

## Chapter 130: SOIL REMOVAL

### GENERAL REFERENCES

Filling and Grading of Soil— See Ch..

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## ARTICLE I SOIL REMOVAL, EROSION, AND SEDIMENT

### § 130-1. Legislative intent.

It is the intention of the Village Board of the Village of South Blooming Grove by the adoption of this article to control soil erosion and sediment damages and related environmental damage by requiring adequate provisions for surface water retention and drainage for the protection of exposed soil surfaces in order to promote the safety, public health, convenience and general welfare of the community.

### § 130-2. Word usage; definitions.

- A. For the purposes of this chapter, certain rules of word usage apply to the text as follows:
- (1) Words used in the present tense include the future tense and the singular includes the plural, unless the context clearly indicates the contrary.
  - (2) The term "shall" is always mandatory and not discretionary; the word "may" is permissive.
  - (3) A word or term not interpreted or defined by this section shall be used with a meaning of common or standard utilization.

- B. The following definitions shall apply in the interpretation and enforcement of this chapter, unless otherwise specifically stated:

**APPLICANT** — A person, partnership, corporation or public agency requesting permission to engage in land disturbance activity.

**CRITICAL AREA** — A sediment-producing highly erodible or severely eroded area.

**EROSION** — Detachment and movement of soil or rock fragments by water, wind, ice and gravity.

**EROSION AND SEDIMENT CONTROL PLAN** — A plan, which fully indicates the necessary land treatment, measures, including a schedule of the timing for their installation, which will effectively minimize soil erosion and sedimentation. Such measures shall be in accordance with standards as adopted by the New York State Soil and Water Conservation Committee, or any successor agency.

**EXCAVATION or CUT** — Any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated.

**FARM CONSERVATION PLAN** — A plan, which provides for use of land, within its capabilities and treatment, within practical limits, according to chosen use to prevent further deterioration of soil and water resources.

**LAND** — Any ground, soil or earth, including marshes, swamps, drainage ways and areas not permanently covered by water within the Village.

**LAND DISTURBANCE** — Any activity involving the clearing, grading, transporting, filling, removal and any other activity, which causes land to be exposed to the danger of erosion.

**MULCHING** — The application of plant residue or other suitable materials to the land surface to conserve moisture, hold soil in place and aid in establishing plant cover.

**PERMIT** — A certificate issued to perform work under this chapter.

**SEDIMENT** — Solid material, both mineral and organic, that is in suspension, is being

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transported or has been moved from its site of origin by air, water or gravity as a product of erosion.

**SEDIMENT BASIN** — A barrier or dam built at suitable locations to retain rock, sand, gravel, silt or other material.

**SITE** — Any plot, parcel or parcels of land.

**SOIL** — All unconsolidated mineral and organic material of any origin.

**STATE SOIL AND WATER CONSERVATION COMMITTEE** — An agency of the state established in accordance with the provisions of the Soil and Water Conservation Districts Law of the State of New York.

**STRIPPING** — Any activity which significantly disturbs vegetated or otherwise stabilized soil surface, including clearing and grubbing operations.

### § 130-3. Plan and permit required.

No land area shall be disturbed by any person, partnership, corporation, municipal corporation or other public agency within this municipality unless the applicant has submitted to the Village Engineer a plan to provide for soil erosion and sediment control for such land area in accordance with the Guidelines for Erosion and Sediment Control in Urban Areas of New York State adopted by the New York State Soil and Water Conservation Committee and unless such plan has been approved by the Village Engineer and a valid land disturbance permit has been issued by the Village Engineer, except as exempted by § 130-9.

### § 130-4. Information to be included in plan.

The applicant must submit a separate soil erosion control plan for each noncontiguous site. The applicant may consult with the New York State Soil and Water Conservation Committee in the selection of appropriate erosion and sediment control measures and the development of the plan. Such plan shall contain:

- A. The location and description of existing natural and man-made features on and surrounding the site, including general topography and soil characteristics.
- B. The location and description of proposed changes to the site.
- C. Measures for soil erosion and sediment control, which must meet or exceed Standards for Soil Erosion and Sediment Control in Urban Areas of New York State, adopted by the State Soil and Water Conservation Committee. Guidelines shall be on file at the office of the Village Clerk-Treasurer.
- D. A schedule of the sequence of installation of planned erosion and sediment control measures as related to the progress of the project, including anticipated starting and completion dates.
- E. All proposed revisions of data required shall be submitted for approval.

### § 130-5. Review and approval.

- A. Soil erosion and sediment control plans shall be reviewed by the Village Engineer and approved when in conformance with the Guidelines for Erosion and Sediment Control in Urban Areas of New York State.
- B. The Village Engineer may seek the assistance of the New York DEC in the review of such plans and may deem as approved those plans, which have been reviewed and determined adequate.

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### § 130-6. General design principles.

Control measures shall apply to all aspects of the proposed land disturbance and shall be in operation during all stages of the disturbance activity. The following principles shall apply to the soil erosion and sediment control plan:

- A. Stripping of vegetation, grading or other soil disturbance shall be done in a manner, which will minimize soil erosion.
- B. Whenever feasible, natural vegetation shall be retained and protected.
- C. The extent of the disturbed area and the duration of its exposure shall be kept within practical limits.
- D. Either temporary seeding, mulching or other suitable stabilization measures shall be used to protect exposed critical areas during construction or other land disturbance.
- E. Drainage provisions shall accommodate increased runoff resulting from modified soil and surface conditions during and after development or disturbance. Such provisions shall be in addition to all existing requirements.
- F. Water runoff shall be minimized and retained on site wherever possible to facilitate groundwater recharge.
- G. Sediment shall be retained on site.
- H. Diversions, sediment basins and similar required structures shall be installed prior to any on-site grading or disturbance.
- I. The principle of zero net incremental discharge of surface water shall be adhered to.

### § 130-7. Maintenance.

All necessary soil erosion and sediment control measures installed under this chapter shall be adequately maintained after completion of the project until such measures are permanently stabilized as determined by the Village Engineer. The Village Engineer shall give the applicant, upon request, a certificate indicating the date on which the measures called for in the approved plans were completed.

### § 130-8. Performance and maintenance bond.

Where the permitted soil disturbance is done in conjunction with an activity requiring a building permit and the restoration and stabilization are satisfactorily completed prior to issuance of a certificate of occupancy, a bond for such disturbance only will not be required. Where the soil disturbance is not done in conjunction with a building permit, a cash bond shall be deposited with the Village Clerk-Treasurer prior to issuance of a soil disturbance permit in an amount determined by the Village Engineer to be sufficient to allow the Village to perform the erosion control work and/or cleanup work in the event of default of the permittee. Said bond shall include written permission to the Village or its agents or contractors to enter upon the permittee's land to perform the work and to use the bond money to pay for any corrective measures taken, including off-site cleanup or repairs. The bond or remaining balance of bond shall be returned to the permittee upon application to and subsequent approval by the Village Engineer.

### § 130-9. Exemptions.

The following activities are specifically exempt from this chapter:

- A. Use of land for gardening primarily for home consumption.

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B. Agricultural use of lands when such use will not cause excessive erosion and sedimentation.

### § 130-10. Enforcement; inspections.

The Village Engineer, who shall also inspect or require adequate inspection of the work, shall enforce the requirements of this chapter. If the Village Engineer finds existing conditions not as stated in the applicant's erosion and sediment control plan, he may refuse to approve further work and may require necessary erosion and sediment control measures to be promptly installed and may seek other penalties as provided in § 130-14.

### § 130-11. Appeals.

Appeals from decisions under this chapter may be made to the Village Board in writing within 10 days from the date of such decision. The appellant shall be entitled to a hearing before the Village Board within 30 days from the date of appeal.

### § 130-12. Fees.

Each application shall be accompanied by a fee payable to the Village of South Blooming Grove in accordance with a schedule recommended by the Village Engineer and adopted by the Village Board.

### § 130-15. Penalties for offenses.

- A. Any person violating any section or provision of this chapter shall be guilty of a violation, shall be liable to a penalty not to exceed \$500 and, in addition, such person may be ordered to abate such violation. Violation of a permit condition shall constitute grounds for abatement and for revocation of such permit. In the case of a continuing violation of this chapter, each week that such violation exists shall constitute a separate and distinct violation.
- B. In addition, where construction subject to a building permit is involved, the Building Inspector shall, at the recommendation of the Village Engineer, issue an order to stop all work on the project or revoke the building permit, as may be necessary or appropriate to the situation.
- C. The remedies contained within this chapter shall further not be exclusive, but shall be in addition to any other remedy provided by law, so long as not inconsistent herewith, nor shall the invoking of any remedy or procedure contained within this chapter preclude the pursuit of any and all other remedies, and the same are intended to be cumulative.

### § 130-14. Judicial review.

Any persons aggrieved by any decision or determination made by the Village Board pursuant to this article may bring a proceeding to review such determination in the manner provided by Article 78 of the Civil Practice Law and Rules.

### § 130-15. Application.

No statement in this article shall be construed to interfere with any additional requirements that may be imposed by any federal, state or local health authority having jurisdiction.

### § 130-16. Supersession of other laws.

This chapter supersedes, and is in derogation of the Code of the Town of Blooming Grove, County of Orange, and State of New York.

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### § 130-17. Authority.

This chapter is enacted by authority of § 20, Subdivision 5, of the Municipal Home Rule Law and any other law referenced herein as authority herefor.

### § 130-18. Repeal.

All ordinances, local laws and parts thereof inconsistent with this local law are hereby repealed.

### § 130-19. Effective Date.

This local law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

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## ARTICLE II SOIL REMOVAL AND MOVING

### § 130-20. Legislative intent.

It is the intention of the Village Board of the Village of South Blooming Grove hereby finds that the uncontrolled and unregulated excavation, filling and removal of soil has resulted and will result in conditions detrimental to the public safety, health and general welfare, deterring substantially the efforts of the Village to promote and effectuate the general purpose of municipal planning.

### § 130-21. Word usage; definitions.

Whenever used in this chapter, the following terms shall be deemed and construed to have the following meanings:

**APPROVING AUTHORITY** — The board or official designated by this chapter to receive and review soil permit applications and to issue soil permits, i.e., the Building Inspector, Zoning Board, Planning Board and Village Engineer and, in the event of an appeal, the Mayor and Village Board of Trustees,

**DEVELOPMENT** — Improvement of a lot by the construction or erection of one or more buildings for residential, commercial or industrial purposes and improvement of lands through conservation and flood control. The term improvement shall mean that work done as part of an approved permit from the Building Inspector, Planning Board or Zoning Board.

**ENFORCEMENT OFFICER** — The Building Inspector, and Code Enforcement Officer serving the Village of South Blooming Grove shall have the power, right and authority to issue an appearance ticket, as the same is defined in Article 150 of the Criminal Procedure Law of the State of New York, for the violation of any section of this article.

**EXCAVATOR** — Any person who shall move or remove soil, as the terms are hereinafter defined.

**HAZARDOUS MATERIALS** — Those materials as defined by either federal or state law as "hazardous" and/or including petroleum and petroleum products.

**MAJOR SOIL MOVEMENT** — The movement of soil in amounts exceeding 300 cubic yards over the course of a twelve-consecutive-month period. (Excluding areas designated for Farming, the care of live stock, or area designated for agricultural use)

**MINOR SOIL MOVEMENT** — The movement of soil, in amounts equal to or less than 300 cubic yards but greater than 100 cubic yards over the course of a twelve-consecutive-month period. (Excluding areas designated for Farming, the care of live stock, or area designated for

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agricultural use)

**MOVE or MOVEMENT** — To dig; to excavate; to remove; to deposit; to place; to fill; to grade, re-grade, level or otherwise alter or change the location or contour; to transport; or to supply. This term shall not be construed to include plowing, spading, cultivating, harrowing or any other operation usually and ordinarily associated with the tilling of soil for agricultural or horticultural purposes.

**SOIL** — Any earth, sand, clay, loam, gravel, humus, rock or dirt, without regard to the presence or absence therein of organic matter.

### § 130-22. Permit Required; Exceptions

- A. Major soil permit. Anyone engaged in the movement of soil classified as a major soil movement shall require a permit to be issued by the Village Planning Board, unless the soil moving is part of an application brought before the jurisdiction of the Village Zoning Board when, under those circumstances, the Village Zoning Board may issue the major soil moving permit.
- B. Minor soil permit. Anyone engaged in the movement of soil classified as a minor soil movement shall require a permit to be issued by the approving authority, subject to the Official's right to refer applications to the Planning Board and unless the soil moving is part of an application brought before the jurisdiction of the Village Planning Board or Zoning Board when, under those circumstances, the Village Planning Board or Zoning Board may issue the minor soil moving permits.
- C. Anyone engaged in the movement of soil within a designated wetlands or floodplain.
- D. **Exceptions.**
  - (1) **No soil permit shall be required:**
    - (a) For any person engaged in the soil conservation program of the United States Department of Agriculture Soil Conservation Service and for which lands an approved farmland has been established by the agency, provided that all soil-moving operations in and upon such lands are performed in accordance with such approved farm plan.
    - (b) For moving of soil in amounts less than or equal to 100 cubic yards during any twelve-consecutive-month period.
    - (c) When the soil to be moved is in accordance with approved plans for development, provided that no soil is removed from or brought onto the development from another location.
    - (d) For movement on commercial property of a business engaged in retail or wholesale distribution of soil.
  - (2) In the event of soil movement as part of a development application, nothing contained in this subsection, entitled "Exceptions," shall be construed to preclude the Building Inspector and / or Code Enforcement Officer from determining that, by reason of the size or complexity of the contemplated soil movement, a major or minor soil permit would be required.
- E. Any movement of soil, including that exempt from the provisions of this chapter, must include the representation that said soil movement shall have no adverse impact on the property owners and shall not increase water runoff.

### § 130-23. Application for permit.

- A. Form of application. On forms prescribed and supplied by the approving authority, the

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applicant shall set forth in triplicate:

- (1) The name and address of applicant.
  - (2) The name and address of owner of the lot.
  - (3) A description of the lot in questions, identified as to the block and lot or lots on the current Tax Assessment Map of the Village of South Blooming Grove.
  - (4) The ultimate purpose or reason for excavating, moving or removing the soil.
  - (5) The kind and quantity, in cubic yards, of soil to be excavated, moved, or removed. In the case of soil to be brought in, the place from which the soil is to be brought and the kind and quality of the soil to be brought in shall be set forth.
  - (6) The proposed dates of commencement and completion of the work.
  - (7) The name, address, and telephone number of the person having direct charge, supervision and control of the proposed excavation work.
  - (8) The name, address and telephone number of the person having direct charge or control of the operation or removing the excavated material.
  - (9) A description of the equipment to be used in the excavation and removal of the soil.
  - (10) A description giving the number and size of the trucks or other vehicles in removal or delivery of soil, their weight when empty and estimate weight when carrying full loads of soil.
  - (11) A description of the route or routes to be used by the vehicles in removing the soil.
  - (12) In the event the removal of said soil is in connection with the development of a subdivision or site plan, all of the information required under the applicable Subdivision or Site Plan of the Village of South Blooming Grove together with evidence of Planning Board approval thereof.
  - (13) Evidence of compliance with applicable soil erosion and sediment control regulations.
  - (14) In the event the contemplated work shall proceed in stages, a map showing the division of the tract into mining and fill sectors clearly indicating the order in which each sector is to be mined or filled and the length of time to be devoted to each sector.
  - (15) Hazardous materials/importation of fill material. Fill material procured from a site other than the site at which the fill is proposed to be used shall be free of hazardous substances, as defined by all federal, state and local regulations. This shall apply to all soil movement, which imports soil onto a lot within the Village, and regardless of its classification as "minor," "major" or "exempt." An owner seeking to import fill as part of a minor or major soil application shall submit, as part of the standard soil moving application, information required by the approving authority adhered as to the source, need, purpose and volume of the fill, including a description of the methods used to prove that it is free of hazardous substances, which shall include but will not be limited to a true copy of the fill shipper's delivery manifest. Methods used to ensure compliance with this section shall be in conformance with published field-testing procedures as adopted by the New York Department of Environmental Conservation. The Village Building Inspector and / or Code Enforcement Officer or Village Engineer may request further information regarding compliance with this section before approving the permit application.
  - (16) Such other data as the approving authority may require, consistent with its review function and the standards governing said review.
  - (17) The applicant shall also include a copy of a survey delineating the approximate location and the dimensions of the amount of soil.
- B.** Signature and endorsement. The application shall bear the signature, printed name (s), mailing address, contact phone numbers of the applicant(s) and the endorsement of the

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owner or owners of the lands signifying approval of the application, consent of the applicant to perform the proposed work and consent to the Village, in the event of failure of the applicant to do so, to cause the proposed work to be completed or otherwise terminated in keeping with the purposes and objectives of this ordinance.

- C. Submission of application. In the event that the moving of soil for which a permit is required is in connection with property on which subdivision or site plan approval is being sought simultaneously, the application and all other documents and fees, which may be required, shall be submitted to the Planning Board. In all other cases, the said application, documentation and fees shall be submitted to the Village Clerk / Treasurer.
- D. Referral to Planning Board. By reason of the size or complexity of minor soil moving contemplated by the applicant the Building Inspector may, notwithstanding the provisions of the Subsection C above and § 130-22, within 10 days of the filing of the application, refer the application to the Planning Board for its approval and shall so notify the applicant. Upon such referral by the Building Inspector, the Planning Board shall assume exclusive jurisdiction of the application.
- E. Topographic Map. Accompanying all major soil moving applications as well as minor applications referred to the Planning Board pursuant to Subsection D above, there shall be eight prints of a topographic map, prepared and certified by a licensed professional engineer and land surveyor of the State of New York, showing:
  - (1) The dimensions and section, block and lot number of the lot upon which the soil-moving operations are to be conducted and of all surrounding lands within 200 feet of the perimeter of the subject lot.
  - (2) The existing grades of the subject lot and of all lots within 200 feet of the perimeter of the subject lot.
  - (3) The existing elevations of all buildings, structures, streets, bodies of water, and watercourses, natural or artificial, and all drainage features such as pipes, inlets, and manholes. Pipe sizes and invert elevations shall also be provided.
  - (4) The proposed final elevations at each point where existing elevations shown on the map are to be changed as a result of the completion of the proposed work.
  - (5) Existing surface water drainage and proposed facilities for surface water drainage and, where applicable, channels of any streams, bodies of water and watercourses, natural or artificial, including detailed cross-sections showing proposed channel widths, bank slopes and method of erosion control.
  - (6) Proposed slopes and lateral supports to adjacent properties and on the subject lot.
  - (7) The limits of disturbance of the area or areas within the subject lot within which the soil moving operations are to be conducted.
  - (8) Accurate cross-sections showing the locations and quantities, in cubic yards, of the soil to be moved.
  - (9) Such other pertinent data as the approving authority may require.
- F. Where, by reason of the simplicity of the application, the approving authority determines that all or part of the information set forth in Subsection E above is not necessary to make an informed determination on the application, the approving authority may waive all or part of the requirements set forth in said Subsection E.

### § 130-24. Filing fee.

- A. Simultaneously with the filing of the application, there shall be submitted to the approving authority a fee, payable to the order of the Village of South Blooming Grove, as provided in Village's Schedule of Fees (as adopted and amended from time to time by the Village Board of Trustees).

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- B. In the event of refusal of the soil permit, that portion of the fee in excess of the Village's engineering, legal, administrative and other expenses shall be refunded to the applicant.
- C. In the event that the fees posted by the applicant are insufficient to meet the reasonable engineering, legal and administrative expenses incurred by the Village in processing the application and monitoring the applicant's performance, then the applicant shall, upon the request of the Village, immediately pay such additional engineering, legal, administrative and other expenses incurred by the Village. In the event that the applicant does not pay all the fees required by this chapter, the sums due to the Village shall become an obligation of the owner of the property and shall become a lien upon the property. Final approvals will not be granted in the event the applicant does not pay all required fees.

### **§ 130-25. Inspections and tests by Village Engineer.**

At the request of the approving authority, the Village Engineer shall make an inspection of any site within the Village, from which soil is to be moved and shall make such engineering studies as may be required to determine the effect of the removal of soil from the location as it relates to soil erosion by water and wind, surface and subsurface water drainage, soil fertility, lateral support of abutting streets and lands, public health and safety and any other factors as may bear upon or relate to the coordinated, adjusted and harmonious physical development of the Village. He shall also inspect the site to determine whether stakes have been placed on each corner and whether grades stakes have been placed at the existing elevation points designated on the topographical map.

### **§ 130-26. Factors to be considered by approving authority.**

In considering and reviewing the application, the approving authority shall be guided by the general purpose of municipal planning and shall take into consideration that the change will not adversely affect any other property and these other factors:

- A. Soil erosion by water and wind.
- B. Drainage.
- C. Lateral support, slopes, and grades of abutting streets and lands.
- D. The effect of flooding, and the impact on floodplain areas, if any.
- E. Whether the proposed soil movement will create a nuisance or danger.
- F. The overall appearance of the subject property after moving of soils.
- G. The creation of sharp declivities, pits or depressions.
- H. Traffic congestion and the effect upon the roads within the Village.
- I. Danger to the environment or the general welfare from the presence of hazardous materials.
- J. The effect that the proposed work would have on current and future Village sanitary sewerage disposal systems.
- K. The negative effect on private wells.
- L. The negative effect on Village owned municipal wells.
- M. The negative effect on Village infrastructure. (Storm Drain, Culverts, streams, Water mains, Sewer Mains)
- N. Such other factors as may bear upon the general welfare of the Village of South Blooming Grove and its citizens.

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### § 130-27. Decision of the approving authority.

- A. The approving authority shall, within 60 days after the filing of the application and the topographical map containing all of the information required pursuant to the provisions of this chapter and the payment of the requisite fee, grant or deny the application. The approving authority, in approving said application, may attach such reasonable conditions to said approval, as it may deem necessary.
- B. The approving authority may, in its discretion, require a public hearing prior to its decision. In the event a public hearing is so required, the approving authority shall notify the applicant of the time and place it shall consider the application, and the applicant shall give notice thereof in the following manner:
  - (1) By publishing a notice in the official newspaper of the Village of South Blooming Grove, at least ten (10) days prior to the date set by the approving authority, of the date set for the public hearing; and
  - (2) By delivering a copy of said notice, by certified mail or by personal service, to all property owners within 200 feet of the perimeter of the subject property as their names appear on the municipal tax records.
- C. The applicant, at or prior to the public hearing, shall file an affidavit with the approving authority certifying compliance with the notice provisions above set forth.
- D. In the event a public hearing is so ordered by the approving authority, the time for the making of its decision shall be extended to not later than 30 days after the date of the hearing.
- E. Failure of the approving authority to act within the time specified herein shall be deemed a denial of the application.
- F. Nothing herein contained shall prohibit the extension of the time periods herein set forth by the written consent of the applicant.

### § 130-28. Appeals.

- A. **Filing of appeal.** Any person aggrieved by the decision of the approving authority may, not later than 30 days after said decision, appeal that decision to the Mayor and the Village Board of Trustees.
- B. **Public hearing.** The Mayor and Village Board of Trustees may, in its discretion, require a public hearing on said appeal and, if so required, shall cause a notice setting forth the time and place thereof to be published in the official newspaper of the village at least 10 days prior to the date set for the public hearing.
- C. **Consideration of appeal; decision.** The Mayor and Village Board of Trustees shall consider the matter de novo and shall decide the appeal within 45 days from the filing of the appeal or from the public hearing, whichever is later. The Mayor and Village Board of Trustees may reverse, remand or affirm, wholly or in part, or may modify the decision of the approving authority. The affirmative vote of a majority of the full-authorized membership of the Mayor and Village Board of Trustees shall be necessary to reverse, remand or modify the decision of the approving authority.

### § 130-29. Contents and duration of permit.

- A. **Contents of permit.** The soil permit shall be in such form as may be prescribed by the approving authority, signed by the Secretary and the Chairman of the Planning Board or the Building Inspector and / or the Village Engineer, as the case may be, and shall contain any special conditions set forth in the decision of the approving authority.
- B. **Duration of permit.** The soil permit shall be dated as of the date it is actually issued, and the

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term of the permit shall not exceed one year. All permits shall automatically expire on the termination date unless an application for renewal has been made and approved by the Planning Board in writing extending the permit. No such extension shall exceed one year.

### § 130-30. Bond requirements.

- A. Bond required.** No soil permit for over 100 cubic yards shall be issued unless the applicant has posted with the Village a performance bond in form and with surety acceptable to the Village, in such an amount as the approving authority shall determine, conditioned upon full and faithful performance by the principal, within the time specified in the application, of all the proposed work in accordance with the provisions of this chapter and of the soil permit. In the event that the applicant fails to post the required performance bond within 60 days, the approval of the approving authority shall be automatically rescinded.
- B. Amount of bond.** The amount of the bond shall be determined at the rate of not less than \$0.15 per cubic yard for minor soil permits and not in excess of \$0.50 per cubic yard for major soil moving permits, calculated on the amount of soil to be moved; provided, however, that in no event shall the bond be less than the principal amount of \$2,000; for minor permits only, the Building Inspector and / or Village Engineer may waive the bond requirements of this section if deemed unnecessary. In ascertaining the rate upon which to compute the amount of the bond or whether a bond shall be deemed unnecessary for minor soil permits, the approving authority shall take into consideration such factors as may bear upon the facility with which the proposed work may be performed, including but not limited to the type and character of soil, the extent of the area over which the soil moving operations are to be conducted, the extent and depth of the various cuts and fills, the extent to which the operations to streets, buildings, natural or artificial streams or watercourses and general drainage conditions. In addition, the bond shall be conditioned upon the repair, at the expense of the owner and applicant, or any street or streets damaged by the transportation of soil in connection with the application if, in the judgment of the Mayor and Village Board of Trustees, such repairs are deemed to be necessary. The term "expense" as used herein, shall include the cost of supervision incurred by the Village Engineer in connection with such repairs. The approving authority may require that no more than 10% of the amount of the bond required by this section shall be in the form of a cash deposit.
- C. Written consent of surety required.** Before the holder of any soil permit proceeds before the approving authority with an application for any amendment or alteration of the terms and conditions of any outstanding soil permit, there shall be submitted to the approving authority the written consent of the surety on the bond approving the application for amendment or alteration and consenting to extension of the bond coverage thereto.

### § 130-31. General rules for excavation and removal.

All excavation and removal of soil in the Village shall be performed subject to the following conditions, regardless of whether or not a permit is required:

- A.** All boulders, tree stumps and other debris shall be removed from the property.
- B.** In dry weather, the person conducting such operation shall dampen the ground where operations are conducted to prevent dust.
- C.** No trucks used shall be loaded above the level of the sides of the truck, to prevent spillage, and all streets shall be cleaned, at the applicant's expense, each day, of any spillage or soil on such streets resulting from truck operation.
- D.** All truckloads shall be covered with tarpaulin and, if necessary, treated by water or chemical to prevent flying dust.
- E.** No trucks, machinery or any part of the operation shall be conducted before 8:00 a.m. or after

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5:00 p.m. on weekdays, before 8:00 a.m. or after 5:00 p.m. on Saturdays, nor at any time on Sunday or federal or state legal holidays.

- F. All vehicles engaged in such operations shall use as routes only those Village streets, which have been approved by the Planning Board and / or Village Board of Trustees.
- G. The entire area covered by the work shall be maintained and left in such a manner as not to create or maintain a nuisance or condition hazardous to life and limb or to the health or general welfare of the inhabitants of the Village of South Blooming Grove.
- H. All excavation, removal and other mandatory ground cover work proposed in the application and map, including restoration of property to final grades and subsequent seeding, must be completed within one year from the date of the permit.
- I. No more soil shall be removed than is reasonably necessary for the development and use of the land.
- J. No soil removal shall be allowed which shall cause damage to adjacent properties or detrimentally affect the values of adjacent properties.
- K. The operation must be conducted in a phased fashion so that one sector of the tract is mined and covered with planting prior to the commencement of mining operations in another sector of the tract.
- L. The Village Engineer or other authorized representative of the Village shall be permitted to inspect the seeding and planting and general conduct of the mining operation to assure that the same is being conducted in a manner that shall assure the satisfactory control of erosion and that it is being conducted in full accordance with the remainder of this chapter.
- M. Excavation shall not be below the grade levels shown in the topographical map.

### § 130-32. Storage and replacement of soil.

- A. Whenever any developer or excavator shall move topsoil in or on any lot, provision shall be made for the storage of the topsoil within the boundary lines of the lot.
- B. Except as provided, all of the topsoil so stored shall be uniformly replaced over the entire area or surface of the lot on or before the completion date set forth in the soil permit, so that the final grade or grades of replaced topsoil shall be in accordance with the proposed final grades shown on the topographical map.
- C. No developer or excavator shall remove to any point beyond the boundary lines of the lot any topsoil whatsoever unless and until topsoil not inferior in quality to that to be removed shall first have been replaced uniformly to a depth of not less than six inches, measured from the proposed final grades as shown on the topographical map, over the entire, surface or area of the lot, excepting only such portions thereof as shall be or shall have become, since the date of filing of the topographical map, permanently covered by a building or structure, street pavement, curb, sidewalk, driveway or other paved area or by any body of water or waterway. In no event shall the developer or excavator remove from the lot more topsoil than that comprising the surplus or excess remaining after the replacement of the topsoil.

### § 130-33. Digging below final grade.

No developer or excavator shall, at any time in the course of the work, dig or excavate more than six inches below the proposed final grades as shown on the topographical map, unless:

- A. The soil permit specifies otherwise and the performance bond makes specific provision for replacement, on or before the completion date, of soil of sufficient quantity and kind to restore the final grades to those shown on the topographical map.
- B. After issuance of the soil permit, the developer or excavator, before digging or excavating

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below the minimum level, shall apply to the approving authority and be granted an amendment of the application and topographical map then in effect, which amendment may be granted upon such terms as the approving authority may deem necessary to assure adherence to the purpose and objectives of this chapter.

### § 130-34. Raising of grade.

No developer or excavator shall deposit soil upon, fill in or raise the grade of any lot without first making provision for:

- A. The use in the work of soil or such other materials as will not result in deviation from the proposed final grades or the uniformity thereof by reason of abnormal shrinkage or settlement.
- B. The collection and storage upon the lot of the original topsoil, to the end that the topsoil shall not be buried beneath soil or other material be inferior quality, and the uniform replacement of the topsoil so stored over the entire area or surface of the fill soil or other material so that the final grade or grades of the replaced topsoil shall be in accordance with the proposed final grades shown on the topographical map. In the event that such provision is not practicable, provision shall be made for the uniform placement over the entire area or surface of the fill soil or other material, excepting only such portions thereof as shall be or shall have become permanently covered by a building or structure, street, pavement, curb, sidewalk, driveway or other paved area or by any body of water or waterway, of a layer of topsoil not inferior in quality to that of the original topsoil, to a depth of not less than six inches, measured from the proposed final grades as shown on the topographical map.

### § 130-35. Administration and enforcement.

For the purpose of administering and enforcing this chapter, any duly authorized officer, agent or employee of the Village shall have the right to enter into or upon any lands in or upon which soil-moving operations are being conducted to examine and inspect such lands.

### § 130-36. Suspension or revocation of permit.

- A. In the event that any of the provisions of this chapter or any other laws are alleged to have been violated, the Mayor and Village Board of Trustees may terminate or suspend any permit issued hereunder. Such suspension or revocation shall be determined as follows:
  - (1) The Mayor, or other person authorized by the Mayor and Village Board of Trustees, shall cause a written notice of the alleged violations of this chapter or of any other laws involved to be served upon the applicant or any of the agents of the applicant upon the premises, together with a notice of the time and place of a public hearing to be held within 21 days after service, directing the applicant to show cause before the Mayor and Village Board of Trustees why the permit should not be suspended or revoked.
  - (2) At the hearing, the Mayor and Village Board of Trustees shall hear all of the evidence offered by the Village and the applicant, which is material to the issue and shall make a prompt determination of its findings. If the findings are in favor of the applicant, the charges shall be dismissed; but if the findings are against the applicant, the permit issued may be revoked entirely or suspended upon such conditions as the Mayor and Village Board of Trustees may direct.
- B. In the event that any of the terms and conditions of this chapter or the terms and conditions of the permit shall have proven to be violated, the permit shall be immediately suspended and all work shall immediately cease.
  - (1) If the owner shall eliminate the violations within 30 days of the suspension, the owner

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shall apply to the Mayor and Village Board of Trustees in writing for permission to continue the operation, and if the Mayor and Village Board of Trustees is satisfied that the violations no longer exist, it may restore the permit to the owner, but such restoration shall not serve to increase the time limit of such permit.

- (2) If such violations are not eliminated within the said 30 days, the permit shall be deemed to be automatically revoked and the bond declared forfeit without any further action by the Mayor and Village Board of Trustees.
- C. This section is hereby made a part of each and every permit hereafter issued by the Mayor and Village Board of Trustees, and acceptance of such permit shall constitute complete acquiescence by the principal and surety on said bond.
- D. No fee or other charge, or portions thereof, shall be refunded following revocation or suspension of any permit.

### § 130-37. Emergency suspension of permit.

Notwithstanding the provisions of § 130-36 above, when, in the judgment of the Mayor or the Mayor and Village Board of Trustees, the moving and removal of soil causes a serious emergent and continued impediment to the passage of public traffic or endangerment to the public health, safety or welfare, the Mayor or the Mayor and Village Board of Trustees may temporarily halt such operation until the emergent danger to the public's health, safety or welfare is abated, but in no event shall such emergency suspension of operations exceed 30 days.

### § 130-38. Violations and penalties.

- A. Any person who shall violate this chapter shall, upon conviction thereof, pay the highest possible fine not exceeding \$1,000 or be imprisoned in the county jail for a term not exceeding 90 days, or both, for each offense, in the discretion of the court. Each day that a violation shall continue shall constitute a separate offense.
- B. Upon the recommendation of the Village Engineer and upon furnishing the owner with written notice, the Village may levy upon any bonds furnished to guarantee performance of the work set forth in the soil permit or soil agreement. In the event that said bonds are insufficient to cover the costs of performing or completing said work, then the costs of said performance shall be assessed against the property and shall become a lien upon said property.
- C. Nothing herein contained shall preclude the Village from pursuing any civil remedy available in law or in equity.

### § 130-39. Judicial review.

Any persons aggrieved by any decision or determination made by the Village Board pursuant to this article may bring a proceeding to review such determination in the manner provided by Article 78 of the Civil Practice Law and Rules.

### § 130-40. Application.

No statement in this article shall be construed to interfere with any additional requirements that may be imposed by any federal, state or local health authority having jurisdiction.

### § 130-41. Supersession of other laws.

This chapter supersedes, and is in derogation of the Code of the Town of Blooming Grove, County of Orange, and State of New York.

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### **§ 130-42. Authority.**

This chapter is enacted by authority of § 20, Subdivision 5, of the Municipal Home Rule Law and any other law referenced herein as authority herefor.

### **§ 130-43. Repeal.**

All ordinances, local laws and parts thereof inconsistent with this local law are hereby repealed.

### **§ 130-44. Effective Date.**

This local law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.