

ORDINANCE NO. 2079

AN ORDINANCE OF THE CITY OF GERING, NEBRASKA TO AMEND TITLE VII, ADDING CHAPTER 55 RELATED TO A STORMWATER POLLUTION PREVENTION PLAN AND PROCEDURES FOR STORMWATER; AMENDING, REPEALING, AND ADDING ORDINANCES OR PARTS OF ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GERING, NEBRASKA:

Section 1. That Title V Public Works, Chapter 55, Stormwater Pollution Prevention Plan and Procedures for Stormwater be added and otherwise amended as follows:

TITLE V PUBLIC WORKS

CHAPTER 55: STORMWATER

Section

55.01 Definitions

55.02 General Provisions

55.03 Stormwater Pollution Prevention Plan

§ 55.01 DEFINITIONS.

Wherever used in this Chapter, the following terms shall bear the meanings herein:

Accidental Discharge Means a discharge prohibited by this chapter which occurs by chance and without planning or thought prior to occurrence.

Best Management Practices (BMPs) schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving water, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Construction Activity means activities subject to the NPDES Construction Permits. Currently these include construction projects resulting in land disturbance of one (1) acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavation and demolition.

Hazardous Materials means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or

physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge means any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in this ordinance.

Illicit Connections means any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit means a permit issued by EPA (or by a State under authority delegated pursuant to 33USC 1342 (B) that authorizes the discharge of pollutants to water of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge means any discharge to the storm drain system that is not composed entirely of storm water.

Person means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so the same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind. Pollutants lead to the human-made or human-induced alteration of the chemical, physical, biological or radiological integrity of an aquatic ecosystem

§ 55.02 GENERAL PROVISIONS.

(A) Purpose and Intent.

The purpose of this chapter is to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges to the City of Gering separate storm sewer system to the maximum extent practicable required by Federal and State law. This chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements on the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this chapter are:

- (1) Regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user.
- (2) To prohibit illicit connection and discharges to the municipal separate storm sewer system.
- (3) Prevent non-storm water discharges, generated as a result of spills, inappropriate dumping or disposal, to the City's separate storm sewer system.
- (4) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this chapter.

(B) Applicability.

This chapter shall apply to all water generated on any developed and undeveloped lands entering the storm drain system unless explicitly exempted by this municipal code or otherwise by the City.

(C) Compatibility with other Regulations.

This chapter is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this chapter are in addition to the requirements of any other ordinance, rule regulation, or other provision of law. Where this chapter is in conflict with any other provision of law, the provision which is more restrictive or imposes higher protective standards for human health or the environment shall control.

(D) Responsibility for Administration.

The City Administrator shall administer, implement, and enforce the provisions of this chapter. The City Administrator may delegate enforcement powers to any employee of the City.

(E) Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter 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 chapter.

(F) Ultimate Responsibility.

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore this chapter is not to be interpreted as

meaning that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

(G) Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials other than storm water, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standard. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as follows:

(1) The following discharges are exempt from discharge prohibitions established by this chapter: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated - typically less than one part per million of chlorine), firefighting activities, and any other water source not containing pollutants.

(2) Discharges specified in writing by the City Administrator as being necessary to protect public health and safety.

(3) Dye testing is an allowable discharge, but requires a verbal notification to the City Administrator prior to the time of test.

(4) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(H) Prohibition of Illicit Connections.

The construction, connection, use, maintenance or continued existence of any illegal connection to the City's separate storm sewer system is prohibited.

(1) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(2) A person is considered to be in violation of this chapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(I) Industrial or Construction Activity Discharges.

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Gering prior to the allowing of discharges to the MS4.

(J) Requirements to prevent, Control, and Reduce Storm Water Pollutants by the use of Best Management Practices.

The City will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the State of Nebraska or the United States of America. The owner or operator of a commercial or industrial establishment shall provide, at the expense of the owner or operator, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or water courses through the use of these structural and non-structural best management practices to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial the provisions of this section. These best management practices shall be part of a storm water pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

(K) Watercourse Protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use function, or physical integrity of the watercourse.

(L) Suspension of MS4 Access.

(1) Suspension due to Illicit Discharges in Emergency Situations

The city may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the State of Nebraska or the United States of America or to minimize danger to persons or property.

(2) Suspension due to the Detection of Illicit Discharge.

Any person discharging to the MS4 in violation of this chapter may have his or her MS4 access terminated if such termination would abate or reduce an illicit discharge. The city will notify a violator of the proposed termination of its MS4 access. The violator may petition the City Administrator for a reconsideration and hearing.

A person commits an offense if that person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City Administrator.

(M) Access and Inspection of Properties and Facilities.

The City Administrator or designee may enter and inspect properties and facilities at reasonable time as often as may be necessary to determine compliance with this chapter.

