

## **ORDINANCE NO. 2021-04**

### **ORDINANCE OF THE BOROUGH OF RED BANK, COUNTY OF MONMOUTH, STATE OF NEW JERSEY SUPPLEMENTING THE BOROUGH'S REVISED GENERAL ORDINANCES TO INSERT NEW CHAPTER 582: "SOIL AND FILL IMPORTATION" TO REGULATE THE IMPORTING AND DEPOSITING OF SOIL AND FILL TO PROTECT THE SAFETY, PUBLIC HEALTH, AND GENERAL WELFARE OF THE BOROUGH'S RESIDENTS**

**WHEREAS**, the Governing Body of the Borough of Red Bank (the "Borough") believes it important and necessary to regulate the importing and depositing of soil and fill within the limits of the Borough; and

**WHEREAS**, tainted soil or fill, which is sold or sometimes offered free of charge, may contain contaminants that should not be present on occupied properties; and

**WHEREAS**, the battle to keep such soil – possibly "dirty" dirt – off New Jersey's lands starts most effectively at the municipal level, with regulations that prevent this material from being deposited on residential, construction and development sites; and

**WHEREAS**, to proactively address this issue, the Borough finds it to be in the best interests of the municipality and its residents to enact a soil and fill ordinance to provide the necessary authority to ensure that the quality of soil brought into the Borough and placed on lands within its boundaries is acceptable;

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Red Bank, County of Monmouth, State of New Jersey, that the Borough's Revised General Ordinances is amended to include new Chapter 582: "Soil and Fill Importation" as follows:

#### **CHAPTER 582: SOIL AND FILL IMPORTATION.**

##### **§ 582-1 Purpose/Application.**

The purpose of this Chapter is to manage the importation and deposition of soil/fill within the Borough to protect the safety, public health, and general welfare of the community and the environment. This chapter does not exempt any applicant from any other required local, State or Federal approvals or local Soil Conservation District requirements regarding the acceptability and placement of soil/fill materials.

This Chapter does not apply to soil/fill imported for the purposes of remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS, N.J.A.C. 7:26C) and Technical Requirements for Site Remediation (N.J.A.C. 7:26E), operation and/or closure of sanitary landfills (N.J.A.C. 7:26), or dredge repository sites approved by State or Federal agencies.

##### **§ 582-2 Definitions.**

As used in this Chapter, the following terms shall have the meanings indicated:

##### **ACCEPTABLE SOIL/FILL**

Non-water-soluble, non-decomposable, inert solids such as soil, subsoil, topsoil, sand, clay, loam, gravel, humus, rock, concrete, brick, glass, and/or clay or ceramic products, free of construction/demolition debris, garbage, refuse, or sludge and not containing concentrations of one or more contaminants that exceed the DEP's Residential Direct Contact Soil Remediation Standards or Non-Residential Direct Contact Soil Remediation Standards, whichever is more stringent, as set forth in N.J.A.C. 7:26D, Remediation Standards.

##### **APPLICANT**

The property owner requesting a soil importation permit as provided for in this chapter.

##### **CONSTRUCTION/DEMOLITION DEBRIS**

Mixed waste building material and rubble resulting from construction, remodeling, repair, and demolition operations on houses, commercial buildings, pavements and other structures that includes, but is not limited to, treated and untreated wood scrap; tree parts, tree stumps and brush; plaster and wallboard; roofing materials; corrugated cardboard and

miscellaneous paper; ferrous and nonferrous metal; non-asbestos building insulation; plastic scrap; carpets and padding; and other miscellaneous materials.

### **CONTAMINATED SOIL/FILL**

Any soil/fill containing contaminants exceeding the current requirements for the most stringent concentrations between the Non-residential and Residential Direct Contact Soil Remediation Standards pursuant to N.J.A.C. 7:26D, Remediation Standards.

### **CONTAMINATED PROPERTY**

Any property, including but not limited to structures, sediment, soil and water, that contains a contaminant which is present at such levels or concentration as to require action pursuant to any federal or state statutes or regulations.

### **FILL**

Material placed at a location for the purpose of filling low areas, changing the contours of an area, stabilizing existing grades and/or raising the grade of an area. Fill usually consists of soil, but may also include non-water-soluble, non-decomposable, inert solids, such as rock, gravel, brick, block, concrete, glass, and/or clay or ceramic products or any combination thereof.

### **PERMIT**

The official document issued by the Municipality approving the Soil Importation Application.

### **PERSON**

Includes an individual, firm, corporation, association, society or partnership, or other business entity and their agents or employees.

### **REMEDIAL ACTION**

As defined in the Technical Requirements for Site Remediation (Technical Requirements) at N.J.A.C. 7:26E-1.8, those actions taken at a contaminated site as may be required by the Department, including, without limitation, removal, treatment measures, containment, transportation, securing, or other engineering or institutional controls, whether to an unrestricted use or otherwise, designed to ensure that any contaminant is remediated in compliance with the applicable remediation standards. A remedial action continues as long as an engineering control or an institutional control is needed to protect the public health and safety and the environment, and until all unrestricted use remediation standards are met.

### **REMEDICATION**

“Remediation” or “remediate” means all actions to investigate, clean up, or respond to any known, suspected, or threatened discharge of contaminants, including the preliminary assessment, site investigation, remedial investigation, and remedial action, or any portion thereof, provided, however, that “remediation” or “remediate” shall not include the payment of compensation for damage to, or loss of, natural resources.

