

# CHAPTER 28

## EROSION CONTROL

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# **EROSION CONTROL ORDINANCE**

## **28.01 FINDINGS AND DECLARATIONS OF POLICY.**

**The City of Middleton finds that urbanizing land uses have accelerated the process of soil erosion, runoff and sediment deposition in the waters of the City of Middleton. It is, therefore, declared through this Ordinance to be the policy of the City of Middleton to provide for the control and if possible, the prevention of accelerated soil erosion resulting from urbanization.**

## **28.02 DEFINITIONS.**

**The following terms, whenever they occur in this Ordinance, are defined as follows:**

- (1) "Affected" means that a regulated activity has significantly:
  - (a) Caused negative impacts on water quality or the use or maintenance of one's property or business; or**
  - (b) Endangered one's health, safety, or general welfare.****
- (2) "Agricultural Activity" means the planting, growing, cultivating, and harvesting of crops or trees as well as the growing and tending of gardens.**
- (3) "Best Management Practice" or "BMP" means a structural or non-structural practice, technique or measure, facility, system of practices or device, that is determined to be an effective means of preventing or reducing runoff pollutants.**
- (4) "City" means City of Middleton, Wisconsin.**
- (5) "City Engineer" means the city employee so designated by the city or his or her designee.**
- (6) "Erosion" (soil erosion) is the detachment and movement of soil or rock fragments by water, wind, ice or gravity.**
- (7) "Erosion Control Plan" is a written description, approved by the City Engineer, of methods for controlling sediment pollution from accelerated erosion on a development area and/or from erosion caused by accelerated runoff from a development area.**
- (8) "Excavation" means any act by which soil, organic matter, sand, gravel, rock or any other similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated or bulldozed and shall include the conditions resulting therefrom.**
- (9) "Filling" is the adding of soil, organic matter, sand, gravel, rock or similar material to the land surface or to a body of water.**

**(10) "Gully Erosion" is a severe loss of soil caused by or resulting in concentrated flow of sufficient velocity to create a defined flow channel.**

**(11) "Grading" is the altering of the elevation of the land surface by stripping, excavating, filling, stockpiling of soil materials or any combination thereof and shall include the land from which the material was taken or upon which it was placed.**

**(12) "Land Disturbing Activities" are any land alterations or disturbances that may result in soil erosion, sedimentation and/or the increase in runoff, including but not limited to tilling, removal of ground cover, grading, excavating and filling of land, except that the term shall not include agricultural activities.**

**(13) "Land Disturbing Permit" is the signed, written statement issued under this Ordinance authorizing the applicant to engage in specified land disturbing activities for a specified period of time.**

**(14) "Permittee" means any person to whom a land disturbing permit is issued under this Ordinance.**

**(15) "Person" is any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county, or state agency within Wisconsin, the federal government, or any combination thereof.**

**(16) "Rill Erosion" is a loss of soil caused by sheet flow or shallow concentrated flow and characterized by shallow irregular scouring of the soil surface.**

**(17) "Sensitive Areas" are lakes, ponds, streams, waterways, environmental corridor areas or wetlands regulated by the City of Middleton, Dane County, State of Wisconsin, or the Federal Government and its agencies.**

**(18) "Sedimentation" is the deposition of eroded soils at a location spatially displaced from the site of where the erosion occurred.**

**(19) "Sediment" means solid earth material, both mineral and organic, that is in suspension, or is being transported by natural processes, or has been moved from its location of origin by air, water, gravity or ice and has come to rest on the earth's surface at a different location.**

**(20) "Sheet Erosion" is a loss of soil caused by sheet flow and characterized by an absence of channeling or a relatively uniform loss across the exposed upper layer of the soil.**

**(21) "Site" means the area bounded by the limits of land disturbance as described in an erosion control plan.**

(22) "Slope" is the net vertical drop in feet per 100 feet of horizontal distance. As used in this ordinance, defined cutoff limits of slope shall apply if the average slope of the land area in question, as measured in 25-foot horizontal increments, meets or exceeds the stated limit and prevails across a minimum horizontal distance of 100 feet.

(23) "Soil Loss Rate" is the rate, usually measured in tons per acre per year, at which soil is transported beyond the perimeter of a given control site and that occurs as a result of sheet and rill erosion. This term does not apply to soil movement resulting from concentrated flow such as gully or bank erosion.

(24) "Unnecessary hardship" means that circumstance where special conditions, that were not self-created, affected a particular property and make strict conformity with regulations unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.

### **28.03 PURPOSE.**

The purpose of this Ordinance is to conserve the soil and related resources and control erosion and sedimentation and thereby to preserve the natural resources, protect the quality of public waters, preserve wildlife, prevent impairment of dams and reservoirs, protect the tax base, and promote the health, safety, prosperity, and general welfare of the citizens of the City of Middleton.

### **28.04 APPLICABILITY.**

(1) This Ordinance applies to any land disturbing activity, except as provided in subsection 28.04(3), that:

- (a) Occurs on any publicly or privately owned lands anywhere within the territorial limits of the City; or on any publicly or privately owned lands within the extraterritorial plat review jurisdiction of the City that may have off-site impacts; and
- (b) Involves a land disturbing activity in excess of the following criteria:
  - 1. An area of land greater than 4,000 square feet; or
  - 2. A volume of excavation and/or filling greater than 400 cubic yards; or
  - 3. A length of trench excavation greater than 400 feet; or
  - 4. A slope of land surface greater than 12% grade; or
  - 5. 100 lineal feet of road ditch, grass waterway or other land area where surface drainage flows in a defined open channel, including the placement, repair or

removal of any underground pipe, utility or other facility within the cross-section of the channel; or

6. Any new public or private roads or access drives longer than 125 feet; or
7. Development that requires a subdivision plat, as defined in the city's subdivision ordinance; or
8. Land disturbing activity that disturbs less than 4,000 square feet of land, including the installation of access drives, that the City Engineer determines to have a high risk of soil erosion or water pollution, or that may significantly affect a lake, stream, or wetland area. Examples of activities with a high risk of soil erosion or water pollution may include, but are not limited to, land disturbance on erodible soil or disturbance adjacent to lakes, rivers, streams, or wetlands. All such determinations made by the City Engineer shall be in writing, unless waived by the permittee.

(2) This Ordinance applies to land disturbing activities such as, but not limited to, grading, excavation for foundation work, landscaping, development of ponds and channelized water courses, installation of driveways, parking areas and sidewalks, and construction, enlargement, relocation or substantial reconstruction of any street, highway, road, bridge, landing strip or airport runway.

(3) The following activities are exempt from all requirements of this ordinance:

- (a) This Ordinance shall not apply to construction sites for one and two family dwelling units regulated by the Wisconsin Uniform Dwelling Code (UDC), although the City does regulate such sites in accordance with UDC regulations.
- (b) This Ordinance shall not apply to agricultural activities.
- (c) This Ordinance shall not apply to state building projects subject to s. 13.48 (13) Wis. Stats., and state highway projects subject to Wis. Admin Code Chap. Trans 401.

## **28.05 REQUIREMENTS FOR EROSION CONTROL PLAN.**

(1) Any person who proposes to engage in any land disturbing activities subject to this Ordinance as provided in section 28.04 shall be required to submit to the City an Erosion Control Plan. Such plan shall include the required elements for the Standard Erosion Control Plan as provided in section 28.06 or, if the applicable criteria are met, the Simplified Erosion Control Plan as provided in section 28.07.

(2) Erosion control plans required under this section may include consideration of adjoining landowners' cooperative efforts to control transport of sediment.

(3) The City may enter into intergovernmental cooperative agreements pursuant to Wis. Stats. 66.30 with other governmental entities to enhance enforcement of these requirements.

(4) The design of all best management practices used in an erosion control plan under this ordinance shall comply with the following technical standards:

- (a) Natural Resources Conservation services "Field Office Technical Guide, Chapter 4" or its successor;
- (b) Wisconsin Department of Natural Resources "Wisconsin Construction Site Best Management Practice Handbook" or its successor;

Any other technical methodology approved by the City Engineer and the Dane County Conservationist.

#### **28.06 STANDARD EROSION CONTROL PLAN.**

##### **(1) Design Requirements.**

- (a) Acceptable Erosion Control Plans shall include strategic placement and phased implementation of effective, practicable erosion control measures sufficient to:
  - 1. Prevent gully and bank erosion; and
  - 2. Prevent mud-tracking off site onto public thoroughfares; and
  - 3. Limit permissible annual cumulative net soil loss from a site, for exposed areas, to a maximum 7.5 tons per acre per year.

As a minimum, these erosion control measures shall include appropriate standard erosion control best management practices as identified in the Wisconsin Construction Site Best Management Practices Handbook published by the Wisconsin Department of Natural Resources.

- (b) Erosion control plan compliance under subpar. 28.06(1)(a)3. shall be determined using the Universal Soil Loss Equation, the Natural Resources Conservation Service Technical Guide or another commonly accepted soil erosion control methodology approved by the City Engineer and the Dane County Conservationist that includes the following considerations: season of year, site characteristics, soil erodability, slope, and the sequencing, staging and duration of exposure.

(2) **Content.** Applicants submitting erosion control plans not meeting the criteria for a Simplified Erosion Control Plan under section 28.07 shall submit a plan based on a Plan Submittal Requirement Form for STANDARD Erosion Control Plans adopted by the City Engineer and approved by the Dane County Land and Watershed Commission.

#### **28.07 SIMPLIFIED EROSION CONTROL PLAN.**

Applicants may submit an erosion control plan using a Plan Submittal Requirement Form for SIMPLIFIED Erosion Control Plans, adopted by the City Engineer, listing proposed standard erosion control Best Management Practices to be installed on site, wherever the following conditions exist:

- (1) The area of proposed disturbance is less than or equal to 20,000 square feet; and
- (2) The site is not adjacent to and does not directly drain into any sensitive areas; and
- (3) The slope of the site as defined in section 28.02 is less than six percent (6%).

#### **28.08 ADMINISTRATION.**

(1) **Application.** No person may begin a land disturbing activity subject to this Ordinance, and no person shall receive a land disturbing permit without having received prior approval of an erosion control plan pursuant to section 28.05 of the City of Middleton Municipal code. The applicant shall submit an application for a land disturbing permit along with a proposed erosion control plan and pay an application fee. The application must be signed by the landowner or include a notarized statement signed by the landowner authorizing the applicant to act as the landowner's agent and bind the landowner to the terms of this ordinance. If the landowner appoints an agent to submit an application, the landowner shall be bound by all of the requirements of this ordinance and the terms of any permit issued to the agent. By submitting an application, the applicant authorizes the City Engineer to enter the site of proposed land disturbance to obtain specific information required for an informed review of the erosion control plan.

(2) **Review.** Within 60 days of receipt of the application, the City Engineer shall review the application. Staff engaged in this review and approval process shall be certified where appropriate by the Wisconsin Department of Commerce for this purpose. If the application and proposed erosion control plan are deficient, the City Engineer shall inform the applicant of any deficiency and may either ask for additional information or disapprove the plan, giving specific reasons for the disapproval. All deficiencies in the application and in the erosion control plan shall be corrected before a land disturbing permit is issued. Upon approval of the erosion control plan by the City Engineer, the erosion control permit shall be issued after the applicant has met all other requirements of this ordinance. Compliance with this approval does not relieve the applicant of the responsibility to comply with other applicable federal,

state, and local laws and regulations.

**(3) Fees.**

(a) Applicant shall pay a fee as set forth in the Fee Schedule under Section 3.12 at the time of filing the application.

(b) In addition to the fee in subsection (a), the applicant shall pay the actual costs incurred by the City from any consultants or agents with whom the City may contract to provide services relating to the administration of this Code. The City shall bill the applicant for such charges, which shall be paid within thirty (30) days. Any unpaid charges shall be assessed to the subject property as a special charge pursuant to Wis. Stats. § 66.0627 and place on the tax roll.”

**(4) Duration of Land Disturbing Permit.** Any land disturbing permit issued shall be valid for the time period identified on the permit application, not to exceed 180 days. Upon expiration of the permit, applicants may apply for a time extension to the permit. The City Engineer, at his discretion may extend the period not to exceed an additional 180 days, and may require additional erosion control measures as a condition of the extension if necessary to meet the requirements of this Ordinance. The applicant will not be required to pay any additional fee for any extension granted unless additional plan review or additional site inspection is required as a result of any changes to the erosion control plan.

**(5) Surety.** As a condition of approval and issuance of a land disturbing permit, the City Engineer may require the applicant to deposit a surety bond, irrevocable letter of credit or other form of surety satisfactory in form and amount to the City Attorney to assure execution of the approved erosion control plan and any conditions upon the land disturbing permit.

**(6) Conditions of the Land Disturbing Permit.** All Land Disturbing Permits shall require the permittee to:

- (a) Notify the City Engineer at least 48 hours prior to commencing any land disturbing activities.
- (b) Notify the City Engineer of completion of any erosion control measures within ten days after their installation.
- (c) Obtain written permission from the City Engineer prior to modifying the erosion control plan or altering the sequencing of land disturbing activities.
- (d) Install and maintain all erosion control measures identified in the approved erosion control plan.
- (e) Maintain all road drainage systems, storm water drainage systems, erosion and runoff control measures, and other facilities identified in the erosion control plan.

- (f) Promptly repair any situation or erosion damage to adjoining properties, drainage ways or public facilities resulting from the land disturbing activities regulated under the terms of the erosion control plan, initiating the repair within 24 hours of notice of the situation or erosion damage.
- (g) Inspect the erosion control measures at least once per week and after each rain of one half (1/2) inch or more and initiate repairs within 24 hours of the inspection.
- (h) Refrain from the performance of work on the site during any period of time that the average hourly wind velocity at the location of the land disturbing activity exceeds twenty (20) miles per hour, unless provision has been made to eliminate dust and blowing dirt.
- (i) All incidental mud-tracking off-site onto adjacent public thoroughfares shall be cleaned up and removed by the end of each working day using proper disposal methods.
- (j) Allow the City Engineer to enter the site at any time for the purpose of inspecting compliance with the erosion control plan and for performing any work necessary to bring the site into compliance with the erosion control plan. Such permission has been granted as a part of the application process as so noted on the application for the permit
- (k) Keep a copy of the erosion control plan on the site.

(7) **Implementation of Erosion Control Plan.** The erosion control plan shall be implemented prior to the start of any land disturbing activity, and shall be maintained throughout the entire term of such activity. The applicant is responsible for successful completion of the erosion control plan as approved. Upon issuance of the land disturbing permit, the permittee shall be liable for any and all costs resulting from noncompliance with the permittee's approved erosion control plan.

(8) **Transfer of Ownership.**

- (a) When a permittee transfers ownership, possession or control of property subject to an erosion control plan prior to completion of the steps necessary to attain soil stabilization:
  1. The permittee must secure approval from the City to transfer any portion of the permittee's responsibility for implementing the approved erosion control plan to another party; and

2. The permittee shall notify the party taking possession (transferee) as to the current status of compliance with the approved erosion control plan, provide a copy of said notice to the City Engineer, and provide a copy of the approved erosion control plan to the transferee; and
  3. The transferee of interest to any portion of said property shall bear responsibility to control soil erosion on that portion of the property under the transferee's ownership, possession or control, and shall comply with the standards provided in this Ordinance.
- (b) Transfers of interest in real estate subject to an approved, uncompleted erosion control plan may be completed consistent with this Ordinance under any of the following circumstances:
1. The transferee shall file and obtain approval of a new erosion control plan; or
  2. The transferee shall obtain approval of assignment from the City Engineer as sub-permittee to complete that portion of the approved erosion control plan for the transferred property; or
  3. The permittee shall provide the city with a surety, if such has not previously been provided, in an amount sufficient to complete the work proposed in the approved erosion control plan. At the time of transfer, the permittee may seek to reduce any prior surety to the amount necessary to complete the remaining work. If the permittee enters into escrow agreements with the transferee to complete an approved erosion control plan, such amounts in escrow shall be available to the City Engineer to attain erosion control plan compliance. When an approved erosion control plan is not completed as proposed, the City Engineer may obtain the surety to complete remaining work to achieve erosion control plan compliance.

#### **28.09 ENFORCEMENT.**

(1) **Inspections.** As part of the erosion control plan approval process, the City Engineer shall establish a minimum number of inspections to be conducted consistent with the land disturbing activity proposed to be undertaken. The number of inspections shall be no less than once every thirty days.

(2) **Verification.** The permittee shall notify the City Engineer to arrange an inspection to verify erosion control plan compliance:

- (a) Within ten days after completion of installation of all required erosion control measures in an approved erosion control plan, and

- (b) **Within ten days after completion of soil restabilization.**
- (c) **The City Engineer shall inspect the property to verify compliance within ten days of notification.**

**These inspections shall not relieve the permittee from the responsibility to maintain erosion control measures or uphold erosion control plan requirements as set forth in sections 28.06 and 28.07.**

**(3) Noncompliance.**

- (a) **If an inspection reveals any noncompliance with an approved erosion control plan, the City Engineer shall notify the permittee in writing of all specific instances of noncompliance. The notice shall describe the nature of the noncompliance, remedial action needed, a schedule of remedial action and additional enforcement action that may be taken.**
- (b) **Upon receipt of written notification from the City Engineer, the permittee shall bring the work into compliance with the erosion control plan as necessary to meet the specifications and schedule set forth by the City Engineer in the notification. The permittee shall initiate corrective action within 24 hours of notification by the City Engineer.**

**(4) Stop Work Orders. The stop work order shall provide the following information: date of issuance, town and section number or an address, reason for posting, and the signature of the inspector posting the card. It shall be a violation of the ordinance for the unauthorized removal of the stop work order from the premises.**

- (a) **The City Engineer shall issue and post a stop work order under any of the following circumstances:**
  - 1. **Any land disturbing activity regulated under this Ordinance and undertaken without a land disturbing permit.**
  - 2. **Any noncompliance with an approved erosion control plan for which the permittee has failed to initiate corrective action within 24 hours or to follow the specifications and schedule set forth by the City Engineer under par. 28.09 (3)(a).**
- (b) **Upon issuance of a stop work order, the only permissible activity on the project shall be actions to bring the project into compliance with the approved erosion control plan following the specifications and schedule set forth by the City Engineer, or actions to assure issuance of an approved erosion control plan until such time as the City Engineer certifies compliance.**

(c) In addition to posting a stop work order, the City Engineer shall provide notification to the owner or contractor by personal service, written notice by certified mail, or facsimile transmission.

1. The permittee, landowner and contractor shall have 24 hours from the time and date of notification by the City Engineer to correct any noncompliance with the plan when notification is either personal communication of noncompliance to owner or contractor or their respective agents or written notice sent by certified mail to owner or contractor.

2. If notice is not provided under 28.09(4)(c)1, the permittee and landowner shall have 72 hours to correct any noncompliance with the plan when notification is by posting notice in a conspicuous place on site or sending notice by facsimile transmission to owner or contractor.

(5) **Revocation.** If the permittee fails to comply with the stop work order, the City Engineer may revoke the land disturbing permit for noncompliance with the provisions of this Ordinance.

(6) **Remedial Action.**

(a) If the permittee fails to comply with the stop work order, the City Engineer may issue to the permittee or land owner a notice of intent by the City to perform any work, or commence any operations necessary, to correct conditions on the property. Agents of the City may enter the land and commence the work three days after issuance of the notice of intent to the permittee or land owner.

(b) If the permittee files an appeal prior to the expiration of the time for compliance, the City Engineer may take action, perform work or correct conditions only to the extent necessary to protect against or correct an imminent hazard or a condition that will cause or threatens to cause personal injury or damage to off-site property.

(c) If the violations of this Ordinance are likely to result in damage to properties, public facilities or waters of the State, the City Engineer may enter the land and take emergency actions necessary to prevent such damage. The City Engineer may take such emergency actions immediately without providing notification of noncompliance, issuing a stop work order or waiting for three days.

(d) The cost incurred by the City for actions taken under par. (a) or (b), plus interest and legal costs, shall be billed to the permittee or owner of record title of the property and, if not paid, shall be entered on the tax rolls and collected as a special charge pursuant to Wis. Stats. 66.60(16).

(7) **Further Legal Action.** The City Engineer is authorized to refer any violation of this Ordinance, or of a stop work order issued pursuant to this Ordinance, to the City Attorney for the commencement of further legal proceedings.

(8) **Forfeitures.** Any person violating any of the provisions of this Ordinance shall also be subject to a forfeiture, with penalties as provided in section 30.04 of the City of Middleton Municipal Code.

(9) **Injunctions.** Every violation of this Ordinance is a public nuisance. Compliance with this Ordinance may be enforced by an action for an injunction at the suit of the City Pursuant to Wis. Stats. 62.23(8). It shall not be necessary to prosecute for forfeiture pursuant to subsection 28.09(8) of this ordinance before resorting to injunctive proceedings.

#### **28.10 APPEALS.**

(1) **Procedure.** The Middleton Water Resources Management Commission shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the City Engineer in administering this Ordinance. Upon appeal, the Water Resources Management Commission may authorize variances from the provisions of this Ordinance that are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship. The Water Resources Management Commission shall use rules, procedures, duties and powers authorizing variances.

(2) **Who May Appeal.** Any applicant, permittee, land owner or land user may appeal any order, decision or determination made by the City Engineer in administering this Ordinance.

#### **28.11 ABROGATION AND GREATER RESTRICTIONS.**

It is not intended by this Ordinance to repeal, abrogate, annul, impair or interfere with any existing covenants, deed restrictions, agreements, rules, regulations, ordinances or permits previously adopted or issued pursuant to law. However, whenever this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern.

#### **28.12 INTERPRETATION.**

In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements and shall be liberally construed in favor of the City and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

**28.13 SEVERABILITY OF ORDINANCE PROVISIONS.**

**If any section, provision or portion of this Ordinance is adjudged unconstitutional or invalid by a court, the remainder of this Ordinance shall not be affected thereby.**

**28.14 EFFECTIVE DATE.**

**This Ordinance shall become effective upon its adoption by the City and publication.**

**The above foregoing Ordinance was duly adopted at a regular meeting of the City of Middleton Common Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2003.**