

O: 2016-10

**ORDINANCE OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, STATE OF NEW JERSEY, CREATING A NEW CHAPTER 520 ENTITLED “SOIL IMPORTATION AND PLACEMENT”**

**NOW, THEREFORE BE IT ORDAINED**, by the Town Council of the Town of Phillipsburg as follows:

**Section One.**

The Town Code shall be amended and a new chapter, Chapter 520, entitled *Soil Importation and Placement* shall hereinafter be adopted to provide as follows:

**Chapter 520 SOIL IMPORTATION AND PLACEMENT**

**520-1 Purpose**

A. The purpose of this chapter is to protect the health, safety and welfare of persons and property within the Town of Phillipsburg by requiring licensing which seeks to ensure the property operation, procedures, future development and safeguards involving all soil and fill importation and placement activities within the Town.

B. Additionally, the Town Council has determined that development of property without appropriate regard to grading and drainage can cause adverse conditions on neighboring properties, including public roads and rights-of-way due to flooding caused by water runoff. The New Jersey Department of Environmental Protection (NJDEP) Site Remediation Program (SRP) fill guidance is applicable to only those sites with defined areas of concern (AOCs), thereby leaving all other properties outside of the SRP with no guiding authority or oversight other than the Town; and any placement of material within SRP sites can be performed with little or no regard to future development activities. Accordingly, the Town has a reasonable basis and concern to ensure that the importation of fill material, the placement of fill material, and/or the relocation of fill material into or within the Town be of sound quality, meets appropriate environmental standards and/or be consistent with any potential future development activities in order to protect the health, safety and welfare of the public.

**502-2 Definitions**

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

**DEVELOPMENT:** The construction, reconstruction or relocation of any structure; land regrading or disturbance of 50 acres or more; and/or any subdivision of land classified as a major subdivision by the Town of Phillipsburg Planning Board; and/or any redevelopment project.

**LICENSE:** A permit approval issued by the Town of Phillipsburg Council.

**PERSON:** The legal or beneficial owner or owners of a lot or any land proposed to be included in a soil or fill importation or placement operation, including the holder of an option or

contract to purchase, or other person with an enforceable proprietary interest in such land and the explicit right to apply for and/or conduct the activities described in this chapter.

**SOIL AND FILL:** Whether used separately or together, include both surface (or top) soil and subsoil, and shall include dirt, stone, gravel, sand, humus, clay, loam, rock, limonite, mixtures of any of these and all items included in the NJDEP SRP Alternate and Clean fill Guidance for SRP Sites dated December 29, 2011 (Version 2.0) and any subsequent addendum, which is incorporated herein by reference.

#### 420-3 **Permit Requirements**

A. Permit required. No person shall import or relocate soil and/or fill within the town in an aggregate quantity in excess of 20,000 cubic yards during any three-hundred-sixty-five-day period without obtaining a soils permit from the Town Council.

B. Annual renewal required following initial two year term. A permit obtained pursuant to this chapter shall expire two years after the date issued. A person holding an expiring license who intends to continue operations past the date of expiration must complete a renewal application in a timely manner so as to ensure that no lapse occurs. Each day of such a lapse may incur penalties pursuant to §21.

C. New operations. Any person(s) seeking to initiate new soil or fill operations, to be established after the effective date of this chapter within any area of the Town must first secure a permit pursuant to the provisions of this chapter before beginning operations.

D. Preexisting operations. Any person(s) conducting a soil or fill operation already lawfully in operations prior to the effective date of the ordinance codified in this chapter may continue such operation, subject to the following conditions:

(1) The limits of any preexisting operation shall end at least 100 feet from any property line. Preexisting operations less than 100 feet from any property line shall not be extended farther unless approved by Council in accordance with this chapter.

(2) Such person(s) must submit an initial application for a license pursuant to §4C.

#### 520-4 **Permit Application**

A. Application form. Applications for a permit to import soil or fill shall be filed with the town Clerk on forms supplied by the town in accordance with the procedures hereinafter set forth. The clerk shall forward the application to the Town Engineer who shall determine the completeness of the application. Failure to submit a complete application shall not extend the deadline for submission of an application required by this chapter.

B. New operation prohibited until licensed. Persons seeking a license for a new soil or fill activity not active and in existence on the effective date of this chapter shall not commence such operation until a license has been issued in accordance with this chapter.

C. Preexisting operations temporarily permitted. Person(s) conducting soil or fill operations on the effective date of the ordinance codified in this chapter shall submit initial applications on or before 90 days from the effective date of this chapter in accordance with the procedures hereinafter set forth. The Town Council, for good cause shown by the applicant, may grant one forty-five-day extension to this deadline. Preexisting operations may continue except as proscribed by this chapter.

D. Processing deadlines, general. Within 15 days of the date of submission of a complete application, the Town Engineer shall review the application in accordance with the procedures established in this chapter and submit his/her findings to the Town Council. Council shall then decide whether to issue the permit on or before the first regular council meeting after submission of the findings by the Town Engineer. The Town Council may issue the permit earlier where all other necessary approvals are in place and the Town Engineer has no objection and requires no further information.

#### **520-5 Permit Fee; Expiration Date.**

A. Permit fee. The annual permit fee shall be \$500 per acre of land proposed to be disturbed for fill moving within one property, between contiguous properties and/or properties of common ownership and/or control; or \$.20 per cubic yard for material imported into the Town, which ever shall be greater. The anticipated amount of fees shall be based upon the operator's statements of anticipated amount of soils to be imported, which shall be approved by the Town Engineer. Fees shall be paid on a monthly basis to be calculated by weighing actual soils imported. These measurements will be verified with certified weight slips and bills of lading and other transport documentation. The amount of cubic yards per Ton of materials shall be agreed upon by the Town Engineer and the operator. No permits shall be renewed until all prior fees have been paid.

B. Expiration date of license. The initial license shall expire two years after the date of issuance.

#### **520-6 Application Requirements**

A. The Town Council shall not consider any application for a permit for soil and fill operations unless the applicant has deposited with the Town Clerk initial escrow moneys in the amount of \$5,000 for engineering, legal and other costs generated by an application and filed with the Town Clerk an application requesting such license. A minimum escrow balance of \$1,500 shall be maintained. The application shall include the following information and shall be accompanied by a map or maps which indicate the following.

- (1) Certification that current taxes have been paid for the premises.
- (2) The boundary lines of the whole tract of land within which the proposed soil or earth importation will take place.
- (3) the limits and boundaries of the proposed work area, showing the location of markers or monuments set on or in the ground to define said limits.

- (4) A United States Geological Survey quadrangle map showing the dimensions of the property and an area of at least 1,000 feet beyond such boundary in all directions.
- (5) The lot and block numbers of the subject parcel and all adjoining land as shown on the Official Tax Map and an identification of the owners thereof.
- (6) The existence of a permanently established benchmark or benchmarks approved by the Town Engineer, for which there has been established vertical and horizontal control based on the New Jersey plane coordinate system and National Geodetic Vertical Datum.
- (7) The existing contour lines and grades and proposed contour lines and finished grades for the entire proposed work area; contour lines should normally be at one-foot intervals.
- (8) The location of all existing and proposed streets and rights-of-way, excluding those included within the area to be mined.
- (9) The location of all points of ingress and egress to the tract of land.
- (10) The location of all streams, wetlands, and significant vegetation, forest associations and wildlife habitats.
- (11) A soils map.
- (12) Map indicating truck route entering the Town, proceeding to the site, leaving the site and proceeding to the exit from the Town. The entire route will be videoed as to determine the physical condition of the route including pavement and .....curb/sidewalk..... intersections.
- (13) A soil/sill reclamation plan which includes:
  - (a) Method of stockpiling topsoil and overburden.
  - (b) Proposed grading and final elevations.
  - (c) Topsoil material application and preparation.
  - (d) Type, quantity and age of vegetation to be used.
  - (e) Fertilizer application including method and rates
  - (f) Planting method and schedules.
  - (g) Maintenance requirements schedule.
- (14) Provision for the control of stormwater runoff from the work area as required by Chapter 535 of the Code of the Town of Phillipsburg; the applicant should give consideration to the need for detention and/or retention and/or sedimentation basins so as to minimize possible adverse conditions resulting from uncontrolled runoff and sedimentation.

(15) An erosion sediment control plan that has been approved by the Warren County Soil Conservation Service.

(16) Description and details of proposed rehabilitation, stabilization and reforestation of the proposed work area.

(17) The intended use of the work area subsequent to completion of the excavation.

(18) An agreement that the applicant to indemnify the Town, its officers, employees and agents harmless from any and all costs, by reason of any work performed under said permit. The acceptance of any permit under this chapter shall constitute such an agreement by the applicant.

(19) Description and details of proposed safety measures to be taken during operations to eliminate unsafe and hazardous conditions, extensive erosion and ponding of water.

(20) The location of all existing structures, buildings and/or dwellings within 300 feet of the property line; proof of receipt of written notification of the application by each of the landowners and/or occupants within 300 feet shall be attached to the application.

(21) A study showing the effect, if any, that the proposed work will have on the elevation, movement, quantity or quality of groundwater and/or surface water within the Town, or affecting adjacent property owners.

(22) Written consent of the owner of the premises containing the proposed work area, if the owner is other than the applicant.

(23) The appropriate fees required by this chapter.

(24) An environmental impact statement, in triplicate, signed and sealed by a New Jersey licensed engineer or a New Jersey Licensed professional planner, which shall include at minimum all considerations and elements contained in the then current Town of Phillipsburg soil importation environmental impact statement requirements form issued by the Town Engineer.

(25) Soil importation donor site details consistent with NJDEP SRP Alternate and Clean fill Guidance for SRP Sites dated December 29, 2011 (Version 2.0).

(26) For sites zoned for or proposing residential development, a complete site plan indicating the location, volume, contaminant loading, height and/or depth of fill material.

B. The Town Engineer in his discretion may accept the same or similar documents and materials that were submitted either to the Town's Planning Board or any redevelopment board or authority so long as they substantially provide the information called for in this section.

## **520-7 Placement and Disturbance Standards**

An application shall be approved only if the applicant can demonstrate that the proposed operation:

- A. Is designed so that no area of excavation, sedimentation pond, storage area, equipment or machinery or other structure or facility is closer than 200 feet to any property line, unless the applicant demonstrates that a distance between 100 and 200 feet shall not result in adverse off-site environmental impacts.
- B. Provides that all topsoil that is necessary for restoration will be stored on the site but not within 100 feet of any property line unless the area proposed for storage is unforested and shall be restored; and that the topsoil will be protected from wind and water erosion.
- C. Is fenced or blocked so as to prevent unauthorized entry into the operation through access roads.
- D. Provides ingress and egress to the operation from public roads by way of washed gravel driveways to minimize sediment transport onto public roads.
- E. Is designed so that surface runoff shall be maintained on the parcel in a manner that shall provide for on-site recharge to groundwater.
- F. Will not involve excavation below the seasonal high-water table, unless the excavation will serve as a recreational or wildlife resource or a water reservoir for public, agricultural or industrial uses or for any other use authorized in the area in which the site is located, provided that in no case shall excavation have a depth exceeding 40 feet below the natural surface of the ground existing prior to excavation unless it can be demonstrated that a depth greater than 40 feet shall result in no significant adverse impact relative to the proposed final use or to off-site areas.
- G. Will be carried out in accordance with a deposition schedule which depicts the anticipated sequence, as well as anticipated length of time that each parcel or portion of a parcel proposed for deposition shall be worked.
- H. Will involve restoration of disturbed areas at the completion of the operation in accordance with §20, and the implementation of the restoration plan is secured by a performance guaranty.
- I. Will not involve unreclaimed clearing of land exceeding 100 acres or 50% of the area to be mined, whichever is less, for surface excavation at any time.
- J. Will not involve fill within the floodplain unless specifically approved by the New Jersey Department of Environmental Protection (NJDEP) with the appropriate land use approvals.

