



**City of Conway**  
**Ordinance No. O-20- 78**

**AN ORDINANCE ESTABLISHING REQUIREMENTS FOR PERMITTING OF ALL GRADING, EXCAVATION AND OTHER LAND ALTERING ACTIVITIES, STORM WATER MANAGEMENT PRACTICES, AND POLLUTION PREVENTION-EROSION CONTROL MEASURES; ESTABLISHING PENALTIES FOR VIOLATIONS AND OTHER PURPOSES.**

**Storm Water Management Ordinance**

**WHEREAS;** The City of Conway operates and maintains a small municipal separate storm water system (MS4) and;

**WHEREAS;** The Arkansas Department of Energy and Environment, Division Environmental Quality (DEQ), under regulations administered by the Environmental Protection Agency (EPA), requires the City of Conway to meet certain requirements as established in the National Pollution Discharge Elimination System (NPDES) Phase II for MS4's including;

1. Permitting and monitoring of construction activities disturbing one acre or more of land to ensure effective storm water runoff control measures are implemented on construction sites.
2. Monitor post-construction storm water runoff control from developed sites to ensure both acceptable water quality is maintained, and quantity of runoff is adequately controlled.
3. Detect and eliminate illicit discharges into the city's storm drainage system.
4. Make annual reports to ADEQ regarding the Storm Water Management activities of the city.
5. Provide for public education of storm water pollution prevention practices; and

**WHEREAS;** ADEQ requirements provide for implementation of storm water best management practices and assessment of impacts from construction sites 1 acre and larger, it has become necessary for the City of Conway to establish a permitting process to enable review of all grading, excavation, and other land altering activities regardless of size, and;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS THAT:**

**Section 1. Findings**

- A. Grading, excavation, and other land altering activities leave soil highly vulnerable to erosion by wind and water. Erosion carries sediments into waterways and streets, endangers water resources by negatively affecting water quality, and reduces capacity of storm drainage systems. Land altering activities can inhibit the ability of the City to install and maintain public infrastructure (drainage structures, sidewalks, etc.) within right-of-way and easements, affect the natural landscape, and change site drainage patterns.
- B. Within the City-limits, these impacts primarily result from residential and commercial development; however, they also result from individual home construction, multi-family dwelling construction, as well as from land grading and excavation activities that do not include construction of buildings or dwellings.
- C. Site development may result in increased impervious surfaces that reduce storm water infiltration into the soil and increase peak storm water discharges. The cumulative effect is an increase in downstream flooding conditions during rainfall events.

- D. Unregulated non-storm water discharges into the city's storm drainage system may contain contaminants that are harmful to aquatic environment of local streams and lakes.

## Section 2. Purpose

This Ordinance sets forth requirements for:

- A. Implementing effective storm water management measures for grading, excavation, and other land altering activities that affect natural drainage patterns, including development, to prevent sediments and other contaminants from entering the storm drainage system and to prevent adverse impacts to adjacent property owners, the general public, and the environment.
- B. Planning, design, and construction of storm drainage systems to effectively convey storm water and help mitigate flood damage caused by excessive rainfall events.
- C. The City of Conway to detect and eliminate illicit non-storm water discharges from entering the city's storm drainage system.

## Section 3. Permit Requirements and Exclusions

- A. **Applicability.** Any clearing, grading, excavation, development, or other land altering activity that may result in any of the following impacts shall have been issued one of the City-issued permits described in paragraph 'D' of this section **prior to the start of the activity**.
  - 1. Disturbance of the ground surface layer exposing bare soil to the effects of erosion and allowing transport of sediments off-site to enter the storm drain system;
  - 2. Changing the contouring and/or any other slope characteristics of the land;
  - 3. Stopping, constricting, or rerouting the natural flow of water to, through or from any parcel of property.
- B. **Exclusions.** The following activities are excluded from the requirements and regulations of this Ordinance.
  - 1. Timber harvesting on land not planned for development;
  - 2. Permitted landfill operations;
  - 3. Street/drainage construction being performed by or for the City of Conway;
  - 4. Work by or for the Arkansas Department of Transportation (ARDOT);
  - 5. Emergency street, storm drainage or utility repairs;
  - 6. The otherwise legally permitted burial of human and animal remains;
  - 7. Farming, livestock operations and gardening activities.
- C. **Responsibility.** The owner on which the construction activity is being performed, or their designated representative shall be responsible for assuring compliance with this ordinance, including:
  - 1. Obtaining the appropriate City-issued permit described below;
  - 2. Establishing erosion/sediment control measures specified in this Ordinance;
  - 3. Maintaining control measures throughout all phases of construction.

