

BILL NO. 2-3-13

ORDINANCE NO. 4811

**AN ORDINANCE ADDING CHAPTER 20, ARTICLE IV, DIVISION III OF THE CODE OF CITY ORDINANCES OF THE CITY OF WARRENSBURG, MISSOURI, REGARDING EROSION AND SEDIMENT CONTROL REGULATIONS.**

WHEREAS, water quality can be degraded by construction and development activities; and

WHEREAS, the City of Warrensburg desires to manage and regulate development activities that affect surface and storm water runoff to prevent erosion, sedimentation, and damage to life and property; and

WHEREAS, the use of best management practices to reduce the amount of sediment and other pollutants from entering the water stream protects the biological diversity and water quality of the recreational and environmental resources in Warrensburg; and

**NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WARRENSBURG, MISSOURI, AS FOLLOWS:**

Section 1. Chapter 20, Article IV, Division 3. is hereby adopted to read as follows:

**Chapter 20**

**STREETS, SIDEWALKS AND OTHER PUBLIC PLACES**

**ARTICLE IV. EXCAVATIONS AND OBSTRUCTIONS**

**DIVISION 3. EROSION AND SEDIMENT CONTROL REGULATIONS**

**Sec. 20-100. General**

- (a) Title. This Division shall be known as the Erosion and Sediment Control Regulations.
- (b) Purpose. The purpose of this Division is to control or eliminate storm water pollution along with soil erosion and sedimentation within the City. It establishes standards and specifications for conservation practices and planning activities which minimize storm water pollution, soil erosion and sedimentation.
- (c) Scope. Any person, entity, agency, or political subdivision proposing a land disturbance activity within the City shall apply to the City for the approval of a Storm Water Pollution Prevention Plan. No land shall be disturbed prior to the issuance of an excavation permit and approval of a plan by the City that conforms to the standards set forth herein.

**Sec. 20-101. Definitions.** For the purposes of this Division, the following terms, phrases, words and their derivatives shall have the meanings stated below.

*Best Management Practices (BMPs).* Practices, procedures, or a schedule of activities to reduce the amount of sediment and other pollutants in storm water discharges associated with construction and land disturbance activities.

*Detention Basin.* A temporary or a permanent natural or man-made structure that provides for the temporary storage of storm water runoff.

*Disturbed Area.* An area of land subject to erosion due to the removal of vegetative cover and/or soil disturbing activities.

*Drainage.* The removal of excess surface water or groundwater from land by surface or subsurface drains.

*Erosion.* The process by which the land surface is worn away as a result of the land disturbance activities, movement of wind, water, ice, gravity or any combination of those forces.

*Erosion and Sediment Control.* The control of sediment and soil, to minimize the removal of soil from the land surface and to prevent its transport from a disturbed area by means of wind, water, ice, gravity or a combination of those forces. Practices include 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.

*Excavate.* Any act by which soil is cut into, dug, quarried, uncovered, removed displaced, relocated tunneled, bored or altered in any way.

*Land Disturbance Permit.* A permit issued by the City authorizing disturbance of the land at a specific site or disturbed area subject to conditions stated in the permit.

*Fill.* A deposit of soil or other earth materials placed by artificial means.

*Final Stabilization.* Means that all land disturbing activities at the site have been completed and a uniform perennial vegetative cover for the area has been established or equivalent stabilization measures, such as the use of mulches or geotextiles, have been employed.

*Land Disturbance Activity.* Any land change that may result in soil erosion and the movement of sediments into or upon waters, lands, or rights-of-way within the City.

*Permit Holder.* Any person or entity who receives an excavation permit approved by the City. This term includes that person's agents, employees, and anyone acting under their direction.

*Sediment.* The soils or other surface materials, mineral and organic, that are transported or deposited by the action of wind, water, ice, gravity or any combination of those forces, as a product of erosion.

*Silt.* A solid material consisting of very fine particles that become part of the erosion process when moved by water, air or ice.

*Site.* The entire area of land on which the land disturbance activity is proposed in the permit application.

*Soil.* The unconsolidated mineral and organic material including earth, sand, gravel, rock or other similar material, that is on the immediate surface of the earth serving as a natural medium for the growth of land plants.

*Storm Water Pollution Prevention Plan. (SWPPP).* A management plan, the purpose of which is to ensure the design, implementation, management and maintenance of erosion and sediment control measures in order to reduce the amount of sediments, soil, silt and other pollutants in storm water runoff associated with land disturbance activities.

*Storm water runoff.* The portion of rainfall, melted snow, or irrigation water that flows across the ground or impervious surface and is eventually conveyed to water resources or wetland.

## **Sec. 20-102 Land Disturbance Permitting Process**

- (a) **Permit Required.** No person or entity may clear, grub, grade, fill, excavate, store, stockpile, transport, or dispose of earth materials or perform any other land disturbing activity including such activity related to the demolition of any structure without a land disturbance permit. A land disturbance permit is required whether or not a building permit or right-of-way permit is required. Land disturbance activities not requiring land disturbance permits are limited to the following activities:
- (1) Minor land disturbance activities such as private home gardens and an individual's home landscaping, repairs and maintenance work.
  - (2) Installation of fence, sign, telephone and electric poles and other kinds of posts or poles.
  - (3) Tilling, planting or harvesting of agricultural, horticultural or silvicultural crops.
  - (4) Emergency work performed to protect life, limb, or property that would have otherwise required an approved storm water pollution prevention plan.
- (b) **Application.** Application for a land disturbance permit shall be filed with the City on forms furnished by the City for such purpose. At a minimum, the form shall contain the name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the permit holder together with the name of the permit holder's principal contact at such firm. Incomplete applications will be returned to the applicant and will not be processed until the form and all of the following items are submitted:
- (1) A filing fee as set by resolution of the City Council.
  - (2) The estimated starting and completion dates for the proposed land disturbance activities schedule and permit term.
  - (3) Two copies of a site plan showing the following information:
    - a. Property lines and dimensions of the site;

- b. The location of any existing buildings or structures on the site and the location of any building or structure on the land of adjacent property which is within 50 feet of the property boundary;
  - c. The elevations, dimensions, locations, extent, and slopes of all proposed land disturbance activities shown by contours or other means;
  - d. Graphic representation of proposed excavations and fills, of on-site storage of soil and other earthen material, and of on-site disposal or spoil areas;
  - e. Graphic representation, including design details, of each temporary and permanent erosion, surface runoff and sediment control measure and structure;
  - f. Graphic representation of the location of all existing and proposed natural and man-made drainage facilities;
  - g. A clear and definite delineation of any wetlands, natural or artificial water storage detention areas, and drainage ditches on the site, or a statement that there are no wetlands, detention areas or drainage ditches located on the property;
  - h. A clear and definite delineation of any drainage, sanitary, utility, or other easement(s) on or near the site.
- (4) A Storm Water Pollution Prevention Plan (SWPPP) prepared for the disturbed area and site along with two sets of all supporting plans, specifications, reports, and documentation. This plan must be sufficient to evaluate the environmental characteristics of the affected area; assess the potential impacts of the proposed land disturbance on water resources; and, assess proposed methods to minimize on-site soil erosion and prevent off-site sedimentation to the maximum extent practicable, including disturbance of topsoil and limitation on disturbance.
- a. For any site where one acre or more of land will be disturbed, including sites of less than one acre that are part of a larger common plan that will ultimately disturb one acre or more, the SWPPP is required to be prepared by a design professional recognized by the State of Missouri as qualified to prepare a SWPPP.
- (5) Qualified cost estimates of work to be performed under the SWPPP.
- (6) A performance guaranty in accordance to Sec. 20-108.
- (7) A Land Disturbance Permit issued by the Missouri Department of Natural Resources for any site where one acre or more of land will be disturbed, before beginning any site work authorized by a City permit. This requirement includes sites of less than one acre that are part of a larger common plan that will ultimately disturb one acre or more.
- (8) Copy of Open Burning Permit issued from the Missouri Department of Natural Resources prior to burning any vegetation on-site.

(c) **Review and Approval.** The City will review all applications to determine their conformance with the provisions of this section 20-104 and the erosion and sediment control design criteria. After receiving all required submissions, the City shall notify the applicant in writing of his or her intention to:

(1) If a building permit is otherwise required:

- a. Approve the plan and notify the Building Official that all requirements of this Division have been met and that the permit may be issued; or
- b. Conditionally approve the plan and notify the Building Official that the requirements of this Division have been met and that the building permit may be issued, subject to conditions as may be necessary to substantially secure the objectives of this Division, prevent the creation of a nuisance or an unreasonable hazard to persons or to a public or private property; or
- c. Disapprove the plan and notify the Building Official that the requirements of this Division have not been met, indicating those requirement(s) that have not been met and the procedure for submitting revised information and/or submittals.

(2) If a building permit is not otherwise required:

- a. Approve the plan and issue a land disturbance permit; or
- b. Conditionally approve the plan and issue a land disturbance permit subject to conditions as may be necessary to substantially secure the objectives of this Division, prevent the creation of a nuisance or an unreasonable hazard to persons or to a public or a private property; or
- c. Disapprove the plan and inform the applicant in writing of those requirement(s) that have not been met and the procedure for submitting revised information and/or submittals.

**Sec. 20-103. Inspections.** In making application for a land disturbance permit, the permit holder consents to allow City representatives to enter the site or disturbed area for the purpose of inspection and enforcement of the provisions of this Division during any period that a land disturbance permit is in place, until closure of the permit by City approval. After the permit is issued, the permit holder shall be responsible for the following:

- (a) A copy of the land disturbance permit must be available on the site for inspection by the City prior to any inspections being conducted.
- (b) Field markings showing limits of disturbance must be on site during all installation of erosion and sediment control measures, construction or other land disturbance activities.
- (c) The permit holder shall call for and be approved for any or all of the following inspections:
  - (1) After a land disturbance permit has been issued and before any land disturbance activity begins;

- (2) During the construction of sediment basins or storm water management structures;
- (3) During rough grading, including hauling of imported or wasted materials;
- (4) Prior to the removal or substantial modification of any erosion and sediment control measure or practice;
- (5) Upon completion of final grading, including establishment of ground covers and planting, installation of all vegetative measures and all other work.
- (6) Additional inspections as required by the City to abate erosion control failures not addressed in the Storm Water Pollution and Prevention Plan.

**Sec. 20-104. Standards of Performance and Maintenance of Structures, Measures and Devices.**

All structures, measures and devices installed or used for erosion and sediment control practices at a site or disturbed area must meet the following performance standards:

- (a) Erosion and water runoff controls may be temporarily removed by the permit holder to accommodate short-term activities, such as passage of large vehicles. Erosion control measures shall be returned to the configuration as soon as possible using best management practices and approval by the City.
- (b) Land disturbance activities may be initiated sufficiently close to a property line that might endanger any adjoining property, including a public street, sidewalk, alley or right-of-way. The adjoining property shall be supported and protected from damage that may result from land disturbance activities including, but not limited to, settling, cracking, vegetative damage, erosion, soil deposition and excessive construction dust. If, in the opinion of the City, the land disturbance activity creates a hazard to life or property that is not adequately safeguarded, the permit holder must construct walls, fences, guard rails, or other structures to safeguard the adjoining private property or public street, sidewalk, alley, right-of-way or other public property and persons. Such methods of protection shall first be approved by the City.
- (c) Erosion and sediment control measures shall be placed on all construction sites or other land disturbance activities to prevent runoff onto neighboring properties, sidewalks, curbs, gutters, storm water inlets, streets, right-of-ways and along channel edges.
- (d) Temporary construction entrances shall be required at the discretion of the City to prevent the tracking of mud onto City streets, curbs or sidewalks. Temporary driveways shall be made of gravel and have a depth no less than six inches and provide coverage area sufficient to prevent construction vehicles from making direct contact with bare soil. Temporary construction entrances are allowed by the City only for the duration of a construction project.
- (e) Sidewalks, streets, curbs and gutters shall be protected from damage from vehicles, equipment and supplies for the duration of a construction project.

- (f) City streets, right-of-ways or adjoining property shall not be used for cleaning construction vehicles including mud and concrete, disposing or storing of construction-related materials, parking automobiles, or for placing construction trailers.
- (g) No solid or liquid waste, including building materials, shall be discharged into storm water runoff. The permit holder must implement best management practices to prevent toxic materials, hazardous materials or other debris from entering water resources or wetlands. These practices shall include but are not limited to the following:
  - (1) A covered dumpster shall be made available for the proper disposal of garbage, plaster, drywall, grout, gypsum and other waste materials.
  - (2) The washing of concrete material into a street, detention basin or other public facility or natural resource is prohibited. A designated area shall be established onsite for the purpose of washing concrete, dirt or other waste byproducts from any equipment or vehicles used onsite. This area shall be separate and contained to prevent washed materials from leaving the site or entering other areas of the site.
  - (3) All fuel/liquid tanks and drums shall be stored in a marked storage area. A dike shall be constructed around this storage area with a minimum capacity of 110% of the volume of all containers in the storage area.
  - (4) Any toxic or hazardous waste shall be disposed of properly.
  - (5) Contaminated soils from redevelopment sites shall be disposed of properly. Runoff from contaminated soils shall not be discharged from the site.
- (h) Water removed from an excavation site by pumping shall not be discharged in a manner that causes erosion or flooding of the site, receiving channels, into streets, curbs, gutters, storm inlets, adjacent properties or a wetland.
- (i) All storm drain inlets must be protected during construction and methods of such protection approved by an authorized representative of the City until erosion and sediment control measures are in place.
- (j) Detention basins shall be provided with a sump area for collecting coarse-grained material. Such basins shall be cleaned when they are half filled with material.
- (k) The permit holder shall schedule and install erosion and sediment control practices according to the approved SWPPP including the construction and stabilization of steep slopes using best management practices; providing measures to control the quality and quantity of storm water leaving a site; stabilizing all waterways and outlets; protecting storm sewers from the entrance of sediment; re-stabilizing excavation areas as soon as possible; properly disposing of temporary and permanent erosion and sediment control measures; proper disposal of sediment and floating debris. In addition, the permit holder is responsible for the following:
  - (1) Inspecting and maintaining in good and effective condition and promptly repairing or restoring all grade surfaces, wall drains, dams and structures, plantings, vegetation and other erosion and sediment control measures and devices throughout the life of the construction project. The City shall monitor

their effectiveness and require the necessary adjustment to ensure they function correctly.

- (2) Immediately removing mud, dirt or debris deposited on City streets, curb, gutter and sidewalks and rights-of-way by equipment leaving the site or disturbed area.
- (3) Regularly inspecting and maintaining the sediment and erosion control after construction is complete until adequate turf or other suitable vegetative cover is established and final stabilization has occurred.

(l) Any persons performing utility related work under a permit shall be responsible for the repair or maintenance of all erosion and sediment control measures affected by the utility construction.

### **Sec. 20-105. Enforcement.**

- (a) The City shall serve a Notice of Violation upon any person responsible in whole or in part for the construction, alteration, repair, maintenance, or removal of drainage improvements in violation of a building permit, right-of-way permit, land disturbance permit or any permit issued under the Code of Ordinances of the City of Warrensburg. In the event work does not conform to the plans and specifications of an approved SWPPP, this Division or to any instructions of the City, a Notice of Violation shall be served upon the permit holder. The Notice of Violation shall state the work to be done and the specified period of time by which corrective action shall be completed. After a Notice of Violation to comply is given, the permit holder shall commence corrective measures within 24 hours.
- (b) If corrective action is not completed by the end of the time specified on a Notice of Violation, the City may issue a Stop Work Order.
- (c) The City may require all work on a site or disturbed area which is being performed contrary to the provisions of this Division or in an unsafe or dangerous manner, be immediately stopped. The City may issue a Stop Work Order for the entire project or any specified part thereof if any of the following conditions exist:
  - (1) Any land disturbance activity regulated under this Division is being undertaken without an excavation permit.
  - (2) The SWPPP is not being fully implemented.
  - (3) Any of the conditions of the land disturbance permit are not being met.
  - (4) The work is being performed in a dangerous and unsafe manner.
- (d) The Stop-Work Order shall be in writing and shall be issued by posting a copy at the site or disturbed area and by serving a copy upon the permit holder. A copy of the Stop Work Order shall be posted on the site of the land disturbing activity in reasonable proximity to a location where the land disturbing activity is taking place. In the case of work for which there is a land disturbance permit, a permit holder shall be properly served by mailing a copy of the order by first class mail to the address listed for the

permit holder on the permit application. In the case of work for which there is not a land disturbance permit, a copy of the order shall be mailed to the owner of record. In addition, a copy of the Stop Work Order may be given to any person in charge of or performing work on drainage improvements at the site or disturbed area, or to an agent of any of the foregoing.

- (e) The Stop Work Order shall state the conditions under which work may be resumed. No person, entity or permit holder shall continue any work after a Stop Work Order has been issued except such work as is directed to be performed to remove a violation or dangerous or unsafe condition, as provided in the order.
- (f) Ten (10) days after issuing a Stop Work Order, the City may issue a Notice of Intent to the owner of record or permit holder of the City's intent to perform work necessary to comply with these regulations. If the permit holder wishes to contest the City's determination to enter and complete the work at the expense of the permit holder, the permit holder may request a hearing on the matter before the Director of Public works by requesting the same in writing delivered to the Director of Public Works during the ten (10) day notice period. If a hearing is requested, the Director of Public Works will, after a hearing on the record, determine whether the permit holder has complied with the provisions of this Division, and shall issue written findings of fact and conclusions of law. If the Director of Public Works determines that the provisions of this Chapter have not been complied with, they shall order the permit holder to comply within a period of time specified in the order. Should the permit holder fail to comply within that time, or fail to request a hearing, the City may go on the land and commence work. The costs incurred by the City to perform this work shall be paid by the owner of record or permit holder out of the performance guaranty required by Section 20-108 of this Division to the extent the amount is covered thereby, with the remainder being directly due and owing by the owner of record or permit holder. In the event no permit was issued or no performance guaranty was posted, the cost, plus interest at the rate authorized by the issuing authority, plus a reasonable administrative fee shall be billed to the owner of record.

**Sec. 20-106. Completion Certificate.** Upon completion of the land disturbance activity and after final stabilization of the site has occurred and all other requirements of the land disturbance permit are satisfied and approved by the City, a completion certificate shall be issued to the permit holder by the City.

**Sec. 20-107. Liability.** The permit holder is responsible for safely and legally completing the project. Neither the issuance of a land disturbance permit under the provisions of this Division, nor compliance with the provisions hereto or with any conditions imposed by the City, shall relieve any person from responsibility for damage to persons or property resulting there from, or as otherwise imposed by law, nor impose any liability upon the City for damages to persons or property.

**Sec. 20-108. Performance Guaranty.**

- (a) The applicant shall post a performance guaranty in the form of a cash bond, performance bond or letter of credit. The guaranty shall be in such form and amount as is necessary to assure the work, if not completed in accordance with this Division, will be corrected. The amount of the performance guaranty shall be determined by the Public Works Director to secure the costs for improvements required by this Division, and this amount shall be in addition to any other amounts necessary to secure the faithful

performance of other acts required of the permit holder by the City that the performance guaranty is intended to cover. The Public Works Director may grant a partial or complete waiver of the performance guaranty, upon application, for governmental or quasi-governmental entities or state regulated utilities or where the Public Works Director finds minimal impairment of existing surface drainage, minimal erosion hazard, minimal sedimentation hazard upon any adjacent land or watercourse, and no hazard to human life or property.

- (b) In the event of any alleged default in the performance of any term or condition of the performance guaranty, the City, the surety, the issuing organization or entity, or any person employed or engaged on its behalf has a right to go upon the site or disturbed area to complete the required work necessary to control erosion and sedimentation or to protect properties, watercourses and persons. In the event the City undertakes this work with the funds from a forfeited performance guaranty, the funds must be used to pay the cost of contracting, including engineering and administration, for necessary restoration of the site to control erosion and sediment within the requirements set forth in this Division, permit, or performance guaranty. If the cost of the work necessary to control erosion and sediment or to protect properties, watercourses and persons exceeds the amount of the performance guaranty, the permit holder shall continue to be firmly bound under a continuing obligation for payment of all excess costs and expenses incurred by the City. The cost of necessary work in excess of the performance guaranty shall be certified by the City Clerk of the City of Warrensburg and shall, to the extent authorized by law, become a lien upon all property and all rights to property, real or personal, of any person liable to pay that cost. The cost of removal shall be listed on the tax bill and be collected in the manner of ordinary taxes to the extent authorized by law.
- (c) A performance guaranty remains in full force and effect until a completion certificate is issued and all other permit holder's acts covered by the performance guaranty have been determined to be complete in accordance with the applicable City code provisions. Failure to renew the performance guaranty 14 days prior to expiration shall be deemed default by the City.
- (d) The City shall issue a Notice of Violation or Stop Work order upon failure of any permit holder to maintain the performance guaranty.

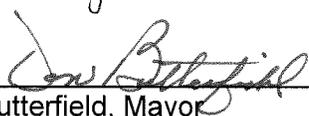
**Sec. 20-109. Penalties.** Any violation of the codes adopted by this Division shall be an offense punishable under section 1-15 of the Code of Ordinances. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Warrensburg or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

Section 2. Severability Clause. If any section, subsection, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or major sections, sentence, clauses, or phrases be declared invalid.

Section 3. It is intended the provisions of Sections One (1) of this ordinance shall become a part of the Code of Ordinances of the City of Warrensburg and it may be renumbered to accomplish that purpose.

Section 4. This ordinance shall become effective April 1, 2013.

Passed by the City Council this 25<sup>th</sup> day of February, 2013.

  
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Don Butterfield, Mayor



Attest.  
  
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Cindy Gabel, City Clerk