

**ORDINANCE NO. 08-02-03**

**AN ORDINANCE CREATING AN  
EROSION AND SEDIMENT CONTROL PROGRAM  
BY CREATING A NEW DIVISION 5 OF CHAPTER 8 OF THE ABERDEEN  
MUNICIPAL CODE.**

WHEREAS, During the construction process, soil is highly vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair or maintenance of sewers and ditches and the dredging of lakes; and

WHEREAS, In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat; and

WHEREAS, The City of Aberdeen is a Phase II Storm water community, which is now being regulated by the State of South Dakota for compliance. As a result, the purpose of this regulation is to safeguard persons, protect property, and prevent damage to the environment in Aberdeen; and

WHEREAS, This ordinance will also promote the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land in Aberdeen.

**NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABERDEEN THAT THE FOLLOWING CHANGES AND ADDITIONS SHALL BE MADE TO THE ABERDEEN CITY CODE:**

**Division 5**

**Sec. 8-501. Definitions**

**Best Management Practices (BMP's)** – is a technique or series of techniques which are proven to be effective in controlling runoff, erosion, and sedimentation, such as: a) good housekeeping, b) preventive maintenance, c) visual inspections, d) spill prevention and response, e) sediment and erosion prevention, f) silt fencing, g) storm sewer protective measures, and h) traditional storm water management practices addressing quantity and quality. These would be a part of an Storm Water Pollution Prevention Plan.

**Clearing** - Any activity that removes the vegetative surface cover.

**Drainage Way** - Any channel that conveys surface runoff throughout the site.

**Erosion Control** - A measure that prevents erosion.

**General Storm Water permit** - is the South Dakota Department of environment and Natural Resources (SD DENR) general National Pollutant Discharge Elimination System (NPDES) construction storm water permit covering anyone conducting a land disturbing activity which disturbs 1 or more acres of land.

**Grading** - Excavation or embankment of material, including the resulting conditions thereof.

**Land Disturbance Activity** – is any land change that may result in soil erosion from wind, water and/or ice and the movement of sediments into or upon waters, lands, or rights-of-way within the City of Aberdeen, including but not limited to building demolition, clearing and grubbing, grading, excavating, transporting and filling of land.

**Manual of Standards** – is a compilation of technical standards and design specifications adopted by the City of Aberdeen Engineering Department as being proven methods of controlling construction related surface runoff, erosion and sedimentation. The reference material at this time is the SDDOT Manual on Erosion and Sediment Control and Storm Water Management - 2007

**Perimeter Control** - A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

**Permit** - A permit issued by the municipality for the construction or alteration of ground improvements and structures for the control of erosion, runoff, and grading.

**Phasing** - Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

**Sediment Control** - Measures that prevent eroded sediment from leaving the site.

**Site Development** - A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation on an area equal to or greater than one acre.

**Stabilization** - The use of practices that prevent exposed soil from eroding.

**Start of Construction** - The first land-disturbing activity associated with a development, including land preparation such as clearing, grading, and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

**Storm Water Pollution Prevention Plan** - A set of plans indicating the specific measures (BMP's) and sequencing to be used to control sediment and erosion on a development site during and after construction.

**Watercourse** - Any body of water, including, but not limited to lakes, ponds, rivers, streams, and bodies of water delineated by the City, State or Federal Governments.

Waterway - A channel that directs surface runoff to a watercourse or to the public storm sewer system.

**Sec. 8-502. Permits Required.**

- A. No person may commence any Land Disturbance Activities which disturb an acre or more of land without first obtaining (1) a city site development permit; and (2) a storm water permit from the South Dakota Environment and Natural Resources, Storm Water Division. Applications for the state permit can be obtained from the State of South Dakota Website Homepage under the construction activities section.
- B. No person may commence any Land Disturbance Activity which disturbs 1000 s.f. or more of land without first obtaining a city site development permit.
- C. No city site development permit is required for the following activities:
  - i. Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
  - ii. Existing nursery and agricultural operations conducted as a permitted main or accessory use.
  - iii. Cemetery graves.
  - iv. Land disturbance activity that does not exceed 1000 s.f.
- D. Each application for a city site development permit shall bear the name(s) and address(es) of the owner or developer of the site, general contractor and any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm and shall be accompanied by a filing fee. Each application shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the Storm Water Pollution Prevention Plan and the City Engineering Department shall be notified 48 hours prior to construction or grading activities.
- E. Fees – An application fee in an amount to be determined by the City Council will be required in order to process the permit.

**Sec. 8-503 Storm Water Pollution Prevention Plan to be submitted.**

- A. Prior to obtaining a city site development permit, an applicant must submit a Storm Water Pollution Prevention Plan. The Storm Water Pollution Prevention Plan shall include the following:
  - i. For sites with 1,000 square feet or more, but less than one acre of disturbance.
    - 1. A scale drawing of the site;

2. Erosion and sediment control measures (BMP's) to be implemented; and
  3. A sequence of site operations.
- ii. For sites with one acre or more of disturbance:
1. A map showing the existing contours or drainage path, existing trees, brush and type vegetation (blue grass, crested wheat grass, corn, etc.). The map should also show the area to be disturbed, existing adjacent drainage ways (curb and gutter, storm sewer inlets, creeks, lakes and rivers). This map should be at a scale no smaller than 1"=100'.
  2. A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.
  3. All erosion and sediment control measures (BMP's) necessary to meet the objectives of this regulation throughout all phases of construction and after completion of development of the site. Depending upon the complexity of the project, the drafting of intermediate plans may be required at the close of each season. Best Management Practices shall be identified.
  4. A plan for establishing or re-establishing temporary and permanent vegetation on site.
  5. Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.
- B. Modifications to the plan shall be processed and approved or disapproved in the same manner as listed in the Review and Approval section of this regulation, may be authorized by the City Engineer by written authorization to the permittee, and shall include:
- i. Major amendments of the Storm Water Pollution Prevention Plan submitted to the City Engineer.
  - ii. Field modifications of a minor nature

#### **Sec. 8-504. Storm Water Pollution Prevention Plan Design Requirements**

- A. Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set by the South Dakota DOT Erosion & Sediment Control and Storm Water Management Manual - 2007, and shall be adequate to prevent transportation of sediment from the site to the satisfaction of the City Engineer.
- B. Clearing and grading of natural resources, such as forests and wetlands, shall be first permitted by the U.S. Army Corps of Engineers, South Dakota Dept. of Environment and Natural Resources, & City of Aberdeen Forestry Department.

- C. Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.
- D. Erosion control requirements shall include the following:
- 1) The drainage way shall be shaped and seeded prior to construction of impermeable surfaces and structures. If the area does not germinate within 2 weeks, it shall be reseeded.
  - 2) Special techniques that meet the design criteria outlined by the City of Aberdeen on steep slopes or in drainage ways shall be used to ensure stabilization.
  - 3) Where a vegetative cover sufficient to control erosion is not established at the close of the construction season, the entire site must be stabilized, using a heavy mulch layer or another method that does not require germination to control erosion.
  - 4) Sediment control requirements may include:
    - a) Settling basins, sediment traps, and perimeter controls.
    - b) Settling/detention basins that are designed in a manner that allows adaptation to provide long term storm water management, if required by the City Engineer.
    - c) Protection for adjacent properties by the use of a vegetated buffer strip and/or other perimeter controls.
    - d) Waterway and watercourse protection requirements may include:
      - i) A temporary stream crossing installed and approved by South Dakota Dept. of Environment and Natural Resources if a wet watercourse will be crossed regularly during construction.
      - ii) Stabilization of the watercourse channel before, during, and after any in-channel work.
      - iii) Stabilization adequate to prevent erosion located at the outlets of all pipes and paved channels.
      - iv) An Army Corps of Engineers 404 permit.
      - v) Such other protection requirements as the City Engineer shall deem appropriate to accomplish erosion control.
    - e) Construction site access requirements shall include:
      - i) A temporary access road provided at all sites.
      - ii) Other measures required by the City Engineer in order to ensure that sediment is not tracked onto public streets by construction vehicles or washed into storm drains.

#### **Sec. 8-505. Permit Review and approval**

- A. The City Engineer or his/her designee will review each application for a site development permit to determine its conformance with the provisions of this regulation. Within ten (10) days after receiving an application, the City Engineer shall, in writing:
- (i) Approve the permit application;
  - (ii) Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
  - (iii) Disapprove the permit application, indicating the reason(s) and procedure for submitting a revised application and/or submission.

B. Failure of the City Engineer to act on an original or revised application within ten (10) days of receipt shall authorize the applicant to proceed in accordance with the plans as filed and in accordance with all SDDENR regulations, unless such time is extended by agreement between the applicant and the City Engineer. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the City Engineer.

**Sec. 8-506. Inspection**

A. The City Engineer or designated agent shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the Storm Water Pollution Prevention Plan as approved. Plans for grading, stripping, excavating, and embankment shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the Engineering Department at least two working days before the following:

- i. Start of construction to insure installation of BMP's.
- ii. Completion of final landscaping.

B. The City Engineer or designated agent shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Storm Water Pollution Prevention Plan. The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form and submitted to the City Engineer at the time interval specified in the approved permit.

C. The City Engineer or designated agent shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed under Section B.

**Sec. 8-507. Penalty.**

A. Stop-Work Order; Revocation of Permit - In the event that any person holding a site development permit pursuant to this ordinance violates the terms of the permit or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the City Engineer may suspend or revoke the site development permit.

B. Violation and Penalties - No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this ordinance. Any person violating any of the provisions of this ordinance shall be deemed guilty of a class 2 misdemeanor, punishable by up to thirty (30) days in jail and/or a \$500.00 fine. Each day during which any violation of any of the provisions of this ordinance is committed, continued, or permitted, shall constitute a separate offense. Upon conviction of any such violation, such person, partnership, or corporation shall be assessed an

administrative penalty by the City of Aberdeen of not more than \$1,000.00 for each offense. Such penalty represents the amount of actual damages suffered by the City, and shall be in addition to any other penalty authorized by this section. Any person, partnership, or corporation convicted of violating any of the provisions of this ordinance shall be required to bear the expense of such restoration.

CITY OF ABERDEEN

\_\_\_\_\_  
Mike Levsen, Mayor

ATTEST:

\_\_\_\_\_  
Karl Alberts, Finance Officer

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Published: \_\_\_\_\_

Effective: \_\_\_\_\_