

LAND USE REGULATIONS

LUL Attachment 4

Town of Westfield

**Appendix IV
Soil Removal and Replacement**

**Chapter 22
SOIL REMOVAL AND REPLACEMENT**

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§ 22-2. PURPOSE.

The Town Council hereby finds and determines that the uncontrolled and unregulated removal, excavation, filling and placement of soil has resulted and will result in conditions which are or may be detrimental and inimical to the public safety, health and general welfare, and which do or may substantially affect the efforts of the Town of Westfield to promote and effectuate the general purposes of proper municipal planning, drainage and flood control.

§ 22-3. DEFINITIONS.

- A. Soil. Earth, sand clay, loam, gravel, humus, rock or dirt, without regard to the presence or absence of organic matter.
- B. Removal. Any digging, excavation, placement, filling, grading, leveling of soil, or any activity which shall alter or change the grade, location or contour of lands, and the transportation or supplying of soil.

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- C. Redistribution. The making of any change or alteration in the grade of any property, using soil derived from within that property.

§ 22-4. PERMIT REQUIRED.

No person shall remove, permit or cause soil to be removed from or to be filled, placed or replaced on, any places within the Town of Westfield, which activity shall result in a change of more than twelve (12) inches in the established grade thereof, unless a permit therefor has been issued by the Town Engineer. It shall not be necessary that a separate permit be obtained for each load or unit of soil so removed, filled, placed or replaced, provided that the work is being done as part of a single removal or filling program for which permit has been issued, but in the event that the performance of such work shall extend beyond one (1) calendar year, a new permit shall be applied for and obtained annually.

§ 22-5. PERMIT APPLICATION PROCEDURE.

Any person desiring to remove, redistribute or fill soil for which a permit is required pursuant to § 22-4 shall file with the Town Engineer an application for such removal, redistribution or filling. Such application shall be signed by the person intending to perform such operation, and by the owner(s) of the premises from or on which soil is to be removed, redistributed or filled, and shall include or be accompanied by the following information:

- A. a map of the premises showing the present contour lines at no more than two (2) foot intervals, and the future contour lines resulting from the proposed removal, filling or redistribution, together with the existing and future proposed grades in relation to the topography of the premises;
- B. the reasons for the proposed work, and the proposed dates for commencement and completion;
- C. the address, lot and block number of the premises from which or on which soil is removed or filled, and the names and addresses of property owners;
- D. the type and quantity of soil to be moved; and
- E. such other pertinent data as Town Engineer shall deem necessary.

§ 22-6. PERMIT APPLICATION REVIEW.

- A. Factors to be considered in review. In considering a permit application, the Town Engineer shall take into consideration and be guided by the following factors relating to the subject property and other properties affected:
 - 1. soil erosion by water and wind;

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2. drainage and flooding characteristics;
 3. soil fertility;
 4. lateral support slopes and grades of abutting and nearby streets and lands;
 5. land values and uses;
 6. unfavorable environmental impacts; and
 7. any other factors which may bear upon or relate to the coordinated, adjusted and harmonious development of lands involved and of other lands, in accordance with the zoning and building ordinances and master plan of the Town.
- B. Issuance of permit. If, after examination of the application and map and consideration of the effect of the proposed operation in the light of the criteria herein set forth, the Town Engineer shall determine that the proposed removal, filling or redistribution shall not create conditions inimical or detrimental to the health, safety or welfare of the Town or any other inhabitants, will not result in the creation of any sharp declivities, pits or depressions, soil erosion or fertility problems or depressed land values, nor create any sewerage or drainage problems or other conditions of danger, nor obstruct or hinder the normal development, maintenance or enjoyment of the lands in question or of adjacent, nearby or surrounding lands according to the master plan of the Town, he shall issue the permit. Notice of issuance of the permit shall be duly published and advertised in the local paper, and work may not commence under the said permit until five (5) days after the date of such application.

§ 22-7. APPEAL OF PERMIT DECISION.

The decision of the Town Engineer to grant or deny the permit application shall be subject to review by the Planning Board, upon the written request of the applicant or of any citizen who shall be affected by the proposed removal, redistribution or filling. Such written request must be filed with the Town Engineer within five (5) days after publication of the notice of the issuance or denial of the permit, and the Planning Board shall grant a hearing for review of the said action of the Town Engineer within thirty (30) days thereafter. The Planning Board, in considering and reviewing the decision of the Town Engineer, shall be guided by and take into consideration the criteria set forth in § 22-6, and upon conclusion of such hearing, may reverse or affirm, wholly or in part, or may modify the decision of the Town Engineer and order that permit be issued or revoked, as the case may be.

§ 22-8. FEES.

No permit for soil removal, redistribution or filling shall be issued until a fee of one hundred dollars (\$100.00) shall be paid by the applicant to the Town Engineer, together with a charge of twenty-five cents (\$0.25) per cubic yard of soil estimated to be removed, redistributed or filled pursuant to such permit, during the period for which the permit or extension is to be issued. The

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permit fees and charges herein provided may be waived by the Town Engineer, with the consent and approval of the Town Council, when the Engineer and Council shall determine that the owner of the premises upon which the proposed work is to be performed is a non-profit charitable or tax-exempt organization performing services for, and that performance of the proposed soil removal, filling or redistribution is in the best interests of, the citizens of the Town of Westfield.

§ 22-9. BOND.

Before any permit for soil removal or filling shall be issued, the owner or the person conducting such operation shall file with the Town Clerk a surety company bond in an amount to be fixed by the Town Engineer after considering the needs and requirements of the activity, and in a form to be approved by the Town Attorney. Such bond shall be conditioned that the work of soil removal or filling:

- A. shall comply with this Code and other Town ordinances and regulations on the subject;
- B. shall be done in a proper manner in accordance with the approved grades;
- C. shall set aside and retain the top layer of soil to a depth of four (4) inches, which soil shall thereafter be respread over the area when the last of the removal and filling has been completed;
- D. shall make repairs to any street used in transportation, at the expense of the owner and if in the Town's discretion such repairs are necessary due to such use of the streets;
- E. shall be properly done without detriment to adjoining properties or detriment to the Town and without leaving any sharp declivities, pits or depressions and that the property shall be leveled off properly and cleared of debris; and
- F. shall provide for the payment, by the owner or the person performing such operation, of the cost of engineering, inspection, supervision and street cleaning incurred by the Town during the progress of the soil removal or filling.

§ 22-10. GENERAL STANDARDS.

Any soil removal or filling operation:

- A. shall be so conducted that there shall be no sharp declivities, pits or depressions and so that the area shall be properly leveled off, cleared of debris and graded to conform to the approved grades;
- B. shall not substantially increase or alter the existing water drainage characteristics to the detriment of adjacent, nearby or surrounding properties;

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- C. shall not be remove the top four (4) inches of arable soil from the premises, but shall set aside same for retention on the premises and shall respread same on the premises when the rest of the soil has been removed filled pursuant to approved levels;
- D. shall complete all of such work within the time period specified in the application; and
- E. shall limit such activity to between the hours of 8:00 a.m. and 8:00 p.m. on any weekday.

§ 22-11. USE OF TOWN STREETS IN THE TRANSPORTATION OF SOIL.

In the removal or filling of soil, dirt or other material, only such streets within the Town shall be used for transportation as may be designated for that purpose by the Town Engineer. Such streets shall be kept free from dirt resulting such soil removal or filling work.

§ 22-12. EXCLUSIONS.

This chapter shall not apply to excavations or removal or filling of soil incident to work under a permit issued by the Construction Official for the construction of buildings, nor to excavations or removal or filling of soil incident to a permit issued by the Town Engineer for trench work, nor to excavations or filling for improvements being made by the Town or its contractors.

§ 22-13. INJUNCTION, ENFORCEMENT AND PENALTIES.

- A. Nothing in this chapter shall be so construed as to prevent the appropriate Town officials from initiating injunctive proceedings so as to restrain removal, redistribution or filling of soil as described in this chapter.
- B. If any person shall continue to violate any of the provisions of this ordinance after being duly notified of such violation, or shall neglect or refuse to comply with any lawful order of the Town Engineer, each day of failure to comply with a second notice or lawful order, or with each subsequent notice or order, shall be construed to be an additional violation of this chapter, and each such additional violations shall subject the offending party, upon conviction, to the same penalty as provided for a first offense.
- C. Any person violating any of the provisions of this ordinance shall upon conviction thereof, pay a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or be imprisoned in the County jail for not more than thirty (30) days, for each such violation.

§ 22-14. REPEALER.

All ordinance or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

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§ 22-15. SEVERABILITY.

If any section, subsection, clause or phrase of this ordinance shall, for any reason, be held to be unconstitutional or invalid, such decision shall not affect the remaining portion of this ordinance.

§ 22-16. EFFECTIVE DATE.

This ordinance shall take effect as provided by law.