

ORDINANCE NUMBER 14-01

AN ORDINANCE TO THE CITY OF SOMERSET, KENTUCKY, FULLY REPEALING ORDINANCES 482, 83-2, AND 98-10; ADOPTING THE FOLLOWING AS THE CITY'S "*EXCAVATION, EROSION, FILLING, AND SEDIMENT CONTROL ORDINANCE*"; AND FURTHER DECLARING THAT THIS ORDINANCE SHALL STAND ALONE AND BE CONSIDERED SEPARATE AND APART FROM THE CITY'S PLANNING AND ZONING ORDINANCE(S), AND THE CITY'S STORMWATER MANAGEMENT ORDINANCE;

WHEREAS, THE PRESENT ORDINANCE REFLECTS CURRENT AMENDMENTS AND REGULATIONS IN EFFECT AND FOUND WITHIN KRS, KAR, AND ALL OTHER APPLICABLE STATE AND/OR FEDERAL LAW, AND THEREFORE BRINGS THE CITY'S EXCAVATION, EROSION, FILLING, AND SEDIMENT CONTROL PRACTICES INTO COMPLIANCE WITH ACCEPTED STANDARDS AND MANDATES;

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF SOMERSET, KENTUCKY THAT THE FOLLOWING IS HEREBY ADOPTED AS THE CITY'S "*EXCAVATION, EROSION, FILLING, AND SEDIMENT CONTROL ORDINANCE*" AS FOLLOWS:

I. INTENT

The intent of this Ordinance is to protect property, prevent damage to the environment, and promote the public welfare in the city, by guiding, regulating, and controlling excavation, filling, grading, and other similar activities which disturb or break topsoil, or result in the movement of soil from its natural placement. During excavation, filling, grading, and construction activity, soils are the most vulnerable to erosion by wind and water. This eroded soil not only endangers water resources by reducing water quality, it causes the siltation of aquatic habitat for fish and other desirable species. Eroded soil further necessitates the repair and cleaning of storm sewers, ditches, and other facilities in the City's stormwater system, as well as water drainage systems which occur naturally. The regulations contained in this Ordinance are intended to prevent improper excavation, filling, and grading, and further to prevent unnecessary soil erosion. This Ordinance shall provide procedures for application and approval of permits for excavation, filling, grading, and construction activity within the City's jurisdictional limits, specifically setting forth the process for application, review, and approval of such activities which shall be set forth in specific "Excavation, Filling, Grading and Sediment Control Plans" prior to any soil disturbance.

II. DEFINITIONS

For the purposes of this Ordinance, the following words are defined:

- a. *City Engineer.* The City Engineer of Somerset, Kentucky, and the employees and/or the designees of the City Engineer.
- b. *Erosion.* The process by which the ground surface is worn away by the action of wind or water.
- c. *Excavation or cut.* Any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated, including the conditions resulting from such activities.
- d. *Fill.* A deposit of soil, rock or other non-deteriorating material used by man to replace or supplement the original soil or sub-soil.
- e. *Floodplain.* That land adjacent to a stream, channel, or body of water, which has been or may be hereafter covered by flood water during the base flood. *Floodplain* shall include those lands within the Special Flood Hazard Areas shown on the Federal Emergency Management Agency Flood Insurance Rate Map, as well as other land that is anticipated to be covered with water during the one hundred (100) year, one (1) hour storm, based on a fully developed watershed and calculated using the procedures of the City's *Stormwater Manuals*.
- f. *Grading.* Any stripping, excavating, filling, stockpiling of soil, or any combination thereof, including the land in its excavated or filled condition.
- g. *Natural features.* Shall include, but not be limited to, lakes, ponds, springs, wetlands, existing water courses, soils and rocks.
- h. *Natural ground cover.* Shall include, but not be limited to, vegetation/vegetative cover (such as grasses, shrubs, legumes and the like), and tree stands having trees five (5) inches or greater in diameter, or fifteen (15) feet or greater in height.
- i. *Natural ground surface.* Any ground surface in its original state before any grading, excavation or filling. Where there is any question of the location of the *natural ground surface*, the City Engineer shall make such determination.
- j. *Post-development floodplain.* The portion of land adjacent to a stream or other watercourse which is anticipated to be covered with water during the one hundred (100) year, one (1) hour storm, based on a fully developed watershed and calculated using the procedures set forth in the City's *Stormwater Manuals* or other established and adopted authority.
- k. *Sediment.* Any solid material which is a product of erosion, whether mineral or organic, and that is in suspension, is being transported, or has been moved from its site of origin, whether by air, water or gravity.

- l. *Slope*. Any inclined, exposed surface of a fill, excavation or natural terrain.
- m. *Soil*. All earth material of whatever origin that overlies bedrock, and may include the decomposed zone of bedrock which can be readily excavated by mechanical equipment.
- n. *Stormwater Manuals*. Whenever the term “Stormwater Manuals” is used in this Ordinance, it shall mean the City’s most current Stormwater Manual(s), including, but not limited to, the City’s most current **“Regulations and Specifications Pertaining to Roadway and Drainage Design”** Manual, provided by the City Engineer and adopted by the Mayor under his/her administrative authority, said manual incorporated in full into this Ordinance by reference. The referred to manual(s) provide standards for the design, review, construction and inspection of stormwater facilities. From time to time the City may revise, modify or amend the manuals referred to in this Ordinance as the “*Stormwater Manual(s)*”. Therefore, the most current, recent version of the City’s Stormwater Manuals should be used anytime this Ordinance is applicable. Said Manuals should be obtained directly from the City of Somerset only to ensure the most current version is being followed.
- o. *Stream*. Any river, creek or channel in which water flows for substantial periods of the year, and which has a drainage area of at least one hundred (100) acres.
- p. *Stripping*. Any activity which removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.
- q. *Watercourse*. Any body of water, including but not limited to, lakes, ponds or streams, whether perennial or intermittent.

III. SCOPE OF COVERAGE

No grading, stripping, excavating, filling or other disturbance of the natural ground cover or natural features shall take place prior to the submission and approval of an “Excavation, Filling, Grading and Sediment Control Plan”. Said plans shall be prepared in conformance with this Ordinance and the City’s most current Stormwater Manuals, unless otherwise exempted herein (see Section A. below). If the activity subject to this Ordinance is to be conducted in stages, each stage may proceed only if the planned measures for each proceeding stage have been completed in conformance with the submitted overall plan.

IV. RESPONSIBILITY OF PROPERTY OWNERS; RESPONSIBILITY OF PERSONS AND/OR ENTITY HAVING CARE, CUSTODY OR CONTROL OF PROPERTY

No person, company, or other legal entity owning, leasing, occupying, or having care, custody or control of a parcel of property found within the City limits shall knowingly, intentionally, or negligently violate this Ordinance, nor shall they keep and/or maintain property in a manner that violates the provisions of this Ordinance or that causes substantial diminution in the value of other properties found in the neighboring area of the subject property.

The owner(s) and/or other persons having care, custody, or control of any tract of land lying within the City of Somerset upon which activity covered under this Ordinance is, will be, or has taken place, shall be required under this Ordinance to ensure that activity occurring on said property is in compliance with the City’s applicable manuals and this Ordinance, and further that the property is properly excavated, filled, graded, and if necessary reseeded for replacement or replenishment of vegetative growth to prevent unnecessary erosion.

V. PROHIBITION OF DISPOSAL AND/OR FILLING WITHOUT A PROPER PERMIT

It is hereby prohibited for any person or entity owning a parcel of land, or any other person(s) having care, custody or control of a parcel of property subject to this Ordinance, or his/her/their agents, employees, or assigns, to conduct or condone the following activities: dumping, burying, covering over, plowing under, casting, throwing, sweeping, sifting, or any other type of disposal or movement of material which contains, or may contain, substances, including but limited to, ashes, debris, garbage, refuse, or any other type of waste, whether liquid or solid, without obtaining the proper permit to do so from the City of Somerset, and any other authority which must provide approval for such activity.

Said prohibited activities specifically includes the practice of using "construction fill" which contains liquids and/or solids of any of the substances listed above, or any other prohibited type of fill per this Ordinance, other local law, and/or state and federal law. It shall also be prohibited under this Ordinance to allow disposal or depositing of any of the aforementioned items, whether knowingly, intentionally, or negligently, due to said items being carried, disposed of, or deposited in any manner by sun, wind, rain, snow, or any other type of naturally occurring activity.

This Ordinance applies to any parcel of property found within the jurisdictional limits of the City of Somerset, including but not limited to, private property, property which is considered in, or upon, any public place, property which is considered in, or upon, any public waterway, property which is considered in, or upon, any drainage system (whether naturally occurring or man-made), property which is considered in, or upon, any sewer system and/or any other type of receiving basin (whether naturally occurring or man-made).

VI. EXCEPTIONS TO THE PERMIT AND PLAN REQUIREMENTS.

A. Certain activities are exempted from the permit and plan approval process which normally would be required under this Ordinance. Any such exemptions only apply to permits and/or plans required by the City of Somerset under this Ordinance and do not exempt the requirements of any other permits and/or plans required to be approved under other City Ordinances, other local law, and/or state/federal law. The following activities are hereby exempt from the required permit process and/or from the required "Excavation, Filling, Grading and Sediment Control Plan" submissions:

- a. Any emergency activity which is immediately necessary for the protection of life, property or natural resources.
- b. Agricultural practices such as: plowing, cultivation, construction of agricultural structures, and nursery operations such as removal and/or transplanting of trees.
- c. Excavation for the installation of lateral sewer lines, telephone lines, electric lines, gas lines or other similar public service facilities, if said excavation is being performed by a person licensed by the proper authority to conduct such activity.
- d. Excavation at cemeteries for human or animal burial.
- e. Excavation or fill on private property, but only when authorized by any required building permit(s), and only when the disturbed material or fill is handled in such a manner as to conform to the provisions of this Ordinance, provided that all of the following are met (the City Engineer and/or his/her designee shall have full authority to make any determinations needed as to whether the following are met or not):
 1. The excavation and fill is less than four (4) feet in vertical depth at its deepest point, as measured from the natural ground;

2. Said excavation and fill does not result in a total quantity of more than one hundred (100) cubic yards of material being removed from, deposited on, or disturbed on any lot, parcel or combination thereof;
 3. Said excavation and fill does not impair existing surface drainage, constitute a potential erosion hazard, or act as a source of sedimentation to any adjacent land or watercourse;
 4. Said excavation and fill has no final slopes steeper than one (1) foot vertical in three (3) feet horizontal;
 5. Said excavation and fill has proper vegetative cover reestablished as soon as possible on all disturbed areas; and
 6. Said excavation and fill has no fill placed on a surface having a slope steeper than five (5) feet horizontal to one (1) foot vertical.
- f. Grading as a maintenance measure or for landscaping purposes, but only when authorized by any required building permit(s), and only when the disturbed material or fill is handled in such a manner as to conform to the provisions of this Ordinance, provided that all of the following are met (the City Engineer and/or his/her designee shall have full authority to make any determinations needed as to whether the following are met or not):
1. The aggregate area(s) affected or stripped at any one time does not exceed ten thousand (10,000) square feet, and is not within a floodplain or a natural watercourse;
 2. The grade change does not exceed eighteen (18) inches at any point, and does not alter the drainage pattern;
 3. Proper vegetative cover is reestablished as soon as possible on all disturbed areas; and
 4. The grading does not involve a quantity of material in excess of one hundred (100) cubic yards.
- g. Finished grading and excavation which is below finished grade for the uses set forth below, but only when authorized by a valid building permit, and only when the disturbed material or fill is handled in such a manner as to conform to the provisions of this Ordinance. The following are considered low density residential projects for purposes of this section of the Ordinance:
1. Basements and footings of a residential structure of no more than four units;
 2. Retaining walls;
 3. Swimming pools;
 4. An accessory structure related to a residential structure of no more than four units.

VII. EXCAVATION, FILLING, GRADING AND SEDIMENT CONTROL PLANS.

The following guidelines shall be followed for any and all activity to which this Ordinance applies, unless specifically exempted by Subsection (A) of Ordinance Section VI set forth above.

1. *Authorization to prepare plans.*

All plans required under this Ordinance must be prepared by a licensed professional engineer, or a licensed landscape architect. All hydrologic, hydraulic, structural and geotechnical design must be prepared by a licensed professional engineer. All Excavation, Filling, Grading and Sediment Control Plans shall be prepared in accordance with this Ordinance and with the City's most current *Stormwater Manuals*.

2. *Submission of the plan, posting of the surety, and issuance of a grading permit.*

All plans required under this Ordinance shall be submitted to the City Engineer, who shall conduct an administrative review of the plan to verify that all items have been submitted as required by this

Ordinance and the City's most current *Stormwater Manuals*. It shall be the responsibility of the design engineer, or the landscape architect, as appropriate, to ensure the accuracy and completeness of all drawings, reports and calculations, and to ensure construction feasibility of the design. Within ten (10) working days of receipt of the required control plans, the City Engineer shall notify, in writing, the engineer or the landscape architect, as appropriate, of any omissions; shall determine the amount of the irrevocable letter of credit; and thereafter shall authorize the Building Inspector to issue the proper permit for soil disturbance. Provided all other permit requirements under the City's Building Code, the state building code, and all other applicable law, the Building Inspector shall issue the soil disturbance permit upon notification by the City Engineer.

3. *Contents of any required Excavation, Erosion, Fill, and Sediment Control Plan(s).*

All plans required under this Ordinance shall conform to the requirements of the City's most current *Stormwater Manuals*, but at the minimum shall contain the following:

a. *Written description.*

The plans shall contain a written description of the site, and the measures which will be used to control the erosion and sediment on the site, which shall include:

- i. A statement of the purpose of the project, the location and size of the site, and the area to be disturbed;
- ii. A discussion of the topography, land cover conditions, soils, percent and location of impervious areas, and the drainage patterns both before and after the soil disturbance;
- iii. A schedule of the work to be conducted, including the beginning and the completion dates of the soil disturbance, staging and sequencing of activities, including re-vegetation and winter shutdown, if appropriate;
- iv. A list of the best management practices that will be used, and their location on the site; and
- v. An operation and maintenance plan indicating the schedule for inspection and the maintenance and repair of the best management practices during construction.

b. *Site plan.*

The site plan shall be prepared at a scale of one (1) inch equals fifty (50) feet, and shall contain the following information:

- i. The site boundaries, the pre-construction topography at two (2) foot intervals, drainage ways, utilities, and the location of the site disturbance;
- ii. The finished grades, topography, building locations, paved areas, construction entrances, other access locations, soil stockpile areas, and equipment storage areas;
- iii. Planned best management practices overlaid with other site features; and
- iv. Areas planned for no disturbance.

c. *Other information.*

The project engineer shall submit all hydrologic, hydraulic, structural and geotechnical design calculations, drawings and specifications.

4. *Certifications.*

The following certifications shall be submitted with the required plans.

- a. For all plans, a signed and witnessed certification by the property owner which shall state:

"I certify that I am the owner of the property shown hereon, do agree with all graphic and textual representations shown herein, and that no grading, stripping, excavating, filling or other

disturbance of the natural ground cover will be conducted except in conformance with this submitted plan.”

b. For plans prepared by a licensed professional engineer, a signed and witnessed certification which shall state:

“I certify that this plan was prepared by me or under my direction; that the engineering design was prepared in accordance with the Erosion and Sediment Control Ordinance and with the City’s *Stormwater Manuals*; and, to the best of my knowledge and belief, the information shown herein is accurate.”

c. For plans prepared by a licensed landscape architect, a signed and witnessed certification which shall state:

“I certify that this plan was prepared by me or under my direction; this plan was prepared in accordance with the Erosion and Sediment Control Ordinance and with the City’s *Stormwater Manual*; that no hydrologic, hydraulic, structural or geotechnical design is required for this plan; and, to the best of my knowledge and belief, the information shown herein is accurate.”

5. *Submission of an irrevocable letter of credit for erosion and sediment control required.*

The City Engineer shall not authorize the issuance of any permit under this Ordinance until the permit applicant has posted an irrevocable letter of credit, in an amount determined by the City Engineer as being sufficient to ensure the provision of the following on the site:

- a. Re-grading of the site as might be necessary to correct any slopes which do not meet the standards of this article;
- b. Installation of erosion and sediment control measures to protect adjoining or on-site streams and waterways;
- c. Seeding and mulching of the site as would be needed to stabilize the soil;
- d. Conversion of any temporary basins to properly operating permanent stormwater best management practices.

6. *Extensions of time.*

Every permit issued under this Ordinance shall expire six (6) months from the date of issuance, unless work has commenced in accordance with the plan. If work authorized by the permit is not completed within the terms of the permit, or is not commenced within six (6) months, the permit holder may, in writing and prior to the expiration of the permit, request the Building Inspector grant an extension to the permit. The Building Inspector may grant the extension, upon a showing by the permit holder that all of the following are met (the City Engineer and/or his/her designee shall have full authority to make any determinations needed as to whether the following are met or not):

- a. There was justification for the delay in commencing or completing the work;
- b. The delay will not create a new erosion hazard or permit an existing hazard to continue;
- c. A new completion date has been established; and
- d. The extension and re-issuance of the permit is approved by the City Engineer.

VIII. BEST MANAGEMENT PRACTICES (BMP’S) TO BE USED FOR REQUIRED PLANS.

All plans required under this Ordinance shall utilize the Best Management Practices (BMP’s) set forth in the City’s most current *Stormwater Manuals*, and the City’s most current Stormwater Management Ordinance(s). This requirement for BMP’s is to minimize improper filling and erosion, and further properly control sedimentation.

IX. SPECIAL REQUIREMENTS FOR LOW DENSITY RESIDENTIAL PROJECTS.

The following are special requirements for any and all low density residential projects:

- a. Construction of, or an addition to, a residential structure of four (4) units or less, including an accessory structure for such a residential structure, shall not require the submission of a separate erosion and sediment control plan as a condition to the issuance of a building permit.
- b. However, the following shall be required during construction.
 - i. *Installation of a silt fence or other sediment control.* In order to prevent sediment from washing into streets, catch basins, storm sewers, grassed open channels and adjacent properties, sediment controls shall be installed. Such controls shall include silt fences, diversion ditches, earthen berms, grass strips at least ten (10) feet wide, or other controls as specified in the City's *Stormwater Manuals*. Disturbed areas that drain directly to a sediment pond or a sediment trap by means of a temporary diversion ditch do not require additional sediment controls.
 - ii. *Seeding and mulching.* All disturbed areas shall be seeded and mulched within fourteen (14) days after final grading of the property.
 - iii. *Temporary gravel pad.* A temporary gravel pad, thirty (30) feet wide, shall be installed from the edge of the street at least twenty (20) feet into the property, to provide a temporary construction entrance.

X. VIOLATIONS AND PENALTIES.

1. *Violations.* Whenever the City Engineer finds that a person has violated a prohibition or has failed to meet a requirement of this Ordinance, the City Engineer may order compliance by sending a written notice of violation to the property owner. All violations shall be corrected within the time period specified in the notice, but in no case shall such time period be less than twenty-four (24) hours. The notice of violation shall be mailed to the property owner at the last known address listed on the current tax assessment roll, or by personally serving, or by causing to be personally served, the property owner with a written notice of violation. If the violation is not corrected as specified, the City Engineer may, without limitation:

- a. Order such work as is necessary to leave the site in a safe condition and to achieve compliance with this Ordinance and the City's *Stormwater Manuals*;
- b. Order the stoppage of work which is determined to have created, or to have contributed to, any dangerous conditions;
- c. Call the letter of credit that was posted for the site and initiate corrective action by work forces under control of the City Engineer, with the cost of such work being recoverable from the letter of credit.

2. *Penalties.* The City may commence appropriate civil legal action and/or seek equitable relief, including injunctive relief, against any person and/or entity who fails to abate a violation and/or to restore an affected property prior to the deadline established in the notice of violation. Any person who conducts any activities that are in violation of this Ordinance, or who violates, neglects, omits or refuses to comply with any provision of this Ordinance shall, upon a finding by a Court of Competent Jurisdiction, be liable of violation of this Ordinance and the City shall be awarded a fine of not less than two hundred dollars (\$200.00), nor more than one thousand dollars (\$1,000.00), for each offense committed. The time of violation shall be measured from the time the written notice to correct the violation is issued to the owner as set forth in this Ordinance above. Each day a violation is maintained shall constitute a separate offense. Any recoverable cost of corrective action, including but not limited to court costs and attorney fees, may

be awarded by a Court in addition to the above stated fines imposed for violation of this Ordinance. The imposition of penalties shall not exempt the violator from compliance with the provisions of this Ordinance.

XI. SEVERABILITY.


If any part of this Ordinance, including but not limited to, any Subsection, Paragraph, Sentence, Clause, Phrase, or any other portion of this Ordinance, is declared illegal or unconstitutional, or otherwise invalid by a Court of competent jurisdiction, such declaration shall not affect the remaining portions thereof.

XII.

This Ordinance shall take effect after its passage and publication as required by law.

FIRST READING: Jan 13, 2014 SECOND READING: Jan 27, 2014

APPROVED: 
EDWARD R. GIRDLER, MAYOR

ATTEST: 
DAVID GODSEY, CITY CLERK