

ORDINANCE NO. 2595

AN ORDINANCE AMENDING CHAPTER 27, UTILITIES, OF THE CODE OF ORDINANCES OF THE CITY OF CEDAR FALLS, IOWA, BY ADDING THERETO A NEW ARTICLE 5, CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CEDAR FALLS, IOWA:

Section 1. Chapter 27, Utilities, of the Code of Ordinances of the City of Cedar Falls, Iowa, is hereby amended by adding thereto a new Article V, Construction Site Erosion and Sediment Control, as follows:

ARTICLE V. CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

Sec. 27-301. Findings.

- (a) The U.S. EPA's National Pollutant Discharge Elimination System ("NPDES") permit program ("Program") administered by the Iowa Department of Natural Resources ("IDNR") requires certain persons engaged in construction activities to submit an application to the IDNR for a State NPDES General Permit No. 2. Notwithstanding any provision of this chapter, every Applicant bears final and complete responsibility for compliance with the Applicant's State NPDES General Permit No. 2 and any other requirement of state or federal law or administrative rule.
- (b) As a condition of the city's MS4 Permit, the city is obliged to undertake primary responsibility for administration and enforcement of the Program by adopting a Construction Site Erosion and Sediment control ordinance. In furtherance of this objective:

- (1) Any person, firm, sole proprietorship, partnership, corporation, limited liability company, state agency or political subdivision (each an "Applicant") required by law or administrative rule to apply to the IDNR for a State NPDES General Permit No. 2 shall apply to the IDNR for such permit and shall apply to the City Engineer for approval of a Stormwater Pollution Prevention Plan ("SWPPP") as defined in Section 27-114(115) of this chapter; and
 - (2) Each Applicant having a site with more than five (5) acres of disturbed area shall hire either a licensed professional engineer or registered architect as the Applicant's Engineer. Each Applicant having a site with five (5) acres or less of disturbed area shall hire either a licensed professional engineer, a registered architect (including a registered landscape architect), or a professional in erosion and sediment control, as the Applicant's Engineer. Each such Applicant's Engineer shall be credentialed in a manner acceptable to the city, and shall be referred to in this article as the "Applicant's Engineer."
 - (3) The Applicant's Engineer for the Applicant shall have primary responsibility for design, inspection, monitoring and enforcement procedures to assure Applicant's compliance with the State NPDES General Permit No. 2 and the SWPPP.
- (c) No state or federal funds have been made available to assist the city in administering and enforcing the Program. Accordingly, each Applicant seeking city approval of a SWPPP shall pay a non-refundable fee to the city in such amount as shall be determined from time to time by resolution of the city council.

Sec. 27-302. Definitions.

- (a) Unless otherwise provided in this article, words, terms and phrases, when used in this article, shall have the meanings ascribed to them in section 27-114 of this chapter, except where the context clearly indicates a different meaning.
- (b) As used in this article, the term "City Engineer" includes any other representative of the City Engineer's office that is designated by the City Engineer to act in the place and with the authority of the City Engineer. As so defined, the City Engineer is also referred to in this article as the "Enforcement Officer."
- (c) As used in this article, the term "Applicant" also includes any person to whom a State NPDES General Permit No. 2 has been issued.

Sec. 27-303. Submission and Approval of Stormwater Pollution Prevention Plan and Other Documents.

- (a) No person shall begin work on any site that is the subject of a State NPDES General Permit No. 2 until compliance with this Section 27-303 and approval of a SWPPP.

- (b) An Applicant in possession of a State NPDES General Permit No. 2 issued by the IDNR shall submit to the city complete, certified copies of the materials described below, together with all supporting calculations:
- (1) Applicant's plans, specifications and supporting materials previously submitted to the IDNR in support of Applicant's application for the State NPDES General Permit No. 2;
 - (2) Applicant's authorizations issued pursuant to Applicant's State NPDES General Permit No. 2;
 - (3) A SWPPP prepared in accordance with this chapter. Every SWPPP submitted to the city:
 - a. shall comply with all current minimum mandatory requirements for SWPPPs promulgated by the IDNR in connection with issuance of a State NPDES General Permit No. 2, as set out in the IDNR publication entitled, "Iowa Department of Natural Resources NPDES General Permit No. 2, Storm Water Discharge Associated With Industrial Activity For Construction Activities, Effective Date-- October 1, 2002, to October 1, 2007," including, but not limited to, "Part IV. Storm Water Pollution Prevention Plans," and as said minimum mandatory requirements are modified from time to time hereafter; and
 - b. shall, if the Applicant is required by law to file a Joint Application Form entitled, *Protecting Iowa Waters, Iowa Department of Natural Resources and U.S. Army Corps of Engineers*, comply with all mandatory minimum requirements pertaining to such a joint application;
 - c. shall comply with all other applicable state or federal permit requirements in existence at the time of application;
 - d. shall be prepared by the Applicant's Engineer; and
 - e. shall include within the SWPPP a signed and dated certification by the Applicant's Engineer that the SWPPP complies with all requirements of this chapter.
- (c) In addition to the SWPPP requirements stated in subsection (b) of this section, which constitute minimum mandatory requirements imposed by the Program, every SWPPP submitted to the city shall comply with Statewide Urban Design and Specifications (SUDAS) standard design criteria and the Iowa Construction Site Erosion Control Manual, as such Manual and SUDAS may be revised or amended from time to time, including but not limited to design, location, and phased implementation of effective, practicable Storm Water Pollution prevention measures, and shall also:

- (1) identify the nature of the construction activity and the potential for Sediment and other Pollutant Discharges from the site;
- (2) assure 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; with no stockpiling being allowed in the street;
- (3) assure that, until work on the site has been completed, all construction waste materials shall be disposed of in a dumpster of appropriate size and shall not be permitted to be stockpiled on the site unless in a covered and enclosed structure or trailer;
- (4) identify measures and procedures including but not limited to Best Management Practices, to reasonably minimize site soil compaction and provide soil quality restoration as specified;
- (5) assure that all temporary Erosion and Sediment controls shall not be removed until the city has determined that the site has been permanently stabilized with 70% perennial cover;
- (6) identify methods to prevent Ssediment damage to adjacent properties and sensitive environmental areas such as water bodies, plant communities, rare, threatened and/or endangered species habitat, wildlife corridors, greenways, and the like;
- (7) provide for design and construction methods to stabilize steep or long continuous slopes;
- (8) include measures to control the quantity and quality of Storm Water leaving a site before, during and after construction;
- (9) provide for stabilization of all waterways and outlets;
- (10)protect Storm Sewer infrastructure from Sediment loading and/or plugging;
- (11)specify precautions to be taken to contain Sediment when working in or crossing Waters of the State;
- (12)assure stabilization of disturbed areas, including utility construction areas, within five (5) calendar days after the area is no longer actively being worked
- (13)protect outlying roads from Sediment and mud from construction site activities, including preventing tracking;
- (14)provide for disposal of collected Sediment and floating debris; and

(15) assure that when working near Waters of the State, as defined in section 27-114(132), the specific practices itemized immediately below are utilized:

- a. during construction:
 - (i) all exposed soil areas with a slope of 3:1 or steeper, and that have a continuous positive slope to Waters of the State, shall have temporary Erosion protection or permanent cover within three (3) days after the area is no longer actively being worked; all other slopes that have a continuous positive slope to the Waters of the State shall have temporary Erosion protection or permanent cover within seven (7) days after the area is no longer actively being worked; and
 - (ii) temporary Sediment basin requirements shall be used for common drainage locations that serve an area that has five (5) or more acres of soil disturbed at one time; and
- b. buffer zone: provide for the maintenance at all times of an undisturbed buffer zone consisting of not less than 100 linear feet from the Waters of the State (including tributaries); exceptions from this requirement for areas, such as water crossings or limited water access, are allowed if the Applicant fully documents in the SWPPP the circumstances and reasons that the buffer encroachment is necessary; provided, however, that all potential water quality, scenic and other environmental impacts of these exceptions shall be minimized and documented in the SWPPP for the project.
- (d) The Applicant shall post security for compliance with all requirements imposed by the State NPDES General Permit No. 2 as well as necessary remedial work resulting from violation of any provision of this article in an amount of \$100.00 per gross acre for building sites, subdivisions or other developments of five (5) acres or more. This amount shall apply to the maximum acreage of soil that will be simultaneously exposed during the project's construction. Acceptable forms of performance security include the following:
 - (1) performance bonds in form and content acceptable to the city; or
 - (2) Cash escrow agreement in form and content acceptable to the city.
- (e) The Applicant shall also submit a signed written statement to the city which states as follows: "In addition to the performance security posted with this application, the undersigned Applicant hereby agrees to defend, indemnify and hold the City of Cedar Falls harmless from any and all claims, damages or suits arising directly or indirectly out of any act of commission or omission by the Applicant, or any employee, agent, assignee, contractor or subcontractor of the Applicant, in connection with Applicant's State NPDES General Permit No. 2 and/or Stormwater Pollution Prevention Plan."

- (f) The City shall send written notification to the Applicant of the approval of the Applicant's SWPPP within a reasonable time following the Applicant's completed submission of all documents and information required under this section and posting of the required security, unless the city has provided to the Applicant a written bill of particulars identifying non-complying elements of the application. The city shall not issue approval of the Applicant's SWPPP until such non-complying elements of the application have been corrected, and until the application complies with the Applicant's State NPDES General Permit No. 2, the requirements of this chapter, and all other applicable laws and regulations, federal, state and local.
- (g) For so long as a construction site is subject to a State NPDES General Permit No. 2, the Applicant shall promptly provide the city with current information as follows:
 - 1. The name, address and telephone number of the Applicant's Engineer and any other person on site designated by the owner who is knowledgeable and experienced in Erosion and Sediment control and who will oversee compliance with the State NPDES General Permit No. 2 and the SWPPP; and
 - 2. The name(s), address(es) and telephone number(s) of the contractor(s) and/or subcontractors(s) that will implement each Erosion and Sediment control measure identified in the SWPPP.

Applicant's failure to provide current information shall constitute a violation of this article.

Sec. 27-304. Transfer and Termination of State NPDES General Permits and Stormwater Pollution Prevention Plan Obligations.

- (a) The owner of real property that is the subject of a State NPDES General Permit No. 2 may transfer responsibility under the owner's SWPPP to one or more transferees of all or part of such property in the same manner that responsibility for compliance with an NPDES General Permit No. 2 can be transferred pursuant to 567 Iowa Admin. Code § 64.6(6), or any similar successor provision. Each Transferee must agree to the transfer in writing and must agree to fulfill all obligations of the State NPDES General Permit No. 2 and the SWPPP, including submission of a statement signed by the transferee as provided for in section 27-303(e). The property owner shall file with the office of the City Engineer a copy of all documents filed with IDNR in connection with transfer of responsibility under the State NPDES General Permit No. 2 to each such transferee, and a copy of each such transferee's agreement to fulfill all obligations of the SWPPP. Absent such written confirmation of transfer of obligations, such property owner remains responsible for compliance with the SWPPP on any property that has been sold, conveyed or otherwise transferred.

- (b) All documents and information required by the IDNR to be filed to terminate the NPDES General Permit No. 2 must also be filed with the office of the City Engineer. Upon submission of said materials to the city, the city shall have 30 days in which to request additional information, before the SWPPP shall be deemed terminated.

Sec. 27-305.. Inspection Procedures.

- (a) All inspections undertaken by the city under this article shall be conducted by the Enforcement Officer.
- (b) The Applicant's Engineer shall notify the city when all measures required by Applicant's SWPPP have been accomplished on-site. The Enforcement Officer may inspect the property to determine compliance. If the Enforcement Officer determines that compliance has not been achieved, the Enforcement Officer shall provide to the Applicant a written bill of particulars identifying the conditions of non-compliance. The Applicant shall immediately commence corrective action and shall complete such corrective action within twenty-four (24) hours of receiving the Enforcement Officer's bill of particulars. For good cause shown, the Enforcement Officer may extend the deadline for taking corrective action for a reasonable period of time. Failure of the Applicant to take corrective action in a timely manner shall constitute a violation of this article.
- (c) Construction shall not occur on the site at any time while conditions of non-compliance that have been identified by the Enforcement Officer continue to exist.
- (d) Construction activities undertaken by an Applicant prior to resolution of all discrepancies specified in the bill of particulars shall constitute a violation of this article.
- (e) The city shall not be responsible for the direct or indirect consequences to the Applicant or to third parties for non-compliant conditions that were undetected by inspection or that were undetected because the city, in operating its program of random inspections, did not inspect the property.
- (f) Applicant's Engineer shall inspect the site no less than once every seven (7) calendar days and shall retain on site a written report about site conditions that is readily available to the Enforcement Officer.

Sec. 27-306. Monitoring Procedures.

- (a) Upon issuance of a State NPDES General Permit No. 2 and SWPPP approval, an Applicant shall have an absolute, affirmative 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 or State NPDES General Permit No. 2. Rainfall in an amount over one-half (1/2) inch within a 24-hour period, as measured by an on-site standard rain gauge, shall be deemed a change of circumstances or site conditions requiring notification under this section.
 - (1) Such report shall be made available by the Applicant to the Enforcement Officer immediately, but in any event within twenty four (24) hours of the change of circumstances or site conditions.
 - (2) Failure to make a timely report shall constitute a violation of this article.
- (b) 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 or State NPDES General Permit No. 2.
- (c) Upon receiving a report pursuant to Section 27-306(a), the Enforcement Officer may conduct an inspection and thereafter shall provide the Applicant with a written bill of particulars identifying the conditions of non-compliance. The Applicant shall immediately commence corrective action and shall complete such corrective action within twenty-four (24) hours of receiving the bill of particulars. For good cause shown, the Enforcement Officer may extend the deadline for completing corrective action for a reasonable period of time. Failure to take corrective action in a timely manner shall constitute a violation of this article, whereupon the Enforcement Officer shall immediately commence enforcement actions specified in Section 27-307.
- (d) Upon receiving a report from a third party pursuant to subsection 27-306(b), the Enforcement Officer may conduct an inspection of the site as soon as reasonably possible and thereafter shall provide the Applicant with a written bill of particulars identifying the conditions of non-compliance. The Applicant shall immediately commence corrective action and shall complete such corrective action within twenty-four (24) hours of receiving the bill of particulars. For good cause shown, the Enforcement Officer may extend the deadline for completing corrective action for a reasonable period of time. Failure to take corrective action in a timely manner shall constitute a violation of this article, whereupon the Enforcement Officer shall immediately commence enforcement actions specified in Section 27-307.
- (e) The Enforcement Officer may conduct one or more unannounced inspections at any time during the course of construction to monitor compliance with the State NPDES General Permit No. 2 and the SWPPP.

If the inspection discloses any non-compliance, the Enforcement Officer shall provide the Applicant with a written bill of particulars identifying the conditions of non-compliance. The Applicant shall immediately commence corrective action and shall complete such corrective action within twenty-four (24) hours of receiving the bill of particulars. For good cause shown, the Enforcement Officer may extend the deadline for completing corrective action for a reasonable period of time. Failure to take corrective action in a timely manner shall constitute a violation of this article, whereupon the Enforcement Officer shall immediately commence enforcement actions specified in Section 27-307.

- (f) The city shall not be responsible for the direct or indirect consequences to the Applicant or to third parties for non-compliant conditions that were undetected by inspection or that were undetected because the city, in operating its program of random inspections, did not inspect the property.

Sec. 27-307. Enforcement.

- (a) Violation of any provision of this article may be enforced by issuance of a stop work order by the Enforcement Officer or by civil action, administrative or judicial, including but not limited to an action for injunctive relief. A stop work order shall specify the violation(s) and shall remain in effect until the deficient condition has been remedied.
- (b) Violation of any provision of this article constitutes a municipal infraction under this code, punishable as provided in the following schedule of civil penalties:
 - (1) First offense: \$250.00;
 - (2) Second offense: \$500.00;
 - (3) Third and subsequent offenses: \$1,000.00.

Each day that a municipal infraction occurs or is permitted to exist constitutes a separate offense. Seeking a civil penalty as authorized in this section does not preclude the city from seeking alternative relief from the court in the same action. Such alternative relief may include but is not limited to abatement or injunctive relief.

- (c) In addition to the enforcement processes and penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this article shall be considered a threat to public health, safety, and welfare, and is declared and deemed to be a nuisance. This nuisance may be summarily abated or corrected at the violator's expense.
- (d) In addition to any fine or penalty, the city may recover all attorneys' fees, court costs and other expenses associated with enforcement of this article, including necessary monitoring expenses.

- (e) The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law. It is within the discretion of the Enforcement Officer to seek cumulative remedies if necessary. Enforcement pursuant to this section shall be undertaken by the Enforcement Officer upon the advice and consent of the city attorney.

Sec. 27-308. Appeal.

- (a) Administrative decisions by city staff and enforcement actions of the Enforcement Officer may be appealed by the Applicant to the city council pursuant to the following rules:
 - (1) The appeal must be filed in writing with the city clerk within five (5) business days of the decision or enforcement action.
 - (2) The written appeal shall specify in detail the action appealed from, the errors allegedly made by the Enforcement Officer giving rise to the appeal, a written summary of all oral and written testimony the Applicant intends to introduce at the hearing, including the names and addresses of all witnesses the Applicant intends to call, copies of all documents the Applicant intends to introduce at the hearing, and the relief requested.
 - (3) The Enforcement Officer shall, at the hearing, or at any time before the hearing, specify in writing the reasons for the enforcement action, a written summary of all oral and written testimony the Enforcement Officer intends to introduce at the hearing, including the names and addresses of all witnesses the Enforcement Officer intends to call, and copies of all documents the Enforcement Officer intends to introduce at the hearing.
 - (4) The city clerk shall notify the Applicant and the Enforcement Officer by ordinary mail, and shall give public notice in accordance with Iowa Code Chapter 21 of the date, time and place for the regular or special meeting of the city council, or its designated committee, at which the hearing on the appeal shall occur. The hearing shall be scheduled for a date not less than four (4) nor more than twenty (20) days after the filing of the appeal. The rules of evidence and procedure, and the standard of proof to be applied, shall be the same as provided by Iowa Code Chapter 17A. The Applicant may be represented by counsel at the Applicant's expense. The Enforcement Officer may be represented by the city attorney or by an attorney designated by the city council at city expense.
- (b) The decision of the city council, or its designated committee, shall be rendered in writing and may be appealed to the Iowa District Court as provided by Iowa law.

Sec. 27-309. Enforcement measures after appeal.

If the violation has not been corrected pursuant to the requirements set forth in the written bill of particulars, or, in the event of an appeal, within five (5) business days of the decision of the city council or its designated committee upholding the decision of the Enforcement Officer, the Enforcement Officer may enter upon the subject property and take such 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 article. It shall be 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 article.

Sec. 27-310. Cost of abatement of the violation.

After abatement of the violation, the Applicant shall be notified of the cost of abatement, including administrative costs. The Applicant may, within thirty (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 Enforcement Officer, the assessment shall constitute a lien on the property pursuant to Iowa Code Section 384.84. Any abatement costs not paid in full within thirty (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 Applicant at least thirty (30) days prior to certification. The notice shall be sent to the Applicant by ordinary mail not less than thirty (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.

Sec. 27-311. Injunctive relief.

It shall be unlawful for any person to violate, or fail to comply with, any of the provisions of this article. If a person has violated, or continues to violate, the provisions of this article, the Enforcement Officer may petition a court for a preliminary or permanent injunction restraining the person from any violation of the provisions of this article, or compelling the person to perform abatement or remediation of any such violations.

Sec. 27-312. Compensatory action.

In lieu of or in addition to enforcement proceedings, penalties, and remedies authorized by this article, the Enforcement Officer 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 Enforcement Officer. The failure of any person to complete any such alternative compensatory actions imposed by the Enforcement Officer shall constitute a violation of this article.

Sec. 27-313. Severability.

The provisions of this article are hereby declared to be severable. If any section, provision, clause, sentence, paragraph or part of this article or the application thereof to any person, establishment, or circumstance shall be held invalid or unconstitutional, such adjudication shall not affect the other provisions or applications of this article.

INTRODUCED: _____ August 14, 2006 _____

PASSED 1st CONSIDERATION: _____ August 14, 2006 _____

PASSED 2nd CONSIDERATION: _____ August 28, 2006 _____

PASSED 3rd CONSIDERATION: _____ September 11, 2006 _____

ADOPTED: _____ September 11, 2006 _____

Jon T. Crews, Mayor

ATTEST:

Gary L. Hesse, CMC, City Clerk