

## CHAPTER 65 EXCAVATIONS AND FILLS

- 65.010. Intent
- 65.020. Definitions
- 65.030. Scope
- 65.040. Excavations; Permit Required
- 65.050. Prohibited Excavations
- 65.060. Fills; Permit Required
- 65.070. Prohibited Fills; Particular Standards
- 65.080. Alternatives
- 65.090. Surface and Subsurface Drainage
- 65.100. Inspections
- 65.110. Permit Issuance
- 65.120. Term and Termination of Permit
- 65.130. Suspension or Revocation of Permit; Appeal
- 65.140. Scope of Work Authorized by Permit
- 65.150. Plan Review and Permit Fees
- 65.160. Appeals
- 65.990. Violations

### EXCAVATIONS AND FILLS

**65.010. Intent.** It is the intent of this chapter to insure that any excavation or fill adjacent to public right-of-way or within a public easement, designated waterway, or floodplain overlay zone:

- (a) Creates no imminent danger to public safety or public facilities; and
- (b) Does not create a public nuisance known to common law or in equity jurisprudence. (Ord No. 69-79; Ord No. 79-88)

**65.020. Definitions.** Except as the context otherwise specifically requires, as used in this Chapter:

- (a) Adjacent or adjoining means within 25 feet horizontally from the edge of the easement or right-of-way described or a distance sufficient to protect the stability of a slope supporting a public facility whichever is greater.
- (b) Approved means having the approval of the Director.
- (c) Approved discharge point means a gutter, ditch, or receptacle approved by the director of public works for the removal of storm water.
- (d) Backfill means the replacement of removed earth to its original grade.
- (e) Director means the Director of Public Works, or the Director's designee.
- (f) Drainage course means any land surface, ditch, or other land feature which serves as a course for the transmission of surface and storm water.
- (g) Excavation means the mechanical disturbance or removal of earth material.
- (h) Fill means the deposit of earth placed by artificial means.
- (i) Floodplain has the meaning given in SRC Chapter 601.
- (j) Qualified engineer means an engineer licensed in Oregon who, in the judgment of the director, possesses the knowledge, experience, and ability to successfully design and oversee a project involving excavations or fills regulated by this chapter.
- (k) Waterway means any perennial river, stream, or creek within the City of Salem designated by the Director. (Ord No. 69-79; Ord No. 95-79; Ord No. 186-82; Ord No. 79-88; Ord No. 85-92; Ord 31-13)

**65.030. Scope.** The scope of this chapter shall include the following items as they relate to excavations and fills regulated by this chapter:

- (a) Under what circumstances permits are required and specific exclusions;
- (b) Limitations imposed on excavations and fills;
- (c) Surface and subsurface water drainage;
- (d) Inspection of excavation and fill work before, during, and after completion; and
- (e) Alternatives to the limitations set forth in this chapter. (Ord No. 69-79; Ord No. 79-88)

**65.040. Excavations; Permit Required.** Permits shall be required and obtained from the director for any excavation work adjoining a public right-of-way or adjoining or within an easement (or future right-of-way or easement) or within or adjoining a designated waterway or within a floodplain overlay zone. (Ord No. 69-79; Ord No. 79-88)

**65.050. Prohibited Excavations.**

(a) Except as provided in this subsection and in SRC 65.080, no excavation shall leave a cut slope greater than two horizontal to one vertical.

EXCEPTION: Excavations may exceed this limitation when they are in conjunction with a building permit and the final grade after backfill will not exceed a 2:1 slope.

(b) Excavation within any recorded utility easement is prohibited without 48-hour notice to the utilities holding the easement and the director of public works of the City of Salem.

(c) Excavations, other than sand and gravel mining under a valid conditional use permit, are prohibited in floodplain overlay zones and waterways, except as provided in SRC 65.080 or when such excavations are done under a permit issued by the Oregon Division of State Lands. (Ord No. 69-79; Ord No. 79-88)

**65.060. Fills; Permit Required.** A permit shall be required for the placement of any fill material adjoining a public right-of-way or easement (or future public right-of-way or easement or within or adjacent to a designated waterway or within a floodplain overlay zone). (Ord No. 69-79; Ord No. 79-88)

**65.070. Prohibited Fills; Particular Standards.**

(a) No fill shall obstruct a natural drainage course unless provisions for an alternative drainage method are made and approved by the Oregon Division of State Lands and the Director.

(b) No fill shall be placed in a recorded or platted easement designated for public utilities without consent of the easement holder or, in the case of platted easements, the Director.

