

Chapter 7
EXCAVATIONS GENERALLY

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SEC. 7.1 **DEFINED**

Excavation. An excavation as used in this chapter shall include the removal of any soil, rock, sand or other material for purposes of sale, fill, building or other construction usage off the premises from which removed. (Ord. No. 110 N.S., '1)

SEC. 7.2 **PERMIT REQUIRED; EXCEPTION**

It shall be unlawful for any person to make, or cause or permit to be made, any excavation in or under the surface of any land, public or private, in the City without first obtaining a permit from the City Council in the manner provided in this chapter. A separate permit is not required to make an excavation for a foundation or a basement in connection with the erection of a building on the premises in which the excavation is to be made and for which a building permit has been issued. (Ord. No. 110 N.S., '1)

SEC. 7.3 **APPLICATION FOR PERMIT; CONTENTS**

The application for a permit required by the preceding section shall be filed with the city clerk in quadruplicate, the original of which shall be sworn to before some person lawfully authorized to administer oaths, and shall set forth the following information and shall be

accompanied by the following data:

- (a) A full identification of the applicant and all persons to be directly or indirectly interested in the permit if granted.
- (b) The residence and business address and the citizenship of the applicant, including all members of any firm or partnership or all officers and directors of any corporation applying.
- (c) A complete description and location of the property on which the excavation is proposed to be made.
- (d) The exact nature of the proposed excavation and material to be removed and an estimate of the approximate number of cubic yards to be removed.
- (e) A statement of the manner in which is it proposed to excavate and remove the dirt, rock or other materials, including the slope of the sides and the level of the floor, and the kind of equipment proposed to be employed in making such excavation and removing such material.
- (f) The proposed route which the applicant proposes to use over the public streets and over private property in transporting such materials.
- (g) The past experience of the applicant in the matter to which the permit appertains and the name, address and past experience in such matters of the person to be in charge of the proposed operations.
- (h) The location of the place and the name and address of all persons to whom any materials from the excavation are to be sold or delivered.
- (i) Whether or not any permit of the applicant has been revoked and if so the circumstances of such revocation.
- (j) The time within which such excavation is to be commenced after the granting of the permit and the time when it is to be completed.
- (k) Such further information as the city engineer, superintendent of streets or the City Council may require. (Ord. No. 110 N.S., '2)

SEC. 7.4 PLAT TO ACCOMPANY APPLICATION

At the time of the filing of the application provided for in the preceding section, the applicant shall file with the city engineer a topographic map of the property on which the proposed excavation is to be made covering an area having a radius of three hundred feet, so far as

may be possible, from the exterior boundary of the proposed excavation. (Ord. No. 110 N.S., '3)

SEC. 7.5 FILING FEE REQUIRED; SCHEDULE OF FEES

At the time of filing an application and map, the applicant shall pay a filing fee to cover the City's costs of investigation as follows: If the estimated number of cubic yards of material to be removed does not exceed ten thousand yards, twenty-five dollars; if the estimated number of cubic yards to be removed exceeds ten thousand but is not over fifty thousand cubic yards, fifty dollars; and, if the estimated number of cubic yards exceeds fifty thousand cubic yards, one hundred dollars. (Ord. No. 110 N.S., '3)

SEC. 7.6 PROCEDURE FOLLOWING APPLICATION-INVESTIGATION; HEARING TO BE HAD

Immediately upon the filing of an application for a permit as provided in Section 7.3, one copy thereof shall be delivered to the city clerk, one copy to the superintendent of streets, and one copy to the city engineer. The superintendent of streets and city engineer shall each make an investigation of the facts set forth in the application and shall make a written report of their investigation, together with their recommendations, to the City Council, who shall proceed to act upon the application after a hearing set by the city clerk for a day certain not less than ten days nor more than thirty days from the date of filing the application. Such hearing may be continued from time to time as the circumstances may require. (Ord. No. 110 N.S., '5)

SEC. 7.7 SAME-NOTICE OF HEARING REQUIRED; HOW NOTICE IS GIVEN; CONTENTS OF NOTICE

Notice of hearing of the application shall be given by the city clerk by posting a notice on the premises described in the application and by posting a copy not more than three hundred feet apart on each public street constituting a direct approach to the premises on which the excavation is proposed to be made, and not further distant than one thousand feet from the boundary of such premises, at least ten days prior to the date set for the hearing, and by mailing a copy addressed to the applicant and to the owners of the property, as appear on the last assessment rolls of the City, within a five hundred foot radius of the exterior boundaries of the proposed excavation, at least five days prior to the date set for the hearing. Such notice shall contain a statement of the time and place of the hearing of the application, the name of the applicant, a general description of the premises where the applicant proposes to make the excavation, and a general statement of the size and nature of the proposed excavation. (Ord. No. 110 N.S., '6)

