

HAMPTON TOWNSHIP ORDINANCE #2019-05

AN ORDINANCE TO AMEND CHAPTER 87, ENTITLED “SOIL REMOVAL”, OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF HAMPTON, COUNTY OF SUSSEX, STATE OF NEW JERSEY

BE IT ORDAINED by the Township Committee of the Township of Hampton, County of Sussex, State of New Jersey, that Chapter 87 of the Revised General Ordinances of the Township of Hampton, entitled “Soil Removal”, shall be and is hereby amended as follows:

SECTION 1. Chapter 87, entitled “Soil Removal”, is amended so as to be entitled “Soil Removal and Importation”.

SECTION 2. Section 87-3, entitled “Definitions”, is amended to read as follows:

Section 87-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPROVED PLAN -- In the case of a new application, a plan for soil removal, storage and/or importation approved by the Zoning Board of Adjustment along with a use variance and, in the case of a nonconforming use in existence on June 29, 1982, and not involving an expansion of that nonconforming use, a plan approved by the Planning Board.

ARABLE SOIL -- Soil within eight inches of the surface of the premises from which soil is contemplated to be removed.

CONTAMINANT -- Any hazardous substance, hazardous constituent, hazardous waste or pollutant.

CONTAMINATED MATERIAL -- Any soil, fill or other material containing contaminants exceeding the present requirements for residential direct contact pursuant to N.J.A.C. 7:26E-1.1 et seq., technical requirements for site remediation, as may be amended.

FILL -- Soil and/or any other material, whether natural or not, put into a depression or hole in the ground or used to create mounds or otherwise artificially change the grade or elevation of real property. In no case shall fill include contaminated material, construction debris, trash, vegetative debris and/or other forms of waste.

IMPORT -- Engage in importation.

IMPORTATION -- Bringing soil or fill to a tax lot within the Township from another location.

MULCHING -- The application of plant residue or other suitable materials to the land surface to conserve moisture, hold soil in place and aid in establishing plant cover.

PERMIT -- A certificate issued to perform work under this chapter.

RECYCLED ASPHALT PAVEMENT (“RAP”) – Asphalt millings (material produced from milling of roads before repaving) and pieces of asphaltic roadway pavement removed from roadway surface or subbase or other asphalt-paved surfaces such as parking lots or driveways.

SOIL -- Dirt, stone, gravel, sand, humus, clay, loam, rock, shale, and/or mixtures of any of these, but excluding contaminated material and also excluding quarry process or rock products previously used in construction of roads, driveway or similar construction.

TOPSOIL -- The arable soil within eight inches of the surface.

SECTION 3. Section 87-4, entitled “Permit Required”, is amended to read as follows:

§ 87-4. Permit required.

A. No person or entity shall excavate for the removal, relocation, or importation of soil or fill for sale or use or otherwise remove, relocate, import, store, or stockpile soil and/or fill for sale, gift or otherwise or for use on any given tax lot, unless a permit has been first obtained, as herein set forth.

B. The provisions of section 87-4(A) shall not apply when:

- (1) The amount of removal of soil is 50 cubic yards or less;
- (2) The removal of soil is associated with and incidental to the excavation required for the construction of a single-family dwelling and associated lawns, driveways, accessory buildings, patios and retaining walls on a single lot in accordance with the building permits issued by the Construction Official;
- (3) The removal of soil is associated with the excavation required for the construction of an in-ground or aboveground swimming pool;
- (4) The removal and/or importation of soil and/or fill is associated with the excavation required for the construction or reconstruction of individual sewage disposal systems in accordance with permits issued by the Board of Health;
- (5) The removal of soil is limited to an area of not more than five acres and is associated with, and incidental to, the construction of an approved site plan, if the material removed is utilized as fill material on the subject property, or the amount removed from the site does not exceed twice the volume of the material displaced by the building foundation or foundations;
- (6) The removal of soil is associated with and necessary for the reconstruction and/or construction of roads, drainage systems, sanitary sewers, flood control measures or other improvements approved on the subdivision plat by the reviewing municipal body or undertaken by any governmental agency; or
- (7) The removal of soil is associated with and incidental to the regrading of the yard on an existing developed single lot for the purposes of making or installing drainage improvements, driveways or other necessary improvements.
- (8) The importation of soil and/or fill does not exceed 15 cubic yards in the aggregate.
- (9) Importation and/or storage of soil and/or fill is needed for a building foundation, septic tank, pool or sanitary installation to be constructed, installed or repaired within the Township if all required permits related to the project are first issued.

