

ORDINANCE NO. BC-2419

AN ORDINANCE RELATING TO EROSION AND SEDIMENT CONTROL IN THE CITY OF OVERLAND PARK, KANSAS; ADDING AS NEW CHAPTER 16.200, CONSISTING OF NEW SECTIONS 16.200.010, 16.200.020, 16.200.030, 16.200.040, 16.200.050, 16.200.060, 16.200.070 AND 16.200.080.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OVERLAND PARK, KANSAS:

SECTION 1. A new Chapter 16.200 of the Overland Park Municipal Code is hereby added to read as follows:

Chapter 16.200
EROSION AND SEDIMENT CONTROL

16.200.010 Purpose of ordinance. The purpose of this Ordinance is to set forth procedures for controlling erosion and sedimentation caused by Land Disturbance activities, thereby providing for the protection and enhancement of the water quality of watercourses, Water Bodies, and wetlands.

16.200.020 Definitions. For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein or as defined in Title 18:

A. "Best Management Practices," or "BMPs" mean physical facilities, schedules of activities, prohibitions of practices, maintenance procedures, and other management practices which, when properly designed, installed and maintained, will be effective to prevent or reduce the discharge of water or air pollution associated with Land Disturbance activities regulated by this Ordinance.

B. "Certified Professional in Erosion and Sediment Control (CPESC)" means an individual who is currently holding such certification as issued by CPESC, Inc., or other Person holding a state license authorizing them to prepare and submit an Erosion and Sediment Control Plan.

C. "Code" means the Overland Park Municipal Code.

D. "Director" means the Director of Planning and Development Services Department or the Director's authorized representative.

E. "Erosion" means the wearing away of land by the action of wind, water, gravity or ice or a combination thereof.

F. "Erosion and Sediment Control Plan, or Plan," means a Plan for the control of soil Erosion and sedimentation resulting from land disturbing activity, and may include, without being limited to, the drawings, specifications, construction documents, schedules, or other

related documents upon which the Best Management Practices to be used on a site are set forth, including such information as necessary to review the basis for their design and to ensure their proper installation, maintenance, inspection and removal.

G. "Erosion and Sediment Control Standards, or Standards," means the Erosion and Sediment Control design criteria and specifications adopted in writing by the Director of Planning and Development Services Department.

H. "Land Disturbance" means any activity that changes the physical conditions of landform, vegetation and hydrology, creates bare soil, or otherwise may cause Erosion or sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials.

I. "Perennial Vegetation" means grass or other appropriate natural growing vegetation that provides substantial land cover, Erosion protection and soil stability and that is capable of sustained and healthy growth over multiple years under the constraints of shade, temperature, and moisture that will be prevalent on the site. For the purposes of this Ordinance, annual grasses that do not regenerate after winter, ornamental plants or shrubs that do not offer effective Erosion and Sediment protection, and plants that are not suitable for the expected growing conditions on the site shall not be considered Perennial Vegetation.

J. "Permit" means a Building Permit, Site Development Permit, Land Disturbance Permit, or Right of Way Permit.

K. "Permit Holder" means the owner or contractor who is issued a Permit pursuant to Title 18.

L. "Person" means any individual, business, partnership, corporation, association, organization or legal entity of any kind including governmental entities.

M. "Sediment" means any solid material, organic, or inorganic. that has been deposited in water, is in suspension in water, is being transported or has been removed from its site of origin by wind, water, ice or gravity as result of soil Erosion. Sedimentation is the process by which eroded material is transported and deposited by the action of wind, water, ice or gravity.

N. "Storm Sewer System" means any conveyance or system of conveyances for Storm Water, including road with drainage systems, streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, as well as any system that meets the definition of a municipal separate Storm Sewer System or "MS4" as defined by the Environmental Protection Agency in 40 CFR 122.26.

O. "Storm Water" means Storm Water runoff, snowmelt runoff, and surface runoff and drainage.

P. "Water Bodies" means surface waters including rivers, streams, lakes and wetlands, including all areas designated by the federal government as a water of the United States.

16.200.030 Administration.

A. Authority. The Director shall be responsible for the administration and enforcement of this Ordinance. The Director shall have the authority to adopt regulations, policies and procedures as necessary for the enforcement of this Ordinance. The Director may waive the requirements for maps, plans, reports or drawings, if the Director finds that the information otherwise submitted or to be submitted will be sufficient to show that the proposed work will conform to the requirements of this Ordinance.

B. Right of entry. Whenever the Director has cause to believe that there exists, or potentially exists, in or upon any premises, any condition which constitutes a violation of this Ordinance, the Director is authorized to enter the premises at reasonable times to inspect or to perform the duties imposed by this Ordinance. If entry is refused, the Director shall have recourse to the remedies provided by law to secure entry.

C. Erosion and Sediment Control Standards. The Director shall adopt and maintain Erosion and Sediment Control Standards to assist in the administration of this Ordinance. The Erosion and Sediment Control Standards shall be based on, but not limited to, the following principles:

- i. Fit the development to existing site conditions.
- ii. Minimize the extent of exposure.
- iii. Minimize duration of exposure.
- iv. Break work activities into phases when possible.
- v. When possible, protect disturbed areas from any unnecessary run-on of stormwater from adjacent sites, at least during the construction period.
- vi. Stabilize disturbed areas.
- vii. Keep runoff velocities low.
- viii. Retain Sediment on the site.
- ix. Inspect and maintain control measures.
- x. Use performance measures and outcomes.
- xi. Timely employment and maintenance of all measures.

D. Time Requirement. Where Land Disturbance activities have temporarily or permanently ceased on a portion of the project site for over 21 days, the disturbed areas shall be protected from Erosion by stabilizing the area with mulch or other similarly effective soil stabilizing BMPs. Where implementation of stabilization measures is precluded by snow cover, stabilization measures shall be initiated as soon as practicable.

E. Other Pollutants. In addition to Sediment, the Erosion and Sediment Control Plan shall provide for the control of other pollutants related to the Land Disturbance activity that might cause an adverse impact to water quality, including, but not limited to, discarded building materials, concrete truck washout, fuel, hydraulic fluids, chemicals, litter, and sanitary wastes.

16.200.040 General Provisions.

A. Any Person undertaking Land Disturbance activities, including the clearing, grading, excavating, filling, storing, and disposing of soil and earth materials, shall comply with the requirements and standards set forth in this Chapter of the Code. Permit requirements for Land Disturbance activities are described in Title 18 of the Code.

B. Applicability. Regardless of whether or not a Land Disturbance activity requires a Permit, any Person engaged in any Land Disturbance activity shall comply with the spirit and intent of this Ordinance. At a minimum, such Persons shall employ BMP methods for Erosion and Sediment Control in proportion to the scale of the activity to reduce the amount of Sediment or other pollutants in stormwater discharges associated with those activities.

C. Responsible Person(s). The responsible Person(s) is the owner of the property upon which a Land Disturbance takes place. When a Land Disturbance Permit is issued, an owner is responsible for Land Disturbance activities from Permit issuance to closure, unless the City approves a transfer of responsibility to a new owner when land is sold. When Land Disturbance is authorized through the issuance of a Permit pursuant to the Building Code, the owner remains responsible until that Permit is closed and any open Land Disturbance Permits on the same property are closed. Title 18 of the Code governs closure of the Permits.

16.200.050 Erosion and Sediment Control Plans.

A. All proposed Land Disturbance activity that requires a Permit in accordance with Title 18 of the Code shall be depicted on a site-specific Erosion and Sediment Control Plan. Land Disturbance activities that do not require a Permit in accordance with Title 18 of the Code are required to employ applicable BMPs included in standard details provided by the City. The Erosion and Sediment Control Plan shall be submitted to the Director for review. The Plan shall include, at a minimum, the following information:

- i. Proposed site map.
- ii. Areas to be disturbed.
- iii. Proposed Erosion and Sediment Control BMPs to be employed.
- iv. Phasing of Erosion and control measures.
- v. Final stabilization plan for each phase.
- vi. Work schedule.
- vii. Maintenance and inspection requirements.

The Director may require any additional information or data deemed appropriate to ensure compliance with the intent, purpose and provisions of this Section of the Code.

B. Review and Approval of Erosion and Sediment Control Plans. The Erosion and Sediment Control Plan shall be of sufficient clarity to indicate the location, manner, nature and extent of the work proposed. The Plan shall clearly show that the proposed work will conform to the provisions of this Code, the Erosion and Sediment Control Standards, and other relevant laws, ordinances, policies, rules and regulations as determined by the Director. The Director shall review the submitted documents to determine compliance with the Erosion and Sediment Control Standards. If the Director finds that the Plan is in compliance, the Applicant shall be advised that they may request a Permit. If the Director finds that the Plan is not in compliance, the Director shall advise the Applicant which elements of the Plan are not in compliance.

