

ORDINANCE NO. 10677

AN ORDINANCE REGULATING GRADING, ADDING A NEW CHAPTER TO THE BELLINGHAM MUNICIPAL CODE.

WHEREAS, the citizens of Bellingham find that grading is a necessary and beneficial activity when appropriately managed and therefore desire to reduce the potentially harmful effects which may result; and

WHEREAS, regulatory ordinances must be periodically updated to meet the needs of the community while remaining fair, predictable and efficient consistent with the Growth Management Act; and

WHEREAS, a grading task force comprised of technical experts was formed and has made recommendations to improve the grading regulatory chapter; and

WHEREAS, a SEPA Determination of Nonsignificance was issued on September 26, 1995 by the responsible official as required by the State Environmental Policy Act, and

WHEREAS, the Planning Commission held a public hearing on July 20th, 1995 and made recommendations for approval to the City Council, and

WHEREAS, the City Council held a public hearing on October 2, 1995,

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1

Ordinance #10649 adopting Appendix Chapter 33 of the Uniform Building Code, Excavation, is hereby repealed.

Section 2

A new subsection of Bellingham Municipal Code 16.04.070 (A) (4) is hereby added, reading:

"For any landfill or excavation as per WAC 197-11-800 (1) (b) (v), 500 cubic yards."

Section 3

A new chapter, 16.70, is added to the Bellingham Municipal Code to read as follows:

.010 TITLE

This chapter shall be known as the GRADING CHAPTER of the Bellingham Municipal Code.

.020 AUTHORITY

Article 11 of the Washington State Constitution.

.030 PURPOSE

The purpose of this chapter is to:

Provide an efficient and appropriate process for managing grading activities within the City.

Require advance site planning to improve the utility of lands within the City while preventing waste and harmful impacts to natural resources and public and private property.

Maintain a safe and healthy community.

Provide for adequate enforcement of the provisions contained herein.

.040 DEFINITIONS

Active Grading Site: A permitted site, in regular use, which has been inspected by the PCDD within one year of issuance of a grading permit and is in conformance with this Chapter.

Clay Soil: A plastic, smooth, sticky soil with mineral particles typically less than 0.002 millimeters in diameter.

Developed residential land: A lot or parcel which may not be further subdivided, is at maximum allowable density and which is presently occupied by one or more residential buildings.

Director: The Director of the Planning and Community Development Department.

Erosion controls: A combination of methods and materials which prevent the transport of dirt, mud or silt offsite or in undesirable directions.

Grading: The movement of soil in the form of excavation and/or placement of fill.

Granular Soil: Mineral soil consisting of particles over 0.05 millimeters in diameter, remains loose when crumbled and does not exhibit cohesive properties.

Major Grading: A non-exempt grading action over 500 cubic yards.

Minor Grading: A non-exempt grading action of 500 cubic yards or less permitted once every 5 years.

Non-Structural Fill: Fills for disposal of spoils, general topographic reshaping, berming or other applications where load bearing, settlement and stability are not of concern for future building purposes.

PCDD: The Planning and Community Development Department.

Performance Standard: A generalized standard established for all grading activities. Specific methods to meet the standard may be determined by a qualified professional consultant subject to approval by appropriate City departments.

Self-Contained Site: A lot, parcel or land assemblage free of environmental constraints, which is distinctly separated from adjacent parcels by virtue of topography, physical barriers, vegetative screening, drainage networks and the like which would prevent any significant disruption or impact on adjacent properties as a result of a particular grading activity. The Director shall determine whether a site is self-contained.

SEPA: State Environmental Policy Act.

Site closure: A completed grading action which has been stabilized and inspected by the City.

Site Plan: A clear, concise drawing of a lot or parcel showing the location of existing and proposed buildings, driveways, parking, utilities, drainage, easements, landscaping, topography, environmentally sensitive areas, and other site features as may be relevant.

Structural Fill: Fill which must be properly placed and compacted for the purposes of building pads, parking or other structures which may be placed on top thereof.

Violation: Non-compliance with the provisions of this chapter.

.050 RELATIONSHIP TO OTHER PERMITS

Grading permit applications shall be reviewed under the auspices of this chapter as well as the Land Clearing Chapter, Stormwater Management

Ordinance, Wetland and Stream Chapter, Shoreline Master Program and other applicable regulatory provisions as may be required by law.

PCDD staff will review applications and coordinate with other departments for code compliance. For example, applications inclusive of retaining walls will be reviewed by the Building Services Department to determine the need for a separate building permit.

.060 REGULATED ACTIVITY

All grading within the City shall be in compliance with the provisions of this chapter.

.070 PERFORMANCE STANDARDS

The following performance standards shall apply to all grading actions within the City. Each grading action will require:

- A. Written permission from the legal property owner(s) if performed by a non-owner.
- B. Compliance with all applicable ordinances and zoning provisions.
- C. Identification of property corners and lines by staking or flagging when working in close proximity (10') to abutting properties.
- D. Location and protection of underground utilities, storage tanks, septic systems or other potential hazards which may reasonably be anticipated to exist.
- E. A proper vehicle access point such as a crushed rock entrance sufficient to prevent the transport of dirt, mud or debris offsite.
- F. Work site perimeter containment/erosion control sufficient to prevent the transport of earth materials or silt contaminated

stormwater runoff off site or onto rights of way, into water bodies, drainage courses or environmentally sensitive areas.

- G. Work hours and methods compatible with weather conditions and surrounding property uses.
- H. Prevention of any damage or nuisance to adjacent public or private properties, structures, facilities or occupants.
- I. Maintenance of the property and work site in a safe and stable condition.

.080 EXEMPT ACTIVITY

A grading action is exempt from the provisions of Section .090 of this chapter if it satisfies one of the criteria listed in (A.) through (H.) below. Exempt grading actions must still comply with the performance standards listed above and all other applicable laws.

- A. Structural fill, including foundation and retaining wall preparation for structures requiring a building permit, in conformance with the Grading Chapter of the Uniform Building Code, published by the International Conference of Building Officials.
- B. Grading covered within a Planned Contract, Preliminary Plat, Shoreline Substantial Development Permit, Wetland and Stream Permit or Public Services Contract if specifically addressed within the document or permit.
- C. Gravel mining regulated by and pursuant to a permit issued by the State Department of Natural Resources.

- D. Cemetery graves, wells, utility trenches, stockpiling of landscaping or construction materials as allowed by underlying zoning, or exploratory excavations under the direction of an engineer or geologist.
- E. Earth moving without import or export on a self-contained site.
- F. Placement of topsoil for landscaping not exceeding one foot in depth, gravel for residential driveways, or similar superficial applications as determined by the Director.
- G. Grading within any developed residential land not to exceed 100 cubic yards.
- H. The grading action satisfies all of the following criteria:
 - 1. Grading of less than 100 cubic yards.
 - 2. Cut, fill or excavation less than 5' in vertical dimension that will maintain a 2' horizontal dimension to 1' vertical dimension slope ratio.
 - 3. The existing groundslope does not exceed a 2' horizontal to a 1' vertical slope ratio.
 - 4. The grading action is not within Shoreline, floodplain or Wetland and Stream ordinance jurisdiction.
 - 5. Complies with zoning setbacks for structure.
 - 6. Is the only exempt grading action to occur within a five year period on an individual lot or series of lots in contiguous ownership.

.090 MINOR GRADING

APPLICATION FOR GRADING 500 CUBIC YARDS OR LESS:

Anyone who wishes to perform a non-exempt grading activity involving 500 cubic yards or less shall complete and submit to the PCDD a grading application on forms provided by the PCDD which provides the following information:

Parcel number or legal description of lot or parcel, name, address and phone numbers for the legal owner and operator.

A clear, concise site plan of appropriate scale showing the entire parcel, the work area and all relevant features including topography, existing and proposed structures, roads, utilities, drainage courses, water bodies, potential hazards and vehicle access points.

A schematic description of the grading work to be performed including total volume of earthwork, before and after dimensioned footprints, depth, elevation, slopes and cross sections.

Source of fill if imported, destination if exported, duration of activity with start and end dates.

An erosion control and drainage plan consistent with the requirements of the Stormwater Management Ordinance administered by the Public Works Department.

CONDITIONS:

All performance standards listed in Section .070 shall apply.

All cuts and fills shall maintain a horizontal property line setback equal to 1/2 the maximum vertical cut or depth of fill, in addition, the maximum side slope shall be 2' horizontal to 1' vertical ratio, unless plans are provided by a licensed engineer.

The Director may require additional conditions as may be necessary to protect the public health safety and welfare such as requiring dust control, soil contamination testing or limiting work hours.

.100 MAJOR GRADING

APPLICATION FOR GRADING MORE THAN 500 CUBIC YARDS:

Anyone who wishes to perform a major grading activity involving more than 500 cubic yards shall complete and submit to PCDD a grading permit application on forms approved by PCDD which provide the following information in addition to the application information described above in Section .090.

- A. Submit a SEPA checklist and other information as outlined in Attachment A.

- B. Technical analysis is required when the proposal involves:
 - 1. A cut of more than five feet; or
 - 2. Fill steeper than two horizontal feet for every one vertical foot; or
 - 3. Fill is non-granular; or
 - 4. Drainage courses will be altered.

At the discretion of the Director, the technical analysis may be required to be provided by a licensed engineer.

- C. Names and addresses of abutting property owners as determined from the County Assessor's records for notification when grading will be within or immediately adjacent to residential areas.

CONDITIONS:

All conditions listed in Section .090 above shall apply.

.110 APPROVAL

Prior to undertaking any non-exempt grading activity regulated by this chapter, any person who proposes such activity shall obtain a grading permit from the PCDD. The PCDD shall review the application and prior to issuing a grading permit shall determine that:

- A. The application complies with the provisions of this chapter and other applicable laws.
- B. A SEPA determination has been made when applicable.
- C. The proposed grading plan is in conformance with the Stormwater Management Ordinance and Land Clearing Chapter.
- D. Any required notice has been mailed to abutting property owners.
- E. Required erosion control has been installed and inspected.

