

O-XXX-22

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF WILSON
TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE (UDO)
TO INCORPORATE PROVISIONS FOR SOME TECHNICAL
CHANGES AND MODIFICATIONS TO DEVELOPMENT
STANDARDS WITHIN CHAPTER 12**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WILSON:

SECTION 1. That Chapter 12, entitled “Erosion, Flood, Stormwater and Watershed Standards,” in Section 12.3, entitled “Erosion and Sedimentation Control”, should be amended as follows:

12.3 EROSION AND SEDIMENTATION CONTROL *[Adapts City Code Part III Chapter 32.5]*

12.3.1 SCOPE AND EXCLUSIONS

- A. Land-Disturbing Activity:** This section shall apply to land-disturbing activity within the territorial jurisdiction of the City of Wilson and to the extraterritorial jurisdiction of the City of Wilson as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument or law.
- B. Applicability**
 - 1. Erosion control devices must be installed to prevent any offsite sedimentation for any construction site regardless of the size of the land disturbance, except as provided in Section 12.3.1.C, below, however;
 - 2. Land-disturbing activity of 1 acre in surface area or greater shall only be conducted in accordance with an approved erosion control plan and grading permit pursuant to the provisions of this section and the procedures set forth in Sections 15.7.1 and 15.7.2. In determining the area of land-disturbing activity, lands under being developed as a unit, whether under single or diverse ownership, will be aggregated.
- C. Exemptions:** This section shall not apply to the following types of land-disturbing activity:
 - 1. An activity, including production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture for the production of plants and animals useful to humans, including but not limited to:
 - a. Forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts;
 - b. Dairy animals and dairy products;
 - c. Poultry and poultry products;
 - d. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats;

- e. Bees and apiary products;
 - f. Fur-producing animals; and
 - g. Mulch, ornamental plants, and other horticultural products. For purposes of this section, “mulch” means substances composed primarily of plant remains or mixtures of such substances.
2. An activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract.
 3. An activity for which a permit is required under the Mining Act of 1971, Article 7 of NCGS Chapter 74.
 4. A land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in NCGS 113A-56(a).
 5. An activity which is essential to protect human life during an emergency.
 6. Activities undertaken to restore wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
 7. Activities undertaken pursuant to Natural Resources Conservation Service standards to restore wetlands functions of converted wetlands as defined in Title & Code of Federal Regulations § 12.2.
- D. Protection of Property:** Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.
- E. Land Disturbances Not Requiring a Permit:** Whenever land-disturbing activities disturb less than one acre and such disturbance is not part of a larger common plan of development, including without limitation a subdivision, an erosion and sedimentation control permit is not required. However, the person conducting the land disturbing activity must install and maintain erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during the development of said tract.
- F. Land Disturbances Not Requiring a Permit:** Whenever land-disturbing activities disturb less than one acre and such disturbance is not part of a larger common plan of development, including without limitation a subdivision, an erosion and sedimentation control permit is not required. However, the person conducting the land disturbing activity must install and maintain erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during the development of said tract
1. Must install a construction entrance, 12 foot in width and 20 foot in length or equivalent, at the access point(s) for construction vehicles;
 2. Must install silt fence on all sides of the lot that due to the contour and topography of the development site, the erosion control measure would

substantially and materially retain the sediment generated by the land-disturbing activity with the boundaries of the tract during construction upon and development of the tract.

3. Must install silt fence prior to the initial footing inspection conducted by the Erosion Control Inspector.
4. Areas within 25 feet of the edge of pavement or gravel of the road must be stabilized before issuance of a Certificate of Occupancy.
5. All uncovered areas that result from land disturbing activities, and are subject to continued and accelerated erosion, and are causing the movement of sediment offsite from the tract, must be provided with a ground cover or other protective measures, structures or devices sufficient to restrain accelerated erosion and control off-site sedimentation.
6. The property owner or agent must be given notice of responsibility for compliance at the issuance of a building permit for said land disturbing activity.
7. While a permit is not required for land disturbances of less than one acre that are not part of a larger common plan of development, the City retains the right to take enforcement actions and assess penalties if the movement of sediment offsite from the tract is observed during an inspection.
8. Notwithstanding the provisions of subsection (E) herein, a permit is not required for land disturbing activities that disturb less than one acre upon a lot for which a certificate of occupancy for a single-family dwelling previously has been issued.
9. Refer to the City of Wilson's Manual of Specifications, Standards, and Design (MSSD).

12.3.2 STANDARDS FOR LAND-DISTURBING ACTIVITY

No land-disturbing activity subject to the control of this section shall be undertaken except in accordance with the following mandatory standards:

- A. Construction Buffer Zone:** No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse as provided for in Section 8.9.3.
- B. Graded Slopes and Fills:** The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed shall be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion in accordance with the City of Wilson Manual of Specifications, Standards and Design. The angle for graded slopes and fills must be demonstrated to be stable, where the soil remains in its original configuration, with or without mechanical constraints.
- C. Fill Material:** Materials being used as fill shall be consistent with those described in 15A NCAC 13B .0562 unless the site is permitted by the Department's Division of Waste Management to operate as a landfill. Not all materials described in Section .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly.
- D. Ground Cover:** Whenever land-disturbing activity that will disturb one (1) acre or more on a residential common plan of development or half ($\frac{1}{2}$) acre on a commercial lot in a common plan of development is undertaken on a tract, the

person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in Section 32.5-8(b)(5) of this article, provisions for a ground cover sufficient to restrain erosion must be accomplished within ninety (90) calendar days following completion of construction or development.

