

ORDINANCE 37-2007

**AN ORDINANCE ESTABLISHING EROSION
PREVENTION AND SEDIMENT CONTROL REQUIREMENTS**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
HOPKINSVILLE, KENTUCKY AS FOLLOWS:**

SECTION ONE

Title.

This ordinance shall be known as the Erosion Prevention and Sediment Control (EPSC) Ordinance for the City of Hopkinsville, Kentucky.

Purpose.

The purpose of this ordinance is to safeguard persons, protect property and prevent damage to the environment in the City of Hopkinsville, and more specifically is intended to:

(A) Conserve, preserve, and enhance the natural resources of the City, including its soils, waters, vegetation, fish and wildlife.

(B) Control soil erosion and sedimentation arising from development and other land disturbing activities (i.e. grading and clearing) to prevent adverse impacts and offsite degradation including short-term and long-term damage to public and private property.

(C) Comply with all applicable state and federal requirements for clean water, including limitations on discharge of pollutants as set forth in Kentucky's Pollutant Discharge Elimination System (KPDES); and all applicable National Pollution Discharge Elimination System (NPDES) general permit for Phase II municipalities.

(D) Provide definitive procedures for erosion prevention and sediment control (herein under EPSC) regulations and review, as applied in the City.

Public Purpose.

This ordinance is enacted to promote the public welfare by guiding, regulating and controlling the design, construction, use and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth or land in the City.

Findings of Fact.

The Clean Water Act, EPA and KYDOW established Phase II regulations and mandated Erosion Protection and Sediment Control (EPSC) procedures for construction in the Commonwealth of Kentucky. During the construction process, soil is highly vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers, ditches, sinkholes and drywells. Streets and roads with sediment deposits are slick and hazardous to the public. In addition, clearing and grading during construction causes the loss of native vegetation necessary for terrestrial and aquatic habitat.

Authority.

The Environmental Protection Agency (EPA) is empowered to regulate storm water by the authority of The Clean Water Act. The City of Hopkinsville, classified as a Municipal Separate Storm Sewer System (MS4) under Phase II of the National Pollution Discharge Elimination System (NPDES) Storm Water Program, is empowered to regulate non-storm water discharges.

Definitions.

The following words and phrases, when used in this ordinance shall have the following meaning:

(A) Adverse Impact – A material negative impact to the land, water, and associated resources resulting from land disturbing activity. The negative impact includes increased risk of flooding, degradation of water quality, increased sedimentation, reduced groundwater recharge, adverse effects on aquatic organisms and other resources, and threats to public health.

(B) Authorized Enforcement Agency – The Hopkinsville Surface and Stormwater Utility (SSWU), or its designated agent, will enforce the Ordinance.

(C) Best Management Practice (BMP) – Refers to physical, structural, and/or managerial practices, that when used individually or in combination, prevent or reduce pollution of water and have been approved by the SSWU. BMPs include, but are not limited to, infiltration, retention and/or detention, bio-filtration facilities, open ditches with check dams, filter fabric strips, oil/water separators, wet ponds, constructed wetlands, erosion and sedimentation control, and other treatment/abatement facilities. BMPs include, but are not limited to, structural solutions covered by the terms best available technology (BAT) and all known available and reasonable methods of treatment (AKART).

(D) Channel – A natural or constructed/manmade watercourse with definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow is that water which is flowing within the limits of the defined channel.

(E) City – The City of Hopkinsville, Kentucky

(F) Clean Water Act – Those Federal regulations (33 U.S.C - 1251 et seq. and as amended) that prohibit the discharge of pollutants to waters of the United States unless such discharge is in accordance with an approved National Pollutant Discharge Elimination System (NPDES) permit.

(G) Clearing – Any activity that removes the vegetative surface cover.

(H) Construction Activity – Any activities subject to NPDES construction permits issued by the United States Environmental Protection Agency (USEPA) or the Kentucky Division of Water (KYDOW). Currently these include construction projects resulting in land disturbance of one (1) acre or more. Such activities include, but are not limited to, clearing and grubbing, grading, excavating and demolition.

(I) Critical Area – A site subject to erosion or sedimentation as a result of cutting, filling, grading, or other disturbance of the soil; a site difficult to stabilize due to exposed subsoil, steep slope, extent of exposure, close proximity to a water body, and other conditions.