.120 FEES/BONDS

FEES:

Applicants for a non-exempt grading permit shall pay a fee as established by the City Council as set by resolution.

BONDS:

Public Facilities

If in the opinion of the Planning and Community Development Department Director or the Public Works Department Director there exists significant risk of damage to public facilities such as roadways or utilities, either may require the establishment of a bond for potential repair or replacement of such facilities. The amount and duration of this bond shall be based upon the cost of repair or replacement, and shall be set by the Public Works Department.

A bond may be reduced or waived for those grading contractors on a pre-approved list as determined by the Public Works Department.

Performance

If in the opinion of the PCDD Director there exists significant risk of damage to public or private properties or natural resources if a grading action were to be improperly performed or completed, the Director may require a performance bond sufficient to ensure proper completion of the grading activity in accordance with the permit requirements. The amount and duration of the bond shall be set by the Director.

.130 INSPECTION

PCDD or Public Works Department staff shall inspect all grading sites requiring permits to verify that erosion control has been properly installed prior to grading permit issuance.

Upon completion of the grading activity, the above staff will also inspect to see that permit conditions have been satisfied and the site is properly stabilized and/or contained.

Further development permits, building permits or certificates of occupancy shall not be granted for the subject property until the grading permit conditions have been satisfied or revised, permitting additional actions. Satisfaction of permit conditions shall constitute site closure.

.140 ENFORCEMENT, VIOLATION, PENALTY

The City, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may take or cause to be made such examinations, surveys, or sampling as the City deems necessary.

The Director has the authority to enforce this chapter and grading regulations regulated thereunder. All costs, fees, and expenses in connection with such enforcement actions may be recovered as damages against the violator.

Law enforcement officials or other enforcement officials having police powers shall have concurrent authority to enforce this chapter and grading activities regulated hereunder.

Any person who commits, takes part in, or assists in any violation of any provision of this chapter is guilty of a misdemeanor and may be fined not more than \$1,500.00 for each offense. Each violation of this act shall be a separate offense, and in the case of a continuing violation each day's continuance shall be deemed to be a separate and distinct offense.

Should an activity occur and it is later discovered that the activity is occurring in violation of this chapter, the Director shall have the authority to issue a stop work order and all activity shall cease until such time as the applicant or violator can meet the requirements of this chapter.

In the event of a violation, the Director shall have the authority to order restoration measures for the damaged or destroyed area by the person

or agent responsible for the violation. If the responsible person or agent does not complete such measures within a reasonable time specified by the director following the order, the City of Bellingham may restore the affected area to its prior condition. The person or agent responsible for the original violation shall be liable to the City of Bellingham for the cost of such actions.

.150 APPEALS

A. General Appeals

An applicant or aggrieved person may appeal a PCDD or Director's decision regarding interpretation, criteria, or approval, denial or conditioning of a grading permit to the City Council, within 15 days of the date that the decision is mailed to the applicant. The City Council will conduct a review of the PCDD or Director's decision, and will issue finding of fact and conclusions of law.

B. Appeal Procedure

1. Submittal. A complete application consisting of the following:
 - a. Application form supplied by the Director, containing the decision being appealed, and the basis of the appeal.
 - b. Fee payment.
2. Arguments and Testimony. The City Council shall set a hearing of the appeal for the first available meeting that can be scheduled and for which at least 10 days public notice can be provided. The Council shall hear arguments and testimony from the applicant, the public and the staff on the issues raised by the appeal.

3. Council Action. After receiving all testimony and arguments, the City Council shall decide the appeal, and issue its decision within 15 days.

4. Appeal from Decisions. Any action for review of a final determination pursuant to this chapter, including but not limited to decisions on variance applications, shall be filed in the Superior Court of Whatcom County no later than 21 days after issuance of the decision.

.160 SEVERABILITY

Should any section, clause, designation, or provision of this chapter be declared by the Courts to be invalid, the same shall not affect the validity of the chapter as a whole or any part thereof, other than the part so declared to be invalid.

PASSED by the City Council this 9th day of October, 1995.




Council President

APPROVED by me this 18th day of OCTOBER, 1995.



Mayor

ATTEST:



Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

Attachment A: Required Information

1. Grading applications should include a complete site plan of appropriate scale showing the following information:

Vicinity map, parcel legal description, parcel size and dimensions, scale, north.

Abutting rights of way, easements, underground utilities.

Existing and proposed structures, vehicle access points.

Topography/slope, drainage courses, alterations to drainage.

Grading contours showing before and after features.

Cut and fill cross sections, lifts or layering if applicable.

Erosion and sedimentation controls, settling ponds, detention.

Visual screening, if in a residential area.

Site restoration, re-vegetation or stabilization plan.

Names and addresses of abutting property owners.

Project timing, start and finish dates, phasing if applicable.

If over 5,000 cubic yards of import or export, a transportation plan to be reviewed by the Public Works Department.

