

# ORDINANCE NO. 2496

## AN ORDINANCE REGULATING SOIL EROSION AND SEDIMENT CONTROL WITHIN THE CITY LIMITS.

### BE IT ORDAINED BY THE CITY OF MITCHELL, SD:

Section 1: There is hereby enacted a new Article to be included within Title 8, chapter 9, in the Mitchell SD Code of Ordinances as follows:

#### ARTICLE D. REGULATION OF SOIL EROSION AND SEDIMENT CONTROL

##### SECTION:

- 8-9D- 1: Purpose/Intent
- 8-9D- 2: Definitions
- 8-9D- 3 Applicability
- 8-9D- 4 Responsibility for Administration
- 8-9D- 5 Severability
- 8-9D- 6 General Principals
- 8-9D- 7 Site Development Permit
- 8-9D- 8 Design and Requirements
- 8-9D- 9 Maintenance and Control Measures
- 8-9D-10 Inspection
- 8-9D-11 Notifications
- 8-9D-12 Special Precautions
- 8-9D-13 Amendment of Plans
- 8-9D-14 Enforcement
- 8-9D-15 Appeal of Notice of Violation
- 8-9D-16 Enforcement Measures After Appeal
- 8-9D-17 Cost of Abatement of Violation
- 8-9D-18 Injunctive Relief
- 8-9D-19 Compensatory Action
- 8-9D-20 Violations Deemed A Public Nuisance
- 8-9D-21 Criminal Prosecution
- 8-9D-22 Remedies Not Exclusive

##### **8-9D-1: PURPOSE/INTENT:**

The purpose of this Ordinance is to safeguard persons, protect property, prevent damage to the environment, and promote the public welfare of the City of Mitchell, South Dakota by guiding, regulating and controlling the design, construction, use and maintenance of any develop ment or other activity which disturbs or breaks the topsoil or otherwise results in the movement of earth on land situated in the City. It is the intention of this ordinance that the delivery of sediment from sites affected by land disturbing activities be limited, as closely as practicable, to that which would have occurred if the land had been left in its natural undisturbed state.

The objectives of this ordinance are to minimize soil erosion because:

- (a) Excessive quantities of soil may erode from areas undergoing development for certain non-agricultural uses including but not limited to the construction of dwelling units, commercial buildings and industrial plants, the building of roads and highways, the modification of stream channels and drainageways, and the creation of recreational facilities;
- (b) The washing, blowing, and falling of eroded soil across and upon roadways endangers the health and safety of users thereof, by decreasing vision and reducing traction of road vehicles;
- (c) Soil erosion necessitates the costly repairing of gullies, washed-out fills, and embankments;
- (d) Sediment from soil erosion tends to clog sewers and ditches and to pollute and silt rivers, streams, lakes, wetlands, and reservoirs;
- (e) Sediment limits the use of water and waterways for most beneficial purposes, promotes the growth of undesirable aquatic weeds, destroys fish and other desirable aquatic life, and is costly and difficult to remove; and
- (f) Sediment reduces the channel capacity of waterways and the storage capacity of floodplains and natural depressions, resulting in increased chances of flooding at risk to public health and safety.

**8-9D-2: DEFINITIONS:**

Authorized Enforcement Agency: The Public Works Department of the City, its director or employees designated to enforce this ordinance.

Building Permit: A permit issued by the City for the construction, erection or alteration of a structure or building.

Certify of Certification: Formally attesting that the specific inspections and tests where required have been performed, and that such tests comply with the applicable requirements of this Ordinance.

City: The City of Mitchell, South Dakota.

Clearing: Any activity that removes vegetative ground cover.

Cubic Yards: The amount of material in excavation and/or fill measured by the method of "average end areas."

