CHAPTER 15
FILLING AND EXCAVATING OF LANDS

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Section 15.01. DEFINITIONS. For the purpose of this chapter the following words and phrases are defined and shall be construed to mean, unless the context in which they are used clearly indicates an intent to the contrary, as follows:

(1) **Fill Or Filling.** Fill or filling means the act of placing, setting down or depositing solid fill on land for the purpose of, or which has the resulting effect of changing the existing contour or of raising the elevation of said land or any part thereof.

(2) **Solid Fill.** Solid fill is earth, clay, soil, ground, stone, rocks, broken concrete without reinforcement, if the same does not exceed eighteen (18) inches at its largest dimension, or any mixture or combination of the foregoing.

(3) **Excavate or Excavating.** Excavate or excavating means the act of removing materials such as, but not limited to, earth, clay, soil, ground, stone, rocks and sand, from land, for the purpose of or which has the resultant effect of changing the existing contour of, or lowering, or raising, the elevation of said land or any part thereof.

(4) **Permit.** A permit to engage in the act of filling or excavating on any specified parcel of land.

(5) **Person.** The word "person" shall mean and include any natural person, firm, corporation, or partnership.

(6) **Control Plan.** Control plan means a written description of the number, locations, sizes, and other pertinent information of control measures designed to meet the requirements of this ordinance.

(7) **Land Development Activity.** Land development activity means the construction of buildings, roads, parking lots, paved storage areas and similar facilities.

(8) **Land Disturbing Construction Activity.** Land disturbing construction activity means any manmade change of the land surface, including removing vegetation cover, excavating, filling, or grading.

(9) **Set-Back.** The area of a lot or parcel which is within twenty (20) feet from any lot
line.

(10) **Site.** Site means the entire area included in the legal description of the land on which the land disturbing or land development activity is proposed.

(11) **Wetland.** Wetland means those areas where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions, which are two (2) acres or greater in size. The size of the wetland area shall be measured by the outer dimensions of the wetland area that is a contiguous wetland, regardless of whether the wetland area is contained on one or more parcels of land under single or multiple ownership.

(12) **Wetland Alteration.** Wetland alteration means any filling, flooding, draining, dredging, tiling, excavating, temporary water level stabilization measures, or dike and dam construction in a wetland area.

Section 15.02. PERMIT REQUIRED.

(1) No person shall engage in land development activity, land disturbing construction activity, excavate or fill any lands within the Village of River Hills whenever such activity involves the excavating, filling, or grading of twenty (20) cubic yards or more per acre or comparable percentage of a parcel or lot without first having obtained a permit pursuant to this ordinance, and having posted the same upon the premises in the manner provided for posting of a building permit as set forth in the General Ordinances of the Village. If the activity for which a permit is required will be conducted in the set-back area of a lot or parcel as defined in section 15.01(9) then the Village Clerk shall give notice to all property owners whose property adjoins or abuts the portion of the property where the activity is proposed. This is intended to require notice to property owners whose property is separated from the property by a public or private road but is located on the opposite side of the road where the activity is proposed. Notice is complete upon mailing a notice advising the property owner(s) that the application, permit, description of location of proposed activity and a copy of the control plan, if otherwise required, are available for inspection at the office of the Village Clerk.

(2)  

[a] No land owner or land user may commence land disturbing construction activity, land development activity, excavate or fill any lands as set forth in (1) above, without receiving prior approval of a control plan for the site and a permit from the Village Clerk. At least on land owner of land user controlling or using the site and desiring to undertake an-activity requiring a permit shall submit an application for a permit and a control plan and pay an application
fee as set forth in the schedule of fees as adopted and subject to amendment from time to time by Resolution of the Village Board. The Resolution and the applicable schedule of fees shall be kept on file in the Office of the Village Clerk and will be posted on the village website. By submitting an application the applicant is authorizing the Village Engineer and his designees to enter the site to obtain information required for the review of the control plan. (Amd Ord #537, 10/16/19)

[b] The permit may be in effect for a period of up to six months, and shall be subject to renewal. The Village Board shall have the right to revoke any permit at any time and/or direct the Clerk not to renew a permit if, in the judgment of the Village Board, the permittee has failed or refused to comply with any of the regulations relating to the filling or excavation of lands.

[c] Permit Conditions. All permits shall require the permittee to:

1. Notify the Village Engineer within 48 hours of commencing any land disturbing activity;

2. Notify the Village Engineer of completion of any control measures within 14 days after their installation;

3. Obtain permission in writing from the Village Engineer prior to modifying the control plan;

4. Install all control measures as identified in the approved control plan;

5. Maintain all road drainage systems, storm water drainage systems, control measures and other facilities identified in the control plan;

6. Repair any situation or erosion damage to adjoining surfaces and drainage ways resulting from land developing or disturbing activities;

7. Inspect the construction control measures after each rain of 0.5 inches or more at least once each week and make needed repairs;

8. Allow the Village Engineer to enter the site for the purpose of inspection compliance with the control plans or for performing any work necessary to bring the site into compliance with the control plan;

9. Keep a copy of the control plan on the site; and

10. Submit a landscape plan detailing both plan and elevation of construction if a hill, mound or berm, will exceed four feet in height.
11. Identify and delineate any wetlands that will be altered. Delineation of wetlands shall be performed by any of the following: Department of Natural Resources, Southeastern Wisconsin Regional Planning Commission, or other qualified professional.

