

**BUSINESS OF THE CITY COUNCIL
WINDSOR HEIGHTS, IOWA
AGENDA STATEMENT**

Item No. 7
For Meeting of 10/15/07

ITEM TITLE: Phase II Stormwater Ordinances – Construction Site Erosion and Sediment Control – Ordinance 07-04 – final reading

CONTACT PERSON(S): Marketa George Oliver, City Administrator
John Wiedman, Public Works


SUMMARY EXPLANATION

The 1987 amendments to the Clean Water Act required the US EPA to establish the National Pollutant Discharge Elimination System (“NPDES”) permitting program. In December 1999, the EPA published Phase II of the NPDES program titled “Storm Water Phase II Final Rule.” Phase II expands the program started in Phase I by automatically requiring NPDES storm water permits for US Census defined “urbanized areas”. All areas identified in the 1990 US census and the 2000 census maps as “urbanized areas” are required to have a Phase II permit.

The Phase II regulations mandate six minimum control measures for inclusion in the NPDES permit. These measures are:

- Public Education and Outreach,
- Public Involvement/Participation,
- Illicit Discharge Detection and Elimination,
- Construction Site Runoff Control,
- Post-Construction Stormwater Management in New and Redevelopment, and
- Pollution Prevention/Good Housekeeping for Municipal Operations.

Ordinance 07-04 addresses the requirement for the City to monitor construction run-off and sediment control and creates a permitting process, mirroring the State NPDES Permit #2, referred to as a CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL permit. In addition, the ordinance transfers to the City primary responsibility for inspection, monitoring and enforcement procedures to promote applicants’ compliance with State NPDES General Permits #2 and City COSESCO Permits.

Resolution _____ Ordinance _____ Contract _____ Other (Specify) _____
Funding Source _____
APPROVED FOR SUBMITTAL  _____
City Administrator

STAFF RECOMMENDATION: Pass the ordinance on final reading on a roll call vote.

COUNCIL ACTION:

ORDINANCE NO. 07-04

ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY¹ OF Windsor Heights, BY

ADDING
CHAPTER 62, "CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL"

Section 1. THE CODE OF ORDINANCES, CITY OF Windsor Heights, is hereby amended to add CHAPTER 62 "CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL," in the form attached hereto.

Section 2. Repealer Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. Severability Clause. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. Effective Date. This ordinance shall be effective from and after the final passage, approval and publication as provided by law.

PASSED AND APPROVED this _____ day of _____, 2007.

Jerry Sullivan, Mayor

(SEAL)

ATTEST:

Marketa George Oliver, City Administrator/Clerk

APPROVED AS TO FORM:

City Attorney¹

¹ IMPORTANT NOTE: For drafting purposes, this ordinance has been prepared for adoption by a city; however, with appropriate modifications it may serve as a model for other governmental subdivisions as well.

I, _____, City Clerk of the City of _____
_____, Iowa, do hereby certify that the foregoing
ORDINANCE was passed and approved by the City Council of the City of _____
_____, Iowa, on the _____ day of _____,
20_____, and was published in the
, a newspaper of general circulation in the said City of
, on the _____ day of
_____, 20_____.

Dated this _____ day of _____, 20_____.

City Clerk

¹ This model ordinance is furnished as a drafting guide for attorneys representing governmental subdivisions in Iowa that are subject to NPDES Permit Program requirements. CAVEAT: THIS MODEL ORDINANCE SHOULD NOT BE ADOPTED WITHOUT CONFIRMING INDEPENDENT LEGAL RESEARCH BY AN ATTORNEY LICENSED TO PRACTICE LAW IN IOWA. LOCAL CIRCUMSTANCES WILL VARY SIGNIFICANTLY FROM JURISDICTION TO JURISDICTION. CONSIDERATION OF SUCH AN ORDINANCE CALLS FOR CAREFUL ANALYSIS AND DETERMINATION OF A NUMBER OF CRITICAL POLICY ISSUES BY THE GOVERNING BODY OF THE JURISDICTION.

