

**ORDINANCE NO. 1137**

**AN ORDINANCE OF THE TOWN OF SAN ANSELMO AMENDING CHAPTER 18 TO TITLE 9 OF THE TOWN OF SAN ANSELMO MUNICIPAL CODE, "EXCAVATION, GRADING, AND EROSION CONTROL"**

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

**SECTION 1.** The project is exempt from CEQA because it falls within the so called "common sense" exemption pursuant to CEQA Guidelines section 15061(b)(3) which indicates that CEQA only applies to projects that have a significant effect on the environment. Projects that fall under this ordinance will either continue to have environmental review as discretionary projects or are the types of projects typically found to be exempt from the California Environmental Quality Act (CEQA) as the types of projects which the Secretary of the Resources Agency has determined do not usually have a significant effect on the environment under CEQA Guidelines 15301(c) (minor alteration of existing public facilities involving negligible or no expansion of use) or CEQA Guideline 15269 (actions necessary to prevent or mitigate an emergency).

**SECTION 2.** Title 9 (Building Regulations), Chapter 18 (Excavation, Grading and Erosion Control) is deleted and replaced with the following:

**9-18.01 - Purpose**

The purpose of this Chapter is to establish controls on excavation, grading, and fill within the Town. The controls are established for reasons of safety, erosion control, sound soil engineering practice, aesthetics, environmental protection, and water quality protection.

**9-18.02 - Definitions**

(a) For the purposes of this Chapter, the following definitions shall apply:

- i. Excavation - The cutting, grading, digging, or removal of earth or natural materials in a manner as to significantly change natural or existing terrain.
- ii. Fill - The placing, carrying, or depositing of earth or natural materials in a manner as to significantly change the natural or existing terrain.
- iii. Grading - An excavation, fill, or any combination thereof.

**9-18.03 - Permit Required**

It is unlawful for any person to make, cause, or permit to be made or caused, any excavation, fill, or grading in the Town, except in accordance with a permit issued as specified in this Chapter.

**9-18.04 - Exceptions to Permit Requirement.**

The following excavation, grading or fill activities are exempt from the provisions of this section and may be conducted without obtaining a grading permit, provided that these activities

shall still be subject to the best management practices for construction grading and drainage:

- (a) Where less than twenty-five cubic yards of earth or material are moved.
- (b) Work within a public right-of-way where authorized by a valid encroachment permit.
- (c) Activity necessary to protect life or property, or to implement erosion prevention or control measures, where a situation exists that requires immediate action; provided that only the volume of construction grading necessary to abate an imminent hazard may be performed prior to obtaining a grading permit. The person performing the emergency grading or the property owner shall notify the Director and provide evidence acceptable to the Director of the scope and necessity of the emergency construction grading on or before the next business day after the onset of the emergency situation. The person performing the emergency grading or the property owner shall apply for a grading permit within ten (10) days after the commencement of the emergency grading. The Director may order emergency grading stopped or restricted in scope based upon the nature of the emergency.
- (d) Excavations and fills for pipelines, routine pipeline maintenance practices, or installation, testing, maintenance, or replacement of utility connections, distribution or transmission systems, or telecommunication facilities, on a single site or within a public right-of-way, where the ground surface is restored to its previous topographic condition within sixty (60) days after the completion of the work.
- (e) Public projects where a public agency takes full responsibility for the work.

#### 9-18.05 - Application Requirements

- (a) An application for a permit to excavate, grade, or fill must be signed by the owner of the land upon which the fill or excavation is to be made or by his or her authorized agent, and filed with the Director of Public Works for action by him or her or his or her deputy.
- (b) The application shall set forth the following:
  - i. The name, identity and address of the owner;
  - ii. The name, identity and address of the contractor or other person who is to perform the work of excavation, grading, or fill;
  - iii. A description and the location of the property involved;
  - iv. A statement of the exact nature of the proposed excavation, grading, or fill, indicating the slope of the sides and the level of the finished surface, the type of earth or material to be moved, the method, manner and equipment to be used in the accomplishment of the work and the disposition of material of the site;
  - v. A proposed time of commencement of work after issuance of the permit, and estimated date of completion;

