

CHAPTER 145

EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT

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145.01 PURPOSE. The purpose of this chapter is to regulate and control the design, construction, quality of materials and use and maintenance of any development or other activity which disturbs or breaks the soil profile or otherwise results in the movement or compaction of soil in the City, and by requiring the abatement of certain accumulation of soil. Further, such purposes are:

1. To care for and protect the quality of our soil and water resources;
2. To protect, restore and maintain the chemical, physical and biological integrity of streams and their water resources;
3. To remove pollutants delivered in urban storm water;
4. To protect public water supplies;
5. To minimize erosion and control sedimentation;
6. To provide infiltration for stormwater runoff;
7. To care for, protect and control existing and future City streets, sidewalks, sewers, and other municipal and private property;
8. To prevent the despoliation of the environment;
9. To further the goals of the Johnston Comprehensive Plan;
10. To promote and preserve the rights, privileges, property, safety, health, welfare, comfort and convenience of the residents of, property owners within, and visitors to the City;
11. To verify that various design options have been considered by the applicant, and to determine whether or not the highest and best use of the property may require removal of some or all of the existing trees, other vegetation or other natural features;
12. To achieve and maintain compliance with Section 145.02.

145.02 FINDINGS.

1. The United States Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System (NPDES) permit program (Program) administered by the Iowa Department of Natural Resources (IDNR) requires that cities meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System (MS4 Permit). The City is subject to the Program and is required to obtain, and has obtained, an MS4 Permit; the City's MS4 Permit is on file at Johnston City Hall and is available for public inspection during regular office hours.
2. The Program requires certain individuals engaged in construction activities (applicant or applicants) to submit an application to the IDNR for a State NPDES General Permit #2. Notwithstanding any provision of this chapter, every applicant bears final and complete responsibility for compliance with a State NPDES General Permit #2, City Permits and any other requirement of State or Federal law or administrative rule.
3. The United States Environmental Protection Agency (EPA) has established that runoff from urbanized areas is one of the leading sources of water quality impairments.
4. In Iowa, more than 90% of the rainfall events are defined as 2-year recurrence interval, smaller high frequency storms.
5. A variety of inorganic, organic, bacteriological and other pollutants are added to the stormwater runoff as it moves across the urban landscape.
6. Slowing down and decreasing runoff and increasing infiltration will partially address surface water quality impairments.
7. As a condition of the City's MS4 Permit, the City is obliged to undertake primary responsibility for administration and enforcement of the Program by adopting or amending an erosion and sediment control ordinance designed to achieve the following objectives:
 - A. Any person, firm, sole proprietorship, partnership, corporation, State agency or political subdivision required by law or administrative rule to apply to the IDNR for a State NPDES General Permit #2 shall also be required to obtain from the City a Grading Permit as required in Section 145.06, in addition to and not in lieu of the State NPDES General Permit #2; and
 - B. The City shall have primary responsibility for inspection, monitoring and enforcement procedures to promote compliance with State NPDES General Permits #2 and City Permits.
8. As a condition of the City's MS4 Permit, the City is obliged to adopt or amend an ordinance which will address the control of runoff from building activities after construction has been completed and achieve the following objectives:
 - A. Require water quality and quantity components be considered in the design of new construction and implemented when practical; and
 - B. Promote the use of stormwater detention and retention, grass swales, bioretention swales, riparian buffers and proper operation and maintenance of these facilities.

9. Under Section 303(d) of the Clean Water Act, States are required to submit a list of waters for which effluent limits will not be sufficient to meet all state water quality standards. Watersheds identified with the City of Johnston drain to the following waters which are listed as impaired by the Iowa Department of Natural Resources:

- A. Saylorville Reservoir;
- B. The Des Moines River;
- C. Beaver Creek.

10. The determination of appropriate minimum stormwater management standards and guidelines and the development of effective best management practices (BMPs) to achieve those standards and guidelines require technical expertise that may not always be readily available within City's own staff. Moreover, it is important that these requirements be reasonably consistent across the state so that property owners and developers are not confronted with myriad variations depending upon the location of development.

A. The "Iowa Stormwater Management Manual " published collaboratively by the Iowa Department of Natural Resources and The Center for Transportation Research and Education at Iowa State University establishes guidelines, including but not limited to unified sizing criteria, stormwater management designs and specifications and BMPs. The City hereby finds and declares that the guidelines provided for in the Iowa Stormwater Management Manual, and in future editions thereof, should be and are hereby adopted as the stormwater management guidelines of the City, subject to any approved Amendments. Any BMP installation that complies with the provisions of the Iowa Stormwater Management Manual, or future editions thereof, and that is acceptable to the City at the time of installation shall be deemed to have been installed in accordance with this chapter.

B. The Natural Resources Conservation Service (NRCS) publishes Conservation Practice Standards which establish guidelines, including but not limited to filter strips, riparian forest buffers, streambank and shoreline protection, stream habitat improvement and management. The City hereby finds and declares that the guidelines provided for in the Conservation Practice Standards, and in future editions thereof, should be and are hereby adopted as the stormwater management guidelines of the City, subject to any approved Amendments. Any BMP installation that complies with the provisions of the Conservation Practice Standards, or future editions thereof, and that is acceptable to the City at the time of installation shall be deemed to have been installed in accordance with this chapter.

C. Proposed stormwater management facilities shall be designed by a licensed professional engineer (if required by and in accordance with the Code of Iowa) or landscape architect or a professional in erosion and sediment control or a representative of the local Soil and Water Conservation District, credentialed in a manner acceptable to the City.

D. If a reference other than Paragraph A or B above was used to design the stormwater management facility(s), it shall be documented in writing to the City, reviewed by city staff and approved by the City Council.

11. No State or Federal funds have been made available to assist the City in administering and enforcing the Program. Accordingly, the City shall fund its application, inspection, monitoring and enforcement responsibilities entirely by fees imposed as adopted by resolution of the Council.

12. Terms used in this chapter shall have the meanings specified in the Program.

145.03 RELATED SECTIONS.

1. See Chapter 102, Storm Drainage System.
2. See Chapter 180, Subdivision Regulations.

145.04 DEFINITIONS. For the purpose of this chapter, the following terms shall have or include the following meanings:

1. "Approval" means formal, written consent by the Council or an authorized representative of the City.
2. "Approved applicant" means a person with an approved grading permit, site plan or plat.
3. "Benefited property" means the property included in the Stormwater Management Agreement and/or on a recorded Plat or other document acceptable to the City that is identified as being served by the Stormwater Management Facility(s) to address stormwater runoff from the property.
4. "Board of Appeals" means the Board of Appeals of the City.
5. "Clearing" or "cleared" means any intentional, unintentional or negligent act that results in the cutting, removal of all or a substantial part of, or damage to a tree or other vegetation that will cause the tree or other vegetation to decline and/or die. Such acts shall include (but are not limited to):
 - A. Damage inflicted upon the root system;
 - B. The application of substances toxic to trees and other vegetation;
 - C. The operation of equipment and vehicles;
 - D. The storage of temporary structures and materials, including materials used for building and construction; or
 - E. The changing of the natural grade due to the unapproved alteration of natural physical conditions.
6. "Detention" means the holding of stormwater runoff for a short period of time before releasing it to the natural water course. See "retention."
7. "Detention, On-Site" means the storage of stormwater runoff on or near the site where precipitation occurs.
8. "Enforcement officer" means the building official or other designated representative of the City assigned the responsibilities of this position.
9. "Erosion" means the wearing away of ground surface.
10. "Excavate" or "excavation" means any land-disturbing activity, by which organic matter, earth, sand, gravel, rock, trees, vegetation, or other ground cover is

cleared, graded, cut into, dug, quarried, uncovered, removed, displaced, relocated or moved, and includes the conditions resulting therefrom.

11. “Fill” means any land-disturbing activity by which earth, sand, gravel, rock or other material is deposited, placed, replaced, pushed, dumped, pulled, transported or moved to a new location and includes the conditions resulting therefrom.

12. “Grade” or “grading” means any excavating, filling or combination thereof.

13. “Grading limits” means the outermost edge of the area in which the existing topography is to be altered by clearing or excavation.

14. “Grading bond” means a bond posted pursuant to Section 145.16 of this chapter.

15. “Grading permit” means the permit required by Section 145.06 of this chapter.

16. “Horticultural activity” means the cultivation of a garden and landscape installation and maintenance for a single-family residential property. It also includes the commercial operation of an orchard or landscape nursery.

17. “Land-disturbing activity” means any action which alters the surface of the land and makes the land more vulnerable to soil erosion. This includes but is not limited to such actions as clearing, grading, compacting and excavation.

18. “Log” means any and all documentation covering activities on a site. See also: Stormwater Pollution Prevention Plan (SWPPP).

19. “Permit holder” means a person holding a grading permit which has not expired or been revoked.

20. “Person” means any individual, firm, partnership, domestic or foreign corporation, association or joint stock association, trust or other association or entity, but does not include a governmental body or political subdivision except where required for compliance with a State NPDES General Permit #2 and any other requirement of State or Federal law or administrative rule.

21. “Property” means land located in the City, whether or not with buildings or other structures on the land.

22. “Property owner” means a person who, alone or with another person or other persons, holds the legal title to property; except, however, where property has been sold on contract to a person who has the present right to possess the property and the contract has been filed for record in the office of the Recorder for Polk County, Iowa, the person so purchasing the property, whether alone or with another person or other persons, is the property owner, and not a mortgagee.

23. “Retention” means the holding of stormwater in a storage facility for a considerable length of time, for aesthetic, agricultural, consumptive, or other uses. The water might never be discharged to a natural watercourse, but instead be consumed by plants, evaporation or infiltration into the ground. See “detention.”

24. “Sediment” is any particulate matter than can be transported by fluid flow, wind, glaciers or gravitational collapse.

25. “Sedimentation” is the deposition of eroded particles (sediment).

26. “Sewer” or “City sewer” means all pipes, culverts, channels, manholes, ditches and other structures, appurtenances, or courses, manmade or natural, forming a part of the storm and sanitary sewer systems of the City.

27. “Sidewalk” or “City sidewalk” means that portion of a public right-of-way in the City intended for use by pedestrians.

28. “Soil” includes dirt, sand, loam, gravel, rock and other naturally occurring surficial deposits overlying bedrock.

29. “Stormwater Management Agreement” means a legally recorded document, submitted and executed by the property owner and approved by the City Council which defines and describes the operation and maintenance of permanent, Stormwater Management Facilities designed for to address water quality and quantity and the person(s) or entity responsible for cost and completion of this work.

30. “Stormwater Management Design Plan” means a plan in compliance with Section 145.09 (2) (C).

31. “Stormwater Management Facility” means permanent structures and/or associated materials including but not limited to landscaping installed pursuant to an approved Stormwater Management Agreement, in accordance with Section 180.37, Subdivision Regulations, Storm Drainage Facilities.

32. “Stormwater Pollution Prevention Plan or SWPPP” is a site-specific, written document that is in compliance with Section 145.09 (2) (G) Grading Permit Contents and:

A. Identifies potential sources of stormwater pollution at the construction site in each phase of construction;

B. Describes practices to reduce pollutants in stormwater discharges from the construction site in each phase of construction;

C. Identifies procedures the operator will implement to comply with the terms and conditions of the NPDES General Permit no. 2 and this chapter;

D. Is kept up-to-date to reflect changes at the site;

E. Is included with a written log and documentation of required site inspections in compliance with NPDES General Permit no. 2, when associated with the same;

F. Is prepared and amended by a licensed professional engineer (if required by and in accordance with the Code of Iowa) or landscape architect or a professional in erosion and sediment control or a representative of the local Soil and Water Conservation District, credentialed in a manner acceptable to the City.

33. “Stormwater Runoff Control Plan” is a site-specific, written document that is in compliance with Section 145.09 (2) (H) Grading Permit Contents and:

A. Is required by the City on sites covered by a Grading Permit, but not required or no longer required to have an executed NPDES General Permit no. 2;

B. Illustrates all easements, setbacks, existing and proposed elevations (1-foot contours and spot elevations where required);.

- C. Identifies potential sources of stormwater pollution at the construction site in each phase of construction;
 - D. Describes practices to reduce pollutants in stormwater discharges from the construction site in each phase of construction;
 - E. Identifies procedures the operator will implement to comply with the terms and conditions of the Grading Permit;
 - F. Is kept up to date to reflect changes at the site, if required by the City;
 - G. Is prepared and amended by a licensed professional engineer (if required by and in accordance with the Code of Iowa) or landscape architect or a professional in erosion and sediment control or a representative of the local Soil and Water Conservation District, credentialed in a manner acceptable to the City.
34. “Stream” means perennial and intermittent watercourses identified through site inspection, and/or an approved City of Johnston Map, and/or the relevant United States Geological Survey (USGS) seven and one-half (7.5) minute series topographical map, and further defined and categorized as follows:
35. “Stream, Top of Bank” means the intersecting point between the stream channel and the break in the stream bank slope or the highest point of the stream channel (source: Polk County Zoning Ordinance).
36. “Stream, Buffer” means a vegetated strip of land which lies adjacent to a stream and provides such functions as protecting water quality, providing wildlife habitat and storing flood waters.
37. “Street” or “City Street” means all of a public street or thoroughfare in the City, including the unpaved portions of a public right-of-way generally referred to as “public parking” but exclusive of sidewalks.
38. “Water Quality Volume (WQv)” means the storage needed to capture and treat the runoff from 90% of the average annual rainfall. In numerical terms, it is equivalent to the rainfall depth in inches (the 90% cumulative frequency rainfall depth) multiplied by the volumetric runoff coefficient (Rv) for the site, and the site drainage area.
39. “Waterway” means natural or manmade lakes, channels, rivers, streams, and creeks, which store and/or convey stormwater runoff.
40. “Work” includes the activities and results of land-disturbing activities.

145.05 NOTIFICATION.

1. The applicant shall notify the City in writing a minimum of five working days prior to any application to the IDNR for release of any property from a General Permit #2 pursuant to 567 IAC 64.6(b), or any similar successor provision.
2. The holder of the State NPDES General Permit #2 can transfer State NPDES General Permit #2 responsibility to homebuilders, new lot owners, contractors and subcontractors. Transferees must agree to the transfer in writing, and must agree to fulfill all obligations of the SWPPP, and the State NPDES General Permit #2. Absent such written confirmation of transfer of obligations, the developer remains responsible for compliance on any lot that has been sold.

3. The applicant shall be required to provide the following executed certification:

Legal Description of Property: _____

Address of the Property: _____

Print Name (applicant): _____

Address: _____

Telephone: _____

EMAIL address: _____

Print Name (owner, if different from applicant): _____

Address: _____

Telephone: _____

EMAIL address: _____ *Identify all of the following that apply:*

_____ (1) "A State NPDES General Permit #2 **is not required** for this site."

_____ (2) "A State NPDES General Permit #2 **is required** for this site." The State NPDES General Permit #2 authorization number for this current permit is:

_____ (3) "As owner of the subject property, I **have not accepted** a transfer of liability."

_____ (4) "As owner of the subject property, I **have accepted** a transfer of liability and agreed to become the sole responsible permittee for storm water compliance, under the requirements of NPDES General Permit #2. Written evidence of this transfer will be provided to the City as part of this application."

_____ (a) "The Storm Water Pollution Prevention Plan (SWPPP) which includes this property is the SWPPP related to this authorization number and **has not been prepared separately.**"

_____ (b) "The SWPPP for this property **has been prepared separately**, and a current copy will be provided to the City as part of this application. In addition, written evidence of continued compliance with the requirements of NPDES General Permit #2, including but not limited to SWPPP updates and weekly inspection logs shall be provided to the City."

Signature of Applicant: _____

Date: _____

Signature of Owner, if different from Applicant: _____

Date: _____

4. Applicant's failure to provide current information shall constitute a violation of this chapter.

145.06 GRADING PERMIT REQUIRED.

1. Unless excepted by the provisions of Section 145.08 of this chapter, it is unlawful for any person to grade, or cause to be graded, any property within the City unless the owner of such property or any agent responsible for the work holds a current and valid grading permit, issued by the Community Development Department, permitting such work to be done. Each day excavating persists in violation of this section shall constitute a new and separate violation of this chapter.
2. In instances where ground-disturbing activity is proposed and no NPDES General Permit #2 is required:
 - A. The building permit application shall include a Stormwater Runoff Control Plan in compliance with Section 145.04.
 - B. The intent of the Stormwater Runoff Control Plan is also to illustrate compliance with prior preliminary plat and construction plan approvals (subsection 2 above), any previous State NPDES General Permit #2 and this chapter. Prior to issuance of a certificate of occupancy, the City may require applicants to provide written certification that information included on the exhibit has been achieved.
3. Minimum Protection Elevation (MPE).
 - A. After review of the application and prior to issuance of a building permit, the City may require a Minimum Protection Elevation (MPE) to be assigned to the site and illustrated on the exhibit required in subsection 3 of this section. The lowest foundation opening must be protected to at least the MPE required by the City. In the case of openings protected by retaining walls, the MPE is measured at the top of the wall.
 - B. Prior to issuance of a final certificate of occupancy, the City will require applicants whose sites include an MPE to provide written certification that the MPE has been achieved.

