

Article XII - Earth Removal and Import

SECTION 1 - Establishment of Earthwork Board

The Board of Selectmen shall serve as the Earthwork Board for the Town of Berlin

SECTION 2 - Permit required

No person, firm or corporation shall remove or import in excess of one hundred (100) cubic yards of soil, loam, sand, gravel, stone or other earth material from or to any land not in public use without first obtaining a permit therefore from the Earthwork Board, as provided in the following sections. A permit shall be granted only by an affirmative vote of the majority of the Board,

SECTION 3 -Work for which permit required; exemptions

A. A permit shall be required under this by-law for the removal or importation of soil, loam, sand, gravel, stone or other earth material in the course of excavation incidental to the construction of a business, industrial, research or commercial building or facility of any kind, including apartment buildings of more than two (2) apartment units and/or developments of more than one (1) apartment building on any single parcel or lot of land. This requirement for an earth- work permit extends also to any material removed or imported for the installation of walks, driveways, parking lots and similar appurtenances to said commercial building or facility.

B. Exemptions.

(1) A permit shall not be required under this by-law for the removal or importation of soil, loam, sand, gravel, stone or other earth material in the course of excavation incidental to the construction of a residential building consisting of less than three (3) apartments on a single parcel or lot of land for which a permit has been issued and to the installation of walks, driveways and similar appurtenances to said building; provided, that the quantity of material removed does not exceed that displaced by the portion of building, walk, driveway or similar appurtenances below finished grade or in the course of customary use of land for farming as defined in Massachusetts General Laws Chapter 128, Section 1A or agricultural composting as defined in 330 CMR 25.00 and 310 CMR 16.00.

(2) The exemptions in paragraph (1) do not cover removal or importation of earth from the premises involving topographical changes or soil-stripping or

loam-stripping activities, nor shall tentative or final approval of a subdivision plan be construed as authorizing the removal or importation of earth material from streets shown on the subdivision plan.

SECTION 4 - Application procedure

A. An application for an earthwork permit shall be in writing and, among other documents required by the Earthwork Board, shall contain an accurate description of the portion of land from which earth is to be removed or to which earth is to be imported, shall state fully the purpose for the removal or importation thereof and shall include plans of the land involved in such form as the Earthwork Board may require. The Earthwork Board may charge reasonable fees for filing an application for earthwork. Upon receipt of an application for a permit for removal or importation of earth from or to any land, the Earthwork Board shall appoint a time and place for a public hearing, notice of which shall be given to the applicant and shall be published at least twenty-one (21) days before such hearing in a newspaper of general circulation in town.

B. Fees.

New permit: five hundred dollars (\$500.00).

Renewal permit: two hundred fifty dollars (\$250.00).

SECTION 5 - Conditions for granting of permit

A permit for removal or importation of soil, loam, sand, gravel, stone or other earth material shall be granted only if the Earthwork Board determines that such removal or importation is neither detrimental to the neighborhood nor injurious to the recharge of the water table or the condition of surface water. The exercise of any permit granted under provisions of this by-law shall be subject to conditions, limitations and safeguards to be set forth therein by the Earthwork Board to protect the groundwater supply, health, welfare, convenience and safety of the public and to promote the best interests of the neighborhood and of the town. These conditions may include but are not limited to: method of removal; type and location of temporary structures; hours of operation; routes for transporting the material through the town; area and depth of excavation; distance of excavation from street and lot lines; steepness of slopes excavated; reestablishment of ground levels and grades; provisions for permanent and temporary drainage; disposition of boulders and tree stumps; replacement of loam over the area of removal; planting of the area to suitable cover; and inspection of the premises as permitted by law by the Earthwork Board or its representative.

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SECTION 6 - Performance bond; duration of permit; public hearing

The Earthwork Board may require, as a condition to the granting of a permit for the removal or importation of soil, loam, sand, gravel, stone or other earth material, that the permittee furnish cash, a certified check or a surety company bond to the town as obligee in a penal sum to be fixed by said Earthwork Board as it shall deem sufficient to cover the cost of the performance of all labor and material as shall be required to carry out all the conditions, limitations and safeguards as may be imposed by said Earthwork Board in connection with the removal or importation of the particular substances for which the permit is issued. No permit shall be issued under provisions of this by-law for a period of more than one (1) year, although permits may be renewed. Prior to issuing or renewing any permit, the Earthwork Board shall appoint a time and place for a public hearing, notice of which shall be given to the applicant and all abutters and shall be published at least twenty-one (21) days before such hearing in a newspaper having a circulation in the town.

SECTION 7 - Investigation of violations; suspension or revocation of permit

If the Earthwork Board shall be informed or shall have reason to believe that any provision of this by-law or any permit or condition thereunder has been, is being or is about to be violated, the Earthwork Board shall make or cause to be made an investigation of the facts, and if the Earthwork Board finds any violation, the Earthwork Board shall send a notice ordering cessation of the improper activities to the owner of the premises in question or his duly authorized agent and to the occupant of the premises. If, after such notice, the violation continues, the Earthwork Board may suspend any permit it has issued or take such other action as is necessary to enforce the provisions of the chapter and/or seek penalties as provided in MGL C. 40, § 21, Clause 17. violation of this bylaw shall be punishable by a fine of fifty dollars (\$50.00) for a first offense; one hundred dollars (\$100.00) for a second offense and for each subsequent offence, two hundred dollars (\$200.00) . Each day of violation shall constitute a separate offense. If any permit is suspended, an early date shall be set by the Earthwork Board for a public hearing, notice of which shall be given to the permittee and shall be published at least seven (7) days before such hearing in a newspaper of general circulation in town. Any permit granted by the Earthwork Board may be revoked for cause shown, after such public hearing. The suspension or revocation of a permit shall not relieve the permittee of his obligations thereunder, except at the discretion of the Earthwork Board.

SECTION 8 - Record of proceedings and decisions

The Earthwork Board shall record all proceedings brought under this by-law in a book to be kept for that purpose and shall file in the office of the Town Clerk a copy of all decisions, and the said Town Clerk shall keep a proper index thereof.

SECTION 9 - When effective

This chapter shall take effect upon its approval by the Attorney General and publication as provided by law; provided, however, that any continuous earthwork activities in actual legal working operation on the date of enactment, may continue unaffected by this chapter until the termination date specified in said permit. Permits for operation of the latter activities will be required from this Board upon the termination of their existing permits.

SECTION 10 - Severability

If any provision of this by-law shall be held invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions.

Adopted 5/7/2012

Approved by A.G. 7/19/2012