- vi. Detailed temporary and permanent erosion control plans, if required, containing measures necessary to offset any adverse impact resulting from the proposed excavation, grading, or fill;
  - vii. An agreement on the part of the applicant to indemnify, release, defend and hold harmless the Town, its officers, agents, employees, and volunteers, against any claim, demand, suit, judgment, loss, liability or expense of any kind, attorney's fees and administrative costs to the extent caused by any excavation, grading, or fill, undertaken by the applicant or any of the applicant's officers, agents, and/or employees; and
  - viii. A description of all easement rights in the land to be excavated, graded, or filled, with names and addresses of each owner of any rights in and to the land, and proof of service upon each of the owners of notice of pendency of application for excavation, grading, or fill.
- (c) At the time of filing the application for a permit to excavate, grade, or fill, the applicant shall pay a filing fee in accordance with the schedule of fees fixed and adopted from time to time by resolution of the Town Council.

#### 9-18.06 - Permit Issuance Criteria

- (a) Before final action is taken by the Director of Public Works on any application for a permit to excavate or fill, he or she shall consider all pertinent matters concerning the proposed excavation or fill and its possible effect upon the public health, safety and general welfare, and shall exercise reasonable and sound discretion in deciding whether to issue a permit.
  - i. The Director of Public Works shall have the authority to require reports and/or inspections by a registered civil or geotechnical engineer if said reports are deemed necessary for analyzing an application or for monitoring work being performed pursuant to an approved application. Situations where reports may be required include, but are in no way limited to, excessive slope, unstable soil conditions, or other unique site conditions. The cost of said reports and/or inspections shall be borne by the applicant.
- (b) An application shall be denied if it appears to the Director of Public Works from his or her investigation that the excavation, grading, or fill would:
  - i. Remove the lateral or subjacent support of the adjacent land;
  - ii. Result in a dangerous topographic condition;
  - iii. Cause seepage or slides;
  - iv. Improperly divert the flow of above-ground or subterranean drainage waters;
  - v. Violate the Town's General Plan or Zoning Codes;

- vi. Be more than is required to allow the property owner reasonably beneficial use of his or her property;
- vii. Create a nuisance; or
- viii. Otherwise in any manner endanger the health, safety or property of any other person, despite all precautions which the applicant might be ready, willing and able to take.

9-18.07 - Permit Issuance and Right to Appeal

The Director of Public Works shall notify the applicant of his or her action on the application and, if the applicant is dissatisfied therewith, he or she may appeal to the Town Council by filing an appeal in accordance with 1-4.01 et. seq. of this Code.

9-18.08 - Requirement of Planning Commission Approval

- (a) Notwithstanding any of the provisions of this Chapter, no permit to excavate, grade or fill shall be granted, where the application shows the excavation, grade or fill to involve the movement of more than 100 cubic yards of material, unless and until approval of the application is given by action of the Planning Commission of the Town after a public meeting noticed in compliance with section 10-3.1602 (Notice of public hearings and meetings).
- (b) The applicant shall provide the following information to the Planning Commission:
  - i. Geotechnical analysis;
  - ii. Site plan prepared by a licensed surveyor, architect, or engineer providing estimated quantities and locations of cut and fill and depicting existing and final elevations;
  - iii. Landscape plan that will comply with the town Water Efficient Landscape requirements and any vegetation management requirements of the Ross Valley Fire Department; and
  - iv. Any fees, applications or documents necessary for any environmental review required under the California Environmental Quality Act.
- (c) Upon receipt, shall be referred to the Planning Commission for investigation and action at a public meeting, and before action of approval may be given, the Planning Commission must find:
  - i. The health, welfare and safety of the public will not be adversely affected;
  - ii. Adjacent properties are adequately protected by project investigation and design from geologic hazards as a result of the work;
  - iii. Adjacent properties are adequately protected by project design from drainage and

erosion problems as a result of the work;

- iv. The amount of excavation, grading, or fill proposed is not more than is required to allow the property owner reasonable beneficial use of his or her property;
  - v. The visual and scenic enjoyment of the area by others will not be unreasonably adversely affected by the project;
  - vi. Natural landscaping will not be removed by the project more than is necessary and that any removed vegetation will be replanted in a timely manner;
  - vii. The time of year during which construction will take place is such that work will not result in excessive siltation from storm runoff nor prolonged exposure of unstable excavated slopes;
  - viii. The proposed excavation, grading, or fill does not violate the Town's General Plan or zoning Codes; and
  - ix. Sufficient erosion control measures will be employed to offset any impact by the proposed excavation, grading, or fill.
- (d) Exemptions from Planning Commission review. The following grading activities are exempt from the provisions of this section requiring Planning Commission approval, but a grading permit and public notice is required:
- i. Environmental remediation ordered or approved by a public agency exercising regulatory jurisdiction over a site contaminated with hazardous materials.
  - ii. Grading associated with a landslide repair or creek bank failure.

The Public Works Director or his/her designee shall mail or deliver a notice describing the project at least ten (10) days prior to the issuance of the grading permit to all owners of real property as shown on the latest equalized assessment roll within three hundred feet of the real property that is the subject of the permit.

#### 9-18.09 - Security and Insurance

- (a) The Town may require as a condition of the granting of any permit hereunder, that the applicant deposit with the Town a performance bond, in an amount deemed sufficient and necessary by the Director of Public Works, inuring to the benefit of the Town, guaranteeing that the applicant will faithfully perform all of the conditions and requirements specified in the permit. The performance bond shall be executed by sureties approved by the Town as being sufficient in number and financial responsibility.
- (b) The Town may also require as a condition to the granting of a permit that the applicant deposit with the Town Clerk a certificate of a responsible insurance company showing that the applicant is insured in an amount to be fixed by The Town 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 fill, grading, or excavation, or the removal of the excavated materials for which the permit is issued.

#### 9-18.10 - Rainy Season Permits

- (a) Unless the Director of Public Works determines that imminent public or private safety concerns exist, or that grounds for an exception pursuant to subsection (c) of this Section apply, permits to excavate, grade; or fill shall not be issued for activity that will commence in, or continue into, the rainy season (October 15th to April 15th). Special authorization in the form of a "Rainy Season Excavation, Grading, or Fill Permit" must be received from the Director of Public Works prior to any excavation, fill, or grading activity during the rainy season. The permit application must be supported by facts showing that public or private safety requires that the proposed work commence or continue during the rainy season. If there appears to be a likelihood of unavoidable damage from rainy season excavation, fill, or grading, the Director of Public Works may refuse to issue a permit, may revoke a permit already issued, or temporarily suspend excavation, fill, or grading operations.
- (b) Regardless of whether excavation, fill, or grading is or is not permitted during the period from October 15th to April 15th, all required temporary and/or permanent erosion control measures shall be in place prior to October 15th.
- (c) The Public Works Director shall have the authority to allow excavation, fill, or grading activity during the rainy season if said activity is not likely to cause environmental damage or erosion due to the nature of the activity to be undertaken. Examples may include excavation, fill, or grading activity on relatively flat lots, or excavation, fill, or grading activity in already covered understory areas.

#### 9-18.11- Slope and Shoring

- (a) A slope of an excavation, fill, or grading shall not be steeper than two horizontal to one vertical. The Director of Public Works may specify in a permit granted pursuant to this Chapter the permissible angle of slope of the sides of the excavation, fill, or grading be flatter than two horizontal to one vertical if soil conditions appear to be unfavorable, or if an adjacent foundation or structure may be endangered. No side of the excavation, fill, or grading shall 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 the sides of the excavation, fill, or grading and constructed in accordance with a permit to do so, including an geotechnical analysis performed by a licensed geotechnical engineer if applicable, as provided in this Chapter.
  - i. If the applicant desires to make any side of the excavation, fill, or grading steeper than the angle specified in the permit, he or she shall so state in a supplemental application, and shall file therewith, in duplicate, detailed plans and specifications for the retaining wall.
    - 1. The retaining wall, if built, shall satisfy the requirements of the Building Code of the Town and the requirements of this section.