(1) Employees of the City may enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter.

(2) Facility operators shall allow authorized employees of the City ready access to all parts of the premises for the purposes of inspection, sampling examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and performance of any additional duties as defined by state and federal law.

(3) The City may set up on any permitted facility such devices as are necessary in the opinion of the City Administrator to conduct monitoring and/or sampling of the facility's storm water discharge.

(4) The City may require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

(5) The temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the city and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delays in allowing the City access to a permitted facility is a violation of a storm water discharge permit and of this chapter. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter.

(7) If the representatives of the City have been refused access to any part of the premises from which storm water is discharged the City may seek issuance of a search warrant from any court of competent jurisdiction.

(N) Notification of Accidental Discharges and Spills.

Notwithstanding other requirements of the law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-storm water discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into storm water, the City of Gering (MS4) separate storm sewer system, waters of the State of Nebraska, or the waters of the United States of America, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

Said person shall notify the City Administrator or designee of the City Administrator of the nature, quantity and time of occurrence of the discharge within 24 hours. Notifications which are not in writing shall be confirmed by written notice addressed and mailed to the City Administrator or designee within

three business days of the phone call or by personal notification. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the action taken to prevent its recurrence. Such records shall be retained for at least three years. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.

In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified.

Failure to provide notification of a release as provided above is a violation of this chapter.

(O) Notice of Violation.

(1) Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the City Administrator may order compliance by written notice of violation to the responsible person. Such notice shall be sent via regular U.S. mail or via hand delivery to the owner of the property and to any licensee listed under a City business license for the property. The notice shall include:

- a. The name and address of the parties listed above;
- b. The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- c. A statement specifying the nature of the violation;
- d. A description of the remedial action;
- e. A statement of the penalty or penalties that shall or may be assessed against the person or persons to whom the notice of violation is directed; and,
- f. A statement that the determination of violation may be appealed to the City Administrator by filing a written notice of appeal within thirty (30) days of service of notice of violation.

(2) In the event of a violation, the City may require:

- a. The performance of monitoring, analyses, and reporting;
- b. The elimination of illicit discharges and illegal connections;
- c. That violating discharges, practices, or operations shall cease and desist;
- d. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- e. Payment of costs to cover administrative and abatement costs;
- f. The implementation of pollution prevention practices; and
- g. Such other action as may be reasonably necessary to accomplish the purposes of this chapter.

(P) Appeal of Notice of Violation.

Any person receiving a Notice of Violation may appeal the determination of the City of Gering. The notice of appeal shall be in writing and shall be delivered to the City Clerk within thirty (30) days from the date of the Notice of

Violation. Hearing on the appeal before the City Administrator shall take place within 15 days from the date of receipt of the notice of appeal. The pendency of an appeal shall not relieve the responsible person from complying with the requirements of the Notice of Violation, unless the City Administrator otherwise consents in writing.

(Q) Enforcement Measures after Appeal.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 15 days of the decision of the City Administrator or designee, then representatives of the City may enter upon the subject private property and are authorized to take any measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the City of Gering or designated City contractor to enter upon the premises for the purposes set forth above.

(R) Cost of Abatement of the Violation.

Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the assessment or to the amount of the assessment within thirty (30) days of such notice. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within (30) days after a decision on said appeal, the charges shall become a special assessment. Any person violating any of the provisions of this article shall become liable to the City of Gering by reason of such violation.

The City may recover all attorney's fees, court costs and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

(S) Injunctive Relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of the chapter, the City may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

(T) Alternative Actions Upon Violation.

In lieu of enforcement proceedings, penalties and remedies authorized by this chapter, the City may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance of compliance workshops, waterway cleanup, or other community service work.

(U) Violations Deemed A Public Nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of the chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken.

(V) Criminal Prosecution.

Any person, firm, corporation or agency acting as principal, agent, employee or otherwise, who fails to comply with the provisions of this Chapter unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be subject to the penalties described in § 10.99 of the Gering City Code of Ordinances. A conviction pursuant to this Chapter shall be a Class II violation of the Gering City Code of Ordinances, and subject to fine in any sum not exceeding \$1,000.00. A new violation shall be deemed to have been committed every 24 hours of failure to comply with the provisions of this code.

(W) Remedies not Exclusive.

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City to seek cumulative remedies.

§ 55.03 STORMWATER POLLUTION PREVENTION PLAN

(A) Purpose/Scope.

The purpose and scope of this Ordinance is to control land disturbances, or eliminate soil erosion and sedimentation within the corporate limits of the City of Gering. It establishes standards and specifications for conversion practices and planning activities that minimize soil erosion and sedimentation. It further provides the City of Gering with procedures for issuance, approval, admission and enforcement of a permit.

(B) Definitions.

