

ORDINANCE NO. 1074

AN ORDINANCE OF THE TOWN OF SAN ANSELMO ADDING CHAPTER 18 TO TITLE 9 OF THE TOWN OF SAN ANSELMO MUNICIPAL CODE, "EXCAVATION, GRADING, AND EROSION CONTROL".

The Town Council of the Town of San Anselmo does hereby ordain as follows:

9-18.01 – Purpose

The purpose of this Chapter is to establish controls on excavation, grading, and fill within the Town. The controls are established for reasons of safety, erosion control, sound soil engineering practice, aesthetics, environmental protection, and water quality protection.

9-18.02 – Definitions

- (a) For the purposes of this Chapter, the following definitions shall apply:
- i. **Excavation** – The cutting, grading, digging, or removal of earth or natural materials in a manner as to significantly change natural or existing terrain.
 - ii. **Fill** – The placing, carrying, or depositing of earth or natural materials in a manner as to significantly change the natural or existing terrain.
 - iii. **Grading** – An excavation, fill, or any combination thereof.

9-18.03 – Permit Required

It is unlawful for any person to make, cause, or permit to be made or caused, any excavation, fill, or grading in the Town, except in accordance with a permit issued as specified in this Chapter.

9-18.04 – Exceptions to Permit Requirement.

- (a) No permit shall be required to excavate, grade, or fill where less than twenty-five (25) cubic yards of earth or material are moved.

9-18.05 – Application Requirements

- (a) An application for a permit to excavate, grade, or fill must be signed by the owner of the land upon which the fill or excavation is to be made or by his or her authorized agent, and filed with the Director of Public Works for action by him or her or his or her deputy.
- (b) The application shall set forth the following:
- i. The name, identity and address of the owner;

- ii. The name, identity and address of the contractor or other person who is to perform the work of excavation, grading, or fill;
 - iii. A description and the location of the property involved;
 - iv. A statement of the exact nature of the proposed excavation, grading, or fill, indicating the slope of the sides and the level of the finished surface, the type of earth or material to be moved, the method, manner and equipment to be used in the accomplishment of the work and the disposition of material of the site;
 - v. A proposed time of commencement of work after issuance of the permit, and estimated date of completion;
 - vi. Detailed temporary and permanent erosion control plans, if required, containing measures necessary to offset any adverse impact resulting from the proposed excavation, grading, or fill;
 - vii. An agreement on the part of the applicant to indemnify, release, defend and hold harmless the Town, its officers, agents, employees, and volunteers, against any claim, demand, suit, judgment, loss, liability or expense of any kind, attorney's fees and administrative costs to the extent caused by any excavation, grading, or fill, undertaken by the applicant or any of the applicant's officers, agents, and/or employees ; and
 - viii. A description of all easement rights in the land to be excavated, graded, or filled, with names and addresses of each owner of any rights in and to the land, and proof of service upon each of the owners of notice of pendency of application for excavation, grading, or fill.
- (c) At the time of filing the application for a permit to excavate, grade, or fill, the applicant shall pay a filing fee in accordance with the schedule of fees fixed and adopted from time to time by resolution of the Town Council.

9-18.06 – Permit Issuance Criteria

- (a) Before final action is taken by the Director of Public Works on any application for a permit to excavate or fill, he or she shall consider all pertinent matters concerning the proposed excavation or fill and its possible effect upon the public health, safety and general welfare, and shall exercise reasonable and sound discretion in deciding whether to issue a permit.
 - i. The Director of Public Works shall have the authority to require reports and/or inspections by a registered civil or geotechnical engineer if said reports are deemed necessary for analyzing an application or for monitoring work being performed pursuant to an approved application. Situations where reports may be required include, but are in no way limited to, excessive slope, unstable soil conditions, or other unique site conditions. The cost of said reports and/or inspections shall be borne by the applicant.

(b) An application shall be denied if it appears to the Director of Public Works from his or her investigation that the excavation, grading, or fill would:

- i. Remove the lateral or subjacent support of the adjacent land;
- ii. Result in a dangerous topographic condition;
- iii. Cause seepage or slides;
- iv. Improperly divert the flow of above-ground or subterranean drainage waters;
- v. Violate the Town's General Plan or Zoning Codes;
- vi. Be more than is required to allow the property owner reasonably beneficial use of his or her property;
- vii. Create a nuisance; or
- viii. Otherwise in any manner endanger the health, safety or property of any other person, despite all precautions which the applicant might be ready, willing and able to take.

9-18.07 – Permit Issuance and Right to Appeal

The Director of Public Works shall notify the applicant of his or her action on the application and, if the applicant is dissatisfied therewith, he or she may appeal to the Town Council by filing an appeal in accordance with 1-4.01 et. seq. of this Code.

9-18.08 – Requirement of Planning Commission Approval

- (a) Notwithstanding any of the provisions of this Chapter, no permit to excavate, grade or fill shall be granted, where the application shows the excavation, grade or fill to involve the movement of more than 100 cubic yards of material, unless and until approval of the application is given by action of the Planning Commission of the Town.
- (b) The application, upon receipt, shall be referred to the Planning Commission for investigation and action, and before action of approval may be given, the Planning Commission must find:
 - i. The health, welfare and safety of the public will not be adversely affected;
 - ii. Adjacent properties are adequately protected by project investigation and design from geologic hazards as a result of the work;
 - iii. Adjacent properties are adequately protected by project design from drainage and erosion problems as a result of the work;
 - iv. The amount of excavation, grading, or fill proposed is not more than is required to allow the property owner reasonably beneficial use of his or her property;
 - v. The visual and scenic enjoyment of the area by others will not be unreasonably adversely affected by the project;
 - vi. Natural landscaping will not be removed by the project more than is necessary and that any removed vegetation will be replanted in a timely manner;

- vii. The time of year during which construction will take place is such that work will not result in excessive siltation from storm runoff nor prolonged exposure of unstable excavated slopes;
- viii. The proposed excavation, grading, or fill does not violate the Town's General Plan or Zoning Codes; and
- ix. Sufficient erosion control measures will be employed to offset any impact by the proposed excavation, grading, or fill.

9-18.09 – Security and Insurance

- (a) The Town may require as a condition of the granting of any permit hereunder, that the applicant deposit with the Town a performance bond, in an amount deemed sufficient and necessary by the Director of Public Works, inuring to the benefit of the Town, guaranteeing that the applicant will faithfully perform all of the conditions and requirements specified in the permit. The performance bond shall be executed by sureties approved by the Town as being sufficient in number and financial responsibility.
- (b) The Town may also require as a condition to the granting of a permit that the applicant deposit with the Town Clerk a certificate of a responsible insurance company showing that the applicant is insured in an amount to be fixed by The Town against any loss or damage to persons or property arising directly or indirectly from the operations of the applicant or any person acting in his behalf in carrying on any operation connected directly or indirectly with the making of the fill, grading, or excavation, or the removal of the excavated materials for which the permit is issued.

9-18.10 – Rainy Season Permits

- (a) Unless the Director of Public Works determines that imminent public or private safety concerns exist, or that grounds for an exception pursuant to subsection (c) of this Section apply, permits to excavate, grade, or fill shall not be issued for activity that will commence in, or continue into, the rainy season (October 15th to April 15th). Special authorization in the form of a "Rainy Season Excavation, Grading, or Fill Permit" must be received from the Director of Public Works prior to any excavation, fill, or grading activity during the rainy season. The permit application must be supported by facts showing that public or private safety requires that the proposed work commence or continue during the rainy season. If there appears to be a likelihood of unavoidable damage from rainy season excavation, fill, or grading, the Director of Public Works may refuse to issue a permit, may revoke a permit already issued, or temporarily suspend excavation, fill, or grading operations.
- (b) Regardless of whether excavation, fill, or grading is or is not permitted during the period from October 15th to April 15th, all required temporary and/or permanent erosion control measures shall be in place prior to October 15th.

- (c) The Public Works Director shall have the authority to allow excavation, fill, or grading activity during the rainy season if said activity is not likely to cause environmental damage or erosion due to the nature of the activity to be undertaken. Examples may include excavation, fill, or grading activity on relatively flat lots, or excavation, fill, or grading activity in already covered understory areas.

