

ORDINANCE NO. 14-11 AN ORDINANCE TO AMEND CHAPTER 169, SOIL REMOVAL, OF THE CODE OF THE BOROUGH OF KINNELON, NEW JERSEY

WHEREAS, N.J.S.A. 40:48-2 permits a municipality to make and amend an ordinance as it may deem necessary and proper for good government, order, and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

WHEREAS, the Borough Council of the Borough of Kinnelon ("Borough") desires to amend Chapter 169, Soil Removal, of the Code Of The Borough Of Kinnelon, New Jersey.

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

SECTION ONE. Chapter 169, Soil Removal, of the Code of the Borough of Kinnelon, New Jersey, shall be revised to read as follows:

#### CHAPTER 169 SOIL DISTURBANCE

##### §169-1 DEFINITIONS.

*Person* shall mean any developer, organization, individual, company, corporation, partnership, limited liability company, limited liability partnership, or any other form of business entity.

*Site* shall mean the Block(s) and Lot(s) that is named on the application form and is the location of the project.

*Soil* shall mean any earth, sand, clay, loam, gravel, humus, rock or dirt, without regard to the presence or absence therein of organic matter, including any synthetic substance used as a substitute or in conjunction with soil.

*Soil disturbance* shall mean any movement of soil including, movement of soil within one (1) site or movement of soil from one site to another site regardless of its destination. This also includes movement of soil on land disturbed previously as a result of a previous project or development.

*Soil exportation* shall mean removing soil from one (1) site to any location off-site.

*Soil importation* shall mean bringing soil to the site from any location off-site.

*Soil movement* shall mean the transfer of soil within a site.

*Topsoil* shall mean soil, that, in its natural state, constitutes the top layer of earth, and is composed of two (2%) percent or more, by weight, of organic matter and has the ability to support vegetation.

#### **§169-2 GRADING PLANS REQUIRED.**

Any soil disturbance that results in a change in grade or elevation of two (2') 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 \$1,000.00. 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.

Grading plans shall be prepared by a licensed professional engineer and shall be accompanied by a signed and sealed topographic survey prepared by a licensed professional and surveyor. Grading plans involving the construction of new retaining walls or the repair/reconstruction of existing retaining walls, regardless of height, shall require the prior review and approval by the Borough Engineer. In cases where retaining walls exceed a height of four (4) feet and in cases involving tiered walls, structural calculations prepared by a licensed professional engineer shall be submitted for review and approval by the Borough Engineer to confirm the standards are met for sliding, overturning and global stability. Upon completion of work shown on the lot grading plans and retaining wall plans, the applicant shall submit a topographic as-built survey prepared by a licensed professional land surveyor for review and approval by the Borough Engineer. Routine inspections are required by both the applicant's Design Engineer and the Borough Engineer to ensure all work conforms with the approved plans. A certified report of completion is required to be submitted to the Borough Engineer by the design engineer to ensure retaining walls were constructed in substantial conformance with the approved plans. In cases involving rock cuts, the Borough Engineer may require the applicant to obtain a certification from a professional engineer familiar with geotechnical matters to ensure the safety and stability of such rock cuts.

#### **§169-3 SOIL DISTURBANCE PERMIT REQUIRED.**

- a. Any soil disturbance within the Borough of Kinnelon involving fifty (50) cubic yards volume of soil or more on one (1) site shall comply with the provisions of this Soil Disturbance Chapter. Any soil disturbance within the Borough of Kinnelon involving fifty (50) cubic yards volume of soil or more on one (1) site requires first obtaining a soil disturbance permit, as provided herein, to be approved by the Borough Council. This section shall not apply to soil disturbance by the Borough or its contractors.
- b. This section shall also apply to soil disturbance incident under a permit issued by the Construction Official for the construction of a single family dwelling and its accessory structures (such as garage, shed, swimming pools, cabana houses, driveway, etc.).

