

TOWN OF ADDISON, TEXAS

ORDINANCE NO. 010-017

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS ADOPTING A NEW CHAPTER 71 REGARDING EROSION CONTROL; ESTABLISHING PROVISIONS TO MINIMIZE, TO THE EXTENT PRACTICABLE, THE AMOUNT OF SEDIMENT AND OTHER POLLUTANTS CARRIED BY RUNOFF OR DISCHARGED FROM LAND DEVELOPING ACTIVITIES AND LAND DISTURBING CONSTRUCTION ACTIVITIES TO LAKES, STREAMS, AND WETLANDS; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. Amendment. The Code of Ordinances of the Town of Addison, Texas (the "City") is hereby amended by adding thereto a new Chapter 71 regarding erosion control as set forth in Exhibit A attached hereto and incorporated herein for all purposes, and all other chapters, articles, sections, subsections, sentences, phrases and words of the said Code of Ordinances are not amended hereby.

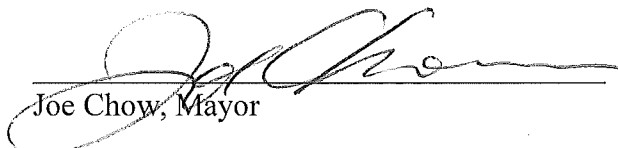
Section 2. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the City, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

Section 4. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Five Hundred and No/100 Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.

Section 5. Severability. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 6. Effective Date. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law (including, without limitation, the City Charter and the ordinances of the City).

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this 8th day of June, 2010.



Joe Chow, Mayor

ATTEST:

By: 

Lea Dunn, City Secretary

APPROVED AS TO FORM:

By: 

John Hill, City Attorney

EXHIBIT A
TO ORDINANCE NO. 010-017

CHAPTER 71
EROSION CONTROL

ARTICLE I. IN GENERAL.

Section 71-1. Purpose, Intent.

It is the purpose of this Ordinance to preserve the natural resources; to protect the quality of the waters of the State of Texas and the Town of Addison; and to protect and promote the health, safety and welfare of the people, to the extent practicable by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land developing activities and land disturbing construction activities to lakes, streams and wetlands.

Section 71-2. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Below ground installations means activity that causes excess sediment laden water, concrete sawing wash water, wash water or drilling mud pumped from an excavation or structure and shall be treated as sediment laden runoff for erosion control purposes.

Building Official means the Building Official for the Town of Addison or their designee.

Construction activities means construction activities that require a right-of-way or building permit.

Director of Public Works means the Director of Public Works for the Town of Addison or the Director's designee.

Erosion Control Plan means a site plan with necessary details, showing the property where land disturbing activity will take place and showing the locations and types of structures, devices, procedures and practices to be used to control erosion and sedimentation.

Final approval means completion of a project, site or building in accordance with Town of Addison requirements and ordinances. In the case of a building, a certificate of occupancy is issued.

Land disturbing activity means any activity, including but not limited to excavation, planting, tilling, and grading, which disturbs 1 acre (43,560 square feet) of the natural or improved vegetative ground cover so as to expose soil to the erosive forces of rain, storm

water runoff or wind. Land disturbing activities also include areas smaller than one acre that are part of a larger common plan of development or sale. All installations and maintenance of franchise utilities such as telephone, gas, electric, etc., shall be considered land disturbing activities.

Erosion Control Manual means the North Central Texas Council of Governments (NCTCOG) Manual of Best Management Practices, as amended from time to time. A current copy of the Manual shall be kept on file in the office of the Department of Public Works of the Town and may be obtained from the NCTCOG offices.

Off-site borrow area means a source of earth fill material used in the construction of embankments or other earth fill structures, that is located on another parcel of property other than where the principal construction is occurring.

Off-site sedimentation means deposit of soil material beyond the limits of the property undergoing land disturbing activity or in public streets, alleys or drainage facilities in an amount sufficient to constitute a threat to public safety and comfort.

Off-site spoil area means an area on another parcel of property, other than where the principal construction is occurring, where excess earth, rock or construction material is disposed of.

Permanent erosion control devices means devices or practices installed prior to final approval and maintained after final approval to prevent or minimize the erosion and deposit of soil materials. Such devices may include, but shall not be limited to, permanent seeding, sod, storm drain channels, channel linings, storm drain pipes, outlet velocity control structures and storm water detention structures.

Permanent ground cover means permanent vegetative cover on all bare soil areas of a property not covered by a permanent structure or landscaping improvements, including but not limited to, live sod, perennial grasses or other materials which lessen runoff and soil erosion on the property.

Phased occupancy means use or inhabitation of a single structure or other portion of a project as such structure or portion thereof is completed, but before the project as a whole is fully completed and finally approved by the Town.

Related land area includes the property where the principal land disturbing activity is taking place, all adjacent property, off-site borrow areas, off-site spoil areas, off-site properties necessary for required utility extensions, and off-site areas for required street improvements.

Responsible Party means a business entity, franchised utility company, developer, property owner, contractor or holder of a building permit who is required to comply with the terms of this chapter.

Staging area means an on-site or off-site location used by a contractor to store materials for a project, to assemble portions of equipment or structures, to store equipment or machinery, to park vehicles, or for other construction related uses.

Stop work order means the suspension of all Town permits with no approvals or inspections of work for the site or project being performed.

Temporary erosion control devices means devices installed or practices implemented and maintained during land disturbing activities to prevent, minimize or control the erosion and deposit of soil materials.

Town means the Town of Addison, Texas.

Section 71-3. Authority; Federal and State Regulations.

Federal Regulations (Section 402 of the Clean Water Act) and State Regulations (Chapter 26 of the Texas Water Code) require all owners/operators of storm water discharges from industrial activities to apply for and operate pursuant to Texas Pollutant Discharge Elimination System (TPDES) General Permit TXR150000 hereafter referred to as the "State Permit". The State Permit regulates land disturbing activities that result in the disturbance of one or more acres of total land area, including areas smaller than one acre that are part of a larger common plan of development or sale.

A Responsible Party engaging in a regulated land disturbing activity is responsible for compliance with the Texas Commission on Environmental Quality (TCEQ) State Permit. The Responsible Party shall submit to TCEQ a Notice of Intent (NOI) or Construction Site Notice for coverage under the State Permit, and shall also provide the Director of Public Works with a copy of the NOI or Construction Site Notice prior to beginning any land disturbing activity.

A Responsible Party engaging in a regulated land disturbing activity shall prepare a Storm Water Pollution Prevention Plan (SWPPP) satisfying all requirements of the State Permit. A copy of the SWPPP shall be provided to the Director of Public Works prior to the start of any land disturbing activity. The SWPPP shall be prepared by either a Registered Professional Engineer licensed in the State of Texas, a Certified Professional in Erosion and Sediment Control (CPESC) or a Certified Professional in Storm Water Quality (CPSWQ).

Any Responsible Party not in compliance with the TPDES General Permit TXR150000 shall be in violation of this ordinance as well as State and Federal Law and shall be subject to all local, state and federal enforcements.

ARTICLE II. EROSION CONTROL REQUIRED.

Section 71-4. Application of Chapter.

A Responsible Party engaging in any land disturbing activity shall prepare an Erosion Control Plan and submit that Plan to the Town for approval. This Article shall apply

regardless of whether a Responsible Party is required to obtain a permit from the Town in order to conduct such land disturbing or construction activity. The Responsible Party shall also be held liable for violations of this chapter committed by third parties engaging in activities related to the Responsible Party's project.

Section 71-5. Erosion Control Plan Implementation and Compliance.

Each Responsible Party shall implement and maintain the erosion control measures shown on its approved Erosion Control Plan in order to minimize the erosion and the transport of silt, earth, topsoil, etc., by water runoff or construction activities, beyond the limits of the Responsible Party's site onto Town streets, drainage easements, drainage facilities, storm drains or other Town property prior to beginning any land disturbing activity.

Section 71-6. Off-Site Borrow, Spoil and Staging Areas.

Where applicable, off-site borrow areas, spoil areas and construction staging areas shall be considered as part of the project site and shall be governed by this chapter.

Section 71-7. Related Land Areas.

The erosion control requirements of this chapter shall apply to all related land areas. Additionally, when land disturbing activity occurs on a project, all disturbed land areas related to the project shall have permanent erosion control established before final occupancy of structures located thereon or final acceptance of the subdivision may be obtained. This section applies whether or not a building permit is required.

Section 71-8. Below Ground Installations.

All discharges resulting from below ground installations shall be passed through Town approved erosion control device(s) or removed from the site and properly disposed of.

ARTICLE III. EROSION CONTROL PLANS.

Section 71-9. Plan Requirements Generally.

Each Erosion Control Plan required by this chapter shall clearly identify all erosion and sediment control measures to be installed and maintained throughout the duration of the project for which that Plan is submitted. The Responsible Party shall install and maintain erosion control devices in accordance with their Town approved Erosion Control Plan as required by this chapter. Erosion and sediment control devices shall be installed and maintained in accordance with the Town's Erosion Control Manual. General guidelines for erosion and sediment control are as follows:

- (a) Maximum use shall be made of vegetation to minimize soil loss.
- (b) Natural vegetation should be retained wherever possible.

- (c) Where inadequate natural vegetation exists, or where it becomes necessary to remove existing natural vegetation, temporary controls should be installed promptly to minimize soil loss and ensure that erosion and sedimentation does not occur.
- (d) Wherever possible during construction, erosion and sedimentation controls shall be used on hillsides to slow drainage flow rate.
- (e) Erosion and sedimentation control elements should be implemented as soon as practical in the development process. Erosion and sedimentation controls shall be maintained by the Responsible Party. Erosion and sedimentation controls that are installed but not properly maintained in accordance with the Erosion Control Manual shall be considered a violation of this chapter.
- (f) Waste or disposal areas and construction roads should be located and constructed in a manner that will minimize the amount of sediment entering streams.
- (g) Frequent fording of live streams will not be permitted; therefore, temporary bridges or other structures shall be used wherever an appreciable number of stream crossings are necessary.
- (h) When work areas or material sources are located in or adjacent to live streams, such areas shall be separated from the stream by a dike or other barrier to keep sediment from entering a flowing stream. Care shall be taken during the construction and removal of such barriers to minimize the sediment transport into a stream.
- (i) Should preventative measures fail to function effectively, the applicant shall act immediately to bring the erosion and/or siltation under control by whatever additional means are necessary.
- (j) Erosion control devices shall be placed to trap any losses from stockpiled topsoil.
- (k) The selection and timing of the installation of erosion controls shall be based upon weather and seasonal conditions that could make certain controls not practicable.
- (l) Vegetation used for vegetative cover shall be suitable for local soil and weather conditions. Ground cover plants shall comply with listings from the Texas Agricultural Extension Service for North Central Texas.
- (m) Runoff shall be diverted away from construction areas as much as possible.
- (n) Stripping of vegetation from project sites shall be phased so as to expose the minimum amount of area to soil erosion for the shortest possible period of time. Phasing shall also consider the varying requirements of an erosion control plan at different stages of construction.
- (o) Developers, builders, or owners of property shall install all utilities, including franchise utilities, before final acceptance of a subdivision, property and/or structure. Final acceptance will also be contingent upon having all necessary erosion control

measures installed to minimize off-site sediment. A site may be accepted without erosion control measures if perennial vegetative cover is actively growing at the discretion of the Director of Public Works.

ARTICLE IV. NON-RESIDENTIAL, MULTI-FAMILY CONSTRUCTION; RESIDENTIAL SUBDIVISIONS; FRANCHISED UTILITIES; FARMING AND RANCHING; RESIDENTIAL LOTS.

Section 71-10. Non-Residential and Multi-Family Construction.

