

**TOWNSHIP OF HARDYSTON  
SUSSEX COUNTY, NEW JERSEY**

**ORDINANCE NO. 2019-12**

**AN ORDINANCE OF THE TOWNSHIP OF HARDYSTON COUNTY OF SUSSEX, AND STATE OF NEW JERSEY TO AMEND THE TOWNSHIP CODE TO INCLUDE A NEW CHAPTER 151 ENTITLED “SOIL FILL PLACEMENT”**

**WHEREAS**, the unregulated and uncontrolled dumping of fill in the Township of Hardyston has caused concerns over the resulting possible conditions detrimental to the health, safety and general welfare of the citizens of the Township; and

**WHEREAS**, there is currently no mechanism for the Township to abate and prohibit hazards created by dumping of fill; and

**WHEREAS**, the Township further does not have the necessary mechanism in place to abate such hazards; and

**WHEREAS**, the Mayor and Township Council have determined that it is in the best interests of the Township to regulate the placement of fill within the Township; and

**WHEREAS**, procedures are needed to allow for submission for the placement of fill within the Township; and

**WHEREAS**, the Township Code must be amended to include permit fees for the placement of fill; and

**NOW THEREFORE BE IT ORDAINED**, by the Township Council of the Township of Hardyston, Sussex County, New Jersey, that the Township Code shall be amended to add new Chapter 151 “Soil Fill Placement”.

**SECTION 1.** New Chapter 151 “Soil Fill Placement” shall read as follows:

Chapter 151 Soil Fill Placement

Article I. Title; Findings; Definitions; Permit Requirements

§151-1 Title

This Section shall be known as the “Soil Fill Ordinance of the Township of Hardyston”

§151-2 Purpose and Findings

The Township Council finds that the unregulated and uncontrolled placement and movement of soil and other mineral deposits can result in conditions detrimental to the public safety, health and general welfare. Such conditions substantially hamper and deter the efforts of the Township to effectuate the general purposes of municipal planning. Soil movement operations and filling operations should relate to the overall physical development of the area within which the operation is located. It is essential

that all soil movement operations and filling operations be reviewed and approved by the Township Zoning Officer and/or Township Engineer. All soil movement operations and filling operations must be conceived and operated in such a way that there will be no appreciable harmful effects to the environment. In order to best ensure that all soil movement operations and filling operations are an asset to the Township of Hardyston, rather than a liability, all such operations shall adhere to the conditions, restrictions and provisions outlined in this Section.

#### §151-3 Definitions

The words defined in this section shall mean and include the following when used in this Section:

APPROVED PLAN – A plan for the placement of soil fill approved by the Zoning Official and/or the Township Engineer (minor permit) or by the Township Planning Board (major permit) pursuant to the provisions of this Section.

MAJOR SOIL FILL PERMIT – A permit for the fill of more than 500 cubic yards of soil.

MINOR SOIL FILL PERMIT – A permit for the fill of more than 100 cubic yards of soil but less than 500 cubic yards of soil.

PERMIT – A soil fill permit.

PERSON – Includes an individual, a partnership, a corporation or any other legal entity.

PLANNING BOARD – The Planning Board of the Township of Hardyston.

SOIL – Includes dirt, stone, gravel, sand, humus, clay, loam and mixtures of any of these, but this shall not include quarry process or rock products utilized in the construction of roads, driveways or similar types of construction.

TOPSOIL – The arable soil within eight (8) inches of the surface.

TOWNSHIP – The Township of Hardyston.

#### §151-4 Permit required

No person shall fill or cause the placement of any soil on any premises in the Township of Hardyston whether such fill be for sale, gift or otherwise, unless a permit therefore is first secured from the Township Zoning Official and/or Township Engineer or the Township Planning Board as hereinafter provided. A permit shall not be required for the moving or placement of fill or less than 100 cubic yards of soil.

#### §151-5 Exceptions and Exemptions

(1) The Provisions of this Section shall not apply to excavations or fill for building foundations, septic tanks or sanitary installations, provided that no excavation or construction of any kind shall take place until a site plan or permit has been

approved by the Construction Official and/or Department of Health as required by law.

