

## Chapter 130

### EARTH REMOVAL

**[HISTORY: Adopted by the Town Meeting of the Town of Charlton as Art. XLI of the 2005 Bylaws. Amendments noted where applicable.]**

#### GENERAL REFERENCES

Zoning — See Ch. 200.

Subdivision of land — See Ch. 210.

#### § 130-1. Definitions.

The following words used in this bylaw shall have the following meanings unless a contrary intention clearly appears:

BOARD — The Selectmen of the Town of Charlton.

EARTH — Soil, loam, sand or gravel or any combination thereof.

LOT — A parcel of land held in identical ownership throughout, including all contiguous land held in the same ownership within the Town of Charlton. Any other land held in the same ownership, but not within the Town of Charlton, shall be considered a separate parcel.

PERSON — Includes a corporation, society, association and partnership.

TOWN — The Town of Charlton.

#### § 130-2. Prohibition and exemptions.

- A. No earth shall be removed from any lot in the Town unless an earth removal permit therefor shall first have been obtained from the Board.
- B. The provisions of this section shall not apply to:
  - (1) The removal of earth in connection with the construction of or other work on a building or other structure or facilities ancillary to a building or other structure under the authority of a permit issued by any department or agency of the Town;
  - (2) The removal of earth in compliance with the requirements of a subdivision plan approved by the Planning Board;<sup>1</sup>
  - (3) The removal of earth from land in public use;

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<sup>1</sup>. Editor's Note: See Ch. 210, Subdivision of Land.

- (4) The removal of earth for any municipal purpose by or on behalf of the Town or any department or agency thereof;
- (5) The removal of not more than a total of five hundred (500) cubic yards of earth from a lot within any period of ten (10) consecutive years;
- (6) The removal of earth which is customarily incidental to agriculture, horticulture or floriculture; and
- (7) The removal of earth in connection with the construction or improvement of a private way.

**§ 130-3. Application for permit; fee.**

- A. Applications for earth removal permits shall be made to the Board.
- B. Each application shall include and be accompanied by the following information and supporting documentation:
  - (1) The location of the lot from which it is proposed to remove earth;
  - (2) The complete name and address of the owner of the lot;
  - (3) The complete name and address of the applicant;
  - (4) Adequate evidence of the applicant's ownership of the lot or authority from the owner of the lot to remove earth therefrom, as the case may be;
  - (5) The quantity of earth to be removed;
  - (6) The form of the bond proposed to be submitted in accordance with § 130-6C;
  - (7) Such other relevant information as may be required by the Board.
- C. Each application shall be accompanied by the sum of five hundred dollars (\$500) for the permit fee, which the Board shall pay over upon receipt to the Town Treasurer.

**§ 130-4. Hearings.**

- A. Before acting on an application, the Board shall hold a public hearing thereon.
- B. Before holding a public hearing, the Board shall, at the expense of the applicant, give notice of the time, place and subject matter of the hearing at least seven (7) days prior thereto by publication in a newspaper of general circulation in the Town.

**§ 130-5. Action on application.**

- A. Applications for permits may be granted or denied, or granted in part and denied in part.
- B. The Board shall not grant an application if it appears that the proposed earth removal may:

- (1) Endanger the public health or safety;
- (2) Be detrimental to the normal use of other land in the area by reason of noise, dust or vibrations; or
- (3) Undermine any building or other structure or any public or private way.

**§ 130-6. Permit term and conditions; bond; consultants.**

- A. No permit shall be issued for a period in excess of five (5) years, and the beginning and terminating dates shall be set forth thereon.
- B. Each permit shall be subject to the following conditions which shall be set forth thereon:
  - (1) No earth shall be removed from the lot in such manner or in such quantity as to alter the course or increase the volume of surface or subsurface water draining from the lot.
  - (2) No slope created by the removal of earth shall be finished at a grade in excess of two (2) (horizontal) to one (1) (vertical) expressly otherwise set forth in the permit.
  - (3) Upon completion of the removal of earth from the lot, all stones and boulders protruding above the finished grade in those areas from which earth was removed a distance of four (4) inches or more shall be buried beneath the finished grade or removed from the lot.
  - (4) Upon completion of the removal of earth from the lot, all areas from which earth was removed, except where ledge rock is exposed, shall be brought to the proposed finished grades shown on the plan referred to in § 130-3, covered with not less than four (4) inches of the original topsoil or topsoil of equivalent or greater quality than the original topsoil, and seeded with a suitable cover crop.
  - (5) Such other conditions consistent with the provisions of this bylaw and any regulations adopted hereunder as may be imposed by the Board.
- C. The applicant shall post with the Treasurer of the Town a bond in a form approved by the Town Counsel in such amount and with such sureties as determined by the Board to be sufficient to guaranty compliance with the terms and conditions of the permit.
- D. The permit-issuing Board may hire at the applicant's expense engineering consulting services to provide the Board with a plan review and recommendations as deemed necessary.

**§ 130-7. Regulations.**

- A. The Board may adopt regulations to carry out the provisions of this bylaw.

- B. Such regulations shall take effect upon their being published in a newspaper of general circulation in the Town and filed with the Town Clerk.

**§ 130-8. Effect of zoning bylaws.<sup>2</sup>**

No provision of this bylaw shall be deemed to amend, repeal or otherwise change any zoning bylaw of the Town now or hereafter in effect or to derogate from the intent or purposes of any such zoning bylaw.

**§ 130-9. When effective; existing operations.**

This bylaw shall take effect upon its approval by the Attorney General and its publication and posting as required by MGL c. 40, § 32; provided, however, that any earth removal operations being actively conducted on the effective date of this bylaw may continue unaffected by this bylaw.

**§ 130-10. Violations and penalties.**

Any person who continues to violate any provision of this bylaw or any permit issued hereunder after the expiration of ten (10) days after written notice of such violation by the Board to such person shall be liable to a penalty of fifty dollars (\$50) for the first offense, one hundred dollars (\$100) for the second offense and two hundred dollars (\$200) for each subsequent offense. Each day that any such violation continues shall constitute a separate offense.

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<sup>2</sup>. Editor's Note: See Ch. 200, Zoning.