

Sec. 117-359. - Grading, mining and filling permits.

- (a) *Purpose.* The purpose of this section is to safeguard life, limb, property and the public welfare by controlling grading, mining, and filling operations so as to minimize conflicts with adjacent land uses, to preserve good soils and to regulate the type of materials used in filling operations, and to ensure that disturbed areas are restored upon completion of the operation.
- (b) *Scope.* This section sets forth rules and regulations to control grading, mining, excavation, and earthwork construction including fills and embankments, establish the administrative procedure for issuance of permits, and provides for approval of plans and inspection of grading construction.
- (c) *Exceptions.* This section shall not apply to:
- (1) The excavation, removal, or storage of rock, sand, dirt, gravel, clay, black dirt, peat, or other like material for the purpose of compliance with a grading plan approved as part of a subdivision plat, site plan, or planned unit development, if said plat, site plan or planned unit development does not require the exporting of earth material, or for the purpose of the yard, foundation, or basement of a building in the process of being erected, built, or placed thereon contemporaneously with, or immediately following, such excavation, removal or storage.
 - (2) The excavation, removal, or storage of rock, sand, dirt, gravel, clay, black dirt, peat, or other like material by a public agency incidental to the construction or maintenance of streets or utilities.
 - (3) Grading of individual residential lots by less than three feet in depth, filling of less than two feet at any point and which does not interfere with surface drainage in the area.
 - (4) Excavations that require removal of less than 400 cubic yards of earth material.
- (d) *Administration.*
- (1) An interim use permit shall be required for all grading, mining and filling operations as required herein. Said permit shall be applied for pursuant to section 117-52 and issued for a maximum period of three years, after which a permit renewal is required. Permit renewal requests shall be processed as an original request for an interim use permit.
 - (2) The following operations shall be covered by this section: the removal, crushing, borrowing, filling and excavation of earth material.
 - (3) The costs to the city of the continuous administration of any interim use permit issued herein shall be paid by the permit holder. In order to insure payment, the operator shall deposit with the city an escrow sum in an amount specified by the city engineer. Said escrow deposit will then be used to defray the city's expenses in the continuing administration of the interim use permit. In the event the escrow fund is not properly funded, as described in this subsection (d)(3), the operator shall cease and further operations and the interim use permit will be deemed suspended until the proper sums have been deposited into the escrow fund. These costs are in addition to any security requirements of the interim use permit.
 - (4) Application for the interim use permit shall be made in writing to the council on such form as the council may from time to time designate, and shall include the following information:
 - a. Names and address of the applicant, operator and owner of the land.
 - b. The purpose of the permit.
 - c. The exact legal description and acreage of the property to be graded, mined or filled.
 - d. The following maps of the entire work site and including all areas within 350 feet of the work site. All maps shall be drawn at a scale of one inch to 100 feet unless otherwise stated below:
 1. Map 1: existing work site conditions to include:
 - (i) Contour map (two-foot intervals);
 - (ii) Existing vegetation;
 - (iii) Existing drainage and permanent water areas;
 - (iv) Existing structures;
 - (v) Existing wells; and
 - (vi) Water table elevations.
 2. Map 2: proposed operations to include:
 - (i) Location of work sites to be graded, mined or filled showing elevations of each stage of proposed operations;
 - (ii) Location of storage of mined materials, showing maximum height of storage deposits;
 - (iii) Location of vehicle parking, and access roads;
 - (iv) Location and description of erosion and sediment control structures;
 - (v) Location of any proposed dewatering operations.
 3. Map 3: end use plan to include:
 - (i) Final grade of proposed work site showing elevations and contour lines at two-foot intervals;
 - (ii) Location and species of vegetation to be planted;
 - (iii) Phasing plan; and
 - (iv) Stormwater drainage plan.
 4. Map 4: location of designated hauling roads from work site to a state or federal highway.
 - e. A soil erosion and sediment control plan.
 - f. A plan for dust and noise control.
 - g. A full and adequate description of all phases of the proposed operation to include an estimate of duration of the grading, mining or filling operation, location and approximate acreage of each stage and schedule for restoration.

- h. A rehabilitation or restoration plan providing for the orderly and continuing rehabilitation of all excavated land. Such plan shall illustrate, using appropriate photographs, maps, and surveys drawn to a scale of one inch equals 100 feet and with a two-foot contour interval satisfactory to the engineer, the following:
 - 1. The final or planned contours of the land when the mineral removal operations are completed.
 - 2. Those areas of the work site that will be used for storage of top soil and overburden.
 - 3. The elevation and location of all water bodies.
 - i. Location of any and all existing wells and the size and depth thereof located on the work site.
 - j. Location and description of any proposed dewatering operations.
 - k. An analysis of the earth material to be used in the filling, which analysis shall include the following:
 - 1. pH content.
 - 2. Organic material content.
 - 3. Determination of the presence or lack of hazardous substances as defined by the Minnesota Pollution Control Agency.
 - l. The analysis as required herein shall be certified by a qualified testing laboratory.
 - m. Any other information requested by the city staff, planning commission or council.
- (e) *Performance standards.*
- (1) *General provisions.*
 - a. Weeds and other unsightly or noxious vegetation shall be cut or trimmed as may be necessary to preserve a reasonably neat appearance of the work site and to minimize seeding on adjacent property.
 - b. All equipment used for grading mining or filling operations shall be maintained and operated in such a manner as to minimize, as far is practicable, noises, dust and vibrations adversely affecting surrounding properties. In addition, all machinery shall be kept in good repair and painted regularly. Abandoned machinery and rubbish shall be removed from the work site regularly.
 - c. All hauling operations shall be completed so as to minimize noise, safety and dust concerns to adjacent residential properties.
 - d. All grading, mining and filling work sites shall be properly safeguarded to prevent the general public from depositing garbage or other refuse in the work site.
 - e. All structures that are not being used shall be removed from the work site.
 - f. Existing tree and ground cover shall be preserved to the extent feasible, maintained and supplemented by selective cutting, transplanting and replanting of trees, shrubs and other ground cover along all setback areas.
 - (2) *Water resources.*
 - a. The grading, mining or filling operation shall be conducted in such a manner as to minimize interference with the surface water drainage outside of the boundaries of the operation.
 - b. Excavation occurring below groundwater elevation may require an analysis performed by a hydrologist or other qualified professional. Such analysis shall address whether the proposed excavation shall have a significant impact on the adjacent groundwater quantity and quality. In general, excavations less than 15 acres shall be exempt from this requirement unless there is evidence of clay lenses or perched water table adjacent to the excavation, in which case some analysis may be required.
 - (3) *Safety fencing.* Safety fencing may be required around all or portions of the grading, mining or filling operation at the discretion of the council. Fencing may be ordered by the council or city engineer any time the permit is in force and shall be installed within 24 hours' written notice.
 - (4) *Access roads.*
 - a. The location of the intersection of mining, grading or filling access roads with any public roads shall be selected such that traffic on the access roads will have sufficient distance of public roads in view so that any turns onto the public road can be completed with a margin of safety as determined by the city engineer.
 - b. All access roads from grading, mining or filling operations to public highways, roads or streets shall be maintained in order to minimize dust considerations.
 - (5) *Fill materials.* An analysis of all fill materials must be provided to and approved by the city engineer prior to commencing any filling activities. No filling materials shall be permitted which in the opinion of the city engineer would be undevelopable or create substandard soils.
 - (6) *Screening barrier.* To minimize problems of dust and noise and to shield operations from public view, a screening barrier may be required between the work site and adjacent properties. A screening barrier may also be required between the work site and any public roads located within 500 feet of any grading, mining or filling operations. The screening barrier shall be planted with a species of fast growing trees, and where practical, stockpiles of overburden materials shall be used to screen the operation work site.
 - (7) *Slopes.* The maximum permitted slope for any grading, mining or filling operation other than the working face shall be sloped on all sides at a maximum ratio of two feet horizontal to one foot vertical, unless a steeper slope shall be approved by the engineer. In no case shall the slope of the working face of the operation be left unattended with a slope greater than two feet horizontal to one foot vertical. Where excavations are adjacent to a public roadway or other right-of-way, the excavation shall have a maximum four to one slope. Slopes adjacent to or contiguous to bodies of water shall be sloped at a maximum of five to one.
 - (8) *Setback.* Grading, mining or filling operation shall not be conducted closer than 30 feet to the right-of-way line of any existing or platted street, road or highway, except that excavating may be conducted within such limits in order to reduce or raise the elevation thereof in conformity to the existing or platted street, road or highway.
 - (9) *Security agreement.* Prior to commencing any grading, mining or filling operations, a performance bond, cash escrow or irrevocable letter of credit, in such form and amounts as the city may require, shall be deposited with the city. The amount of

