

ORDINANCE NO. O-08-11

AN ORDINANCE OF THE CITY OF GLENN HEIGHTS, TEXAS ESTABLISHING EROSION AND SEDIMENTATION CONTROL CODE DESIGNED TO MINIMIZE EROSION AND SEDIMENTATION FROM PRIVATE PROPERTY ONTO PUBLIC PLACES AND PUBLIC RIGHTS-OF-WAY; STATING THE PURPOSE AND SCOPE OF THE CODE; MAKING IT UNLAWFUL TO PERMIT A PUBLIC EROSION NUISANCE; DEFINING A PUBLIC EROSION NUISANCE; PROVIDING NOTICE PROVISIONS; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE AND PROVIDING THAT SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING FOR THE DUTIES OF THE CITY AND THE RESPONSIBILITIES OF THE OWNER; PROVIDING FOR AN EROSION AND SEDIMENTATION CONTROL PLAN TO BE SUBMITTED BY DEVELOPERS; PROVIDING FOR SURETIES TO BE PROVIDED BY DEVELOPERS; PROVIDING FOR STOP WORK ORDERS TO BE ISSUED FOR VIOLATIONS; PROVIDING FOR INJUNCTIVE RELIEF AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Texas Commission on Environmental Quality (TCEQ) is responsible for implementing the Clean Water Act as adopted by the federal government; and

WHEREAS, throughout the State of Texas TCEQ has designated attainment areas surrounding heavily populated metropolitan areas; and

WHEREAS, the City of Glenn Heights, Texas is located within one of the designated attainment areas; and

WHEREAS, the City of Glenn Heights, Texas is required to comply with and enforce the rules and regulations of the TCEQ; and

WHEREAS, as mandated by TCEQ the City shall enforce erosion control practices to aid in reaching desired results.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GLENN HEIGHTS, TEXAS:

SECTION ONE - FINDINGS OF FACT, PURPOSE, AUTHORITY, RELATED ORDINANCES

A. FINDING OF FACT

The City of Glenn Heights (City) has in the past experienced significant soil erosion and sedimentation problems. Large quantities of earth have been displaced from private property onto drainage easements, storm drains and other public places, access easements, public easements and public rights-of-way. Erosion is a dangerous activity in that it contaminates water supplies and water resources. Excessive sedimentation clogs watercourses, drainage easements and storm drains, and causes flooding which results in substantial damage to public and private lands. These problems result in a serious threat to the health, safety and general welfare of the community.

B. STATEMENT OF PURPOSE

This Ordinance sets forth the minimum performance standard necessary to protect against erosion and sedimentation problems within the City and to establish the various public and private responsibilities for providing this protection. It is the intent of this Ordinance to set forth performance standards which all erosion and sedimentation controls must, at a minimum, meet. It shall be the duty and responsibility of all persons, firms or corporations to which this Ordinance applies, to design and implement erosion and sedimentation control measures which meet the performance standards contained in this Ordinance. Further, it is the purpose of this Ordinance to:

- (1) Protect human life, health and property;
- (2) Minimize expenditures of public money for cleaning sediment out of streets, sidewalks, storm drains and watercourses;
- (3) Ensure that those who expose soil to possible erosion losses are minimizing those soil losses;
- (4) Preserve the natural beauty and aesthetics of the community;
- (5) Prevent the pollution of streams, ponds and other watercourses by sediment.
- (6) Provide for restoration of sites to reduce the negative environmental impacts of construction activity.

C. SCOPE OF AUTHORITY

The provisions of this Ordinance apply to:

- (1) Any person, firm, corporation or business proposing to develop land or improve property within the City;
- (2) Any person, firm, corporation or business currently developing land or improving property within the City; and
- (3) Any person, firm, corporation or business who own, possesses, is in custody of, or exercises control of, property within the City. This Ordinance applies to individual building structures, subdivisions, excavations and fills operations, all development and all other similar development activities.

D. RELATED ORDINANCES

Besides this Ordinance, the City has other Ordinances, regulations, and specifications possibly affecting erosion and sedimentation control. In the event of a conflict between

this Ordinance and any other Ordinances of the City, the most restrictive Ordinance shall govern.

SECTION TWO - APPLICABILITY, NOTICE AND ABATEMENT

A. LANDS TO WHICH THIS ORDINANCE APPLIES

All properties (lands) within the City are subject to this Ordinance.

