

**RESOLUTION NO. 368 APRIL 26, 2017**  
**TOWN BOARD ENVIRONMENTAL DETERMINATION ON THE COMPOSITION**  
**AND PLACEMENT OF FILL IN THE TOWN OF BABYLON**

The following resolution was offered by Councilwoman Gordon and seconded by Councilman Donnelly

WHEREAS, it has come to the attention of the Town Board of the Town of Babylon that the importation and placement of potentially contaminated or unsuitable fill may pose possible health risks to its residents and to the environment of the Town of Babylon; and

WHEREAS, the use of unsuitable fill may lead to structural problems to buildings and structures, poor drainage, storm water runoff issues and the settling of land on development sites or on lands in the Town of Babylon; and

WHEREAS, this policy is established by the Town Board of the Town of Babylon to guide the use of fill material in the Town of Babylon; and

WHEREAS, the Town Board of the Town of Babylon hereby defines the environmental quality of fill as follows:

**Definitions**

**Fill**-Dirt, soil, sand, whole or crushed concrete, whole or crushed rock, whole or crushed brick or other material added to level or raise the existing elevation of land or to eliminate a depression in the land surface or to place or surround fully or partially outside or within a foundation or other manmade structure. The act of the artificial deposit of material on a site.

**Acceptable Fill**-Fill that is composed of clean, non-burnable material containing no solid waste. Acceptable fill is generally derived from residential excavations or sand mining of undeveloped lands and should also exhibit good drainage characteristics and not contain clay or silt.

In no event, shall Acceptable Fill contain:

1. Contaminants exceeding applicable current soil cleanup standards under 6 NYCRR Part 375-6.8(b) for a specified land use.
2. Refuse or offal or other unwholesome matter, recognizable concrete, steel, or brick or any discarded material or substances, including but not limited to garbage, rubber, glass, refuse, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous materials, incinerator residue, construction and demolition debris and other discarded materials and substances resulting from industrial, commercial, mining or agricultural operations or from community activities, or the carbon component (or "content of") in energy waste, or any organic matter that may decompose over time.

Materials derived from commercial, institutional or industrial sites that have been tested by a New York State Department of Health, Environmental Laboratory

Approval Program (ELAP), approved testing lab to determine the environmental quality of fill in accordance with applicable current soil cleanup standards under 6 NYCRR Part 375-6.8(b) and any other New York State Department of Environmental Conservation requirements and guidance for a specified land use may be utilized as Acceptable Fill provided that proof of such documentation of compliance of the applicable standard is provided and achieved for the specific proposed land use/occupancy of the site, example: unrestricted residential soil cleanup objective for residential land use.

WHEREAS, notwithstanding the foregoing, this policy shall not limit or hinder the ability of the Town of Babylon Department of Public Works and/or Department of Environmental Control in carrying out their road construction program using construction materials, solid waste, ash and former landfill management, nor materials management and reuse and recycling activities for municipal works or storm recovery or emergency actions operating in conformance with the applicable New York State Department Environmental Conservation (NYSDEC) and Suffolk County Department of Health Services (SCDHS) environmental regulations; and

WHEREAS, this policy shall not supersede the NYSDEC or SCDHS regulatory authority and enforcement of pertinent regulations with regards to remedial actions of sites and land and or cleanup standards; and

WHEREAS, the following standards shall be followed for the use of fill in the Town of Babylon:

#### **Standards**

Materials utilized as fill for private residential, commercial and industrial sites within the Town of Babylon shall meet the definition of Acceptable Fill.

No person shall place, store or otherwise cause the presence, deposit or placement of any fill on any lands in the Town of Babylon that do not meet the definition of Acceptable Fill. Fill materials with unsuitable properties observed based on a visual inspection and/or odors shall be sufficient cause for the Town of Babylon to deem the material unacceptable for use on a development site or on any lands in the Town of Babylon. The Town of Babylon in its discretion may require the removal of unacceptable fill to an approved off-site location in accordance with NYSDEC requirements. The Town of Babylon may also, in its discretion, require sampling and analysis by a New York State Department of Health Environmental Laboratory Approval Program (ELAP) approved testing lab to determine the environmental quality of fill and whether it may remain on a site.

Any private development project or land disturbance activity involving Acceptable Fill shall also meet the requirements of Chapter 189 of the Code of the Town of Babylon: Storm water Management and Erosion and Sediment Control.

Any private land development project involving Acceptable Fill shall be subject to a grading plan to be approved by the Department of Planning and Development.

In addition to this policy, Acceptable Fill shall meet any Engineering Requirements as necessary in connection with the construction of improvements on a development site. This policy specifically addresses the environmental quality in connection with the use of fill.

WHEREAS, fill material placed on a site for a Town of Babylon Project or improvement procured under bid for the Town of Babylon or under a change order for a Town of Babylon Project already underway shall meet the standards as set forth and required by the Department of General Services Commissioner for the specific land use, examples; park, institutional building, etc. and in conformance with under 6 NYCRR Part 375-6.8(b) Soil Cleanup Objectives and any applicable NYSDEC regulations, standards and or guidance. The contractor shall be responsible for the sampling and analysis of any material and costs subject to this policy and submittal of data in a form to the satisfaction of the Commissioner of General Services and;

WHEREAS, the Town of Babylon Department of Environmental Control shall assist and provide technical advice as requested and needed to the General Services Department or any other Departments of the Town of Babylon; and,

WHEREAS, as applicable, the evaluation of the suitability of the engineering properties of soils for construction shall be in addition to this policy and determined by the engineer assigned to the project by the Town and;

WHEREAS, the Town of Babylon Building Inspectors and Ordinance Enforcement shall enforce compliance with this policy on private land pursuant to Chapter 18 Soils and Foundations Section 1803.5.2 Questionable Soil of the 2015 Edition of the International Building Code or as revised and or updated and adopted by New York State. The Commissioner of General Services shall establish and enforce any bid requirements or change orders under this policy and;

WHEREAS, the Department of Environmental Control shall provide technical advice and guidance as needed for the Town of Babylon to carry out enforcement of this policy;

NOW, THEREFORE, be it

RESOLVED that the Town Board of the Town of Babylon hereby adopts this policy with regards to the use of Fill in the Town of Babylon.

VOTES: 4            YEAS: 4            NAYS: 0

The resolution was thereupon declared duly adopted.

