

ORDINANCE 2011

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ANKENY, IOWA, BY AMENDING PROVISIONS PERTAINING TO CHAPTER 169 CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

BE IT ENACTED by the City Council of the City of Ankeny, Iowa:

SECTION 1. CHAPTER MODIFIED. Chapter 169 of the Code of Ordinances of the City of Ankeny, Iowa, is amended by deleting the stricken language and inserting the underlined language as follows:

169.01 PERMIT REQUIRED.

1. Any person, entity, sole proprietorship, partnership, corporation, State agency or political subdivision (“applicant” or “person”):

(a) required by law or administrative rule to obtain coverage under the Iowa Department of Natural Resources (IDNR) National Pollutant Discharge Elimination System (NPDES) General Permit No. 2 (General Permit No. 2); and/or

(b) required to obtain a building permit from the City of Ankeny for new construction and/or a commercial or industrial addition

shall also be required to obtain from the City a Construction Site Erosion and Sediment Control Permit (COSESCO permit) in addition to and not in lieu of ~~the~~any State IDNR authorization for coverage.

~~2. IDNR authorization for coverage under General Permit No. 2 and a COSESCO permit are required prior to construction activity that disturbs one or more acres or which is part of a larger project that disturbs one acre or more in total.~~

~~3. Persons applying for a building permit, but who are not required to obtain coverage under General Permit No. 2 or a COSESCO permit, will be required to provide information regarding how they will comply with this chapter. Forms to provide this information will be available with the City building permit applications.~~

42. The person holding the permit (“permittee”) shall have primary responsibility to comply with the General Permit No. 2 and/or the City COSESCO permit requirements of this chapter.

169.02 APPLICATION FOR PERMIT.

1. Applications for COSESCO permits shall be made on forms approved by the City which may be obtained at the Public Services Building.

2. An applicant may be required to post security for compliance in accordance with Section 200.39 of this Code of Ordinances. The application form signed by the applicant for a City COSESCO permit shall include the following commitment by the applicant: “In addition to the performance security posted with this application, the undersigned applicant hereby agrees to

defend, indemnify and hold the City harmless from any and all claims, damages or suits arising directly or indirectly out of any act of commission or omission by the applicant, or any employee, agent, assign or contractor or subcontractor of the applicant, in connection with applicant's coverage under General Permit No. 2 and/or City COSESCO permit.

3. An applicant for a COSESCO permit shall pay fees ~~as follows: An application/permit fee shall be paid at the time of application in the amount of \$120.00 plus \$20.00 per acre or portion thereof for sites over one acre total~~ in accordance with an established fee schedule, which fee schedule may be modified from time to time, adopted by Resolution of the City Council.

4. An applicant who also has applied for coverage under General Permit No. 2 shall submit with the application two full copies of the materials described below as a basis for the City to issue a COSESCO permit:

A. Notice of Intent and supporting materials submitted to the IDNR in support of applicant's application for coverage under the General Permit No. 2;

B. Storm Water Pollution Prevention Plan (SWPPP).

C. Evidence of IDNR authorization for coverage received after application for a COSESCO permit shall be submitted ~~when it is received~~ by the applicant.

5. Every SWPPP submitted to the City in support of an application for a COSESCO permit shall:

A. Comply with all current minimum mandatory requirements for SWPPPs promulgated by the IDNR in connection with General Permit No. 2; and

B. If the applicant is required by law to file a Joint Application Form, *Protecting Iowa Waters, Iowa Department of Natural Resources and U.S. Army Corps of Engineers*, comply with all mandatory minimum requirements pertaining to such applications; and

C. Include evidence of permit approval for all applicable State or Federal permits in existence at the time of application; and

D. Be prepared by a licensed professional engineer or landscape architect or a certified professional in erosion and sediment control (CPESC) or a representative of the local Soil and Water Conservation District, credentialed in a manner acceptable to the City; and

E. Include within the SWPPP a signed and dated certification by the person preparing the SWPPP that the SWPPP complies with all requirements of this chapter.

6. In addition to the SWPPP requirements stated in subsection 5 immediately above which constitute minimum mandatory requirements imposed by the Program, every SWPPP submitted to the City in support of an application for a COSESCO permit shall comply with the Statewide Urban Design Standards (SUDAS), including but not limited to design, location, and phased implementation of effective, practicable storm water pollution prevention measures.

7. When a COSESCO permit is required, it shall be obtained prior to or at the same time as issuance of a building permit, plat approval by Council or site plan approval by the Planning and Zoning Commission.

8. For so long as a construction site is subject to a General Permit No. 2 and/or a COSESCO permit, the applicant shall provide the City with current information as follows:

A. The name, address, and telephone number of the person on site designated by the owner who is knowledgeable and experienced in erosion and sediment control and who will oversee compliance with the General Permit No. 2, if applicable, and/or the City COSESCO permit.

B. The names, addresses, and telephone numbers of the contractors and/or subcontractors that will implement each erosion and sediment control measure identified in the SWPPP, if applicable.

C. Applicant's failure to provide current information shall constitute a violation of this chapter.

9. Property owners can transfer coverage of the General Permit No. 2 and/or the COSESCO permit responsibility with the sale of property to homebuilders or new lot owners. Contractors and subcontractors can accept transfer of responsibility as co-permittees. Transferees must agree to the transfer in writing, and must agree to fulfill all obligations of the SWPPP, the General Permit No. 2 and/or the COSESCO permit. Absent such written confirmation of transfer of obligations received by the City, the ~~permitted property owner~~ permittee remains responsible for compliance on any lot that has been sold. A permittee shall notify the City of any transfers or any Notice of Discontinuation sent to the IDNR for release of any property from a General Permit No. 2 pursuant to 567 IAC 64.6(6) or any similar successor provision.

10. Upon receipt of an application for a COSESCO permit, the City shall either find that the application complies with this chapter and issue a COSESCO permit in accordance with this chapter, or that the application fails to comply with this chapter, in which case the City shall provide a report identifying noncompliant elements of the application.

169.03 INSPECTION PROCEDURES.

1. Compliance inspections shall be conducted by the Storm Water Coordinator, or other representative of the City, hereinafter referred to as the "enforcement officer." Inspections by the enforcement officer may be scheduled or unannounced.

2. Permittee shall notify the City at each phase of construction when all measures required by the applicant's SWPPP and/or COSESCO permit have been accomplished on site. Phases include but are not limited to grading, underground utilities, installation and maintenance of erosion and sediment controls, paving and/or fine grading, building construction and final stabilization. ~~Other phases may be as identified in the SWPPP.~~

3. The City shall conduct regular inspections for the purpose of determining compliance with this chapter, and shall within a reasonable time thereafter report to the permittee either that compliance appears to have been achieved, or that compliance has not been achieved. At the time of reporting to the permittee, any conditions of noncompliance shall be identified. The permittee shall immediately commence corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this chapter.

4. Construction shall not occur on site from the time the City identifies conditions of noncompliance until resolution of such conditions.

5. Construction activities undertaken by a permittee prior to resolution of conditions of noncompliance shall constitute a violation of this chapter.

6. The City shall not be responsible for the direct or indirect consequences to the permittee or to third parties for noncompliant conditions undetected by inspection.

7. Permittee shall notify the City in writing when the site is permanently stabilized.

8. The City shall not be responsible for the direct or indirect consequences to the applicant, permittee, or to third parties for noncompliant conditions.

169.04 MONITORING PROCEDURES.

1. Upon issuance of a COSESCO permit, a permittee has an absolute duty to monitor site conditions and to report to the enforcement officer any storm water discharge that is a violation of the water quality standards, or in a manner inconsistent with the permittee's SWPPP, General Permit No. 2 and/or COSESCO permit.

A. Such report shall be made by the permittee to the enforcement officer immediately but in any event within one (1) business day of the discharge.

B. Failure to make a timely report shall constitute a violation of this chapter.

2. Any third party may also report to the City site conditions which the third party reasonably believes pose a risk of storm water discharge in a manner inconsistent with the applicant's SWPPP, General Permit No. 2 and/or COSESCO permit.

3. Upon receiving a report pursuant to the previous subsections, the enforcement officer shall conduct an inspection of the site as soon as reasonably possible and thereafter shall provide the permittee with a notice identifying the conditions of noncompliance. The permittee shall immediately commence corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this chapter, whereupon the enforcement officer shall immediately commence enforcement actions specified in Section 169.05 below.

4. The City shall not be responsible for the direct or indirect consequences to the permittee or to third parties for noncompliant conditions ~~undetected by the inspection.~~

169.05 ENFORCEMENT.

1. Violation of any provision of this chapter may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorney fees and costs from a person who is determined by a court of competent jurisdiction to have violated this chapter.

2. Violation of any provision of this chapter may also be enforced as a municipal infraction within the meaning of § 364.22, pursuant to [Chapter 4](#) of this Code of Ordinances.

3. Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the City Attorney.

4. If the enforcement officer finds any work regulated by this chapter being performed in a manner either contrary to the provisions of this chapter or dangerous or unsafe, the enforcement officer is authorized to issue a stop work order. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, all work on site shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as stated in this chapter.

SECTION 2. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 3. WHEN EFFECTIVE. This ordinance shall be in effect as of July 1, 2020 ~~from and after its final passage, approval and publication as provided by law.~~

PASSED at Ankeny, Iowa, this 23rd day of March, 2020.

Gary Lorenz, Mayor

ATTEST:

Denise L. Hoy, City Clerk

PUBLISHED IN THE
DES MOINES REGISTER
ON THE ____ DAY OF _____, 2020

1st Con 03/23/2020
2nd Con _____
3rd Con _____