

ORDINANCE NO. 1709

**EROSION AND SEDIMENT CONTROL ORDINANCE
CITY OF RADFORD, VIRGINIA**

BE IT ORDAINED by the City Council of the City of Radford, Virginia that a new Chapter 31, entitled, "Erosion and Settlement Control", is hereby adopted and added to the Radford City Code of Ordinances, and this Stormwater Management Ordinance is hereby adopted to be effective in the City of Radford, Virginia as of July 1, 2014, as follows:

***CHAPTER 31
EROSION AND SETTLEMENT CONTROL***

ARTICLE I. - IN GENERAL

Sec. 31-1. - Definitions.

In addition to the definitions set forth in 9VAC25-840-10 of the Virginia Erosion and Sediment Control Regulations, as amended, and in Chapter 3.1 of Title 62.1 of the Code of Virginia, and any amendments thereto, which are expressly adopted herein and incorporated herein by reference and made a part hereof, the following words and terms as used in this Chapter have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

Administrator means the city manager, who is the official designated by the council as its agent to administer this chapter, under the general administrative responsibility of the city manager.

Clearing means any activity which removes the vegetative ground cover, including but not limited to removal, root mat removal and/or topsoil removal.

Conservation standards or standards means standards adopted or approved by the city council pursuant to Code of Virginia, §§ 62.1-44.15:52 and 62.1-44.15:54.

Erosion and sediment control plan or plan means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Excavating means any digging, scooping or other methods of removing earth materials.

Filling means any depositing or stockpiling of earth materials.

Grading means any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

Land-disturbing activity means any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the state, including, but

not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work.
- (2) Individual service connections.
- (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk, provided the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced.
- (4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system.
- (5) Surface or deep mining.
- (6) Exploration or drilling for oil and gas including the well site, roads, feeder lines and offsite disposal areas.
- (7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: Construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation.
- (8) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.
- (9) Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act, Code of Virginia, title 10.1, chapter 6, article 2 (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation.
- (10) Preparation for single-family residences separately built, unless in conjunction with multiple construction in subdivision development.
- (11) Disturbed land areas of less than 10,000 square feet in size.
- (12) Installation of fence and signposts or telephone and electric poles and other kinds of posts or poles.
- (13) Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the marine resources commission or the United States Army Corps of Engineers.
- (14) Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

Land-disturbing permit means a permit issued by the city for clearing, filling, excavating, grading or transporting of any combination thereof.

Natural channel design concepts means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

Peak flow rate means the maximum instantaneous flow from a given storm condition at a particular location.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the state, any interstate body, or any other legal entity.

Plan-approving authority means the city manager and/or his designee.

Responsible land disturber means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement-in-lieu-of a plan, who:

- (1) Holds a responsible land disturber certificate of competence;
- (2) Holds a certificate of competence from the board in the areas of combined administration, program administration, inspection, or plan review;
- (3) Holds a current contractor certificate of competence for erosion and sediment control; or
- (4) Is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to article 1 (§ 54.1-400 et seq.) of chapter 4 of title 54.1.

Runoff volume means the volume of water that runs off the land development project from a prescribed storm event.

Transporting means any moving of earth materials from one place to another, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover, either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

Water quality volume means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

(Code 1975, § 7.1-2; Code 1992, § 24-1; Ord. No. 1582.1, § 31-1, 1-14-08)

Cross reference— Definitions and rules of construction generally, § 1-2

State Law reference— Similar provisions, Code of Virginia, § 62.1-44.15:51.

Sec. 31-2. - Purpose of chapter.

- (a) The purpose of this chapter is to provide for the control of erosion and sedimentation, both during and following development, and to establish procedures for the administration and enforcement of such controls, and is intended to conform with and is enacted pursuant to the

authority of the Virginia Erosion and Sediment Control Law, Code of Virginia, title 62.1, chapter 3.1, article 2.4 (§ 62.1-44.15:51 *et seq.*).

- (b) It is also intended to be an adjunct to both the city's subdivision and zoning ordinances wherein such apply to the development and subdivision of land within the city or wherein such apply to additional development on previously subdivided land within the city.

(Code 1975, § 7.1-1; Code 1992, § 24-2)

Cross reference— Subdivision of land, ch. 95; zoning, ch. 120.1.

Sec. 31-3. - Exemptions.

The provisions and requirements of this chapter shall not apply to land changes or activities except from the definition of "land-disturbing activity" set forth in section 31-1.

(Code 1975, § 7.1-3; Code 1992, § 24-3)

Sec. 31-4. - Inspection and enforcement.

- (a) Inspection and enforcement of the provisions of this chapter shall rest with the city manager and/or his designee and shall be in accordance with and controlled by the City of Radford's Administrative Guidance Manual, latest edition; the Virginia Erosion and Sediment Control Handbook, 1993, and any amendments or additions thereto, hereby approved and incorporated herein by reference; and shall be in accordance with any additional requirements of the Virginia Erosion and Sediment Control Law, Code of Virginia, title 62.4, chapter 3.1, article 2.4, (§ 62.1-44.15:51 *et seq.*).
- (b) The city will require the responsible land disturber to monitor and maintain the land-disturbing activity. The responsible land disturber will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
- (c) The city manager and/or his designee shall periodically inspect the land-disturbing activity in accordance with Sec 9VAC25-840-40 of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the city manager and/or his designee determines that there is a failure to comply with the plan or if the plan is determined to be inadequate, notice shall be served upon the permittee, person responsible for carrying out the plan or the responsible land disturber by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee shall be deemed to be in violation of this chapter and, upon conviction, shall be subject to the penalties provided by this chapter.

- (d) Upon determination of a violation of this chapter, the city manager and/or his designee may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan or proper permits, the city manager and/or his designee may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all of the land-disturbing and/or construction activities be stopped until an approved plan or any required permits are obtained. Failure to comply will result in penalties as outlined in sections 31-7 and 31-38 of this chapter.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this chapter. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the circuit court.

If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the city manager and/or his designee may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the city.

The owner may appeal the issuance of an order to the circuit court of the city. Any person violating or failing, neglecting or refusing to obey an order issued by the city manager and/or his designee may be compelled in a proceeding instituted in the circuit court of the city to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted. Nothing in this section shall prevent the city manager and/or his designee from taking any other action authorized by this chapter.

(Code 1975, § 7.1-4; Code 1992, § 24-4; Ord. No. 1581.2, 1-14-08)

Sec. 31-5. - Administrative appeal.

- (a) Final decisions of the administrator or the plan-approving authority under this chapter shall be subject to review by the city council, provided that an appeal is filed within 30 days from the date of any written decision by the administrator or the plan-approving authority.
- (b) Final decisions of the city council under this chapter shall be subject to review by the court of record of the city, provided that an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land-disturbing activities.

(Code 1975, § 7.1-5; Code 1992, § 24-5)

Cross reference— Administration, ch. 2.

State Law reference— Similar provisions, Code of Virginia, § 62.1-44.15:62.

Sec. 31-6. - Liability.

Compliance with the provisions of this chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

(Code 1975, § 7.1-7; Code 1992, § 24-6)

State Law reference— Similar provisions, Code of Virginia, § 62.1-44.15:63.

Sec. 31-7. - Penalties.

A violation of this chapter shall be deemed a misdemeanor and be subject to a fine not exceeding \$2,000 per offense or day.

(Code 1975, § 7.1-6; Code 1992, § 24-7)

State Law reference— Penalties, Code of Virginia, § 62.1-44.15:63.

Secs. 31-8—31-30. - Reserved.

ARTICLE II. - EROSION AND SEDIMENT CONTROL PLAN; LAND-DISTURBING PERMIT

Sec. 31-31. - Erosion and sediment control plan.

- (a) Except as provided in Code of Virginia, § 62.1-44.15:56, it shall be unlawful for any person to engage in any land-disturbing activity until an erosion and sediment control plan has been submitted to and approved by the administrator.
- (b) The standards contained in the Virginia Erosion and Sediment Control Regulations, the Virginia Erosion and Sediment Control Handbook and any other requirements and/or regulations contained in the Virginia Code § 62.1-44.15:52 or promulgated thereunder are to be used by the applicant when making a submittal under the provisions of this article and in the preparation of an erosion and sediment control plan. The city manager and/or his designee, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the state regulations shall take precedence. In accordance with Code of Virginia, § 62.1-44.15:52 of the stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

In accordance with Code of Virginia, §62.1-44.15:52, for plans approved prior to July 1, 2014, any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to:

- (1) Detain the water quality volume and to release it over 48 hours;
- (2) Detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and
- (3) Reduce the allowable peak flow rate resulting from the 1.5-, two-, and ten-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.

For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (, § 62.1-44.15:24 et seq.) and attendant regulations, unless such land-disturbing activities

- (a) are in accordance with grandfathering or time limits on applicability of approved design criteria provisions of the Virginia Stormwater Management Program (VSMP) Regulations, in which case the flow rate capacity and velocity requirements of this subsections shall apply, or
- (b) are exempt pursuant to subdivision C 7 of § 62.1-44.15:34

(Code 1975, § 7.1-8; Code 1992, § 24-31; Ord. No. 1582.3, § 31-31, 1-14-08)

State Law reference— Plan required, Code of Virginia, § 62.1-44.15:55.

Sec. 31-32. - Plan submission.

- (a) Five copies of the erosion and sediment control plan shall be submitted to the administrator.
- (b) State agency projects are exempt from the provisions of this section except as provided for in the Code of Virginia § 62.1-44.15:56.
- (c) Electric, natural gas, and telephone utilities companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the Soil and Water Conservation Board of the Commonwealth of Virginia for review and written comments. The specifications shall apply to;
 - (1) Construction, installation or maintenance electric transmission, natural gas, and telephone utility lines and pipelines, and water and sewer lines; and

- (2) Construction of the tracks, rights of way, bridges, communication facilities and other related structures and facilities of the railroad company.

Individual approval of separate projects within subsections (c)(1) and (c)(2) is not necessary when board-approved specifications are followed; however, projects included in subsections (c)(1) and (c)(2) must comply with board-approved specifications. Projects not included in subsections (c)(1) and (c)(2) shall comply with the requirements of the city's erosion and sediment program.

- (d) As a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the city as provided by § 62.1-44.15:52 of the Commonwealth of Virginia Erosion and Sediment Control Law who will be responsible for carrying out the land-disturbing activities (the responsible land disturber). Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in the revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this chapter.
- (e) When land-disturbing activities will be required of a contractor performing construction work pursuant to a construction contract, the preparation, the submission, and approval of the erosion and sediment control plan shall be the responsibility of the owner.
- (f) In accordance with the procedure set forth by Code of Virginia, § 62.1-44.15:55(E), any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and/or operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use and operations of mitigations banks, pursuant to a permit issued by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corp of Engineers, may, at the option of that person, file general erosion and sediment specifications for wetland mitigation banks annually with the board for review and approval consistent with guidelines established by the board.
- (g) The city manager and/or his designee may waive or modify any of the regulations that are deemed inappropriate or too restrictive for site conditions by granting a variance under the conditions noted in 9VAC25-31-850 of the Commonwealth of Virginia Erosion and Sediment Control Regulations.
- (h) Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the board for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an agreement-in-lieu-of-a plan may be substituted for an erosion and sediment control plan if approved by the administrator.

(Code 1975, § 7.1-9; Code 1992, § 24-32; Ord. No. 1582.4, § 31-32, 1-14-08)

Sec. 31-33. - Approval.

Any erosion and sedimentation plan submitted under the provisions of this chapter shall be acted on within 45 days from receipt by either approving or disapproving in writing and giving specific reasons for disapproval. If no formal action has been taken by the plan-approving authority within 45 days after receipt of the plan, the plan shall be deemed approved, as provided in the Virginia Sediment and Erosion Control Handbook, 1993. The Administrator shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

(Code 1975, § 7.1-10; Code 1992, § 24-33)

State Law reference— Similar provisions, Code of Virginia, § 62.1-44.15:55.

Sec. 31-34. - Amendment to plan.

An approved plan may be changed by the administrator in the following cases:

- (1) Where inspection has revealed the inadequacy of the plan to satisfy applicable regulations or to accomplish the erosion and sediment control objectives of the plan, and appropriate modifications to correct the deficiencies of the plan are agreed to by the administrator and the person responsible for carrying out the plan; or
- (2) Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan consistent with the requirements of this chapter are agreed to by the administrator and the person responsible for carrying out the plan.

(Code 1975, § 7.1-11; Code 1992, § 24-34)

State Law reference— Similar provisions, Code of Virginia, § 62.1-44.15:55.

Sec. 31-35. - Issuance of land-disturbing permit; fees.