- (2) Nothing in this Section shall be construed to affect or apply to any person engaged in the moving of soil in and upon lands enrolled in the Soil Conservation Program of the Sussex County Soil Conservation District, Department of Agriculture Soil Conservation Service and for which lands an approved farm plan has been established by said agency, provided that all soil moving operations and fill operations in and upon such lands are performed in accordance with said approved farm plan and provided further that a copy of said approved farm plan is placed on file with the Township prior to any soil moving operations or fill operations.
- (3) A separate soil permit under this Section shall not be required for subdivisions and/or site plans approved pursuant to other Sections within this Article.
- (4) Nothing in this Section shall be construed to affect or apply to any person engaged in a state-mandated cleanup plan; provided that all soil moving, removal operations and fill operations are performed in accordance with said cleanup plan and provided further that notice of the state-mandated cleanup plan is placed on file with the Township Engineer prior to any soil moving, removal operations or fill operations.
- (5) The provisions of this Section shall not apply to the storage of sand, soil, stone, topsoil, mulch or other similar materials on lawfully existing landscaping and contractor yards provided that the outdoor storage of materials on said property has previously been established and does not require site plan approval pursuant to this Article.
- (6) This Section does not regulate the movement and placement of soil fill directly related to agricultural uses on farm properties within the Township of Hardyston and does not supersede any rights granted under the Right to Farm Act.

#### §151-6 Application for Permit

- (1) Application for a minor soil fill permit shall be filed with the Township Zoning Officer who shall issue the permit based upon substantial compliance with the provisions of this Section, provided, however, that the Township Zoning Officer and/or the Township Engineer shall have the authority to deny a permit if he/she determines that the placement of fill would be detrimental to the health, welfare or safety of the general public. The denial shall be in writing setting forth the reasons for same.
- (2) Application for a major soil fill permit shall be filed with the Township Planning Board and shall be accompanied by a fee prescribed in Section 151-22 "Fees". Appropriate copies of the application shall be submitted on forms prescribed by the Township Planning Board and supplied to the Secretary to the Board.
- (3) The application for minor and major permits shall set forth the following:
  - a. Name and address of the applicant.
  - b. Name and address of the owner, if other than the applicant.
  - c. The description and location of the land in question, including tax map block and lot numbers.
  - d. The purpose or reason for placement of soil.
  - e. The nature and quantity, in cubic yards, of soil to be filled.

- f. The source of material to be used as fill and certification that the fill can be considered “clean fill” as regulated by local and state regulations.
- g. The location to which the soil is to be placed.
- h. The proposed date of completion of the soil fill.
- i. Supporting documentation as required to adequately address and comply with the purpose and provisions of this Section.
- j. An approved soil erosion and sediment control permit (if applicable).
- k. Route of travel to and from the subject property
- l. Hours of operation.

§151-7 Supporting documentation for a major soil fill application

The application for a major soil fill permit shall be accompanied by a topographic map or maps prepared and certified by a professional land surveyor. The scale of said map shall not be more than 100 feet to the inch and shall include the following:

- (1) Key map.
- (2) Property Survey
- (3) Existing contour lines at not greater than five-foot intervals within the property and for a minimum distance of 25 feet beyond the limit of the subject property.
- (4) Proposed contour lines at not greater than five-foot intervals after fill of the soil.
- (5) All existing structures, all existing roads and drainage on the subject property within 200 feet of the property.
- (6) Cross section of the area of disturbance showing both the existing ground level and the proposed ground level when the fill operation is complete.
- (7) Calculations, based on the cross-sections showing the amount of material which will be moved or imported onto the site.
- (8) Location of any wetlands, wetland buffer areas, streams, or other environmentally sensitive areas on the property. Location of any existing or proposed topsoil storage areas.

§151-8 Referral

Upon receipt of an application for a major soil fill permit, the Planning Board Secretary shall forthwith send a copy of same to the Zoning Officer, Construction Official, and Township Engineer, who shall review the application, and they shall make best efforts to submit their reports and recommendations, and their reasons, to the Township Planning Board within thirty (30) days of receipt of the application. Failure to file such a report within the required time period may be deemed an approval of the application by such department and officials.

§151-9 Action by Planning Board; notice of hearing on major soil fill applications

- (1) The Township Planning Board shall grant or deny the application within forty-five (45) days after receipt of the reports and recommendations of the Zoning Officer, Construction Official, Township Engineer and Environmental Commission. On an application for a major soil fill permit, the Planning Board shall schedule a public hearing and shall notify the applicant of the date of such hearing. The applicant shall notify, in writing, all property owners within 200 feet of the extreme limits of the property, as their names appear on the Township tax records, at least ten (10) days prior to the date of the hearing on the application. The notice shall be given in person or by registered mail and shall state the reason for the

hearing; the time and place of the hearing as fixed by the Township Planning Board; a brief description of the property; and that a copy of the application and plans have been filed with the Township Planning Board Secretary for public inspection not less than ten days prior to the hearing date.. The applicant shall also cause notice of the hearing to be published in the official newspaper of the Township, at least ten (10) days prior to the date of the hearing.

