

Chapter 8-17

CONSTRUCTION SITE EROSION CONTROL ORDINANCE

Sections:

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Section 8-17-01 TITLE, PURPOSE AND GENERAL PROVISIONS

8-17-01.1 Title

This Ordinance shall be known as the “Construction Site Erosion Control Ordinance” and may be so cited.

8-17-01.2 Purpose and Intent

The purpose and intent of this Ordinance is to:

- A. Promote and protect the health, safety, and general welfare of the citizens of Boise and enhance and preserve the quality and value of our resources by regulating construction activities.
- B. Provide for the protection of storm water, ground water, water bodies, watercourses, and wetlands pursuant to and consistent with the Clean Water Act, and NPDES permits granted to the City of Boise.
- C. Manage and control the amount of pollutants in storm water discharges, soil erosion, sediment discharge, and mud and dirt deposits on public roadways caused by or a result of construction activities.
- D. Ensure adequate drainage, storm water management and soil conservation measures are utilized at the site of any construction activity.

8-17-01.3 Definitions

The terms as used in this Ordinance shall have the following meanings:

- A. ~~Authorized Enforcement Agent~~. The Director of the Boise City Department of Planning and Development Services and/or any individual designated by the Director of the Boise City Department of Planning and Development Services as an Authorized Enforcement Agent.
- B. ~~Best Management Practices (BMPs)~~. Physical, structural, and/or managerial practices that, when used singly or in combination, control activities including, but not limited to, site run-off, spillage and leaks, and waste disposal, and prevent or reduce the discharge of pollutants directly or indirectly to waters of the State or U.S. BMP’s may include schedules of activities, prohibition of practices, design standards, educational activities, and treatment requirements.
- C. ~~Clean Water Act (CWA)~~. Federal Water Pollution Control Act enacted by

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Public Law 92-500 as amended by Public Laws 95-217, 95-576, 96-483, and 97-117, enacted at 33 USC 1251 et seq.

- D. ~~Construction Activity~~. Activities occurring in furtherance of a construction project, including, but not limited to, land disturbing activities; temporary crushing and screening operations lasting less than 180 calendar days (also refer to Section 8-17-02.2G,11), and hauling of soil and rock; explosive and abrasive blasting; implosion; handling of building materials; concrete, stone and tile cutting; operation of motorized and non-motorized machinery; and operation of motor vehicles on the site, staging areas, parking areas, storage areas, or any access routes to the construction site.
- E. ~~Director~~. The Director of the Boise City Department of Planning and Development Services.
- F. ~~Erosion~~. Progressive detachment and removal of particles, including soil and rock fragments, from the earth's surface by means of water, wind, ice, gravity or mechanical processes, including vehicular traffic.
- G. ~~Erosion Control Plan~~. Details of the concepts and techniques, including BMP's, used prior to and during construction, up to and including final landscaping, to control and limit soil erosion, mud and dirt deposits on public roadways, and sediment discharge.
- H. ~~Hazardous Waste~~. Any chemical, compound, mixture, substance or article which is designated by the United States Environmental Protection Agency or appropriate agency of the state to be a "hazardous waste", "hazardous material" or "hazardous substance" as those terms are defined by federal or state law.
- I. ~~Illicit Discharge~~. Any discharge to a storm drain system that is not composed entirely of storm water, except discharges pursuant to a NPDES permit, discharges resulting from fire fighting activities, and other exempt discharges as outlined in the City of Boise Storm Water Management and Discharge Control Ordinance.
- J. ~~Land Disturbing Activity~~. A human induced change to improved or unimproved land, including, but not limited to, new home or building construction, expansion of an existing building or home, demolition activity, clearing, grubbing, leveling, excavation, fill operations, clearing, trenching, landscaping, grading, drainage, pipe installation, drilling, mining, dredging, road construction or improvement, paving, construction of earthen berms, and improvements for use as parking or storage.
- K. ~~Maximum Extent Practicable (MEP)~~. Technology based discharge standard for municipal separate storm sewer systems established by CWA § 402(p).
- L. ~~National Pollutant Discharge Elimination System (NPDES) Permit~~. A storm water discharge permit issued by the U.S. EPA, Region X, in compliance with the federal Clean Water Act and its amendments.

