

Title 7 – Chapter 7

Bank, Pit, Topsoil Removal and Other Excavations

7-7-1	Declaration of Policy
7-7-2	Definitions
7-7-3	Application for Permit
7-7-4	Regulation of Excavations
7-7-5	Topsoil Stripping and Removal
7-7-6	Provisions Applicable to Both Bank and Pit Excavations and Topsoil Removal
7-7-7	Penalties

Sec. 7-7-1 Declaration of Policy.

It is hereby declared to be the policy of the Town of Oshkosh to provide for the proper use of land to prevent all manner of excavations which create pits, holes, or hollows in the earth, leaving it in a hazardous or dangerous state, or cause soil erosion which depletes the land of its natural vegetative cover and supply of organic material, renders such land unproductive and unsuitable for agricultural purposes and undesirable for building homes, resulting in lower land values. By this Chapter the Town of Oshkosh seeks to remove the danger to health and life caused by deep excavations remaining in the ground; and the stripping of topsoil, thereby resulting in damage to agricultural crops through dust storms in dry weather, by exposure of the bare earth to wind action and in wet periods by pools of water, which ordinance will promote the safety, health and general welfare of the citizens of the Town.

Sec. 7-7-2 Definitions.

As used in this Chapter the following terms shall have the meanings hereinafter designated:

- (a) **Earth.** Sand, clay, gravel, mud, bog and rock, but not topsoil.
- (b) **Excavation.** The removal of more than seventy-five cubic feet of earth from the ground in a vertical dimension of more than three (3) feet for any purposes other than the improvements of land for permitted uses not otherwise regulated by this Chapter, other than sewage disposal systems, other than the purposes described by Section 7-7-8(d) and other than the removal of material subject to the dredging permitted by other governmental authorities.

- (c) **Pit Excavation.** Any excavation involving the removal of more than one thousand (1,000) cubic feet of earth leaving a hole or depression below the grade of the surrounding land.
- (d) **Bank Excavation.** Any excavation involving the removal of more than one thousand (1,000) cubic feet of earth, other than a pit excavation.

Sec. 7-7-3 Application for Permit.

Before any excavation is commenced for any purpose and topsoil, earth, sand, gravel, rock or other substance is removed from the ground, the owner, lessee or agent of the premises shall obtain a written permit therefore from the Town Board. For that purpose such applicant shall file with the Building Inspector of the Town of Oshkosh a verified application in duplicate for such permit containing a detailed statement of the proposed work, together with a plan prepared by an engineer or land surveyor duly licensed by the State of Wisconsin setting forth in detail the following information:

- (a) All information as required on the application form prepared by the Town of Oshkosh, including a detailed statement of the proposed work and three-dimensional extent of the proposed excavation and exact condition of the plot or premises before the work is commenced and proposed condition of the said plot or premises after the work is completed;
- (b) The plan shall be drawn to scale and give all streets adjoining the property, the location and dimensions of the premises upon which it is proposed to excavate, location, size and use of any existing buildings, cross sections of the property, giving elevations thereof at intervals of fifty (50) foot squares and also at each break in the grades, and the elevation of the premises as compared to the elevation of any abutting highways;
- (c) A duly acknowledged consent in writing of the owner of the premises and mortgagee, if any, including his, her, its or their address;
- (d) Receipted tax bills or a certificate from the Treasurer of the Town of Oshkosh and the County Treasurer of Winnebago County showing payment of all taxes or assessments to date against the property described in the application;
- (e) A certificate of the Highway Commissioner of Winnebago County that such proposed excavation and the finished grades of said property as shown on said map will not interfere with any applicable drainage plan of Winnebago County and will not endanger any road, street or highway of Winnebago County or of the Town of Oshkosh or other property of the said County or Town.
- (f) The purpose of the proposed excavation;
- (g) The existing and the theoretical maximum ground water level at the location.

Sec. 7-7-4 Regulations of Excavations.

- (a) No pit excavation shall be made within two hundred (200) feet of any property line opposite which there are residential buildings within one hundred (100) feet of such property line, or within one hundred (100) feet of any other property line.
- (b) No pit or bank excavation shall be made greater than ten (10) feet below the established grade of the nearest public street or highway unless the side walls