The property owner shall be liable for any penalties or fines imposed. In addition, individuals and contractors may be cited, penalized, and fined for specific violations of this ordinance.

D. **City-Issued Permits.** The specific City-issued permit applicable to the type of land altering activity and/or project site location are as follows.

1. **Grading Permit** - required for any site over 1 acre in size where land altering activities occur unless one of the other City-issued permits below applies.
2. **Site Development Permit** - required for any subdivision that requires preliminary plat approval or any development subject to the Development Review Process of the Conway Zoning Code. (Issued in lieu of the Grading Permit).
3. **Residential Building Permit** - required for construction of a single-family or two-family dwelling. (Issued in lieu of a Grading Permit).
4. **Floodplain Development Permit** – required for land altering activity on sites located within a designated floodplain. The permit and review processes are governed by **City of Conway Ordinance O-09-15**. (Issued in lieu of the Grading Permit, sites may additionally be subject to separate permitting requirements such as Development Review or Building Permits).

E. **ADEQ Permits.** In addition to City-issued permits above, ADEQ requires that all construction activities on sites **1 acre or larger** have the following General Storm Water Permit documentation.

1. **Storm Water Pollution Prevention Plan (SWPPP)**, all sites **1 acre or larger**;
2. **Notice of Coverage (NOC)**, sites from **1 acre to 5 acres** (small site);
3. **Notice of Intent (NOI)**, sites **larger than 5 acres** (large site)

**NOTE 1:** For small construction sites (1 to 5 acres), ADEQ does not require submittal of individual permit documents and there is no fee; however, the SWPPP and the automatic Notice of Coverage (NOC) **shall be posted at the site prior to commencing construction**.

**NOTE 2:** For large construction sites (5 acres or more), SWPPP documentation and a Notice of Intent (NOI) **must be submitted to ADEQ**, along with a fee, for review and approval. The SWPPP and Notice of Coverage (NOC) **shall be posted at the site prior to commencing construction**.

#### Section 4. Permit Application Process

All City-issued permits shall be submitted for review via electronic means or at City Hall on city issued forms.

A. **Grading Permit.** Application for a Grading Permit shall be accompanied by the following, as applicable:

1. **Site Plan** containing applicable drainage and erosion control information, and slope excavation/fill design information if applicable, as specified below:

General Information:

- Owner/applicant name(s) and address(es)
- Applicant's Consulting firm (if retained) and principal contact

Existing Site Information:

- Vicinity map clearly identifying site location
- Ground contours and type of ground cover (20 ft beyond boundary)
- Composite runoff curve number(s)
- Precise location where storm water enters and exits the site
- Drainage area contributing to drainageway entering the site and water shed area of

drainage leaving the site

- Surface drainage features (e.g., ponds, creeks, ditches, swales)
- Storm drainage structures (e.g., drain inlets, drainage pipe, culverts)

Proposed Site information:

- New ground contours and type of ground cover
- Composite runoff curve number(s)
- Slope Excavation/Fill Design where applicable (See paragraph 4.D. below)
- New surface drainage features (e.g., earthen/concrete swales, berms, etc)
- Downstream drainage structures to receive site runoff
- Slope Excavation/Fill Design where applicable (See paragraph 4.D. below)

2. **ADEQ Storm Water Pollution Prevention Plan (SWPPP)** and the General Storm Water Permit **Notice of Intent (NOI)** for sites 5 acres or larger, or a **Notice of Coverage (NOC)** for sites between 1 and 5 acres.

- B. **Site Development Permit.** Applications for a Site Development Permit will include submittal of design information for appropriate storm drainage infrastructure and storm water pollution prevention documentation as specified below:

1. All items required for a Grading Permit including Site Plan and ADEQ SWPPP.
2. Site Drainage Plan and Report prepared in accordance with the ***City of Conway Drainage Criteria Manual***.
3. Projects subject to development review shall include all other information as required by the Conway Zoning Ordinance, O-17-91.
4. Subdivision development subject to preliminary plat approval shall include all other information as required for the subdivision application as listed in the Subdivision Ordinance, O-00-03.

- C. **Residential Building Permit.** Application for a Residential Building Permit shall be accompanied by an ***Erosion Control Compliance Certification*** and a signed ***Stormwater Pollution Prevention Agreement*** requiring compliance with storm water pollution prevention provisions of this Ordinance.

**NOTE:** See Section 5 below for general Construction Site Erosion and Sediment Control Requirements. Guidance for implementation of storm water best management practices (BMP's) for compliance with these requirements on small residential construction sites is provided in the publication ***Storm Water Pollution Prevention for Small Residential Construction Sites*** as published by the United States Environmental Protection Agency (EPA 830-F-15-001) dated December 2015, as well as the ***City of Conway Standard Details for Roadway & Drainage Construction***.

- D. **Slope Excavation/Fill Design.** For permitted activities with proposed excavation and/or fill on slopes steeper than 3 feet horizontal to 1 foot vertical (3:1), the following requirements must be met.

1. The excavation and/or fill be supported by an engineered soil retention system (i.e., retaining wall) with designs over 5 feet tall stamped and signed by a registered professional engineer licensed in the state of Arkansas.
2. Any engineered soil retention system or series of systems over 87 inches tall must be constructed of architectural stone or other suitable aesthetic material approved by the City Engineer.

3. Individual soil retention systems may not exceed 15 feet in height. Excavations or fills requiring additional height must use a series of systems with terraces, preserving portions of natural vegetation and/or providing areas for planting.
4. Terracing width shall be at a ratio of at least 1 foot of horizontal terrace for every 1 foot of vertical height up to a maximum of 10 feet. Terraces shall be landscaped with dense evergreen plantings sufficient to screen the wall. The terrace must be sloped to drain up to 1 foot in 10 feet of width.
5. The terrace plantings shall include understory trees a maximum of 15 feet apart on centers. Two shrubs shall be required for each tree planting. Trees and shrubs may be selected from a list maintained by the Planning Director.
6. Terrace landscaping shall be in addition to any landscaping as otherwise required by City Ordinances.
7. Exposed earth shall be planted with grass or covered in a suitable ground cover approved by the City Engineer. Shrubs and groundcover shall be required at the discretion of the Planning Director.

**E. Permit Application Review.**

1. For all Grading Permits and Floodplain Development Permits, the City Engineer or his/her designee will review the respective application and accompanying documentation for compliance with this Ordinance. Within 30 days of receipt of a complete application, City Engineer shall act to approve, conditionally approve, or deny the permit. If the application is denied, a written statement as to the reasons for disapproval shall be returned to the applicant.
2. For all Site Development Permits, the City Engineer or his/her designee will review the respective application and accompanying documentation for compliance with this Ordinance. Review shall occur as part of the applicable review process triggering the need for a Site Development Permit. (Development Review Process or Preliminary Plat Application)
3. For all Residential Building Permits, the Building Official or his/her designee shall verify all necessary documentation is included in the permit application prior to permit issuance. The Building Official at any time prior to or after issuance of a Residential Building Permit may seek a determination from the City Engineer or his/her designee on whether a separate Grading Permit is warranted due to lack of compliance with this Ordinance or the presence of significant land altering activities on-site consistent with those items listed in Section 3, paragraph "A", items 2-3. If the City Engineer or his/her designee determines a Grading Permit is warranted, the building contractor or property owner shall be required to obtain a Grading Permit prior to initiation or continuance of any work on-site.

