

ORDINANCE NO. 3/5

*4/12/49 - Title City
6/14/49 - second in full.*

AN ORDINANCE REGULATING THE MAKING OF EXCAVATIONS OTHER THAN IN PUBLIC STREETS, PROVIDING FOR THE ISSUANCE OF PERMITS TO EXCAVATE, FOR INVESTIGATION OF PROPOSED EXCAVATIONS, AND FOR PRESCRIBING THE CONDITIONS UNDER WHICH EXCAVATIONS MAY BE MADE, AND PROVIDING PENALTIES FOR THE VIOLATION HEREOF.

The City Council of the Town of San Anselmo does ordain as follows:

Section 1. EXCAVATIONS FOR WHICH A PERMIT IS REQUIRED. It shall be unlawful for any person to make, or cause or permit to be made, any excavation in or under the surface of any land, public or private, in the Town of San Anselmo, without first obtaining a permit so to do, in the manner hereinafter provided, or in violation of any of the terms or conditions of such permit; provided, however, that no permit shall be required for grading in subdivisions according to plans which have been approved by the City Council, or for excavations by any public utility for the installation, operation, inspection, repair or replacement of any of its facilities, or for the grading of any parcel of land where no cut bank is left standing more than four (4) feet in height and wherein less than 50 cubic yards of earth is removed or otherwise disturbed.

Section 2. PROCEDURE ON APPLICATION FOR PERMIT. The application for a permit referred to hereinabove shall be filed in duplicate with the City Clerk of the Town of San Anselmo, who shall forthwith deliver one copy thereof to the Building Inspector. The application shall set forth the following information:

(a) A full identification, and the residence and business address of the applicant and the owner or owners of the land on which the excavation is proposed to be made. If the applicant is the agent or employee of any person for whose benefit the permit is asked, this fact, with a full identification of such person and his business and residence address, shall be stated in the application.

(b) A complete description and location of the property on which the excavation is to be made.

(c) The exact nature of the proposed excavation and material to be removed, and an estimate of the approximate number of cubic yards to be removed.

(d) A statement of the manner in which it is proposed to excavate and remove the excavated materials, including the slope of the sides and the level of the floor, the kind of equipment proposed to be used in making such excavation and removing such materials, and whether the material is to be removed for sale or for delivery at some other place in fulfillment of an agreement to provide filling material at such other place.

(e) The time within which such excavation is to be commenced after the granting of such permit, and the time when it is expected to be completed.

(f) An agreement on the part of applicant to indemnify the Town of San Anselmo against any and all damages which may arise out of or by virtue of any such excavation, including any damage to the public streets, and the further agreement that if any dirt, rocks or debris from such excavation should by rain water or otherwise be carried to public streets, that the same should be forthwith cleaned and removed from said public streets, and that said agreement shall be effective for a period of two (2) years from and after the date of completion of the excavation.

Section 3. PAYMENT OF FEES. At the time of filing the application the applicant shall pay a filing fee of two dollars to cover the cost of the City's investigation of said application.. Applicant shall pay an additional fee to cover the expense of inspection and examination of the progress of the excavation at the rate of two dollars (\$2.00) per inspection.

Section 4. INVESTIGATION, RECOMMENDATION AND APPEAL. Immediately upon filing the application, the Building Inspector shall cause an investigation to be made within ten (10) days from the filing thereof and shall either grant the permit with or without modification, and upon such condition or conditions expressed in the permit as he shall deem necessary to carry out the provisions of this ordinance, or deny it in whole or in part.

Should the Building Inspector modify or deny the application in whole or in part; he shall immediately notify the applicant in writing of such modification or denial and state his reasons therefor. In such event, the applicant may file with the City Clerk a written notice of appeal to the City Council and the City Clerk must set such appeal for hearing before the City Council on the first succeeding regular meeting after the date of filing such appeal. At

the time of filing such appeal, the applicant shall also file with the City Clerk a list of names and addresses of all owners of property within a radius of 300 feet of the proposed boundaries of the excavation. The City Clerk shall mail notice of such hearing at least ten days prior thereto to all of such property owners. The hearings may be continued from time to time. At the conclusion of the hearing, the Council shall make its findings and may grant or deny the application or may modify it in its discretion. The findings and order of the Council shall be final and conclusive and no similar application may be made within a period of one year after such findings and order have been made.