(c) Fills are prohibited in floodplain overlay zones and waterways, except as provided in SRC 65.080, SRC Chapter 601, or when such fills are placed under a permit issued by the Oregon Division of State Lands. (Ord No. 69-79; Ord No. 79-88; Ord No. 31-13)

**65.080. Alternatives.** The limitations imposed in SRC 65.050 and 65.070 may be varied by the director if a qualified engineer designs and oversees the prescribed work and provides the director with all supportive data necessary to establish to his satisfaction that the alternative design provides equal or better safety, durability, and protection of adjacent property than compliance with the standards of SRC 65.050 and 65.070. (Ord No. 69-79; Ord No. 79-88)

**65.090. Surface and Subsurface Drainage.** No excavation or fill shall create a slope causing surface drainage to flow over adjacent public or private property in a volume or location materially different from that which existed before the excavation or fill. Surface and subsurface drainage caused or affected by changing of grade or uncovering subsurface sources such as springs shall be collected by

an approved means and carried to an approved discharge point. (Ord No. 69-79)

**65.100. Inspections.** The director shall be notified at least 24 hours, but not more than 72 hours prior to the commencement of any excavation or fill work requiring a permit under 65.040 or 65.060. Inspection may occur at any time throughout the project. A work schedule may be required at the discretion of the director when notice of such requirement is given at the time of the permit issuance. A final inspection is required of all fill work and an approved set of plans shall be provided to the inspector. (Ord No. 69-79; Ord No. 79-88)

**65.110. Permit Issuance.** An applicant will be required to complete an excavation and fill permit application provided by the director. The form shall disclose or be accompanied by the following information:

- (a) Identification of work as excavation or fill.
- (b) Legal description of property involved.
- (c) Identification of soil type if soil is to be removed from one location and placed in fills at another location.
- (d) Each application for a permit under this section shall be accompanied by two sets of drawings. The minimum required shall be a plan view of the property drawn to suitable scale with the following:
  - (1) Lot lines shown and their dimensions given.
  - (2) North arrow.
  - (3) Street and curb line locations and elevations (if applicable).
  - (4) Both existing and final grades depicted by contour lines at two-foot intervals. Contours shall not be interpolated from U.S.G.S. contour maps.
  - (5) Intended method of proper storm water drainage (if applicable).
  - (6) Recorded easement and right-of-way locations.
- (e) The director may require additional information on the plan view or require cross-section views. In addition, the director may require additional data or studies necessary to evaluate the impact of the proposed work; and, in geologically hazardous areas, floodplain overlay zone or other unstable areas, may require a qualified engineer or engineering geologist's study and report, and may require the permittee to comply with any of the recommendations therein as a condition of the permit.
- (f) The director may require information such as the name and address of the permittee, property owner, owner's engineer, contractor, and other persons associated with the work.
- (g) The application shall be accompanied by the written concurrence, in recordable form, of the holders of any private easements and rights-of-way affected by the proposed excavation or fill.
- (h) The director shall either issue or deny the permit, or notify the applicant that additional information is required pursuant to subsection (e) of this section. In the event that additional information is required, the director shall either issue or deny the permit, or notify the applicant of what additional time will be necessary to review and evaluate the additional information submitted.
- (i) In the event a permit is denied, the director shall furnish the applicant with a written statement of the reasons therefor. (Ord No. 69-79; Ord No. 79-88)

**65.120. Term and Termination of Permit.** Every permit issued by the director under the provisions of this chapter shall expire by limitation and become null and void if the work authorized by such permit is not commenced within 180 days from the date of such permit, or if the work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced a new permit shall be obtained and the fee therefor shall

be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans for such work; and provided, further, that such suspension or abandonment has not exceeded one year. (Ord No. 69-79; Ord No. 79-88)

**65.130. Suspension or Revocation of Permit; Appeal.** The director may, in writing, suspend or revoke a permit issued under the provisions of this chapter whenever it appears that:

- (a) The permit was issued in error, and the applicant was not, in fact, on the basis of his application, entitled to the permit;
- (b) The permit was issued on the basis of incorrect, incomplete, or misleading information supplied by the applicant;
- (c) The work authorized by the permit is in violation of any applicable law or ordinance, including any provision requiring the applicant to obtain a license, registration, or additional permit; or
- (d) The work being done under the permit is not in accordance with the approved plans, or is beyond the scope of work authorized by the permit as provided in SRC 65.140. (Ord No. 69-79; Ord No. 79-88)

**65.140. Scope of Work Authorized by Permit.**

- (a) The issuance of a permit under the provisions of this chapter shall be held to authorize work only in accordance with the provisions of this chapter, the approved plans, and work necessarily implied therefrom.
- (b) The issuance of such a permit shall not be construed to be a permit for or approval of any violation of the provisions of this chapter, or any other applicable law or ordinance. The issuance of a permit based on submitted plans shall not thereafter prevent the director from requiring the correction of errors or apparent violations contained therein, or from preventing operations being carried on thereunder when in violation of any applicable law or ordinance. (Ord No. 69-79; Ord No. 79-88)

**65.150. Plan Review and Permit Fees.** Every application for a plan review and for a permit required by this chapter shall be accompanied by a fee as prescribed by resolution of the common council. (Ord No. 69-79; Ord No. 51-91)

**65.160. Appeals.** Any person aggrieved by an action of the Director denying a permit, imposing conditions on a permit, revoking or suspending a permit, or disapproving an alternative offered pursuant to SRC 65.080, may appeal such action to Hearings Officer, in the manner provided in SRC Chapter 20J. (Ord No. 69-79; Ord No. 79-88; Ord No. 31-13)

**65.990. Violations.** It shall be unlawful for any person to engage in, cause, suffer, or permit any work for which a permit is required under the provisions of this chapter without first obtaining such a permit, or while such permit is suspended or revoked. Violation of this section is an infraction. (Ord No. 69-79; Ord No. 193-79)