Whenever used in this article, the following terms shall have the meaning given to them in this section:

Applicant is any person who submits an application to the City for a permit pursuant to this ordinance.

Architect is a person duly registered or authorized to practice architecture in the State of Nebraska.

ASTM is the American Society for Testing Materials.

Bedrock is in place solid rock.

Bench is a relatively level step excavated into earth material on which fill is to be placed.

Best Management Practices (BMP) are erosion and sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing, and minimizing degradation of surface water, including avoidance of impacts, construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by state or designated area-wide planning agencies.

Borrow is earth material acquired from an off-site location for use in grading on a site.

City is the City of Gering and only includes areas within its corporate limits.

City Engineer is the City Engineer of the City of Gering and his/her duly authorized designees.

Civil engineer is a professional engineer registered in the State of Nebraska to practice in the field of civil works.

Civil engineering is the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design and construction of civil works for the beneficial uses of mankind.

Clearing and grubbing is any activity that removes the vegetative surface cover, including the cutting and removal of trees, shrubs, bushes, and other vegetation including removal of tree stumps, roots and other remains in the designated areas.

CSW is the Construction Site to Waters Permit of the State of Nebraska.

Demolition is any act or process of wrecking or destroying a building or structure as defined in the City of Gering Building Code.

Detention facility is a temporary or permanent natural or man-made structure that provides for the temporary storage of storm water runoff.

Developer is any person, firm, corporation, sole proprietorship, partnership, state agency, or political subdivision thereof engaged in a land disturbance activity.

Engineering Department is the department in the City of Gering that is responsible for building inspections, code enforcement, community development, current and long range planning, zoning, and permit coordination.

Director of Public Works is the Stormwater Program Specialist of the City of Gering and his/her duly authorized designees.

Erosion is the wearing away of earth material as a result of the movement of wind, water, ice, and/or land disturbance activities.

Excavation is the mechanical removal of earth material.

Fill is a deposit of soil or other earth materials placed by artificial means.

Final SWPPP (Final Plan) is a plan which includes permanent measures and Best Management Practices to control surface runoff and control sediment if not included in the SWPPP (Plan).

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 Floodway Maps for Gering.

General Storm Water Permit is the Nebraska Department of Environmental Quality (NDEQ) general National Pollutant Discharge Elimination System (NPDES) construction storm water permit covering anyone conducting a land disturbing activity which disturbs one (1) or more acres of total land area.

Grade is the vertical location of the ground surface.

(1) **Existing grade** is the grade prior to grading.

(2) **Rough grade** is the stage at which the grade approximately conforms to the approved plan.

(3) **Finish grade** is the final grade of the site which conforms to the approved plan.

Issuing Authority is the Stormwater Program Specialist of the City of Gering and their duly authorized designees.

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 corporate limits of the City of Gering, including but not limited to building demolition, clearing and grubbing, grading, excavating, transporting and filling of land. Land disturbance activity does not include the following:

(1) Minor land disturbance activities including, but not limited to, underground utility repairs, home gardens, minor repairs, and maintenance work which do not disturb more than one (1) acre and is not part of a larger common plan of development.

(2) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

(3) 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 Chapter 24, Article 3.

(4) Agricultural and other activity related to the production and management of crops for economic benefit.

Landscape Architect is a person duly registered or authorized to practice landscape architecture in the State of Nebraska.

Larger Common Plan of Development is part of a large set of plans if the ultimate plan is larger than 1 acre then it is part of a larger common plan.

Maintenance Project is a non-construction related activity.

Measurable Storm Event is any precipitation measuring 0.5 inches or greater.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit means a permit issued by EPA (or by a State under authority delegated pursuant to 33USC 1342 (B) that authorizes the discharge of pollutants to water of the United States, whether the permit is applicable on an individual, group, or general area-wide basis).

NOAA is the National Oceanic and Atmospheric Administration.

NDEQ is the Nebraska Department of Environmental Quality.

NDOR is the Nebraska Department of Roads.

NDOT is the Nebraska Department of Transportation.

N.O.L is the document of Notice of Intent.

N.O.T. is the document of Notice of Termination.

Outfall is the point of discharge to any watercourse from a public or private stormwater drainage system.

Owner is any person with a legal or equitable interest in the land for which an erosion control permit has been issued.

Permittee is the applicant in whose name a valid permit is duly issued pursuant to this Ordinance and his/her agents, employees, and others acting under his/her direction.

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.

Runoff is rainfall, snowmelt, or irrigation water flowing over the ground surface.

Sediment is soils or other surficial materials transported by surface water as a product of erosion. Sedimentation is the process or action of deposition sediment that is determined to have been caused by erosion.

Sedimentation is the process or action of depositing sediment that it determined to have been caused by erosion.

Site is the entire area of land on which the land disturbance activity is proposed in the permit application.

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.

Slope is the incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

Soil is naturally occurring surficial deposits overlying bedrock.

Stormwater Pollution Prevention Plan (SWPPP) is a plan which includes a set of best management practices or equivalent measure designed to control surface runoff and erosion and to retain sediment on a particular site during the period in which pre-construction and construction related land disturbances, fills, and soil storage occur, and before final improvements are completed, all in accordance with the specific requirements set forth in this Ordinance.

Stormwater Pollution Prevention Plan Inspector is an employee of the City of Gering that has in his/her possession either of the following:

(1) Certification for Erosion and Sediment Control for Inspectors; sponsored or endorsed by Nebraska Local Technical Assistance Program.

(2) Certification of Preparer of Stormwater Pollution Prevention Plan and Certified Compliance inspector of Stormwater sponsored or endorsed by Stormwater USA.

Stripping is any activity which removes or significantly disturbs the vegetative surface cover including clearing, grubbing of stumps and root mat, and topsoil removal.

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.

Surveyor is a person duly registered or authorized to practice land surveying in the State of Nebraska.

SWPPP is the Stormwater Pollution Prevention Plan which details sediment erosion and control.

Topsoil is the upper layer of soil.

Utility 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, water (including stormwater), steam, sewage and other similar substances.

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.

Watershed is a region draining to a specific river, river system, or body of water.

Wetland is a lowland area such as a marsh, which is saturated with moisture, as defined in Sec. 404, Federal Water Pollution Control Act Amendments of 1987.

(C) 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 permits or complying with the requirements and conditions of such permit, 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.

(D) Exemptions.

The following activities are exempt from obtaining a permit and from following the procedures required in this Ordinance:

- (1) Cemetery graves.
- (2) Emergencies posing an immediate danger to life or property, or substantial flood or fire hazards.
- (3) Those undertaken on agricultural land for the production and management of crops for economic benefit.

(E) Manner of work.

All land disturbing or land filling activities or soil storage, whether pursuant to this Ordinance or otherwise, shall be undertaken in a manner designed to minimize surface runoff, erosion and sedimentation. Whenever the Issuing Authority determines that any land disturbing activity on any private property has become a hazard to life and limb, or endangers the property of another, or adversely affects the safety, use, slope, or soil stability of a public way, publicly controlled wetland, or watercourse, then the owner of the property upon which the land disturbing activity is located, or other person or agent in control of said property, upon receipt of notice in writing from the Issuing Authority, shall within the period specified therein repair or eliminate such conditions.

Exempt activities under this Ordinance or the activities excluded under the definition of land disturbance activities under this Ordinance are also subject to the provisions of this section. If the City incurs costs to enforce the provisions of the section because of any activity listed in this Ordinance, reimbursement of City costs associated with the correction work completed by the City must occur prior to the issuance of a letter certifying completion, when required under this ordinance.

(F) SWPPP Performance Standards.

A 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 system, or wetland or watercourse. The design, testing, installation, and maintenance of erosion and sediment control operations and facilities shall adhere to City approved design standards as well as standards specifications in the most current Authorization to Discharge under the National Pollutant Discharge Elimination System General NPDES Permit for Storm Water Discharges from Construction Sites to Waters of the State of

Nebraska which shall be hereby incorporated into this Ordinance. In the event of conflict, a copy of the NOI, SWPPP and the CSW shall be filed with the Engineering Department of the City of Gering and Stormwater Pollution Prevention Plan Inspector for the City of Gering.

(G) Application; Fees.

All land disturbance activities require a stormwater permit issued by the City. A written application for a permit from the owner of the site, or any other authorized representative designated by the owner who has day-to-day operational control and/or the ability to modify project plans with specifications related to the SWPPP, in the form prescribed by in this Ordinance shall be required for each permit. The fees for said permit shall be as provided in Chapter 150 § 031 of the City Municipal Code. Plans and specifications shall be prepared or approved by a qualified person such as a civil engineer, surveyor, architect or landscape architect.

(H) Permit Application Form.

The following information is required on the application:

- (1) Name, address, and telephone number of owner.
- (2) Name, address, and telephone number of applicant, if different than owner.
- (3) Names, addresses, and telephone numbers of any and all contractors, subcontractors or persons actually doing the land disturbing or land filling activities and their respective tasks.
- (4) Name(s), address(es), and telephone number(s) of the person(s) responsible for the preparation of the Site Map and Grading Plan.
- (5) Name(s), address(es), and telephone number(s) of the person(s) responsible for the preparation of the SWPPP.
- (6) Address of site.
- (7) Date of the application.
- (8) Signature(s) of the owner(s) of the site or an authorized representative.

(I) Stormwater Pollution Prevention Plan.

Before a stormwater permit will be issued by the City, a SWPPP shall be submitted and approved by the City. The SWPPP 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. The owner/developer shall perform all clearing, grading, drainage, construction, and development in strict accordance with the standards approved by the City and the approved SWPPP. In addition, the following information shall be included in any plan where land disturbance activity will be greater than One (1) acre:

- (1) A letter of transmittal, which includes a project narrative.
- (2) An attached vicinity map showing the location of the site in relationship to the surrounding area's watercourses, water bodies and other significant geographic features, and roads and other significant structures.
- (3) An indication of the scale used.
- (4) The name, address, and telephone number of the owner and/or developer of the property where the land disturbing activity is proposed.

- (5) Suitable contours for the existing and proposed topography.
- (6) The proposed grading or land disturbance activity including: the surface area involved, excess spoil materials, use of borrow material, and specific limits of disturbance.
- (7) A clear and definite delineation of any areas of vegetation or trees to be saved.
- (8) A clear and definite delineation of any wetlands, natural or artificial water storage detention areas, and drainage ditches on the site.
- (9) A clear and definite delineation of any one hundred (100) year floodplain on or near the site.
- (10) Storm drainage system, including quantities of flow and site conditions around all points of surface water discharge from the site.
- (11) Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sedimentation, including provisions to preserve topsoil and limit disturbance.
- (12) Design details for both temporary and permanent erosion control structures.
- (13) A copy of the Notice of Intent (NOI) for the state permit will be submitted.
- (14) A chronological construction schedule and time frame including, as a minimum, the following activities:
 - a. Clearing and grubbing for those areas necessary for installation of perimeter erosion control devices.
 - b. Construction of perimeter erosion control devices.
 - c. Remaining interior site clearing and grubbing.
 - d. Installation of permanent and temporary stabilization measures.
 - e. Road grading.
 - f. Grading for the remainder of the site.
 - g. Utility installation and whether storm drains will be used or blocked after construction.
 - h. Building, parking lot, and site construction.
 - i. Final grading, landscaping or stabilization.
 - j. Implementation and maintenance of final erosion control structures.
 - k. Removal of temporary erosion control devices.
- (15) Stormwater Pollution Prevention Plan Inspector may require any additional information or data deemed appropriate and/or may impose such conditions there to as may be deemed necessary to ensure compliance with the provisions of the NOI, CSW, or the preservation of public health and safety.
- (16) A description of, and specifications for, sediment retention structures.
- (17) A description of, and specifications for, surface runoff and erosion control devices.
- (18) A description of vegetative measures.

For land disturbance activities, for less than one (1) acre:

- (1) Project name and description.
- (2) Project start date and estimated completion date.

- (3) Control measures to be installed.
- (4) Waste disposal practices.
- (5) Concrete washout.
- (6) Track-out prevention practices.
- (7) A site map which must show the direction of stormwater flow, areas to be disturbed, location of concrete washout, location of soil stock piles, and location of control measures.

(J) Permit Required.

Except as otherwise provided in Chapter 55, no person may grade, fill, excavate, store, stockpile or dispose of earth materials or perform any other land disturbing or land filling activity within the corporate limits of the City without first obtaining a stormwater permit from the City.

(K) Permit Duration.

Permits issued under Chapter 55 shall be valid for the period during which the proposed land disturbing or filling activities and soil storage takes place or is scheduled to take place, whichever is shorter, but in no event shall such a permit be valid for more than one (1) year. The permittee shall commence permitted activities within one hundred eighty (180) days of the scheduled commencement date for grading or the permittee shall resubmit all required application forms, maps, plans, and schedules to the Issuing Authority, except where an item to be resubmitted is waived by the Issuing Authority.

(L) Permit Renewals/Extensions.

The permittee shall fully perform and complete all of the work required according to standards approved by the City in the sequence shown on the plans within the time limit specified in the permit. Prior to the expiration of a SWPPP, the permittee may present a written request for an extension to the Engineering Department of the City of Gering. If, in the opinion of the Issuing Authority, an extension is warranted, a one time, no fee extension, not to exceed ninety (90) days, may be granted. The Issuing Authority may authorize additional extensions not to exceed a total of one (1) year at the rate of seventy-five dollars (\$75.00) per extension.

(M) Permit Denial.

If the Issuing Authority determines that the SWPPP does not meet the requirements of Chapter 55, he/she shall not issue a permit for the land disturbing activity. Factors indicating the deficiencies and the procedure for submitting a revised plan will be given to the applicant at the time of denial. The SWPPP must be resubmitted for approval before the land disturbance activity begins. All land use and building permits must be suspended until the permittee has an approved SWPPP.

(N) Conditions of Approval.

In granting any permit pursuant to Chapter 55, the Issuing Authority may impose such conditions as may be reasonably necessary to prevent creation of a nuisance or unreasonable hazard to persons or to a public or private property. Such conditions shall include (even if not specifically written in the permit), but need not be limited to:

(1) The granting (or securing from others) and the recording in County land records of easements for drainage facilities, including the acceptance of their discharge on the property of others, and for the maintenance of slopes or erosion control facilities.

(2) Adequate control of dust by watering, or other control methods acceptable to the Issuing Authority, and in conformance with standards approved by the City

(3) Improvements of any existing grading, ground surface or drainage condition on the site (not to exceed the area as proposed for work or development in the application) to meet the standards required under Chapter 24 and approved by the City for new grading, drainage and erosion control.

(4) Sediment traps and basins located within a densely populated area or in the proximity of an elementary school, playground or other area where small children may congregate without adult supervision may be requested to install additional safety related devices.

(5) Solid waste, industrial waste, yard waste and any other pollutants or waste on any construction site shall be controlled through the use of BMPs. Waste or recycling containers shall be provided and maintained by the owner or contractor on construction sites where there is the potential for release of waste. Uncontained waste that may blow, wash or otherwise be released from the site is prohibited. Sanitary waste facilities shall be provided and maintained in a secured manner.

(6) Ready-mixed concrete, or any materials resulting from the cleaning of vehicles or equipment containing such materials or used in transporting or applying ready-mixed concrete, shall not be allowed to discharge from any construction site.

(7) Cover or perimeter control shall be applied within fourteen (14) days to any soil stockpiles, which will remain undisturbed for longer than thirty (30) calendar days.

(8) Disturbed soil shall be managed with BMPs that are adequately designed, installed, and maintained according to standards approved by the City, specifications and guidance for the duration of the construction activity to minimize erosion and contain sediment within the construction limits.

(9) Bulk storage structures for petroleum products and other chemicals shall have adequate protection to contain all spills and prevent any spilled material from entering the MS4 or waters of the State.

(10) Temporary BMPs shall be removed and disturbed areas shall be stabilized with permanent BMPs at the conclusion of all approved construction activity.

(11) Proposed conditions inspections must be conducted at least once every fourteen calendar days, and within 24 hours of storms that have occurred in a 24 hour period with an accumulation of precipitation that measures 0.5 inches or greater. A rain gauge will be maintained on site to measure precipitation. A description of the location of the rain gauge will be included in the SWPPP and will be indicated on the site map.

(12) A copy of the SWPPP, including a copy of the permit, NOI, CSW, and the letter from NDEQ notifying the receipt of the complete and accurate NOI, CSW must be retained at the construction site. The SWPPP must be made available upon request to Federal, State, and local agencies, from the date of commencement of construction activities to the date of final stabilization.

(13) A sign or other notice must be posted conspicuously near the main entrance of the construction site. The sign must contain a copy of the completed NOI, CSW as submitted to the NDEQ, the current location of the SWPPP and name and telephone number of a contact person for scheduling viewing times must be provided.

(14) Discharges from de-watering activities, including discharges from de-watering of trenches and excavations, are prohibited unless managed by appropriate controls.

(15) When discharging from basins and impoundments, utilize outlet structures that would draw water from the surface, unless infeasible.

(O) Requirements for Utility Construction.

Utility agencies or their representatives shall develop and implement BMPs to prevent the discharge of pollutants on any site of utility construction within the City. The City may require additional BMPs on utility construction activity. If the utility construction disturbs greater than one (1) acre, the utility agency must comply with the requirements of § 55.03(I) and § 55.03(J).

Utility agencies or their representatives shall implement BMPs to prevent the release of sediment from utility construction sites. Disturbed areas shall be minimized, disturbed soil shall be managed and construction site exits shall be managed to prevent sediment tracking. Sediment tracked onto public right-of-way shall be removed immediately.

Prior to entering a construction site or subdivision development, utility agencies or their representatives shall obtain and comply with any approved erosion and sediment control plans for the project. Any impact to construction and post-construction BMPs resulting from utility construction shall be evaluated prior to disturbance by the developer and utility company. Repairs to the disturbed BMPs must be completed within forty-eight (48) hours, by individuals agreed upon during the design phase or at a preconstruction meeting.

(P) Liability.

The permittee is responsible for safely and legally completing the project. Neither the issuance of a permit under the provisions of Chapter 55, nor the compliance with the provisions hereto or with any condition imposed by the Issuing Authority, shall relieve any person from responsibility for damage to persons or property resulting there from, or as otherwise imposed by law, nor impose any liability upon the City for damages to persons or property.

(Q) Responsibility of Permittee.

The permittee shall maintain a copy of the permit, approved plans and reports required under the permit on the work site and available for public inspection during all working hours. The permittee shall, at all times, be in conformity with the approved grading plan; SWPPP and also conform to the following:

(1) General - Notwithstanding other conditions or provisions of the permit, the standards approved by the City, or minimum standards set forth in Chapter 24, the permittee is responsible for the prevention of damage to adjacent property. No person shall grade on land in any manner, or so close to the property line as to endanger or damage any adjoining public street, sidewalk,

alley or any other public or private property without supporting and protecting such property from settling, cracking, erosion, sedimentation or other damage or personal injury which might result.

(2) Public ways - The permittee shall be responsible for the prompt removal of, and the correction of damages resulting from any soil, miscellaneous debris or other materials washed, spilled, tracked, dumped or otherwise deposited on public streets, highways, sidewalks or other public thoroughfare, incident to the construction activity, or during transit to and from the construction site.

(R) Permit Authorization.

The issuance of an SWPPP permit shall constitute an authorization to do only the work described in the permit, or shown on the approved site plans and specifications, all in strict compliance with the requirements of Chapter 55, unless each and every modification or waiver is specifically listed and given specific approval by the Issuing Authority.

(S) Compliance.

The permittee, his/her agent, contractors and employees shall carry out the proposed work in accordance with the approved plans and specifications, and in compliance with all standards approved by the City and the requirements of the permit.

(T) Action Upon Noncompliance.

In the event work does not conform to the permit or to the plans and specifications or to any standards approved by the Issuing Authority, notice to comply shall be given to the permittee in writing. After a notice to comply is given, in the determination of the Issuing Authority, the permittee or his/her contractor shall be required to make the corrections within the time period determined by the Issuing Authority. If an imminent hazard exists, the Issuing Authority may require that the corrective work begin immediately.

If the Issuing Authority finds any existing conditions not as stated in the application or approved plans, he/she may stop the work on the entire project or any specified part thereof until a revised plan is submitted conforming to the currently existing conditions.

(U) Changes to Plans.

All changes or modifications to the approved SWPPP must adhere to the following conditions:

(1) All proposals to modify the approved plans must clearly documented in the SWPPP and available to the stormwater inspector during any inspection

(2) The permittee shall submit requests for major revisions to approved SWPPP, such as the addition or deletion of a sediment basin, to the Stormwater Pollution Prevention Plan Inspector or his/her designee. This includes revisions due to plan and site discrepancies and inadequacies at controlling erosion and sediment as revealed through inspection.

(V) Inspection and Supervision.

The contractor and/or their agents shall conduct a pre-construction meeting on-site with the Issuing Authority on each site when it is determined necessary by the City Inspector and/or their designated employee. After commencing initial grading or land disturbing activities, the permittee shall obtain written inspection approvals by the Issuing Authority at the following stages in the development of the site, or of each subdivision thereof:

(1) Upon completion of installation of perimeter erosion and sediment controls, prior to proceeding with any other land disturbance or grading. Other building or grading inspection approvals may not be authorized until initial approval by the Stormwater Pollution Prevention Plan Inspector or his/her designee is made.

(2) Upon completion of final grading, permanent drainage and erosion control facilities including established ground covers and planting, and all other work of the permit.

The Issuing Authority may require additional inspections as may be deemed necessary. Work shall not proceed beyond the stages outlined above until the Stormwater Pollution Prevention Plan Inspector or his/her designee inspects the site and approves the work previously completed. Requests for inspections shall be made at least twenty-four (24) hours in advance (exclusive of Saturdays, Sundays, and holidays) of the time the inspection is desired. Upon request for inspections, the Issuing Authority shall perform the inspection within forty-eight (48) hours of request. In making application for a permit covered by Chapter 55, the applicant or the landowner performing or allowing such work consents to the Issuing Authority having the right to enter the site for the purpose of inspecting compliance with the SWPPP or for performing any work necessary to bring the site into compliance with the SWPPP. This does not include consent to enter into any building which is completed and which has been secured, but does include consent to inspect any area of the property where land disturbing activity is occurring or is thought to be planned as a site of land disturbing activity.

(V) Changes During Construction Reports.

The permittee shall maintain records with the SWPPP under the following circumstances along with recommendations for corrective measures, if deemed necessary and appropriate.

(1) There are delays in obtaining materials, machinery, services or manpower necessary to the implementation of the grading, or SWPPP as scheduled.

(2) There are delays in land disturbing or filling activities or soil storage.

(3) The work is not being done in conformance with the approved grading, or SWPPP.

(4) There are any departures from the approved grading plan which may affect implementation of the SWPPP as scheduled.

(5) There are any delays in the implementation of the SWPPP Plans.

(6) There are any other departures from implementation of the SWPPP.

(W) Maintenance During and After Construction.

On any property on which grading or other work has been done pursuant to a permit granted under the provisions of Chapter 55 the permittee or owner, their agent, contractor, and employees shall, at a minimum, daily inspect, maintain and repair all graded surfaces and erosion control facilities, drainage structures or means and other protective devices, plantings, and ground cover installed while construction is active. After construction is complete, the owner or their agent shall continue to regularly inspect the vegetation until adequate turf establishment or other suitable vegetative cover is established.

(X) Security.

The Issuing Authority may require the posting of a surety bond in a form approved by the City Attorney, when in the judgment of the Issuing Authority the project provides potential for environmental damage. The bond shall be in such form and amount as is necessary to assure that the work, if not completed in accordance with the approved plans and specifications, will be corrected. In lieu of a surety bond, with the approval of the Issuing Authority, the applicant may file a cash bond or instrument of credit that has been approved by the City Attorney in an amount equal to that which would be required in the surety bond.

(Y) Enforcement.

The Issuing Authority shall be responsible for the enforcement of Chapter 55.

(1) The Issuing Authority may post a stop-work order for the entire project or any specified part thereof if any of the following conditions exist:

- a. Any land disturbance activity regulated under Chapter 55 is being undertaken without a permit.
- b. The SWPPP is not being fully implemented.
- c. Any of the conditions of the permit are not being met.

(2) For the purposes of this section, a stop-work order is validly posted by posting a copy of the 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 order, in the case of work for which there is a 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 order shall be mailed to the person listed as owner of the property by the Scotts Bluff County Assessor on the homestead record, or if none, to the taxpayer shown by the records of the Scotts Bluff County Assessor.

(3) If the permittee does not cease the activity or comply with the SWPPP or permit conditions within one (1) day, the Issuing Authority may revoke the permit.

(4) If the owner or land user where no permit has been issued does not cease the land disturbance activity, the Issuing Authority may request the City Attorney to obtain injunctive relief

(5) The Issuing Authority may retract the revocation.

(6) Ten (10) days after posting a stop-work order, the Issuing Authority may issue a notice of intent to the permittee, owner, or land user of the Issuing Authority's intent to perform work necessary to comply with Chapter 55. The Issuing Authority may go on the land and commence work after fourteen (14)

days from issuing the notice of intent. The costs incurred by the Issuing Authority to perform this work shall be paid by the owner or permittee out of the bond referred to in this Ordinance, to the extent that the amount is covered thereby, with the remainder being directly due and owing by the owner or permittee. In the event no permit was issued or no bond was posted, the cost, plus interest at the rate authorized by the Issuing Authority, plus a reasonable administrative fee shall be billed to the owner. If in any event the amount due is not paid, the Scotts Bluff County Assessor shall enter the amount due on the tax roll and collect as a special assessment against the property using the procedures for collecting the assessment, providing for the notice of assessment.

(7) Compliance with the provisions of Chapter 55 may also be enforced by injunction.

(8) A notice of intent to perform work necessary to comply with Chapter 55 pursuant to subsection (6) of this section may be served in the manner specified for a stop-work order in subsection (2).

(Z) Penalties.

Any person, firm, corporation or agency acting as principal, agent, employee or otherwise, who fails to comply with the provisions of this Ordinance unless otherwise specifically provided herein, shall be deemed guilty of an offense and upon conviction thereof shall be subject to the penalties described in § 10.99 of the Gering City Code of Ordinances. A conviction pursuant to this Ordinance shall be a Class II violation of the Gering City Code of Ordinances, and subject to fine in any sum not exceeding \$1,000.00. A new violation shall be deemed to have been committed every 24 hours of failure to comply with the provisions of this code.

(AA) Certification of Completion.

Upon final inspection and/or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with the City Municipal Code, permittee will be eligible to obtain a certificate of occupancy from the City.

(BB) Notice of Termination.

The permittee shall submit a N.O.T. after one or more of the following conditions have been met; and must be submitted within 30 days of one conditions, according to the CSW, have been met:

(1) Final Stabilization has been achieved on all portions of the site for which you are responsible.

(2) Another operator has assumed control according to part VI.D.6 of the CSW over all areas of the site that have not been finally stabilized.

(3) Coverage under an individual or alternative general NPDES permit has been obtained.

(4) For residential construction only, temporary erosion protection has been completed and the residence has been reassigned to the homeowner.

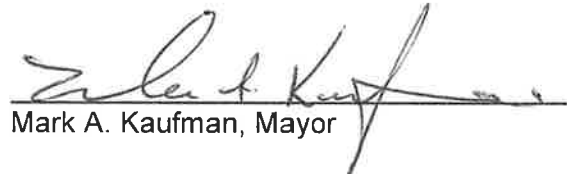
Section 2. That all ordinances and resolution or parts of ordinances and resolutions in conflict herewith are hereby repealed.

Section 3. It in the intention of the City Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Code of the City of Gering, Nebraska, and the sections of this Ordinance may be renumbered to accomplish such intention.

Section 4. This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law and shall be published in pamphlet from by authority of the City Council.

PASSED AND APPROVED THIS 8th DAY OF July, 2019.

ATTEST:


Mark A. Kaufman, Mayor


Kathleen J. Welf, City Clerk