Prior to beginning any land disturbing activity or upon the effective date of the ordinance, a Responsible Party engaging in land disturbing activity for non-residential and multi-family construction projects shall submit an Erosion Control Plan to the Town for approval. The approved Erosion Control Plan shall be implemented and erosion control devices shall be maintained as specified in the plan and the Erosion Control Manual. A Responsible Party engaging in non-residential and multi-family activities shall comply with all other general requirements of the chapter.

When construction or land disturbing activities are conducted as part of a non-residential or multi-family construction project, permanent erosion control shall be established prior to the occupancy of any non-residential or multi-family structure. Phased occupancy will be allowed only when there are no outstanding erosion control violations for the project for which the request is made.

Section 71-11. Non-Residential and Multi-Family Construction.

In addition to the other requirements of this chapter, when construction or land disturbing activities are conducted as part of a residential subdivision project, the following shall apply:

(a) *Erosion Control Plan.* Simultaneously with or prior to the filing of the final plat, the Responsible Party shall submit an Erosion Control Plan for approval by the Town. No inspection of any type may be performed on a project or portion thereof until a Town approved Erosion Control Plan is implemented by the Responsible Party.

(b) *Final Acceptance.* Permanent erosion control devices and when applicable, temporary erosion control devices, as specified in the approved Erosion Control Plan shall be installed and maintained prior to final acceptance of a subdivision. The developer for such subdivision shall continue to maintain all temporary erosion control devices until permanent erosion control has been established on all those lots within the subdivision for which a building permit has not been issued.

(c) *Transfer of Property by Developer.* If the Responsible Party sells all or part of the lots in a subdivision to a purchaser, that purchaser becomes the Responsible Party for the subdivision of the lots sold and is liable for violation of this Ordinance. The sale of lots shall be logged within the SWPPP kept at the project site along with written proof of transfer of lots. As required by this chapter, the purchaser shall be required to comply with the Town approved Erosion Control Plan and SWPPP.

(d) *Stop Work Orders/Citation.* The Town shall inspect the erosion control devices located at a site for compliance with the approved Erosion Control Plan submitted by a Responsible Party that is applicable to that site. If a Responsible Party fails to implement or maintain erosion control devices as specified in their approved Erosion Control Plan, the Town shall provide such party with written notice of noncompliance identifying the nature of the noncompliance. The Responsible Party shall have twenty-four (24) hours to bring their erosion control devices into compliance with the approved Erosion Control Plan for the site to which notice of noncompliance was issued. Correction shall include sediment clean-up, erosion control device repair, erosion control device maintenance and/or installation of additional erosion control devices to prevent re-occurrence of the violation. The 24-hour cure period may be extended for inclement weather or other factors at the discretion of the Director of Public Works.

At the end of the twenty-four (24) hour cure period, the Town shall re-inspect the site. If at the time of such re-inspection, the erosion control devices at the site have not been brought into compliance with the approved Erosion Control Plan, the Town may issue a stop work order and issue a citation for each violation of this chapter. To obtain a re-inspection for removal of the stop work order, a request for re-inspection must be submitted.

Section 71-12. Franchised Utilities.

Subject to the terms of its franchise agreement with the Town, including but not limited to terms regarding permits, a franchised utility company engaging in land disturbing activities within the Town shall comply with the following:

(a) *Erosion Control Plan.* Prior to beginning any land disturbing activity or upon the effective date of this chapter, an Erosion Control Plan shall be submitted for approval by the Town.

(b) *Stop Work Order/Citation.* The Town shall inspect the erosion control devices located at a site for compliance with the approved Erosion Control Plan submitted for such site. If a Responsible Party fails to implement or maintain erosion control devices as specified in their approved Erosion Control Plan, the Town shall provide such Responsible Party with written notice of noncompliance identifying the nature of such noncompliance. The Responsible Party shall have twenty-four (24) hours to bring their erosion control devices into compliance with the approved Erosion Control Plan for the site where the violation occurred. Correction shall include sediment clean-up, erosion control device repair, and erosion control device maintenance. The 24-hour cure period may be extended for inclement weather or other factors at the discretion of the Director of Public Works.

At the end of the 24-hour cure period, the Town shall re-inspect the site. If at the time of such re-inspection, the erosion control devices at the site have not been brought into compliance with the approved Erosion Control Plan, the Town may issue a stop work order and issue a citation for each violation of the Town's erosion control requirements.

To obtain a re-inspection for removal of the stop work order, a request for re-inspection must be submitted.

Section 71-13. Farming and Ranching Activities.

Prior to beginning any land disturbing activity or upon the effective date of this chapter, a Responsible Party engaging in land disturbing activities for farming and ranching purposes shall submit an Erosion Control Plan for approval by the Town. The approved Erosion Control Plan shall be implemented and erosion control devices shall be maintained as specified in the approved Erosion Control Plan. A Responsible Party engaging in farming or ranching activities shall comply with all other general requirements of this chapter.

Section 71-14. Residential Lots with a Building Permit.

When land disturbing activities are conducted on a residential lot for which a building permit must be issued, the Responsible Party shall comply with the following:

(a) *Erosion Control Plan.* Prior to approval of a building permit for a residential lot by the Town, the contractor or other Responsible Party obtaining the building permit shall submit an Erosion Control Plan for approval by the Town. No inspection may be performed on a project until a Town-approved Erosion Control Plan is implemented.

(b) *Stop Work Order/Citation.* The Town shall inspect the erosion control devices located at a site for compliance with the approved Erosion Control Plan submitted for such site. If a Responsible Party fails to implement or maintain erosion control devices as specified in their approved Erosion Control Plan, the Town shall provide such Responsible Party with written notice of noncompliance identifying the nature of such noncompliance. The Responsible Party shall have twenty-four (24) hours to bring their erosion control devices into compliance with the approved Erosion Control Plan for the site where the violation occurred. Correction shall include sediment clean-up, erosion control device repair, erosion control device maintenance, and/or installation of additional erosion control devices to prevent re-occurrence of the violation. The 24-hour cure period may be extended for inclement weather or other factors at the discretion of the Building Official.

At the end of the 24-hour cure period, the Town shall re-inspect the site and may assess a re-inspection fee. If at the time of such re-inspection, the erosion control devices at the site have not been brought into compliance with the approved Erosion Control Plan, the Town may issue a stop work order and issue a citation for each violation of the Town's erosion control requirements. When a stop work order has been issued, a re-inspection fee shall be assessed. To obtain a re-inspection for removal of the stop work order, a request must be submitted therefore and a re-inspection fee, as set by the Building Inspection Department of the Town of Addison, shall be paid.

(c) *Removal of Erosion Control Devices.* Upon establishing permanent ground cover on a lot, all temporary erosion control devices shall be removed.

ARTICLE IV. ENFORCEMENT.

Section 71-15. Violations.

It shall be an offense for a Responsible Party or a third party performing work on a project to violate any of the requirements of this chapter, including, but not limited to, the following:

- (a) Conducting any land disturbing or construction activity without an approved Erosion Control Plan for the location where the violation occurred.
- (b) Failing to install erosion control devices or to maintain erosion control devices throughout the duration of land disturbing activities, in compliance with the approved Erosion Control Plan for the location where the violation occurred.
- (c) Failing to remove off-site sedimentation that is a direct result of land disturbing activities where such off-site sedimentation results from the failure to implement or maintain erosion control devices as specified in an approved Erosion Control Plan for the location where the violation occurred.
- (d) Allowing sediment laden water resulting from below ground installations to flow from a site without being treated through an erosion control device.
- (e) Failing to repair damage to existing erosion control devices, including replacement of existing grass or sod.

Section 71-16. Notice of Violation.

Written notice of violation shall be given to the Responsible Party or their job site representative as identified in the Erosion Control Plan for a site. Such notice shall identify the nature of the alleged violation and the action required to obtain compliance with the approved Erosion Control Plan.

Section 71-17. Class C Misdemeanor.

Any person, firm, or corporation violating any of the provisions or terms of this chapter shall be deemed guilty of a Class C misdemeanor and, upon conviction thereof, be subject to a fine not exceeding \$500 for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.