

City Code, Chapter 9: EXCAVATION, MINING AND FILLING

CHAPTER 9
EXCAVATION, MINING AND FILLING

TABLE OF CONTENTS

CHAPTER 9 EXCAVATION, MINING AND FILLING9-1 TO 9-6

ARTICLE I PERMIT REQUIRED9-1 TO 9-6

Section 9-100 Purpose 9-1

Section 9-101 Definitions 9-1

Section 9-102 Applications 9-1

Section 9-103 Requirements 9-2

Section 9-104 Interim Use 9-3

Section 9-105 Conditions 9-3

Section 9-106 Financial Guarantee For Repair of Damage to City Roads 9-4

Section 9-107 Issuance of Permit 9-5

Section 9-108 Scope of This Chapter 9-5

Section 9-109 Violations 9-6

Section 9-110 Validity 9-6

City Code, Chapter 9: EXCAVATION, MINING AND FILLING

CHAPTER 9
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ARTICLE I
PERMIT REQUIRED

SECTION 9-100. PURPOSE. No person shall excavate, mine or fill any land or wetland, transport any excavation or fill, or operate a business for excavating, mining, or filling unless an Excavation, Mining, or Fill Permit shall have been approved by the City Council.

[Section 9-100 amended by Ord. No. 89-13, effective December 8, 1989, amended by Ord. No. 07-02, effective March 1, 2007.]

SECTION 9-101. DEFINITIONS. The following words, when used in this Chapter, shall have the meanings ascribed to them:

A. **“Person”** - Any individual, partnership, firm or corporation whether fee owner, assignee, contract holder or other, or any agent or employee thereof, having an interest as an owner of any land where mining or filling takes place.

B. **“Excavation”** or **“Fill”** or **“Mining”** - The removal, mining, digging, filling or transportation of more than one hundred (100) cubic yards of earthy deposits.

C. **“Earthy Deposits”** - Soil, clay, peat, dirt, sand, gravel, stone or other fill material, the primary characteristic of which is mineral.

[Section 9-101 amended by Ord. No. 89-13, effective December 8, 1989.]

SECTION 9-102. APPLICATIONS.

A. **GENERAL APPLICATION.** Application for an Excavation, Mining, or Fill Permit shall be made by the fee owner of the land where the proposed Excavation, Mine, or Fill will be located and presented to the City Administrator who shall review the application with the assistance of the City Engineer. If the Zoning Administrator finds that the application is complete in all respects and that the proposed excavation, filling, or mining falls within the guidelines for permissible activities under § 9-103 of the City Code, then the permit may be issued administratively.

If the application falls outside of the guidelines or if a difficult or doubtful issue is presented in the application, then the Zoning Administrator shall present said application to the City Planning Commission, together with any recommendations he or she deems appropriate. The Planning Commission shall conduct a public hearing and other proceedings and then make recommendations to the City Council. Said application shall be in a form designated by the City Council and shall contain among other things:

1. The name and address of the fee owner of the proposed Excavation, Mine, or Fill.
2. Two copies of a Site Plan of the Excavation or Fill on a scale of one inch to one hundred (100) feet showing any existing or proposed Excavation, Mine, or Fill in depth and area, and showing a minimum of three hundred (300) feet of land adjacent to the proposed Excavation, Mine, or Fill and any structures, improvements, and roads located thereon, together with proposed drainage plans and finished grade plans for the

City Code, Chapter 9: EXCAVATION, MINING AND FILLING

Excavation, Mine, and Fill both during and after operation. The application must be accompanied by either a certificate of exemption or an approved wetlands replacement plan issued pursuant to Chapter 7C of this City Code. The site plan shall be accompanied by the Storm Water Management Plan required by Chapter 7D. The site plan shall also show the location of the Mature Trees and Wooded Areas, if any, on the land and shall be accompanied by a tree protection plan so that a determination can be made that the proposed excavation, filling, mining, or related development will be in compliance with the tree protection provisions of Chapter 20 of this City Code. (See City Code § 20-202 for definitions of “Mature Trees” and “Wooded Areas.”)

3. The legal description of the tract or parcel upon which the proposed Excavation, Mine, or Fill is located.
4. The route proposed for the transportation of earthly deposits to or from the Site from the boundary of the proposed Excavation, Mine, or Fill to the City limits.
5. The estimated period of time that the Excavation, Mine, or Fill is to be operated and the days and hours of operation.
6. \$50.00 fee to defray the City’s costs in administering the application, including the costs of conducting a public hearing in the event that a public hearing becomes necessary.