SEC. 7.8 PERFORMANCE BOND REQUIRED

The City Council shall require, as a condition to the granting of a permit, that the

applicant deposit a surety company bond, in an amount to be fixed by the Council, insuring to the benefit of the City and the general public, guaranteeing that the applicant will faithfully perform all of the conditions and requirements under which the permit is issued. (Ord. No. 110 N.S., '7)

SEC. 7.9 INDEMNITY BOND REQUIRED

The City Council shall also require, as a condition to the granting of a permit, that the applicant deposit a certificate of a responsible indemnity company insuring the City and the public against any loss or damage to persons or property arising directly or indirectly from the operations of the applicant, or any person acting on his behalf, in carrying on any work connected directly or indirectly with the issuance of the permit, the amount of the insurance to be fixed by the Council. (Ord. No. 110 N.S., '7)

SEC. 7.10 MATTERS TO BE CONSIDERED BY COUNCIL IN GRANTING OR DENYING APPLICATION

The City Council, in granting or denying any application for a permit for an excavation, shall take into consideration the character of the applicant as respects morality, honesty, integrity, financial responsibility and all pertinent things concerning the proposed application which may concern the health, safety and general welfare of the public, and shall exercise a reasonable and sound discretion in the premises. (Ord. No. 110 N.S., '8)

SEC. 7.11 APPLICATION SHALL BE DENIED IF EXCAVATION WOULD ENDANGER PUBLIC HEALTH AND SAFETY, ETC.

Any application for a permit for an excavation shall be denied if it appears from the investigation thereof that such excavation would remove the lateral and subjacent support of the adjacent land and result in a dangerous topographic condition, or result in seepage or slides or create an attractive nuisance dangerous to public safety, or that otherwise would in any manner endanger the public health and safety or be detrimental to the general public welfare. (Ord. No. 110 N.S., '8)

SEC. 7.12 FEE REQUIRED UPON ISSUANCE OF PERMIT; AMOUNT

At the time of the issuance of the permit for an excavation, the applicant shall pay a permit fee, to cover the expenses of inspection and examination of the continued operation of the excavating, in the amount of one dollar for each one thousand cubic yards estimated in the application to be removed from the proposed excavation. (Ord. No. 110 N.S., '4)

SEC. 7.13 REGULATIONS TO BE COMPLIED WITH DURING EXCAVATION

Any person to whom an excavation permit is issued shall comply with the following:

- (a) All vehicles transporting rock, earth or other materials from such excavation over the public streets of the City shall travel only over such route as may be directed by the superintendent of streets to be least dangerous to public safety, cause the least interference with general traffic and cause the least damage to the public streets.
- (b) The floor of any such excavation shall not be made lower than the level thereof as set forth in the application provided for in this chapter.
- (c) If, in the opinion of the superintendent of streets, any such excavation will present a dangerous condition if left open, such excavation shall be enclosed by a suitable fence.
- (d) Any rock, earth or other material that may be deposited on any public street or place from any vehicle transporting such materials from any such excavation shall be immediately removed in a manner satisfactory to the superintendent of streets at the expense of the person to whom the permit to excavate was issued. (Ord. No. 110 N.S., '9)

SEC. 7.14 **WHEN COUNCIL MAY REVOKE OR SUSPEND PERMIT; HEARING PROVIDED**

Any permit granted pursuant to the provisions of this chapter may be revoked or suspended by the City Council as in its discretion may seem meet and just for any reason for which the granting of such permit might lawfully be denied, or for any failure to comply with any of the provisions of this chapter. Revocation of such permit shall be made only upon a hearing granted to the holder of the permit held before the Council after five days' notice to such permit holder stating the grounds of complaint against him and stating the time and place where such hearing will be held. If, in the opinion of the Council, the public health, safety or welfare requires it, they may suspend any permit pending the hearing for the revocation of such permit. Such revocation or suspension of any permit shall be in addition to any other penalties more specifically provided in this chapter. (Ord. No. 110 N.S., '10)

SEC. 7.15 **PERMIT EXPIRES WHEN MATERIALS EXCAVATED EQUAL AMOUNT ESTIMATED IN APPLICATION; NEW PERMIT REQUIRED**

At any time that the number of cubic yards removed amounts to the number of cubic yards set forth in the estimate filed with the original application, the permit for an excavation shall terminate and no further materials may be removed from the excavation until a new application has been filed and a permit granted in the same manner as the original application and permit. (Ord. No. 110 N.S., '4)

SEC. 7.16 **EXPIRATION OF PERMIT ON NONUSE**

In the event that any excavation for which a permit has been granted, as provided for in this chapter, is not commenced within three months from the date of granting of such permit, or in the event work is started on excavations pursuant thereto and the work is abandoned for a period of three months, such permit shall automatically expire by limitation and cease to be valid for any purpose. (Ord. No. 110 N.S., '11)