

## Chapter 80 - Soil Removal and Fill

---

- 8.181 Purpose. The purpose of this Chapter is to promote the public health, safety and general welfare of the residents of the City of Troy and preserve the natural resources and to prevent the creation of nuisances and hazards to the health, safety, and general welfare by the regulation of the removal of topsoil, sub-soil, sand, gravel, earth and other materials from lands located within the City of Troy, and the regulation of depositing and dumping of sand, gravel, earth, rock, stone, concrete, minerals and other materials on land located within the City of Troy; and by providing for the issuance of licenses for such activities; and to provide for fees; and to prescribe the rules and regulations and conditions for the issuance of such licenses; and to provide for the bonds to insure satisfactory performance of the terms of this Chapter.
- 8.182 Permit Required. It shall be unlawful for any person to move, remove or deposit topsoil, subsoil, sand, gravel, earth, rock, stone, concrete, minerals or other materials on land located within the City of Troy without having first obtained a permit for such moving, removal and/or deposition from the City Council; provided however, that
- (1) No permit fee shall be collected for sites less than two acres, except as provided in Section 8.189(2).
  - (2) No permit shall be required for the moving of the aforesaid materials upon a parcel of land two acres or less in area where grade will not be changed by more than 1 foot and/or drainage will not be changed to the detriment of adjacent properties, except as provided in Section 8.189(2).  
  
(Rev. 02-25-85)
  - (3) No permit shall be required for sites where the moving, grading or leveling of the aforesaid materials is carried on for the immediate use or development of land upon which these substances are found pursuant to an approved grading plan for a platted subdivision which has received final approval of the preliminary plat;  
  
No permit shall be required for the application of topsoil or other similar material when used for purposes of lawn maintenance or gardening; provided, however, that such lawn maintenance or gardening does not violate the requirements of this Chapter.
- 8.183 Procedure on Application. The application for any permit shall be filed with the City Clerk in quadruplicate, signed by the property owner of record, the original of which shall be sworn to before some person lawfully authorized to administer oaths, and shall set forth the following information and shall be accompanied by the following data:
- (1) A full identification of the applicant and all persons to be directly or indirectly interested in the permit if granted;
  - (2) The residence and business address of the applicant, including all members of any firm or partnership, or all officers of any corporation applying;
  - (3) A complete description and location of the property on which the work is proposed to be done, as prepared by a registered civil engineer or land surveyor.
  - (4) The exact nature of the proposed excavation or fill and soil to be removed or deposited and an estimate of the approximate number of cubic yards to be

## Chapter 80 - Soil Removal and Fill

---

removed or deposited. This computation to be made by a registered civil engineer or land surveyor.

- (5) A statement of the manner in which it is proposed to excavate and remove or fill the soil or other materials including the slope of the sides and the level of the floor, and the kind of equipment proposed to be employed in making such excavation and removing such materials.
- (6) The proposed route which applicant proposes to use over the public streets and over private property in transporting such material;
- (7) The past experience of the applicant in the matter to which the permit pertains; the name, address and past experience in such matter of the person to be in charge of the proposed operations;
- (8) Whether or not any permit of the applicant has been revoked, and if so, the circumstances of such revocation;
- (9) The time within which such excavation and/or fill is to be commenced after the granting of said permit and the time when it is to be completed; and
- (10) Such further information as the City Council, the City Manager, or the City Engineer may require.

(Rev. 03-26-79)

8.184 Filing Map and Payment of Filing Fee. At the time of application, the applicant shall file with the City Clerk a topographic map of the property on which the proposed work is to be done covering the area extending 300 feet from the exterior boundary of the proposed site. This map is to be prepared by a registered civil engineer or land surveyor. The map shall indicate the number of acres on which excavation work is to be performed. At the time of filing said map and application for permit, the applicant shall pay a filing fee of \$100.00 provided, however, no filing fee shall be charged for areas of 5 acres or less. Said sum is to be used to defray the cost of engineering services, investigation, publication charges, and the other miscellaneous administrative expenses occasioned by processing such application. In addition to the filing fee, the applicant shall pay a permit fee in accordance with the provisions of this Chapter.

8.185 Investigation and Hearing. Immediately upon the filing of an application for a permit one copy thereof shall be delivered to the City Manager and one copy shall be delivered to the City Engineer. The City Engineer shall make an investigation of the facts set forth in the application and shall make a written report of his investigation together with his recommendations to the City Manager, who shall then present same to the City Council along with his recommendation.

The City Council, in granting or denying any applications for a permit shall take into consideration the zoning of the proposed site, character of the applicant with regard to morality, honesty, integrity, financial responsibility, and all pertinent things concerning the proposed application which may concern the health, safety and general welfare of the public, and the preservation of natural resources.

## Chapter 80 - Soil Removal and Fill

---

Any permit for which application is made shall be denied if it appears from the investigation thereof that the project would remove the lateral and subjacent support of the adjacent land and result in a dangerous topographic condition or result in seepage or slides or create an unattractive nuisance dangerous to public safety, or that it otherwise would in any manner endanger the public health, morals and prevent the preservation of natural resources or be detrimental to the general public welfare.

Approval by the City Council shall not be required for permits involving less than five acres of land or for planned developments which have received site plan approval by the Plan Commission. Such permits may be issued upon approval of the City Engineer. Estimates of soil to be removed or deposited need not be made by a registered civil engineer, nor will a topographic map be required for such limited operations.

8.186 Permit Fees. At the time of issuance of an excavation permit, if the application is approved, the applicant shall pay an excavation permit fee of \$2.00 per thousand cubic yards, or any part thereof, to be removed from the site.

At the time of issuance of a filling permit, whether in conjunction with an excavation permit or separately where no excavation work will take place, the applicant shall pay a filling permit fee of \$2.00 per thousand cubic yards or any part thereof, to be filled at the site.

At the time of issuance of a topsoil removal or stripping permit, if the application is approved, the applicant shall pay a topsoil removal or stripping permit fee of \$10.00 per acre or any part thereof.

At any time prior to the time limit specified in the application that the number of cubic yards for which a permit has been granted have been removed or filled, or in the case of topsoil removal and stripping operations the number of acres for which a permit has been issued have been stripped, the permit shall automatically be terminated and no further materials may be removed or deposited from the site until a new application has been filed and a permit granted in the same manner as the original application and permit. The cost of this permit is designed to cover expenses of the City occasioned by the continued operation of the soil removal or depositing and no part thereof shall be returnable to the permit holder. The permit fee shall remain separate and distinct from the purpose and use of the surety bond required in the following section and no part thereof shall be used to insure faithful performance of all conditions and requirements under which the permit is issued.

8.187 Deposit of Bonds. The City Council shall require, as a condition to the granting of any permit under this Chapter, that the applicant deposit a surety bond or cash in an amount to be fixed by the City Council inuring to the benefit of the City of Troy and the general public, guaranteeing that the applicant will faithfully perform all of the conditions and requirements under which the permit is issued. In addition to the aforementioned surety bond the applicant shall deposit with the City a cash bond in the amount of \$1,000 the purpose of which shall be to make immediate correction of any conditions threatening the health, safety and welfare of the people of Troy caused by violation of the requirements of this ordinance or of the conditions under which the permit is made. If any portion of the cash bond is spent by the City for corrections of conditions caused by violation of the ordinance or of the terms of the permit, the permit holder shall replace that same amount of money spent. If said funds are not replaced, the City Engineer shall cause all operations at the site for which the permit has been issued to cease and desist until such funds have been replaced.

## Chapter 80 - Soil Removal and Fill

---

(Rev. 03-26-79)

8.188 Other Conditions Required of Applicant. Any person to whom any permit is issued shall comply with the following:

(1) AS TO EXCAVATIONS.

- (a) All vehicles transporting soil or other materials from such excavation over the public streets of the City shall travel only directly over such route as may be directed by the City Engineer to be least dangerous to public safety, cause the least interference with general traffic and cause the least damage to the public streets.
- (b) The floor of any such excavation shall not be made lower than the level thereof as set forth in the application.