Development: Any man-made change to real estate, including:

- (a) Construction, reconstruction or placement of a building or any addition to a building;
- (b) Installation of a manufactured home on a site preparing a site for a manufactured home, or installing a travel trailer on a site for more than 180 days;
- (c) Construction of roads, bridges, or similar projects;
- (d) Redevelopment of a site;
- (e) Filling, dredging, grading, clearing, excavating, paving or other non-agricultural alterations of the ground surface;
- (f) Storage of materials or deposit of solid or liquid waste;

- (g) Any other activity that might alter the magnitude, frequency, deviation, direction or velocity of stormwater flows from a property.

Drainageway: Any channel that conveys surface runoff throughout the site.

Excavation: Any act by which organic matter, earth, sand, gravel, rock or any other similar, material is cut into, dug, quarried, uncovered, re moved, displaced, relocated or bulldozed and shall include the conditions resulting therefrom.

Existing Grade: The vertical location of the existing (natural) ground surface prior to excavation or filling.

Fill: Any act by which, earth, sand, gravel, rock or any other material is deposited, placed, replaced, pushed, dumped, pulled, transported or moved by man to a new location and shall include the conditions resulting therefrom.

Final Grade: The vertical location of the ground or pavement surface after the grading work is completed in accordance with the site development plan.

Grading: Excavation or fill or any combination thereof and shall include the conditions resulting from any excavation or fill.

Land Disturbance Activity: Means any land change that may result in soil erosion from wind, water and/or ice and the movement of sediments into or upon waters, lands, or rights-of-way within the city, including, but not limited to, building demolition, clearing and grubbing, grading, excavating, transporting and filling of land.

Manual of Standards: A compilation of technical standards and design specifications adopted by the public works/city engineering department as being proven methods of controlling construction related surface runoff, erosion and sedimentation. The reference material at this time is the South Dakota Department of Transportation (SDDOT) Manual on Erosion and Sediment Control and Stormwater Management 2014, as amended.

MS4: Municipal Separate Storm Sewer System.

Natural Drainage: Channels formed in the existing surface topogra phy of the earth prior to changes made by unnatural causes.

Parcel: All contiguous land owned by a single entity.

Permittee: Any person to whom a site development permit is issued.

Person: Any individual, firm or corporation, public or private, the State of South Dakota and its agencies or political subdivisions, and the United States of America, its agencies and instrumentalities, and any agent, servant, officer or employee of any of the foregoing.

Authorized Enforcement Agency: This may be the public works director, city engineer or his/her designee.

Removal: Cutting vegetation to the ground or stumps, complete extraction, or killing by spraying.

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

Site Development: Altering terrain and/or vegetation and constructing improvements.

Site Development Permit: A permit issued by the City for the construction or alteration of ground improvements and structures for the control of erosion, runoff and grading.

Stream: Any river, creek, brook, branch, flowage, ravine, or natural or man-made drainageway which has a definite bed and banks or shoreline, in or into which surface or groundwater flows, either perennially or intermittently.

Stripping: Any activity that removes the vegetative surface cover including tree removal, clearing, and storage or removal of topsoil.

Vacant: Land on which there are no structures or only structures that are secondary to the use or maintenance of the land itself.

Wetlands: Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

**8-9D-3: APPLICABILITY:**

This ordinance shall apply to any land disturbance activity within the City of Mitchell unless explicitly exempted by an authorized enforcement agency.

**8-9D-4: RESPONSIBILITY FOR ADMINISTRATION:**

The Authorized Enforcement Agency shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Director of the Authorized Enforcement Agency to persons or entities acting in the beneficial interest of or in the employment of the agency.

**8-9D-5: SEVERABILITY:**

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

**8-9D-6: GENERAL PRINCIPLES:**

It is the objective of this ordinance to control soil erosion and sedimentation caused by development activities, including clearing, grading, stripping, excavating, and filling of land, in the

City. Measures taken to control soil erosion and offsite sediment runoff should be adequate to assure that sediment is not transported from the site by a storm event of two (2) year or twenty four (24) hour storm event. The following principles shall apply to all development activities within the City and to the preparation of the submissions required under Section 8-9D-7 of this ordinance:

- (a) Development should be related to the topography and soils of the site so as to create the least potential for erosion. Areas of steep slopes where high cuts and fills may be required should be avoided wherever possible, and natural contours should be followed as closely as possible.
- (b) Natural vegetation should be retained and protected wherever possible. Areas immediately adjacent to natural watercourses, lakes, ponds, and wetlands should be left undisturbed wherever possible. Temporary crossings of watercourses, when permitted must include appropriate stabilization measures.
- (c) Special precautions should be taken to prevent damages resultant from any necessary development activity within or adjacent to any stream, lake, pond, or wetland. Preventative measures should reflect the sensitivity of these areas to erosion and sedimentation.
- (d) The smallest practical area of land should be exposed for the shortest practical time during development.
- (e) Sediment basins or traps, filter barriers, diversions, and any other appropriate sediment or runoff control measures should be installed prior to site clearing and grading and maintained to remove sediment from run-off waters from land undergoing development.
- (f) The selection of erosion and sedimentation control measures should be based on assessment of the probable frequency of climatic and other events likely to contribute to erosion, and on evaluation of the risks, costs, and benefits involved.
- (g) In the design of erosion control facilities and practices, aesthetics and the requirements of continuing maintenance should be considered.
- (h) Provision should be made to accommodate the increased run-off caused by changed soil and surface conditions during and after development. Drainageways should be designed so that their final gradients and the resultant velocities and rates of discharge will not create additional erosion onsite or downstream.
- (i) Permanent vegetation and structures should be installed and functional as soon as practical during development.
- (j) Those areas being converted from agricultural purposes to other land uses should be vegetated with an appropriate protective cover prior to development.
- (k) All waste generated as a result of site development activity should be properly disposed of and should be prevented from being carried off the site by either wind or water.
- (l) All construction sites should provide measures to prevent sediment from being tracked onto public or private roadways.

## **8-9D-7: SITE DEVELOPMENT PERMIT:**

(a) **Permit Required.**

Except as otherwise provided in this ordinance, no person shall commence or perform any clearing, grading, stripping, excavating, or filling of land which meets the following provisions without having first obtained a site development permit from the City of Mitchell.

- (1) Any land disturbing activity (i.e., clearing, grading, stripping, excavation, fill, or any combination thereof) that will affect an area in excess of 5000 square feet;
- (2) Any land disturbing activity that will affect an area in excess of 500 square feet if the activity is within 25-feet of a lake, pond, stream, or wetland; or
- (3) Excavation, fill, or any combination thereof that will exceed 100 cubic yards.

(b) **Exceptions.**

A permit shall not be required for any of the following provided that the person responsible for any such development shall implement necessary soil erosion and sediment control measures to satisfy the principles set forth in Section 8-9D-6 of this Ordinance:

- Excavation below final grade for the basement and footings of a single -family residence and appurtenant structures on a site in excess of **two (2) acres less than one (1) acre** for which a building permit has been issued by the City of Mitchell;
- Agricultural use of land, including the construction of agricultural structures;
- Existing nursery and agricultural operation conducted as a permitted main or accessory use;
- Cemetery graves; or
- Installation, renovation, or replacement of a septic system to serve an existing dwelling or structure.

(c) **Application for Permit.**

Each application for a city site development permit shall bear the names and addresses of the owner or developer of the site, general contractor and any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm and shall be accompanied by a filing fee in the amount set forth in the city fee schedule on file in the office of the finance director. Each application shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the stormwater pollution prevention plan, approved plans and site development permit. The public works/city engineering department shall be notified 48 hours prior to construction or grading activities.