#### **§ 582-3 Permit required.**

- A. No person shall deposit or place soil/fill material, or cause, allow, or permit soil/fill to be placed on any property in the Borough of Red Bank unless a permit is issued by the Borough and any other applicable county, state or federal approval(s) or permit(s). No permit under this chapter shall be required for any development that requires a Land Use Approval from the Planning Board or Zoning Board of Adjustment provided the approval contains a condition(s) that meet the standards of this Chapter.
- B. Unless otherwise exempt, no permit shall be issued unless: (1) the applicant submits proof that the soil/fill material has been tested consistent with any applicable requirements set forth herein; (2) the soil/fill meets the definition of acceptable soil/fill; and (3) the application otherwise conforms with the standards of this chapter.

#### **§ 582-4 Permit Exemptions.**

A person is not required to obtain a permit under this chapter for the following:

- A. Minor filling associated with landscaping activities at any property where up to 15 cubic yards, or as otherwise allowed by the New Jersey Department of Environmental Protection under applicable regulations, per year of acceptable soil/fill material is being deposited.
- B. Fill for septic installation and/or repair certified to be such by a licensed New

- C. Jersey engineer; or approved by the local health agency.
- D. Virgin quarry products including, but not limited to, rock, stone, gravel, sand, clay and other mined natural products.
- E. Acceptable soil/fill material being moved from one section of an owner's property to another section of the same property.
- F. Soil/fill imported to or moved within a properly licensed Class B recycling facility.
- G. Acceptable soil/fill moved from a properly licensed Class B recycling facility.
- G. Public works projects conducted or contracted for by a public entity or utility regulated by the Board of Public Utilities provided the soil/fill material meets the definition of acceptable soil/fill.

**§ 582-5 Responsibility for Obtaining Permit.**

The property owner receiving the soil/fill material is responsible for obtaining the permit.

**§ 582-6 Duration of permit.**

Each permit issued under the terms of this chapter shall be valid only for the location(s) and soil/fill material described therein and shall be valid for the duration of the project specified in the permit application.

**§ 582-7 Permit Application Requirements.**

The procedure to apply for a Soil/Fill Importation Permit shall be as follows:

- A. All applications for Soil/Fill Importation Permits shall be filed with the Planning/Zoning Department, which shall administer the applications and permits.
- B. A fee, in the amount of \$100.00 shall be remitted at the time of application. The fee shall address the costs associated with the review of the application and for any field monitoring inspections, as applicable.
- C. The application shall include FORM SI-1 ACCEPTABLE SOIL/FILL MATERIAL CERTIFICATION FORM to be completed as follows:

*By the soil/fill material supplier:*

Part 1: The date the form is completed, the soil/fill supplier's name, title, company name, address, telephone number, and email contact information.

Part 2: The site name(s), address(es), and block/lot of the property(ies) supplying the soil/fill material.

Brief history of the source property(ies), including current or past use of the property.

Answers to questions 1 through 3.

If applicable, the date soil/fill material was subject to analytical testing in accordance with applicable requirements of the New Jersey Department of Environmental Protection's guidance entitled "Understanding Requirements for Soil and Fill Materials." If analytical testing was not conducted, justification for making a determination that the soil/fill is acceptable without analytical results.

Certification (signature) from the soil/fill supplier that the soil/fill being imported meets the definition of acceptable soil/fill.

*By the person receiving or placing acceptable soil/fill material:*

Part 3: The date the form is completed, the name, title, company name, address, telephone number, and email contact information.

The address of the location where soil/fill placement will be placed.

Answers to questions 1 through 5.

Certification (signature) from the person receiving or placing the soil/fill material.

**§ 582-8 Review of Application.**

Within 30 days after receipt of a complete application, the Borough shall review the application and either approve, conditionally approve or deny the application.

**§ 582-9 Appeals.**

Whenever an application for a permit is denied, the applicant may appeal the denial to the municipal governing body by filing a written notice of appeal with the Borough Clerk within 30

days after receiving written notice of the denial of such application. The Borough Council shall thereafter hold a public hearing within 60 days on the matter in accordance with rules or procedures to be established by the Borough Council and may modify, affirm or reverse the decision.

**§ 582-10        Violations and Penalties.**

Any person who violates any provision of this Chapter shall be liable to a fine of not more than \$1,500 or to imprisonment for a term not to exceed 30 days or both such fine and imprisonment, at the direction of the Municipal Court. Every day in which such violation continues after due notice has been served shall constitute a separate violation or offense. Upon order of the Court, the violator shall pay all costs associated with analytical testing, remediation, removal and proper disposal of soil/fill material determined to not to comply with the definition of acceptable soil/fill.

**§ 582-11        Permit Suspension or Revocation.**

The person receiving a permit pursuant to this Chapter shall comply with all conditions set forth in the permit. Submitting false information or noncompliance with a permit may subject the person to a penalty pursuant to Section 10 hereinabove and/or suspension or revocation of such a permit.

**BE IT FURTHER ORDAINED** by the Governing Body of the Borough of Red Bank that any ordinances or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance. All other provisions of the Revised General Ordinances are ratified and remain in full force and effect.

**BE IT FURTHER ORDAINED** by the Governing Body of the Borough of Red Bank that if any provision of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

**BE IT FURTHER ORDAINED** by the Governing Body of the Borough of Red Bank that this Ordinance shall take effect immediately upon its passage and adoption according to law.

	Motion	Yes	No	Abstain	Absent
Councilman Yassin		X			
Councilwoman Triggiano	Motion	X			
Councilman Ballard		X			
Councilman Yngstrom					X
Councilman Zipprich		X			
Councilwoman Horgan	Second	X			

Dated: January 27, 2021