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ORDINANCE 15-03

Amending/Replacing Ordinance 06-16 and 06-52

AN ORDINANCE TO ESTABLISH INSPECTION FEES AND REGULATIONS FOR EROSION & SEDIMENT CONTROL INSPECTIONS FOR RESIDENTIAL LOTS AND OUTLOTS

WHEREAS, The City Council of the City of Westfield, Indiana ("Council") desires to provide for the health, safety, and general welfare of the citizens of the City of Westfield, Indiana ("City") through the regulation of water, erosion and sediment discharges to the maximum extent practicable as required by federal and state law; and

WHEREAS, The Council is desirous of establishing methods for controlling the introduction of pollutants from construction activity into the City Separate Storm Sewer System ("MS4") in order to comply with requirements of the National Pollutant Discharge Elimination System ("NPDES") program authorized by the 1972 amendments to the Clean Water Act, the Indiana Department of Environmental Management's Rule 13 (327 IAC 15-13), and the Indiana Department of Environmental Management's Rule 5 (327 IAC 15-5); and

WHEREAS, on April 10, 2006 the council adopted Ordinance 06-16, an Ordinance to Establish Inspection Fees and Regulations for Erosion & Sediment Control Inspections for Residential Lots and Outlots; and

Whereas, The Council has the authority to amend and replace ordinances;

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Westfield, Hamilton County, Indiana, meeting in regular session, Ordinance 06-16 and 06-52 are hereby amended/replaced by this ordinance as follows:

Section 1. Purpose and Intent

The primary purpose of this Ordinance is to ensure perimeter sediment and erosion control, with best management practices (BMP's) being utilized to prevent and minimize sediment and erosion discharge from leaving the construction site. The intent of this Ordinance is to prevent non-storm water discharges, erosion and minimize sediment from leaving the site. Failure to do so can result in damage to adjacent property, damage to the MS4's storm sewer system, and contribute to the polluting of streams, lakes and rivers.

The City of Westfield Improvement Location Permit Application ("ILP"), generally known as a Building Permit, permittee (the "Permittee") is responsible for ensuring that adequate BMP's are in place and functioning until the construction project obtains a Certificate of Occupancy ("C of O")

from the City Building Department. The property owner, after the C of O is issued, is responsible to maintain the erosion control measures until adequate ground cover (70% mature growth) is established and the property is required to have established adequate ground cover within two (2) years from the issuance of the C of O.

Compliance with this Ordinance shall be the responsibility of the party listed on the ILP filed with the City.

Section 2. Best Management Practices (BMP's) For Construction Lots

Examples of BMP's include but are not limited to: sediment fence, straw mat, seed, mulch, coconut and fiber rolls, or other types approved by the Westfield Public Works Department ("WPWD"). The sequence of installation shall be:

a. **Grading/Excavating** - Install all BMP's prior to any grading or excavating activities, where practical.

b. **Inlet Protection** - Ensure that the BMP's are in place and functioning for both yard inlets and curb inlets around the perimeter of the lot.

c. **Protection of Adjacent Lots** - Install BMP's along the common lot line of adjacent lots.

d. **Stabilize Stockpiles** - Install BMP's to stabilize stockpiles to prevent erosion and sediment from entering the street.

e. **Installation of BMP's** – Follow manufacturer's recommendations and requirements for the installation of all BMP's.

f. **Temporary Construction Entrance** – A temporary stone access drive is required for all lots and shall be utilized for access onto the lot.

g. **Maintenance** - The builder is responsible for maintaining and repairing all BMP's as needed throughout construction.

h. **Final Grading** - BMP's may be removed in order to complete final grading on the lot. However, BMP's will be required to be reinstalled until seed germination establishes 70% mature growth. On lots where sod is installed erosion control measures are not required to be installed, unless requested by the WPWD. For lots where sod installation is delayed, the contractor will be required to maintain BMP's until the sod can be installed effectively.

i. **Concrete Wash Out** – Required onsite or within development.