CHAPTER 62, CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

SECTION 1. FINDINGS:

- 1.1. The U.S.EPA's National Pollutant Discharge Elimination System ("NPDES") permit program (Program) administered by the Iowa Department of Natural Resources ("IDNR") requires that cities meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System (MS4) (MS4 Permit). The City of Windsor Heights is subject to the Program and is required to obtain, and has obtained, an MS4 Permit; the City's MS4 Permit is on file at the office of the city clerk and is available for public inspection during regular office hours.
- 1.2. The Program requires certain individuals engaged in construction activities (applicant or applicants) to submit an application to the IDNR for a State NPDES General Permit #2. Notwithstanding any provision of this ordinance, every applicant bears final and complete responsibility for compliance with a State NPDES General Permit #2 and a City COSESCO Permit and any other requirement of state or federal law or administrative rule.
- 1.3. As a condition of the City's MS4 Permit, the City is obliged to undertake primary responsibility for administration and enforcement of the Program by adopting a CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL (COSESCO) ordinance designed to achieve the following objectives:
 - 1.3.1. Any person, firm, sole proprietorship, partnership, corporation, state agency or political subdivision ("applicant") required by law or administrative rule to apply to the IDNR for a State NPDES General Permit #2 shall also be required to obtain from the City a CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL permit (City COSESCO Permit) in addition to and not in lieu of the State NPDES General Permit #2; and
 - 1.3.2. The City shall have primary responsibility for inspection, monitoring and enforcement procedures to promote applicants' compliance with State NPDES General Permits #2 and City COSESCO Permits.
- 1.4. No state or federal funds have been made available to assist the City in administering and enforcing the Program. Accordingly, the City shall fund its application, inspection, monitoring and enforcement responsibilities entirely by fees imposed on the owners of properties which are made subject to the Program by virtue of state and federal law, and/or other sources of funding established by a separate ordinance.
- 1.5. Terms used in this ordinance shall have the meanings specified in the Program.

SECTION 2. APPLICATION PROCEDURE FOR OBTAINING AND MAINTAINING A CITY CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL (COSESCO) PERMIT

- 2.1 All persons required by law or administrative rule to obtain a State NPDES General Permit #2 from the IDNR are required to obtain a City COSESCO Permit.
- 2.2 Applications for City COSESCO Permits shall be made on forms approved by the City which may be obtained from the office of the city clerk.
- 2.3 An applicant for a City COSESCO Permit shall pay fees as follows:
 - 2.3.1 An application fee at the time of application in the amount of \$50.00:
 - 2.3.2 For each inspection required by this ordinance, the applicant shall pay an inspection fee in the amount of \$30.00.
 - 2.3.3 Failure of the applicant to pay an inspection fee within thirty (30) days of billing shall constitute a violation of this ordinance.
 - 2.3.4 The applicant will also be responsible for any outside consultant fees incurred by the City in enforcing this ordinance.
- 2.4 An applicant in possession of a State NPDES General Permit #2 issued by the IDNR shall immediately submit to the City full copies of the materials described below as a basis for the City to determine whether to issue a City COSESCO Permit:
 - 2.4.1 applicant's plans, specifications and supporting materials previously submitted to the IDNR in support of applicant's application for the State NPDES General Permit #2;
 - 2.4.2 applicant's authorizations issued pursuant to applicant's State NPDES General Permit #2; and
 - 2.4.3 a Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with this ordinance.
- 2.5 Every SWPPP submitted to the City in support of an application for a City COSESCO Permit:
 - 2.5.1 shall comply with all current minimum mandatory requirements for SWPPPs promulgated by the IDNR in connection with issuance of a State NPDES General Permit #2; and
 - 2.5.2 shall, if the applicant is required by law to file a Joint Application Form, PROTECTING IOWA WATERS, IOWA DEPARTMENT OF NATURAL RESOURCES AND U.S. ARMY CORPS OF ENGINEERS, comply with all mandatory minimum requirements pertaining to such applications¹; and
 - 2.5.3 shall comply with all other applicable state or federal permit requirements in existence at the time of application; and
 - 2.5.4 shall be prepared by a licensed professional engineer or landscape architect or a professional in erosion and sediment control or a representative of the local Soil and

¹ As of the time of drafting this model ordinance, the circumstances necessitating the filing of such a joint application are as set out in the Joint Application Form, PROTECTING IOWA WATERS, IOWA DEPARTMENT OF NATURAL RESOURCES AND U.S. ARMY CORPS OF ENGINEERS, which is accessible at this website: <http://www.iowadnr.com/other/files/jointpermit.pdf>.

- Water Conservation District, credentialed in a manner acceptable to the City; and
- 2.5.5 shall include within the SWPPP a signed and dated certification by the person preparing the SWPPP that the SWPPP complies with all requirements of this ordinance.
- 2.6 In addition to the SWPPP requirements stated in subparagraph 2.5 immediately above which constitute minimum mandatory requirements imposed by the Program, every SWPPP submitted to the city in support of an application for a City COSESCO Permit shall comply with SUDAS¹ standard design criteria, including but not limited to design, location, and phased implementation of effective, practicable stormwater pollution prevention measures, and shall also:
- 2.6.1 limit total off-site annual aggregate sediment yield for exposed areas to an equivalent amount resulting from sheet and rill erosion equal to an annual, cumulative soil loss rate not to exceed the standard established from time to time by Soil and Water Conservation Districts; erosion rates can exceed soil loss limits as long as sediment yield does not exceed that expected from allowable erosion rates; and
- 2.6.2 identify the nature of the construction activity and the potential for sediment and other pollutant discharges from the site; and
- 2.6.3 calculate the predicted erosion and estimated sediment yield for the construction site using the USDA Revised Universal Soil Loss Equation (RUSLE II); and
- 2.6.4 assure that stockpiles of soil or other materials subject to erosion by wind or water are covered, vegetated, or otherwise effectively protected from erosion and sedimentation in accordance with the amount of time the material will be on site and the manner of its proposed use; no stockpiling is allowed in the street; and
- 2.6.5 identify measures and procedures to reasonably minimize site soil compaction and provide soil quality restoration as specified; and
- 2.6.6 assure that all temporary erosion and sediment controls shall not be removed until the City has determined that the site has been permanently stabilized; and
- 2.6.7 assure that all disturbed sites be permanently stabilized with 70% perennial cover as measured by the USDA line transect method; and
- 2.6.8 identify methods to prevent sediment damage to adjacent properties and sensitive environmental areas such as water bodies, plant communities, rare, threatened and/or endangered species habitat, wildlife corridors, greenways, etc.; and
- 2.6.9 provide for design and construction methods to stabilize steep or long continuous slopes; and,
- 2.6.10 include measures to control the quantity and quality of stormwater leaving a site before, during and after construction; and

¹ SUDAS standard design criteria can be found at this website: www.iowasudas.org.

- 2.6.11 provide for stabilization of all waterways and outlets; and
- 2.6.12 protect storm sewer infrastructure from sediment loading/plugging; and
- 2.6.13 specify precautions to be taken to contain sediment when working in or crossing water bodies; and
- 2.6.14 assure stabilization of disturbed areas, including utility construction areas, as soon as possible; and
- 2.6.15 protect outlying roads from sediment and mud from construction site activities, including tracking; and
- 2.6.16 provide for disposal of collected sediment and floating debris; and
- 2.6.17 assure that when working near sensitive waters, the specific practices itemized immediately below are utilized:
 - 2.6.17.1 during construction:
 - 2.6.17.1.1 all exposed soil areas with a slope of 3:1 or steeper, that have a continuous positive slope to a sensitive water, should have temporary erosion protection or permanent cover within three (3) days after the area is no longer actively being worked; all other slopes that have a continuous positive slope to a sensitive water should have temporary erosion protection or permanent cover within seven (7) days after the area is no longer actively being worked, and
 - 2.6.17.1.2 temporary sediment basin requirements should be used for common drainage locations that serve an area with five (5) or more acres disturbed at one time; and
 - 2.6.17.2 buffer zone: provide for the maintenance at all times of an undisturbed buffer zone consisting of not less than 100 linear feet from the special water (not including tributaries); exceptions from this for areas, such as water crossings or limited water access, are allowed if the applicant fully documents in the SWPPP the circumstances and reasons that the buffer encroachment is necessary; all potential water quality, scenic and other environmental impacts of these exceptions should be minimized and documented in the SWPPP for the project; and
 - 2.6.17.3 enhanced temperature controls: design the permanent stormwater management system such that the discharge from the project will minimize any increase in the temperature.
 - 2.6.17.3.1 minimize new impervious surfaces; and/or
 - 2.6.17.3.2 other methods that will minimize any increase in the temperature of the sensitive waters.

- 2.7 Issuance by the City of a City COSESCO Permit shall be a condition precedent for the issuance of a City building permit or site plan approval.
- 2.8 For so long as a construction site is subject to a State NPDES General Permit #2 or a City COSESCO Permit, the applicant shall provide the City with current information as follows:
 - 2.8.1 The name, address and telephone number of the person on site designated by the owner who is knowledgeable and experienced in erosion and sediment control and who will oversee compliance with the State NPDES General Permit #2 and the City COSESCO Permit;
 - 2.8.2 The name(s), address(es) and telephone number(s) of the contractor(s) and/or subcontractors(s) that will implement each erosion and sediment control measure identified in the SWPPP.
 - 2.8.3 Applicant's failure to provide current information shall constitute a violation of this ordinance.
- 2.9 Developers can transfer State NPDES General Permit #2 and the City COSESCO Permit responsibility to homebuilders, new lot owners, contractors and subcontractors. Transferees must agree to the transfer in writing, must agree to fulfill all obligations of the SWPPP, the State NPDES General Permit #2 and the City COSESCO Permit. Absent such written confirmation of transfer of obligations, the developer remains responsible for compliance on any lot that has been sold. A developer shall notify the City of any application to the DNR for release of any property from a General Permit #2 pursuant to 567 IAC 64.6(6) or any similar successor provision.
- 2.10 Upon receipt of an application for a City COSESCO Permit, the City shall either find that the application complies with this ordinance and issue a City COSESCO Permit in accordance with this ordinance, or that the application fails to comply with this ordinance, in which case the City shall provide a bill of particulars identifying non-compliant elements of the application. The City of Windsor Heights will use a consulting engineer to accomplish this review.
- 2.11 Application for termination of a City COSESCO Permit shall be made in the following manner:

SECTION 3. INSPECTION PROCEDURES FOR CITY COSESCO PERMITS.

- 3.1 All inspections required under this ordinance shall be conducted by the Public Works Director, City Engineer, Building Inspector; a subcontractor credentialed in a manner satisfactory to the city or other appropriate designee, hereinafter referred to as the "enforcement officer."
- 3.2 Applicant shall notify the City when all measures required by applicant's SWPPP have been accomplished on-site, whereupon the City shall conduct an inspection for the purpose of determining compliance with this ordinance, and shall within a reasonable time thereafter report to the applicant either that compliance appears to have been achieved, or that compliance has not been achieved, in which case the City shall provide a bill of particulars identifying the conditions of non-compliance. The applicant shall immediately commence corrective action and shall complete such corrective

action within twenty-four (24) hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for taking corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance.

- 3.3 Construction shall not occur on the site at any time when the City has identified conditions of non-compliance.
- 3.4 Construction activities undertaken by an applicant prior to resolution of all discrepancies specified in the bill of particulars shall constitute a violation of this ordinance.
- 3.5 The City shall not be responsible for the direct or indirect consequences to the applicant or to third-parties for non-compliant conditions undetected by inspection.

SECTION 4. MONITORING PROCEDURES FOR CITY COSESCO PERMITS

- 4.1 Upon issuance of a City COSESCO Permit, an applicant has an absolute duty to monitor site conditions and to report to the enforcement officer any change of circumstances or site conditions which the applicant knows or should know pose a risk of stormwater discharge in a manner inconsistent with applicant's SWPPP, State NPDES General Permit #2 and/or City COSESCO Permit.
 - 4.1.1 Such report shall be made by the applicant to the enforcement officer immediately but in any event within twenty four (24) hours of the change of circumstances or site conditions.
 - 4.1.2 Failure to make a timely report shall constitute a violation of this ordinance.
- 4.2 Any third party may also report to the City site conditions which the third party reasonably believes pose a risk of stormwater discharge in a manner inconsistent with applicant's SWPPP, State NPDES General Permit #2 and/or City COSESCO Permit.
- 4.3 Upon receiving a report pursuant to the previous subsections, the enforcement officer shall conduct an inspection of the site as soon as reasonably possible and thereafter shall provide the applicant with a bill of particulars identifying the conditions of non-compliance. The applicant shall immediately commence corrective action and shall complete such corrective action within twenty-four (24) hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for completing corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance, whereupon the enforcement officer shall immediately commence enforcement actions specified in SECTION 5 below.
- 4.4 Unless a report is made to the enforcement officer pursuant to the previous subsections, the enforcement officer shall conduct at least one unannounced inspection during the course of construction to monitor compliance with the State NPDES General Permit #2 and the City COSESCO Permit. If the inspection discloses any significant non-compliance, the enforcement officer shall provide the applicant with a bill of particulars identifying the conditions of non-compliance. The applicant shall immediately commence corrective action and shall complete such corrective action within

twenty-four (24) hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for completing corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance, whereupon the enforcement officer shall immediately commence enforcement actions specified in SECTION 5 below.

- 4.5 The City shall not be responsible for the direct or indirect consequences to the applicant or to third-parties for non-compliant conditions undetected by inspection.

SECTION 5. ENFORCEMENT

- 5.1 Violation of any provision of this ordinance may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this ordinance.
- 5.2 Violation of any provision of this ordinance may also be enforced as a municipal infraction within the meaning of §364.22, pursuant to the City's municipal infraction ordinance.
- 5.3 Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the City Attorney.

SECTION 6. FAILURE TO COMPLY

- 6.1.1 Failure to comply with this ordinance constitutes a municipal infraction. The property owner is responsible to ensure that this ordinance is observed.

SECTION 7. APPEAL

- 7.1 Administrative decisions by city staff and enforcement actions of the enforcement officer may be appealed by the applicant to the city council pursuant to the following rules:
 - 7.1.1 The appeal must be filed in writing with the city clerk within five (5) business days of the decision or enforcement action.
 - 7.1.2 The written appeal shall specify in detail the action appealed from, the errors allegedly made by the enforcement officer giving rise to the appeal, a written summary of all oral and written testimony the applicant intends to introduce at the hearing, including the names and addresses of all witnesses the applicant intends to call, copies of all documents the applicant intends to introduce at the hearing, and the relief requested.
 - 7.1.3 The enforcement officer shall specify in writing the reasons for the enforcement action, a written summary of all oral and written testimony the enforcement officer intends to introduce at the hearing, including the names and addresses of all witnesses the enforcement officer intends to call, and copies of all documents the enforcement officer intends to introduce at the hearing.
 - 7.1.4 The city clerk shall notify the applicant and the enforcement officer by ordinary mail, and shall give public notice in accordance with Chapter 21, Iowa Code, of the date, time

and place for the regular or special meeting of the city council at which the hearing on the appeal shall occur. The hearing shall be scheduled for a date not less than four (4) nor more than twenty (20) days after the filing of the appeal. The rules of evidence and procedure, and the standard of proof to be applied, shall be the same as provided by Chapter 17A, Code of Iowa. The applicant may be represented by counsel at the applicant's expense. The enforcement officer may be represented by the city attorney or by an attorney designated by the city council at City expense.

- 7.2 The decision of the city council shall be rendered in writing and may be appealed to the Iowa District Court.