(d) **Submissions.**

Each application for a site development permit shall be accompanied by the following information:

- 1) For all regulated sites, a vicinity map in sufficient detail to enable easy location in the field of the site for which the permit is sought, and including the boundary line and approximate acreage of the site, existing zoning, and a legend and scale.
- 2) For sites with 5000 square feet or more, but less than one acre of disturbance:

- a) A scale drawing of the site;
  - b) Erosion and sediment control measures (BMPs) to be implemented; and
  - c) A sequence of site operations.
- 3) For sites one (1) acre and greater in size:
- a) A development plan of the site showing:
    - i. Existing topography of the site and adjacent land within approximately 100-feet of the boundaries, drawn at no greater than 2-foot contour intervals and clearly portraying the conformation and drainage pattern of the area.
    - ii. The location of existing buildings, structures, utilities, streams, lakes, floodplains, wetlands and depressions, drainage facilities, vegetative cover, paved areas, and other significant natural or man-made features on the site and adjacent land within 100-feet of the boundary.
    - iii. A general description of the predominant soil types on the site, their location, and their limitations for the proposed use.
    - iv. Proposed use of the site, including present development and planned utilization; areas of clearing, stripping, grading, excavation, and filling; proposed contours, finished grades, and street profiles; provisions for storm drainage, including storm sewers, swales, detention basins and any other measures to control the rate of runoff, with a drainage area map, indications of flow directions, and computations; kinds and locations of utilities; and areas and acreages proposed to be paved, covered, sodded or seeded, vegetatively stabilized, or left undisturbed.
  - b) An erosion and sediment control plan showing all measures necessary to meet the objectives of this ordinance throughout all phases of construction and permanently after completion of development of the site, including:
    - i. Location and description, including standard details, of all sediment control measures and design specifics of sediment basins and traps, including outlet details.
    - ii. Location and description of all soil stabilization and erosion control measures, including seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, kind and quantity of mulching for both temporary and permanent vegetative control measures, and types of non-vegetative stabilization measures.
    - iii. Location and description of all runoff control measures, including diversions, waterways, and outlets.
    - iv. Location and description of methods to prevent tracking of sediment offsite, including construction entrance details, as appropriate.
    - v. Description of dust and traffic control measures.
    - vi. Locations of stockpiles and description of stabilization methods.
    - vii. Description of off-site fill or borrow volumes, locations, and methods of stabilization.

- viii. Provisions for maintenance of control measures, including type and frequency of maintenance, easements, and estimates of the cost of maintenance.
  - ix. Channel stabilization before, during and after any in-channel/adjacent to channel work.
  - x. An Army Corp of Engineers 404 permit, as well as any other state or federal permits.
  - xi. Any other measures required by the Authorized Enforcement Agency to accomplish erosion and sediment control for the site.
  - xii. Identification (name, address, and telephone) of the person(s) or entity which will have legal responsibility for maintenance of erosion control structures and measures during development and after development is completed.
- c) The proposed phasing of development of the site, including stripping and clearing, rough grading and construction, and final grading and landscaping. Phasing should identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, and the sequence of installation of temporary sediment control measures (including perimeter controls), clearing and grading, installation of temporary soil stabilization measures, installation of storm drainage, paving streets and parking areas, final grading and the establishment of permanent vegetative cover, and the removal of temporary measures. It shall be the responsibility of the applicant to notify the Authorized Enforcement Agency of any significant changes which occur in the site development schedule after the initial erosion and sediment control plan has been approved.
- 4) The Authorized Enforcement Agency may waive specific requirements for the content of submissions upon finding that the information submitted is sufficient to show that the work will comply with the objectives and principles of this ordinance.
- (e) **Review and Approval.**  
 Each application for a site development permit shall be reviewed and acted upon according to the following procedures:
- 1) The Authorized Enforcement Agency or his or her designee will review each application for a site development permit to determine its conformance with the provisions of this ordinance. The Authorized Enforcement Agency may also refer any application to any other local government or public agency within whose jurisdiction the site is located for review and comment. After receiving an application and completing a review of the site plans and permit documents, the Authorized Enforcement Agency shall, in writing:
    - a) Approve the permit application and issue the permit;
    - b) Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this ordinance, and issue the permit subject to these conditions; or
    - c) Disapprove the permit application, indicating the deficiencies and the procedure for submitting a revised application and/or submission.

