

"SOIL REMOVAL AND DEPOSITING REGULATION BYLAW 1976 NO. 1747"

Consolidated Version

1999-JUN-22

Includes Amendments: 2008, 2164, 2214, 2420, 3698, 4721, 4893, 5289, 5404

CITY OF NANAIMO

BYLAW NO. 1747

A BYLAW TO REGULATE THE REMOVAL OF SOIL FROM ANY LANDS AND THE ADDITION OF FILL TO ANY LANDS WITHIN THE CITY OF NANAIMO, TO REQUIRE THE HOLDING OF A PERMIT FOR SUCH PURPOSE AND TO FIX THE FEE FOR SUCH PERMIT

Whereas it is deemed expedient that the removal or depositing of soil from or upon lands within the City be regulated.

Now therefore, the Municipal Council of the City of Nanaimo, in open meeting assembled enacts as follows:

1. This bylaw may be cited for all purposes as "SOIL REMOVAL AND DEPOSITING REGULATION BYLAW 1976 NO. 1747".

2. For the purposes of this Bylaw:

"City" means the City of Nanaimo.

"Corporation" means the legal authority of the City of Nanaimo.

"City Engineer" means the City Engineer of the City of Nanaimo and shall include his appointed representative.

"Fill" means soil free from refuse, wood, wood products, wood by-products or wood waste undecomposed organic matter, petroleum products or by-products, or anything or substance or liquid likely to cause contamination hazard or injury when in place.

"Permit" means a permit for soil removal or for fill issued pursuant to this Bylaw.

"Restricted Fill" (Bylaw 4721) means material which contains refuse, wood, wood products, wood by-products, or wood waste, undecomposed organic matter, petroleum products or by-products or any substance defined as a special waste pursuant to the Special Waste Regulation.

"Soil" means topsoil, silt, clay, sand, gravel, rock, peat or other substance of which natural land is composed. (Bylaw 2008)

For the purposes of this Bylaw, references to the City Engineer shall be deemed to be references to the Director of Public Works. (Bylaw 2008)

3. (1) No person shall remove soil from or add or deposit fill to or on any land within the City without having obtained a soil deposit permit. (Bylaw 4721)

(1.1) No permit shall be required for the removal of less than 500 cubic yards of soil or the deposit of less than 500 cubic yards restricted fill. (Bylaw 4721)

(1.2) No person shall deposit restricted fill on any land in the City except as permitted in Section 3(1.4). (Bylaw 4721)

(1.3) No person shall move restricted fill within the boundaries of any parcel of land within the City and deposit restricted fill on the surface of the land or into an excavation on the land so that the restricted fill becomes or is reasonably likely to become incorporated into the ground. (Bylaw 4721)

(1.4) No person shall be granted a permit from the City to deposit or permit the depositing of restricted fill in the City unless the person has first obtained a permit or approval for that purpose from the Provincial Government. (Bylaw 4721)

(2) Every permit shall expire ninety days from the date of its issue or at such earlier date as the permit may provide. (Bylaw 2008)

(3) No person shall be granted a permit from the City to deposit or permit the depositing of material other than defined under "fill" unless he has first been granted a Pollution Control Branch Permit or Exemption from the Provincial Government.

(4) An application for a permit shall be accompanied by a fee of \$20.00, shall be made by the owner of the lands at the City Hall on the form authorized by the City Engineer for such purpose and shall show: (Bylaw 3698)

- (a) The street location and legal description of the property from which it is proposed to remove the soil or on which it is proposed to place the fill;
- (b) If required for reasonable cause by the City Engineer, a plan in sufficient detail to indicate clearly the location of the proposed removal or fill and the final grades;
- (c) The maximum depth of soil removal, the quantity of soil to be removed, or the maximum depth of fill to be added and the quantity of fill to be added.

4. All permits for removal of soil or placing of fill pursuant to this Bylaw shall be issued by the Director of Public Works, or the person duly appointed as such from time to time and includes any person appointed or designated by the Director to act on his behalf, in a form authorized by him. (Bylaw 2214)

5. (1) Subject to Subsection (2) of this Section, no person shall remove soil from any land within the City or place fill on any land within the City if:

- (a) Such removal or filling would in any way endanger utilities, municipal works, surrounding or neighbouring land or the support thereof or would constitute or result in any hazard or contamination;
- (b) Such removal or filling would make impracticable the future subdivision or development of the land on surrounding or neighbouring land;
- (c) Such removal or filling would foul, obstruct or impede the flow of any stream, creek, waterway, watercourse, waterworks, ditches, drain or sewer in the City, whether or not the same are situated on private property;
- (d) Such removal or filling would contravene the *Soil Conservation Act*, the intentions of Provincial Government regulations pertaining to natural waterways and rivers, and to agricultural reserves.

(2) Notwithstanding Subsection (1) of this Section, a permit may be issued if precautions can be taken which will prevent the results referred to in clauses (a), (b), (c) and (d) of Subsection (1) as a result of the removal or filling of soil which is the subject of the application and provided the applicant agrees in writing to take such precautions.

- (3) Before a permit is issued the applicant may for reasonable cause, be required to:
 - (a) obtain the services of a Professional Engineer to determine the feasibility and proper method of the proposed soil removal or filling provided that the report of such Engineer will be subject always to the interpretation and approval of the City Engineer;
 - (b) deposit with the City Engineer a contour plan or plans prepared under the direction of a Professional Engineer or of a British Columbia Land Surveyor in sufficient detail to show the present state of the land, the extent of removal or filling contemplated and the proposed surface and topography of the land after the soil removal or filling has been completed.

(4) Notwithstanding the provisions of this Section, no permit will be issued for the removal of soil or the deposit of fill in that area of the City shown outlined in red on Schedule 'A' to this Bylaw which Schedule is declared to be an integral part of this Bylaw. The removal of soil and the deposit of fill from and on any land in the area shown on Schedule 'A' is prohibited. (Bylaw 2008)

6. Prior to the issuance of a permit under this Bylaw the applicant shall:
 - (a) agree in writing to remove or place the soil or fill in such quantities and in such manner as is specified in the permit; (Bylaw 2008)
 - (b) deposit cash, a certified cheque payable to the Corporation or an Irrevocable Letter of Credit in the amount of \$2,000. for each acre of property from which soil is to be removed or on which soil is to be placed, to ensure that the terms of such agreement are fully carried out. The cash, certified cheque or Irrevocable Letter of Credit will be returned upon the City Engineering certifying in writing that the works authorized by the permit have been satisfactorily completed and upon the filing of such certification with the City Treasurer. (Bylaw 5404)
7. All soil removed must be replaced by clean fill, systematically deposited and graded, if required by the City Engineer.
8. Access to any area from which soil is being removed or on which fill is being placed must be controlled at all times by a gate or other suitable device to prevent unauthorized dumping and the excavation or fill must be free of hazard and maintained hazard-free at all times.
9. If, at any stage of a soil removal or filling operation, it appears that further work authorized by the permit is likely to endanger any utilities, bridges, drains, public property, streets, easements or lanes, or is likely to create conditions which would endanger the health or safety of persons or property, the permit may be revoked by the City Engineer or the permittee may be required, as a condition to the continuance of the work, to take adequate precautions to prevent such danger.
10. It is the responsibility of the applicant to repair damage to municipal works and to property and to comply with the Streets and Traffic Bylaw of the Corporation and all other relevant bylaws.
11. Other than in building development areas, the area of excavation or fill shall be covered with not less than four inches of topsoil and shall be graded and sown with grass or protective cover, if so ordered by the City Engineer.
12. This Bylaw shall not apply to any person removing soil for the purpose of constructing an irrigation pond for which a licence shall have been obtained under the *Water Act* of the Province of British Columbia or which was necessarily dug or excavated in the course of construction of a structure in respect of which a building permit was duly issued.

13. If the permittee fails to carry out the work in accordance with the terms and conditions of this Bylaw or any plans and reports filed with the City Engineer or any conditions contained in the permit, it shall be an offence under this Bylaw and every day that the lands remain in a conditions contrary to the terms and conditions of this Bylaw or the said plan and specifications or the conditions contained in the permit, a new offence shall be deemed to have been committed and, in addition, the deposit referred to in Section 6(b) hereof shall be forfeited.

14. The permittee shall at all times accept full responsibility for any accident which may occur or damage which may be done to any person or property whatsoever caused directly or indirectly by said works, and shall save harmless and keep indemnified the Corporation from all claims and demands whatsoever in respect of the works.

15. Any person who contravenes any provision of the Bylaw or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of the Bylaw or who refuses, omits or neglects, to fulfill, observe, carry out or perform any duty, obligation, matter or thing whatsoever, commits an offence punishable upon summary conviction and is liable to a fine not exceeding Two Thousand Dollars (\$2,000); or, if an information is laid by means of a ticket, in accordance with the procedure set out in the *Offence Act*, a fine as stipulated in Schedule 'C' of this Bylaw. (Bylaws 2420, 4893)

16. The provisions of this Bylaw, including amendments thereto, do not apply to works and services constructed, installed, maintained or altered by the City of Nanaimo, the Regional District of Nanaimo and the Greater Nanaimo Water District. (Bylaw 2214)

(Bylaw 2008)

SCHEDULE 'A'

(Attach map of Diver Lake)

(Bylaw 2164)

SCHEDULE 'B'

(Deleted by Bylaw 5289)

(Bylaw 4893)

SCHEDULE 'C'

FINE SCHEDULE

Fines for tickets issued pursuant to this Bylaw, shall be as follows:

<u>Description of Offence</u>	<u>Section #</u>	<u>Amount of Fine</u>
Remove or add fill without permit	3(1)	\$ 50.00
Remove or add fill causing a hazard	5(1)(a)	\$200.00
Remove or add fill making development impractical	5(1)(b)	\$200.00
Remove or add fill obstructing or fouling water	5(1)(c)	\$200.00
Soil removed not replaced by fill	7	\$150.00