

TOWN OF HURLEY
LOCAL LAW NO. __ OF THE YEAR 2022
A LOCAL LAW ENACTING CHAPTER 94
OF THE TOWN OF HURLEY CODE

BE IT ENACTED by the Town Board of the Town of Hurley as follows:

SECTION I. TITLE

This Local Law shall be known as the “Fill and Grading Law”, enacting Chapter 94 of the Town of Hurley Code to provide controls relating to the placement and characteristics of fill within the Town of Hurley.

SECTION 2. ENACTMENT OF CHAPTER 94

Chapter 94 is hereby adopted as follows:

§94-1The Town Board of the Town of Hurley hereby finds that uncontrolled filling or excavating of land may cause serious health, safety and environmental problems including erosion, siltation, flooding and other potential harmful effects. It is the purpose of this chapter to prevent such harmful effects, to ensure only clean fill is used, to ensure the placement or removal of fill does not create unsafe or unstable slopes or drop-offs, to ensure the placement or removal of large quantities of fill is done in a safe and professional manner and thus promote the public health, safety and welfare in the Town of Hurley.

§94-2. Approving authority.

The approving authority for all applications shall be the Building Inspector, except that the Planning Board shall be the approving authority for any application that is also the subject to review for a pending site plan, subdivision plan or special use permit before the Planning Board in accordance with the requirements of the Code of the Town of Hurley.

§94-3. Exemptions

While the following activities are exempt from permit requirements, the Building Inspector may still request verification of the quantity and source of all fill and the homeowner must provide such documentation. In all situations, only clean fill may be used. The following operations are exempt and do not require a permit:

A. Permits will not be required for an excavation or filling operation involving less than 200 cubic yards of material over a period of 12 consecutive months.

B. The provisions of this chapter shall not apply to operations conducted by or for the Town of Hurley, or any department or agency thereof.

C. Farming. The provisions of the chapter shall not be construed as prohibiting or limiting the normal use of land for farming or gardening, or similar agricultural or horticultural uses in any district.

D. Lawns, gardens and driveways. The provisions of this chapter shall not be construed as prohibiting or limiting the normal addition of topsoil or fertilizer to lawns and gardens, or the addition of gravel or material for the primary purpose of improving or beautifying the surfaces of previously graded areas. The placement of topsoil not exceeding three inches in depth over an area not exceeding 5,000 square feet shall not require an excavation and filling permit, provided that said topsoil is immediately seeded and mulched.

E. Permitted septic systems and permitted new structures. The provisions of this chapter shall not be construed as prohibiting or limiting the normal addition of soil or fill from permitted septic systems, the backfilling of new permitted structures or the creation of new permitted driveway and parking areas. Any legally permitted work will not require an additional fill and grading permit.

F. Projects requiring Planning Board review. Where projects require Planning Board approval for site plan review, special use permits, etc., the Planning Board will also conduct a review of any proposed fill or grading plan as part of their overall review of the proposed project.

§94-4. Applicability.

A. An excavation and filling permit shall be required for the following actions in accordance with the provisions of this chapter, regardless of whether the action is carried out by relocating soil or other materials between the land and other properties or by redistributing the soil or other materials on the land itself:

- (1) Excavation or grading with slopes in excess of 2.5 H:W.
- (2) Excavation or grading operation involving more than 200 cubic yards of material.
- (3) Any lowering or raising of existing grade by more than 6 inches or stripping of topsoil over an area of 5,000 square feet or more.

§94-5. Permit.

A. The owner of the affected site shall obtain a permit from the Building Department which will require compliance with 6 NYCRR Part 360 and which provides for the following:

- (1) For each truck delivering fill to a site, there shall be a signed manifest stating the date of delivery, the origin of the fill, the type of fill, and a representation that there is full compliance with 6 NYCRR Part 360.
- (2) The manifest shall be provided to the Building Department on a weekly basis or whenever requested by the Building Department on a more frequent basis.
- (3) Material used for landfilling must be clean and non-burnable before being delivered to the site. Such material shall not contain garbage, disease-producing organisms, construction and demolition debris, harmful radioactivity, or any other substance which may be considered harmful. No material may be used for this purpose which will produce obnoxious odors, or either cause or require covering or other measures to prevent the attraction of rats or other vermin, flies, mosquitoes, or other harmful insects.

B. The following information is required to be provided to the Building Department in order to obtain a permit:

- (1) Engineering drawings showing the section, block and lot numbers upon which the activity will be conducted.
- (2) A plan showing all existing and proposed contour lines of not more than intervals of two feet, the area that is to be disturbed by the proposed excavation or landfilling, the amount of fill to be delivered, location of trees over four inches in diameter measured four feet from the ground, road access to the site, the area proposed to be disturbed and its relation to neighboring properties, the location of any well, and the depth thereof, the location of any sewage disposal system, the location of natural wetlands and watercourses, if any, located within 50 feet of the proposed disturbed area, together with buildings and roads.
- (3) The estimated maximum quantity of material to be excavated and/or removed and/or the estimated maximum quantity that will be used for regrading or filling, computed from cross sections of a proposed excavation or disturbed area and a description of any material to be used, and the source of the fill material. The source(s) and type(s) of fill must be suitable for its intended purpose, as determined by the Building Inspector or the Town's Engineer.
- (4) An erosion control plan.
- (5) The details of any drainage system proposed to be installed and maintained by the applicant, designed to provide for proper surface drainage of the land, both during the performance of the work applied for, and after the completion thereof. Drainage may not be re-directed toward neighboring properties.
- (6) If a proposed excavation is for the purpose of making a lake or pond, the details of the proposed construction of the dam or other structure or embankment intended to impound the water, together with the details and location of proposed discharge and of a valved outlet for drainage purposes.
- (7) Documentation regarding permit status with the New York State Department of Environmental Conservation prior to the issuance of a Town permit. Any New York State Department of Environmental Conservation permit required must be in effect prior to the issuing of a Town permit.
- (8) Proof of insurance adequate to cover the intended work pursuant to the terms of the permit.
- (9) The rehabilitation proposed, and the estimate of the cost of such work in accordance with the standards in this section.

C. If in the discretion of the Building Inspector testing or further monitoring is required, the Building Inspector may require an escrow account to be funded by the owner of said site to cover such costs.

D. The owner of the site shall be required to post a surety bond with the Town Clerk, in a form acceptable to the Town Attorney, in an amount to be fixed by the Town Board, prior to issuance of said permit in the following cases:

(1) When the estimated cost of the work, including all lots, as shown in the application or as reasonably calculated by the Building Inspector, exceeds \$50,000; or

(2) When the estimated time of completion as set forth in the application or as reasonably calculated by the Building Inspector, exceeds 60 days from the issuance of the permit.

E. The permit does not permit onsite processing, sorting or crushing.

F. The Building Inspector may impose other reasonable conditions on the permit, such as, but not limited to, screening, access controls, dust controls and site security, which the Building Inspector determines are necessary in order to adequately maintain the site.

§94-6. Definitions.

CLEAN FILL – Natural material including soil, rock and stone that is uncontaminated, meaning the fill has not been mixed with any construction debris, concrete, asphalt or any waste and has not been subjected to any known spill or release of chemical contaminants, including petroleum product, nor treated to remediate such contamination. Clean fill must be free of solid waste, including land clearing debris, construction and demolition debris, municipal solid waste, radioactive waste, hazardous waste or special waste. Such fill material shall contain no contaminants beyond what would normally be expected for that material and meet other Federal, and State guidelines, Clean Fill shall be deemed not to include any fill originating within New York City or otherwise regulated under 6 NYCRR Part 360.

EXCAVATION – The process of removing earth to form a cavity in the ground.

