**ORDINANCE NO. 02-05**

**AN ORDINANCE ESTABLISHING**

**THE CITY OF SODAVILLE FILL AND EXCAVATION ORDINANCE**

**INTENDED TO PROVIDE STANDARDS AND PROCEDURES RELATED TO FILL AND EXCAVATION ACTIVITIES IN THE CITY OF SODAVILLE.**

The City of Sodaville ordains as follows:

ARTICLE 1. GENERAL PROVISIONS

Section 1.010. Title. This ordinance shall be known as the City of Sodaville Fill and Excavation Ordinance and shall apply to all area within the City Limits of Sodaville.

Section 1.020. Statement of Purpose. This ordinance is enacted to promote the public health, safety and general welfare, and to minimize public and private losses due to improperly placed fill and uncontrolled excavation activities by:

1. Establishing standards for the placement of fill and the removal of earth materials.
2. Establishing the criteria for type and extent of reports required in conjunction with fill and excavation activities.
3. Requiring engineering design for work which is a extensive and complex in nature.
4. Providing for the submission of text data when deemed necessary by the Building Official.
5. Establishing the requirement for the type and frequency of inspections.
6. Establishing the basis for bonding requirements.
7. Establishing administrative requirements relative to the issuance of fill and excavation permits.
8. Establishing fee schedules to cover costs of plans examination and inspection of work.
9. Outlining the process for appeal from the provisions of this Ordinance.

Section 1.030. Definitions. In addition to the definitions of Section 3308, Appendix Chapter 33 of the Uniform Building Code (UBC), the following definitions apply to this Ordinance.

“Authorized” refers to authorization by the Building Official as the result of investigation and test conducted by him, or in his behalf, by his acceptance of engineering or geological studies, or by reason of accepted principles or tests by a national technical or scientific organization.

“Building Official” means a person charged by Linn County, under an agreement with the City of Sodaville, who is charged with responsibility for administration and enforcement of the state and county building codes, to include fill and excavation work.

“Development” means any man-made changes to improved or unimproved land including but not limited to construction of buildings or other structures, dredging, filling, grading, paving, excavation or drilling operations.

“Drainage course” is any natural or developed area that has been used for conveying of water, either year round or intermittently, through, across, below or around an area, to include terracing from a point of higher elevation to a lower point.

“Enforcement Officer” shall mean the individual person or committee designated by the City of Sodaville who is charged with responsibility to administer this ordinance.

“Grading Permit” is a permit that, when approved, provides authorization to do filling and/or excavation.

“Structure” is that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

Section 1.040. Adoption of Uniform Building Code and Other Code Provisions.

1. Appendix Chapter 33 of the Uniform Building Code, 1997 edition, as promulgated by the International Conference of Building Officials is hereby adopted as part of this Ordinance, except that Section 3310 – Grading Fees, is expressly not adopted.
2. Sections 106.1 and 106.4, of the State of Oregon Structural Specialty Code, 1997 edition, as promulgated by the International Conference of Building Officials is hereby adopted as part of this Ordinance.
3. Subsequent amendments to the Code Chapters referenced in this section shall be subject to review and approval by the City Council of the City of Sodaville, following standard ordinance amendment procedures.

Section 1.050. Interpretation. Should any provision of this Ordinance outside Appendix Chapter 33, Uniform Building Code (UBC), be in conflict with a provision of Chapter 33, the provision outside Chapter 33 shall be the one having application.

Section 1.060. Fill and Excavation Prohibited Without a Permit. No person may fill or excavate in or on the land areas of the City of Sodaville without first obtaining a grading permit from the City of Sodaville Enforcement Officer. No person may fill or excavate in violation of a Stop Work Order.

Section 1.070. Warning and Disclaimer of Liability. The provisions of this Ordinance shall be deemed to be minimum performance requirements and do not preclude the permit holder from exercising more stringent measures in terms of sound engineering practices. These provisions shall not be interpreted as acting as a basis for waiver or appeal of other existing statutory requirements of a similar nature. This Ordinance provides for a reasonable degree of protection for regulatory purposes, and is based on engineering and other related scientific methods, and shall not create liability on the part of the City of Sodaville or any officer or employee thereof for any damages resulting from complete reliance on this Ordinance or administrative decision related thereto.

Section 1.080. Exemptions from Code Provisions. The following activities or uses are exempt from the provisions of this Ordinance, with the provision that exemption from the permit requirements of this Ordinance shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Ordinance or any other Ordinances of the City of Sodaville.

