

SECTION 1026 – GRADING, FILLING AND EXCAVATING

SECTION

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1026.01: PERMIT REQUIRED:

Subd. 1. Except for City land grading, filling and excavating operations, and in cases where a grading and drainage plan for a private development has been approved as part of a subdivision or other development plan approved by the City, or as may be otherwise stipulated by this Ordinance, any person who proposes to add landfill or extract sand, gravel, black dirt, or other natural material from the land or grade land shall apply for a land alteration permit as specified below:

Cubic Yards of Landfill or Land to be Excavated/Graded	Permit Requirement
1 to 50 cubic yards	No City Permit unless in Shore or Bluff Impact Zone
50 – 250 cubic yards	MPCA Storm Water Permit and Administrative land alteration permit as provided in Section 1003 of this Ordinance
Greater than 250 cubic yards	MPCA Storm Water Permit and Interim Use Permit as provided in Section 1010 of this Ordinance

Subd. 2. Notwithstanding the requirements of this Section, no permit will be required for depositing landfill or excavation/grading on a lot for which a building permit has been issued for construction thereon provided that there is compliance with this Section, and such activity is in accordance with an approved grading plan and/or building permit.

Subd. 3. Excavations for agricultural purposes and gardening are exempt from the requirements of this Section.

Subd. 4. Activities which qualify as mining operations shall be subject to this Section.

Subd. 5. Except for mining activities, land filling and land excavation/grading operations are an allowable activity within all zoning districts.

1026.02: APPLICATION AND REQUIRED INFORMATION: Any person desiring a permit hereunder shall file an application on such forms as shall be provided by the Zoning Administrator. Such application shall be accompanied by a fee as set forth by City Council resolution and a large scale copy and reduced scale (11 by 17 inches) copy of detailed written and graphic materials fully explaining the proposed land filling or land excavation operation. The number of copies of said maps and materials shall be determined by the Zoning Administrator. The scale of such materials shall be the minimum necessary to ensure legibility. The request shall be considered as being officially submitted and complete when the applicant has submitted and complied with all the following required information, as applicable and specified by the Zoning Administrator:

Subd. 1. The name and address of the applicant.

Subd. 2. The name and address of the owner of the land.

Subd. 3. The address and legal description of the land involved.

Subd. 4. The purpose of the landfill or excavation/grading activity.

Subd. 5. A description of the type and amount of material to be placed upon or excavated/graded from the premises.

Subd. 6. The source of fill material.

Subd. 7. The highway, street or streets, or other public ways in the City upon and along which any material is to be hauled or carried.

Subd. 8. An estimate of the time required to complete the landfill or excavation/grading.

Subd. 9. A site location map and certificate of survey of the entire subject site.

Subd. 10. A site plan showing present topography (with a minimum interval of one (1) foot) and also including boundary lines for all properties, water courses, wetlands and other significant features within three hundred fifty (350) feet.

Subd. 11. A site plan showing the proposed finished grade (with a minimum interval of one (1) foot) and landscape plan. All sites over one (1) acre shall submit an erosion control plan prepared by a licensed professional engineer. Final grade shall not adversely affect the surrounding land or the development of the site on which the landfill is being conducted. Topsoil shall be of a quality capable of establishing normal vegetative growth.

Subd. 12. A plan and/or statement demonstrating the proposed activity will in no way jeopardize the public health, safety, and welfare or is appropriately fenced to provide adequate protection. All sites over one (1) acre shall submit an erosion control plan prepared by a licensed professional engineer.

Subd. 13. A statement that the applicant will comply with all conditions prescribed by the City.

Subd. 14. A written right-of-entry is provided to the Zoning Administrator to enter the land for the purpose of determining compliance with all applicable conditions imposed on the operation.

Subd. 15. When required by the State of Minnesota an approval by the State to impound the waters or to make the excavation described in the application.

Subd. 16. Other information as may be specified by the Zoning Administrator.

1026.03: TECHNICAL REPORTS: The Zoning Administrator shall immediately, upon receipt of a completed application, as determined by preliminary staff review, forward a copy thereof to the City Engineer and the City Building Official. Where protected watersheds, floodplains, and/or protected wetlands are in question, the Minnesota Department of Natural Resources, Army Corps of Engineers, and Sherburne County Soil and Water Conservation District shall also be contacted. These technical advisors shall be requested to prepare reports, as applicable, for the City Council and/or Zoning Administrator.

1026.04: ISSUANCE OF PERMIT: Upon receiving information and reports from the City staff and other applicable agencies, as applicable, a public hearing shall be scheduled before the Planning Commission which shall forward a recommendation to the City Council. The City Council shall take formal action on the application and as to whether, and when, and under what conditions such permit for a landfill or excavation/grading activity is to be issued to the applicant.

1026.05: CONDITIONS OF PERMIT:

Subd. 1. Landfill Operations.

1. Under no circumstances shall any landfill operation be conducted or permitted if the contents of the landfill or any part thereof shall consist of garbage, animal or vegetable refuse, poisons, contaminants, chemicals, decayed material, filth, sewage or similar septic or biologically dangerous material deemed to be unsuitable by the City.
2. Unless expressly extended by permit, the hours of operation shall be limited to seven o'clock (7:00) AM to seven o'clock (7:00) PM, Monday through Saturday.

Subd. 2. Land Excavation/Grading Operations.

1. Site Development and Restoration Plan. An extractive use site development and restoration plan must be developed, approved, and followed over the course of operation of the site. The plan must address dust, noise, possible pollutant discharges, hours and duration of operation, and anticipated vegetation and topographic alterations. It must also identify actions to be taken during operation to mitigate adverse environmental impacts, particularly erosion, and must clearly explain how the site will be rehabilitated after extractive activities end.
2. The City, as a prerequisite to the granting of a permit, or after a permit has been granted, may require the applicant to whom such permit is issued, or the owner or user of the property on which the excavation/grading is located to:
 - a. Properly fence the excavation.
 - b. Slope the banks, and otherwise properly guard to keep the excavation in such condition as not to be dangerous from caving or sliding banks.
 - c. Properly drain, fill in or level the excavation, after the extraction has been completed so as to render it usable, seeding where required to avoid erosion and an unsightly mark on the landscape and to make the same safe as the City shall require.
 - d. Keep the excavation/grading within the limits for which the particular permit is granted.
 - e. Remove excavated/graded material from the excavation, away from the premises upon and along such highways, streets or other public ways as the City shall order and direct.
 - f. Retain and store top soil from the site in question and to utilize such materials in the restoration of the site.
3. Unless expressly extended by permit, the hours of operation shall be limited to seven o'clock (7:00) AM to seven o'clock (7:00) PM, Monday through Saturday.

1026.06: SECURITY: The City shall require either the applicant or the owner or user of the property on which the landfill or excavation/grading is occurring to post a security in such form and sum as determined by the City Attorney or City Council. The amount of the security shall be sufficient to cover the City's extraordinary cost and expense of repairing, from time to time, any highways, streets or other public ways where such repair work is made necessary by the special burden resulting from hauling and travel in transporting fill or excavated material. The amount of the security shall also be sufficient to insure compliance with all requirements of this Section, and the particular permit, and to pay the expense the City may incur as a result of the permit.

1026.07: FAILURE TO COMPLY: The City may, for failure of any person to comply with any requirement made of them in writing under the provisions of such permit, as promptly as same can reasonably be done, proceed to cause said requirement to be complied with, and the cost of such work shall be certified as an assessment against the property whereon the landfill or excavation/grading operation is located, or the City may at its option proceed to collect such costs by an action against the person to whom such permit has been issued, and their superiors if a bond exists. In the event that landfilling or excavation/grading operations requiring a permit are commenced prior to City review and approval, the City may require work stopped and all necessary applications filed and processed. In such cases, application fees shall be double the normal charge.