- E. Prior Plan Approval:** No Person shall initiate any land-disturbing activity that will disturb more than one (1) acre on a residential common plan of development or half (1/2) acre for a commercial lot in a common plan of development. If more than the allowable acreage is to be uncovered then, thirty (30) or more days prior to initiating the activity, a plan for such activity is filed with and approved by the City of Wilson. The City of Wilson shall forward to the director of the division of water quality a copy of each plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract. For plans under the one (1) acre residential threshold and half (1/2) acre commercial threshold the erosion control plan will be submitted to NCDEMLR (Land Quality Section) for review and approval. The NCG01 permit will be issued separately by the state, but can't be issued until the erosion control plan approval is received; as this is a required step in the online NCG01 application process through the state's website.

12.3.3 VIOLATIONS

Any person engaged in land-disturbing activity who fails to file a Sedimentation and Erosion Control Plan in accordance with this section and Section 15.7.2, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan, shall be deemed in violation of this section and subject to the enforcement procedures outlined in Section 16.2.1.

12.3.4 BASIC CONTROL OBJECTIVES

An erosion and sedimentation control plan must address the following control objectives:

- A. Identify Critical Areas:** On-site areas which are subject to severe erosion and off-site areas which are especially vulnerable to damage from erosion.
- B. Limit Time of Exposure:** All land-disturbing activities are to be planned and conducted to limit exposure to the shortest time specified in G.S. 113A-57, the rules of the aforementioned Chapter, or as directed by the Approving Authority.
- C. Limit Exposed Areas:** All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- D. Control Surface Water:** Surface water runoff originating upgrate of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- E. Control Sedimentation:** All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
- F. Manage Stormwater Runoff:** When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving stormwater conveyance or at the point of discharge, a plan

is to include measures to minimize accelerated erosion of the site and within the project boundary and at the point of discharge.

12.3.5 DESIGN AND PERFORMANCE STANDARDS

- A. Typical Design Standards:** Except as provided in Section 12.3.5.B.2, below, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the 10-year storm. Runoff rates shall be calculated using the procedures in the United States Department of Agriculture (USDA), Natural Resources Conservation Service's "National Engineering Field Handbook," or other acceptable calculation procedures.

12.3.6 STORMWATER OUTLET PROTECTION

- A. Intent:** Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.
- B. Performance Standard:** Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
1. The velocity established by the Maximum Permissible Velocities Table below; or
 2. The velocity of the 10-year storm runoff in the receiving watercourse prior to development.

If condition (1) or (2) of this paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by 10%.

C. Maximum Permissible Velocities Table

Material	Feet Per Second	Meters Per Second
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

- D. Acceptable Management Measures:** Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The city recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may

be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

1. Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
2. Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
3. Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
4. Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
5. Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

E. Exceptions: This rule shall not apply where it can be demonstrated to the city that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

12.3.7 BORROW AND WASTE AREAS

When the Person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the NCDENR Division of Waste Management, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the Person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

12.3.8 ACCESS AND HAUL ROADS

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

12.3.9 OPERATIONS IN LAKES OR NATURAL WATERCOURSES

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristics.

12.3.10 RESPONSIBILITY FOR MAINTENANCE

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved erosion and sedimentation control plan or any provision of this section, the North Carolina Sedimentation Pollution Control Act of 1973, or any order adopted pursuant to this section or that Act. After site development, the landowner or person in possession or control of the land shall install

and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

12.3.11 ADDITIONAL MEASURES

Whenever the city determines that accelerated erosion and sedimentation continues despite installation and maintenance of protective practices, the City shall direct the Person conducting the land-disturbing activity to take additional protective action to achieve compliance with the conditions specified in the Act or its rules.

12.3.12 INSPECTIONS

A. Inspection: Agents, officials, or other qualified persons authorized by the city will periodically inspect land-disturbing activities to ensure compliance with the North Carolina Sedimentation Pollution Control Act of 1973, this section, or rules or orders adopted or issued pursuant to this section, and to determine whether the measures required in the erosion and sedimentation control plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each erosion and sedimentation control plan.

B. Self-Inspection: The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the erosion and sedimentation control plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with NCGS 113A-57(2). In addition, weekly and rain-event self-inspections are required by federal regulations. The Person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion and sedimentation control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by NCGS 113A-61.1.

Where inspections are required by Section B of this Ordinance or G.S. 113A-54.1(e), the following apply:

1. The inspection shall be performed during or after each of the following phases of the plan;
 - a. initial installation of erosion and sediment control measures;
 - b. clearing and grubbing of existing ground cover;
 - c. completion of any grading that requires ground cover;
 - d. completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
 - e. transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or Person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item (iii) of this Item.
2. Documentation of self-inspections performed under Item (1) of this Rule shall include:
 - a. Visual verification of ground stabilization and other erosion control

- measures and practices as called for in the approved plan;
- b. Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
 - c. The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.
 - d. A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. For the purpose of this Rule, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

- C. Willful Resistance, Delay or Obstruction:** No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the city while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

SECTION 2. That any violation of this ordinance shall subject the offender to a civil penalty to be recovered by the City in a civil action in the nature of a debt if the offender does not pay any penalty called for hereunder within the prescribed period of time after being cited for violation of the ordinance.

SECTION 3. That this ordinance may be enforced by an appropriate, equitable remedy such as injunction or order of abatement issued from any court of competent jurisdiction.

SECTION 4. That this ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed above.

SECTION 5. That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 6. That if any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 7. That this ordinance shall become effective immediately upon its adoption.

DULY ADOPTED this 16th day of June, 2022.

Carlton L. Stevens, Mayor

ATTEST:

Tonya A. West, City Clerk

PROJECT # 22-00000176