this deposit shall vary according to the scope and duration of the project and shall be established by the council. This deposit may be used by the city to: pay for the cost and expense of repairing any public rights-of-way due to the grading, mining or filling operation; pay for any costs associated in administering the requirements of this chapter; and to pay for any restoration of the work site not properly restored upon completion. This security shall be used by the city only in the event that the permit holder fails to pay bills submitted for costs incurred by the city.

- (10) *Earth material.* No earth material shall be imported to or exported from the work site until the haul road has been officially designated as a haul road by the city and all materials hauled from the source shall be hauled over that road. The haul road designation process shall be pursuant to section 2051.3 of the state department of transportation's Standard Specifications for Construction, 1983 Edition.
- (f) *Insurance.* The applicant shall file with the administrator a liability insurance policy or certificate of such insurance acceptable to the city and issued by an insurance company authorized to do business in the state.
- (1) The policy shall be an all-perils or general liability insurance policy in the minimum amount of \$1,000,000.00. The policy shall name the city as an additional insured. The policy shall require that the city be notified 30 days in advance of cancellation of the policy.
 - (2) Said policy shall be for the full period of the permit and shall provide for the giving of ten days prior notice to the administrator by registered mail of termination, cancellation, or amendment of the policy.
 - (3) In the event said policy is terminated for any reason, the permit shall be automatically suspended upon the day the policy terminates, unless a new policy complying with this section is obtained and filed with the administrator prior to the termination of the policy in force.
- (g) *Regulations and requirements and operating standards.*
- (1) The council as a pre-requisite to the granting of said permit or after such permit has been granted, may impose such further restrictions and requirements as may be reasonable and necessary under the particular circumstances of each application. Such restrictions and requirements may be in contract form with the applicant or any other person interested directly or indirectly in the issuance of such permit.
 - (2) No excavation or digging shall be made beyond the limits for which the particular permit is granted and in no case shall any excavation or digging be made within 30 feet of any adjoining road right-of-way or structure as may be in the area without obtaining specific approval by the council.
 - (3) Where excavations are made within 30 feet of a public roadway or other right-of-way, the permittee shall erect either a suitable guard rail along said right-of-way or roadway or construct a dirt berm not less than 30 inches in height and six feet in width at the base.
 - (4) All reasonable means shall be employed by applicant to reduce dust, noise and nuisances.
 - (5) *Noise.* The maximum noise level at the perimeter of the work site shall be within the limits set by the Minnesota Pollution Control Agency and the Environmental Protection Agency of the United States.
 - (6) *Hours.* All mining operations shall be conducted between 7:00 a.m. and 8:00 p.m. on weekdays only unless otherwise specifically approved by the city engineer or their agent.
 - (7) *Explosives.* The use and handling of explosives shall be coordinated with the city police department. Blasting shall occur only at hours specified by the police department and at no other time.
 - (8) *Dust.* Operators shall utilize all practical means to reduce the amount of dust caused by the operation. In no case shall the amount of dust or other particulate matter exceed the standards established by the MPCA. No operations shall be allowed when wind gusts exceed 30 miles per hour.
 - (9) *Water pollution.* Operators shall comply with all applicable Minnesota Pollution Control Agency regulations and federal and Environmental Protection Agency regulations for the protection of water quality. No waste products or process residue, including untreated washwater, shall be deposited in any lake, or natural drainage system, except that lakes or ponds wholly contained within the extraction site may be so utilized.
 - (10) *Top soil preservation.* All top soil shall be retained at the work site until complete rehabilitation of the work site has taken place according to the rehabilitation plan.
 - (11) *Designated haul routes* shall be maintained by the operator in accordance with state department of transportation's Specification 2051.4 as found in the state department of transportation Standard Specifications for Construction, 1983 Edition.
- (h) *Dangerous operations.* The operators shall change, alter or modify immediately any excavation or operation therein deemed by the council to be unsanitary or dangerous or polluted or contrary to the general health and welfare of the community.
- (i) *Designation of haul roads and traffic law compliance.* Material of the kinds and for the purposes described herein shall not be hauled from any source until the haul road from that source has been officially designated as a haul road and all materials hauled from the source shall be hauled over that road.
- (1) The operator shall select a haul road over which it is proposed to haul the materials, as previously described, and notify the city engineer as to the road so selected. Within 15 calendar days after being notified of the haul road selection, the city engineer will, if the road so selected is a practicable route, approve that road as a designated haul road.
 - (2) After a haul road has been officially designated, the operator may select a different road for official designation under the same conditions as previously stated. However, any changes made in haul road designation shall not relieve the operator of their obligation of restoring the previously designated haul road if any of the above-described materials were hauled over that road.
 - (3) While hauling operations are in progress, the operator shall maintain the haul road in a condition satisfactory to the city engineer. This work shall include application of water, bituminous material, or calcium chloride to the road surface as may be necessary to alleviate dust nuisance and eliminate traffic hazards. This work shall also include the removal of spillage of any material on the haul road.
 - (4) When hauling operations over any haul road are completed, the operator shall (at their option):
 - a. Restore that haul road to a condition at least equal to that which existed at the time the hauling operations were started; or