1026.08: COMPLETION OF OPERATION:

Subd. 1. All landfill and excavation/grading operations shall be completed within one hundred eighty (180) days of the issuance of the permit. Upon completion, the permit holder shall notify the Zoning Administrator in writing of the date of completion. If additional time beyond the one hundred eighty (180) days is needed for completion, the permit holder may apply to the Zoning Administrator and upon a satisfactory showing of need, the Zoning Administrator may grant an extension of time. If such extension is granted, it shall be for a definite period. Extensions shall not be granted in cases where the permit holder fails to show that good faith efforts were made to complete the landfill or excavation/grading operation within one hundred eighty (180) days and that failure to complete the operation was due to circumstances beyond the permit holder's control, such as shortage of fill or excavated material, teamster's strike, unusually inclement weather, illness or other such valid and reasonable excuse for non-completion. In the event a request for an extension is denied, the permit holder shall be allowed a reasonable time to comply with other provisions of this Section relating to grading, leveling and seeding or sodding. What constitutes such "reasonable time" shall be determined by the Zoning Administrator after inspecting the premises.

Subd. 2. At the completion of a landfill or excavation/grading operation, the premises shall be graded, leveled, and seeded or sodded with grass. The grade shall be such elevation with reference to any abutting street or public way as the City shall prescribe in the permit. The site shall also conform to such prerequisites as the City may determine with

reference to storm water drainage runoff and storm water passage or flowage so that the landfill or excavation cannot become a source of, or an aggravation to, storm water drainage conditions in the area. The Zoning Administrator shall inspect the project following completion to determine if the applicant has complied with the conditions required thereof. Failure of such compliance shall result in the withholding of any building permits for the site and notice of such withholding shall be filed in the office of the Sherburne County Recorder for the purposes of putting subsequent purchasers on notice.

1026.09: OPERATIONS IN PROCESS: All landfill and excavation/grading operations for which a permit has previously been issued shall terminate such operations on the date specified by the permit.

1026.10: EROSION AND DRAINAGE:

Subd. 1. Every applicant for a building permit, subdivision approval, or a grading permit to allow land disturbing activities shall adhere to erosion control measure standards and specifications contained in the Metropolitan Council Publication “Minnesota Urban Small Sites Best Management Practices (BMP) Manual), as may be amended, or as approved by the City Engineer.

Subd. 2. No land shall be developed and no use shall be permitted that results in water runoff causing flooding, erosion, or deposit of sediment on adjacent properties. Such runoff shall be properly channeled into a storm drain, watercourse, ponding area, or other public facilities subject to the review and approval of the City Engineer.

Subd. 3. All residential, commercial, industrial, and institutional developments shall satisfy the provisions of the City’s Subdivision Ordinance in regard to storm water management.

Subd. 4. In the case of all single family lots, multiple family lots, business, industrial and institutional developments, the drainage and erosion control plans shall be subject to the City Engineer’s written approval. No modification in grade and drainage flow through fill, cuts, erection of retaining walls or other such actions shall be permitted until such plans have been reviewed and received written approval from the City Engineer.

Subd. 5. Proposed erosion control measures may be approved by the City Engineer as part of grading plan review. Erosion control may be specified by the City Engineer as part of a site survey for individual building permits. Erosion control measures may also be specified by the City Engineer as needed and deemed appropriate during the construction and post-construction periods separate from the above.

Subd. 6. All storm sewer inlets which are functioning during construction shall be protected so that sediment laden water not enter the conveyance system without first being filtered or otherwise treated to remove sediment.

Subd. 7. All on-site storm water conveyance channels shall be designed and constructed to withstand the design volume of storm water with appropriate stabilization to prevent scour and erosion. Erosion controls must be provided at the outlets of all storm sewer pipes.

Subd. 8. All temporary and permanent erosion and sediment control practices shall be maintained and repaired to assure the continued performance of their intended function.

Subd. 9. The developer or the developer's designated representative shall be responsible for inspection and maintenance until such time as the final improvements are approved by the City Engineer. The developer or the developer's designated representative shall maintain inspection records which include the minimum following information:

1. Date and Time of Inspection
2. Name of Person Performing Inspection
3. Rainfall Amounts
4. Deficiencies and Maintenance Needs Identified During the Inspection
5. Proposed Corrective Actions
6. Date of Completion of Corrective Action

Subd. 10. Tracking. Each site shall have graveled roads, access drives and parking areas of sufficient width and length to prevent sediment from being tracked onto public or private roadways. Any sediment reaching a public or private road shall be removed by street cleaning (not flushing) before the end of each workday.

Subd. 11. Seeding. All disturbed ground left inactive for seven (7) or more days shall be stabilized by seeding or sodding or by mulching or covering or other equivalent control measure approved by the City Engineer.

Subd. 12. Temporary Sedimentation Basin Required. One or more temporary or permanent sedimentation basins shall be constructed if:

1. More than 10 acres are disturbed and drained to a single point of discharge temporary sediment basins must be installed.
2. More than 5 acres are disturbed and drain to a special and/or impaired water temporary sediment basin requirements described must be installed.
3. The site has sensitive features as determined by the Public Works Director or designee or the potential of offsite impacts, then temporary sediment basins must be installed to protect the resource.

Subd. 13. Each temporary sedimentation basin shall meet the following minimum criteria:

1. The basins must provide live storage for a calculated volume of runoff from a two (2)-year, 24-hour storm from each acre drained to the basin, except that in no case shall the basin provide less than 1,800 cubic feet of live storage from each acre drained to the basin; or where the calculation has not been done, providing 3,600

- cubic feet of live storage per acre drained to the basin shall be provided for the entire drainage area of the temporary basin.
2. Temporary basin outlets must be designed to prevent short-circuiting and the discharge of floating debris.
 3. The basin must be designed with the ability to allow complete basin drawdown for maintenance activities, and must include a stabilized emergency overflow to prevent failure of pond integrity.
 4. The outlet structure must be designed to withdraw water from the surface in order to minimize the discharge of pollutants, except that the use of a surface withdrawal mechanism for discharge of the basin may be temporarily suspended during frozen conditions.
 5. Energy dissipation must be provided for the basin outlet.
 6. Sediment Basins must be situated outside of surface waters and any buffer zones, and must be designed to avoid draining water from wetlands unless a current and valid permit for wetland impact has been obtained in advance.
 7. The temporary basins must be constructed and made operational prior to disturbance of 10-acres, or 5-acres if discharging to a special and/or impaired.
 8. When site restrictions do not allow for a temporary sediment basin, equivalent measures such as smaller basins, check dams, and vegetated buffer strips can be included.

Each sedimentation basin shall have at least one meter (three (3) feet) of depth and constructed in accordance with accepted design specifications. Sediment shall be removed to maintain a depth of one meter (three (3) feet). The basin discharge rate shall also be sufficiently low as to not cause erosion along the discharge channel or the receiving water.

Subd. 14. Sites not required to install temporary sediment basins. For sites not required to install temporary sediment basins, silt fences, or equivalent control measures shall be placed along all side slope and down slope sides of the site. If a channel or area of concentrated runoff passes through the site, silt fences shall be placed along the channel edges to reduce sediment reaching the channel. The use of silt fences, or equivalent control measures must include a maintenance and inspection schedule.

Subd. 15. Removal. All temporary erosion control devices including silt fence, gravel, hay bales or other measures shall be removed from the construction site by the applicant and properly disposed of or recycled. This removal and disposal must occur within thirty (29) days of the establishment of permanent vegetative cover on the disturbed area.

Subd. 16. Site Dewatering. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upflow chambers, hydro-cyclones, swirl concentrators or other appropriate controls as appropriate. Water may not be discharged in a manner that causes erosion or flooding of the site or receiving channels of a wetland. All dewatering shall be in accordance with all applicable county, state, and federal rules and regulations. Minnesota Department of Natural Resources regulations regarding appropriate permits shall also be strictly adhered to.

Subd. 17. Waste and Material Disposal. All waste and unused building materials (including garbage, debris, cleaning wastes, waste water, toxic materials or hazardous materials) shall be properly disposed of off-site and not allowed to be carried by runoff into a receiving channel or storm sewer system.

Subd. 18. Unless approved by the City Engineer, the top of the foundation and garage floor of all structures shall be at least eighteen (18) inches above the grade of the crown of the street.

Subd. 19. No soil or dirt piles containing more than ten cubic yards of material shall be located with a down-slope drainage length of less than 25 feet from the toe of the pile to a roadway or drainage channel. If remaining for more than seven days, they shall be stabilized by mulching, vegetative cover, tarps, or other means. Erosion from piles that will be in existence for less than seven days shall be controlled by placing silt fence barriers or other erosion control measures as approved by the City Engineer around the pile. In-street utility repair or construction soil or dirt storage piles located closer than 25 feet of a roadway or drainage channel must be covered with tarps or suitable alternative control if exposed for more than seven days, and the storm drain inlets must be protected with appropriate filtering barriers.

Subd. 20. Natural topography. The applicant shall give consideration to reducing the need for stormwater management facilities by incorporating the use of natural topography and land cover such as wetlands, ponds, natural swales, and depressions as they exist before development to the degree that they can accommodate the additional flow of water without compromising the integrity or quality of the wetland or pond. The development shall minimize impact to significant natural features. Review the site for steep slopes (greater than 1V:3H), wetlands, wooded areas of significance, rare and endangered species habitat, greenways, or parks and open space. These areas should not be developed.

Subd. 21. The City's Building Official or City Engineer may issue stop work orders for any violation of this Ordinance.

1026.11: GRADING, FILLING AND EXCAVATING WITHIN SHORELAND DISTRICTS.

Subd. 1. Topographic Alterations/Grading and Filling.

1. Grading and filling and excavations necessary for the construction of structures, sewage treatment systems, and driveways under validly issued construction permits for these facilities shall not require the issuance of a separate grading and filling permit. However, the grading and filling standards in this Section must be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways.

2. Grading for public roads and parking areas shall be regulated by Section 1065 (Shoreland Management District) of this Ordinance.
3. Notwithstanding Items 1 and 2 above, a grading and filling permit shall be required for:
 - a. The movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones.
 - b. The movement of more that fifty (50) cubic yards of material outside of steep slopes and shore and bluff impact zones.
4. The following considerations and conditions must be adhered to during the issuance of construction permits, grading and filling permits, conditional use permits, variances, and subdivision approvals:
 - a. Grading or filling in any type 2, 3, 4, 5, 6, 7, or 8 wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland: (This evaluation must also include a determination of whether the wetland alterations being proposed requires permits, reviews, or approval by other local, state or federal agencies such as a watershed district, the Minnesota Department of Natural Resources or the United States Army Corps of Engineers. The applicant shall be so advised.)
 - (1) Sediment and pollutant trapping and retention.
 - (2) Storage of surface runoff to prevent or reduce flood damage.
 - (3) Fish and wildlife habitat.
 - (4) Recreational uses.
 - (5) Shoreline or bank stabilization.
 - (6) Noteworthiness, including special qualities such as historic significance, critical habitat for endangered plant and animals, or others.
 - b. Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground shall be exposed for the shortest time possible.

- c. Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetation of cover must be established as soon as possible.
- d. Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used.
- e. Altered areas must be stabilized to acceptable erosions control standards consistent with the field office technical guides of the local soil and water conservation districts and the United States Soil Conservation Service.
- f. Fill or excavated material must not be placed in a manner that creates an unstable slope.
- g. Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of thirty (30) percent or greater.
- h. Fill or excavated material must not be placed in bluff impact zones.
- i. Any alterations below the ordinary high water level of public waters must first be authorized by the commissioner under Minn. Stat. § 105.42 as amended.
- j. Alterations of topography must only be allowed if they are accessory to permitted or conditional uses and do not adversely affect adjacent or nearby properties.
- k. Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, shall be permitted if the finished slope does not exceed three (3) feet horizontal to one (1) foot vertical, the landward extent of the riprap is within ten (10) feet of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three (3) feet.
- l. Setbacks for Processing Machinery. Processing machinery must be located consistent with Shoreland District setback standards for structure from the ordinary high water levels of public waters and from bluffs.