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32.01 AUTHORITY

- (1) This ordinance is adopted under the authority granted by Section 62.234, Wisconsin Statutes. This ordinance supersedes all provisions of an ordinance previously enacted under Section 62.23 Wisconsin Statutes that relate to construction site erosion control, except as otherwise specified in Section 62.234 and Section 62.23 of the Wisconsin Statutes, applies to this ordinance and to any amendments to this ordinance.
- (2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The common council hereby designates the city engineer to administer and enforce the provisions of this ordinance.
- (4) The requirements of this ordinance do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits, or approvals including those authorized under Sections 281.16 and 283.33 of the Wisconsin Statutes.
 - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under Section NR 151.004, Wisconsin Administrative Code.

32.02 FINDINGS OF FACT

The common council finds that runoff from land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state in City of Wisconsin Rapids.

32.03 PURPOSE

It is the purpose of this ordinance to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; Preserve ground cover and scenic beauty; and promote sound economic growth, by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activity to waters of the state in the City of Wisconsin Rapids.

32.04 APPLICABILITY AND JURISDICTION

- (1) Applicability.
 - (a) This ordinance applies to the following land disturbing construction activities, except as provided under Section 32.04(1)(b).
 - (1) A construction site, which has 5 or more acres of land disturbing construction activity.
 - (2) A construction site, which has one or more acres of land disturbing construction activity after March 10, 2003.
 - (b) This ordinance does not apply to the following:

- ~~(1) Land disturbing construction activity that includes the construction of a building and is otherwise regulated by the Wisconsin Department of Commerce under Sections COMM 21.125 or COMM 50.115, Wisconsin Administrative Code. (MC#1100)~~
 - (2) A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under Chapter 40, Code of Federal Regulations, Part 122, for land disturbing construction activity.
 - (3) Nonpoint discharges from agricultural facilities and practices.
 - (4) Nonpoint discharges from silviculture activities.
 - (5) Routine maintenance for project sites under five (5) acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
- (c) Notwithstanding the applicability requirements in paragraph (a), this ordinance applies to construction sites of any size that, in the opinion of the city engineer are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.
- (2) Jurisdiction. This ordinance applies to land disturbing construction activity on construction sites located within the boundaries and jurisdiction of the City of Wisconsin Rapids.
 - (3) Exclusions. This ordinance is not applicable to activities conducted by a state agency, as defined under Section 227.01(1), Wisconsin Statutes, but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under Section 281.33(2), Wisconsin Statutes.

32.05 DEFINITIONS

- (1) Agricultural facilities and practices has the meaning in Section 281.16(1), Wisconsin Statutes.
- (2) Average annual rainfall means a calendar year of precipitation, excluding snow, which is considered typical.
- (3) Best management practice or BMP means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.
- (4) Business day means a day the office of the city engineer is routinely and customarily open for business.
- (5) Cease and desist order means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit.
- (6) City engineer means the individual, or the individual's designee, or the firm, or a representative of the firm, appointed or retained by the common council to routinely provide engineering services for the city, and empowered under Section 62.234, Wisconsin Statutes, to administer this ordinance.
- (7) Construction site means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan.
- (8) Division of land means the creation from one parcel of five or more parcels or building sites of 1.5 or fewer acres each in an area where such creation occurs at one time or through the successive partition within a five (5) year period.
- (9) Erosion means the process by which the land's surface is worn away by the action of wind, water, ice, or gravity.
- (10) Erosion and sediment control plan means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.
- (11) Extraterritorial means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.
- (12) Final stabilization means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established, with a density of at least 70 percent of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.
- (13) Governing body means town board of supervisors, county board of supervisors, city council, village board of trustees or village council.
- (14) Land disturbing construction activity means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.
- (15) MEP or maximum extent practicable means a level of implementing best management practices in order to achieve a performance standard specified in this chapter which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered

and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

- (16) Performance standard means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (17) Permit means a written authorization made by the city engineer to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
- (18) Pollutant has the meaning given in Section 283.01(13), Wisconsin Statutes.
- (19) Pollution has the meaning given in Section 281.01 (10), Wisconsin Statute.
- (20) Responsible party means any entity holding fee title to the property or performing services to meet the performance standards of this ordinance through a contract or other agreement.
- (21) Runoff means stormwater or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (22) Sediment means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.
- (23) Separate storm sewer means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:
 - (a) Is designed or used for collecting water or conveying runoff.
 - (b) Is not part of a combined sewer system.
 - (c) Is not draining to a stormwater treatment device or system.
 - (d) Discharges directly or indirectly to waters of the state.
- (24) Site means the entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application.
- (25) Stop work order means an order issued by the city engineer which requires that all construction activity on the site be stopped.
- (26) Technical standard means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.
- (27) Waters of the state has the meaning given in Section 281.01 (18), Wisconsin Statute.

32.06 TECHNICAL STANDARDS

- (1) Design Criteria, Standards and Specifications. All BMP's required to comply with this ordinance shall meet the design criteria, standards and specifications based on any of the following:
 - (a) Applicable design criteria, standards and specifications identified in the *Wisconsin Construction Site Best Management Practice Handbook*, WDNR Publication WR-222 November 1993 Revision.
 - (b) Other design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under Subchapter V of Chapter NR 151, Wisconsin Administrative Code.
 - (c) For this ordinance, average annual basis is calculated using the appropriate annual rainfall or runoff factor, also referred to as the R factor, or an equivalent design storm using a type II distribution, with consideration given to the geographic location of the site and the period of disturbance.
- (2) Other Standards. Other technical standards not identified or developed in Section 32.06(1), may be used provided that the methods have been approved by the city engineer.

32.07 PERFORMANCE STANDARDS

- (1) Responsible Party. The responsible party shall implement an erosion and sediment control plan, developed in accordance with Section 32.09, that incorporates the requirements of this section.
- (2) Plan. A written plan shall be developed in accordance with 32.09 and implemented for each construction site.
- (3) Erosion and Other Pollutant Control Requirements. The plan required under Section 32.07(2) shall include the following:
 - (a) BMP's that, by design, achieve to the maximum extent practicable, a reduction of 80% of the sediment load carried in runoff, on an average annual basis, as compared with no sediment or erosion controls until the construction site has undergone final stabilization. No person shall be required to exceed an 80% sediment reduction to meet the requirements of this paragraph. Erosion and sediment control BMP's may be used alone or in combination to meet the requirements of this paragraph. Credit toward meeting the sediment reduction shall be given for limiting the duration or area, or both, of land disturbing construction activity, or other appropriate mechanism.
 - (b) Notwithstanding Section 32.07(3)(a), if BMP's cannot be designed and implemented to reduce the sediment load by 80%, on an average annual basis, the plan shall include a written and site-specific

explanation as to why the 80% reduction goal is not attainable and the sediment load shall be reduced to the maximum extent practicable.

- (c) Where appropriate, the plan shall include sediment controls to do all of the following to the maximum extent practicable:
 - (1) Prevent tracking of sediment from the construction site onto roads and other paved surfaces.
 - (2) Prevent the discharge of sediment as part of site dewatering.
 - (3) Protect the separate storm drain inlet structure from receiving sediment.
 - (4) The use, storage and disposal of chemicals, cement and other compounds and materials used on the construction site shall be managed during the construction period, to prevent their entrance into waters of the state. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this paragraph.
- (4) Location. The BMP's used to comply with this section shall be located prior to runoff entering waters of the state.
- (5) Alternate Requirements. The city engineer may establish stormwater management requirements more stringent than those set forth in this section if the city engineer determines that an added level of protection is needed for sensitive resources.

32.08 PERMITTING REQUIREMENTS, PROCEDURES AND FEES

- (1) Permit Required. No responsible party may commence a land disturbing construction activity subject to this ordinance without receiving prior approval of an erosion and sediment control plan for the site and a permit from the city engineer.
- (2) Permit Application and Fees. At least one responsible party desiring to undertake a land disturbing construction activity subject to this ordinance shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of Section 32.09 and shall pay an application fee of \$250.00 to the city engineer. By submitting an application, the applicant is authorizing the city engineer to enter the site to obtain information required for the review of the erosion and sediment control plan.
- (3) Review and Approval of Permit Application. The city engineer shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:
 - (a) Within 30 business days of the receipt of a complete permit application, as required by Section 32.08(2), the city engineer shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this ordinance.
 - (b) If the permit application and plan are approved, the city engineer shall issue the permit.
 - (c) If the permit application or plan is disapproved, the city engineer shall state in writing the reasons for disapproval.
 - (d) The city engineer may request additional information from the applicant. If additional information is submitted, the city engineer shall have 30 business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.
 - (e) Failure by the city engineer to inform the permit applicant of a decision within 30 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (4) Surety Bond. As a condition of approval and issuance of the permit, the city engineer may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion control plan and any permit conditions.
- (5) Permit Requirements. All permits shall require the responsible party to:
 - (a) Notify the city engineer within 48 hours of commencing any land disturbing construction activity.
 - (b) Notify the city engineer completion of any BMP's within 14 days after their installation.
 - (c) Obtain permission in writing from the city engineer prior to any modification pursuant to 32.09(3) of the erosion and sediment control plan.
 - (d) Install all BMP's as identified in the approved erosion and sediment control plan.
 - (e) Maintain all road drainage systems, stormwater drainage systems, BMP's and other facilities identified in the erosion and sediment control plan.
 - (f) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in a site erosion control log.
 - (g) Inspect the BMP's within 24 hours after each rain of 0.5 inches or more which results in runoff during active construction periods, and at least once each week, make needed repairs and document the findings of the inspections in a site erosion control log with the date of inspection, the name of the

person conducting the inspection, and a description of the present phase of the construction at the site.

- (h) Allow the city engineer to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the control plan. Keep a copy of the erosion and sediment control plan at the construction site.
- (6) **Permit Conditions.** Permits issued under this section may include conditions established by city engineer in addition to the requirements set forth in Section 32.08(5), where needed to assure compliance with the performance standards in 32.07.
- (7) **Permit Duration.** Permits issued under this section shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The city engineer may extend the period one or more times for up to an additional 180 days. The city engineer may require additional BMP's as a condition of the extension if they are necessary to meet the requirements of this ordinance.
- (8) **Maintenance.** The responsible party throughout the duration of the construction activities shall maintain all BMP's necessary to meet the requirements of this ordinance until the site has undergone final stabilization.

32.09 EROSION AND SEDIMENT CONTROL PLAN, STATEMENT, AND AMENDMENTS

(1) Erosion and Sediment Control Plan.

- (a) An erosion and sediment control plan shall be prepared and submitted to the city engineer.
- (b) The erosion and sediment control plan shall be designed to meet the performance standards in 32.07 and other requirements of this ordinance.
- (c) The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:
 - (1) The name(s) and address(es) of the owner or developer 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. The application shall also include start and end dates for construction.
 - (2) Description of the site and the nature of the construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5 minute series topographic map.
 - (3) 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, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.
 - (4) Estimates of the total area of the site and the total area of the site that is expected to be disturbed by construction activities.
 - (5) Estimates, including calculations, if any, of the runoff coefficient of the site before and after construction activities are completed.
 - (6) Calculations to show the expected percent reduction in the average annual sediment load carried in runoff as compared to no sediment or erosion controls.
 - (7) Existing data describing the surface soil as well as subsoils.
 - (8) Depth to groundwater, as indicated by Natural Resources Conservation Service soil information where available.
 - (9) Name of the immediate named receiving water from the United States Geological Service 7.5 minute series topographic maps.
- (d) The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than 100 feet per inch and at a contour interval not to exceed five feet.
 - (1) Existing topography, vegetative cover, natural and engineered drainage systems, roads and surface waters. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site shall be shown. Any identified 100-year flood plains, flood fringes and floodways shall also be shown.
 - (2) Boundaries of the construction site.
 - (3) Drainage patterns and approximate slopes anticipated after major grading activities.
 - (4) Areas of soil disturbance.
 - (5) Location of major structural and non-structural controls identified in the plan.
 - (6) Location of areas where stabilization practices will be employed.
 - (7) Areas that will be vegetated following construction.

- (8) Areal extent of wetland acreage on the site and locations where stormwater is discharged to a surface water or wetland.
- (9) Locations of all surface waters and wetlands within one mile of the construction site.
- (10) An alphanumeric or equivalent grid overlying the entire construction site map.
- (e) Each erosion and sediment control plan shall include a description of appropriate controls and measures that will be performed at the site to prevent pollutants from reaching waters of the state. The plan shall clearly describe the appropriate control measures for each major activity and the timing during the construction process that the measures will be implemented. The description of erosion controls shall include, when appropriate, the following minimum requirements:
 - (1) Description of interim and permanent stabilization practices, including a practice implementation schedule. Site plans shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.
 - (2) Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the City engineer, structural measures shall be installed on upland soils.
 - (3) Management of overland flow at all sites, unless otherwise controlled by outfall controls.
 - (4) Trapping of sediment in channelized flow.
 - (5) Staging construction to limit bare areas subject to erosion.
 - (6) Protection of down slope drainage inlets where they occur.
 - (7) Minimization of tracking at all sites.
 - (8) Clean up of off-site sediment deposits.
 - (9) Proper disposal of building and waste materials at all sites.
 - (10) Stabilization of drainage ways.
 - (11) Control of soil erosion from dirt stockpiles.
 - (12) Installation of permanent stabilization practices as soon as possible after final grading.
 - (13) Minimization of dust to the maximum extent practicable.
- (f) The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel, as necessary, to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.
- (2) Erosion and Sediment Control Plan Statement. For each construction site identified under 32.04 (1)(c), an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the city engineer. The control plan statement shall briefly describe the site, including a site map. Further, it shall also include the best management practices that will be used to meet the requirements of the ordinance, including the site development schedule.
- (3) Amendments. The applicant shall amend the plan if any of the following occur:
 - (a) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the plan.
 - (b) The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff.
 - (c) The city engineer notifies the applicant of changes needed in the plan.

32.10 FEE SCHEDULE

The fees referred to in other sections of this ordinance shall be established by the city engineer and may from time to time be modified by resolution. A schedule of the fees established by the city engineer shall be available for review at city hall.

32.11 INSPECTION

If land disturbing construction activities are being carried out without a permit required by this ordinance, the city engineer may enter the land pursuant to the provisions of Sections 66.0119(1), (2), and (3), Wisconsin Statute.

32.12 ENFORCEMENT

- (1) The city engineer may post a stop-work order if any of the following occurs:
 - (a) Any land disturbing construction activity regulated under this ordinance is being undertaken without a permit.
 - (b) The erosion and sediment control plan is not being implemented in a good faith manner.
 - (c) The conditions of the permit are not being met.

- (2) If the responsible party does not cease activity as required in a stop-work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the city engineer may revoke the permit.
- (3) If the responsible party, where no permit has been issued, does not cease the activity after being notified by the city engineer, or if a responsible party violates a stop-work order posted under sub. (1), the city engineer may request the city attorney to obtain a cease and desist order in any court with jurisdiction.
- (4) The Zoning Board of Appeals may retract the stop-work order issued under Section 32.12(1) or the permit revocation under Section 32.12(2).
- (5) After posting a stop-work order under sub. (1), the city engineer may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The city engineer may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this subsection by the city engineer plus interest at the rate authorized by the city treasurer shall be billed to the responsible party. In the event a responsible party fails to pay the amount due, the clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to Subchapter VII of Chapter 66, Wisconsin Statute.
- (6) Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$200 nor more than \$1000 and the costs of prosecution of each violation. Each day a violation exists shall constitute a separate offense.
- (7) Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.

32.13 APPEALS

- (1) **Board of Zoning Appeals.** The board of zoning appeals created pursuant to section 11 of the City of Wisconsin Rapids ordinance pursuant to Section 62.23(7)(e), Wisconsin Statute.
 - (a) 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 except for cease and desist orders obtained under Section 32.12(3).
 - (b) Upon appeal, may authorize variances from the provisions of this ordinance which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship; and
 - (c) Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- (2) **Who May Appeal.** Appeals to the zoning board of appeals may be taken by any aggrieved person or by any office, department, board, or bureau of the City of Wisconsin Rapids affected by any decision of the city engineer by submitting a Notice of Appeal to the Zoning Board of Appeals within 30 days of receipt of the city engineer's decision.

32.14 SEVERABILITY.

If a court of competent jurisdiction judges any section, clause, provision or portion of this ordinance unconstitutional or invalid, the remainder of the ordinance shall remain in force and not be affected by such judgment.

32.15 EFFECTIVE DATE.

This ordinance shall be in force and effect from and after its adoption and publication. The above and foregoing ordinance was duly adopted by the Wisconsin Rapids Common Council on the 15th day of January, 2007.