

The purpose of this ordinance is to protect surface water quality by the regulation of land disturbing activities in the City of St. Cloud.

Ordinance Number _____

ORDINANCE ESTABLISHING SECTION 571 OF
THE 2007 CODE OF ORDINANCES
ENTITLED “EROSION AND SEDIMENT CONTROL”

THE COUNCIL OF THE CITY OF ST. CLOUD HEREBY ORDAINS:

SECTION 1. That Section 571 of the 2007 Code of Ordinances entitled “Erosion and Sediment Control” is hereby established as follows:

Section 571 – Erosion and Sediment Control

Section 571:00. Purpose and Policy. This ordinance establishes standards and requirements for erosion and sediment control measures to be taken during the development of and alterations to lands within the City of St. Cloud. The purpose of this ordinance is to protect public health, safety and general welfare, property and the environment by establishing regulations for erosion and sediment control related to land disturbing activities as required by federal (United States Environmental Protection Agency, US-EPA) and state (Minnesota Pollution Control Agency, MPCA) law.

The objectives of this ordinance are:

- (1) To regulate land disturbing activity that allows uncontrolled erosion to occur.
- (2) To protect and prevent the discharge of sediment into public and/or private lands, public infrastructure, wetlands and waters of the State.

Section 571:05. Definitions. Unless the context specifically indicates otherwise, the following terms as used in this ordinance, shall have the meanings designated.

Subd. 1. “Applicant” is any person or group that applies for a permit to allow land disturbing activities. Applicant also means that person's agents, employees, and others acting under this person's or groups direction. The term “applicant” also refers to the permit holder or holders and the permit holder’s agents, employees, and others acting under this person's or group’s direction.

Subd. 2. “Best Management Practices (BMPs)” Erosion and sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing and minimizing degradation of waters of the state, including avoidance of impacts, prohibitions of practices, general house keeping practices, pollution prevention and educational practices, operating and maintenance procedures, and other applicable management practices.

Subd. 3. “Builder, Commercial” Any building contractor engaging in work other than work performed under a license from the State of Minnesota as a residential building contractor, remodeler or specialty contractor in the business of contracting or offering to contract to improve residential real estate, all terms as defined by Minnesota Statute.

Subd. 4. “Builder, Residential” Any building contractor engaging in work performed under a license from the State of Minnesota as a residential building contractor, remodeler or specialty contractor in the business of contracting or offering to contract to improve residential real estate, as defined by Minnesota Statute.

Subd. 5. “Building Construction” The construction of any principle building or accessory structure or modification of a parcel of land or platted lot.

Subd. 6. “City” The City of St. Cloud, the St. Cloud City Council, the Public Utilities Department.

Subd. 7. “Developer” Any person, firm, corporation, sole proprietorship, partnership, state agency, or political subdivision engaged in a land disturbance activity.

Subd. 8. “Director” The City of St. Cloud Public Utilities Director or authorized designee.

Subd. 9. “Final Stabilization” All soil disturbing activities at the site have been completed and all soils must be stabilized by a uniform perennial vegetative cover with a density of seventy (70) percent over the entire pervious surface area, or other equivalent means necessary to prevent soil failure under erosive conditions and,

- (a) All drainage ditches, constructed to drain water from the site after construction is complete, must be stabilized to exclude erosion;
- (b) All temporary synthetic and structural erosion prevention and sediment control BMP’s (such as silt fence) must be removed; and
- (c) The Permittee must clean out all sediment from conveyances and from temporary sedimentation basins that are to be used as permanent water quality management basins. Sediment must be stabilized to prevent it from being washed back into the basin and/or into conveyances or drainage ways discharging off-site or to surface waters. The cleanout of permanent basins must be sufficient to return the basin to design capacity.

Subd. 10. “Land Development (Develop)” The process whereby improvement to a single lot or to an entire site, occurs in one continuous process or in more than one distinct phase, including but not limited to the following activities, site grading; installation of utilities; construction of public streets; construction or grading of drainage ways; other grading or filling of any area within the site; grading of building pad areas; utility hookups; construction of buildings; parking lots; driveways; storage areas; private streets; and any other construction or land disturbing activity within the subject property site.

Subd. 11. “Land Disturbing Activity” Any removal of vegetation, excavating, grading, clearing, filling, stockpiling, hauling, or other earth change related to or associated with construction or reconstruction, which may result in movement of soil particles of earth.

Subd. 12. “Land Disturbance Permit (LDP)” A permit issued by the City for the control of erosion and sediment during land disturbing activities.

Subd. 13. “Municipal Separate Storm Sewer System (MS4)” The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body and designed or used for collecting or conveying stormwater, and not used for collecting or conveying wastewater that discharges to waters of the United States.

Subd. 14. “National Pollution Discharge Elimination System (NPDES) Stormwater Discharge Permit” A permit issued by the US-EPA (or by a State under authority delegated by the US-EPA) that authorizes discharge to waters of the United States.

Subd. 15. “Owner(s)” A natural person, partnership, firm, association, public or quasi-public corporation, private corporation, or a combination of, with a legal or equitable interest in the parcel of record.

Subd. 16. “Parcel of Record” A tract, plot, lot, and/or portion of subdivision or other parcel of land, intended as a unit for the purpose, whether immediate or future, of transfer of ownership, possession or for building development.

Subd. 17. “Permittee” A Land Disturbance Permit holder.

Subd. 18. “Preliminary Plat” A drawing of the entire subdivision meeting all requirements of the City Subdivision Ordinance.

Subd. 19. “Public Waters” Are all waterbasins and watercourses that meet the criteria set forth in Minnesota Statutes, Section 103G.005 subd.15 that are identified on Public Water Inventory maps and lists authorized by Minnesota Statute, Section 103G.201.

Subd. 20. “Sediment” Soil particle exposed to movement.

Subd. 21. “Stormwater” Any surface flow, runoff and drainage consisting entirely of water from any form of natural precipitation.

Subd. 22. “Stormwater Pollution Prevention Plan (SWPPP)” A plan developed to identify the sources of pollution that affect the quality of stormwater discharges from a site and to describe and ensure the implementation of practices to prevent or reduce pollutants in stormwater discharge.

Section 571:10. Subject Land Use Activities. The following land use activities are subject to this ordinance:

Subd. 1. All land disturbing activities are subject to the conditions of this ordinance. Only land disturbing activities that disturb land of greater than or equal to five thousand (5,000) square feet are required to obtain a Land Disturbance Permit (LDP).

- (a) Residential, Commercial, Multifamily and Industrial Site: All persons planning a land disturbing activity, meeting the requirement of 571:10 Subd. 1 of this ordinance, on an existing parcel of record (building site) shall obtain a LDP, from the City prior to obtaining a building permit. A building permit will not be issued without an approved Building Site LDP.
- (b) Subdivision Development: A Subdivision owner/developer/agent planning a land disturbing activity, including but not limited to mass grading, site development, roadway and utility installation on an existing parcel of record as shown on the preliminary plat, shall obtain a LDP from the City, if meeting the requirement of 571:10 Subd.1 of this ordinance, for the project phase where work will be performed as specified in the City approved construction plans (each phase needs its own permit) as part of the approved grading and drainage plan. A subdivision owner/developer/agent may have multiple phase permits open for the master plan site. The LDP will not be issued without approved final construction plans and specifications relevant to final plat phasing. Prior to site work or building construction, each parcel of record (building site) must have its own LDP obtained by the owner or applicant as described in 571:10 Subd. 1. (a)
- (c) Roadway and Utility Installation Construction Plans: All persons wishing to start a land disturbance project on an existing lot of record for the purposes of the construction of any roadway or utilities, shall submit a Land Disturbance Permit application to the City at the time of the roadway and utility plan if the project meets the requirement of 571:10 Subd. 1 of this ordinance. Each parcel of record within a subdivision must obtain a separate LDP.

Subd. 2. The LDP does not replace, eliminate or satisfy the need for any other permits required by any other public or private entity.

Section 571:15. Land Use Exemptions. The following activities are exempt from the requirements of this ordinance:

Subd. 1. Any emergency activity that is immediately necessary for the protection of life, property or natural resources.

Subd. 2. Nursery, home gardening and agricultural operations that are confined to private property.

Section 571:20. Land Disturbance Permit Exemptions. The following activities do not require a LDP but are subject to the conditions of this ordinance:

Subd. 1. Maintenance work by City employees.

Subd. 2. Federal, State, County, MS4 and other projects where the City does not have regulatory authority.

Subd. 3. Land disturbance activities less 5,000 square feet

Section 571:25. Land Disturbance Permit. Prior to any land disturbing activities on lands subject to this ordinance, the owner or applicant shall be required to obtain a Land Disturbance Permit (LDP).

