

ORDINANCE NO. 298 3RD SERIES

AN ORDINANCE OF THE CITY OF EAST GRAND FORKS, MINNESOTA, AMENDING CITY CODE TITLE XV LAND USAGE BY ADDING CHAPTER 153 ENTITLED "STORM WATER MANAGEMENT)" AND BY ADOPTING BY REFERENCE CITY CODE CHAPTER 10 AND SECTION 10.99 WHICH, AMONG OTHER THINGS, CONTAIN PENALTY PROVISIONS.

THE CITY OF EAST GRAND FORKS ORDAINS:

Section 1. That Title XV of the City Code is hereby amended to include Chapter 153 Storm Water Management to read as follows, to-wit:

TITLE XV Land Usage

Chapter 153. STORM WATER MANAGEMENT

153.1 Statement of intent

- (1) This article sets forth uniform requirements for storm water pollution prevention plans within the City and its extraterritorial jurisdiction. It is the intent of the City Council that the requirements and standards contained in this ordinance comply with all applicable local, state and federal laws.
- (2) In the event of any conflict between the provisions of this ordinance and the provisions of a erosion and sediment control, shoreland protection, or floodplain ordinance, or other regulations adopted by the City, County, Water Resource District, State or Federal authorities, the more restrictive standard prevails.
- (3) The objective of this article are:
 - a. To promote, preserve, and enhance the natural resources within the City of East Grand Forks and its extraterritorial jurisdiction;
 - b. To protect and promote the health, safety, and welfare of the people and property through effective storm water management practices;
 - c. To protect the City's natural resources from adverse impacts occasioned by development or other activities;
 - d. To regulate land disturbing, or other activities that may have an adverse and potentially irreversible impact on water quality and environmentally sensitive lands:
 - e. To minimize conflicts and encourage compatibility between land disturbing and development activities and environmentally sensitive issues (i.e. land, water, habitat, etc.)
 - f. To require detailed review standards and procedures for land disturbing activities that may have an adverse and potentially irreversible impact on water quality and environmentally sensitive lands;
 - g. To provide for adequate construction site storm water runoff control and appropriate storm water runoff design as necessary to protect public and private property, water quality, and existing natural resources. This article establishes and provides for the following storm water pollution prevention plan criteria:

- i. The regulation of development through the issuance of storm water permits and through the enforcement of general storm water drainage requirements throughout the City. It also authorizes inspection and enforcement activities, and provides for the setting of applicable fees for the equitable distribution of prevention program established herein.
- ii. Penalties for violating the provisions of the ordinance, and the orders, rules, regulations and permits issued hereunder.
- iii. Applies within the city limits of the City of East Grand Forks, Minnesota, and its extraterritorial jurisdiction. Except as otherwise provided, herein, the City Engineer shall administer, implement, and enforce the provisions of the ordinance.

153.2 Definitions.

For the purpose of this article, the following terms, phrases, words, and their derivatives, shall have the meaning as stated below. When inconsistent with the context, words used in the present tense include the future tense. Words in plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and the word “may” is always permissive.

- (1) *Applicant.* Any person wishing to perform any land disturbing activity or obtain a conditional use permit or detailed development plan approval.
- (2) *BMP's.* Measures designed to 1) prevent pollutants from leaving a specific area; 2) reduce/eliminate the introduction of pollutants; 3) protect sensitive areas or 4) prevent the interaction between precipitation and pollutants.
- (3) *Council.* The City Council of the City of East Grand Forks.
- (4) *City.* The geographic limits of the City of East Grand Forks or the City Council of the City of East Grand Forks.
- (5) *City Engineer.* The City Engineer of the City of East Grand Forks or authorized agent.
- (6) *Control measure.* A practice or combination of practices to control erosion and attendant pollution.
- (7) *Conveyance structure.* A pipe, open channel, or other facility that transports runoff from one location to another.
- (8) *Developer.* A person, firm, corporation, sole proprietorship, partnership, federal or state agency, or political subdivision thereof engaged in a land disturbance and/or land development activity.
- (9) *Erosion.* Any process that wears away at the surface of the land by the action of water, wind, ice, or gravity. Erosion can be accelerated by the activities of man and nature.
- (10) *Extraterritorial jurisdiction.* Land within an area extending two (2) miles beyond the East Grand Forks City Limits.
- (11) *Final Stabilization.* All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70 percent of the native cover for unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
- (12) *Flood fringe.* That portion of the floodplain outside of the floodway.

- (13) *Floodplain.* The area of land adjoining a watercourse, which have been, or hereafter may be covered by the regional flood.
- (14) *Floodway.* Means the channel or the watercourse, and those portions of the adjoining flood plains, which are reasonably required to carry and discharge the regional flood.
- (15) *Hydric soils.* Soils that are saturated, flooded, or covered by water long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile.
- (16) *Hydrophytic vegetation.* Macrophytic plant life growing in water, soil or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.
- (17) *Land disturbing activity.* Any manmade change of the land surface including removing vegetative cover, excavating, filling, grading, construction or demolition of buildings, roads, parking lots, paved storage areas, and similar facilities but not including agricultural land uses such as planting, growing, cultivating and harvesting of crops: growing and tending of gardens, pasturing or yarding of live stock and planting and harvesting trees.
- (18) *Management practice.* A practice or combination of practices to control erosion and water quality degradation.
- (19) *National pollution discharge elimination system (NPDES) permit.* Any permit or requirement enforced by the Minnesota Pollution Control Agency pursuant to the Clean Water Act as amended for the purposes of regulating storm water discharge.
- (20) *Outlet.* Any outlet including storm sewers and combined sewer overflows, into a watercourse, pond ditch, lake or other body of surface or groundwater.
- (21) *Owner or occupant.* Any person owning or using a lot, parcel of land, or premises connected to and discharging storm water into the storm water system of the City, and who pays for and is legally responsible for the payment of storm water rates or charges made against the lot, parcel of land, building or premises, if connected to the storm water system or who would pay or be legally responsible for such payment.
- (22) *Permanent development.* Any buildings, structures, landscaping and related features constructed as part of a development project approved under a storm water permit.
- (23) *Permittee.* Any person who applies for and receives a storm water permit from the City.
- (24) *Person.* Any developer, individual, firm, corporation, partnership, franchise, association, owner, occupant or property, or agency – public or private.
- (25) *Public drainage channel.* A drainage channel located entirely within a naturally occurring or constructed watercourse.
- (26) *Public storm sewer.* A storm sewer located entirely within publicly owned land or easements and maintained by the city.
- (27) *Private drainage channel.* A drainage channel on privately-owned land or easements which eventually discharge into a public drainage channel or public storm sewer.
- (28) *Private storm sewer.* A storm sewer on privately-owned land or easements which eventually discharge into a public drainage channel or public storm sewer.

- (29) *Runoff.* The rainfall, snowmelt, dewatering or irrigation water flowing over the ground surface and into open channels, underground storm sewers, and detention or retention ponds.
- (30) *Sediment.* Solid material or organic material that, in suspension, is being transported or has been moved by air, water, gravity, or ice and deposited at another location.
- (31) *Site.* The entire area included in the legal description of the parcel or other land division on which the land development or land disturbing activity is proposed in the permit application.
- (32) *Stabilize.* To make the site steadfast or firm, minimizing soil movement by mulching and seeding, sodding, landscaping, concrete, gravel or other measures.
- (33) *State.* *The State of Minnesota.*
- (34) *Storm sewer.* A pipe or conduit for carrying storm waters, surface runoff, street and wash waters, and drainage, excluding sewage and industrial wastes.
- (35) *Storm Water Pollution Prevention Plan.* A written description and/or drawing that indicates the number, locations, sizes, and other pertinent information about best management practice methods designed to meet the requirements of this ordinance.
- (36) *Storm water system.* Any storm sewer, open channel, pond, or conveyance structure located entirely within publicly owned land or easements and maintained by the city.
- (37) *Structure.* Anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas.
- (38) *Urban area.* Land associated with, or part of, an incorporated City.
- (39) *Wetlands.* Lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:
 - a. A predominance of hydric soils:
 - b. Are inundated or saturated by the surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions: and
 - c. Under normal circumstances support the prevalence of such vegetation.

153.3 Scope

- (1) Every applicant for a subdivision approval greater than or equal to one (1) acre, a building permit within a subdivision greater than or equal to (1) acre or a permit to allow land disturbing activities of greater than or equal to one (1) acre must submit a Storm Water Pollution Prevention Plan to the City Engineer. No building permit, subdivision approval, or permit to allow land disturbing activities of greater than or equal to one (1) acre shall be issued until approval of the Storm Water Pollution Prevention Plan or a waiver of the approval requirement has been obtained in strict conformance with the provisions of the section.
- (2) Exemptions to the requirements of the section include:
 - a. Any parcel for which a building permit has been approved on or before the effective date of the article:

- b. Installation of a fence, sign, telephone, and electric poles and other kinds of posts or poles; or
- c. Emergency work to protect life, limb, or property.
- d. Land disturbing activity involving less than one (1) acre that is not required to submit a SWPPP as provided in 153.03 (1) or 153.07 (2) (d) is not required to apply or to submit a Storm Water Pollution Prevention Plan to the City Engineer, however construction must comply with BMP's or any existing permitted SWPPP for the subdivision and must comply with the Single Family Residential Construction Erosion/ Sediment Control Standards.

153.4 Storm water pollution prevention plan – application

- (1) *Application.* A written application for Storm Water Pollution Prevention Plan approval, along with the proposed Storm Water Pollution Prevention Plan, shall be filed concurrently with the Detailed Development Plan, Site Plan, building permit or subdivision application.
- (2) *Copies.* Two sets of legible copies of the drawings and required information shall be submitted to the City Engineer and shall be accompanied by a receipt from the City to document the payment of all required fees for processing and approval as set forth in section 153.04 (4). Plans shall be prepared to a scale appropriate to the site of the project and suitable for the review to be performed.
- (3) *Contents of the Storm Water Pollution Prevention Plan.* At a minimum, the Storm Water Pollution Prevention Plan shall contain the following information:
 - a. *For subdivision approval.* A map of existing site conditions showing the site and immediately adjacent areas, including:
 - i. The name and address of the applicant, the section, township and range , and the north point, date and scale of drawing, and number of sheets;
 - ii. The location of the tract by an insert map at a scale sufficient to clearly identify the location of the property that provides such information as the names and numbers of adjoining roads, railroads, utilities, subdivisions, or other defining landmarks;
 - iii. Existing topography with a contour interval appropriate to the topography of the land, but in no case having a contour interval greater than two feet and/ or providing spot elevations;
 - iv. The 100-year flood plains, flood fringes, and floodways.
 - b. *For Site plan and/or Detailed Development Plan Approval.* A site construction plan shall be provided, including:
 - i. All information as required in section 153.04 (3)(a);
 - ii. Location and dimensions of the existing storm water drain systems and natural drainage patterns on and immediately adjacent to the site delineating the direction and the rate storm water is conveyed from the site, identifying the receiving stream, river, public ditch, or wetland, and identifying those areas of the unaltered site where storm water collects or passes;
 - iii. Locations and dimensions of all proposed land disturbing activities and any phasing or scheduling of those activities;
 - iv. Approximate locations of all temporary soil and dirt stockpile areas;

- v. Location and description of all construction site erosion control measures necessary to meet the requirements of this ordinance;
 - vi. A schedule of anticipated starting and completion dates for each land disturbing activity, including the installation of construction site erosion control measures needed to meet the requirements of the ordinance; and
 - vii. Provisions for maintaining the construction site erosion control measures prior to, during and after construction.
- (4) *Fees.* All applications for Storm Water Pollution Prevention Plan approval shall be accompanied by a processing and approval fee established by the City Council.

153.5 Storm water pollution prevention plan – review

- (1) *Process.* Storm Water Pollution Prevention Plans meeting the requirements of Section 153.04 shall be submitted to the City Engineer for review and compliance with the standards of Section 153.06.
- (2) *Duration.* The permit shall be in affect until the Permittee requests termination of coverage and receives approval to terminate coverage from the City Engineer.
- a. Permittees wishing to terminate coverage must submit a Notice of Termination or other written request identifying the facility, reason why the permit is no longer needed and signed by the permittee. Compliance with the conditions of the storm water permit is required until a Notice of Termination is submitted.
 - b. Permittees may only submit a Notice of Termination after one of the following conditions has been met.
 - i. Final stabilization has been achieved on all portions of the site for which the permittee is responsible.
 - ii. Another operator/permittee has assumed control, in accordance with the requirements of Section 153.07 (d), over all areas of the site that have not been finally stabilized.
 - iii. For residential construction only, temporary erosion protection and down gradient perimeter control for individual lots has been completed and the residence has been transferred to the homeowner. Additionally, the Permittee must distribute a “homeowner factsheet” to the homeowner to inform the homeowner of the need for, and benefits of, final stabilization.
- (3) *Conditions.* A Storm Water Pollution Prevention Plan may be approved subject to compliance with conditions reasonable and necessary to insure that the requirements contained in this ordinance are met. Such conditions may, among other matters, require replacement of vegetation, stage the work over time, require alteration of the site design in insure buffering, the City Engineer may specify special requirements for specific watersheds within the City and its extraterritorial jurisdiction. Approval of a plan shall bind the applicant to perform all of the conditions and requirements of the plan prior to any land disturbing activities.

153.6 Storm water pollution prevention plan – approval standards.

- (1) *General.* This section describes approval standards against which proposed storm water pollution prevention plans will be measured. A storm water pollution prevention plan which fails to meet the standards contained in this section shall not be approved. In the event two (2) or more standards issued by state and/or federal agencies having jurisdiction conflict, the more restrictive standard shall apply.
- (2) *Applicant responsible for required permits.* It shall be the responsibility of the applicant to obtain any required permits from other local, state or federal governmental agencies having jurisdiction over the work to be performed
- (3) *Storm Water Pollution Prevention Plan design guidelines.* The Storm Water Pollution Prevention Plan design guidelines shall conform to all of the current MPCA requirements as set forth in the National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) General Stormwater Permit for Construction Activity.
- (4) *Construction activities.*
 - a. *Site dewatering.* Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upflow chambers, hydro-cyclones, soil concentrators or other appropriate controls as deemed necessary. Water may not be discharged in a manner that causes erosion, sedimentation, or flooding on the site; the receiving channels; or any wetland.
 - b. *Waste and material disposal.* All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, toxic materials, or hazardous materials) shall be properly disposed of off-site and not allowed to be carried by runoff into a receiving channel, storm sewer system, or wetland.
 - c. *Tracking management.* Each site shall have roads, access drives and parking areas of sufficient width, length and surfacing to prevent sediment from being tracked onto public or private roadways. Any material reaching or placed on a public or private road shall be removed (not by flushing) before the end of each work day.
 - d. *Water quality protection.* The construction contractor shall be required to control oil and fuel spills, and the discharge of any chemicals to prevent such spills or discharges from entering any water course, sump, sewer system, water body, or wetland.
 - e. *Site erosion and sedimentation control.* Construction operations must include erosion and sedimentation control measures meeting accepted design criteria, standards and specifications contained in the Storm Water Pollution Prevention Plan design guidelines.
- (5) *Storm Water Pollution Prevention Plan applicability.* A plan approved under this article runs with the land and is a condition of the site plan, building permit or subdivision approval. Any owner or subsequent owner of any parcel within the plat must comply with the plan or any approval, revision or modification of the plan.

153.7 Storm water pollution prevention plan – permits.

- (1) *Storm water pollution prevention.* It is unlawful to initiate land development, land disturbance greater than or equal to one (1) acre without having first complied with the terms of this article.

- (2) *Storm water pollution prevention permits.*
- a. *Mandatory permits.* Every applicant for a subdivision approval greater than or equal to one (1) acre, a building permit within a subdivision greater than or equal to one (1) acre or a permit to allow land disturbing activities of greater than or equal to one (1) acre must submit a Storm Water Pollution Prevention Plan to the City Engineer or a designated agent.
 - b. *Permit application.* All persons subject to meeting the requirements for a mandatory storm water permit shall complete and file with the City Engineer or a designated agent an application in the form prescribed by the City Engineering Department and accompanied by fee established by the City Council. The permit application shall be accompanied by a Storm Water Pollution Prevention Plan as prescribed under Section 153.04. The City Engineer or a designated agent will evaluate the data furnished as part of the Storm Water Pollution Prevention Plan, the City Engineer or a designated agent may issue a storm water permit subject to any terms and conditions deemed necessary.
 - c. *Permit amendments.* Storm water permits may be amended only by a written request submitted by the Permittee to the City Engineer or a designated agent. This request shall contain the reason for the change and documentation related to any additional impacts which may result from amendment approval. Amendment requests submitted prior to issuance of a storm water permit shall be considered part of the original submittal. Amendment requests filed after permit approval shall be considered and reviewed under the same procedures and guidelines as used for the storm water permit applications under this article.
 - d. *Permit transfer.* A storm water permit runs with the property it covers and is transferable to new owners in its entirety or by parcel, with each parcel being subject to the permit and any conditions which apply to that parcel. The new owner or operator must submit a written request for permit transfer/modification seven (7) days prior to assuming control of the site or commencing work on-site, or of the legal transfer, sale or closing on the property. The new owner or operator can implement the original Storm Water Pollution Prevention Plan created for the site or develop, submit for approval and implement their own Storm Water Pollution Prevention Plan. Permittee(s) shall ensure either directly or through coordination with other operators that their Storm Water Pollution Prevention Plan meets all requirements of this ordinance and that their activities do not interfere with another party's Storm Water Pollution Prevention Plan.

153.8 Enforcement

- (1) *Inspection.* The City Engineer or a designated agent may inspect the best management practice of any permittee to determine compliance with the requirements of this article. A permittee shall allow the City Engineer or a designated agent to enter upon the premises at all reasonable hours for the purpose of inspection or record examination.
- (2) *Notification.* Whenever the City Engineer or a designated agent finds that any person has violated or is violating this section, storm water permit and/or its conditions, or any prohibition, limitation or requirement contained herein, the City

Engineer or a designated agent shall provide upon such person a written notice stating the nature of the violation. Within a time frame set by the City Engineer or a designated agent due to the nature of the violation, a plan for the satisfactory correction thereof must be submitted to the City Engineer or the designated agent. If a plan is not submitted to the City Engineer or the designated agent in the designated timeframe the City Engineer or the designated agent may issue a stop work order until a satisfactory plan is submitted.

- (3) *Appeals process.* If the violation is not corrected by timely compliance, the City Engineer or the designated agent may require any permittee who causes or allows a violation to a storm water permit to show cause before the City Administrator why the order of the City Engineer or the designated agent should not be upheld.
- (4) *Owner responsible for removal and costs.* The discharge of deposited or eroded materials within the City of East Grand Forks and its extraterritorial jurisdiction shall be considered an offense and may result in an order to remove such materials. Removal of such material shall be at the owner's expense based on the properties from which they originated. The City Engineer or a designated agent shall serve upon such person a written notice stating a designated timeframe after receiving the notice to take corrective action. Under the City Engineer's direction, if action is not completed in the designated time frame, the City will take corrective action and any cost of such corrective action shall be paid by the owner.
- (5) For all Land disturbing activity involving less than one (1) acre that is not required to submit a SWPPP as provided in 153.03 (1) or 153.07 (2) (d), the City Building Inspector or a designated agent shall have all of the same authority conferred upon the City Engineer as expressed in this article to enforce compliance with this Storm Water Management Ordinance.
- (6) *Legal Action.* If any person commences any land disturbing activities contrary to the provisions of this article, federal or state requirements or any order of the City, the City Attorney may commence action for appropriate legal and/or equitable relief. Any action commenced by the City Attorney shall be in addition to any other rent proceedings, penalties, fines, or remedies provided by law.

153.9 Penalties

- (1) *Fines.* Any person who is found to have violated an order of the City Engineer, Board of Appeals (City Administrator), or City Council, or the control authority, or who willfully or negligently failed to comply with any provision of this chapter, and the orders, rules, regulations, and permits issued hereunder, shall be fined not more than one thousand dollars (\$1,000.00) for each offense. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense.
- (2) *Falsifying information.* Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this section shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000.00) per incident.

Section 2. City Code Chapter 10 entitled "General Provisions" Including Penalty for Violation and Section 10.99 entitled "General Penalties" are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

Section 3. This ordinance shall take effect and be in force from and after its passage and publication and be given the Number 298 3rd Series.

Voting Aye: Grassel, Buckalew, Tweten, Gregoire, Gander, Leigh, and Vetter.

Voting Nay: None.

Absent: None.

The President declared the Ordinance passed.

ATTEST:

PASSED: February 20, 2007

City Administrator

President of Council

I hereby approve the foregoing Ordinance this 20th day of February 2007.

Mayor