B. APPLICATION WITH OTHER DEVELOPMENT WORK. When the application for an Excavation, Mining, or Fill Permit is made in conjunction with other development work which requires proceedings and a public hearing before the Planning Commission, and is intended to comply with some other legal requirement, e.g., creation of a Buildable Area, construction of a road in a new development, mitigation of damage to wetlands, or to improve a local drainage pattern, then the applicant shall not be required to pay the fees otherwise required by this Section.

[Section 9-102 amended by Ord. No. 89-13, effective December 8, 1989, amended by Ord. No. 93-2, effective June 11, 1993, amended by Ord. No. 94-5, effective January 12, 1996, amended by Ord. No. 93-1, effective February 2, 1996, amended by Ord. No. 07-02, effective March 1, 2007, amended by Ord. No. 09-04, effective March 19, 2009.]

SECTION 9-103. REQUIREMENTS. The Planning Commission may recommend and the City Council may direct the City Administrator to issue a Interim Use Permit for Excavation, Mining, or Filling upon finding that:

- A. The establishment, maintenance and operation of the Mine, Excavation or Fill will not be injurious to the use and enjoyment of other property in the City for the uses already permitted in the district.
- B. The Excavation, Mine, or Fill will not impede the normal and orderly development and improvement of surrounding property for uses already permitted in the district.
- C. The hours and days of operation, the temporary and finished grade plan, the temporary and finished drainage plan, and the operation of the Excavation, Mine, or Fill generally, will not be injurious to the health, safety, welfare, comfort or convenience of the public.
- D. The transportation of the earthly deposits will not cause damage to any public roads or streets, or that the applicant has stated the willingness to provide financial guarantees to the City to pay for restoration of foreseeable damage to public roads.

City Code, Chapter 9: EXCAVATION, MINING AND FILLING

E. Where Filling is proposed, the applicant has first obtained either a permit or letter of nonapplicability from the U.S. Army Corps of Engineers, the Minnesota Department of Natural Resources, and Anoka County (shoreland and flood plain regulation).

F. The City Engineer has given written recommendation for approval of the application, with or without recommendations for special or unique conditions or restrictions.

G. All of the standards in § 7A of this City Code, “General Standards Applicable to All Interim Uses,” will be met by the applicant.

H. If the applicant proposes to sell excavated material and the applicant’s land is zoned Rural Residential (R5), that all of the standards of § 7A-822A will be met by the applicant.

I. That the applicant’s proposed use will meet or exceed the performance standards contained in § 7A-833 of this City Code.

J. The applicant’s proposed use is accompanied by an approved Storm Water Management Plan issued pursuant to Chapter 7D of this City Code.

[Section 9-103 amended by Ord. No. 89-13, effective December 8, 1989, amended by Ord. No. 94-5, effective January 12, 1996, amended by Ord. No. 07-02, effective March 1, 2007, amended by Ord. No. 09-04, effective March 19, 2009.]

SECTION 9-104. INTERIM USE. The removal, mining, or filling of earthly deposits is deemed to be an Interim Use in all zoning districts, and compliance with procedures outlined herein is deemed to be compliance with the procedures as set forth in the Zoning Ordinance of City of Columbus. The application for an Excavation, Mining, or Fill Permit shall be administered and adjudicated in accordance with the Interim Use Permit procedures and standards of Chapter 7A of this Code, with one exception to the procedures: an application may be administered and permits may be issued by the Zoning Administrator if the Zoning Administrator determines that there are no difficult or doubtful issues presented in the application which would require a public hearing before the Planning Commission and adjudication by the City Council.

[CHAPTER 9, Article I, Section 105 (now § 9-104) amended by Ord. No. 86-3, effective February 21, 1986, [Section 9-104 amended by Ord. No. 89-13, effective December 8, 1989, amended by Ord. No. 94-5, effective January 12, 1996, amended by Ord. No. 07-02, effective March 1, 2007, amended by Ord. No. 09-04, effective March 19, 2009.]

SECTION 9-105. CONDITIONS. The City Administrator or the Planning Commission may recommend, and the City Council may impose such conditions and restrictions upon the location, maintenance, transportation, operation or restoration of the Excavation, Mine, or Fill as are deemed necessary to secure compliance with the requirements of this Ordinance.