C. Preparation of Plans. Erosion and Sediment Control Plans submitted to the City for review must be prepared under the supervision of and sealed by a licensed professional engineer or landscape architect or by a Certified Professional in Erosion and Sediment Control (CPESC). The engineer or landscape architect must be licensed to practice in the State of Kansas. The Director may waive this Plan preparation requirement if the Applicant's Plan consists entirely of utilizing standard plans and specifications as adopted in the City's Erosion and Sediment Control Standards.

D. Amended Plans. Work shall be installed and maintained in accordance with the approved Plan. Changes made during construction that are not in compliance with the approved Plan shall be resubmitted for approval as an amended set of construction documents. Minor modifications of the approved Plan may be authorized by the Director without formal review provided those modifications are consistent with the Erosion and Sediment Control Standards and standard industry practice.

16.200.060 Inspection.

A. Initial Inspection. The Permit Holder shall notify the Director when initial Erosion and Sediment Control measures are installed in accordance with the Erosion and Sediment Control Plan. No Land Disturbance activities shall begin prior to approval from the Director that all pre-construction Erosion and Sediment Control measures are correctly installed per the approved Plan.

B. Maintenance of Control Measures. All prescribed Erosion and Sediment Control measures shall be maintained in good order and in compliance with the Erosion and Sediment Control Plan at all times.

C. Routine Inspection. It shall be the duty of the Permit Holder to routinely inspect the construction site and maintain effective Erosion and Sediment Control measures. Routine inspections shall be performed once per month or more frequently if required on the Plan and within twenty-four hours following each rainfall event of 1/2" or more within any twenty-four hour period. A log shall be kept of these inspections. Any deficiencies shall be noted in a report of the inspection and include the action taken to correct the deficiency. Inspection reports shall

be submitted to the Director upon request. The inspection report shall include the following minimum information:

- i. Inspectors name.
- ii. Date of inspection.
- iii. Observations relative to the effectiveness of the Erosion and Sediment Control measures.
- iv. Actions necessary to correct deficiencies.
- v. Signature of Person performing the inspection.

The Director may also perform inspections of the Land Disturbance site to verify compliance with the Erosion and Sediment Control Plan. Should it be found that Erosion and control methods are ineffective or are not being maintained properly, the Director may take enforcement actions described within this Chapter.

D. Closure of Land Disturbance Activities. Once the site is stabilized a final inspection shall be requested. The site shall be considered stabilized when Perennial Vegetation, pavement, buildings or structures using permanent materials, cover all areas that have been disturbed. Perennial Vegetation shall be considered established and completed for stabilization when it has established a healthy and growing stand with a density of at least 70 percent of undisturbed areas at the site.

E. Removal of Temporary Erosion and Sediment Control Measures. Subsequent to a satisfactory final inspection of the Land Disturbance, all temporary Erosion and Sediment Control measures must be removed in the manner described in the Erosion and Sediment Control Plan. Such removal shall be complete prior to closure of the Permit which authorized the Land Disturbance.

16.200.070 Enforcement.

A. In General. The Director shall handle enforcement of the provisions of this Chapter through routine activities that include receiving inspection reports from the Permit Holder when requested, inspections, and communication with contractors. However, if these methods fail, the Director may proceed with any or all of the following enforcement measures:

1. Refusal of Inspection. Request for an inspection of any permitted construction activity may be denied if it is found that Erosion and Sediment control measures have not been implemented, or are found to be ineffective or are not maintained. If an inspection is refused, a notice of violation or a stop work order may be issued. No further inspections will be performed until the Erosion and control measures have been implemented or violations of Chapter 16.200 or Title 18 abated.
2. Notice of Violation. The Director is authorized to serve a Notice of Violation or

order on any Person found to be doing work in violation of the provisions of Chapter 16.200 or Title 18 of the Code. Such order shall direct the discontinuance of the illegal action or condition and order the abatement of the violation by the responsible Person.

3. Stop Work Order. The Director is authorized to issue a stop work order for any or all construction activity within the established boundary of the Permit. The stop work order shall be in writing and shall be given to the owner of the property involved, or the owner's agent or to the Person doing the work. In addition, notice of the stop work order shall be posted on the site. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order and the conditions under which the cited work will be permitted to resume. Any Person who shall continue to work after having been served with a stop work order, except such work as that Person is directed by the City to perform to remove a violation or unsafe condition, is guilty of a public offense and may be subject to penalties as prescribed herein.
4. Abatement. Should any Person fail to comply with the provisions of this Chapter, the Director is authorized to correct or abate such violation. This action can be taken in lieu of, or in conjunction with, any action taken under O.P.M.C. Section 1.12.010, or enforcement actions set forth in this Chapter.
 - i.* City expenditures to correct or abate a violation shall be assessed as a fee against the Land Disturbance, Site Development, Building Permit or any other Permit issued for work at the same site. The City will keep a record of the abatement costs. The fee shall be paid prior to recommencement of work on the site and prior to any further inspections. If the fee is not paid within 30 days of the date the invoice is sent to the Permit Holder, the Director is authorized, as the Director deems appropriate, to expend additional abatement funds to provide permanent soil stabilization on the site. Such additional expenditures shall also be assessed as a fee against the Land Disturbance, Site Development, Building Permit, or other Permit issued for work on the same site.
 - ii.* Should the Permit become suspended, revoked, or expired with the fee not paid, all City expenditures to correct or abate the violation may be assessed as a lien and special assessment against the lot or parcel of land on which the permitted activity took place. The same abatement and collection procedure shall apply if work is done without the issuance of a Permit. The City Clerk, at the time of certifying other City taxes, shall certify the unpaid portion of the costs and the County Clerk shall extend the same on the tax rolls of the county against the lot or parcel of land.
- B. Abatement Funds. Prior to approval of Land Disturbance Permits that authorize the disturbance of one (1) acre or more of land, the Director shall require surety in

the form of a cash deposit or letter of credit, approved by the City, to be used to offset the costs of abatement as required. The surety amount, established and reviewed annually by the Director, shall be based on the estimated cost to the City of providing temporary Erosion control and establishing Perennial Vegetation on typical project sites. The surety amount will be proportioned based on the acreage of the site. If the surety is furnished in the form of a letter of credit, the amount shall equal the surety amount or five thousand dollars (\$5,000), whichever is greater. Amounts not used for abatement shall be returned to the Permit Holder after final inspection and approval to close the Permit.

- C. Violations and penalties.
 - i. Any Person who violates a provision of this Ordinance, fails to comply with any of the requirements thereof or fails to comply with a directive issued by the Director is guilty of a public offense and shall be subject to penalties as provided in Overland Park Municipal Code Section 1.12.010.
 - ii. The Director shall be permitted to cite the owner, or any/all Persons identified on a Permit as being legally responsible to the City for any violations of the Ordinance pertaining to that Permit.

16.200.080 Miscellaneous

A. Other Laws. Neither this Ordinance nor any administrative decision made under it exempts the Permit Holder or any other Person from other requirements of this Code, state and federal laws, or from procuring other required Permits, including any state or federal stormwater Permits authorized under the National Pollutant Discharge Elimination System (NPDES), or limits the right of any Person to maintain, at any time, any appropriate action at law or in equity, for relief or damages against the Permit Holder or any Person arising from the activity regulated by this Ordinance.

B. Disclaimer of Liability. The performance standards and design criteria set forth herein establish minimum requirements, which must be implemented with good engineering practice and workmanship. Use of the requirements contained herein shall not constitute a representation, guarantee or warranty of any kind by the City, or its officers and employees, of the adequacy or safety of any best management practice or use of land, nor shall the approval and issuance of a Permit imply that land uses permitted will be free from damages caused by Storm Water. The degree of protection required by these regulations is considered reasonable for regulatory purposes and is based on historical records and engineering and scientific methods of study. Larger storms may occur or Storm Water runoff heights may be increased by man-made or natural causes. These regulations therefore shall not create liability on the part of the City or any officer with respect to any legislative or administrative decision lawfully made hereunder.

C. Severability. If any section, subsection, paragraph, sentence, clause or phrase in this Ordinance or any part thereof is held to be unconstitutional, invalid or ineffective by any court of

competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

D. Effective Date. The provisions of this Chapter shall apply to all Land Disturbance activities that take place on or after March 10, 2003.

SECTION II. This ordinance shall take effect and be in force March 10, 2003, and after its publication in *The Overland Park Sun*, an official City newspaper.

PASSED by the City Council this ___ day of _____, 2003.

APPROVED by the Mayor this ___ day of _____, 2003.

Ed Eilert, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

J. Bart Budetti
Senior Assistant City Attorney