(Rev. 03-26-79)

- (c) If, in the opinion of the City Engineer, any such excavation will present a dangerous condition if left open, such excavation shall be enclosed by a chain link or wire mesh fence completely surrounding the portion of the site where the excavation extends, said fence to be not less than five (5) feet in height, complete with gates, which gates shall be kept locked when operations are not being carried on. The fence shall be topped with three strands of barbed wire.
- (d) Any soil or other material that may be deposited on any public street or place from any vehicle transporting such materials from any excavation shall be immediately removed in a manner satisfactory to City Engineer at the expense of the person to whom the permit to excavate was issued.
- (e) Any roads used for the purpose of ingress and egress to said excavation site which are located within five hundred (500) feet of an occupied residence shall be kept dust free by surfacing with concrete or bituminous substance and/or chemical treatment.

(Rev. 04-10-67)

- (f) No excavation shall be made with a cut fence steeper in slope than one (1) horizontal to one (1) vertical except that a steeper or a different cut may be permitted upon the approval of the City Engineer if he shall find the material of the proposed cut sufficiently stable or a retaining wall or other approved support is provided to support the face of the cut or excavation.
- (g) Where excavation operations result in a body of water, the owner or operator shall place appropriate "Keep Out-Danger" signs around said premises not more than one hundred (100) feet apart, except where said body of water is constructed as a permanent man-made lake in conformance with plans approved by the City Engineer.

(Rev. 04-10-67)

## Chapter 80 - Soil Removal and Fill

---

- (h) No excavation shall be made closer than fifty (50) feet from the nearest street or highway right-of-way nor nearer than forty (40) feet to the nearest property line, provided, however, that the City Engineer may permit or require closer or farther requirements depending on the surrounding property and the stability of the soil.
- (i) No person shall open more than ten (10) acres of land for purposes of excavation for, or operation of, a gravel or sand mining pit at one time.
- (j) No person, firm, or corporation shall allow water to form in stagnant ponds, pools, or puddles in conjunction with any excavation within the City of Troy. In the event such water is allowed to collect, the permit holder shall pump, fill, or spray such bodies of water as determined and directed by the City Engineer.
- (k) In all cases wherein a lake, pool, or pond is constructed in connection with the operation of a pit, chain link fences shall be placed around such body of water adequate to prevent children from entering.
- (l) Prior to excavation, grade stakes shall be set at 100' grids and shall be maintained until the proper elevation is obtained.
- (m) Prior to commencement of excavation operations, enough topsoil shall be stripped and stockpiled on the site to allow a four (4) inch cover of topsoil to be replaced over the entire excavation site upon finalization of excavation and/or filling operations as specified in the permit(s). Rye grass seed, or another type equally acceptable to the City Engineer, shall then be spread upon such topsoil surface in the amount of fifty (50) pounds per acre.
- (n) The City Council shall require such other and further requirements as are deemed necessary in the interest of the public health, safety, morals, preservation of natural resources and general welfare of the citizens of the City of Troy.

(Rev. 03-26-79)

### (2) AS TO STRIPPING AND TOPSOIL REMOVAL OPERATIONS.

- (a) No soil or other material shall be removed in excess of two (2) feet below the mean elevation of the existing ground surface.
- (b) No soil or other materials shall be removed in such manner as to cause water to collect or to result in a condition dangerous menacing to the public health. The premises shall at all times be graded so that surface water drainage is not interfered with.
- (c) That sufficient topsoil shall stockpiled on said site so that the entire site when stripping operations are completed, may be recovered with a minimum of four (4) inches of topsoil and the replacement of such topsoil shall be made immediately following the termination of the stripping operations. In the event, however, that such stripping operations continue over a period of time greater than thirty (30) days, the operator shall

## Chapter 80 - Soil Removal and Fill

---

replace the stored topsoil over the stripped areas as he progresses.

- (d) During stripping or topsoil removal operations enough topsoil will be left on the site to allow a four (4) inch cover, which shall be spread over the site upon completion of the operations specified in the permit. Rye grass seed, or another type equally acceptable to the City Engineer, shall then be spread upon such topsoil surface in the amount of fifty (50) pounds per acre.
- (e) Any roads used for purpose of ingress and egress to said stripping or removal site which are located within five hundred (500) feet of an occupied residence shall be kept dust free by surfacing with concrete or bituminous substance and/or chemical treatment.

(Rev. 04-10-67)

- (f) The City Council shall require such other and further requirements as are deemed necessary in the interest of the public health, safety, morals, preservation of natural resources and general welfare of the citizens of the City of Troy.

