law, and may consult with legal counsel; and

- (e) the Director may affirm, vary or rescind the decision in writing and shall deliver by ordinary prepaid registered mail, courier, email, or facsimile transmission to the person appealing the decision.
23. The Director shall not issue a Permit or accept an application for a Site Alteration within a twelve (12) month period of the expiry date of any previous Permit.

PART IX – CONSIDERATION BY COUNCIL OVER 1000 CUBIC METRES

24. Where the Site Alteration involves the removal or Dumping of Fill out of or onto a Site that exceeds one thousand (1000) cubic metres within any twelve (12) month period, the Permit for such Site Alteration may only be issued when approved by Council, which shall have the same powers as the Director pursuant to this By-law.
25. In addition to the requirements of Sections 21 and 22, every Owner applying to Council for approval of a Permit for a Site Alteration involving in excess of one thousand (1000) cubic metres of Fill will be required to enter into a Site Alteration Agreement in the form set out in Schedule “C” to this By-law, which may include a requirement to provide additional Security.
26. Upon receipt of a Complete Application for a Site Alteration that exceeds one thousand (1000) cubic metres:
- (a) the Director shall:
 - (i) schedule a Public Open House,
 - (ii) provide the person submitting the Complete Application notice of the Public Open House at least thirty (30) days prior to the date of the meeting,
 - (iii) provide notice of the Complete Application to all registered Owners of land within one hundred and twenty (120) metres of the boundaries of the Site, and
 - (iv) post notice of the Public Open House on the City’s Web Page at least ten (10) days prior to the Public Open House date; and
 - (b) the person submitting the Complete Application shall post a placard on the Site as provided by the City at least ten (10) days prior to the Public Open House so that it is clearly visible to the public, provide proof of the placement of the placard to the Director and leave the placard on the Site until the Permit is issued or denied.
27. Delivery of any notice to the person submitting the Complete Application shall be made by regular mail and shall be deemed to have been delivered on the fifth (5) day after the date of mailing.
28. Comments received at the Public Open House shall form part of a technical report provided by the Public Works and Community Services Department to Council and form part of the review by Council.
29. Consideration of the Complete Application shall be held in public and the Owner may request to be a delegate.
30. Upon reviewing the Complete Application and technical report, Council shall consider whether it meets the requirements of Sections 21 and 22 of this By-law and the decision of Council is final.

PART X - CONDITIONS ON PERMITS AND HAUL ROUTES

31. The Director shall, as a condition of the issuance of a Permit, require an Owner of the Site which is the subject of the Permit either prior to the Permit being issued or after the Permit has been issued, to comply with the following:

- (a) notify the Director in writing at least seventy-two (72) hours:
 - (i) before commencing any work under the Permit, and
 - (ii) of the completion of the work under the Permit;
 - (b) maintain the Roads providing ingress and egress to the Site in the same condition that existed prior to the commencement of the work;
 - (c) keep all Roads providing ingress and egress to the Site free from any damage, equipment or material or mud tracked onto the Road arising from any works undertaken as a result of the Permit;
 - (d) remediate and clean up forthwith any material or mud tracked onto the Roads where required to do so by City staff;
 - (e) ensure that any dust control measures are in place so as to restrict and limit the blowing of dust onto any adjacent lands;
 - (f) install temporary signage in accordance with Ministry of Transportation's Ontario Traffic Manual (OTM) Book 7 regulations on all Roads immediately adjacent to the Site where Fill is being Dumped;
 - (g) inspect and maintain sediment control measures to ensure they are kept in good working order;
 - (h) ensure that any machinery operating on a Road or any person directing traffic on a Road does so in a manner acceptable to the Director and in accordance with all other applicable law;
 - (i) ensure that Fill that is Dumped on the Site is in accordance with the Permit, the Site Plan and all other applicable law;
 - (j) provide the Director or a Municipal Law Enforcement Officer a report from a Qualified Person, qualified engineer or environmental consultant possessing an expert or special knowledge in respect to the source and nature of the Fill to be Dumped that the Fill meets the standards prescribed by the MOE; and
 - (k) provide Security satisfactory to the Director or secure the maintenance of the Roads that are used by trucks delivering or removing Fill in a state of good repair and free from dust and mud.
32. The Director may, as a condition of the issuance of a Permit, require an Owner of the Site which is the subject of the Permit, either prior to the Permit being issued or after the Permit has been issued, to comply with one or more of the following:
- (a) keep, maintain and make available to the Director the following records:
 - (i) the full and complete legal name and business name if different from the legal name of each hauler,
 - (ii) the commercial vehicle registration number of each hauler,
 - (iii) the motor vehicle permit number of the motor vehicles owned and operated by each hauler,
 - (iv) the date and time of delivery of Fill,
 - (v) the point of origin of each delivery of Fill,
 - (vi) the volume of each delivery of Fill,
 - (vii) the content of material of each delivery of Fill,
 - (viii) any other information required by O. Reg. 153/04, and