FILLING - The placement of soil, rubble, spoils, rocks and/or any other appropriate fill on any property for the purpose or effect of raising, elevating or otherwise altering any portion of a property.

GRADING - The changing or alteration of the ground surface or slopes on a property.

SOIL - Earth, sand, clay, loam, gravel, humus, rock or dirt, without regard to the presence or absence of organic matter and any debris, whether organic or construction debris, including but not limited to asphalt and concrete.

CONSTRUCTION AND DEMOLITION DEBRIS - All waste from the construction, demolition, remodeling and repair of structures, road building and land clearing. Such waste includes but is not limited to bricks, concrete and other masonry materials, shingles, siding, sheetrock, paneling, insulation, scrap wood, fasteners, and bathroom and other fixtures.

§94-7. Violations and enforcement.

A. The Building Inspector shall issue and post notices of violations of this Chapter as well as stop work orders. In addition, by resolution, the Town Board may direct the Building Inspector

to make such inspection and reports, initiate and take such court proceedings and perform all other actions as required by the Town Board as may be necessary to enforce this chapter or to invoke penalties for violations.

B. Any person who violates this article, upon conviction thereof, shall be punishable by a fine of not less than \$1,000 per day and not more than \$2,500 per day or by imprisonment for a term not to exceed 15 days. Each day's continued violation shall constitute a separate additional violation.

C. Convictions for a violation of this article shall constitute and effect an immediate revocation of the permit granted hereunder.

D. The Building Inspector may suspend the performance of any delivery of fill and also may revoke any permit issued hereunder or under any other provision of law purporting to authorize such delivery of fill for a like period, at any time, in the event of an actual or threatened violation of this article. The Building Inspector shall have the further authority to suspend and revoke all other permits at the site when the instant permit is violated or there is a threatened violation.

(1) The Building Inspector shall accomplish such suspension and revocation by delivering personally or by certified mail a written notice thereof, stating the particular grounds therefore, to the applicant. Thereafter, during the period of such suspension and revocation, no delivery of fill shall be permitted or performed.

(2) Any person aggrieved by such suspension and/or revocation may appeal therefrom to the Town Board, who may affirm, modify or reverse the Building Inspector's action or make such other disposition of the appeal which may be consistent with the purposes of this article.

E. In addition to the above-provided penalties and punishment and such other remedies as may now or hereafter be provided by law, the Building Inspector may maintain an action or proceeding in the name of the Town in any court of competent jurisdiction to compel compliance with or to restrain by an injunction the violation of such article and to recover, by appropriate civil remedies, any cost, expense or damage sustained by the Town in consequence of such violation, including an action to enforce the surety bond provided for in this article.

F. Authority to remove and restore. In the event that the owner, occupant or person in control of such site shall fail to comply with this article, the Town shall have the authority, as provided for herein, to enter onto such land and remove such noncomplying fill and restore the land to an appropriate and safe state and charge the cost and expense of such action against the owner and establish a lien against the land in the manner herein provided.

§94-8. Fees.

Permit application fees may be established and amended from time to time by resolution of the Town Board.

SECTION 3. SEVERABILITY.

If any word, phrase, sentence, part, section, subsection, or other portion of this Law or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid

for any reason, then such word, phrase, sentence, part, section, subsection or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Law, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.

SECTION 4. CONFLICT WITH OTHER LAWS.

Where this Law differs or conflicts with other Laws, rules and regulations, unless the right to do so is pre-empted or prohibited by the County, State or federal government, the more restrictive or protective of the Town and the public shall apply.

SECTION 5. AUTHORITY

This Local Law is enacted pursuant to the Municipal Home Rule Law. This Local law shall supersede the provisions of the Town Law to the extent it is inconsistent with same, and the extent permitted by the New York State Constitution, the Municipal Home Rule Law, or any other applicable statute.

SECTION 6. EFFECTIVE DATE.

This Law shall become effective upon filing with the New York State Secretary of State.

Adopted: _____, 2022