(Rev. 03-26-79)

### (3) AS TO FILLING OPERATIONS.

- (a) Within thirty (30) days following filling or dumping, the parcel of land must be graded in such manner as to prevent the collection of water, to provide proper drainage and to leave the ground surface reasonably level or smooth, free of all rock, stone, cement, heavy aggregate or rubbish, and fit for the growing of turf and other land uses permitted in the district.
- (b) No soil or other material shall be dumped on the spillways or flood plains of any natural or artificial stream or water courses, or any area between the upper and lower banks of such streams or water courses, except on the approval of the City Council, after a satisfactory showing that such dumping will not result in damage to other property within the limits of the City of Troy and will not be detrimental to the public health, safety, preservation of natural resources or welfare. The flood plain is defined as the land abutting a water course which has stored or, upon development, could store the overflow of storm water during a ten year design storm.

(Rev. 03-26-79)

- (c) Types of materials to be deposited shall be regulated by the City Engineer and shall be specified as a condition issuance of the permit.
- (d) Upon completion of filling operations topsoil shall be spread over the site specified in the permit at least four (4) inches in thickness. Rye grass seed, or another type equally acceptable to the City Engineer, shall be spread upon such topsoil surface in the amount of fifty (50) pounds per acre.
- (e) Any roads used for purpose of ingress and egress to said filling site which

## Chapter 80 - Soil Removal and Fill

---

are located within five hundred (500) feet of any occupied residence shall be kept dust free by surfacing with concrete or bituminous substance and/or chemical treatment.

(Rev. 04-10-67)

- (f) The City Council shall require such other and further requirements as are deemed necessary in the interest of the public health, safety, morals, preservation of natural resources and general welfare of the citizens of the City of Troy.

(Rev. 03-26-79)

- (g) Where filling operations result in a body of water, the owner or operator shall place appropriate "Keep Out - Danger" signs around said premises not more than one hundred (100) feet apart, except where said body of water is constructed as a permanent man-made lake in conformance with plans approved by the City Engineer.

(Rev. 07-8-68)

(4) WAIVER OF TOPSOIL REPLACEMENT REQUIREMENT.

The requirement for replacement of topsoil in conjunction with any permit issued under this Chapter may be waived by the City Engineer in instances where the proposed land use would make this requirement unreasonable or unnecessary as in the construction of a parking lot, large industrial or commercial building sites.

(Rev. 03-26-79)

8.189 Artificial Hills and Berms.

- (1) No artificial hill or berm shall be established, so as to cause the deflection of run-off water onto property owned by another party, or so as to interfere with the normal run-off of water from property owned by another party causing ponding or erosion injurious to the other property.

(Rev. 02-25-85)

- (2) If (a) any point on the perimeter of an artificial hill or berm is to be five (5) feet or less from a property line, or (b) the hill or berm will contain fifty (50) cubic yards or more of material; then: a permit for establishing the hill or berm must be obtained from the City of Troy Engineering Department, which shall inspect the hill or berm for compliance with this ordinance. The standards set forth herein and in Chapter 86 (The City of Troy Erosion Control Ordinance) shall be considered in determining whether a permit should be issued. A permit fee shall be paid to the City Treasurer's Office, in an amount as set from time to time by the Troy City Council by Resolution.

(Rev. 02-25-85)

- (3) The surface of any artificial hill or berm shall be maintained by planting or seeding, fertilizing, irrigation, mowing, pruning, weeding and/or other practices, so as to

## Chapter 80 - Soil Removal and Fill

---

prevent the production of dust, the presence of weeds, and erosion of the soil. If a determination is made that there has been a failure to comply with this sub-section, then the City shall provide a written notice to the occupants, and to the owner as shown on the City tax rolls, stating that the property shall be brought into compliance with this sub-section within twenty (20) days of the date of the notice. If compliance is not achieved within the twenty (20) day period, then the owner of the property shall be guilty of a misdemeanor.

(Rev. 02-25-85)

- (4) No artificial hill or berm shall be established higher than two (2) feet above the average grade of the ground immediately adjacent to it and the ground under it, except in compliance with the conditions stated below in sub-sections (a) through (c).
    - (a) Slope. The slope of a hill or berm of greater than two (2) feet but less than three (3) feet in height shall be three (3) feet horizontal for each one (1) foot vertical (See examples in Figure #1); the slope of a hill or berm three (3) feet in height or over shall be four (4) feet horizontal for each one (1) foot vertical (See example in Figure #2).
    - (b) Line-of-sight. The hill or berm shall not be located or designed so as to interfere with the line-of-sight for safe observation of any street, driveway, or walkway (a) by motorists driving on a street adjacent to the lot on which the hill or berm is located, or (b) by motorists entering or leaving a driveway on that lot or an adjoining lot. In no event shall any part of an artificial hill or berm, or any plant material thereon, (other than isolated flower stems or leaves that do not substantially block safe observation) extend more than thirty (30) inches above the surface of a driveway on either the lot on which the hill or berm is located or on an adjoining lot, or above the surface of a street adjacent to the lot on which the hill or berm is located (said driveways and streets in their traveled portion, being referred to hereinafter as "adjacent ways of travel") if that part is within the triangle created by measuring twenty-five (25) feet back along the two adjacent ways of travel, from the point of intersection of the two adjacent ways of travel, and then drawing an imaginary line connecting the two points thereby established. (See examples in Figure #3).
- (Rev. 02-25-85)
- (c) Erosion. Establishment of such a hill or berm shall be in compliance with the standards set forth in Chapter 86 (The City of Troy Erosion Control Ordinance). The surface of the hill or berm shall be prepared and fertilized, and grass shall be seeded or sodded, or the soil shall be covered with vegetative ground cover which meets the requirements of Section 6.05 of the City's Landscape Design Standards, adopted by Resolution No.75-829, as revised by Resolution No. 77-88.
- (5) Those artificial hills or berms now in existence if and when altered by changing the slope, height, length or other dimension by the removal, addition or movement of nonliving material; such alteration shall be made in a manner to bring the artificial hill or berm into compliance with this Chapter.

## Chapter 80 - Soil Removal and Fill

---

- 8.190 Excavations or Holes. The existence within the limits of the City of any unprotected, unbarricaded, open excavation, holes, pits, or wells or of any excavations, which constitute or are reasonably likely to constitute a danger or menace to the public health, safety, morals, and preservation of natural resources are hereby prohibited and declared a public nuisance, provided, however, that this Chapter shall not prevent the construction of excavations under a permit of the City of Troy, where such excavations are properly protected and warning signs and lights located in such manner as may be approved by the City Manager and provided, further, that this section shall not apply to drains created or existing by authority of the State of Michigan, County of Oakland, City of Troy or other governmental agency.

Where the City Manager shall determine a nuisance to exist as herein defined, he shall notify the owner as shown on the latest tax rolls in writing of such finding and require the owner to abate such nuisance within a reasonable time, in no event more than thirty (30) days.

In the event no appeal is made within ten (10) days time, the City Manager may abate or cause to be abated such nuisance, and the cost or reasonable value of such work shall be placed as an assessment against said property on the next assessment roll.

- 8.191 Revocation and Suspension of Permit. Any permit granted pursuant to this Chapter may be revoked or suspended for failure to comply with any of the provisions of said sections. A hearing on revocation of a permit shall be held before the City Council after five (5) days notice to such permit holder stating the grounds of complaint against permittee and stating the time and place which such hearing will be held. Proper notice shall consist of any of the methods specified in Section 1.11 of this Code. If, in the opinion of the City Manager, the public health, safety or welfare requires it, the City Manager may suspend any permit pending hearing by the City Council. Such revocation or suspension of any permit shall not affect the prosecution of any person for a violation of this Chapter.

(Rev. 02-25-85)

- 8.192 Penalties for Violations. Except as otherwise provided in specific sections of this Chapter, a violation of any section of Chapter 80 is a Municipal Civil Infraction subject to the provisions of Chapter 100 of the Code of the City of Troy. Each day that a violation continues is a separate Municipal Civil Infraction violation. Sanctions for each violation of Chapter 80 shall include a fine of not more than \$500, costs, damages and injunctive orders as authorized by Chapter 100.

(Rev. 03-01-06)