

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2005-55

No. 568

AN ORDINANCE AMENDING THE CODE OF
ORDINANCES TO ADD AN ORDINANCE RELATING
TO SOIL EROSION AND SEDIMENT CONTROL

Approved December 8, 2005

Be it ordained by the City of Providence:

SECTION 1: The Code of Ordinances of the City of Providence is hereby amended by adding the following provisions:

Article 1. Purpose

The City Council hereby finds that excessive quantities of soil are eroding from certain areas that are undergoing development for non-agricultural uses such as housing developments, industrial areas, recreational facilities and roads. This erosion makes necessary costly repairs to gullies, washed out fills, roads, and embankments. The resulting sediment clogs the storm waters and road ditches, muddies streams, and deposits silt in ponds and reservoirs. Sediment is considered a major water pollutant.

The purpose of this ordinance is to prevent soil erosion and sedimentation from occurring as a result of non-agricultural development within the City by requiring proper provisions for water disposal, construction waste disposal and the protection of soil surfaces during and after construction, in order to promote the safety, public health and general welfare of the City.

Article 2. Applicability

This ordinance shall be applicable to any situation involving any disturbance to the terrain, topsoil or vegetative ground cover upon any property within the City of Providence after determination of applicability by the Building Official or his/her designee based upon criteria outlined in Article 3, Section A, below. Compliance with the requirements as described herein shall not be construed to relieve the owner/owner/applicant of any obligations to obtain necessary state or federal permits.

Article 3. A. Determination of Applicability

No.

CHAPTER
AN ORDINANCE

IN CITY COUNCIL
APR 25 2005
FIRST READING
REFERRED TO COMMITTEE ON
ORDINANCES

Michael P. Clement CLERK
(10)

THE COMMITTEE ON
ORDINANCES
Approves Passage of
The Within Ordinance, as Amended
Ann M. Steen
11-2-05 Clerk

Councilman Williams, By Request

It shall be unlawful for any person to disturb any existing vegetation, grades, and contours of land in a manner, which may increase the potential for soil erosion without first applying for a determination of applicability from the Building Official or his/her designee. Upon determination of applicability, the owner/applicant shall submit a Soil Erosion and Sediment Control Plan for approval by the Building Official or his/her designee, as provided in Article 4. The application for determination of applicability shall describe the location, nature, character, and time schedule of the proposed land disturbing activity in sufficient detail to allow the Building Official or his/her designee to determine the potential for soil erosion and sedimentation resulting from the proposed project. In determining the applicability of the soil erosion and sediment control ordinance to a particular land disturbing activity, the Building Official or his/her designee shall consider site topography, drainage patterns, soils, proximity to watercourses, and other such information as deemed appropriate by the Building Official or his/her designee. A particular land disturbing activity shall not be subject to the requirements of this ordinance if the Building Official or his/her designee finds that erosion resulting from the land disturbing activity is insignificant and represents no threat to adjacent properties or to the quality of any coastal feature or watercourse, as defined herein. The current "Rhode Island Soil Erosion and Sediment Control Handbook," U.S. Department of Agriculture Soil Conservation Service, R.I. Department of Environmental Management, and R.I. State Conservation Committee shall be consulted in making this determination.

No determination of applicability shall be required for the following:

1. Construction, alternation or use of any additions to existing single family or duplex homes or related structures, provided the grounds coverage of such addition is less than $\frac{1}{4}$ acre, and such construction, alteration and use does not occur within one hundred (100) feet of any watercourse or coastal feature, and the slopes at the site of land disturbance do not exceed ten percent (10%).
2. Use of a home or community garden.
3. Excavations for improvements other than those described in Sub-section 1 above which exhibit all of the following characteristics:

- Does not result in a total displacement of more than fifty (50) cubic yards of material; and
 - Has no slopes steeper than ten (10) feet vertical in one hundred feet (100) horizontal or approximately ten percent (10%); and
 - Have all disturbed surface areas promptly and effectively protected to prevent soil erosion and sedimentation.
4. Grading, as a maintenance measure, or for landscaping purposes on existing developed land parcels or lots, provided that all bare surfaces are immediately seeded, sodded or otherwise protected from erosive actions and all of the following conditions are met:
- The aggregate of areas of such activity does not exceed two thousand (2000) square feet; and
 - The change of elevation does not exceed two feet at any point; and
 - The grading does not involve a quantity of fill greater than eighteen (18) cubic yards; except where fill is excavated from another portion of the same parcel and the quantity does not exceed fifty (50) cubic yards.
5. Grading, filling, removal, or excavation activities and operations undertaken by the City under the direction and supervision of the director of public works for work on streets, roads, or right-of-way dedicated to public use, provided, however, that adequate and acceptable erosion and sediment controls are incorporated in engineering plans and specifications are employed. Appropriate controls shall apply during construction as well as after the completion of these activities. All such work shall be undertaken in accordance with the performance principles provided for in Article 5, Section C and such standards and definitions as may be adopted to implement said performance principles.

Article 4. Provisions of Plan-Procedures

A. Plan

To obtain approval for a land disturbing activity as found applicable by the Building Official or his/her designee under Article 3, an applicant shall first file an Erosion and Sediment Control Plan signed by the owner of the property, or authorized

agent, on which the work subject to approval is to be performed. The Plan or drawings, as described in Article 5 of this ordinance, shall include proposed erosion and sediment control measures to be employed by the applicant or the applicant's agent.

B. Plan review

Within five (5) business days of the receipt of a completed Plan, the Building Official or his/her designee shall send a copy of the Plan to the review authorities which may include the Public Works Department, Parks Department, and/or the Planning Department for the purpose of review and comment. The Building Official or his/her designee may also within the above time frame, submit copies of the Plan to other local departments or agencies, including the Conservation District that services their county, in order to better achieve the purpose of this Ordinance. Failure of the aforementioned review authorities to respond within twenty-one (21) calendar days of their receipt of the Plan shall be deemed as no objection to the Plan as submitted.

The time allowed for Plan review shall be commensurate with the proposed development project, and shall be done simultaneously with other reviews.

C. Plan Approval

The Building Official or his/her designee shall take action in writing either approving or disapproving the Plan with reasons stated within ten (10) calendar days after the Building Official or his/her designee has received the written opinion of the aforementioned review authorities.

In approving a Plan, the Building Official or his/her designee may attached such conditions deemed reasonably necessary by the aforementioned review authorities to further the purposes of this ordinance. The conditions pertaining to erosion and sediment control measures and/or devices, may include, but are not limited to, the erection of walls, drains, dams, and structures, planting vegetation, trees and shrubs, furnishings, necessary easements, and specifying a method of performing various kinds of work, and the sequence or timing thereof. The applicant/owner shall notify the building inspector or his/her designee in advance of his or her intent to begin clearing and construction work described in the Erosion and Sediment Control Plan. The applicant shall have the Erosion and Sediment Control Plan on the site during grading and construction.

D. Appeals

1. Administrative procedures - If the ruling made by the Building Official or his/her designee is unsatisfactory to the applicant/owner, the applicant/owner may file a written appeal. The appeal of plans for soil erosion and sediment control shall be to the zoning board of review or other appropriate board of review, as determined by the City Council and shall be governed by the appellate procedure applicable thereto.

Appeal procedures shall follow current requirements for appeal to the boards above.

During the period in which the request for appeal is filed, and until such time as a final decision is rendered on the appeal, the decision of the Building Official or his/her designee shall remain in effect.

2. Expert Opinion - The official or his/her designee, the zoning board of review or other board of review, may seek technical assistance on any Soil Erosion and Sediment Control Plan. The expert opinion must be made available in the office of the Building Official or his/her designee as a public record prior to the appeals hearing.

Article 5. Soil Erosion and Sediment Control Plan

A. Plan Preparation

The Erosion and Sediment Control Plan shall be prepared by a registered Professional Engineer, or certified Landscape Architect or a Soil and Water Conservation Society certified Erosion and Sediment Control Specialist. Five (5) copies of the Plan shall be submitted to the Building Official or his/her designee.

B. Plan Contents

The Erosion and Sediment Control Plan shall include sufficient information about the proposed activities and land parcels(s) to form a clear basis for discussion and review and to assure compliance with all applicable requirements of this Ordinance. The Plan shall be consistent with the data collection, data analysis, and Plan preparation guidelines in the current "Rhode Island Soil Erosion and Sediment Control Handbook," prepared by the U.S. Department of Agriculture, Soil Conservation Service, R.I. Department of Environmental Management, and R.I. State Conservation Committee. At a minimum, the Plan shall contain:

1. A narrative describing the proposed land disturbing activity with the soil erosion and sediment control measures and storm water management measures to be installed to control erosion that could result from the proposed activity. Supporting documentation, such as a drainage area, existing site, and soil maps shall be provided as required by the Building Official or his/her designee.
2. Construction drawings illustrating, in detail, existing and proposed contours, drainage features, and vegetation; limits of clearing and grading, the location of soil erosion and sediment control and storm water management measures, detail drawings of measures; stockpiles and borrow areas; sequence and staging of land disturbing activities; and other such information needed for construction.
3. Other information or construction plans and details as deemed necessary by the Building Official or his/her designee for thorough review of the Plan prior to action being taken as prescribed in this Ordinance. Withholding or delay of such information may cause the Building Official or his/her designee to judge the application as incomplete and may constitute grounds for disapproval.

C. Performance Principles

The contents of the Erosion and Sediment Control Plan shall clearly demonstrate how the principles, outlined below, have been met in the project design and are to be accomplished by the proposed development.

The site selected shall show due regard for natural drainage characteristics and topography.

To the extent possible, steep slopes shall be avoided.

The grade of slopes created shall be minimized.

Post development runoff rates should not exceed predevelopment rates, consistent with other storm water requirements which may be in effect. Increases in storm water runoff shall be retained and recharged as close as feasible to its place of origin by means of detention ponds or basins, seepage areas, subsurface drains, infiltration chambers, porous paving, or similar technique.

Original boundaries, alignment, and slopes of water-courses within the project locus shall be preserved to the greatest extent feasible.

In general, drainage shall be directed away from structures intended for human occupancy, municipal or utility use, or similar structures.

All drainage provisions shall be of such a design and capacity so as to adequately handle storm water runoff, including runoff from tributary upstream areas, which may be outside the locus of the project.

Drainage facilities and controls shall be installed as early as feasible during construction, prior to site clearance, if possible.

Fill adjacent to water courses should be avoided. If there is no viable alternative, fill shall be protected from erosion. Vegetative stabilization with minimal rip-rap and/or gabions is the preferred method. Vertical structures, including retaining walls, should not be used unless the applicant can clearly demonstrate there will be no adverse impacts resulting from this method of stabilization.

Temporary vegetation and/or mulching shall be used to protect bare areas and stockpiles from erosion during construction; the smallest areas feasible shall be exposed at any one time; disturbed areas shall be protected during the non-growing months, November through March.

Permanent vegetation shall be placed immediately following final grading.

Trees and other existing vegetation shall be retained whenever feasible; the area within the dripline shall be fenced or roped off to protect trees from construction equipment.

In the City's residential neighborhoods, it is strongly recommended that sidewalks should be separated from the curb by a permeable strip whenever possible, provided there is a uniform appearance. The permeable strip shall be soil, mulch, vegetation or porous paving. At no time should the sidewalk be less than four feet. Sidewalks in excess of six feet in width are strongly discouraged under normal circumstances.

All areas damaged during construction shall be resodded, reseeded, or otherwise restored. Monitoring and maintenance schedules, where required, shall be predetermined.

All construction wastes shall be handled, stored, and disposed of in accordance with applicable local, state, and federal laws.

Article 6. Approval-Expiration-Renewal**A. In General**

1. Every approval granted herein shall expire at the end of the time period set forth in the conditions. The developer shall fully perform and complete all of the work required within the specified time period.
2. If the developer is unable to complete the work within the designated time period, he or she shall, at least thirty (30) calendar days prior to the expiration date, submit a written request to the Building Official or his/her designee for an extension of time, setting forth the reasons underlying the requested time extension. If in the discretion of the Building Official or his/her designee the extension is warranted, the Building Official or his/her designee may grant an extension of time up to a maximum of one (1) year from the date of the original deadline. Subsequent extensions under the same conditions may be granted at the discretion of the Building Official or his/her designee.

B. Maintenance of Measures

Maintenance of all erosion-sediment control devices under this ordinance shall be the responsibility of the owner. The erosion-sediment control devices shall be maintained in good condition and working order on a continuous basis. Watercourses originating and located completely on private property shall be at the responsibility of the owner to their point of open discharge at the property line or at a communal watercourse within the property.

C. Liability of Applicant

Neither approval of an Erosion and Sediment Control Plan nor compliance with any conditions of this Ordinance shall relieve the owner/applicant from any responsibility for damage to persons or property, nor impose any liability upon the City for damages to persons or property.

Article 7. Inspections**A. Periodic Inspections**

The provisions of this ordinance shall be administered and enforced by the Building Official or his/her designee. All work shall be subject to periodic inspections by

the Building Official or his/her designee. All work shall be performed in accordance with an inspection and construction control schedule approved by the Building Official or his/her designee, who shall maintain a permanent file on all of his/her inspections. Upon completion of the work, the developer or owner(s) shall notify the Building Official or his/her designee that all grading, drainage, erosion and sediment control measures and devices, and vegetation and ground cover planting has been completed in conformance with the City's approval, submitted plans, specifications, conditions, and other applicable provisions of this ordinance.

B. Final Inspection

Upon notification of the completion by the owner, the Building Official or his/her designee shall make a final inspection of the site and shall prepare a final summary inspection report of its findings, which shall be retained in the department of inspections in the department of public works permanent inspections file.

Article 8. Non-Compliance

A. In General

If, at any stage the work-in-progress and/or completed work under the terms of an approved Erosion and Sediment Control Plan does not conform to the Plan, a written notice from the Building Official or his/her designee to comply shall be transmitted by certified mail to the owner. The notice shall set forth the nature of the temporary and permanent corrections required and the time limit within which corrections shall be completed as set forth herein.

B. Penalties

1. Revocation or Suspension of Approval - The approval of an Erosion and Sediment Control Plan under this Ordinance may be revoked or suspended by the Building Official or his/her designee and all work on the project halted for an indefinite time period by the Building Official or his/her designee after written notification is transmitted to the developer for one or more of the following reasons:
 - Violation of any condition of the approved Plan, or specifications pertaining thereto;

- Violation of any provision of this ordinance or any other applicable law, ordinance, rule, or regulation related to the work or site of work; and
 - The existence of any condition or the performance of any act constituting or creating a nuisance, hazard, or endangerment to human life or the property of others, or contrary to the spirit or intent of this ordinance.
2. Whenever there is a failure to comply with the provisions of this chapter, the City shall have the right to notify the applicant/owner that he or she has five (5) calendar days from the receipt of notice to temporarily correct the violations and thirty (30) calendar days from receipt of notice to permanently correct the violations. Any applicant/owner who fails and/or refuses to temporarily correct the violation within five (5) calendar days from notice and/or to permanently correct a violation within thirty (30) calendar days from notice shall be fined up to seventy five dollars (\$75) for every two thousand (2,000) square feet of property area or a portion thereof, for each day following notice during which the violation continues shall constitute a separate offense. The City also shall then have the right to take whatever actions it deems necessary to correct the violations and to charge the applicant/owner for any and all costs associated with such action. In addition, any violation continuing thirty (30) calendar days after notice shall be deemed, and is hereby declared to be, a public nuisance and the City Solicitor is hereby empowered to institute an action for an injunction, abatement or any other appropriate action to prevent, enjoin or abate such nuisance. The remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

Article 9. Definition of Selected Terms

Applicant: Any person, corporation, or public or private organization proposing a development which would involve disturbance to the natural terrain as herein defined.

Coastal Feature: Coastal beaches and dunes, barrier beaches, coastal wetlands, coastal cliffs, bluffs, and banks, rocky shores, and manmade shorelines as defined in "The State of Rhode Island Coastal Resources Management Program" as amended June 28, 1983.

Construction Wastes: Solid and/or liquid wastes generated from the site development process. This includes, but is not limited to, discarded building materials, concrete truck washout, chemicals, litter, and sanitary wastes.

Cut: An excavation. The difference between a point on the original ground and a designated point of lower elevation on the final grade. Also, the material removed in excavation.

Development Project: Any construction, reconstruction, demolition, or removal of structures, roadways, parking, or other paved areas, utilities, or other similar facilities, including any action requiring a building permit by the City.

Erosion: The removal of mineral and/or organic matter by the action of wind, water and/or gravity.

Excavate: Any act by which earth, sand, gravel, rock or any other similar material is dug into, cut, quarried, uncovered, removed, displaced, relocated or bulldozed, and shall include the conditions resulting therefrom.

Fill: Any act by which earth, sand or other material is placed or moved to a new location above-ground. The fill is also the difference in elevation between point of existing undisturbed ground and a designated point of higher elevation of the final grade. Fill also includes material added to an excavation.

Land Disturbing Activity: Any physical land altering activity which includes such actions as clearance of vegetation, moving or filling of land, removal or excavation of soil or mineral resources, or similar activities.

Sediment: Solid material, both mineral and/or organic, that is in suspension, being transported or has been moved from its site of origin by wind, water, and/or gravity as a product of erosion.

Soil Erosion & Sediment Control Plan: The (approved) document required before any person(s) may cause disturbance to the natural terrain within the City as herein regulated. Also, herein referred to as Erosion and Sediment Control Plan, approved Plan.

Runoff: The surface water discharge or rate of discharge of a given watershed after rainfall or snowfall and including seepage flows that do not enter the soil but runoff the surface of the land. Also, that portion of water that is not absorbed by the soil, but runs off the land's surface.

Watercourses: The term watercourse shall be held to mean any tidewater or coastal wetland at its mean high water level, and any freshwater wetland at its seasonal high water level, including but not limited to, any river, stream, brook, pond, lake, swamp, marsh bog, fen, wet meadow, or any other standing or flowing body of water. The edge of the watercourse as herein defined shall be used for delineation purposes.

IN CITY COUNCIL
NOV 17 2005
FIRST READING
READ AND PASSED

Claire E. Bishara
First Deputy
CLERK

IN CITY
COUNCIL

DEC 1 2005
FINAL READING
READ AND PASSED

Claire E. Bishara
First Deputy
CLERK

APPROVED

[Signature] 12/8/05

MAYOR