

CHAPTER 167

FILLING, GRADING, AND EROSION CONTROL CODE

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167.01 TITLE AND AUTHORITY. This chapter shall be known as “City of Hiawatha Filling, Grading, and Erosion Control Code,” and has been referred to as the “Grading Code” when a shortened title is necessary. This chapter is adopted by authority of and for the purposes set forth in the *Code of Iowa* and shall be codified as Chapter 167 of the Code of Ordinances, City of Hiawatha, Iowa.

167.02 ADOPTION AND REPEALS. This chapter establishes and provides for the administration, enforcement, and amendment of filling, grading, and erosion control requirements; and repeals all ordinances or resolutions in conflict therewith.

167.03 PURPOSE AND INTENT. Soil erosion contributes to: the impairment of drainage ways; an increase in road and storm sewer maintenance costs; the destruction and obstruction to traveled roadways, creating a potential hazard for vehicular traffic; the contamination and degradation of land surfaces and streams, flooding, and dusty conditions. Requirements are established by this chapter in an effort to control erosion and sediment transport. Unless exempted in this chapter, a Grading, Erosion and Sediment Control Plan will be required prior to any proposed land-disturbing activity. This chapter also establishes requirements for grading, filling, fill material, and obtaining fill permits. These requirements include use of suitable fill material, stable slope construction, proper site drainage, and usability of public and private easements.

167.04 APPLICABILITY. A filling, grading and erosion control permit must be in conformance with the standards, procedures, exemptions and other requirements of this chapter.

167.05 RELATIONSHIP TO OTHER REQUIREMENTS.

1. Relationship to Other Laws. Nothing in this chapter shall be construed as exempting any person from other requirements of the City of Hiawatha or State and Federal laws and regulations. To the extent the requirements of this chapter differ from other applicable City, State, or Federal requirements, the more restrictive requirements shall apply.

2. Minimum Requirements. The provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety, morals, comfort, convenience, prosperity, and general welfare.

167.06 SEVERABILITY. It is the intention of the City Council that each section, paragraph, sentence, clause, and provision of this chapter is separable and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this chapter, or any part thereof, other than that affected by such decision.

167.07 EFFECTIVE DATE. This Grading Code shall be in full force and effect from and after its passage, approval, and publication, as provided by law.

167.08 CONSTRUCTION, INTERPRETATION AND DEFINITIONS. Wherever used in this chapter the terms listed below will have the meanings indicated. Words using the present tense shall include the future; the singular shall include the plural; the plural shall include the singular; the masculine gender shall include the feminine; the term “shall” is always mandatory, and the term “may” is permissive.

1. “Applicant” means any individual, firm, corporation, association, or partnership, or proprietor of land to undergo land-disturbing activities.
2. “Certified professional erosion and sediment control specialist” means a specialist in the area of soil erosion and sediment control, as certified by the Soil and Water Conservation Society and the International Erosion Control Association.
3. “City” means the City of Hiawatha, Iowa.
4. “City Council” means the City Council of the City of Hiawatha, Iowa.
5. “City Engineer” means the city engineer for the City of Hiawatha, Iowa.
6. “Civil Engineer” means a professional engineer licensed in the State of Iowa to practice civil engineering.
7. “Clearing and grubbing” means removal of unwanted growth, in the form of trees, wood, shrubs, brush, or stumps on a site.
8. “Design professional” means a licensed civil engineer, registered landscape architect, or certified professional erosion and sediment control specialist.
9. “Design Standards Manual” means the latest edition of the *Cedar Rapids Metropolitan Area Engineering Design Standards*, as approved by the City Council.
10. “Development” means the alteration of land from its existing state.
11. “Disturbed area” means the part of a site on which land-disturbing activities take place. All land area that is to be disturbed at any time during the project is to be counted in determining the disturbed area, even if part of the land will be stabilized before another part is disturbed.
12. “Erosion” means the wearing away of the land surface by running water, wind, ice, gravity, or other geological, natural, or manmade agents.
13. “Erosion Control Officer” means the City Engineer, Community Development Director, or designee.
14. “Erosion control permit” means a major erosion control permit or a minor erosion control permit.

15. “Filling” means placing materials to effectively change the site contours. This includes placing materials from the site itself, or from off site.
16. “Fill material” means soil, stone, rock, brick, Portland cement, or asphaltic concrete, or sand.
17. “Fill permit” means a permit issued by the City of Hiawatha to engage in filling on a site.
18. “Fill site” means land upon which fill materials are placed and which placement does not require a sanitary disposal permit issued by the State of Iowa.
19. “Final stabilization” means all land-disturbing activities at the site have been completed and that a uniform perennial vegetative cover with a density of 70 percent for the area has been established or equivalent stabilization measures have been employed.
20. “Grading, Erosion and Sediment Control Plan” means a plan for property upon which land disturbing activities are proposed. The Plan will indicate materials, construction phasing, grading and drainage, and erosion and sediment control best management practices according to the *Design Standards Manual*.
21. “General Permit No. 2” means a General Permit No. 2, Storm Water Discharge Associated with Industrial Activity for Construction Activities, as authored and administered by the Iowa DNR.
22. “Iowa DNR” means the Iowa Department of Natural Resources.
23. “Land-disturbing activity” means clearing, grading, excavating, filling, or other construction activities on a site.
24. “Landscape architect” means a professional landscape architect, registered in the State of Iowa to practice landscape architecture.
25. “Major erosion control permit” means a permit issued by the City of Hiawatha to engage in land-disturbing activities on a site with one acre or greater disturbed area.
26. “Minor erosion control permit” means a permit issued by the City of Hiawatha to engage in land-disturbing activities on a site of greater than 6,000 square feet and less than one acre disturbed area.
27. “Responsible party” means one or more persons who have applied for or hold a city erosion control permit or who own, control, or perform work on a site.
28. “Sediment” means solid material, both natural and manmade, that is in suspension, has been transported, or has been moved from its origin by air, water, gravity, or ice and has been deposited by the action of water or wind.
29. “Site” means property where land-disturbing activities take place.
30. “Standard Specifications” means the latest edition of the *Hiawatha Metropolitan Area Standard Specifications for Public Improvements*, as approved by the City Council.
31. “Stabilization” or “stabilized” means vegetative cover with a density of 70 percent has been established or equivalent stabilization measures have been employed.
32. “Storm water drainage system” means all manmade facilities and structures and all natural watercourses that are owned by the City or that are within a drainage

easement owned by the City and that are used for collection, storage, treatment, and conveyance of storm water from any area through any area. This includes, without limitation, all storm water facilities, canals, creeks, curb and gutter, dams, ditches, floodwalls, flumes, gulches, gullies, levees, ravines, siphons, streams, streets, and swales.

33. “Storm water facilities” means anything built or used for the control of storm water, including (without limitation) catch basins, channels, culverts, detention basins, energy dissipation structures, inlets, manholes, outlets, pipes and other conduits, retention basins, and roadways and gutters.

34. “Storm Water Pollution Prevention Plan” means a document conforming to the requirements therefore contained in General Permit No. 2 and this chapter, prepared and certified by a design professional, as defined herein.

35. “SWPPP” means the Storm Water Pollution Prevention Plan.

167.09 FILL PERMIT REQUIRED.

1. Except as provided in subsection 6 of this section, no person shall fill upon any site without obtaining a valid fill permit.

2. All fill permits shall be issued by the City of Hiawatha Building Official upon approval of a completed application for a fill permit on a form provided by the City. The application shall be signed by the title holders of all sites to be filled, together with the applicant, if different from the title holders. The application fee for fill permits and renewals shall be established by resolution of the City Council.

3. A fill permit application shall include the following:

A. A completed application for fill permit on a form provided by the City Building Department.

B. A dimensioned drawing including the following:

(1) Property address or legal description.

(2) Property lines and any existing easements of record.

(3) Limits of fill area.

(4) Existing and proposed ground elevations.

(5) Other information as required by the City Building Official or City Engineer.

C. The application shall include a Grading, Erosion and Sediment Control Plan as set forth in Section 167.11 of this chapter.

4. Fill permits shall be valid for a period of one year from the date of issuance and may be renewed as provided for herein. A renewal application must include those items required in subsection 3 of this section, and the following:

A. Payment of the Renewal Fee.

B. Current dimensioned drawing of the original plan as modified.

5. The Building Department may revoke a fill permit or decline renewal if unacceptable materials are being deposited at the site, or if the permittee has failed to

comply with any of the regulations set forth in this chapter, or any requirement of law, statute or regulation.

