

CITY OF WINCHESTER, KENTUCKY
ORDINANCE NO. 5-2011

**AN ORDINANCE STATING THE EROSION PREVENTION AND
SEDIMENT CONTROL REQUIREMENTS FOR THE CITY OF
WINCHESTER, KENTUCKY**

The entire ordinance is available for public review at the City **Manager's** Office or City **Clerk's** Office at City Hall, 32 Wall Street, Winchester, Kentucky.

I hereby certify that the foregoing is an accurate summary of the contents of the above-entitled Ordinance.

/s/ William A. Dykeman

William A. Dykeman
City Attorney

CITY OF WINCHESTER, KENTUCKY
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**AN ORDINANCE STATING THE EROSION PREVENTION AND
SEDIMENT CONTROL REQUIREMENTS FOR THE CITY OF
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WHEREAS, the City of Winchester now operates under the requirements of the Kentucky Pollutant Discharge Elimination System (KPDES), and

WHEREAS, the City of Winchester has a stormwater permit which provides authorization to discharge under the KPDES general permit for small municipal separate storm sewer systems (MS4), and

WHEREAS, one of the six (6) minimum control measures required is Construction Site Stormwater Runoff Control, and

WHEREAS, in order to minimize the adverse impact of soil sediment, erosion, and the disbursement of refuse created by construction and/or development activity on individual lots and/or construction sites on public rights-of-way and adjacent properties and into city storm sewer systems and natural water sources the City of Winchester is required to reduce pollutants in stormwater runoff from construction sites that disturb at least one acre, or projects less than one acre that are part of a larger common plan of development, and

WHEREAS, in order to be consistent in regulations and authority, all other ordinances or parts of ordinances which are in conflict with this ordinance will be repealed to the extent of such conflict.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF WINCHESTER, KENTUCKY AS FOLLOWS:

Section 1. Authority

This Ordinance is adopted pursuant to the powers granted and limitations imposed by Kentucky laws, including the statutory authority granted to Kentucky cities and counties in Kentucky Revised Statutes (KRS), Chapter 67 and 100.

This Ordinance is adopted pursuant to the powers granted and limitations by the Federal Clean Water Act, and in particular those parts that authorize local governments to require any state or federal department or agency to comply with all local water pollution control requirements.

Section 2. Purpose and Intent

The regulations set forth in this Ordinance are intended to protect the general health, safety, and welfare of the citizens of the City of Winchester, and more specifically;

1. Control or eliminate soil erosion and sedimentation resulting from land disturbing activities within the City of Winchester;
2. Establish guidelines, conservation practices and planning activities which minimize soil erosion and sedimentation;
3. Comply with all applicable state and federal requirements for clean water, including limitations on the discharge of pollutants as set forth by the Kentucky Pollutant Discharge Elimination System (KPDES); and all applicable provisions of the Federal National Pollution Discharge Elimination Systems storm water general permit for Phase II communities.

This Ordinance controls land disturbances, soil storage, and erosion and sedimentation resulting from such activities and establishes procedures for issuance, approval, administration, and enforcement of a Grading Permit.

Section 3. Definitions

For the purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meaning stated below:

- 1 **Applicant** is the contractor, builder, landowner, or developer who submits an application to the City of Winchester for a Grading Permit pursuant to this ordinance.
- 2 **Bankful Elevation** is the water level, or stage, at which the stream, river, or lake is at the top of its banks and any further rise would result in water moving into the floodplain (NOAA Glossary).
- 3 **Bedrock** is in place solid rock.
- 4 **Bench** is a relatively level step excavated into earth material on which fill is to be placed.
- 5 **Best Management Practices (BMP)** are a schedule of activities, prohibitions of practices, maintenance procedures, and other management practices, which are proven to be effective in preventing or reducing runoff, erosion, and sedimentation.
- 6 **Borrow** is earth material acquired from an off-site location for use in grading on a site.
- 7 **Buffer Zone** is the area defined from the bankful elevation extending toward a construction activity that shall be protected from disturbance.
- 8 **Building Inspector** is that person, employed by the City of Winchester/Clark County that reviews, approves and provides inspection services related to building/structure activities.
- 9 **Certificate of Occupancy** is issued by the building inspector after final inspection of a structure construction or alteration and related site has been made and found to be in substantial compliance with all applicable codes.