- c. The soil disturbance permit shall expire after one (1) 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 (1) year, the applicant may apply to the Borough Council for an extension of said permit. Approval of said extension shall not be unreasonably withheld.
- d. All applications shall include a soil erosion and sediment control plan as set forth in Chapter 167, Soil Erosion and Sediment Control, of the Borough of Kinnelon Code Book. In addition, certification may be required from the Morris County Soil Conservation District.
- e. All applications for lot grading plan or soil disturbances shall include a report from a qualified environmental professional which confirms the presence or absence of freshwater wetlands, wetlands transition areas, flood hazard areas, category-1 watercourses, riparian buffers, and which confirms the applicability of the state Highlands Water Protection and Planning Act, the state Flood Hazard Area Control Act, Freshwater Wetlands Act, or any other state regulations protecting environmental resources which could be impacted by the proposed work. Copies of any necessary state permits shall be submitted prior to the final approval of any lot grading or soil disturbance plan.
- f. Exemptions from Permit Requirements. In cases involving minor soil moving, as set forth below, no Permit is required:
  - 1. Removal of less than 50 cubic yards.
  - 2. Spreading of topsoil for a lawn, provided that there is not a buildup of more than four inches and the areas filled are within the property line.
  - 3. Filling of holes left by rock or tree stump removal.
  - 4. Filling of sunken backfill areas, provided that such filling does not take place more than two years after the completion of the original backfill.
  - 5. Importation of less than 50 cubic yards, provided that the change in elevation is no more than two feet at any point and the source of fill material is identified and approved by the Construction Official.
  - 6. 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.
  - 7. Notwithstanding the foregoing, no exemption should be given in cases where stormwater facilities are being constructed or in cases where grading will redirect runoff which could potentially adversely affect neighboring properties or public and private roads.

#### §169-4 APPLICATION AND CONTOUR MAP.

- a. *Application.* Any disturbance of soil within the Borough of Kinnelon of five thousand (5,000) square feet surface area or more on one (1) site or fifty (50) cubic yards volume of soil or more on one (1) 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 one hundred fifty (\$150.00) dollars must be submitted with the application if the applicant proposes to disturb fifty (50) to five hundred (500) cubic yards of soil. An application fee in the amount of five hundred (\$500.00) dollars must be submitted with the application if the applicant

proposes to disturb five hundred one (501) or more cubic yards of soil. In the event soil is being exported from one (1) site within the Borough of Kinnelon and imported to another site within the Borough of Kinnelon, then two (2) soil disturbance permits must be obtained, one (1) permit for the exportation and one (1) permit for the importation. Applications can be obtained by 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. Twenty-five (25) copies of the application shall be submitted if the application will be reviewed by the Borough Engineer and the Planning Board or Board of Adjustment, as set forth below. Four (4) copies of the application shall be submitted if only the Borough Engineer will review the application.

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. Twenty-five (25) copies of the map and earth work calculations shall be submitted if the application will be reviewed by the Borough Engineer and the Planning Board or Board of Adjustment, as set forth below. Four (4) copies of the map and earth work calculations shall be submitted if only the Borough Engineer will review the application. The map and earth work calculations must include not only the site where the soil is to be disturbed, but also all surrounding lands within two hundred (200') feet of the perimeter of the site. The map and earth work 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 (1") inch to thirty (30') feet showing the site and its relation to all of the surrounding lands in the following manner:

1. The dimensions of the site and the lot and block number of the site and of each lot in the surrounding lands as shown on the Tax Assessment Map of the Borough.
2. The existing elevations of all lands with two (2') foot contour lines.
3. The existing elevations of all buildings, structures, streets, streams, bodies of water and watercourses (natural or artificial), as well as underground utilities, aboveground utilities, septic system components, potable wells, and irrigation wells.
4. All wooded areas.
5. The proposed final elevations where existing elevations shown on the map are to be changed as a result of completion of the proposed work.
6. Proposed slopes and lateral supports at the limits of the area upon completion of the soil disturbance operations.
7. Proposed provisions and facilities for surface water drainage and, where applicable, channels of natural or artificial drainage, including cross sections showing proposed channel widths, bank slopes and method of erosion and control thereof.