- (ix) any other information required by the Director; and
 - (b) comply with any other conditions imposed by the Director.
33. In addition to Sections 32 and 33, as a condition of the Permit, the City may designate one or more Haul Routes to be used to access/egress a Site for the Site Alteration.
34. Where Haul Routes are not within the jurisdiction of the City, the City may require that the Owner provide proof of permission to use the Roads.
35. Every Owner who is issued a Permit under this By-law shall be responsible for ensuring that the designated Haul Routes are used by any person coming to or from the Site for works carried out under the Permit and any failure to do so shall be in contravention of this By-law.
36. The City may engage legal, engineering or other technical consultants the Director deems necessary in order to evaluate and/or review studies and/or agreements or to provide assistance to the Director in respect of an application and ensuing Site Alteration in which case such costs shall be charged back to the Owner.
37. The City may draw on any Security provided under this By-law in order to remedy any breach of the provisions of this By-law, the conditions of a Permit, or any other obligation of the Owner relating to the Permit.
38. The issuance of a Permit under this By-law does not relieve an Owner or any other person from compliance with the By-law or any other applicable law.

PART XI – SUSPENSION, REVOCATION, TRANSFER AND EXPIRY OF A PERMIT

39. A permit issued pursuant to the provisions of this By-law may be revoked by the Director at any time and without notice under any of the following circumstances:
- (a) if no work has been commenced after three (3) months from the date of issuance;
 - (b) if the Permit was issued on mistaken, misleading, false or incorrect information;
 - (c) if the Permit was issued in error, and
 - (d) where the Owner is in contravention of a condition to the Permit, a provision of this By-law, or a provision of the Site Alteration Agreement, where one has been entered into.
40. No refund of any Permit fees paid pursuant to this By-law shall be provided if a Permit expires.
41. A Permit may be renewed/extended prior to the passing of the tenth (10) month from the date of the issuance of the Permit if work has been completed under that Permit. A renewal/extension may be granted upon submission of a new application to the Director accompanied by a payment of Permit fees, provided that the previously permitted work has not be revised.
42. A renewal or extension of a Permit issued pursuant to this By-law shall be valid for a period of six (6) months from the date of issuance, but shall expire after three (3) months from the date of issuance if work has not been commenced by that date.

43. A Permit may be cancelled upon written request from the Owner to the Director. An inspection of the Site will be conducted to ensure that no work has commenced and that the Site is in an acceptable condition, and at the discretion of the Director, a refund of the Fee for the Permit may be made.
44. If title to the Site for which a Permit has been issued is transferred while the Permit remains in effect, the Permit is automatically cancelled unless the new Owner, within thirty (30) days prior to the transfer:
 - (a) provided the City with an undertaking agreeing to comply with all conditions under which the existing Permit was issued, an executed assumption agreement satisfactory to the Director and an executed release and indemnity as required by Section 18(a); or
 - (b) applies for and obtains a new Permit in accordance with the provisions of this By-law.

PART XII - ORDERS

45. For the purpose of ensuring compliance with this By-law, the Director or any person authorized by the Director or a Municipal Law Enforcement Officer may, at all reasonable times, enter upon and inspect any Site to determine whether or not the following are being complied with:
 - (a) this By-law;
 - (b) a condition of a Permit;
 - (c) a provision of the Site Alteration Agreement or a direction or order made under this By-law; or
 - (d) a prohibition order made under section 431 of the *Municipal Act, 2001*.
46. The Director or a Municipal Law Enforcement Officer may, for the purposes of the inspection under Section 46;
 - (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;
 - (c) require information in writing or otherwise as required by the officer from any person concerning a matter related to the inspection; or
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
47. Any cost incurred by the City in exercising its authority to inspect under Section 47(d) including, but not limited to, the cost of any examination, test, sample or photograph necessary for the purposes of the inspection, shall be paid by the Owner or occupant of the Site where the inspection takes place.
48. If the Director or a Municipal Law Enforcement Officer is satisfied that:
 - (a) a contravention of this By-law has occurred, he or she may make an Order requiring the Owner or the person who caused or permitted the Site Alteration to discontinue the activity and the Order shall set out:
 - (i) the municipal address or the legal description of the Site,
 - (ii) reasonable particulars of the contravention, and
 - (iii) the period of time within which there must be compliance; and,