B. OFFENSE OF FAILING TO PREVENT A PUBLIC EROSION NUISANCE

It shall be unlawful for any person, firm or corporation which owns, possesses, is in custody of or exercises control of property to permit a public erosion nuisance to occur on said property. A public erosion nuisance is an occurrence where erosion of, or sediment from, one location causes an unsafe, bothersome, or unsightly condition on public property and public rights-of-way. An unsafe, bothersome or unsightly condition or burden includes silt, mud or similar debris, originating on one property but being deposited onto a second off-site property, which is public property or a public right-of-way from which the City may have to remove or clean up the deposit due to liability, statutory, aesthetic, drainage or property damage concerns. Examples include, but are not limited to:

- (1) Excessive sedimentation in storm drains, drainage easements and watercourses caused by erosion; and
- (2) Excessive sedimentation on public streets, sidewalks, alleys, easements and other rights-of-way caused by erosion. It is not a violation of this Ordinance if erosion and sedimentation occurs upon private property and is deposited upon private property. Only erosion and sedimentation which impacts upon public property and public rights-of-way are governed by this Ordinance.

C. NOTICE PROVISIONS

It shall be the duty of the appointed City Manager or his designee to give forty-eight hours (48 hours) notice, in writing, to the owner or agent in charge of any premises believed to be in violation of this Ordinance, to correct the public erosion nuisance and to clean up and remove the offending and burdensome sedimentation. A notice of less than forty-eight (48) hours may be given in the event that the City Manager decides, in his/her judgment, that the situation believed to be in violation of this Ordinance poses a substantial and immediate threat to public health, safety, and welfare.

D. VARIANCES

The Glenn Heights' City Council may grant a written variance from the provisions of this Ordinance if strict adherence to requirements will result in unnecessary hardship and not fulfill the intent of this Ordinance. The owner shall submit a written request for a variance to the City. The request shall state the specific variances sought and reasons

for requesting the variance. The City shall not grant a variance unless and until sufficient specific reasons justifying the variance are provided by the owner.

E. ABATEMENT BY CITY

In the event that the owner of any lot, tract, parcel of land, or a portion thereof situated within the corporate limits of the City shall fail to comply with this Ordinance, then the City Manager, or his designee, shall notify such owner by letter, addressed to him at the address shown on the last approved tax rolls of the City or at any residence or business structure located on subject property or at the last known address. The mailing of notice in accordance with any of the above shall satisfy this section. In the alternative, the City may notify the owner by publication in the City's official newspaper on one (1) occasion. At the expiration of ten (10) days after notification or publication, the City may enter upon such premises and may do such work as is necessary, or cause the same to be done, in order that the premises may comply with the requirements set forth within this Ordinance. A statement of the cost incurred by the City to abate such condition shall be mailed to the owner of said premises, which statement shall be paid within thirty (30) days of the date of the mailing thereof. In the event that said statement has not been paid within such period, the City Manager or the appointed City Manager may file a statement with the Dallas County Clerk of the expenses incurred to abate such condition on said premises, and the City shall have a privileged lien on any lot, tract or parcel of land upon which such expense is incurred, together with ten (10) percent on the delinquent amount from the date such payment is due. For any such expenditure and interest, as aforesaid, suit may be instituted and recovery and foreclosure had in the name of the City and the statement so made, as aforesaid, or a copy thereof shall be prima-facie proof of the amount expended in any such work performed by the City. The City Manager or his/her designee shall file a statement of expenses incurred, giving the amount of such expenses, the date on which said work was done or improvements made, with the county clerk; and the City shall have a privileged lien on such lots or real estate upon which said work was done or improvements made to secure the expenditures so made, in accordance with the provisions of Subchapter "A" of Chapter 342 of UTCA Health and Safety Code, which lien shall be second only to tax liens and liens for street improvements; and said amount shall bear ten (10) percent interest from the date said statement was filed. Further, for any such expenditures and interests as aforesaid, suit may be instituted and recovery and foreclosure of said lien may be had in the name of the City; and the statement of expenses so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.

SECTION THREE - DUTIES AND RESPONSIBILITIES

A. DUTIES OF CITY MANAGER

The City Manager or his/her designee is hereby appointed to administer and implement this Ordinance. The duties of the City Manager or his/her designee shall include, but not be limited to:

- (1) Inspecting sites to determine compliance with this Ordinance;
- (2) Determining if sureties shall be exercised. If so, the City Manager shall arrange for the work to be done, and if not, the City Manager shall return the sureties to the applicant; and
- (3) Determining if a "stop work order" shall be issued and, if so, when the "stop work order" shall be removed from the project or construction, and work allowed to commence or recommence.

B. RESPONSIBILITIES OF OWNERS

The owner, builder, developer, tenant, or any other person, firm, or corporation who owns, possesses, is in custody of, or exercises control of, property shall be responsible for any silt, mud, or sands transported from the property by drainage. The intent of this Ordinance is that owners, builders, and developers make provisions for preventing erosion and sedimentation problems at such time as their property is proposed for development, use, or modification, and to continue such preventive measures during the actual construction and development of the property. Additionally, all persons, firms, or corporations who, after construction and development, own, possess, are in custody of, or exercise control of, the property are responsible for preventing the erosion and sedimentation problems addressed by this Ordinance.

SECTION FOUR - ADMINISTRATION, EROSION AND SEDIMENTATION CONTROL METHODS, APPROVALS, SURETY

A. STANDARD FOR NEW SUBDIVISIONS

In addition to those requirements for subdivisions found in the Code of Ordinances, City of Glenn Heights, Texas, all applicants for subdivision of land shall submit to the City Manager an erosion and sedimentation control plan for approval prior to the commencement of construction. The erosion and sedimentation control plan shall be included in the engineering construction plans.

B. EROSION AND SEDIMENTATION CONTROL PLAN

The objective of the Erosion and Sedimentation Control Plan is to prevent public erosion nuisances. The prevention of public erosion nuisances can be promoted, in part, by the following goals:

- (1) Reduce sedimentation in streams, creeks, lakes, waterways, storm drains, etc.
- (2) Protect the quality of the water in the City.
- (3) Provide, protect, and preserve wildlife habitat.
- (4) Provide for restoration of sites to reduce the negative environmental impacts of construction activity.

C. METHODS OF REDUCING EROSION AND SEDIMENTATION

In order to implement the objectives stated above, the following design considerations are necessary:

- (1) Limit the size of disturbed areas to the greatest extent possible.
- (2) Stabilize any disturbed area as soon as possible.
- (3) For construction activities in waterways, the following additional requirements must be met.
 - (3.1) At the end of each working day the Contractor shall remove all loose excavated material from the channel.
 - (3.2) No construction or fill materials can be stored within the limits of the channel. All equipment and materials storage and staging areas must have erosion controls.
 - (3.3) Rock berms or sand bag berms shall be used to entrap sediment.
 - (3.4) Flooding potential should be considered when locating the control measures.
- (4) Controls are required to intercept silt from all disturbed areas.
- (5) Keep the velocities of storm water runoff below the erosive level.
- (6) Protect street areas and areas disturbed by development activity from upstream runoff.
- (7) Capture and filter/drain stormwater runoff.
- (8) Minimize the extent of sediment leaving the project site.
- (9) Reduce flooding hazards and silt removal cost associated with excessive sediment accumulation in storm drains and waterways.
- (10) Reduce the concentration of stormwater runoff and promote street flow to greatest extent possible.
- (11) Re-vegetate all disturbed areas with a rapid, vigorous growth of long-term vegetation composed of a mixture of grasses, forbs and woody plants.
- (12) Provide sedimentation and/or filtration pond to maintain and improve water quality.
- (13) Erosion control plans should be phased to accommodate for changes in drainage patterns that occur during development.
- (14) Reduce the silt leaving a construction site on the wheels of construction vehicles by providing vehicle washing areas and/or established construction entrances and exits.
- (15) Preserve and protect existing vegetation to the greatest extent possible.
- (16) Planning should consider the natural topography and soil condition in an attempt to limit the erosion potential.
- (17) Design erosion/sedimentation controls to harmonize with natural character of the lands.
- (18) When storm drain inlets must be protected, a perimeter filtration dike shall be used (triangular filtration dike or hay bale dike). The above listed considerations are illustrative only, and are not to be considered an exhaustive list of criteria effective erosion, and sedimentation plan should address in order to prevent a public erosion nuisance. It shall be the sole responsibility of the applicant to prepare and submit an erosion and sedimentation control plan which meets the requirements of the City and this Ordinance. The plan shall include sufficient information to evaluate the environmental characteristics of the affected areas,

the potential impacts of the proposed grading on water resources, and the effectiveness and acceptability of measures proposed to minimize soil erosion and off-site sedimentation. The applicant shall certify on the drawings that all clearing, grading, drainage, construction, and development shall be conducted in strict accordance with the plan.

D. EFFECT OF APPROVAL

It is to be understood that the approval of an Erosion and Sedimentation Control Plan by the City does not constitute recognition by the City that the Erosion and Sedimentation Control Plan will prevent any, or all, public erosion nuisances. By approval of the Erosion and Sedimentation Control Plan, the City does not warrant that the Erosion and Sedimentation Control Plan will be sufficient to prevent a public erosion nuisance, and the City waives no rights to pursue any legal remedies, both under this Ordinance, and all other applicable Ordinances and laws. If for any reason, after an Erosion and Sedimentation Control Plan is approved by the Engineering Department, a public erosion nuisance occurs on property addressed by said Erosion and Sedimentation Control Plan, the approval of said Erosion and Sedimentation Control Plan shall not be a defense or bar to prosecution under this Ordinance.

E. WARNING AND DISCLAIMER OF LIABILITY

The planning considerations given in this Ordinance for erosion controls rely on a degree of erosion and sedimentation control and flood protection that is considered reasonable for regulatory purposes and that is based on scientific, engineering, and economic considerations. This Ordinance does not imply that erosion and sedimentation controls will survive inundation by runoff from storms or that land below such controls will be free from flooding or flood damages. This Ordinance shall not create liability on the part of the City, or any officer or employee thereof, for any flood damages, or erosion or sedimentation damages, whether to persons or property, that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

F. SURETY FOR PERMANENT EROSION CONTROLS IN NEW SUBDIVISIONS

The applicant shall provide a surety in the form of cash, certificate of deposit, surety bond, or irrevocable letter of credit acceptable to the City to insure that vegetative cover and other permanent erosion control measures are installed, maintained, and functioning properly up to a two (2) year period from the date of final acceptance of the dedicated streets and/or utilities by the City. This surety shall be given to the City before the final acceptance of the streets and/or utilities. This surety shall be in the amount estimated by the Developer, which is one hundred percent (100%) of the cost of constructing and maintaining the permanent erosion controls for a two (2) year period. However, such estimate is subject to review by the City Manager and may be rejected, and the surety not accepted, if the City Manager deems the estimate not to be a reasonable approximation of the costs of constructing and maintaining the erosion

controls. Should the vegetative cover die or become sparse or the erosion controls fail to be maintained or are not functioning during this two-year period, the City may notify applicant in writing. The applicant has ten (10) days after being notified to begin correcting the problems. If no corrections are started, the City may make the necessary repairs by exercising the surety or billing the applicant. If at the end of the two-year period the vegetative cover is still not established or is sparse, or the erosion controls are not functioning, the City may exercise the surety and have the erosion controls installed and established. The above procedures for ensuring that vegetation is established shall apply to all projects, whether or not the vegetation is the long-term maintenance responsibility of the City. Any vegetative cover which is planted and is a permanent part of the improvement project will not be accepted by the City until the growth has been established and maintained by the developer for a two (2) year period from the date of final acceptance of the subdivision. After the two-year period has elapsed, the owner of the property shall be responsible for maintaining the erosion controls in good working order. If any future owner modifies or disturbs the erosion controls for the area, that owner must restore or replace the permanent erosion controls at the conclusion of the disturbing activity.

G. STOP WORK ORDERS

All development, improvement, and construction on any land which is in violation of the provisions of this Ordinance may be halted and stopped by order of the City Manager. No stop work order may be issued until the notice provisions of this Ordinance are fully complied with by the City and the owner or agent of the premises is given reasonable time period to correct the public erosion nuisance and to clean up and remove the offending and burdensome sedimentation.

SECTION FIVE - SEVERABILITY

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

SECTION SIX - PENALTY

Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed Five Hundred Dollars (\$500.00) and a separate offense shall be deemed committed upon each day during or on which violation occurs or continues.

SECTION SEVEN - EFFECTIVE DATE

The Ordinance shall take effect on August 1, 2011 and after publication according to statute.

PASSED AND ADOPTED by the City Council of the City of Glenn Heights, Texas this the 18th day of July, 2011.



VICTOR PEREIRA, Mayor
City of Glenn Heights, Texas

ATTEST:



OTHEL MURPHREE, City Secretary