

ORDINANCE NO. 200

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF BETHEL HEIGHTS, ARKANSAS CONCERNING GRADING, EROSION CONTROL, AND STORMWATER POLLUTION PREVENTION, PROVIDING FOR THE EMERGENCY CLAUSE AND FOR OTHER PURPOSES

WHEREAS, the City Council of the City of Bethel Heights, Arkansas believes it to be in the best interest of the citizens of the city to enact provisions governing construction grading, erosion control during construction projects and the prevention of stormwater pollution, and

WHEREAS, the City of Bethel Heights has desired to take a stronger position concerning the practices used by contractors and builders in the above-stated areas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BETHEL HEIGHTS, ARKANSAS:

SECTION 1: That the Code of Ordinances of the City of Bethel Heights, Arkansas, is hereby amended by adding the following:

City of Bethel Heights, Arkansas

Stormwater Pollution Prevention, Grading, And Erosion Control

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SECTION 1

GENERAL PROVISIONS

(A) Purposes

The purpose and objectives of this Article are as follows:

1. To maintain and improve the quality of water impacted by the storm drainage system within the City of Bethel Heights.
2. To prevent the discharge of contaminated stormwater runoff and illicit discharges from industrial, commercial, residential, and construction sites into the storm drainage system within the City of Bethel Heights.
3. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the storm drainage system.
4. To encourage recycling of used motor oil and safe disposal of other hazardous consumer products.
5. To facilitate compliance with state and federal standards and permits by owners of construction sites within the City.
6. To enable the City to comply with all federal and state laws and regulations applicable to the National Pollutant Discharge Elimination System (NPDES) permitting requirements for stormwater discharges.

(B) Administration

Except as otherwise provided herein; the City Engineer or other designated representative shall administer, implement, and enforce the provisions of this Article.

(C) Abbreviations

The following abbreviations when used in this Article shall have the designated meanings:

ADEQ – Arkansas Department of Environmental Quality

BMP - Best Management Practices

CFR - Code of Federal Regulations

EPA - U.S. Environmental Protection Agency

HHW - Household Hazardous Waste

MS4 - Municipal Separate Storm Sewer System

NPDES - National Pollutant Discharge Elimination System

SWP3 - Stormwater Pollution Prevention Plan

(D) Definitions

Unless a provision explicitly states otherwise, the following terms and phrases as used in this Article, shall have the meanings hereinafter designated.

Best Management Practices (BMP's) here refers to management practices and methods to control pollutants in stormwater. BMP's are of two types: "source controls" (nonstructural) and "treatment controls" (structural). Source controls are practices that prevent pollution by reducing potential pollutants at their source, before they come into contact with stormwater. Treatment controls remove pollutants from stormwater. The selection, application and maintenance of BMP's must be sufficient to prevent or reduce the likelihood of pollutants entering the storm drainage system. Specific BMP's shall be imposed by the City and a list of appropriate BMP's can be obtained from the City.

City means the City of Bethel Heights, Arkansas.

Clearing means the act of cutting, removing from the ground, burning, damaging or destroying trees, stumps, hedge, brush, roots, logs, or scalping existing vegetation.

Commercial means pertaining to any business, trade, industry, or other activity engaged in for profit.

Construction Site means any location where construction activity occurs.

Contaminated means containing harmful quantities of pollutants.

Contractor means any person or firm performing or managing construction work at a construction site, including any construction manager, general contractor or subcontractor. Also includes, but is not limited to, earthwork, paving, building, plumbing, mechanical, electrical or landscaping contractors, and material suppliers delivering materials to the site.

Discharge means any addition or release of any pollutant, stormwater or any other substance whatsoever into storm drainage system.

Discharger means any person who causes, allows, permits, or is otherwise responsible for, a discharge, including, without limitation, any owner of a construction site or industrial facility.

Domestic Sewage means sewage originating primarily from kitchen, bathroom and laundry sources, including waste from food preparation, dishwashing, garbage grinding, toilets, baths, showers and sinks.

Earthwork means the disturbance of soils on a site associated with clearing, grading, or excavation activities.

Environmental Protection Agency (EPA) means the United States Environmental Protection Agency, the regional office thereof, any federal department, agency, or commission that may succeed to the authority of the EPA, and any duly authorized official of the EPA or such successor agency.

Facility means any building, structure, installation, process, or activity from which there is or may be a discharge of a pollutant.

Fertilizer means a substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers.

Garbage means putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

Grading means any land altering activity, including stripping top soil, excavating, cutting, filling or similar construction activity.

Groundwater means any water residing below the surface of the ground or percolating into or out of the ground.

Harmful Quantity means the amount of any substance that the City Engineer determines will cause an adverse impact to storm drainage system or will contribute to the failure of the City to meet the water quality based requirements of the NPDES permit for discharges from the MS4.

Hazardous Substance means any substance listed in Table 302.4 of 40 CFR Part 302.

Hazardous Waste means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

Household Hazardous Waste (HHW) means any material generated in a household (including single and multiple residences) that would be classified as hazardous.

Illegal Discharge see illicit discharge below.

Illicit Discharge means any discharge to the storm drainage system that is prohibited under this Article.

Illicit Connection means any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drainage system.

Industrial Waste (or commercial waste) means any wastes produced as a byproduct of any industrial, institutional or commercial process or operation, other than domestic sewage.

Land Alteration means the process of grading, clearing, filling, excavating, quarrying, tunneling, trenching, construction or similar activities

Mechanical Fluid means any fluid used in the operation and maintenance of machinery, vehicles and any other equipment, including lubricants, antifreeze, petroleum products, oil and fuel.

Mobile Commercial Cosmetic Cleaning (or mobile washing) means power washing, steam cleaning, and any other method of mobile cosmetic cleaning, of vehicles and/or exterior surfaces, engaged in for commercial purposes or related to a commercial activity.

