

1 **ENGROSSED ORDINANCE BILL NO. 6-16**

2 AN ORDINANCE RELATING TO CLEARING AND GRADING OF LAND; AND
3 CREATING NEW CHAPTER 82

4 *The City of Salem ordains as follows:*

5 **Section 1.** The following is made part of and added to the Salem Revised Code as Chapter 82.

6 **82.001. Purpose.** The purpose of this Chapter is to protect life, property, and the environment
7 from loss, injury, or damage by pollution, erosion, flooding, landslides, strong ground motion,
8 soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards,
9 whether from natural causes or from human activity related to clearing and grading activities.

10 The provisions of this Chapter shall be liberally construed to accomplish this purpose.

11 **82.005. Definitions.**

12 (a) Unless the context specifically indicates otherwise, as used in this Chapter the following
13 mean:

- 14 (1) Bench: A relatively level step excavated or constructed into earth material on which fill
15 is to be placed.
- 16 (2) Compact: To compress fill by mechanical means.
- 17 (3) Cut: See Excavation.
- 18 (4) Certified Professional: Any person licensed in Oregon as a civil engineer, geotechnical
19 engineer, engineering geologist, architect, or landscape architect and who possesses the
20 knowledge, experience, and ability to successfully design and oversee a project
21 regulated by this Chapter.
- 22 (5) Director: The Public Works Director, or the Director's designee.
- 23 (6) Down Drain. A device for collecting water from a swale or ditch located on or above a
24 slope, and safely delivering it to an approved drainage facility.
- 25 (7) Earth material: All naturally occurring rock and soil, or combination thereof, including
26 clay, silt, sand, gravel-size particles, and naturally occurring and naturally formed
27 aggregates. The term does not include manmade materials such as fill, concrete, or
28 asphalt.
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- 1 **(8)** Erosion: The wearing away of the ground surface, or the movement, detachment or
- 2 dislocation and transport of sediment including soil particles by the action of water or
- 3 wind.
- 4 **(9)** Excavation: The removal of earth material by artificial means; also referred to as a cut.
- 5 **(10)** Fill: Earth material that has been deposited by artificial means.
- 6 **(11)** Grade: The vertical location of the ground surface.
- 7 **(12)** Grade, existing: The grade of the site prior to grading.
- 8 **(13)** Grade, finished: The grade of the site at the conclusion of all ground disturbing
- 9 activities.
- 10 **(14)** Grading: The movement of earth material through mechanical or other means to create
- 11 the finished surface and contour of the project site, which may involve excavation, fill
- 12 or leveling activities, and is meant to include the resulting conditions, spoils or by-
- 13 products.
- 14 **(15)** Ground disturbing activity: Any activity that exposes earth material through the use of
- 15 mechanical equipment. By way of illustration, but not of limitation, ground disturbing
- 16 activity includes: grading, excavating, filling, clearing, grubbing, or working of land.
- 17 Such disturbance may be permanent, such as gravel mining, farming, gardening, sports
- 18 fields; or short-term duration, such as construction, excavation, fill, grading, landscape
- 19 installation, or other vegetative clearing activities.
- 20 **(16)** Key: A compacted fill placed in a trench excavated in earth material beneath the toe of
- 21 a slope.
- 22 **(17)** Site: A unit of land, or portions of street, highway, or other right-of-way, or contiguous
- 23 combination thereof, where a project is proposed or performed.
- 24 **(18)** Slope: An inclined surface, the inclination of which is expressed as a ratio of horizontal
- 25 distance to vertical distance.
- 26 **(19)** Technical Report: The report prepared by a certified professional pursuant to 82.035.
- 27 **(20)** Terrace: A relatively level step constructed in the face of a graded slope for drainage
- 28 and maintenance purposes.
- 29 **(21)** Waterway: Any watercourse within the City of Salem as designated by the Director.
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1 (b) Words and phrases not defined in this section shall be construed according to their customary
2 and usual meaning unless the context indicates a special or technical meaning. Words used in the
3 present tense include the future, the singular number includes the plural, and the word "shall" is
4 mandatory and not discretionary.

