

Chapter 48.
Erosion control.

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Section 48-1. Authority and administration.

- (1) This ordinance is adopted under the authority granted by secs. 62.231 and 62.234, Wisconsin State Statutes. This ordinance supersedes all conflicting and contradictory storm water management regulations previously adopted by the city under sec. 62.23 Wisconsin State Statutes. Except as specifically provided for in secs. 62.231 or 62.234, sec. 62.23 applies to this ordinance and to any amendments to this ordinance.
- (2) The requirements of this ordinance do not preempt more stringent storm water management requirements that may be imposed by the Wisconsin Department of Natural Resources (“DNR”).
- (3) The provisions of this ordinance are not intended to limit any other lawful regulatory powers of the city.
- (4) The city council designates the Building Inspector to administer and enforce the provisions of this ordinance. The Building Inspector may refer projects to the City Engineer or other professionals or specialists, where additional professional expertise is required. The Municipal Services Committee may review staff decisions upon written request by an applicant or permit holder to the committee chair.

(Ord. 2005-27, Ord. 2010-03, Ord. 2014-02)

Section 48-2. Findings of fact.

- (1) The city council finds that runoff from land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state in and near the city. The city council also finds that these sediments and other pollutants have a detrimental effect on water quality and downstream water uses and increases the potential for flooding of adjacent lands.
- (2) Recognizing the well-established relationship between erosion and sedimentation and the loss of water quality and the increased dangers of flooding, the city council finds that effective erosion control practices should be required. The city council also finds that construction site erosion and sediment control best management practices (BMPs) are commonly available and effective, and that the effectiveness of these BMPs depends upon proper planning and design, timely installation, and continuous maintenance.

(Ord. 2005-27)

Section 48-3. Purpose and intent.

- (1) **PURPOSE.** The general purpose of this ordinance is to promote the health, safety, and general welfare of the people, preserve the natural resources, and protect the quality of the waters of the state in and near the city. Specific purposes are to:
 - A. Minimize the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activities to the waters of the state, or adjacent property, to the extent practicable.
 - B. Foster consistent, statewide application of the non-agricultural performance standards developed by the DNR in subchapters III and IV of chapter NR 151, Wisconsin Administrative Code.
 - C. Assist the city in becoming an "Authorized Local Program" under the National Pollutant Discharge Elimination System Storm Water Phase 2 rules.

- (2) **INTENT.** The intent of this ordinance is to require, through the use of a permit, BMPs to reduce the amount of sediment and other pollutants leaving sites of land disturbing construction activities. It is intended that permit holders be able to choose the most cost-effective BMPs meeting the performance standards required under this ordinance. This ordinance is not intended to limit activity or land division permitted under the applicable zoning and land division ordinances.

(Ord. 2005-27)

Section 48-4. Jurisdiction, applicability and waivers.

- (1) **JURISDICTION.** The provisions of this ordinance shall apply in all lands within the jurisdictional boundaries of city.

- (2) **APPLICABILITY.**
 - A. This ordinance applies to the following land disturbing construction activities unless documentary evidence establishes that the project bids were advertised, contracts signed where no bids were advertised, or substantial, on-site, work on the project had been completed before the effective date of this ordinance:
 - I. Grading, removal of protective ground cover or vegetation, excavation, land filling, or other land disturbing activity where:
 - 1. The cumulative area affected exceeds a surface area of 1,000 square feet on a slope of 12 percent or greater, or
 - 2. Where the cumulative area affected exceeds a surface area of 4,000 square feet or more. This includes any activity directly affecting a cumulative surface area less than 4,000 square feet that is part of a larger construction site that in total disturbs more than 4,000 square feet.
 - II. Grading, removal of protective ground cover or vegetation, excavation, land filling, or other activity affecting a cumulative surface area of more than 1,000 square feet, or more than 40 cubic

- yards of fill, within the Shoreland Overlay District as defined in Chapter 100, City of Evansville Code of Ordinances;
- III. Grading, excavation or filling, or any combination thereof, affecting 400 cubic yards or more of soil, sand, or other excavation or fill material;
 - IV. Laying, repairing, replacing, or enlarging underground pipe, cable, or wire for a distance of 300 feet or more;
 - V. Disturbing 100 feet or more of road ditch, grass waterway, or other land area where surface drainage flows in a defined open channel;
 - VI. Constructing new public or private roads, access roads, or driveways, or portions thereof, exceeding 100 feet in length;
 - VII. Land disturbing construction activities relating to land divisions, including subdivision plats, certified survey maps, and condominium plats requiring public or quasi-public improvements;
 - VIII. Land disturbing construction activities, on a site of any size, that have been observed to cause, or have been determined likely to result in, undue channel erosion, increased water pollution by scouring or the transportation of particulate matter, or endangerment of property or public safety. The Building Inspector shall make this determination after review by the Technical Review Committee.

(3) EXEMPTIONS.

- A. This ordinance does not apply to the following:
 - I. Nonpoint discharges from agricultural facilities and practices;
 - II. Nonpoint discharges from silviculture (forestry) activities;
 - III. Routine maintenance for project sites under 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
 - IV. Land disturbing construction activities conducted, or contracted by, a state agency, as defined under sec. 227.01 (1), Wisconsin State Statutes, but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under sec. 281.33 (2), Wisconsin State Statutes;
 - V. Land disturbing construction activity that includes the construction of single and two family buildings and manufactured dwellings otherwise regulated by the Wisconsin Department of Commerce under COMM 21.125 or public buildings regulated by COMM 61.115, Wisconsin Administrative Code;¹
 - VI. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollution discharge elimination system permit issued under chapter 40, Code

¹ Note: COMM 21.125 refers to statewide construction standards and inspection standards for one- and 2 family dwellings and manufactured dwellings. COMM 61.115 refers to Wisconsin Pollution Discharge Elimination System (WPDES) General Permit coverage for the construction of a public building or a building that is a place of employment.

of Federal Regulations, part 122, for land disturbing construction activity;

- VII. Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
- B. Any project that is designed and/or certified by the City of Evansville, Rock County Land Conservation Department, or the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture as part of a soil conservation or water pollution control project shall comply with all of the requirements of this ordinance, but shall be exempted from obtaining a permit, providing a financial guarantee, or paying fees under sec. 48-8.
- C. Any land disturbing construction activity that is conducted by or for the city shall comply with all of the requirements of this ordinance, including obtaining a permit and submitting an erosion and sediment control plan, but shall be exempted from providing a financial guarantee, or paying fees under sec. 48-8.
 - I. At the discretion of the Building Inspector, for land disturbing construction activity that is conducted by or for the city, a qualified employee of the city department, or agent, undertaking the construction activity may administer the permit.

(4) WAIVERS.

- A. The Building Inspector may, after review by the Technical Review Committee, waive any or all of the requirements of this ordinance if the Building Inspector determines that:
 - I. A requirement is not necessary for a particular site to ensure compliance with the intent of this ordinance; or
 - II. Storm water runoff from the construction site activities will have no appreciable off-site impact.

(Ord. 2005-27, Ord. 2010-03)

Section 48-5. Technical standards.

- (1) All BMPs required to comply with this ordinance shall meet the design criteria, standards and specifications identified, developed or disseminated by the DNR under subchapter V of Chapter NR 151, Wisconsin Administrative Code.
- (2) Where technical standards have not been identified or developed by the DNR, other technical standards may be used provided that the methods have been approved by the Building Inspector.
- (3) The Building Inspector may develop a “Design Guidelines and Standards” manual to supplement this ordinance. This manual will assist landowners, developers, and consultants to comply with the provisions of this ordinance. The manual will include approved best management practices (BMPs), either within the manual or by reference, which may be used to meet the performance

standards of this ordinance. However, other BMPs that meet the performance standards of this ordinance may be approved for use.

(Ord. 2005-27, Ord. 2010-03)

Section 48-6. Performance standards.

(1) EROSION AND OTHER POLLUTANT CONTROL REQUIREMENTS.

- A. All persons who conduct land disturbing construction activities under sec. 48-4 of this ordinance shall design, install, apply and maintain erosion control BMPs, either on or off the construction site, in accordance with a permitted erosion and sediment control plan (plan) designed to limit sediments and other pollutants from entering waters of the state, storm water systems, or adjacent property. BMPs that limit erosion are preferable to those that control runoff sediment. Accordingly, credit toward meeting the sediment reduction goal will be given for limiting the duration, area, or both, of land disturbing construction activity.
- B. BMPs shall, by design, reduce pollutants from the construction site to the maximum extent practicable by use of methods including, but not limited to, the following:
 - I. Prevent gully and bank erosion.
 - II. Achieve a reduction of 80% of the sediment load carried in runoff, on an average annual basis, as compared with no sediment or erosion controls until the construction site has undergone final stabilization. The Building Inspector may, upon written approval by the DNR, use a standard that is equivalent to an 80 % reduction in sediment load. Erosion and sediment control BMPs may be used alone or in combination to meet this requirement.
 - 1. If BMPs cannot be designed to meet the standard in paragraph (B) 2., the plan shall include a written and site-specific explanation as to why the standard is not attainable and a statement that the sediment load shall be reduced to the maximum extent practicable.
- C. Calculations used to comply with paragraph (B) 2. shall be determined by a methodology selected by the Building Inspector in consultation with the Technical Review Committee.
- D. For this ordinance, average annual basis is calculated using the appropriate annual rainfall or runoff factor, also referred to as the R factor, or an equivalent design storm using a type II distribution, with consideration given to the geographic location of the site and the period of disturbance.
- E. Where appropriate, sediment controls shall be implemented to do all of the following:
 - I. Prevent tracking of sediment from the construction site onto roads and other paved surfaces;
 - II. Prevent the discharge of sediment as part of site de-watering;
 - III. Protect separate storm drain inlet structures from receiving sediment.
- F. The use, storage, and disposal of chemicals, cement, and other compounds and materials used on the construction site shall be managed during the construction period to prevent their entrance into the waters of the state, separate storm sewers connecting to the waters of the state, or adjacent property. However, projects that require the placement of these materials

in the waters of the state, such as constructing bridge footings, or BMP installations are not prohibited by this paragraph.

- G. Only clean fill may be used for restoration conducted on any land disturbing construction activity.
- H. BMPs for plan approval need not attempt to regulate soil transportation within the boundaries of the applicant's site.

(2) MAINTENANCE OF BMPs. The permit holder shall maintain all BMPs necessary to meet the requirements of this ordinance until the site has achieved final site stabilization and a written BMP removal authorization has been received from the Building Inspector.

(3) LOCATION. The BMPs used to comply with this section shall be located prior to runoff entering the waters of the state. While regional treatment facilities are appropriate for control of post-construction pollutants, they should not be used for construction site sediment removal.

(4) ALTERNATE REQUIREMENTS.

- A. The Building Inspector, after review by the Technical Review Committee, may establish erosion and sediment control requirements more stringent than those set forth in this section if the Building Inspector determines that an added level of protection is needed to protect sensitive resources.

(Ord. 2005-27, Ord. 2010-03)

Section 48-7. Permits and waivers.

(1) PERMIT OR WAIVER REQUIRED. No responsible party may undertake a land disturbing construction activity subject to this ordinance without receiving a permit from the Building Inspector, or a waiver as provided in sec. 48-4(4), prior to beginning the proposed activity.

(2) PRELIMINARY REVIEW LETTER.

- A. A preliminary review letter provides a potential permit applicant with a simple initial evaluation of whether erosion and sediment control standards can be met for a proposed site, lot layout, or construction design. This review is voluntary and intended to assist applicants to obtain a permit. A preliminary review letter does not guarantee that a plan will be approved, or that a permit will be issued. Permit applications and plans must meet all applicable standards and criteria for approval.

B. Preliminary Review Letter Procedure:

- I. Any responsible party may apply for a preliminary review letter by submitting an application using a form provided by the Building Inspector.
- II. The Building Inspector will evaluate completed applications and may consult other governmental departments or agencies. The

Building Inspector may request additional information from the applicant to better evaluate the application.

- III. The Building Inspector will provide the applicant with the preliminary review letter within 10 working days from the date the last information concerning the application is received.
- IV. The fee for preliminary review letters shall be determined according to sec. 48-8 of this ordinance. The amount of this fee shall be deducted from an application fee for an erosion and sediment control permit for the site reviewed.

(3) GENERAL PERMITS FOR PRIVATE UTILITY WORK PROJECTS

A. A General Permit may be issued for land disturbing construction activities which are subject to this ordinance under sec. 48-4(2) conducted by or for utilities. The following conditions apply to these General Permits.

- I. General Permits will be issued to a utility for a one-year period.
- II. An application for a General Permit must include a generic erosion control plan or plans that include the best management practices (BMPs) typically used on the land disturbing construction activities conducted by the applicant.
- III. All land disturbing construction conducted under the General Permit must meet the performance standards specified under sec. 48-6 of this ordinance using best management practices referenced under sec. 48-5.
- IV. General Permit holders must notify the Building Inspector two days prior to the planned beginning any land disturbing construction covered the General Permit. This notification must include the following information:
 - 1. Location of the planned land disturbing activity
 - 2. Purpose of the planned land disturbing activity
 - 3. Approximate amount of disturbance
 - 4. Beginning and ending dates of the planned land disturbing activity
 - 5. A simple sketch plan of the planned land disturbing activity
 - 6. The name of those responsible for BMP installation or reestablishment, if not the General Permit holder.
- V. The enforcement, penalties appeals, and fee schedule provisions of this ordinance shall apply to General Permits.

(4) PERMIT / WAIVER APPLICATION.

A. Any responsible party desiring a permit or waiver shall submit an application to the Building Inspector using a form provided by the City.

- I. If the application is from a land user, the application must be signed by the landowner of the site where the land disturbing construction activities are to take place. A notarized statement signed by the landowner authorizing the applicant to act as the landowner's agent shall also be accepted, provided that it binds the

landowner to the terms of this ordinance and any permit issued to the permit holder, including the enforcement actions set forth in sec. 48-9.

- II. Submission of an application by one of several landowners or land users of a particular site shall constitute an affirmation by the applicant of authority to act on behalf of the other landowners or land users to apply for, receive, and abide by the provisions of a permit. The city shall be under no obligation to ascertain the legal authority of the applicant to so act.
- III. A permit application shall consist of a completed application form, including a waiver application for relief from any requirement deemed not necessary to ensure compliance with the intent of this ordinance as provided for in sec. 48-3, an erosion and sediment control plan, or simplified plan document as described in sec. 48-7(5) and a non-refundable application review fee.
- IV. A waiver application, as provided for in sec. 48-4(4), shall consist of a completed waiver application form, including complete documentation of the justification for the requested waiver, and a non-refundable application review fee.
- V. Each application shall contain an agreement by the applicant that:
 1. Authorizes the Building Inspector to enter the site to obtain information required for the review of the application; and
 2. Any land disturbing construction activity shall be conducted in accordance with the provisions of an approved or amended permit.

(5) EROSION AND SEDIMENT CONTROL PLANS

A. PLAN REQUIRMENTS FOR CLASS ONE LAND DISTURBING CONSTRUCTION ACTIVITIES.

- I. Class One land disturbing construction activities contain:
 1. One or more acres (43,560 square feet) of disturbed area;
 2. 4,000 square feet or more of disturbed area if any portion of that disturbed area contains slopes of 12% or greater;
 3. More than 1,000 square feet, or a cumulative area of more than 1,000 square feet, of disturbed area, or more than 40 cubic yards of fill, if located within the Shoreland Overlay District, as defined in Chapter 100, City of Evansville Code of Ordinances.
- II. The plan shall address pollution caused by soil erosion and sedimentation during construction until a written BMP removal authorization is received, as described in sec. 48-6(2). The plan shall include, at minimum, the following items:
 1. The name(s) and address(es) of the owner or developer of the site, and the principal contact person of any consulting firm retained by the applicant;
 2. The start and end dates of land disturbing construction activity;
 3. The intended sequence of major land disturbing activities at the site, including stripping, rough grading, construction of utilities, infrastructure, and buildings. Sequencing shall identify the expected date on which clearing will begin, areas of clearing, the estimated duration of exposure of cleared areas, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation;
 4. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by construction activities;
 5. Calculations showing compliance with the soil loss standards of sec. 48-6(1).
 6. Existing data describing the surface soils and subsoils;
 7. Depth to groundwater, as indicated by NRCS soil information, where available;
 8. Name of the immediate receiving point of discharge identified on a United States Geological Service topographical map.
 9. A materials list for the proposed BMPs that will meet the minimum requirements stated below in paragraph 4.
- III. The plan shall include a site map. The site map shall be at a scale of either 1 inch equals 50 feet or 1 inch equals 100 feet, whichever is appropriate to the site size and at a contour interval not

exceeding 2 feet in areas with less than 20 percent slope. The site map shall include the following items:

1. Existing topography, vegetative cover, natural and engineering drainage systems, and roads;
 2. All surface waters, including lakes, rivers, streams, wetlands, channels, ditches, and other watercourses on, or immediately adjacent to, the site;
 3. Floodways and 100-year floodplains;
 4. Boundaries of the construction site;
 5. Drainage patterns and approximate slopes anticipated after major grading activities;
 6. Areas of soil disturbance;
 7. Location of all structural and non-structural BMPs identified in the plan;
 8. Location of all areas that will be vegetated following construction;
 9. Areal extent of wetland acreage on the site and locations where storm water is discharged to a surface water or wetland;
 10. Locations of all surface waters and wetlands within one mile of the construction site, on an inset map of a convenient scale;
 11. Alphanumeric or equivalent grid overlying the entire construction site map.
- IV. Each plan shall include a description of interim and permanent BMPs that will be implemented at the site to prevent pollutants from reaching waters of the state or adjacent property. The BMPs shall meet, when appropriate, the following minimum requirements:
1. Preservation of existing vegetation where possible;
 2. Stabilization of the disturbed portions of the site;
 3. Diversion of flow away from exposed soils;
 4. Store flows, or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the Building Inspector, structural BMPs shall be installed on upland soils.
 5. Management of sheet flow runoff at all sites, unless otherwise controlled by outfall controls;
 6. Trapping of sediment in channelized flow;
 7. Staging construction to limit bare areas subject to erosion;
 8. Protection of downslope drainage inlets;
 9. Minimization of tracking at all sites;
 10. Clean up of off-site sediment deposits;
 11. Proper disposal of building and waste materials at all sites;
 12. Stabilization of drainage ways;
 13. Control of soil erosion from soil stockpiles;

14. Installation of permanent stabilization BMPs immediately after final grading;
 15. Minimization of dust to the maximum extent practicable.
- V. Velocity dissipation devices shall be placed at discharged locations and along the length of any outfall channel as necessary to provide a non-erosive flow from the structure to a watercourse so that the natural physical and biological characteristics and functions are maintained and protected.
- B. PLAN REQUIREMENTS FOR CLASS TWO LAND DISTURBING CONSTRUCTION ACTIVITY.
- I. Class Two land disturbing construction activities contain less than one acre (43,560 square feet) of disturbed area with no portion of that disturbed area containing slopes of 12% or greater. Class Two activities cannot be located within the shoreland overlay district as defined in Chapter 100, City of Evansville Code of Ordinances.
 - II. For Class Two sites the applicant may prepare a simplified plan document as part of a permit application. Using an application form provided by the Building Inspector, the simplified plan must contain a site description, a simplified map, a description of the BMPs, and a schedule of implementation. Applicants for a permit for Class Two sites are not required to provide financial assurance as described in paragraph (10) of this section. The submission of a simplified plan document does not relieve the permit holder from achieving the performance standards found in sec. 48-6.

(6) EVALUATION AND APPROVAL OF APPLICATIONS. Within 3 working days of receipt, the Building Inspector shall review applications to insure they are complete. Any application found to be incomplete shall be returned to the applicant for completion. Upon receiving a complete application, the Building Inspector shall use the following approval/disapproval procedure:

- A. Completed applications will be evaluated for compliance with the requirements of this ordinance. Other governmental departments or agencies may be consulted during application evaluation.
- B. Additional substantive information may be requested from the applicant to better evaluate the application.
- C. Within 15 working days from the receipt of a complete permit application, or 10 working days from the receipt of additional information requested in accordance with paragraph (B), whichever is later, the applicant shall be informed whether the application has been approved or disapproved. The City engineer shall base the decision on the requirements of this ordinance.
- D. If the applicant is applying for a waiver, within 20 working days from the receipt of a complete waiver application, or 10 working days from the receipt of additional information requested in accordance with paragraph (B), whichever is later, the applicant shall be informed whether the waiver application has been approved or disapproved. The Building Inspector

shall base the decision in consideration of the recommendations of the Technical Review Committee and the requirements of this ordinance.

- E. Failure to inform an applicant of a decision within the applicable time specified in paragraph (C) or (D) shall constitute approval of the application. If the application was for a permit, the applicant may then proceed in accordance with the provisions of the submitted plan, including any waivers requested in accordance with sec. 48-4(3)(A). If the application was for a waiver under sec. 48-4(3)(B), the waiver shall be deemed granted.
- F. If the application is approved the Building Inspector shall issue the permit or waiver.
- G. An application for a permit may be approved with conditions determined by the Building Inspector to be needed to meet the requirements of this ordinance.
- H. If the application is disapproved, the Building Inspector shall notify the applicant by certified mail and provide a written statement of the reasons for disapproval.
- I. If the application is disapproved, or if the applicant does not agree with the permit conditions, the applicant may request a review by the Technical Review Committee. This request must be made in writing within 30 calendar days from the date of the applicant was notified of the Building Inspector decision. The schedule and procedure for a waiver described in paragraph (D) above will be followed for this review.

(7) PERMIT MODIFICATIONS AT THE PERMIT HOLDER'S REQUEST. The permit holder must obtain permission from the Building Inspector prior to modifying an approved plan. Plans, or portions thereof, drawn by a certified erosion control planner, professional engineer, surveyor, or landscape architect, must be amended to show that the author has approved the modifications. These modifications must be shown as amendments to the copy of the plan kept by the permit holder.

(8) PERMIT MODIFICATIONS AT THE BUILDING INSPECTOR'S REQUEST. If the BMPs implemented as part of the approved plan are determined by the Building Inspector to be inadequate to meet the performance standards of this ordinance, the Building Inspector may modify the plan after consultation with the permit holder. These modifications shall be provided to the permit holder in writing and shall be shown as amendments to the copy of the plan kept by the permit holder. The permit holder shall implement these modifications according to a timetable established in the modifications.

(9) PERMIT CONDITIONS. All permits issued under this ordinance shall be subject to the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. Compliance with this permit does not relieve the permit holder of the responsibility to comply with other

applicable federal, state and local laws and regulations. All permits shall require the permit holder to:

- A. Install and maintain all BMPs as identified in the approved plan;
- B. Notify the Building Inspector within 2 working days of beginning land disturbing construction activity. This notification is not necessary for minor land disturbances undertaken to prepare for site development. Examples of minor disturbances are: survey work, perk tests, well boring, installation of tracking pads or culverts, stump rooting, or the installation of temporary electrical service;
- C. Establish a site erosion control log to document the installation and maintenance of BMPs required by the plan. This site erosion control log will not be required for a Class Two land disturbing construction activity as provided for under sec. 48-7(5)(B) of this ordinance;
- D. Provide access to the erosion control log and a copy of the plan, including approved amendments, for referral by the Building Inspector during site visits;
- E. Notify the Building Inspector within 10 working days of the completion of the installation of all BMPs required in the plan;
- F. Inspect BMPs at least once each week and after each rain of 0.5 inches or more, make needed repairs, and document the findings of the inspections in the site erosion control log with the date of inspection and the name of the person conducting the inspection;
- G. Document and repair, with the permission of the property owner, any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities. A financial consideration may be paid by the permit holder in lieu of repair to the owner of affected property. The Building Inspector must approve this financial consideration.
- H. Allow the Building Inspector to enter the site for the purposes of inspecting compliance with the plan;
- I. Allow the Building Inspector, or agent, to enter the site for the purposes of performing any work necessary to bring the site into compliance with the plan, as provided in sec. 48-9 of this ordinance;
- J. Complete all seeding or mulching called for in the plan by the next September 15th. If either permanent or temporary soil stabilization by seeding or mulching is not accomplished by September 15, additional erosion control practices will be required. These practices may include additional mulching, application of erosion control matting, sodding, or application of polymer tackifiers. These additional practices will be prescribed by the Building Inspector according to sec. 48-7(6).

(10) SITE VISITS.

- A. If land disturbing construction activities are being conducted without a permit required by this ordinance, a representative of the Building Inspector may enter the land, pursuant to the provisions of secs. 66.0129 (1), (2) and (3), Wisconsin State Statutes, to obtain information necessary

to undertake enforcement and penalties as provided by sec. 48-9 of this ordinance.

- B. The Building Inspector shall conduct a site visit of each construction site that holds a permit under this ordinance at least once every 30 calendar days during the period starting March 1 and ending October 31, and at least 2 times during the period starting November 1 and ending February 28, to ensure compliance with the provisions of the permit.
- C. Site visits will be conducted at no additional cost to the permit holder, unless as the result of the visit the Building Inspector determines that a previously issued remedial action issued as part of a notice of non-compliance, as provided for in sec. 48-9 of this ordinance, has not been accomplished as scheduled. The cost of the site visit will then be billed to the permit holder, according to the fee schedule adopted as provided for in sec. 48-8.

(11) **FINANCIAL GUARANTEE.** As a condition of approval and issuance of the permit, the Building Inspector shall require the applicant to submit a financial guarantee, the form and type of which shall be acceptable to the Building Inspector. This financial guarantee shall not be required in the case of a Class 2 activity, as defined in sec. 48-7(4)(B).

- A. The financial guarantee shall be in an amount determined by the Building Inspector to be adequate to ensure payment of the estimated costs of implementing the plan.
- B. The financial guarantee shall give the Building Inspector authorization to use the funds to complete the plan if the permit holder defaults, or does not properly implement the required BMPs in accordance with the approved plan. The Building Inspector shall notify the permit holder in writing as provided for in sec. 48-9 of this ordinance.

(12) **PERMIT DURATION.** Permits issued under this section shall be valid for one year or until the site has achieved final site stabilization. After one year permits shall be renewed monthly until the site has achieved final site stabilization. The Building Inspector may require additional BMPs as a condition of the renewal if necessary to meet the requirements of this ordinance. In the case where the land disturbing construction activities do not begin within two years after the issuing of a permit, that permit shall become void.

(Ord. 2005-27, Ord. 2010-03)

Section 48-8. Fee schedule.

- (1) The city council, as part of the annual budget, shall determine the fees referenced in other sections of this ordinance.
- (2) Fees paid under this section shall equal as closely as possible the Building Inspector costs of administrating the provisions of this ordinance, including

applicant consultations, application evaluation and approval, permit holder consultations and site inspections.

- (3) All fees shall be doubled if work is started before a permit is applied for and issued. Such doubled fees shall not release the applicant from full compliance with this ordinance nor from prosecution for violation of this ordinance.

(Ord. 2005-27, Ord. 2010-03)

Section 48-9. Enforcement and penalties.

- (1) Any land disturbing construction activities initiated after the effective date of this ordinance by any person, firm, association, or corporation subject to the provisions of this ordinance shall be deemed a violation unless conducted in compliance with the requirements of this ordinance.
- (2) Every violation of this ordinance is a public nuisance. Compliance with this ordinance may be enforced by injunctive order at the suit of the city pursuant to sec. 62.23(7)(f), 62.23(7a)(g) and/or 62.23(8), Wisconsin State Statutes. It shall not be necessary to prosecute for forfeiture before resorting to injunctive proceedings.
- (3) The Building Inspector shall notify the permit holder by certified mail of any non-complying land disturbing construction activity. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action that may be taken. Non-complying activities include, but are not limited to:
 - A. Any land disturbing construction activity regulated under this ordinance being undertaken without a permit or waiver;
 - B. The plan not being implemented;
 - C. The conditions of the permit not being met.
- (4) Upon receipt of written notification from the Building Inspector under paragraph (3) (A) the permit holder shall comply with the remedial actions described in the notice.
- (5) Upon receipt of written notification from the Building Inspector under paragraphs (3) (B) or (3) (C), the permit holder shall correct work that does not comply with the plan, or other provisions of the permit as necessary to meet the specifications and schedule set forth in the notice.
- (6) If a permit holder does not comply with the provisions of a notice of non-compliance, the Building Inspector may revoke the permit.
- (7) If non-compliance with this ordinance is determined by the Building Inspector as likely to result in damage to adjacent property, public facilities, or waters of the state, the Building Inspector may post a stop-work order at the time of notification.

- (8) If the permit holder does not comply with the provisions of a notice of non-compliance, or violates a stop-work order posed under paragraph (7), the Building Inspector may request the City Attorney to obtain a cease and desist order in any court with jurisdiction.
- (9) Any permit revocation, stop-work order, or cease and desist order shall remain in effect unless retracted by the Building Inspector, board of appeals, or by a court with jurisdiction.
- (10) If non-compliance with this ordinance is determined by the Building Inspector as likely to result in damage to adjacent property, public facilities, or waters of the state, the Building Inspector may issue to the permit holder or landowner a notice of intent to perform specific work necessary to comply the requirements of an approved plan, or to protect property, public facilities, or waters of the state.
- (11) After 5 working days from issuing the notice of intent, the Building Inspector may enter upon the land and perform work, or other operations necessary to bring the condition of said lands into conformance with an approved plan, or to protect adjacent property, public facilities, or waters of the state.
- A. The Building Inspector shall keep a detailed account of the costs and expenses of performing this work. These costs, plus legal and staff costs incurred by the city, shall be billed to the owner of title of the property.
 - B. In the event a permit holder or landowner fails to pay the amount due, the amount shall be deducted from any financial guarantee posted pursuant to sec. 48-7(11) of this ordinance. Where such a financial guarantee has not been established, or is insufficient to cover these costs and expenses, the amount shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon pursuant to subchapter VII of chapter 66, Wisconsin State Statutes, for the year in which the work is completed.
- (12) Upon the receipt of assurances deemed sufficient by the Building Inspector, the permit holder may be authorized by the Building Inspector to resume responsibility for the BMPs undertaken under paragraph (11).
- (13) Any person, firm, or corporation who removes, destroys, repositions, or otherwise renders ineffective for a period of 2 working days or more any erosion control BMP installed under a plan approved under this ordinance, unless acting in a manner consistent with that plan, shall be in violation of this ordinance.
- (14) Any person, firm, association, or corporation violating any of the provisions of this ordinance shall be subject to a forfeiture of no less than 500 dollars, nor more than 5,000 dollars, and the costs of prosecution, including staff time, per offense. Each day a violation exists shall constitute a separate offense.

(Ord. 2005-27, Ord. 2010-03)

Section 48-10. Appeals.

(1) BOARD OF APPEALS. The board of appeals:

- A. Shall hear and decide appeals where it is alleged that there is an error in any order, decision, or determination made by the Building Inspector in administering this ordinance, except for cease and desist orders obtained under sec. 48-9(8);
- B. Shall use the rules, procedures, duties, and powers authorized by statute, in hearing and deciding appeals and authorizing variances; and
- C. Upon appeal, may authorize variances from the provisions of this ordinance that are not contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship.

(2) WHO MAY APPEAL. Any applicant, permittee, or landowner may appeal within 30 calendar days of the date of any order, decision, or determination made by the Building Inspector in administering this ordinance, relative to sites in which such person has an interest.

(Ord. 2005-27, Ord. 2010-03)

Section 48-11. Severability.

If a court of competent jurisdiction judges any section, clause, provision, or portion of this ordinance unconstitutional or invalid, the remainder of the ordinance shall remain in force and not be affected by such judgment.

(Ord. 2005-27)

Section 48-12. Definitions.

Agency means the Building Inspector and the municipal services committee.

Agricultural Facility means a structure associated with an agricultural practice.

Agricultural Practice means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint, and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising.

Applicant means the responsible party of a site subject to this ordinance.

Application Review Fee means money paid to the city clerk-treasurer by the permit applicant for recouping the expenses incurred by in administering the provisions of this ordinance.

Average Annual Rainfall means a calendar year of precipitation, excluding snow, which is considered typical.

Bank Erosion means the removal of soil particles from a bank slope primarily caused by water action, such as fluctuations in water volume and velocity, but also by climatic conditions, ice and debris, chemical reactions, and changes in land and stream use.

Best Management Practice or *BMP* means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.

Cease and Desist Order means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit, or in violation of the terms of a permit.

Clean Fill means uncontaminated soil, brick, building stone, concrete, reinforced concrete, or broken pavement.

Channel means any natural or artificial watercourse constructed, developed, and utilized for the drainage of surface waters.

Construction Site means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan.

Development means residential, commercial, industrial, or institutional land uses and associated roads.

Disturbed means a site which, due to developing or disturbing activities, has or will experience disturbance or destruction of the existing land surface and/or vegetative cover.

Division of Land means the division of an existing lot or land parcel; the creation of a condominium unit; an interest in real property (including land for a public facility) by the owner thereof for the purpose of sale or building development.

DNR means the Wisconsin Department of Natural Resources.

Erosion means the process by which the land's surface is worn away by the action of wind, water, ice, or gravity.

Erosion and Sediment Control Plan or *Plan* means a comprehensive plan developed to address pollution caused by soil erosion and sedimentation of soil particles or rock fragments during construction.

Facilities Development Manual means the most recent edition of the Facilities Development Manual published by the Wisconsin Department of Transportation.

Final Site Stabilization means that all land disturbing construction activities at the construction site have been completed and that a uniform, perennial vegetative cover has been established with a density of at least 70% of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.

Financial Guarantee means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the city clerk-treasurer by the permit holder to assure that requirements of the ordinance are carried out in compliance with the erosion and sediment control plan.

Gully Erosion means a severe loss of soil caused by, or resulting in concentrated flow of sufficient velocity to create a defined flow channel.

Land Conservation Department means the Rock County Land Conservation Department responsible for assisting the administration erosion control and stormwater management ordinances of Rock County.

Land Disturbing Construction Activity means any man-made alterations of the land surface resulting in a change in the topography or existing vegetative and non-vegetative soil cover, or the existing soil topography, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes, but is not limited to, clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, but does not include agricultural land use or silviculture activities.

Land User means any person operating upon, leasing, or renting land, or having made any other arrangements with the landowner by which the land user engages in uses of land that are subject to this ordinance.

Landowner means person holding title to or having an interest in a parcel of land that includes a site subject to this ordinance.

Maximum Extent Practicable means a level of implementing BMPs in order to achieve a performance standard specified in this chapter which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. "Maximum extent practicable" allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

NRCS means the Natural Resources Conservation Service, a division of the United States Department of Agriculture.

Off-site means located outside the property boundary described in the permit application for land disturbing construction activity.

Performance Standard means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

Permit means a written authorization made by the Building Inspector to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

Pervious Surface means an area that releases as runoff a small portion of the rainfall that falls upon it. Lawns, gardens, parks, forests, or other similar vegetated areas are examples of surfaces that typically are pervious.

Pollutant means has the meaning given in sec. 283.01 (13), Wisconsin State Statutes.

Pollution means has the meaning given in sec. 281.01 (10), Wisconsin State Statutes.

Quasi-Public means essentially public, as in services rendered, although under private ownership or control.

R Factor means a numeric value used in erosion modeling to account for the total precipitation, intensity and duration patterns of precipitation events.

Responsible Party means any entity holding fee title to the property or performing services to meet the performance standards of this ordinance through a contract or other agreement.

Runoff means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

Sediment means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

Separate Storm Sewer means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria Is designed or used for collecting water or conveying runoff, Is not part of a combined sewer system, Is not draining to a storm water treatment device or system, Discharges directly or indirectly to waters of the state.

Site means the entire area included in the legal description of which the land disturbing construction activity is proposed in the permit application, or has occurred.

Site Visit means an in-person observation of the site by the Building Inspector to determine compliance with this ordinance.

Sheet and Rill Erosion means a loss of soil caused by sheet flow or shallow concentrated flow, and characterized by an absence of channeling, or a relatively uniform loss across the exposed layer of the soil, or shallow irregular scouring of the soil subsurface.

Sheet Flow Runoff means water, usually storm runoff, flowing in a thin layer of the ground surface; also called overland flow.

Shoreland Overlay District means as defined in Chapter 100, City of Evansville Code of Ordinances, an area within 1,000 feet of the ordinary high water mark of navigable lakes, ponds or flowages, or within 300 feet of the ordinary high water mark of navigable rivers or streams, or to the landward of the floodplain, whichever distance is greater.

Stabilized means that all disturbed ground, soil or soil storage piles have been contained on site by filter barriers, fences, straw bales, or other BMPs.

Stop-Work Order means an order issued by the Building Inspector that requires that all construction activity on the site be stopped.

Storm Water Basin means an artificially created catchment for the purposes of retaining, detaining, or infiltrating storm water. A storm water basin may also be designed to collect sedimentation.

Storm Water System means waters of the state, drainage swales, storm water basins, storm sewers and pipes, storm drains, pumps, and lift stations, roads with drainage systems, streets, curbs, gutters, ditches, constructed channels, culverts and all other appurtenances now and hereafter existing, used or useful in connection with the collection, control, transportation, treatment, or discharge of storm water.

Technical Review Committee means a committee comprised of the city engineer, zoning administrator, and chair of the municipal services committee.

Technical Standard means a document promulgated by the DNR that specifies design, predicted performance and operation and maintenance specification for a material, device or method.

Tracking Pad means a temporary graveled access located at points of vehicular access to a construction site designed to retain sediment on-site.

Waters of the State means all lakes, bays, rivers, streams, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private within Wisconsin, or its jurisdiction.

Working Day means Monday, Tuesday, Wednesday, Thursday, or Friday, excluding any such day officially observed by the city as a legal holiday.

Wisconsin Storm Water Manual means the Wisconsin Storm Water Manual from the DNR.

(Ord. 2005-27, Ord. 2010-03, Ord. 2014-02)