 1. The following activities or uses listed under Section 3306 of chapter 33, UBC:

1. When approved by the Building Official, grading in an isolated, self-contained area if there is no danger to private or public property.
2. An excavation below finished grade for basements and footings of a building, retaining wall or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation or exempt any excavation having an unsupported height greater than five (5) feet after completion of such structure.
3. Cemetery graves.
4. Refuse disposal sites controlled by other regulations.
5. Excavation for wells, tunnels, or utilities.
6. Mining, quarrying, excavating, processing, stockpiling of rock, sand, gravel or clay where established and provided for by law, provided such operations do not affect the lateral support or increase the stresses in or pressure upon any adjacent or contiguous property.
7. Exploratory excavations under the direction of soil engineers or engineering geologists.
8. An excavation which:
	1. is less than two (2) feet in depth; or
	2. does not create a cut slope greater than five (5) feet in height and steeper than 1 unit vertical in 1 1/2 units horizontal (66.7% slope).
9. A fill less than 1 foot in depth and placed on natural terrain with a slope flatter than one (1) unit vertical in five (5) units horizontal, or less than three (3) feet in depth, not intended to support structures which does not exceed 50 cubic yards on any one lot and does not obstruct a drainage course.

2. Quarrying, excavating, processing and stockpiling of rock, sand, gravel, aggregate or clay as a commercial operation approved by the City Council of the City of Sodaville, where the overburden and products derived from the on-site operation is relocated and deposited as fill or as a stockpile product with the confines of the primary operation.

3. Normal routine farming activities necessary to manage land, crops, and/or animals for food production, including tile drainage, field drainage ditches and other necessary conservation practices without damaging off-site property.

ARTICLE 2. ADMINISTRATION

Section 2.010. Application for Permit. Persons or other entities desiring to perform fill or excavation activities shall, prior to the commencement thereof, first obtain a grading permit by applying to the Enforcement Officer. A fee, based upon a fee schedule adopted by the City Council of the City of Sodaville, shall accompany an application for a grading permit.

Section 2.020. Supporting Documents Required. When required by the Enforcement Officer, each application shall be accompanied by two (2) sets of grading plans which reflect the extent of work to be performed, both in type and quantity.

Section 2.030. Process for Review and Approval of Grading Permit.

1. The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the Enforcement Officer and the Building Official.

a. If the Enforcement Officer is satisfied that the work described on the application conforms to the Ordinances of the City of Sodaville and that the fees for the application have been paid, the Enforcement Officer shall transmit the application to the Building Official.

b. If the Building Official finds that the work described in an application for a permit and the plans, specifications and other data filed with the application conform to the requirements of this Ordinance and other pertinent laws and ordinances, the Building Official shall issue a permit therefor to the applicant and shall immediately inform the City of Sodaville Enforcement Officer that the permit has been issued.

2. When the Building Official issues the permit where plans are required, the Building Official shall endorse in writing or stamp the plans and specifications “APPROVED”. The approved plans and specifications shall not be changed, modified or altered without authorization from the Building Official, and all work regulated by this Ordinance shall be done in accordance with the approved plans.

Section 2.040. Duration of Permit.

 1. Except as outlined in subsection (2) of this Section, 2.040, a permit for fill and excavation activities shall be in effect for a period of one (1) year. On request by the applicant, the permit may be extended for an additional time period, not to exceed one (1) year.

2. At the time of application for a fill and excavation permit, the applicant may request a permit time period for longer than one (1) year. An application for a longer time period shall be accompanied by a grading plan which shall show the location for fill and/or excavation activity; the anticipated on-site elevation upon

completion of the project; and the type and approximate volume of materials to be added to, or removed from, the site. The Building Official, as part of his review of the application, shall either approve or modify the time period to be covered by the request. The Building Official may also establish time periods when the permit and permit activities would be evaluated.

Section 2.050. Plans Review. Depending on the size, amount and complexity of the proposed work, a plans review may be required prior to the issuance of the permit. A determination of the need for a plans review will be made by the Building Official or his designated representative at the time of application for the permit.

Section 2.060. Zoning Review. All permit applications will be subject to review by the Enforcement Officer for determination of compliance with the City of Sodaville Zoning Ordinance, the City of Sodaville Nuisance Ordinance and other City Ordinances that may be applicable.

Section 2.070. Environmental Health Review. Permit applications are subject to review by the Linn County Environmental Health Division for consistency with regulations pertaining to sub-surface sewage disposal systems.

Section 2.080. Drainage Courses.

1. Property owners are obligated under this Ordinance to maintain drainage courses on their property to prevent excessive damage caused by sediment and/or vegetation build-up or by other obstructions. Maintenance of natural drainage courses is required so that drainage capacity is not significantly diminished. Maintenance of drainage courses means that vegetation and/or sediment build-up and other obstructions shall be managed so that water can flow without causing excessive flooding or drainage problems on other downstream or upstream property.

2. All fill and excavation work performed in a drainage course shall conform to the provision of Section 3312.2, Appendix, chapter 33, Uniform Building Code relative to degree of slope and configuration of finished grading.

3. Any maintenance, fill, excavation or placement of an obstruction in a drainage course performed by a property owner or owners, or the agent or contractor of the property owner or owners must be in compliance with removal and fill requirements administered by the Oregon Division of State Lands and/or US Army Corps of Engineers, and through this Ordinance.

4. Fill and excavation work performed in a drainage course shall not cause or contribute to a significant increase in flood levels on other property.

5. The Building Official may require the property owner or owner’s agent to submit a report certified by a professional engineer that concludes that any fill or removal work will not adversely affect other property.

Section 2.090. Revocation of Permits. The Building Official or the Enforcement Officer may, in writing, suspend or revoke a grading permit issued under the provisions of this Ordinance whenever the permit has been issued in error or on the basis of incorrect information supplied, or when work is in violation of any City Ordinance or state or federal statute or administrative rule.

Section 2.100. Stop Work Orders. Whenever any fill and excavation work is being done in violation of the Ordinance or other City Ordinance, the Building Official or the Enforcement Officer may order the work stopped by serving notice in writing on any person or legal entity engaged in the work. No person may fill or excavate in violation of a Stop Work Order.

Section 2.110. Appeals.

1. Appeals Board. The City Council of the City of Sodaville shall hear and render decisions pertaining to appeals regarding requirement of this Ordinance or from decisions by the Enforcement Officer or the Building Official in its application. An appeal shall be filed with the Enforcement Officer within 10 working days from the date of decision. A decision shall be made by the City Council within 60 days of the date the appeal is filed unless an extension of time not to exceed 60 days is agreed to by the appellant. The appeal shall be accompanied by a filing fee, based upon a fee schedule adopted by the Sodaville City Council.

2. Right of Access. The appellant shall, at the time of filing an appeal, provide written approval for City of Sodaville and Linn County staff for access to the affected property for the purpose of preparing a staff report when deemed necessary by the Enforcement Officer or the Building Official.

3. Appellant’s Representation. The appellant may be represented by legal counsel or by other agent of his own choosing if counsel or other assistance is desired. All expense in connection therewith shall be borne by the appellant.

4. Public Hearing. When an appeal of an action by the Building Official or the Enforcement Officer to approve or disapprove a grading permit is filed, a public hearing shall be conducted. Notices shall be mailed to the appellant and to all parties owning property that is contiguous to, or within 250 feet of, property that is the proposed location of the matter being appealed. All parties shall be notified at least 15 days prior to the date of the public hearing.

5. Decision and Findings.

1. All decisions and findings of the City Council related to the appeal shall be provided in writing to the Enforcement Officer, the Building Official, to the applicant for the grading permit, and to the appellant, if different from the applicant.
2. The findings may be rendered at the conclusion of the hearing or at a subsequent established time. The time and place for rendering of a decision shall be at the discretion of the Mayor but shall be announced at the conclusion of the hearing.
3. The decision shall be based upon the findings of fact as determined by the City Council. The decision shall either support the decision of the Building Official or Enforcement Officer, be contrary to the prior decision, or shall modify the conditions of a prior approval. The findings shall be based upon the following:
	1. The technical data submitted in support and in opposition to the appeal;
	2. The standards and requirements mandated in this Ordinance, to include Appendix, Chapter 33, Uniform Building Code;
	3. The immediate or potential effects that the requested action may have on adjacent property;
	4. The compatibility of the proposed work in relation to existing and proposed uses within the area as shown on the Sodaville Zoning Map;
	5. The relationship between the fill or excavation and any existing structures;
	6. The environmental impact of the work to be performed relative to fish or wildlife habitat and to potable water supply systems in the area;
	7. The relationship of the proposed work to the Building Code, the Sodaville Zoning Ordinance, and to other Ordinances of the City of Sodaville.

Section 2.120. Penalty. A violation of this ordinance shall be enforced pursuant to the City of Sodaville Enforcement Ordinance.

Section 2.130. Emergency Clause. The City Council hereby determines that existing conditions are such that this ordinance is immediately necessary for the protection of the present health, safety and good of the City of Sodaville and the property owners and citizens thereof and therefore, an emergency is hereby declared to exist and this Ordinance shall be in full force and effect immediately after its passage by the Council and approval by the Mayor.

Ayes \_\_\_\_\_

Nays \_\_\_\_\_

Passed by the Council this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_ in the year \_\_\_\_\_\_\_\_\_.

Approved by the Mayor this \_\_\_\_ day of \_\_\_\_\_\_\_\_ in the year \_\_\_\_\_\_\_\_\_.

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# Mayor

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## City Recorder