5 **82.010. Limitation of Liability.** Nothing contained in this Chapter is intended to be nor shall be
6 construed to create or form the basis for any claim, action, or liability against the City, its
7 officers, employees or agents for any injury or damage resulting from the failure of responsible
8 parties to comply with the provisions of this Chapter, or by reason or in consequence of any
9 inspection, notice, order, certificate, permission, or approval authorized, issued, or done in
10 connection with the implementation or enforcement of this Chapter, or by reason of any action or
11 inaction on the part of the City related in any manner to the enforcement of this Chapter by its
12 officers, employees, or agents. Nothing in this Chapter is intended to nor shall be construed to
13 create a standard of care or impose a duty upon the City.

14 **82.015. Administration.** The Director shall administer and enforce the provisions of this
15 Chapter, and shall have the authority to render written and oral interpretations and to adopt
16 administrative rules, design standards, and procedures for its proper administration and
17 enforcement.

18 **82.020. Applicability, Exemptions.**

19 (a) The standards set forth in this Chapter apply to all ground disturbing activity regardless of
20 whether a permit has been issued by the City, unless the activity is exempted in 82.020(b).

21 (b) The following activities are exempt from this Chapter:

22 (1) Ground disturbing activities that constitute “farm use” or “accepted farming
23 practices” as those terms are defined or used in ORS Chapter 215.

24 (2) Mining activities conducted under permits issued by the Oregon Department of
25 Geology and Mineral Industries.

26 (3) Routine maintenance of gravel roads, road shoulders, paths, parking lots, and storage
27 yards.

28 (4) Routine maintenance of sports fields or playgrounds.

29 (5) Ground disturbing activities conducted for the purpose of opening or closing cemetery
30 graves.

- 1 (6) Ground disturbing activities performed for wells.
- 2 (7) Ground disturbing activities performed for underground utilities.
- 3 (8) Boring or exploration for the purpose of soil analysis or testing as performed under
- 4 the direction of a certified professional.
- 5 (9) Excavation for basements and footings of a building, retaining wall, or other structure
- 6 for which a complete building permit application has been submitted or that has been
- 7 authorized by a building permit. This shall not exempt any fill made with the material
- 8 from such excavation, nor exempt any excavation having an unsupported height greater
- 9 than five feet after the completion of such structure.
- 10 (10) Excavation for constructing a segmented wall or other minor landscape terracing
- 11 that does not require a building permit.
- 12 (11) Excavation for installing fence posts.

13 **82.025. Emergencies.** Where the Director determines that an emergency exists, the Director is
14 empowered to act with all necessary speed to address the emergency situation, including
15 suspension or waiver of permit requirements when necessary to eliminate an imminent hazard to
16 public health, safety or welfare. Compliance with the provisions of this Chapter may not be
17 required where strict compliance with the provisions would impair the ability of the Director to
18 address an imminent threat to public health, safety or property.

19 **82.030. Clearing and Grading Permit.**

20 **(a) Permit Required, Exemptions.**

- 21 (1) Except as provided in paragraph (2) of this subsection, a Clearing and Grading Permit is
- 22 required for any activity that involves ground disturbing activity exceeding two feet in depth
- 23 or 25 cubic yards of volume, if:
 - 24 (A) The ground disturbing activity involves more than 1,000 square feet;
 - 25 (B) The ground disturbing activity is within 50 feet of a waterway as measured from top
 - 26 of bank;
 - 27 (C) The ground disturbing activity is within 50 feet of the boundary of a wetland; or
 - 28 (D) The ground disturbing activity will result in a finished grade slope steeper than two
 - 29 units horizontal to one unit vertical.
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1 **(2) Permit Exemptions.** A Clearing and Grading Permit is not required for activities
2 exempted by Section 82.020(b), or for ground disturbing activities performed by, or under
3 contract for, the City of Salem and conducted in an existing public right-of-way or easement.
4 An exemption from permit requirements does not authorize work to be done in a manner that
5 violates the provisions of this Chapter or any other laws or ordinances, except to the extent
6 allowed under local, state, or federal permits issued for a specific site or purpose.

7 **(c) Submittal Requirements.** An application for a Clearing and Grading Permit shall include the
8 following:

9 **(1)** Location of the property involved;

10 **(2)** Identification of the type of work proposed.