- b. Compensate the local road authority in an amount satisfactory to that road authority and concurred in by the city engineer for the restoration of that haul road by the city.
- (5) The fact that other traffic has used the haul road concurrently with the hauling of the above-described materials shall not relieve the operator of their obligation to maintain and restore the haul road as above provided.
- (6) The city engineer's determination as to the kind and amount of maintenance and restoration work required to restore the haul road to a condition equal to that which existed at the time the hauling operations were started shall be final, binding and conclusive.
- (7) When hauling over any designated haul road has been completed and the operator has restored that road or has compensated for that restoration as required, the city engineer will accept such restoration or concur in such financial settlement for the restoration of the haul road (as the case may be) in writing, and such acceptance will relieve the operator of any additional obligation in connection with the restoration of that road.
- (8) If the operator fails or refuses to perform haul road restoration or to make satisfactory financial settlement for such restoration as required within the period specified in a written notice by the city engineer, the city will cause the restoration work to be done and require reimbursement therefor from the operator's surety.
- (9) Operators shall obey all state, county and municipal road limits and other applicable traffic regulations in hauling to and from the work site. Operators shall also restrict trucks hauling to and from the work site to the use of those public highways designated by the permit.
- (j) *Site restoration.* All grading, mining and filling sites shall be restored immediately after operations cease. Restoration shall be complete within 60 days of the cessation of operations. The following standards shall apply to restoration:
- (1) The peaks and depressions of the work site shall be graded and backfilled to a surface which will result in a gently rolling topography in substantial conformity to the land area immediately surrounding the work site and which will minimize erosion due to rainfall. No finished slope shall exceed 12 percent in grade.
- (2) Restoration shall begin after the grading, mining and/or filling of 25 percent of the total area to be mined or five acres, whichever is less. Once these areas have been graded, mined or filled, they shall be sloped and seeded as per the restoration plan.
- (3) Restored areas shall be surfaced with a soil of a quality at least equal to the topsoil of land areas immediately surrounding the work site, and to a depth of at least six inches. The topsoil shall be seeded, sodded, or planted with grasses. Trees and shrubs may also be planted but not as a substitute for grasses. Such planting shall adequately retard soil erosion.
- (4) The finished grade shall be such that it will not adversely affect the surrounding land or future development of the work site and shall be consistent with the end use plan.
- (5) Within 30 days after the deposit of approved fill materials, the filled area shall be covered with a minimum of six inches clean fill, and the depth of the fill shall be controlled to blend with the surrounding ground conditions.
- (k) *Existing operations.* Existing grading, mining and filling operations shall comply with these provisions within 180 days following the effective date of the ordinance from which this subsection is derived.

(Code 1978, § 9.11.12; Ord. No. 87-9, 1-11-1988; Ord. No. 97-15, 12-1-1997; Ord. No. 01-15, 7-30-2001; Ord. No. 03-30, 9-15-2003)