- 2) No site development permit shall be issued for an intended development site unless:
  - a) the development, including but not limited to subdivisions and planned unit development, has been approved by the City of Mitchell where applicable, or
  - b) such permit is accompanied by or combined with a valid building permit issued by the City of Mitchell, or
  - c) the proposed earth moving is coordinated with any overall development program previously approved by the City of Mitchell for the area in which the site is situated; and
  - d) all relevant federal and state permits have been received for the portion of the site subject to soil disturbance.

(f) **Expiration of Permit.**

Every site development permit shall expire and become null and void if the work authorized by such permit has not been commenced within 360 days, or is not completed by a date which shall be specified in the permit; except that the Authorized Enforcement Agency may, if the permittee presents satisfactory evidence that unusual difficulties have prevented work being commenced or completed within the specified time limits, grant a reasonable extension of time if written application is made before the expiration date of the permit. The Authorized Enforcement Agency may require modification of the erosion control plan to prevent any increase in erosion or offsite sediment runoff resulting from any extension.

(g) **Appeals.**

The applicant, or any person or agency which received notice of the filing of the application, may appeal the decision of the Authorized Enforcement Agency as provided in Section 8-9D-7e, to the City Plan Commission. The City Plan Commission shall render a decision within 45 days after receiving notice. Factors to be considered on review shall include, but need not be limited to, the effects of the proposed development activities on the surface water flow to tributary and downstream lands, any comprehensive watershed management plans, or the use of any retention facilities; possible saturation of fill and unsupported cuts by water, both natural and domestic; runoff surface waters that produce erosion and silting of drainageways; nature and type of soil or rock which when disturbed by the proposed development activities may create earth movement and produce slopes that cannot be landscaped; and excessive and unnecessary scarring of the natural landscape through grading or removal of vegetation.

(h) **Retention of Plans.**

A "For Construction" set of plans, specifications, and reports for all site developments shall be retained by the Authorized Enforcement Agency during construction operations.

(i) **Record Drawings.**

A "Record Drawing" set of plans, specifications, and reports for all site developments shall be prepared by the developer (applicant) upon completion of the development project. The record drawings will need to be reviewed and approved by the Authorized Enforcement Agency prior to the acceptance of the development.

### **8-9D-8: DESIGN AND REQUIREMENTS:**

Soil erosion and sediment control related measures are required to be constructed and maintained for any land disturbance activity permitted under Section 8-9D-7. The following requirements shall be met:

- (a) Soil disturbance shall be conducted in such a manner as to minimize erosion. Areas of the development site that are not to be graded shall be protected from construction traffic or other disturbance until final seeding is performed. Soil stabilization measures shall consider the time of year, site conditions and the use of temporary or permanent measures.
- (b) Properties and channels adjoining development sites shall be protected from erosion and sedimentation. At points where concentrated flow leaves a development site, energy dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive velocity of flow from the structure to the watercourse so that the natural physical and biological characteristics and functions are maintained and protected.
- (c) Soil erosion and sediment control features shall be constructed prior to the commencement of hydrologic disturbance of upland areas.
- (d) Disturbed areas shall be stabilized with temporary or permanent measures within 14 calendar days following the end of active hydrologic disturbance, or redisturbance, consistent with the following criteria or using an appropriate measure as approved by the Authorized Enforcement Agency.
  - 1) Appropriate temporary or permanent stabilization measures shall include seeding, mulching, sodding and/or non-vegetative measures.
  - 2) Areas or embankments having slopes greater than or equal to 3H:1V shall be stabilized with staked in place sod, mat or blanket in combination with seeding.
  - 3) Erosion control blanket shall be required on all interior detention basin side slopes between normal water level and high water level.
  - 4) The 14 day stabilization requirement may be precluded by snow cover or where construction activity will resume within 21 days from when the active hydrologic disturbance ceased, then stabilization measures do not have to be initiated on that portion of the site by the 14th day after construction activity temporarily ceased given that portion of the site has appropriate soil erosion and sediment controls in place.
- (e) Land disturbance activities in streams shall be avoided, where possible. If disturbance activities are unavoidable, the following requirements shall be met:
  - 1) Where stream construction crossings are necessary, temporary crossings shall be constructed of non-erosive material.
  - 2) The time and area of disturbance of a stream shall be kept to a minimum. The stream, including bed and banks, shall be re-stabilized within 48 hours after channel disturbance is completed or interrupted.
- (f) Soil erosion and sediment control measures shall be appropriate with regard to the amount of tributary drainage area as follows:
  - 1) Disturbed areas draining greater than 5000 square feet but less than one (1) acre shall, at a minimum, be protected by a filter barrier (including filter fences, which at a minimum, meet the applicable sections of the *AASHTO Standard Specification 288-00*, or equivalent control measures) to control all off-site runoff.

- Vegetated filter strips, with a minimum width of 25-feet, in the direction of flow, may be used as an alternative only where sheet flow runoff is expected.
- 2) Disturbed areas draining more than one (1) acre but fewer than five (5) acres shall, at a minimum, be protected by a sediment trap or equivalent control measure at a point downslope of the disturbed area.
  - 3) Disturbed areas draining more than five (5) acres or more, shall, at a minimum, be protected by a sediment basin with a perforated filtered riser pipe or equivalent control measures at a point downslope of the disturbed area.
  - 4) Sediment basins shall have both a permanent pool (dead storage) and additional volume (live storage) with each volume equal to the runoff amount of a 2-inch precipitation event in a 24-hour period over the onsite hydrologically disturbed tributary drainage area to the sediment basin. The available sediment volume below normal water level, in addition to the dead storage volume shall be sized to store the estimated sediment load generated from the site over the duration of the construction period. For construction periods exceeding one (1) year, the one (1) year sediment load and a sediment removal schedule may be submitted. If the detention basin for the proposed development condition of the site is used for sediment basin, the above volume requirements will be explicitly met. Until the site is finally stabilized, the basin permanent pool of water shall meet the above volume requirements and have a filtered perforated riser protecting the outflow pipe.
- (g) All storm sewers that are or will be functioning during construction shall be protected by an appropriate sediment control measure.
  - (h) **If** With a DENR Permit where dewatering services are used, adjoining properties and discharge locations shall be protected from erosion. Discharges shall be routed through an effective sediment control measure (e.g., sediment trap, sediment basin or other appropriate measures).
  - (i) All temporary soil erosion and sediment control measures shall be removed within 30 days after final site stabilization is achieved or after the temporary measures are no longer needed. Trapped sediment and other disturbed soil areas shall be permanently stabilized.
  - (j) A stabilized mat of aggregate underlain with filter cloth (or other appropriate measures) shall be located at any point where traffic will be entering or leaving a construction-site of a major development to or from a public right-of-way, street, alley or parking area. Any sediment or soil reaching an improved public right-of-way, street, alley or parking area shall be removed by scraping or street cleaning as accumulations warrant and transported to a controlled sediment disposal area. The Authorized Enforcement Agency may require additional stabilized construction entrance methods.
  - (k) Earthen embankments shall be constructed with side slopes no steeper than 3H:1V. Steeper slopes may be constructed with appropriate stabilization as approved by the Authorized Enforcement Agency.
  - (l) Stormwater conveyance channels, including ditches, swales and diversions, and the outlet of all channels and pipes shall be designed and constructed to withstand the expected flow velocity from the ten (10) year frequency storm without erosion. All constructed or modified channels shall be stabilized within 48 hours.
  - (m) Temporary diversions shall be constructed as necessary to direct all runoff from hydrologically disturbed areas to the appropriate sediment trap or basin.

- (n) Soil stockpiles shall not be located in a flood-prone area or a designated buffer protecting Waters of the **United States State**. Soil stockpiles are defined as having greater than 100 cubic yards of soil and will remain in place for more than seven (7) days. Soil stockpile locations shall be shown on the soil erosion and sediment control plan and shall have the appropriate measures to prevent erosion of the stockpile.
- (o) Handbooks: Standards and specifications contained in the SDDOT Manual on Erosion and Sediment Control and Stormwater Management 2014, as amended, are referenced in this ordinance as guidance for presenting soil erosion and sediment control plan specifications and delineating procedures and methods of operation under site development for soil erosion and sediment control. In the event of conflict between provisions of said manuals and this ordinance, this ordinance shall govern.
- (p) The applicant shall provide adequate receptacles for the deposition of all construction material debris generated during the development process. The applicant shall not cause or permit the dumping, depositing, dropping, throwing, discarding or leaving of construction material debris upon or into any development site, channel, or Waters of the U.S. The applicant shall maintain the development site free of construction material debris.

**8-9D-9: MAINTENANCE OF CONTROL MEASURES:**

All temporary measures and permanent erosion and sediment control must be maintained in an effective working condition as identified by required inspections. This includes, but is not limited to, the following:

- (a) Repair, replace or maintain erosion and sediment control structures after any singular or cumulative rainfall event(s). **of 0.5-inches or more over a 24-hour period.**
- (b) Remove sediment from sedimentation ponds when the design capacity has been reduced by 50 percent or more.
- (c) Remove sediment from silt fences and other sediment controls before the deposit reaches the point at which 50 percent of the height of the control is attained.
- (d) The erosion and sediment controls required for compliance with effluent limits shall be maintained from the beginning of construction activity until the final stabilization is completed and approved.
- (e) Make adjustments to the erosion and sediment control plan and methods, as needed, to accomplish the intended purpose.
- (f) Any necessary repairs or corrective action to soil erosion and sediment control measures shall be made prior to the next rainfall event or seven (7) days, whichever is earlier.

**8-9D-10: INSPECTION:**

- (a) Construction plans for grading, stripping, excavating, and filling work approved by the Authorized Enforcement Agency (should be stamped “FOR CONSTRUCTION”) shall be maintained at the site during the progress of the work. The permittee shall make inspections and maintain on-site records of such inspections at the intervals specified below.
  - (1) Upon completion of installation of sediment and runoff control measures (including perimeter controls and diversions), prior to proceeding with any other earth disturbance or grading.
  - (2) After rough grading.

- (3) After final grading, and
  - (4) **Weekly** Every seven (7) days and after each rainfall event of 0.5-inches or more over a 24-hour period, or a snowmelt event that causes surface erosion.
  - (5) Once a site has been temporarily stabilized and construction has ceased for the winter, such inspections shall be conducted at least once per month.
- (b) The permittee shall maintain records of each inspection and resulting maintenance activities, including:
- (1) Date and time of inspections;
  - (2) Name(s) and title(s) of personnel conducting the inspections;
  - (3) **Findings** Area of inspections;
  - (4) Corrective actions taken;
  - (5) Dates and amount of all rainfall events greater than 0.5-inches in 24 hours; and
  - (6) Documentation of any changes made to the Stormwater Pollution Prevention Plan (SWPPP).
- (c) Copies of the inspection records shall be submitted to the Authorized Enforcement Agency in a monthly inspection report. When an inspection does not identify any incidents of non-compliance, the report shall contain a certification that the site is in compliance with the SWPPP and this the DENR permit.
- (d) The SWPPP shall be revised if the site inspections identify any non-compliance with the effluent limits. The changes shall be implemented at the site within seven (7) calendar days following the inspection.

**8-9D-11: NOTIFICATIONS:**

- (a) To facilitate inspections by the Authorized Enforcement Agency and to ensure compliance with the approved erosion and sediment control plan, the grading or building permit, and this Ordinance, the permittee shall notify the Authorized Enforcement Agency within two (2) working days of the completion of the construction stages specified below:
- (1) Upon completion of installation of sediment and runoff control (controls and diversions), prior to proceeding with any other earth disturbance or grading,
  - (2) After stripping and clearing,
  - (3) After rough grading,
  - (4) After final grading,
  - (5) After seeding and landscaping deadlines, and
  - (6) After final stabilization and landscaping, prior to removal of sediment controls.
- (b) If stripping, clearing, grading and/or landscaping are to be done in phases or areas, the permittee shall give notice at the completion of each of the above work stages in each phase or area. For site's equal to and greater than 5000 square feet and less than one (1) acre only 1, 3, and 6 of the above requirements shall apply.