6. The following activities are exempt from the requirements of this chapter:
 - A. Corp production activities.
 - B. Cemetery graves.
 - C. Emergencies posing an immediate danger to life or property, or substantial flood or fire hazards.
 - D. Total fill quantity of less than 25 cubic yards in a 12-month time period.
 - E. Disturbed area of less than ¼ acre.
 - F. Public improvements work within public right-of-way and easements.

167.10 FILLING REQUIREMENTS.

1. Clearing and grubbing shall be performed according to Part 3 of Section 01400 of the *Standard Specifications*, except as provided in this chapter.
2. Fill material shall be placed according to the Grading, Erosion and Sediment Control Plan as accepted by the City.
3. Interim filling during construction shall be placed in a safe manner. Soil stabilization, inspection and maintenance of erosion control, and soil stabilization where work has been suspended shall be according to the *Design Standards Manual*.
4. Finish grading shall be according to Part 2 and Part 3 of Section 02900 of the *Standard Specifications*.
5. Finish slopes shall not exceed a 3:1 ratio on any slope facing and terminating within 15 feet of a property line.
6. Unacceptable Fill Materials.
 - A. Fill materials shall not include hazardous waste, synthetic material, metal, and organic material other than natural topsoil incidental to excavation except as noted below. Concrete, brick, tile, and other manufactured inert material shall not be greater than 18 inches in its greatest dimension. Asphalt paving material shall not be used for bank stabilization or where the final location will be below the known water table.
 - B. Trees may be buried within the site they originate from, provided they are not buried within structural footprints or in earthwork providing structural support, such as for building foundations and roadways. Trees shall not be placed in the trench backfill for sewers, culverts, and other underground utilities. Trees shall not be imported onsite from offsite for use as fill.

167.11 GRADING, EROSION AND SEDIMENT CONTROL PLAN REQUIRED.

1. No person shall engage in land-disturbing activities within the City unless a Grading, Erosion and Sediment Control Plan has been approved by the Erosion Control Officer and permit issued.
2. All erosion control measures must be in place before any additional work is started.

3. Sites with land disturbance shall fall into one of two categories as listed below:

A. Major Erosion Control Permit Is Required.

(1) Sites or common plans of development or sale that will result in a total disturbed area of one or more acres shall obtain a major erosion control permit prior to any land-disturbing activities.

(2) All major erosion control permits shall be issued by the City upon approval of a completed application for erosion control permit on a form provided by the City. The application shall be signed by the title holder of the site, together with the applicant, if different from the title holder.

(3) Sites required to obtain an erosion control permit shall comply with Section 167.14 (Requirements for Sites Covered by the Iowa DNR General Permit No. 2) herein.

(4) A major erosion control permit application shall include the following:

a. A completed application for erosion control permit on a form provided by the City.

b. A SWPPP conforming to the requirements of this chapter and the requirements of General Permit No. 2. If a SWPPP for the site has previously been submitted to the City and has not been modified, the applicant shall submit a signed and dated statement that the SWPPP has not been modified, in which case the SWPPP need not be resubmitted.

c. Payment of the permit fee.

(5) The permittee shall provide the erosion control officer with all materials submitted as part of a notice of discontinuation when such a notice is filed with the Iowa DNR.

B. Minor Erosion Control Permit Is Required. Sites or common plans of development or sale that will result in a disturbed area of greater than 6,000 square feet but less than one acre shall obtain a minor erosion control permit prior to any land-disturbing activity, except:

(1) Filling or construction within floodplain limits, as established by the Federal Emergency Management Agency and in the Hiawatha Unified Development Code (Chapter 165 of this Code of Ordinances), will require a separate additional permit under that chapter, in addition to the permits required by this chapter.

(2) For work that is specifically covered by a City demolition permit, building permit, NPDES permit or approved plan of improvements containing a SWPPP, a minor erosion control permit is not required. However, site filling and grading done pursuant to these approved permits and plans shall meet the requirements of this chapter.

4. All Grading, Erosion and Sediment Control Plans must be reviewed and approved by the Erosion Control Officer prior to the issuing of permit and commencement of land-disturbing activities.

5. All Grading, Erosion and Sediment Control Plans shall include a drainage plan prepared according to the *Design Standards Manual*. The drainage plan shall be accompanied by a drainage report prepared according to the *City Engineering Department Drainage Report Process Handbook*. This Handbook is available in the City Engineering Department. The drainage report shall, at a minimum, demonstrate the design of proposed grading, erosion, and sediment control, if constructed per plan, is not expected to adversely impact adjacent properties.

167.12 SWPPP REQUIREMENTS. Every SWPPP submitted to the City in support of an application for a major or minor erosion control permit:

1. Shall contain complete 24-hour contact information for the site owner and the person in responsible charge of providing and maintaining sedimentation and erosion control for the site. The permittee shall inform the Erosion Control Officer within 7 calendar days of any change in this contact information.

2. Shall comply with all current minimum mandatory requirements for SWPPPs promulgated by the Iowa DNR in connection with General Permit No. 2, including those published as Summary Guidance for General Permit No. 2 by the Iowa DNR. The Erosion Control Officer may develop policies modifying these requirements for sites with a disturbed area less than one acre.

3. Shall comply with all other applicable State or Federal permit requirements in existence at the time of application.

4. Shall include a drainage plan prepared according to the *Design Standards Manual*. The drainage plan shall be accompanied by a drainage report. The drainage report shall, at a minimum, demonstrate the design of proposed grading, erosion, and sediment control, if constructed per plan, is not expected to adversely impact adjacent properties.

5. Shall be prepared by a design professional, as defined herein; and

6. Shall include within the SWPPP a signed and dated certification by the person preparing the SWPPP that the SWPPP complies with all requirements of this section.

The SWPPP shall be modified by a design professional (as defined herein) as required in General Permit No. 2. Any modification of a SWPPP shall meet the requirements above.

167.13 SWPPP REVIEW AND APPROVAL PROCEDURE. The applicant shall submit a SWPPP for the site, meeting the requirements established in the *Design Standards Manual*, to the Erosion Control Officer for review and approval, as follows:

1. The City Engineer shall review the submittal for compliance with the requirements of a SWPPP as set forth in the *Design Standards Manual*. Following the review, the Erosion Control Officer may return comments to the design professional.

2. Following receipt of comments from the Erosion Control Officer, the applicant shall provide a revised submittal in accordance with any requested revisions.

3. The City Engineer or Building Official may require supporting documentation as needed to demonstrate conformance with these requirements. Issuance of an erosion control permit may be delayed pending receipt of the documentation.

4. If the submittal is complete, and meets the requirements as set forth herein, the Erosion Control Officer will issue required permits.

167.14 REQUIREMENTS FOR SITES COVERED BY IOWA DNR GENERAL PERMIT NO. 2.

1. The City shall not allow any land-disturbing activity on a site for which coverage under General Permit No. 2 is required, nor shall the City issue any permit, authorization, or license allowing such activity, until the site owner has obtained coverage for the site under General Permit No. 2 from the Iowa DNR.
2. Any responsible party who is required to obtain – or has obtained – coverage under General Permit No. 2 shall comply with all the requirements of General Permit No. 2. Failure to do so is a violation of this section.
3. For sites covered under General Permit No. 2 where the ownership changes, the Enforcement Officer must be notified of the title transfer within 30 days, except in the case of single-lot sales, which shall be recorded on the SWPPP. The new owner shall be subject to all terms and conditions of the erosion control permit. A copy of the notice of transfer that was sent to the Enforcement Officer shall be included in the SWPPP. For sites that are part of a larger common plan of development, such as a housing or commercial development project, if a permittee transfers ownership of all or any part of property subject to an erosion control permit, both the permittee and transferee shall be responsible for compliance with the provisions of General Permit No. 2 and the erosion control permit for that portion of the project which has been transferred, including when the transferred property is less than one acre in area. If the new owner agrees in writing to be solely responsible for compliance with the provisions of General Permit No. 2 and the erosion control permit for the property which has been transferred, then the existing permittee shall be relieved of responsibility for compliance with General Permit No. 2 and the erosion control permit for the transferred property, from and after the date the transfer of responsibility is attached to the SWPPP.

167.15 INSPECTION, NOTICE TO COMPLY AND NOTICE OF VIOLATION.

1. The Erosion Control Officer may inspect the site in response to reports from third parties or at other times, at the Erosion Control Officer's discretion.
2. The Erosion Control Officer may issue a notice to comply to the responsible party or parties, describing any problems and specifying a date and time by which compliance must be achieved.
 - A. The Erosion Control Officer may modify a notice to comply and may authorize, in writing, an extension to the specified date and time by which compliance must be achieved.
 - B. Failure to achieve compliance by the specified date and time is a violation of this section.
3. The Erosion Control Officer shall, upon determination of any violation of this section, issue a notice of violation in writing to the responsible party or parties, indicating the nature of the violation and ordering the action necessary to correct it.

- A. The notice of violation may:
- (1) Order the discontinuance of any illegal work, specifying a date and time for such discontinuance;
 - (2) Require the repair and cleanup of any damage done due to failure to comply with General Permit No. 2, specifying a date and time for completion of repair and cleanup;
 - (3) Order the withholding of any building or occupancy permits for the site; and
 - (4) Order the discontinuance of any or all work at the site, including at the Erosion Control Officer's discretion work not directly related to the cause and prevention of erosion and sedimentation, except work necessary to achieve compliance and to repair and clean up damage, specifying a date and time for such discontinuance to commence and conditions for such discontinuance to cease.
- B. Failure to comply with any order in a notice of violation is an additional violation. Each day of such failure constitutes a separate violation.
- C. The Erosion Control Officer may modify a notice of violation and may authorize, in writing, an extension to the specified dates and times therein.
- D. The notice of violation shall, where necessary or appropriate, recommend to the City Attorney the institution of legal or equitable actions that may be required for the enforcement of this section.
4. Communication to a responsible party's employee, partner, attorney, agent, contractor, or subcontractor shall be regarded as communication to the responsible party for the purpose of this section.
5. Communication to one responsible party shall be regarded as communication to each responsible party for the purpose of this section.

167.16 POWERS OF AUTHORITY FOR INSPECTION.

1. **Right of Entry.** The City Engineer or Building Official and authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter. The applicant, owner, or titleholder shall be deemed to have consented to such entry by submission of an application for any permit or plan contemplated in this chapter. Barring or delaying such inspection is a violation of this section.
2. **Access to Records.** The Erosion Control Officer shall have access to and be able to copy any records that must be kept under the conditions of General Permit No. 2 within 3 business hours, where a business hour is any hour between 8:00 a.m. and 3:30 p.m. on a non-holiday weekday.

167.17 REPAIR AND CLEANUP OF DAMAGE.

1. For any site, whether or not covered by an erosion control permit or other storm water discharge permit, the City may clean up eroded sediment or tracked soil deposited on public property if:

- A. Corrective action has not been completed within 24 hours or within an extended deadline granted in writing by the City; or
 - B. In the judgment of the City Engineer, damage to the environment is ongoing and prompt corrective action would be intended to reduce such damage.
2. If the City cleans up such material deposited off-site, the City will invoice the responsible party or parties for the City's actual costs, including overhead, which may be recorded as an assessment against the property and constitute a lien thereon.
 3. Failure to pay an invoice under this chapter within 30 days shall constitute a violation of this section.

167.18 ENFORCEMENT.

1. Violation of any provision of this chapter may be enforced by civil action including an action for injunctive relief.
2. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this chapter.
3. Violation of any provision of this chapter may also be enforced as a municipal infraction within the meaning of Section 364.22 of the *Code of Iowa*, and pursuant to Chapter 4 of the Hiawatha Code of Ordinances.

167.19 APPEALS. Anyone claiming to be aggrieved by any determination made by the Erosion Control Officer may, within 5 days of the date of such determination, appeal to the City Administrator or designee and, in writing, state his or her reasons for requesting such order to be rescinded or modified. The City Administrator or designee shall review the determination of the Erosion Control Officer, and if reasonable grounds exist, shall modify, withdraw or order compliance with said determination. Anyone claiming to be aggrieved by the determination made by the City Administrator or designee shall have such rights of appeal as provided by the law.

167.20 FEES ESTABLISHED. The City Council may establish fees by resolution for permit applications, permit renewal applications, inspections, and for the review and processing of documents necessitated by this chapter. When such fees are established, a submittal shall not be considered unless the appropriate fee has been submitted to the City.

