

General Bylaw-- Earth Removal Incidental to Construction Activities in the Town of South Hadley

Commented [MM1]: The proposed bylaw, from a form point of view, is missing a number of key components. Town counsel is available to assist with drafting of a general bylaw so that it can be enforced and not challenged, if directed by the Selectboard. Town counsel advises holding public hearings and engaging in public debate about this proposed bylaw

Article 1-Purpose:

1. To permit reasonable removal of earth for agriculture, residential, business, and industrial uses, while also protecting the value of the land within the Town and without imposing undue risk to the general public.
2. To limit earth removal from any agricultural, commercial, residential or commercial development to a reasonable and essential amount which is incidental to the primary principal end use.
3. To require that earth removal operations are conducted in a manner that will cause the least stress and harm to the Town's natural resources
4. To prevent detriment to adjacent neighborhoods and abutting parcels from earth removal activities: and
5. To prevent cumulative damage to landscape, aquifer and topography and related valuable and nonrenewable natural resources, while not unreasonably interfering with necessary, desirable, or creative land uses.

Article 2-Authority:

This general by-law is adopted pursuant to the authority granted under General Laws Chapter 40, § 21, clause 17.

Article 3-Definitions:

1. Earth: all material normally and naturally composing part of the earth's surface and immediate subsurface, excluding water, including but not limited to, soil, clay, gravel, hard pan, loam, rock, peat and sand.
2. Remove/Removal: The severance of any Earth from its natural location, whether or not such Earth is moved from the lot to another location on the same lot or off the lot, by any means, including but not limited to, stripping, excavating, mining or blasting.
3. Incidental: meeting all of the following:
 - a. Is minor in significance to the primary use.
 - b. Is commonly established as reasonably associated with the primary use.
 - c. Is necessary to carry out the primary use.
 - d. Is minor in its net effect to that of the principal use, based on the amount of material to be removed and the time period over which it is to be removed.

Article 4-Earth Removal:

1. No person, firm or corporation shall remove any Earth from any lot in the Town of South Hadley, unless such activity is a permitted or lawfully nonconforming use authorized by a permit issued by the Planning Board.
2. Earth removal is prohibited unless it is necessary and incidental to a lawful end use which has received all required local and state permits for the use and which end use has been fully designed.

Commented [MM2]: How does someone get a permit? There is no section providing guidance on the permitting process, applications, what materials are necessary for an application, timelines for a decision, how applications are to be reviewed, etc.

Article 5-Conditional Exemptions:

1. No permit or special permit shall be required for the following activities under any South Hadley bylaw, provided the activities do not constitute a nuisance or danger to the public and conform to accepted engineering or agricultural practices:
 - a. The Commissioner of Public Works and his/her agents and employees may perform Earth Removal activities in the performance of their public duties on any public way and on Town property.
 - b. Earth Removal incidental to the permitted construction of foundations of buildings, walks, driveways, septic systems or swimming pools, and incidental to the installation of utilities, provided that the quantity of Earth subject to Removal does not exceed that displaced by the portions of construction and installation below finished grade.
 - c. Construction of a structure on the premises for which a building permit has been issued, or incidental to the grading and development of contiguous property, and provided that such removal, excavation or addition is limited to the area within a distance not more than 100 feet from the building or improvements authorized under said permit.
 - d. Earth Removal incidental to an approved definitive subdivision plan, or an approved business or industrial development plan, in which the amount of Earth subject to Removal does not exceed 5000 cubic yards in one calendar year, if the Earth is transported off the lot.
 - e. Earth Removal incidental to landscaping, and/or clearing, and in which the amount of Earth subject to Removal does not exceed 200 cubic yards in one calendar year, if the Earth is transported off the lot, and does not exceed 500 cubic yards in one calendar year, if the Earth is transported within the lot.
2. The foregoing conditional exemptions shall be subject to inspection, determination, and enforcement by the Building Commissioner.
3. The Building Commissioner, shall issue a cease and desist order in any case in which the Building Commissioner's determines that:
 - a. the earth removal activity would not be necessary and incidental to an identified lawful principal use, a lawful structure, an approved subdivision road, or lawful utility installation, or

Commented [MM3]: This bylaw needs a separate section specifically providing that the Planning Board is the permit-granting authority, if the Planning Board will be the permitting authority – the Town should have discussions as to who should be the public body designated as the permit granting authority for purposes of this bylaw

Commented [MM4]: This should be removed, to prevent confusion relative to special permits under the zoning bylaw covering earth removal. It is important to make a clear distinction between zoning and general bylaw provisions.

Commented [MM5]: This volume should be reviewed so as not to be considered arbitrary and unreasonable.

Commented [MM6]: This proposed bylaw lacks an enforcement provision – but for number 3 below. A separate provision should be included covering violations, penalties, fines, etc. – what is the mechanism for enforcing? The provisions in 3 can be used but it needs to better coordinate with 2. These provisions should be modified.

- b The earth removal activity would be excessive in scope or nature to the foregoing end use or structure, or**
- c Would create unsafe conditions on or off the property, or**
- d Would be a detriment or nuisance to nearby landowners or to the Town in general by reason of noise, dust, vibration, or other objectionable conditions.**