

CHAPTER 102

CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

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102.01 PURPOSE AND INTENT. The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the City through the regulation of non-storm-water discharges to the Municipal Separate Storm Sewer System (MS4), to the maximum extent practicable, as required by federal and State law. This chapter establishes methods for controlling the introduction of soil and construction debris into the MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) Phase II permit and the Federal Clean Water Act. The objectives of this chapter relating to construction site erosion and sediment control (during new construction) are to:

1. Retain soil on residential, commercial, industrial, recreational, and roadway construction sites. Soil erosion from these sites can result in a change in the natural cover, topography, or drainage from the land, and can significantly interfere with existing drainage courses established.
2. Reduce erosion from construction sites that may cause obstructions on roadways, restrict storm sewer capacity, create silt in road ditches, increase road and storm sewer maintenance costs, cause dust and mud on streets and sidewalks, leave deposits of silt in creeks and streams, and increase the potential for flooding.
3. Reduce the occurrence of soil erosion and sedimentation that result in damage caused by the change in a course as a result of nonagricultural earth-moving activities.
4. Require the issuance of a General Permit #2 and approval of a Storm Water Pollution Prevention Plan (SWPPP) prior to the occurrence of any grading activity on a new construction site as required by the City.
5. Establish legal authority to conduct review of a permit application and inspection of construction site to ensure compliance with this chapter.
6. Investigate, eliminate, and enforce, to the maximum extent practicable, the contribution of soil erosion and construction debris to the MS4 by storm water discharges from new construction sites during storm water events.

102.02 DEFINITIONS. Terms or acronyms used in this chapter have the meanings given to them in Chapter 100 of this Code of Ordinances.

102.03 CONSTRUCTION SITE GRADING ACTIVITIES. During grading operations, the contractor/owner shall be responsible for the following:

1. The prevention of damage to public utilities or services within the limits of grading operations and along routes of travel of construction equipment.
2. The prevention of damage of adjacent property.
3. Carrying out proposed work so as not to grade on land so close to the property line as to endanger an adjoining public street, sidewalk, alley, or any other public or private property without supporting and protecting such property from settling, cracking, or other resulting damage.
4. Carrying out the proposed work in accordance with the approved plan and in compliance with the requirements of this chapter.
5. Prompt removal of excessive soil, miscellaneous debris, or other materials applied, dumped, or otherwise deposited on public streets, highways, sidewalks, or other public thoroughfares during transit to and from the construction site.
6. Completion of the grading operation and the erosion control measures within the approved time schedule.
7. Conduct any grading in such a manner as to effectively reduce accelerated soil erosion and resulting sedimentation from the site.
8. Implement and maintain acceptable soil erosion and sediment control measures throughout construction.
9. Design, construct, and complete grading in such manner that the exposed area of any disturbed land shall remain exposed for the shortest possible period of time.
10. Obtaining a General Permit #2 from the Iowa Department of Natural Resources and developing a Storm Water Pollution Prevention Plan (SWPPP) for the site prior to conducting any grading activity, whether temporary or permanent.
11. Maintaining a copy of Permit #2 and SWPPP on the premises at all times. Such permit and SWPPP shall be available for inspection by the City Engineer.

102.04 REQUIREMENT TO OBTAIN APPROVAL OF GENERAL PERMIT #2 AND STORM WATER POLLUTION PREVENTION PLAN (SWPPP). The developer/owner of all new residential additions and subdivisions, commercial, industrial, and institutional developments, unless considered exempt by the City Engineer, pursuant to the guidelines set forth in this section, shall submit and obtain approval of a General Permit #2 to the Iowa Department of Natural Resources. The developer/owner, unless considered exempt by the City Engineer pursuant to the guidelines set forth in this section, shall also submit to the City, and obtain approval of, a Storm Water Pollution Prevention Plan (SWPPP) for the development prior to the approval of construction plans and/or final plat. Obtaining approval of a General Permit #2 and a SWPPP is required, in addition to any other applicable permits required by the City, State, or federal Government, for storm water discharges associated with construction and/or grading. Construction and grading activities shall be classified in one of four categories as determined by the City Engineer and as set forth below:

1. A General Permit #2 and SWPPP are not required for construction sites with an area of disturbed land less than one acre, unless the construction site falls within subsection 2 or 3 of this section. However, the owner of a site is required to plan and implement erosion control measures as described in the brochure *Erosion Control for Small Site Development*. The brochure is available upon request from City Engineer.
2. A SWPPP will be required for sites with a disturbed land area of less than one acre if the City Engineer determines such a requirement is warranted by site conditions. Such site conditions may include, but are not limited to:
 - A. Construction site with slopes of nine percent or greater;
 - B. Construction site adjacent to a water body or open drainage channel; and/or
 - C. Construction sites that have been identified as having severe erosion potential, or identified as having potential to create a significant impact on adjacent properties, water bodies, or open drainage channels due to erosion and sediment deposition.
3. A SWPPP is required for land grading activities that are less than one acre in size if such activities are part of a larger common plan of development. Even though multiple separate and distinct land development activities less than one acre may take place at different times and on different schedules, the developer/owner shall submit the required SWPPP plan.
4. Construction sites with a disturbed land area greater than or equal to one acre are required to submit a Permit #2 and a SWPPP in accordance with the requirements of this chapter.

When a SWPPP is required under subsections 2, 3 and 4 of this section, the SWPPP shall be certified by a design professional and approved by the City Engineer prior to commencement of construction or grading activities. The developer/owner shall allow the City Engineer access to the construction site for the purposes of plan review and observation prior to the commencement of work and during progression of work. The property owner shall give the City Engineer written notice of completion of erosion and sediment control requirements within 30 days after completion of construction activity.

102.05 SWPPP – CONTENT. A Storm Water Pollution Prevention Plan (SWPPP), including an addition to a previously approved plan, shall include provisions for erosion and sediment control in accordance with, but not limited to, the Statewide Urban Design and Specifications (SUDAS) standards. Copies of such standards will be made available to the public for review in the office of the City Engineer. The SWPPP shall demonstrate how the developer/contractor will control the quantity and quality of storm water runoff leaving a construction site. The plan shall include structural controls and non-structural measures adequate to prevent soil erosion. The SWPPP will be reviewed by the City Engineer prior to the approval of construction drawings and the approval of a final plat, if applicable. Information required on the SWPPP will be maintained on the City's Sediment and Erosion Control Checklist. This list will be provided to the developer/contractor by the City Engineer.

102.06 SWPPP REVIEW PROCEDURE. The owner/developer shall submit a SWPPP for the development of a site, meeting the requirements established in this chapter, to the City Engineer for review and approval, as follows:

1. The City Engineer shall review the submittal for compliance with the requirements of the SWPPP as set forth in the current edition of the City's Sediment and Erosion Control Checklist. Following the review, the City Engineer will return comments to the design professional within 30 days of initial submittal.
 - A. Following receipt of comments from the City Engineer, the applicant shall provide a revised submittal to the City Engineer, if required, in accordance with requested revisions.
 - B. The City Engineer may require supporting documentation as needed to demonstrate conformance with City, State, and federal storm water pollution prevention requirements. Approval of construction drawings and/or final plat may be delayed pending receipt of this documentation.
2. If a submittal is deemed complete, and meets the requirements as set forth herein, the City Engineer shall approve the Storm Water Pollution Prevention Plan and authorize approval of construction plans and/or final plat.

102.07 EXTENSION OF TIME TO COMPLETE WORK. If the developer/owner or an authorized representative is unable to complete the work within the time specified in the SWPPP, said person may, at least ten (10) days prior to the expiration of the General Permit #2, present in writing to the City Engineer a request for an extension of time, setting forth the reasons for the request for extension. If such an extension is warranted and the conditions at the site present no accelerated soil erosion potential, the City Engineer shall grant additional time for the completion of the work. The developer/owner shall also submit documentation indicating the coverage of the General Permit #2 with the Iowa DNR is also extended a sufficient time to allow completion of construction.

102.08 FAILURE TO COMPLETE WORK. Failure to complete construction and/or grading activity in accordance with the approved General Permit #2 and SWPPP shall constitute a nuisance. The City may give notice to the owner to abate such nuisance or cause such nuisance to be abated in accordance with this Code of Ordinances and the laws of the State.

102.09 MODIFICATIONS TO APPROVED GENERAL PERMIT #2 AND STORM WATER POLLUTION PREVENTION PLAN. Any modification to an approved General Permit #2 and SWPPP shall be submitted to, and approved by, the Iowa DNR and City Engineer prior to construction of such modification. All necessary reports shall be submitted with any proposal to modify the approved General Permit #2 and SWPPP. Grading work in connection with any proposed modification shall not be permitted without the approval of the City Engineer. If the proposed modifications are considered substantial, the City Engineer may require a revised Storm Water Pollution Prevention Plan to be submitted prior to further grading activity.

102.10 CERTIFICATION OF COMPLETION. The developers/owner or a designated representative shall inspect the work and certify the satisfactory completion of all work required by the General Permit #2 and SWPPP. Upon satisfactory completion of all approved grading, the City Engineer shall issue a written letter certifying acceptable completion of the project.

102.11 RESPONSIBILITY OF NEW OWNER. The responsibility of fulfilling requirements of the General Permit #2 and SWPPP when a new owner purchases a parcel of

property becomes the responsibility of the new owner. The previous owner shall inform the new owner in writing of the requirements of the General Permit #2 and the SWPPP prior to the completion of the transfer of ownership.

102.12 REQUIREMENT TO PROVIDE ON-SITE STORM WATER DETENTION.

On-site storm water detention facilities shall be required for all new residential (three-plex and greater), commercial, industrial, and institutional developments. On-site detention shall also be required when a new building is constructed on an existing developed site, or when parking lot construction occurs. Parking lot construction includes the construction of new parking areas, expansions, reconstruction, or hard surfacing of existing gravel parking lots. Developments shall detain on-site storm water run-off equal to the difference between the storm water generated from the 10-year frequency rainfall event for the site in the developed condition, as applied to the entire lot including the proposed improvements, and the 5-year frequency rainfall event applied to the site as the site existed in its natural undeveloped state. A construction plan and calculations shall be submitted to the City Engineer showing the location, size, and capacity of the storm water detention facility. The plan shall also show the method of controlling the release from the facility with all necessary construction details included. Computations for sizing the detention facility and release rate shall also be submitted with the construction plan. A list of items to be shown on the construction plan related to on-site storm water detention can be obtained from the City Engineer upon request. Detention facilities shall be designed to have at least one foot of additional elevation above the design storm. The maximum level in the detention facility shall be a minimum one foot below finished floor level for the new development. The construction plan, including on-site storm water detention facilities, shall be reviewed and approved by the City Engineer prior to the approval to begin construction. The on-site detention shall be constructed prior to the issuance of a certificate of occupancy for the site. For sites on which privately owned and maintained storm water detention and/or conveyance facilities are located, the property owner shall be responsible for the following:

1. Future grading, repairs, and maintenance;
2. Maintenance of the minimum storm water detention volume, as approved by the City Engineer;
3. Maintenance of detention basin control structures and discharge pipes to insure the maximum theoretical storm water release rate, as approved by the City Engineer, is not increased.

The property owner shall not place fill material, or erect any buildings, obstructions, or other improvements on the area reserved for storm water detention purposes, unless approved otherwise by the City Engineer. Upon determination that a site is not in compliance with detention facility specifications, the City Engineer may issue a notice of violation in accordance with this chapter. Except as provided in this chapter, no person shall engage in construction of storm water detention or conveyance facilities, unless construction drawings and calculations have been reviewed and approved by the City Engineer.

102.13 ACTIVITIES EXEMPT FROM GENERAL PERMIT #2 AND SWPPP REVIEW. The City Engineer hereby considers the following activities exempt from SWPPP submittal and review, except as otherwise required and described in Section 102.04 of this chapter:

1. Activities with land disturbance of less than one acre in size.

2. Minor activities such as home gardens and individual home landscaping, home repairs, home maintenance work, and other related activities, which result in the possibility of minor soil erosion.
3. The construction of single-family residences when built separately on property less than one acre in size. Excavation should be limited to trenches for the foundation, basement, water, and sewer service connections, and minor grading for driveways, yard areas, and sidewalks. These activities have a minor chance of producing offsite discharge of sediments. Erosion control for single-family residences shall be installed in accordance with the *Erosion Control for Small Site Development* brochure provided by the City. This brochure will be made available by the City Engineer for review by the public.
4. Individual service and sewer connections for single- or two-family residences.
5. Agricultural practices involving the establishment, cultivation or harvesting of products of the field or orchard, preparing and planting of pasture land, forestry land management practices including harvesting, farm ponds, dairy operations, and livestock and poultry management practices, and the construction of farm buildings within the City limits.
6. Installation, maintenance, and repair of any underground public utility lines when such activity occurs within existing right-of-way on a hard-surfaced road, street, or sidewalk. This work shall be confined to the public right-of-way.
7. Larger utility installations will be reviewed on a case-by-case basis with regard to the necessity for installation of sediment and erosion controls.
8. Cemetery grave preparation.
9. Emergencies posing an immediate danger to life or property.

102.14 MAINTENANCE COVENANT FOR STORM WATER CONTROL FEATURES. Maintenance of all storm water management facilities shall be ensured through the creation of a formal maintenance covenant that shall be approved by the City and recorded with the land record, or deed of dedication, prior to final plan (final plat) approval. As part of the covenant, a schedule shall be developed for when, and at what frequency, maintenance shall occur to storm water management features to ensure proper function of the storm water features. The covenant shall also include an outline for periodic inspection to monitor proper performance of the drainage features between scheduled cleaning and maintenance. Subsequent owners of property shall be bound by the maintenance covenant approved for the property. The subsequent property owner shall maintain temporary and permanent erosion control measures in proper condition. A legally binding covenant specifying the parties responsible for the proper maintenance of all storm water management facilities shall be provided to the City prior to issuance of construction permits and/or site approval documentation.

102.15 RESPONSIBILITY. No condition of this plan shall release the owner/developer from any responsibility or requirements under other environmental statutes or regulations.

102.16 RIGHT OF INSPECTION ON PUBLIC AND PRIVATE PROPERTY. The City Engineer may enter public or private property for the purpose of investigating and inspecting erosion control measures approved under a SWPPP reviewed by the City. The City Engineer may also investigate and inspect conditions and practices that may contribute to storm water pollution, and inspect on-site detention or retention facilities to determine

compliance with approved design plans. The City Engineer shall also have the right to inspect public and private property within the City to determine the source and nature of pollutants, hazards, and/or activities creating or promoting storm water pollution within the City limits.

102.17 GRANTING A VARIANCE. The City Engineer may grant a variance from the requirements of this chapter, providing this action would not result in a violation of City, State, or Federal regulations. The City Engineer shall review circumstances applicable to the construction site, and if determined that strict adherence to the provisions of this chapter would result in unnecessary hardship to the owner/developer, the City Engineer may grant a variance to specific requirements of the chapter. A written request for a variance shall be required from the owner/developer and shall state the specific variance sought and the reasons, with supporting data, why a variance shall be granted. The request shall include all information necessary to evaluate the proposed variance. The petition shall be filed with the City Engineer. The City Engineer shall conduct a review of the request for variance within fifteen (15) days after receipt, and may either support or reject the request. If the City Engineer rejects the request, the owner/developer may request review of the request for variance by the City Council. City Council decision shall be considered final.

102.18 PROOF OF COMPLIANCE FOR GRADING ACTIVITY. Any person or entity in the process of, or intending to, commence a grading activity for an industrial or construction site shall comply with all provisions of the General Permit #2 and Storm Water Pollution Prevention Plan (SWPPP). Proof of compliance with said permit and SWPPP may be required in a form acceptable to the City Engineer prior to allowing grading activities to commence.

102.19 ENFORCEMENT – NOTICE OF VIOLATION. When the City Engineer finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the City Engineer shall notify the property owner or other responsible person in writing. This written notice may be delivered by ordinary mail to the property owner or other responsible person at its last known address. Such notice shall include:

1. Name of the property owner;
2. Date and the location of the violation;
3. Description of the violation;
4. Actions that must be taken by the property owner to remedy the violation, including but not limited to the elimination of illicit discharges and connections, the performance of monitoring, analyses, and reporting, and the implementation of source control or treatment BMPs.
5. Deadline by which the required actions must be completed.
6. Notice date.
7. Restoration procedures to property, if any.
8. Amount of administrative and remediation fines, fees, or costs, if any.

The notice shall also advise that, if the violator fails to take required remedial action within the stated deadline, the work may be done by a designated governmental agency or a private contractor, in either case at the sole expense of the violator.

102.20 APPEAL OF NOTICE OF VIOLATION. Any person receiving a Notice of Violation may appeal the determination of the City Engineer. The notice of appeal must be

received within fourteen (14) days from the date of the Notice of Violation. Hearing on the appeal before the Zoning Board of Adjustment shall take place within 14 days from the date of receipt of the notice of appeal, unless extended for good cause. The decision of the Zoning Board of Adjustment shall be final.

102.21 ENFORCEMENT MEASURES AFTER APPEAL. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or in the event of an appeal, within fourteen (14) days of the decision of the Zoning Board of Adjustment upholding the decision of the City Engineer, the City Engineer shall enter upon the subject property and take measures as are reasonably necessary to abate the violation and/or restore the property to a condition that is in compliance with the provisions of this chapter. It is unlawful for any person to refuse to allow the City or the City's designated contractor to enter upon any premises in the City for the purposes of investigating, correcting, or abating violations, or otherwise enforcing the provisions of this chapter.

102.22 COST OF ABATEMENT OF THE VIOLATION. After abatement of the violation, the owner of the property shall be notified of the cost of abatement, including administrative costs. The property owner may, within 30 days following notice of abatement costs, file a written protest objecting to the amount of the assessment. If the amount due is not paid within a timely manner as determined by the City Engineer, the assessment shall constitute a lien on the property pursuant to Section 384.84 of the *Code of Iowa*. Any abatement costs not paid in full within 30 days of final determination shall bear interest at the legal rate of interest provided by law, until paid in full. Prior written notice of intent to certify a lien shall be given to the property owner at least 30 days prior to certification. The notice shall be sent to the property owner by ordinary mail not less than 30 days prior to the certification of the lien to the County Treasurer. After compliance with the foregoing provisions, the City Clerk shall certify for taxation purposes and for purposes of the establishing of the property lien to the County Treasurer all delinquent abatement costs, together with an administrative expense of \$5.00. The lien shall not be certified to the County Treasurer for a delinquent cost of less than \$5.00. For the purpose of the certification and for no other purpose whatsoever, assessment costs shall be designated as delinquent when the payments are shown and appear on the books of the City to have been unpaid for a period of six (6) months following their due date.

102.23 INJUNCTIVE RELIEF. It is unlawful for any person to violate or fail to comply with any of the requirements of this chapter. If a person has violated, or continues to violate, the provisions of this chapter, the City Engineer may petition a court for a preliminary or permanent injunction restraining the person from violation of the provisions of this chapter, or compelling the person to perform abatement or remediation of any such violations.

102.24 COMPENSATORY ACTION. In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the City Engineer may impose upon a violator alternative compensatory actions. These actions may include, but are not limited to, storm drain labeling, attendance at storm water pollution prevention compliance workshops, the cleanup of local waterways or creeks, or any other activity as determined appropriate by the City Engineer. The failure of any person to complete any compensatory actions imposed by the City Engineer shall be a violation of this chapter.

102.25 VIOLATIONS DEEMED A PUBLIC NUISANCE. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter shall be considered a threat to public health,

safety, and welfare, and is hereby declared and deemed a nuisance. Any such nuisance may be summarily abated or restored at the violator's expense, or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be undertaken as authorized by law.

102.26 MUNICIPAL INFRACTION. Any violation of any provision of this chapter is hereby declared to be a municipal infraction, punishable as provided in Chapter 3 of this Code of Ordinances. In addition to any fine or penalty, the City may recover all legal fees, court costs, and other expenses associated with enforcement of this chapter, including necessary sampling and monitoring expenses.

102.27 REMEDIES NOT EXCLUSIVE. The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, State, or local law. It is within the discretion of the City Engineer to seek cumulative remedies if necessary.

102.28 COMPATIBILITY WITH OTHER REQUIREMENTS. This chapter is not intended to repeal, interfere with, abrogate, impair, or annul any existing article, rule, or regulation, statute, or other provision of law. The requirements of this chapter shall be considered minimum requirements, and where any provision of this chapter imposes restrictions different from those imposed by any other article, rule or regulations, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

102.29 ULTIMATE RESPONSIBILITY. The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore, this chapter does not intend or imply that compliance by any person shall ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into the MS4, waters of the State, or waters of the United States.

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