- (2) Five (5) days prior to the hearing, the applicant shall present to the Township Planning Board Secretary the following:
  - a. Certification, in the form of an affidavit, signed and sworn by the affiant, affirming that he has notified all property owners, as required in Subsection (1) above.
  - b. Proof of publication of the newspaper notice required in Subsection (1) above.

#### §151-10 Factors to be considered in approving permits

In considering and reviewing the application and arriving at a decision, the Zoning Officer and/or Township Engineer (minor permit) and the Township Planning Board (major permit) shall be guided by and take into consideration the public health, safety and general welfare and the general purposes of municipal planning, and particulate consideration shall be given to the following factors:

- (1) Soil erosion by water and sand.
- (2) Surface water drainage.
- (3) Soil fertility.
- (4) Lateral support of abutting streets and lands.
- (5) Public health and safety.
- (6) Land values and uses.
- (7) Contours, both existing and proposed.
- (8) Existing contours and topographic character of the land prior to the placement of any soil and proposed contours which will result subsequent to the placement of soil in accordance with the soil fill application.
- (9) Whether the proposed placement of soil is necessary and incidental to the development of the property for its intended use or whether the proposed placement of fill constitutes primarily a commercial activity.

#### §151-11 Issuance of permit

A permit shall be issued after the approval of the application by the Zoning Officer and/or the Township Engineer (minor permit) or by the Planning Board (major permit). The approval shall specifically list the total number of cubic yards of soil authorized to be filled with calculations to be reviewed and approved by the Township Engineer based upon the contour maps submitted and approved.

#### §151-12 Enforcement

- (1) The Township Zoning Officer, the Township Police, or other official designated by the Township Council, shall have the authority to enforce the provisions of this Section and to issue summonses to any person importing soil without a permit.

- (2) The Township Engineer, or other official designated by the Township Council, shall have the authority to enforce the provisions of this Section with respect to persons importing soil with a permit. The Township Engineer, or other designated official, shall, from time to time, upon their own initiative, and whenever directed by the Township, inspect the premises for which permits have been granted to ensure compliance with the terms of the permit and this Section. The Township Engineer, or other designated official, shall have the right to enter upon any lands for the purpose of examination and inspection of the operation without advance notice.
- (3) After notice and an opportunity to be heard before the Zoning Officer, Township Engineer, or other designated official, the permit of any person may be revoked or suspended for such period as may be determined for any violation of the terms hereof or the terms and conditions of any permit granted hereunder. In addition to the revocation provided for herein, any person who violates this Section or any director or officer of a corporation who participates in a violation of this Section shall, upon conviction thereof, be subject to a minimum fine of \$2,000, or imprisonment for a period not to exceed 90 days, or both. Each and every day that such violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense.
- (4) In addition to the penalties set forth above, the Township shall have the right, but not the obligation, to pursue injunctive relief in the Superior Court of New Jersey, Sussex County, including but not limited to requiring the removal of any soil imported without a permit, testing to ensure no presence of contaminated soil, and site restoration.

#### §151-13 Terms of the Permit

- (1) The term of a minor permit shall be six months. One extension of time for a minor permit may be granted by the Zoning Official or Township Engineer upon written reasons explaining why the term of the permit needs to be extended. A minor permit can only be extended one time. No more than one soil fill permit can be granted within a two year period. Minor Fill permit projects not completed within the time frame and extension of time noted above can only be further extended by applying for a major soil fill permit.
- (2) The term of a major soil fill permit shall be three years. An extension of time for a major permit may be only be granted by the Planning Board. Such an extension shall only be granted if the applicant provides updated topographic information demonstrating compliance with the permit for which an extension is being requested with a written explanation of why the term of the permit needs to be extended, and the applicant must demonstrate that the extension will not negatively impact the health or safety of adjoining land owners and/or the general public.

Article II. Operating Requirements

§151-14 Method of operation

If a permit is issued for the placement of soil as provided herein, the owner or person in charge shall so conduct the operations that there shall be no sharp declivities, pits or depressions, and in such manner that the area shall be properly leveled off, cleared of debris, and graded to conform with the contour lines and grades as required and shown on the approved plan.

§151-15 Regulation of operation

No soil shall be placed nor shall any operation be conducted so as to violate any of the regulations contained in this Section after a permit is granted.