- (b) a person has caused or permitted the performance of a Site Alteration in contravention of the provisions of this By-law, he or she may make an order requiring work to be done to correct the contravention and the order shall set out:
 - (i) the municipal address or the legal description of the Site,
 - (ii) reasonable particulars of the contravention,
 - (iii) the period of time within which there must be compliance, and
 - (iv) that if the work is not done in compliance with the Order within the period as specified, the City may have the work completed at the expense of the Owner.
49. Any Order issued under Section 49 shall be served personally or by registered mail to the last known address of the Owner of the Site and to any other person to be served. If an Order is served by registered mail, the service shall be deemed to have been made on the fifth (5) day after the date of mailing.
50. Upon completion of the work to correct the contravention by or on behalf of the City under Section 49, the City shall have a lien on the land for the amount spent in excess of any Security applied to remedy or rectify the contravention and the amount may be added to the tax roll and collected in the same manner and with the same priority as municipal property taxes.

PART X111 – PENALTY AND OFFENCE

51. Administrative Penalties By-law _____ applies to each administrative penalty issued pursuant to this By-law.
52. Each person who contravenes any provision of this By-law:
 - (a) may be given a Penalty Notice in accordance with the City of Thorold's Administrative Penalty By-law and be liable to pay to the City an Administrative Penalty in the amount specified by the Administrative Penalty By-law, for each day or part of a day on which the contravention continues; or
 - (b) upon conviction be liable to fines as provided for in the *Provincial Offences Act*, R.S.O. 1990, c.P. 33, as amended.
53. Every person who contravenes any provision of this By-law, a condition of a Permit or an Order issued under this By-law, is guilty of an offence and upon conviction is liable:
 - (a) on a first conviction, to a fine of not more than \$10,000; and
 - (b) on any subsequent conviction, to a fine of not more than \$25,000.
54. Notwithstanding Section 54, where the person convicted is a corporation, the maximum penalty that may be imposed is,
 - (a) on a 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.
55. In addition to any fine or any other penalty, any person who is convicted of contravening a provision of this By-law, the terms or conditions of a Permit issued pursuant to this By-law or any Order issued pursuant to this By-law, may be ordered by a court of competent jurisdiction at the expense of the person to:
 - (a) rehabilitate the land;

- (b) remove the Fill; and
- (c) restore the grade of the land to its original condition.

PART XIV - OBSTRUCTION

- 56. No Person shall hinder or obstruct, or attempt to hinder or obstruct the Director or a Municipal Law Enforcement Officer, or person in the discharge of duties under this By-law as required by the Director or Municipal Law Enforcement Officer in order to bring a Site into compliance with this By-law or an Order issued under this By-law.
- 57. No person shall provide false information in any statement, whether orally, in writing or otherwise, made to a Municipal Law Enforcement Officer or the Director.
- 58. No person shall hinder or obstruct, or attempt to hinder or obstruct, any Municipal Law Enforcement Officer or Director who is exercising a power or performing a duty under this By-law

PART XV - SEVERABILITY

- 59. Should a court of competent jurisdiction declare any provision of this by-law to be invalid or of no force and effect, the provision is deemed severable from this by-law and it is the intention of the City that the remainder of the by-law shall survive and be applied and enforced in accordance with its terms to the extent possible under the law.

PART XVI – INTERPRETATION

- 60. Any reference to a statute, regulation, by-law or other statutory instrument shall be deemed to refer to the legislation as amended, consolidated, replaced or modified.

Now therefore, the Council of The Corporation of the City of Thorold enacts as follows:

- 1. That By-law No. 275(78) approved at Council August 12, 2014 is hereby repealed.
- 2. That this By-law shall come into force on the date it is passed.

Read a first, second and third time and finally passed by Council this ____ day of _____, 2021.

Terry Ugolini, Mayor

Donna Delvecchio, City Clerk