

City Code, Chapter 9: EXCAVATION, MINING AND FILLING

CHAPTER 9
EXCAVATION, MINING AND FILLING

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CHAPTER 9
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ARTICLE I
PERMIT REQUIRED

SECTION 9-100. PURPOSE. No person shall excavate, grade, or fill any land or wetland, or transport any excavation or fill, unless an Excavation, Grading, or Filling Permit shall have been approved by the City. No Excavation, Grading or Filling shall increase drainage flow onto neighboring property or disrupt an existing natural drainage way. It is the intent of the City to allow Excavation, Grading and Filling that does not result in the unnecessary loss of upland, buildable acreage. Unnecessary loss of upland, buildable acreage shall not include the creation of onsite stormwater management, onsite wetland restoration and replacement, or residential property recreational ponds less than one acre in area.

[Section 9-100 amended by Ord. No. 89-13, effective December 8, 1989, amended by Ord. No. 07-02, effective March 1, 2007, as amended by Ord. No. 16-12, effective December 22, 2016.]

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 Excavation, Grading, or Filling takes place.
- B. **“Excavation”** or **“Grading”** or **“Filling”** - The removal, digging, filling, rearranging, or transportation of more than two hundred (200) cubic yards of earthly deposits, but excluding Mineral Extraction as regulated in Chapter 7 of the City Code.
- C. **“Earthy Deposits”** - Soil, clay, peat, dirt, sand, gravel, stone or other natural material, the primary characteristic of which is mineral.
- D. **“Mineral Extraction”** - The commercial extraction, processing, and transporting of Earthly Deposits as regulated in Chapter 7A of the City Code.

[Section 9-101 amended by Ord. No. 89-13, effective December 8, 1989, as amended by Ord. No. 16-12, effective December 22, 2016.]

SECTION 9-102. APPLICATIONS.

A. **GENERAL APPLICATION.** Application for an Excavation, Grading, or Filling Permit shall be made by the fee owner of the land where the proposed Excavation, Grading, or Filling 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, Grading or Filling falls within the guidelines for permissible activities under § 9-100 and § 9-103 of the City Code, then the permit may be issued.

Said application shall be in a form designated by the City Council and shall contain among other things:

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1. The name and address of the fee owner of the proposed Excavation, Grading, or Filling.
2. Two copies of a Site Plan of the Excavation, Grading or Filling on a scale of one inch to one hundred (100) feet with two feet contours, showing any existing or proposed Excavation, Grading, or Filling in depth and area, and any structures, improvements, and roads located thereon, together with proposed drainage plans and finished grade plans for the Excavation, Grading, and Filling. Applications affecting wetlands 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.
3. The legal description of the tract or parcel upon which the proposed Excavation, Grading, or Filling is located.
4. The route proposed for the transportation of Earthly Deposits to or from the property of the proposed Excavation, Grading, or Filling within the City.
5. The estimated period of time that the Excavation, Mining, or Filling is to be operated and the days and hours of operation.
6. \$250.00 application fee and \$1,200 escrow.

B. APPLICATION WITH OTHER DEVELOPMENT WORK. When the application for an Excavation, Grading, or Filling Permit is made in conjunction with other development work which requires proceedings and a public hearing before the Planning Commission, such as a Conditional Use Permit, Interim Use Permit, Planned Unit Development, 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. Excavation and removal of Earthly Deposits associated with development work or road work shall not reduce the amount of upland within the City in excess of the minimum amount necessary to accommodate stormwater ponding on the development property, as determined by the City Engineer. Excavation and removal of Earthly Deposits in excess of the minimum amount required to accommodate stormwater ponding shall be subject to the Mineral Extraction permitting requirements under Chapter 7A of the City Code, unless otherwise approved by development agreement that incorporates such Mineral Extraction permit requirements, including, but not limited to: haul route restrictions, an applicable performance standards.

[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, as amended by Ord. No. 16-12, effective December 22, 2016, amended by Ord. No. 18-01, effective May 31, 2018.]

SECTION 9-103. REQUIREMENTS. The City Administrator may issue an Excavation, Grading, or Filling Permit upon finding that:

- A. The establishment, maintenance and operation of the Excavation, Grading or Filling 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, Grading, or Filling 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 (7:00 a.m. – 7:00 p.m. Monday through Saturday), the temporary and finished grade plan, the temporary and finished drainage plan, and the operation

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of the Excavation, Grading, or Filling 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. Routing for the transportation of Earthly Deposits minimizes the use of residential streets to the maximum extent possible.

E. When applicable, 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 watershed organization.

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. Dust control measures will be required on the construction site and any graveled haul routes.

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

I. Special conditions or requirements of the Excavation, Grading, or Filling Permit have been made in writing by the City Administrator or City Engineer and are attached to the Permit.

[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, as amended by Ord. No. 16-12, effective December 22, 2016.]

SECTION 9-104. 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 may 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.

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, Grading, 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

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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 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 Permit.

[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, as amended by Ord. No. 16-12, effective December 22, 2016.]

SECTION 9-105. SCOPE OF THIS CHAPTER. This Chapter is intended to regulate Excavation, Grading, or Filling involving a cumulative mass of two hundred (200) cubic yards or more in any six (6) month period. By not regulating smaller excavations, or fills (i.e., less than two hundred (200) cubic yards), the City Council finds that most typical construction of single family homes and of business buildings should be achievable without being subjected to the provisions of this Chapter. Notwithstanding the foregoing, any smaller excavations or fills which occur closer than twenty (20) feet from any property line shall require a drainage, erosion, and sedimentation control plan in sufficient detail to guarantee adjacent properties or roadways are not impacted. 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 9-105 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, as amended by Ord. No. 16-12, effective December 22, 2016.]

SECTION 9-106. VIOLATIONS.

A. Any person violating the terms of this Chapter or the restrictions or conditions of any Excavation, Grading, or Filling 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 Permit.

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

[Chapter 9, Article I, 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, as amended by Ord. No. 16-12 effective December 22, 2016.]

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SECTION 9-107. 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 9-107 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, as amended by Ord. No. 16-12, effective December 22, 2016.]



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.

Ord. No. 16-12, effective December 22, 2016.

Ord. No. 18-01, effective May 31, 2018.

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