

**ARTICLE II. OBSTRUCTIONS AND EXCAVATIONS.**

**Section. 14-18. Permit for Obstructions and Excavations.**

- a. *Required; Exceptions.* No person shall obstruct any sidewalk or street, or any part thereof, or break or dig the ground of same, without first obtaining a written permit from the Board of Selectmen therefor, except in case of emergency. Officers of the town in the lawful performance of their duties and those acting under their orders are also exempted from the requirements of this section.
- b. *Bond as prerequisite.* The Board of Selectmen may require said persons to give to the town a sufficient bond to restore said street, sidewalk, or any part thereof to a condition satisfactory to them. (Bylaws, Art. 14, § 1, 11-12-40)

**Section. 14-19. Removal of Obstructions after Notice.**

A person who has placed an obstruction of any nature on any sidewalk or street of the Town without a permit from the Board of Selectmen shall remove such obstruction immediately after receiving notice from a police officer or constable of the Town or the Town Manager. (Bylaws Art. 14, § 3, 11-12-40)

**Section. 14-20. Obstructions of Sidewalks with Wares, Merchandise or Other.**

No person shall obstruct the free and convenient use by the public for travel of any sidewalk, by occupying the same with wares, merchandise or other goods or by using the same as a place of resort for amusement, recreation or business without a permit in writing signed by the Board of Selectmen. (Bylaws, Art. 14, § 12, 11-12-40)

**Section. 14-21 Earth Removal Bylaw.**

**General**

No person, or firm or corporation shall remove any soil, loam, sand, gravel, stone, or other earth material from any land in the Town without first obtaining a permit, hereinafter called a Removal Permit, from the Earth Removal Board, for the excavation or removal of more than five hundred (500) cubic yards of soil within a twelve-month period as provided in the following sections.

**Section 1. Removal Permit**

A Removal Permit shall be required under this bylaw for the removal of all forms of soil including, without limitation, sod, loam, sand, gravel, clay, peat, hardpan, rock, quarried stone or mineral products in the course of excavation, including blasting, incidental to the construction of a commercial, residential, institutional or industrial building or facility of any kind for which a building permit is required. This requirement for a Removal Permit extends also to any material

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removed for the installation of walks, driveways, parking lots, and similar appurtenances to said commercial building or facility.

### **Section 2. Subdivision**

Tentative or final approval of a subdivision shall not be construed as authorization for the removal of earth material from streets shown on the subdivision plan. Nor does it authorize any removal of earth from the premises involving topographical changes or soil-stripping or loam-stripping activities. Efforts shall be taken to maintain the continuity of the natural topography when building on any site. Cut and fill shall be avoided in all instances possible; and structures shall be designed and sited to fit naturally into the topography rather than radically altering the topography to conform to structures or other site appurtenances. Any proposed excavation shall have the necessary supporting documents that shall show the proposed amount and location of all excavation, the amount of blasting that will be required and shall designate exactly where and in what manner all said material or unused by-product material shall be deposited or stored.

### **Section 3. Exemptions**

The earth removal board may exempt the following earth removal operations from the provisions of this bylaw after the applicant has filed a statement with the board that the removal falls into one of the following categories and states the amount to be removed.

- a. Earth removal operations for any municipal or state purpose by or on behalf of the Town Millbury or any department or agency thereof of the Mass. Highway Dept.
- b. Earth removal operations in connection with the construction or improvement of a private way, including laying of municipal water lines.
- c. Excavating for swimming pools, basements, replacement of wells and septic systems.
- d. Where a special Earth Removal Permit has been granted under Sec. 42 of the Millbury Zoning Bylaws, it shall remain in effect until the expiration date, at which time the applicant will have to re-apply according to the Earth Removal Bylaw.
- e. Earth Removal operations which are customarily incidental to farming, agriculture, gardening or nursery operations.

### **Section 4. Grading**

Except in areas where terracing is used, when excavation is necessary, grading shall be done in such a way that the resulting contours follow smooth natural curves that conform to the curves of the surrounding landscape. Straight or angular slopes or cuts which interrupt natural topography shall not normally be allowed.

- a. The developer shall control erosion and sedimentation during construction. All slopes resulting from grading of street and sidewalks shall not exceed one foot (1') vertical to three feet (3') horizontal in fill; one foot (1') foot to two feet (2') cut; and 1 foot (1') to three-quarter foot (3/4') in ledge. Slope easements or retaining walls shall be employed where slopes cannot be contained within street sidelines.
- b. The entire area, except exposed ledge rock or roadways, shall be covered by no less than six inches (6") of topsoil and shall be seeded and covered with two inches (2") of hay mulch.

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- c. Topsoil shall be stripped from disturbed areas and stockpiled in an approved area and stabilized with a temporary vegetative cover if left more than fifteen (15) calendar days. Perimeter sediment controls shall be installed around stockpiled topsoil.
  
- d. A construction entrance (anti-tracking pad) shall be used to minimize off-site movement of soil by vehicles. All construction access points shall be maintained to prevent tracking or flow of sediment into roadways.
  
- f. During cold weather months, when seeding and sodding may be impractical, a anchored mulch shall be applied as approved.
  
- g. There shall be no adverse impacts to abutting properties from any change in volume of stormwater runoff resulting from earth removal including erosion, silting, flooding, sedimentation or impacts to wetlands, ground water resources or wells.
  
- h. No area shall be excavated so as to allow the accumulation of free standing water, other than as shown on plans as a detention/retention area.
  
- i. Any blasting material used will not contain perchlorate.
  
- j. A plan will be submitted for controlling dust and erosion of soil. Use of chlorides for dust control shall be prohibited within the Aquifer and Watershed Protection Overlay District (As per Section 47 of the Millbury Zoning Bylaws.)
  
- k. All loaded vehicles shall be suitably covered so as to prevent contents from spilling or blowing from the load. Any spillage that may occur on a public way is the responsibility of the permit holder, and shall be removed promptly, upon notification of same, by the Millbury Department of Public Works. If for reasons of safety, it becomes necessary for the Town to clean up and remove such spillage, the cost shall be charged to the permit holder and shall be assessed as a lien against the performance bond.
  
- l. Earth removal will be permitted Monday through Friday from 7am to 5 pm and on Saturdays from 8am to 4 pm.

### **Section 5. Application**

The application shall be accompanied by a plan showing all natural and man-made features, including wetlands, water courses, 100-year flood plain, property lines, names and addresses of all abutters if available from the Assessors, including those across any street or way, topography at two foot (2') contour level of the site and all land within one hundred feet (100') of the area of the earth moving and/or clearing activity together with any grades below or above which finish surface will now lie, and the proposed cover vegetation and trees. The application shall include a description of earth moving, renewal permits may be granted by the Board without a public hearing, however a renewal application fee will be required.

### **Section 6. Fees – Public Hearing**

The Earth Removal Board will establish reasonable fees for making an application for earth removal as well as fees to cover any expenses that may arise. Upon receipt of an application for a Removal Permit, the Earth Removal board shall appoint a time and place for a public hearing notice of which shall be mailed to the applicant and abutters and published in a newspaper, having a circulation in the Town, at least fourteen (14) days before such hearing. A public

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hearing shall be held within thirty-five (35) days of receipt of a properly submitted application. Following the close of the hearing, the Earth Removal Board shall allow twenty-one days to elapse before filing the decision with the Town Clerk. A majority vote of the Earth Removal is necessary to render a decision. Two subsequent annual renewal permits may be granted by the Earth Removal board without a public hearing, however a renewal application fee will be required.

(Bylaws, Art. 24, 5-1-2007)

**Section 7. Additional Conditions**

The Earth Removal Board may set conditions, in addition to the above, including but not limited to the duration of the permit, the hours of day during which removal or relocation may take place, and the vegetation to be planted. The Earth Removal Board may, by a majority vote, where such action is allowable by law in the public interest, and not inconsistent with the purpose and intent of this bylaw, waive strict compliance with any requirements of this bylaw and its rules and regulations.

**Section 8. Security**

As a condition of the granting of a removal permit and before any work is begun, the Board shall require security of cash, certified check or a surety company bond to the Town. The sum to be fixed by said Board (\$1,000 per acre of operation) to insure compliance with the terms, conditions, limitations and safeguards of such permit and such regulations and to indemnify the town for any harm to any public well, road, wetland or other resource caused by such removal, the removal operations, the equipment used on the premises or by ancillary activities.

**Section 9. Bylaw Construction**

This Bylaw shall not interfere or annul any zoning bylaw or other regulation which is more restrictive. Where this bylaw is more restrictive, it shall control. Adherence to Sub-division Rules and Regulations shall also be required when dealing with sub-divisions.

(Bylaws, Art. 68, 5-2-2006)

**Sections 14-22 to 14-31. Reserved**

**ARTICLE III. DEPARTMENT OF PUBLIC WORKS**

Section 14-32 In conformity with Paragraph (a) of Section 5-1 of the Millbury Town Charter, there shall be established in the Town of Millbury a Department of Public Work. The Department of Public Works shall consolidate the functions and operations of the Cemetery, Highway, Parks and Sewer Departments, and shall assume the responsibility for the management and operations of the Cemetery, Highway, Parks and Sewer Departments, under the direction of

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the Town Manager, in conformity with: (a) the policies and directives of the Board of Selectmen, acting in its capacity of the chief executive office of the municipality under Paragraph (b) of Section 3-2 of the Millbury Town Charter, (b) the policies and directives of the Boards of Cemetery Commissioners, Parks Commissioners, and Sewer Commissioners; (c) the enabling and special legislation establishing and managing the Millbury Sewer Department and Sewer Enterprise Fund, and (d) all applicable laws, rules, regulations, and local bylaws.