Subchapter 18 – Land Disturbing Activities

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35.18.1 Purpose.

A. Preserve and enhance the City of Denton’s natural character by preventing untimely and indiscriminate removal or destruction of trees, understory, and ground cover;
B. Protect and preserve the ecological functions of environmentally sensitive areas (ESAs) by regulating land disturbances and removal of vegetation within the ESAs;
C. Protect the city from sediment that finds its way into streets, storm sewers, ditches and streams, which may result in additional taxes for city maintenance costs, increased flooding, impaired water quality, and damage to property;
D. Promote soil conservation by minimizing land disturbances, thereby reducing sedimentation, air, and surface water pollution; and
E. Comply with State and Federal storm water regulations.

35.18.2 Approval and Permit Required.

No person, corporation, or other legal entity shall engage in stockpiling, grubbing, or land clearing and grading without the required approvals and permits. Activities shall be limited to the area and scope identified on the plans submitted with the approved permit, and shall comply with State and Federal storm water regulations. There are three types of permits covered by this subsection:
A. Clearing and Grading Permit requires:
   1. Development Review Committee review of construction plan and site plan;
   2. Approval by the Planning and Zoning Commission of a final plat, for those projects which will ultimately be required to plat (see Subchapter 16);
      a. Upon submission of all site information deemed necessary for approval, the City’s Drainage Engineer may issue a land disturbance permit on unplatted parcels to improve drainage and promote compliance with Federal, State and City standards relating to flood prevention and erosion control.
   3. Tree Removal Permit, if applicable; and
   4. A pre-construction conference with Engineering for clearing and grading activities on public right-of-ways or public easements.
B. Grubbing Permit requires:
   1. Tree Removal Permit, if applicable.
C. Stockpiling and Excavation Permit requires:
   1. Tree Removal Permit, if applicable.
35.18.3 Exemptions.

The following shall be exempt from the provisions of this Subchapter:

A. Grading and clearing in emergency situations involving immediate danger to life and property or substantial fire hazards.

B. Any site disturbing activity where the total volume of material disturbed, stored, disposed of or used as fill does not exceed 25 cubic yards for residential projects or 50 cubic yards for non-residential projects, and the area to be disturbed in either case does not exceed 2,000 square feet. Notwithstanding this exemption, the site disturbance activity shall not result in the obstruction of any water courses, nor shall be located in a floodplain or any other environmentally sensitive area. This exemption shall not constitute a waiver or variance from any applicable state or federal regulations.

C. Soil disturbing activities, excluding tree removal, that are associated with normal agricultural crop operations.

D. Stockpiling and handling of earth material associated with commercial quarry and landfill operations licensed under the State.

E. Projects with an approved Building Permit.

35.18.4 Applications.

Permit applications and requirements, processing of applications, and conditions of issuance are as follows:

A. An application along with the required fee shall be submitted in accordance with the Application Criteria Manual.

B. Any permit granted under this Subchapter shall expire one year from the date of issuance. Upon a showing of ongoing construction activity, the permit may be extended by the building official for one 6-month period and for an additional fee.

C. Reviewed plans shall not be amended without authorization of the Building Official. The Building Official may suspend or revoke a permit because of incorrect information supplied, or for any violation of the provisions of this Subchapter.

35.18.5 Standards.

The design criteria for erosion and sediment control shall comply with the design standards contained in the Site Design Criteria Manual. Permitees shall also comply with the following general regulations and standards:

A. General Regulations.

1. The activity will not create or contribute to landslides, accelerated soil creep, or settlement;

2. The activity will not create or contribute to flooding, erosion, or increased turbidity, siltation or other forms of pollution in a watercourse;

3. Operations shall be consistent with anticipated build-out schedules, and shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time;

4. The property owner shall be responsible for all cleanup operations incidental to the disturbance of the surface of the property within 6 months of the operation completion date, including removal of temporary erosion and sediment controls if final stabilization has been obtained, and removal of all trash or other materials not suitable for fill;
5. No soil, rock, mud or other construction debris shall be allowed to be deposited on or in the streets, alleys, utility facilities, right-of-ways, easements, or drainage facilities owned or required by the City of Denton;

6. The site operator or owner shall provide a copy of the signed Notice of Intent from the Texas Commission on Environmental Quality (TCEQ) for all sites that are larger than 5 acres or are less than 5 acres and part of a larger common plan of development that exceeds 5 acres, and shall develop and maintain a Storm Water Pollution Prevention Plan (SWPPP) for the site in accordance with TCEQ regulations;

7. The site operator or owner shall provide a copy of the signed Construction Site Notice for all sites less than 5 acres and not part of a larger common plan of development exceeding 5 acres, and shall develop and maintain a Storm Water Pollution Prevention Plan (SWPPP) for the site in accordance with TCEQ regulations;

8. The site owner or operator is responsible for routinely inspecting erosion and sediment controls at the site as specified in the SWPPP. The City may also inspect erosion and sediment controls located at a site for compliance. If a responsible party fails to implement, inspect, and maintain controls as specified in the site's approved SWPPP, the City shall provide such party with written notice of non-compliance. The responsible party shall have no less than forty-eight (48) hours to correct the violation, which may be extended for inclement weather or other factors at the discretion of the City of Denton inspector.

9. When construction or land disturbing activities are conducted as a part of a Non-Residential or Multi-Family construction project, temporary erosion and sediment controls shall be installed prior to land disturbing activities as specified in the approved SWPPP. Permanent erosion and sediment controls that are specified in the SWPPP shall be installed and maintained prior to the occupancy of any non-residential or multi-family structure. Phased occupancy will only be allowed when there are no outstanding erosion or sediment control violations for the project for which the request is made.

10. When construction or land disturbing activities are conducted as part of a Residential Subdivision project, temporary erosion and sediment controls shall be installed, as specified in the approved SWPPP. Permanent erosion and sediment controls that are specified in the SWPPP shall be installed and maintained prior to final acceptance of a subdivision.

   i. The developer for such subdivision shall continue to maintain all temporary erosion and sediment control devices until permanent erosion and sediment control has been established on all lots within the subdivision for which a building permit has not been issued, and

   ii. If a developer sells one or more lots in a subdivision to a purchaser, the developer may extend permit coverage to the purchaser under the developer’s Notice of Intent (NOI). If this occurs, the developer remains the responsible party for the entire subdivision including the purchased lot(s) and remains liable for violation of this subchapter. A copy of the developer’s NOI and a letter from the developer stating that coverage under the NOI has been extended to the purchaser shall be provided to the City as a condition of Building permit issuance for the lot(s), and

   iii. If a developer sells one or more lots in a subdivision to a purchaser, the developer may choose to not extend permit coverage to the purchaser under the developer’s NOI. If this occurs, the developer remains the responsible party for only those lots for which the developer retains day-to-day operational control. The purchaser then becomes the responsible party for the lot(s) purchased, and is liable for violation of this subchapter. A copy of the developer’s Notice of Change (NOC) or Notice of Termination (NOT), in addition to the purchaser’s NOI and SWPPP shall be provided to the City as a condition of Building permit issuance for the lot(s), and

   iv. If a purchaser sells one or more lots prior to final occupancy, the current owner of the lot(s) becomes the responsible party. A copy of owner’s NOI and SWPPP shall be provided to the City as a condition of Building permit issuance for the lot(s).
11. Upon establishing permanent ground cover or other approved permanent erosion and sediment control, all temporary erosion and sediment control devices shall be removed by the responsible party, as identified on the SWPPP. Failure to comply with this provision is considered a violation of this subchapter.

B. Standards for Establishing Temporary Stabilization Measures

It shall be the responsibility of the Director of Water/Wastewater to ensure that temporary stabilization measures are appropriately established in all areas of the site where soil disturbances have occurred and where construction activities have temporarily ceased for more than 21 calendar days. Temporary stabilization may include seeding, geotextiles, mulches, and similar measures as approved by the City, and that are designed to reduce or eliminate erosion until permanent stabilization can be achieved or until further construction activity takes place.

### 35.18.6 Remedies of the City.

A. The City may deny the approval of any clearing and grading permit, building permit, site development plan, and any other City approval necessary to commence or continue construction or to assume occupancy, on the grounds that site erosion or sediment controls are determined not to reduce the discharge or sediment, silt, earth, soil, and other materials associated with land disturbances to the maximum extent practicable.

B. If a permittee (or its officers, employees, agents, contractors, subcontractors, or representatives) fail to comply with any requirements of this subchapter (including any requirement incorporated by reference), a representative from the City shall give notice to the permittee specifying the nature and extent of the alleged failure, the extent of efforts required to cure the failure, the established cure period, and the potential impacts on the health, safety, or welfare of the community. The cure period will be established by the City representative, and will generally not be less than 48 hours unless the alleged failure represents a risk of destruction of property or injury to persons. The cure period may be extended for inclement weather or other factors at the discretion of the City representative.

C. If the permittee does not cure the alleged failure within the time frame specified by the City representative, the City may:

1. Notify the TCEQ and request that the TCEQ take appropriate action; and

2. Issue a Stop Work Order and may enforce the penalty provisions of Subsection 35.1.10.4 of the Denton Development Code against the permittee or site operator, or both.

E. Should the permittee fail in any respect to fulfill the requirements of this article, the City may go on to the property in question and perform such work as may be necessary to fulfill such requirements, including but not limited to leveling ground, establishing temporary stabilization, constructing erosion controls, and removing all soil, rock, debris and other materials not suitable for fill at the permittee’s expense. The City shall bill the permittee for the expenses incurred. If the permittee fails to pay the City for such expenses within 30 days of being billed for same, the City shall have the right to place a lien on the property for all amounts expended by the City, plus interest at the current lawful rate.

F. The remedies provided by this Section are in addition to any other remedies described in this Development Code. Exercise of this remedy shall not be a bar against, nor a prerequisite for, taking other action against the violator, including civil enforcement remedies.