

Councilor Christy introduced the following ordinance and moved for its adoption:

ORDINANCE NO. 10-04-03

AN ORDINANCE RESCINDING ORDINANCE 09-04-03 IN ITS ENTIRETY
AND ADOPTING NEW STORM WATER PROTECTION ORDINANCE

A. Scope

Except where a variance is granted, any person, firm, sole proprietorship, partnership, corporation, state agency, or political subdivision proposing a land disturbance activity, requiring a grading or building permit within the City shall submit to the City for review and comment on the Stormwater Pollution Prevention Plan (SWPPP) and site plan. No land shall be disturbed until the plan is reviewed by the City and conforms to the standards set forth herein and applicable permits have been issued.

The provisions of the Storm Water Protection Ordinance shall apply to all sites that will disturb the ground.

Sites that have one or more acres of disturbed ground shall obtain a MPCA NPDES Construction Permit in addition to a City Storm Water Permit. Sites that are less than one acre can be waived at the discretion of City staff and require compliance with the provisions of this ordinance to preserve or protect water quality or a downstream resource. Plowing of soil for farming or gardening is exempt and does not require a permit although disturbances must have a minimum of 25 feet buffer from any drainage ditch (top of slope), storm sewer system, wetland or waterway. Vegetation must exist within the 25 feet buffer.

The provisions of the Waste Controls and Illicit Discharge and Inspections and Enforcement sections of this ordinance apply to all areas within the City at all times.

The definitions of terms in this ordinance correspond to the definitions in the most current MPCA NPDES Construction Permit.

B. Erosion and Sediment Control

Erosion and sediment control, at a minimum, shall meet the requirements and provisions defined in the most current Minnesota Pollution Control Agency (MPCA) National Pollution Discharge Elimination System (NPDES) General Storm Water Permit for Construction Activities, also referred to as the NPDES Construction Permit.

C. Waste Controls and Illicit Discharge

1. Illegal Disposal

- a. No person shall throw, deposit, place, leave, maintain, or keep or permit to be thrown, placed, left, maintained or kept, any refuse, rubbish, garbage, or any other discarded or abandoned objects, articles, or accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin conduit or drainage structure,

business place, or upon any public or private plot of land in the City, so that the same might be or become a pollutant, except in containers, recycling bags, or other lawfully established waste disposal facility.

b. No person shall intentionally dispose of grass, leaves, dirt, or other landscape debris into a water resource buffer, street, road, alley, catch basin, culvert, curb, gutter, inlet, ditch, natural watercourse, wetland, flood control channel, canal, storm drain or any fabricated natural conveyance.

2. Illicit Discharges and Connections

a. No person shall cause any illicit discharge to enter the municipal storm water system unless such discharge: (1) consists of non-storm water that is authorized by an NPDES point source permit obtained from the MPCA; or (2) is associated with fire fighting activities.

b. No person shall use any illicit connection to intentionally convey non-storm water to the City storm water system.

3. Good Housekeeping Provisions - Any owner or occupant of property within the City shall comply with the following good housekeeping requirements:

a. No person shall leave, deposit, discharge, dump, or otherwise expose any chemical or septic waste in an area where discharge to streets, storm drain system, or waters of the State as defined by the MPCA, may occur. This section shall apply to both actual and potential discharges.

b. Storage of Materials, Machinery, and Equipment

i. Objects, such as motor vehicle parts, containing grease, oil or other hazardous substances, and unsealed receptacles containing hazardous materials, shall not be stored in areas susceptible to runoff or discharge to a storm water system.

ii. Any machinery or equipment that is to be repaired or maintained in areas susceptible to runoff shall be placed in a confined area to contain or collect leaks, spills, or discharges without discharge to the storm water system.

iii. Any storage of materials that are exposed to the environment such as; salt, salt/sand or sand, that are susceptible to runoff or discharge into a storm water system, public or private, shall be covered in a manner that will eliminate the leeching of chemicals and/or sediment and must apply for storm water permit for inspection and monitoring.

c. Removal of Debris and Residue - Debris and residue shall be removed, as noted below:

- i. Fuel and chemical residue or other types of potentially harmful material, such as animal waste, garbage or batteries, which is located in an area susceptible to runoff, shall be removed as soon as possible and disposed of properly. Household hazardous waste shall not be placed in a trash container.

