

7-9-08 *ca*

ORDINANCE NO. 528

AN ORDINANCE RELATING TO EROSION AND SEDIMENT CONTROL IN THE CITY OF BASEHOR, KANSAS ADDING NEW ARTICLE 12 TO CHAPTER IV; BUILDING AND CONSTRUCTION.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BASEHOR, KANSAS:

SECTION 1: The City of Basehor Municipal Code Chapter IV; Article 12 is hereby added to read as follows:

Ordinance No: 528

EROSION AND SEDIMENT CONTROL

Sections:

1. Purpose of Ordinance.
2. Definitions.
3. Administration.
4. General Provisions.
5. Erosion and Sediment Control Plans.
6. Inspection.
7. Enforcement.
8. Miscellaneous.

1. Purpose of Ordinance

The purpose of this Ordinance is to set forth procedures for controlling erosion and sedimentation caused by land disturbance activities, thereby providing for the protection and enhancement of the water quality of watercourses, water bodies, and wetlands.

2. Definitions For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein

A. "Best Management Practices or BMPs" mean physical facilities, schedules of activities, prohibitions of practices, maintenance procedures, and other management practices which, when properly designed, installed and maintained, will be effective to prevent or reduce the discharge of water or air pollution associated with land disturbance activities regulated by this Ordinance.

B. "Certified Professional in Erosion and Sediment Control (CPESC)" means an individual who is currently holding such certification as issued by CPESC, Inc., or other Person holding a state license authorizing them to prepare and submit an Erosion and Sediment Control Plan.

C. "Code" means the City of Basehor Municipal Code.

D. "Erosion" means the wearing away of land by the action of wind, water, gravity or ice or a combination thereof.

E. "Erosion and Sediment Control Plan, or Plan", means a Plan for the control of soil erosion and sedimentation resulting from land disturbing activity, and may include, without being limited to, the drawings, specifications, construction documents, schedules, or other related documents upon which establish the Best Management Practices (BMPs) to be used on a project. The Plan shall include any site area set forth, including such information required as necessary to review the basis for their design of the BMPs and to ensure their proper installation, maintenance, inspection, and removal of the BMPs, along with the details required to construct any portion of the final storm sewer system that was impeded by a BMP.

F. "Erosion and Sediment Control Standards, or Standards" means the Erosion and Sediment Control design criteria and specifications adopted by reference by the City of Basehor.

G. "Land Disturbance" means any activity that changes the physical conditions of landform, vegetation and hydrology, creates bare soil, or otherwise may cause erosion or sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials.

H. "Perennial Vegetation" means grass or other appropriate natural growing vegetation that provides substantial land cover, erosion protection and soil stability and that is capable of sustained and healthy growth over multiple years under the constraints of shade, temperature and moisture that will be prevalent on the site. For the purposes of this Ordinance, annual grasses that do not regenerate after winter, ornamental plants or shrubs that does not offer effective Erosion and Sediment protection, and plants that are not suitable for the expected growing conditions on the site shall not be considered Perennial Vegetation.

I. "Permit" means a Building Permit for construction of a building, Site Development Permit, Land Disturbance Permit, or Right of Way Permit.

J. "Permit Holder" means the owner or contractor who is issued a Permit. The Permit Holder may designate a separate contact person regarding field issues related to erosion and sediment control.

K. "Person" means any individual, business, partnership, corporation, association, organization or legal entity of any kind including governmental entities.

L. "Sediment" means any solid material, organic, or inorganic that has been deposited in water, is in suspension in water, is being transported or has been removed from its site of origin by wind, water, ice or gravity as result of soil Erosion. Sedimentation is the process by which eroded material is transported and deposited by the action of wind, water, ice or gravity.

M. "Storm Sewer System" means any conveyance or system of conveyances for Storm Water, including road with drainage systems, streets, catch basins, curbs, gutters, ditches, man made channels, or storm drains, as well as any system that meets the definition of a municipal separate Storm Sewer System or "MS4" as defined by the Environmental Protection Agency in 40 CFR 122.26.

N. "Storm Water" means Storm runoff, snowmelt runoff, and surface runoff and drainage.

O. "Water Bodies" means surface waters including rivers, streams, lakes and wetlands, including all areas designated by the federal government as a waterway of the United States.

4-1201 Administration

A. Authority. The Code Enforcement Officer or designated Officer shall be responsible for the administration and enforcement of this Ordinance. The City Council shall have the authority to adopt regulations, policies and procedures as necessary for the enforcement of this Ordinance.

B. Right of entry. Whenever the Code Enforcement Officer or designated Officer has cause to believe that there exists, or potentially exists, in or upon any premises, any condition which constitutes a violation of this Ordinance, the Code Enforcement Officer or designated Officer is authorized to enter the premises at reasonable times to inspect or to perform the duties imposed by this Ordinance. If entry is refused, the Code Enforcement Officer or designated Officer shall have recourse to the remedies provided by law to secure entry.

C. Erosion and Sediment Control Standards. The City shall adopt and maintain Erosion and Sediment Control Standards to assist in the administration of this Ordinance. The Erosion and Sediment Control Standards shall be based on, but not limited to, the following principles:

1. Fit the development to existing site conditions.
2. Minimize the extent of exposure.
3. Minimize duration of exposure.
4. Break work activities into phases when possible.
5. When possible, protect disturbed areas from any unnecessary run-on of storm water from adjacent sites, at least during the construction period.
6. Stabilize disturbed areas.
7. Keep runoff velocities low.
8. Retain Sediment on the site.
9. Inspect and maintain control measures.
10. Use performance measures and outcomes.
11. Timely employment and maintenance of all measures.

D. Time Requirement. Where Land Disturbance activities have temporarily or permanently ceased on a portion of a project site for over 21 consecutive days, the disturbed areas shall be protected from erosion by stabilizing the areas with mulch or other similarly effective soil stabilizing BMPs, unless the timeframe for compliance is extended by the Code Enforcement Officer or designated Officer. Where implementation of stabilization measures is precluded by snow cover, stabilization measures shall be initiated as soon as practicable.

E. Other Pollutants. In addition to Sediment, the Erosion and Sediment Control Plan shall provide for the control of other pollutants related to the Land Disturbance activity that might cause an adverse impact to water quality, including, but not limited to, discarded building materials, concrete truck washout, fuel, hydraulic fluids, chemicals, litter, and sanitary wastes.

4-1202 General Provisions

A. Any Person undertaking Land Disturbance activities, including the clearing, grading, excavating, filling, storing, and disposing of soil and earth materials, shall comply with the requirements and standards set forth in this Chapter of the Code.

B. Applicability. Regardless of whether or not a Land Disturbance activity requires a Permit, any Person engaged in any Land Disturbance activity shall comply with the spirit and intent of this Ordinance. At a minimum, such Persons shall employ BMP methods for Erosion and Sediment Control in proportion to the scale of the activity to reduce the amount of Sediment or other pollutants in storm water discharges associated with those activities.

C. Responsible Person(s). The responsible Person(s) is/are the owner of the property upon which a Land Disturbance takes place and any person(s) performing a Land Disturbance activity.

4-1203 Erosion and Sediment Control Plans

A. All proposed Land Disturbance activity shall be depicted on a site-specific Erosion and Sediment Control Plan. Land Disturbance activities that do not require a Permit in are required to employ applicable BMPs included in standard details provided by the City. The Erosion and Sediment Control Plan shall be submitted to the Building Official or the Planning Director for review. The Plan shall include, at a minimum, the following information:

1. Proposed site map.
2. Areas to be disturbed.
3. Proposed Erosion and Sediment Control BMPs to be employed.
4. Phasing of Erosion and control measures.
5. Final stabilization plan for each phase.
6. Details and specifications for any sections of the final storm sewer system that must be constructed after the removal of BMPs such as temporary sediment basins or silt ponds.
7. Work schedule.
8. Maintenance and inspection requirements.

The Building Official or the Planning Director may require any additional information or data deemed appropriate to ensure compliance with the intent, purpose and provisions of this Section of the Code.

B. Review and Approval of Erosion and Sediment Control Plans. The Erosion and Sediment Control Plan shall be of sufficient clarity to indicate the location, manner, nature and extent of the work proposed. The Plan shall clearly show that the proposed work will conform to the provisions of this Code, the Erosion and Sediment Control Standards, and other relevant laws, ordinances, policies, rules and regulations as determined by the City. The Building Official or the Planning Director shall review the submitted documents to determine compliance with the Erosion and Sediment Control Standards. If the Plan is not in compliance, the applicant shall be advised which elements of the Plan are not in compliance.

C. Preparation of Plans. Erosion and Sediment Control Plans submitted to the City for review must be prepared under the supervision of and sealed by a licensed professional engineer or landscape architect or by a Certified Professional in Erosion and Sediment Control (CPESC).

The engineer or landscape architect must be licensed to practice in the State of Kansas. The Building Official or Planning Director may waive this Plan preparation requirement if the Applicant's Plan consists entirely of utilizing standard plans and specifications as adopted in the City's Erosion and Sediment Control Standards.

D. Amended Plans. Work shall be installed and maintained in accordance with the approved Plan. Changes made during construction that are not in compliance with the approved Plan shall be resubmitted for approval as an amended set of construction documents. Minor modifications of the approved Plan may be authorized by the Building Official or the Planning Director without formal review provided those modifications are consistent with the Erosion and Sediment Control Standards and standard industry practice.

4-1204 Inspection

A. Initial Inspection. The Permit Holder shall notify the Building Official or the Public Works Director when initial Erosion and Sediment Control measures are installed in accordance with the Erosion and Sediment Control Plan. No Land Disturbance activities shall begin prior to approval from the Building Official, Public Works Director or the Planning Director that all pre-construction Erosion and Sediment Control measures are correctly installed per the approved Plan.

B. Maintenance of Control Measures. All prescribed Erosion and Sediment Control measures shall be maintained in good order and in compliance with the Erosion and Sediment Control Plan at all times.

C. Routine Inspection. It shall be the duty of the Permit Holder to routinely inspect the construction site and maintain effective Erosion and Sediment Control measures. Routine inspections shall be performed once per month or more frequently if required on the Plan and within twenty-four hours following each rainfall event of 1/2" or more within any twenty-four hour period. A log shall be kept of these inspections. Any deficiencies shall be noted in a report of the inspection and include the action taken to correct the deficiency. Inspection reports shall be submitted to the Building Official or the Planning Director upon request.

The inspection report shall include the following minimum information:

1. Inspectors name.
2. Date of inspection.
3. Observations relative to the effectiveness of the Erosion and Sediment Control measures.
4. Actions necessary to correct deficiencies.
5. Signature of Person performing the inspection.

The Code Enforcement Officer may also perform inspections of the Land Disturbance site to verify compliance with the Erosion and Sediment Control Plan. Should it be found that Erosion and control methods are ineffective or are not being maintained properly, the Code Enforcement Officer or designated Officer may take enforcement actions described within this Chapter.

D. Closure of Land Disturbance Activities. Once the site is stabilized a final inspection shall be requested. The site shall be considered stabilized when Perennial Vegetation, pavement, buildings or structures using permanent materials, cover all areas that have been disturbed. Perennial Vegetation shall be considered established and completed for stabilization when it has established a healthy and growing stand with a density of at least 70 percent of undisturbed areas at the site.

E. Removal of Temporary Erosion and Sediment Control Measures. Subsequent to a satisfactory final inspection of the Land Disturbance, all temporary Erosion and Sediment Control measures must be removed and the final segments of the storm sewer system shall be constructed in the manner described within the approved plans in the Erosion and Sediment Control Plan. Such removal shall be complete prior to closure of the Permit which authorized the Land Disturbance.

4-1205 Enforcement

A. In General. The Code Enforcement Officer or designated Officer shall handle enforcement of the provisions of this Chapter through routine activities that include receiving inspection reports from the Permit Holder when requested, inspections, and communication with contractors. However, if these methods fail, the Code Enforcement Officer or designated Officer may proceed with any or all of the following enforcement measures:

1. Refusal of Inspection. Request for an inspection of any permitted construction activity may be denied if it is found that Erosion and Sediment control measures have not been implemented, or are found to be ineffective or are not maintained. If an inspection is refused, a notice of violation or a stop work order may be issued. No further inspections will be performed until the Erosion and control measures have been implemented or violations have been abated.

2. Notice of Violation. The Code Enforcement Officer or designated Officer is authorized to serve a Notice of Violation or order on any Person found to be doing work in violation of the provisions of this chapter of the Code. Such order shall direct the discontinuance of the illegal action or condition and order the abatement of the violation by the responsible Person.

3. Stop Work Order. The Code Enforcement Officer or designated Officer is authorized to issue a stop work order for any or all construction activity within the established boundary of the Permit. The stop work order shall be in writing and shall be given to the owner of the property involved, or the owner's agent or to the Person doing the work. In addition, notice of the stop work order shall be posted on the site. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order and the conditions under which the cited work will be permitted to resume. Any Person who shall continue to work after having been served with a stop work order, except such work as that Person is directed by the City to perform the removal of a violation or unsafe condition, is guilty of a public offense and may be subject to penalties as prescribed herein.

4. Abatement. Should any Person fail to comply with the provisions of this Chapter, the Code Enforcement Officer or designated Officer is authorized to correct or abate such violation without further notice. This action can be taken in lieu of, or in conjunction with, any action

taken under Chapter IV; Article 12 of the Municipal Code of the City of Basehor, or enforcement actions set forth in this Chapter.

a. City expenditures to correct or abate a violation shall be assessed as a fee against the property owner, developer, builder or any other applicable party. The City will keep a record of the abatement costs. The fee shall be paid prior to recommencement of work on the site and prior to any further inspections. If the fee is not paid within 30 days of the date the invoice is sent to the Permit Holder, then that person involved will be found guilty of a municipal code violation under Chapter IV; Article 12 and be fined the maximum amount of \$100.00 per each day the violation exists.

b. Should the Permit become suspended, revoked, or expired with the fee not paid, all City expenditures to correct or abate the violation may be assessed as a lien and special assessment against the lot or parcel of land on which the permitted activity took place. The same abatement and collection procedure shall apply if work is done without the issuance of a Permit. The City Clerk, at the time of certifying other City taxes, shall certify the unpaid portion of the costs and the County Clerk shall extend the same on the tax rolls of the county against the lot or parcel of land.

C. Violations and penalties.

1. Any Person who violates a provision of this Ordinance or fails to comply with any of the requirements thereof or fails to comply with a directive issued by the Building Official or the Code Enforcement Officer or designated Officer is guilty of a public offense and shall be subject to the maximum penalties as provided in the City of Basehor Municipal Code Chapter IV; Article 12.

2. The Code Enforcement Officer or designated Officer shall be permitted to cite the owner, or any/all Persons identified on a Permit as being legally responsible to the City for any violations of the Ordinance pertaining to that Permit.

4-1206 Miscellaneous

A. Other Laws. Neither this Ordinance nor any administrative decision made under it exempts the Permit Holder or any other Person from other requirements of this Code, state and federal laws, or from procuring other required Permits, including any state or federal storm water Permits authorized under the National Pollutant Discharge Elimination System (NPDES), or limits the right of any Person to maintain, at any time, any appropriate action at law or in equity, for relief or damages against the Permit Holder or any Person arising from the activity regulated by this Ordinance.

B. Disclaimer of Liability. The performance standards and design criteria set forth herein establish minimum requirements, which must be implemented with good engineering practice and workmanship. Use of the requirements contained herein shall not constitute a representation, guarantee or warranty of any kind by the City, or its officers and employees, of the adequacy or safety of any best management practice or use of land, nor shall the approval and issuance of a Permit imply that land uses permitted will be free from damages caused by Storm Water. The

degree of protection required by these regulations is considered reasonable for regulatory purposes and is based on historical records and engineering and scientific methods of study. Larger storms may occur or Storm Water runoff heights may be increased by man-made or natural causes. These regulations therefore shall not create liability on the part of the City or any officer with respect to any legislative or administrative decision lawfully made hereunder.

C. Severability. If any section, subsection, paragraph, sentence, clause or phrase in this Ordinance or any part thereof is held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

D. Effective Date. The provisions of this Chapter shall apply to all Land Disturbance activities that take place on or after the 5th of May, 2008

SECTION 2. Effective Date. This ordinance shall be in full force and effective from and after its passage and publication in the official city newspaper.

Approved by the City Council this 5th day of May, 2008.

Approved by the Mayor this 5th day of May, 2008

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF BASEHOR KANSAS THIS 5TH DAY OF MAY, 2008



CHRIS GARCIA, MAYOR



ATTEST:



MARY A. MOGLE, CITY CLERK

APPROVED AS TO FORM:



PATRICK G. REAVEY, CITY ATTORNEY