- (10) Movement or placement of soil or fill to the extent it is a protected agricultural management practice under the New Jersey Right to Farm Act.
- (11) Storage of soil by a landscaping and/or retail sales business for landscaping and/or retail sales purposes in a yard lawfully dedicated to and/or approved by the Township for that use.

C. No application for a permit shall be made pursuant to this chapter to the Township Committee until a use variance and plan have been approved by the Zoning Board of Adjustment in the case of a new application or by the Planning Board in the case of an existing nonconforming use not involving an expansion of that nonconforming use. The Township Committee shall be the issuing authority for the permit.

SECTION 4. Section 87-6, entitled “Application for Conditional Use Permit; Recommendation on Certain Soil Removal Permit Applications”, is amended so as to be entitled, “Application for Conditional Use Permit; Recommendation on Certain Permit Applications”.

SECTION 5. Subparagraph (i) of paragraph A(1) of Section 87-6, now entitled “Application for Conditional Use Permit; Recommendation on Certain Permit Applications”, is amended to read as follows:

- (i) Sites which exist at the time of the initial enactment of this chapter on which there is an existing gravel bank from which 8,000 cubic yards or less of material are removed during any calendar year are not required to file the map as required hereunder; provided, however, that the Township Engineer shall cause a site inspection to be made prior to the issuance of any permit on any such site, and he shall determine if the operation, if continued, will have a detrimental effect on adjoining properties, roads, streams, waterways and on the public health and safety. The Township Engineer shall render an inspection report and recommendation to the reviewing municipal board for its consideration and action prior to the issuance of any permit. The reviewing municipal board shall have the right after receipt of the Engineer's report and recommendation to require the filing of a map in accordance with the provisions of this chapter if it shall deem it necessary for the proper performance of its duties under this chapter.

SECTION 6. Subparagraph (8) of paragraph A of Section 87-7, entitled “Factors Considered in Approving Permits” is amended to read as follows:

- (8) Existing contours and topographic character of the land prior to the removal and/or importation of any soil and/or fill and the proposed contours which shall result subsequent to the removal and/or placement of soil in accordance with the application.

SECTION 7. Subparagraph (9) of paragraph A of Section 87-7, entitled “Factors Considered in Approving Permits” is amended to read as follows:

- (9) Whether the proposed removal and/or importation of soil and/or fill is necessary and incidental to the development of the property for its intended use or whether the proposed project constitutes primarily a commercial activity.

SECTION 8. Subparagraph (11) of paragraph A of Section 87-7, entitled “Factors Considered in Approving Permits” is amended to read as follows:

- (11) Traffic impact and appropriate traffic routes. The reviewing municipal board having jurisdiction shall have the authority to require the applicant to conduct engineering studies and a traffic survey on the roads in the vicinity of the proposed operation in order to determine if such roads are of sufficient strength to support the truck traffic to be emanating from the operation. The traffic survey, if required, shall be made with counters, and the average daily traffic shall be determined.

SECTION 9. Paragraph D of Section 87-7, entitled “Factors Considered in Approving Permits” is amended to read as follows:

- D. The reviewing municipal board, in cases where it determines that off-tract improvements are necessitated or required because of the proposed operation, shall have the authority to require the applicant to construct off-tract improvements in accordance with the provisions of § 91-13 of the Hampton Township Ordinances.

SECTION 10. Section 87-8, entitled “Issuance of Permits”, is amended to read as follows:

Section 87-8. Issuance of Permits.

After approval of the application by the reviewing municipal board, an application for a permit shall be made to the Township Committee. The Township Committee shall review the application and issue the permit if appropriate. Said permit shall be issued on an annual calendar-year basis. For renewal of permits, see § 87-11J.

SECTION 11. Section 87-9, entitled “Methods of Operation”, is amended to read as follows:

Section 87-9. Methods of operation.

If a permit is issued for the removal or importation of soil or fill as provided herein, the owner, or person in charge, shall so conduct the operations that there shall be no sharp declivities, pits or depressions, and in such manner that the area shall be properly leveled off, cleared of debris and graded to conform to the contour lines and grades as required and shown on the approved plan. No soil or fill shall be removed, stored, placed or imported nor shall any operation be conducted so as to violate any of the regulations contained in this chapter or any applicable law. The owner, or person in charge, shall ensure that public rights of way used for transport of soil and/or fill are kept free of soil, fill and debris related to the operation.

SECTION 12. Paragraph A of Section 87-11, entitled “General Regulations” is amended to read as follows:

- A. Deposits prohibited on adjoining property or public roads. Soil and/or fill removed and/or imported shall not be deposited or in any way thrown or placed upon adjoining property or public

roads. Any soil or material resulting from any operation, accumulating on any adjoining property or public road, shall be removed therefrom immediately, upon notice by the township to the permittee.

SECTION 13. Paragraph B of Section 87-11, entitled “General Regulations” is amended to read as follows:

- B. Access road. The applicant shall construct a coarse gravel access road into the removal site to ensure that trucks leaving the site will not track material onto the public road. Such access road shall be in accordance with the requirements of the Township Engineer.

SECTION 14. Paragraph C of Section 87-11, entitled “General Regulations” is amended to read as follows:

- C. Operations near streams or wetlands. All operations shall be conducted in strict accordance with any federal, state or local law, ordinance or regulation and the terms and conditions of any permit granted for the operations. More specifically, but without limitation, the operator shall strictly comply with the New Jersey Freshwater Wetlands Act, rules and regulations and the New Jersey Stormwater Management laws, rules and regulations. No operation shall be permitted within 100 feet of any stream or wetland, unless it can be shown that no federal or state regulation would be violated and that soil removal, movement or importation would not alter the quantity or quality of the water, nor adversely affect the rate of flow, and that the final finishing grade requires soil disturbance within the one-hundred-foot distance. However, even if any state or federal law, rule or regulation would permit the operation or removal within 100 feet of a stream or wetland, the within restriction applies.

SECTION 15. Paragraph D of Section 87-11, entitled “General Regulations” is amended to read as follows:

- D. Nuisances or hazards. The operation shall be conducted so as not to constitute a nuisance to adjoining owners or the township, and in no event shall the operation create any hazardous or unsafe condition with regard to any person or persons. No soil or fill shall be removed or placed within 100 feet of the road right-of-way of any public road or within 100 feet of any adjoining property line except for that removal or placement which is necessary for final grading and which has been approved by the reviewing municipal board.

SECTION 16. Paragraph F of Section 87-11, entitled “General Regulations” is amended to read as follows:

- F. Requirement of approved plan. Soil shall not be removed or imported, except in accordance with the approved plan, which plan may, upon application, be amended from time to time by the reviewing municipal board.

SECTION 17. Paragraph I of Section 87-11, entitled “General Regulations” is amended to read as follows:

I. Testing and Inspection.

- (1) Unless otherwise exempt under the terms of this Chapter, no permit per section 87-4 shall be issued for relocation and/or importation of soil or fill unless the applicant submits proof that the material has been tested in conformance with section 87-11(I)(2) below and that it complies with the Technical Requirements for Site Remediation found in N.J.A.C. 7:26E-1.1 et seq., as may be amended. Proof shall be a letter from a laboratory certified by the State of New Jersey to perform soil analysis, stating that results meet or exceed the present requirements for residential direct contact pursuant to N.J.A.C. 7:26E-1.1, et seq., as may be amended, along with the actual test results.
- (2) Any soil, fill and/or other material brought into the township from outside source(s) or relocated within the township for the purpose of temporarily or permanently depositing or storing same on lands within the township must be tested at the source for compliance with the present requirements found in N.J.A.C. 7:26E-1.1 et seq., in accordance with section 87-11(I)(1) above and collected and evaluated by a laboratory certified by the State of New Jersey. Further:
 - (a) All expenses connected with such testing are to be borne by the recipient of the fill;
 - (b) The Township shall have the authority to order additional reports or inspections as it may deem necessary and appropriate;
 - (c) Acceptance or rejection of any material is to be made according to this Chapter and any additional rules or regulations the Township it may from time to time enact; and
 - (d) A minimum of two samples are to be extracted from the source for laboratory analysis for each 500 cubic yard lot, or fraction thereof if from undisturbed natural ground. Testing for all other sources shall be determined based upon the source and volume of the fill to be imported. Samples are to be extracted, tested and evaluated by a state certified laboratory. Samples must be biased to the location of the highest suspected contaminated concentrations, as determined by the laboratory professional or his duly assigned representative.
- (3) The applicant shall permit the inspection of the operation and materials, at any reasonable time, by the Hampton Township Subcode Official and/or the Township Engineer, or any other person designated by the township to perform such inspections. All professional fees and testing expenses are chargeable to the owner and applicant, jointly and severally.

SECTION 18. Paragraph J, entitled “Permit Renewal”, of Section 87-11, entitled “General Regulations”, is amended so as to be entitled “Permit Renewal for Soil Removal”.

SECTION 19. Section 87-12, entitled “Application and Inspection Fees”, is amended to read as follows:

§ 87-12. Application and inspection fees.

A. Removal operations. Upon application for a permit for the removal of a total of less than 8,000 cubic yards of material, pursuant to the provisions of this chapter, the applicant shall pay a filing fee in the

amount of \$100. For an application for the removal of more than 8,000 cubic yards, the fee shall be \$500. In addition, at the time of filing the application for the removal of less than 8,000 cubic yards of material, a deposit in the sum of \$100 to cover review by the Township Engineer, Planning Consultant and other township personnel and site inspections and other review fees shall be made with the Township Clerk by the applicant. In the case of an application for the removal of more than 8,000 cubic yards, said deposit shall be \$500. Any unused portion shall be returned to the applicant. The Board shall have the right to require additional deposits to be paid by the applicant, from time to time, in order to ensure that review and inspection fees are adequately provided for. Upon the issuance of a permit for the removal of 8,000 cubic yards or less, the applicant shall pay another deposit in the sum of \$100 to cover reasonable inspection fees to municipal personnel, including but not limited to the Township Engineer, for any inspections and field checks of the operation and for inspections of improvements. Upon the issuance of a permit for the removal of more than 8,000 cubic yards, said deposit shall be \$500. Thereafter, the permittee shall reimburse the township promptly for the cost of all periodic inspection fees, as well as any extraordinary costs or expenses, including attorneys' fees necessitated as a result of unforeseen difficulties or exigencies or necessitated by or resulting from any violation of any provision of this chapter. Should the applicant fail to reimburse the township for the aforesaid fees within 14 days of a request by the township to do so, the permit may be suspended or revoked for such a period of time as the Township Committee may determine.

B. Importation of Soil or Fill. Upon application for a permit for the importation, storage or relocation of soil and/or fill pursuant to the provisions of this chapter, the applicant shall pay a filing fee in the amount of \$150 for the first 10 cubic yards plus \$0.25 for each additional cubic yard. The filing fee shall cover the cost of a preliminary site visit and review of initial submission. If more than two inspections of a property are anticipated or required, the applicant shall post an escrow deposit in an amount established by the Township Engineer to cover the cost of any additional inspections. All inspections shall be charged to the account in an amount based on the regular hourly rates of the Township Engineering staff. All fees shall be paid and the escrow account made current prior to the issuance of any certificate of occupancy, certificate of approval or the release of any performance guarantees that may have been posted with respect to the property. The applicant shall reimburse the township promptly for the cost of all periodic inspection fees, as well as any extraordinary costs or expenses, including attorneys' fees necessitated as a result of unforeseen difficulties or exigencies or necessitated by or resulting from any violation of any provision of this chapter. Should the applicant fail to reimburse the township for the aforesaid fees within 14 days of a request by the township to do so, the permit may be suspended or revoked for such a period of time as the Township Committee may determine.