§151-16 Deposit of soil on adjoining property or public roads

Soil fill shall not be deposited or in any way thrown or placed upon adjoining property or public roads. Any soil or material resulting from any such operation accumulating on any adjoining property or public road shall be removed there from immediately upon notice to the permittee of such accumulation.

§151-17 Changes in Source of Fill Material

Should the source of fill material change during the term of the permit, the Zoning Official or Township Engineer shall be notified before any soil from an alternate site is imported. A certification demonstrating that the soil from the alternate location is "clean fill" shall be supplied by the applicant and approved by either the Zoning Official or Township Engineer.

§151-18 Compliance with other standards and terms of permit

All operations shall be conducted in strict accordance with any state and/or county laws, other ordinances of the Township, and the terms and conditions of any permit granted for such operations.

§151-19 Nuisances and unsafe conditions

The operation shall be so conducted as to not constitute a nuisance, and in no event shall said operation create any hazardous or unsafe condition with regard to any person or persons. Natural screening is to be preserved by the applicant.

§151-20 Restoration of area

(1) Upon completion of any operation delineated on the approved plan, said area shall be properly leveled off, cleared of debris, and graded to conform to the contours and grades as approved by the Zoning Officer and/or Township Engineer. A final map for all major soil fill permits shall be submitted containing

and complying with all requirements of this Section and the preceding Section "Soil Fill Placement".

- (2) No trash, junk or debris may be stored in any area, and no safety hazards will be permitted, either during or after completion of operations.

§151-21 Storage limitations

The material stored shall not exceed a height of 20 feet, and the maximum storage slope shall be 45°.

§151-22 Enforcing officer; inspections

- (1) The Zoning Officer and/or the Township Engineer are hereby designated as the officer whose duty it shall be to enforce the provisions of this Section. He/she shall, from time to time, upon their own initiative, and whenever directed by the Township, inspect the premises for which permits have been granted to ensure compliance with the terms of the permit and this Section. The Zoning Officer and/or the Township Engineer shall have the right to enter upon any lands for the purpose of examination and inspection of the operation without advance notice.

§151-23 Use of streets for soil transportation

In the placement of soil or fill operation, the applicant shall cause such streets to be kept free from dirt and debris resulting from such soil or fill operation.

Article III Fees; Bonds; Penalties and Miscellaneous Provisions

§151-24 Permit fees; inspection fees

- (1) Soil Fill Placement Permit Fees
  - (a) Minor soil fill permit (100 to 500 cubic yards) Fee \$100 Escrow \$500
  - (b) Major soil fill permit (greater than 500 cubic yards) Fee \$500 Escrow \$2,000

- (2) The permittee shall be responsible for all of the inspection fees of the Township Engineer incurred in review of the application and making inspections.

§151-25 Revocation of permit; violations and penalties

After notice and an opportunity to be heard before the Zoning Officer, Township Engineer, or other designated official including the Township Manager, the permit of any person may be revoked or suspended for such period as may be determined for any violation of the terms hereof or the terms and conditions of any permit granted hereunder. In addition to the revocation provided for herein, any person who violates this Section or any director or officer of a corporation who participates in a violation of this Section shall, upon conviction thereof, be subject to a minimum fine of \$2,000, or imprisonment for a period not to exceed 90 days, or both. Each and every day



that such violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense.

§151-26 Other permits

Nothing contained in this Section shall be construed to affect the owner's application for soil erosion and sediment control permits or any other state or federal regulations or permits as required.

**SECTION 4.** All ordinances or parts of ordinances of the Township of Hardyston inconsistent herewith are repealed to the extent of such inconsistency.

**SECTION 5.** If any section, subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any court or competent jurisdiction, such decision shall not affect the remaining portion of this Ordinance.

**SECTION 6.** This ordinance may be renumbered as necessary.

**SECTION 7.** This law shall take effect immediately upon final passage, approval and publication as required by law.

**NOTICE**

**PLEASE TAKE NOTICE** that notice is hereby given that the above ordinance was introduced and passed at the regular meeting of the Hardyston Township Council held at the Municipal Building, 149 Wheatworth Road, Hardyston, New Jersey, on September 25, 2019. The same came up for final adoption at a meeting of the Township Council of the Township of Hardyston held on October 23, 2019, and after all persons present were given the opportunity to be heard concerning the same, it was finally passed, adopted and will be in full force and effect in the Township according to law.

Jane Bakalarczyk, RMC/CMC  
Municipal Clerk