Municipal Separate Storm Sewer System (MS4) means the system of conveyances, including roads, streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins and ponds owned and operated by the City and designed or used for collecting or conveying stormwater, and not used for collecting or conveying sanitary sewage.

NPDES means the National Pollutant Discharge Elimination System.

NPDES Permit means a permit issued by EPA that authorizes the discharge of pollutants to Waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Notice of Violation means a written notice detailing any violations of this Article and any action expected of the violators.

Oil means any kind of oil in any form, including, but not limited to: petroleum, fuel oil, crude oil, synthetic oil, motor oil, cooking oil, grease, sludge, oil refuse, and oil mixed with waste.

Owner means the person who owns a facility, part of a facility, or land.

Person means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, state, and local governmental entities.

Pesticide means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest.

Pet Waste (or Animal Waste) means excrement and other waste from domestic animals.

Petroleum Product means a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel or lubricant in a motor vehicle or aircraft, including motor oil, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel.

Pollutant means any substance attributable to water pollution, including but not limited to rubbish, garbage, solid waste, litter, debris, yard waste, pesticides, herbicides, fertilizers, pet

waste, animal waste, domestic sewage, industrial waste, sanitary sewage, wastewater, septic tank waste, mechanical fluid, oil, motor oil, used oil, grease, petroleum products, antifreeze, surfactants, solvents, detergents, cleaning agents, paint, heavy metals, toxins, household hazardous waste, small quantity generator waste, hazardous substances, hazardous waste, soil and sediment.

Pollution means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animal life, plant life, property, or public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Potable Water means water that has been treated to drinking water standards and is safe for human consumption.

Private Drainage System means all privately or publicly owned ground, surfaces, structures or systems, excluding the MS4, that contribute to or convey stormwater, including but not limited to, roofs, gutters, downspouts, lawns, driveways, pavement, roads, streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins, ponds, draws, swales, streams and any ground surface.

Qualified Person means a person who possesses the required certification, license, or appropriate competence, skills, and ability as demonstrated by sufficient education, training, and/or experience to perform a specific activity in a timely and complete manner consistent with the regulatory requirements & generally accepted industry standards for such activity.

Release means to dump, spill, leak, pump, pour, emit, empty, inject, leach, dispose or otherwise introduce into the storm drainage system.

Rubbish means non-putrescible solid waste, excluding ashes, that consist of: (A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

Sanitary Sewage means the domestic sewage and/or industrial waste that is discharged into the City sanitary sewer system and passes through the sanitary sewer system to the City sewage treatment plant for treatment.

Sanitary Sewer means the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the City sewage treatment plant (and to which stormwater, surface water, and groundwater are not intentionally admitted).

Sediment means soil (or mud) that has been disturbed or eroded and transported naturally by water, wind or gravity, or mechanically by any person.

Septic Tank Waste means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and aerated tanks.

Shall means mandatory; **may** means discretionary.

Site means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Solid Waste means any garbage, rubbish, refuse and other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, municipal, commercial, construction, mining or agricultural operations, and residential, community and institutional activities.

State means The State of Arkansas.

Storm Drainage System means all surfaces, structures and systems that contribute to or convey stormwater, including private drainage systems, the MS4, surface water, groundwater, Waters of the State and Waters of the United States.

Stormwater means runoff resulting from precipitation.

Stormwater Pollution Prevention Plan (SWP3) means a document that describes the Best Management Practices to be implemented at a site, to prevent or reduce the discharge of pollutants.

Subdivision Development includes activities associated with the platting of any parcel of land into two or more lots and includes all construction activity taking place thereon.

Surface Water means water bodies and any water temporarily residing on the surface of the ground, including oceans, lakes, reservoirs, rivers, ponds, streams, puddles, channelized flow and runoff.

Uncontaminated means not containing harmful quantities of pollutants.

Used Oil (or Used Motor Oil) means any oil that as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties.

Utility Agency means private utility companies, City departments or contractors working for private utility companies or City departments, engaged in the construction or maintenance of utility distribution lines and services, including water, sanitary sewer, storm sewer, electric, gas, telephone, television and communication services.

Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Water of the State (or water) means any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, inside the territorial limits of the State, and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the State or inside the jurisdiction of the State.

Water Quality Standard means the designation of a body or segment of surface water in the State for desirable uses and the narrative and numerical criteria deemed by State or Federal regulatory standards to be necessary to protect those uses.

Waters of the United States means all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and the flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal

definition of "waters of the United States" at 40 CFR Section 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the Federal Clean Water Act.

Wetland means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Yard Waste means leaves, grass clippings, tree limbs, brush, soil, rocks or debris that result from landscaping, gardening, yard maintenance or land clearing operations.

SECTION 2.

PROHIBITIONS AND REQUIREMENTS

(A) Prohibitions

1. No person shall release or cause to be released into the storm drainage system any discharge that is not composed entirely of uncontaminated stormwater, except as allowed herein. Common stormwater contaminants include trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste and sediment.
2. Any discharge shall be prohibited by this Section if the discharge in question has been determined by the City Council to be a source of pollutants to the storm drainage system.
3. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
4. No person shall connect a line conveying sanitary sewage, domestic sewage or industrial waste, to the storm drainage system, or allow such a connection to continue.
5. No person shall maliciously destroy or interfere with BMP's implemented pursuant to this Article.

(B) Exemptions

1. The following non-stormwater discharges are deemed acceptable and not a violation of this Section:
 - a. A discharge authorized by an NPDES permit other than the NPDES permit for discharges from the MS4;
 - b. Uncontaminated waterline flushing and other infrequent discharges from potable water sources;
 - c. Infrequent uncontaminated discharge from landscape irrigation or lawn watering;
 - d. Discharge from the occasional non-commercial washing of vehicles on any property regardless of zoning.
 - e. Uncontaminated discharge from foundation, footing or crawl space drains, sump pumps and air conditioning condensation drains;
 - f. Uncontaminated groundwater, including rising groundwater, groundwater infiltration into storm drains, pumped groundwater and springs;
 - g. Diverted stream flows and natural riparian habitat or wetland flows;
 - h. A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials.

(C) Requirements Applicable to Certain Dischargers

1. **Private Drainage System Maintenance.** The owner of any private drainage system shall maintain the system to prevent or reduce the discharge of pollutants. This maintenance shall include, but is not limited to, sediment removal, bank erosion repairs, maintenance of vegetative cover, and removal of debris from pipes and structures.
2. **Minimization of Irrigation Runoff.** A discharge of irrigation water that is of sufficient quantity to cause a concentrated flow in the storm drainage system is prohibited. Irrigation

systems shall be managed to reduce the discharge of water from a site.

3. **Cleaning of Paved Surfaces Required.** The owner of any paved parking lot, street or drive shall clean the pavement as required to prevent the buildup and discharge of pollutants. The visible buildup of mechanical fluid, waste materials, sediment or debris is a violation of this ordinance. Paved surfaces shall be cleaned by dry sweeping, wet vacuum sweeping, collection and treatment of wash water or other methods in compliance with this Code. This section does not apply to pollutants discharged from construction activities.
4. **Maintenance of Equipment.** Any leak or spill related to equipment maintenance in an outdoor, uncovered area shall be contained to prevent the potential release of pollutants. Vehicles, machinery and equipment must be maintained to reduce leaking fluids.
5. **Materials Storage.** In addition to other requirements of this Code, materials shall be stored to prevent the potential release of pollutants. The uncovered, outdoor storage of unsealed containers of hazardous substances is prohibited.
6. **Pet Waste.** Pet waste shall be disposed of as solid waste or sanitary sewage in a timely manner, to prevent discharge to the storm drainage system.
7. **Pesticides, Herbicides and Fertilizers.** Pesticides, herbicides and fertilizers shall be applied in accordance with manufacturer recommendations and applicable laws. Excessive application shall be avoided.
8. **Prohibition on Use of Pesticides and Fungicides Banned from Manufacture.** Use of any pesticide, herbicide or fungicide, the manufacture of which has been either voluntarily discontinued or prohibited by the Environmental Protection Agency, or any Federal, State or City regulation is prohibited.
9. **Open Drainage Channel Maintenance.** Every person owning or occupying property through which an open drainage channel passes shall keep and maintain that part of the drainage channel within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or retard the flow of water through the drainage channel. In addition, the owner or occupant shall maintain existing privately owned structures adjacent to a drainage channel, so that such structures will not become a hazard to the use, function, or physical integrity of the drainage channel.

(D) Release Reporting and Cleanup

Any person responsible for a known or suspected release of materials which are resulting in or may result in illegal discharges to the storm drainage system shall take all necessary steps to ensure the discovery, containment, abatement and cleanup of such release. In the event of such a release of a hazardous material, said person shall comply with all state, federal, and local laws requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release. In the event of such a release of non-hazardous materials, said person shall notify the City no later than 5:00 p.m. of the next business day.

(E) Authorization to Adopt and Impose Best Management Practices

The City may adopt and impose requirements identifying Best Management Practices for any activity, operation, or facility, which may cause a discharge of pollutants to the storm drainage system. Where specific BMP's are required, every person undertaking such activity or operation, or owning or operating such facility shall implement and maintain these BMP's at their own expense.

SECTION 3.

STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES.

(A) General Requirements for Construction Sites

1. The owner of a site of construction activity shall be responsible for compliance with the requirements of this ordinance.
2. **Before construction can begin, the contractor is required to install the erosion control devices and BMPs required in the SWPPP that are necessary and able to be installed. Once this has been done, the contractor shall notify the City and an inspection will be completed by City or other authorized personnel. Upon acceptance of the erosion control device and BMP installation, a pre-construction conference will be scheduled. Construction may begin upon City approval following the pre-construction conference.**
3. Waste Disposal. Solid waste, industrial waste, yard waste and any other pollutants or waste on any construction site shall be controlled through the use of Best Management

Practices. Waste or recycling containers shall be provided and maintained by the owner or contractor on construction sites where there is the potential for release of waste. Uncontained waste that may blow, wash or otherwise be released from the site is prohibited.

4. Ready-mixed concrete, or any materials resulting from the cleaning of vehicles or equipment containing or used in transporting or applying ready-mixed concrete, shall be contained on construction sites for proper disposal. Release of these materials is prohibited.
5. Erosion and Sediment Control. Best Management Practices shall be implemented to prevent the release of sediment from construction sites. Disturbed areas shall be minimized, disturbed soil shall be managed and construction site entrances shall be managed to prevent sediment tracking. Excessive sediment tracked onto public streets shall be removed immediately.
6. Erosion and Sediment Control. No construction of any development may proceed nor may a Developer receive a Building Permit nor may Final Plat approval be issued for a subdivision without an approved bond being posted for the cost of the site development work that would cause land disturbing activity unless the Developer has:
 - a. The approved drainage and/or detention facilities constructed and certified by the project Engineer of Record with "As-built" plans being submitted to the City.
 - b. If determined necessary by the City Engineer, an Erosion Control Plan must be submitted for approval.
7. For purposes of this Ordinance, "land disturbing activity" means any use of land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause to contribute to sedimentation, except for ordinary agricultural practices, City, County, State, or Federally funded and authorized construction and maintenance. Sedimentation occurs whenever solid particulate matter, mineral or organic, is transported by water, air, gravity, or ice from the site of its origin. In determining the need for sedimentation or erosion control, the decision of the City Engineer is final.

8. Upon completion of permitted construction activity on any site, the property owner and subsequent property owners will be responsible for continued compliance with the requirements of this ordinance, in the course of maintenance, reconstruction or any other construction activity on the site.

(B) Construction Sites Requiring an Approved SWP3

This section applies to all construction sites of greater than or equal to one (1) acre but less than five (5) acres of land where construction on a site will disturb soil or remove vegetation during the life of the construction project. A copy of the Stormwater Pollution Prevention Plan (SWP3) and Construction Site Notice for the project must be provided to the City by the construction site owner before construction begins.

This section applies to all construction sites of greater than or equal to five (5) acres of land where construction on a site will disturb soil or remove vegetation during the life of the construction project. A copy of the ADEQ approved Stormwater Pollution Prevention Plan (SWP3) and ADEQ stormwater permit for the project must be provided to the City by the construction site owner before construction begins.

The owner/developer bears the responsibility for implementation of the SWP3 and notification of all contractors and utility agencies on the site.

(C) Subdivision Developments Requiring an Approved SWP3

Where construction of a subdivision development will disturb soil or remove vegetation on greater than or equal to one (1) but less than five (5) acres of land during the life of the development project, a copy of the Stormwater Pollution Prevention Plans (SWP3's) and a copy of the Construction Site Notice for the project must be provided. Where construction of a subdivision development will disturb soil or remove vegetation on five (5) or more acres of land during the life of the development project, a copy of the ADEQ approved Stormwater Pollution Prevention Plans (SWP3's) and a copy of the ADEQ stormwater permit for the project must be provided to the City. The SWP3 must be implemented by the subdivision owner/developer as follows:

1. The area disturbed shall be assumed to include the entire platted area, unless shown otherwise.

2. SWP3's must be provided by the subdivision owner/developer.
3. SWP3's must be provided for all phases of development, including sanitary sewer construction, storm drainage system construction, waterline, street and sidewalk construction, general grading and the construction of individual homes. The subdivision owner/developer will not be required to provide an SWP3 for the activities of utility agencies within the subdivision.
4. The subdivision owner/developer shall provide a copy of the approved SWP3's to all utility agencies prior to their working within the subdivision.
5. The subdivision owner/developer bears the responsibility for implementation of the approved SWP3's for all construction activity within the development, excluding construction managed by utility agencies.
6. The subsequent owner of an individual lot bears the responsibility for continued implementation of the approved SWP3's for all construction activity within or related to the individual lot, excluding construction managed by utility agencies.

(D) Stormwater Pollution Prevention Plans

Preparation and implementation of Stormwater Pollution Prevention Plans for construction activity shall comply with the following:

1. Preparation
 - a. The SWP3 shall be prepared under the direction of a qualified person.
 - b. The SWP3 shall follow all the current EPA and ADEQ guidelines set forth for the development of said plans.
 - c. The SWP3 shall be prepared in accordance with the current City of Bethel Heights drainage ordinance.
2. Implementation

- a. BMP's shall be installed and maintained by qualified persons. The owner/developer or their representative shall maintain and be able to provide upon request a copy of the SWP3 on site and shall be prepared to respond to unforeseen maintenance of specific BMP's.
- b. The owner/developer or their representative shall inspect all BMP's at least once per month and within 24 hours after a rainfall of one half of an inch or more as measured at the site.
- c. Based on inspections performed by the owner/developer or by authorized City personnel, modifications to the SWP3 will be necessary if at any time the specified BMP's do not meet the objectives of this ordinance. In this case, the owner/developer or authorized representative shall meet with authorized City personnel or their authorized representative to determine the appropriate modifications. All modifications shall be completed within seven (7) days of the referenced inspection, except in circumstances necessitating more timely attention, and shall be recorded on the owner's copy of the SWP3.

(E) Requirements for Utility Construction

1. Utility agencies shall be responsible for compliance with the requirements this ordinance.
2. Utility agencies shall develop and implement Best Management Practices (BMP's) to prevent the discharge of pollutants on any site of utility construction within the City. In addition, the City may adopt and impose BMP's on utility construction activity.
3. Utility agencies shall implement BMP's to prevent the release of sediment from utility construction sites. Disturbed areas shall be minimized, disturbed soil shall be managed and construction site entrances shall be managed to prevent sediment tracking. Excessive sediment tracked onto public streets shall be removed immediately.
4. Prior to entering a construction site or subdivision development, utility agencies shall have obtained from the owner a copy of any SWP3's for the project. Any disturbance to BMP's resulting from utility construction shall be repaired immediately by the utility company in compliance with the SWP3.

SECTION 4.

GRADING.

(A) Findings

The city has experienced development activity causing the displacement of large amounts of earth and the removal of vegetative cover. Significant problems resulting from such development include flooding, soil erosion and sedimentation, unstable slopes, and impaired quality of life. These problems are a concern because of their negative effects on the safety and general welfare of the community and environment.

(B) Purpose

The purposes of this chapter are to:

1. Prohibit the indiscriminate clearing of property.
2. Prevent excessive grading, clearing, filling, cutting, or similar activities.
3. Substantially reduce flooding, erosion and sediment damage within the city.
4. To safeguard the safety and welfare of citizens.
5. Establish reasonable standards and procedures for development, which prevent potential flooding, erosion and sediment damage.
6. Prevent the pollution of streams, ponds and other watercourses by sediment.
7. Minimize the danger of flood loss and property loss due to unstable slopes.
8. Preserve natural vegetation, which enhances the quality of life of the community.
9. To conceal hillside scars.

(C) General requirements

1. Persons engaged in land alteration activities regulated by this chapter shall take measures to protect neighboring public and private properties from damage by such activities. The requirements of this chapter, however, are not intended to prevent the reasonable use of properties.
2. The responsible party shall be liable for all fines levied or remedial action required under this chapter. Each violation shall be considered a separate offense.
3. Any person, who engages in land alteration activities regulated by this chapter without obtaining a grading permit, shall be required to restore the land, to the maximum extent

practicable to its original condition.

4. The permit applicant shall have on the project site at all times an agent who is a competent superintendent capable of reading and thoroughly understanding the plans, specifications and requirements for the type of work being performed. The superintendent shall have full authority to issue orders or direction to employees working on site, without delay and to promptly supply such materials, labor, equipment, tools, and incidentals as may be required to complete the work in a proper manner. If no superintendent is on site, the city official may issue the notice of violation and stop work order to the person conducting the violation.

(D) Grading Permit Required

1. Any person proposing to engage in clearing, filling, cutting, quarrying, construction or similar activities on any piece of disturbed land of 1 acre or larger shall apply to the City for a grading permit as specified in this chapter. A large scale development plan shall be obtained from the City before constructing or expanding a vehicular use area or when expanding or rehabilitating a building and landscaping is required. No land shall be altered or cleared to the extent regulated in this chapter unless approved by a permit.
2. No land alteration shall be permitted until all necessary city approval of all plans and permits, except building permit, have been issued and construction is imminent. In those cases where filling or cutting in areas with no trees is to be done, the area is to be graded suitable for mowing and shall be re-vegetated.
3. A grading permit is required for land alteration activities specified in this section. However, all construction work shall include appropriate drainage and erosion control measures to protect neighboring properties. All land alteration in properties within the designated 100 year floodplain or on a 20% or greater slope and any excavation from which fill will be exported or imported requires a grading permit without exception.
4. Prior to issuance of a grading permit, a grading and drainage plan shall be submitted and approved by the City. A drainage report shall be submitted to the city at the time new subdivisions and large scale developments are submitted for project approval. The drainage report shall comply with all current drainage ordinances and must be certified by a registered professional engineer licensed in the State of Arkansas.
5. Utility organizations may obtain a one-time approval from the City for all routine tree trimming and installation, maintenance, replacement and repair of fence and sign posts, telephone poles and other kinds of posts or poles and overhead or underground electric, water, sewer, natural gas, telephone or cable facilities. The approval will include a utility organization and its contractors, agents or assigns and will be permanent in nature as long as the original approved procedures are followed. However, large-scale utility projects involving clearing of areas over twenty-five (25) feet in width shall not be authorized by one-time approval of all projects. In such cases, a separate grading permit must be

obtained for each project.

6. One-time approval may be obtained by public or private entities for the stockpiling of construction spoil material at particular locations for a limited time period, not to exceed six (6) months. Grading and replanting of grassed areas is required upon removal of stockpile.

(E) Exemptions

A grading permit shall not be required for:

1. Emergency work or repairs to protect health, safety and welfare of the public.
2. Cemetery graves.
3. Construction of or addition to a single family residence. This shall include excavations for basements, footings, swimming pools, hot tubs septic systems, retaining walls, and like structures.
4. Refuse disposal sites controlled by other regulations.

(F) Contents of grading plans

The grading and drainage plan shall identify the following:

1. Acreage of the proposed project.
2. Designate all land areas to be disturbed and label acreage of disturbed areas.
3. Stages of grading showing the limits of sections to be graded.
4. The height and slope of cuts and fills.
5. Cross sections shall be required every one hundred (50) feet on property where the depth of excavation or fills exceeds five (5) feet, showing original and final grades. A grading plan showing existing and proposed contours with a maximum 2-foot contour interval for slopes less than 10% and a maximum 5-foot contour interval for slopes greater than 10% can be shown as an alternate to cross-sections every 50 feet.
6. Provisions for collecting and discharging surface water.
7. Erosion and sediment control measures, including structural and vegetative measures. Specification of measures to control runoff, erosion and sedimentation during the process

of construction, noting those areas where control of runoff will be required during construction and indicating what will be used, such as sediment basins, silt dams, rock check dams, lateral hillside ditches, catch basins, etc.

8. Seal, Certificate of Authority and signature of a registered engineer qualified under state regulations to certify that the grading and drainage plan complies with this chapter.
9. A vicinity drawing showing location of property lines, location and names of all existing or platted streets or other public ways within or immediately adjacent to the tract on City of Bethel Heights topographic mapping or approved equal.
10. Location of all known existing sewers, water mains, culverts and underground utilities within the tract and immediately adjacent thereto; location of existing permanent buildings on or immediately adjacent to the site if right of entry can be obtained to locate same.
11. Identification of rights-of-way or easements affecting the property.
12. A plan of the site at a minimum scale of one (1) inch equals one hundred (100) feet or less, i.e. 1" = 50' or 1" = 30', etc.
13. The grading plan shall include areas of tree protection, erosion and sediment control provisions meeting standards established by the City and ADEQ.

Such other information required by the City, including but not limited to:

1. The approximate location and width of existing and proposed streets.
2. The locations and dimensions of all proposed or existing lots.
3. The locations and dimensions of all parcels of land proposed to be set aside for parks, playgrounds, natural condition perimeters, public use, or for the use of property owners in proposed development.
4. Existing and proposed topography at a maximum of two-foot contour intervals unless approved otherwise by the City.
5. Identification of unusual material or soils in land areas to be disturbed. If any surface indications of unusual materials or soils that would cause street or lot instability, such as

non-vertical tree growth, old slides, seepage, or depressions in the soil are visible before grading, they should be noted and accompanied by the engineer's recommendation for correcting such problem areas.

6. Identification of suitable material to be used for fills shall be accomplished before actual filling begins. If there are any surface indications that local material is not suitable for fills, those areas to be filled with outside material should be identified and the type and source of the fill noted.
7. Measures to protect neighboring built-up areas and city property during process of construction, noting work to be performed, such as cleaning existing ditches, storm culverts and catch basins or raising existing curbs in neighboring areas.
8. Provisions to stabilize soils and slopes after completion of streets, sewers and other improvements, noting on the grading plan when and where ground cover will be planted, also noting any other means to be used such as placement of stone embankments and riprap or construction of retaining walls.
9. All fill areas shall be compacted to 95% standard proctor density unless approved otherwise.

(G) Issuance procedure

The following procedure shall be implemented for the issuance of a grading permit.

1. The City or its authorized representative shall approve, disapprove or recommend modification of the grading plan in writing within ten (10) working days after the date of submittal.
2. Upon approval of the final plan, the City shall issue a grading permit. A superintendent capable of understanding the plans and with the authority to issue orders to employees performing the land alteration shall properly supervise the land alteration work.

Groups of trees and individual trees that are not to be removed and required undisturbed buffer areas shall be protected during construction by protective fencing and shall not be used for material storage or for any other purpose. The fencing shall be placed and maintained by the owner until all exterior construction except landscaping has been completed. Individual trees to be preserved outside the protected area shall be fenced at the critical root zone and shall be flagged with bright orange vinyl tape wrapped around the main trunk at a height of four (4) feet or more such that the tape is clearly visible to workers on foot or operating equipment.

The City Engineer may allow minor modifications of the plan to alleviate particular problems during the process of construction. In reviewing request for modifications, the City Engineer may require from the applicant's engineer appropriate reports and data sufficient to make a decision on the request.

Major changes to plans previously approved shall only be permitted by the planning commission. Examples of major changes are those that substantially increase the height of cuts, the area of clearing or grading, or impact on neighboring properties. More than twenty percent (20%) increase in height, area or impact will normally be considered a major change. Examples of increased impact include reductions in buffer area, increased runoff onto adjacent properties and increased site area that is visible from adjacent properties or public streets.

(H) Grading plan requirements

1. Preparation of grading and drainage plans shall be designed on the basis of the following considerations:
 - a. A maximum of thirty (30) vertical feet of fill or excavation (three, ten [10] feet vertical terraces or two, fifteen [15] feet vertical terraces) is permitted. However, additional development areas may be constructed a minimum of one-hundred fifty (150) feet in width and at a slope of no more than eight percent (8%). The maximum of thirty (30) feet of fill or excavation may again be utilized.
 - b. The depth of fill or excavation shall be measured from the finish grade elevation to the original ground line elevation.
 - c. No more than two hundred (200) feet of terrace can be in a straight line and a minimum of a ten (10) foot curved section, jog, or offset is required for each additional 200 feet of terrace.
 - d. For excavations or fills constructed with slopes flatter than 3:1 (three horizontal to one vertical), terraces are not required nor is there a limit on the height of cut or fill. Planting requirements on these 3:1 slopes shall be the same as required for terraces and shall be spaced uniformly over the slope.
 - e. Cuts or fills shall be limited to ten (10) feet in height or to fifteen (15) feet if architectural stone is included to protect the vertical face. A series of smaller cuts or fills with terraces, preserving portions of natural vegetation and providing areas for planting, shall be used in situations where more than ten (10) feet of cut or fill is needed.
 - f. Terracing width shall be at a ratio of at least one (1) foot of horizontal terrace for every one (1) foot of vertical height, up to a maximum of ten (10) feet. Terraces shall be landscaped with dense evergreen plantings sufficient to screen the cut or fill slope.
 - g. If the slope of the cut or fill is faced with an architectural stone wall, the terrace plantings shall be a minimum of two (2) rows of trees four (4) feet between the rows,

staggered not more than twenty (20) feet on centers.

2. Development shall be planned to fit topography, soils, geology, hydrology, and other existing site conditions.
3. To the extent practical, lot boundaries shall be made to coincide with natural and pre-existing man-made drainage ways within subdivisions.
4. Provisions shall be made for safety against unstable slopes or slopes subject to erosion and deterioration.
5. Grading shall complement natural landforms.
6. Easements for drainage channel maintenance shall be in accordance with the current drainage ordinance.
7. All developments or any lot containing or adjacent to a drainage channel or drainage structure must provide the minimum finish floor elevation for any proposed structure based on the 100 year flood elevation in the drainage structure. For subdivisions, this minimum elevation shall be shown on the Final Plat. For Large Scale Development Plans, this minimum elevation must be shown on the approved plans.
8. After grading, all paving, seeding, sodding, or mulching shall be performed in accordance with a reasonable schedule approved by the City Engineer.
9. Open areas not planned for immediate use shall be seeded or sodded. Soil which is exposed for more than twenty-one (21) days with no construction activity shall be seeded, mulched or re-vegetated in accordance with this code. All restoration efforts must be to the satisfaction of the City.
10. Areas not well suited to development, as evidenced by existing incompetent soils, geology, hydrology investigations and reports, should be allocated to open space and recreational uses.
11. The potential for soil loss shall be minimized by retaining natural vegetation wherever possible.
12. Appropriate BMPs and other erosion and sediment control practices shall be used to accommodate stormwater runoff and control soil loss occasioned by changed soil and surface conditions during and after development, including the use of vegetation and limitations on soil exposure. If staff determines upon visual inspection that excessive silt from the construction has migrated offsite, additional measures to reduce erosion may be required.
13. Permanent improvements such as streets, storm sewers, curb and gutters and other features for control of storm runoff shall be scheduled as soon as economically and physically feasible before removing vegetation cover from the area, so that large areas are not left bare and exposed for long periods of time beyond the capacity of temporary

control measures.

17. Private roads, parking lots, and access ways (excluding residential driveways), within developments shall utilize curb, gutter, and storm drain systems to provide adequate drainage. The use of swales and siding open side ditches are acceptable only upon written approval of the City Engineer. All utilities must be a minimum of 24" below the flow line of an open ditch unless approved in writing by the City Engineer and the respective utility company. Clearances may be reduced for paved ditches.
18. Persons engaged in land alteration activities regulated by this chapter shall take measures to protect public and private properties from damage by such activities.
19. A temporary or permanent sediment basin, debris basin, silt basin or silt trap shall be installed and maintained to substantially reduce sediment from water runoff. The volume of the sediment basin shall be three-thousand (3000) cubic feet per acre for property with average slope greater than five (5) percent, or fifteen-hundred (1500) cubic feet per acre for property with an average slope less than five (5) percent. A properly sized sediment basin is required for each separate drainage area within the property being developed.
20. Construction access shall be limited to locations as approved by the City. Construction access points shall be graveled for a minimum length of twenty percent (20%) of the lot depth or fifty (50) feet, whichever is greater, up to a maximum of one hundred (100) feet and of adequate thickness to minimize tracking onto the city street. Two (2) to three (3) inch crushed stone shall be used for the construction entrance.
21. Appropriate provisions shall be made to prevent excessive particulate matter from becoming airborne.
22. A perimeter buffer strip shall be temporarily maintained around disturbed areas for erosion control purposes and shall be kept undisturbed except for reasonable access for maintenance. The width of the strip shall be six percent (6%) of the lot width and depth. The minimum width shall be twenty-five (25) feet and the maximum shall be forty (40) feet. In no event shall these temporary strips be less than the width of the permanent buffers required for the development.
23. A minimum strip twenty-five (25) feet wide, undisturbed except for reasonable access, shall be provided along each side of streams having a peak ten-year storm flow rate of greater than one hundred fifty (150) cubic feet per second. The 25-foot strip shall be measured from the top of the bank. An exception to this requirement is allowed where the only work being done on the site is public street construction.
24. Care shall be exercised to minimize the risk of damage from or to pedestrian and vehicular traffic in the vicinity of a cut or fill by placement of handrails, guardrails, fencing or landscaping.

(I) Unified plan and permit

One plan may be submitted incorporating all provisions for compliance with the applicable city zoning, drainage, stormwater detention, grading, clearing, filling, cutting, quarrying, and construction requirements.

(J) Miscellaneous

1. Grading plans shall conform to the Phase II Stormwater Regulations as established by United States Environmental Protection Agency's regulations, Region VI published in the July 6, 1998 Federal Register or its latest revisions.
2. A copy of the ADEQ NOI permit shall be required for all sites of one (1) acre or more.

(K) Transition Period

Any construction or development project which has received a development or building permit under prior provisions of the Bethel Heights Code shall come into full compliance with the requirements of this ordinance within thirty (30) days of its effective date.

(L) Fees

A fee for each grading permit shall be paid to the city as follows:

<i>Total Project Area</i>	<i>Fee</i>	
1 acre or less.....	\$100.00	Greater than
1 acre but less than 5 acres.....	\$200.00	
Greater than 5 acres	\$300.00	

SECTION 5.

ENFORCEMENT

A. Enforcement Personnel Authorized

The following personnel shall have the power to issue Notices of Violations and implement other enforcement actions under this ordinance as provided by the City of Bethel Heights:

1. All inspectors employed by the City of Bethel Heights.
2. The City Engineer or his authorized representatives.

B. Right of Entry and Sampling

1. Whenever the City Engineer has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this ordinance, the City Engineer or his authorized representative shall have the right to enter the premises at any reasonable time to determine if the discharger is complying with all requirements of this ordinance. In the event that the owner or occupant refuses entry after a request to enter has been made, the City is hereby empowered to seek assistance from a court of competent jurisdiction in obtaining such entry.
2. The City shall have the right to set up on the property of any discharger to the storm drainage system such devices that are necessary to conduct sampling of discharges.

C. Enforcement Procedures

This policy establishes a formal enforcement procedure to be followed by the City of Bethel Heights' City Engineer when enforcement action is necessary on sites that do not comply with the City's Stormwater Pollution Prevention, Erosion Control, and Grading Ordinance. Enforcement cases can be generated in any of three ways: (1) through the construction review process; (2) through complaints from individuals, groups, etc; and (3) through referrals from City/State agencies. Procedures to be followed for each of these methods are outlined below.

1. Construction Review

Every effort is made to use the Construction Review process to correct deficiencies in site compliance whenever possible. Should that process fail to achieve expected results or if the site reviewer feels that a violation is serious enough to warrant enforcement action, the following procedures shall be followed:

a. Issuance of Notice of Violation:

If site deficiencies are noted, the owner/developer or authorized agent shall be given a notice of violation. The notice of violation shall be specific as to the noted violation, corrective measures to be taken, and time frame allowed to complete the work.

b. Compliance Review

At the end of the time period specified above, a follow-up site inspection shall take place to determine whether compliance has been achieved. Depending on that determination, the following actions may occur:

(1) Site Violations Corrected:

If all previous site violations have been corrected, the site reviewer shall issue an inspection report stating that fact and the site shall be returned to a normal Construction Review status.

(2) Previous Violations Not Corrected:

If previously noted violations have not been satisfactorily corrected, the further actions may be initiated as outlined in the following section.

2. Submissions from the General Public

Members of the General Public may submit information pertaining to this ordinance to the City of Bethel Heights. The City Engineer will consider such submissions as they pertain to the implementation and enforcement of this ordinance and will provide written or verbal response to the person submitting the information.

3. Referrals from other agencies will be handled in the following manner:

- a. Cases will be referred directly to the City Engineer. At this point the City Engineer will determine if enforcement actions are warranted and if proper documentation has been

obtained. If the City Engineer determines that action is required, the enforcement process will be set into motion.

b. Cases received by the City Engineer will be handled on a first come, first served basis. All enforcement actions will be initiated by a site inspection to verify site conditions that caused the case to be referred. If conditions have been corrected or do not exist as stated in the referral, the case will be returned to file for documentation and reporting purposes. If conditions exist as stated in the referral, enforcement actions will proceed. (See 3c)

c. Once site conditions have been verified and the site is determined to be in a state of non-compliance two avenues of enforcement can be pursued, one for the infrequent offender and one for the frequent offender.

(1) Infrequent Offender, if an individual or company is being reviewed by the City Engineer for the first time or it has been at least 3 years since the last violation (36 months has elapsed since last review), notice to comply will be issued to the owner/developer informing them they are not in compliance with the City's Stormwater Pollution Prevention, Erosion Control, and Grading Ordinance, the steps needed to be taken to get into compliance, and that they have an established time frame to complete the work. At the end of the period the City Engineer will reinspect to check for compliance. If all work has been satisfactorily completed the case will be returned to file for documentation and reporting purposes. If the work has not been satisfactorily completed within the established time frame a citation (ticket) will be issued to the owner developer and follow up will be done until the site is brought into compliance.

(2) Frequent Offender, if an individual or company has been reviewed by the City Engineer at any time in the preceding 36 months they will be considered repeat offenders. Repeat offenders will be issued a citation (ticket) by the City Engineer upon verification of non-compliance with the City's Stormwater Pollution Prevention, Erosion Control, and Grading Ordinance. Follow-up will continue until the site has been brought into compliance.

D. Enforcement Options for Failure to Comply

1. City of Bethel Heights' City Engineer may issue a stop work order to any persons violating any provision of the City's Stormwater Pollution Prevention, Erosion Control, and Grading Ordinance by ordering that all site work stop except that necessary to comply with any administrative order.
2. City of Bethel Heights' City Engineer may request that the City of Bethel Heights refrain from issuing any further building or grading permits until outstanding violations have been remedied.
3. City of Bethel Heights' City Engineer may initiate penalties as stipulated herein. Complete information concerning enforcement and penalties is described below.

E. Action without Prior Notice

Any person who violates a prohibition or fails to meet a requirement of this Article will be subject, without prior notice, to one or more of the enforcement actions, when attempts to contact the person have failed and the enforcement actions are necessary to stop an actual or threatened discharge which presents or may present imminent danger to the environment, or to the health or welfare of persons, or to the storm drainage system.

F. Enforcement Actions

1. Recovery of Costs. Within 30 days after abatement by City representatives, the Director shall notify the property owner of the costs of abatement, including administrative costs, and the deadline for payment. The property owner may protest the assessment before the City Council. The written protest must be received by the Mayor's Office within 15 days of the date of the notification. A hearing on the matter will be scheduled before the City Council. The decision of the City Council shall be final. If the amount due is not paid within the protest period or within 10 days of the decision of the City Council, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. A copy of the resolution shall be turned over to the County Clerk so that the Clerk may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the Treasurer shall include the amount of the assessment on the bill for taxes levied against the parcel of land.
2. Termination of Utility Services. After lawful notice to the customer and property owner

concerning the proposed disconnection, the Mayor shall have the authority to order the disconnection of City water, sanitary sewer and/or sanitation services, upon a finding by the City Engineer that the disconnection of utility services will remove a violation of this Article that poses a public health hazard or environmental hazard.

3. Performance Bonds. Where necessary for the reasonable implementation of this Article, the Mayor may, by written notice, order any owner of a construction site or subdivision development to file a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the City Engineer to be necessary to achieve consistent compliance with this Article. The City may deny approval of any building permit, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or to assume occupancy, until such a performance bond has been filed. The owner may protest the amount of the performance bond before the City Council. The written protest must be received by the Mayor's Office within 15 days of the date of the notification. A hearing on the matter will be scheduled before the City Council. The decision of the City Council shall be final.
4. Criminal Prosecution. Any person who violates or continues to violate a prohibition or requirement of this Article shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to criminal penalties.

G. Criminal Penalties

The violation of any provision of this ordinance shall be deemed a municipal offense. Any person violating this ordinance shall, upon an adjudication of guilt or a plea of no contest, be fined according to the schedule of fines. Each separate day on which a violation is committed or continues shall constitute a separate offense.

1. Other Legal Action

Notwithstanding any other remedies or procedures available to the City, if any person discharges into the storm drainage system in a manner that is contrary to the provisions of this ordinance, the City Attorney may commence an action for appropriate legal and equitable relief including damages and costs in any court of competent jurisdiction. The City Attorney may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the discharger.

2. Violations/Schedule of Fines

A violation of any of the foregoing provisions shall be punished in accord with the following schedule of fines:

Offense	Fine (per offense)
First	\$ 1,000
Second	\$ 2,000
Third	\$ 4,000
Fourth and subsequent offenses	\$ 8,000

SECTION 6.

EMERGENCY CLAUSE

The need to address stormwater pollution prevention, erosion control and grading is immediate and necessary to the health, safety and welfare of the citizens of Bethel Heights, Arkansas. Therefore, an emergency is declared to exist and this ordinance shall have full force and effect from and after its passage and approval.


Passed and approved this 21st day of June, 2005.

APPROVED:




Mayor

ATTEST:



Recorder/Treasurer


SEAL
THE INCORPORATED CITY OF BETHEL HEIGHTS, ARKANSAS