Section 5. CONSIDERATION BY THE BUILDING INSPECTOR. The Building Inspector, in granting in whole or in part, or in granting on conditions expressed in the permit, or in denying any application for a permit to excavate, shall take into consideration all pertinent matters concerning the proposed excavation which may affect the public health, safety and general welfare in the district in which the excavation is proposed to be made, and shall exercise a reasonable and sound discretion in the premises. The application shall be denied if it shall appear to the Building Inspector from the investigation that such excavation would remove the lateral and subjacent support of the adjacent land, or would result in a dangerous topographic condition, or result in seepage or slides, or would improperly divert the flow of drainage waters, or would create or increase nuisance dangerous to public safety, or would otherwise in any manner endanger the public health, or safety or be detrimental to the public welfare, despite all precautions which the applicant is willing, ready and able to take.

Section 6. BOND AND CERTIFICATE OF INSURANCE. The Building Inspector may require as a condition of the granting of any permit hereunder, that the applicant deposit with the City Clerk a surety bond, in an amount to be fixed by the Building Inspector not exceeding the sum of Fifty Thousand (\$50,000.00) Dollars inuring to the benefit of the Town of San Anselmo and of the general public, guaranteeing that the applicant will faithfully perform all of the conditions and requirements specified in the permit. Such surety bond shall

be executed by sureties approved by the City Clerk as being sufficient in number and in financial responsibility. The Building Inspector may also require, as a condition to the granting of any such permit, that the applicant deposit with the City Clerk a certificate of a responsible insurance company, showing that the applicant is insured in an amount not less than a sum certain, to be fixed by the Building Inspector, not to exceed One Hundred Thousand (\$100,000.00) Dollars, against any loss or damage to persons or property arising directly or indirectly from the operations of the applicant or any person acting in his behalf in carrying on any operation connected directly or indirectly with the making of the excavation or the removal of the excavated materials for which such permit is issued.

Section 7. PREVENTING COLLAPSE OF SIDES OF EXCAVATIONS. In order to minimize the danger of collapse of adjacent lands into the excavation, the Building Inspector may specify in the permit the permissible angle of slope of the sides of the excavation. No side of such excavation may be made steeper at any point than the angle so specified in the permit, unless supported by a substantial, permanent retaining wall of sufficient strength to permanently support such side or sides of the excavation, and constructed in accordance with a permit so to do, as provided herein. Such retaining wall shall be of concrete, brick, stone, or other material not subject to deterioration, and shall extend the full height and length of each side of such excavation which is at any point made steeper in slope than the angle specified in the permit to excavate. If the applicant desires to cut any side of the excavation steeper than the angle specified in the permit to excavate, he shall so state in a supplemental application, and shall file therewith, in duplicate, detailed plans and specifications for said retaining wall. Upon approval of such plans and specifications by the Building Inspector, and the issuance of a building permit therefor, the Building Inspector shall include in the permit to excavate, or in a supplemental permit to excavate, a provision allowing the sides of such excavation to be made steeper than the angle of slope specified therein, if supported by a retaining wall constructed according to said plans and specifications.

Section 8. OTHER CONDITIONS AND REQUIREMENTS. Any person to whom a permit to excavate is issued shall also comply with the following requirements:

(a) The bottom of such excavation shall not be made lower than the level specified in such permit to excavate or in a supplemental permit to excavate.

(b) If, in the opinion of the Building Inspector, any such excavation will create or aggravate a dangerous condition if left open, such excavation shall be enclosed by a fence sufficiently high, tight and strong to eliminate such dangerous condition.

(c) Any rock, earth, or other material which may be dropped or deposited on any public street or place from any vehicle transporting such materials from any such excavation shall be immediately removed in a manner and to an extent satisfactory to the Superintendent of Streets, at the expense of the person to whom the permit to excavate was issued.

(d) The applicant shall agree to save, indemnify and keep harmless the Town of San Anselmo against all liabilities, judgments, costs and expenses which may in any wise accrue against said town in consequence of the granting of this permit.

Section 9. OTHER RESTRICTIONS. It shall be unlawful for any person upon making any excavation for which a permit has been granted or should have been granted, to deposit any loose dirt, rock or gravel in such fashion that the same will roll, slide or be carried by storm waters into or upon any public street in the Town of San Anselmo.

Section 10. REVOCATION OR SUSPENSION OF PERMIT. Any permit granted hereunder may be revoked or suspended by the Building Inspector, as in his discretion may seem reasonable and just, for any reason for which the issuance of such permit might lawfully be denied, or for any failure to comply with any of the terms of this ordinance or of such permit. Revocation of such permit shall be made only upon a hearing granted to the person to whom such permit was issued, held before the Building Inspector, after five (5) days' notice to the person to whom the permit was issued. Written notice, deposited in the United States mail, addressed to such person at his business or residence address as stated in his application for such permit, shall be sufficient notice. In the

event of such revocation or suspension the applicant may apply for hearing before the City Council in the manner prescribed in Section 4 above. If, in the opinion of the Building Inspector, public health, safety or welfare requires it, the Building Inspector may suspend any permit granted hereunder, pending the hearing for the revocation of such permit. Such revocation or suspension shall be in addition to any other penalties provided in this ordinance.

Section 11. EXPIRATION OF PERMITS; ISSUANCE OF SUPPLEMENTAL PERMITS.

In the event that any excavation for which a permit has been granted hereunder is not commenced within six (6) months from the date of issuance of said permit, or in the event that work on said excavation is at any time abandoned for a period of six (6) consecutive months, said permit shall automatically expire, without notice, and no further excavation shall be made; however, the conditions expressed in said permit shall remain binding upon the person to whom such a permit was issued, and all legal and equitable remedies shall be available against him for any breach thereof. When the amount of material excavated equals the number of cubic yards which said permit authorizes to be excavated, no further excavation may be made until a new or a supplemental permit to excavate has been issued. In either event, an application for a supplemental permit to continue or enlarge the excavation may be filed, setting forth all the information required in the original application; no further filing fee shall be required, but if such supplemental permit is issued, the applicant shall pay an additional inspection fee at the rate of Two (\$2.00) Dollars per inspection.

Section 12. PERMIT DOES NOT EXCUSE COMPLIANCE WITH OTHER ORDINANCES.

Nothing in this ordinance, or in any permit granted hereunder, shall be deemed to authorize the doing or the commission of any act contrary to any term or provision of any other ordinance of this Town, or without any license or permit required by any other ordinance of this Town.

Section 13. DEFINITIONS. The term "person", as used in this ordinance, shall include natural persons, corporations, partnerships, and all associations of persons of every kind. The singular includes the plural and the plural the singular.

Section 14. PENALTIES. Any person who shall violate any term or provision of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment not more than six (6) months, or by both such fine and imprisonment. Nothing herein contained shall be construed to limit the power of the Town of San Anselmo to use all other legal or equitable remedies against any person who shall violate any term or provision of this ordinance.

Section 15. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid as to any person or under any circumstances, by the decision of any court of competent jurisdiction, such decision shall not affect the validity of any of the remaining portions of this ordinance. The City Council of the Town of San Anselmo hereby declares that it would have adopted this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases thereof may be adjudged to be invalid or unconstitutional.

Section 16. PASSAGE OF ORDINANCE REQUIRED FOR PUBLIC SAFETY. This ordinance is hereby declared to be an urgency measure necessary for the immediate preservation of the public peace, health and safety, the urgency of which is stated as follows: That in recent years many excavations have been made in the Town of San Anselmo without regulation or supervision, and during the rainy seasons of each year dirt, gravel and rock from such excavations have been carried upon the public streets of the Town of San Anselmo, causing great damage and creating an unsafe condition in said streets. That further excavations are in process and in contemplation, and it is necessary to protect the people of the Town of San Anselmo that this ordinance be adopted and become effective immediately.

Section 17. PASSAGE AND ADOPTION--WHEN EFFECTIVE. This ordinance shall become effective immediately upon its final passage and adoption, and shall thereafter within fifteen (15) days, be posted in the following three (3) public places in the Town of San Anselmo, County of Marin, State of

California, to-wit:

- (a)
- (b)
- (c)

which said public places are hereby designated for that purpose.

The foregoing ordinance was duly and regularly introduced at a regular meeting of the City Council of the Town of San Anselmo held in said town on the 12 day of April, 1949, and was thereafter, at a Regular meeting held in the Town of San Anselmo on the 14 day of June, 1949, duly passed and adopted by the following

vote:

AYES:	COUNCILMEN	<u>BOOTH-MILLER-ALLEN-LOVE-SMITH</u>
NOES:	COUNCILMEN	<u>None</u>
ABSENT:	COUNCILMEN	<u>None</u>

Arthur W. Smith
Mayor of the Town of San Anselmo

ATTEST:

[Signature]
Clerk of the Town of San Anselmo