**Section 5. Construction Site Erosion and Sediment Control Requirements**

- A. **Project Site Responsibility.** Site responsibility shall be handled in accordance with Section 3, paragraph "C". In addition, the construction contractor shall be responsible for ensuring erosion and sediment control measures are implemented and maintained until the site is stabilized and a Certificate of Occupancy (CO) is issued. This responsibility includes preventing adverse impacts from storm water flowing onto adjacent property by ensuring the construction site is sloped at a minimum grade of 2% to direct storm water to either the curb & gutter or other drainage infrastructure located within either street right of way or a drainage easement as shown on the development's Final Plat.

Upon completion of the permitted construction activity, the property owner shall be responsible for continued compliance with the requirements of this Ordinance on the site.

- B. **Erosion and Sediment Control Best Management Practices (BMP).** All construction sites within the City of Conway that require a permit as listed in Section 3 above, including single-family two-family structure construction, shall have measures in-place to address the following, as applicable. Design criteria is established in the ***City of Conway Standard Details for Roadway & Drainage Construction*** for compliance with the provisions of this Ordinance. These measures shall be shown explicitly in the site SWPPP for sites larger than 1 acre.

- Perimeter Erosion and Sediment Control
  - Curb and Inlet Protection
  - Construction Entrance/Exits
  - Concrete Truck Wash Areas
  - Dirt and Topsoil Storage
  - Dust Control
  - Good Housekeeping
1. Stream crossings shall be designed and installed in a manner to minimize soil disturbance and potential erosion. For sites where regular traversing of streams must be made, the crossing location will require stabilization before, during, and after construction.
  2. Good housekeeping practices shall be implemented on the project site to eliminate trash and debris from entering storm drainage system. All water pumped out of sumps, depressions, or sediment control areas should be clear water free of sediments. In addition, any chemicals or compounds (including paint, fertilizer, solvents, petroleum products or other contaminants) shall be stored and handled in a manner that will prevent any potential for the materials being carried into the city storm drainage system. Techniques shall be employed to prevent the blowing of dust or sediment from the site.
  3. Stabilization measures shall be initiated within 14 days in portions of the site where construction activities have ceased, including uncovered stockpiles of soil. Stockpiles shall be located a minimum of 25 feet from a roadway or drainage way. Techniques shall be employed for the diversion of upland runoff, seeding of the site perimeter, or other measures to protect exposed soils.
  4. Clearing, except as necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and stabilized. Clearing and grading of natural resources, such as forests and wetlands, shall not be permitted except when in compliance with all other state and federal regulations.
  5. All disturbed surfaces shall be permanently stabilized with seeding, paving or other measures to prevent soil from being exposed to storm water runoff. Neither a Certificate of Occupancy (CO), nor Certificate of Compliance (CoC) shall be issued until after permanent stabilization.

**NOTE:** Control measures shall generally conform to the guidance provided in the publication ***Developing Your Stormwater Pollution Prevention Plan – A Guide for Construction Sites*** as published by the United States Environmental Protection Agency (EPA 833-R-06-004) dated May 2007.

- C. **Monitoring / Inspection / Maintenance.** The Storm Water Pollution Prevention Plan or site “Erosion Control Compliance Certification” shall designate an agent representing the owner who will be responsible for inspecting and monitoring the Storm Water Pollution Prevention Measures throughout construction and until final, permanent stabilization. The designated agent shall evaluate and ensure the overall effectiveness of the storm water pollution prevention measures and the need for additional or revised measures. Observation of any “muddy water” leaving a

construction site will be considered a violation of this Ordinance. Inspections shall be made at least weekly and immediately following rainfall events and, in addition, at the following construction milestones.

- Start of construction
- Installation of sediment and erosion measures
- Completion of site clearing
- Completion of rough grading
- Completion of final grading
- Close of the construction season
- Completion of final landscaping
- Every two weeks following stabilization until a Certificate of Occupancy (CO) or Certificate of Completion (CoC) is issued.

For sites requiring a SWPPP, the inspections shall be documented and shall clearly state deficiencies in the implementation of the plan and provide a detailed description of the items of work needed to bring the plan into compliance. The work description shall include a method of confirming that deficiency reports are presented to the party responsible for correcting the problem. A copy of the SWPPP and inspection reports shall be maintained on site in a waterproof enclosure that can be readily accessed by City personnel.

**NOTE:** City personnel may enter the property of the applicant as deemed necessary to make regular inspections to ensure compliance with this ordinance. Failure to maintain proper erosion and sediment controls may result in enforcement action being taken (see Section 7 below). Failure to provide for adequate and appropriate site drainage may result in **withholding of the Certificate of Occupancy (CO) or Certificate of Completion (CoC)**.

#### **Section 6. Illicit Discharges into Storm Water System**

- A. The City of Conway will implement a program to detect and eliminate illicit discharges and notify ADEQ of any discharges that appears to contain contaminants that exceed minimums in exceedance of applicable water quality standards.
- B. All non-storm water discharges into the City of Conway's storm drainage system, drainageways, creeks or stream are prohibited except those specifically permitted and authorized by ADEQ and those listed in paragraph D below.
- C. The following measures will be implemented by the City to detect, trace, and eliminate illicit discharges into the City's storm drainage system.
  1. Develop and maintain a comprehensive set of storm drainage system maps showing all the various storm drainage piping, ditches and drainageways. The map shall include the location of all permitted non-stormwater discharges in the City of Conway. The maps shall be readily used in tracing the origin of possible illicit discharges in a stream.
  2. A monitoring program shall be implemented to inspect the stormwater system on a routine basis such that the entire City storm drainage system is inspected at least every four years. The storm drainage systems receiving runoff from industrial or manufacturing shall be the initial area of monitoring.
  3. The monitoring program shall include visual inspection of the storm drainage system during dry weather along with tracing dry weather flows to determine the source of the dry weather flows are for acceptable sources.
  4. Water quality test shall be performed on water samples obtained from selected downstream monitoring locations to evaluate if any potential contaminants are entering the various major streams flowing out of the City. The test shall be conducted at intervals that will evaluate the major streams every two years. If contaminants are detected, additional tests shall be conducted upstream at various junctions in the drainageway to isolate the source of the

pollutant

- D. The following non-storm water discharges may be discharged unless they are determined to be a significant contributor of pollutants to the City's storm drainage system.
- Waterline Flushing
  - Landscape irrigation
  - Diverted stream flows
  - Rising ground water
  - Uncontaminated ground water infiltration
  - Uncontaminated pumped ground water
  - Incidental discharges from potable water sources
  - Foundation drains
  - Air conditioning condensate
  - Irrigation water
  - Springs
  - Water from crawl space or basement pumps
  - Footing drains
  - Lawn watering
  - Individual residential car washing
  - Discharges from riparian habitats and wetlands
  - Dechlorinated swimming pool discharges
  - Street wash down water
  - Routing building wash water
  - Discharges or flows from emergency fire-fighting activities
  - Other similar occasional non-storm water discharges that are not reasonably expected to be a significant source of pollutants to the city's storm drainage system.
- E. When the appropriate source of an illicit discharge is identified, the City will issue a ***Cease and Desist Order*** to the operator and owner of the facility to require immediate stoppage of the discharge and activities causing the discharge. Before the ***Cease and Desist Order*** is satisfied, the operator will be required to provide an "action plan" to identify the measures taken to prevent the discharge from reoccurring. The City will also advise ADEQ of the violation and assess penalties as described in the following section if the circumstances require.

## Section 7. Enforcement

- A. **Authority.** The Code Enforcement Officer, the Building Official, and the City Engineer or their designees shall have the authority to enforce this Ordinance in accordance with administrative policies established by the Mayor or his/her designee. The Building Official and his/her designee shall have the authority to refuse final inspection approval on any building on any parcel of land that is in violation of this Ordinance.
- B. **Cease and Desist Order, Revocation of Permit, Emergency Repairs.** If any land altering activities undertaken that result in sediments and/or other pollutants being carried from the construction site onto adjacent property, adjacent drainage ways, or public rights of way, the responsible party shall remove the material and implement measures to prevent further occurrence within 24 hours.

If necessary, the Code Enforcement Officer or City Engineer may issue a "Cease and Desist" Order for all construction activities on the site until the appropriate clean up measures are completed and measures to prevent recurrence are implemented. Failure to meet the requirements of the Cease and Desist Order will result in revocation of City-issued Permits and the possibility of additional punitive measures, including monetary penalties, as described below.

If the contractor fails to act as stated above the Senior Code Enforcement Officer shall employ the necessary labor and materials to perform the required work as expeditiously as possible. Costs



incurred in the performance of this work shall be paid by the City. The City Attorney shall institute appropriate action against the property owner for the recovery of such costs.

- C. **Violation and Penalties.** Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and each day during which any violation of any of the provisions of this Ordinance is committed, continued, or permitted, shall constitute a separate offense. Upon conviction of any such violation, such person, partnership, or corporation shall be punished by a fine of not less than \$100 and not more than \$500 for each offense. In addition to any other penalty authorized by this section, any person, partnership, or corporation convicted of violating any of the provisions of this Ordinance shall be required to bear the expense of such restoration.

Violations that are subject to an immediate penalty without warning or issuance of a Cease-and-Desist Order include the following:

1. Commencing grading, excavation, construction, or other land altering activity prior to obtaining the appropriate City-issued Permit.
2. Failure to conform to or implement the BMP measures (including final stabilization) as described in the project SWPPP.
3. Failure to modify SWPPP and BMP practices to conform to requirements as described in this ordinance.
4. Tracking mud or allowing sediments to be carried onto adjacent streets.
5. Allowing sediments to be carried from the site into adjacent waterways or storm drainage facilities.
6. Failure to implement dust control.
7. Illicit discharges into the City's storm drainage system.
8. Failure to acquire or conform to a required Construction Stormwater Permit issued by the Arkansas Department of Environmental Quality.
9. Creating conditions that result in water ponding on adjacent properties or on public right-of-way or the diversion of storm water onto locations not previously receiving storm water runoff from the site.
10. Creating conditions that result in the blockage of water in the drainage ways or restricting of flows in drainage ways.

Issuance of any Notice of Violation or Citation for Violation shall be handled by the Code Enforcement Officer in consultation with the City Engineer.

#### **Section 8. Separability**

The provisions and sections of this Ordinance shall be deemed to be separable, and the invalidity of any portion of this Ordinance shall not affect the validity of the remainder.

**Section 9. Related Ordinances and Repeal.** The following Ordinances will be superseded upon adoption of this new Storm Water Management Ordinance.

- A-584 - Standards/Specifications for Construction of Storm Drainage Systems
- O-06-67, O-07-43, O-20-47 - Excavation Plan Approval

- O-09-13 – Storm Water Management (previous version)
- O-18-91 - Storm Water Discharge

Any other ordinance in conflict with this Ordinance are hereby repealed.

**Section 10. Effective Date.**

This Ordinance shall become effective 30 days after adoption. For projects which were issued building permits prior to the effective date of this Ordinance, no additional permits or approvals are required, but said projects shall conform to the performance requirements contained in this Ordinance.

**PASSED** this 8<sup>th</sup> day of December 2020.

**Approved:**

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**Mayor Bart Castleberry**

**Attest:**

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**Michael O. Garrett**  
**City Clerk/Treasurer**