

## CHAPTER 38; ENVIRONMENTAL

### **ARTICLE V. Surface Water Management**

#### **Section 38-173. Purpose and Findings.**

These regulations are adopted for the following purposes:

- (a) To promote the public health, safety and general welfare of the citizens of Anoka without preventing the reasonable development of land;
- (b) To encourage site development on public and private land including clearing, excavation, and filling in such a manner as to minimize hazards to life, health and property;
- (c) To preserve and enhance the City's physical and aesthetic character by preventing untimely and indiscriminate removal or destruction of trees and ground cover;
- (d) To minimize surface water runoff and diversion which may contribute to flooding;
- (e) To reduce siltation in the City's rivers, ponds, storm sewer systems, and public roadside improvements;
- (f) To promote building and site planning practices that are consistent with the City's natural topography, soils, and vegetative features while at the same time recognizing that certain factors such as disease, danger of fallings, proximity to existing and proposed structures and improvements, interference with utility services, protection of scenic views, and the realization of a reasonable enjoyment of property may require the removal of certain ground trees and ground cover;
- (g) To ensure prompt development, restoration and replanting and effective erosion control of property after clearing and grading; and
- (h) To implement the goals and policies of the City's Surface Water Management Plan and the City's National Pollution Discharge Elimination System (NPDES) permit.

#### **Section 38-174. Statutory Authority.**

This Chapter is adopted pursuant to Minnesota Statutes 462.351, as amended.

#### **Section 38-175. Definitions.**

The following definitions of words, terms, and phrases apply in this Chapter of the Code. References hereinafter to "Section" are, unless otherwise specified, references to sections of this Chapter.

*Applicant* means any person who wishes to conduct land disturbing activities.

*Clearing* means any activity, which removes the vegetative cover and/or trees, including, but not limited to, root mat material and/or topsoil removal.

*Earth Material* means any rock and/or natural soil exclusive of any decomposable material.

*Earthwork* means excavation, filling, compaction and grading.

*Erosion* means the wearing away of the ground surface as a result of movement of wind, water, and/or ice.

*Excavation* means the removal by any means whatsoever of soil, rocks, minerals, mineral substances, or organic substances, other than vegetation, from water or land, on or beneath the surface thereof, or beneath the land surface, whether exposed or submerged.

*Fill or backfill* means a depositing or stockpiling of earth material.

*Finish or final grade* means the final elevation of the ground level after development.

*Grade* means the vertical location of the ground surface to a predetermined elevation datum (feet above sea level).

*Grading* means any stripping, cutting, filling, or stockpiling of earth or land, including the land in its cut or filled condition, to create new grades.

*Ground cover* means trees less than six inches in diameter, measured four and ½ feet above the ground (DBH – diameter at breast height) and other grasses or other plants and landscaping grown to keep soil from being blown or washed away.

*Land disturbing activity* means any land change, including but not limited to, clearing, grading, excavating, transporting and filling of land, which may result in soil erosion from water or wind and the movement of sediments into waters or onto adjacent properties.

*Person* means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative or any other legal entity.

*Rough grade* means the stage of construction at which the grade approximately conforms to the approved plan.

*Sediment* means deposited silt that is being or has been moved by water or ice, wind, gravity, or other means of erosion.

*Significant Tree* means any existing, healthy, living tree eight (8) inches DBH (diameter at breast height) or greater in size.

*Site* means a specific location on which land disturbing activities are being conducted.

*Subdivision* means the division of a lot, tract, or parcel of land into two or more lots, tracts, parcels, or other divisions of land.

*Structure* means 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.

*Surface water or storm water* means that portion of precipitation (rain falling or snow melting) that flows across a surface to the storm water system or receiving waters.

*Tree* means any self supporting woody plant characterized by one main stem or trunk of at least six inches in diameter or a multi-stemmed trunk system with a definite crown, maturing at a height of at least six feet above ground level.

*Wetlands* means lands that are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface of the land or is covered by shallow water. For purposes of this Ordinance, wetlands must have the following three attributes:

- (a) Have a predominance of hydric soils;
- (b) Are inundated or saturated by 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 a prevalence of such vegetation.

**Section 38-176. Applicability.**

This Chapter applies to all land, public or private, located within the City of Anoka.

**Section 38-177. Land Disturbance Permit (LDP) and Land Disturbance and Erosion Control Plan (LDECP).**

- (a) *Land Disturbance Permit.*
  - (1) *Permit required.* A Land Disturbance Permit (LDP) shall be required before any land disturbing activity occurs in connection with any of the following:
    - a. Projects with land disturbance of 10,000 square feet or more in size;
    - b. Any land disturbing activity that changes the existing or natural contour of the land which affects drainage or natural resources, such as slopes, trees or water bodies; and
    - c. Any alteration of land that changes the elevation by more than five (5) feet from the existing contour of the ground on any contiguous one thousand (1,000) or more square feet of ground.
  - (2) *Exemptions.*
    - a. The following shall be exempt from the provisions of this Chapter:
    - b. Minimal land disturbing activities such as house gardens and individual home landscaping, repairs, maintenance work and other related activities;
    - c. Excavation or grading for agricultural purposes located no closer than three hundred feet (300') from any edge or delineated boundary of any water body;
    - d. Below finished grade elevations for basements and footings of a building, retaining wall, or other structure authorized by a valid building permit;
    - e. Excavations for wells, tunnels or utilities;
    - f. Exploratory excavations under the direction of soil engineers or engineering geologists;
    - g. Individual service connections;

- h. Installation of posts or poles;
  - i. Emergency work and emergency repairs;
  - j. Land disturbing activities that require approval from the Watershed Management Organization shall not be required to submit a Land Disturbance and Erosion Control Plan or apply for a Land Disturbance Permit.
- (3) *Approval Standards.*
- a. *Surface Water Management Plan.* All construction, land disturbing activity and development shall comply with the City's Surface Water Management Plan. All persons performing any grading operations shall put into effect all safety precautions which are necessary in the opinion of the Public Works Director and provide adequate erosion control as per the NPDES Program, including anti-erosion and/or drainage devices, debris basins, or other safety devices to protect the life, limb, health, and welfare and private and public property of others from damage of any kind.
  - b. *Compliance with Minnesota Wetland Conservation Act.* No approval to allow wetland-disturbing activities shall be issued until approval of a wetland replacement plan or a certificate of exemption has been obtained in compliance with the provisions of this Chapter and the Minnesota Wetland Conservation Act of 1999. The Minnesota Wetland Conservation Act of 1991, as amended from time to time, is hereby incorporated into this Chapter by reference.
  - c. *Erosion Control Standards.* Every applicant for a LDP must adhere to erosion control measure standards and specifications contained in the MPCA publication "Protecting Water Quality in Urban Areas" or as approved by the City of Anoka.
  - d. *Tree Preservation.* Removal or loss of significant trees shall be in accordance with a City approved Land Disturbance and Erosion Control Plan and the arboricultural specifications and standards in the City's Master Street Tree Plan.
  - e. *City Plans and Ordinances.* Every applicant for a LDP shall comply with all applicable adopted City plans and ordinances.
- (4) *Permit Application.* The application for a LDP permit shall be made in writing to the City on such form as the City may, from time to time, designate. The application shall include three (3) copies of the submittal materials.
- (5) *Fees.* The processing and approval fee shall be established from time to time by the City Council. In addition, the applicant will be responsible for all reasonable costs incurred by the City in review of the proposed plan. Fees may vary based on the complexity of the plan review process.
- (6) *Submittal.* Any application for a Land Disturbance Permit (LDP) shall be submitted to the City with required fees. All applications shall also include the following information:

- a. *A Land Disturbance and Erosion Control Plan (LDECP)* which indicates compliance with this Chapter, including:
  1. *Erosion and Sedimentation Controls.*
    - i. Identification and use of the “best management practices” for temporary erosion and sedimentation control as recommended by the MPCA in its publication “Protecting Water Quality in Urban Areas,” (2000), or as amended, including but not limited to: Perimeter erosion control devices, including but not limited to silt fencing; phased grading; temporary seeding; rock construction entrance; storm drain inlet protection devices; removal of all debris, dirt and soil from impervious ground surfaces including abutting public or private roadways and sidewalks in connection with the subject property; sediment basins and flow diversions; and any other erosion control and sedimentation device deemed necessary by the City.
    - ii. Identification of all permanent erosion control measures and a completion schedule.
  2. *Tree Preservation.*
    - i. An accurate inventory of significant trees on the subject property, including identification of the size, species, condition, and location of each significant tree.
    - ii. Identification of all significant trees on the subject property proposed to be removed or that will be lost as a result of the land disturbing activity.
    - iii. Identification of measures to be utilized to protect and preserve the significant trees proposed to be preserved.
  3. *Drainage and Grading.*
    - i. Identification of all measures to protect water bodies and wetland areas.
    - ii. If applicable, the plans must be consistent with any approved subdivision grading plan.
    - iii. Methods of controlling dust.
    - iv. Plans for controlling site runoff.
    - v. The plan shall not adversely impact neighboring properties.

- vi. The plan shall minimize any irreparable adverse impacts to natural resources upon the subject property.
- vii. The plan shall provide for and include any of the following temporary safety requirements if the City determines that all, or a combination thereof, of the following requirements are necessary for the protection of public safety, health and welfare:
  - aa. Any slope of 3:1 or greater that is adjacent to a project property line and which is deemed dangerous by the City must be properly fenced;
  - bb. Banks, fill, or any depression or mound must be sloped or leveled off or otherwise placed in such condition at any time as not to be dangerous because of sliding or caving banks, and so as to minimize or stop erosion or dust during or after the grading operation; and
  - cc. Any graded or ungraded area must be properly drained, filled, or leveled off so as to make the same safe and healthful, unless otherwise approved by the City.
- b. General Information, including a site plan that includes the following:
  1. The names, addresses, telephone numbers, and fax numbers of the applicant, owner, developer, engineer and contact person.
  2. The section, township and range, north point, date and scale of drawing, and number of sheets.
  3. Plat names and block, lot, and outlot boundaries for adjacent platted properties and full property identification numbers for adjacent unplatted properties.
  4. Delineation of the subject property and the location of existing and proposed buildings, structures and impervious surfaces on the subject property.
  5. Location and indication of demolition, relocation or abandonment of existing structures, driveways, septic systems and wells.
  6. Existing underground and overhead utilities, easements and rights-of-way.
  7. Topographical data, including existing (dashed) and proposed (solid) contours at vertical intervals of not more

than two (2) feet, except that contour lines shall be no more than one hundred (100) feet apart.

8. The location and size of all existing sanitary sewer, water or storm sewer, and services on or adjacent to the property.
9. Identification of all water bodies located on or within thirty (30) feet of the subject property's boundaries, including the Normal Water Level (NWL), the High Water Level (HWL), and the Ordinary High Water (OHW) elevations.
10. The location and direction of natural drainage patterns on and immediately adjacent to the site.
11. A description of the soils at the site.
12. If applicable, the location of the ten (10) year and one hundred (100) year flood plains, flood fringes, and flood ways.
13. Delineation of all areas to be graded or excavated, and the limits of land disturbing activity.
14. Identification of the location of dirt or soil storage or stockpile area to be utilized on the subject property.
15. The estimated time required to complete the proposed work and the amount of material to be moved on the site and the amount to be removed from the site.
16. A landscape plan, drawn to appropriate scale, including dimensions and distances, and the location, type, size, and description of all proposed landscape materials that will be added as part of the development.
17. Location and dimensions of permanent erosion control measures.
18. Location of any proposed septic system.
19. Any other information pertinent to the particular project which in the opinion of the applicant or the City is necessary for the review of the project.

(7) *Plan and Permit Review Procedure.*

- a. *Process.* Review of the submitted plan and permit will be coordinated with other necessary approvals.
- b. *Plan and Permit Approval.* Projects that are regulated by this Chapter shall be approved administratively by City staff, unless City staff presents it to the City Council for its review and approval. Upon finding that the requirements of this Chapter have been met and after approval of the Land Disturbance and Erosion Control

Plan, the City will issue a permit in accordance with the provisions of this Chapter.

- c. *Conditions of Approval.* In granting any land disturbance permit, the Public Works Director may attach such conditions as may be reasonably necessary to prevent creation of a nuisance or hazard to public or private property. Such conditions may include, but are not limited to:
1. Requirements for fencing of excavations.
  2. Improvements of any existing site condition for compliance with the standards of this chapter.
  3. Requirements to slope banks and keep the excavation in such condition as not to be dangerous from caving or sliding banks.
  4. Requirements to properly drain, fill or level the excavation, after it has been created, to make the excavation safe.
  5. Requirements to remove excavated/graded material from the excavation away from the premises upon and along such highways, streets, or other public way as directed by the City.
  6. Requirements to retain and store top soil from the subject site and to utilize such material in restoration of the site.
  7. Requirements to limit the hours of operation.
- (8) *Security.* The City shall require either the applicant or the owner for which the land disturbance permit is issued to post a security in such form and sum as determined by the Public Works Director. The amount of the security shall be sufficient to cover the City's extraordinary cost and expense of repairing, from time to time, any highways, streets, or other public ways where such repair work is made necessary by the special burden resulting from hauling and travel in transporting fill or excavated material. The amount of the security shall also be sufficient to ensure compliance with all requirements of this Chapter, and the particular permit, and to pay the expense the City may incur as a result of the permit.
- (9) *Expiration of Permit and Plan.* Any Land Disturbance Permit issued pursuant to the requirements of this Chapter shall expire two (2) years from the date of approval if significant progress of the work covered by the Permit is not accomplished, unless an extension of the permit is requested by the applicant and approved by the City Council.
- (10) *Revocation of Permit.* Failure to comply with the approved terms and conditions of a Land Disturbance and Erosion Control Plan shall be grounds for revocation of the Land Disturbance Permit, or other permit or approval issued in lieu thereof, by the City Council following a public hearing. Written notice of the public hearing shall be mailed at least ten (10) days prior to said hearing to the current holder of the Permit. Such notice shall outline the violation(s) considered by the City to be grounds for revocation

and inform the current holder of the permit of the opportunity to be heard at such public hearing.

- (11) *Other permit or approval in lieu of Land Disturbance Permit.* When a building permit is issued in connection with a project, or a new development project is approved by the City as required by the City Code, the building permit or other new development approval may be in lieu of the land disturbance permit required hereunder, provided the applicant shall comply with all other regulations herein, including but not limited to compliance with a Land Disturbance and Erosion Control Plan.
- (12) *Appeal of Decisions.* Except the decision to revoke a land disturbance permit under Section 42.05, subsection 10, the applicant may appeal any requirement, decision or determination by the City in connection with any provision of this Section pursuant to the procedures as set forth in the City Code under zoning regulations as related to the Board of Appeals and Adjustments.
- (13) *Compliance with Plan.* The applicant shall implement and comply with a City-approved Land Disturbance and Erosion Control Plan (LDECP) prior to and during any construction or land disturbing activity under the Land Disturbance Permit (LDP). All erosion and sedimentation control and tree preservation measures required under the Plan shall be properly installed and remain in place until all grading and construction activity is completed or until a written request for removal of the protection measures is made to and approved by the City. No construction or land disturbing activity to which this Chapter applies or removal of any significant trees may occur until the LDECP is approved by the City and except in accordance with the approved LDECP. Failure to comply with the approved terms and conditions of the LDECP shall constitute a violation of this Chapter.
  - a. *Determination of Compliance.* The City shall have the right to enter and inspect the subject property in order to determine compliance with the approved LDECP. The City shall have the right to order the suspension of any grading or construction activity on the subject property until compliance with the LDECP has occurred.
  - b. *Finding of Noncompliance.* Upon a finding of noncompliance, the City shall use the following procedure with respect to notification and corrective measures:
    1. The City shall personally serve upon the project manager, or other responsible person, and by certified U. S mail upon the property owner, if different than the project manager, a written notification of the violation of the approved LDECP.
    2. If remedial work is not completed and compliance with the LDECP has not occurred within forty-eight (48) hours of service of the violation notification, the City may complete remedial or corrective work and any costs incurred in connection with taking remedial action or installing corrective measures may be recovered from the applicant. The City may recover costs by certifying them for

collection with real estate property taxes. In the alternative, the City may revoke a construction-related permit and order the termination of all construction activity on the subject property until the subject site is in compliance with the LDECP.

- (14) *Emergency Corrective Actions.* In the event circumstances exist that noncompliance poses an immediate danger to the public health, safety and welfare, as determined by the City, the City may take emergency corrective action to prevent such danger. The City shall take reasonable action to contact and direct the owner of the subject property to take any necessary action. Any costs incurred by the City in connection with any emergency action may be recovered from the applicant. The City may elect to recover costs by certifying them for collection with real estate property taxes.

**Section 38-178. Conflict with Other Laws.**

If the requirements of this Chapter are in conflict with any other federal, state or local law, the stricter requirements shall be enforced.

**Section 38-179. Heritage Preservation.**

No land disturbing activities shall be performed on any significant historic site in any manner that affects the historic value of the site prior to preparation of an inventory and analysis of the site being prepared by a professional historian or archeologist. The inventory and analysis shall be deposited with the Minnesota Historical Society or other suitable repository approved by the City Council.

**Section 38-180. Enforcement.**

It shall be the duty of the Public Works Director, or his designee, to enforce the provisions of this Chapter. Land Disturbance Permits may be issued by the City Building Official following approval of the Land Disturbance and Erosion Control Plan by the Public Works Director. Issuance of a Land Disturbance Permit does not represent approval of a final plat, site plan, or other required permit or approval of the City, and all land disturbance permits are subject to amendment based on future approvals or permits.

**Section 38-181. Violations and Penalties.**

- (a) Any person who violates any of the provisions of this Chapter shall be guilty of a misdemeanor. Each day of violation shall constitute a separate offense.
- (b) In the event of a violation of this Chapter, the City may institute appropriate proceedings, including bringing criminal charges, or seeking civil or injunctive relief, to prevent, restrain, correct, or abate such violations. The City, in any court of competent jurisdiction, may recover all costs incurred for corrective action. Any violator of this Ordinance shall be responsible for the City's cost of prosecution, including attorney's fees.

**Section 38-182. Severability.**

If any section, subsection, sentence, clause, phrase or portion of this Chapter is, for any reason, held to be invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.