

**ORDINANCE NO. 19-22 AN ORDINANCE AMENDING AND SUPPLEMENTING
CHAPTER 169 "SOIL DISTURBANCE" OF THE
KINNELON BOROUGH CODE**

WHEREAS, pursuant to N.J.S.A. 40:48-2, the governing body of a municipality may make, amend, repeal, and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of person and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law; and

WHEREAS, the Borough of Kinnelon desires to update Chapter 169 "Soil Disturbance" of its Code by amending and supplementing provisions therein.

NOW, THEREFORE, BE IT ORDAINED, by the Governing Body of the Borough of Kinnelon, County of Morris, State of New Jersey, as follows:

SECTION 1. Section 169-2 "Grading plans required", Paragraph A therein, is hereby amended such that the minimum escrow amount required to be submitted with a grading plan under said section is increased from \$1,000 to \$1,500, and said section now reads as follows:

- A. Any soil disturbance that results in a change in grade or elevation of two feet or more, but does not fall within the limits set forth below in § **169-3**, shall require approval from the Borough Engineer. A grading plan shall be prepared and submitted to the Borough Engineer for approval, along with a minimum escrow amount of \$1,500. The applicant shall also file a building permit application with the Building Department and pay the appropriate fee. The Borough Engineer may request additional escrow funds as warranted.

SECTION 2. Section 169-3 “Soil disturbance permit required”, Paragraphs A and B

therein, are hereby amended and now read as follows:

- A. Any soil disturbance within the Borough of Kinnelon involving 50 cubic yards volume of soil or more on one site shall comply with the provisions of this chapter. Any soil disturbance within the Borough of Kinnelon involving 50 cubic yards volume of soil or more on one site requires first obtaining a soil disturbance permit, as provided herein. This section shall not apply to soil disturbance by the Borough or its contractors.
- B. This section shall also apply to soil disturbance incidents under a permit issued by the Construction Official for the enlargement or addition to an existing single-family residence, construction of a single-family dwelling and its accessory structures (such as garages, decks, retaining walls, sheds, swimming pools, cabana houses, driveways, etc.).

SECTION 3. Section 169-3 “Soil disturbance permit required”, Paragraph C therein, is hereby amended and revised such that an application for an extension of a soil disturbance permit will no longer be made to the Borough Council but to the Borough Engineer, and said section now reads as follows:

- C. The soil disturbance permit shall expire after one year from the date it is issued. In the event the soil disturbance activity for which the permit was issued is not completed within one year, the applicant may apply to the Borough Engineer for an extension of said permit. Approval of said extension shall not be unreasonably withheld.

SECTION 4. Section 169-3 “Soil disturbance permit required”, Paragraph F(1)(f) therein, is hereby amended and now reads as follows:

- F.(1)(f) Cut and fill operations over an area less than 400 square feet that result in no more than a two-foot change in elevation at any point.

SECTION 5. Section 169-4 “Application and contour map”, Paragraph A therein, is hereby amended and now reads as follows:

- A. Application. Any disturbance of soil within the Borough of Kinnelon of 5,000 square feet of surface area or more on one site or 50 cubic yards' volume of soil or more on one site requires the submission to the Borough Clerk of an application for a soil disturbance permit. In addition, an application fee in the amount of \$150 must be submitted with the application if the applicant proposes to disturb 50 to 500 cubic yards of soil. An application fee in the amount of \$500 must be submitted with the application if the applicant proposes to disturb 501 or more cubic yards of soil. In the event soil is being exported from one site within the

Borough of Kinnelon and imported to another site within the Borough of Kinnelon, then two soil disturbance permits must be obtained: one permit for the exportation and one permit for the importation. Applications can be obtained from the Borough Clerk's office and shall be signed by the person intending to perform the soil disturbance and by the owner of the site where the soil is to be disturbed. In addition, the application must include a contour map of the site where the soil is to be disturbed, the appropriate fee, and when the application involves the importation or exportation of soil, a traffic plan. Four copies of the application shall be submitted to the Borough Clerk.

SECTION 6. The introductory portion of Paragraph B in Section 169-4 "Application and contour map" relating to the contour map is hereby amended and now reads as follows:

- B. Contour map. Accompanying the application shall be a contour map of the site where the soil is to be disturbed showing the proposed grades resulting from the intended soil disturbance in relation to the existing topography of the site. Four copies of the map and earthwork calculations shall be submitted to the Borough Clerk with the application. The map and earthwork calculations must include not only the site where the soil is to be disturbed, but also all surrounding lands within 200 feet of the perimeter of the site. The map and earthwork calculations shall be prepared and certified by a licensed professional engineer of the State of New Jersey. The map must be prepared using a scale of not less than one inch to 30 feet, showing the site and its relation to all of the surrounding lands in the following manner:

SECTION 7. Section 169-4 "Application and contour map" is hereby amended such that existing Paragraph C therein relating to "Traffic Plan" is re-lettered Paragraph "D" and subsections (1)(e) and (2) within said paragraph revised, and now read as follows:

- (1)(e) The required traffic plan shall comply with the following requirements.
- [1] Except for emergencies, all soil shall be imported or exported from the subject site during the hours of 7:00 a.m. through 6:00 p.m., Eastern time, on weekdays only (excluding holidays).
 - [2] The scheduling of trucks used to move soil to and from the subject site shall be done in such a way as to minimize truck traffic within school zones during the morning and afternoon school hours.
- (2) Four copies of the traffic plan shall be submitted to the Borough Clerk with the application.

