

# CHAPTER 2 REGULATIONS

**2.1 PLANO EROSION CONTROL ORDINANCE** - This section contains excerpts from the City of Plano Erosion Control Ordinance, but may be incomplete and should be used for information purposes only. This chapter should not be used for legal interpretations or proceedings.

## CITY OF PLANO EROSION CONTROL ORDINANCE

### ARTICLE VI. EROSION CONTROL

#### Sec. 14-92. Definitions

The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

*Below ground installations* means activity that causes excess sediment laden water, concrete sawing wash water, wash water or drilling mud pumped from an excavation or structure and shall be treated as sediment laden runoff for erosion control purposes.

*Building Official* means the Building Official for the City of Plano or his designee.

*Construction Activities* means construction activities that require a building permit.

*Director of Development Services* means the Director of Development Services for the City of Plano or his designee.

*Erosion control plan* means a site plan with necessary details, showing the property where land disturbing activity will take place and showing the locations and types of devices, procedures and practices to be used to control erosion and sedimentation.

*Final approval* means completion of a project, site or building in accordance with City of Plano requirements and ordinances. In the case of a building, a Certificate of Occupancy is issued.

*Land disturbing activity* means any activity, including but not limited to excavation, planting, tilling, and grading, which disturbs 5,000 or more square feet of the natural or improved vegetative ground cover so as to expose soil to the erosive forces of rain, storm water runoff or wind. All installations and maintenance of franchise utilities such as telephone, gas, electric, etc., shall be considered land disturbing activities.

*Manual* means the City of Plano Erosion and Sediment Control Manual, as amended from time to time. A current copy of the Manual shall be kept on file in the Office of Development Services.

*Off-site borrow area* means a source of earth fill material used in the construction of embankments or other earth fill structures, that is located on another parcel of property other than where the principal construction is occurring.

*Off-site sedimentation* means deposit of soil material beyond the limits of the property undergoing land disturbing activity or in City streets, alleys or drainage facilities in an amount sufficient to constitute a threat to public safety and comfort.

*Off-site spoil area* means an area on another parcel of property, other than where the principal construction is occurring, where excess earth, rock or construction material is disposed of.

*Permanent erosion control devices* means devices or practices installed prior to final approval and maintained after final approval to prevent or minimize the erosion and deposit of soil materials. Such devices may include, but shall not be limited to, permanent seeding, sod, storm drain channels, channel linings, storm drain pipes, outlet velocity control structures and storm water detention structures.

*Permanent ground cover* means permanent vegetative cover on all bare soil areas of a property not covered by a permanent structure or landscaping improvements, including but not limited to, live sod, perennial grasses or other materials which lessen runoff and soil erosion on the property.

*Phased occupancy* means use or inhabitation of a single structure or other portion of a project as such structure or portion thereof is completed, but before the project as a whole is fully completed and finally approved by City.

*Related land area* includes the property where the principal land disturbing activity is taking place, all adjacent property, off-site borrow areas, off-site spoil areas, off-site properties necessary for required utility extensions, and off-site areas for required street improvements.

*Responsible party* means a business entity, franchised utility company, developer, property owner, contractor or holder of a building permit who is required to comply with the terms of this Article.

*Staging area* means an on-site or off-site location used by a Contractor to store materials for a project, to assemble portions of equipment or structures, to store equipment or machinery, to park vehicles, or for other construction related uses.

*Stop work order* means the suspension of all City permits with no approvals or inspections of work for the site or project being performed.

*Temporary erosion control devices* means devices installed or practices implemented and maintained during land disturbing activities to prevent, minimize or control the erosion and deposit of soil materials.

**Sec. 14-93. Erosion Control Required.**

(a) Application of Article. A Responsible Party engaging in any land disturbing activity or any construction activities shall prepare an Erosion Control Plan and submit that Plan to the City for approval. This Article shall apply regardless of whether a Responsible Party is required to obtain a permit from the City in order to conduct such land disturbing or construction activity. The Responsible Party shall also be held liable for violations of this Article committed by third parties engaging in activities related to the Responsible Party's project.

(b) Erosion Control Plan Implementation and Compliance. Each Responsible Party shall implement and maintain the erosion control measures shown on its approved Erosion Control Plan in order to minimize the erosion and the transport of silt, earth, topsoil, etc., by water runoff or construction activities, beyond the limits of the Responsible Party's site onto City streets, drainage easements, drainage facilities, storm drains or other City property prior to beginning any land disturbing activity.

(c) Off-Site Borrow, Spoil and Staging Areas. Where applicable, off-site borrow areas, spoil areas and construction staging areas shall be considered as part of the project site and shall be governed by this Article.

(d) Related Land Areas. The erosion control requirements of this Article shall apply to all related land areas. Additionally, when land-disturbing activity occurs on a project, all disturbed land areas related to the project shall have permanent erosion control established before final occupancy of structures located thereon or final acceptance of the subdivision may be obtained. This section applies whether or not a building permit is required.

(e) Below Ground Installations. All discharges resulting from below ground installations shall be passed through City approved erosion control device(s) or removed from the site and properly disposed of.

#### **Sec. 14-94. Erosion Control Plans.**

(a) Plan Requirements Generally. Each Erosion Control Plan required by this Article shall clearly identify all erosion and sediment control measures to be installed and maintained throughout the duration of the project for which that Plan is submitted. The Responsible Party shall install and maintain erosion control devices in accordance with his City approved Erosion Control Plan as required by this Article.

#### **Sec. 14-95. Non-Residential and Multi-Family Construction.**

When construction or land disturbing activities are conducted as part of a Non-Residential or Multi-Family construction project, permanent erosion control shall be established prior to the occupancy of any non-residential or multi-family structure. Phased occupancy will be allowed only when there are no outstanding erosion control violations for the project for which the request is made.

## **Sec. 14-96. Residential Subdivisions-Compliance.**

In addition to the other requirements of this Article, when construction or land disturbing activities are conducted as part of a Residential Subdivision project, the following shall apply:

(a) Erosion Control Deposit Account. Prior to approval of the final plat by the Planning and Zoning Commission, the Developer shall submit an Erosion Control Plan for approval by City and shall pay an erosion control deposit to the City in the amount of \$100.00 per lot. The deposit shall be posted to ensure implementation and continued maintenance of the City approved Erosion Control Plan for the development as required by this Ordinance. No inspection of any type may be performed on a project or portion thereof until a City approved Erosion Control Plan is implemented by the Responsible Party.

(b) Final Acceptance. Permanent erosion control devices and when applicable, temporary erosion control devices, as specified in the approved Erosion Control Plan shall be installed and maintained prior to final acceptance of a subdivision. The Developer for such subdivision shall continue to maintain all temporary erosion control devices until permanent erosion control has been established on all those lots within the subdivision for which a building permit has not been issued.

(c) Transfer of Property by Developer. If the Developer sells all of the lots in a subdivision to one purchaser, that purchaser becomes the Responsible Party for the subdivision, is liable for violation of this Article and shall post an erosion control deposit as required by this Article. The balance remaining in the original Developer's account shall be released as provided herein upon the submission of written proof of transfer of lots or a new erosion control deposit by the purchaser. As required by this Article, the such purchaser shall post an erosion control deposit with City.

(d) Deductions from Erosion Control Deposit Account/Stop Work Orders/Citation. City shall inspect the erosion control devices located at a site for compliance with the approved Erosion Control Plan submitted by a Developer. If a Developer fails to implement or maintain erosion control devices as specified in his approved Erosion Control Plan, City shall provide such party with written notice of noncompliance identifying the nature of the noncompliance. Such notice shall also inform the Developer of the circumstances under which a deduction from his deposit account will be made and the time frame for the filing of an appeal of such action by City. The Developer shall have twenty-four (24) hours to bring his erosion control devices into compliance with the approved Erosion Control Plan for the site to which notice of noncompliance was issued. Correction shall include sediment clean-up, erosion control device repair, erosion control device maintenance and/or installation of additional erosion control devices to prevent re-occurrence of the violation. The 24-hour cure period may be extended for inclement weather or other factors at the discretion of the Director of Development Services.

At the end of the twenty-four (24) hour cure period, City shall re-inspect the site and shall deduct a re-inspection fee of \$150.00 from the Developer's erosion control deposit account. If at the time of such re-inspection, the erosion control devices at the site have not been brought into

compliance with the approved Erosion Control Plan, City may issue a stop work order and issue a citation for each violation of this Article. All deductions from a Developer's erosion control deposit account may be appealed as provided in Section 14-101 of this Ordinance.

(e) Erosion Control Deposit Account Balance - Deposit Refund. After building permits have been issued for seventy-five percent (75%) of the lots within the development, the Developer may request the return of the remainder of his deposit by submitting a written request to the Development Services Department. However, the Developer shall continue to maintain temporary erosion control devices on those remaining lots for which building permits have not been issued and for any other areas upon which permanent erosion control has not been established. The balance of the deposit remaining in an account after deductions for all violations have been made shall be refunded within thirty (30) days of receipt of the written request for refund along with a list of all deductions made from his deposit account. The Responsible Party shall have the right of appeal as set forth in Section 14-101 of this Chapter.

(f) Erosion Control Deposits. Erosion control deposits posted pursuant to the requirements of this Article shall not accrue interest.

#### **Sec. 14-97. Franchised Utility Companies.**

Subject to the terms of its franchise agreement with City, including but not limited to terms regarding permits, a franchised utility company engaging in land disturbing activities within the City of Plano shall comply with the following:

A. Erosion Control Plan. Prior to beginning any land disturbing activity or upon the effective date of this ordinance, an Erosion Control Plan shall be submitted for approval by the City.

B. Stop Work Order/Citation. City shall inspect the erosion control devices located at a site for compliance with the approved Erosion Control Plan submitted for such site. If a Responsible Party fails to implement or maintain erosion control devices as specified in his approved Erosion Control Plan, City shall provide such party with written notice of noncompliance identifying the nature of such noncompliance. The Responsible Party shall have twenty-four (24) hours to bring his erosion control devices into compliance with the approved Erosion Control Plan for the site where the violation occurred. Correction shall include sediment clean-up, erosion control device repair, and erosion control device maintenance. The 24-hour cure period may be extended for inclement weather or other factors at the discretion of the Director of Development Services.

At the end of the 24-hour cure period, City shall re-inspect the site. If at the time of such re-inspection, the erosion control devices at the site have not been brought into compliance with the approved Erosion Control Plan, City may issue a stop work order and issue a citation for each violation of the City's erosion control requirements. To obtain a re-inspection for removal of the stop work order, a request for re-inspection must be submitted.

**Sec. 14-98. Farming and Ranching Activities.**

Prior to beginning any land disturbing activity or upon the effective date of this ordinance, a Responsible Party engaging in land disturbing activities for farming and ranching purposes shall submit an Erosion Control Plan for approval by the City. The approved Erosion Control Plan shall be implemented and erosion control devices shall be maintained as specified in the Plan. A Responsible Party engaging in farming or ranching activities shall comply with all other general requirements of this Ordinance.

**Sec. 14-99. Residential Lots with a Building Permit.**

When land disturbing activities are conducted on a residential lot for which a building permit must be issued, the Responsible Party shall comply with the following:

A. Erosion Control Plan. Prior to approval of a building permit for a residential lot by the City, the Contractor or other Responsible Party obtaining the building permit shall submit an Erosion Control Plan for approval by the City. No inspection may be performed on a project until a City-approved Erosion Control Plan is implemented.

B. Stop Work Order/Citation. City shall inspect the erosion control devices located at a site for compliance with the approved Erosion Control Plan submitted for such site. If a Responsible Party fails to implement or maintain erosion control devices as specified in his approved Erosion Control Plan, City shall provide such party with written notice of noncompliance identifying the nature of such noncompliance. The Responsible Party shall have twenty-four (24) hours to bring his erosion control devices into compliance with the approved Erosion Control Plan for the site where the violation occurred. Correction shall include sediment clean-up, erosion control device repair, erosion control device maintenance, and/or installation of additional erosion control devices to prevent re-occurrence of the violation. The 24-hour cure period may be extended for inclement weather or other factors at the discretion of the Building Official.

At the end of the 24-hour cure period, City shall re-inspect the site and may assess a re-inspection fee. If at the time of such re-inspection, the erosion control devices at the site have not been brought into compliance with the approved Erosion Control Plan, City may issue a stop work order and issue a citation for each violation of the City's erosion control requirements. When a stop work order has been issued, a re-inspection fee shall be assessed. To obtain a re-inspection for removal of the stop work order, a request must be submitted therefor and a re-inspection fee, as set by the Building Inspection Department of the City of Plano, shall be paid.

C. Removal of Erosion Control Devices. Upon final occupancy or upon establishing permanent ground cover on a lot, all temporary erosion control devices shall be removed.

**Sec. 14-100. Enforcement.**

(a) Violations. It shall be an offense for a Responsible Party or a third party performing work on a project to violate any of the requirements of this Article, including, but not limited to, the following:

- (1) Conducting any land disturbing or construction activity without an approved Erosion Control Plan for the location where the violation occurred.
- (2) Failing to install erosion control devices or to maintain erosion control devices throughout the duration of land disturbing activities, in compliance with the approved Erosion Control Plan for the location where the violation occurred.
- (3) Failing to remove off-site sedimentation that is a direct result of land disturbing activities where such off-site sedimentation results from the failure to implement or maintain erosion control devices as specified in an approved Erosion Control Plan for the location where the violation occurred.
- (4) Allowing sediment laden water resulting from below ground installations to flow from a site without being treated through an erosion control device.
- (5) Failing to repair damage to existing erosion control devices, including replacement of existing grass or sod.

(b) Notice of Violation. Written notice of violation shall be given to the Responsible Party or his job site representative as identified in the Erosion Control Plan for a site. Such notice shall identify the nature of the alleged violation and the action required to obtain compliance with the approved Erosion Control Plan.

(c) Class C Misdemeanor. Any person, firm, or corporation violating any of the provisions or terms of this Article shall be deemed guilty of a Class C misdemeanor and, upon conviction thereof, be subject to a fine not exceeding \$500 for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

#### **Sec. 14-101. Appeals.**

(a) Appeal to Director of Development Services. Upon notice of noncompliance, a Responsible Party may appeal the City's decision to take deductions from his erosion control deposit pursuant to Section 14-96 of this Article, by filing a written appeal to the Director of Development Services within seven (7) days of City's written notice of its intent to make such deduction for costs as allowed herein. An appeal filed pursuant to this section shall specifically state the basis for the aggrieved party's challenge to the City's authority to take deductions under this Article.

(b) Standard for Appeals. When reviewing an appeal filed pursuant to this Section, the Director of Development Services shall evaluate all evidence submitted. The burden of proving that a violation of this Article occurred shall be on the City. The City shall provide evidence sufficient to reasonably support a determination that the Responsible Party failed to comply with the requirements of this Article as alleged by the City.

(c) Issuance of Opinion by Director. Decisions of the Director of Development Services shall be issued within twenty (20) days of City's receipt of the written appeal. Decisions of the Director of Development Services shall be final.

**2.2 USEPA - NPDES PERMIT PROGRAM** - Under current Federal law and EPA/State Regulations, all owners/operators of storm water discharges from industrial activities must have applied for and be operating pursuant to a NPDES permit, or risk Federal penalties. The regulations define "storm water discharges associated with industrial activity" to include storm water discharges from construction activities (including clearing, grading and excavation activities) that result in the disturbance of five or more acres of total land area, including areas that are part of a larger common plan of development or sale.

The EPA administers the NPDES program under the Clean Water Act (CWA), but a provision in the CWA allows states to request authorization to administer the NPDES program instead of the EPA. States that develop an EPA approved plan can become responsible for issuing permits and administering the NPDES program locally. To date the State of Texas has not developed an EPA approved plan and is not delegated to issue NPDES permits. Dischargers in Texas must comply with EPA's regulations which mandate that baseline requirements be met.

Two kinds of permits are issued under the NPDES program. One is an individual permit tailored to fit the specific requirements of a particular facility, while the second, a general permit, provides umbrella-like coverage to a large number of facilities. General permits have been established by the EPA with generic requirements for sediment and erosion control, storm water management, and other controls. Coverage under the general permit will normally be available for all construction activities. The general permit is also the quickest and easiest to obtain.

The operator of a construction site must submit a Notice of Intent (NOI) for coverage under the general permit, prior to the start of construction. For the purposes of this permit, "operator" is the party or parties that either individually or taken together meet the following two criteria:

- They have operational control over the site specifications; and
- They have day to day operational control of those activities at the site necessary to ensure compliance with plan requirements and permit conditions.

In many instances, more than one party will have to submit an NOI for the same project in order to satisfy both criteria.

Currently all NOI's prepared for activities within the State of Texas shall be sent to:

Storm Water Notices of Intent  
P.O. Box 1215

Newington, VA 22122

Due to ongoing changes in Federal regulations always check the NOI form for the up-to-date mailing address.

Sites operating under approved state or local sediment or erosion control plans, are required to submit signed copies of the NOI to the approving state or local agencies, as well. Once the NOI is submitted for a general permit, the construction activities are automatically covered and construction may begin within 2 days, unless contacted by EPA . An actual permit will not be issued, although a specific permit number will be assigned to each application.

When the General permit is used a Storm Water Pollution Prevention Plan (SWPPP) is required. The SWPPP consists of an erosion and sediment control plan along with an accompanying report that outlines the methods that will be employed to reduce pollution at the site. The SWPPP shall be prepared in accordance with design guidelines acceptable to the EPA by a Registered Professional Engineer, licensed in the State of Texas. The purpose of the SWPPP is to identify potential sources of erosion and pollution to storm water discharge, and to provide mechanisms to reduce those pollutants. Although the plan is not to be submitted with the NOI, an applicant is required to prepare such a plan prior to NOI submission. Also the erosion and sediment control plan is required by the City of Plano's erosion control ordinance for land disturbing activities.

Persons required to comply with NPDES requirements under the storm water application rule could be subject to enforcement by the EPA. When required to comply, the permittee is subject to enforcement for breaching any condition of the General Construction Permit. In Texas, the EPA regional office is the primary regulating agency and will undertake enforcement actions where warranted. There are four methods of enforcement that are typically used. They are administrative orders, civil actions, criminal actions, and citizen suits.

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