Legislation Details (With Text)

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On agenda:	6/1/2021		
Final Action:	6/4/2021	**Ord. No.**	Ord 126357
Title:	AN ORDINANCE relating to land disturbing activity; updating the Grading Code to align with updates to other codes; and amending Sections 22.170.020, 22.170.050, 22.170.060, 22.170.070, 22.170.080, 22.170.110, and 22.170.190 of the Seattle Municipal Code.		
Sponsors:	Dan Strauss		
Indexes:			
Attachments:	1. Summary and Fiscal Note, 2. Presentation (5/12/21), 3. Signed Ordinance 126357, 4. Affidavit of Publication		

Date	Ver.	Action By	Action	Result
6/4/2021	1	City Clerk	attested by City Clerk	
6/4/2021	1	Mayor	returned	
6/4/2021	1	Mayor	Signed	
6/3/2021	1	City Clerk	submitted for Mayor's signature	
6/1/2021	1	City Council	passed	Pass
5/26/2021	1	Land Use and Neighborhoods Committee	pass	Pass
5/24/2021	1	City Council	referred	
5/20/2021	1	Council President's Office	sent for review	
5/11/2021	1	City Clerk	sent for review	
5/11/2021	1	Mayor	Mayor's leg transmitted to Council	

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to land disturbing activity; updating the Grading Code to align with updates to other codes; and amending Sections 22.170.020, 22.170.050, 22.170.060, 22.170.070, 22.170.080, 22.170.110, and 22.170.190 of the Seattle Municipal Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 22.170.020 of the Seattle Municipal Code, enacted by Ordinance 123107, is amended as follows:

22.170.020 Scope

This code applies to all grading and other land disturbing activity, including addition and replacement of ((~~impervious~~)) hard surface, within the City of Seattle; to the maintenance and protection of grades, slopes, and soil stability; and to the correction of hazards related to any of the foregoing.

Section 2. Section 22.170.050 of the Seattle Municipal Code, last amended by Ordinance 125248, is amended as follows:

22.170.050 Definitions

* * *

"Development" means land disturbing activity or the addition or replacement of ((~~impervious~~)) hard surface.

* * *

((~~"Impervious surface" means any surface exposed to rainwater from which most water runs off. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, formal planters, parking lots or storage areas, concrete or asphalt paving, permeable paving, gravel surfaces subjected to vehicular traffic, compact gravel, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for the purposes of determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of stormwater modeling.~~))

"Hard surface" means "hard surface" as defined in Section 22.801.090.

* * *

"Land disturbing activity" means any activity resulting in a movement of earth, or a change in the existing soil cover, both vegetative and nonvegetative, or the existing topography. Land disturbing activities include, but are not limited to, clearing, grading, filling, excavation, or addition of new or the replacement of ((

~~impervious~~)) hard surface. Compaction, excluding hot asphalt mix, that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land disturbing activities.

* * *

"Potentially hazardous location" includes:

1. ((~~All sites on the Hazardous Sites List compiled by the Washington State Department of Ecology pursuant to WAC 173-340-330 or any successor rule, or listed on the National Priorities List by the U.S. Environmental Protection Agency pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), commonly known as the Superfund statute. When a site is no longer on either list, or when the owner otherwise establishes contamination does not pose a present or potential threat to human health or the environment, the site will no longer be considered a potentially hazardous location.~~)) Any site on a list, register, or database compiled by the U.S. Environmental Protection Agency (EPA) or the Washington State Department of Ecology (Ecology) for investigation, cleanup, or other action regarding contamination under any federal or state environmental law. When EPA or Ecology removes the site from from the list, register, or database, or when the Director or the Director of SPU determines the owner has otherwise established the contamination does not pose a present or potential threat to human health or the environment, the site will no longer be considered a potentially hazardous location.

2. When designated by the Director, existing and abandoned solid waste disposal sites; and facilities for hazardous waste treatment, storage, or disposal, all as defined by the federal Solid Waste Disposal Act, 42 U.S.C. 6901, et seq.

* * *

"Replaced ((~~impervious~~)) hard surface" or "replacement of ((~~impervious~~)) hard surface" means ((~~for structures, the removal and replacement of impervious surface down to the foundation. For other impervious surface, the impervious surface that is removed down to earth material and a new impervious surface is~~

~~installed~~)) those terms as defined in Section 22.801.190.

"Site" means the lots or parcels, or portions of street, highway, or other rights-of-way, or contiguous combination thereof, where a permit for the addition or replacement of ((~~impervious~~)) hard surface or the undertaking of land disturbing activity has been issued or where any such work is proposed or performed. For roadway projects, the length of the project site and the right-of-way boundaries define the site.

* * *

Section 3. Section 22.170.060 of the Seattle Municipal Code, enacted by Ordinance 123107, is amended as follows:

22.170.060 Grading ((~~Permit Required~~)) permit required

A. Grading ((~~Permit Required~~)) permit required. Except as otherwise specifically provided in this code, a grading permit shall be obtained from the Director before commencing any activity for which a permit is required as specified in subsection 22.170.060.A. The required grading permit may be a component of a building permit, and, in this case, a separate grading permit is not required. The provisions of this ((~~chapter~~)) code apply to both a separate grading permit and a grading permit that is a component of a building permit except as expressly otherwise stated. Actions exempt from the requirement for a grading permit are specified in subsection 22.170.060.B.

1. General. A grading permit is required prior to any of the actions in subsection 22.170.060.A.1, whether or not the site is subject to any other provision of subsection 22.170.060.A:

a. Changing existing grade at any location more than 4 feet measured vertically, if the combined volume of excavation, filling, and other movement of earth material on a site is more than 50 cubic yards;

b. Changing the existing grade at any location more than 4 feet measured vertically, if the grading will result in a permanent slope steeper than 3 horizontal to 1 vertical;

c. Changing the existing grade at any location more than 4 feet measured vertically, if

there will be a temporary slope steeper than 1 horizontal to 1 vertical;

d. Any grading if the combined volume of excavation, filling, and other movement of earth material exceeds 500 cubic yards;

e. ((~~One acre~~)) 5,000 square feet or more of land disturbing activity on a site;

f. ((~~Two thousand~~)) 750 square feet or more of new plus replaced ((impervious)) hard surface.

g. Extracting groundwater from a well dewatering system.

2. Shoreline District. In the Shoreline District as established in Section 23.60A.010 a grading permit is required:

a. If there will be any grading of lands covered by water;

b. If there will be any land disturbing activity within 100 feet of the ordinary high water mark; or

c. If the combined volume of excavation, filling, and other movement of earth material is more than 25 cubic yards in the area between 100 and 200 feet of the ordinary high water mark.

3. Environmentally ((~~Critical Areas~~)) critical areas and ((~~Buffers~~)) buffers. A grading permit is required for:

a. Any land disturbing activity in riparian corridors, wetlands, wetland buffers, and shoreline buffers;

b. Land disturbing activity in liquefaction-prone areas, abandoned landfills, seismic hazards areas, peat settlement-prone areas, and volcanic hazard areas, if any threshold in subsection 22.170.060.A.1 is met or exceeded;

c. Land disturbing activity in any ((~~Environmentally Critical Area~~)) environmentally critical area not listed in subsections 22.170.060.A.3.a and 22.170.060.A.3.b, if the combined volume of excavation, filling, and other movement of earth material is more than 25 cubic yards or grading reaches any

threshold in subsection 22.170.060.A.1.

4. Potentially ((~~Hazardous Locations~~)) hazardous locations. A grading permit is required for any volume of excavation, filling, or other movement of earth material in potentially hazardous locations as defined in Section 22.170.050.

5. ((~~In-Place Ground Modification~~)) In-place ground modification. A grading permit is required for any in-place ground modification. The Director may waive the requirement for a grading permit if the Director determines the in-place ground modification will be insignificant in amount or type.

6.Temporary ((~~Stockpiles~~)) stockpiles. A grading permit is required for temporary stockpiles that meet or exceed any applicable threshold of subsection 22.170.060.A.1 through 22.170.060.A.5 and that are not located on sites for which a valid grading permit has been issued.

7. Grading ((~~Near Public Places~~)) near public places. A grading permit is required to excavate or fill in excess of 3 feet, measured vertically, on private property within any area between the vertical prolongation of the margin of a public place, and a 100 percent slope line (45 degrees from a horizontal line) from the existing elevation of the margin of a public place to the proposed elevation of the private property. See Sections 15.44.020 and 15.44.030.

B. Exemptions. A grading permit is not required for the activities listed in this subsection 22.170.060.B.

1. Activity conducted in the public right of way by a City agency, or under a street use permit that specifically authorizes the activity;

2. Excavation and filling of cemetery graves;

3. Exploratory excavations that comply with the requirements of subsection 22.170.190.N;

4. Operation of sewage treatment plant sludge settling ponds;

5. Operation of surface mines for the extraction of mineral and earth materials subject to the regulations and under a permit of the State of Washington;

6. Stockpiling and handling of earth material when the earth material is consumed or produced

in a process that is the principal use of the site and that complies with the requirements of subsection 22.170.190.M;

7. Maintenance or reconstruction of active tracks and yards of a railroad in interstate commerce within its existing right-of-way;

8. Maintenance or reconstruction of the facilities of parks and playgrounds including work required for the protection, repair, replacement, or reconstruction of any existing paths, trails, sidewalks, public improvement or public or private utility, and the stockpiling of material for these maintenance and reconstruction activities;

9. Excavation and filling of post holes;

10. Trenching and backfilling for the ((~~installation,~~)) reconstruction or repair of existing utilities on property other than a public right-of-way that includes replacing the ground surface with in-kind material or materials with similar runoff characteristics;

11. Trenching and backfilling the installation of utilities on property other than a public right-of-way or an environmentally critical area that includes replacing the ground surface with in-kind material or materials with similar runoff characteristics, except that installation of drainage systems and facilities for short plats and subdivisions that are subject to subsection 22.805.010.D are not exempt;

12. Grading done as part of a City public works project (see also Section 22.800.070);

((~~12.~~)) 13. Public works and other publicly funded activities on property owned by public entities, when all of the following conditions are satisfied:

a. Stormwater discharges from the property do not enter the public drainage control system or the public combined sewer system;

b. The project will not undercut or otherwise endanger adjacent property; and

c. The Director has waived grading permit requirements by interagency agreement((~~.~~)) ;

((~~13. Underground storage tank removal and replacement that is subject to regulation by a state~~

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~~or federal agency, unless any grading is done on a potentially hazardous location. See subsection 22.170.060.A.~~

))

14. Development undertaken by the Washington State Department of Transportation in state highway right-of-way that complies with standards established pursuant to ((~~Chapter~~)) chapter 173-270 ((~~Washington Administrative Code, the Puget Sound Highway Runoff Program~~)) WAC;

15. On-site work required for construction, repair, repaving, replacement, or reconstruction of an existing road, street, or utility installation in a public right-of-way((~~.~~)) ;

16. Pavement maintenance practices with no change to drainage patterns or existing discharge points limited to the following activities;

a. Pothole and square cut patching;

b. Overlaying existing asphalt or concrete or brick pavement with asphalt or concrete without expanding the area of coverage;

c. Shoulder grading;

d. Reshaping or regrading drainage ditches;

e. Crack sealing; and

f. Vegetation maintenance.

C. Compliance ((~~Required~~)) required. All grading and other land disturbing activity, whether or not it requires a grading permit, shall comply with the provisions of this code, the Stormwater Code, and all other applicable laws.

Section 4. Section 22.170.070 of the Seattle Municipal Code, enacted by Ordinance 123107, is amended as follows:

22.170.070 Application ((~~Requirements for Grading Permits~~)) requirements for grading permits

* * *

B. Plans and ((~~Information Required.~~)) information required

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1. Projects ((~~Requiring Plans~~)) requiring plans. The information listed in subsection 22.170.070.B.2 shall be provided on plans submitted with each application for a grading permit.

Exceptions:

a. When the only grading included in an application is for an approved drainage control plan ((~~the information required in subsection 22.170.070.B is not required~~)) , a separate grading plan is not required if all information in subsection 22.170.070.B.2 is shown on the drainage control plan.

b. When the only grading included in an application for a building permit is excavation and replacement of earth material within an area 4 feet or less from the footing lines of a building or structure, ((~~plans are~~)) the grading plan is not required, except that the applicant shall show the location of temporary stockpiles and the slope of temporary cuts on the site plan.

c. A separate grading plan may be omitted if all information in subsection 22.170.070.B.2 is shown on the site plan and drainage control plans and preparation by a civil engineer or stamping by a geotechnical engineer is required.

d. The work will be permitted by the Seattle Department of Transportation and a separate grading plan may be omitted if the work is in the right-of-way and all information in subsection 22.170.070.B.2 is shown on the right-of-way plans.

2. Requirements for ((~~Plans~~)) plans. The following information shall be submitted with applications for grading permits requiring plans.

a. A general vicinity map and legal description of the site;

b. A site plan ((~~showing:~~)) as required by the director of the department that will issue the permit;

((~~1) location of existing buildings and structures, easements, utilities and other surface and above-ground improvements on the site;~~

~~2) the approximate location of all buildings, structures, impervious surface and~~

~~other improvements on adjacent land;~~

~~3) the location of existing and planned temporary and permanent drainage control facilities, existing and proposed drainage discharge points, watercourses, drainage patterns, environmentally critical areas, and areas of standing water;~~

~~4) the approximate location, type and size of trees and other vegetation on the site;~~

~~5) designation of trees and vegetation to be removed, and the minimum distance between tree trunks and the nearest excavation and/or fill; and~~

~~6) areas where equipment traffic will be permitted and excluded;~~))

c. A grading plan showing:

1) An estimate of the total combined volume of excavation, filling, and other movement of earth material;

2) A topographic ((~~map~~)) plan, including cross-sections of the site and adjacent property, showing the ((~~present~~)) existing and proposed contours of the land at not more than 2-foot contour intervals, and the location and amount of all temporary stockpiles and excavations. On steeper sites, the Director may authorize plans to show a contour interval greater than 2 feet but in no case more than a 5-foot interval. The information relating to adjacent properties may be approximated;

3) A bar scale and north arrow;

4) The limits of proposed land disturbance;

5) Existing and proposed retaining walls, rockeries, and all other features that create sudden grade changes. Proposed retaining walls and rockeries shall include top and bottom elevations at the ends, high points, and at least every 25 feet along the feature;

6) Location of existing and proposed buildings, structures, hard surface, and other improvements on the site;

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7) The approximate location of all buildings, structures, hard surface, and other improvements on adjacent land;

8) The location of existing and proposed drainage control facilities, drainage discharge points, watercourses, drainage patterns, and areas of standing water;

9) Environmentally critical areas and associated setbacks and buffers;

10) Non-disturbance areas;

11) The approximate location, type, and size of trees and other vegetation on the site;

12) Designation of trees and vegetation to be removed, and the minimum distance between tree trunks and the nearest excavation and/or fill; and

13) Areas where equipment traffic will be permitted and excluded;

d. A drainage control plan as set forth in ((~~SMC~~)) Chapter 22.807((~~, except when the grading is limited to the area providing for vehicular and pedestrian access to the building or to the temporary stockpiling of excavated material~~)).

3. ((~~Number Required. If a grading permit is sought as a component of another permit, the minimum number of plan sets required for the grading permit application shall be the same as the number of plan sets required for the other permit application. If only a grading permit is sought, the applicant shall submit at least 3 sets of plans. Additional sets may be required by the Director.~~

~~4. Clarity of Plans.~~)) Clarity of plans. Plans shall be drawn to a clearly indicated and commonly accepted scale ((~~upon substantial paper such as blueprint quality or standard drafting paper. Tissue paper, poster board or cardboard will not be accepted~~)) and shall include a bar scale. The plans shall be of ((~~microfilm~~)) legible print quality and limited to a minimum size of ((~~18~~)) 11 inches by ((~~18~~)) 17 inches and a maximum size of 41 inches by 54 inches.

((~~5. Preparation by Civil Engineer.~~)) 4. Preparation by civil engineer. The grading plans shall be

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prepared by, or under the direction of, a licensed civil engineer for all applications where the total amount of materials graded is more than 2,500 cubic yards. The Director may require that grading plans for lesser quantities be prepared by or under the direction of a licensed civil engineer for sites such as, but not limited to, those in geologic hazard areas and areas with known erosion problems.

((~~6. Stamping by Geotechnical Engineer.~~)) 5. Stamping by geotechnical engineer. When required by the Director in accordance with the provisions of this code, the grading plans shall be reviewed and stamped by the geotechnical engineer who performed the geotechnical investigation to indicate that the plans conform to the conclusions and recommendations of the investigation.

* * *

Section 5. Section 22.170.080 of the Seattle Municipal Code, enacted by Ordinance 123107, is amended as follows:

22.170.080 Financial ((~~Assurance and Covenants~~)) assurance and covenants

As a condition precedent to issuance of any grading permit provided for in this code, the Director may require an applicant to submit financial assurances and a covenant as provided in this Section 22.170.080.

A. Insurance.

1. The Director may require the owner(s) or contractor to carry liability and property damage insurance against bodily injury, death, disability, property damage, and/or loss from or related to land disturbing activities or resulting conditions, or operation of equipment on or about the property, naming the City as an additional insured, covering any occurrence prior to determination by the Director that the requirements of the grading permit have been met. The amount and policy terms shall be commensurate with the risks as determined by the Director. The Director may require proof that the insurance is in effect prior to issuance of a grading permit.

2. The Director may also require the owner(s) to maintain a policy of general public liability insurance against personal injury, death, property damage, and/or loss from activities conducted pursuant to the

grading permit, or conditions caused by grading activities, and naming the City as an additional insured. The policy shall be in an amount and on terms that the Director determines to be commensurate with the risks. It shall cover a period of not more than ten years from the date of issuance of a Certificate of Occupancy or finalization of the grading permit. A certificate evidencing the insurance shall be filed with the Director before issuance of a grading permit.

3. The insurance policy shall provide that the City will be notified of cancellation of the policy at least 30 days prior to cancellation. The notice shall be sent to the Director and to the Risk Management Division in the Department of Finance and Administrative Services and shall state the insured's name and the property address. If a property owner's insurance is canceled and not replaced ten days prior to a lapse in coverage, the Director may order that any further work under a grading permit stop, or issue a notice of violation, or the grading permit and any interrelated permit or approval may be revoked, including a Certificate of Occupancy or approval for occupancy.

* * *

Section 6. Section 22.170.110 of the Seattle Municipal Code, last amended by Ordinance 124105, is amended as follows:

22.170.110 Granting or denial of grading permits

A. Granting

1. If the Director finds that an application for a grading permit complies with the requirements of this code and rules promulgated hereunder, that the fees specified in the Fee Subtitle have been paid, and that the applicant has satisfied all other conditions precedent imposed by or pursuant to this code, the Stormwater Code, and rules promulgated under those codes, the Director shall issue a permit to the applicant. A permit may be granted with or without conditions. Conditions may include, but are not limited to: restricting grading work to specific seasons, months or weather conditions; limiting vegetation removal; sequencing of work; requiring that recommendations contained in the geotechnical investigation are followed; requiring observation by a

licensed civil or geotechnical engineer; requiring special inspection pursuant to Section 22.170.130; requiring structural safeguards; specifying methods of erosion, sedimentation, and drainage control; specifying methods for maintenance of slope stability; retaining existing trees; requiring revegetation and grass seeding and/or long term maintenance activities; requiring compliance with Chapter 25.09, Regulations for Environmentally Critical Areas, Chapter 23.60A, Shoreline Master Program, and other regulations of the City or other agencies with jurisdiction.

2. The Director may require that plans and specifications be stamped and signed by a licensed civil engineer or geotechnical engineer to indicate that the grading and proposed structure comply with the conclusions and recommendations of any required investigation or report.

3. Minimal risk. In geologic hazard areas and steep slope erosion hazard areas as identified in Chapter 25.09, the geotechnical/civil engineer who prepared the soils analysis and report may be required to submit a letter stating that:

a. The plans and specifications conform to the recommendations of the soils analysis and report; and

b. So long as conditions stated in the soils report are satisfied, areas disturbed by construction will be stabilized, the risk of damage to the proposed development or to adjacent properties from soil instability will be minimal, and the proposed grading and development will not increase the potential for soil movement.

* * *

Section 7. Section 22.170.190 of the Seattle Municipal Code, last amended by Ordinance 124952, is amended as follows:

22.170.190 General requirements

* * *

I. Amendment with organic matter. Areas that have been cleared, graded, or compacted and that have

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not been covered by ((~~impervious~~)) hard surface, incorporated into a drainage facility, or engineered as structural fill or slope shall be amended with organic matter prior to final inspection.

* * *

Section 8. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2021, and signed by me in open session in authentication of its passage this _____ day of _____, 2021.

_____

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2021.

_____

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2021.

_____

Monica Martinez Simmons, City Clerk

(Seal)

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