#### **520-8 Factors Considered in Granting Permit**

A. Factors to be considered. The Town Council in consideration and reviewing the application and in arriving at its decision shall be guided by and take into consideration the public health, safety and general welfare, and particular consideration shall be given to the following factors:

- (1) Soil erosion by water and wind.
- (2) Drainage
- (3) Soil fertility.
- (4) Lateral support slopes and grades of abutting streets and ramps.
- (5) Land values and proposed uses.
- (6) Zoning classification and the zoning plan.
- (7) Impact on quality of groundwater and/or surface water.
- (8) Impact on local streets, utilities and services.
- (9) Such other factors as may bear upon or relate to the coordinated, adjusted and harmonious physical development of the Town.
- (10) The comments and recommendations of the Town Engineer.

B. Granting of permit. If, after examining the application and the information, maps, plans and data required by §§ 6 and 7, the Town Council shall be of the opinion that the proposed soil or fill importation and/or placement will not create conditions inimical to the public health, welfare and safety, including those that may be affected by future development, and shall not result in the creation of any sharp declivities, pits or depressions, soil erosion or fertility problems, depressed land values nor create any drainage, sewerage problems, lowers groundwater or other conditions of danger, a permit may be issued. The town Council may impose additional conditions as it may see fit to insure that the proses of this chapter shall be satisfied.

#### **520-9 Rejection of Application; Hearing**

Should the Town Council reject the application, applicant may request a hearing by making written request to the Town Council, which hearing shall be held within 30 days after the first Town Council meeting at which the request was received.

#### **520-10 Prior Recommendation of Town Engineer**

Any application for a permit for soil or fill activities pursuant to this chapter shall be reviewed and recommended for approval by the town Engineer prior to the issuance of such permit.

#### **520-11 Performance Guaranty**

Before any permit for soil or fill activities shall be issued, the owner of applicant shall file with the Town Clerk for approval by the Town Council a performance guaranty in a form permitted by N.J.S.A. 40:55D-53 of the Municipal Land Use Law. The form and content of such guaranty shall be reviewed and approved by the Town Attorney. The minimum amount of such guaranty

shall be the greater of \$1,000 per acre of potential disturbance for \$.20 per cubic yard of imported material as indicated in the applicant's submission documents unless otherwise calculated by the Town Engineer.

The amount of the bond shall be determined by the Town Engineer and shall be conditioned as follows:

(A) That the applicant will complete the work authorized by the permit in ..... with the terms of the permit.

(B) That the applicant will repair any public street, structure or land which may be damaged as a result of work authorized by the permit.

**520-12 Renewal of Permit**

A. Any permit under this chapter shall be renewed annually under the following conditions:

(1) If the appropriate annual fee for such license is tendered with the application.

(2) If the applicant has not permitted or suffered a condition which would violate this chapter to go uncorrected.

(3) If the applicant submits the information maps, plans and data as described in §§6 and 7. Said maps should reflect the proposed changes in elevation and other topography as a result of the soil or earth importation during the renewal period.

(4) If the applicant has complied with the requirements of this chapter relating to grading, seeding and reforestation of the area of the site where modification has taken place.

(5) If all current taxes on the site for which license renewal is sought have been paid.

(6) If the applicant is not in violation of any state, county or municipal law, ordinance or health regulation as a result of any activity or operations under the chapter.

(7) If the applicant is in compliance with the requirements for insurance under §13.

(8) If the applicant is in compliance with the requirements for a performance guaranty under §11.

(9) If all fees and charges due the Town as a result of operations by the applicant under this chapter have been paid.

B. Time for renewal application. An applicant for renewal of a license hereunder shall make application for renewal sufficiently prior to the expiration of the then current license, but in no case less than 60 days prior thereto, to permit necessary consideration of the application, supporting documents and necessary inspection to allow issuance of the renewal license on or before the expiration of the then current license. Renewal applications shall be referred to the Town Engineer, who shall submit his findings to the Town Council at least 14 days prior to the renewal date.

**520-13 Insurance.**

A. Amount required. An original application for a license under this chapter shall be accompanied by a certificate of public liability insurance reflecting the issuance of a policy of public liability insurance of the applicant, wherein the Town is named as coinsured for damages arising out of any activity of the applicant under a license issued under this chapter, in an amount not less than \$500,000/\$1,000,000 for death or bodily injury; \$100,000/\$250,000 for property damage; and \$5,000,00 pollution liability if alternate fill is to be imported and/or utilized on the site.

B. Certificate required. No renewal license shall be issued unless and until the applicant files with the Town Clerk a certificate reflecting continued or renewed public liability insurance in the amount specified in Subsection A.

**520-14 Enforcement and Inspection.**

For purposes of enforcing this chapter, the Town Engineer is designated as the enforcing officer. It shall be the duty of the town Engineer to make physical inspections in connection with any application for a permit, maintenance of the permit, or renewal permit hereunder at any time at the Engineer's discretion. It is an express condition of any permit granted pursuant to this chapter that the enforcing officer be permitted unlimited and unconditional access to the operation and any fill source locations at any time.

**520-15 Prohibited Activities**

A. No license shall be granted which will permit a licensee to, and no licensee shall:

(1) Place or disturb any soil or fill unless and until the owners of the lands on which the soil or earth is proposed to be removed has signed a written consent thereto and has filed the same with the Town Clerk, unless the applicant for license is such landowner, in which event the applicant shall so state. If a consent is required hereunder, it shall accompany the application to be filed with the Town Clerk.

(2) Either begin or continue the importation or disturbance of any soil or fill from any land until an annual license fee as elsewhere herein provided has been paid to the Town and a license therefor has been issued and is in full force and effect.

(3) Begin to operate and engage in said activities until the corners and exterior lines of the licensed premises have been staked and marked so that the licensed area shall be clearly designated and in order that no public highway or private property of another shall be endangered by the proposed business. The licensee shall have a licensed New Jersey land surveyor stake and mark said area. The Town Engineer shall examine said exterior lines and recommend the approval of the same to the Town Council. Such stakes and markings shall be maintained at all times on the licensed premises by the licensee.

(4) Prevent or attempt to prevent or hinder the Town Council or any of its authorized employees or representatives from viewing, inspecting or examining the permitted premises at any reasonable time.

(5) Permit any unattended child or children upon the permitted premises or do anything to permit or cause the permitted premises to be or continue as a source of danger to children or adults. Temporary fencing at active fill area access routes and no trespassing signs shall be considered adequate notice to abate the danger.

(6) Construe his/her or its permit to cover any area or parcel of land other than the area, lot or parcel described in his, her or its license.

(7) Disperse liquids, bury building materials, tanks, drums, debris, tires or other forms of hazardous or solid waste on any premises for which a permit hereunder has been issued.

(8) Seventy-five percent (75%) of soil importation operations shall be between the hours of 6pm and 7am. A maximum of 25% of such operations shall be between the hours of 7am and 6pm or as directed by the Phillipsburg Police Department.

B. No permit shall be granted to conduct a business hereunder within 100 feet of any existing home, unless the owner and adult occupants of said home are notified by letter delivered personally or via certified mail.

C. No permittee shall operate the permitted premises in such a manner that any natural stream of water shall be interfered with or have its course altered to the detriment of any other person or landowner. No permittee shall substantially alter, change or interfere with any natural watershed or natural surface watercourse, or groundwater aquifer. No permittee shall detrimentally interfere with or affect the natural drainage of any land other than that being permitted hereunto, nor shall the permit cause serious erosion and/or sedimentation of any stream. Proper precautions shall be taken to avoid sedimentation of streams or watercourses. The permittee shall adhere to New Jersey Department of Environmental Protection (NJDEP) flood hazard rules and regulations, wetlands regulations, waterfront development and soil erosion and sediment control standards.

D. No permittee shall permit at any permitted premises any vehicle intended to be used to import material to the permittee on any public highway or road, unless such material is covered and said vehicle proposed to be loaded has a tight body. Vehicles to be used for transport shall be well constructed so as to prevent spillage onto roadways.

#### **520-16 Screening of Operation Near Residential Dwellings**

Where residential dwellings are located within 100 feet of the boundary line of the tract from which soil or earth is to be removed, a screening strip of trees or dense growth, or both, shall be provided to screen the soil operations from the view of such residential dwellings. This buffer strip shall have a minimum width of 50 feet and shall extend longitudinally along the boundary of the tract and said residential lands to screen the operation.

#### **520-17 Road to be Kept Clear**

No person engaging in activities permitted under this ordinance shall allow or permit any dangerous condition to result from the transportation of soil or fill on any public road or highway. The public roads and highways in close proximity to the permitted area shall be kept clear of loose dirt. In the event any violation of this section exists, the Town shall be authorized to rectify the situation and the cost of such work will be borne by the applicant. The same will apply to drift onto roads passing through or adjoining the site area. In no event shall said roads be closed, destroyed or made impassable in any way.

#### **520-18 Manner of Work**

An applicant, after having been issued a license under this chapter, shall not remove from the site the top layer of arable soil to a depth of six inches, but shall set this soil aside for retention on the premises and shall respreads it over the premises when the soil or earth has been removed, or sooner, at the direction of the Town Engineer, pursuant to levels and contour lines and grades as approved by the Town Council. Said topsoil stripped from the work area shall be stockpiled and protected in accordance with Standards for Soil Erosion and Sediment Control in New Jersey at the work area and shall be used as needed for site restoration. This requirement may be waived if natural existing soils are not present.

#### **520-20 Duties of Licensee; Seeding and Restoration**

A. Prior to the commencement of deposition operations under any license issued pursuant to this chapter, the overburden or topsoil, where found, shall be stripped to the depth of six inches and stockpiled on the premises.

B. A licensee shall, within 60 days of the conclusion of the deposition operation, or within 60 days of having removed soil or earth to the planned grade as shown on the contour map filed in support of the application whichever shall first occur, regrade, seed and reforest said licensed premises as hereinafter provided. In the event the licensee has not completed its operation on the licensed premises or removed earth to planned grade, within one year from the issuance of the original license for the premises in question, then, in that event, the licensee shall grade, topsoil, seed and reforest such portion or portions of the licensed area from which soil or earth has been modified but which no longer will be modified and which does not interfere with the balance of the licensed area. Said work shall be done within 60 days of the expiration date of the aforementioned original or renewed license.

C. Said licensee shall respread the stockpiled overburden or topsoil over the deposition area, including slopes, to a minimum depth of four inches and shall prepare it so as to be capable of supporting a cover crop. If this soil is at a pH of 5.0 or lower, it shall be amended by spreading agricultural limestone over the restoration area at a rate of two tons per acre. This area shall be graded, raked and seeded with an approved cover crop. Said seeding shall be at the following minimum rates: 10 pounds per acre cover crop with 5-10-10 (N-P-K) fertilizer spread at 400 pounds per acre.

D. The land shall be reforested if appropriate based on future use in accordance with an approved procedure accepted by the Town Engineer and the Town Council. The applicant's plan shall include a description of detailed soil stabilization measures and permanent revegetation

which meet accepted practices and have been approved by the Warren County Soil Conservation District as part of a certified soil erosion and sediment control plan.

E. Upon acceptance of the restoration of the site or portion of the site by the Town Engineer, the licensee shall furnish a maintenance guaranty to the Town council for approval; said guaranty to be reviewed by the Town Engineer as to adequacy of amount and by the Town Attorney as to form and content; provided that, in no event, shall such maintenance bond be less than \$2,500 per acre of the licensed premises. The maintenance guaranty shall be maintained in full force and effect for a period of two years from the date the restoration has been inspected and approved by the Town Engineer. The maintenance guaranty shall not be released until reforestation has been established to the satisfaction of the Town Council and shall be extended in the event reforestation has not been established.

### **520-21 Violations and Penalties**

Any person, firm or corporation violating any of the provisions of this chapter shall be subject to a fine not exceeding \$5,000 per day and/or imprisonment in the County Jail for a term not exceeding 90 days, in the discretion of the Judge before whom such conviction shall be had. Each and every violation of and nonconformance with this chapter, or each day that any provision of this chapter shall have been violated, shall be construed as a separate and distinct violation thereof.

### **520-22 Permit Suspension or Revocation**

A. Suspension or revocation. Any permit issued under this chapter may be suspended or revoked by the Town Council:

(1) Where the applicant or permittee has violated or refused to comply with any provision of this chapter.

(2) Where the permittee conducts a deposition operation without having a special use permit covering the land upon which such operations is or has been conducted.

(3) Where the permittee has failed to pay or caused to be paid any taxes upon the lands covered by his, her or its license.

(4) Where the permit is in violation of any federal, state, county or municipal law or ordinance or health regulations as a result of any activity or operation under this chapter.

(5) Where any operations of the permittee under this chapter endangers the person or property of adjoining landowners or other persons in the Town.

(6) Where it is found that the applicant submitted false, incomplete or misleading information.

B. Procedure for suspension or revocation of license.

(1) Whenever the Town Engineer and the Town Council determine that there are reasonable grounds to believe that there has been a violation of any provisions of this chapter, they shall give notice of such alleged violation to the person or persons responsible therefor as hereinafter provided. Such notice shall be in writing, include a statement of the reasons why it is being issued, allow up to 30 days for the performance of any act it requires, be served upon the owner or his agent, and contain an outline of remedial action which, if taken, shall effect compliance with the provisions of this chapter. Such notice shall be deemed to be properly served upon such owner or agent if a copy thereof is served upon him personally, if a copy thereof is sent by certified mail to his last known address as shown on the application, if a copy thereof is posted in a conspicuous place in or about the licensed premises involved, or if he is served with such notice by any other method authorized or required under the laws of this state.

(2) Any person affected by any notice which has been issued in connection with the enforcement of any provisions of this chapter may request and shall be granted a hearing on the matter before the Town Council, provided that such person shall file written notice of the request with the Town Clerk, setting forth a brief statement of the grounds therefore, within 10 days after service of notice upon him. Upon receipt of such written request, the Town Clerk shall set a time and place for such hearing and shall give the petitioner written notice thereof. After such hearing the Town Council shall sustain, modify or withdraw the notice. If the Town Council sustains or modifies such notice, it shall be deemed to be an order which, at the discretion of the Town Council, may operate as a revocation of the license. Any notice served pursuant to this chapter shall automatically become an order if a written request for a hearing is not filed with Town Clerk within 10 days after such notice is served.

C. Emergency permit suspension or revocation procedure.

(1) Whenever the Town Engineer and the Town Council find that an emergency exists which requires immediate action to protect the public health or safety, they may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as they deem necessary to meet the emergency. Notwithstanding any other provisions of this chapter, such order shall be effective immediately.

(2) Where a permittee or owner requests in writing a hearing on an emergency suspension, such hearing shall be held within 72 hours of the receipt of the written request by the Town Council. After such hearing, the Town Council shall continue such order in effect, modify it or revoke it.

### **520-23 Additional Rights of Town**

A. In granting a permit, the town Council may require the applicant to install or cause to be installed adequate and suitable traffic warning signs and markers in the area where any access road enters any public road, as such places as the town Engineer shall direct.

B. The Town Council expressly reserves the right to change, alter, modify, revoke or refuse to renew any license issued under this chapter at any time and to regulate the hours of operation after written notice to the applicant of such intention, including the reasons for such action, and after an opportunity to be heard at a public hearing. Any action taken by the Town Council pursuant to this subsection shall be governed by the standards and procedures set forth in §§ 21 and 22.

C. The Town Council may, whether an application for a license is granted or denied, deduct up to \$1,000 from the escrow moneys deposited with the town Clerk for payment of any inspection expenses and services to which the town has been put in having the maps or plans, application and any other submitted data inspected and checked by its Town Attorney, town Engineer and other officials, or any of them. All such charges shall be and remain municipal funds for the use and benefit of the Town. The balance not so deducted shall, upon release, be returned to the applicant. This provision shall not limit use of escrow funds to pay for other professional services generated by submission of an application pursuant to this chapter.

D. The Town Council may institute a civil action for injunction or other equitable relief if the applicant violates any provision of this chapter or a condition of his, her or its license.

E. The Town Council shall have the right to set aside and invalidate any permit in violation of the provisions of this chapter or nonconformance therewith, which license was procured through misrepresentation or falsification in applying for such license or the failure to file a contour map or report as required by this chapter.

#### **520-24 Variation from Strict Compliance.**

No exceptions or variations from strict compliance are permitted for properties not under the jurisdiction of NJDEP SRP. Any person seeking a permit for AOC areas under the jurisdiction of NDJEP SRP may request a variation(s) from strict compliance with this chapter upon written application therefore to the Town Council. Variations must be submitted in writing over the signature of an LSRP. The request for verification may be approved by the Town Council, after report thereon by the Town Engineer, upon a determination that:

A. Any variation or modification or any requirement of this chapter shall not in any material way alter the standards of the Chapter and shall not affect detrimentally the health, safety or welfare of persons on the premises or occupants or owners of adjacent premises or of the neighborhood wherein the subject premises are located, or the public generally.

B. The owner, operator or occupant is without any practical or feasible means to comply with the strict provisions of this chapter.

C. The applicant can demonstrate to the satisfaction of the Town Engineer that there are appropriate existing controls, oversight and/or permitting by other governmental agencies that are consistent with the objectives of this chapter and that are sufficiently protective of the health, safety and welfare of persons and property of the Town of Phillipsburg.

#### **520-25 Non-transferability of Permit**

The permit issued under this chapter is not transferable, and the holder of the license shall be solely responsible for the provisions specified in this chapter.

### **Section Two.**

Severability. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder off this Ordinance shall not be affected thereby.

**Section Three.**

Repealer. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed as to their inconsistencies only.

**Section Four.**

Effective Date. This Ordinance shall take effect upon final passage and publication as provided by law.

**ATTEST:**

**TOWN OF PHILLIPSBURG**

\_\_\_\_\_  
VICTORIA L. KLEINER,  
Municipal Clerk  
DATED:

\_\_\_\_\_  
STEPHEN R. ELLIS  
Mayor

**CERTIFICATION**

I, Victoria L. Kleiner, Municipal Clerk for the Town of Phillipsburg, do hereby certify that the foregoing is a true copy of an Ordinance duly adopted by the Town Council at their April 05, 2016 meeting.

\_\_\_\_\_  
VICTORIA L. KLEINER,  
Municipal Clerk