SECTION 20. Paragraph A of Section 87-16, entitled "Violations and Penalties", is amended to read as follows:

- A. A violation of any provision of this chapter of the Code of Hampton Township by any person, firm or corporation shall, upon conviction for that violation, be punishable by one or more of the following in the discretion of the Judge: a fine of not more than \$2,000, or imprisonment in the County Jail for a term not to exceed 90 days, or community service for a period not to exceed 90 days. Each day that such violation shall be continued shall be deemed and taken to be a separate and distinct offense and violation.

SECTION 21. Section 87-17, entitled "Action Instituted by Township", is amended to read as follows:

Section 87-17. Action instituted by Township.

In the case of any violation of this chapter or in the case of any excavation, removal, storage, placement or importation being conducted or having been conducted without the required permit, the Township of Hampton through the Zoning Officer may institute an action to enjoin or other appropriate action or proceeding in court to prevent the violation of this chapter. The Zoning Officer may issue a notice to stop work until the proper permits are obtained and this ordinance is complied with.

SECTION 22. Section 87-18, entitled “Recycled Asphalt Pavement Prohibited; Exceptions”, is added to reads as follows:

Section 87-18. Recycled asphalt pavement prohibited; exceptions.

Notwithstanding any contrary term in this chapter, importation, use and/or placement of recycled asphalt pavement to or on property in the Township is prohibited unless permitted by and used in accordance with applicable regulations promulgated by the New Jersey Department of Environmental Protection; however, in no case shall the material be placed within the boundaries of a public road. This section shall not apply to road maintenance, repair and/or replacement conducted by the Township, county or State.

SECTION 23. Section 87-19, entitled “Prohibited Materials”, is added to reads as follows:

Section 87-19. Prohibited materials.

Notwithstanding any contrary term in this chapter, importation of contaminated material, construction debris, trash or vegetative debris or of solid waste as defined by N.J.A.C. 7:26–1.6 to a property for deposit within the Township is prohibited.

SECTION 24. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this Ordinance shall not be affected thereby but shall remain in full force and effect.

SECTION 25. All ordinances or parts of ordinances inconsistent with or contrary to the provisions of this Ordinance are hereby repealed to the extent of such inconsistency or contrariness. All provisions of Chapter 87 not amended hereby shall remain in full force and effect.

SECTION 26. This Ordinance shall take effect immediately on its final passage and publication as required by law.

CERTIFICATION

I hereby certify that the above Ordinance was adopted by the Hampton Township Committee at their regular meeting held on May 28, 2019, at the Hampton Township Municipal Building, Baleville, Sussex County, New Jersey.

Date: _____

Kathleen Armstrong, RMC
Township Clerk

NOTICE

NOTICE IS HEREBY GIVEN that the attached Ordinance #2019-05 was introduced at a regular meeting of the Township Committee of the Township of Hampton, Sussex County, New Jersey, held on the 30th day of April, 2019, and passed on first reading, and that such Ordinance will be further considered for final passage and adoption at the regular meeting of the Township Committee to be held on the 28th day of May, 2019 at the Municipal Building, One Rumsey Way, in the Township of Hampton, at 7:00 p.m., and that at such time and place all persons interested be given an opportunity to be heard concerning said Ordinance.

Date: _____

Kathleen Armstrong, RMC
Township Clerk

**HAMPTON TOWNSHIP
NOTICE
ORDINANCE #2019-05**

NOTICE IS HEREBY GIVEN that the foregoing Ordinance #2019-05 was adopted at Final Reading at the regular meeting of the Township Committee of the Township of Hampton, County of Sussex held on Tuesday, May 28, 2019, at the Hampton Township Municipal Building, Baleville, N.J.

Date: _____

Kathleen Armstrong, RMC
Township Clerk