11 **(3)** Identification of soil type, if soil is to be excavated from one location and placed as fill at
12 another location;

13 **(4)** A grading plan, of a size and form and in the number of copies meeting the standards
14 established by the Director, containing the following:

15 **(A)** Property lines, dimensions, and orientation relative to north;

16 **(B)** Recorded property lines, easements, and right-of-way locations;

17 **(C)** Street and curb line locations and elevations, where applicable;

18 **(D)** Existing and finished grades for the subject property shown by at least two-foot
19 contour intervals and in sufficient detail to identify the nature and extent of the work and
20 demonstrate conformance with the requirements of this Chapter.

21 **(E)** Existing grade on adjoining properties in sufficient detail to identify how grade
22 changes will conform to the requirements of this Chapter;

23 **(F)** Location of any buildings or structures on the property where the work is to be
24 performed and the location of any buildings or structures on land of abutting owners that
25 are within 15 feet of the property boundary, or which may be affected by the proposed
26 ground disturbing activity; and

27 **(G)** Intended methods of stormwater drainage, if applicable.

28 **(5)** The Director may require additional information on the grading plan view or require
29 cross-section views.

1 (6) The Director may require additional information on involved persons, such as the name
2 and address of the permittee, property owner, owner's engineer, certified professional,
3 contractor, and other persons associated with the work.

4 (7) A technical report, prepared by a certified professional, shall be submitted by the
5 applicant if the proposed activity cannot meet the excavation, fill, setback, terracing, or
6 drainage requirements of this Chapter.

7 **(d) Criteria.** A Clearing and Grading Permit shall be granted if the proposed ground disturbing
8 activity conforms to the requirements of this Chapter.

9 **(e) Indemnification.** The permittee shall indemnify and hold the City, its agents, employees,
10 and officers harmless from and shall process and defend at its own expense any and all claims,
11 demands, or suits of whatsoever kind or nature brought against the City arising out of, or in
12 connection with, or incident to, the execution of the permit or the permittee's performance or
13 failure to perform any aspect of the permit.

14 **82.035. Technical Report.**

15 **(a)** The technical report, if required, shall include:

16 (1) A comprehensive description of the site topography and geology;

17 (2) An opinion as to the adequacy of the proposed activity;

18 (3) An opinion as to the extent that instability on adjacent properties may adversely affect
19 the project;

20 (4) A description of the field investigation and findings;

21 (5) Conclusions regarding the effect of geologic conditions on the proposed development;

22 (6) Specific requirements for grading plan modification, corrective grading, and special
23 techniques and systems to facilitate a safe and stable development; and

24 (7) Other recommendations, as necessary, commensurate with the project grading and
25 development.

26 **(b)** The technical report shall bear the signature and stamp of a certified professional.

27 **(c)** Any recommendations made in the technical report that are more stringent than the
28 requirements of this Chapter shall be made part of any permit issued pursuant to this Chapter.

29 Any recommendations made in the technical report that are less stringent than the requirements
30 of this Chapter may be made part of any permit issued pursuant to this Chapter, if approved by

1 the Director. The Director may require a geotechnical report prepared and stamped by a
2 geotechnical engineer or equally qualified person approved by the Director in order to approve
3 less stringent standards or methods.

4 **82.040. Inspections.**

5 **(a) General.** All activities for which a permit is required by this Chapter shall be subject to
6 inspection by the Director

7 (1) The Director shall be notified at least 24 hours, but not more than 72 hours, prior to the
8 commencement of any ground disturbing activity requiring a permit under this Chapter.

9 (2) Inspection by the Director may occur at any time during the project.

10 **(b)** For projects identified as requiring a technical report:

11 (1) The certified professional shall be responsible for incorporating all recommendations
12 from the technical report into the grading plan.

13 (2) The certified professional shall be responsible for inspecting and approving the activities
14 contained in the grading plan that are regulated by this Chapter.

15 (3) The certified professional shall act as the coordinating agent in the event a need arises for
16 liaison between any other professionals, the contractor, and the Director regarding activities
17 regulated by this Chapter.

18 (4) The certified professional shall be responsible for preparing as-built plans and submitting
19 plans to the Director upon completion of the work.

20 (5) If the certified professional finds that the work is not being done in conformity with this
21 Chapter or the approved grading plan, the discrepancies shall be reported immediately in
22 writing to the person in charge of the work and to the Director.

23 (6) If the certified professional is changed during the course of the work, the work shall be
24 stopped until a new certified professional has assumed the responsibilities contained in this
25 Chapter.

26 **82.045. Completion of Work.**

27 **(a)** Upon completion of work, the owner shall notify the Director that the site is ready for final
28 inspection. The Director shall not give final approval until all work has been completed in
29 accordance with the final approved grading plan and all required reports have been submitted.

30 **(b)** For projects identified as requiring a certified professional per SRC 82.030(c)(7):

1 (1) Upon completion of the work, a final site plan shall be prepared by the certified
2 professional and submitted to the Director that includes original ground surface elevations,
3 finished graded ground surface elevations, lot drainage patterns, and locations and elevations
4 of all surface and subsurface drainage facilities.

5 (2) Prior to final approval by the Director, the certified professional shall provide
6 documentation that the work has been done in accordance with the final approved grading
7 plan.

8 **82.050. Excavations.**

9 (a) **General.** Unless otherwise recommended in a technical report, excavations shall comply with
10 the provisions of this section.

11 (b) **Maximum slope.** The finished slope of cut surfaces shall be no steeper than two units
12 horizontal to one unit vertical or as recommended in a technical report.

13 (c) **Maximum slope, exceptions.**

14 (1) A cut surface shall be permitted to be at a slope of 1.5 units horizontal to one unit vertical
15 provided that all of the following are met:

16 (A) It is not intended to support structures or surcharges;

17 (B) It is protected against erosion;

18 (C) It is no more than eight feet in height;

19 (D) Groundwater is not encountered.

20 (2) A cut surface in bedrock shall be permitted to be at a slope of one unit horizontal to one
21 unit vertical.

22 **82.055. Fills.**

23 (a) **General.** Unless otherwise recommended in a technical report, fills shall comply with the
24 provisions of this section.

25 (b) **Maximum Depth and Slope.** The depth of fill surfaces shall be no more than four feet. The
26 slope of fill surfaces shall be no steeper than two units horizontal to one unit vertical or as
27 recommended in a technical report.

28 (c) **Surface Preparation.** The ground surface shall be prepared to receive fill by removing
29 vegetation, topsoil, and other unsuitable materials, and scarifying the ground to provide a bond
30 with the fill material.

1 **(d) Benching.** Where the existing grade is at a slope steeper than five units horizontal to one unit
2 vertical and the depth of the fill exceeds five feet, benching shall be provided in accordance with
3 Figure 1. A key shall be provided that is at least 10 feet in width and two feet in depth.

4 **(e) Fill material.** Fill material shall not include organic, frozen, or other deleterious materials.
5 No rock or similar irreducible material greater than 12 inches in any dimension shall be included
6 in fills. Rocks shall be placed so as to assure filling all voids with fines. Topsoil may be used in
7 the top 12-inch surface layer to aid in planting and landscaping.

8 **(f) Compaction.** All fill material not intended for use for roadway, landscaping or infiltration
9 purposes shall be compacted to 90 percent of maximum density as determined by ASTM D
10 1557, Modified Proctor, in lifts not exceeding 12 inches in depth. Fill material intended for use
11 for roadway embankments shall be placed and compacted in accordance with the City of Salem
12 Standard Construction Specifications. A higher relative dry density, or additional compaction
13 tests, or both, may be required as determined by a certified professional.

14 **82.060. Setbacks.**

15 **(a) General.** Unless otherwise recommended in a technical report, cut and fill slopes shall be set
16 back from property lines in accordance with this section. Setback dimensions shall be measured
17 perpendicular to the property line and shall be as shown in Figure 2.

18 **(b) Top of Slope.** The setback at the top of a cut slope shall not be less than that shown in Figure
19 2, or than is required to accommodate the required interceptor drains, whichever is greater.

20 **(c) Slope Protection.** Except as otherwise recommended in a technical report, the following
21 minimum slope protection measures shall be included to protect abutting properties at the toe of
22 a slope from adverse effects of the ground disturbing activity:

- 23 (1) Setbacks greater than those required by Figure 2;
- 24 (2) Provisions for retaining walls or similar structures;
- 25 (3) Erosion protection of the fill slopes; and
- 26 (4) Provision for the control of stormwater runoff.

27 **82.065. Terracing and Drainage.**

28 **(a) General.** Unless otherwise recommended in a technical report, terracing and drainage
29 facilities shall comply with the provisions of this section.

30 **(b) Terraces.**

1 (1) Terraces at least six feet in width shall be established at not more than 30-foot vertical
2 intervals on all cut or fill slopes. Access shall be provided to allow for cleaning and
3 maintenance.

4 (2) Where more than two terraces are required, one terrace, located at approximately mid-
5 height, shall be at least 12 feet in width. For cut or fill slopes greater than 60 feet and up to
6 120 feet in vertical height, one terrace at approximately mid-height shall be 12 feet in width.

7 (3) Terrace widths and spacing for cut and fill slopes greater than 120 feet in height shall be
8 designed by a certified professional.

9 **(c) Drainage Facilities on Terraces.**

10 (1) Swales or ditches shall be provided on terraces. The swales or ditches shall have a
11 minimum gradient of 20 horizontal to 1 vertical and shall be paved with concrete not less
12 than three inches in thickness, or with other materials suitable to the application. Swales and
13 ditches shall have a minimum depth of 12 inches and a minimum width of five feet.

14 (2) A single run of swale or ditch shall not collect runoff from a tributary exceeding 13,500
15 square feet without discharging into a down drain.

16 **(d) Interceptor Drains.**

17 (1) Interceptor drains shall be installed along the top of cut slopes receiving drainage from a
18 tributary width greater than 40 feet, measured horizontally.

19 (2) Interceptor drains shall have a minimum depth of one foot and a minimum width of three
20 feet. The slope shall not be less than 50 horizontal to 1 vertical. The drain shall be paved with
21 concrete not less than three inches in thickness, or by other materials suitable to the
22 application.

23 (3) Discharges from the drains shall be accomplished in a manner to prevent erosion.

24 **(e) Drainage across Property Lines.** Drainage across property lines shall not exceed that which
25 existed prior to ground disturbing activity. Excess or concentrated drainage shall be contained on
26 site or directed to a drainage facility. Erosion of the ground in the area of discharge shall be
27 prevented.

28 **(f) Subsurface Drainage.**

29 (1) Cut and fill slopes shall be provided with subsurface drainage as necessary for site
30 stability.

1 (2) Appropriate culverts shall be laid under all fills placed in natural watercourses and along
2 the flow line of any tributary branches in such a manner that the hydraulic characteristics of
3 any stream are not adversely altered.

4 (3) Subsurface drainage shall be installed if active or potential springs or seeps are covered
5 by the fill.

6 (4) All culverts and subsurface drainage systems shall be installed after subgrade
7 preparation. Design details of culverts and subsurface drainage shall be shown on the grading
8 plan.

9 (5) A subsurface drain system shall be provided for embedded foundation/ retaining walls
10 and floor slabs where ground water or seepage has a potential to affect the performance of
11 the structure. The grading plan shall indicate:

12 (A) Subsurface drainage details with appropriate specifications;

13 (B) Location of footing subsurface drain/discharge lines; and

14 (C) Method of disposal.

15 In lieu of above, walls/floors may be waterproofed and designed to resist hydrostatic
16 pressure.

17 **82.070. Stop Work Orders; Permit Revocation; Civil Penalties; Enforcement.**

18 (a) **Stop Work Orders and Permit Revocation.** The Director may suspend work or revoke a
19 permit specifying the basis for the suspension or revocation that must be remedied prior to
20 resuming other work on the project, upon a finding that:

21 (1) The work is not authorized by a valid permit;

22 (2) Inaccurate information was used to obtain the permit;

23 (3) The applicant is not complying with the terms of the permit, the grading plan, or this
24 Chapter;

25 (4) The work is, or threatens to become, risk to property or public safety; is adversely
26 affecting or about to adversely affect adjacent property or rights-of-way; or is otherwise
27 adversely affecting the public health, safety, or welfare; or

28 (5) The permit was issued in error.

29 (b) **Rescinding a Stop Work Order or Revocation.** Penalty fees shall be paid to the City before
30 a stop work order or permit revocation is rescinded.

1 **(c) Civil Penalty.** Any person who fails to comply with the requirements of this Chapter, or the
2 terms of a permit issued hereunder, who undertakes an activity regulated by this Chapter without
3 first obtaining a permit, or who fails to comply with a stop work order issued pursuant to this
4 Chapter shall also be subject to a civil penalty, not to exceed \$2,000 per violation. Each day that
5 a permit violation continues shall constitute a separate violation.

6 **(d) Civil Penalties against Agents.** Any person who acts as the agent of, or otherwise assists, a
7 person who engages in an activity that would be subject to a civil penalty may likewise be
8 subject to a civil penalty.

9 **(e) Injunctive Relief.** The City may seek injunctive relief against any person who has willfully
10 engaged in violation of this Chapter, such relief to be in effect for a period not to exceed five
11 years.

12 **(f) Appeal.** Appeals from all orders, decisions and determinations of the Director under this
13 Chapter shall be to the Hearings Officer, and shall be initiated by filing a notice of intent to
14 appeal with the City Recorder within fifteen business days after notice of the Director's final
15 decision is deemed to have been received by the applicant under SRC 20J.100. The notice of
16 appeal shall satisfy the requirements of SRC 20J.110, and the appeal shall proceed as a contested
17 case under the procedures established in SRC 20J.240-20J.430. Notwithstanding SRC 20J.270,
18 the Director's decision, action, or determination shall remain in effect during such period of the
19 appeal. Appeals to the Hearings Officer under this section shall extend any applicable plan
20 review deadline by the number of days it takes for a final decision to be issued upon the appeal.

21 **(g) Prohibition of Further Approvals.** The City shall not issue any final approvals or any
22 additional permits for property on which a violation of this Chapter has occurred or is occurring,
23 until the violation has been cured by restoration or other means acceptable to the Director and
24 any penalty imposed for the violation is paid.

25 **82.075. Remedies not Exclusive.** The remedies provided in this Chapter are cumulative and not
26 mutually exclusive and are in addition to any other right, remedies, and penalties available to the
27 City under any other provision of law.

28 **82.080. Violations.** Violation of any of the provisions of this Chapter is an infraction. Each day
29 that a violation continues shall constitute a separate infraction.
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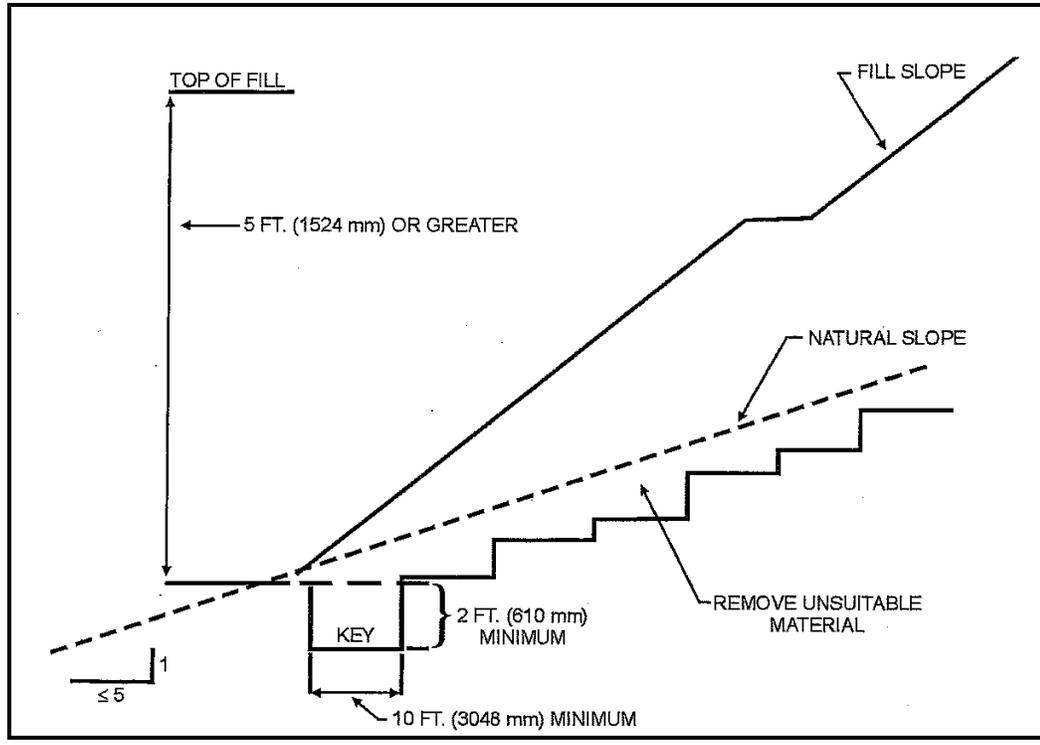


Figure 1: Benching Details

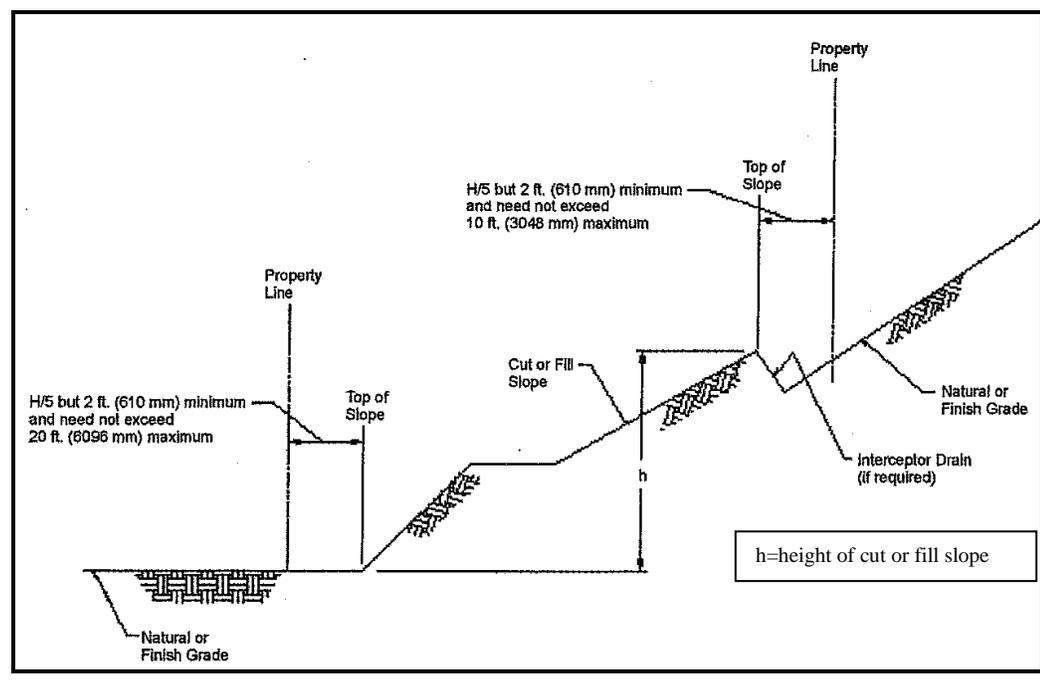


Figure 2: Drainage Dimensions

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Section 2. Codification. In preparing this ordinance for publication and distribution, the City Recorder shall not alter the sense, meaning, effect or substance of this ordinance, but within such limitations, may:

- (a) Renumber sections and parts of sections of the ordinance;
- (b) Rearrange sections;
- (c) Change reference numbers to agree with renumbered chapters, sections or other parts;
- (d) Delete references to repealed sections;
- (e) Substitute the proper subsection, section or chapter, or other division numbers;
- (f) Change capitalization and spelling for the purpose of uniformity;
- (g) Add headings for purposes of grouping like sections together for ease of reference; and
- (h) Correct manifest clerical, grammatical or typographical errors.

Section 3. Severability. Each section of this ordinance, and any part thereof, is severable, and if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

PASSED by the City Council this _____ day of _____, 2016.

ATTEST:

City Recorder

Approved by City Attorney: _____

Checked by: Glenn Davis