

ORDINANCE NO. 5355

AN ORDINANCE REGULATING CONSTRUCTION SITE RUNOFF BY ADDING CHAPTER 8.46 TO THE RAPID CITY MUNICIPAL CODE.

WHEREAS, the regulations within this ordinance will prevent the pollution, impairment, and destruction of natural resources by regulating construction site runoff; and

WHEREAS, the Common Council of the City of Rapid City deems it to be in the City's best interests to adopt an ordinance regulating construction site runoff.

NOW THEREFORE, BE IT ORDAINED by the City of Rapid City, South Dakota, that Chapter 8.46 of the Rapid City Municipal Code be added to read as follows:

Construction Site Stormwater Runoff Control Ordinance

Title 8

8.46 Construction Site Stormwater Runoff Control

Section

- 8.46.010 Definitions
- 8.46.020 Permits
- 8.46.030 Permit Application Submittal
- 8.46.040 Review and Approval
- 8.46.050 Sequential Applications
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8.46.010 Definitions.

The following terms and phrases are defined and shall be interpreted as such throughout this chapter, unless the context clearly indicates or requires a different meaning. Terms not defined in this section shall have the meaning customarily assigned to them.

- A. **Accelerated Soil Erosion.** The increased movement of soils that occurs as a result of human activities.

- B. **Best Management Practice.** Non-structural or structural device, measure, facility, or activity which helps to achieve soil erosion and stormwater management control objectives at a designated site.
- C. **Certified.** A person who has received training and is licensed by the city to inspect and maintain sediment and erosion control practices.
- D. **Channel.** The portion of a natural stream which conveys normal flows of water, or a ditch or channel excavated for the flow of water.
- E. **Clearing.** Any activity that removes the vegetative surface cover.
- F. **Control Plan.** A plan which indicates the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.
- G. **Conveyance Facility.** A surface or subsurface structure or channel which transports stormwater runoff.
- H. **Detention Basin.** A structure or facility, natural or artificial, which stores stormwater on a temporary basis and releases it at a controlled rate.
- I. **Discharge.** The rate of flow of water through a drainage system structure at a given point and time, measured in cubic feet per second (cfs).
- J. **Disturbed Area.** An area of land subjected to erosion due to the removal of vegetative cover and/or earthmoving activities, including filling.
- K. **Downstream.** Lands and waters which receive stormwater runoff and other surface water flows from a designated site. Downstream lands and waters are downgradient from the designated site.
- L. **Drainage Way.** Any channel that conveys surface runoff throughout the site.
- M. **Drainage System.** All facilities, channels, and areas which serve to convey, filter, store, and/or receive stormwater, either on a temporary or permanent basis.
- N. **Earth Change.** A human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. The term “earth change” as used in this ordinance shall not apply to the practice of plowing and tilling soil for the purpose of crop production.
- O. **Erosion Control.** A measure that prevents erosion.
- P. **Excess Runoff.** Surface runoff that cannot be conveyed or stored adequately by the natural or planned drainage systems.
- Q. **Fill Material.** Soil, sand, gravel, clay, or any other non-polluting material which displaces soil or water or reduces water retention potential in a lake, pond, creek, or wetland.
- R. **Flood.** An overflow of surface water onto lands not normally covered by water.
- S. **Floodplain.** The area of land adjoining a lake or stream which is inundated when the flow exceeds the capacity of the normal channel. For mapping purposes, floodplains are designated according to the frequency of the flood event, such as the 100-year floodplain or the 500-year floodplain.

- T. **Grading.** Any stripping, clearing, stumping, excavating, filling, stockpiling, or any combination thereof, including the land in its excavated or filled condition.
- U. **Impervious Area.** Impermeable surfaces such as paved driveways, parking areas, or roads which prevent the infiltration of water into the soil.
- V. **Infiltration.** The downward movement or seepage of water from the surface to the subsoil and/or groundwater. The infiltration rate is expressed in terms of inches per hour.
- W. **Land Use.** A use of land which may result in an earth change, including but not limited to subdivision, residential, commercial, industrial, recreational, agricultural practices, or other development, private and public highway, road and stream construction, and drainage construction.
- X. **Landscaping.** Mowing, seeding, sodding, and other landscaping activities which are not an earth change.
- Y. **Normal Maintenance.** Landscaping, repairs, road leveling, minor excavation or filling at a developed site, or other activities determined by the City Engineer or designated agent to be exempt from permit requirements, provided that such activities do not violate standards in this ordinance.
- Z. **Outfall.** The point where water flows out from a conduit, drain, or stream.
- AA. **Outlet.** A stream or facility receiving the flow from a basin, drain, or other stormwater management facility.
- BB. **Peak Rate of Discharge (peak flow).** The maximum calculated rate of stormwater flow at a given point in a channel, watercourse, or conduit resulting from a predetermined frequency storm or flood, measured in cubic feet per second (cfs).
- CC. **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.
- DD. **Permit.** Sediment and Erosion Control Permit.
- EE. **Phasing.** Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.
- FF. **Pollution.** Degradation of water quality, preventing the use of water for its designated beneficial use, caused by a natural or human-made substance.
- GG. **Receiving body of water.** Any lake, pond, creek, wetland, or groundwater into which stormwater runoff is directed.
- HH. **Regional Detention Pond.** A basin to detain storm water flow from a number of development sites or a small watershed.
- II. **Runoff.** Water flow discharging into the drainage system resulting from rainfall or snowmelt.
- JJ. **Sediment.** Mineral or organic solid particulate matter that has been removed from its site of origin by (a) soil erosion; (b) suspension in water; and/or (c) wind or water transport.
- KK. **Sedimentation.** The process or action of depositing sediment.

- LL. **Sediment and Erosion Control Plan.** Documentation for a proposed land use or earth change which describes the way in which soil erosion and sediment will be controlled, during and after completion of construction.
- MM. **Sediment Control.** A measure that prevents eroded materials from leaving the site.
- NN. **Site.** A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation.
- OO. **Soil Erosion.** The wearing away of land by the action of wind, water, gravity or a combination thereof.
- PP. **Soil Erosion Control Facilities and Measures.** Any structure, facility, barrier, berm, vegetative cover, basin, or other measure which serves to control soil erosion in accordance with the purposes and standards of this ordinance. **Temporary measures** – Installations designed to control soil erosion during construction or until soils in the contributing drainage area are stabilized. **Permanent measures** – Installations designed to control soil erosion after a project is completed.
- QQ. **Stabilization.** The use of practices that prevent exposed soil from eroding.
- RR. **Start of Construction.** The first land-disturbing activity associated with a development, including land preparation such as clearing, grading, and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and construction of accessory buildings such as garages.
- SS. **Stop Work Order.** A notice issued by the City Engineer or designated agent to the permittee to require the permittee to cease construction, grading or development activities.
- TT. **Stripping.** Any activity which removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.
- UU. **Swale.** Low-lying grassed area with gradual slopes which transports runoff.
- VV. **Vegetative Cover.** Grasses, shrubs, trees, and other vegetation which hold and stabilize soils.
- WW. **Watercourse.** Any body of water, including, but not limited to lakes, ponds, rivers, streams, creeks, and bodies of water delineated by the Rapid City Public Works Department.
- XX. **Waterway.** A channel that directs surface runoff to a watercourse or to the public storm drain.
- YY. **Watershed.** A land area, also known as a drainage area, which collects precipitation and contributes runoff to a receiving body of water or point along a watercourse.

8.46.020 Permits

- A. Any person performing earth disturbing activities shall first submit for approval an erosion and sediment control permit application and plan. The fee

for an erosion and sediment control permit shall be based on the size of the site as follows:

1. Site less than 10,000 square feet = \$100 permit fee
 2. Site 10,000 to 43,560 square feet = \$250 permit fee
 3. Site greater than 43,560 square feet = \$500 permit fee
- B. Subdivision erosion and sediment control plans must incorporate a separate detailed drawing and narrative describing minimum erosion and sediment control measures of individual lots within the approved subdivision.
- C. Individual lots in a subdivision of less than one (1) acre where an erosion and sediment control permit and plan has been approved shall not be considered a separate construction project but shall be considered a part of the subdivision as a whole. It shall be the responsibility of such lot owner and the lot owner's contractor to conform to all the requirements of the approved erosion and sediment control plan for the subdivision.
- D. An erosion and sediment control permit application and plan is not required for the following activities:
1. Earth moving activities of less than 300 cubic yards.
 2. Any emergency activity immediately necessary for the protection of life, property, or natural resources.
 3. Existing nursery and agricultural operations conducted as a permitted main or accessory use.
 4. Sidewalk and driveway installation.
 5. Underground utility construction, including the installation, maintenance, and repair of all utilities under hard surfaced roads, streets, sidewalks, provided such land-disturbing activities are confined to the hard surfaced area and provided the runoff and erosion from soil stockpiles are confined and will not enter the drainage system.
 6. Mining operation as approved by the State of South Dakota.
 7. Other activities as approved by the City Engineer.
- E. Each building and grading permit shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the erosion and sediment control plan.
- F. All applicants shall, if applicable, obtain coverage under the State of South Dakota's General Permit for Stormwater Discharges Associated with Construction Activities.

8.46.030 Permit Application Submittal

- A. Application for a permit shall be made prior to any grading operations. Any unauthorized work shall be considered a violation regardless of any later actions taken towards compliance. Soil test borings, vegetative cutting for land surveys, percolation tests, and normal maintenance shall not be considered start of work.
- B. Permit applications shall be submitted to the City.
- C. The permit application shall be made available by the City. All applications for erosion and sediment control permits shall include two copies of the

proposed erosion and sediment control plan unless more copies are requested by the City.

- D. The application review period begins upon receipt of a completed application.

8.46.040 Review and Approval

- A. Within 1 week after receiving an erosion and sediment control permit application and plan the City shall, in writing:
 - 1. Approve the erosion and sediment control permit application and plan;
 - 2. Request additional information from the applicant; or
 - 3. Disapprove the erosion and sediment control permit application and plan, indicating the reason and procedure for submitting a revised application and plan.
- B. Failure of the City to act on an original or revised erosion and sediment control permit and plan within 1 week of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the City Engineer or designated agent.

8.46.050 Sequential Applications

- A. On large or complex projects where a plan encompassing all phases of the project cannot reasonably be prepared prior to initial ground breaking, a request for sequential applications may be approved by the City prior to submittal of a permit application.
- B. Approval of sequential applications shall take place in two phases. First, the overall conceptual plan for the entire development shall be submitted for review and approval. Second, detailed plans for sections of the total project shall be submitted prior to construction.
- C. All permits processed and issued for phases of a project shall be clearly defined as to the nature and extent of work covered. Each phase of the project must be reviewed and permitted prior to construction.

8.46.060 Permit Expiration or Revocation

- A. Permits shall terminate automatically in the event construction activities have not commenced within one year of the date of issuance or in the event construction activities have halted and not commenced within six (6) months. The permit holder may request an extension from the City.
- B. Any permit may be revoked or suspended by the City for any of the following causes after notice and an opportunity for a hearing is given to the applicant:
 - 1. A violation of a condition of the permit;
 - 2. Obtaining a permit by misrepresentation or failure to fully disclose relevant facts in the application or the erosion and sediment control plan; and/or

3. A change in a condition that requires a temporary or permanent change in the activity.

8.46.070 Erosion and Sediment Control Plan

An erosion and sediment control plan shall be prepared by a licensed professional. An erosion and sediment control plan for a site less than 5 acres can be prepared by a certified person experienced in specifying erosion and sediment control measures. The plan shall be designed to effectively reduce accelerated soil erosion and sedimentation during construction and after construction is completed. The erosion and sediment control plan shall follow the requirements set forth in the most recent revision of the Stormwater Quality Manual.

An 8-1/2" by 11" exhibit prepared by the owner showing erosion and sediment control measures will be acceptable for sites of less than 43,560 square feet (1 acre) or as approved by the City.

8.46.080 Design Requirements

Erosion and sediment control best management practices shall be designed, installed, and maintained to adequately prevent transportation of sediment from the site. The Stormwater Quality Manual provides guidance for erosion and sediment control best management practices.

8.46.090 Maintenance

- A. All erosion and sediment control facilities and measures shall be maintained in accordance with permit conditions.
- B. The site must be inspected at least weekly and within 24 hours following storm events of at least 0.5 inches or a snowmelt event that causes surface erosion. A thorough check of the site shall be made to ensure that materials have not been discharged off-site. Records of the inspections must be kept with the erosion and sediment control plan and permit, and the plan must be updated as site conditions change.
- C. The person or organization responsible for maintenance shall be designated in the erosion and sediment control plan and the permit application.
- D. In the event ownership of the property is transferred, a signed agreement may be submitted to the City stating that the new owner is responsible for maintenance of the erosion and sediment control devices. This agreement shall be documented on a form provided by the City.

8.46.100 Inspections

- A. The City may enter any property to conduct on-site inspections. Such inspections may take place before, during or after any earth change activity for which a permit has been issued.

- B. The approved erosion and sediment control plan shall be maintained at the site during the progress of the construction work.
- C. If, upon inspection, existing site conditions are found not to be as stated in the permit or approved sediment and erosion control plan, the permit will be invalid. No earth disrupting work shall be undertaken, or continued, until a revised plan has been submitted and a valid permit issued.
- D. Requests for major revisions as determined by the City must be submitted in writing before being effective. A revised erosion and sediment control plan shall be submitted for review and approval.

8.46.110 Violation - Stop-Work Order

In the event that any person holding an erosion and sediment control permit and plan 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 persons residing, working, or traveling in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the City shall issue a stop-work order.

8.46.120 Violation - Penalty

Wherever in this chapter an act is prohibited or is made or declared unlawful, or the doing of any act is required or the failure to do any act is declared to be unlawful, any person who shall be convicted of any such violation shall be fined and jailed in accordance with the city's General Penalty RCMC § 1.12.10. Each day any violation of this chapter continues shall constitute a separate offense.

8.46.130 Violation – Liability for Related Costs

Any person violating any provisions of this chapter shall become liable to the city for the expense of restoration.

8.46.140 Appeal

Should any applicant or any person holding an erosion and sediment control permit and plan, under this chapter be aggrieved by the action of the City, he or she may, within 10 days, apply to the Common Council for a review of the action. Upon the review, the Common Council may affirm, modify or reverse the action of the City.

8.46.150 Severability

In the event any portion of this ordinance is determined by a court of competent jurisdiction to be invalid, all valid portions which are severable from the invalid portion shall remain in effect. If application of any portion of any section or subsection of this ordinance is determined by a court of competent jurisdiction to be invalid, such portions

shall remain in effect in all valid applications that are severable from the invalid applications.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

First Reading:

Second Reading:

Published:

Effective: