

**BOROUGH OF WATCHUNG
ORDINANCE: 24/10**

**ORDINANCE AMENDING THE BOROUGH'S REGULATIONS AND
PERMITTING REQUIREMENTS FOR THE IMPORTING AND
REMOVAL OF SOIL AND FILL IN THE BOROUGH.**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of Watchung, in the County of Somerset and State of New Jersey as follows:

Section 1. Chapter 23 entitled "Soil and Soil Removal" of the Code of the Borough of Watchung is hereby supplemented and amended to read as follows: [New language **bold and underlined** and deleted language ~~double-strikethrough.~~]

CHAPTER 23. Soil Importing and Soil Removal.

§23-1. SOIL REMOVAL.

§23-1.1. Purpose for Regulations.

The purpose of this section is to regulate and control the relocation, filling, excavation and removal of soil in the Borough. The Mayor and Council hereby finds and determines that the unregulated and uncontrolled relocation, filling, excavation and removal of soil is detrimental to the public safety, health, general welfare and proper development of the Borough, and constitutes a deterrent to the general purposes of municipal planning of the Borough. The lack of control and regulation would result in serious and irreparable damage to the public welfare by reason of soil erosion, inadequate and improper surface water drainage, the impairment of the fertility of the soil, the removal of lateral support of abutting streets, lands and premises, the creation of dangerous depressions or pits, the deterioration of property values and the rendering of land unfit or unsuitable to its most appropriate uses.

§23-1.2. Definitions.

As used in this section:

MOVE

Shall mean to dig, excavate, remove, grade, regrade, level or otherwise alter or change the location or contour, to transport or to supply. This term shall not be construed to include plowing, spading, cultivating, harrowing or discing of soil, or any other operation usually and ordinarily associated with the tilling of soil for agricultural or horticultural purposes.

SOIL

BOROUGH OF WATCHUNG
ORDINANCE: 24/10

Shall mean any earth, topsoil, sand, clay, loam, gravel, humus or dirt, without regard to the presence or absence therein of organic matter.

§23-1.3. Permit Required.

No person, firm or corporation shall move, or cause, allow, permit or suffer to be moved or relocated, any soil in excess of 50 cubic yards from, in, or upon any land in the Borough, unless and until a soil permit shall first have been issued by the Mayor and Council.

§23-1.4. Certain Construction Projects Exempted.

No soil permit shall be required in connection with the construction, alteration, addition to or repairing of any building erected or hereafter to be erected on any land, or the excavation, filling, landscaping or grading incidental to the use of such building on the land, including the installation, repair or replacement of a sanitary system used in connection therewith, provided that the finished grade on such land after completion of the work shall not be lowered to a point more than six inches higher than the crown of the road abutting the property upon which such building shall be located. Further, any holes left as the result of excavation shall not be filled with stones, boulders, debris or stumps unless they are covered with at least three feet of soil. In no case shall any soil be moved under the provisions of this section prior to the issuance of a building permit.

§23-1.5. Issuance of Permits.

The Mayor and Council may, upon written application, grant permits for relocation, filling, excavation or removal of soil or other purposes, provided the granting of such application by the Mayor and Council does not create conditions inimical to the public health, welfare and safety and will not result in the creation of sharp declivities, pits or depressions and soil erosion and inadequate and improper surface water drainage, depressed land values, drainage or sewerage problems or other conditions or dangers.

§23-1.6. Applications for Permits.

The application shall be made in writing to the Mayor and Council and filed with the Borough Clerk. The application shall set forth in detail the nature of the proposed relocation, filling, excavating or removal of soil, describe the premises and define the purposes, and shall be accompanied by a contour map of the premises showing present contour lines, proposed contour lines and grades of abutting streets and lands. The applicant shall also submit such other pertinent data as the Mayor and Council may require.

§23-1.7. Hearings on Applications.

Upon written request of any applicant, the Mayor and Council shall grant the applicant a hearing prior to making a determination of the disposition of the application. At the hearing, which shall be held within two weeks from the date of the filing of the application with the Borough Clerk, the applicant may present such evidence as he desires in support of his application. In determining the disposition of each application, the Mayor and Council shall take into consideration soil erosion,

**BOROUGH OF WATCHUNG
ORDINANCE: 24/10**

drainage, soil fertility, lateral support slopes and grades of abutting streets, land values and uses, and such other factors as may bear upon or relate to the coordinated, adjusted and harmonious physical development of the Borough.

§23-1.8. Surety Bond Required.

Before any permit or permission for soil removal shall be granted or issued, the owner or applicant shall file with the Mayor and Council a bond in acceptable form and acceptable surety and in sufficient amount to ensure the faithful performance of the work to be undertaken pursuant to the permission granted in accordance with the provisions of this section.

§23-1.9. Application and Removal Fees.

- a. Applicants for permits shall submit, together with their applications, an application fee of \$50 to cover the costs of reviewing and issuing the permit.
- b. Permittees shall, within 30 days after concluding work authorized by a particular permit, pay to the Borough the sum of three (\$0.03) cents for every cubic yard of soil removed. The total amount of soil removed shall be verified by the Borough Engineer or such other person who may be so authorized by the Mayor and Council.

§23-1.10. Violations and Penalties.

Any person who violates any provision of this section shall, upon conviction, be subject to a penalty as stated in Chapter 1 Section 1-5, General Penalty.

§23-2. IMPORTING OF SOIL/FILL.

§23-2.1. Purpose for Regulations.

The purpose of this section is to regulate and control the importation and deposition of soil and fill into the Borough. The Mayor and Council hereby finds and determines that the unregulated and uncontrolled importation of soil and fill into the Borough is detrimental to the public safety, health, general welfare and proper development of the Borough. The lack of control and regulation could result in serious and irreparable damage to the public welfare by reason of the importation of contaminated soil or fill into the Borough. The adoption and enforcement of this Section does not exempt an applicant from other required local, State or Federal approvals or local Soil Conservation District requirements regarding the acceptability and placement of soil/fill materials.

This Section does not apply to soil/fill imported for the purposes of remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS, N.J.A.C. 7:26C) and Technical Requirements for Site Remediation (N.J.A.C. 7:26E), operation and/or closure of sanitary landfills (N.J.A.C. 7:26), or dredge repository sites approved by State or Federal agencies.

**BOROUGH OF WATCHUNG
ORDINANCE: 24/10**

§23-2.2. Definitions.

For purposes of this Section, the terms used herein are defined as follows:

ACCEPTABLE SOIL/FILL

Non-water-soluble, non-decomposable, inert solids such as soil, subsoil, topsoil, sand, clay, loam, gravel, humus, rock, free of construction/demolition debris, garbage, refuse, or sludge and not containing concentrations of one or more contaminants that exceed the DEP's Residential Direct Contact Soil Remediation Standards or Non-Residential Direct Contact Soil Remediation Standards, whichever is more stringent, as set forth in N.J.A.C. 7:26D, Remediation Standards.

APPLICANT

The property owner requesting a soil importation permit as provided for in this Section.

CONSTRUCTION/DEMOLITION DEBRIS

Mixed waste building material and rubble resulting from construction, remodeling, repair, and demolition operations on houses, commercial buildings, pavements and other structures that includes, but is not limited to, treated and untreated wood scrap; tree parts, tree stumps and brush; plaster and wallboard; roofing materials; corrugated cardboard and miscellaneous paper; ferrous and nonferrous metal; non-asbestos building insulation; plastic scrap; carpets and padding; and other miscellaneous materials.

CONTAMINATED SOIL/FILL

Any soil/fill containing contaminants exceeding the current requirements for the most stringent concentrations between the Non-residential and Residential Direct Contact Soil Remediation Standards pursuant to N.J.A.C. 7:26D, Remediation Standards.

CONTAMINATED PROPERTY

Any property, including but not limited to structures, sediment, soil and water, that contains a contaminant which is present at such levels or concentration as to require action pursuant to any federal or state statutes or regulations.

FILL

Material placed at a location for the purpose of filling low areas, changing the contours of an area, stabilizing existing grades and/or raising the grade of an area. Fill usually consists of soil, but may also include non-water-soluble, non-decomposable, inert solids, such as rock, gravel, brick, block, concrete, glass, and/or clay or ceramic products or any combination thereof.

**BOROUGH OF WATCHUNG
ORDINANCE: 24/10**

PERMIT

The official document issued by the Municipality approving the Soil Importation Application.

PERSON

Includes an individual, firm, corporation, association, society or partnership, or other business entity and their agents or employees.

DREDGED MATERIAL

Sediments removed from under a body of water such as, but not limited to, a bay, harbor, lake, stream and river, removed during a dredging operation that are displaced or removed to another location.

REMEDIAL ACTION

As defined in the Technical Requirements for Site Remediation (Technical Requirements) at N.J.A.C. 7:26E-1.8, those actions taken at a contaminated site as may be required by the Department, including, without limitation, removal, treatment measures, containment, transportation, securing, or other engineering or institutional controls, whether to an unrestricted use or otherwise, designed to ensure that any contaminant is remediated in compliance with the applicable remediation standards. A remedial action continues as long as an engineering control or an institutional control is needed to protect the public health and safety and the environment, and until all unrestricted use remediation standards are met.

REMEDICATION

“Remediation” or “remediate” means all actions to investigate, clean up, or respond to any known, suspected, or threatened discharge of contaminants, including the preliminary assessment, site investigation, remedial investigation, and remedial action, or any portion thereof, provided, however, that “remediation” or “remediate” shall not include the payment of compensation for damage to, or loss of, natural resources.

§23-2.3. Permit Required for Deposit of Acceptable Soil/Fill Material.

- A. **No person shall deposit or place soil/fill material, or cause, allow, or permit soil/fill to be placed on any property in the Borough of Watchung unless a permit is issued by the Borough, along with any other applicable County, State or Federal approval(s) or permit(s). No permit under this Section shall be required for any development that requires a land use approval from the Borough Planning Board or Zoning Board of Adjustment provided the approval contains a condition(s) that meet the standards of this Section.**

**BOROUGH OF WATCHUNG
ORDINANCE: 24/10**

- B. Unless otherwise exempt, no permit shall be issued unless: (1) the applicant submits proof that the soil/fill material has been tested consistent with any applicable requirements set forth herein; (2) the soil/fill meets the definition of acceptable soil/fill; and (3) the application otherwise conforms with the standards of this Section.**

§23-2.4. Permit Exemptions.

A person is not required to obtain a permit under this Section for the following:

- A. Minor filling associated with landscaping activities at any property where up to 15 cubic yards, or as otherwise allowed by the New Jersey Department of Environmental Protection under applicable regulations, per year of acceptable soil/fill material is being deposited.**
- B. Placement of landscape material, such as top soil, mulch, decorative stone and wood chips, up to a maximum of twenty-five (25) cubic yards, provided such material is not to be utilized as fill.**
- C. Fill for septic installation and/or repair certified to be such by a licensed New Jersey engineer; or approved by the local health agency.**
- D. Virgin quarry products including, but not limited to, rock, stone, gravel, sand, clay and other mined natural products.**
- E. Acceptable soil/fill material being moved from one section of an owner's property to another section of the same property.**
- F. Soil/fill imported to or moved within a properly licensed Class B recycling facility.**
- G. Acceptable soil/fill moved from a properly licensed Class B recycling facility.**
- H. Public works projects conducted or contracted for by a public entity or utility regulated by the Board of Public Utilities provided the soil/fill material meets the definition of acceptable soil/fill.**

§23-2.5. Responsibility for Obtaining Permit.

The property owner receiving the soil/fill material is responsible for obtaining the permit.

§23-2.6. Duration of Permit.

Each permit issued under the terms of this Section shall be valid only for the location(s) and soil/fill material described therein and shall be valid for the duration of the project specified in the permit application.

**BOROUGH OF WATCHUNG
ORDINANCE: 24/10**

§23-2.7. Permit Application Requirements.

The procedure to apply for a Soil/Fill Importation Permit shall be as follows:

- A. All applications for Soil/Fill Importation Permits shall be filed with the Borough Engineer who shall administer the applications and permits.**
- B. A fee, in the amount of \$150.00 shall be remitted at the time of application. The fee shall address the costs associated with the review of the application and for any field monitoring inspections, as applicable.**
- C. The application shall include FORM SI-1 ACCEPTABLE SOIL/FILL MATERIAL CERTIFICATION FORM to be completed as follows:**

By the soil/fill material supplier

Part 1: The date the form is completed, the soil/fill supplier's name, title, company name, address, telephone number, and email contact information.

Part 2: The site name(s), address(es), and block/lot of the property(ies) supplying the soil/fill material.

Brief history of the source property(ies), including current or past use of the property.

