

CHAPTER 7, ARTICLE VI. EROSION AND SEDIMENT CONTROL AND CLEANING OF STREETS

Sec. 7-201. General provisions; definitions.

(a) *Purpose and policy.* This ordinance sets forth uniform requirements for reducing the impact of soil erosion on construction sites within the City of Henderson.

The objectives of this ordinance are to:

- (1) Promote the public welfare by regulating the design, construction, use and maintenance of development or other activity that involves site grading, clearing, or disturbance of topsoil;
- (2) Control soil erosion by wind and water, and reduce siltation of ditches, streams and impoundments;
- (3) Preserve native vegetation;
- (4) Protect water quality and enhance aquatic habitat;
- (5) Delineate requirements for permit applications and issuance of permits for site development activities;
- (6) Establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

(b) *Definitions.* Unless the context specifically indicates otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated:

Certified Contractor. A person or firm who has received training to install, inspect and maintain erosion and sediment control practices.

City. The duly constituted municipal corporation of the City of Henderson, Kentucky acting by and through its Henderson Water and Sewer Commission, the Henderson Water Utility (HWU), the HWU General Manager or his designee, or its City Code Enforcement Officer or designee.

Clearing. Any activity that removes all or a portion of existing vegetative cover.

Drainage Way. Any channel that conveys surface runoff within a site.

Erosion Control. Measures that limit wind, rainfall or runoff from displacing exposed or disturbed soil.

Erosion and Sediment Control Plan. A set of drawings or narrative indicating the specific measures and sequencing to be used to control sediment and erosion on a site during and after construction. On larger sites or in special circumstances these plans may be required to be prepared by or under the direction of a licensed professional engineer.

Grading. Excavation, fill or other disturbance of soil material, including deposition on or removal of in-situ material from a site.

Land disturbing activity. Any construction-related 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 Henderson, including, but not limited to, construction, demolition, clearing and grubbing, grading, excavating, transporting, and filling of land. Land disturbing activity does not include the following:

- Minor land disturbing activities, including, but not limited to, underground utility repairs; replacement of existing utilities at a single location; home gardens and landscaping; and minor repairs;
- Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles;
- Excavation or filling of graves in a cemetery;
- "Agricultural Use" as defined under KRS 100.111;
- Resource Extraction activity pursuant to the Kentucky Pollutant Discharge Elimination System General Permit or a facility specific individual KPDES Permit;
- Site investigations, such as geotechnical explorations, clearing for surveying work, monitoring wells, and archaeological explorations, that are undertaken prior to submittal of an application for a preliminary subdivision plat; and
- Emergency work to protect life, limb, or property, and emergency repairs.

Perimeter Control. A barrier at or near the limits of disturbance, which prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

Phasing. Clearing a parcel of land in distinct segments, with the stabilization of each segment completed before the clearing of the next.

Sediment Control. Measures that limit eroded sediment from leaving the site.

Site. A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation.

Stabilization. The use of practices that limit the erosion of exposed soil.

Start of Construction. The initial land-disturbing activity associated with a development, including land preparation, clearing, grading, and filling; excavation for basements, footings, piers, or foundations; and installation of accessory structures.

Technical Stormwater Manual: A set of standards and regulations issued by the Henderson Water Utility, governing the design and construction of stormwater facilities that are owned or regulated by the City of Henderson.

Watercourse. Any open drainageway, including, but not limited to lakes, ponds, rivers, streams, and bodies of water owned or maintained by the City of Henderson.

Waterway. A channel that directs surface runoff to a watercourse or to the public storm drain.

(Ord. No. 28-11, 9-13-11)

Sec 7-202. Responsibilities, right of access.

- (a) Every person who improves land or changes the contour of land in any manner shall be responsible for the protection against erosion; and for reestablishing permanent ground cover.
- (b) Every such person shall be responsible for the cleaning of city streets, storm and sanitary sewers, and open channels on private land in or upon which soil or other matter has been deposited from such lands.

(c) Before any land disturbing activity, or before any building or structure is demolished, erected, constructed or reconstructed, every person proposing such development shall present an erosion and sediment control plan for protection of the site against erosion and for reestablishing permanent ground cover. The plan shall be submitted to the codes administrator for review and approval as part of the demolition permit or building permit submittal. A demolition permit or a building permit shall not be issued to such person prior to approval of the erosion and sediment control plan.

(d) No erosion and sediment control plan is required for the following activities:

(1) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.

(2) Existing nursery and agricultural operations conducted as a main or accessory use.

(3) Any activity disturbing one (1) acre or less of land. For these small sites, certain minimum erosion control requirements shall apply (see Section 7-203 (h)).

(e) The City shall be permitted to enter and inspect lands and facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.

(f) In addition to all other remedies, and after such time as the codes administrator shall have determined a failure of a developer or builder to comply with this section, the codes administrator may institute an injunction, mandamus, or appropriate action or proceeding in any court of competent jurisdiction to prevent the work or occupancy of such building, structure or land.

(Ord. No. 28-11, 9-13-11; Ord. No. 33-13, 12-14-2013)

Sec 7-203. Erosion and sediment control plan content, design requirements.

(a) Each erosion and sediment control plan shall bear the name and address of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm.

(b) For sites containing more than one (1) acre of disturbed area, a Notice of Intent (NOI) must be filed with the Kentucky Division of Water (KDOW). The complete NOI submittal shall be submitted to the City for review and comment, and a separate application for local HKYR10 permit coverage shall be submitted to HWU. The City reserves the right to review all submittals for conformance with this Ordinance, and this review is separate and apart from State approval of any plan.

(c) Each erosion and sediment control plan shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the erosion and sediment control plan submitted by the developer, and that a certified contractor shall be on site on all days when construction activity related to site work or grading takes place.

(d) The applicant may be required to file with the Planning Commission a performance bond, or letter of credit, in an amount deemed sufficient by the City to cover all costs of temporary or permanent erosion and sediment control improvements for such period as specified by the City, and engineering and inspection costs to cover the cost of repair of erosion and sediment control improvements installed on the site.

(e) *Review and Approval:* The City will review each erosion and sediment control plan to determine its conformance with the provisions of this ordinance. Within seven (7) calendar days after receiving an application, the City shall, in writing:

- (1) Approve the erosion and sediment control plan;
- (2) Approve the erosion and sediment control plan subject to such reasonable conditions as may be necessary to secure the objectives of this regulation, and issue the permit subject to these conditions; or
- (3) Disapprove the erosion and sediment control plan, indicating the reasons for denial and the procedure for submitting a revised plan.

(f) Failure of the City to act on an original or revised erosion and sediment control plan within seven (7) calendar days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the City. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the City.

(g) *Erosion and Sediment Control Plan:* Erosion and Sediment Control Plans shall include the following:

- (1) A natural resources map identifying soils, forest cover, and resources protected under other chapters of this code.
- (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 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 necessary to meet the objectives of this ordinance throughout all phases of construction and after completion of development of the site. Depending upon the complexity of the project, the adoption of intermediate plans may be required at the close of each season.
- (4) Seeding mixtures and rates, types of sod, method of seedbed preparation, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures. Specify alternative methods based on seasonal needs.
- (5) Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.

(h) *Small Site Requirements:* For construction sites of one (1) acre or less disturbed area, the following minimum erosion control measures shall be used, if applicable:

- (1) An approved construction entrance;
- (2) Perimeter control, if there is potential for disturbed soil to be deposited onto or in streets, storm sewers, drainage channels or streams;
- (3) Contained washout facility for concrete trucks;
- (4) Trash control;

- (5) Prompt cleanup of any silt or other debris discharged to streets, gutters, storm sewers or streams.

(i) *Design Requirements:* Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth in the most recent version of the City's Technical Stormwater Manual, and shall be adequate to prevent transportation of sediment from the site. Design requirements include:

- (1) Cut and fill slopes shall be no greater than 2:1, (horizontal: vertical), except as approved by the City to meet other community or environmental objectives.
- (2) Clearing and grading of natural resources, such as forests and wetlands, shall not be permitted, except when in compliance with State and Federal regulations. Clearing techniques shall retain natural vegetation and drainage patterns to the maximum extent practicable, as described in the City's Technical Stormwater Manual.
- (3) Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and stabilized.
- (4) Phasing is encouraged on all sites, with the size of each phase to be established at plan review and as approved by the City.
- (5) Erosion control measures shall include the following:
 - (a) Stabilization of disturbed areas must be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased and will not resume on any portion of the site for a period of fourteen (14) days. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site necessitates that it remain disturbed..
 - (b) If seeding or another vegetative erosion control method is used, adequate temporary erosion control may be required until permanent cover is established.
 - (c) Special techniques that meet the design criteria outlined in the Technical Stormwater Manual on steep slopes or in drainage ways shall be used to ensure stabilization.
 - (d) Soil stockpiles must be contained at the end of each workday, with adequate measures taken to control and treat runoff.
 - (e) The entire site must be stabilized, using a heavy mulch layer or another method that does not require germination to control erosion, at the close of the construction season.
 - (f) Techniques shall be employed to prevent the blowing of dust or sediment from the site.
 - (g) Techniques that divert upland runoff past disturbed slopes shall be employed.
 - (h) Techniques shall be employed to minimize soil compaction and preserve topsoil, but these measures are not required where the intended function of a specific area dictates that topsoil be compacted, disturbed or removed.

- (6) Sediment control measures may be required to include, if applicable:
 - (a) Settling basins, sediment traps, or tanks and perimeter controls.
 - (b) Settling basins that are designed in a manner that allows adaptation to provide long term storm water quantity and quality management, if required by the City.
 - (c) Protection for adjacent properties by the use of a vegetated buffer strip in combination with perimeter controls.
- (7) Waterway and watercourse protection requirements shall include:
 - (a) A temporary stream crossing installed and approved by the Kentucky Division of Water if a wet watercourse will be crossed regularly during construction.
 - (b) Stabilization of the watercourse channel before, during, and after any in-channel work.
 - (c) Design all on-site storm water conveyance channels according to the criteria outlined in the City's Technical Stormwater Manual.
 - (d) Stabilization adequate to prevent erosion located at the outlets of all pipes and paved channels.
 - (e) Vegetative buffer strips may be required along watercourses, in conformance with the Flood Damage Prevention Ordinance (Chapter 13 of the City Code of Ordinances).
- (8) Construction site access requirements shall include:
 - (a) Approved temporary access entrance(s) provided at all sites.
 - (b) Other measures necessary to ensure that sediment is not tracked onto public streets by construction vehicles or washed into storm drains.

(Ord. No. 28-11, 9-13-11; Ord. No. 33-13, 12-14-2013; Ord. No. 40-17, 07-29-2017)

Sec 7-204. Inspection, enforcement.

(a) The City may make inspections as hereinafter required and may approve that portion of the work completed or may notify the permittee of those portions of the work that fail to comply with the Erosion and Sediment Control Plan as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the City shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the City at least two working days before the following:

- (1) Start of construction.
- (2) Installation of sediment and erosion measures.
- (3) Completion of site clearing
- (4) Completion of rough grading
- (5) Completion of final grading
- (6) Close of the construction season
- (7) Completion of final landscaping

(b) The permittee or his agent shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Erosion and

Sediment Control Plan(s). The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures, and to provide maintenance as needed. All inspections shall be documented in written form and submitted to the City at the time interval specified in the approved permit. The City will make regular inspections to verify the reports submitted by the permittee.

(c) 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, the site development permit may be suspended or revoked.

(d) 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.

(e) Written Notice: Any person violating any of the provisions of this ordinance shall be served by the City with written notice stating the nature of the violation. Within five (5) business days of the receipt date of this notice, permittee shall submit to the City an explanation of the violation and a corrective action plan for the satisfactory correction and prevention thereof, to include specific required actions. Submission of this plan in no way relieves the permittee of potential liability for any violation occurring before or after receipt of the notice of violation. The permittee shall permanently remedy all violations upon approval of this corrective action plan.

(f) Revocation of permit: Any user violating any of the provisions of this ordinance or a permit or order issued hereunder, may be subject to termination of its authority to continue work.

(g) In addition to any other penalty authorized by this ordinance, any person, partnership, or corporation convicted of violating any of the provisions of this ordinance shall become liable to the City for any expense, loss or damage occasioned by the City by reason of such violation, including but not limited any costs of remediation or repair of erosion prevention and sediment control at the site.

(Ord. No. 28-11, 9-13-11)

Sec. 7-205. Clean-up by city; charges against premises.

(a) The city shall have the right to clean streets, storm sewers, ditches or streams, or employ other persons to do so. In such event the person responsible for the deposit of soil or other matter in or upon streets, storm sewers, ditches or streams shall be liable to the city for the reasonable expenses or costs thereof. There shall be included in the computation of such reasonable costs the City's actual costs for labor, equipment and supplies, and the administrative cost to the city, if applicable.

(b) Charges for removal and cleaning shall be a lien upon the premises. Whenever a bill for such charges remains unpaid for thirty (30) days after it has been rendered, the city may file with the county court clerk a statement of a lien claim. This statement shall contain a legal description of the premises, the expenses and costs incurred, the date same was incurred, and a notice that the city claims a lien for that amount. Notice of such lien claim shall be mailed to the owner of the premises if his address is known; provided, however, that failure of the city to mail such notice, or the failure of the land

owner to receive such notice, shall not affect the right to enforce the lien for such charges as provided herein.

(Ord. No. 28-11, 9-13-11)

Sec. 7-206. Penalty.

In addition to all other civil and administrative remedies available to the city upon violation of this article, any person who violates any provision of this division or any orders or permits issued hereunder shall, upon conviction, be guilty of a Class B misdemeanor, punishable by a fine not to exceed two hundred fifty dollars (\$250.00) per violation per day or imprisonment for not more than ninety days or both.. Each day during which any violation of this provision shall continue shall constitute a separate violation.

(Ord. No. 28-11, 9-13-11; Ord. No. 33-13, 12-14-2013)

Sec 7-207. Severability.

The provisions and sections of this ordinance shall be deemed to be severable, and the invalidity of any portion of this ordinance shall not affect the validity of the remainder.

(Ord. No. 28-11, 9-13-11)