9-18.11 – Slope and Shoring

- (a) A slope of an excavation, fill, or grading shall not be steeper than two horizontal to one vertical. The Director of Public Works may specify in a permit granted pursuant to this Chapter the permissible angle of slope of the sides of the excavation, fill, or grading be flatter than two horizontal to one vertical if soil conditions appear to be unfavorable, or if an adjacent foundation or structure may be endangered. No side of the excavation, fill, or grading shall be made steeper at any point than the angle so specified in the permit, unless supported by a substantial, permanent retaining wall of sufficient strength to permanently support the sides of the excavation, fill, or grading and constructed in accordance with a permit to do so, including an geotechnical analysis performed by a licensed geotechnical engineer if applicable, as provided in this Chapter.
- i. If the applicant desires to make any side of the excavation, fill, or grading steeper than the angle specified in the permit, he or she shall so state in a supplemental application, and shall file therewith, in duplicate, detailed plans and specifications for the retaining wall.
 - 1) The retaining wall, if built, shall satisfy the requirements of the Building Code of the Town and the requirements of this section.
 - 2) The retaining wall shall be of concrete, masonry, stone, pressure treated wood, or other material not subject to rapid deterioration, and shall extend the full height and length of each side of the excavation or fill which is at any point made steeper in slope than the angle specified in the permit to excavate or fill.
 - 3) The Director of Public Works may require that the applicant support the supplemental application with reports from engineering professionals, including, but not limited to, soils, geotechnical, and structural engineering reports.

9-18.12 – Permit Suspension or Revocation

- (a) Any permit granted under this chapter may be revoked or suspended by the Director of Public Works, for any reason for which the issuance of the permit might lawfully be denied, for any failure to comply with any of the terms of this Chapter, for any failure to comply with any of the terms of the permit, or violation of any applicable law.

- i. Revocation of the permit shall be made only upon a hearing granted to the person to whom the permit was issued, held before the Director of Public Works.
 - ii. Written notice, deposited in the United States mail at least five days before the date set for hearing, addressed to the person at his or her business or residence address as stated in his or her application for the permit, shall be sufficient notice.
- (b) If, in the opinion of the Director of Public Works, the public health, safety or welfare requires it, the Director of Public Works may suspend any permit granted under this chapter, pending a hearing for the revocation of the permit.
- (c) The revocation or suspension shall be in addition to any other penalties provided in this code.
- (d) In the event of the revocation or suspension, an applicant may appeal to the Town Council by filing an appeal in accordance with 1-4.01 et. seq. of this Code.

9-18.13 - Permit Expiration

Permits issued pursuant to this chapter shall be valid for six months. Permits may be extended no more than twice, for up to six additional months for each extension, so long as the Director of Public Works can still make all of the necessary findings for issuance.

9-18.14 Fines and penalties

Any person, firm, corporation or agency acting as principal agent, employee or otherwise, who fails to comply with the provisions of this Chapter shall be guilty of a misdemeanor and shall be subject to a fine of no less than one hundred dollars and not more than five hundred dollars or by imprisonment in the county jail for not more than thirty days, or both, for each separate offense. Each day any violation of this Chapter shall continue, shall constitute a separate offense.

9-18.15 Additional Conditions and Requirements.

Any person to whom a permit is issued under this Chapter shall also comply with the following requirements:

- (a) The depth of the excavation shall be no lower than the level specified in the permit unless recommended by a geotechnical engineer based on field observations.
- (b) If, in the opinion of the Director of Public Works, any work performed pursuant to the permit will create or aggravate a dangerous condition if left open, the work shall be enclosed by a fence sufficiently high, tight, and strong to eliminate the dangerous condition.
- (c) Any rock, earth, or other material that is dropped or deposited on any public street or place from any vehicle transporting such materials from the work site shall be

immediately removed in a manner and to an extent satisfactory to the Director of Public Works, at the expense of the person to whom the permit was issued.

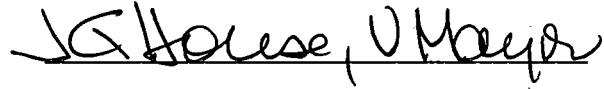
The foregoing ordinance was introduced at a regular meeting of the San Anselmo Town Council on the 14th day of July, 2009, and was adopted at a regular meeting of the San Anselmo Town Council on the 28th day of July, 2009, by the following vote:

AYES: Breen, Freeman, Greene, House, Thornton


NOES: NONE

ABSENT: NONE

ABSTAIN: NONE



Peter Breen, Mayor

ATTEST: 

Barbara Chambers, Town Clerk