

ORDINANCE NO. 01-2007

**AN ORDINANCE OF THE CITY OF ELIZABETHTOWN, KENTUCKY
ESTABLISHING EROSION PREVENTION AND SEDIMENT CONTROL**

BE IT ORDAINED by the City of Elizabethtown, Kentucky that from and after the passage, approval and publication of this Ordinance that Erosion Prevention and Sediment Control for the City of Elizabethtown is defined and shall be administered as prescribed herein:

Section I. Introduction / Purpose

The purpose of this Ordinance is to safeguard persons, protect property, and prevent damage to the environment in the City of Elizabethtown. This ordinance will also promote the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs the soil or results in the movement of earth within the City of Elizabethtown.

During the construction process, soil is highly vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Left unchecked, eroded soil migrates through the entire stormwater system and necessitates the early maintenance and/or repair of inlet boxes, storm sewers, ditches, creeks, and other stormwater features. Streets with sediment deposits are slick and hazardous to the motoring public. Clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat.

Through the Clean Water Act (CWA), the United States Environmental Protection Agency (EPA) and the Kentucky Division of Water (KYDOW) established Phase II regulations and mandated Erosion Protection and Sediment Control (EPSC) procedures for construction within the Commonwealth of Kentucky.

Section II. Definitions

Best Management Practice (BMP)	A measure that is implemented to protect water quality and reduce the potential for pollution associated with storm water runoff.
Blue Line Streams	Streams that are represented on the United States Department of the Interior Geological Survey 1:24,000 quadrangle maps.
Channel	A natural or constructed/manmade watercourse with definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow is that water which is flowing within the limits of the defined channel.
City	City of Elizabethtown, Kentucky

Clean Water Act (CWA)	Federal Regulation that prohibits the discharge of pollutants to Waters of the United States unless said discharge is in accordance with an NPDES permit.
Clearing	Any activity that removes the vegetative surface cover to expose erodible soil.
Critical Area	A site difficult to stabilize due to exposed subsoil, steep slope, extent of exposure, or other conditions.
Detention	The temporary delay of storm runoff prior to its discharge into receiving waters.
Developer	Any individual, firm, corporation, association, partnership, or trust involved in commencing proceedings to effect development of land.
Drainage Basin	A part of the surface of the earth that is occupied by and provides surface water runoff, consisting of a surface stream or a body of impounded surface water together with all tributary surface streams, bodies of impounded surface water, and contributing land area.
Drainage Way	Any channel that conveys surface runoff throughout the site.
Drainage/Dry Well	A bored, drilled, driven, dug, or naturally occurring shaft or hole with a depth greater than the largest surface dimension; used to drain surface water into a subsurface formation.
Ephemeral Stream	A stream or part of a stream that flows only in direct response to rain, other forms of precipitation, and snowmelt. Its channel is above the water table at all times.
Erosion	The wearing away of land surface by the action of wind, water, gravity, ice, or any combination of those forces.
EPSC	Erosion Prevention and Sediment Control
EPSC Contractor	A person or other entity responsible for the installation, inspection, record-keeping, and maintenance of erosion and sediment control BMPs.
EPSC Plan	A set of plans indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.
Excavation	Any portion of land surface or area from which earth has been removed or will be removed; the depth below original ground surface to remaining surface.

Existing Grade	The slope or elevation of existing ground surface prior to cutting or filling.
Fill	Portion of land surface or area to which soil, rock, or other materials have been or will be added; height above original ground surface after the material has been or will be added.
Finished Grade	The final slope or elevation of the ground surface after cutting or filling.
Flood Plain	The relatively flat or lowland area adjoining a watercourse or a body of water which has been or may be covered temporarily by floodwater. Flood plains are often found along rivers, streams, creeks, ditches, and stormwater piping systems and in proximity to lakes, ponds, and sinkholes.
Grading	Any stripping, cutting, filling or stockpiling of earth or land, including the land in its cut or filled condition, to create new grades.
Impervious Surface	A term applied to any ground or structural surface that water cannot penetrate or through which water penetrates with great difficulty.
KYDOW General Permit (KGP)	An agreement between the KYDOW, the City, and the Permittee which specifies conservation practices that shall be implemented in conjunction with the construction activities specified in the terms and conditions of the general permit.
Land Disturbance	The purposeful act of clearing, grubbing, excavating or grading; disrupting ground surface by or for construction activities, including construction access/roads, staging, and storage sites producing significant areas of exposed soil and soil piles.
National Pollutant Discharge Elimination System (NPDES)	EPA's program to control the discharge of pollutants to waters of the United States. NPDES is a part of the Federal CWA, which requires point and non-point source dischargers to obtain permits. These permits are referred to as NPDES permits nationally and KPDES permits within the Kentucky.
Notice of Intent (NOI)	A formal notice to the EPA or the KYDOW that a construction project seeking coverage under a General Permit is about to begin.
Notice of Termination (NOT)	A formal notice to the KYDOW that construction project is complete and seeking release for the EPSC and the State General Permit.
Perimeter Control	A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

Permit Phasing	Clearing a parcel of land sequentially in distinct phases, with the stabilization of each phase completed before the clearing of the next.
Permittee	Shall mean the “Person Responsible for the Land Disturbing Activity”.
Plot Plan	A limited plan depicting proposed improvements and other physical features of the site.
Public Storm Drain	Drainage system that is maintained by the City.
Sediment	Solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, or gravity as a product of erosion.
Sediment Control	Measures that prevent eroded sediment from leaving a site.
Site	A parcel or contiguous parcels of land where grading work is performed that is subject to erosion of sediments as a result of cutting, filling, grading, or other disturbance of the soil.
sMS4	Small Municipal Separate Storm Sewer System as established in the Kentucky Pollution Discharge Elimination System (KPDES)
Stabilization	The use of practices that prevent exposed soil from eroding.
Start of Construction	The first land-disturbing activity associated with a development, including land preparation such as clearing, grading, and filling; stockpiling topsoil; installation of streets and sidewalks; utilities installation; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.
Storm Water Management Plan (SWMP)	A plan based on hydrologic and hydraulic calculations that determines flood stage and required improvements to minimize impact from development. The SWMP shall be prepared by or under the direction of a licensed professional engineer.
Storm Water Pollution Prevention Plan (SWPPP)	A plan required by storm water regulations or permits that includes site map(s), an identification of construction/contractor activities that could cause pollutants in the storm water, and a description of measures or practices to control these pollutants. This is synonymous with the term “BMP Plan” used in the KYDOW General Permit. The SWPPP shall be prepared by or under the direction of a licensed professional engineer.
Temporary Protection	Short-term stabilization of erosive or sediment producing areas.

Vegetative Protection	Stabilization of erosive or sediment producing areas by covering the soil with any of the following materials: permanent seeding for long-term vegetative cover, short-term seeding for temporary vegetative cover, sodding, producing areas covered with a turf of perennial sod-forming grass, tree planting, or other planting.
Watercourse	Any body of water, including, but not limited to lakes, ponds, rivers, streams, and other bodies of water as delineated by the City, State, or Federal government.
Waterway	A channel that directs surface runoff to a watercourse or to the public storm drain.

Section III. Permits

- A) Permits through the City are required for site construction projects and/or land disturbances. Depending on the amount of disturbed area, various permits are necessary. Permit levels and parameters are as follows:
- 1) **Level 1:** Site construction less than one disturbed acre, increased impervious area less than or equal to 6,000 square feet, and slopes less than 6% requires filing for a permit. This permit shall be accompanied by a Plot Plan with Erosion Prevention and Sediment Control measures indicated. All permits for commercial, industrial, and multi-family residential sites shall include a grading plan. All permits in proximity to a major stormwater feature, such as a creek or stormwater culvert, shall include a grading plan showing the proposed minimum finished floor (opening) relative to the anticipated high water elevation.
 - 2) **Level 2:** Site construction less than one disturbed acre and increased impervious area greater than 6,000 square feet or with slopes greater than or equal to 6% requires filing for a permit. The permit shall be accompanied by a Grading Plan and an Erosion Prevention and Sediment Control Plan.
 - 3) **Level 3:** Site construction of one disturbed acre or greater, including a linear disturbance from utility construction, requires filing for a permit accompanied by a Grading Plan, an Erosion Prevention and Sediment Control Plan, a SWPPP Plan, and a copy of the Kentucky Division of Water Notice of Intent (NOI) for the site.
 - 4) **Level 4:** Utility Companies shall apply for a general permit from the City for land disturbance operations. This permit must be renewed every 5 years. A NOI shall be obtained from the KYDOW for disturbances of one acre or greater.
- B) Notice to the City is required that the contractor has coordinated with the KYDOW and the US Army Corps of Engineers to determine whether permits are required from those agencies before construction begins.
- C) No permit through the City is required for the following activities:
- 1) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
 - 2) Existing nursery and agricultural operations conducted as a permitted main or accessory use. However, permitting through regional, state, and federal agencies

may be required.

- D) Each application shall bear the name, address, and telephone information for the following parties: the owner, the developer of the site, the general contractor for the site, the EPSC contractor, and any engineering consultant retained for work on the site.
- E) Each application shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the EPSC Plan and the EPSC contractor shall be responsible for implementing and maintaining all aspects of that plan.
- F) The application shall be accompanied by the permit fee as established by this ordinance: Level 1 - \$25, Level 2 - \$50, Level 3 - \$100; and Level 4 – in accordance with the existing franchise agreement.

Section IV. Review and Issuance

- A) The City will review each permit application to determine its conformance with the provisions of this ordinance. Acceptance indicates that minimum requirements or intent are met and does not imply a guarantee of performance. Based on the review of the permit application, the City will:
 - 1) Accept the permit application
 - 2) Accept the permit application subject to such reasonable conditions as may be necessary to meet the requirements or intent of the objectives of this ordinance, and issue the permit subject to these conditions; or
 - 3) Deny the permit application, indicating the reason(s) and procedure for submitting a revised application and/or submission.
- B) The City reserves the right to inspect the site prior to any construction activity in furtherance of the review process.
- C) The City acceptance of the permit is for general compliance with the KPDES SMS4 program. The designer is ultimately responsible for the specific details of design of the EPSC plan. The property owner remains responsible for the implementation, maintenance, and compliance recordkeeping for the EPSC plan.

Section V. Erosion Prevention and Sediment Control Plan

- A) The EPSC Plan shall include the following:
 - 1) A natural resources map identifying soil types, forest cover, topography, and other natural features of concern. This map should be to scale equivalent to balance of submittal.
 - 2) A schedule of events for the construction of the development site, including stripping and clearing, rough grading, construction of utilities, infrastructure, final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary EPSC measures, and establishment of permanent vegetation.
 - 3) All EPSC measures necessary shall be shown on the plan by location and referred

to by a legend for all phases of construction. Depending upon the complexity of the project, the drafting of interim plans may be required at the close of each season. Multiple EPSC plan sheets may be necessary to best convey requirements for each phase.

- 4) Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and type and quantity of mulching for both temporary and permanent vegetative control measures.
 - 5) Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.
- B) Modifications to the plan shall be processed and accepted or denied in the same manner as Section IV of this ordinance and authorized by the City by written authorization to the permittee, and shall include:
- 1) Major amendments of the EPSC plan shall be submitted to the City for acceptance.
 - 2) Field modifications of a minor nature shall require authorization by the City and shall be noted and dated on the EPSC record drawings. Where minor modifications prove to be ineffective, the EPSC contractor shall return to the intent of the original plan within seven (7) days of notification by the inspector.

Section VI. Design Requirements

- A) The plan for any permitted land disturbance operation shall be designed using sound engineering practice and shall meet the minimum criteria set forth in the most recent version of the City's Subdivision Regulations, Storm Water Manual, and other City stormwater design guidelines. The plan, when implemented, shall be sufficient to control erosion and prevent sediment from leaving the site. Cut and fill slopes shall be no greater than 3:1, except as approved by the City to meet other community or environmental objectives.
- B) Clearing and grading of natural resources, such as forests and wetlands, and other natural features of concern shall not be permitted, except when in compliance with all sections of this ordinance as well as any regional, state and federal regulation. Clearing techniques that retain natural vegetation, drainage patterns, and buffers along streams as described by the City Storm Water Manual, shall be used where possible.
- C) Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.
- D) Phasing shall be required on all sites disturbing greater than 50 acres, with the size of each phase to be established at plan review and approved by the City.
- E) Erosion Prevention BMP requirements:
- 1) Soil stabilization shall be completed within fourteen days of final grade work. If an area is left inactive for twenty-one days or more the area shall have temporary stabilization.
 - 2) If seeding or other vegetative erosion prevention methods are used, vegetation

shall become established within three weeks. If a satisfactory stand of vegetation is not established, the site shall be reseeded or an approved non-vegetative employed.

- 3) Special techniques such as rip rap, turf reinforcement, armoring, and other stabilization methods that meet the design criteria outlined in the City Storm Water Manual shall be used on steep slopes or in drainage ways to ensure stabilization.
 - 4) Soil stockpiles must be stabilized or covered and have sediment control measures in place to control sediment movement. Stock-piles left for 21 days or more shall have temporary stabilization or vegetation established.
 - 5) When no construction is planned during the winter months, the entire site shall be stabilized at the close of the construction season. A heavy mulch layer, or other approved stabilization method that does not rely on seed germination, shall be placed to control sediment and prevent erosion.
 - 6) Minimize clearing and grading to the smallest possible area. Preserve existing vegetation and trees to the maximum extent possible.
 - 7) Areas to be left undisturbed by the proposed construction shall be clearly noted and delineated on the plans and protected with temporary fencing, or other approved barrier, on the site.
 - 8) Vegetative buffer strips in combination with other perimeter controls shall be used for the protection of adjacent properties, watercourses, and rights of way.
 - 9) Measures shall be implemented to control sedimentation deposits into drainage structures and features, receiving water bodies, streets, street right-of-ways, adjacent properties, and natural karst features,.
 - 10) In no case shall the placement of temporary or final seeding exceed 120 days after the original disturbance.
- F) Sediment Control BMP requirements:
- 1) Dust control techniques shall be employed to prevent the blowing of dust by air movements during land disturbance, demolition, and other construction activities.
 - 2) Diversion of upland runoff past disturbed slopes shall be implemented when effective.
 - 3) Settling basins, sediment traps, tanks and/or perimeter controls shall be implemented as required to control sediment, consistent with the City Storm Water Manual.
 - 4) Effective debris and trash management shall be required.
- G) Waterway, watercourse, ephemeral stream, and public storm drain protection requirements shall include the following:
- 1) When a watercourse will be crossed regularly during construction, install a temporary stream crossing as approved by the Kentucky Division of Water and/or the City.
 - 2) Stabilization of the watercourse channel before, during, and after any in-channel work.
 - 3) Design of all on-site storm water conveyance channels in accordance with criteria outlined in the City Storm Water Manual, the Subdivision Regulations, other City stormwater design guidelines, and sound engineering practice.
 - 4) Stabilization adequate to prevent erosion at the inlets and outlets of all

pipes and paved channels.

- H) Construction site access requirements designed to minimize the deposit of sediment or other materials on public streets and rights of way shall include:
- 1) Continuous access via a stabilized rock entrance, constructed in accordance with the City Storm Water Manual.
 - 2) A tire wash rack shall be required by the City as necessitated by site traffic.

Section VII. Inspection

- A) Plans accepted by the City for site earthwork, including grading, stripping, excavating, and filling, shall be maintained at the construction site throughout the duration of the work. After EPSC measures have been installed, the contractor shall contact the City to request a Preconstruction Inspection.
- B) Upon completion of the Preconstruction Inspection and approval of EPSC measures, the permit will be issued and site construction may commence.
- C) The City shall make inspections as deemed necessary to ensure the EPSC measures are being properly implemented and maintained during construction. If minimum requirements for the EPSC are not met, the permittee shall be notified and enforcement actions shall be taken.
- D) The permittee or his/her agent shall make regular inspections of all control measures to determine the overall effectiveness of the EPSC plan and the need for additional control measures. The frequency of these inspections shall be once every seven (7) calendar days and before and after storm events of a half-inch (1/2") of precipitation or more. All inspections shall be documented in written form and kept on the construction site by the EPSC contractor. Reports should be available for City, State, or Federal inspectors to review upon request during a site inspection.
- E) The City or designated agent shall, by execution of the permit, be granted the right to enter the property of the applicant as deemed necessary to make regular inspections and to assure the validity of the reports filed under sub-section D above.

Section VIII. Enforcement

- A) Stop-Work Order; Revocation of Permit
In the event that any person holding a site development permit pursuant to this ordinance violates the terms of the permit or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of the public near the development site or vicinity so as to be materially detrimental to the public welfare or injurious to property or improvements in the vicinity, the City may suspend or revoke the site development permit.
- B) Violation and Penalties
No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this

ordinance. Each day of violation of this ordinance may be considered a separate occurrence. Any person, partnership or corporation violating this ordinance may be cited for a civil offense pursuant to the Code Enforcement Board Ordinance and Fine Schedule. The civil fine shall be paid directly to the City of Elizabethtown. If the fine is not paid within thirty (30) days from the date of notification, then the City may recover said fine in a civil action in a court of proper jurisdiction.

The citing officer may at his or her discretion cite the offender to appear before the Code Enforcement Board. The City may also obtain injunctions or abatement orders to insure compliance with this ordinance.

Nothing in this section shall negate the ability of the City to pursue applicable civil or criminal penalties as prescribed by law.

It shall also constitute a violation of this ordinance to damage or vandalize site erosion prevention and sediment control measures that are in place. In addition to any other penalty authorized by this section, any person, partnership, or corporation convicted of violating any of the provisions of this ordinance shall be required to bear the expense of such restoration.

Section IX. Severability

If any provision, clause, sentence, or paragraph of this Ordinance or its application to any person or factual context shall be held invalid, that invalidity shall not affect the remaining provisions of this Ordinance, which may be given effect independent of the provision or application declared invalid.

Section X. Effective Date

This Ordinance shall be effective the 12th day of March, 2007.

BE IT FURTHER ORDAINED that the Mayor of the City of Elizabethtown and/or his designate be and he is hereby authorized and directed to take all steps necessary to perfect this Ordinance.

READ THE FIRST TIME this 2nd day of January, 2007.

RE-READ THE FIRST TIME this 20th day of February, 2007

READ, ADOPTED AND APPROVED this 5th day of March, 2007.

DAVID WILLMOTH, JR., MAYOR

ATTESTED TO:

MARY CHAUDOIN, CITY CLERK