(J) Detention – The temporary delay of storm runoff prior to discharge into receiving waters.

(K) Developer – A person, partnership, association, corporation or other entity, or any responsible person therein or agent thereof, that undertakes any regulated activity of this ordinance.

(L) Drainage Basin – A storage area to collect storm water.

(M) Drainage Way – Any channel that conveys surface runoff throughout the site.

(N) Engineer – A person registered to practice Engineering in the Commonwealth of Kentucky pursuant to KRS Chapter 322; a Professional Engineer.

(O) Erosion – The wearing away of land surface by the action of wind, water, gravity, ice, or any combination of those forces.

(P) Erosion Prevention and Sediment Control Plan (EPSC Plan) – A scaled set of plans and attendant documentation prepared by a Professional Engineer indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction. The detailed EPSC plan shall include the full engineering and construction details for the proposed controls and shall be incorporated into the full construction plans.

(Q) Excavation – Any portion of land surface or area from which earth has been removed or will be removed; the depth below original ground surface to remaining surface.

(R) Existing Grade – The slope or elevation of existing ground prior to cutting or filling.

(S) Fill – The portion of land surface to area to which soil, rock, or other materials have been or will be added; height above original ground surface after the material has been or will be added.

(T) Floodplain – The relatively flat or lowland area adjoining a river, stream, watercourse, lake, or other body of standing water, which has been or may be covered temporarily by floodwater. For purposes of this ordinance, the flood plain is defined as the area encompassed by a 100-year storm having a one percent chance of being equaled or exceeded in any given year.

(U) Grading – Any stripping, cutting, filling, or stockpiling of earth or land, including the land in its cut or filled condition, to create new grades.

(V) Grading and Clearing Permit – A permit for Land Disturbance.

(W) Impervious – Not allowing water to penetrate or water penetrates with great difficulty.

(X) Kentucky Division of Water (KYDOW) General Permit – An agreement between the regulating authority and the Permittee, which specifies conservation practices that shall be implemented in the construction activities specified in the terms and conditions of the general permit.

(Y) Land Alteration – Onsite or offsite the purposeful act that includes but not limited to clearing, grubbing, excavating or grading; disrupting ground surface by or for construction activities, including construction access/roads, staging, and storage sites producing significant areas of exposed soil and soil piles. Includes:

- (1) Changes in contours
- (2) Changes in elevations, increase in runoff rate or volume
- (3) Changes in drainage patterns
- (4) Creation of a drainage facility or channel
- (5) Impounding
- (6) Construction enlargement or location of any building on a permanent foundation

The term shall NOT include:

- (1) Minor land disturbing activities, such as home gardens and individual home landscaping, and associated repairs and maintenance work;
- (2) Installation, maintenance, or repair of any underground public utility when such activity occurs adjacent to an existing hard surfaced road, street, or sidewalk, provided such land disturbing activity is confined to the area of the road, street, or sidewalk which is hard surfaced and which appropriate sediment control practices are implemented for any long term stockpiling of excavated or fill materials.
- (3) Septic tank or lateral field, unless included in an overall plan for land disturbing activity related to construction of the building to be served by the septic tank system;
- (4) Tilling, planting, or harvesting agricultural, horticultural, or forest crops or livestock feedlot operations, including soil conservation operations related to agriculture as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, and land drainage and land irrigation which does not cause an increase in storm water runoff and does not exacerbate erosion and sedimentation.
- (5) Clearing and grading activities that disturb less than two thousand square feet (<2000 ft²) and are situated no closer than fifty feet (50 ft) to a stream, and which are not governed by a General Permit or Site Disturbance Permit.

(6) Emergency work to ensure the health, safety and property. However, if the activity would have required an approved ESC plan if the activity were not an emergency, then the land

are disturbed shall be shaped and stabilized in accordance with the requirements of this Ordinance.

(Z) Landowner – A person, firm, or governmental agency holding legal title, or in possession or control of the land who indirectly or directly allows the land disturbing activity or benefits from it.

(AA) Land Disturbance – The purposeful act of clearing, grubbing, excavating, or grading; disrupting ground surface by or for construction activities, including construction access/road, staging, and storage sites producing significant areas of exposed soil and soil piles.

(BB) Municipal Separate Storm Sewer System (MS4) – Any physical inlet, natural or manmade, conveyance, storage basins or outfalls in which storm water is induced, conveyed, stored or discharged.

(CC) Natural Features of Concern – Wetlands, endangered, or threatened species habitat, etc.

(DD) NPDES – The National Pollution Discharge Elimination System, under the umbrella of this Ordinance, a process under which the federal government, through the state governments, has required the City to establish the means and methods to eliminate the erosion of soils during and after the construction process, and the release of same to public waters.

(EE) Notice of Intent (NOI) – A formal notice to the EPA or a state agency having delegated NPDES authority that a construction project seeking coverage under a General Permit is about to begin.

(FF) Permittee – The person responsible for the land disturbing activity.

(GG) Person – Any individual, association, organization, partnership, firm, corporation or other entity recognized by law.

(HH) Plan – A document approved at the site design phase that outlines the measures and practices used to control storm water runoff at a site.

(II) Pollutant – Anything that causes or contributes to a violation of applicable water quality standards. Pollutants may include, but are not limited to, paints, varnishes, solvents, oil or other automotive fluids, non-hazardous liquid and solid wastes, yard wastes, refuse, rubbish, garbage, litter or other discarded or abandoned objects and accumulations, sediment and detergents so that same may cause or contribute to pollution. Pollutants may also include, but are not limited to, floatables, pesticides, herbicides, and fertilizers, hazardous substances and wastes, sewage, fecal coliform and pathogens, dissolved and particulate metals, animal wastes, wastes and residues that result from constructing a building or structure, and noxious or offensive matter of any kind.

(JJ) Sediment – Solid material, both mineral and organic, that in suspension is being transported or has been moved from its site of origin by air, water, or gravity as a product of erosion.

(KK) Sediment Control – Measures that prevent eroded soil or other material from leaving the site.

(LL) Site – A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation subject to erosion of sedimentation as a result of cutting, filling, grading, or other disturbance of the soil.

(MM) Storm Water – Any surface flow, runoff, ponding or drainage from any form of precipitation.

(NN) Storm Water Management Plan (SWMP) – A plan that is based on hydrologic and hydraulic calculations to determine flood stage and required improvement to minimize impacts by development.

(OO) Watercourse – Any body of water or conveyance, including but not limited to lakes, ponds, rivers, creeks, streams, karst features, drainage basins or bodies of water delineated by the City of Hopkinsville.

(PP) Water Quality Standards – Administrative regulations promulgated by the State of Kentucky establishing the designated use of a surface water and the water quality criteria necessary to maintain and protect that designated use (401 KAR 5:002; 401 KAR 5:031 as amended).

Administration.

The City has designated the Hopkinsville Surface and Storm Water Utility (SSWU) or the Utility's designated agent to administrate and enforce the Ordinance. The duties will include, but not be limited to:

(A) Adopting by reference the most recent version of the Kentucky Best Management Practice for Construction Erosion, Sediment, and Pollutant Runoff from Construction Sites: Planning and Technical Specifications Manual (Kentucky BMP Manual);

(B) Review plans and issue permits for grading and clearing, erosion control techniques, process and effectiveness;

(C) Coordinate permits, inspections, and other activities with city, state, and federal agencies under the City's NPDES;

(D) Render judgment on the enforcement duties and requirements of this Ordinance.

Applicability.

Subject to the exemptions set forth below, the EPSC provisions of this Ordinance shall apply to all land disturbing activities undertaken in the City.

Exemptions.

The following land disturbing activities shall be exempt from compliance with the provisions of this Ordinance, provided all such exempt activities are undertaken in a manner that present no significant erosion or sedimentation potential:

(A) Agricultural operations required to adopt and implement an individual agricultural water quality plan pursuant to the requirements set forth in the Kentucky Agricultural Water Quality Act (KRS 224-71-100 et seq.), as amended;

(B) Usual and customary site investigation and surveying activities, such as soil testing, rock coring, test pits, boundary and topographical surveying, monitoring wells, and archeological excavations, undertaken prior to submittal of an application for preliminary subdivision or development approval, provided the land disturbance is incidental to necessary equipment access and performance of investigation and surveying activities;

(C) Following preliminary subdivision or development approval, but prior to site disturbance, clearing necessary for survey work, rock soundings, or other usual and customary site investigations are permitted, provided the following conditions are met:

(1) Preliminary site investigations have been planned that minimize the amount of clearing required;

(2) Clearing shall follow proposed roadway centerlines and shall not result in a clear access way of more than twenty feet (20') in width;

(3) Cleared access ways beyond the proposed roadways to access individual lots shall not exceed twelve feet (12') in width and no trees eight inches (8") or greater in diameter measured at breast height shall be removed without prior written approval.

(D) Minor land disturbing activities that disturb two thousand square feet (2000 ft²) or less of land area and not within fifty feet (50') of a drainage way.

(E) Existing nursery and agricultural operations conducted as a permitted main or accessory use. However, permitting through regional, state, and federal agencies may be required.

Permits and Plans.

(A) A Grading and Clearing Permit is required (Ord. 32-2005, §16-22) to be obtained from the SSWU for land disturbances as set out herein below. The landowner and /or developer shall also coordinate with the KYDOW and the U.S. Army Corps of Engineers to determine whether any permits are required from those agencies before construction begins. No permit shall be required from the SSWU for emergency activity that is immediately necessary for the protection of life, property or natural resources. In the event of an emergency activity, notify the authorized enforcement agency in person or by phone, facsimile or email no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the SSWU within three business days of the visit or phone notice. This notification should include details of emergency measure(s) taken and if needed, a plan for permanent repair. Grading and Clearing permit applications shall include the appropriate fee of \$50.00 which is in addition to the fees required for all activities requiring a land excavation, grading, paving, swimming pool, building and all other types related permits required from the City for construction permits requiring a Notice of Intent (NOI). The Grading and Clearing Permit is required to be obtained from the SSWU for improvements meeting any the following criteria:

(1) Any land alterations in the public right of way, within 20 feet of a public roadway, 10 feet of a ditch or within a drainage easement.

(2) An increase in impervious area greater than 3350 square feet and site disturbance less than one acre and which is not part of a Storm Water Management Plan (SWMP).

(3) Site disturbances of 2000 square feet or more.

(B) Erosion Prevention and Sediment Control Plan (EPSC Plan).

(1) The SSWU requires an EPSC Plan to accompany the Grading and Clearing Permit for development that disturbs one acre or greater (per KPDES general permit). The plan must be approved before obtaining a Grading and Clearing Permit. When preparing the EPSC, the design engineer and/or developer should determine the best practices to protect active construction sites by selecting source control and sediment containment practices. In doing so, most erosion problems can be avoided and sediment containment issues can be addressed prior to construction disturbances.

(2) All EPSCs shall be designed in a manner to minimize the need for maintenance and reduce the chances of failure. Design guidelines should follow the most recent version of *Kentucky Best Management Practice for Construction Erosion, Sediment, and Pollutant Runoff from Construction Sites: Planning and Technical Specifications Manual* (Kentucky BMP Manual) and must be submitted in an accepted digital format.

(3) Storm water easements and covenants shall be provided by the property owner for access for facility inspections and maintenance. Easements and covenants shall be recorded with Christian County Clerk's Office prior to the issuance of a permit. Final design shall be approved by the SSWU or its designated agent.

(4) The EPSC Plan shall include, but not be limited to, the following:

(a) Site boundaries.

(b) Lakes, streams, channels, ditches, wetlands, and other watercourses on or adjacent to the site.

(c) Location and approximate dimension of storm water drainage systems and natural drainage patterns on or immediately adjacent to the sites.

(d) Location and approximately dimension of all land disturbance area.

(e) Potential locations of stockpiles.

(f) A natural resources map identifying soil types, forest cover, topography, 100-year floodplain, critical areas, and other natural features of concern. This map should be to scale equivalent to balance of submittal.

(g) A schedule of events for the construction of the development site, including stripping and clearing, rough grading, construction of utilities, infrastructure, final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion prevention and sediment control measures, and establishment of permanent vegetation.

(h) All EPSC measures necessary shall be shown on the plan by location and referred to by a legend for all phases of construction. Depending upon the complexity of the project, the drafting of intermediate plans may be required at the close of each season. Multiple EPSC plan sheets may be necessary to best convey requirements for each phase.

(i) Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and type and quantity of mulch for both temporary and permanent vegetative control measures.

(j) Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.

(5) Modifications to the plan shall be submitted as follows. The modifications may be authorized by the SSWU by written authorization to the Permittee.

(a) Major amendments of the EPSC plan require an engineer's signature and shall be submitted to the SSWU for acceptance.

(b) Field modifications of a minor nature shall require an engineer's signature and shall be noted and dated on the EPSC record drawings and available for review and acceptance by the SSWU.

(6) EPSC plans shall be accompanied by a \$50.00 fee which is in addition to the Grading and Clearing Permit fee, and any other applicable fees.

Review and Issuance of Permit.

The SSWU or its designated agent will review each permit application to determine its conformance with the provisions of this ordinance. Approval indicates that minimum requirements or intent are met and does not imply a guarantee of performance. Based on the review of the permit application, the SSWU will:

(A) Approve the permit application;

(B) Approve the permit application subject to such conditions as may be necessary to meet the requirements/intent of the objectives of this ordinance, and issue the permit subject to these conditions; or,

(C) Deny the permit application, indicating the reason(s) and procedure for submitting a revised application and/or submission.

Inspections.

(A) Plans accepted by the SSWU for stripping, grading, excavating, and filling work shall be maintained on site throughout the duration of the work. After EPSC measures have been installed, the Permittee shall contact the SSWU and request a Preconstruction Inspection.

(B) Upon completion of the Preconstruction Inspection and approval of EPSC measures, the Grading and Clearing Permit will be issued.

(C) The SSWU shall make inspections as deemed necessary to ensure the EPSC measures as outlined in the Kentucky BMP Manual are being properly implemented and maintained during construction. If minimum requirements for the EPSC are not met, the Permittee may be notified and enforcement actions shall be taken.

(D) The Permittee or his/her agent shall make regular inspections of all control measures to determine the overall effectiveness of the EPSC plan and the need for additional control measures. The minimum frequency of these inspections shall be once every seven (7) calendar days and before and after storm events of a half-inch (1/2") of precipitation or more. All

inspections shall be documented in written form and kept on the construction site. Reports should be available for the City or State Inspectors to review.

Right of Entry.

In the event an owner/developer/ applicant or on-site personnel impede or attempt to impede in any manner utility personnel or duly appointed agents of the utility from performance of inspections as outlined in this chapter, a search warrant as authorized by the laws of the Commonwealth of Kentucky shall be obtained to assure the inspection process can be completed as required and mandated.

Enforcement and Penalties.

(A) Enforcement. Non-compliance with EPSC plans or the existence of an immediate danger in a downstream area is the determination of the SSWU or its designated agent. If the SSWU or its designated agent so determines, then they may issue correction notice(s) and stop work order(s) and assign fines.

(1) Failure to comply with and provisions of this ordinance shall subject the offending Person to the enforcement and penalties herein set forth.

(2) Violations of the provisions of this ordinance or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with the implementation, enforcement and operation shall constitute an offense under this ordinance and shall result in a fine.

(3) The provisions of this ordinance may be enforced by the Code of Ordinance Enforcement Board established in Ordinance 24-2002 and/or violation through the powers delegated to the SSWU or its designated agent, and/or in the alternative, the Christian County District Court as a misdemeanor and/or violation.

(B) Penalties.

(1) Any person who violates this chapter or fails to comply with any of its requirements shall be fined not more than \$500.00 nor less than \$100.00.

(2) Each day such violation continues after receipt of a notice of violation shall be considered a separate offense. Nothing herein shall prevent the SSWU from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION TWO

If any section, subsection, sentence, clause, or phrase of this Ordinance is held unconstitutional or otherwise invalid such infirmity shall not affect the validity of the remaining portions of this Ordinance.

SECTION THREE

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION FOUR

This Ordinance shall take effect after its passage and publication according to law.

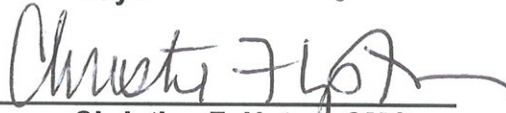
ORDINANCE 37-2007
Erosion Prevention & Sediment Control

PUBLICLY READ AND PASSED FIRST TIME: November 6, 2007

PUBLICLY READ AND PASSED SECOND TIME: November 20, 2007

APPROVED: 

J. Daniel Kemp
Mayor

ATTEST: 

Christine F. Upton, CMC
City Clerk