

ORDINANCE NO.

48-25

"AN ORDINANCE TO AMEND THE ELIZABETHTON, TENNESSEE, MUNICIPAL CODE, 2000, AS AMENDED BY REVISING IN ITS ENTIRETY TITLE 14, CHAPTER 10, SECTIONS 14-1001 THROUGH 14-1007 TO ADOPT A NEW "EROSION AND SEDIMENT CONTROL" ORDINANCE AS REQUIRED BY THE CITY'S NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT."

WHEREAS, the City of Elizabethton is the holder of a National Pollutant Discharge Elimination System (NPDES) Storm Water Permit No. TN3075281; and

WHEREAS, Title 14, Chapter 10, of the current Elizabethton Municipal Code must be amended to allow for the latest Tennessee Construction General Permit according to the General National Pollutant Discharge Elimination System (NPDES) Permit No. TNS000000 issued by the State of Tennessee on August 31, 2010; and

WHEREAS, this mandatory Ordinance Revision will bring the City into compliance with Best Management Practice 3B of the City's Notice of Intent by December 13, 2010; and,

WHEREAS, it is in the best interest and welfare of the citizens and residents of the City of Elizabethton that this Ordinance be adopted.

NOW, THEREFORE, BE IT ORDIANED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ELIZABETHTON, TENNESSEE, AS FOLLOWS:

Section 1. That Title 14, Chapter 10, Sections 14-1001 and 14-1007 shall be amended and revised in their entirety to read as follows:

14-1001. Title. This chapter shall be known as the "Erosion and Sedimentation Control Ordinance of the City of Elizabethton, Tennessee."

14-1002. Purpose. The purposes of this ordinance are to:

- (1) Protect, maintain, and enhance the environment of the Elizabethton Urban Planning Region and the public health, safety and general welfare of the citizens of the region, by preventing the discharge of sediment and construction related waste to the region's storm water system.
- (2) Maintain and improve the quality of the receiving waters into which storm water runoff flows, including without limitation, lakes, rivers, streams, ponds, and wetlands.
- (3) Comply with the State of Tennessee National Pollutant Discharge Elimination System (NPDES) general permit for discharges from small municipal separate storm sewer systems.

14-1003. Definitions. For the purposes of this ordinance, the following definitions shall apply. Words used in the singular shall include the plural, and the plural shall include the singular. Words used in the present tense shall include the future tense. The word "shall" in mandatory and not discretionary. The word "may" is permissive.

- (1) "Best Management Practices (BMP)." Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to the municipal separate storm sewer system. BMP

also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage, or leaks, sludge or waste disposal, or drainage from raw material storage.

(2) "City." The City of Elizabethton, Tennessee.

(3) "City Manager." The City Manager of the City of Elizabethton, Tennessee, or a designee.

(4) "Clearing." In the definition of discharges associated with construction activity, clearing, grading, and excavation do not refer to clearing of vegetation along existing or new roadways, highways, dams or power lines for site distance or other maintenance and/or safety concerns, or cold planing, milling, and/or removal of concrete and/or bituminous asphalt roadway pavement surfaces. Clearing typically means the removal of vegetation and disturbance of soil prior to grading or excavation in anticipation of construction activities. Clearing may also refer to wide area land disturbance in anticipation of non-construction activities; for instance, clearing forested land in order to convert forestland to pasture for wildlife management purposes.

(5) "Commencement of construction or commencement of land disturbing activities." The initial disturbance of soils associated with clearing, grading or excavating activities or other construction activities.

(6) "Construction." Any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

(7) "Construction related wastes." Refuse or unused materials that result from construction activities. Construction related wastes can include, but are not limited to, unused building and landscaping materials, chemicals, litter, sanitary waste, and concrete truck washout.

(8) "Construction support activities." Activities such as concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, or borrow areas provided all of the following are met:

a) the support activity is primarily related to a construction site that is covered under a grading permit;

b) the operator of the support activity is the same as the operator of the construction site;

c) the support activity is not a commercial operation serving multiple unrelated construction projects by different operators;

d) the support activity does not operate beyond the completion of the construction activity of the last construction project it supports; and

e) support activities are identified in the Erosion and Sediment Control Plan. The appropriate erosion prevention and sediment controls and measures applicable to the support activity shall be described in a comprehensive SWPPP covering the discharges from the support activity areas."

(9) "Development." Any man-made change to improved or unimproved property including, but not limited to, construction of buildings or other structures, clearing, dredging, drilling operations, filling, grading, paving, excavation, or storage of equipment or materials.

(10) "Erosion." The removal of soil particles by the action of water, wind, ice or other agents, whether naturally occurring or acting in conjunction with or promoted by manmade activities or effects.

(11) "Erosion and sediment control plan." A written plan required by this chapter and prepared in accordance with the Tennessee Construction General Permit that includes, but not limited to, site map(s), identification of construction/contractor activities that could cause pollutants in the stormwater, and a description of measures or practices to control these pollutants.

(12) "Exceptional Tennessee Waters." Surface waters of the State of Tennessee that satisfy the characteristics of exceptional Tennessee waters as listed Chapter 1200-4-3-.06 of the official compilation, *Rules and Regulations of the State of Tennessee*.

(13) "Filling." Any deposition or stockpiling of dirt, rock, stumps, or other natural or man-made solid waste material.

(14) "Grading." Any excavation, filling (including fill placed in watercourses), or stockpiling of earth materials or any combination thereof, including the land in its

excavated or filled condition.

(15) "Grading permit." A permit issued by the city authorizing the commencement of land disturbing activities.

(16) "Land disturbing activity." Any activity on a property that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, land transporting, and excavation.

(17) "Municipal separate storm sewer system or MS4." A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) which is designed or used for collecting or conveying storm water and is owned or operated by the City of Elizabethton.

(18) "Owner or operator." For the purpose of the Tennessee Construction General Permit and in the context of stormwater associated with construction activity, means any person associated with a construction project that meets either of the following two criteria:

a) This person has operational or design control over construction plans and specifications, including the ability to make modifications to those plans and specifications. This person is typically the owner or developer of the project or a portion of the project, and is considered the primary permittee; or

b) This person has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a SWPPP for the site or other permit conditions. This person is typically a contractor or a commercial builder who is hired by the primary permittee, and is considered a secondary permittee.

It is anticipated that at different phases of a construction project, different types of parties may satisfy the definition of "operator."

(19) "Plan." An erosion and sediment control plan, or a small lot erosion and sediment control plan.

(20) "Priority construction activity." Construction activities that discharge directly into or immediately upstream, as defined by the City Manager, from waters the state recognizes as impaired for siltation or those waters designated as Exceptional Tennessee Waters. A property is considered to have a direct discharge, if storm water runoff from the property does not cross any other property before entering the water of the state.

(21) "Region." The Elizabethton, Tennessee, Urban Planning Region

(22) "Sediment." Solid material, either mineral or organic, that is in suspension, being transported, or has been moved from its site of origin by erosion.

(22) "Small lot erosion and sediment control plan." A plan that is designed to eliminate and/or reduce erosion and off-site sedimentation from a site during construction activities, applicable to development and redevelopment sites that disturb less than one acre and are not part of a larger plan of development.

(23) "Stormwater pollution prevention plan or SWPPP." The written plan required by the Tennessee Construction General Permit that includes site map(s), an identification of construction/contractor activities that could cause pollutants in the stormwater, and a description of measures or practices to control these pollutants.

(24) "Subdivision." The division, subdivision, or re-subdivision of any lot or parcel of land as defined in the Subdivision Regulations of the Elizabethton Regional Planning Commission.

(25) "Tennessee Aquatic Resource Alteration Permit." Persons who wish to make an alteration to a stream, river, lake or wetland must first obtain a water quality permit from TDEC. Physical alterations to properties of waters of the state require an Aquatic Resource Alteration Permit (ARAP) or a Section 404 Permit from the U. S. Army Corps of Engineers.

(26) "Tennessee Construction General Permit." A permit issued and amended by TDEC titled General NPDES Permit for Discharges of Storm Water Associated with Construction Activities. For purposes of this chapter, the Tennessee Construction General Permit is State of Tennessee Permit Number TNR 100000 which became effective on May 24, 2011, the Tennessee Construction General Permit that is in effect on the date when the Notice of Coverage for a development is issued.

(27) "TDEC." The Tennessee Department of Environment and

Conservation.

(28) "Tennessee Erosion and Sediment Control Handbook." The document entitled Tennessee Erosion and Sediment Control Handbook. For purposes of this chapter, the Tennessee Erosion and Sediment Control Handbook is dated August 2012, or the handbook that is in effect on the date when the Notice of Coverage for a development is issued.

(29) "Transporting." Any moving of earth materials from one place to another, other than such movement incidental to grading, as authorized on an approved plan.

(30) "Waters or waters of the state." Any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

14-1004. General requirements.

(1) Applicability.

(a) Land disturbing, construction or construction support activities that cause off-site sedimentation or sediment discharges to waters of the state shall be in violation of this ordinance.

(b) No owner or operator of any property within the region shall commence land-disturbing activities unless he/she has obtained all applicable permits from city, state and federal agencies.

(c) For construction resulting in less than one acre of disturbed area, excluding single family residential construction that is part of a larger plan of development or sale, a small lot erosion and sediment control plan shall be submitted to and approved by the City Manager prior to obtaining a building permit and/or commencement of any land disturbing activity. The small site erosion and sediment control plan will be included with the building permit and must be followed by the building permit holder and the owner operator. The City Manager has the discretion to require a fully engineered erosion and sediment control plan as set forth in § 14-1006(2).

(d) The issuance of a grading permit shall be conditioned upon the approval of the erosion and sediment control plan by the City Manager. The city shall serve as the plan approval agency only, and in no instance are its regulations to be construed as designing erosion and sediment control or other storm water systems.

(e) No building permit shall be issued until the owner or operator has obtained a grading permit and is in compliance with the grading permit, where the same is required by this ordinance.

(f) All land disturbing activities shall employ adequate erosion and sediment control best management practices.

(2) Exemptions from plans submittal.

(a) The following activities shall not require submittal and approval of an erosion and sediment control plan, or small lot erosion and sediment control plan.

(i) Minor land disturbing activities such as home gardens and individual home landscaping, repairs or maintenance work;

(ii) Additions or modifications to existing, individual, single family structures;

(iii) Emergency work to protect life, limb or property, and emergency repairs, provided that the land area disturbed shall be shaped and stabilized in accordance with the requirements of this regulation.

(iv) Existing nursery and agricultural operations conducted as a permitted main or accessory use; and

(v) State and federal projects subject to the submission requirements of TDEC.

(b) All other provisions of this ordinance shall apply to the exemptions noted in 2(a) above.

14-1005. Erosion and sediment control design standards.

(1) Adoption of standards.

(a) The city adopts the Tennessee Erosion and Sediment Control Handbook as its erosion and sediment control design standards and best management practices standards, which is incorporated by reference into this chapter.

(b) The design, installation, operation and maintenance of construction site runoff control design standards and best management practices intended for erosion prevention and the control of sediment and other construction related wastes and/or pollutants shall be performed in accordance with the requirements of the Tennessee Construction General Permit. This requirement also applies to erosion and sediment control plan development and its contents, site inspection and documentation and reporting. Where the provisions of this section conflict or overlap with the Tennessee Construction General Permit and the Tennessee Erosion and Sediment Control Handbook, the regulation which is more restrictive or imposes higher standards or requirements shall prevail.

(c) Requirements for BMP design, installation, operation and maintenance, plan development and contents, site inspection, documentation and reporting presented in the Tennessee Construction General Permit and/or the Tennessee Erosion and Sediment Control Handbook may be updated and expanded upon, at the discretion of the City Manager, based on improvements in engineering, science, monitoring, and local maintenance experience.

(d) Erosion and sediment control BMPs that are designed, constructed and maintained in accordance with the BMP criteria presented in the Tennessee Construction General Permit and the Tennessee Erosion and Sediment Control Handbook shall be presumed to meet the minimum water quality performance standards required by the city.

(e) The additional requirements for discharges into impaired or Exceptional Tennessee Waters that are defined in the Tennessee Construction General Permit shall be implemented. The City Manager has the discretion to require BMPs that conform to a higher than minimum standard where deemed necessary.

(5) Other guidelines.

(a) No solid materials, including building materials, shall be discharged to waters of the state, except as authorized by a section 404 permit and/or Tennessee Aquatic Resource Alteration Permit.

(b) Off-site vehicle tracking of sediments is prohibited.

(c) Dust generation shall be minimized.

(d) For installation of any waste disposal systems on site, or sanitary sewer or septic system, the plan shall provide for the necessary sediment controls. Owners/operators must also comply with applicable state and/or local waste disposal, sanitary sewer or septic system regulations for such systems to the extent that these are located within the permitted area.

(e) Erosion and sediment control measures must be in place and functional before commencement of land disturbing activities, and must be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the work day, but must be replaced at the end of the work day or prior to a rain event, whichever is sooner.

(f) Riparian buffer zones shall be preserved in accordance with the Tennessee Construction General Permit.

14-1006. Erosion and sediment control plans.

(1) Requirements.

- (a) The erosion and sediment control plan shall present in detail the best management practices that will be employed to reduce erosion and control sedimentation.
- (b) The plan shall be sealed in accordance with the Tennessee Construction General Permit.
- (c) Best management practices presented in the plan shall conform to the requirements found in the Tennessee Erosion and Sediment Control Handbook, and shall meet or exceed the requirements of the Tennessee Construction General Permit.
- (d) The plan shall include measures to protect legally protected state or federally listed threatened or endangered aquatic fauna and/or critical habitat (if applicable).
- (e) The plan submitted shall be subject to any additional requirements set forth in the city's subdivision regulations, zoning ordinance, or other city regulations.
- (f) Construction of the site in accordance with the approved plan must commence within one year from the issue date of the grading permit, or the grading permit will become null and void and the plan must be resubmitted for approval.

(2) Plan contents. Erosion and sediment control plans shall include the components of a Storm Water Pollution Prevention Plan, as required by the Tennessee Construction General Permit, and any other information deemed necessary by the City Manager.

(3) Small lot erosion and sediment control plan contents. Small lot erosion and sediment control plans shall include the following information:

- (a) address/location of land disturbing activity;
- (b) owner/operator name and contact information;
- (c) building permit application number (if available);
- (d) locations of streams, wetlands, ponds, sinkholes, easements, existing drainage structures with respect to the site;
- (e) a description of other construction related waste controls that are expected to be implemented on-site. Such details should include, but are not limited to: the construction/location of the vehicle wash pads; litter and waste materials control; sanitary and chemical waste control, and concrete truck washout areas;
- (f) approximate disturbed area limits; and,
- (g) location of the stabilized construction entrance/egress.

(4) Application fee. Any person, firm or association making an application for approval of a site plan to the city shall file an application and shall pay an application fee to partially defray the administrative costs and shall pay a filing fee to the City of Elizabethton as follows:

- (a) Commercial site plans \$75.00 (b)
- Residential site plans \$50.00

14-1007. Compliance.

(1) Conformity to approved plan.

- (a) The owner or operator is responsible for maintaining compliance with the approved plan and grading permit.
- (b) The approved erosion and sediment control plan, shall be followed during the entire duration of construction at the site.
- (c) The City Manager may require reports or records from the permittee or person responsible for carrying out the plan to insure compliance.
- (d) No land disturbing activity shall be allowed to commence without prior plan approval by the City Manager.

- (e) Priority construction activities shall not commence until the owner/operator attends a pre-construction meeting with the City Manager.
- (2) Amendments to the approved plan.
- (a) Applicability. The owner or operator shall modify and update the plan in accordance with the requirements of the Tennessee Construction General Permit.
- (3) Inspections and Maintenance.
- (a) Maintenance, site assessments and inspections of the best management practices shall be implemented in the manner specified by the Tennessee Construction General Permit and the Tennessee Erosion and Sediment Control Handbook by qualified personnel that are provided by the owner/operator of the land disturbing activity.
- (b) The owner/operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the owner/operator to achieve compliance with this ordinance. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by an owner/operator only when necessary to achieve compliance with the conditions of this ordinance.
- (c) Any inadequate control measures or control measures in disrepair shall be replaced or modified, or repaired as necessary, in accordance with the inspection and maintenance timeframes stated in the Tennessee Construction General Permit and the maintenance guidance provided in the Tennessee Erosion and Sediment Control Handbook.
- (d) If sediment escapes the permitted property, the owner or operator shall remove off-site accumulations in accordance with the requirements of the Tennessee Construction General Permit.
- (e) Records shall be retained in accordance with the requirements of the Tennessee Construction General Permit.
- (4) Inspections by the city.
- (a) The City Manager or his/her designee shall have the right to enter onto private properties for the purposes of conducting unrestricted periodic inspections of all land disturbing activities to verify compliance with the approved plan or to determine whether such a plan is necessary.
- (b) The City Manager or his/her designee shall have the right to enter onto private properties for the purposes of investigating a suspected violation of this ordinance.
- (c) Failure on the part of an owner or operator to allow such inspections by the City Manager or his/her designee shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy, and / or civil penalties.
- (5) Enforcement, penalties, and liability.
- (a) Any person failing to have an approved erosion and sediment control plan prior to starting a land disturbing activity violates this ordinance.
- (b) Any owner or contractor who fails to follow an approved erosion and sediment control plan shall have violated this ordinance and shall be subject to a civil penalty, a stop work order, withholding of a certificate of occupancy, and civil damages.
- (c) If sediment escapes the permitted property, off-site accumulations of sediment that have not reached the stream shall be removed at a frequency sufficient to minimize offsite impacts. For example, fugitive sediment that has escaped the construction site and has collected in the street must be removed so that it is not subsequently washed into storm sewers and streams by the next rain or so that it does not pose a safety hazard to users of public streets. Removal of fugitive sediments shall be done by the owner/operator at the owner/operator's expense. This ordinance does not authorize remediation/restoration of a stream without consultation with TDEC, nor does it authorize access by the owner/operator to other private property.
- (d) The owner and/or contractor shall allow periodic inspections by the city of all land disturbing activities. Failure to allow such inspections shall be

considered a failure to follow the approved plan, and shall be subject to civil penalties, a stop work order, and withholding of a certificate of occupancy.

(e) In order to gain compliance, the City Manager may; notify other departments to deny service to the property until the site has been brought into compliance with this ordinance.

(f) Any person who violates any provision of this ordinance may also be liable to the city in a civil action for damages.

(g) The remedies provide for in this ordinance are cumulative and not exclusive, and shall be in addition to any other remedies provided by law.

(h) Neither the approval of a plan under the provisions of this ordinance nor compliance with the conditions of such plan shall relieve any person of responsibility for damage to other persons or property or impose any liability upon the city for damage to other persons or property.

(i) The City of Elizabethton, pursuant to Tennessee Code Annotated, § 68-221-1106, hereby declares that any person who violates this ordinance is subject to a civil penalty of not less than fifty (\$50.00) dollars ore more than five thousand (\$5,000.00) dollars per day for each violations. Civil penalties for any person who violates this ordinance involving property used or to be used solely as a single family residence, situated or to be situated on one (1) acre or less, shall be not less than fifty (\$50.00) dollars or more than five hundred (\$500.00) dollars per day for each day of violation. Each day of violation constitutes a separate violation.

(j) In assessing a civil penalty, the following factors may be considered:

- (i) The harm done to the public health or the environment;
- (ii) Whether or not the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
- (iii) The economic benefit gained by the violator from the violation.
- (iv) The amount of effort put forth by the violator to remedy this violation;
- (v) Any unusual or extraordinary enforcement costs incurred by the City of Elizabethton;
- (vi) Any equities of the situation which outweigh the benefit of the imposing any penalty or damage assessment.

(k) The City of Elizabethton may also assess damages proximately caused by the violator to the city, which may include any reasonable expenses incurred in investigating and enforcing violation of this ordinance or any actual damages caused by the violation.

(l) Appeal from any assessment of civil penalty or damages or both shall be to the Elizabethton Regional Planning Commission. A written petition for review of such damage assessment or civil penalty shall be filed by the aggrieved party in the office of the City Manager within thirty (30) days after the damage assessment or civil penalty is served upon the violator either personally or by certified mail, return receipt requested. Failure on part of the violator to file a petition for appeal in the office of the City Manager shall be deemed consent to the damage assessment or civil penalty and shall become final.

(m) Whenever any damage assessment or civil penalty has become final because of a violator's failure to appeal the city's damage assessment or civil penalty, the city may apply to the chancery court for a judgment and seek execution of the same.

Section 2. This Ordinance shall take effect ten (10) days from and after its final passage.

PASSED ON FIRST READING: October 11, 2012

PUBLIC HEARING: November 8, 2012

PASSED ON SECOND READING: November 8, 2012

CITY OF ELIZABETHTON, TENNESSEE

By: Curt Alexander
CURT ALEXANDER, MAYOR

ATTEST:

Jerome D. Kitchen
JEROME D. KITCHENS, CITY CLERK

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