- 10 Certificate of Stabilization** is issued by the City of Winchester after final inspection of a site had been made and found to be in substantial compliance with all requirements of the Grading Permit.
- 11 City of Winchester** is the municipal agency designated to enforce this ordinance. Agencies with enforcement may include public works, engineering technician, code enforcement, or Winchester Municipal Utility.
- 12 Clearing and grubbing** is the cutting and removal of trees, shrubs, bushes, windfalls and other vegetation including removal of stumps, roots, and other remains in the designated areas.
- 13 Contractor** is a person who contracts with the permittee, landowner, developer, or another contractor (i.e. subcontractor) to undertake any or all the land disturbance activities covered by this Ordinance.
- 14 Co-Permittee** is any person, other than the permittee, including but not limited to a developer or contractor who has or represents financial or operational control over the land disturbing activity.
- 15 Critical Areas** are areas within 25 ft of, and on a positive slope toward a 'Water of the Commonwealth' (as defined in KRS 244.01-010(33)).
- 16 Detention facility** is a temporary or permanent natural or man made structure that provides for the temporary storage of storm water runoff.
- 17 Developer** is any person, firm, corporation, sole proprietorship, partnership, state agency, or political subdivision thereof engaged in a land disturbance activity.
- 18 Development** is any man-made change to improved or unimproved real estate, including, but not limited to, buildings of other structures, dredging, mining, filling, grading, paving, excavating, drilling operations, or permanent storage of materials or equipment.
- 19 Engineer** is a professional engineer licensed in the Commonwealth of Kentucky to practice in the field of civil works.
- 20 Erosion** is the wearing away of the ground surface as a result of the movement of wind, water, ice, and/or land disturbance activities.
- 21 EPSC (Erosion Prevention and Sediment Control)** is the prevention of soil erosion and control of solid material during land disturbing activity to prevent its transport out of the disturbed area by means of air, water, gravity, or ice through the selection of Best Management Practices (BMP).
- 22 Erosion control inspector** is a qualified person who has attended KEPSC, CPESC, or a Winchester sponsored or approved training course in EPSC. The EPSC Plan is the document that supports erosion protection and sediment control measures.
- 23 Final Stabilization** means that:
- A. All soil disturbing activities at the site have been completed and either of the two following criteria are met:
 - a. an uniform perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or

- b. equivalent stabilization measures (such as riprap, gabions, or geotextiles) have been employed.
- B. For individual lots in residential construction, final stabilization means, the either:
 - a. The homebuilder has completed final stabilization as specified above, or
 - b. The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization.

24 Regulatory Floodplain is the one hundred (100) year floodplain which is that area adjoining a watercourse which could be inundated by a flood that has a one (1) percent chance of being equaled or exceeded in any given year and is delineated on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM).

25 General Permit is a KPDES Storm Water General Permit for storm water discharges related to construction activities. Coverage under this general stormwater permit is obtained by filing a Notice of Intent (NOI) with the Kentucky Division of Water and receiving approval from said agency and developing a SWPPP.

26 Grade is the vertical location of the ground surface.

- *Existing grade* is the grade (contour of the land) prior to land disturbance.
- *Rough grade* is the stage at which the grade approximately conforms to the approved plan.
- *Finish grade* is the final grade of the site which conforms to the approved plan.

27 High Quality Waters (HQWs) are those “waters of the Commonwealth” that have been categorized by the Division of Water as high quality pursuant to the requirements of 401 KAR 10:030, Section 1(3).