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- M. ~~PDS~~. The Boise City Department of Planning and Development Services.
- N. ~~Permit~~. The erosion control permit issued by the Director of Planning and Development Services authorizing performance of a construction project.
- O. ~~Permit Holder~~. The person who makes application for an erosion control permit.
- P. ~~Person~~. Any individual, firm, association, club, organization, corporation, partnership, business trust, company or other entity which is recognized by law as the subject of rights or duties.
- Q. ~~Pollutant~~. Objects including, but not limited to, dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, wrecked or discarded equipment, rock, sand, silt, cellar dirt, industrial, municipal and agricultural waste, gases entrained in water, paints, oil and other automotive fluids, soil, rubbish, trash, debris, refuse, heavy metals, hazardous waste, road sanding materials, yard waste from commercial landscaping operations, animal waste, materials that result from the process of constructing a building or structure, and nauseous or offensive matter of any kind, which, when discharged to water, cause or contribute to water pollution.
- R. ~~Pollution~~. The degradation of the physical, thermal, chemical, biological or radioactive properties of the air and the waters of the state or U.S.; the discharge of any pollutant into the air stream or waters of the state or U.S. which will or is likely to create a nuisance or to render such waters harmful, detrimental, or injurious to public health, safety or welfare, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses.
- S. ~~Premises~~. Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.
- T. ~~Public Nuisance~~. Any condition which affects others beyond the property line and is injurious to health, offensive to the senses, or constitutes an obstruction to the free use of property and interferes with the comfortable enjoyment of life or property.
- U. ~~Public Works~~. Any construction project for the benefit of the public on behalf of the State of Idaho, any county or municipal corporation within the State of Idaho, or any other public board, body, commission, agency or entity.
- V. ~~Responsible Person~~. Any foreman, superintendent, project manager, or other person with operational control over site activities and day to day operational control over plan requirements and permit conditions at the site of any construction activity.
- W. ~~Sediment~~. Solid material, either mineral or organic, that is in suspension or has been or is being moved from its site of origin due to erosion.
- X. ~~Storm Drain System~~. Facility by which storm water may be collected and conveyed to waters of the state or U.S.

- Y. ~~Storm Water~~. Surface runoff and drainage associated with rain storm events and snow melt.
- Z. ~~U.S. EPA~~. United States Environmental Protection Agency.
- AA. ~~Variance~~. A modification of the requirements of the Ordinance based on hardship.
- BB. ~~Wetlands~~. Lands that meet all of the following criteria: (a) a predominance of hydric soil, (b) saturation by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, and (c) normally support a prevalence of hydrophytic vegetation.

~~8-17-01.4 Applicability~~

This Ordinance shall apply to all construction activity and all land disturbing activity, directly or indirectly associated with construction projects, and all persons engaged in construction activity and land disturbing activity, directly or indirectly associated with construction projects, within the corporate limits of the City of Boise. Indirect association requires a cognizable nexus between the activity involved and the construction project, but does not require a primary or direct connection.

~~8-17-01.5 Regulatory Consistency~~

This Ordinance shall be construed to assure consistency with state and federal laws, rules and regulations, including the Clean Water Act and all acts amendatory thereof or supplementary thereto; all NPDES permits issued to the City of Boise; and any other provisions of the Boise City Code. No permit or approval issued pursuant to this Ordinance shall relieve a person of the responsibility to secure permits and approvals required for activities regulated by any other applicable rule, code, act, permit or ordinance. Compliance with this Ordinance does not exempt any person from complying with other applicable ordinances, rules, codes, acts or permits.

~~8-17-01.6 Severability~~

If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstance shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are hereby declared to be severable.

(6098, Added, 11/13/2001)

Section 8-17-02 EROSION CONTROL REGULATIONS AND REQUIREMENTS

~~8-17-02.1 General Requirements and Prohibitions~~

- A. Every person shall obtain an erosion control permit (hereinafter permit) before commencing any construction activity, unless performing work covered by an existing Boise City approved erosion control permit or otherwise exempted by this Ordinance.
- B. Erosion, sediment, or discharge of pollutants, resulting from construction activities, which enter onto public property or private property not controlled by the permit holder, shall be eliminated to the maximum extent practicable unless otherwise permitted or exempted under this Ordinance.
- C. No final plat, subdivision site development plan, site plan, grading permit, building