SECTION 8. Section 169-4 "Application and contour map" is hereby supplemented to include a new Paragraph C which reads as follows:

- C. Stormwater Management. All applications for building permits and/or grading plan approval for properties applicable to this ordinance shall contain plans, construction details, calculations and reports that provide for zero increase in the rate and volume stormwater runoff for the completed project to ensure there will be no adverse impact on downstream structures, steep slopes, properties and public roads. For projects having less than 5,000 square feet of disturbance and less than 1,000 square feet of impervious cover, the Applicant's Engineer shall size stormwater facilities to store three (3") inches of rainfall depth over the area of new impervious coverage. Where disturbances and coverages are greater than noted above, the Applicant's Engineer shall use the modified rational method, or NRCS method, or a method as may be deemed appropriate by the Borough Engineer.

SECTION 9. Section 169-5 "Review and examination of application" is hereby repealed in its entirety and replaced with the following, and now reads as follows:

§ 169-5 Review and examination of application.

- A. Upon receipt of an application for a soil disturbance permit in conjunction with an application before the Planning Board or Board of Adjustment, the Borough Clerk shall send a copy of the same to the Planning Board or Board of Adjustment, as appropriate, and the Borough Engineer. The Borough Engineer shall review the application and the findings of the Planning Board or Board of Adjustment, and submit a report to the Borough Clerk approving or denying the soil disturbance permit. In the event a soil disturbance permit application is submitted in conjunction with soil disturbance on property that is not before the Planning Board or Board of Adjustment, the permit application shall be submitted to the Borough Clerk for distribution to the Borough Engineer. The Borough Engineer shall review the application and submit a report to the Borough Clerk approving or denying the soil disturbance permit.
- B. The Planning Board or Board of Adjustment and/or Borough Engineer, in considering and reviewing the application and the contour map, shall take into consideration the public health, safety and general welfare, and shall give particular consideration to the following factors:
- (1) The potential for soil erosion by water and wind.
 - (2) The prevention of silt and sediment from entering brooks, streams, ponds, lakes, rivers and other bodies of water.
 - (3) The existing drainage of the site involved and any changes in drainage patterns that may result from the establishment of new contours.
 - (4) Types and fertility of the soil to be removed and the use to which it will be put.
 - (5) Lateral support slopes and grades of abutting streets and lands.

- (6) Land values and uses of those properties affected directly or indirectly by the proposed disturbance of soil.
 - (7) Such other factors as may bear upon or relate to a coordinated, adjusted and harmonious physical development of the site in connection with the surrounding lands in accordance with the master plan for the development of the Borough.
- C.
- (1) The Borough Engineer shall respond in writing, either recommending approval or denial, to the Borough Clerk within forty-five (45) days of receipt of a complete soil disturbance permit application.
 - (2) As directed by the Borough Engineer, the Borough Clerk shall issue or deny the soil disturbance permit within five (5) days after receipt of the report and recommendation of the Borough Engineer.
 - (3) A denial of a soil disturbance permit may be appealed to the Borough Council, who shall hear such appeal at its next regularly scheduled meeting.

SECTION 10. Section 169-6 "Fees", Paragraph A therein, is hereby amended such that the minimum escrow to be established is increased from \$1,000 to \$1,500, and said paragraph now reads as follows:

- A. An application fee of \$150 must be submitted with the application if the applicant proposes to disturb 50 to 500 cubic yards of soil. An application fee in the amount of \$500 must be submitted with the application if the applicant proposes to disturb 501 or more cubic yards of soil. In addition to the application fee stated herein, a minimum escrow of \$1,500 must be established. The Borough Engineer may request additional escrow funds as warranted.

SECTION 11. Section 169-6 "Fees" is hereby further amended such that existing Paragraphs B and C therein are repealed in their entirety.

SECTION 12. Section 169-7 "Performance Guarantee" is hereby amended such that approval for soil disturbance permits and permission for soil disturbance are not obtained from the Borough Council, and said section now reads as follows:

Before any permit or permission for soil disturbance is granted or issued, the owner or applicant shall file with the Borough Clerk, in such amount as in the opinion of the Borough Engineer shall be sufficient, a performance guarantee, in a form satisfactory to the Borough Attorney, consistent with the guarantee form permitted under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., to insure the faithful performance of the work to be undertaken pursuant to the provisions of this section. For those soil permit

applications submitted in connection with an application before the Planning Board or Board of Adjustment, said performance guarantee may be included in the guarantee required by the developer's agreement. An as-constructed contour map shall be filed and approved by the Borough Engineer prior to the release of any bond required.

SECTION 13. Any provisions not amended by this Ordinance shall remain in full force and effect.

SECTION 14. All ordinances, resolutions and regulations or parts of ordinances, resolutions and regulations inconsistent herewith are hereby repealed to the extent of such inconsistency.

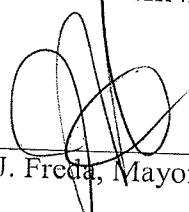
SECTION 15. If any section, paragraph, article, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply to the section, paragraph, article, subdivision, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

SECTION 16. This Ordinance shall take effect after approval and publication as required by law.

ATTEST:


Karen M. Iuele, RMC, Borough Clerk

BOROUGH OF KINNELON


James J. Freda, Mayor