28 Kentucky Erosion Prevention and Sediment Control Manual and Field Guide is a compilation of rules, design criteria, guidelines and standards accepted by the City of Winchester as being proven methods of controlling construction related surface runoff, erosion and sedimentation.

29 Land disturbance activity is any land change that may result in soil erosion from wind, water and/or ice and the movement of sediments into or upon waters, lands, or rights-of-way within the City of Winchester, including but not limited to building demolition, clearing and grubbing, grading, excavating, transporting and filling of land. Land Disturbance activity can also include unintentional acts such as natural weathering and intentional acts such as vandalism. Land disturbance activity does not include the following:

- Minor land disturbance activities including, but not limited to, underground utility repairs, replacement of existing utilities, home gardens, minor repairs, and maintenance work.
- Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

- Emergency work to protect life, limb, or property and emergency repairs. If the land disturbing activity would have required an approved SWPPP except for the emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of this Ordinance.
- 30 Grading Permit** is a permit required by this Ordinance for land disturbance activities.
- 31 Outfall** is the point of discharge to any watercourse from a public or private stormwater drainage system (piped or un-piped) as defined in the KPDES statewide general permit for MS4s, KYG20.
- 32 Permittee** is the applicant in whose name a valid Grading Permit is duly issued pursuant to this Ordinance and his/her agents, employees, and others acting under his/her direction.
- 33 Responsible Party** is the individual or entity holding the ultimate compliance and financial responsibility on the site. In general this will be the property owner and subsequent owner(s) until a Certificate of Stabilization or Certificate of Occupancy, and KPDES Notice of Termination (NOT), if applicable, is issued. It is the responsibility party that shall ensure that the Land Disturbance Activity comply with the ordinance.
- 34 Retention facility** is a temporary or permanent natural or manmade structure that provides for the storage of storm water runoff by means of a permanent pool of water.
- 35 Riparian Buffer** –see **Buffer Zone**.
- 36 Runoff** is rainfall, snowmelt, or irrigation water flowing over the ground surface.
- 37 Sediment** is soils or other surficial materials transported by surface water as a product of erosion.
- 38 Sedimentation** is the process or action of depositing sediment that is determined to have been caused by erosion.
- 39 Site** is the entire area of land on which the land disturbance activity is proposed in the site disturbance permit application.
- 40 Site plan** is a plan or set of plans showing the details of any land disturbance activity of a site including but not limited to the construction of: structures, open and enclosed drainage facilities, stormwater management facilities, parking lots, driveways, curbs, pavements, sidewalks, bike paths, recreational facilities, ground covers, plantings, and landscaping.
- 41 Slope** is the incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.
- 42 Soil** is naturally occurring surficial deposits overlying bedrock.
- 43 Stormwater Pollution Prevention Plan (SWPPP)** is a site-specific document required for submission of the KPDES Notice of Intent (NOI) and this Ordinance. The SWPPP is utilized during construction and for post-construction conditions to identify potential sources of pollution, describe practices to reduce pollutants in stormwater discharges, and identify implementation procedures to maintain compliance with the current general permit.

- 44 Stripping** is any activity which removes or significantly disturbs the vegetative surface cover including clearing, grubbing of stumps and root mat, and topsoil removal.
- 45 Structure** is anything manufactured, constructed or erected which is normally attached to or positioned on land, including buildings, portable structures, earthen structures, roads, parking lots, and paved storage areas.
- 46 Topsoil** is the upper layer of soil.
- 47 Utility Provider** is the owner/operator of any underground facility including an underground line, facility, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, heat, gas, oil, petroleum products, potable water, stormwater, steam, sewage and other similar substances.
- 48 Watercourse** is any natural or improved stream, river, creek, ditch, channel, canal, conduit, gutter, culvert, drain, gully, swale, or wash in which waters flow either continuously or intermittently.
- 49 Watershed** is a region draining to a specific river, river system, or watercourse.
- 50 Wetlands** is a lowland area such as a marsh, that is saturated with moisture, as defined in Sec. 404, Federal Water Pollution Control Act Amendments of 1987, or latest amendment.

Section 4. Permit Procedures and Requirements

4.1. Land Disturbance Activity

Any land disturbance activity that requires the disturbance of soil of 0.25 acres or greater is subject to the provisions of this Ordinance and shall not take place without an authorized Grading Permit.

4.2. Land Disturbance Activity – Common Plan of Development

Land Disturbance Activity less than one (1) acre on individual lot(s) or parcel(s) that are part of a larger common plan of development that disturbs one (1) acre or more of soil, and currently covered by KPDES NOI, is not exempt from this Ordinance and Grading Permit. In this situation, the landowner and/or developer of the larger development, and the individual lot owner(s) or homebuilder(s), will be issued a separate Grading Permits and will be responsible for complying with the provisions of this Ordinance. The landowner and/or developer of the larger development will remain jointly responsible for said lot(s) until such time the larger common plan of development receive an approved KPDES Notice of Termination (NOT), at which time sole responsibility for said lot(s) is transferred to the individual lot owner(s).

4.3. Grading Permit Exemptions

The following activities are exempt from obtaining a Grading Permit and the procedures of this Ordinance, unless it is determined by the City of Winchester that runoff from the land disturbance activity is creating erosion.

- A. Land disturbance activity less than 0.25 acres and is not in or near a critical area.
- B. Cemetery graves.
- C. Emergencies posing an immediate danger to life or property, substantial flood or fire hazards, or natural resources.

- D. Agricultural operations required to adopt and implement an individual agriculture water quality plan pursuant to the requirements set forth in the Kentucky Agriculture Water Quality Act (KRS 224).
- E. Usual and customary site investigations, such as geotechnical explorations, clearing for surveying work, monitoring wells and archaeological explorations, which are undertaken prior to submittal of an application for permit during planning and design phases.
- F. Land Disturbance exempted as described above does not preclude the need for water quality protection. All land disturbances in Winchester shall have an EPSC Plan in place for water quality protection.
- G. The City of Winchester may, on a project-by-project basis, exempt other land disturbance activities not specifically identified above.

4.4. Grading Permit Submittals

- A. Land disturbance activities (< 1 acre)

The following minimum information is required for submittal of the Grading Permit:

- (1) Grading Permit Application.
- (2) Completed EPSC Land Disturbance Form.
- (3) All fees for said permit shall be paid according to the established Permitting Fee Schedule.

- B. Land Disturbance Activities (> 1 acre)

The following minimum information is required for submittal of the Grading Permit:

- (1) Grading Permit Application.
- (2) Completed Storm Water Pollution Prevention Plan (SWPPP) per Section 6 of this Ordinance.
- (3) All fees for said permit shall be paid according to the established Permitting Fee Schedule.
- (4) If applicable, a Stormwater Management Plan (SWMP) and maintenance agreement per the City of Winchester's Post Construction Ordinance.

- C. Application Review Fees

The fee for submittal and review of any Grading Permit application is non-refundable. All of the monetary fees shall be credited to a local budgetary category to support local plan review, inspection and program administration, and shall be made prior to the issuance of any Grading Permit.

4.5. Fiscal Surety

- A. The Permittee shall be responsible for the installation, good repair, maintenance and ultimate removal of all temporary and permanent EPSC measures.
- B. The City of Winchester requires the Permittee to post a fiscal surety, consisting of a bond, certified check, performance guarantee or other instrument, acceptable to and approved by the City of Winchester. When a fiscal surety is required, the surety shall be posted prior to the issuance of a Grading Permit.

- C. The fiscal surety shall be in the amount equal to two times the estimated cost of the EPSC measures, as approved by the City of Winchester, but in no case shall be less than \$1000.
- D. Following the period allowed to the Permittee to complete the installation of the EPSC measures, the City of Winchester finds the required temporary or permanent improvements or control measures have not been installed or maintained properly or are not in good repair or functioning properly, then the City of Winchester may declare the Permittee to be in default if it does not appear that the improvements or controls will be completed or repaired within a reasonable time. Upon declaration of default, the City of Winchester shall demand such amounts from the surety as required to remedy the default.
- E. Request for release of surety may be made after the City of Winchester makes an inspection of the property and determines that final stabilization has been established, and issues a Certificate of Stabilization.

4.6. KPDES Storm Water General Permit

Complying with the provisions of this Ordinance and issued Grading Permit does not exempt the Permittee from obtaining coverage from the Kentucky Division of Water under the KPDES Storm Water General Permit for storm discharges related to construction activities. The Permittee shall provide proof of approved coverage under KPDES with the Kentucky Division of Water to the City of Winchester. When applicable, Grading Permits will not be issued until proof of an approved NOI is received by the City of Winchester.

4.7. Permit Release

Grading Permits will be closed once the City of Winchester determines that final stabilization has been established, receives a copy of the NOT (if applicable), and issues a Certificate of Stabilization or Certificate of Occupancy for project also covered by a Building Permit.

4.8. Relation to Other Laws

Neither this Ordinance nor any administrative decision made under it exempts the Permittee or any other person from procuring other required local, state, or federal permits or complying with the requirements and conditions of such other permit(s), or limits the right of any person to maintain, at any time, any appropriate action, at law or in equity, for relief or damages against the Permittee or any other person arising from the activity regulated by this Ordinance.

Section 5. Review and Approval

1. The City of Winchester will review each application for a Grading Permit to determine its conformance with the provisions of this Ordinance. Within 20 working days after receiving a complete application the City of Winchester shall, in writing:
 - A. Approve the application and EPSC Plan or SWPPP and issue the Grading Permit;

- B. Approve the application and EPSC Plan or SWPPP subject to such reasonable conditions as may be necessary to secure substantially the objectives of this Ordinance, and issue the Grading Permit subject to these conditions; or
 - C. Disapprove the permit application and EPSC Plan or SWPPP, indicating the reason(s) and procedure for submitting a revised application and/or submission.
2. Failure of the City of Winchester to act on an original or revised application within 20 working days after receipt of a complete application shall not authorize the applicant to proceed in accordance with the EPSC Plan or SWPPP filed and this Ordinance, regardless of whether all other local, state and federal permits have been obtained. The time period for the City of Winchester to review the application shall start anew with each resubmittal.

Section 6. Stormwater Pollution Prevention Plan (SWPPP)

1. Land disturbance activities, which require a SWPPP per the requirements of this Ordinance, shall be approved by the City of Winchester. These plans shall be drawn to an appropriate scale and shall include sufficient information to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed grading on water resources, and measures proposed to minimize soil erosion and off-site sedimentation. A SWPPP Plan **may** require the preparation of the plan by a Kentucky licensed Professional Engineer, registered Landscape Architect, or Architect. The division of work to be performed by each profession shall be governed by state statutes and regulations, which regulate each profession. See KRS 322 (Surveyors and Engineers), KRS 323 (Architects), and KRS 323A (Landscape Architects). The owner/developer/contractor shall perform all clearing, grading, drainage, construction, and development in strict accordance with the approved plan and this Ordinance.

The SWPPP shall include the following:

- A. A completed Grading Permit Application.
- B. A project specific SWPPP including:
 - 1) A site description that identifies sources of pollution to stormwater discharges associated with on-site construction activities.
 - a. Describe the function of the project
 - b. Sequential list of activities to be performed including at a minimum:
 - Clearing and grubbing
 - Construction of erosion control devices
 - Installation of permanent and temporary stabilization measures
 - Grading
 - Utility installation
 - Building, parking lot, and site construction
 - Final grading, landscaping or stabilization

- Implementation and maintenance of final erosion control structures
 - Removal of temporary erosion control devices
- c. Total area of site and total area of disturbance, including off-site borrow/fill areas
 - d. List water quality classification of receiving waters as defined by KDOW
- 2) Project site map/drawing
- a. Vicinity map;
 - b. Property boundary of project;
 - c. A clear and definite location of surrounding area's watercourses including, streams, natural or artificial water storage areas, sinkholes, springs, wetlands, riparian zones, and other significant geographic features. Clearly delineate any vegetation to be saved.
 - d. Location of roads and other significant structures;
 - e. Anticipated drainage patterns and slopes after major grading activities, including impervious structures, discharge points (outfalls) with its associated flows, and specific limits of disturbance;
 - f. Location of areas that will be disturbed including fill and borrow areas. Include an additional project site map/drawing if borrow or fill areas are located off-site;
 - g. Location and types of BMPs for erosion protection and sediment control including provisions to preserve topsoil and limit disturbance;
 - h. Location of equipment and material storage areas necessary for the project;
 - i. Location Good Housekeeping protocols (e.g. waste management provisions, adequate material staging areas, concrete washout areas, spill prevention and response, etc.);
 - j. Location of potential pollutant sources;
 - k. A clear and definite delineation of any one hundred (100) year floodplain on or near the site;
 - l. Storm drainage system, including quantities of flow and site conditions around all points of surface water discharge from the site;
 - m. Provide an indication of scale used. Scale must be smaller than 1"=200' and must be a standard engineering scale, such as 30, 40, 50, 60, or 100.
2. Any BMPS may be selected provided that they are proven to be equally or more effective than the equivalent best management practices as contained in the *Kentucky Erosion Prevention and Sediment Control Manual and Field Guide*.
 3. The SWPPP shall be signed and certified in accordance with the signatory requirements in 401 KAR 5:065, Section 1(11).

4. A current copy of the SWPPP shall be readily available to the construction site from the date of project initiation (NOI) to the date of Notice of Termination (NOT).
5. All other requirements of a SWPPP Plan as defined in the current KPDES general permit for construction activities.
6. A site development construction project shall be considered in conformance with this Ordinance if soils have been prevented from being deposited onto adjacent properties, rights-of-ways, public storm drainage system, or wetland or watercourse for a storm event up to the maximum defined by this ordinance and any cleanup/maintenance observed to be needed is performed before the next storm event.

Section 7. Design and Maintenance Requirements

1. Ensure that BMPs selected minimize the amount of disturbance and time the disturbed area is exposed.
2. The design, testing, installation, and maintenance of erosion prevention and sediment control operations and facilities shall adhere to the criteria, standards and specifications as set forth in the most recent version of the *Kentucky Erosion Prevention and Sediment Control Manual and Field Guide*, and the local Subdivision Regulations as adopted by Winchester/ Clark County City of Winchester.
3. At a minimum, the following requirements shall be met:
 - A. Cut and fill slopes shall be no greater than 2H:1V, unless approved by the City of Winchester.
 - B. Clearing and grading, except that necessary to establish sediment control devices, shall not commence until sediment control devices have been installed.
 - C. Erosion control methods shall include the following:
 - a. Phasing of clearing and grading operations for all sites greater than 30 acres;
 - b. Soil stabilization by seeding/mulching within 14 days of mass grading operations for borrow (excavation) and fill areas;
 - c. Stabilizing soil stockpiles at the end of each workday;
 - d. Installing diversion ditches or other techniques where upland runoff occurs past disturbed areas;
 - e. Sediment control measures shall effectively minimize such discharges for storm events up to and including a 2-year, 24-hour event;
 - f. All engineering calculations related to design of erosion control methods shall be submitted with the SWPPP.
 - D. Sediment control methods shall include installing retention facilities, sedimentation basins and traps, other similar facilities at the most downstream runoff location within the site.
 - E. Waterway (creeks, ditches, etc.) protection shall include the installation of a temporary stream crossing; on-site storm water drainage system and stabilized outlets at all pipes.

- F. Prevention of mud and debris onto public roadways by construction equipment and vehicles shall include the installation of crushed stone construction entrances or an on-site tire washing station at the point of ingress and egress to the public roadway.
- G. All BMPs shall be maintained in an effective, operating condition. A schedule of maintenance activities during and after construction of graded surfaces, EPSC facilities, and drainage structures shall be developed to ensure proper function of these devices.
- H. Maintenance measures shall be performed before the next storm event.

Section 8. Inspection

1. The City of Winchester or its duly authorized representatives shall require inspections of land disturbing activities subject to this Ordinance.
2. To ensure compliance with the approved SWPPP and to examine field practices to determine if control measures are adequate, authorized inspectors of the City of Winchester shall have the power to inspect any land disturbing activity and to review the records of all inspections, repairs and modifications made by the Permittee.
3. Prior to commencing construction activities the Permittee shall attend a pre-construction conference if scheduled by the City of Winchester. The City of Winchester shall make the determination if a meeting is needed.
4. The Permittee shall notify the City of Winchester 24 hours in advance of conducting inspections, except in the case of post-rainfall event inspections. At a minimum, the Permittee shall provide an erosion control inspector that shall conduct inspections at the following stages:
 - Completion of perimeter erosion and sediment controls
 - Completion of clearing and grading
 - Installation of temporary erosion controls
 - Completion of final grading and ground stabilization
 - Prior to the fiscal security release
 - Monthly after areas have been temporarily or permanently stabilized
 - Within 24 hours of a rain event 0.5 inches or greater and every 14 days, OR every 7 days.

The City of Winchester may increase or decrease the number of required inspections as deemed necessary to ensure an effective SWPPP and shall have the right to enter the property of the Permittee without notice.

5. The Permittee shall prepare an inspection report after each inspection and shall keep copies at the job site at all times to be included in the SWPPP, but may be required to email or fax the inspection report to the City of Winchester, if deemed necessary. At a minimum the inspection report shall include the date, time of day, name of the person conducting the inspection, company represented, scope of the inspection, major observations relating to the SWPPP and BMPs installed, subsequent changes, and recommendations for correction of deficiencies. The City

of Winchester has the right to make regular inspections to ensure the validity of the inspection reports.

6. The Permittee shall be self-policing and shall correct or remedy any EPSC measures that are not effective or functioning properly at all times during the various phases of construction. All updates to EPSC measures shall be accurately noted in the SWPPP.
7. The SWPPP must be updated throughout the construction project and available for review on-site.

Section 9. Enforcement

1. The City of Winchester shall be responsible for the enforcement of this Ordinance. Duly authorized representatives have the authority to issue notices of violation, stop work orders and levy fines as described below.
2. A notice of violation (NOV) and/or stop-work order may be posted for the entire project or any specified part thereof if any of the following conditions exist:
 - Any land disturbance activity not regulated by permit but has runoff creating erosion.
 - Any land disturbance activity regulated under this Ordinance that is being undertaken without a permit.
 - The SWPPP is not being fully implemented.
 - Any of the conditions of the Grading Permit are not being met.
3. For the purposes of this section, a NOV and/or stop-work order is official by posting a copy of the NOV and/or stop-work order on the site of the land disturbing activity in reasonable proximity to a location where the land disturbing activity is taking place. Additionally, a copy of the violation and/or order, in the case of work for which there is a Grading Permit, shall be mailed by first class mail, postage pre-paid, to the address listed by the Permittee on the permit. In the case of work for which there is no permit, a copy of the violation and/or order shall be mailed to the person listed as the landowner of the property.
4. NOVs are the first level of enforcement and do not include a penalty, or fine. Only one NOV will be issued for an offense before Stop Work Orders are utilized. An offense of the same nature as a previous offense, even if previously corrected under a NOV, will constitute a second offense to be enforced through a Stop Work order. Offenses enforced through a NOV must be corrected within five (5) calendar days of the date of issuance or a Stop Work Order will be issued.
5. Stop Work orders shall include a penalty, or fine, for each occurrence and payable to the City of Winchester prior to release.
 - a. First SWO = \$250.00 fine.
 - b. Second SWO = \$500.00 fine and permit revocation.
6. If the Permittee does not cease the activity or comply with the Stop Work Order conditions within five (5) calendar days, the City of Winchester may revoke the permit.

7. Upon revocation of permit, the Permittee shall bring the site back into compliance prior to re-inspection by the City of Winchester. If the site is found acceptable, the City of Winchester will reinstate the permit upon receipt permit application fees.
8. For violations where no Grading Permit has been issued, the City of Winchester will notify the Responsible Party and cooperate for resolution prior to enforcement. Should the Responsible Party not cease the Land Disturbance Activity or demonstrate a history of non-compliance of the same nature, the City of Winchester may request the City Attorney to seek to obtain injunctive relief.
9. Six (6) calendar days after posting a stop-work order, the City of Winchester may issue a notice of intent to the Permittee, landowner, or land user stating the City of Winchester's intent to perform work necessary to comply with Ordinance. The City of Winchester may go on the land and commence work after fourteen (14) days from issuing the notice of intent. The costs incurred by the City of Winchester to perform this work shall be paid by the landowner or Permittee out of the fiscal surety referred to in this Ordinance, to the extent that the amount is covered thereby, with the remainder being directly due and owed by the landowner or Permittee. In the event no Grading Permit was issued or no bond was posted, the cost, plus interest at the rate authorized by the City of Winchester, plus a reasonable administrative and attorneys fee shall be billed to the owner. Failure to reimburse the City within thirty (30) days will result in a lien being placed on the property.
10. Compliance with the provisions of this Ordinance may also be enforced by injunction.
11. The City of Winchester is authorized to require immediate abatement of any violation of this Ordinance that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately, the City of Winchester is authorized to enter onto private or public property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the City of Winchester shall be fully reimbursed by the property owner and/or responsible party. The cost, plus interest at the rate authorized by the City of Winchester, plus a reasonable administrative and attorneys fee shall be billed to the owner. Failure to reimburse the City within thirty (30) days of notice will result in a lien being placed on the property.
12. Any person, firm, corporation or agency acting as principal, agent, employee or otherwise, who fails to comply with the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than one hundred dollars (\$250.00) and not more than five hundred dollars (\$500.00).
13. For the purpose of this ordinance, the ultimate party responsible for assuring compliance with the conditions set forth is the property owner.

Section 10. Permits and Fees

The fees for permits and inspections associated with this ordinance shall be as provided for in the City of Winchester's Stormwater Manual.

Section 11. Severability

This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

SECTION 12. All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

SECTION 13. All portions of this Ordinance amending the Code designate words and figures, which are deleted by including such words and figures stricken with dashed lines through the center. Words and figures added by the amendment are underlined with solid lines. The codifier is instructed to omit the words and figures deleted and the solid underlining when codifying this Ordinance.

SECTION 13. This Ordinance shall become effective July 1, 2011.

Introduced and given first reading at a meeting of the Board of Commissioners of the City of Winchester, Kentucky held on March 1, 2011 and adopted, after second reading at a meeting of the said Board held on March 15, 2011.

/s/ Edallen York Burtner, Mayor

Edallen York Burtner, Mayor

ATTEST:

/s/ Marilyn Rowe, City Clerk

Marilyn Rowe, City Clerk

Reviewed by City Attorney William A, Dykeman: February 28, 2011