2. The retaining wall shall be of concrete, masonry, stone, pressure treated wood, or other material not subject to rapid deterioration, and shall extend the full height and length of each side of the excavation or fill which is at any point made steeper in slope than the angle specified in the permit to excavate or fill.
3. The Director of Public Works may require that the applicant support the supplemental application with reports from engineering professionals, including, but not limited to, soils, geotechnical, and structural engineering reports.

#### 9-18.12 - Permit Suspension or Revocation

- (a) Any permit granted under this chapter may be revoked or suspended by the Director of Public Works, for any reason for which the issuance of the permit might lawfully be denied, for any failure to comply with any of the terms of this Chapter, for any failure to comply with any of the terms of the permit, or violation of any applicable law.
  - i. Revocation of the permit shall be made only upon a hearing granted to the person to whom the permit was issued, held before the Director of Public Works.
  - ii. Written notice, deposited in the United States mail at least five days before the date set for hearing, addressed to the person at his or her business or residence address as stated in his or her application for the permit, shall be sufficient notice.
- (b) If, in the opinion of the Director of Public Works, the public health, safety or welfare requires it, the Director of Public Works may suspend any permit granted under this chapter, pending-a hearing for the revocation of the permit.
- (c) The revocation or suspension shall be in addition to any other penalties provided in this code.
- (d) In the event of the revocation or suspension, an applicant may appeal to the Town Council by filing an appeal in accordance with 1-4.01 et. seq. of this Code.

#### 9-18.13 - Permit Expiration

Permits issued pursuant to this chapter shall be valid for six months. Permits may be extended no more than twice, for up to six additional months for each extension, so long as the Director of Public Works can still make all of the necessary findings for issuance.

#### 9-18.14 Fines and penalties

Any person, firm, corporation or agency acting as principal agent, employee or otherwise, who fails to comply with the provisions of this Chapter shall be guilty of a misdemeanor and shall be subject to a fine of no less than one hundred dollars and not more than five hundred dollars or by imprisonment in the county jail for not more than thirty days, or both, for each separate offense. Each day any violation of this Chapter shall continue, shall constitute a separate

offense.

#### 9-18.15 Additional Conditions and Requirements.

Any person to whom a permit is issued under this Chapter shall also comply with the following requirements:

- (a) The depth of the excavation shall be no lower than the level specified in the permit unless recommended by a geotechnical engineer based on field observations.
- (b) If, in the opinion of the Director of Public Works, any work performed pursuant to the permit will create or aggravate a dangerous condition if left open, the work shall be enclosed by a fence sufficiently high, tight, and strong to eliminate the dangerous condition.
- (c) Any rock, earth, or other material that is dropped or deposited on any public street or place from any vehicle transporting such materials from the work site shall be immediately removed in a manner and to an extent satisfactory to the Director of Public Works, at the expense of the person to whom the permit was issued.

SECTION 3. Severability. The Town Council hereby declares every section, paragraph, sentence, cause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 4. Inclusion in the San Anselmo Municipal Code. It is the intention of the San Anselmo Town Council that the text in Sections 2 be made a part of the San Anselmo Municipal Code and that the text may be renumbered or relettered and the word "Ordinance" may be changed to "Section", "Chapter", or such other appropriate word or phrase to accomplish this intention.

SECTION 5. Effective Date. This Ordinance shall go into effect thirty (30) days from its adoption and shall be posted or published as required by State law. This ordinance shall apply to any appeal received on or after the effective date.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the San Anselmo Town Council on August 27, 2019, and was adopted at a regular meeting of the San Anselmo Town Council on September 10, by the following vote:

AYES: Brown, Greene, Colbert, Fineman, Wright

NOES: None

ABSENT: None

ABSTAIN: None



Carla Kacmar

Carla Kacmar, Town Clerk

Matthew J. Brown

Matt Brown, Mayor