Subd. 1. The LDP application shall be submitted to the City.

Subd. 2. All applications shall be submitted to the Building Safety Department. All single family residential land disturbance permits shall be processed within seven (7) calendar days from receipt of a completed application. All non single family residential permits shall be processed within thirty (30) calendar days from receipt of a completed application.

Subd. 3. The City of St. Cloud shall in writing:

- (a) Approve the permit application;
- (b) Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this Ordinance, and issue the permit subject to these conditions; or
- (c) Disapprove the permit applications, indicating the reason(s) and procedure for submitting a revised application and/or submission.
- (d) Failure of the City to act on an original or revised Land Disturbance Permit application within seven (7) calendar days for single family residential permits and thirty (30) calendar days for all other permits upon 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, or the City notifies the applicant of errors and/or omissions in the application requiring corrective action on the part of the applicant. Once the LDP is approved, permit coverage will be issued to the Permittee.

Section 571:30. Land Disturbance Permit Fees.

Less than 1 acre -	\$100
1-5 acres-	\$ 200
Over 5 acres-	\$ 300

Subd. 1. All Land Disturbance Permit fees shall be submitted to the Building Safety Department upon permit approval.

Section 571:35. Land Disturbance Permit Submittals. The application for a LDP shall include the following:

Subd. 1. One full set of site plans and a copy of the SWPPP, or portion of the SWPPP that applies to the site, prepared for the MPCA if not included in the full set of site plans. The City reserves the right to approve the SWPPP subject to conditions deemed necessary to meet the purpose of this ordinance and the MPCA requirements. City approval of a SWPPP does not mean approval by the MPCA, and MPCA approval of a SWPPP does not mean City approval. At a minimum, all conditions of the MPCA NPDES Construction Permit MN R100001 must be met; in some cases the City may apply stricter standards or require temporary and permanent erosion and sediment control measures in addition to those required by other public or private entities.

Subd. 2. The Permittee shall indicate in the SWPPP who is responsible for post construction maintenance of all BMPs

Subd. 3. If a SWPPP is not required by the MPCA, the following must accompany the LDP application:

(a) Site Information.

- (i) Delineation of the subject property and the location of existing and proposed buildings, structures and impervious surfaces;
- (ii) Description of the construction or land disturbing activity to be performed on the property and proposed project schedule;
- (iii) Identification of all public waters located on and within 30 feet of the subject property's boundaries, and identify if a water body is intended to be used for water quality treatment. Identification by use of best available maps from the City, DNR or County will be sufficient;
- (iiii) Identification of all wetland buffer zones;
- (iiv) Topographical data, including existing (dashed) and proposed (solid) contours at vertical intervals of not more than two feet, except that contour lines shall be no more than 100 feet apart;
- (iv) Temporary benchmarks shall be established within the boundaries of the project area. Descriptions, reference ties and elevations of the benchmarks shall be furnished; and
- (ivi) The location and size of all existing sanitary sewer, water or storm sewer, and services on or adjacent to the property.

(b) Erosion and Sedimentation Control.

- (i) Delineation of all areas to be graded or excavated, and the limits of land disturbing activities;

- (ii) Identification of measures to be utilized to control erosion and sedimentation within and from the subject property during the project activity as required herein;
 - (iii) Identification of all permanent erosion control measures and a completion schedule.
 - (iv) Identification of the location of dirt or soil storage or stock pile areas to be utilized;
 - (v) Identification of all measures to be utilized to protect neighboring property, water bodies, and wetland buffer zones; and
 - (vi) Identification, use and maintenance plan of BMPs for temporary erosion and sedimentation control as recommended by the MPCA including but not limited to:
 - (a) Perimeter erosion control devices, including but not limited to silt fence, sediment logs, mulch, etc.;
 - (b) Stockpile protection;
 - (c) Phased grading;
 - (d) Temporary seeding, mulching, and disc anchoring (with seed and mulch type);
 - (e) Storm drain inlet protection devices;
 - (f) Appropriately protected construction entrance;
 - (g) Removal of all debris, dirt and soil from impervious ground surfaces, including abutting public or private roadways and sidewalks, in connection with the subject property (street sweeping);
 - (h) Sediment basins and flow diversions; and
 - (i) Any other erosion and sedimentation control device as deemed necessary by the City.
- (c) Drainage and Grading.
- (j) Identification of proposed contour grading at vertical intervals of not more than two feet;
 - (ii) The estimated time required to complete the work, the amount of material to be moved and/or removed from the site;

- (iii) A map showing the stages or limits of grading together with the existing or proposed finished elevations based on sea level readings;
- (iv) Identification of proposed building bench elevations and direction of flow of surface water within each lot;
- (v) Methods of controlling dust;
- (vi) Submission of preliminary plans or program for water supply, sewage disposal, drainage and flood control;
- (vii) Soil borings, if required by the City Engineer; and
- (viii) Drainage and grading design requirements such that no land shall be developed and no use shall be permitted that result in water runoff causing flooding (drainage in excess of the natural drainage anticipated by the city stormwater management plan) or erosion on adjacent property. Runoff shall be properly drained via overland drainage ways or channeled into the storm drain system, watercourse, ponding area or other suitable facility approved by the City.

Section 571:40. Land Disturbance Permit Standards.

Subd. 1. All exposed soil areas must have appropriate permanent or temporary stabilization as soon as possible to limit soil erosion but in no case later than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased. Temporary stockpiles without significant silt, clay or organic components (e.g., clean aggregate stockpiles, demolition concrete stockpiles, sand stockpiles) and the constructed base components of roads, parking lots and similar surfaces are exempt from this requirement but must comply with stockpile requirements.

Section 571:45. Duration of Coverage by Land Disturbance Permit.

Subd. 1. A LDP shall remain effective until one of the following occurs:

- (a) Final Stabilization. Final Stabilization is achieved, a Notice of Termination (NOT) has been filed with the City, all termination of coverage requirements are met and the City has issued the NOT.
- (b) Change of Coverage. For stormwater discharges from construction projects where the Owner changes prior to issuing NOT (e.g. a homebuilder sells a house and lot to the final homebuyer or the entire site changes ownership):
 - (i) The original/current applicant shall provide a copy of the notice of termination/permit modification form to the new applicant.
 - (ii) The original/current applicant shall provide the SWPPP, or equivalent plan, to the new applicant that specifically addresses the remaining construction activity. If the SWPPP or equivalent plan is not relevant, or

the new applicant wants to use a new plan, this must be submitted with the notice of termination/permit modification form.

- (iii) The new and current applicants shall work together to submit one completed and signed permit modification form to the City within seven (7) calendar days of assuming operational control of the site, commencing work on their portion of the site, or of the legal transfer, sale, or closing on the property. No new fees will be required.

The change of coverage becomes effective five (5) calendar days from receipt of the completed form unless the Permittee is contacted by the City during the five (5) day period and notified of an incomplete form. The permit modification portion of the NOT/permit modification form acts as the permit application for the new applicant and a NOT for the current applicant only for the portion of the site which was sold.

- (iv) Late submittals of either LDP transfers will not be rejected, however, the City reserves the right to take enforcement for any unpermitted discharges or permit noncompliance for the new registered party that has assumed control of the site.
- (v) For stormwater discharges from construction activities where the applicant changes, the new applicant can implement the original SWPPP created for the project or develop and implement their own SWPPP.
- (vi) The new Permittee shall ensure either directly or through coordination with the old Permittee that their SWPPP meets all terms and conditions of this ordinance and that their activities do not render ineffective another party's erosion prevention and sediment control BMP's.

- (c) Time Requirement Reached. The LDP becomes void if work does not begin within 180 days of permit approval or is suspended at any time for over 180 days. Extensions may be granted upon requests received at least 15 days prior to permit becoming void. If a permit becomes void, the permit application process will begin new.

Section 571:50. Termination of Coverage. A Permittee wishing to terminate the LDP must complete Final Stabilization of the Parcel of Record and submit a Notice of Termination (NOT) request. Requests for NOT is done by completing the NOT/permit modification form supplied with the permit; or using other proper NOT communication (phone call, e-mail) and submitting it to the Public Utilities Director or designee as provided with the notice of coverage.

Compliance with the LDP is required until a NOT is submitted and approved by the City. The NOT becomes effective fifteen (15) calendar days after the postmarked date of the completed NOT form or other proper notification, unless the Permittee is contacted by the City during the fifteen (15) day period and notified of an incomplete NOT. As-built drawings for all stormwater structures must be provided to the City of St. Cloud before overall subdivision permits are terminated. All other land disturbance permits must show that all stormwater structures are in

compliance with the grading plan. A notice of permit termination will be issued once the termination is approved.

Section 571:55. Inspections. The City shall have the right to enter and inspect a property to determine compliance with this ordinance.

Subd. 1. Self Inspections. The Permittee or their designee must make regular inspections of all the BMPs and the entire site at least once every seven (7) days during active construction and within twenty-four (24) hours after a rainfall event greater than 0.5 inches in 24 hours, to ensure compliance with this ordinance. Records of these inspections shall be made available to the City upon request.

Subd. 2. City Inspections. The Public Utilities Director and/or their designee shall make inspections and either approve that portion of completed work or notify the Permittee where work is non-compliant. The LDP fee shall cover the cost of routine inspections. Additional inspections due to noncompliance will be billed to the affected property owner at 2.5 times the base hourly salary of the Inspector.

Section 571:60. Violations and Enforcement.

Subd. 1. In the event of noncompliance, the City may suspend construction and any issued permits. Only corrective action work to bring the site back to compliance will be permitted, and no other construction shall resume until authorized by the City.

Subd. 2. The City shall use the following procedure to notify property owners of violations and corrective measures:

- (a) Residential, Commercial, Multifamily and Industrial Site. In the event a Building Site Permittee is in violation of the LDP or the SWPPP, the City may suspend or revoke the LDP. The City shall serve the Permittee and/or other responsible persons a Notice of Violation.
- (b) Land Disturbing Activities in Public Right of Ways. A staff designee or Law Enforcement Officer shall use written notification to the responsible party and require construction termination to remove conditions or remedy any defects. The notice shall require the responsible party to take reasonable steps within twenty-four (24) hours to abate and correct the violation.

Subd. 3. Abatement of Violation. If the property owner fails to abate the violation or make the necessary repairs, alterations or changes, a Law Enforcement Officer may cause such violation to be abated and recover the expenditure by assessing the enforcement action against the property upon which the violation existed and to certify the same for collection as taxes and special assessments certified and collected.

Subd. 4. Show Cause Hearing.

- (1) Notice of Hearing. If the violation is not corrected by timely compliance, the Director may order any user which causes or allows an unauthorized discharge to show cause before the City Council why the proposed enforcement action

should not be taken. A notice shall be served on the user specifying the time and place of a hearing to be held by the City Council regarding the violation, the reason the action will be taken, the proposed enforcement action, and directing the user to show cause before the City Council why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least fourteen (14) days before the hearing. Service may be made on any agent or officer of a corporation.

- (2) Hearing Officials. The City Council may conduct the hearing and take the evidence or may designate any of its members, administrative law judge, or any officer or employee of the (assigned department) to:
 - (a) Issue in the name of the City, notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;
 - (b) Receive evidence; and
 - (c) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the City Council for action thereon.
- (3) Transcripts. At any hearing held pursuant to this ordinance, testimony taken must be under oath and recorded. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges therefore.
- (4) Issuance of Orders. After the City Council has reviewed the evidence, it may issue an order to the user responsible for the discharge directing that, following a specified time period, the storm drain service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed or existing treatment facilities, devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued.

Section 571:65. Penalties.

Subd. 1. Administrative Fines. Notwithstanding any other section of this ordinance, any person who is found to have violated any provision of this ordinance, or permits and orders issued hereunder, shall be fined in an amount not to exceed \$1,000 per violation. Each calendar day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation. Unpaid charges, fines and penalties shall constitute a lien against the individual user's property. Users desiring to dispute such fines must file a request for the City Finance Director to reconsider the fine within 10 days of being notified of the fine. Where the City Finance Director believes a request has merit, the Finance Director shall convene a hearing on the matter within 30 days of receiving the request from the user.

Subd. 2. Criminal Penalties. Any person violating any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be furnished by a fine of not more than \$800, or by imprisonment not to exceed 90 days, or both.

Subd. 3. Costs. In addition to the penalties provided herein, the City may recover court costs, court reporter's fees and other expenses of litigation by an appropriate action against the person found to have violated this ordinance or the orders, rules, regulations and permits issued hereunder.

Subd. 4. Costs of Damage. Any person violating any of the provisions of this ordinance shall become liable to the City for any expense, loss or damage. The Director may add to the user's charges and fees, the costs assessed for any cleaning, repair or replacement work caused by the violation or discharge. Any refusal to pay the assessed costs shall constitute a violation of this ordinance.

Subd. 5. Falsifying Information. Any person who knowingly makes false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this ordinance, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ordinance, shall upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than 90 days, or both.