12. Obtain all required permits from the Wisconsin Department of Natural Resources and/or the Army Corp of Engineers necessary to alter any wetlands.

(3) The permit application shall include a contour map of the site and provide the following information:

[a] Existing conditions and proposed final grades for the area to be disturbed;

[b] Locations and dimensions of all proposed land disturbing activities;

[c] Locations and dimensions of all temporary soil or dirt stockpiles;

[d] Locations and dimensions of all construction site management control measures necessary to meet the requirements of this ordinance;

[e] Schedule of anticipated starting and completion date of each land disturbing or land developing activity, including the installation of construction site control measures needed to meet the requirements of this ordinance; and

[f] Provisions for maintenance of the construction site control measures during construction.

[g] Location and dimension of all wetland areas as defined in this ordinance.

(4) No permit under the provisions of subsection (2) hereof shall be issued until the application shall have been submitted to and approved by the Village Engineer, and further that if the land disturbing construction activity will result in the construction of a hill, mound, or berm exceeding four feet in height, then the application for permit shall also be subject to approval of the Building Board of the Village of River Hills. Fill shall be placed and materials excavated only where and as approved by the Engineer.

(5) All applications for a permit within the provisions of subsection (2) hereof shall be accompanied by a cash bond or surety bond executed by a surety company licensed to do business in Wisconsin, in the sum of not less than Five Thousand ($5,000.00) Dollars, or in such higher amount as is certified by the Village Engineer to be required for the purpose of securing the Village against any and all damages to Village property and/or expenses the Village may incur resulting from such filling or excavation operations. The bond requirement may be waived in all or part, if
the Village Engineer certifies to the Village Manager that the bond is not required or a bond in a lesser amount is sufficient for the operations under an application. The certification to the Village Manager shall affirmatively set forth that the Village Engineer has determined that the operations proposed will not have an adverse effect upon the health, safety, welfare or property of the Village.

(6) The initial permit fee for all operations under the provisions of subsection (2) hereof, shall be as set forth in the schedule of fees as adopted and subject to amendment from time to time by Resolution of the Village Board, and shall permit operations for one month from the date of the permit. An additional permit fee per month, after the first month, as set forth in the schedule of fees as adopted and subject to amendment from time to time by Resolution of the Village Board, shall be paid at the time of application, up to maximum of six (6) months. The Resolution and the applicable schedule of fees shall be kept on file in the Office of the Village Clerk and will be posted on the village website. In the event that the operations are not completed within the time for which permit fees have been paid, the permit shall terminate and a new application, surety bond, and initial and monthly permit fees shall be submitted and approved before the permittee shall be allowed to continue the operations. No refund of any permit fees shall be made. (Amd Ord #537, 10/16/19)

(7) No land development activity, land disturbing construction activity, filling, or excavating, or grading regardless of the amount of filling, excavating, or grading may be commenced in the set-back area of a lot or parcel as defined in section 15.01(9) until the property owner or user has submitted a plan of operation sufficient to identify the nature, location, and quantity of the activity to the Village Engineer. Notice to adjoining property owners shall be as required in Section 15.02(1).

Section 15.03. REGULATIONS.

(1) Every person engaging in any activity subject to this ordinance shall do so to the grade to be approved by the Village Engineer, and at the end of such operations shall provide that the top sixteen (16) inches thereof shall be of soil, free from broken concrete and relatively free from gravel, and that the upper four (4) inches thereof shall be of soil suitable for growing vegetation. The permittee shall keep the surface of said site free from dust at all times during the operations and thereafter.

(2) All operations shall be conducted only between the hours of eight a.m. and five p.m. No operations shall be conducted on Sundays or holidays.

(3) The Village Board may, in any individual case, upon the recommendation of the Village Engineer, waive any and all of the regulations of this section upon an affirmative finding by the Village Board that any or all of the regulations in individual cases are not necessary for the public health, safety or welfare.
Section 15.04. PERSONS LIABLE. The owner, lessee, and/or any other person having possession and control over any operation under the terms of this ordinance, shall be responsible for the acts of his or its agents, servants, or employees, to the same extent as though their acts were the acts of such principal; and such owner, lessee, and/or other person shall be subject to prosecution for violation of the provisions of this chapter by any of his or its agents, servants, or employees, and any penalty imposed under the terms of this chapter may be imposed upon said principal, and/or upon the agents, servants or employees, or either or both of them.