Section 3. Responsibilities of Permittee

a. The Permittee is responsible for ensuring that a BMP's measures remain in place during the construction process and that the installation and continuous maintenance of all lot erosion and sediment control devices are monitored.

b. Periodic inspection will be necessary to ensure that erosion and sediment control measures are functioning as designed and installed per the manufacturer's specifications. In addition, to standard periodic inspections, this Ordinance requires that the Permittee conduct inspections after each rain event of 1/2" or more in a 24-hour period. Any problems noted during these inspections shall be corrected immediately.

c. Once the Permittee has started construction, the Permittee is responsible for the maintenance of erosion and sediment control measures protecting yard inlets on and/or adjacent to their lots, as well as curb inlets along the street frontage. Sediment must not be allowed to enter the storm sewer system and allowing such is a violation of this Ordinance.

d. A temporary construction entrance provides a place for parking vehicles off of the street and a spot where material can be off loaded. This requirement is to provide a stable surface for parking vehicles where mud and other debris will not to be tracked onto the street. Proper maintenance of the area is required until such time as a permanent driveway is installed.

e. During the entire construction process the Permittee is responsible to ensure that mud, dirt, rocks, and other debris are not allowed to erode onto streets and sidewalks, nor tracked onto the streets by construction vehicles. At no time shall any mud or other debris be deposited onto the street.

f. Failure to keep streets clear of mud sediment, and debris will result in an enforcement action by the WPWD under the authority of the City of Westfield's Stormwater Management Ordinance (05-30). The Permittee will be responsible for incurring all costs associated with cleaning the streets.

Section 4. Administration and Application

a. The WPWD will administer, implement, and enforce the provisions of this Ordinance.

b. This Ordinance shall apply to all construction activity, (direct or indirect stormwater discharges, and illicit discharges) entering within the storm drainage system, MS4, or receiving waters under the jurisdiction of the City.

c. Any Permittee subject to an NPDES Stormwater Discharge Permit shall comply with all provisions of such permit. If provisions of this ordinance are more restrictive than the NPDES Stormwater Discharge Permit, proof of compliance with said permit and this Ordinance may be required in a form acceptable to the WPWD prior to allowing discharges to the MS4.

d. The provisions of this Ordinance shall be deemed as additional requirements to minimum standards required by other provisions of the City of Westfield Code, and as supplemental requirements to Indiana's Rule 5 regarding Stormwater Discharge associated with construction activity and Indiana's Rule 13 regarding stormwater runoff associated with MS4 conveyances. In

case of conflicting requirements, the most restrictive shall apply. Unless otherwise stated, the most recent versions or editions of said codes, ordinances, laws, and statutes shall apply.

e. The City, by and through its Council, has the authority to modify, grant exemptions, and/or waive any and all the requirements of this Ordinance. A meeting with the WPWD may be requested by an Permittee to discuss the applicability of various provisions of the Ordinance with regard to unique or unusual circumstances. However, any initial determination of such applicability shall not be binding on future determinations of the WPWD.

f. The City of Westfield Utility and Infrastructure Construction Standards and Specifications Manual, and amendments thereto, are hereby incorporated herein by reference, with copies of the same being maintained in the WPWD for public inspection during regular business hours.

g Words and phrases in this Ordinance shall be construed according to their common and accepted meanings. Technical words and technical phrases that are not defined in this Ordinance, but which have acquired particular meanings in law or in technical usage shall be construed according to such meanings and as defined in 327 IAC 15-13 and 327 IAC 15-5 of the Indiana Code and other provisions of the City of Westfield Code.

h. The City shall be permitted to enter and inspect any premise subject to regulation under this Ordinance. It shall be unlawful for the Permittee of any premise to refuse to allow the WPWD to enter upon the premise for the purposes set forth in this Ordinance.

Section 5. <u>Enforcement</u>

I. NOTICE OF VIOLATION and STOP WORK ORDER

A. In the event a Permittee has violated the terms of this Ordinance, the City may order compliance by written Notice of Violation to the Permittee. Such notice may require:

1. Issuance of a Pending Stop Work Order or issuance of a Stop Work Order.
2. The restoration or installation of new BMP measures;
3. Payment of a fine; and/or
4. Revocation or suspension of the Erosion Control Inspection Permit.

B. The City may, without prior Notice of Stop Work Order or Violation, suspend Storm Drainage System or MS4 access to a Permittee when storm water discharges present or may present imminent and substantial danger.

C. The Notice of a Stop Work Order due to a Violation will:

1. Be in writing;
2. Include a description of the property for identification;

3. Include a statement of the violation(s) and section violated and why the notice or order is being issued;
4. Failure to comply with the conditions set forth in this Ordinance will result in an initial verbal warning. If the violation is not corrected within one day from the verbal warning, a Pending Stop Work Order will be issued and a penalty of $50.00 will be assessed for a re-inspection. After the third day from the initial verbal warning, a Stop Work Order will be issued and an additional penalty of $50.00 will be assessed for a re-inspection to ensure that the repairs and improvements required to the property are in compliance with the provisions of this Ordinance.

D. Reinspection of remedied violations will be assessed a re-inspection fee in accordance with the fee schedule in this Ordinance.

