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ORDINANCE 22-0614-01

AN ORDINANCE OF THE CITY OF WHITEHOUSE, TEXAS, ESTABLISHING SOIL EROSION AND SEDIMENTATION CONTROL; REQUIRING THAT PROPERTY OWNERS, DEVELOPERS AND BUILDERS MAINTAIN THEIR PROPERTY IN SUCH A MANNER AS TO PREVENT EXCESSIVE EROSION OF THE SOIL; ESTABLISHING MINIMUM REQUIREMENTS AND PROCEDURES TO CONTROL THE ADVERSE EFFECTS OF INCREASED SEDIMENTATION AND SOIL EROSION; ESTABLISHING ADMINISTRATIVE PROCEDURES FOR DEVELOPMENT AND APPLICATION OF AN EROSION CONTROL PLAN; PROVIDING FOR THE COLLECTION AND ADMINISTRATION OF EROSION CONTROL DEPOSITS; ESTABLISHING GUIDELINES FOR THE ISSUANCE OF EROSION CONTROL PERMITS; PROVIDING FOR CIVIL AND CRIMINAL ENFORCEMENT; PROVIDING A PENALTY FOR FAILURE TO COMPLY; PROVIDING A SEVERABILITY CLAUSE; REPEALING CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS the City Council of the City of Whitehouse finds that it is in the best interest of the citizens of the City Whitehouse to establish the regulations for soil and erosion and sedimentation control within the city limits.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHITEHOUSE, TEXAS, THAT:

SECTION 1. Lands to which this article applies.

Private property owners, developers or builders shall be accountable for the movement of soil from their property or construction site which results in accumulation of sediment in dedicated streets, alleys, lakes, ponds, any waterway or other private properties. Any accumulation or deposit of soil material beyond the limits of the property or in city streets, alleys or drainage facilities in an amount sufficient to constitute a threat to public health, safety and comfort as determined by the Director of Public Works or their designee shall constitute a nuisance and violation of this article. The only exceptions to this provision are lands under active agricultural use. As soon as construction or modification to the exempted land is to begin so that the use of the land will change from agricultural to any other use, then the land shall lose its exemption and become subject to the provisions of this article.

SECTION 2. General Guidelines.

- (a) Maximum use shall be made of vegetation to minimize soil loss.
- (b) Natural vegetation should be retained wherever possible.
- (c) Where inadequate natural vegetation exists, or where it becomes necessary to remove existing natural vegetation, temporary controls (best management practices) should be installed promptly to minimize soil loss and ensure that erosion and sedimentation does not occur.
- (d) Wherever possible during construction, erosion controls shall be used on hillsides to slow drainage flow rate and prevent the movement of soil.
- (e) Erosion control elements should be implemented as soon as practical in the development process.
- (f) Waste or disposal areas and construction roads shall be located and constructed in a manner that will minimize the amount of sediment entering streams.
- (g) Frequent fording of live streams will not be permitted; therefore, temporary bridges or other structures shall be used wherever an appreciable number of stream crossings are necessary. Temporary crossings shall be designed and constructed to pass a minimum of a ten-year flow and so as to not divert larger flow in such a way as to cause flooding of or damage to public or private property or improvements.

- (h) When work areas or material sources are located in or adjacent to live streams, such areas shall be separated from the stream by a dike or other barrier to keep sediment from entering a flowing stream. Care shall be taken during the construction and removal of such barriers to minimize the sediment transport into a stream.
- (i) Should preventative measures fail to function effectively, the applicant shall act immediately to bring the erosion and/or siltation under control by whatever additional means are necessary.
- (j) Erosion control devices shall be placed to trap any losses from stockpiled topsoil.
- (k) The selection and timing of the installation of erosion controls shall be based upon weather and seasonal conditions that could make certain controls not practicable.
- (l) All soil disturbing activities at the site have been completed and a uniform (that is, evenly distributed, without large bare areas) perennial vegetative cover with a density of at least 70% of the native background vegetative cover for the area has been established on all 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.
- (m) Off-site runoff shall be safely diverted away from construction areas to the extent it is practical to do so.
- (n) Stripping of vegetation from project sites shall be phased so as to expose the minimum amount of area to soil erosion for the shortest possible period of time. Phasing shall also consider the varying requirements of an erosion control plan at different stages of construction.
- (o) Developers, builders, or owners of property shall install all utilities, including franchise utilities, before final acceptance of a subdivision, property and/or structure. Final acceptance will also be contingent upon having all necessary erosion control measures installed to minimize off-site sediment deposition. A site may be accepted at the discretion of the Director of Public Works, without erosion control measures if perennial vegetative cover is established and actively growing and if all conditions of any permits (including 404, SWPPP, etc.) have been met prior to acceptance.

SECTION 3. Required

- (a) Application of article: A responsible party engaging in any land disturbing activity or any construction activities shall prepare an erosion control plan and submit that plan to the Director of Public Works for approval. This article shall apply regardless of whether a responsible party is required to obtain a permit from the City in order to conduct such land disturbing or construction activity. The responsible party shall also be held liable for violations of this article committed by third parties engaging in activities related to the responsible party's project.
- (b) Erosion control plan implementation and compliance: Each responsible party shall implement and maintain the erosion control measures shown on its approved erosion control plan in order to minimize the erosion and the transport of silt, earth, topsoil, etc., by water runoff or construction activities, beyond the limits of the responsible party's site onto city streets, drainage easements, drainage facilities, storm drains of other city property prior to beginning any land disturbing activity.
- (c) Off-site borrow, spoil and staging areas: Where applicable, off-site borrow areas, spoil areas and construction staging areas shall be considered as part of the project site and shall be governed by this article.
- (d) Related land areas: The erosion control requirements of this article shall apply to all related land areas. Additionally, when land disturbing activity occurs on a project, all disturbed land areas related to the project shall have permanent erosion control established before final occupancy of structures located thereon or final acceptance of the subdivision may be obtained. This section applies whether or not a building permit is required.
- (e) Below ground installation: All discharges resulting from below ground installations shall be passed through City approved erosion control devices or removed from the site for proper disposal.

- (f) Grading upstream of lakes: In order to protect lakes from accelerated sediment accumulation due to development related grading, the Director of Public Works or their designee may require a pre-grading sediment survey of a lake with a surface area of greater than five acres prior to any significant grading activity in the watershed of the lake. The survey shall be conducted by the city at the developer's or contractor's expense to establish the base level of sediment in the lake. Upon completion of the project, a post-construction survey shall be conducted by the City at the developer's or contractor's expense. The developer or contractor shall be responsible for removal of additional accumulated sediment in the lake based on the difference between the pre-and post-construction surveys. If multiple grading projects are ongoing in the watershed of the lake, the survey costs may be shared on a prorata basis.

SECTION 4. Plans

Each erosion control plan required by this article shall clearly identify all erosion and sediment control measures to be installed and maintained throughout the duration of the project for which that plan is submitted. The responsible party shall install and maintain erosion control devices in accordance with this City approved erosion control plan as required by this article.

SECTION 5. Nonresidential and multifamily construction

When construction or land disturbing activities are conducted as part of a nonresidential or multifamily construction project, permanent erosion control shall be established prior to the occupancy of any nonresidential or multifamily structure. Phased occupancy will be allowed only when there are no outstanding erosion control violations for the project for which the request is made.

SECTION 6. Residential subdivisions; compliance

In addition to the other requirements of this article, when construction or land disturbing activities are conducted as part of a residential subdivision project, the following shall apply:

- (a) Inspections: No inspection of any type may be performed on a project or portion thereof until a City approved erosion control plan is implemented by the responsible party. Upon two or more violations of the erosion control standards of the stormwater ordinance, a stop work order may be issued until all issues have been corrected and all fines and fees have been paid.
- (b) Final acceptance: Permanent erosion control devices and when applicable, temporary erosion control devices, as specified in the approved erosion control plan shall be installed and maintained prior to final acceptance of a subdivision. The developer for such subdivision shall continue to maintain all temporary erosion control devices until permanent erosion control has been established on all those lots within the subdivision for which a building permit has not been issued.
- (c) Transfer of property by developer: If the developer sells all of the lots in a subdivision to one purchaser, that purchaser becomes the responsible party for the subdivision, is liable for violation of this article
- (d) Stop work orders/citation:
 - (1) The City shall inspect the erosion control devices located at a site for compliance with the approved erosion control plan submitted by a developer. If a developer fails to implement or maintain erosion control devices as specified in the approved erosion control plan, the City shall provide such party with written notice of noncompliance identifying the nature of the noncompliance. Such notice shall also inform the developer of the circumstances under which a stop work order or citation may be issued and the time frame for the filing of an appeal of such action by the City. The developer shall

have 24 hours to bring the erosion control devices into compliance with the approved erosion control plan for the site to which notice of noncompliance was issued. Correction shall include sediment clean-up, erosion control device repair, erosion control device maintenance and/or installation of additional erosion control devices to prevent re-occurrence of the violation. The 24-hour cure period, may be extended for inclement weather or other factors at the discretion of the Director of Public Works.

