

Sec. 13-1-16 Filling Activities.

- (a) **Purpose.** The purpose of this Section is:
- (1) To regulate filling activities in order to avoid or mitigate negative impacts of changes to existing drainage patterns.
 - (2) To monitor the amount and type of material brought into the City of Washburn or transferred between sites within the City.
 - (3) To prevent the creation of hazardous conditions or nuisances from filling activities.
 - (4) To prevent conflict with the installation of future underground public utilities.
 - (5) To promote the public health, safety and general welfare of the citizens of the City of Washburn without preventing the reasonable development of land.
 - (6) To encourage site development on public and private property in such a manner as to minimize hazards to life, health, property and natural resources.
 - (7) To preserve and enhance the City's physical and aesthetic character.
 - (8) To minimize surface water runoff and diversion which may contribute to flooding and erosion.
 - (9) To reduce siltation in the City's streams and storm sewer system, and public roadside improvements, and in Lake Superior.
 - (10) To promote building and site planning practices that are consistent with the City's natural topography, soils, and vegetative features.
 - (11) To implement and further the City's Comprehensive Plan.
- (b) **Scope.** This Section is not intended to apply to businesses such as landscaping, nurseries, excavating businesses, or others that regularly stockpile fill material as defined herein, on the same property as the business. This Section does not apply to activities regulated by the State of Wisconsin pursuant to NR 718, Wis. Adm. Code "Management of Solid Waste Excavated During Remedial Actions", or any successor regulation.

- (c) **Definitions.** For purposes of this Section, the following definitions shall apply:
- (1) **Acceptable Organic Materials.** Wood chips, shredded or chopped bark, sawdust, or similar material.
 - (2) **Acceptable Earth Materials.** Soil, topsoil, clay, sand, gravel, rock, stone, or other similar material.
 - (3) **Acceptable Fill Material.** Acceptable organic materials and acceptable earth materials as defined above, which are free from cinders, ashes, refuse, soft or plastic clays, and vegetable or other similar organic matter such as food waste, trees, branches, or stumps. Acceptable fill material shall be capable of being compacted. Up to ten percent (10%) of acceptable fill material may be cobbles (small boulders) or bricks, not more than twenty-four (24) inches in size in any direction.
 - (4) **Completed Application.** An application which meets all of the requirements as set forth in this Section, and which has been submitted to the City along with the required number of copies and required fee.
 - (5) **Fill Material.** Any material of any description which is capable of being deposited on land.
 - (6) **Filling; Filling Activities.** Any depositing or stockpiling of any fill material.
- (d) **Prohibitions.**
- (1) No person shall engage in any activity that involves fill material without a permit, except as provided by this Section.
 - (2) No person shall use in any fill material *anything* other than acceptable fill material as defined in this Section.
- (e) **Permit Required; Exceptions.**
- (1) A permit shall be required for any activity that involves fill material as defined herein being brought onto a property from an off-site location.
 - (2) A permit is not required for the following fill activities:
 - a. When the total amount of fill material to be brought onto a property is less than fifty (50) cubic yards. A permit is required when the cumulative total amount of fill material brought onto a property over any period of time, starting with the original effective date of this Section (October 22, 2006), is fifty (50) cubic yards or greater, even though an individual fill activity may involve less than fifty (50) cubic yards of fill.
 - b. When the fill material is to be brought onto a site for a public improvement project which has been duly authorized by the appropriate public agency or agencies. For the purposes of this Section, a public improvement project shall be defined as a project funded with federal, state or municipal monies such as roads, utilities, parks, public buildings, or similar projects.
 - c. The construction of any use which is subject to site plan review in accordance with the requirements of this Zoning Code.
 - d. Ground restoration activities for public utility construction.

(f) **Application.**

- (1) An application for a fill permit shall be made by the land owner and shall be filed with the Zoning Administrator who shall provide the application form. The application shall include a fee as determined by Common Council resolution from time to time.
- (2) An application for a fill permit shall contain the following information:
 - a. The address and signature of the property owner and the business address of the person who will conduct the filling operation;
 - b. The tax parcel number of the property where the fill activity will take place;
 - c. The nature of the proposed project, the type of fill material to be brought onto the site, an estimate of the number of cubic yards of materials involved, and the depth and composition of proposed fill materials;
 - d. A statement of the manner in which the project work is to be completed, the kind of equipment proposed to be used, and estimated frequency of vehicle trips;
 - e. The proposed route which the applicant proposes to use over the public streets and over private property in transporting fill materials;
 - f. The time within which the project is to be commenced after the granting of the permit and the time when it is to be completed;
 - g. The measures that will be taken by the applicant to control noise, vibration, dust, and traffic, and the measures that will be provided during the project to prevent soil, dust, or other materials from being deposited on adjoining lands or public or private streets or in waterways through erosion by wind or water;
 - h. A description of any traffic control devices, public facilities, or public services which will be required for the proposed operation, and a statement indicating how these will be provided;
 - i. Any measures which the applicant proposes to take to insure public safety, especially the prevention of trespass by children or recreational vehicles on land where filling activities may create a hazardous situation.
 - j. A drawing of the property which shall contain the following information unless waived by the Zoning Administrator:
 1. North arrow,
 2. The dimensions of the lot and acreage,
 3. Dimensions of area to be filled and proposed phasing and method of stabilization for each phase,
 4. The location of all roads bordering or on the property,
 5. The location of any power or gas lines on the property,
 6. The location of any easements on the property,
 7. Existing drainage patterns on the site,
 8. Natural features, such as significant vegetation, bodies of water, wetlands, and streams on the site as well as within five hundred (500) feet of the site,

9. The location, size and use of buildings, structures, or other improvements on the land to which the Permit is to apply, as well as any buildings, structures, or other improvements within one hundred (100) feet of the property to which the Permit is to apply,
 10. Ingress and egress to the property,
 11. If the estimated fill volume is five hundred (500) cubic yards or more, a drawing of the property at a scale not to exceed one (1) inch equals two hundred (200) feet, showing any driveways or roads within one hundred twenty-five (125) feet of the driveway to the site, and which must illustrate existing and proposed contours at four (4) feet intervals (minimum) on the site and extending one hundred (100) feet beyond the boundaries of the site. Such contours shall be certified by a registered engineer, surveyor, or landscape architect.
 12. Additional information as the Zoning Administrator may reasonably require to assist in reviewing the application.
- k. The names and addresses of all owners of property within two hundred (200) feet of the property where the fill activity will take place.
- (3) The applicant shall submit two (2) copies of the application if the estimated fill volume is greater than fifty (50) and less than five hundred (500) cubic yards. The applicant shall submit eighteen (18) copies of the application if the estimated fill volume is five hundred (500) cubic yards or more.
- (g) **Notice to Neighboring Landowners.** Upon receipt of a completed application, the Zoning Administrator shall by regular mail provide notice of the application to the record address of all owners of property within two hundred (200) feet of the property where the fill activity will take place. The notice shall inform each owner of a right to file comments on the application within two (2) weeks of the date the notice is mailed.
 - (h) **Review by Zoning Administrator.** The Zoning Administrator shall approve or disapprove all applications for fill activities involving between fifty (50) and five hundred (500) cubic yards of fill material. The Zoning Administrator may, however, refer any such application to the Plan Commission for review and advice, or to the Plan Commission and Common Council for review and disposition. If, in the opinion of the Zoning Administrator, the proposal described in the application is in compliance with the requirements of this Section, and if the application is for a permit involving less than five hundred (500) cubic yards, a fill permit shall be issued to the applicant. If the applicant or the proposal described therein does not meet the requirements of this Section, the Zoning Administrator shall so notify the applicant in writing, stating the reasons for denial of the permit. Any person or party who is adversely affected by a decision of the Zoning Administrator under this Section may appeal such decision as provided in Section 13-1-160 of the City of Washburn Code of Ordinances.
 - (i) **Review by Plan Commission and Common Council.** The Zoning Administrator shall review for completeness and compliance with this Section all applications for fill activities

involving over five hundred (500) cubic yards of fill material. The Zoning Administrator shall refer to the Plan Commission for review all completed applications for such fill activities. The Zoning Administrator shall return to the applicant any application that is not a completed application. After review and recommendation by the Plan Commission, the Common Council shall approve or disapprove all completed applications for fill activities involving over five hundred (500) cubic yards of fill material, and any completed application for less than five hundred (500) cubic yards of fill material referred by the Zoning Administrator for Common Council decision under Subsection (h), pursuant to the procedures set forth below:

- (1) The Zoning Administrator shall place the application on the next appropriate Plan Commission agenda for a public hearing. The Zoning Administrator shall follow the public hearing notification procedures as set forth in Section 13-1-65.
 - (2) The Plan Commission shall hold a public hearing on the application and shall make a recommendation on the application based on the information presented to it.
 - (3) The Plan Commission may recommend to approve, deny, modify, or approve with conditions the application.
 - (4) If the proposed operation is in compliance with the requirements of this Section, the Plan Commission shall recommend the application for approval.
 - (5) The Common Council shall consider the recommendation of the Plan Commission, and if it determines that the proposed operation is in compliance with the requirements of this Section, it shall instruct the Zoning Administrator to issue a fill permit. If the proposed operation fails to meet the requirements of this Section, the Common Council shall deny the permit and instruct the Zoning Administrator to notify the applicant, in writing, of the reasons for denial.
- (j) **Standards for Approval.** The following standards shall serve as the basis for decisions involving fill permits. In making the following determinations, the Zoning Administrator or Plan Commission and Common Council, as the case may be, shall take into account any comments received in response to the notice provided under Subsection (g) above. In order to issue a permit, the Zoning Administrator or Common Council, as the case may be, must find that each of the following standards is met:
- (1) The operation shall not interfere with existing drainage patterns. If the fill does interfere with existing drainage patterns, the applicant shall bear the burden of establishing that the interference does not have a negative impact on adjoining properties or on other properties, streams, or Lake Superior, including, but not limited to, the creation or contribution to landslides, flooding, erosion, increased turbidity, siltation, or other form of pollution to a water course or water body.
 - (2) The operation shall not result in hazardous traffic situations from vehicles entering or leaving the site.
 - (3) The operation shall not result in hazardous traffic situations from vehicles entering or leaving the site.

- (4) The operation will be carried out in a manner that will not be detrimental to nearby persons or property by reason of excessive production of traffic, noise, dust, fumes, or odor.
 - (5) The fill material is not hazardous, toxic or otherwise a threat to the public health, safety, and general welfare, and complies with the type of fill permitted by this Section.
 - (6) The resulting elevation of the land will be compatible with elevations on adjacent properties.
 - (7) The fill will not restrict a floodway or destroy the storage capacity of a floodplain.
 - (8) Fill slopes shall not be constructed on natural slopes which are steeper than two (2) horizontal to one (1) vertical.
 - (9) The slopes of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes exceeding five (5) feet in depth shall be no steeper than two (2) horizontal to one (1) vertical, except where approved retaining walls are engineered and installed.
 - (10) When the owner of any parcel shall raise, lower or alter the level or existing grade of a site by a fill or excavation, he/she shall at his/her own expense protect all adjoining property from encroachment by such fill or from danger of collapse due to such excavation either by the erection of an engineered retaining wall or by sloping the sides of such fill or excavation entirely within the confines of the site in a manner approved by the Zoning Administrator or Common Council.
 - (11) Cut and fill slopes shall be provided with subsurface and surface drainage as necessary to retain slope stability.
 - (12) The faces of slopes shall be prepared and maintained to control erosion. Check dams, riprap, plantings, terraces, diversion ditches, sedimentation ponds, straw bales or other devices or methods shall be employed where necessary to control erosion and provide safety. Devices or procedures for erosion protection shall be initiated or installed before grading operations and shall be maintained in operable condition by the owner.
- (k) **Restrictions Governing Permit Holders.** Every person to whom any permit is granted under this Section shall comply with the following:
- (1) The topsoil for the area to be filled shall first be removed before any fill is brought onto the site. If stockpiled on site, the topsoil shall be no higher than twelve (12) feet and comply with Subsection (j)(7) herein.
 - (2) All vehicles transporting fill materials from or to a project over public streets in the City shall follow the truck route approved with the application.
 - (3) The resulting elevation of the land shall be compatible with the surrounding area and the land shall be left in a condition suitable for subsequent development for uses permitted in the zoning district in which the land is zoned.
 - (4) If, at the time the permit is granted, the Zoning Administrator shall determine that any project will present a dangerous condition if left open and unfenced, then such project shall be enclosed by chain link, wire mesh, or snow fence completely surrounding the

portion of the land where the project extends; said fence to be not less than four (4) feet in height and to be complete with gates, such gates to be kept locked when operations are not being carried on. Barbed wire shall not be used as part of any such fence.

- (5) Any fill materials that may be spilled on any public street or public place from any vehicle transporting materials from the project site shall be immediately removed without damage to the public street or public place at the expense of the permit holder.
- (6) Any on-site roads used for the purpose of ingress and egress to the site which are located within three hundred (300) feet of any occupied residential, commercial or industrial establishment must be treated to reduce airborne dust by hand-topping with concrete, asphalt, chemical treatment, or such other means as may be proposed by the applicant and approved by the Zoning Administrator or Common Council at the time a permit is granted.
- (7) The slopes of the banks of the materials dumped, stockpiled, or used as fill shall not exceed two (2) horizontal to one (1) vertical and shall be compatible with adjoining grades and land uses. However, the Zoning Administrator or Plan Commission may, at the time a permit is granted, prescribe more lenient or stricter requirements.
- (8) Filling activities shall not interfere with or change existing surface water drainage so as to be detrimental to nearby properties.
- (9) Any phases of the fill operation are completed, they shall be stabilized by ground cover by the applicant to prevent erosion by wind and water. The Zoning Administrator shall approve the stabilization plan so that continuing fill activities will avoid newly stabilized areas.
- (10) The Plan Commission or Zoning Administrator may require additional performance standards or stricter performance standards than are provided herein where, because of peculiar conditions, such standards are necessary to achieve the purposes of these regulations. In addition, the Plan Commission may also attach and impose conditions, restrictions, or requirements as it shall determine are necessary to achieve the purposes of these regulations. Violations of any performance standard, condition, restriction, or requirements imposed by the Plan Commission shall be deemed a violation of these regulations.
- (11) Conditions imposed by the Zoning Administrator or Common Council shall remain unchanged unless a change is mutually agreed to by the applicant and the Zoning Administrator or Common Council in writing.
- (12) An authorized inspection official of the City of Washburn may, at all reasonable times, enter upon any public or private premises for inspection purposes and may require production of the permit and plans for any and all excavation and topography changes. No person shall interfere with or refuse to permit access to any such premises to such inspector while in the performance of his/her duties.

- (l) **Project Completion.** In order to insure that fill activities authorized by this Section are carried out to completion, the following procedures shall be followed:
 - (1) Upon completion of a project or expiration of a Fill Permit, the applicant shall contact the Zoning Administrator to arrange for an inspection of the site. If the requirements have not been met, the Zoning Administrator shall notify the applicant in writing of the permit deficiencies and shall pursue permit compliance as authorized by this Section.
 - (2) For those permits approved by the Plan Commission, the above procedure shall be followed. In addition to this, the applicant shall retain the services of a registered engineer or surveyor to certify that the final elevations of the fill activity comply with those illustrated by this Section.
- (m) **Bond and Insurance.** The Common Council or Zoning Administrator may require as a condition to the granting of a permit that the applicant file or deposit with the City Clerk-Treasurer performance securities in the form of a performance bond, cash, certified or cashier's check payable to the City of Washburn, or an irrevocable bank letter of credit, in a form satisfactory to the City Attorney. The Common Council or Zoning Administrator shall, in establishing the amount of the surety, consider the scale of the operations, the prevailing cost to rehabilitate the property upon default of the operator, court costs, and other reasonable expenses to guarantee that the applicant will fully and faithfully perform all applicable performance standards, conditions, restrictions, and requirements of these regulations. An engineer may be consulted in determining the amount of the surety, and such consultation costs shall be added to the permit fee. The Plan Commission may also require, as a condition to the granting of any such permit, that the applicant deposit a certificate of an indemnity company licensed to do business in the State of Wisconsin, in an amount reasonably relevant to the proposed work to be done as specified by the Plan Commission, insuring the City of Washburn against any loss or damage to persons or property arising directly or indirectly from the operations of the applicant, or any person acting on his/her behalf, in carrying on any work connected directly or indirectly with the issuance of said permit.
- (n) **Expiration of Permit.** A permit granted under this Section shall be valid for one (1) year, at which time it shall automatically expire. A permit holder may apply to the Zoning Administrator for renewal of a permit upon payment of the renewal fee as set from time to time by the Common Council.
- (o) **Suspension or Revocation of Permit.** Any permit granted under these regulations may be suspended or revoked for failure to comply with any provisions of this Section or with any of the performance standards, conditions, restrictions or requirements attached and imposed as part of the issuance of a permit. The Zoning Administrator or his/her designee may suspend a permit and issue a stop work order if there are grounds to reasonably believe that any provision of this Section or any condition of the permit is being violated. The Common Council may revoke a permit after a hearing held on ten (10) days' written

notice to the permit holder stating the grounds for the revocation, and stating the time and place where such hearing will be held.

- (p) **Forfeitures.** Any person who violates any provision of this Section shall be subject to a forfeiture of up to Five Hundred Dollars (\$500.00) for each violation. Each day during which a violation continues shall be deemed a separate offense.

Sec. 13-1-17 through Sec. 13-1-19 Reserved for Future Use.