E. If the Permittee fails to comply with a Stop Work Order, then the WPWD will take steps as deemed necessary to prevent or minimize damage or remediate a violation. All reasonable costs associated with the abatement or restoration shall be assessed against the owner of the property and may be filed as a lien against the property in the amount of the assessment. It shall be unlawful for any Permittee, owner, agent or person in possession of any premise to refuse to allow the WPWD or its designee to enter upon the premise for the purposes set forth above.

F. In the event of a Stop Work Order, the City shall not reinstate the Erosion Control Inspection Permit or MS4 access to the Permittee until the Permittee presents proof, satisfactory to the City, that the corrections have been made. Permittee violates this ordinance if the Permittee reinstates MS4 access to the premises terminated pursuant to this section, without the prior approval of the City.

G. In addition to the penalties listed above, if construction activities are conducted contrary to the provisions of this Ordinance, the City may order the work stopped by notice in writing, in the form of a Stop Work Order, served on any Permittee engaged in the doing or causing of such work to be done; and any such Permittee shall forth with stop such work until authorized by the WPWD to proceed with the work.

II. APPEAL OF NOTICE OF VIOLATION

A. Any Permittee receiving a Notice of Violation may appeal the determination of violation to the Westfield Board of Works and Safety ("BPW"), for rescission of the Notice or Order, or for a modification, variance, or extension of time for compliance on one or more of the following bases: (i) a Stop Work Order served in accordance with this Ordinance is in error, or (ii) should, due to hardship, be modified or entitled to a variance from enforcement, or (iii) that a reasonable extension of time for the compliance should be granted upon the grounds of a demonstrated case of hardship and evidence of an actual undertaking to correct the violation, together with a legitimate intent to comply within a reasonable time period.

B. A request for rescission, modification, variance, or extension of time shall be made in writing, within ten (10) days of the Permittee's receipt of a copy of the Notice or Order, to the City

of Westfield Clerk-Treasurer's Office, to be placed on the Council agenda. The Council shall schedule a hearing within thirty (30) days of receipt of the request.

C. All hearings before the BPW shall be open to the public. The Permittee, the Permittee's representative, and any persons whose interests are affected shall be given an opportunity to be heard.

D. At the conclusion of the hearing the BPW may reverse, affirm, or modify the Order, Notice, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as justice would require. The Council's determination and findings of fact shall be recorded and if a Notice or Order is affirmed or modified, the Council shall, in the determination on appeal, re-establish a reasonable timeline to make the repairs and improvements required to bring the violation into compliance with the provisions of this Ordinance.

III. TRANSFER OF OWNERSHIP

No owner of any premise upon whom a Stop Work Order has been served shall sell, transfer, mortgage, lease or otherwise dispose of to another until the provisions of the Notice of Violation have been complied with, or until such owner first furnishes the grantee, transferee, mortgagee or lessee a true copy of any compliance order or Notice of Violation issued by the City and furnishes to the City a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such Notice of Violation and fully accepting the responsibility without condition for making corrections or repairs required by such Notice of Violation.

IV. PENALTIES FOR VIOLATIONS

Any person found in violation of any provisions of this Ordinance shall be responsible for a civil infraction and subject to a maximum fine of $200 for the first offense, $1,000 for the second offense, and a maximum of $7,500 for a subsequence offense, plus cost, damages, and expenses. Each day such violation occurs or continues shall be deemed a separate offense and shall make the violator liable for the imposition of a fine for each day. The rights and remedies provided for in this section are cumulative and in addition to any other remedies provided by law. An admission or determination of responsibility shall not exempt the offender from compliance with the requirements of this Ordinance.

Any person who aids or abets a person in violation of this Ordinance shall be subject to the penalties provided in this section.

For purposes of this section, "subsequent offense" means a violation of the provisions of this Ordinance committed by the same person within twelve (12) months of a previous violation of the same provision of this Ordinance for which said person admitted responsibility or was adjudicated to be responsible.

Section 6. WPWD Erosion Control Inspections

a. The WPWD Erosion Control Inspector will inspect erosion and sediment control measures in conjunction with routine inspections. Inspections will ensure that proper placement and installation of erosion and sediment control measures are in place.

b. The first inspection will occur at the time prior to the pushing of the pad and foundation installation. Standard items to be checked are: protection of adjacent lots, protection of inlets, grading/excavating, and that stockpiles are stabilized. If BMP's are not installed in the correct location and/or not installed correctly, the inspection may be denied, a Stop Work Order required or fees may be applied.

c. It is anticipated that by the time the foundation inspection is requested, backfilling of the foundation will have been complete and all erosion and sediment control measures will have been installed. If the Permittee fails to install the proper erosion and sediment control measure, this may result in the inspection being denied, a Stop Work Order required or fees may be applied.

d. For unique situations the Erosion Control Inspector will be available to discuss erosion and sediment control measures for any lot and the sequencing for installation of BMP's.

Section 7. WPWD Erosion Control Inspection Fees

Fees for Erosion Control Inspections shall be:

1. Residential lots 2 acres or less $100 each.

2. Residential lots greater than 2 acres will be assessed at $100 per ¼ acre or portion thereof.

3 Industrial, commercial, retail outlets and all other development not noted in Section 7/1 and 7/2 will be assessed at $100 per ¼ acre or portion thereof.

4. Additional re-inspections for denied and/or stop work orders or fines will be assessed at $50 per re-inspection.

Section 8. Forms

The applicable permit forms are attached to this Ordinance as Exhibit A.

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance, or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

All ordinances or parts thereof in conflict with the provisions of the Ordinance are hereby repealed. All acts undertaken to create this Ordinance are hereby ratified.

This Ordinance shall be in full force and effect from and after its passage and signing by the Westfield City Council and publication as required by law.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

ALL OF WHICH IS ORDAINED THIS 9 DAY OF Mar 2015.

WESTFIELD CITY COUNCIL

Voting For	Voting Against	Abstain
Jim Ake	Jim Ake	Jim Ake
Steven Hoover	Steven Hoover	Steven Hoover
Robert L. Horkay	Robert L. Horkay	Robert L. Horkay
Charles Lehman	Charles Lehman	Charles Lehman
Robert J. Smith	Robert J. Smith	Robert J. Smith
Cindy L. Spoljaric	Cindy L. Spoljaric	Cindy L. Spoljaric
Robert W. Stokes	Robert W. Stokes	Robert W. Stokes

ATTEST:

Cindy Gossard, Clerk Treasurer

"I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law"

Signed

I hereby certify that ORDINANCE 15-03 was delivered to the Mayor of Westfield

on the 10 day of Mar, 2015, at 11:00A m.

Cindy Gossard

Cindy Gossard, Clerk-Treasurer

I hereby APPROVE ORDINANCE 15-03

this 12 day of March, 2015.

J. Andrew Cook

J. Andrew Cook, Mayor

I hereby VETO ORDINANCE 15-03

this _____ day of _____, 2015.

_____

J. Andrew Cook, Mayor

Ordinance prepared by
Jeremy Lollar, Director, WPW

This document reviewed by
Brian J. Zaiger, Esq.
KRIEG DEVAULT, LLP
(317) 238-6266

Exhibit A

WESTFIELD PUBLIC WORKS

EROSION CONTROL INSPECTION PERMIT REQUEST

Name of Development/Minor Plat & Lot #: _____
_____
Parcel Number: _____

Project Name: _____
Section/Township/Range _____
Township Name: _____

Applicant's Name: _____
Address: _____
_____
Phone: (___) _____
Fax: (___) _____

Property Owner: _____
Property Address: _____
_____
Phone: (___) _____
Fax: (___) _____

Contractor/Builder: _____
Address: _____
Phone: (___) _____ Fax: (___) _____
Contact Person: _____ Cell Phone: _____

Type of Lot or Improvement: _____

Trained Individual in Charge of the Mandatory Stormwater Pollution Prevention Program
Name: _____ Address: _____ Phone #: _____
List of Qualifications): _____
_____
_____

The individual lot operator is responsible for installation and maintenance of all erosion and sediment control measures until the site is stabilized.

_____ _____
Signature Date
Check Title: Owner _____ Contractor _____ Engineer _____ Agent _____ Other _____

***** For Office Use Only ***** Engineering Firm: _____
Permit # _____ Plan Project # _____ Check # _____

City of Westfield Public Works Engineer

construction site in a safe and non-hazardous condition.

Issued by:

_____

FAXED _____ (DATE & TIME)

ORIGINAL TO FILE YELLOW TO PLANNING AND BUILDING PINK COPY LEFT AT SITE

City of Westfield Public Works Engineer

Westfield Public Works Department

☐ Other _____

SPECIAL NOTE: All needed measures must be taken to secure and leave the construction site in a safe and non-hazardous condition.

Issued by:

_____

FAXED _____ (DATE & TIME)

ORIGINAL TO FILE YELLOW COPY LEFT AT SITE PINK COPY TO PLANNING AND BUILDING