Section 15.05. OBSTRUCTION TO DRAINAGE PROHIBITED. No person shall engage in land development activity, land disturbing construction activity, fill or excavate upon any lands within the Village of River Hills, whether pursuant to permit or not, so as to interfere with the natural flow of surface water in accordance with existing grades, or along any surface water drainage channel or natural water course.

Section 15.06. DUMPING PROHIBITED. No person, firm or corporation shall dump or permit, or cause to be dumped, any materials other than solid fill as defined to Section 15.01 hereof, upon any lands in the Village of River Hills.

Section 15.07. CONTROL OF EROSION AND POLLUTANTS DURING LAND DISTURBANCE AND DEVELOPMENT.

(1) Applicability. This section applies to all sites of land development or land disturbing activities which involve:

[a] Grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activities affecting a surface area of 4000 square feet or more.

(2) Erosion and Other Pollutant Control Requirements. The following requirements shall be met on all sites within the Village of River Hills as described above:

[a] Filter fences, straw bales, or equivalent control measures shall be placed along all sideslope and downslope sides of the site. If a channel or area of concentrated runoff passes through the site, filter fences shall be placed along the channel edges to reduce sediment reaching the channel.

[b] Any soil or dirt storage piles containing more than ten cubic yards of material should not be located with a downslope drainage length of less than 25 feet to a roadway for more than seven days, they shall be stabilized by mulching, vegetative cover, tamps, or other means. Erosion from such soil or dirt storage piles which are in existence for less than seven days shall be controlled by placing straw bales or filter fence barriers around the pile.

Section 15.08. INSPECTION. The Village Engineer shall inspect all construction sites at least
once a month during the period starting March 1 and ending October 31, and at least two times during the period starting November 1 and ending February 28, to insure compliance with the control plan. If land disturbing or land development activities are being carried out without a permit, the Village Engineer shall have the right to enter upon the land pursuant to the provisions of Sections 66.122 and 66.123, Wis. Stats.

Section 15.09. ENFORCEMENT.

(1) The Village Engineer may post an immediate stop-work order if:

[a] Any land disturbing or land development activity regulated under this ordinance is being undertaken without a permit;

[b] The control plan is not being implemented in a good faith manner; and

[c] The conditions of the permit are not being met.

(2) If the permittee does not cease the activity or comply with the control plan or permit conditions, the Village Engineer may revoke the permit.

(3) If the land owner or land user, where no permit has been issued, does not cease the activity immediately, the Village Engineer may request the Village Attorney to take appropriate action to insure compliance with this ordinance.

(4) The Village Engineer or the Board of Appeals may retract the stop-work order or the revocation.

Section 15.10. PUBLIC NUISANCE. The depositing on any land for the purpose of filling the same, of inflammable and/or combustible materials, and the depositing of fly ash, foundry refuse, and other similar materials of such texture or material that they will be capable of being air-borne, and the permitting of such depositing, shall be and is hereby declared to be a public nuisance.

Section 15.11. APPEALS.

(1) Board of Appeals. The Board of Appeals of the Village of River Hills created pursuant to the provisions of Section 7.16 of the General Ordinances of the Village of River Hills:

[a] Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Village Engineer in administering this ordinance;

[b] Upon appeal, may authorize variances from the provisions of this ordinance which are not contrary to the public interest, and where owing to special conditions, a literal
enforcement of the provisions of the ordinance will result in unnecessary hardship; and

[c] Shall use the rules, procedures, duties and powers authorized by the Wisconsin Statutes, and the provisions of Chapter 7 of the General Ordinances of the Village of River Hills in hearing and deciding appeals and authorizing variances.

(2) Who May Appeal. Any applicant, permittee, land owner, land user, or any other person aggrieved by any order, decision or determination made by the Village Engineer in administering this ordinance, may appeal to the Board of Appeals, and all such appeals shall be filed, heard, and decided by the Board of Appeals in accordance with this ordinance and with the provisions of Section 7.16 of the General Ordinances of the Village of River Hills.

Section 15.115. NOTICE OF ACTION TAKEN AND RIGHT TO APPEAL.

[a] The Village Clerk shall cause notice to be given of the final action of the Village Engineer in granting, denying, amending, suspending or revoking a permit by mailing a concise summary of the action taken to all owners of lands affected, within 10 days of the date of the action; said notice shall contain advice regarding the right of any person aggrieved to appeal the action of the Village Engineer to the Board of Appeals.

Section 15.12. PENALTY. Any person, firm or corporation found guilty of the violation of any provision of this Chapter, shall be subject to a forfeiture of not less than Twenty-five ($25.00) Dollars nor more than Five Hundred ($500.00) Dollars, and the costs of the action; and in default of payment thereof, shall be subject to imprisonment in the County Jail or the House of Correction of Milwaukee County until such forfeiture and costs, together with any subsequent costs, have been paid, but in any event not to exceed thirty (30) days. Each day of violation shall constitute a separate offense and be subject to a forfeiture as such.