All conditions and restrictions shall be stated on the Interim Use Permit and shall, at a minimum, include the following:

A. “The owner of the land shall, at all times during the life of this Interim Use Permit, maintain the land in compliance with the City Code, state and federal law and with the other conditions of this Permit. Noncompliance may result in modification, suspension, or revocation of this Permit or in prosecution as the law may provide.”

B. “The owner of the land is hereby authorized to (excavate, mine or fill) ____ cubic yards of ____ (from or on) the land.”

C. “The legal description of the property for which this Permit is issued is as follows:”

(legal description)

D. “This Permit shall expire on (definite date).”

City Code, Chapter 9: EXCAVATION, MINING AND FILLING

E. “The hours of operation during which trucks, vehicles, machinery, heavy equipment, pumps, engines and other noise generating devices or machines may be used are restricted and shall be no earlier than 7:00 a.m., and no later than 5:30 p.m., Monday through Friday (unless more restrictive hours are stated).”

F. “Dust control and erosion control measures shall be employed at all times during the life of this Permit, both on the land and on any roads used under this Permit. The measures employed shall be in accord with Erosion Control Standards adopted from time to time by Resolution of the City Council upon the recommendation of the City Engineer.”

If the Permit includes use of public roads for hauling or transportation of fill, the Permit shall also include:

G. A description of the number, type and size of traffic control devices (e.g., “Trucks Hauling” signs) to be maintained during the life of this Permit by the owner of the land;

H. The axle weight restrictions (if any) imposed upon truck hauling to and from the site;

I. Proper construction of the entrance/exit to and from the city road for the site;

J. The amount of cash, Performance Bond or Letter of Credit to be deposited or posted with the City Treasurer to guarantee to the City that any damage to a public road will be repaired at the expense of the Permit holder and to guarantee reimbursement to the City for periodic road inspections by the City Engineer;

K. A notice to the Permit holder that use of public roads for hauling to or from the site is subject to road and weather conditions, and that upon the advice and recommendation of either the City Road Maintenance Supervisor or the City Engineer, the City Administrator may order a suspension of hauling until conditions improve;

L. The prescribed routes by which all loaded and unloaded trucks must use in traveling through the City; and

M. Any other conditions or restrictions upon the use which are imposed by the City Council in the interest of public health, safety, and welfare. (See the list of examples in § 7A-564 of this City Code.)

[Section 9-105 amended by Ord. No. 89-13, effective December 8, 1989, amended by Ord. No. 07-02, effective March 1, 2007, amended by Ord. No. 09-04, effective March 19, 2009.]

SECTION 9-106. FINANCIAL GUARANTEE FOR REPAIR OF DAMAGE TO CITY ROADS.

A. Cash or Letter of Credit Required. Where the Permit includes use of city roads for hauling or transportation of excavated material or fill, the City Council shall require that the Permit holder post either a cash deposit or an Irrevocable Letter of Credit with the City Treasurer to guarantee to the City that any damage to a city road will be repaired at the expense of the Permit holder and to guarantee reimbursement to the City for periodic road inspections by the City Engineer.

B. Amount. The required amount of cash or of the letter of credit shall be based upon the written recommendation of the City Engineer and shall be an amount which is deemed sufficient to guarantee the Permit holder’s compliance with the road repair requirement stated in A., above.

C. Duration of Deposit. The cash guarantee shall remain on deposit with the City Treasurer until the Permit has expired. The alternative letter of credit shall be valid through the expiration date of the Permit and shall remain on deposit until the permit has expired.

City Code, Chapter 9: EXCAVATION, MINING AND FILLING

D. Form of Letter of Credit. The letter of credit, if used, shall be in an approved form of the Irrevocable Letter of Credit. Each letter of credit shall not be accepted until reviewed and approved by the City Attorney.

E. Determination of Damage. "Damage" to a city road as a result of issuance of a permit for excavation, mining, or filling is defined as any condition of the road or right-of-way which, in the opinion of the City Engineer (based upon pre-excavation and post-excavation inspections and upon city road maintenance records), (1) is beyond normal wear and tear for that road, and (2) was caused by trucks, vehicles or equipment traveling to and from the permitted site.

F. Repairs Required. Road damage resulting from permitted activities shall be repaired by the City and billed to the Permit holder. The Permit holder shall reimburse the City within fifteen (15) days from the date of the billing for road repairs and engineering fees. If the Permit holder does not pay the bill within the fifteen (15) day period, the City shall reimburse itself by making a draw against either the cash deposit or the letter of credit.