8. Accurate cross sections at intervals of not more than fifty (50') feet showing the locations and quantities, in cubic yards, of soil to be disturbed.
  9. All proposed elevations in enclosed rectangular boxes, and all existing elevations to be indicated without any kind of enclosure.
  10. If the application is before the Planning Board or Board of Adjustment, such other pertinent data as the Planning Board or Board of Adjustment may require.
- c. *Traffic Plan.* Accompanying all applications, which include the importation or exportation of soil, shall be a traffic plan which will indicate the following:
1. The specific trucking ingress and egress into the subject site.
  2. The proposed truck routes that will be used to service the site.
  3. The specific hours of operation.
  4. The maximum number of cubic yards that will be moved to or from the subject site during any twenty-four (24) hour period.
  5. The required traffic plan shall comply with the following requirements.
    - a. 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 Standard Time on weekdays only (excluding holidays).
    - b. 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.

Twenty-five (25) copies of the traffic plan shall be submitted if the application will be reviewed by the Borough Engineer and the Planning Board or Board of Adjustment. Four (4) copies of the traffic plan shall be submitted if only the Borough Engineer will review the application.

#### **§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, who shall review the application and submit their report and recommendations to the Borough Council. 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 and recommendations to the Borough Council.

- b. The applicant has the right to be heard by the Borough Council at such time as the soil permit application is being considered by the Borough Council.
- c. The Borough Council shall grant or deny the application within forty-five (45) days after receipt of the reports and recommendations of the Planning Board or Board of Adjustment and/or Borough Engineer. 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.
- d. If after examining the application, the map provided, and the reports of the Planning Board or Board of Adjustment and/or Borough Engineer, the Borough Council shall be of the opinion that the proposed soil disturbance will not create conditions inimical to the public health, welfare and safety and will not result in the creation of any sharp declivities, pits or depressions, soil erosion, fertility problems or depressed land values, nor create any drainage or sewerage problems or other conditions of danger, permission to remove the soil shall be granted with any condition or demand deemed necessary by the Borough Council.

**§169-6 FEES.**

An application fee of one hundred fifty (\$150.00) dollars must be submitted with the application if the applicant proposes to disturb fifty (50) to five hundred (500) cubic yards of soil. An application fee in the amount of five hundred (\$500.00) dollars must be submitted with the application if the applicant proposes to disturb five hundred one (501) or more cubic yards of soil. In addition to the application fee stated herein, a minimum escrow of one thousand (\$1,000.00) dollars must be established. The Borough Engineer may request additional escrow funds as warranted.

Prior to issuance of a soil disturbance permit and approval of the same by the Borough Council, the permit applicant shall pay to the Borough a permit fee as per the following schedule:

Movement of soil within the same site	\$0.10 per cubic yard
Exportation of soil from the site irrespective of	\$0.25 per cubic yard (\$0.10 for

the destination of the soil	movement and \$0.15 for exportation)
Importation of soil from a location outside the site	\$0.25 per cubic yard (\$0.10 for movement and \$0.15 for importation)

If soil is imported and the applicant is charged twenty-five (\$0.25) cents per cubic yard and that soil is later moved within the site in connection with the same soil movement activity or construction of the same development, a further fee shall not be charged. In addition, if soil is moved within the site and the applicant is charged ten (\$0.10) cents per cubic yard and that soil is later exported from the site in connection with the same soil movement activity or construction of the same development, an additional charge of fifteen (\$0.15) cents shall be charged.

All soil volume calculations for the purposes of determining fees shall be initially calculated by the applicant and submitted to the Borough Engineer for approval.

**§169-7 PERFORMANCE GUARANTEE.**

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 permission granted by the Borough Council, 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

**§169-8 SOIL PERMIT EFFECTIVE ONLY WHERE USE ERMITTED BY ZONING ORDINANCE.**

Notwithstanding anything herein to the contrary, a soil disturbance permit shall not be granted pursuant to this chapter in conjunction or related to a use not permitted for or on the relevant property by the Borough Zoning Ordinance.

**§169-9 CONDUCT OF OPERATION: INSPECTION.**

- a. If permission to remove the soil is granted, the owner or person in charge shall so conduct the operations that there shall be no sharp declivities, pits or depressions and in such a manner that the area shall be properly leveled off, cleared of debris and graded to conform to the contour lines and grades as approved by the Borough Engineer
- b. For the purpose of administering and enforcing the provisions of this chapter any duly authorized officer, agent or employee of the Borough shall have the right to enter into and upon any lands in or upon which such soil disturbance operations are being conducted, in order to examine and inspect such lands and the operations thereon.

**§169-10 REMOVAL OF TOP LAYER OF ARABLE SOIL PROHIBITED**

The owner of the site or the person in charge of the disturbance of soil, when permission has been duly granted, shall not take away the top layer of arable soil to a depth of six (6") inches, but such top layer of arable soil to a depth of six (6") inches shall be set aside for retention on the site, and shall be respread over the site when the rest of the soil has been removed pursuant to levels and contour lines approved by the Borough Engineer.

#### **§169-11 ENFORCEMENT.**

The Borough Engineer is hereby designated as the officer whose duty it shall be to enforce the provisions of this chapter. The Borough Engineer shall from time to time, upon the Borough Engineer's own initiative and whenever directed by the Mayor or Council, inspect the site for which permits have been granted to ensure compliance with the terms of the permit of this section. In addition, once all soil disturbance is complete, the Borough Engineer shall inspect the site to determine whether the actual soil disturbed is consistent with the soil disturbance permit issued. In the event more soil is disturbed than authorized by the soil disturbance permit, the applicant shall submit the additional fees due. The additional fees due shall be calculated using the fee for the total soil disturbed minus the fees already paid. In no event shall fees paid for soil disturbance permit be refunded by the Borough.

#### **§169-12 VIOLATIONS AND PENALTIES.**

Any person violating any of the provisions of this chapter shall be subject, upon conviction, to the penalties stated in Chapter I, Section 14.

#### **§169-13 SOIL IMPORTED FOR USE AS FILL.**

- a. Soil to be Used as Fill. No person shall raise the level of any land or portion thereof within the Borough by adding any material or substance other than fill. This section is not applicable to the addition to the land of any material or substance in the ordinary course of farming, horticulture, gardening, quarrying and mining.
- b. Applicable Substances; Exceptions. Fill shall consist of topsoil, earth, rock, gravel, quarry process, or sand obtained solely from virgin sources. Concrete and asphalt cannot be used as fill. Topsoil is the exposed layer of the earth's surface, and earth is the layer of soil immediately beneath the topsoil and above rock. Rock excludes boulders, boulders being detached and rounded or worn pieces of rock, the greatest side of which is no less than six (6") inches. All other materials are excluded. Excluded materials include, but are not limited to, soil containing contaminates, muck, peat, timber, debris, stumps and roots of trees, demolished structures, construction materials or of any other refuse; provided, however that these excluded items shall not have been reprocessed so as to conform with the definition of "fill" herein provided. Muck is soft silt or clay, very high in organic content, which is usually found in swampy areas. Peat is soil composed principally of partially decomposed vegetative matter.

**SECTION TWO.** All ordinances of the Borough of Kinnelon which are inconsistent with the provisions of this Ordinance are hereby repealed as to the extent of the inconsistency.




**SECTION THREE.** If any section, subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any Court of competent jurisdiction, such decision shall not affect the remaining portion of this Ordinance.

**SECTION FOUR.** This Ordinance shall take effect immediately upon final passage, approval, and publication as provided by law.

ATTEST: BOROUGH OF KINNELON

  
Elizabeth M. Sebrowski, Borough Clerk

  
Robert Collins, Mayor

**CERTIFICATION**

Elizabeth M. Sebrowski, Borough Clerk of the Borough of Kinnelon, County of Morris, State of New Jersey, do hereby certify the foregoing to be a true copy of an Ordinance introduced, read by title and passed on the first reading at a regular meeting of the Borough held on August 18, 2011 and adopted by the Governing Body at a regular meeting of the Borough held on September 25, 2011.

  
Elizabeth M. Sebrowski, Borough Clerk