- (2) At the end of 24-hour cure period, the City shall reinspect the site and shall charge a reinspection fee as determined from time to time by City Council. If at the time of such reinspection, the erosion control devices at the site have not been brought into compliance with the approved erosion control plan, the City may issue a stop work order and issue a citation for each violation of this article.
- (3) If a violation is not resolved within the 24-hour cure period, the City may, at its sole discretion, cause erosion control devices to be installed or repaired, sediment to be removed, or take other actions necessary to correct the problem. Costs for such work, an administration fee, and reinspection fees shall be charged to the responsible party. Stop work orders shall be issued until the total amount of charges is paid by the developer. A citation shall also be issued for each violation in which the City acts to cure the violation. The responsible party shall have the right of appeal as set forth in Section 9.

SECTION 7. Residential lots with a building permit

When land disturbing activities are conducted on a residential lot for which a building permit must be issued, the responsible party shall comply with the following:

- (a) Erosion control plan and permit: Prior to City approval of a building permit for a residential lot by the City, the builder/contractor or other responsible party obtaining the building permit shall submit an erosion control plan for approval by the City and shall obtain an erosion control permit for the subdivision or any respective phase of a subdivision, as the City deems appropriate. The erosion control plan shall apply to all sites under control of the builder/contractor within the subdivision. The erosion control plan shall indicate all lots controlled by the applicant at the time of issuance. A single erosion control permit shall be issued for all lots under control or coming into the control of the builder/contractor within the subdivision for the duration of the permit, which duration shall be one year. Upon expiration, a new plan and permit shall be required. No building permits shall be issued until the erosion control permit has been obtained. No inspection may be performed on a project until a City-approved erosion control plan is implemented.
- (b) Stop work order/citation:

- (1) The City shall inspect the erosion control devices located at a site for compliance with the approved erosion control plan submitted for such site. If a responsible party fails to implement or maintain erosion control devices as specified in the approved erosion control plan, the City shall provide such party with written notice on noncompliance identifying the nature of such noncompliance. The responsible party shall have 24 hours to bring the erosion control devices into compliance with the approved erosion control plan for the site where the violation occurred. Modifications to the approved erosion control plan may be required to maintain all sediment on site. Correction shall include sediment clean-up, erosion control device repair, erosion control device maintenance, and/or installation of additional erosion control devices to prevent reoccurrence of the violation. The 24-hour cure period may be extended for inclement weather or other factors at the discretion of the building official. Other inspections shall be delayed until all erosion control violations have been corrected and a reinspection has been performed. A reinspection fee may be assessed, and any reinspection fees assessed shall be paid prior to the reinspection.

- (2) At the end of the 24-hour cure period, the City shall reinspect the site. If at the time of such reinspection, the erosion control devices at the site have not been brought into compliance with the approved erosion control plan, the City may avail itself of any or all of the following, which shall not be exclusive:
 - a. Issue a Stop Work Order;
 - b. Revoke the Erosion Control Permit; or
 - c. Issue a citation for each violation of the City's erosion control requirements
 - (3) The stop work order may apply to all sites subject to the erosion control permit or may apply to specific sites, at the discretion of the Building Official. When a stop work order has been issued, a re-inspection fee shall be assessed on each lot that was identified as being in violation of the erosion control permit. Re-inspection fees shall be doubled for second and subsequent violations of the erosion control permit on a specific site. To obtain a reinspection for removal of the stop work order, a request must be submitted therefore and the re-inspection fee, as set by the Building Official, shall be paid.
 - (4) If any soil or material is deposited, by natural event or by an actor (property owner, builder, permittee, or responsible party), on the right-of-way adjacent to a residential lot or upon any adjacent lot, in violation of any provision of this section or of any state statute regulating soil erosion, and the identity of the actor cannot be determined, the owner or person in whose name the permit was issued is presumed to be the person who caused or failed to prevent the deposit of soil or material from a lot to the adjacent right-of-way or to an adjacent lot. This presumption is rebuttable and shall have the effects and consequences set forth in V.T.C.A., Penal Code § 2.05, and as it may be amended. The City records relative to the permit are prima facie evidence of the contents of the record.
 - (5) If the erosion control devices have been properly installed and maintained, but the intent of the approved control plan (maintaining sediment on site) is not met, the responsible party shall take action within 24 hours to control soil eroding from the site and clean up any sediment and shall have one week to submit a new erosion control plan. Work may continue during the review period. Implementation of this plan will be required within 24 hours of plan approval by the Director of Public Works or their designee. If no plan is submitted within one week, then construction activities shall be halted until a new plan is submitted and approved.
- (c) Removal of erosion control devices: Upon issuance of a certificate of occupancy or upon establishing permanent ground cover on a lot, all temporary erosion control devices shall be removed and legally disposed of.

SECTION 8. Enforcement

- (a) Violations: It shall be an offense for a responsible party or a third party performing work on a project to violate any of the requirements of this article, including, but not limited to, the following:
- (1) Conducting any land disturbing or construction activity without an approved erosion control plan for the location where the violation occurred;
 - (2) Failing to install erosion control devices or to maintain erosion control devices throughout the duration of land disturbing activities, in compliance with the approved erosion control plan for the location where the violation occurred;
 - (3) Failing to remove off-site sedimentation that is a direct result of land disturbing activities where such off-site sedimentation results from the failure to implement or maintain erosion control devices as specified in an approved erosion control plan for the location where the violation occurred;

- (4) Allowing sediment-laden water resulting from belowground installations to flow from a site without being treated through an erosion control device; or
 - (5) Failing to repair damage to existing erosion control devices, including replacement of existing grass or sod.
- (b) Notice of violation: Written notice of violation shall be given to the responsible party or the job site representative as identified in the erosion control plan for a site. Such notice shall identify the nature of the alleged violation and the action required to obtain compliance with the intent of the approved erosion control plan.
 - (c) Class C misdemeanor: Any person, firm, or corporation performing land disturbing activities and violating any of the provisions or terms of this article and not complying within the time periods stated in this article shall be deemed guilty of a class C misdemeanor and, upon conviction thereof, be subject to a fine not exceeding \$2,000.00 for each offense, and each and every day, such violation shall continue shall be deemed to constitute a separate offense.

SECTION 9. Appeals

- (a) Appeal to City Manager: Upon notice of noncompliance, a responsible party may appeal the City's decision to assess fines or fees pursuant to Section 6, by filing a written appeal to the City Manager within seven days of the City's written notice of its intent to make such deduction for costs as allowed herein. An appeal filed pursuant to this section shall specifically state the bases for the aggrieved party's challenge to the City's authority to take deductions under this article.
- (b) Standard for appeals: When reviewing an appeal filed pursuant to this section, the City Manager shall evaluate all evidence submitted. The burden of proving that a violation of this article occurred shall be on the City. The City shall provide evidence sufficient to reasonably support a determination that the responsible party failed to comply with the requirements of this article as alleged by the City.
- (c) Issuance of opinion by City Manager: Decisions of the City Manager shall be issued within 20 days of the City's receipt of the written appeal. Decisions of the City Manager shall be final.

SECTION 10. Severability clause

If any section, subsection, article, paragraph, sentence, clause, phrase or word in this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 11. Repeal of conflicting ordinances

All ordinances, orders and resolutions heretofore passed and adopted by the City Council of the City of Whitehouse, Texas are hereby repealed to the extent said ordinances, orders or resolutions or parts thereof are in conflict herewith.

SECTION 12. Effective date

The fact that the present ordinances and regulations of the City of Whitehouse, Texas, are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the inhabitants of the City of Whitehouse, Texas, creates an emergency for the immediate preservation of public business, property, health,

safety and general welfare of the public that requires that this Ordinance shall become effective from and after the date of its passage and it is accordingly so ordained.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF WHITEHOUSE, TEXAS, THIS THE 14th DAY OF JUNE 2022.

A handwritten signature in black ink, appearing to read 'James Wansley', written over a horizontal line.

James Wansley – Mayor

Attested by:

A handwritten signature in black ink, appearing to read 'Susan Hargis', written over a horizontal line.

Susan Hargis - City Secretary