

## **ORDINANCE NO. 277**

### **AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ELY, IOWA, BY REPEALING PROVISIONS PERTAINING TO CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL AND REPLACING IT WITH REVISED CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL**

**BE IT ENACTED** by the City Council of the City of Ely, Iowa:

**SECTION 1. SECTION MODIFIED.** Section 147 of the Code of Ordinances of the City of Ely, Iowa, is repealed in its entirety and the following adopted in lieu thereof:

### **CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL ORDINANCE**

#### **47.01 GENERAL.**

1. Soil erosion contributes to the impairment of drainageways, increases road and storm sewer maintenance costs, contributes to the destruction and obstruction to traveled roadways creating a potential hazard for vehicular traffic, and contributes to contamination and degradation of land surfaces and streams, flooding and dusty conditions. This chapter establishes requirements in an effort to control erosion and sediment transport.
2. Owners of certain construction sites are required, under rules contained in General Permit No. 2, Storm Water Discharge Associated with Construction Activities ("General Permit No. 2"), to obtain coverage through the Iowa DNR under that permit.
3. Under its Municipal Stormwater National Pollution Discharge Elimination System permit, which permit is on file at the offices of the City Clerk and the City Engineer and is available for public inspection during regular office hours, the city is required to develop, implement and enforce a program to reduce pollutants in any storm water runoff from construction activities. Under that permit the city is required to enforce the General Permit No.2.
4. This chapter establishes requirements for grading, filling, and obtaining erosion control permits.
5. No person shall engage in land-disturbing activities requiring a NPDES permit within the city limits unless they have received an erosion control permit.

#### **147.02 DEFINITIONS.**

Wherever used in this chapter the terms listed below will have the meanings indicated. Words using the present tense shall include the future; the singular shall include the plural; the plural shall include the singular; the masculine gender shall include the feminine; the term "shall" is always mandatory, and the term "may" is permissive.

**1)."Applicant"** means any individual, firm, corporation, association or partnership, or proprietor of land to undergo land-disturbing activities.

2). **"Building Official"** means the City Clerk/Administrator or their designee.

3). **"Certified professional erosion and sediment control specialist"** means a specialist in the area of soil erosion and sediment control as certified by the Soil and Water Conservation Society and the International Erosion Control Association.

4). **"City"** means the City of Ely, Iowa.

5). **"City Council"** means the City Council of the City of Ely, Iowa.

6). **"City Engineer"** means the official so designated by the City Council or designee.

7). **"Civil engineer"** means a professional engineer licensed in the State of Iowa to practice civil engineering.

8). **"Clearing and grubbing"** means removal of unwanted growth, in the form of trees, wood, shrubs, brush, or stumps on a site.

9). **"Design Professional"** means a licensed civil engineer or certified professional erosion and sediment control specialist.

10). **"Development"** means the alteration of land from its existing state.

11). **"Disturbed area"** means the part of a site on which land-disturbing activities take place. All land area that is to be disturbed at any time during the project is to be counted in determining the disturbed area, even if part of the land will be stabilized before another part is disturbed.

12). **"Erosion"** means the wearing away of the land surface by running water, wind, ice, gravity, or other geological, natural, or man-made agents.

13). **"Erosion Control Officer"** means the City Engineer, Building Official, or designee.

14). **"Erosion control permit"** means a major erosion control permit or a minor erosion control permit.

15). **"Fill site"** means land upon which fill materials are placed and which placement does not require a Sanitary Disposal Permit issued by the State of Iowa.

16). **"Filling"** means placing materials to effectively change the site contours. This shall include placing materials from the site itself, or from off site.

17). **"Final stabilization"** means that all land-disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70 percent for the area has been established or equivalent stabilization measures have been employed.

18). **"General Permit No. 2"** means General Permit No. 2, Storm Water Discharge Associated with Industrial Activity for Construction Activities, as authored and administered by the Iowa DNR.

19). "**Iowa DNR**" means the Iowa Department of Natural Resources.

20). "**Land-disturbing activities**" means clearing, grading, excavating, filling, or removal of vegetation, paving, or buildings, exposing earthen material on a site.

21). "**Ordinance**" means the portion of the City Municipal Code entitled, "Construction Site Erosion and Sediment Control."

22). "**Responsible party**" means one or more persons who have applied for or hold a city erosion control permit, or who own, control, or perform work on a site.

23). "**Sediment**" means solid material, both natural and man-made, that is in suspension, has been transported, or has been moved from its origin by air, water, gravity, or ice and has been deposited by the action of water or wind.

24). "**Site**" means property where land-disturbing activities take place.

25). "**Stabilization or stabilized**" means vegetative cover with a density of 70 percent has been established, or equivalent stabilization measures have been employed.

26). "**Standard specifications**" means the latest edition of the Ely Metropolitan Area Standard Specifications for Public Improvements as approved by the City Council.

27). "**SUDAS**" (Pronounced: "Soo'dahs")— Statewide urban design and specifications. Common urban standards and specifications for public improvements.

28). "**Stormwater drainage system**" means all man-made facilities and structures and all-natural watercourses that are owned by the city, or that are within a drainage easement owned by the city, and that are used for collection, storage, treatment, and conveyance of stormwater from any area, through any area. This includes without limitation all stormwater facilities, canals, creeks, curb and gutter, dams, ditches, floodwalls, flumes, gulches, gullies, levees, ravines, siphons, streams, streets, and swales. For the purpose of illicit discharge regulation, any discharge to an area tributary to the stormwater drainage system shall be treated as a discharge to the stormwater drainage system. The stormwater drainage system does not include the Cedar River.

29). "**Stormwater facilities**" means anything built or used for the control of stormwater, including without limitation catch basins, channels, culverts, detention basins, energy dissipation structures, inlets, manholes, outlets, pipes and other conduits, retention basins, and roadways and gutters.

30). "**Stormwater Pollution Prevention Plan**" means a document conforming to the requirements therefore contained in General Permit No. 2 and this chapter, prepared and certified by a design professional as defined herein.

31). "**SWPPP**" means Stormwater Pollution Prevention Plan.

### **147.03 Erosion Control Permit Required**

Sites that will result in a total disturbed area of one or more acres and sites less than one acre that are a part of a larger common plan of development that will result in a total disturbed area of more than one acre.

1. All erosion control permits shall be issued by the City Building Official upon approval of a completed application. The application shall be signed by the title holder of the site, together with the applicant, if different from the title holder. The necessary documents are covered in **147.04**.
2. Sites required to obtain an erosion control permit shall comply with Section **147.06**. Requirements for Sites Covered by the Iowa DNR General Permit No. 2, herein.
3. An erosion control permit application shall include the following:
  - a. A completed application.
  - b. A SWPPP conforming to: The requirements of this chapter, and the requirements of General Permit No. 2.
  - c. A dimensioned drawing including the following:
    - i. Property address and legal description;
    - ii. Property lines and any existing easements of record;
    - iii. Limits of area of land-disturbing activities;
    - iv. Existing and proposed ground elevations (2-foot maximum interval);
    - v. Other information as required by the City Building Official, City Engineer and/or City Council.
4. The permittee shall provide the City with all material submitted as part of a notice of discontinuation when such a notice is filed with the Iowa DNR.
5. Filling or construction within floodplain limits as established by the Federal Emergency Management Agency and in the Ely Floodplain Management Ordinance will require a separate additional permit under that ordinance, in addition to the permits required by this chapter.
6. The following activities are exempt from the requirements of this chapter:
  1. Crop production activities;
  2. Cemetery graves;
  3. Emergencies posing an immediate danger to life or property, or substantial flood or fire hazards;
  4. Total fill quantity of less than 25 cubic yards in a 12 month time period;

### **147.04 SWPPP Requirements**

1. Every SWPPP submitted to the city in support of an application for an erosion control permit:
  - a. Shall contain complete 24-hour contact information for the site owner and the person in responsible charge of providing and maintaining sedimentation and erosion control for the site. The permittee shall inform the Erosion Control Officer within 7 calendar days of any change in this contact information.

- b. Shall comply with all current minimum mandatory requirements for SWPPPs promulgated by the Iowa DNR in connection with General Permit No. 2, including those published as Summary Guidance for General Permit No. 2 by the Iowa DNR. The City Engineer may develop policies modifying these requirements for sites with a disturbed area less than one acre.
  - c. Shall comply with all other applicable state or federal permit requirements in existence at the time of application.
  - d. Shall be prepared by a design professional as defined herein.
  - e. 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 section.
2. The SWPPP shall be modified by a design professional (as defined herein) as required in General Permit No. 2. Any modification of a SWPPP shall meet the requirements above.

#### **147.05 SWPPP REVIEW AND APPROVAL PROCEDURE.**

1. The applicant shall submit a SWPPP for the site, meeting the requirements established in the State Urban Design Standards (SUDAS), to the City Building Official for review and approval, as follows:
  - a. The City Building Official shall review the submittal for compliance with the requirements of a SWPPP as set forth as in the GP#2. Following the review, the City Building Official may return comments to the design professional.
  - b. Following receipt of comments from the City Building Official, the applicant shall provide a revised submittal to the City Building Official in accordance with any requested revisions.
  - c. The City Building Official may require supporting documentation as needed to demonstrate conformance with these requirements. Issuance of an erosion control permit may be delayed pending receipt of the documentation.
  - d. If the submittal is complete, and meets the requirements as set forth herein, the City Building Official shall approve the plan.

#### **147.06 REQUIREMENTS FOR SITES COVERED BY IOWA DNR GENERAL PERMIT NO.2.**

1. The city shall not allow any land-disturbing activity on a site for which coverage under General Permit No. 2 is required, nor shall the city issue any permit, authorization, or license allowing such activity, until the site owner has obtained coverage for the site under General Permit No. 2 from the Iowa DNR.
2. Any responsible party who is required to obtain, or has obtained, coverage under General Permit No. 2 shall comply with all the requirements of General Permit No. 2. Failure to do so is a violation of this section.
  - a. Completion of work shown in a Stormwater Pollution Prevention Plan submitted under the provisions of General Permit No. 2 is a requirement of General Permit No. 2 and failure to complete such work is a violation of this section. Completion of work shown in a Stormwater Pollution Prevention Plan under the provisions of General Permit No. 2 is a requirement of General Permit No. 2 and failure to complete such work is a violation of this section.

2. For sites covered under General Permit No. 2 where the ownership changes, the Enforcement Officer must be notified of the title transfer within 30 days.

The new owner shall be subject to all terms and conditions of the erosion control permit. A copy of the notice of transfer that was sent to the Enforcement Officer shall be included in the SWPPP.

For sites that are part of a larger common plan of development such as a housing or commercial development project, if a permittee transfers ownership of all or any part of property subject to an erosion control permit, both the permittee and transferee shall be responsible for compliance with the provisions of General Permit No. 2 and the erosion control permit for that portion of the project which has been transferred including when the transferred property is less than one acre in area. If the new owner agrees in writing to be solely responsible for compliance with the provisions of General Permit No. 2 and the erosion control permit for the property which has been transferred, then the existing permittee shall be relieved of responsibility for compliance with General Permit No. 2 and the erosion control permit for the transferred property, from and after the date the transfer of responsibility is attached to the SWPPP.

#### **147.07 INSPECTION, NOTICE TO COMPLY, AND NOTICE OF VIOLATION.**

1. The Erosion Control Officer may inspect the site in response to reports from third parties or at other times, at the Erosion Control Officer's discretion.
2. The Erosion Control Officer may issue a notice to comply to the responsible party or parties, describing any problems and specifying a date and time by which compliance must be achieved.
  - a. The Erosion Control Officer may modify a notice to comply and may authorize, in writing, an extension to the specified date and time by which compliance must be achieved.
  - b. Failure to achieve compliance by the specified date and time is a violation of this section.
3. The Erosion Control Officer shall, upon determination of any violation of this section, issue a notice of violation in writing to the responsible party or parties, indicating the nature of the violation and ordering the action necessary to correct it.
  - a. The notice of violation may:
    1. Order the discontinuance of any or all work at the site, including at the Erosion Control Officer's discretion work not directly related to the cause and prevention of erosion and sedimentation, except work necessary to achieve compliance and to repair and clean up damage, specifying a date and time for such discontinuance to commence and conditions for such discontinuance to cease.
    2. Require the repair and cleanup of any damage done due to failure to comply with General Permit No. 2, specifying a date and time for completion of repair and cleanup.
    3. Order the withholding of any building or occupancy permits for the site.
  - b. Failure to comply with any order in a notice of violation is an additional violation.

Each day of such failure constitutes a separate violation.

- c. The Erosion Control Officer may modify a notice of violation and may authorize, in writing, an extension to the specified dates and times therein.
  - d. The notice of violation shall, where necessary or appropriate, recommend to the City Attorney the institution of legal or equitable actions that may be required for the enforcement of this section.
4. Communication to a responsible party's employee, partner, attorney, agent, contractor, or subcontractor shall be regarded as communication to the responsible party for the purpose of this section.
  5. Communication to one responsible party shall be regarded as communication to each responsible party for the purpose of this section.

#### **147.08 POWERS OF AUTHORITY FOR INSPECTION.**

1. Right of Entry. The City Engineer or Building Official and authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter. The applicant, owner, or titleholder shall be deemed to have consented to such entry by submission of an application for any permit or plan contemplated in this chapter. Barring or delaying such inspection is a violation of this section.
2. The Erosion Control Officer shall have access to and be able to copy any records that must be kept under the conditions of General Permit No. 2 within 3 business hours, where a business hour is any hour between 8:00 a.m. and 3:30 p.m. on a nonholiday weekday.

#### **147.09 REPAIR AND CLEAN-UP OF DAMAGE.**

1. For any site, whether or not covered by an erosion control permit or other stormwater discharge permit, the city may clean up eroded sediment or tracked soil deposited on public property if:
  - a. Corrective action has not been completed within 24 hours or within an extended deadline granted in writing by the city; or
  - b. In the judgment of the City Engineer, damage to the environment is ongoing and prompt corrective action would be intended to reduce such damage.
2. If the city cleans up such material deposited off-site, the City Engineer will invoice the responsible party or parties for the city's actual costs including overhead, which may be recorded as an assessment against the property and constitute a lien thereon.
3. Failure to pay an invoice under this subchapter within 30 days shall constitute a violation of this section.

#### **147.10 ENFORCEMENT.**

1. Violation of any provision of this chapter may be enforced by civil action including an action for injunctive relief.

2. 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 chapter.
3. Violation of any provision of this chapter may also be enforced as a municipal infraction within the meaning of Iowa Code 364.22, pursuant to Chapter 1, Ely City Code.

**147.11 APPEALS.** Anyone claiming to be aggrieved by any determination made by the Erosion Control Officer may within 20 days of the date of such determination appeal to the City Manager or designee and in writing state his or her reasons for requesting such order to be rescinded or modified. The City Manager or designee shall review the determination of the Erosion Control Officer, and if reasonable grounds exist, shall modify, withdraw or order compliance with said determination. Anyone claiming to be aggrieved by the determination made by the City Manager or designee shall have such rights of appeal as provided by the law.

**147.12 FEES ESTABLISHED.** The City Council may establish fees by resolution for permit applications, permit renewal applications, inspections, and for the review and processing of documents necessitated by this chapter. When such fees are established a submittal shall not be considered unless the appropriate fee has been submitted to the city.

**SECTION 2. 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.

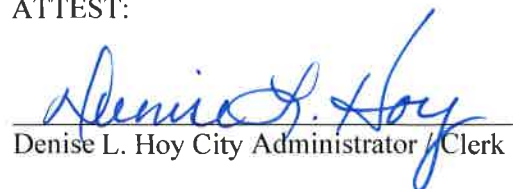
**SECTION 3. WHEN EFFECTIVE.** This ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

Passed by the Council the 11<sup>th</sup> day of March, 2019, and approved this 11th day of  
March, 2020.



Eldrew Miller, Mayor

ATTEST:



Denise L. Hoy City Administrator / Clerk



## **ORDINANCE NO. 277**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ELY, IOWA, BY REPEALING PROVISIONS PERTAINING TO CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL AND REPLACING IT WITH REVISED CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL**

First Reading: 03/11/2019

Second Reading: Waived 03/11/2019

Third Reading: Waived 03/11/2019

I certify that the foregoing was posted as required by law Ordinance No. 277 on the 18 day of March, 2020.

  
Denise L. Hy, City Administrator / Clerk