

## ORDINANCE NO. 1049

**AN ORDINANCE AMENDING CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS BY ADDING THERETO ARTICLE V REGULATING GRADING, ESTABLISHING EROSION CONTROLS, REQUIRING A PERMIT THEREFOR AND SETTING A FEE FOR PERMITS AND PENALTIES FOR VIOLATIONS.**

**BE IT ORDAINED** by the Common Council of the City of Spearfish that Chapter 6 be amended by adding Article V thereto as follows:

### **ARTICLE V. GRADING AND EROSION CONTROLS**

#### **Section 1. Introduction/Purpose/Applicability**

During the construction process, soil is highly vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and adversely affects aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers, ditches and the dredging of lakes, ponds, and streams. In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat.

The purpose of this ordinance is to safeguard persons, protect property, and prevent damage to the environment in the City of Spearfish. This ordinance will also 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 on land in the City of Spearfish.

Unless specifically exempted, these regulations apply to all lands within the City of Spearfish in which the vegetative cover is removed; disturbed or fill material has been brought onto the site requiring stabilization.

#### **Section 2. Definitions**

**ARSD** – Administrative Rules of South Dakota

**Best Management Practices (BMP's)** – control measures which prevent or reduce the discharge of ***pollutants*** (defined at ARSD 74:52:01:35) to waters of the state.

**Clearing** – Any activity the removes the vegetative surface cover.

**Drainage Way** - Any channel that conveys surface runoff throughout the site.

**Final Stabilization** – Outlined in **Section 5**

**Grading and Erosion Control Plan (GECP)** - A set of plans indicating the specific measures and sequencing used to control sediment and erosion on a construction site.

**Grading Permit** – A permit issued by the City of Spearfish for construction, excavating, clearing, and/or any land disturbing activity.

**Land Disturbance/Disturbing Activity-** Any type of activity that involves grading, clearing, and/or moving topsoil, rock or any other natural surface from property. This also includes bringing fill material onto the site.

**Perimeter Controls** – Erosion control measures which protect neighboring properties from non-storm water discharges.

**SD DENR-** South Dakota Department of Environment and Natural Resources

**Stabilization** – The use of practices that prevent exposed soils from eroding including but not limited to grass, trees, sod, mulch, or other materials which prevent erosion and retain moisture.

**SWPPP – Storm Water Pollution Prevention Plan** - Required by SD DENR for Storm Water permit for construction areas disturbing more than 1 acre or industrial activities having a Standard Industrial Code [**SIC**] between 20-39.

**Watercourse** – Any body of water including, but not limited to, lakes, ponds, streams and other bodies of water delineated by the City of Spearfish.

**Waterway** – A channel that directs surface runoff to a watercourse or to a public storm drain.

**Waters of the State** - all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, but not waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (Clean Water Act) other than cooling ponds as defined by 40 C.F.R.: 423.11 (m) (July 1, 1991).

### **Section 3. Grading Permit(s)**

1. Unless otherwise exempt, a Grading Permit will be required prior to persons engaging in a land disturbing activity exceeding 1000 square feet. The following requirements must be met before the permit will be granted:
  - a. General Permit for Storm Water Discharges associated with Construction Activities through SD DENR as required by ARSD 72:52:01 through 72:52:11 for land disturbing activity of one (1) acre or more.
  - b. General Permit for Storm Water Discharges associated with Industrial Activities through SD DENR as required by ARSD 72:52:01 through 72:52:11. The requirements for this permit are governed by the Standard Industrial Code (SIC). There are no size (area) requirements for this permit.
  - c. Approval of the Storm Water Pollution Prevention Plan (SWPPP) by the City of Spearfish Public Works Department. The SWPPP is a requirement for both 1a and 1b above.
2. A Grading Permit will be required for persons wishing to engage in land disturbing activity from 1000 square feet up to one (1) acre upon obtaining approval of a Grading and Erosion Control Plan (GECP) by the City of Spearfish Public Works Department.
3. The Grading Permit shall designate the name, address, and phone number for person(s) (including emergency contact information) responsible for erosion control measure implementation and maintenance.
4. Exemptions; No Grading Permit will be required for the following activities:
  - a. Any emergency activity that is immediately needed for the protection of life, property, or natural resources.
  - b. Any nursery and agricultural operations as permitted main or accessory use.
  - c. Land disturbing activity less than 1000 square feet.
5. All permits will be issued for a period of one (1) year but may be renewed upon a site inspection and approval by the City Public Works Department.

6. Persons not subject to a grading permit but who are engaging in a land disturbing activity are subject to applying effective best management practices (BMP's) as well as the penalties set forth in section 7.

**Section 4. Grading and Erosion Control Plan will include:**

1. Plan must include a legible map identifying area to be disturbed, slopes, and resources to be protected and also must include nearest downstream storm water inlets, drainage ways, and neighboring property lines. This plan must be approved and BMP's must be in place before any grading begins. The minimum map size for sites up to 1 acre is 8½" x 11"; for construction sites disturbing more than 1 acre and industrial sites, minimum map size will be 11" x 17."
2. The SWPPP for items 1a and 1b in Section 3 above will be required for submittal as the ESCP for this section.
3. All BMP's necessary to achieve soil stabilization on the site itself and including stock piles of any soil, rock, or any additional landscaping materials on the site. The plan will also include a designated entry/exit point, a concrete washout area on the site, measures to protect nearest downstream storm water inlet(s), and explain measures to prevent mud-tracking from vehicles and equipment into the street.
4. Dates for final stabilization (defined in Section V) by grading permit holder.

**Section 5. Final Stabilization**

1. All soil disturbing activities at the site have been completed and either of the two following criteria are met:
  - a. Uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or

- b. Equivalent permanent stabilization measures (such as the use of riprap, retaining walls, or geotextiles) have been employed.
2. When background native vegetation naturally covers less than 100 percent of the ground, the 70 percent coverage criteria is adjusted as follows: if the native vegetation covers 50 percent of the ground, 70 percent of 50 percent ( $0.70 \times 0.50 = 0.35$ ) would require 35 percent total cover for final stabilization. In an area where limited vegetation is found naturally, less stabilization will be required.
3. For individual lots in residential construction, final stabilization means that either:
  - a. The homebuilder has completed final stabilization as specified above, or
  - b. The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization. In addition, the owner(s) of the property will sign a statement stating they are aware of these responsibilities upon acquiring water/sewer/garbage accounts.
4. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land, staging areas for road construction, etc.), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to a watercourse, and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria (1) or (2) above.
5. Final stabilization must be completed within 1 year of Certificate of Occupancy, final inspection, or project completion, whichever occurs sooner.

## **Section 6. Additional Requirements**

1. It will be the responsibility of the grading permit holder to attain approval of all required agencies for any waterway crossings to be installed if a wet watercourse will be crossed regularly during construction. (i.e.: DENR, Corps of Engineers, FEMA, etc.)

2. GECP's/SWPPP's must be maintained on the site during the progress of the work.
3. If control measures do not achieve stabilization, the permit holder may be required to submit an updated SWPPP or may be required to submit a GECP prepared by a professional engineer.
4. The City of Spearfish Public Works Department may enter the site to make inspections as needed.

### **Section 7. Stop Work Order.**

1. Authority. Whenever the Public Works Administrator or his designee finds a site maintained contrary to the provisions of this ordinance, the Public Works Administrator or his designee is authorized to issue a stop work order for the site.
2. Issuance. The stop work order shall be in writing and issued to the permittee or assigned contractor. Upon issuance the cited work shall immediately cease. The stop work order shall state the reasons for the order and the conditions under which the cited work will be permitted to resume.
3. Unlawful continuance. Any person who shall continue any work after having been served a stop work order, with exception to work required by the order, shall be subject to penalties set forth in Section 1-14 of the Code of Ordinances.

### **Section 8. Penalties**

The penalties for violation of this ordinance shall be as set forth in Section 1-14 of the Code of Ordinances.

**Section 9. Fees.** The fees for each permit shall be as follows:

1. From 1000 sq/ft to ½ acre, \$ 50.00.
2. From ½ acre to 1 acre, \$100.00
3. For 1 acre and above, \$150.00

Dated this \_\_\_\_ day of \_\_\_\_\_, 2007.

**CITY OF SPEARFISH**

By: \_\_\_\_\_  
Jerry A. Krambeck, Mayor

**ATTEST:**

\_\_\_\_\_  
Elizabeth A. Benning  
Finance Officer

(SEAL)

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Second Reading:  
Published:  
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