

ORDINANCE NO. 155

AN ORDINANCE ESTABLISHING RULES AND REGULATIONS TO PROVIDE PROPER SOIL EROSION AND SEDIMENT CONTROL ON ALL SITES FOR WHICH NPDES PERMITS ARE REQUIRED WITHIN THE CITY OF UNIVERSITY HEIGHTS

SECTION 1. PURPOSE/INTENT.

1. The National Pollutant Discharge Elimination System (NPDES) permit program administered by the Iowa Department of Natural Resources (IDNR) requires that agencies meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System (MS4). The City of University Heights has been issued such a permit.
2. The NPDES program requires certain individuals engaged in earth disturbing activities related to construction on one (1) acre of land or more to submit an application to the IDNR for a NPDES General Permit #2. The NPDES program and the City's MS4 Permit require the City to adopt an ordinance requiring proper soil erosion and sediment control on all sites less than one (1) acre if the earth disturbing activities are part of a larger common plan of development that would disturb one (1) acre or more. Notwithstanding any provision of this ordinance, every applicant bears final and complete responsibility for compliance with a State NPDES General Permit #2, a City Construction Site Runoff (CSR) permit, and any other requirements of state or federal law or administrative rule.
3. As a condition of the City's MS4 Permit, the City is obliged to undertake primary responsibility for administration and enforcement of the NPDES program by adopting a Construction Site Runoff Control Ordinance designed to achieve the following objectives:
 - a. Any person, firm, sole proprietorship, partnership, corporation, state agency or political subdivision (applicant) required by law or administrative rule to apply to the IDNR for a NPDES General Permit #2 shall also be required to obtain from the City a permit in addition to and not in lieu of the NPDES General Permit #2; and
 - b. The City shall have primary responsibility for inspection, monitoring and enforcement procedures to promote applicants' compliance with State NPDES General Permits #2 and CSR permits.
4. No state or federal funds have been made available to assist the City in administering and enforcing the NPDES program. The City shall fund its application, inspection, monitoring and enforcement responsibilities entirely by fees imposed on the owners of properties which are made subject to the Program by virtue of state and federal law, and/or other sources of funding established by a separate ordinance.

SECTION 2. APPLICABILITY.

1. All persons required by law or administrative rule to obtain a NPDES General Permit #2 from the IDNR, and persons who will be conducting any earth disturbing activity on a site less than one (1) acre in size if the earth disturbing activities are part of a larger common plan of development that would disturb one (1) acre or more, are required to obtain a CSR Permit. Earth disturbing activity means any activity that results in a movement of earth or a change in the existing soil cover (both vegetative and nonvegetative) or the existing topography. Earth disturbing activity includes, but is not limited to, clearing, grading, filling, excavation or addition or replacement of impervious surface.
2. Applications for CSR Permits shall be made on forms approved by the City which may be obtained from the City.
3. An applicant for a CSR permit shall pay fees as follows:
 - a. Prior to the issuance of a CSR Permit in connection with a building permit on a platted lot, the applicant shall submit an application permit fee to the City of University Heights in an amount established by Resolution of the City Council. The applicant shall pay all costs, fees, and expenses, including, without limitation, engineering fees and legal fees, incurred by the City in considering and/or approving any application, or amendment. No building permit shall issue until all such costs are paid.
 - b. There shall be no permit fee required prior to the issuance of CSR permits other than those issued in connection with building permits on platted lots, but the applicant shall bear the cost of reviews and inspections required by the terms of this ordinance with respect to said permits, which shall be the actual cost of the reviews and inspections by the City.
4. An applicant in possession of a NPDES General Permit #2 issued by the IDNR shall immediately submit to the City full copies of the materials described below as a basis for the City to determine whether to issue a CSR Permit:
 - a. Applicant's NPDES General Permit #2 Notice of Intent (NOI); and
 - b. Applicant's plans, specifications and materials in support of applicant's application for the NPDES General Permit #2; and
 - c. A Storm Water Pollution Prevention Plan (SWPPP) prepared in accordance with ordinance.
5. Every SWPPP submitted to the City in support of an application for a CSR Permit shall:
 - a. Comply with all current minimum mandatory requirements for SWPPP promulgated by the IDNR in connection with issuance of a NPDES General Permit #2; and

- b. If the applicant is required by law to file the Joint Application Form, “Protecting Iowa Waters,” with the IDNR and U.S. Army Corps of Engineers, comply with all mandatory minimum requirements pertaining to such applicants; and
 - c. Comply with all other applicable local, state or federal permit requirements in existence at the time of application; and
 - d. Include within the SWPPP a signed and dated certification by the person preparing the SWPPP that the SWPPP complies with all requirements of this ordinance.
6. Every SWPPP submitted to the City in support of an application for a CSR Permit shall contain the provisions of the General Permit #2, plus the following additional provisions:
- a. All SWPPP’s shall comply with Iowa Statewide Urban Design and Specifications (SUDAS) standard design criteria as amended; and
 - b. Address that stockpiles of soil or other materials subject to erosion by wind or water are covered, vegetated, or otherwise effectively protected from erosion and sedimentation in accordance with the amount of time the material will be on site and the manner of its proposed use; no stockpiling is allowed in the street; and
 - c. Assure that all temporary erosion and sediment controls shall be maintained until the City has determined that the site has been permanently stabilized; and
 - d. Limit potential for damage to sensitive environmental areas such as water bodies, plant communities, rare, threatened and/or endangered species habitat, wildlife corridors, greenways, etc.; and
 - e. Provide for design and construction methods to stabilize steep or long continuous slopes; and
 - f. Include measures to control sediment, and the quantity and quality of storm water, leaving a site during and after construction; and
 - g. Provide for stabilization of waterways and outlets directly impacted by permitted construction; and
 - h. Protect storm sewer inlets and infrastructure from sediment loading/plugging; and
 - i. Specify precautions to be taken to contain sediment when working in or crossing water bodies; and
 - j. Account for stabilization of disturbed areas, including utility construction areas, as soon as possible; and
 - k. Protect adjacent and outlying roads from sediment and mud from construction site

activities, including tracking; and

1. Provide for disposal of collected sediment and floating debris.
7. Issuance by the City of a CSR Permit shall be a condition precedent for the issuance of a City building permit or site plan approval.
8. For so long as a construction site is subject to a NPDES General Permit #2 or a CSR Permit, the applicant shall provide the City with current information as follows:
 - a. The name, address and telephone number of the person on site designated by the owner who is knowledgeable and experienced in erosion and sediment control and who will oversee compliance with the NPDES General Permit #2 and the CSR Permit.
 - b. The name(s), address(es) and telephone number(s) of the contractor(s) and/or subcontractor(s) that will implement each erosion and sediment control measure identified in the SWPPP.
 - c. An on-site location for storage and retrieval of the current SWPPP.
 - d. Applicant's failure to provide current information shall constitute a violation of this ordinance.
9. If the applicant for the NPDES General Permit #2 and the CSR permit is not the same individual as the owner/builder on the site, then the applicant has the option to include the owner/builder as a co-permittee. Co-permittees have the same obligation and responsibilities as the original applicant. Absent written confirmation of transfer of responsibility signed by both the parties and provided to the City at the office of the enforcement official, the original applicant remains obligated and responsible for permit compliance on any parcel of the site, whether the parcel has been sold or not.
10. Upon receipt of an application for a CSR Permit, the City shall either find that the application complies with this ordinance and issue a CSR Permit in accordance with this ordinance, or that the application fails to comply with this ordinance, in which case the City shall provide a written report identifying non-compliant elements of the application.

SECTION 3. INSPECTION.

1. The City may conduct an inspection at any time.
2. Any applicant shall allow the City or an authorized representative or designee of the City to enter upon the applicant's private property which is the subject of the SWPPP for inspection purposes.

3. All inspections required under this ordinance shall be conducted by a designated person from the City, hereinafter referred to as the “enforcement officer.”
4. The applicant shall notify the City when all measures required by applicant’s SWPPP have been accomplished on-site, whereupon the City shall conduct an inspection for the purpose of determining compliance with this ordinance, and shall within a reasonable time thereafter report to the applicant either that compliance appears to have been achieved, or that compliance has not been achieved, in which case the City shall provide a written report identifying the conditions of non-compliance. The applicant shall immediately commence corrective action and shall complete such corrective action within a timeframe deemed reasonable by the City. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance.
5. Unless otherwise approved by the City, construction shall not occur on the site at any time when the City has identified conditions of non-compliance.
6. Unless approved by the City, construction activities undertaken by an applicant prior to resolution of all discrepancies specified in the written report shall constitute a violation of this ordinance.
7. The City shall not be responsible for the direct or indirect consequences to the applicant or to third-parties for non-compliant conditions undetected by inspection.
8. The applicant shall pay all costs, fees, and expenses, including, without limitation, engineering fees and legal fees, incurred by the City in considering and/or approving any application, or amendment. No building permit shall issue until all such costs are paid.

SECTION 4. MONITORING.

1. Upon issuance of a CSR Permit, the applicant has an absolute duty to monitor site conditions and to report to the enforcement officer any change of circumstances or site conditions which the applicant knows or should know pose a risk of storm water discharge in a manner inconsistent with applicant’s SWPPP, NPDES General Permit #2 and/or CSR Permit.
 - a. Such report shall be made by the applicant to the enforcement officer immediately upon knowledge of site condition changes, but in any event within twenty-four (24) hours of the change of circumstances or site conditions.
 - b. Failure to make a timely report shall constitute a violation of this ordinance.
2. Any third party may also report to the City site conditions which the third party reasonably believes pose a risk of storm water discharge in a manner inconsistent with applicant’s SWPPP, NPDES General Permit #2 and/or CSR Permit.
3. Upon receiving a report pursuant to the previous subsections, the enforcement officer may conduct an inspection of the site as soon as reasonably possible and there after may issue a

written Stop Work Order to the applicant, directing the applicant to take no further action with respect to the SWPPP, NPDES General Permit #2 and/or CSR Permit, other than corrective action provided for hereinafter. The enforcement officer shall provide the applicant with a written report identifying any conditions of noncompliance. The applicant shall immediately commence corrective action and shall complete such corrective action within a timeframe deemed reasonable by the City. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance, whereupon the enforcement officer shall immediately commence enforcement action specified in Section 5 below.

4. The enforcement officer may conduct at least one unannounced inspection during the course of construction to monitor compliance with the NPDES General Permit #2 and the CSR Permit. If the inspection discloses any non-compliance, the enforcement officer shall provide the applicant with a written report identifying the conditions of non-compliance. The applicant shall immediately commence corrective action and shall complete such corrective action within a timeframe deemed reasonable by the City. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance, whereupon the enforcement officer shall immediately commence enforcement actions specified in Section 5 below.

The City shall not be responsible for the direct or indirect consequences to the applicant or to third-parties for non-compliant conditions.

SECTION 5. VIOLATIONS and PENALTIES.

1. Violation of this ordinance may be enforced by civil action including an action for injunctive relief.
2. Violation of any provision of this ordinance is a simple misdemeanor punishable by a jail term not to exceed 30 days and/or a fine not to exceed \$500.00.

SECTION 6. APPEALS.

1. Administrative decisions by City staff and enforcement actions of the enforcement officer may be appealed by the applicant to the University Heights City Council.

SECTION 7. REPEALER.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 8. SEVERABILITY.

If any section, provision or part of the Ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

