

ORDINANCE NO. 2016-01

ORDINANCE AMENDING TITLE C OF THE ELDRIDGE CITY CODE BY ADDING  
CHAPTER 19,  
“CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL”

Section 1. Title C of the Eldridge City Code is hereby amended to add Chapter 19 “CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL,” in the form attached hereto.

Section 2. Repealer Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. Severability Clause. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. Effective Date. This ordinance shall be effective from and after the final passage, approval and publication as provided by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
City Clerk

CHAPTER 19  
CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

SECTION 1. FINDINGS:

- 1.1. The U.S.EPA's National Pollutant Discharge Elimination System ("NPDES") permit program (Program) administered by the Iowa Department of Natural Resources ("IDNR") requires that cities meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System (MS4) (MS4 Permit).<sup>1</sup> The City of Eldridge (City) is subject to the Program and is required to obtain, and has obtained, an MS4 Permit; the City's MS4 Permit is on file at the office of the city clerk and is available for public inspection during regular office hours.
- 1.2. The Program requires certain individuals engaged in construction activities (applicant or applicants) to submit an application to the IDNR for a State NPDES General Permit #2. Notwithstanding any provision of this ordinance, every applicant bears final and complete responsibility for compliance with a State NPDES General Permit #2 and a City Construction Site Erosion and Sediment Control (COSESCO) Permit and any other requirement of state or federal law or administrative rule.
- 1.3. As a condition of the City's MS4 Permit, the City is obliged to undertake primary responsibility for administration and enforcement of the Program by adopting a COSESCO ordinance designed to achieve the following objectives:
  - 1.3.1. Any person, firm, sole proprietorship, partnership, corporation, state agency or political subdivision ("applicant") required by law or administrative rule to apply to the IDNR for a State NPDES General Permit #2 shall also be required to obtain from the City a CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL permit (City COSESCO Permit) in addition to and not in lieu of the State NPDES General Permit #2; and
  - 1.3.2. The City shall have primary responsibility for inspection, monitoring and enforcement procedures to promote applicants' compliance with State NPDES General Permits #2 and City COSESCO Permits.
- 1.4. No state or federal funds have been made available to assist the City in administering and enforcing the Program. Accordingly, the City shall fund its application, inspection, monitoring and enforcement responsibilities entirely by fees imposed on the owners of properties which are made subject to the Program by virtue of state and federal law, and/or other sources of funding established by a separate ordinance.

- 1.5. Terms used in this ordinance shall have the meanings specified in the Program.

SECTION 2. APPLICATION PROCEDURE FOR OBTAINING AND MAINTAINING A CITY CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL (COSESCO) PERMIT<sup>2</sup>

- 2.1 All persons required by law or administrative rule to obtain a State NPDES General Permit #2 from the IDNR are required to obtain a City COSESCO Permit.
- 2.2 Applications for City COSESCO Permits shall be made on forms approved by the City which may be obtained from the office of the community development department (assistant city administrator).
- 2.3 An applicant for a City COSESCO Permit shall pay fees as follows:
  - 2.3.1 An application fee at the time of application in the amount of \$50.
  - 2.3.2 For each inspection required by this ordinance, the applicant shall pay an inspection fee in the amount of \$50.
  - 2.3.3 Failure of the applicant to pay an inspection fee within thirty (30) days of billing shall constitute a violation of this ordinance.
- 2.4 An applicant in possession of a State NPDES General Permit #2 issued by the IDNR shall immediately submit to the City full copies of the materials described below as a basis for the City to determine whether to issue a City COSESCO Permit:
  - 2.4.1 applicant's plans, specifications and supporting materials previously submitted to the IDNR in support of applicant's application for the State NPDES General Permit #2;
  - 2.4.2 applicant's authorizations issued pursuant to applicant's State NPDES General Permit #2; and
  - 2.4.3 a Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with this ordinance.
- 2.5 Every SWPPP submitted to the City in support of an application for a City COSESCO Permit:
  - 2.5.1 shall comply with all current minimum mandatory requirements for SWPPPs promulgated by the IDNR in connection with issuance of a State NPDES General Permit #2; and
  - 2.5.2 shall, if the applicant is required by law to file a Joint Application Form, PROTECTING IOWA WATERS, IOWA DEPARTMENT OF NATURAL RESOURCES AND U.S. ARMY CORPS OF ENGINEERS, comply with all mandatory minimum requirements pertaining to such applications; and
  - 2.5.3 shall comply with all other applicable state or federal permit requirements in existence at the time of application; and
  - 2.5.4 shall be prepared by a licensed professional engineer or landscape architect or a professional in erosion and sediment control or a representative of the local Soil and Water Conservation District, credentialed in a manner acceptable to the City; and

- 2.5.5 shall include within the SWPPP a signed and dated certification by the person preparing the SWPPP that the SWPPP complies with all requirements of this ordinance.
- 2.6 Issuance by the City of a City COSESCO Permit shall be a condition precedent for the issuance of a City building permit or site plan approval.
- 2.7 For so long as a construction site is subject to a State NPDES General Permit #2 or a City COSESCO Permit, the applicant shall provide the City with current information as follows:
  - 2.7.1 The name, address and telephone number of the person on site designated by the owner who is knowledgeable and experienced in erosion and sediment control and who will oversee compliance with the State NPDES General Permit #2 and the City COSESCO Permit;
  - 2.7.2 The name(s), address(es) and telephone number(s) of the contractor(s) and/or subcontractors(s) that will implement each erosion and sediment control measure identified in the SWPPP.
  - 2.7.3 Applicant's failure to provide current information shall constitute a violation of this ordinance.
- 2.8 Developers can transfer State NPDES General Permit #2 and the City COSESCO Permit responsibility to homebuilders, new lot owners, contractors and subcontractors. Transferees must agree to the transfer in writing, must agree to fulfill all obligations of the SWPPP, the State NPDES General Permit #2 and the City COSESCO Permit. Absent such written confirmation of transfer of obligations, the developer remains responsible for compliance on any lot that has been sold. A developer shall notify the City of any application to the DNR for release of any property from a General Permit #2 pursuant to 567 IAC 64.6(b) or any similar successor provision.
- 2.9 Upon receipt of an application for a City COSESCO Permit, the City shall either find that the application complies with this ordinance and issue a City COSESCO Permit in accordance with this ordinance, or that the application fails to comply with this ordinance, in which case the City shall provide a bill of particulars identifying non-compliant elements of the application.
- 2.10 Application for termination of a City COSESCO Permit shall be made in the following manner:

**SECTION 3. INSPECTION PROCEDURES FOR CITY COSESCO PERMITS.**

- 3.1 All inspections required under this ordinance shall be conducted by the city engineer, hereinafter referred to as the "enforcement officer."
- 3.2 Applicant shall notify the City when all measures required by applicant's SWPPP have been accomplished on-site, whereupon the City shall conduct an inspection for the purpose of determining compliance with this ordinance, and shall within a reasonable time thereafter report to the applicant either that compliance appears to have been achieved, or that compliance has not been achieved, in which case the City shall provide a

bill of particulars identifying the conditions of non-compliance. The applicant shall immediately commence corrective action and shall complete such corrective action within twenty-four (24) hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for taking corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance.<sup>3</sup>

- 3.3 Construction shall not occur on the site at any time when the City has identified conditions of non-compliance.
- 3.4 Construction activities undertaken by an applicant prior to resolution of all discrepancies specified in the bill of particulars shall constitute a violation of this ordinance.
- 3.5 The City shall not be responsible for the direct or indirect consequences to the applicant or to third-parties for non-compliant conditions undetected by inspection.

#### SECTION 4. MONITORING PROCEDURES FOR CITY COSESCO PERMITS

- 4.1 Upon issuance of a City COSESCO Permit, an applicant has an absolute duty to monitor site conditions and to report to the enforcement officer any change of circumstances or site conditions which the applicant knows or should know pose a risk of stormwater discharge in a manner inconsistent with applicant's SWPPP, State NPDES General Permit #2 and/or City COSESCO Permit.
  - 4.1.1 Such report shall be made by the applicant to the enforcement officer immediately but in any event within twenty four (24) hours of the change of circumstances or site conditions.
  - 4.1.2 Failure to make a timely report shall constitute a violation of this ordinance.
- 4.2 Any third party may also report to the City site conditions which the third party reasonably believes pose a risk of stormwater discharge in a manner inconsistent with applicant's SWPPP, State NPDES General Permit #2 and/or City COSESCO Permit.
- 4.3 Upon receiving a report pursuant to the previous subsections, the enforcement officer shall conduct an inspection of the site as soon as reasonably possible and thereafter shall provide the applicant with a bill of particulars identifying the conditions of non-compliance. The applicant shall immediately commence corrective action and shall complete such corrective action within twenty-four (24) hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for completing corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance, whereupon the enforcement officer shall immediately commence enforcement actions specified in SECTION 5 below.
- 4.4 Unless a report is made to the enforcement officer pursuant to the previous subsections, the enforcement officer shall conduct at least one unannounced inspection during the course of construction to monitor compliance with the

State NPDES General Permit #2 and the City COSESCO Permit. If the inspection discloses any significant non-compliance, the enforcement officer shall provide the applicant with a bill of particulars identifying the conditions of non-compliance. The applicant shall immediately commence corrective action and shall complete such corrective action within twenty-four (24) hours of receiving the City's bill of particulars. For good cause shown, the City may extend the deadline for completing corrective action. Failure to take corrective action in a timely manner shall constitute a violation of this ordinance, whereupon the enforcement officer shall immediately commence enforcement actions specified in SECTION 5 below.

- 4.5 The City shall not be responsible for the direct or indirect consequences to the applicant or to third-parties for non-compliant conditions undetected by inspection.

#### SECTION 5. ENFORCEMENT

- 5.1 Violation of any provision of this ordinance may be enforced by civil action including an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this ordinance.
- 5.2 Violation of any provision of this ordinance may also be enforced as a municipal infraction within the meaning of §364.22, pursuant to the City's municipal infraction ordinance.<sup>4</sup>
- 5.3 Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the City Attorney.

#### SECTION 6. PERFORMANCE BOND OR CASH SECURITY<sup>5</sup>

- 6.1 Along with the application for a City COSESCO Permit, the applicant shall post security for compliance with all requirements imposed by the State NPDES General Permit #2 and the City COSESCO Permit as well as necessary remedial work resulting from violation of any provision of this ordinance. The amount of the security shall be equal to the amount shown on a cost opinion provided by a licensed engineer or landscape architect. This amount shall apply to the maximum acreage of soil that will be simultaneously exposed during the project's construction.
- 6.2 Acceptable forms of Performance Security include the following:
- 6.2.1 Performance Bonds;
  - 6.2.2 Surety Bonds;
  - 6.2.3 Money Orders;
  - 6.2.4 Certificates of Deposit.
- 6.3 The application form signed by the applicant for a City COSESCO Permit shall include the following commitment by the applicant: "In addition to the performance security posted with this application, the undersigned applicant

hereby agrees to defend, indemnify and hold the City harmless from any and all claims, damages or suits arising directly or indirectly out of any act of commission or omission by the applicant, or any employee, agent, assign or contractor or subcontractor of the applicant, in connection with applicant's State NPDES General Permit #2 and/or City COSESCO Permit.

## SECTION 7. APPEAL

- 7.1 Administrative decisions by city staff and enforcement actions of the enforcement officer may be appealed by the applicant to the city council pursuant to the following rules:
  - 7.1.1 The appeal must be filed in writing with the city clerk within five (5) business days of the decision or enforcement action.
  - 7.1.2 The written appeal shall specify in detail the action appealed from, the errors allegedly made by the enforcement officer giving rise to the appeal, a written summary of all oral and written testimony the applicant intends to introduce at the hearing, including the names and addresses of all witnesses the applicant intends to call, copies of all documents the applicant intends to introduce at the hearing, and the relief requested.
  - 7.1.3 The enforcement officer shall specify in writing the reasons for the enforcement action, a written summary of all oral and written testimony the enforcement officer intends to introduce at the hearing, including the names and addresses of all witnesses the enforcement officer intends to call, and copies of all documents the enforcement officer intends to introduce at the hearing.
  - 7.1.4 The city clerk shall notify the applicant and the enforcement officer by ordinary mail, and shall give public notice in accordance with Chapter 21, Iowa Code, of the date, time and place for the regular or special meeting of the city council at which the hearing on the appeal shall occur. The hearing shall be scheduled for a date not less than four (4) nor more than twenty (20) days after the filing of the appeal. The rules of evidence and procedure, and the standard of proof to be applied, shall be the same as provided by Chapter 17A, Code of Iowa. The applicant may be represented by counsel at the applicant's expense. The enforcement officer may be represented by the city attorney or by an attorney designated by the city council at City expense.
- 7.2 The decision of the city council shall be rendered in writing and may be appealed to the Iowa District Court.