D. Storm Water Controls

A project that changes land use and/or runoff conditions will be required to maintain the existing peak flow rates and hydrologic conditions for the 2-year, 10-year, and 100-year rainfall events.

In addition, all storm water must be discharged in a manner that does not cause nuisance conditions, erosion in receiving channels or on downslope properties, or inundation in wetlands causing an adverse impact to the wetlands.

E. Maintenance Agreement for Privately Owned Storm Water Systems

For storm water systems that are on private property or owned by an entity other than the City and discharge within the City, an agreement for maintenance and inspections of the system must be submitted to and approved by the City.

F. Plan Review and Inspections

SWPPP Requirements. The SWPPP shall include all requirements of the most current NPDES Construction Permit and address the applicable provisions of this ordinance.

Inspections as defined in this provision do not fulfill the inspections and maintenance requirements as defined in the NPDES Construction Permit.

1. **Review** - City may review and comment on the SWPPP.
2. **Modification of Plan.** Modifications to the SWPPP or plans shall be submitted to the City for review.

G. Inspections and Enforcement.

1. City inspections and enforcement - The City may conduct inspections on a regular basis to monitor erosion and sediment control practices. In all cases the inspectors will attempt to work with the builder or developer to maintain proper erosion and sediment control at all sites. A charge of \$55.00 per hour will be assessed for any inspections that are necessary. In cases where cooperation is withheld, construction stop work orders may be issued by the City until erosion and sediment control measures meet the requirements of this ordinance.

2. Construction stop order -The City may issue construction stop orders until stormwater management measures meet specifications. A second stormwater management inspection must then be scheduled and passed before the final inspection will be done.

3. Perimeter breach - If stormwater management measures malfunction and breach the perimeter of the site, enter streets, other public areas, or water bodies, the applicant shall immediately notify the City and initiate corrective measures within 48 hours. If in the discretion of the City, the applicant does not repair the damage caused by the stormwater runoff, the City can do the remedial work required and charge the cost to the applicant.

4. Actions to ensure compliance -The City can take the following action in the event of a failure by applicant to meet the terms of this ordinance:

- a. Withhold inspections or issuance of certificates or approvals
- b. Revoke any permit issued by the City to the applicant
- c. Conduct remedial or corrective action on the development site or adjacent site affected by the failure
- d. Charge applicant for all costs associated with correcting the failure or mitigating damage from the failure. If payment is not made within thirty days, payment will be made from the applicant's financial securities.
- e. Bring other actions against the applicant to recover costs of remediation or meeting the terms of this ordinance, which are not covered by financial securities.
- f. 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 of \$1,000 or imprisonment of 90 days or both. Each day that a separate violation exists shall constitute a separate offense.

5. Financial Securities. The applicant shall provide security for the performance of the work described and delineated on the approved Stormwater Pollution Prevention Plan and related remedial work in an amount of \$1,000 for each parcel of disturbed property. This amount shall apply to the maximum acreage of soil that will be simultaneously exposed during the project's construction. The form of the securities shall be one or a combination of the following to be determined by the City:

a. **Cash deposit** -

b. **Securing deposit** - Deposit, either with the City, a responsible escrow agent, or trust company, at the option of the City.

i. an irrevocable letter of credit or negotiable bonds of the kind approved for securing deposits of public money or other instruments of credit from one or more financial institutions, subject to regulation by the state and federal government wherein said financial institution pledges funds are on deposit and guaranteed for payment. The security deposit shall have an expiration date of not less than one year after approval of the storm water permit.

This security shall save the City free and harmless from all suits or claims for damages resulting from the negligent grading, removal, placement or storage of rock, sand, gravel, soil or other like material within the city.

**Blanket Financial Security Deposit
(for Licensed Contractors for Multiple Residential Permits within a construction season.)**

Licensed contractors working within the City can provide \$1,000 cash or letter of credit, dated 1 year from the first application, to cover a permit. Upon completion of a parcel permit the contractor can transfer the letter of credit to another parcel permit. The contractor must notify the City of each new construction area by remitting an application. This financial security deposit will be held by the City until parcel work sites are substantially complete.

6. Maintaining the Financial Security. If at anytime during the course of the work this amount falls below 50% of the required deposit or the dated letter of credit expires, the developer shall make another deposit in the amount necessary to restore the cash deposit or letter of credit to the required amount. If the developer does not bring the financial security back up to the required amount within seven (7) days after notification by the City that the amount has fallen below 50% of the required amount the City may:

- a. **Withhold inspections** - Withhold the scheduling of inspections and/or the issuance of a Certificate of Occupancy.
- b. **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 City's jurisdiction.

7. Proportional Reduction of the Financial Security. When more than one-third of the applicant's maximum exposed soil area achieves final stabilization, the City can reduce the total required amount of the financial security by one third. When more than two-thirds of the applicant's maximum exposed soil area achieves final stabilization, the City can reduce the total required amount of the financial security to two-thirds of the initial amount. This reduction in financial security will be determined by the City staff.

8. Action Against the Financial Security. The City may access financial security for remediation actions if any of the conditions listed below exist. The City shall use the security to finance remedial work undertaken by the City, or a private contractor under

contract to the City, and to reimburse the City for all direct cost incurred in the process of remedial work including, but not limited to, staff time and attorney's fees.

- a. **Abandonment** - The developer ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.
- b. **Failure to implement SWPPP** - The developer fails to conform to the grading plan and/or the SWPPP as approved by the City.
- c. **Failure to perform** - The techniques utilized under the SWPPP fail within one year of installation.
- d. **Failure to reimburse City** - The developer fails to reimburse the City for corrective action taken.

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. Any cost to the City may be recovered from the applicant's financial security.

10. Returning the Financial Security. The security deposited for faithful performance of the SWPPP and any related remedial work shall be released after the completion of the installation of all stormwater pollution control measures as shown on the grading and/or the SWPPP and approval/acceptance of City staff.

11. Notification of Failure of the SWPPP. The City may notify the permit holder of the failure of the SWPPP's measures.

a. **Initial contact.** The initial contact will be to the party or parties listed on the application and/or the SWPPP as contacts. Except during an emergency action, forty-eight (48) hours after notification by the City of the failure of erosion control measures, or non-compliance of the permit, 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

b. **Erosion off-site.** If erosion 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 should be required to work with the appropriate agency to ensure that the work is done properly.

c. Erosion into streets, wetlands or water bodies. If eroded soils (including tracked soils from construction activities) enter or appear likely to enter 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.

d. 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.

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

ii. 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.

iii. 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.

iv. 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 costs are incurred by the City, payment will be made from the applicant's financial securities as described in Section G above.

v. If there is an insufficient financial amount in the applicant's financial securities as described in Section G above then the City may assess the remaining amount against 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.

12. Enforcement.

a. Penalties. Any person, firm, or corporation failing to comply with or violating any of these regulations, may be deemed guilty of a misdemeanor and be subject to a \$1,000 fine or 90 days imprisonment or both. All land use and building

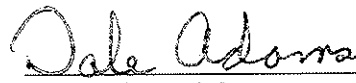
permits must be suspended until the applicant has corrected the violation. Each day that a separate violation exists shall constitute a separate offense.

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.

In the event that there is a governing entity that has a more restrictive requirement, the more stringent requirement is required.

This Ordinance shall become effective after its passage and publication.

Adopted this 12th day of April, 2010


Dale Adams, Mayor

ATTEST:


Kimberly Johnson-Gibeau, City Clerk

Councilor Chandler seconded the foregoing ordinance and the following voted in favor thereof: McInerney, Zabinski, Christy, Chandler. Opposed: None, whereby the ordinance was declared duly passed and adopted.