- permit, or Public Work project shall be approved without an approved erosion control plan.
- D. All construction activity commenced pursuant to an approved erosion control plan or permit must at all times comply with the conditions of the erosion control plan or permit. The permit holder is responsible for ensuring their contractor(s), subcontractor(s), utility trenching subcontractor(s), and all other persons entering the site abide by the conditions of the permit. The permit holder's signature or that of his authorized agent on the permit shall constitute an agreement by the permit holder to accept responsibility for meeting the conditions of the permit.
 - E. No construction activity shall take place without a valid permit. If a permit has been suspended or revoked, or has expired, all work covered by the permit shall cease until a new permit is issued.
 - F. The Director shall receive notification of pending permitted construction activity a minimum of 48 hours prior to commencement of such activity.
 - G. A person or persons possessing a current and valid Boise City Certificate of Training, as provided for in section 8-17-02.6, shall be directly in charge of all sites of construction activity regulated by this Ordinance. Failure to comply with this requirement will result in revocation or suspension of the permit issued pursuant to this Ordinance.
 - H. All necessary action shall be taken to minimize the depositing and tracking of mud, dirt, sand, gravel, rock or debris on the public right-of-way. The owner of the site of the construction activity or the permit holder with respect to the construction site shall be responsible for any clean-up of the public rights-of-way or private property not under the permit holder's control necessitated from any tracking or depositing of mud, dirt, sand, gravel, rock or debris, or shall reimburse the City for any expenses incurred by the City to effectuate the clean-up.
 - I. Construction ramps shall be constructed of material that will not erode or deteriorate under adverse conditions, and shall not be placed in a manner as to interfere with or block the passage of storm water runoff.
 - J. No debris, dirt, aggregate or excavated materials, or construction supplies shall be placed on the public right-of-way unless permitted by the Ada County Highway District or other controlling entity. In addition, public sidewalks shall not be removed, blocked, or otherwise rendered unusable by construction activity, equipment or materials, or portable toilets, unless a safe, usable alternate walkway, which meets the design standards of the Ada County Highway District, is placed on the same side of the right-of-way by the contractor.
 - K. No owner or lessee of real property shall allow the property to be unoccupied, unused, vacant or undeveloped after the topsoil has been disturbed or the natural cover removed, unless control measures are undertaken to prevent mud, sand, dirt and gravel from migrating offsite and entering the public right-of-way or a storm water system. Soil or aggregate stockpiles shall not be stored on unoccupied, vacant, unused, or undeveloped property unless permitted by the City and such control measures are in place. This

provision is not meant to prevent individual homeowners from accepting title of land that is not yet landscaped, and such homeowners will not be in violation of this Ordinance.

- L. All temporary erosion and sediment control measures shall be removed after final site stabilization. Trapped sediment and other disturbed soil areas resulting from the removal of temporary measures shall be permanently stabilized within thirty (30) days from removal of the temporary measures.
- M. To facilitate inspection and enforcement under this Ordinance, all building or commercial lot owners holding an erosion control permit shall display a sign on the property indicating the address of the property, if one has been assigned, or a lot or block number, or other suitable property identification, the permit holder's name, and the phone number of the City complaint department, during any phase of construction. The City of Boise shall provide the materials for the signs. All required writing on the signs shall be legible and of sufficient size to be easily read from the street.

~~8-17-02.2 Erosion Control Permits~~

- A. The following categories of permits shall be issued upon approved application:
 - 1. ~~General Permit~~. Issued for construction, demolition, and site development for single family homes and duplexes, and utility trench excavation.
 - 2. ~~Site Specific Permit~~. Issued for construction, demolition, and site development for multiple home developments, apartment complexes and commercial sites.
 - 3. ~~Special Site Permit~~. Issued for the following site conditions for additional control measures:
 - a. Development regulated by the City of Boise Hillside and Foothill Area Development Ordinance, Boise City Code Title 11, Chapter 14.
 - b. Pre-development slopes greater than ten percent.
 - c. Ground disturbance of a natural vegetative buffer within fifty (50) feet of wetlands or water bodies.
 - d. Sites located entirely or partially within an environmentally sensitive area as declared by the Director or state or federal authorities.
 - e. Any other site determined by the Director to have conditions necessitating additional control measures.
- B. Applications for permits shall be made on forms provided by the City of Boise

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Department of Planning and Development Services (PDS) and shall be accompanied by the applicable fee or fees. In addition, applications for site specific permits or special site permits shall be accompanied by two copies of an erosion control plan which is in compliance with the provisions of this Ordinance. No permit requiring an erosion control plan shall be granted unless the erosion control plan has been approved by PDS.

- C. Permit applications should be filed with PDS at the same time as the request for a permit to conduct the construction activity, such as a building permit or grading permit.
- D. Any construction activity which has been initiated, but not fully completed, at the time of enactment of this Ordinance shall require a permit within 90 days of the effective date of this Ordinance, unless otherwise exempted by this Ordinance. Initiation is not limited to actual ground-breaking activities, but also includes granting of building, excavation and construction permits.
- E. For general permits, although an erosion control plan is not required, the permit will contain requirements and conditions that must be implemented before and during construction. These requirements and conditions will consist of, but are not limited to, the requirements found in this Ordinance in section 8-17-02.1, paragraphs B, E, F, H, I, J, K, L, and M.
- F. A surety bond may be required prior to issuance of a permit when the Director has determined the existence of potential environmental damage to wetlands or water bodies. The surety bond shall be in a form and amount necessary to ensure the ability to correct any deficiency caused from the failure to comply with the conditions of the permit. The Director may also approve the use of a cash bond or instrument of credit in lieu of the surety bond. Existing surety bonds may be utilized upon approval of the Director. The bond shall remain in effect until the permit expires or ceases due to final completion.
- G. The following construction or land disturbing activities do not require a permit:
 - 1. Minor land disturbance activities performed by the property owner or an employee of the property owner, including, but not limited to, individual home gardens, commercial and residential landscaping, and landscaping maintenance and repair work.
 - 2. Repair, replacement, and utility work which occurs entirely on a residential lot, in which no sediment leaves the property.
 - 3. Drain tiling, tilling, or planting incidental to agricultural crops, and harvesting of agricultural, horticultural or silvicultural (forestry) crops.
 - 4. Installation of fence, sign, telephone, electric poles, and other types of posts and poles that involves less than two cubic yards of excavation in any one location.

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5. Emergency repairs or emergency work necessary to protect life, limb or property.
 6. Utility repair work that involves less than two cubic yards of excavation in any one location.
 7. Parking lot and driveway repair.
 8. Construction activity that occurs entirely on federal or state owned lands.
 9. Construction and maintenance activity that occurs on transportation rights-of-way or land owned by a separate governmental entity, when an erosion control plan for the activity has been approved by the controlling governmental entity.
 10. Construction, maintenance, and any other land disturbing activity on canals, laterals, sub-laterals, ditches, drains, and other water conveyance facilities, and all appurtenant roadways and structures, which occurs within the fee title lands, right-of-ways, or easements for such facilities and appurtenances. This exemption is not a relief from provisions of this Ordinance which control activities that impact public or private property.
 11. Crushing and screening operations exceeding 180 calendar days of operation. These sites are subject to Zoning and Conditional Use Permit requirements, and any other requirements specified by Boise City Code. This exemption does not relieve such operations from provisions of this Ordinance which control activities that impact public or private property.
- H. Approval of an erosion control plan and issuance of a permit does not relieve a person from the duty to ensure continuous compliance with all conditions of the approved plan or permit, as well as all of the applicable provisions of this Ordinance.
- I. The permit may be suspended or revoked at any time if the site of the construction activity is not in full compliance with the conditions of the approved erosion control plan, the permit, and all applicable provisions of this Ordinance; the permit was issued in error; or the permit was based on incorrect information.
- J. Notice shall be given by the City of the intent to suspend or revoke a permit, and this decision may be appealed in accordance with the provisions of section 8-17-03.2.
- K. A permit shall automatically expire and become null and void if the project for which the permit was issued is not commenced within a period of 180 days from the date of issuance, the project for which the permit was issued is suspended or abandoned for any reason within the permit holder's control, or the time frame for conditions of a violation order has elapsed without compliance. The project shall not recommence until the permit has been renewed. Such renewal will

require submittal of an intent to renew the permit, payment of the applicable fee, and approval of the PDS.

- L. Once final landscaping has been completed and a letter of compliance has been issued by the PDS, the conditions of the permit shall cease. The Director may require all denuded soil to be permanently stabilized prior to the issuance of the letter of compliance. In addition, any charges, fees, clean-up costs and penalties must be paid before issuance of a letter of compliance. The letter of compliance for a phased development permit will not be issued until all lots have been completed or a legal transfer of ownership has occurred. Notification for a legal transfer of ownership must be made to the Director within five working days of the transfer.
- M. In cases where another person wishes to continue or complete work previously commenced under a permit, this person shall either obtain a new permit or gain transfer of the previous permit. The original permit holder will be released from the permit once another person has become responsible for the conditions for erosion and sediment.
- N. Permits may be transferred to other persons upon approval of the Director after receiving a request for transfer and payment of the applicable fee. The request must contain the name, address, and telephone number of the person to whom the permit will be transferred. The involved parties shall be notified of the decision of the Director within ten working days. If approved, all conditions of the permit shall transfer to the new permit holder. If approval is not granted, an appeal may be taken under the provisions of section 8-17-03.2.

8-17-02.3 Erosion Control Plans

- A. An erosion control plan submitted with an application for a permit must bear the signature and certification number of an individual who has successfully completed an approved training course and who has demonstrated competence, through education, training and knowledge of the applicable laws and regulations, in erosion and sediment.
- B. The PDS shall review all submitted erosion control plans and issue a permit for each approved erosion control plan.
- C. An erosion control plan may be approved in whole or in part. If only part of the erosion control plan has met approval, only that section of the project for which the plan has been approved, shall be allowed to commence.
- D. If an erosion control plan is not approved, a permit will not be issued, and the applicable construction activity will not be allowed to commence. Notice of this decision shall be sent to the applicant and a new erosion control plan will be required prior to the issuance of a permit. An applicant may appeal a decision not to approve an erosion control plan pursuant to the provisions of section 8-17-03.2.

- E. Erosion control plans shall include the following:
1. Erosion control report which discusses, with supporting technical documentation, the strategy of the proposed erosion control plan, and including significant details of the BMPs which will be utilized. This report shall be typed except for computational sheets, in good technical form, on 8.5"x11" paper and bound in a covered binder. Maps, diagrams, and figures, except computer printouts, shall be clearly labeled and folded to fit within the report. The report shall contain the title on the outside of the binder and include a title sheet, table of contents, list of figures and tables, and the narrative or body, in that order. The narrative shall contain an introduction, analysis, and conclusion.
 2. Site drawing of existing and proposed conditions, including:
 - a. Property boundaries and lot lines.
 - b. North arrow, scale and date.
 - c. Excavations, grades, paved areas, pond elevations, structures and utilities.
 - d. Drainage easements.
 - e. Benchmark.
 - f. Surface water and wetlands, drainage patterns and watershed boundaries, if present.
 - g. Location of vegetative cover.
 - h. Location of BMPs.
 3. Topographic survey showing drainage and irrigation water conveyance systems and finished grade contours at two foot intervals. Sites less than one acre, with less than two percent cross grades, may submit grade spot elevations of the property line and other required points in lieu of the topographic study.
 4. Plan of new or modified drainage systems, including system dimensions.
 5. Sites located in areas which are regulated by the Boise Foothills Development Ordinance (Boise City Code Title 11, Chapter 14) shall have all erodible soils designated and classified using the Unified Soil Classification System (USCS). An engineering geology or geotechnical report, prepared by a registered geologist or geotechnical engineer, and providing recommendations for erosion control, may be required if a determination is made that additional information is necessary to assess the erosion control plan.

6. Location and schedule of soil disturbance.
 7. A BMP inspection and maintenance schedule.
 8. Final vegetation, landscape, and permanent stabilization measures.
 9. Name, title, address, and telephone number of the land owner or owner's representative.
 10. Any other information used to prepare the erosion control plan, such as geologic reports prepared by a registered geologist, maps and geotechnical engineering reports prepared by a registered engineer, and soil surveys. Photographs should be included or cited by reference.
- F. If the applicant submitting an erosion control plan has an approved storm water management plan which contains the requirements listed above, the applicant may file proof of the approved storm water management plan in lieu of submitting a new erosion control plan.
- G. Erosion control plans may be modified at the permit holder's request upon an approved application for modification and payment of the applicable fee. Any modification deemed by PDS to be minor may be approved on site by an authorized enforcement agent without the need for a formal application and fee payment. The authorized enforcement agent shall document the modification on a field report or correction notice, and the approved plans, with a dated signature.
- H. If an authorized enforcement agent determines the facilities or techniques of an erosion control plan are not effective or sufficient after prior approval, and is having an impact on public property or private property not controlled by the permit holder, or is placing Boise City in violation of its NPDES permit, the agent may order a revised plan be submitted within a reasonable time period. If the revised plan is not acceptable or is not immediately implemented upon approval, the permit may be suspended or revoked. Any decision of the authorized enforcement agent or PDS may be appealed pursuant to section 8-17-03.2.
- I. Emergency control measures may be ordered when erosion products are actually leaving the site or sediment deposition is occurring. These measures will not relieve the duty to file a revised plan if ordered.

8-17-02.4 Erosion and Sediment Control Standards

The design, testing, installation, and maintenance of erosion controls, as detailed in the erosion control plan, shall be in accordance with the Boise City Storm Water BMP Guidebook or other similar reference materials, and shall be based on the following conditions, goals and expectations:

- A. Minimization of soil exposure;

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- B. Prevention of landslides, slope failures, gully developments and rill erosion at hillside locations;
- C. Stabilization of exposed soil areas and temporary soil stockpiles;
- D. Establishment of permanent vegetation;
- E. Prevention of sediment damages to storm drain systems;
- F. Scheduling of erosion and sediment control practices;
- G. Use of temporary sediment basins;
- H. Control of storm water discharge to minimize downstream erosion;
- I. Stabilization of waterways and outlets;
- J. Protection of storm water inlet structures from sediment during construction;
- K. Underground utility construction;
- L. Construction of access routes;
- M. Control measures for disposal of sediment from temporary erosion and sediment control devices;
- N. Maintenance of erosion and sediment control facilities and practices;
- O. Control measures to accommodate concrete delivery, construction material delivery and construction site parking during wet weather;
- P. Control measures for disposal of construction and building waste, and paint and other chemicals, used during construction and site clean up;

~~8-17-02.5~~ Permit Fees

- A. The City maintains the right to prescribe and regulate the fees or charges associated with obtaining a permit pursuant to this Ordinance.
- B. The City shall set reasonable fees for the application for a permit. Such fees shall be required upon initial application, as well as for any requests for modifications of erosion control plans and requests for variances. If, after review of the plan, it is determined by the Director an incorrect fee has been collected, the fee will be adjusted to the correct amount.
- C. The required permit fees are based on the nature or size of the permitted area and are for the purpose of providing administration and enforcement of the provisions of this Ordinance. The permit fees shall be as follows:

Permit Fees	
Sites less than 1.5 acres	\$75.00
Sites equal to or greater the 1.5, acres, but less than 10 acres	\$75.00 for the first 1.5 acres, \$50.00 per acre for the remainder
Sites equal to or greater than 10 acres, but less than 20 acres	\$500.00 plus \$50.00 per acre over 10 acres
Sites equal to or greater than 20 acres	\$1000.00 plus \$50.00 per acre
Utility Trench Excavation	\$50.00
Special Site Fee (in addition to the applicable fee from 1-4, above)	\$75.00
Permit Transfer Fee	\$50.00
Modification Request Fee	\$75.00
Variance and Waiver Request Fee	\$75.00

- D. The above listed fees shall be doubled if the construction activity is commenced prior to the issuance of the permit, except where an emergency situation has been recognized by the Director. Payment of the doubled fee shall not preclude the City from taking any other enforcement actions within its authority.
- E. The fee necessary to resubmit an application for an expired permit shall be one-half the above listed fees.

8-17-02.6 Training and Certification

- A. Any person who successfully completes a City approved training program shall receive a Boise City Certificate of Training, upon payment of a \$25.00 certification fee. This certificate shall be in card form, with a certification number, and should be carried at all times while on the site of construction activity.
- B. Interim certificates can be obtained prior to the completion of a City approved training program by submitting an enrollment request form to the PDS with an interim certification fee of \$10.00, which will be credited towards the cost of future certification. An interim certificate issued by the City shall remain valid until the next regularly scheduled City approved training program is offered.
- C. The enrollment request form for an interim certificate or the training program

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shall contain the name, address and telephone number of the person receiving the certification, as well as that person's employer, and a brief description of the duties performed by the person to receive the certification.

- D. All persons in charge of a construction site at the time of adoption of this Ordinance shall have thirty (30) days to obtain a Boise City Certificate of Training or an interim certificate. All subsequent site developments shall have a person possessing one of these certificates on staff, with direct control and authority, and immediately available upon the request of an inspector.
- E. A training program must be pre-approved by the Director and must include educational materials on the following subjects:
 - 1. Ecological and resource value of the waters of the state and the U.S.;
 - 2. The proper and effective methods of erosion and sediment control implementation and maintenance, and the benefits of such;
 - 3. Recognition of improperly implemented erosion and sediment control BMP's and the methods of correction;
 - 4. The purpose and provisions of any laws, regulations, and ordinances on erosion and sediment control, including this Ordinance;
 - 5. A description of sediment as a pollutant;
 - 6. The processes of erosion, sediment transport, and sediment deposition;
 - 7. The required responsibilities of supervisory and enforcement personnel pursuant to this Ordinance;
 - 8. The effect of storms on erosion control measures;
 - 9. Emergency remedial action;
 - 10. Dewatering practices;
 - 11. Management of hillsides;
 - 12. Proper measures for areas subject to flooding, including those outside the flood plain; and
 - 13. The difference between erosion control and sediment control.
- F. A Boise City Certificate of Training shall be valid for three years from the date of issuance. A change of employment has no effect on the validity of the certificate. A certificate holder must attend the next available training program after three years has elapsed. If the certificate holder does not attend a training program as directed, the certificate shall expire the day following the designated

program.

- G. Certifications from other cities, states, or associations may be accepted upon approval of the Director, when the applicant can demonstrate the prior certification was based on standards similar to those found in this Ordinance.
- H. Lost certification cards will be replaced by the City for a \$10.00 lost card fee.

8-17-02.7 Training Instructors

- A. For a training program to be approved, it must be taught by an approved instructor, certified by the City. A person may apply for certification by submitting a letter of application, a \$50.00 application fee, and a resume detailing educational history and experience in the area of erosion control. They must be able to demonstrate knowledge of the principles of:
 - 1. Erosion;
 - 2. Sediment transport and deposition;
 - 3. Erosion and sediment control technology, implementation, and maintenance; and
 - 4. Local ordinances regulating erosion and sediment control, including this Ordinance.
- B. The Director shall determine approval of a request for instructor certification by an analysis of the person's demonstrated competence, experience, education, training, and understanding of the applicable laws, regulations and ordinances.
- C. An instructor's certification shall be valid for three years from the date of issuance.
- D. After each class held by a certified training instructor, the instructor shall notify the Director of all persons who have successfully completed the program, including their names, addresses, telephone numbers, and employers. Certification cards will be sent by the Director to applicants who have successfully completed the program.

8-17-02.8 Construction Site NPDES Permits

Current holders of a Construction Site NPDES permit or a Multiple Sector General Permit (MSGP) issued by the U.S. EPA shall be exempt from obtaining a permit and submitting an erosion control plan if the permit incorporates an erosion control plan substantially in conformance with the provisions of this Ordinance and the following procedure and conditions are met:

- A. The substantially conforming erosion control plan must be made available to the City for review a minimum of thirty (30) days prior to commencement of any construction activity.

- B. The applicable fee, as specified in 8-17-02.5, must be tendered to the City and a surety bond may be required.
- C. The Director shall notify the applicant within ten working days whether the submitted plan is in substantial conformity to this Ordinance. If it is not, the Director shall include a detailed explanation of why it is not in substantial conformity with this Ordinance.
- D. No work shall commence unless an erosion control plan has been submitted and approved.
- E. The Director shall be notified of any modifications to the erosion control plan within five working days and may suspend or revoke prior approval if the modifications cause the plan to fall out of conformity.
- F. The City shall be notified a minimum of five days prior to the actual commencement of any construction activity pursuant to a construction site NPDES permit or MSGP.
- G. The City retains all rights of inspection and enforcement as provided for in section 8-17-03.
- H. The approval under this section shall be revoked upon suspension of the NPDES permit or MSGP by the U.S. EPA.

(6098, Amended, 11/13/2001)

Section 8-17-03 ADMINISTRATION, INSPECTION AND ENFORCEMENT

~~8-17-03.1 Waivers and Variances~~

- A. The Director may waive or modify the requirement for all or part of the erosion control plan or report upon a determination that the plan or requirement is unnecessary due to the size, character or natural conditions of a site.
 - 1. To obtain a waiver or modification, a written request must be submitted to the Director, along with the permit application and the applicable fees, detailing each requirement for which a waiver or modification is sought, the reasons for the request, and the potential impact of the waiver or modification.
 - 2. The Director may place conditions upon a grant of waiver or modification deemed necessary to substantially secure the objectives of the standards or requirements being waived or modified.
 - 3. The Director shall be responsible for ensuring that a waiver or modification would not adversely affect the public welfare or the interests of the City, and the general intent of this Ordinance is preserved.

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4. A request for waiver or modification, and the decision of the Director related to such request shall be enclosed with and made part of the permit application and erosion control plan.
 5. A denial of the waiver or modification may be appealed in accordance with the requirements of section 8-17-03.2.
- B. If undue hardship would result from strict application of the requirements of this Ordinance, a variance may be requested.
1. The variance request must be submitted in writing to the Director with the applicable fee, and must detail the reason for the request and include documentation, if necessary.
 2. If a request for variance is denied, the denial may be appealed in accordance with the requirements of section 8-17-03.2.
 3. A variance shall not be considered a right or special privilege.

8-17-03.2 Appeals

- A. Any person notified of a violation of this Ordinance and ordered to perform corrective actions or other activities, or denied a request for waiver, modification, or variance, may request a reconsideration of the order and denial within ten business days of receipt of the decision.
- B. A request for reconsideration shall be made in writing to the Director with specific detail as to the decision or order in question and the reason the decision or order should be reconsidered.
- C. The Director may take additional evidence and testimony to render a decision to affirm, modify or withdraw the order or decision, or the Director may deny the request for reconsideration.
- D. For reconsideration of decisions on variance or waiver requests, no additional testimony or supporting evidence will be allowed unless it is information not reasonably known by the applicant at the time of the original request for variance or waiver.
- E. A denial of reconsideration, or a decision to affirm or modify the original order or decision, may be appealed to the City Council. The appeal must be in written form and submitted to the City Clerk's office within five days of receipt of the decision to be appealed. The appellant shall have the right to address the City Council at a public hearing to dispute the decision of the Director. The City Council may affirm, modify, or withdraw the decision of the Director, or may remand the issue back to the Director for further proceedings.

8-17-03.3 Inspections

All construction activities which require a permit under this Ordinance shall be subject to the

inspection provisions provided herein.

- A. The City maintains the right to inspect any site of construction activity that has been issued a permit under this Ordinance or is required to have a permit issued under this Ordinance.
- B. Sites operating with a site specific permit or a special site permit shall be required to undergo and pass a City inspection upon completion of the installation of perimeter erosion and sediment controls, and upon completion of the final grading and the permanent drainage and erosion control facilities. The permit holder shall be responsible for scheduling these inspections through PDS. Inspections must be requested a minimum of 24 hours prior to the desired time of inspection, excluding Saturdays, Sundays, and holidays. The City shall ensure an inspection is done within 24 hours of a request, excluding Saturdays, Sundays and holidays. Additional inspections may also occur as deemed necessary by PDS.
- C. When an inspection is required under this Ordinance, no work shall proceed until completion of the inspection and approval from the authorized enforcement agent conducting the inspection.
- D. A complaint of violation shall be promptly investigated by inspection. The complainant shall be notified of the results of the inspection and any enforcement action taken.

8-17-03.4 Administrative Enforcement

In addition to any other remedies under this Ordinance, a person or permit holder in violation of this Ordinance may be subject to administrative enforcement procedures. The administrative enforcement procedures are not a prerequisite to any other remedy under this Ordinance and if administrative enforcement is undertaken, any of the following procedures may be utilized regardless of the order in which they appear in this section.

- A. If an authorized enforcement agent determines a violation of the approved erosion control plan is occurring or has occurred, the permit holder or the designated responsible person may be notified by a Correction Notice or Notice of Violation. Both notification documents contain a description of the required corrective action and provide a time period in which the corrective action must be completed. A Correction Notice will not require a signature from the owner; however, a Notice of Violation shall require the signature of the owner of the site or an agent representing the owner.
- B. If the corrective action requested in a Correction Notice or Notice of Violation is not completed in the specified time period, a Stop Work Order may be issued. The authorized enforcement agent shall determine the extent of the order, which may include all work except the corrective action. Once a Correction Notice and/or a Notice of Violation have been issued to a permit holder, if continuous violations occur on the permitted project, Stop Work Orders or a Citation may be issued without further issuance of a Correction Notice or Notice of Violation. The permit holder may be requested by the Director to respond in writing to

multiple violations.

- C. If no reasonable effort at corrective action is made, or if necessitated by emergency, the Director or authorized enforcement agent may cause the corrective action to be performed and shall assess the actual and administrative costs of such performance against the property owner.
- D. A Stop Work Order may be issued at any time if work is being done without a valid, current permit.
- E. Administrative costs may be assessed to the property owner if any administrative enforcement action is undertaken.

~~8-17-03.5 Violations Constitute Misdemeanors~~

The knowing violation of any provision, or failure to comply with any requirement, of this Ordinance shall constitute a misdemeanor and may be punishable by a fine up to \$300.00, imprisonment in the county jail up to six months, or both. Each day on which a violation occurs may constitute a separate criminal offense.

~~8-17-03.6 Violations Deemed a Public Nuisance~~

- A. In addition to any other remedies and penalties provided for by this Ordinance, any condition caused or permitted to exist in violation of this Ordinance shall be considered a threat to the public health, safety, welfare, and environment, and may be declared and deemed a nuisance by the Director or an authorized enforcement agent.
- B. Any condition deemed a nuisance by the Director or an authorized enforcement agent may be summarily abated and/or restored by the City and civil actions may be taken to abate, enjoin, or otherwise compel the cessation of such nuisance.
- C. The cost of abatement and restoration shall be borne by the owner of the property or the permit holder for work done on the property, and shall be a lien upon and against the property and such lien shall continue until paid.
- D. The City shall seek from the violator, the payment of all costs of investigation, administrative overhead, out-of-pocket expenses, cost of administrative hearings, costs of suit and reasonable attorney's fees for all administrative or civil proceedings for nuisance violations in which the City is the prevailing party, as authorized by state law.

~~8-17-03.7 Civil Actions for Violations~~

In addition to any other remedies provided for by this Ordinance, any violation of this Ordinance may be enforced by civil action brought by the City. In any such action, the City may seek any or all of the following:

- A. Temporary and/or permanent injunction;
- B. Assessment of the violator for the costs of any investigation, inspection, or

monitoring survey which led to the establishment of a violation, and for the reasonable costs of preparing and bringing legal action under this provision;

- C. Costs incurred in removing, correcting, or terminating the adverse effects resulting from a violation;
- D. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life;
- E. Assessments and recovered damages under this provision shall be used exclusively for costs associated with implementing or enforcing this Ordinance.

~~8-17-03.8 Concealment~~

Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Ordinance shall constitute a violation of such provision.

~~8-17-03.9 Nonexclusivity of Remedies~~

All remedies and penalties under this Ordinance are in addition to and do not supersede or limit any and all other remedies and penalties, both civil and criminal. The remedies and penalties provided for herein shall be cumulative and not exclusive.

~~8-17-03.10 Acts Resulting in Violation of Federal Laws and Regulations~~

Any person who violates any provision of this Ordinance, any provision of any permit issued pursuant to this Ordinance, or discharges any pollutant or causes pollution, or violates a cease and desist order or any requirement or prohibition, may also be in violation of federal laws or regulations, and may be subject to the sanctions of those laws or regulations, including civil or criminal penalties, notwithstanding any legal action taken by the City.

~~8-17-03.11 Disclaimer of Liability~~

The degree of protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth herein are minimum standards and this Ordinance does not imply that compliance will ensure against all unauthorized discharge of pollutants. This Ordinance shall not create liability on the part of the City, any agent or employee thereof for any damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

(6098, Added, 11/13/2001)