

ORDINANCE BILL NO. 11 FOR 2003

ORDINANCE NO. 1157

AN ORDINANCE AMENDING SWEET HOME MUNICIPAL CODE CHAPTER 13
PERTAINING TO PUBLIC SERVICES AND ADDING EROSION CONTROL AND
DECLARING A NEED FOR EXPEDIENCY.

WHEREAS, the City of Sweet Home declares a need for expediency for the purposes of protecting the health, safety and welfare of Sweet Home residents, for the health and welfare of the natural environment and for the purposes of securing short term and long term economic security for the community.

Now therefore, the City of Sweet Home does ordain as follows:

Section 1: Amending Title 13, Public Services adding the following to Chapters:
13.06 Erosion Control

Chapter 13.06
Erosion Control

Sections:

- 13.06.010 General Policy
- 13.06.020 Definitions
- 13.06.030 Erosion Control
- 13.06.040 Fish and Wildlife Habitat
- 13.06.050 Natural Vegetation
- 13.06.060 Contaminated Soils
- 13.06.070 Enforcement.

13.06.010 General Policy. The policies of this section shall apply during construction and until permanent measures are in place following construction. It is the policy to require temporary and permanent measures for all construction projects to lessen the adverse effects of site alteration on the environment. The owner, agent, contractor, or employee shall properly install, operate and maintain both temporary and permanent work, as provided in this section or in an approved plan, to protect the environment during the useful life of the project.

These erosion control rules apply to all parcels within the authority of the City. Nothing in this section shall relieve any person from the obligation to comply with the regulation or permits of any federal or state authority.

13.06.020 Definitions.

For the purpose of this ordinance, the following definitions apply:

“Class I” means any violation that poses a major risk of harm to public health or environment, or

violation of any compliance schedule contained in a City permit or a City order, including but not limited to:

1. Violation of a City Order or approved plan;
2. Intentional unauthorized discharges;
3. Negligent spills or discharges that pose a major risk of harm to public health or the environment;
4. Discharge of waste to surface waters without first obtaining a National Pollutant Discharge Elimination System Permit;
5. Failure to immediately notify the City of a spill or upset condition that results in an unpermitted discharge to public waters that poses a major risk of harm to public health or the environment;
6. Violation of a permit compliance schedule;
7. Failure to provide access to premises or records;
8. Any other violation related to water quality that poses a major risk of harm to public health or the environment;
9. Two Class II Violations or one Class II and two Class III violations or three Class III violations.

“Class II” means any violation that poses a moderate risk of harm to public health or the environment, including but not limited to:

1. Violation of a City order or approved plan;
2. Waste discharge permit limitation violations that pose a moderate risk of harm to public health or the environment;
3. Negligent spills that pose a moderate risk of harm to public health or the environment;
4. Failure to submit a report or plan as required by permit or license;
5. Any other violation related to water quality, that poses a moderate risk of harm to public health or the environment.

“Class III” means any violation that poses a minor risk of harm to public health or the environment, including but not limited to:

1. Violation of a City order or an approved plan;
2. Negligent spills or discharges that pose a minor risk of harm to public health or the environment;
3. Violation of a waste discharge permit limitation that poses a minor risk of harm to public health or the environment;
4. Any other violation related to water quality that poses a minor risk of harm to public health or the environment.

“Magnitude of Violation” means the extent of a violator’s deviation from the City’s ordinances, rules, permits or orders taking into account such factors as, but not limited to, pollutant or concentration, turbidity, volume, duration, toxicity or proximity to human or environmental receptors. Deviations shall be classified as major, moderate or minor.

“Risk of Harm” means the level of risk created by the likelihood of exposure, either individual or cumulative or the actual damage either individual or cumulative, caused by a violation to public health or the environment. Risk of harm shall be categorized as major, moderate or minor.

“Violation” means a transgression of any ordinance, rule, order, license, permit or any part thereof and includes both acts and omissions.

13.06.030 Erosion Control. It is the City’s policy to prevent erosion and to minimize the

amount of sediment and other pollutants reaching the public storm and/or surface water system resulting from development, construction, grading, filling, excavating, clearing, and any other activity that accelerates erosion.

A. Erosion Prohibited. No visible or measurable erosion shall leave the property during construction or during activity described above. The owner of the property, together with any person who causes such action from which the visible or measurable erosion occurs, shall be responsible for clean up, fines, and damages. Clean up responsibilities involve public facilities and sensitive areas including, but not limited to:

1. Creeks,
2. Drainage ways,
3. Wetlands,
4. Catch basins and storm drains, and
5. Sensitive areas, impacted by a project.

B. General Requirements. Site plans for storm drainage, grading and erosion control plans will be required for all grading activities, including single family residential construction, residential, commercial, industrial and recreational developments. New developments impacting areas of 10,000 square feet or greater must obtain an erosion control permit. All sites shall submit an erosion control plan for review, regardless of size. At a minimum the Erosion Control Plan shall include:

1. The methods and/or facilities to be used to prevent erosion and pollution created from the development both during and after construction. Site-specific considerations shall be incorporated.
2. Limits of clearing by flagging boundaries in the field before starting site grading or construction. Staging areas shall be included.
3. An analysis of source controls, such as detention and storage during construction as an alternative method to control erosion from storm water runoff.
4. A drainage plan during construction.
5. Show existing contours as well as all sensitive areas, creeks, streams, wetlands, and open areas.
6. A description of historic localized flooding problems resulting from surface water runoff, FEMA or flooding problems known to the community or the City.
7. Erosion control plan shall include a schedule for implementation of erosion measures. The schedule shall include:
 - a. Measures to cover bare soil within 14 days following final grading.
 - b. Implementation of wet weather measures between October 1st and April 30th, unless otherwise approved by the City.
 - c. On sites where vegetation and ground cover have been removed, City approved ground cover shall be re-established by seeding and mulching on or before September 1st with the ground cover established by October 15th. As an alternative to seeding and mulching, or if ground cover is not established by October 15th, the open areas shall be protected through the wet season with straw mulch, erosion blankets, or other approved methods, where appropriate, with long term maintenance plan.
8. Water containing sediment shall not be discharged into the surface water management system, wetlands or streams without first passing through an

approved sediment filtering facility or device. Discharge from temporary sedimentation ponds or detention facilities used for sedimentation during construction shall be constructed to City standards to provide adequate sediment filtration.

C. Site Plan. A site-specific plan prepared by an engineer shall be required and additional erosion control measures may be required for sites having one or more of the following characteristics:

1. Sites greater than five (5) acres disturbed;
2. Sites with slopes greater than 15 percent on any portion of the site;
3. Sites with highly erodible soils;
4. Sites adjacent to sensitive areas;
5. Sites where grading and clearing activities are likely between October 1st and April 30th.

D. Additional Measures. Additional erosion control measures may include one or more of the following:

1. Limited area cleared at any one time;
2. Additional drainage requirements during construction;
3. Filtering or treatment of runoff;
4. Additional water quality;
5. Additional erosion control to cover portions of the site;
6. Maintaining a vegetated buffer strip between site and sensitive area;
7. Additional facilities to reduce volume and velocity of water runoff;
8. If there are no workable alternatives, limit clearing and grading in some areas between October 1st and April 30th.
9. All disturbed land areas that shall remain unworked for 14 days or more shall be physically covered in the wet weather season.

E. NPDES Erosion Control Permit. All construction activities disturbing an area that is one (1) or more acres of land shall obtain a NPDES erosion control permit for construction activities issued by the City.

F. Performance. The City may require the Applicant to submit a bond, cashier's check or irrevocable letter of credit from an acceptable financial institution to secure performance of the requirements of this section. Upon default, the City may perform work or remedy violations and draw upon the bond or fund. If the City does not require a bond and the Developer does not perform the erosion control plan in whole or in part, the City may, but shall not be obligated to, perform or cause to be performed corrective work and charge the Developer. Such amount shall bear interest and shall become a lien upon the property, foreclosable in accordance with ORS Chapter 88.

G. Erosion Control Certification.

1. Developers/contractors of building activities requiring erosion control permits who have a certified individual on staff with authority over erosion control and who is responsible for erosion control of the site, are eligible for a discount of their erosion control fees. On large or complex sites, the City may require an individual certified in erosion control to be on site at all times. Developments with certified erosion control staff are subject to all of these Rules and Regulations. Violation of these Rules and Regulations resulting in enforcement procedures described in Section 8.4 will result in revocation of the certifications and payment of the full

erosion control fee. Recertification is required following erosion control violations resulting in enforcement actions.