145.07 GRADING PERMIT NOT TRANSFERABLE. A grading permit issued under the provisions of this chapter shall not be transferable to another person or another property.

145.08 GRADING PERMIT EXCEPTIONS. Any language in this chapter to the contrary notwithstanding, a grading permit is not necessary when a land-disturbing activity is done:

1. In the furtherance of a farming or horticultural activity;
2. By a public utility company for the purpose of installing otherwise approved utilities;
3. By the City or its employees or agents while engaged in the conduct of normal City activities;

4. By or under the direction of a soil engineer, geologist, or similar person in the investigation, testing or evaluation of earth materials in conjunction with the design or engineering of building, structures or other improvements;
5. By legitimate businesses engaged in the operation of sand or gravel pits, mining and extraction of raw materials or minerals, or like activities, provided that such business activities are otherwise in compliance with applicable law;
6. When not required by law or administrative rule to obtain a State NPDES General Permit #2, unless otherwise directed by the City.

Exceptions in this section apply only to the requirement that a grading permit be issued. Nothing in this section shall be deemed to be an exception to or a release from the responsibilities in the State NPDES General Permit #2, other City ordinances and any other requirement of State or Federal law or administrative rule.

145.09 GRADING PERMIT CONTENTS. Any person seeking a grading permit shall submit an application to the Community Development Department for approval. The City shall provide guidelines as appropriate for the preparation of documentation required for a permit application. The permit application must be accompanied by a grading plan prepared by a licensed engineer or land surveyor accurately documenting the extent of the proposed work to be done.

1. Application Contents. A grading permit application shall include a completed application form provided by the City and the information as outlined below:
 - A. Name, address, and phone number of the property owner(s);
 - B. Legal description of property to be covered by the permit;
 - C. Street address or location of property to be covered by the permit;
 - D. Name, address, and phone numbers of applicant;
 - E. Name, address, and phone numbers of any persons who will be accomplishing work under the permit;
 - F. Estimated date work is to commence;
 - G. Estimated date work is to be completed;
 - H. Description of work (type and extent) to be performed;
 - I. Estimate of quantity of material to be excavated, filled or moved;
 - J. Purpose of work to be performed;
2. Attachments. As attachments to the application form, the following shall be provided:
 - A. A plan prepared by a licensed engineer or land surveyor showing the proposed work, the boundaries and dimensions of the property, the location of streets, sidewalks and sewers in the area of the property, and the actual location of the property where the proposed work is to occur;
 - B. Information on the property and other properties in the area sufficient to show existing topography, drainage patterns, existing facilities, existing vegetation and/or other natural features and drainage courses;

C. A Stormwater Management Design Plan and calculations prepared by a licensed engineer in compliance with Section 180.37 Storm Drainage Facilities that:

- (1) Provides on-site detention designed to reduce the release rate to the equivalent of a 5-year recurrence interval, 1-hour duration storm when the property was in an undeveloped state;
- (2) Considers on-site retention designed to infiltrate all or a portion of the Water Quality Volume, calculated at the point when the property was in an undeveloped state;
- (3) Considers water quality components and documents how they have been addressed in compliance with Section 145.02 Findings;
- (4) Considers water quantity components and documents how they have been addressed in compliance with Section 145.02 Findings, including but not limited to the Channel Protection Volume for downstream areas;
- (5) Considers best management practices, document design and management requirements for temporary and permanent facilities;
- (6) Documents all of the above and provides written explanation of the same;
- (7) Use of the Natural Resources Conservation Service WinTR-55 analysis (or approved equal) is required;
- (8) Provides a Stormwater Management Agreement for any permanent stormwater facility(s).

D. The methods and materials to be used to prevent erosion and control sediment on the site, consistent with Section 145.18, including the location of any and all silt fence and other best management practices;

E. Location of grading limit line where the total site exceeds the area to be disturbed;

F. If applicable or otherwise required by the City, an applicant in possession of a State NPDES General Permit #2 issued by the IDNR shall immediately submit to the City full copies of the materials described below as a basis for the City to determine whether to issue a City Permit:

- (1) Applicant's plans, specifications and supporting materials previously submitted to the IDNR in support of applicant's application for the State NPDES General Permit #2;
- (2) Applicant's authorizations issued pursuant to applicant's State NPDES General Permit #2.

G. If the applicant is required to maintain a State NPDES General Permit #2, then a Storm Water Pollution Prevention Plan (SWPPP) shall be submitted. Every SWPPP submitted to the City in support of an application for a City Permit shall be in compliance with this chapter and:

- (1) Comply with all current minimum mandatory requirements for SWPPPs promulgated by the IDNR in connection with issuance of a State NPDES General Permit #2.

(2) If the applicant is required by law to file a Joint Application Form, PROTECTING IOWA WATERS, IOWA DEPARTMENT OF NATURAL RESOURCES AND U.S. ARMY CORPS OF ENGINEERS, comply with all mandatory minimum requirements pertaining to such applications; and

(3) Comply with all other applicable State or Federal permit requirements in existence at the time of application; and

(4) Be prepared and amended by a licensed professional engineer (if required by and in accordance with the Code of Iowa) or landscape architect or a professional in erosion and sediment control or a representative of the local Soil and Water Conservation District, credentialed in a manner acceptable to the City; and

(5) Include within the SWPPP a signed and dated certification by the person preparing the SWPPP that the SWPPP complies with all requirements of this chapter and the applicant's NPDES General Permit #2; and

(6) Include information regarding all phases of construction as planned, including but not limited to initial ground disturbing activity through final stabilization and completion of permanent facilities.

(7) As adopted via resolution by the Council, comply with the Statewide Urban Design and Specifications (SUDAS) standard design criteria, including but not limited to design, location, and phased implementation of effective, practicable storm water pollution prevention measures; and

(8) Limit total off-site annual aggregate sediment yield for exposed areas to an equivalent amount resulting from sheet and rill erosion equal to an annual, cumulative soil loss rate not to exceed the standard established from time to time by Soil and Water Conservation Districts; erosion rates can exceed soil loss limits as long as sediment yield does not exceed that expected from allowable erosion rates. If the applicant is not required to maintain a State NPDES General Permit #2, then a Stormwater Runoff Control Plan shall be submitted, in compliance with this chapter.

H. Either a Storm Water Pollution Prevention Plan (SWPPP) as associated with an NPDES General Permit #2 (where applicable) and/or a Stormwater Runoff Control Plan will be required by the City with each and every grading permit application.

I. For so long as a construction site is subject to a State NPDES General Permit #2 or a City Permit, the applicant shall provide the City with current information as follows:

(1) The name, address and telephone number of the person on site designated by the owner who is knowledgeable and experienced in erosion and sediment control and who will oversee compliance with the State NPDES General Permit #2 and the City Permit.

(2) The name, address and telephone number of the contractor and/or subcontractor that will implement each erosion and sediment control measure identified in the SWPPP.

J. An inventory of trees and existing vegetation in the disturbed area is required, showing:

(1) All existing trees of six-inch caliper (diameter) and larger within the area to be disturbed with species type, condition and location; and

(2) Identification and location of staked barrier fence at grading limit line to protect existing trees to remain. Trees outside the area to be disturbed shall be protected as required by this chapter.

K. Any other sketches, maps, studies, engineering reports, tests, profiles, cross-sections, construction plans and specifications the City may require to fully analyze the risk of erosion and the procedures available to prevent the same.

3. Upon receipt of an application for a City Permit and within 30 calendar days, the City shall find either that the application complies with this chapter and issue a City Permit in accordance with this chapter, or that the application fails to comply with this chapter, in which case the City shall provide a bill of particulars identifying non-compliant elements of the application.

145.10 GRADING PERMIT TERM. The term of a grading permit shall be 365 calendar days from its date of issuance except:

1. A grading permit shall expire 180 days after date of issuance, if permitted work has not then commenced.

2. A grading permit shall be considered void and no longer valid when the subject property is not in compliance with a State NPDES General Permit #2 and any other requirement of State or Federal law or administrative rule.

3. A grading permit shall be considered void and no longer valid under conditions prescribed in Section 145.17.

4. A grading permit may be renewed for a period not to exceed 365 calendar days, upon demonstration by the permit holder that circumstances or conditions require an extension of time in order to accomplish the work covered by the permit.

145.11 FEES. No grading permit shall be issued except after the payment of a grading permit fee to the City. Grading permit fees shall be established in accordance with a duly approved resolution.

145.12 REFUND OF FEES. A fee paid to the City for a grading permit may be refunded in accordance with the following conditions:

1. Ninety percent (90%) of the fee originally paid may be refunded upon written request of the permit holder, provided that work contemplated under the permit has not then commenced or will be commenced.

2. An amount not to exceed ninety percent (90%) of the fee originally paid may be refunded, upon written request of the permit holder, should work under the permit cease, provided that:

- A. A permit holder documents cause of cessation of work;
 - B. All other provisions of this chapter have been complied with;
 - C. The amount of any such refund is proportional to the amount of work then completed, as determined by the City.
3. No refund of fees paid shall be made in any case wherein the grading permit has been revoked as provided for in Section 145.17.
 4. No refund of fees paid shall be made in cases where the fee was assessed for City staff and consultant costs, including but not limited to application, inspection, monitoring and enforcement responsibilities required to administer and enforce the Permit Program.
 5. The City shall determine the amount of any refund.

145.13 GRADING PERMIT OR APPROVAL; CONDITIONS IMPOSED.

1. A grading permit or approval may be issued with certain conditions and requirements to be met or fulfilled by the permit holder preliminary to or as part of the proposed work. Such conditions and requirements shall be those determined to be necessary or advisable by the City, in order to limit or control erosion or sedimentation consistent with acceptable principles and the requirements of this Code of Ordinances. A pre-construction meeting may be required at a time and place to be arranged by the contractor.
2. During the course of the work, the City may impose other or additional conditions or requirements to be met or fulfilled by the permit holder to prevent or limit erosion or sedimentation. A written notice shall be made to the permit holder, or to the person designated by the permit holder to receive such notices, delivered in person or by certified mail, return receipt requested, to the address or addresses of the permit holder, or a designee, as listed on the excavation permit.
3. The City may waive, in writing, any condition or requirement imposed pursuant to this section, if such condition or requirement is no longer necessary or advisable to prevent or limit erosion.

145.14 CERTIFICATION REQUIRED. Prior to issuance of a certificate of occupancy where applicable, the applicant may be required to provide written certification to the City that the as-built elevations on the site are in compliance with the approved site plan, preliminary plat, construction plan, the exhibit required in Section 145.06(3) of this chapter or any other approved plan used to illustrate surface water flow on the site. The City may require any other sketches, maps, studies, engineering reports, tests, profiles, cross-sections, construction plans and specifications to fully analyze the risk of erosion and the procedures available to prevent the same.

145.15 WORK IN VIOLATION OF IMPOSED CONDITIONS. It is unlawful for any person to engage in any land-disturbing activity on any property in the City covered by a grading permit or approval in violation of such conditions and requirements as have been imposed pursuant to Section 145.13. Each day excavating, filling or other work persists in violation of this section shall constitute a new and separate violation of this chapter.

145.16 GRADING BOND REQUIRED. In addition to the requirements of this chapter, the City may require an approved applicant or a permit holder to file with the City a grading

bond, in such amount as the City may deem necessary, based on the type and extent of work proposed, to assure that an approved applicant or a permit holder meets and fulfills those conditions and requirements imposed upon the applicant pursuant to this chapter. The grading bond will be in cash, cash equivalent, or letter of credit issued by a solvent surety, in a manner acceptable to the City.

145.17 GRADING APPROVAL; REVOCATION. The enforcement officer or other designated official of the City may suspend or revoke an approval under this chapter and order that all work stop for any one or all of the following reasons:

1. For violation or failure to comply with this chapter, State NPDES General Permit #2 and any other requirement of State or Federal law or administrative rule, the terms of the grading permit, the exhibit, the Storm Water Pollution Prevention Plan (SWPPP), or any conditions or requirements imposed therewith pursuant to Section 145.14.
2. For conducting or accomplishing permitted work in such a manner as to materially and adversely affect the health, welfare or safety of persons residing in, owning property in, or working in the neighborhood of the property where such work has occurred. This includes (and is not limited to) erosion caused by wind, where particulate material is visible in the air and determined by the City to be causing a nuisance or a hazard. If such determination is made, then the site shall be watered to minimize erosion in accordance with Section 145.18(10).
3. For conducting or accomplishing permitted work in a manner that is materially detrimental to the public welfare or injurious to the quality of soil and water resources or other property or improvements within the neighborhood or the City;
4. For violation or failure to comply with any provision of this chapter.

145.18 PRINCIPLES FOR EROSION AND SEDIMENT CONTROL. The following are principles which may be employed singly or in combination by an approved applicant or a permit holder, or which may be imposed on an approved applicant or a permit holder, pursuant to Section 145.13 for the accomplishment of work proposed. These principals must be in compliance with the State NPDES General Permit #2 requirements and this chapter.

1. The smallest practical area of land shall be exposed at any given time during development or work.
2. Such minimum area exposure shall be kept to as short a duration of time as is practical.
3. Temporary vegetation, mulching or other nonviable cover shall be used to protect areas exposed during development. This material shall be installed not later than twenty-one (21) days after grading is completed or suspended.
4. Soil stockpiles shall be stabilized with vegetation or covered. Mowing may be required if the vegetation becomes a nuisance.
5. Best management practices (BMPs):
 - A. Shall be illustrated accurately and updated on the approved Stormwater Pollution Prevention Plan (SWPPP) and/or the Stormwater Runoff Control Plan;

- B. Shall be installed and maintained to remove sediment from runoff waters from the development; and
 - C. Shall be in compliance with this chapter.
6. Best Management Practices that are illustrated on the approved SWPPP or the Stormwater Runoff Control Plan and that are:
- A. Not in compliance with this chapter; and/or
 - B. Not installed on the site; and/or
 - C. Not installed correctly; and/or
 - D. Not functioning as designed; and/or
 - E. Not maintained as required;

are in violation of this chapter.

7. Permanent, final plant covering or structures shall be installed as soon as possible but not longer than 21 days after final grading is completed. All areas disturbed by the work shall be stabilized in compliance with this chapter, including but not limited to disturbance by the applicant or his agent on property not owned by the applicant. Replanting may be required to ensure adequate vegetative cover is established. Adequate vegetative cover is considered to be at least 70% density of 100% of the soil surface by the intended species. If native landscape is used, then at least 70% density of 100% of the soil surface by the cover crop is required.

8. Storm sewer intakes, including but not limited to intakes in dedicated easements, in streets and public rights-of-way must be protected from sediment, properly and regularly maintained and function as designed. Furthermore, above grade protection in paved areas is not permitted, unless approved in writing by the City of Johnston prior to installation. Ponding of water as a result of this protection is a violation of this chapter.

9. Concrete waste management for any concrete activity.

- A. Washout facilities prevent runoff of concrete wash water which is alkaline and contains high levels of chromium and can increase the pH of area waters.
- B. The washout facility(s) must be served by a stabilized construction entrance and located on private property.
- C. Concrete washout waste must be contained in washout areas. The washout areas shall contain the concrete and liquids when equipment is rinsed out after delivery.
- D. Saw-cut slurry must be vacuumed or shoveled and removed from the site or disposed of in a concrete washout area.
- E. Washout areas consolidate solids for easier disposal. These washout areas must be removed and/or cleaned, and dry waste concrete must be disposed of properly.
- F. Washout areas must be cleaned and the ground stabilized not longer than 21 days after the work is completed, in compliance with Section 145.18.

- G. Washout areas that are not in compliance are a violation of this chapter.
- 10. Actions during work shall relate to the topography and soils of the site so that the lowest potential for erosion is created.
- 11. Natural plant covering shall be retained and protected so far as is consistent with developing the site.
- 12. Work proposed shall take into consideration the seasonal limitations on construction scheduling such as wind, drought, winter thaw, snowmelt and rainfall which have an effect on soil erosion.
- 13. If material becomes airborne in such quantities and concentrations that it remains visible in the ambient air and/or is deposited beyond the premises where it originates, the requirements of the Polk County Board of Health Rules and Regulations may be imposed pursuant to Section 145.13 of this chapter.
- 14. A construction site entrance shall be designed to minimize tracking of sediment or other debris off the site.
- 15. Erosion and sediment controls reflecting perimeter control measures appropriate for the phase of construction must be in place prior to excavation. Inspection by the enforcement officer, including but not limited to the foundation, will not be scheduled until this work is in compliance.

145.19 PRINCIPLES FOR STORMWATER MANAGEMENT. The following are principles which may be employed singly or in combination by an approved applicant or a permit holder, or which may be imposed on an approved applicant or a permit holder, pursuant to Section 145.13 for the accomplishment of work proposed. These principals must be in compliance with the State NPDES General Permit #2 requirements and this chapter.

- 1. Best Management Practices shall be in compliance with Section 145.02.
- 2. Permanent, post-construction facilities shall be detailed in the Stormwater Management Design Plan and in compliance with Section 145.09(C).
- 3. Stream Buffer Width:
 - A. Type I Streams or Perennial Streams. The total required stream buffer width is one hundred (100) feet on each side perpendicular to the waterway measured from the outer wet edge of the channel during base flows. These streams are illustrated on a map approved by the City Council, established in accordance with a duly approved resolution.
 - B. Type II or Intermittent Streams. The total required stream buffer width is fifty (50) feet on each side perpendicular to the water way measured from the centerline of the channel. These streams are illustrated on a map approved by the City Council, established in accordance with a duly approved resolution.
 - C. Type III Streams are waterways and/or dry channels that have a contributing drainage area of fifty (50) acres or greater. The total required stream buffer width is thirty (30) feet on each side perpendicular to the waterway measured from the centerline of the waterway.
 - D. For waterways and/or dry channels with a contributing drainage area of less than 50 acres, the City may require additional sketches, maps, studies,

engineering reports, tests, profiles, cross-sections, construction plans and specifications to fully analyze the risk of erosion and potential damage to water quality, and the procedures available to prevent the same.

E. If the area required for stream buffer width is owned by more than one property owner, this requirement shall be additive so the intent of this chapter is achieved.

4. Stream Buffer Composition:

A. This area shall be defined within a recorded easement, which includes a Management Plan.

B. Impervious surfaces, septic systems and all associated equipment are prohibited.

C. Dominant vegetation shall consist of existing, naturally regenerated, or seeded/planted native trees, shrubs, perennial grasses and forbs suited to the soil and hydrology of the site and the intended purpose. No single species shall make up more than 50% of the total number of species planted. Turfgrass (lawn) is not permitted.

D. Overland flow through the stream buffer area will be maintained as sheet flow.

E. The stream bank (the area between the stream channel and the break in the stream bank slope or the highest point of the stream channel) is included in the stream buffer area and must also be stabilized, unless noted otherwise on a plan approved by the City.

F. Stabilization of the stream buffer shall be in compliance with Section 145.18.

145.20 PRELIMINARY INSPECTION REQUIREMENTS.

1. All inspections required under this chapter shall be conducted by a representative of the City, herein referred to as the “enforcement officer.” Inspections by the enforcement officer may be scheduled or unannounced.

2. In accordance with Section 145.18 and Section 145.19 and in compliance with the applicant’s SWPPP and/or Stormwater Runoff Control Plan, applicant shall notify the City when control measures have been accomplished on-site, whereupon the City shall conduct an initial inspection for the purpose of determining compliance with this chapter. Results of the inspection (hereinafter referred to as the “City inspection log”) shall be kept, in writing, by the enforcement officer as required by and in compliance with the City’s MS4 Permit.

3. A copy of the City’s inspection log will be provided upon request.

4. Construction shall not occur on the site at any time when there is failure to implement or maintain pollution control best management practices, when a site is not in compliance with the applicant’s SWPPP, Stormwater Runoff Control Plan or when a stop work order has been issued, in accordance with Section 145.21 of this chapter.

5. Construction activities undertaken by an applicant prior to resolution of all discrepancies shall constitute a violation of this chapter.

6. The City shall not be responsible for the direct or indirect consequences to the applicant or to third parties for noncompliant conditions undetected by inspection.

145.21 STOP WORK ORDER.

1. Authority. Whenever the enforcement officer finds any work regulated by this chapter being performed in a manner either contrary to the provisions of this chapter or dangerous or unsafe, the enforcement officer is authorized to issue a stop work order.

2. Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.

3. Unlawful Continuance. Any person who continues any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be in violation of this chapter.

145.22 NUISANCE. Failure to maintain Stormwater Management Facilities in violation of this chapter and/or the approved Stormwater Management Agreement, and/or an executed easement(s) shall be deemed to constitute a nuisance, in accordance with Chapter 50, Nuisance Abatement Procedure.

145.23 MONITORING PROCEDURES.

1. Upon issuance of a City Permit, an applicant has an absolute duty to monitor site conditions and to report to the enforcement officer any change of circumstances or site conditions which the applicant knows or should know pose a risk of storm water discharge in a manner inconsistent with applicant's SWPPP, Stormwater Runoff Control Plan, State NPDES General Permit #2 and/or City Permit.

2. Such report shall be made by the applicant to the enforcement officer immediately but in any event within 24 hours of the change of circumstances or site conditions.

3. Failure to make a timely report shall constitute a violation of this chapter.

4. Failure to install and maintain the Best Management Practices included on the applicant's approved SWPPP and/or Stormwater Runoff Control Plan shall constitute a violation of this chapter.

5. Any third party may also report to the City site conditions which the third party reasonably believes pose a risk of storm water discharge in a manner inconsistent with applicant's SWPPP, State NPDES General Permit #2 and/or City Permit.

6. Upon receiving a report pursuant to the previous subsections, the enforcement officer shall conduct an inspection of the site as soon as reasonably possible. Results of the inspection shall be kept, in writing, by the enforcement officer as required by and in accordance with the City's MS4 Permit. A copy of this log shall be provided to the applicant on request. The applicant shall immediately commence corrective action, as required by and in accordance with State NPDES General Permit #2 requirements and this chapter. Failure to take corrective action within 7 days from the date of notification shall constitute a violation of this chapter.

7. Unless a report is made to the enforcement officer pursuant to the previous subsections, the enforcement officer shall conduct unannounced inspections and quarterly inspections, as required by and in accordance with the City’s MS4 Permit, during the course of construction to monitor compliance with the State NPDES General Permit #2 and any City Permits. If the inspection discloses any significant noncompliance, the results of the inspection shall be kept, in writing, by the enforcement officer in the log. A copy of this log shall be provided to the applicant upon request. The applicant shall immediately commence corrective action, as required by and in accordance with State NPDES General Permit #2 requirements and this chapter. Failure to take corrective action within 7 days from the date of notification shall constitute a violation of this chapter.

8. The City shall not be responsible for the direct or indirect consequences to the applicant or to third parties for noncompliant conditions undetected by inspection.

145.24 UNAUTHORIZED REMOVAL OF TREES.

1. All trees and shrubs that are included on an approved site plan or plat and required for compliance with this chapter must be maintained. Material that has died or been removed shall be replaced as originally required, within the same growing season.

2. All trees that have been cleared in violation of this chapter shall be replaced, including trees smaller than 6-inch caliper (diameter).

3. If possible, cleared trees are to be replaced by trees of equal size, species, quality and caliper. Some species are not acceptable due to physical characteristics and therefore would not be replaced with the same type. Species type shall be in compliance with Section 150.02 of this Code of Ordinances and approved by City staff prior to installation.

4. If replacement of equal size, quality and caliper is not possible, replacement is to be in accordance with the following criteria:

Each Existing Deciduous Tree	Replacement Quantity	Replacement Size and Condition**
Less than 6-inch caliper	*	2-inch caliper
6-inch to 10-inch caliper	5	2-inch caliper
> 10-inch to 12-inch caliper	6	2-inch caliper
> 12-inch to 18-inch caliper	9	2-inch caliper
> 18-inch to 24-inch caliper	12	2-inch caliper
> 24-inch caliper	*	2-inch caliper
*To be determined by the City, based on the size removed.		
**Condition for all replacements to be container or balled & burlapped.		

Each Existing Evergreen Tree	Replacement Quantity	Replacement Size and Condition**
Less than 4-foot height	*	4-foot height
4-foot to 6-foot height	5	4-foot height
> 6-foot to 12-foot height	6	4-foot height
> 12-foot to 16-foot height	9	4-foot height

Each Existing Evergreen Tree	Replacement Quantity	Replacement Size and Condition**
> 16-foot to 20-foot height	12	4-foot height
> 20-foot height	*	4-foot height
*To be determined by the City, based on the size removed.		
**Condition for all replacements to be balled & burlapped.		

5. If it is impractical to locate all of the trees required for replacement on a particular property, plat or site plan, some of the replacement trees may be planted on public or private property as directed by the Council.
6. Maintenance of replaced trees is required as part of this chapter. If any landscape materials required for replacement or shown on an approved plan are neglected, become diseased, substantially damaged or die at any time after approval was granted, the owner of the property shall replace the materials in the next appropriate growing season, to bring the property back into compliance.
7. If trees were removed in violation of this chapter and without an inventory, an estimate of destroyed material will be made using available aerial photography and evidence on the site. The replacement penalty will be calculated by the City using this estimate.
8. An existing tree is exempted if it would impose a documented hazard to the public health, safety and welfare.
9. An individual single family and/or duplex land use would be exempted, unless a grading permit, site plan or plat is required.

145.25 APPEAL.

1. Any person aggrieved by an order, requirement, decision or determination of the enforcement officer in the enforcement of this chapter may, within thirty (30) calendar days thereof, appeal such action to the Board of Appeals by filing with the Board of Appeals an appeal specifying the grounds thereof. The enforcement officer or other designated official of the City shall forthwith transmit to the Board of Appeals all papers constituting the record upon which the action appealed from is taken.
2. Before an appeal is filed with the Board of Appeals, the appellant shall pay to the City a fee in accordance with a duly approved resolution.
3. Upon receipt of such an appeal, and payment of the fee, the Board of Appeals or its designated representative shall establish a date, time and place for a public hearing on the appeal and shall cause the preparation, publication, posting and distribution of a public notice of said hearing.
4. The public hearing shall be attended by the appellant or his agent, and by the enforcement officer or other designated official of the City.
5. The Board of Appeals may modify, reverse or affirm, wholly or partly, the order, requirement, decision or determination appealed from. It shall not have the power to grant exceptions or variances to the requirements of this chapter.
6. A majority vote of the members of the Board of Appeals present at the hearing shall be necessary to reverse any order, requirement, decision or determination appealed from.

145.26 RESPONSIBILITY. The failure of City officials to observe or foresee hazardous or unsightly conditions, or to impose other additional conditions or requirements on approved applicants or permit holders, or to deny or revoke a grading permit or approval, or to stop work in violation of this chapter, shall not relieve the property owners, approved applicants or permit holders of the consequences of their actions or inactions or result in the City, its officers or agents, being liable therefore, or on account thereof.

(Ch. 145 – Ord. 775 – Feb. 08 Supp.)

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