G. Suspension of Permit for Draws Against Deposits. If the City makes a draw against either a cash deposit or a letter of credit as described above, all permitted activities under the Interim Use Permit shall then be immediately ceased and the Permit shall be suspended. The City Administrator shall have the authority to issue the suspension order to the Permit holder. The suspension shall continue until:

1. The Permit holder restores either the cash deposit or the letter of credit to the original amount as stated on the Permit, or,
2. Action of the City Council.

Such suspension shall cause the permit to be reviewed and adjudicated according to the procedures of Chapter 10 of this City Code. Review proceedings may result in reinstatement, modification, continued suspension, or revocation of the Interim Use Permit.

[Section 9-106 amended by Ord. No. 89-13, effective December 8, 1989, amended by Ord. No. 07-02, effective March 1, 2007, amended by Ord. No. 09-04, effective March 19, 2009.]

SECTION 9-107. ISSUANCE OF PERMIT. Activities authorized by a Permit shall not be commenced until the City Administrator has issued the Permit to the applicant or until such later date as may be prescribed in the Permit. The City Administrator may issue an Interim Use Permit to an applicant when:

- A. The City Council has approved and signed the Permit;
- B. The applicant has reimbursed the City for its costs in processing the Permit application, including fees charged by the City Engineer or City Attorney;
- C. The applicant has delivered a check to the City Administrator to pay for the costs of recording the Permit with the County Recorder/Registrar of Titles.
- D. The applicant has made either a cash deposit or deposit of an approved letter of credit.

[Section 9-107 added to Chapter 9 by Ord. No. 89-13, effective December 8, 1989, amended by Ord. No. 07-02, effective March 1, 2007, amended by Ord. No. 09-04, effective March 19, 2009.]

SECTION 9-108. SCOPE OF THIS CHAPTER. This Chapter is intended to regulate excavation, mining, or filling involving a cumulative mass of one hundred (100) cubic yards or more. By not regulating smaller excavations, mines, or fills (i.e., less than one hundred (100) cubic yards), the City Council finds that most typical construction of single family homes and of business buildings should be

City Code, Chapter 9: EXCAVATION, MINING AND FILLING

achievable without being subjected to the provisions of this Chapter. Land owners are advised that the limited scope of this Chapter does not relieve them of the responsibility to ensure that their small excavation or fill meets the requirements of the local watershed management, the county, or the state or federal government.

[Section 9-108 added to Chapter 9 by Ord. No. 89-13, effective December 8, 1989, amended by Ord. No. 07-02, effective March 1, 2007.]

SECTION 9-109. VIOLATIONS.

A. Any person violating the terms of this Chapter or the restrictions or conditions of any Excavation, Mining, or Fill Permit issued thereunder shall be the guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or imprisonment in accordance with the provisions of Chapter 1, Section 1-109 of this City Code.

B. The imposition of criminal penalties shall not preclude action of the City Council by way of Injunction or Forfeiture of cash deposit or letter of credit or other civil remedy. The City Council may concurrently commence review proceedings under Chapter 10 of this City Code, which may result in reinstatement, modification, suspension, or revocation of the Conditional Use Permit.

C. Time is of the essence: each separate act performed in violation of this Chapter or of an Excavation, Mining, or Fill Permit shall be deemed a separate offense.

[Chapter 9, Article 1, Section 106 (now § 9-109), amended by Ord. No. 86-3, effective February 21, 1986, amended by Ord. No. 89-13, effective December 8, 1989, amended by Ord. No. 07-02, effective March 1, 2007, amended by Ord. No. 92-2, effective April 17, 1992.]

SECTION 9-110. VALIDITY. If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining provisions of this Chapter.

[Section 9-110 added to Chapter 9 by Ord. No. 89-13, effective December 8, 1989, amended by Ord. No. 07-02, effective March 1, 2007.]



History of ordinances affecting the text of Chapter 9 (since codification on August 26, 1981):

Ord. No. 86-3, effective February 21, 1986.

Ord. No. 89-13, effective December 8, 1989.

Ord. No. 92-2, effective April 17, 1992.

Ord. No. 93-2, effective June 11, 1993.

Ord. No. 94-5, effective January 12, 1996.

Ord. No. 93-1, effective February 2, 1996.

Ord. No. 07-02, effective March 1, 2007.

Ord. No. 09-04, effective March 19, 2009.

This Chapter has been updated through the date of the latest ordinance listed above.
