

Section 10.32. **Erosion and Sediment Control**

Subd. 1. **Purpose.** The purpose of this section is to control or eliminate soil erosion and sedimentation within the City. This article establishes standards and specifications for conservation practices and planning activities that minimize soil erosion and sedimentation.

Subd. 2. **Scope and Application.** Except as exempted by the definition of the term "land disturbance activity" in Subdivision 3, any person, state agency, or political subdivision thereof proposing land disturbance activity within the city shall apply to the city for the approval of the erosion and sediment control plan. No land shall be disturbed until the plan is approved by the city and conforms to the standards set forth in this article.

In their interpretation and application, the provisions of this article shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare. Where the requirements imposed by any provision of this article are either more restrictive or less restrictive than comparable conditions imposed by any other city ordinance, law, code, statute, or regulation, the regulations that are more restrictive or impose higher standards or requirements shall prevail. Application of this article should be considered in conjunction with other controls regulating land use and waters within the city, including administration of Wetland Conservation Act regulations, administered by the city through its agent, the Douglas County Soil & Water Conservation District (SWCD).

Subd. 3. **Definitions.** Unless specifically defined below, words or phrases used in this Section shall be interpreted so as to give them the same meaning as they have in common usage and to give this Chapter its most reasonable application. For the purpose of this Chapter, the words "must" and "shall" are mandatory and not permissive. All distances, unless otherwise specified, shall be measured horizontally.

1. Best Management Practices (BMPs). Erosion and sediment control practices that are the most effective and practicable means of controlling, preventing, and minimizing the degradation of surface water, including construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by the state.

2. Common Plan of Development or Sale. A contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, or on different schedules, but under one proposed plan. This item is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land disturbing activities may occur.

3. Developer. Any person, group, firm, corporation, sole proprietorship, partnership, state agency, or political subdivision thereof engaged in a land disturbance activity.

4. Development. Any land disturbance activity that changes the site's runoff characteristics in conjunction with residential, commercial, industrial or institutional construction or alteration.

5. Erosion. Any process that wears away the surface of the land by the action of water, wind, ice, or gravity.

6. Erosion Control. Refers to methods employed to prevent erosion. Examples include soil stabilization practices, horizontal slope grading, temporary or permanent cover, and construction phasing.

7. Erosion and Sediment Practice Specifications or Practice. The management procedures, techniques, and methods to control soil erosion and sedimentation as officially adopted by either the state, county, City or local watershed group, whichever is more stringent.

8. Exposed Soil Areas. All areas of the construction site where the vegetation (trees, shrubs, brush, grasses, etc.) or impervious surface has been removed, thus rendering the soil more prone to erosion. This includes topsoil stockpile areas, borrow areas and disposal areas within the construction site.

9. Final Stabilization. Means that all soil disturbing activities at the site have been completed, and that a uniform (evenly distributed, e.g., without large bare areas) perennial vegetative cover with a density of seventy (70) percent of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures have been employed.

10. Land Disturbance Activity. Any land change that may result in soil erosion from water or wind and the movement of sediments into or upon waters or lands within this government's jurisdiction, including construction, clearing & grubbing, grading, excavating, transporting and filling of land. Within the context of this rule, land disturbance activity does not mean:

a. Minor land disturbance activities such as home gardens and an individual's home landscaping, repairs, and maintenance work, unless such activity exceeds one half acre in exposed soil.

b. Additions or modifications to existing single family structures which result in creating under one half acre of exposed soil or impervious surface and/or is part of a larger common development plan.

c. Construction, installation, and maintenance of fences, signs, posts, poles, and electric, telephone, cable television, utility lines or individual service connections to these utilities, which result in creating under one half acre of exposed soil or impervious surface.

d. Tilling, planting, or harvesting of agricultural, horticultural, or silvicultural (forestry) crops.

e. Emergency work to protect life, or property and emergency repairs, unless the land disturbing activity would have otherwise required an approved erosion and sediment control plan, except for the emergency. If such a plan would have been required, then the disturbed land area shall be shaped and stabilized in accordance with the City's requirements as soon as possible.

11. Permanent Cover. Means "final stabilization." Examples include grass, gravel, asphalt, and concrete. See also the definition of "final stabilization."

12. Phased Project or Development. Clearing a parcel of land in distinct phases, with at least fifty percent (50%) of the project's preceding phase meeting the definition of "final stabilization" and the remainder proceeding toward completion, before beginning the next phase of clearing.

13. Sediment. The product of an erosion process; solid material both mineral and organic, that is in suspension, is being transported, or has been moved by water, wind, or ice, and has come to rest on the earth's surface either above or below water level.

14. Sedimentation. The process or action of depositing sediment.

15. Sediment Control. The methods employed to prevent sediment from leaving the development site. Examples of sediment control practices are silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, and temporary or permanent sedimentation basins.

16. Soil. The unconsolidated mineral and organic material on the immediate surface of the earth. For the purposes

of this document temporary stockpiles of clean sand, gravel, aggregate, concrete or bituminous materials (which have less stringent protection) are not considered "soil" stockpiles.

17. Stabilized. The exposed ground surface after it has been covered by sod, erosion control blanket, riprap, pavement or other material that prevents erosion. Simply sowing grass seed is not considered stabilization.

18. Steep Slope. Any slope steeper than twelve (12) percent (Twelve (12) feet of rise for every one hundred (100) feet horizontal run).

19. Temporary Protection. Short-term methods employed to prevent erosion. Examples of such protection are straw, mulch, erosion control blankets, wood chips, and erosion netting.

Subd. 4. Erosion and Sediment Control Plan.

1. Required. Every applicant for a building permit, subdivision approval, or a grading permit consisting of more than one-half acre of land disturbing activities within the city shall submit an erosion and sediment control plan to the City Engineer. No land shall be disturbed until the plan is approved by the City Engineer and conforms to the standards set forth herein.

All plans shall be consistent with National Pollution Discharge Elimination Permit (NPDES) requirements, and the filing or approval requirements of relevant Watershed Districts, Watershed Management Organizations, Ditch Authorities, Soil and Water Conservation Districts, or other regulatory bodies.

2. General Criteria for Erosion and Sediment Control Plan. An erosion and sediment control plan shall be required for any land disturbing activity larger than one-half acre and shall meet the following criteria:

- a. Stabilize all exposed soils and soil stockpiles.
- b. Establish permanent vegetation.
- c. Prevent sediment damage to adjacent properties and other designed areas.
- d. Schedule erosion and sediment control practices.
- e. Engineer the construction of steep slopes.
- f. Stabilize all waterways and outlets.
- g. Protect storm sewers from the entrance of sediment.
- h. When working in or crossing water bodies, take precautions to contain sediment.
- i. Restabilize utility construction areas as soon as possible.

- j. Protect paved roads from sediment and mud brought in from access routes.
- k. Dispose of temporary erosion and sediment control measures following final stabilization.
- l. Maintain all temporary and permanent erosion and sediment control practices.

3. Contents of Plan. The erosion and sediment control plan shall include the following:

- a. Project description: the nature and purpose of the land disturbing activity and the amount of grading involved.
- b. Phasing of construction: the nature and purpose of the land disturbing activity and the amount of grading, utilities, and building construction.
- c. Project Schedule: A projected timeline for completion of all site activities.
- d. Existing site conditions: existing topography, vegetation, and drainage.
- e. Adjacent areas, neighboring streams, lakes, residential areas, roads, etc., which might be affected by the land disturbing activity.
- f. Critical erosion areas: areas on the site that have potential for serious erosion problems.
- g. Erosion and sediment control measures: methods to be used to control erosion and sedimentation on the site, both during and after the construction process.
- h. Permanent stabilization: how the site will be stabilized after construction is completed, including specifications.
- i. Maintenance: schedule of regular inspections and repair of erosion and sediment control structures.
- j. Silt Fence: provisions for the removal of all silt fence upon establishment of permanent vegetation.

4. NPDES Construction Site Permit. Any construction activity that disturbs one or more acres is required to obtain a separate NPDES Construction Site Permit. A copy of this permit and erosion and sediment control plan shall be submitted to the City Engineer.

Subd. 5. Review of Plan. The City Engineer shall complete a review of the erosion and sediment control plan within fourteen (14) calendar days of receiving the plan from the developer.

1. Permit Required - If the City determines that the plan meets the requirements of this ordinance, the City shall issue a permit valid for a specified period of time that authorizes the land disturbance

activity contingent on the implementation and completion of the plan.

2. Denial - If the City determines that the plan does not meet the requirements of this ordinance, the City shall not issue a permit for the land disturbance activity. The plan must be resubmitted for approval before the land disturbance activity begins. All land use and building permits shall be suspended until the developer has an approved plan.

3. City inspections and enforcement - The City shall conduct inspections on a regular basis to ensure that the plan is properly installed and maintained. In all cases the inspectors will attempt to work with the builder or developer to maintain proper erosion and sediment control at all sites. . In cases where cooperation is withheld, the City shall issue construction stop work orders, until erosion and sediment control measures meet the requirements of this ordinance. An inspection must follow before work can commence. Inspections are required as follows:

- a. Before any land disturbing activity begins
- b. For residential construction, at the time of footing inspections
- c. At the completion of the project

The City reserves the right to conduct other random inspections during the course of the project to ensure compliance with the plan.

Subd. 6. Modification of Plan. The applicant must amend the erosion and sediment control plan as necessary to include additional requirements such as additional or modified best management practices designed to correct problems identified or address situations whenever:

1. A change in design, construction, operation, maintenance, weather, or seasonal conditions that has a significant effect on the discharge of pollutants to surface waters or underground waters.

2. Inspections indicate the plan is not effective in eliminating or significantly minimizing the discharge of pollutants to surface waters or underground waters or that the discharges are causing water quality standard exceedances.

3. The plan is not achieving the general objectives of controlling pollutants or is not consistent with the terms and conditions of this permit.

Subd. 7. Development Agreement. A development agreement prepared by the City shall be required for any project that requires an erosion and sediment control plan. The agreement shall

guarantee the performance of the work described and delineated on the approved plan. In addition, the agreement will describe the City's inspection policy. Should the applicant fail to meet any of the terms of the development agreement, the City may:

1. Withhold inspections - Withhold the scheduling of inspections and/or the issuance of a Certificate of Occupancy.

2. Revocation of permits - Revoke any permit issued by the City to the applicant for the site in question or any other of the applicant's sites within the community's jurisdiction.

Subd. 8. Remedial Action. The City may take remedial action if any of the conditions listed below exist. The Development Agreement shall stipulate that the applicant shall reimburse the City for all direct cost incurred in the process of remedial work including, attorney's fees.

1. Abandonment - The developer ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.

2. Failure to implement plan - The developer fails to conform to the erosion and sediment control plan as approved by the City.

Subd. 9. Emergency Action. If circumstances exist such that noncompliance with this ordinance poses an immediate danger to the public health, safety and welfare, as determined by the city, the city may take emergency preventative action. The city shall also take every reasonable action possible to contact and direct the applicant to take any necessary action.

Subd. 10. Notification of Failure of the Plan. The City shall notify the permit holder of the failure of the erosion and sediment control plan's measures.

1. Initial contact. The initial contact will be to the party or parties listed on the application and/or the plan as contacts. Except during an emergency action, forty-eight (48) hours after notification by the City or seventy-two (72) hours after the failure of erosion control measures, whichever is less, the City at its discretion, may begin corrective work. Such notification should be in writing, but if it is verbal, a written notification should follow as quickly as practical. If after making a good faith effort to notify the responsible party or parties, the City has been unable to establish contact, the City may proceed

with corrective work. There are conditions when time is of the essence in controlling erosion. During such a condition the City may take immediate action, and then notify the applicant as soon as possible

2. Erosion off-site. If sediment breaches the perimeter of the site, the applicant shall immediately develop a cleanup and restoration plan, obtain the right-of entry from the adjoining property owner, and implement the cleanup and restoration plan within forty-eight (48) hours of obtaining the adjoining property owner's permission. In no case, unless written approval is received from the City, may more than seven (7) calendar days go by without corrective action being taken. If in the discretion of the City, the permit holder does not repair the damage caused by the erosion, the city may do the remedial work required. When restoration to wetlands and other resources are required, the applicant shall be required to work with the appropriate agency to ensure that the work is done properly.

3. Erosion into streets, wetlands or water bodies. If eroded soils (including tracked soils from construction activities) enters streets, wetlands, or other water bodies, cleanup and repair shall be immediate. The applicant shall provide all traffic control and flagging required to protect the traveling public during the cleanup operations.

4. Failure to do corrective work. When an applicant fails to conform to any provision of this policy within the time stipulated, the City may take the following actions.

a. Issue a stop work order, withhold the scheduling of inspections, and/or the issuance of a Certificate of Occupancy

b. Revoke any permit issued by the City to the applicant for the site in question or any other of the applicant's sites within the City's jurisdiction.

c. Correct the deficiency or hire a contractor to correct the deficiency. The issuance of a permit constitutes a right-of-entry for the City or its contractor to enter upon the construction site for the purpose of correcting deficiencies in erosion control.

d. Require reimbursement to the City for all costs incurred in correcting stormwater pollution control deficiencies. If payment is not made within thirty (30) days after the City incurs costs, the City will halt all work on the project site and assess any reimbursement costs to the property. As a condition of the permit, the owner shall waive notice of any assessment hearing to be conducted by the City, concur that the benefit to the property exceeds the amount of the proposed assessment, and waive all rights by virtue of Minnesota Statute

429.081 to challenge the amount or validity of assessment.

Subd. 11. Enforcement. The City shall be responsible enforcing this ordinance.

1. Penalties. Any person, firm, or corporation failing to comply with or violating any of these regulations, shall be deemed guilty of a misdemeanor and be subject to a fine or imprisonment or both. All land use and building permits must be suspended until the applicant has corrected the violation. Each day that a separate violation exists shall constitute a separate offense.

Subd. 12. Severability. The provisions of this ordinance are severable, and if any provisions of this ordinance, or application of any provision of this ordinance to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this ordinance must not be affected thereby.

Subd. 13. Abrogation and Greater Restrictions. It is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

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