2. Certification shall involve training in erosion control techniques, issues, and implementation strategies. A minimum of 4 hours of classroom instruction shall be required every 2 years.

H. Maintenance. The applicant shall maintain the facilities and techniques contained in the approved Erosion Control Plan so as to continue to be effective during construction or other permitted activity. If the facilities and techniques approved in an Erosion Control Plan are not effective or sufficient as determined by the City's site inspector, the permittee shall submit a revised plan within three working days of written notification by the City. In cases where erosion is occurring, the City may require the applicant to implement interim control measures prior to submittal of a revised Erosion Control Plan and without limiting the City's right to undertake enforcement measures. Upon approval of the revised plan by the City, the permittee shall immediately implement the revised plan. The developer shall implement fully the revised plan within 3 working days of approval by the Public Works Director, or their designee.

I. Inspection. The erosion control measures shall be installed by the owner or their representative and shall be inspected by the City prior to the start of any excavation work.

J. Deposit of Sediment. No person shall drag, drop, track, or otherwise place or deposit, or permit to be deposited, mud, dirt, rock or other such debris upon a public street or into any part of the public storm and surface water system, including natural drainage systems, or any part of a private storm and surface water system that drains or connects to the public storm and surface water system, with the exception of sanding for ice and snow and maintenance such as crack or chip sealing. Any such deposit of material shall be immediately removed using hand labor or mechanical means. No material shall be washed or flushed into the road/street or any part of the storm and surface water system without erosion control measures installed to the satisfaction of the City, and any such action shall be an additional violation.

K. Permit Fee. The City may collect all fees for the review of plans, administration, enforcement, and field inspection(s) to carry out the rules contained herein as established and amended by the City. The amount of any fees shall be determined by Council through Resolution.

13.06.040 Fish and Wildlife Habitat. Construction shall be done in a manner to minimize adverse effects on wildlife and fishery resources pursuant to the requirements of local, state, and federal agencies charged with wildlife and fish protection.

13.06.050 Natural Vegetation. Natural native vegetation shall be protected in areas designated with a Natural Resource Overlay Zone. Work within this zone must meet the requirements of Chapter 17.72.

13.06.060 Contaminated Soils. In the event the construction process reveals soils contaminated with hazardous materials or chemicals, all parties shall stop work immediately to ensure no contaminated materials are hauled from the site, remove work forces from the contaminated areas, leaving all machinery and equipment, and secure the areas from access by the public until such time as a mitigation team has evaluated the situation and identified an appropriate course of action. The Owner and the Contractor shall notify OSHA and DEQ of the situation upon discovery. The Owner and the Contractor must comply with OSHA and DEQ statutes and rules.

13.06.070 Enforcement. The City may impose civil penalties, including but not limited to stop

work orders, fines, modification or revocations of permit and/or cessation or services, or seek and injunction or other relief provided by law when any user or person violates any condition or provision of this ordinance or any rule adopted thereto or any final order entered with respect thereto as well as violation of federal or state statutes, regulations or administrative rules. The City shall address all documented violations in order of seriousness at the most appropriate level of enforcement necessary to achieve the goals set forth herein under the particular circumstances of each violation. The violators who do not comply with initial enforcement action shall be subject to increasing levels of enforcement until compliance is achieved.

A. Procedure for Enforcement.

1. **Prior Notice and Exceptions.** Except as otherwise provided, prior to the assessment of any civil penalty the City shall serve a notice of violation upon the Respondent. The written notice shall be served, either personally, or by certified or registered mail, return receipt requested, specifying the violation and stating that the City will assess a civil penalty if a violation continues or occurs after five days following the receipt of the notice.

2. The above notice shall not be required where the Respondent has otherwise received actual notice of the violation not less than five days prior to the assessment of civil penalty. No advance notice, written or actual, shall be required if (a) the act of omission constituting the violation is intentional; (b) the violation would normally not be in existence for five days, (c) the water pollution might leave or be removed from the jurisdiction of the City.

B. Notice of Non-Compliance. A notice of non-compliance is an enforcement action which:

1. Informs a person of the existence of a violation, the actions required to resolve the violations and the consequences of the continued noncompliance.

a. The notice may specify the time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated.

2. Shall be issued under the direction of the Public Works Director or designee; and

3. Shall be issued for all classes of documented violations.

4. The report shall detail the event, steps taken to correct the problem and steps to prevent future events.

C. Notice of Violation and Intent to Assess a Penalty. The Notice of Violation and Intent to Assess a Civil Penalty is a formal enforcement action which:

1. Includes a time schedule by which compliance is to be achieved;

2. Shall be issued by the Public Works Director or designee;

3. Shall be issued for the first occurrence of a documented Class I violation that is not excepted or the repeated or continued occurrence of documented Class II or III violations where notice of non-compliance has failed to achieve compliance or satisfactory progress toward compliance.

D. Notice of Civil Penalty Assessment. A notice of Civil Penalty Assessment is a formal enforcement action which:

1. Shall be issued by the Public Works Director or designee;

2. May be issued for the occurrence of any class of documented violation, for any class of repeated or continuing documented violations or where a person has failed to comply with a notice of violation and intent to assess a civil penalty or other

order or Stipulated Final Order.

E. Memorandum of Agreement and Order. A Memorandum of Agreement and Order is a formal enforcement action that is in the form of an agreement or consent order issued by the Public Works Director that may be negotiated between the City and the subject party prior to or after any notice set forth above, shall be signed by the Public Works Director or designee on behalf of the City and the authorized representative of the subject party, and shall set forth action to be taken and set civil penalties. This may be issued for any class of violations.

F. Other Remedies. The formal enforcement action as described in these sections in no way limits the City for seeking other legal or equitable remedies in the proper court as provided by City code and Oregon law.

G. Civil Penalty Schedule Matrices. In addition to any liability, duty or other penalty provided by law, the Public Works Director may assess a civil penalty for any violation pertaining to the City's ordinances, regulations, permits or orders by service of a written notice of assessment of civil penalty upon the respondent(s) set forth above. Civil penalty issued by the Public Works Director pursuant to this matrix shall be for each day of each violation.

The amount of any civil penalty shall be determined by Council through Resolution, and be reflected in the following magnitude:

Magnitude of Violation			
Class	Major	Moderate	Minor
Class I	5X	2.5X	1X
Class II	2X	1X	.5X
Class III	.5X	.25X	.1X

G. Stop Work Orders. In addition to civil penalties, violations will be enforced by on-site control activities to mitigate existing violations and prevent future violations to the greatest extent possible.

1. Initial violations will result in a written description of requirements for repair of the problem and a 24-hour time period for compliance or a specified time for compliance.
2. If the repair is not performed, or violations continue, the inspector will issue a stop work order on the project, which will remain in effect until the violation is repaired to the requirements.
3. If the violation is not remedied or the person fails to commence diligently remedying the violation within 24 hours, the City may enter upon the property to abate the violation.
4. Notwithstanding anything herein to the contrary, if the City reasonably believes the violation constitutes an emergency or other circumstance requiring immediate action, the City may take reasonable and necessary remedial action with or without


notice to the owner as deemed appropriate by the City considering the circumstance.

5. Any costs incurred by the City to remedy a violation shall be paid by the owner. If the required repairs are not completed within the specified time frame or if violations continue that require additional site visits, additional daily charges will be assessed to the owner of the property.

H. Abatement. Nothing herein shall prevent the City, following seven (7) days written notice to the discharger, and discharger's failure to act, from entering upon the property and disconnecting, sealing, or otherwise abating any unauthorized connection to the storm water or system discharger violating any permit, this ordinance or water quality standards. The City may perform tests upon the property to trace sources of water quantity or water quality violations at the property owner/developer's expense.

Section 2. Expediency: It is in the best interest and benefit of the City that this ordinance becomes effective immediately, as set forth in the City of Sweet Home Charter, Section 29. Therefore, this ordinance shall be in full force and effect after the passage by the Council and approval by the Mayor.

PASSED by the City Council and approved by the Mayor this 23rd day of September, 2003.



Mayor

ATTEST:



City Manager - Ex Officio City Recorder