

CITY OF KELOWNA

BYLAW NO. 12489

Amendment No. 4 to Soil Removal and Deposit Regulation Bylaw No. 9612

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts that the City of Kelowna Soil Removal and Deposit Regulation Bylaw No. 9612 be amended as follows:

1. THAT the following be added before the opening statement "WHEREAS Section 8(3)(m) of the Community Charter" as follows:

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]

2. AND THAT **Section 1. TITLE, 1.1** be amended by deleting "and Deposit" and replace with "Deposit and Improvement";

3. AND THAT **Section 2. APPLICABILITY, 2.4** be removed in its entirety as follows:

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

4. AND THAT **Section 3. DEFINITIONS**, be amended by adding the following definition in its appropriate location:

"**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.";

5. AND THAT **Section 4. RESTRICTIONS, 4.2** be added as follows:

"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.";

6. AND THAT **Section 5. EXEMPTIONS FROM PERMIT REQUIREMENT, 5.2** be added as follows:

"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
- b) 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.";

7. AND THAT Section 6. **PERMIT REQUIREMENTS**, 6.1 be amended by deleting it in its entirety and replacing with the following:

"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.”;

8. AND THAT **Section 6. PERMIT REQUIREMENTS, 6.2 (g)** be amended by adding “or **Soil Improvement**,” after “**Blasting**” and deleting “may be required”;

9. AND THAT **Section 6. PERMIT REQUIREMENTS, 6.2 (h)** be added as follows:

“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**.”;

10. AND THAT **Section 6. PERMIT REQUIREMENTS, 6.4** be amended by deleting “**removal or deposit**” and replacing it with “**removal, deposit, or improvement**”;

11. AND THAT **Section 6. PERMIT REQUIREMENTS, 6.5 (a)** be amended by deleting all references to “**removal or deposit**” and replacing them with “**removal, deposit, or improvement of soil**”;

12. AND THAT **Section 6. PERMIT REQUIREMENTS, 6.5 (c)** be amended by deleting “**deposit or removal**” and replacing it with “**deposit, removal, or improvement**”;
13. AND THAT **Section 6. PERMIT REQUIREMENTS, 6.5 (g)** be amended by deleting “**removal or deposit**” and replacing it with “**removal, deposit, or improvement**”;
14. AND THAT **Section 6. PERMIT REQUIREMENTS, 6.6** be amended by deleting “or material **deposit**” and replacing it with “**deposit, or improvement**”;
15. AND THAT **Section 6. PERMIT REQUIREMENTS, 6.7** be amended by adding “or **improvement**” after the word “**deposit**”;
16. AND THAT **Section 7. ENFORCEMENT, 7.1 (c)** be amended by deleting it in its entirety as follows:

“any person engaged in the **soil removal or deposit** operation or either of them, a notice of such breach. Every person receiving such notice shall forthwith cease and desist from all **soil removal or material deposit** operations, and every **owner** or occupier of **land** upon receiving a notice of a breach shall thereupon cease to permit any further **removal of soil or deposit** of soil or other material from or upon the **land**s, until such breach is remedied to the satisfaction of the **City**.”

and replace with

“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 **land**s, until such breach is remedied to the satisfaction of the **City**.”;

17. AND THAT **Section 7. ENFORCEMENT, 7.6, 7.7 and 7.8** be added as follows:

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.”;

18. AND THAT **Schedule A “Application for Soil Deposit or Removal Permit Bylaw No. 9612”** be deleted in its entirety;
19. AND FURTHER THAT **Schedule B “Soil Deposit and Removal Permit (Bylaw No. 9612)”** be deleted in its entirety.
20. This bylaw may be cited for all purposes as "Bylaw No.12489 being Amendment No. 4 to Soil Removal and Deposit Regulation Bylaw No.9612."
21. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first, second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk