

ORDINANCE NO. 2009-30

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, BY ADDING A NEW ARTICLE IV TO CHAPTER 38; IMPLEMENTING AND ENFORCING EROSION AND SEDIMENT CONTROL MANAGEMENT GUIDELINES; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2000 FOR EACH DAY OF VIOLATION HEREOF; AND PROVIDING FOR SEVERABILITY; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The Code of Ordinances of the City of Tomball, Texas, is hereby amended by adding a new Article, IV, Erosion and Sediment Control, to provide as follows:

“ARTICLE IV. EROSION AND SEDIMENT CONTROL

Sec. 38-50. Purpose.

The purpose of this Article is to reduce erosion during the construction process by implementing and enforcing erosion and sediment control management guidelines. The provisions of this Article are cumulative and in addition to other regulations or rules of the City that may be applicable to the development of property.

Sec. 38-51. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Clearing means any activity which removes the vegetative surface cover.

Drainage Way means any channel that conveys stormwater runoff throughout the site.

Erosion Control means measures that prevent erosion.

Erosion and Sediment Control Plan means a set of plans prepared by or under the direction of a licensed professional engineer indicating the specific measures and

sequencing to be used controlling sediment and erosion on a development site including, before, during and after construction.

Grading means excavation or fill of material, including the resulting conditions thereof.

Perimeter means the area of a lot or tract of land that is 30 feet wide and parallel to and adjacent to the property lines of the lot or tract of land.

Perimeter Control means a barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

Phasing means clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

Sediment Control means measures that prevent eroded sediment from leaving the site.

Site means a parcel of land, or a contiguous combination thereof, where grading work is performed as a single unified operation.

Site Development Permit means a permit issued by the municipality for which the construction or alteration of ground improvements and structures for the control of erosion, runoff and grading.

Stabilization means the use of practices that prevent exposed soil from eroding.

Start of Construction means 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 installation of accessory buildings such as garages.

Watercourse means any natural or artificial body of surface water, including, but not limited to bayous, channels, creeks, lakes, ponds, rivers, sloughs and streams defined by a bed and banks.

Waterway means a channel that directs stormwater runoff to a watercourse, or to the public storm drain.

Sec. 38-52. Permit Required.

(a) No person shall be granted a site development permit for land-disturbing activity that would require the uncovering of 5,000 or more square feet without the approval of an Erosion and Sediment Control Plan by the City Engineer.

(b) No site development permit is required however for the following activities:

- (1) Any emergency activity that is immediately necessary for the protection of life, property or natural resources.
- (2) Existing nursery and agricultural operations conducted as a permitted main or accessory use.
- (3) Any activities on a lot less than one acre in area and used for single family or two family residential purposes only.

(c) Each application shall bear the name(s), address(es) and contact number(s) of the owners and developers of the site, and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm, and shall be accompanied by a filing fee.

(d) Each application 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.

(e) The applicant shall file with City a faithful performance bond or bonds, letter of credit, or other improvement security in an amount deemed sufficient by the City Engineer to cover all costs of improvements, landscaping, and maintenance of improvements for such period as specified by the City, and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site.

Sec. 38-53. Review and Approval

(a) The City Engineer will review each application for a site development permit to determine its conformance with the provisions of this Article. Within 30 days after receiving an application, the City Engineer shall, in writing:

- (1) Approve the permit application;
- (2) Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
- (3) Disapprove the permit application, indicating the deficiencies and the procedure for submitting a revised application and/or submission.

(b) Failure of the City Engineer to act on original or revised applications within 30 days 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. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the City Engineer.

(c) Any permit issued under this Article shall expire six months following its issuance; provided, however, that the City Engineer may extend a permit to complete work substantially completed under that permit.

Sec. 38-54. Erosion and Sediment Control Plan

- (a) The Erosion and Sediment Control Plan shall include:
 - (1) A natural resources map identifying soils, forest cover, and resources protected under other chapters of this code.
 - (2) The map shall be at a scale no smaller than 1"=100'.
 - (3) The map of the perimeter of the trees to remain, including a tree survey showing the location, diameter, and name of all trees with 8 inch caliper or more measured three feet from the ground.
 - (4) A sequence of construction of the development site, including stripping and clearing, rough grading, construction of utilities, infrastructure, and buildings, and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, and the sequence of clearing, installation of temporary erosion and sediment measures, and establishment of permanent vegetation.
 - (5) All erosion and sediment control measures necessary to meet the objectives of this local regulation throughout all phases of construction and permanently, after completion of development of the site. Depending upon the complexity of the project, the drafting of intermediate plans may be required at the close of each season.
 - (6) Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures.
 - (7) Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.
 - (8) Identification of the representative for site activities.

- (b) Modifications to the plan shall include
 - (1) Major amendments of the Erosion and Sediment Control Plan shall be submitted to the City Engineer and shall be processed and approved, or disapproved, in the same manner as the original plans.
 - (2) Field modifications of a minor nature may be authorized by the City Engineer by written authorization to the permittee.

Sec. 38-55. Design Requirements

(a) Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth in the most recent version of the Storm Water Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 Edition and shall be adequate to prevent transportation of sediment from the site to the satisfaction of the City Engineer.

(b) Clearing and Grading

- (1) Clearing and grading of natural resources, such as forests and wetlands, floodplain, shall not be permitted, except when in compliance all other chapters of this Code. These standards are cumulative of other Federal, State, and local jurisdictional requirements.
- (2) Clearing techniques that retain natural vegetation and retain natural drainage patterns, as described in the Storm Water Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 Edition, shall be used to the satisfaction of City Engineer.
- (3) Phasing shall be required on all sites disturbing greater than *thirty* acres, with the size of each phase to be established at plan review and as approved by City Engineer.
- (4) Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.
- (5) Cut and fill slopes shall be *no greater than 2:1*, except as approved by City Engineer to meet other community or environmental objectives.

(c) Erosion Control

- (1) Soil must be stabilized within *five days* of clearing or inactivity in construction.
- (2) If vegetative erosion control methods, such as seeding, have not become established within *two weeks*, the City Engineer may require that the site be reseeded, or that a non-vegetative option be employed.
- (3) On steep slopes or in drainage ways, special techniques that meet the design criteria outlined in the Storm Water Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 Edition, shall be used to ensure stabilization.
- (4) Soil stockpiles must be stabilized or covered at the end of each work day.

- (5) At the close of the construction season, the entire site must be stabilized, using a heavy mulch layer, or another method that does not require germination to control erosion.
 - (6) Techniques shall be employed to prevent the blowing of dust or sediment from the site.
 - (7) Techniques that divert upland runoff past disturbed slopes shall be employed.
- (d) Sediment Controls
- (1) Sediment controls shall be provided in the form of settling basins or sediment traps or tanks, and perimeter controls.
 - (2) Where possible, settling basins shall be designed in a manner that allows adaptation to provide long term stormwater management.
 - (3) Adjacent properties shall be protected by the use of a vegetated buffer strip, in combination with perimeter controls.
- (e) Waterways and Watercourses
- (1) When a wet watercourse must be crossed regularly during construction, a temporary stream crossing shall be provided.
 - (2) When in-channel work is conducted, the channel shall be stabilized before, during and after work.
 - (3) All on-site stormwater conveyance channels shall be designed according to the criteria outlined in the Storm Water Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCF, 2006 Edition.
 - (4) Stabilization adequate to prevent erosion shall be provided at the outlets of all pipes and paved channels.
- (f) Construction Site Access
- (1) A temporary access road shall be provided at all sites.
 - (2) Other measures may be required at the discretion of City Engineer in order to ensure that sediment is not tracked onto public streets by construction vehicles, or washed into storm drains.

Sec. 38-56. Inspection

(a) City Engineer or designated agent shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the Erosion and Sediment Control Plan as approved. Plans for grading, stripping, excavating, and

filling work bearing the stamp of approval of the City Engineer shall be maintained at the site during the progress of the work. In order to obtain inspections, the permittee shall notify City Engineer at least two (2) working days before the following:

- (1) Start of Construction;
- (2) Erosion and Sediment Control Measures are in place and stabilized;
- (3) Site Clearing has been completed;
- (4) Rough Grading has been completed;
- (5) Final Grading has been completed;
- (6) Close of the Construction Season; and
- (7) Final Landscaping.

(b) The permittee or his/her agent shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Erosion and Sediment Control Plan(s). The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for additional control measures. All inspections shall be documented in written form and submitted to City Engineer at the time interval specified in the approved permit.

(c) The City Engineer or its designated agent shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed under Section b.

Sec. 38-57. Enforcement

(a) Stop-Work Order; Revocation of Permit.

- (1) The City Engineer may issue a stop-work order for any clearing or tree removal activity being conducted without a permit required by this Article.
- (2) In the event that any person holding a site development permit 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 or persons residing or working 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 Engineer may suspend or revoke the site development permit.

(b) Violation and Penalties

- (1) No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be

done, contrary to or in violation of any terms of this ordinance.

- (2) A person commits an offense if the person intentionally or knowingly clears land or removes trees, or causes the clearing of land or removal of trees, without a permit for such clearing of land or removal of trees required by this Article.
- (3) A person commits an offense if the person intentionally or knowingly clears land or removes trees, or cause the clearing of land or removal of trees, in violation of the terms of a permit issued under this Article.
- (4) Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor.”

Section 2. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2000. Each day of violation shall constitute a separate offense.

Section 4. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City’s Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 5TH DAY OF OCTOBER 2009.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN WEBB	<u>ABSENT</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 19TH DAY OF OCTOBER 2009.

COUNCILMAN WEBB	<u>AYE</u>
COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

Gretchen Fagan
Gretchen Fagan, Mayor

ATTEST:

Doris Speer
Doris Speer, City Secretary