

## Section 48: Land Excavation/Grading

### SECTION 48:

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**48.01 Purpose.** The purpose of this Section is to regulate land excavation/grading operations so as to protect neighboring properties from negative effects of land filling operations and to promote the safety and general welfare of the public by establishing minimum requirements and conditions for land excavation/grading operations.

#### **48.02 General Regulations.**

- A. Protection of Utilities. The developer shall be responsible for the prevention of damage to any public utilities or services.
- B. Protection of Adjacent Property. The person doing or causing grading is responsible for the prevention of damage to adjacent property. No person shall excavate on land sufficiently close to the property line to endanger any adjoining public street, sidewalk, alley or other public or private property without supporting and protecting such property from any damage that might result.
- C. Inspection Notice. The developer shall notify the public works department at least 24 hours prior to the start of work.
- D. Temporary Erosion Control. The developer shall put into effect and maintain all precautionary measures necessary to protect adjacent watercourses and public or private property from damage by water erosion, flooding, or deposition of mud or debris originating from the site. Precautionary measures must include provisions of properly designed sediment control facilities so that downstream properties are not affected by upstream erosion.
- E. Traffic Control and Protection of Streets. The developer shall provide flaggers, signs, barricades, etc., to ensure adequate safety when working in or near public streets.

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- F. Hazard from Existing Grading. Whenever any existing excavation, embankment, or fill has become a hazard to life or limb, endangers structures, or adversely affects the safety, use, or stability of a public way or drainage channel, the owner of the property upon which the excavation, embankment, or fill is located, or other person or agent in control of said property, upon receipt of notice in writing from the jurisdiction, shall within the period specified therein repair, reconstruct, or remove such excavations, embankment, or fill to eliminate the hazard.
- G. Tracking of Dirt onto Public Streets. The developer shall provide for adequate cleaning of equipment to prevent the tracking of dirt and debris onto public streets and shall be responsible to promptly remove all dirt and debris tracked onto public streets.
- H. All land excavation activity must also comply with the soil erosion and sediment control standards as outlined in Section #50 (Storm Water Management and Erosion Control Guidelines).

**48.03 Permit Required.** Except for a governmental jurisdiction and cases where a grading and drainage plan for a private development has been approved as part of a subdivision or other development, the extraction of sand, gravel, black dirt, or other natural material from the land or the grading of land by a person in the amount of 75 cubic yards or more shall be termed land excavation/grading and shall require an administrative permit.

### 48.04 Application for Permit.

- Subd. 1.** Application. Before any work is commenced, the owner or authorized agent, shall file an application on such form as shall be provided by the City and shall submit the following information.
- A. The name and address of the applicant.
  - B. The name and address of the owner of the land.
  - C. The address and legal description of the land involved.
  - D. The purpose of the excavation or grading.
  - E. A description of the type and amount of material to be excavated or graded from the premises.
  - F. The highway, street or streets, or other public ways in the City upon and along which any material is to be hauled or carried.

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- G. An estimate of the time required to complete the excavation or grading.
- H. A site plan showing present topography and also including boundary lines for all properties, water courses, wetlands, and other significant features within 350 feet.
- I. A site plan showing the proposed finished grade and landscape plan. Erosion control measures shall be provided on such plan. Final grade shall not adversely affect the surrounding land or the development of the site on which the excavation is being conducted. Top soil shall be of a quality capable of establishing normal vegetative growth.
- J. A written description of the procedures to be utilized to ensure that the proposed activity will in no way jeopardize the public health, safety and general welfare of the public including whether the area will be appropriately fenced to provide adequate protection.
- K. A statement that the applicant will comply with all conditions prescribed by the City or its officers or agents.
- L. When approval is required by the State of Minnesota, the applicant shall provide proof of such approval along with the application.
- M. In the City's sole discretion, a Certificate of Survey may be required.

**Subd. 2.** The application shall be considered as being officially submitted when all the information requirements are complied with. A fee for such application shall be paid to the City at the time the application is submitted based upon the schedule as established by City Council Resolution.

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### 48.05 Review and Approval.

**Subd. 1.** The Zoning Administrator shall review the application and required information to determine conformance with the Comprehensive Plan, Zoning Ordinance, Airport Zoning Ordinance, Official Map, and this Ordinance. The Zoning Administrator shall give final approval. In reviewing the application, the Zoning Administrator may request comments from Consultants. The Zoning Administrator may also refer the matter to the Planning Commission for recommendation, if necessary.

Upon receiving information and reports from the City Staff and other applicable agencies, the Zoning Administrator shall make its determination as to whether, and when, and under what conditions such permit shall be granted.

**Subd. 2.** Unless a request for additional review time is requested by the Zoning Administrator, action on the application shall be made within 60 days.

**Subd. 3.** The City Council shall serve as the Board of Adjustment and Appeals if the application is denied by the Zoning Administrator.

### 48.06 Conditions of Permit.

- Subd. 1.** The City, as a prerequisite to the granting of a permit, or after a permit has been granted, may require the applicant to whom such permit is issued, or the owner or user of the property on which the excavation/grading is located to:
- A. Properly fence the excavation.
  - B. Slope the banks and perform such other actions necessary to keep the excavation from caving or having sliding banks.
  - C. Properly drain, fill in, or level the excavation, after it has been created, so as to make the same safe and healthy as the City shall determine.
  - D. Keep the excavation/grading within the limits for which the particular permit is granted.

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- E. Remove excavated/graded material from the excavation upon and along such highways, streets, or other public ways as the City shall order and direct.
- F. Retain and store top soil from the site in question and to utilize such materials in the restoration of the site.
- G. Replace with clean fill material. The introduction of foreign substances or material that does not constitute clean fill is prohibited.

**Subd. 2.** Hours of Operation. Unless expressly extended by permit, the hours of operation shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Saturday.

**48.07 Financial Guarantee.** The City may require either the applicant, owner, or user of the property on which the excavation/grading is occurring to post a security in such form and sum as determined by the Zoning Administrator with the recommendation of the City Attorney and City Engineer. The security will provide the City with sufficient security conditioned to pay the City the extraordinary cost and expense of repairing from time to time, any highways, streets, or public ways where such repair work is made necessary by the special burden resulting from hauling and travel in transporting excavated material, the amount of such costs and expense to be determined by the City Engineer; and conditioned further to comply with all requirements of this Section, and the particular permit, and to pay any expense the City may incur by reason of doing anything required to be done by an applicant to whom a permit is issued.

**48.08 Failure to Comply.** The City may, for failure of any person to comply with any requirement made of them in writing under the provisions of such permit, as promptly as same can reasonably be done, proceed to cause said requirement to be complied with, and the cost of such work shall be taxed against the property whereon the landfill is located, or the City may, at its option, proceed to collect such costs by an action against the person to whom such permit has been issued, and their superiors if a security exists. In the event that excavation/grading operation requiring a permit are commenced prior to City review and approval, the City may require work stopped and all necessary applications filed and processed. In such cases, application fees shall be double the normal charge.

### **48.09 Completion of Alteration.**

- A. All excavation/grading operations shall be completed within 90 days of the issuance of the permit. Upon completion, the permit holder shall notify the

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City in writing of the date of completion. If additional time beyond the 90 days is needed for completion, the permit holder may apply to the City, and upon a satisfactory showing of need, the City may grant an extension of time. If such extension is granted, it shall be for a definite period and the City shall issue an extension permit. Extensions shall only be granted in cases where the permit holder shows that good faith efforts were made to complete the excavation/grading operation within 90 days and that failure to complete the operation was due to circumstances beyond the permit holder's control, such as teamster's strike, unusually inclement weather, illness, or other such valid and reasonable excuse for non-completion. In the event a request for an extension is denied, the permit holder shall be allowed a reasonable time to comply with the other provisions of this Section relating to grading, leveling, and seeding or sodding. What constitutes such "reasonable time," shall be determined by the City Engineer after inspecting the premises.

- B. At the completion of an excavation/grading, the premises shall be graded, leveled, and seeded or sodded with grass. The grade shall be such elevation with reference to any abutting street or public way as the City Engineer shall prescribe in the permit. The site shall also conform to such prerequisites as the City Engineer may determine with reference to storm water drainage runoff and storm water passage or flowage so that the excavation cannot become a source of, or an aggravation to, storm water drainage conditions in the area. The City Engineer shall inspect the project following completion to determine if the applicant has complied with the conditions imposed as part of the permit. Failure of such compliance shall result in the withholding of any building permits for the site and notice of such withholding shall be filed in the office of the County Recorder for the purposes of putting subsequent purchasers on notice.