If applicable, the date soil/fill material was subject to analytical testing in accordance with applicable requirements of the New Jersey Department of Environmental Protection's guidance entitled "Understanding Requirements for Soil and Fill Materials." If analytical testing was not conducted, justification for making a determination that the soil/fill is acceptable without having analytical results.

Certification (signature) from the soil/fill supplier that the soil/fill being imported meets the definition of acceptable soil/fill.

By the person receiving or placing acceptable soil/fill material

Part 3: The date the form is completed, the name, title, company name, address, telephone number, and email contact information.

The address of the location where soil/fill placement will be placed.

Certification (signature) from the person receiving or placing the soil/fill material.

**BOROUGH OF WATCHUNG
ORDINANCE: 24/10**

§23-2.8. Review of Application.

Within thirty (30) days after receipt of a complete application, the Borough shall review the application and either approve, conditionally approve or deny the application.

§23-2.9. Appeals.

Whenever an application for a permit is denied, the applicant may appeal the denial to the municipal governing body by filing a written notice of appeal with the Borough Clerk within thirty (30) days after receiving written notice of the denial of such application. The municipal governing body shall thereafter hold a public hearing within sixty (60) days on the matter in accordance with rules or procedures to be established by the municipal governing authority and may modify, affirm or reverse the decision.

§23-2.10. Violations and penalties.

Any person who violates any provision of this section shall, upon conviction, be subject to a penalty as stated in Chapter 1 Section 1-5, General Penalty. Every day in which such violation continues after due notice has been served shall constitute a separate violation or offense. Upon order of the Court, the violator shall pay all costs associated with analytical testing, remediation, removal and proper disposal of soil/fill material determined to not to comply with the definition of acceptable soil/fill.

§23-2.11. Permit Suspension or Revocation.

The person receiving a permit pursuant to this Section shall comply with all conditions set forth in the permit. Submitting false information or noncompliance with a permit may subject the person receiving a permit to a penalty pursuant to Section 23-2.10 above and/or suspension or revocation of such a permit.

BE IT FURTHER ORDAINED by the Council of the Borough of Watchung that should any section, paragraph, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be affected thereby and shall remain in full force and effect, and to that end the provisions of this Ordinance are hereby declared to be severable; and

BE IT FURTHER ORDAINED by the Council of the Borough of Watchung that in the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of

BOROUGH OF WATCHUNG
ORDINANCE: 24/10

the Borough of Watchung, the provisions hereof shall be determined to govern, and the inconsistencies of the prior ordinance are hereby repealed. All other parts, portions and provisions of the Ordinances of the Borough of Watchung are hereby ratified and confirmed, except where inconsistent with the terms hereof; and

BE IT FURTHER ORDAINED by the County of the Borough of Watchung that within five (5) days after its adoption by the Council, this Ordinance shall be presented to the Mayor for his approval and signature, which approval shall be granted or denied within ten (10) days of receipt of same, pursuant to N.J.S.A. 40A:60-5(d). If the Mayor fails to return this Ordinance with either his approval or objection to same within ten (10) days after it has been presented to him, then this Ordinance shall be deemed approved; and

BE IT FURTHER ORDAINED by the Council of the Borough of Watchung that this Ordinance shall take effect upon final passage and publication according to law; and approval by the Mayor pursuant to N.J.S.A. 40A:60-5(d).

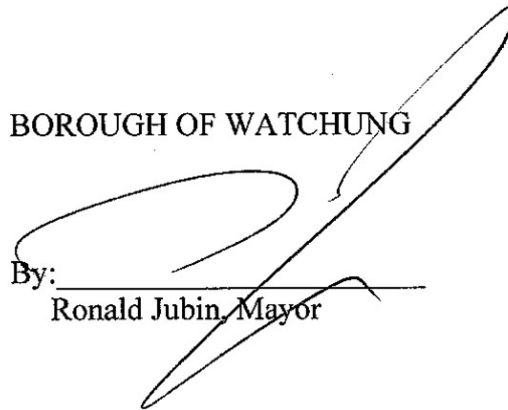
INTRODUCED BY: GIBBS
PASSED: APRIL 18, 2024
PUBLISHED: APRIL 25, 2024
ADOPTED: MAY 2, 2024
CC: CODE, COURTS,
CONSTRUCTION, ENG,

ATTEST:



Edith Gil, Borough Clerk

BOROUGH OF WATCHUNG

By: 

Ronald Jubin, Mayor