**8-9D-12: SPECIAL PRECAUTIONS:**

- (a) If at any stage of the grading of any development site the Authorized Enforcement Agency determines by inspection that the nature of the site is such that further work authorized by an existing permit is likely to imperil any property, public way, stream, lake, wetland, or drainage structure, the Authorized Enforcement Agency may require, as a condition of allowing the work to be done, that such reasonable special precautions be taken as is considered advisable to avoid the likelihood of such peril. "Special

- Precautions” may include, but shall not be limited to, a more level exposed slope, construction of additional drainage facilities, berms, terracing, compaction, or cribbing, installation of plant materials for erosion control, and/or
- (b) Recommendations of a registered soils engineer and/or engineering geologist which may outline requirements for further work.
  - (c) Where it appears that storm damage may occur due to incomplete grading at site, work may be stopped and the permittee required to install temporary structures or take such other measures as may be required to protect adjoining property or the public safety. On large development or where unusual site conditions prevail, the Authorized Enforcement Agency may specify the start and end dates for grading operations or may require that the operations be conducted in specific stages so as to insure completion of protective measures or devices prior to the advent of seasonal rains.

**8-9D-13: AMENDMENT OF PLANS:**

Major amendments of the site development or erosion and sedimentation control plans shall be submitted to the Authorized Enforcement Agency and shall be processed and approved or disapproved in the same manner as the original plans. Field modifications of a minor nature may be authorized by the Authorized Enforcement Agency by written authorization to the permittee.

**8-9D-14: ENFORCEMENT:**

**Notice of Violation.**

Whenever the City of Mitchell, South Dakota, or other authorized enforcement agency finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) The suspension and/or revocation of the Site Development Permit;
- (b) The performance of monitoring, analyses, and reporting;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of stormwater pollution and the restoration of any affected property;
- (e) Payment of a fine to cover administrative and remediation costs; and
- (f) The implementation of additional erosion and sediment control measures or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

**8-9D-15: APPEAL OF NOTICE OF VIOLATION:**

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within seven (7) days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 25 days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

**8-9D-16: ENFORCEMENT MEASURES AFTER APPEAL:**

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within seven (7) days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

**8-9D-17: COST OF ABATEMENT OF THE VIOLATION:**

Within seven (7) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within seven (7) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment plus any legal fees to process the lien. Any person violating any of the provisions of this article shall become liable to the City by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of current market value (percentage per annum) shall be assessed on the balance beginning on the 30th day following discovery of the violation.

**8-9D-18: INJUNCTIVE RELIEF:**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. If a person has violated or continues to violate the provisions of this ordinance, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**8-9D-19: COMPENSATORY ACTION:**

In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek clean-up, etc.

**8-9D-20: VIOLATIONS DEEMED A PUBLIC NUISANCE:**

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

**8-9D-21: CRIMINAL PROSECUTION:**

Any person that has violated or continues to violate this ordinance shall be liable to prosecution to the fullest extent of the law, and shall be subject to a fine of \$1000.00 per violation per day.

**8-9D-22: REMEDIES NOT EXCLUSIVE:**

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

**8-9D-23: ADOPTION OF ORDINANCE:**

This ordinance shall be in full force and effect 30 days after its final passage approval and publication in pamphlet form. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Section 2; The City Finance Officer shall cause notice of the adoption of this ordinance to be published in the official newspaper; and if no referendum shall be invoked, then this ordinance shall become effective 20 days after the completed publication.

Adopted this 2<sup>nd</sup> day of February, 2015

---

Mayor

Attest:

---

City Finance Officer

(Seal)

First Reading: January 19, 2015  
Second Reading: February 2, 2015  
Adoption: February 2, 2015  
Published: