

**TOWNSHIP OF LAFAYETTE
SUSSEX COUNTY, NEW JERSEY**

ORDINANCE 2019-08

**AN ORDINANCE OF THE TOWNSHIP OF LAFAYETTE
ENTITLED "SOIL MOVING"**

STATEMENT OF PURPOSE

There exists in the Ordinances adopted by the Township of Lafayette, Chapter X, entitled "Soil and Soil Removal." The purpose of this Ordinance is to supplement Chapter X and where the two may conflict, the provisions of this Ordinance shall control.

I. TITLE. This chapter shall be known as the Soil Importation/Removal Ordinance of the Township of Lafayette.

II. DEFINITIONS. As used in this Ordinance, the following terms shall have the meanings indicated.

Cut and fill operation. All soil moving activities that do not involve either removal or importation from land situate in the Township.

Major soil moving permit. A permit for the moving of 250 cubic yards or more of soil.

Minor soil moving permit. A permit for the moving of more than 100 cubic yards of soil up to 250 cubic yards. Any soil movement of less than 100 cubic yards shall not require a permit.

Premises. One or more contiguous parcels of land in single ownership.

Soil/Fill. For the purposes of this Ordinance, "soil" shall mean both soil and subsoil, rock, sand, humus, clay and a mixture thereof, and asphalt millings. Excluded material shall be quarry process, and rock products to be utilized in the construction of roads and driveways.

Soil Importation. The transporting of soil onto any premises in the Township from elsewhere.

Soil Removal. The transporting of any soil from any premises in the Township for use elsewhere.

Township Engineer. The person designated by the Township to review all major soil moving applications.

Zoning Officer. The person designated by the Township with jurisdiction to review all minor soil removal applications and exemptions from the permit requirements under this Ordinance.

III. SOIL MOVING. Encompasses, for the purposes of this Ordinance, cut and fill, soil importation, and soil removal.

IV. PERMIT REQUIRED; EXEMPTIONS. No person shall disturb the soil by soil removal, soil importation or cut and fill operations on any premises in the Township unless a permit is first secured. Exemptions may be made only in the following cases:

- A. Removal of less than 100 cubic yards.
- B. Spreading of topsoil for a lawn, provided that there is not a buildup of more than five inches and the areas filled are within the property line.
- C. Filling of holes left by rock or tree stump removal.

- D. Filling of sunken backfill areas, provided that such filling does not take place more than two years after the completion of the original backfill.
- E. Importation of less than 100 cubic yards, provided that the change in elevation is no more than two feet at any point and the source of fill material is identified and approved by the Zoning Officer.
- F. Cut and fill operations over an area less than 500 square feet that result in no more than a two-foot change in elevation at any point.
- G. Excavations and/or fill for buildings, foundations, septic tanks or sanitary installations, provided that no work shall be performed until the issuance of a permit by the Zoning Officer and/or Department of Health.
- H. Excavation for foundations or swimming pools where the grade is no more than 15%.
- I. Soil imported from any licensed quarry.
- J. Those cases where a final site plan or final subdivision (major or minor) has been granted by the Land Use Board.
- K. Notwithstanding an exception, all work shall be performed in accordance with the standards for soil erosion and sediment control as regulated by the State of New Jersey and the County of Sussex Soil Conservation District requirements.

V. APPLICATION REQUIREMENTS.

- A. Where a permit for soil moving is required, the owner of the premises, lessee or a duly authorized representative of the property owner shall first file with the Zoning Officer an application in the form attached requesting such permission, together with a map of the premises, in duplicate, showing existing and proposed finished grade contour lines. The map shall also show the present and proposed topography of the premises in relation to the location and elevation of all abutting streets and adjoining properties. If buildings are to be constructed, their location shall be shown and elevation sketches shall be provided. The source of fill material must be identified, including the name and address of the supplier.
- B. In the case of a major soil moving permit, plans shall be prepared by a New Jersey licensed professional engineer or other qualified professional. For a minor soil moving permit, the Zoning Officer may require such preparation if he deems the plans as submitted to be inadequate.

VI. PERMIT APPLICATION; REVIEW; FEE.

- A. Application review by Zoning Officer. Within ten (10) days of receipt of the application and attachments, the Zoning Officer shall notify the Township Engineer, the Township Clerk and the designated representative of the Township Committee. In the event of a minor soil moving permit, the Zoning Officer shall inspect the site and issue a written report to the designated representative of the Township Committee. In the event of a major soil moving permit, the Township Engineer shall inspect the site and issue a written report to the designated representative of the Township Committee within ten (10) days of his receipt of a complete application.
- B. Minor soil moving permit. In cases involving a minor soil moving permit, the Zoning Officer shall make a written report to the Township Committee within ten (10) days of his receipt of a complete application, and shall either issue or deny a permit after the review by the Township Committee five (5) days thereafter.

