BY-LAW 2021 - XXX

TO AMEND BY-LAW 2011-232 BEING A BY-LAW TO REGULATE OR PROHIBIT REMOVAL OF TOPSOIL, PLACING OR DUMPING OF FILL, AND ALTERATION OF THE GRADE OF LAND WITHIN THE CITY OF MARKHAM ("Site Alteration By-law")

WHEREAS Section 142 of the *Municipal Act*, 2001, S.O. c. 25, as amended, authorizes municipal councils to pass by-laws to regulate or prohibit the removal of topsoil, the placing or dumping of fill, and the alteration of the grade of land, as set out in By-law 2011-232;

AND WHEREAS amendments are required to the said By-law from time to time to reflect current legislation and for administrative and enforcement purposes;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF MARKHAM ENACTS AS FOLLOWS:

That the Site Alteration By-law 2011-232 be amended as follows:

1) That the first letter of all words defined in section 1 (DEFINITIONS) be capitalized throughout the By-law; e.g. 'permit' to 'Permit' and 'order' to 'Order', etc.

2) That the numbering of all sections of the By-law be adjusted, considering the proposed changes.

3) That the following words in the By-law be replaced throughout the By-law, as follows:

	Existing Words in the By-law	**To be Replaced by**
1	Town	City
2	Hazard Lands	Natural Heritage Network
3	Environmental Protection Areas	Natural Heritage Network
4	Ministry of Natural Resources	Ministry of Natural Resources and Forestry

4) That in the WHEREAS section, the following WHEREAS Clauses be added:

"**AND WHEREAS** Section 391 of the *Municipal Act* provides that a municipality may impose fees or charges on persons for services or activities provided or done by or on behalf of it;

AND WHEREAS Section 425 of the *Municipal Act* provides that a municipality may pass by-laws providing that a person who contravenes any by-law of the municipality is guilty of an offence;

AND WHEREAS Section 429(1) of the *Municipal Act* provides that a municipality may establish a system of fines for offences under a by-law of the municipality passed under the *Municipal Act*;

AND WHEREAS Section 434.1 of the *Municipal Act* provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that a person has failed to comply with a by-law of the municipality passed under the *Municipal Act*;

AND WHEREAS Section 434.2(1) of the *Municipal Act* provides that an administrative penalty imposed by a municipality on a person constitutes a debt of the person to the municipality;

AND WHEREAS Section 435 of the *Municipal Act* provides for conditions governing the powers of entry of a municipality;

AND WHEREAS Section 441.1 of the *Municipal Act* provides that upon the request of a municipality that has entered into a transfer agreement under Part X of the *Provincial Offences Act*, the treasurer of a local municipality may add any part of a fine for a commission of a provincial offence that is in default under Section 69 of the *Provincial Offences Act* to the tax roll for any property in the local municipality for which all of the Owners are responsible for paying the fine and collect it in the same manner as municipal taxes;

AND WHEREAS Section 444 of the *Municipal Act* provides that a municipality may make an Order requiring a person who contravened a 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 445 of the *Municipal Act* provides that a municipality may 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 do work to correct the contravention; and

AND WHEREAS Section 446 of the *Municipal Act* provides that where a municipality has 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 to or required to do it, the matter or thing may be done at the person's expense, and further provides that the costs of so doing may be added to the tax roll and collected in the same manner as municipal taxes."

5) That a new section 'PURPOSE AND INTENT' be added before section 1 (DEFINITIONS), as follows:

"PURPOSE AND INTENT

The purpose of this By-law is to regulate the Placing or Dumping of Fill, the removal of Topsoil, and the alteration of the grade of land through the movement, removal or placement of Topsoil or Fill in order to ensure that:

(a) existing drainage patterns are maintained;

(b) changes to drainage or grade are appropriate to protect natural heritage features and archaeological resources;

(c) interference and damage to watercourses or water bodies are limited;

(d) water quality is maintained;

(e) the use of contaminated Fill is prevented;

(f) haul routes for the transportation of Fill and Topsoil will be designated to and/or from a site by the Director to minimize damage to City and Regional roads and minimize interference and/or disturbance to the City's residents and businesses;

(g) the City's other regulatory by-laws are complied with;

(h) the benefits of any proposed Site Alteration outweigh its potential impacts on other properties and Persons; and

(i) the proponent of the Site Alteration project pays for its costs associated with the processing and enforcement of this By-law."

6) That in section 1 (DEFINITIONS), the following definitions be deleted:

"Authorized Agent"
"Retaining Wall"

7) That in section 1, the following definitions be deleted and replaced as follows:

"Agricultural Uses" means the growing of crops, including nursery and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including accommodation for full-time farm labour when the size and nature of the operation requires additional employment;

"Development" means:
a) the construction, erection or placing of one or more buildings or structures on land; or,
b) the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof; or,
c) the laying out, establishment or expansion of a parking lot, or of sites for the location of three or more trailers as defined in Section 164(4) of the *Municipal Act, 2001*, S.O. 2001, c. 25 or of sites for the location of three or more mobile homes as defined in clause 46(1) of the *Planning Act*; or,
d) the laying out and establishment of commercial outdoor recreational facilities including golf courses, driving ranges, sports fields and the like; or,
e) the laying out and establishment of outdoor patios associated with restaurants;

"Dump" or ***"Dumping"*** means depositing of Fill in a location other than where the Fill was obtained;

"Fill" or ***"Filling"*** means Soil, rock, rubble, organic material or a combination of these that is transported and placed on the natural surface of a Soil or rock or organic terrain; it may or may not be compacted;

"Oak Ridges Moraine" means lands subject to *Ontario Regulation* 140/02 and subject to the requirements of the Provincial Oak Ridges Moraine Conservation Plan, as amended;

"Place" or ***"Placing"*** means the distribution of fill on lands to establish a finished grade higher or lower than the existing grade;

"***Security Deposit"*** means financial security submitted to the City by the Applicant and it can be in the form of a certified cheque, or a letter of credit;

"Significant" means identified as significant by the Ministry of Natural Resources and Forestry, the Region, or the City using evaluation procedures established by that Ministry, the Region, or the City, as amended;

"Site Alteration" means the Placing, or Dumping of Fill, the removal of Topsoil from land, or the alteration of the grade of land through the movement, removal or placement of Soil or Fill;

"Valleylands" means a natural area occurring in a valley or other landform depression that has water flowing through or standing for some period of the year. They include well or ill-defined depressional features associated with a river or stream, whether or not they contain a watercourse in which a flow of water regularly or continuously occurs;

"Wetlands" means lands that are seasonally or permanently covered by shallow water or have the water table close to or at the surface. In either case the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic plants or water tolerant plants. The four major types of wetlands are swamps, marshes, bogs and fens. Periodically soaked or wet lands being used for agricultural purposes, which no longer exhibit wetland characteristics, are not considered to be Wetlands for the purposes of this definition;

"Woodland" means an area of land of at least 0.2 hectares and includes at least:

a) 1,000 *trees* of any size, per hectare;
b) 750 trees measuring over 5 centimetres diameter at breast height, per hectare;
c) 500 trees measuring over 12 centimetres diameter at breast height, per hectare; or,
d) 250 trees measuring over 20 centimetres diameter at breast height, per hectare, but does not include a cultivated fruit or nut orchard, a plantation established and used for the purpose of producing Christmas trees or nursery stock. For the purposes of defining a Woodland, treed areas separated by more than 20 metres will be considered a separate *Woodland*. When determining a W*oodland*, continuous agricultural hedgerows and W*oodland* fingers or narrow *Woodland* patches will be considered part of the W*oodland* if they have a minimum average width of at least 40 metres and narrower sections have a length to width ratio of 3:1 or less. Undeveloped clearings with *Woodland* patches are generally included within a W*oodland* if the total area of each clearing is no greater than 0.2 hectares. In areas covered by Provincial Plan policies, W*oodland* includes treed areas as further described by the Ministry of Natural Resources and Forestry. For the purposes of determining densities for *Woodland*s outside of the Provincial Plan areas, the following species are excluded: staghorn sumac, European buckthorn, common lilac.

8) That in section 1, the definitions of ***"Body of Water", "Environmental Protection Areas"*** and ***"Hazard Lands"*** be deleted and replaced with the following:

"Natural Heritage Network" means lands defined as part of the Natural Heritage Network in the City of Markham Official Plan, as amended. It includes Wetlands, Significant Wetlands, Woodlands, Significant Woodlands, Significant Wildlife Habitat, Fish Habitat, Habitat of Endangered and Threatened Species, Valleylands, Significant Valleylands, Areas of Natural and Scientific Interest, permanent and intermittent Watercourses, and other lands (including vegetation protection zones and hazardous lands) as defined in the City of Markham Official Plan;

9) That in section 1, the definitions of ***"Habitat of Endangered, Rare and Threatened Species", "Endangered Species", "Rare Species"*** and ***"Threatened Species"*** be deleted and replaced with the following:

"Habitat of Endangered or Threatened Species" means

a) with respect to a species listed on the Species at Risk in Ontario List as endangered or threatened species for which a regulation made under Clause 55(1)(a) of the Endangered Species Act, 2007, is in force, the area prescribed by the regulation as the habitat of the species; or
b) with respect to any other species listed on the Species at Risk in Ontario List as an endangered or threatened species, an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding, as approved by the Ministry of Natural Resources and Forestry; and places in the areas described in a) or b), whichever is applicable, that are used by members of the species as dens, nests, hibernacula or other residences.

10) That in section 1, the definition of ***"Town"*** be deleted and replaced as follows:

"City" means The Corporation of the City of Markham.

11) That in section 1, the following definitions be added:

"Protected Countryside" means lands designated as Protected Countryside in the Ontario Greenbelt Plan (2017), as amended;

"Greenbelt Plan" means the Ontario Greenbelt Plan (2017), as amended;

"Laying Out" means the arrangement, planning or designing of any facility such as a building or a parking lot.

"Order" includes Notice, Work Order, Order to Comply, and Order to Discontinue;

"Qualified Person" means the person who meets the qualifications prescribed by the *Environmental Protection Act*, RSO 1990 c E.19 and associated regulations O. Reg. 153/04 or O. Reg. 406/19, as amended;

"Receiving Site" means the location where the imported Soil is being reused;

"Soil Importation" means to bring Soil from a Source Site to a Receiving Site;

"Source Site" means the location where the imported soil is being excavated or coming from;

"Treasurer" means the Treasurer of the City of Markham or his/her designate.

12) That section 2.0 be repealed and replaced as follows:

"No Person shall permit, perform or cause to permit or to have performed any Site Alteration without a Permit, unless otherwise exempt as set forth in this By-law."

13) That two new sections be added after section 2.0 as follows:

"No Person shall permit, perform or cause to permit or to have performed any activity other than Site Alteration pursuant to this By-law; and"

"No Person shall permit, perform or cause to permit or to have performed any activity of Development pursuant to this By-law; and"

14) That section 2.1 be repealed and replaced as follows:

"No Person shall permit, perform or cause to permit or to have performed Site Alteration on lands within the City identified as Natural Heritage Network that is not permitted by the City's Official Plan, as amended."

15) That a new section be added after existing section 2.3 as follows:

"No Person shall permit, perform or cause to permit or to have performed Site Alteration on lands within the City that is not permitted by the Greenbelt Plan, as amended and as shown on Schedule "B"."

16) That in section 2.5, add the following "and environmental conditions" after 'to the pre-existing grades'.

17) That section 2.8 be repealed and replaced as follows:

"No Person shall permit, perform or cause to permit or to have performed any Site Alteration on any lands Adjacent to or within 30 metres of the Natural Heritage Network as identified in the City's Official Plan without having been issued a Permit under this By-law by the Director."

18) That section 2.10 be amended as follows:

a) "permited" be changed to "permitted"

b) section 2.10.9 be repealed and replaced as follows:

"negative impact on any lands identified as Natural Heritage Network in the City's Official Plan or Areas of Natural or Scientific Interest, Wetland or Wetland complex as identified by the Toronto and Region Conservation Authority, the Ministry of Natural Resources and Forestry, the Region or the City;"

c) In section 2.10.10, remove the following "Town of Markham Official Plan Amendment No. 117."

19) That the following new sections be added after existing section 2.10:

"No Person shall use a haul route for the transportation of Fill and Topsoil that is not authorized by the Director."

“No Person shall permit, perform or cause to permit or to have performed the removals of vegetation designated as environmentally significant or trees unless approval is obtained from the City.”

20) That section 3.1.1 be repealed and replaced as follows:

“such land is not within 30 meters of the Natural Heritage Network as identified in the City’s Official Plan; or”

21) That in section 3.1, add “AND WHEREAS” at the start of the sentence.

22) That a new section be added after section 3.1.2.1, as follows:

“the Site Alteration does not in any way affect the land Drainage of the abutting properties;”

23) That section 3.1.13 be amended as follows:

Add “or a conditional building permit” after ‘building permit’

add “or the installation of on-site plumbing services,” after ‘building or structure’

24) That section 4.1.2 be amended to remove “Town’s Fee By-law 2002-276, as amended” and replace it with “City’s By-law 211-83, as amended.”

25) That section 4.1.3 be repealed and replaced as follows, and any reference to “securities” or “security deposit” in this By-law be replaced with “Security Deposit”.

“Security Deposit as per the Permit;”

26) That section 4.1.4 be repealed and replaced as follows:

“proof of liability insurance with a minimum coverage amount pursuant to the City’s requirements for insurance coverage;”

27) That section 4.1.5 be repealed and replaced as follows:

“a Site Alteration Plan, certified by an Engineer, meeting the standards set out in the City’s Design Criteria, as amended;”

28) That a new section be added after section 4.1.5, as follows:

“tree protection fencing, as per the accepted Tree Protection Plan and Arborist Report, shall be installed, inspected and approved by City Staff prior to issuance of the Permit;”

29) That section 4.1.6 be repealed.

30) That section 4.1.7 be repealed and replaced as follows:

“reports and/or plans describing the Site Alteration Plan showing features and special site conditions, including erosion and sediment control measures and their design details to the satisfaction of the Director;”

31) That section 4.1.9 be repealed and replaced as follows

“if located on the Oak Ridges Moraine as shown on Schedule “B”, studies or reports to confirm that the Site Alteration is in compliance with Ontario Regulation 140/02, the Oak Ridges Moraine Conservation Plan, as amended;”

32) That the following new sections be added after section 4.1.10:

“confirmation that any Soil Importation will comply with all applicable regulatory requirements related to the Soil Importation including, but not limited to, the *O. Reg*. 406/19 (*On-Site and Excess Soils Management Regulations*), as amended;”

“confirmation that a Qualified Person shall document and certify the Soil Importation work ensuring that it meets all applicable regulatory requirements related to the Soil Importation including, but not limited to, the *O. Reg*. 406/19 (On-Site and Excess Soils Management Regulations), as amended, and make such document(s) available for the City’s review upon request;”

“if lands are designated as Protected Countryside on the Greenbelt Plan as shown on Schedule “B”, studies or reports to confirm that the Site Alteration is in compliance with the Greenbelt Plan;”

“if located within 120.0 m of Natural Heritage Network lands, studies or reports to confirm that the Site Alteration is in conformity with the City’s Official Plan; and”

33) That a new section be added after 4.1.11 as follows:

“The Applicant shall obtain all other approvals that may be required from any level of government or authority having jurisdiction or any agencies thereof.”

34) That section 5.2 be repealed and replaced as follows:

“A Permit which is no longer valid or which has expired pursuant to this By-law must be renewed by making a written application to the Director. The Director can renew the expired Permit and issue a Permit extension for a maximum 180 days upon payment to the City for costs incurred in processing the Permit extension, with such costs to be calculated on an hourly rate, in accordance with the City’s By-law 211-83, as amended.”

35) That section 5.3.1 be repealed and replaced as follows:

“provides the City with an undertaking to comply with all the conditions under which the existing Permit was issued and also provide Letters of Credit, insurance, and any other documents requirement by the Director in accordance with the Permit; or”

36) That section 6 be repealed and numbering adjusted accordingly.

37) That a new section be added after section 7.2 as follows:

“An Owner shall be presumed to have carried out an activity related to Site Alteration located on the Owner’s property or to have contravened or caused the contravention of the conditions of a Permit issued under this By-law, as the case may be, which presumption may be rebutted by evidence to the contrary on a balance of probabilities.”

38) That section 10.0 be amended to delete the words “prepaid registered mail” and replaced with the words “regular mail”.

39) That the title of section 12 be repealed and replaced as follows:

“OFFENCES, PENALTIES AND FINES”

40) That section 12.0 be amended to add the following words after the word “offence”:

“and upon conviction is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended.”

41) That sections 12.1 and 12.2 be repealed and replaced as follows:

“Every Person who is guilty of an offence under this By-law shall be subject to the following penalties:

a) Upon a first conviction, to a fine of not less than $500 and not more than $50,000.

b) Upon a second or subsequent conviction for the same offence, to a fine of not less than $500 and not more than $100,000.

c) Upon conviction for a continuing offence, to a fine of not less than $100 and not more than $10,000 for each day or part of a day that the offence continues. The total of the daily fines may not exceed $100,000.

d) Upon conviction for a Multiple Offence, for each offence included in the Multiple Offence, to a fine of not less than $100 and not more than $10,000. The total of all fines for each included offence is not limited to $100,000.”

e) “Where a Person convicted of an offence is a corporation, the corporation is liable to a fine not less than $500 and not more than $100,000.”

42) That the following new administrative penalty sections be added after section 12.2:

“Instead of laying a charge under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended, for a breach of any provision of this By-law, an Order, a Work Order, or any other Order issued pursuant this By-law, an Officer may issue an administrative penalty to the Person who has contravened this By-law.

The Officer has the discretion to either proceed by way of an administrative penalty or a charge laid under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended. If an administrative penalty is issued to a Person for the breach, no charge shall be laid against that same Person for the same breach.

The amount of the administrative penalty for a breach of a provision of this By-law, a Work Order or Order issued under this By-law is fixed as set out in By-Law No. 2016-84, A By-law to Implement an Administrative Monetary Penalty System for Non-Parking Offences, as amended, or any successor by-law.

A Person who is issued an administrative penalty shall be subject to the procedures as provided for in By-Law 2016-84, A By-law to Implement an Administrative Monetary Penalty System for Non-Parking Offences, as amended, or any successor by-law.

An administrative penalty imposed on a Person pursuant to this By-law that is not paid within 15 days after the day it becomes due and payable, constitutes a debt of the Person to the City and may be added to the tax roll and collected in the same manner as municipal taxes.

Where a fine is in default, the City may proceed with civil enforcement against the Person upon whom the fine has been imposed, pursuant to the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended.

The City may make a request to the treasurer of a local municipality to add any part of a fine that is in default to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the fine, and collect it in the same manner as municipal taxes.

The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the Person convicted, and such order shall be in addition to any other penalty imposed on the Person convicted.”

43) That section 15 be repealed and replaced as follows:

“The following Schedules attached to this By-law form and are part of this By-law:

Schedule "A" Application for Site Alteration Permit; and

Schedule “B” Oak Ridges Moraine and Greenbelt Plan Boundaries.”

44) That section 17 be repealed.

45) That existing Schedule “A”, Schedule “B”, Schedule “C”, Schedule “D”, Schedule “E”, and Schedule “F” be repealed and replaced with Schedule “A” and Schedule “B” attached to this By-law.

46) That any reference to Schedule ‘E’ be replaced with Schedule “A” and reference to Schedule “F” be replaced with Schedule “B”.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED ON……..., 2021.

KIM BERLEY KITTERINGHAM
CITY CLERK

FRANK SCARPITTI
MAYOR