- (a) Except as provided in sections 31-1 and 31-3, no person shall engage in any land-disturbing activity as defined in section 31-1 within the city until he has acquired a land-disturbing permit; and engaging in such activity without a permit shall be a subject to the fines outlined in Sec. 31-7. - Penalties
- (b) Issuance of such permit is conditioned on the approval of an erosion and sediment control plan submitted to the administrator at the time of application for the permit, and upon the fulfillment of all requirements of this chapter and those set forth in the Virginia Erosion and Sediment Control Handbook, 1993, on payment of all fees required by this chapter, upon providing security for performance as required by this chapter, and copies of all other required applicable permits have been received .
- (c) A permit fee in such sum as the council by resolution may approve, said fee shall be located in the Rate Resolution, approved by Council annually, shall be paid at the time of submission of any erosion and sediment control plan; and no permit shall be issued until such plan is

approved by the administrator. The permit fee paid pursuant to this section shall be nonrefundable, whether the plan is approved or disapproved.

(Code 1975, § 7.1-12; Code 1992, § 24-35)

Sec. 31-36. - Bonding of performance.

- (a) Prior to the issuance of any permit under section 31-35, and prior to approval of any erosion and sediment control plan, the administrator shall require that the applicant post a performance bond with surety, a cash escrow, a letter of credit, or any combination thereof, in form or forms approved by the city attorney, payable to the city, for the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the city and a reasonable allowance for estimated administrative costs and inflation, which shall not exceed 25 percent of the estimated cost of the conservation action. This bond may be used by the city to defray the cost necessary to enable the city to take measures at the applicant's expense to initiate or maintain appropriate conservation action and erosion and sediment control required by the approved erosion and sediment control plan as a result of the land-disturbing activity if the applicant shall fail to do so within the time required by the permit.
- (b) In lieu of the bond with surety, cash escrow, letter of credit or combination thereof, the administrator, with the written approval of the city manager, may make such other legal arrangements which are sufficient to ensure that measures can be taken by the city at the applicant's expense should he fail, within the time specified in the permit, to initiate or maintain appropriate conservation action and erosion and sediment control which may be required of him by the approved erosion and sediment control plan as a result of his land-disturbing activity.
- (c) If the administrator determines that the applicant has not complied with the requirements of the approved erosion and sediment control plan, he shall give notice to the applicant of such failure and, if the same is not initiated, completed or maintained, as the case may be, within seven days, that the bond, cash escrow, letter of credit (or combination thereof) shall be forfeited, or the terms of the other legal arrangements made to ensure compliance will be invoked, after which the same shall stand forfeited or invoked and all work under the permit issued and any grading, building or other permit for any activity involving land-disturbing activities shall cease.
- (d) Should the applicant fully comply with the requirements of the approved erosion and sediment control plan and the permit issued therefor, then within 60 days of the completion of the land-disturbing activity, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated, as the case may be.

(Code 1975, § 7.1-13; Code 1992, § 24-36)

State Law reference— Similar provisions, Code of Virginia, § 62.1-44.15:57.

Sec. 31-37. - No other permits to issue without approved plan.

- (a) No agency of the city authorized to issue grading, building or other permits for activities involving land-disturbing activities shall issue any such permits unless the applicant obtains an agreement-in-lieu-of a plan from the administrator, or submits with his application the approved erosion and sediment control plan required by this chapter and a certification by the applicant that such approved erosion and sediment control plan will be followed.
- (b) The requirements of this section are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

(Code 1975, § 7.1-14; Code 1992, § 24-37)

State Law reference— Similar provisions, Code of Virginia, § 62.1-44.15:57.

Sec. 31-38. - Injunctions and other legal actions.

In addition to the penalties provided by section 31-6, and in addition to any other remedies provided by law, the city, through its administrator or otherwise, may apply to the circuit court of the city for injunctive relief to enjoin a violation or threatened violation of any of the provisions of this chapter relative to land-disturbing activities, without any showing that there does not exist an adequate remedy at law.

(Code 1975, § 7.1-15; Code 1992, § 24-38)

State Law reference— Similar provisions, Code of Virginia, § 62.1-44.15:63.

EFFECTIVE DATE OF THIS ORDINANCE: January 28, 2019

First Reading: January 14, 2019

Motion:

Second:

Recorded Vote: Ms. Critterton:
Mr. Gropman:
Dr. Harshberger:
Ms. Huntington:
Mayor Horton:

Second Reading: January 28, 2019

Motion:

Second:

Recorded Vote: Ms. Critterton:
Mr. Gropman:
Dr. Harshberger:
Ms. Huntington:
Mayor Horton:

ATTEST: _____
Jennifer G. Wilder, City Clerk