- C. Major soil moving permit. Within ten (10) days of receipt of an application and attachments, the Township Engineer shall issue a written report to the designated representative of the Township Committee and Township Clerk. If a majority of the Township Committee requires a public hearing to consider the application, the applicant shall provide notice to property owners within 200 feet of the subject property, without newspaper notice. If approved, the Township Committee shall require a performance bond and/or a restoration bond in the amount set by the Township Engineer.
- D. The matter shall be placed on the agenda of the Township Committee as a priority matter after proper notice.
- E. The fee for both a minor or major soil placement permit, which fees may be amended from time to time, as set forth in Chapter 14 of the Revised General Ordinances of the Township of Lafayette.

VII. CONSIDERATION GUIDELINES.

In considering an application, the Township Engineer or the Zoning Officer shall be guided by and shall take into consideration the following factors:

- A. Soil erosion by wind and water.
- B. Drainage. No steep slopes, cuts or pits shall be formed.
- C. Water runoff. No increase in the quantity or velocity of stormwater emanating from the land.
- D. Soil fertility.
- E. A landscaping plan. Provision shall be included for protection of the vegetation that is to be retained both on and off the site, with the understanding that disturbing or covering soil within the dripline of a tree may have a negative effect on the health of that tree.
- F. Lateral support slopes and grades of abutting streets and lands.
- G. Adequacy of buffering from the surrounding properties, impact both visually and environmentally on surrounding properties.
- H. Truck traffic, including the route of delivery, noise and hours of delivery so as not to interfere with school bus traffic or property owners within the vicinity of the property.
- I. Cover. Fill shall be covered with clean arable soil or, in the case of a driveway, with stones or gravel.
- J. Land values and uses.
- K. Written approval of the application by the owner of the Property, if the applicant is other than the owner.
- L. Such other factors as may bear upon or relate to the coordinated, adjusted and harmonious physical development of the Township.
- M. Additional consideration shall be given cases involving premises that, by virtue of their nature, location and other characteristics, are suitable for, and capable of, major subdivision under the appropriate ordinances and statutes. The Township Engineer, Zoning Officer and Township Committee shall review all applications in light of this section, as well as sound planning considerations, zoning requirements, the Master Plan, any pending

subdivision application and the nature of the surrounding terrain and proposed contours.

- N. In the case of imported soil to be utilized as fill, proof that the material to be installed, prior to installation, has been tested and found to be in conformance with the Soil Ranking Criteria found in N.J.A.C. 7:26D, Appendix 1, Table 1A.
 - N.1 Proof under this section shall be a letter from a laboratory certified by the state to perform soil analysis, stating that results meet or exceed the standards set forth in N.J.A.C. 7:26D, Appendix 1, Table 1A, and such other State, county, or municipal standards in effect at the time of testing, along with the actual test results.
 - N.2 A minimum of two samples are to be extracted from the source for laboratory analysis for each 1,000 (one thousand) cubic yard lot, or fraction thereof. Samples are to be extracted, tested, and evaluated by a state certified laboratory. Samples must be biased to the location of the highest suspected contaminated concentrations, as determined by the laboratory professional or his duly assigned representative.
 - N.3 Natural material obtained from a quarry shall be exempt from the testing criteria; however, a receipt from the quarry with the material amount is required.
 - N.4 Source from where the soil is coming from to be shown on the plans, including tax lot and block; owner's name and municipality.
 - N.5 The location to which the soil is to be placed.
 - N.6 The proposed date of completion of the soil fill.
 - N.7 Additional supporting documentation as requested by the Township Engineer/Zoning Officer/ to adequately address and comply with the purpose and the provisions of this chapter.
 - N.8 An approved soil erosion and sediment control permit (if applicable).
- O. Any material that is temporarily stored shall not exceed a height of fifteen (15) feet, and the maximum slope shall be not more than 45 degrees.
- P. All work shall be performed in accordance with the standards for soil erosion and sediment control as regulated by the State of New Jersey and the Sussex County Soil Conservation District requirements.

VIII. ISSUANCE OF PERMIT; TIME FOR COMPLETION OF WORK; CONDITIONS.

- A. If, after considering the application and all maps, reports and other documents or evidence, the Township Engineer or Zoning Officer determines that the proposed soil moving operation will not adversely affect the public health, safety or general welfare, a permit shall be granted to the applicant and shall include a reasonable time limit for completion of the operation.
- B. In granting permits under this section, the Township Engineer or Zoning Officer shall have the power to condition the permit upon compliance by the applicant with such terms and conditions as may be deemed necessary or advisable to effect the provisions and intent of this section. Such conditions may include the requirement of as-built plans.

IX. PERFORMANCE/RESTORATION BOND.

- A. Before a major soil moving permit shall be effective, the applicant shall file with the Township Committee a performance and/or a restoration bond, conditioned upon full compliance with all of the terms and conditions of approval, including the provisions of this chapter. The amount of such bond shall be fixed by the Township Committee, upon recommendation of the Township Engineer. The bond shall be in the form of cash or a surety bond in a form and with surety acceptable to the Township Attorney.
- B. Where a surety bond is given, the Township Committee shall have the right to demand a cash bond equal to 10% of the total amount, it being understood that, in the event of default, the cash deposit shall be resorted to first by the Township in pursuing its remedies.
- C. Restoration of area.
 - C.1 Upon completion of any operation delineated on the approved plan, said area shall be permanently stabilized and maintained. A final map for all major soil fill permits shall be submitted containing and complying with all requirements as set forth in this chapter.
 - C.2 No machinery or equipment or debris may be stored in any area, and no safety hazards shall be permitted either during or after the completion of operations.

X. CARE OF LAND; RESPONSIBILITY OF OWNER/LESSEE.

If permission for soil moving is granted, the owner and/or lessee shall bear responsibility for insuring that the operation is so conducted that:

- A. There shall be no sharp downward slopes (declivities), pits or depressions. The area shall be properly leveled off, cleared of debris and graded to conform to the contour lines and grades as approved by the Township Engineer or Zoning Officer.
- B. There shall be no damage to or littering of roads or other Township property or private property in the Township.
- C. The top layer of arable soil to a depth of six inches shall not be taken away. This soil shall be set aside for retention on the premises and shall be respread, consistent with approved levels and contour lines, when the rest of the soil has been properly graded. Nothing herein shall preclude the removal of nonarable soil and replacement thereof with arable soil to a depth of no less than six inches.

XI. PENALTY FOR VIOLATIONS.

- A. The Zoning Officer shall have the authority to enforce the provisions of this chapter and to issue summonses to any person importing soil without a permit. An initial violation of this Chapter shall be subject to a fine of up to Two Thousand Dollars (\$2,000), or in an amount permitted by N.J.S.A. 40:49-5 on the date of the violation, whichever amount is greater. Each day that a violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuing offense.
- B. The Township Engineer is designated as the official whose duty it shall be to enforce the provisions of this Ordinance with respect to persons importing soil with a permit. The Township Engineer shall, from time to time, on his/her own initiative, or as directed by the Township Committee, inspect the property for which permits have been granted to insure compliance with the terms of the permit and this Ordinance. The Township Engineer shall have the right to enter upon any property for the purposes of examination and inspection of the operation without advance notice. In addition to the

imposition of any fine and pending a court hearing or disposition and in light of any material breach of this Chapter, the Township shall be entitled to an injunction issued by any court of competent jurisdiction restraining a violation of this Chapter. The right to an injunction is cumulative and is in addition to any hearing or legal proceeding before the appropriate municipal court, or administrative agency.

- C. The permit of any person may be revoked or suspended for up to thirty (30) days if in the opinion of the Township Engineer a violation of the permit has occurred. Within the thirty (30) day period, the applicant shall be entitled to a hearing before the Township Committee to determine whether the suspension should be lifted and/or extended.

XII. OTHER APPLICABLE REGULATIONS.

Nothing herein shall exempt the applicant from any applicable provisions of other local, state and federal law.

- A. All ordinances or parts of ordinances or resolutions inconsistent or in conflict with the provisions of this Ordinance are hereby repealed in their entirety.
- B. If any provision of this Ordinance or the application of this Ordinance to any person or circumstances is held invalid, the remainder of this Ordinance shall not be affected and shall remain in full force and effect.
- C. That a copy of this Ordinance by the Township Clerk, together with a certified copy of the proof of publication thereof, shall be filed in the proper County Office according to law.
- D. This Ordinance shall take effect immediately after final passage and publication in the manner provided by law.

NOTICE

The above entitled Ordinance was introduced and passed at first reading by the Lafayette Township Committee at a meeting on May 7, 2019 and after publication and a public hearing was finally adopted by the Lafayette Township Committee at a meeting held on May 21, 2019.

Mayor:

Municipal Clerk: