

ORDINANCE NO.2005-12-7065

**AN ORDINANCE AMENDING CHAPTER 50, BY
CREATING ARTICLE IV, EROSION PREVENTION
AND SEDIMENT CONTROL, OF THE CODE OF
ORDINANCES OF THE CITY OF PADUCAH,
KENTUCKY**

WHEREAS, the City desires to control soil erosion and sedimentation resulting from land disturbing activities within the City of Paducah; and

WHEREAS, the City desires to establish guidelines, conservation practices, and planning activities which minimize soil erosion and sedimentation; and

WHEREAS, the City is required to and desires to comply with all applicable state and federal requirements pertaining to the Clean Water Act, including limitation of discharge of pollutants as set forth by the Kentucky Pollution Discharge Elimination System (KPDES) and all applicable provisions of the National Pollutant Discharge Elimination Systems (NPDES) storm water general permit for Phase II communities.

WHEREAS, this Ordinance will create new Chapter 50, Article IV, Sections 1 to 9.9.

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That Section 50, Floods, of the Code of Ordinances of the City of Paducah, Kentucky, is hereby amended by creating Article IV, Erosion Prevention and Sediment Control, to read as follows:

ARTICLE IV. EROSION PREVENTION AND SEDIMENT CONTROL
(1) - AUTHORITY

This Ordinance is adopted pursuant to the powers granted and limitations imposed by Kentucky laws, including the statutory authority granted to Kentucky cities and counties in Kentucky Revised Statutes (KRS), Chapter 67 and 100.

This Ordinance is adopted pursuant to the powers granted and limitations by the Federal Clean Water Act, and in particular those parts that authorize local governments to require any state or federal department or agency to comply with all local water pollution control requirements.

(2) - PURPOSE/SCOPE

The regulations set forth in this Ordinance are intended to protect the general health, safety, and welfare of the citizens of Paducah, and more specifically:

- 2.1 To control soil erosion and sedimentation resulting from land disturbing activities within City of Paducah;
- 2.2 To establish guidelines, conservation practices and planning activities which minimize soil erosion and sedimentation;
- 2.3 To comply with all applicable provisions as set forth by the Kentucky Pollutant Discharge Elimination System (KPDES) storm water general permit for SMS4 Phase II communities.

This Ordinance controls land disturbances, soil storage, and erosion and sedimentation resulting from such activities and establishes procedures for issuance, approval, administration, and enforcement of an Erosion Prevention and Sediment Control (EPSC) Permit.

(3) - DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meaning stated below:

- 3.1 Applicant is the person and/or landowner who submits an application to City of Paducah for an EPSC Permit pursuant to this ordinance. The Applicant must be a person who has financial or operational control over the land-disturbing activity.
- 3.2 Bench is a relatively level step excavated into earth material on which fill is to be placed.
- 3.3 Best Management Practice (BMP) is a technique or series of techniques, which are proven to be effective in controlling runoff, erosion, and sedimentation.
- 3.4 Borrow is earth material acquired from an off-site location for use in grading on a site.
- 3.5 Clearing and grubbing is the cutting and removal of trees, shrubs, bushes, windfalls and other vegetation including removal of stumps, roots, and other remains in the designated areas.
- 3.7 Contractor is a person who contracts with the permittee, landowner, developer, or another contractor (i.e. subcontractor) to undertake any or all the land disturbance activities covered by this Ordinance.
- 3.8 Detention facility is a temporary natural or man made structure that provides for the temporary storage of storm water runoff.
- 3.9 Developer is any person, firm, corporation, organization, sole proprietorship, partnership, state agency, legal identity or political subdivision thereof engaged in a land disturbance activity.
- 3.10 Engineer is a professional engineer licensed in the Commonwealth of Kentucky to practice in the field of Civil Engineering.
- 3.11 Erosion is the wearing away of the ground surface as a result of the movement of wind, water, ice, and/or vehicles and equipment associated with land disturbance activities.
- 3.12 EPSC (Erosion Prevention and Sediment Control) is the prevention of soil erosion and control of solid material during land disturbing activity to prevent its transport out of the disturbed area by means of air, water, gravity, or ice.
- 3.13 EPSC Permit is a permit required by this Ordinance for land disturbance activities.
- 3.14 EPSC Plan is a detailed plan which includes a set of best management practices or equivalent measures designed to control surface runoff and erosion and to retain sediment on a specific development site or parcel of land during the period in which pre-construction and construction related land disturbances, fills, and soil storage occur, and before final improvements are completed, all in accordance with this Ordinance.
- 3.15 Erosion Control Inspector is a person designated by the Issuing Authority who is properly trained to inspect EPSC measures.
- 3.16 Existing Grade is the grade prior to land disturbing activities.
- 3.17 Finish Grade is the final grade of the site which conforms to the approved plan.
- 3.18 Floodplain is the one hundred (100) year floodplain which is that area adjoining a watercourse which could be inundated by a flood that has a one (1) percent chance of being equaled or exceeded in any given year and is delineated on the Federal Emergency Management Agency Floodway Maps.
- 3.19 General Permit refers to the KPDES Storm Water General Permit for storm water discharges related to construction activities that disturb one (1) acre or more. Coverage under this general storm water permit is obtained by filing a Notice of Intent (NOI) with the Kentucky Division of Water.

- 3.20 Grade is the vertical location of the ground surface.
- 3.21 Issuing Authority is the Paducah City Engineer's Office and their duly authorized designee.
- 3.22 Land disturbance activity is any clearing, grubbing, grading, excavating, filling, or other alteration of the earth's surface where natural or man-made ground cover is destroyed. Land disturbance activity does not include the following:
- 3.22.1 Minor land disturbance activities including, but not limited to, activities specific to underground utility repairs, replacement of existing utilities, home gardens, minor repairs, and maintenance work.
- 3.22.2 Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- 3.22.3 Emergency work to protect life, limb, or property and emergency repairs. If the land disturbing activity would have required an approved EPSC Plan except for the emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of this Ordinance.
- 3.23 Larger common plan of development or sale means a contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan, e.g., a housing development of five 1/4 acre lots
- 3.24 Outfall is the point of discharge to any watercourse from a public or private stormwater drainage system.
- 3.25 Permittee is the applicant in whose name a valid EPSC Permit is duly issued pursuant to this Ordinance and his/her agents, employees, and others acting under his/her direction.
- 3.26 Retention facility is a permanent natural or manmade structure that provides for the storage of storm water runoff by means of a permanent pool of water.
- 3.27 Rough grade is the stage at which the grade approximately conforms to the approved plan.
- 3.28 Runoff is rainfall, snowmelt, or irrigation water flowing over the ground surface.
- 3.29 Sediment is soils or other surficial materials transported by surface water or mechanical means as a product of erosion.
- 3.30 Sedimentation is the process or action of deposition sediment that is determined to have been caused by erosion.
- 3.31 Site is the entire area of land on which the land disturbance activity is proposed in the land disturbance permit application.
- 3.32 Site plan is a plan or set of plans showing the details of any land disturbance activity of a site including but not limited to the construction of: structures, open and enclosed drainage facilities, stormwater management facilities, parking lots, driveways, curbs, pavements, sidewalks, bike paths, recreational facilities, ground covers, plantings, and landscaping.
- 3.33 Slope is the incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.
- 3.34 Stripping is any activity which removes or significantly disturbs the vegetative surface cover including clearing, grubbing of stumps and root mat, and topsoil removal.
- 3.35 Structure is anything manufactured, constructed or erected which is normally attached to or positioned on land, including buildings, portable structures, earthen structures, roads, parking lots, and paved storage areas.
- 3.36 Topsoil is the upper layer of soil.

- 3.37 Utility is the owner/operator of any underground facility including an underground line, facility, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, heat, gas, oil, petroleum products, potable water, stormwater, steam, sewage and other similar substances.
- 3.38 Watercourse is any natural or improved stream, river, creek, ditch, channel, canal, conduit, gutter, culvert, drain, gully, swale, or wash in which waters flow either continuously or intermittently.
- 3.39 Wetlands is a lowland area such as a marsh, that is saturated with moisture, as defined by the United States Army Corps of Engineers.

(4) - PERMITS

4.1 Applicability

An EPSC Permit from the City will be required and the activity subject to the provisions of this Ordinance in the following circumstances:

- 4.1.1 all land disturbing activities including development and re-development activities that disturb an area greater than or equal to one (1) acre. Sites that are smaller than one (1) acre are also covered by this ordinance if they are part of a larger common plan of development or sale as defined by this ordinance.
- 4.1.2 land disturbing activities of less than 1 acre that have the potential to negatively impact local water quality, sensitive areas, or result in a nuisance to the public. This determination will be made at the sole discretion of the City Engineer or his designee.

4.2 Exemptions

The following activities are exempt from obtaining an EPSC Permit and from the procedures of this Ordinance:

- 4.2.1 Cemetery graves.
- 4.2.2 Emergencies posing an immediate danger to life or property, substantial flood or fire hazards.
- 4.2.3 Land disturbance activity on lots less than 1 acre which are not located in or near a sensitive area.
- 4.2.4 Land disturbance activity less than 1 acre that is not associated with a common plan of development, and is not located in or near a sensitive area.
- 4.2.5 Agricultural operations required to adopt and implement an individual agriculture water quality plan pursuant to the requirements set forth in the Kentucky Agriculture Water Quality Act (KRS 224)
- 4.2.6 Usual and customary site investigations, such as geotechnical explorations, monitoring wells and archaeological explorations, which are undertaken prior to submittal of an application for preliminary subdivision plat.
- 4.2.7 The Issuing Authority may, on a project-by-project basis, exempt other land disturbance activities not specifically identified in Section 4.2.

4.3 EPSC Permit Application

Upon approval of the Preliminary Plat, or other applicable approvals from the local planning and zoning authorities, the person responsible for the land disturbing activities subject to this ordinance must submit a completed EPSC Permit Application Form along with an EPSC plan to the City Engineer for review and approval. A licensed engineer shall prepare the EPSC Plan. The Issuing Authority may waive the preparation or

approval and signature by the licensed engineer when it is self-evident that the work is simple, clearly shown, and entails no hazard or nuisance potential to adjacent property or watercourse, and does not include the placement of fill upon which a structure may be erected.

4.4 Fiscal Surety

- 4.4.1 The Permittee shall be responsible for the installation, good repair, day to day maintenance and ultimate removal of all temporary and permanent EPSC measures.
- 4.4.2 The Issuing Authority may require the Permittee to post a fiscal surety in the form of, cash, blanket bond, certified check, irrevocable letter of credit, or other instrument approved by the Issuing Authority. Fiscal surety for single-family developments may be exempt as determined by the Issuing Authority. When a fiscal surety is required, the surety shall be posted prior to the issuance of an EPSC Permit.
- 4.4.3 The fiscal surety shall be in the amount equal to one hundred twenty-five (125) percent of the estimated cost of the EPSC measures, as approved by the Issuing Authority. Whenever feasible, fiscal surety for the EPSC measures may be combined with and posted with other appropriate security instruments, such as those required for final plat approval or other building approvals.
- 4.4.4 If the Issuing Authority finds the required temporary or permanent improvements or control measures have not been installed or maintained properly or are not in good repair or functioning properly, then the Issuing Authority may declare the Permittee to be in default and enforcement actions initiated.
- 4.4.5 Request for release of surety may be made after the Issuing Authority makes an inspection of the property and determines that site construction is finished; final stabilization has been established; the required improvements and controls are properly installed and temporary controls have been removed.

4.5 General Permit

Complying with the provisions of this Ordinance and issued EPSC Permit does not exempt the Permittee from obtaining coverage from the Kentucky Division of Water under the KPDES Storm Water General Permit for storm discharges related to construction activities that disturb one (1) acre or more. The Permittee shall provide a copy of the Notice of Intent filed with the Kentucky Division of Water to the Issuing Authority prior to the issuance of an EPSC Permit by the Issuing Authority.

4.6 Relation to Other Laws

Neither this Ordinance nor any administrative decision made under it exempts the Permittee or any other person from procuring other required local, state, or federal permits or complying with the requirements and conditions of such other permit(s), or limits the right of any person to maintain, at any time, any appropriate action, at law or in equity, for relief or damages against the Permittee or any other person arising from the activity regulated by this Ordinance.

(5) - REVIEW AND APPROVAL

The Issuing Authority will review each application for an EPSC permit to determine its conformance with the provisions of this Ordinance. After receiving a complete application and EPSC plan, the Issuing Authority shall, in writing:

- 5.1 Approve the application and EPSC plan and issue the EPSC Permit;
- 5.2 Approve the application and EPSC plan subject to such reasonable conditions as may be necessary to secure substantially the objectives of this Ordinance, and issue the EPSC Permit subject to these conditions; or
- 5.3 Disapprove the permit application and EPSC plan, indicating the reason(s) and procedure for submitting a revised application and/or submission.

(6) - EROSION PREVENTION AND SEDIMENT CONTROL PLAN

- 6.1 Land disturbance activities, which involve the disturbance of soil as defined herein and described in Section 4.1 above, require an EPSC Plan approved by the Issuing Authority. These plans shall be prepared by a licensed professional engineer, drawn to an appropriate scale and shall include sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed grading on water resources, and show measures proposed to minimize soil erosion and off-site sedimentation. The permittee shall assure that all clearing, grading, drainage, construction, and development are performed in strict accordance with the approved plan and this Ordinance. The EPSC Plan shall include the following:
 - 6.1.1 A project narrative.
 - 6.1.2 The location of the site in relationship to the surrounding area's watercourses, water bodies, sinkholes, roads, structures, and other significant geographic features vulnerable to erosion from the disturbed site.
 - 6.1.3 An indication of the scale used.
 - 6.1.4 The name, address, and telephone number of the owner and/or developer of the property where the land disturbing activity is proposed.
 - 6.1.5 Ground contours, minimum 2 feet intervals, for the existing and proposed topography.
 - 6.1.6 The proposed grading or land disturbance activity including: the surface area involved, excess spoil material, use of borrow material, and specific limits of disturbance.
 - 6.1.7 A clear and definite delineation of any areas of vegetation or trees to be saved.
 - 6.1.8 A clear and definite delineation of any wetlands, sinkholes, natural or artificial water storage detention areas, and drainage ditches on the site.
 - 6.1.9 A clear and definite delineation of any one hundred (100) year floodplain on or near the site.
 - 6.1.10 Existing and proposed storm drainage systems.
 - 6.1.11 Standard details for storm water facilities and EPSC measures.
 - 6.1.12 Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sedimentation, including provisions to preserve topsoil and limit disturbance.
 - 6.1.13 Design details for both temporary and permanent erosion control structures.
 - 6.1.14 Details of temporary and permanent stabilization measures.
 - 6.1.15 A signed statement on the permit by the permittee that any clearing, grading, construction, or development, or all of these, will be done pursuant to the approved EPSC plan and this Ordinance.
- 6.2 The applicant may propose the use of any erosion protection and sediment control techniques in a Final EPSC Plan, provided such techniques are proven to be as or

more effective than the equivalent best management practices as contained in the Kentucky Erosion Prevention and Sediment Control Field Guide.

(7) - DESIGN REQUIREMENTS

- 7.1 The design, testing, installation, and maintenance of erosion protection and sediment control operations and facilities shall adhere to the criteria, standards and specifications as set forth in the most recent version of the Kentucky Erosion Prevention and Sediment Control Field Guide
- 7.2 At a minimum, the following requirements shall be met:
- 7.2.1 Cut and fill slopes stabilized with standard vegetation shall be no greater than 3H:1V, unless approved by the Issuing Authority.
- 7.2.2 Clearing and grading, except that necessary to establish sediment control devices, shall not commence until sediment control devices have been installed.
- 7.2.3 Erosion control methods shall include the following:
- 7.2.3.1 Phasing of clearing and grading operations for all sites greater than 30 acres;
- 7.2.3.2 Soil stabilization by seeding/mulching within 15 days of mass grading operations for borrow (excavation) and fill areas;
- 7.2.3.3 Stabilizing soil stockpiles at the end of each workday;
- 7.2.3.4 Installing diversion ditches or other techniques where upland runoff occurs past disturbed areas
- 7.2.4 Sediment control methods shall include installing detention/retention facilities, sedimentation basins and traps, other similar facilities at the most downstream runoff location within the site.
- 7.2.5 Waterway (creeks, ditches, etc.) protection shall include the installation of a temporary stream crossing; on-site storm water drainage system and stabilized outlets at all pipes.
- 7.2.6 Prevention of mud and debris onto public roadways by construction equipment and vehicles shall include the installation of crushed stone construction entrances.
- 7.2.7 Maintenance schedule during and after construction of graded surfaces, EPSC facilities, and drainage structures.

(8) – INSPECTION

- 8.1 The Issuing Authority or its duly authorized representatives shall, as deemed necessary by the Issuing Authority, make inspections of land disturbing activities subject to this Ordinance.
- 8.2 To ensure compliance with the approved EPSC Plan and to examine field practices to determine if control measures are adequate, authorized inspectors of the Issuing Authority shall have the power to inspect any land disturbing activity and to review the records of all inspections, repairs and modifications made by the Permittee.
- 8.3 The Permittee shall notify the Issuing Authority 24 hours in advance of conducting initial land disturbing activities.
- 8.4 Consistent with the requirements of the Kentucky Division of Water the Permittee shall conduct weekly inspections of the EPSC and document the results of such inspections. These reports shall be kept on site if possible but otherwise made available to the Issuing Authority, if requested. At a minimum the inspection report shall include the date, time of day, name of the person conducting the inspection, company represented, scope of the inspection, major observations relating to the EPSC Plan and BMPs installed, and subsequent changes. The

Issuing Authority has the right to make regular inspections to ensure the validity of the inspection reports.

8.5 The Permittee shall be self-policing and shall correct or remedy any EPSC measures that are not effective or functioning properly at all times during the various phases of construction. Failure of the permittee under this provision subjects the permittee and/or landowner to penalties under the enforcement provisions of this ordinance.

(9) – ENFORCEMENT

9.1 The Issuing Authority shall be responsible for the enforcement of this Ordinance. A stop-work order may be posted for the entire project or any specified part thereof if any of the following conditions exist:

9.1.1 Any land disturbance activity regulated under this Ordinance is being undertaken without a permit.

9.1.2 The Erosion and Sediment Control Plan is not being fully implemented.

9.1.3 Any of the conditions of the EPSC Permit are not being met.

9.2 For the purposes of this section, a stop-work order is validly posted by posting a copy of the stop-work order on the site of the land disturbing activity in reasonable proximity to a location where the land disturbing activity is taking place. Additionally, a copy of the order, in the case of work for which there is an EPSC Permit, shall be mailed by first class mail, postage pre-paid, to the address listed by the Permittee on the permit.

9.3 Once a Stop Work Order has been issued, the permittee may not conduct land disturbing activities until such time that the permittee has demonstrated full compliance with the approved EPSC Plan, and received written approval by the Issuing Authority.

9.4 For land disturbance activities being conducted without a permit, the responsible parties shall immediately cease such activity upon being notified by the Issuing Authority. If the responsible party does not cease the land disturbance activity immediately, the Issuing Authority may request the City Attorney to obtain injunctive relief.

9.5 Ten (10) calendar days after posting a stop-work order, the Issuing Authority may issue a notice of intent to the Permittee, landowner, or land user of the Issuing Authority's intent to perform work necessary to comply with Ordinance. The Issuing Authority may go on the land and commence work after three (3) calendar days from issuing the notice of intent. The costs incurred by the Issuing Authority to perform this work shall be paid by the landowner or Permittee out of the fiscal security referred to in this Ordinance, to the extent that the amount is covered thereby, with the remainder being directly due and owed by the landowner or Permittee. In the event no EPSC permit was issued or no bond was posted, the cost, plus interest at the rate authorized by the Issuing Authority, plus a reasonable administrative and attorneys fee shall be billed to the owner.

9.6 Compliance with the provisions of this Ordinance may also be enforced by injunction.

9.7 The Issuing Authority is authorized to require immediate abatement of any violation of this Ordinance that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately, the Issuing Authority is authorized to enter onto private or public property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the Issuing Authority shall be fully reimbursed by the property owner and/or responsible party. If any expenses related to remediation are not reimbursed by the property owner and/or responsible party within 10 days of notification by the Issuing Authority to these individuals, then the expenses shall become a special assessment against the

property and shall constitute a lien on the property for the amount of the assessment. The Issuing Authority shall be entitled to recover from the property owner and/or responsible party all reasonable attorney fees and other costs of collection required in order to enforce the lien, if any, which secures the liability of the property owner and/or responsible party related to these remediation expenses.

9.8 Any person, firm, corporation or agency acting as principal, agent, employee or otherwise, who fails to comply with the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than one hundred dollars (\$100.00)/day and not more than five hundred dollars (\$500.00)/day, or by imprisonment for not more than ninety (90) days, or both, for each separate offense. Each day there is a violation of any part of this Ordinance shall constitute a separate offense.

9.9 Should the Issuing Authority or City take legal action to enforce the provisions of this Ordinance, the Issuing Authority or City shall be entitled to collect any and all costs in instituting and taking such legal action, including but limited to its court costs and attorney's fees.

SECTION 2. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

Mayor

ATTEST:

Tammara S. Brock, City Clerk

Introduced by the Board of Commissioners, December 13, 2005
Adopted by the Board of Commissioners, December 20, 2005
Recorded by Tammara S. Brock, City Clerk, December 20, 2005
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