- remain at an incline of at least two (2) horizontal to one (1) vertical foot or are supported by retaining walls equal to that specified in the Building Code of the State of Wisconsin for permanent building foundations.
- (c) Any removal of more than seventy-five (75) cubic feet of earth from the ground in a vertical dimension of more than three (3) feet shall be protected by suitable barriers and lights. All pit and bank excavations shall be completely surrounded by wire fencing of the type known as chain link or cyclone fence, or its equivalent, of the height of six (6) feet with no opening except necessary gates for ingress or egress, to prevent public access to the top of any pits or deeply graded slopes.
 - (d) Dust-down or a similar dust layer shall be spread on access roads and other traveled areas used in connection with every pit or bank excavation to protect the public and the surrounding area against wind-blown sand and dust.
 - (e) No removal of earth from the ground shall be so made as to undermine, weaken or deprive of support other lands in the vicinity or to substantially obstruct, impede or change the course of or the natural movement or flow of the water in or otherwise adversely affect any public waterway or public body of water or any waterway or body of water which is used as a part of any public drainage system.
 - (f) No removal of earth from the ground shall be so as to expose to possible pollution, by surface water intrusion or otherwise, any underground water used as a water supply by the public.
 - (g) No removal of earth from the ground shall be so made as to prevent or interfere with the orderly development, for residential, business, manufacturing or public purposes, of other lands in the vicinity of the removal, or as to render unreasonably difficult or unreasonably delay travel from one (1) place to another or as to render unduly difficult or substantially increase the cost of the installation of public utilities or other public services or as to substantially depreciate the value of real property in the vicinity.
 - (h) No excavation shall be made below two (2) feet above the maximum ground water level at the site.
 - (i) No blasting, stone crushing, excavation or earth removal operations shall occur except during hours as follows:
 - (1) On Mondays through Fridays, except legal holidays, from 6:00 p.m. to 6:00 a.m.
 - (2) On Saturdays, except legal holidays, from 6:00 a.m. to 2:00 p.m.
 - (j) The Town Board may deny any application for a permit hereunder if it shall find that the proposed excavation will violate any of the provisions of this Section, and, may revoke or suspend any permit issued hereunder if it shall find that the removal of earth there under violates any such provision.
 - (k) When earth has been removed from any part of any pit excavation area to the maximum extent allowable under this Chapter or the removal of earth from any such part has been discontinued or abandoned or the permit for such removal has expired, such pit or part thereof shall be immediately refilled with clean, non-burnable fill containing no garbage, refuse, offal or any other deleterious or unwholesome matter and the premises, after completion of the removal of earth from the entire pit excavation area shall be so filled and graded to the levels of the nearest abutting streets or roads; or such other action shall be completed

promptly as approved by the Town Board for the restoration plan incorporated in the permit issued under Section 7-7-3.

Sec. 7-7-5 Topsoil Stripping and Removal.

No stripping or removal of topsoil shall be made within ten (10) feet of any property line and upon completion of the work, the premises, if below grade, shall be graded to the level of the abutting highway or the original grade if the same were below the level of the highway. Dust-down, or its equal, shall be spread to prevent dust from flying and there shall be left upon the surface of the land from which topsoil is removed not less than six (6) inches of topsoil. No topsoil shall be removed between the first day of October and the first day of April in the following year.

Sec. 7-7-6 Provisions Applicable to Both Bank and Pit Excavations and Topsoil Removal.

(a) Bond or Cash Deposit.

- (1) Before the issuance of a permit, the applicant and the owner of record of the premises shall execute and file with the Town Clerk, a bond approved by the Town Board of the Town of Oshkosh in an amount to be fixed by said Board, but not less than Two Thousand Dollars (\$2,000) with a surety company as surety and conditioned for the faithful performance of the conditions contained in this Chapter, the observance of all Town ordinances, and to indemnify the Town of Oshkosh and/or the Superintendent of Highways for any damage to Town Property. In the event of a default such bond shall be forfeited to the Town of Oshkosh.
- (2) Said bond shall remain in full force and effect until a certificate of completion has been issued by the Building Inspector, certifying to the fact that all provisions of this Chapter and conditions of the permit have been fully complied with. Application for such certificate shall be made by the applicant, owner, lessee or his agent on forms provided by the Town of Oshkosh and shall be accompanied by a map drawn to scale showing a cross-section of the affected property, giving elevations thereof as provided in Section 7-7-3(b), prepared by an engineer or land surveyor duly licensed by the State of Wisconsin after the completion of the operations, who shall also certify that there is not less than six (6) inches of topsoil remaining upon the ground from which topsoil has been removed and that such area has been seeded in compliance with Section 7-7-5 hereof.
- (3) In lieu of such bond a cash deposit or deposit of negotiable securities may be made with the presiding Supervisor of the Town.

(b) Fees. The officer designated by the Town Board to issue such permits shall charge and collect for each such permit:

- (1) **Bank and Pit Excavations.** A minimum fee of Two Hundred Dollars (\$200.00) for an excavation volume not to exceed twenty thousand

(20,000) cubic yards. For excavations exceeding twenty thousand (20,000) cubic yards, the minimum fee shall be Two Hundred Dollars (\$200.00) plus one cent (1¢) for each additional cubic yard or fraction thereof.

- (2) **Top Soil Removal.** Such permits shall expire by limitation sixty (60) days from the date of issuance unless extended by the Town Board, and no permit or permits shall be granted:
- (a) For removal of more than four (4) acres of topsoil from any one (1) tract of land until full compliance with the Chapter is had under any existing permit for the same tract except the preparation of the ground and seeding as provided in Section 7-7-5 hereof, and
 - (b) No permit shall be valid except between April 1st and October 1st of any year.
- (d) **Exceptions.** Nothing contained in this Chapter shall require a person to obtain a permit hereunder for or prevent a person from removing topsoil from one (1) part of his lands to another part of the same premises when such removal is necessary as an accessory use or is made for the purpose of farming or improving said property or for the installation of public improvements or public utilities, or to obtain a permit hereunder either for the installation of public utilities under a road opening permit or for the removal of material regulated by the Wisconsin Department of Natural Resources or the United States Army Corps of Engineers.

Sec. 7-7-7 Penalties.

For any and every violation of the provisions of this Chapter, the owner, general agent, or contractor of a building on premises where such violations have been committed or shall exist, and the lessee or tenant of the premises where such violation has been committed or shall exist, and the owner, general agent, contractor, lessee or tenant of any part of the premises in which part of said violation has been committed or shall exist, and the general agent, architect, engineer, surveyor, building contractor or any other person who knows, permits, takes part or assists in any such violation, or who maintains any premises in which any such violation shall exist, shall be subject to a forfeiture as provided in Section 1-1-6.

