

ORDINANCE NO. 23-2020

BOROUGH OF ROSELAND  
COUNTY OF ESSEX, STATE OF NEW JERSEY

AN ORDINANCE AMENDING AND SUPPLEMENTING  
CHAPTER 20 OF THE REVISED GENERAL ORDINANCES OF  
THE BOROUGH OF ROSELAND ENTITLED "SOIL AND SOIL  
MOVING"

**WHEREAS**, the Mayor and Council of the Borough of Roseland wish to amend various sections of Chapter 20 of the Revised General Ordinances of the Borough of Roseland entitled "Soil and Soil Moving";

**NOW THEREFORE BE IT RESOLVED** by the Mayor and Council of the Borough of Roseland that Chapter 20 of the Revised General Ordinances of the Borough of Roseland entitled "Soil and Soil Moving" shall be amended as follows:

**SECTION I**

That Chapter 20 entitled "Soil and Soil Movement" shall be amended to add the following **thus** and to delete the following **thus**:

**Chapter 20. Soil and Soil Moving**

**§ 20-1. FINDINGS.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

The Mayor and the Council of the Borough of Roseland hereby find and determine that: the unregulated and uncontrolled removal, relocation, filling and excavation of soil by the owners of property within the Borough is likely to result in conditions detrimental to the public health, safety and general welfare of the citizens of the Borough; and the unregulated and uncontrolled removal, relocation, filling and excavation of soil in, upon or from lands within the boundaries of the Borough will create one or more of the following conditions: a serious erosion by wind and water; inadequate and improper surface water drainage or a complete lack of the same; a decrease in or destruction of the fertility of the soil; the removal of lateral support of abutting streets, land and premises; the creation of excessive amounts of dust and the deposit of dust upon adjoining property, particularly buildings, shrubbery and trees; the deposit upon the streets of the Borough of large quantities of mud, dirt or dust; the creation of depressions which may form mosquito breeding places; the creation of depressions and pits dangerous to small children; the deterioration of adjoining property values; the rendering of lands unfit or unsuitable for their most-appropriate uses; and the creation of other conditions hampering and interfering with the coordinated and harmonious physical development of the Borough.

## **§20-2. DEFINITIONS.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

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

### **DEVELOPER**

Any person who, either directly or through an agent or independent contractor, engages or intends to engage in land subdivision or development with the construction of two or more dwelling houses or business or industrial buildings in any subdivision for the purpose of sale or occupancy by another person or persons.

### **EXCAVATOR**

Any person, engaged in moving, removal or excavation of soil or topsoil from, in or upon any land in the Borough.

### **LAND**

Any land in the Borough in excess of one acre in area.

### **LANDSCAPING**

The placing, planting, arranging, trimming, cutting, removing of trees or maintenance of lawns, trees bushes, shrubs, gardens, sod and pavers and related appurtenances on land or property for the purpose of improving or maintaining same.

### **MAJOR PERMIT**

Any soil movement over 50 cubic yards or any movement of soil that will impact drainage or cause runoff onto a neighboring site.

### **MINOR PERMIT**

Any soil movement between 15 cubic yards and 50 cubic yards.

### **MOVE**

To dig, to excavate, to remove, to deposit; to place and to fill; to grade, regrade, level or otherwise alter or change the location or contour; to transport; and to supply.

### **OWNER**

Any person seized in fee simple of any land or having such other interest or estate therein as will permit the exercise of effective possession.

### **SOIL**

Any earth, sand, clay, loam, gravel, humus, rock or dirt, irrespective of the presence or absence therein of organic matter.

## **TOPSOIL**

Soil that, in its natural state; constitutes the top layer of earth and is composed of 2% or more by weight of organic matter and has the ability to support vegetation.

### **§20-3. PERMIT REQUIRED FOR SOIL MOVEMENT.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

No owner, developer, excavator or other person shall move, or cause, allow, permit, or suffer to be moved, any soil from, in or upon any land in the Borough, nor shall any owner, developer, excavator or other person cut down, or cause, allow, permit or suffer to be cut down, any bank of soil anywhere in the Borough until a major or minor permit therefor shall have first been obtained. Any such permit issued shall be good for 60 days unless otherwise renewed pursuant to § Chapter 20.

#### **§20-3.1 Soil Movement Permit Exception.**

1. Exceptions. No soil movement permit shall be required for soil movements below fifteen (15) cubic yards. The property owner shall first complete and execute a Soil Movement Exemption Form from the Property Maintenance Officer, who shall determine whether to grant the exemption or require the submission of a soil movement permit in the totality of circumstances.
2. No separate soil movement permit shall be required in connection with the construction or alteration of a building or structure on any lot to move soil incidental thereto, provided that no soil is removed from the lot, and further provided that site plan or subdivision approval has been obtained by the appropriate reviewing authority.

#### **§20-3.2 Landscaping Exemption.**

1. No soil movement permit shall be required for routine landscaping and/or placement of soil, topsoil and/or landscaping up to 10% of the gross square footage of the property owner's lot in any one year, with the exception of those circumstances where there is a modification and/or diversion of the natural flow of water existing at the time landscaping was modified.
2. In those circumstances, not including routine landscaping, where a property owner intends to place soil, top soil and/or landscaping up to 10% of gross square footage of the property owner's lot in any one year, or where there is a modification and/or diversion of the natural flow of water existing at the time landscaping is modified, the property owner shall first complete and execute a Soil Movement Exemption Form from the Property Maintenance Officer, who shall determine whether to grant

the exemption or require the submission of a soil movement permit in the totality of circumstances.

#### **§20-4. FILING OF APPLICATION.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

An application for either a major or minor permit shall be filed with the Property Maintenance Officer, who shall refer same to the Borough Engineer. The Property Maintenance Officer shall administer the applications and permits and act as the liaison between the applicants and the Borough Engineer. The Borough Engineer may confer with the applicant or the applicant's professionals during the course of the permit process.

#### **§20-5. APPLICATION PROCEDURE.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

The procedure for filing an application for the issuance of a soil permit shall be as follows:

- a. On a form to be supplied by the Property Maintenance Officer, the applicant shall set forth, in triplicate, the following:
  1. The identity and address of the applicant.
  2. A description of the land in question.
  3. The identity and address of the owner of the land.
  4. An estimate of the quantity of soil, in cubic yards, to be moved, broken down into two figures, namely, topsoil and other soil.
  5. The amount of all soil to be removed from the Borough (exported) shall be estimated and stated on the application, if applicable.
  - ~~5.6.~~ The amount of soil to be delivered (imported) to the land shall be estimated and stated on the application, if applicable.
  - ~~6.7.~~ The proposed dates of commencement and completion of the work, the completion date in no event to exceed 60 days from the date of approval of the application, except as provided in §20-5e.
  - ~~7.8.~~ An estimate of the type and number of machines and other equipment to be used in the operation, ~~the daily starting and finishing time during which the machines are to be operated,~~ and what protection will be provided to keep children and others having no business on the land from

gaining access thereto.

b. Accompanying materials.

1. Minor soil movement applications can be accompanied by a sketch of sufficient detail to describe the soil movement operation.

4.2. Accompanying a major soil movementthe application, there shall be filed a topographical map, in triplicate, of the land upon which the proposed soil-moving operations are to be conducted and a reasonable engineering estimate of all surrounding lands within 200 feet of the perimeter of land which is the subject matter of the application, prepared and certified by a licensed professional civil engineer or land surveyor of the State of New Jersey, on the scale of not less than one inch to 100 feet, and reference to the United States Coast and Geodetic Survey data, showing, both as to the land and as to all of the surrounding land:

- (a) The dimensions of the land and the lot and block number of the land and of each lot surrounding the land and within 200 feet thereof as shown on the last Tax Assessment Map of the Borough.
- (b) The present and proposed grade on a fifty-foot grid layout with contour lines at one-foot levels.
- (c) The existing elevations of all buildings, structures, streets, streams, bodies of water, watercourses, natural or artificial, and utilities, if any.
- (d) All existing surface or subsurface water drainage conditions and provisions therefor.
- (e) All wooded areas.
- (f) The proposed grades at points in § 20-5b2 when the work has been completed, with the same requirements as contained therein.
- (g) The quantity, in cubic yards, of the soil involved in the work.
- (h) The average depth of topsoil as determined by taking borings in the approximate center of each 100-foot grid.
- (i) The grades of all abutting streets and lands.
- U) Proposed slopes and lateral supports at the limits of the area upon completion of the proposed work.

- (k) The proposed details of entry and egress for surface water drainage and of any streams, bodies of water, and watercourses, natural or artificial.

2-3. The applicant shall furnish a soil erosion and sediment control plan. Where applicable, the applicant shall obtain soil erosion and sediment control plan certification from the Hudson-Essex-Passaic Soil Conservation District (HEPSCD) and provide same to the Property Maintenance Officer and Borough Engineer for their records. No work associated with this soil movement permit will commence until such time as soil erosion and sediment control plan certification is received by the Borough.

3-4. Prior to or during the course of soil importation, the Borough Engineer or his designee shall determine if testing of the soil is required to protect public health and safety. The Borough Engineer will determine the number of soil samples required to test any soils imported to the Borough for hazardous substances or contaminants. If testing is required, the applicant shall provide soil testing results from a certified soil testing laboratory that the material is classified as clean fill. The sole expense of soil testing shall be borne by the applicant. If the results of the testing indicate the presence of material which is harmful, dangerous, toxic or hazardous to the public, all soil importation activities shall cease, and the soil in question shall be removed in accordance with direction by the Borough Engineer or Property Maintenance Officer.

c. Where, by reason of simplicity of the application, the Borough Engineer determines that all or part of the information set forth in § 20-5 b above is not necessary to make an informed determination on the application, the Borough Engineer may waive all or part of the requirements set forth in § 20-5 b Subsection b.

e-d. In addition to the requirements of § 20-5 a and b, the applicant shall furnish other pertinent data as the Borough Engineer may require after he has had an opportunity to examine the proposed project, including the extent (in cubic yards) of topsoil to be removed and whether the topsoil is to be replaced on the site in question or moved to some other place, and, if so, whether inside or outside of the Borough.

d. The applicant shall notify the Department of Public Works prior to the start of any work. The applicant, after a minor or major permit is issued, shall submit tickets or other substantiating documentation, on forms provided by the Department of Public Works, indicating the quantity of soil loads deposited on the site until the project is completed.

e. The application shall be submitted with a fee to the order of the Borough per the following schedule:

**Volume of Soil to Be  
Moved (cubic  
yards)**

**Filing  
Fee**

15 to 50 - minor permit	\$25
15 to 50 - major permit	\$25
50 to 200	\$50
200 to 500	\$75
500 to 1,000	\$100
1,000 to 5,000	\$125
5,000 to 10,000	\$150
10,000 to 50,000	\$175

1. If the application and fees submitted to the Borough shall include a total amount of soil to be moved in excess of that moved within the time specified on the application, and should a renewal be desired by the applicant in order to complete the original estimates, the fee for the renewal shall be a flat sum of \$25 for the renewal, except that the applicant shall pay fees based upon the yardage to be removed in accordance with the provisions of § 20-5e. No renewals without application and fees shall be granted that will extend the original project beyond one year from the date of the commencement of the work.
  2. In the event of a refusal to issue a soil permit as hereinafter provided, ~~all expenses to the Borough shall be deducted from the permit fees paid, and any balance remaining shall be returned to the applicant.~~ filing/administrative fees are non-refundable.
- f. There shall also be paid to the Borough, in addition to the fees provided in § 20-5e, an engineering escrow fee to cover the costs of inspection and enforcement of the provisions of this chapter based upon the total number of yards to be moved in accordance with the following schedule:

**Volume of Soil to Be  
Moved (cubic  
yards)**

**Engineering Escrow  
Fee**

15 to 50 - minor permit	<u>\$150N/A</u>
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15 to 50 - major permit	\$600
50 to 200	\$600
200 to 500	\$750
500 to 1,000	\$1,050
1,000 to 5,000	\$1,250
5,000 to 10,000	\$1,750
10,000 to 50,000	\$2,500

1. Each additional 10,000 cubic yards over the 50,000 cubic yards will require an additional \$1,000 per every additional 10,000 cubic yards.
2. If, prior to completion of the project for which the major or minor permit was issued, the engineering escrow account should be depleted, the applicant shall deposit additional funds in the escrow account as estimated by the Borough Engineer to bring the project to completion.
- g. The Borough may also require the applicant to submit an escrow deposit up to \$5,000 for street cleaning for applications which require extended periods of soil movement. The street cleaning escrow deposit will be determined by the Borough Engineer on a case-by-case basis. If, during the course of construction, the applicant fails to clean streets following proper notice by the Borough Engineer or Property Maintenance Officer,, the Borough may use funds from the street cleaning escrow account to accomplish same.
- h. In order to ensure conformity to the requirements of this chapter with reference to, but not limited by, the conditions laid down in this section, inspections shall be made by the Borough Engineer, or his ~~designee duly authorized or qualified agent~~, of the land in or upon which soil moving operations are being conducted.

## **§20-6. DETERMINING FACTORS.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

- a. In considering the application, the Borough Engineer shall take into consideration the following factors:
  1. Soil erosion by water and wind;-
  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, and:-

7. Any other factors which may bear upon or relate to the coordinated, adjusted and harmonious physical development of the Borough.

#### **§20-7. ACTION ON PERMIT APPLICATION.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

##### **§ 20-7.1. Time Limits~~ime Limits~~. :- A p~~A~~ Appeals.**

The Borough Engineer shall grant or refuse to grant the permit hereinafter provided for within 45 days from the filing of the completed application with him; and in case of refusal, the applicant may, within 45 days thereafter, appeal the refusal to the Borough Council. The latter body, after investigation and study of the project, shall afford the applicant a public hearing at a meeting of the Council called for that purpose to be held not more than four weeks after the appeal of the applicant is filed with the Borough Clerk. At least one week's notice of the meeting shall be given to the applicant. The decision of the Borough Council on any appeal shall be immediately communicated to the applicant by letter at the address shown on the application; and in the event the decision is to reverse the decision of the Borough Engineer, the latter shall forthwith issue the permit applied for. The Borough Council may sustain or overrule or modify the Borough Engineer's decision by a majority vote of the entire body.

##### **§20-7.2. Inspections~~nspections~~.**

Upon the completion of the action by the Borough Engineer either to issue or to deny the soil permit and after any appeal as herein provided has been decided, the Borough Engineer or his designee shall be responsible for conducting such inspections provided for under this section. Inspections with reference to Subsection **20-12.1 Transportation of Soil** hereinafter set forth shall be the responsibility of the Property Maintenance Officer~~Construction Official~~.

#### **§ 20-8. GRADE.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

In the event the application for a soil removal permit involves the complete removal of a bank which extends above the elevation of the surrounding lands or above the elevation of a public road or street adjacent to the land upon which such removal

project is to take place, the moving or removal shall be conducted so as to leave the final grade of the land or lot from which the bank is to be removed at a grade that will not create a hazardous condition with respect to the surrounding lands or to the public road or street. Wherever practical, the final grade shall not be lower than the grade of the surrounding lands or of such public road or street, and the final grade shall be established and maintained at a minimum of 1/2 of 1% to ensure proper drainage. In establishing final grades, the factors to be considered shall be the same as those listed in § 20-5.

#### **§ 20-9. SLOPE CONSIDERATIONS.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

- a. In the event the application for a soil moving permit involves the partial cutting down of a bank, the project shall be conducted in a manner so as to leave the final slope of all sides of the remaining portion of the bank at slopes that conform to minimum slope standards as follows:
  1. Wet clay and sand: 1 vertical to 2 horizontal.
  2. Gravel, loam and clay, boulders and earth: 1 vertical to 1 1/2 horizontal.
  3. Large rock slabs into earth **hill**: 1 vertical to **1** horizontal.
  4. Disintegrated rock: 1 vertical to 1/2 horizontal.
  5. Solid rock: 1 vertical to 1/4 horizontal. Under no conditions shall any such slope be left which is in excess of 1 vertical to 1/4 horizontal. If slopes are made up of several types of the above, the minimum standards shall apply to each section in progressively decreasing slopes. Definitions of soil shall be in conformity with the "Highway Engineering Handbook," by Harger and Bonney, for areas of rain and heavy frost.
- b. Where earth is moved in order to lower a grade or to alter an existing slope, the upper crown or brink shall not be closer to any property line than five feet, and this distance shall be increased at the rate of one foot for each one foot of vertical height of the slope up to a maximum required distance of 25 feet from any property line. If, for any reason, the final grade shall be higher than the level of the surrounding lands, the same formula shall be used in determining the distance of the bottom of the slope from the nearest property line.

#### **§ 20-10. STORAGE OF TOPSOIL.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

##### **§ 20-10.1. Storage Within the Property.**

Whenever any owner, developer, or excavator shall remove topsoil in or upon any land in the Borough, provision shall be made for the storage of the topsoil within the boundary lines of the property.

#### **§20-10.2. Replacement of Topsoil.**

Except as hereinafter provided, all topsoil so stored shall be uniformly replaced over the entire area or surface of the land on or before the completion date set forth in the soil removal permit so that the final grades of the replaced topsoil shall conform to the proposed final grade shown on the topographical map.

#### **§20-10.3. Removal of Topsoil Prohibited.**

No owner, developer or excavator shall remove to any point beyond the boundary lines of the land in question any topsoil whatsoever, unless and until topsoil not inferior in quality to that to be removed shall have first been replaced as originally found or in any case not less than six inches of compacted topsoil uniformly placed over the entire surface area of the land excepting only portions thereof which shall be, or shall have become since the date of the filing of the topographical map, permanently covered by 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 owner, developer or excavator remove from the land more topsoil than that comprising the surplus or excess remaining after the replacement of the topsoil as aforesaid.

### **§ 20-11. REMOVAL OF HAZARDOUS CONDITIONS.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

Every soil removal project carried out and authorized under and pursuant to a permit issued in accordance with the provisions of this chapter shall be conducted and completed in such a manner as not to create any condition hazardous to life or limb of any member of the public who may have access to the property or to the health, safety or welfare of the Borough. All boulders, tree stumps or other debris shall be removed from the property or completely burned, except that boulders may be buried.

### **§20-12. REMOVAL OF SOIL.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

#### **§ 20-12.1. Transportation of Soil.**

Every person who shall transport over the streets, roads or highways in the Borough any soil removed from any land or premises pursuant to a soil removal permit

issued in accordance with the chapter shall daily sweep, pick up and remove, or cause to be swept, picked up and removed, all dust, dirt and mud from the roads, streets or highways and shall apply, or cause to be applied, to the roads, streets or highways a dust preventative wherever the same shall be deemed necessary and that fact communicated to the holder of the permit by the Borough Engineer or his designee. In the event of failure, neglect or refusal of any person ~~so to sweep, pick up and remove dust, dirt and mud or to apply a dust preventative when required by this section, the Borough Engineer or his designee is authorized to suspend any soil removal permit indefinitely issued for a period of not less than three days or may revoke the same after notification~~

~~in writing by a duly authorized officer, agent or employee of the Borough to the holder of the permit. In the event of such revocation, no soil removal permit shall again be issued to that person unless application therefor is made as required by § 20-5 of this chapter.~~

#### **§ 20-12.2. Hours and Truck Cover.**

No excavating or removal operation of or from any land or premises pursuant to a soil removal permit issued in accordance with this chapter shall be conducted except as follows:

- a. During the hours of 8:00 a.m. to 5:00 p.m., Mondays through Fridays; Saturdays and Sundays are excluded.
- b. When the material being removed is dirt (earth) or a combination of rock and dirt, each truck shall be covered by a tarpaulin fastened at all four corners of the truck body in such manner as to prevent dust, dirt, or stone from leaving the truckload, or each truckload is to be sufficiently wet down before leaving the site of the earth removal so as to prevent the spillage of dust, dirt, or stone.

#### **§ 20-12.3. Truck Loads.**

Every truckload of material leaving the premises shall be properly trimmed, and in no event shall the peak or highest point of the load protrude above 12 inches over of the sides of the truck.

#### **§ 20-13. PERFORMANCE BOND.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

- a. When greater than 100 cubic yards of soil is to be moved, and at the discretion of the Borough Engineer, no permit shall be issued unless the applicant posts with the Borough a performance guaranty, in a form and with the surety acceptable to the Borough, in such amount of guaranty determined

at the rate of \$8 per cubic yard of the amount of soil to be moved, 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 removal permit issued pursuant hereto. No soil movement permit shall be issued unless and until the applicant shall have posted an acceptable performance bond. A cash equivalent sum may be deposited in lieu of a performance bond.

- b. When other performance guaranties are posted for development applications which include soil movement, no separate performance guaranty is required.

#### **§20-14. INSPECTION.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

For the purpose of administering and enforcing the provisions of this chapter, the Borough Engineer or his designee ~~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 soil removal operations are being conducted in order to examine and inspect the lands and the operations thereon.

#### **§20-15. VIOLATIONS AND PENALTIES; ENFORCEMENT.**

[1973 Code; amended 12-17-2019 by Ord. No. 33-2019]

- a. Any person who violates any provision of this chapter shall, upon conviction thereof, be punished as provided in § 1-5. General Penalty, of the Code of the Borough of Roseland. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
- b. Any person, firm or corporation who has been found to violate any provisions of this chapter shall, in addition to the payment of penalties, comply with all regulations herein.
- c. The Property Maintenance Officer shall enforce this chapter.

### **SECTION II**

All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

### **SECTION III**

This ordinance shall take effect immediately upon its proper publication after passage in the manner provided by law.

DATE OF INTRODUCTION: October 20, 2020

Motion to Introduce by: Councilwoman Fishman

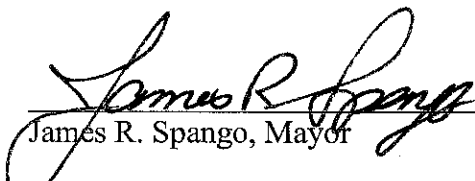
Motion Seconded by: Councilman Trillo

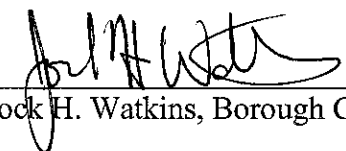
Introduction Approved: 6-0 Voice Vote

DATE OF ADOPTION: November 24, 2020

COUNCIL	MOTION	SECOND	AYE	NAY	ABSTAIN	RECUSE	ABSENT
Councilman Bardi			X				
Councilwoman Fishman			X				
Councilman Freda			X				
Councilwoman Perrotti		X	X				
Councilwoman Tolli			X				
Councilman Trillo	X		X				
Mayor Spango (In case of tie)							
VOTE:			6	0			

I hereby certify that the above Ordinance was duly adopted by the Mayor and Council of the Borough of Roseland at a meeting of Borough Council held on the 24<sup>th</sup> day of November, 2020.

  
James R. Spango, Mayor

  
Jock H. Watkins, Borough Clerk

Date of Publication: December 3, 2020, The Progress