

**DIVISION 12  
CHANGE IN TOPOGRAPHY**

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**7-231 Generally**

A permit is needed to modify the topography of a site that is subject to an approved grading and drainage plan or a site that is not subject to an approved grading and drainage plan involving 50 cubic yards of material or more.<sup>1</sup> Depending on various factors, the permit may be referred to as a minor permit or major permit in this division.

**7-232 Initiation**

The owner of the subject property may submit an application to modify the topography of a site.

**7-233 Review procedure**

(a) **Minor permit.** The general steps outlined below shall be used to review an application to modify the topography of a site that is subject to an approved grading and drainage plan or a site that is not subject to an approved grading and drainage plan involving 50 cubic yards of material or more, but less than 500 cubic yards.

- (1) **Submittal of application materials.** The applicant shall submit a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Common Council.
- (2) **Staff review.** Within 10 calendar days of submittal, the zoning administrator shall either determine that the application is incomplete and notify the applicant, in writing, of any deficiencies or make a decision based on the decision criteria contained in this division to (i) approve the application, (ii) approve the application with conditions, or (iii) deny the application. The zoning administrator shall take no further steps to process the application until the deficiencies are remedied. The incomplete application shall be retained as a public record.
- (3) **Applicant notification.** Within a reasonable time following his or her decision to approve or deny the application, the zoning administrator shall mail the decision document to the applicant by regular mail.
- (4) **Public record copy.** A duplicate copy of the decision document shall be retained as a public record.

(b) **Major permit.** The general steps outlined below shall be used to review an application to modify the topography of a site that is not subject to an approved grading and drainage plan and involves 500 cubic yards of material or more.

- (1) **Pre-submittal meeting.** Before submitting an application, the applicant or the applicant's agent may meet with the zoning administrator to review applicable regulations and procedures and the proposal.
- (2) **Submittal of application materials.** The applicant shall submit a completed application and other required materials to the zoning administrator along with the application fee as may be established by the Common Council.
- (3) **Staff review.** Within 30 calendar days of submittal, the zoning administrator shall either place the matter on the agenda for the meeting at which the matter will be considered allowing for proper public notice or make a determination that the application is incomplete and notify the applicant of any deficiencies. If the application is incomplete, the applicant has 3 months to resubmit the application or forfeit the application fee. The zoning administrator shall take no further steps to process the application until the deficiencies are remedied. The incomplete application shall be retained as a public record.
- (4) **Staff report preparation and distribution.** The zoning administrator shall prepare a written staff report as described in this division and provide a copy of it to each member of the Plan Commission and the applicant prior to the meeting at which the matter will be considered. The zoning administrator shall also provide a copy to interested people upon request.
- (5) **General notice.** Consistent with Division 2 of Article 6, the zoning administrator shall place the matter on the meeting agenda of the Plan Commission.
- (6) **Meeting.** Allowing for proper notice, the Plan Commission shall consider the application at a regular or special meeting.

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<sup>1</sup> Commentary: The capacity of a typical dump truck is about 10 to 12 cubic yards.

- (7) **Decision.** The Plan Commission shall (i) approve the application, (ii) approve the application with conditions, or (iii) deny the application. The Plan Commission may render its decision at the same meeting the matter was initially considered or at a subsequent meeting, but no later than 40 calendar days after the meeting unless the applicant agrees to an extension of a specified duration.
- (8) **Preparation of decision document.** Based on the action of the Plan Commission, the zoning administrator shall prepare a decision document consistent with this division.
- (9) **Applicant notification.** Within a reasonable time following the Plan Commission's decision, the zoning administrator shall mail the decision document to the applicant by regular mail.
- (10) **Public record copy.** A duplicate copy of the decision document shall be retained as a public record.

#### **7-234 Basis of decision**

The zoning administrator and the Plan Commission in making their decision shall consider the following factors:

- (1) effects on existing drainage patterns, including the rate and location of overland flow;
- (2) effects on up-gradient and down-gradient properties;
- (3) effect on existing wetlands and waterbodies;
- (4) effect on existing native vegetation;
- (5) the potential of creating manmade wetlands;
- (6) the extent to which the cut and/or fill appears to be compatible or incompatible with the topography in the area;
- (7) the stability of the proposed slope; and
- (8) any other factor that relates to the purposes of this chapter set forth in s. 1-5 or as allowed by state law.

#### **7-235 Imposition of conditions**

(a) **Generally.** In approving a change in topography, the zoning administrator and Plan Commission may impose one or more conditions of approval deemed necessary to further the intent and purposes of this chapter. Such conditions, for example, may relate to landscaping, screening, preservation of existing vegetation, engineering considerations for excessively steep or unstable slopes, and erosion control.

(b) **Effect on contracts with another party.** The zoning administrator or Plan Commission shall not condition or withhold approval based upon the property owner entering into a contract or discontinuing, modifying, extending, or renewing any contract, with a third party under which the third party is engaging in a lawful use of the property.<sup>2</sup>

#### **7-236 Application form and content**

The application submittal shall include an application form as may be used by the City and a site plan prepared at a scale of 1" = 20' or other appropriate scale depicting the information listed in Appendix A.

#### **7-237 Content of decision document**

(a) **Approval.** If the application for a change in topography is approved, the decision document shall include the following:

- (1) a statement that the application is approved,
- (2) a description of the activity,
- (3) reasons for the decision based on the criteria listed in this division,
- (4) a statement that the applicant may appeal the decision to a court of competent jurisdiction,
- (5) other information the Plan Commission or zoning administrator deems appropriate,
- (6) the signature of the zoning administrator on behalf of the Plan Commission, and
- (7) the date of the decision.

(b) **Denial.** If the application for a change in topography is denied, the decision document shall include the following:

- (1) a statement that the application is denied,
- (2) a description of the activity,

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<sup>2</sup> Commentary: See s. 62.23(7)(gm), Wis. Stats. The City, for example, could not require an applicant to terminate an existing contract with another party that is engaged in a lawful use of the property.

- (3) reasons for the decision based on the criteria listed in this division,
- (4) a statement indicating that the denial does not limit the applicant's ability to resubmit a revised application for consideration,
- (5) a statement that the applicant may appeal the decision to a court of competent jurisdiction,
- (6) other information the Plan Commission or zoning administrator deems appropriate,
- (7) the signature of the zoning administrator on behalf of the Plan Commission, and
- (8) the date of the decision.

**7-238 Effect of decision**

If an application is approved or approved with conditions, such approval runs with the land and is binding on all subsequent property owners.

**7-271 Expiration of an approval**

An approval to modify the topography of a site shall automatically expire 12 months after the date of issuance unless substantial work has commenced under the permit and continues in good faith to completion. Upon petition and with cause, the zoning administrator may grant a one-time extension not to exceed 12 months provided (i) the permit holder requests the extension prior to the expiration of the permit, (ii) the permit holder clearly demonstrates that circumstances beyond his or her control prevented the start of construction and the continuation of the same, and (iii) the project complies with this chapter in effect at the time the extension is granted.

**7-239 Amendment of an approval**

Following approval of a change in topography, the Plan Commission shall review all proposed changes to the approval. If in the opinion of the Plan Commission, the proposed change constitutes a minor alteration, the Plan Commission may approve the requested change in writing at a regular or special meeting of the Plan Commission without following the review procedure in this division. If the proposed change constitutes a major alteration, the review procedure in effect at the time of submittal shall be followed.

**7-240 Appeal**

An aggrieved person may appeal a final decision made pursuant to this division by filing an administrative appeal with the Zoning Board of Appeals within 30 calendar days of the final decision.

**7-241 to 7-250 Reserved**