

ORDINANCE OF THE CITY OF HERNANDO FOR THE PURPOSE OF
GRADING, SOIL EROSION AND SEDIMENTATION CONTROL

Be it Ordained by the Mayor and Board of Alderman of the City of Hernando, Mississippi as follows:

1. Purpose.

The City of Hernando has in the past experienced development causing the displacement of large quantities of earth. Soil erosion and sedimentation can result from such development. Sediment is one cause of the contamination of water supplies and water resources, and is a cause of pollution. A build-up of sediment can negatively impact resources, clog watercourses and cause flooding, which can result in damage to public and private lands. The result is a threat to the health, safety, and general welfare of the community. Therefore, the purpose of this chapter is to provide regulations within the City of Hernando to accomplish the following:

- a. To safeguard the health, safety, and general welfare of the citizens;
- b. To preserve the value of land throughout the city;
- c. To establish reasonable and accepted standards of design and procedures for development that prevent sediment damage;
- d. To prevent the pollution of streams, ponds and other watercourses by erosion and sedimentation; (5) To minimize property damage by means of flooding;
- e. To preserve the natural beauty and aesthetics of the community;
- f. To enable the City of Hernando to comply with the NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems, TMDLs and other applicable state and federal regulations. (1985 Code, § 4-901, as replaced by Ord. #2005-27, July 2005, and Ord. #2008-14, March 2008) 19-302.

2. Rules applying to chapter. For the purpose of this chapter, certain rules of construction shall apply herein as follows: (1) Words used in the present tense shall include the future tense and the singular includes the plural, unless otherwise indicated in the text. (2) The term "shall" or "must" is always mandatory and not discretionary. The words "may" and "should" are permissive in nature. (3) Except as herein provided, all words used in this chapter shall have their common dictionary definition.

3. Definitions.

- a. "Applicant." Person submitting the application for a grading permit. Typically, this is the owner or operator of the land-disturbing activity.
- b. "Construction related waste." Waste that is generated through construction, land development and land-disturbing activities that may cause adverse impacts to water quality. Construction related waste includes, but is not limited to, discarded building materials, concrete truck washout, chemicals, litter, hazardous materials, oil and sanitary waste at the construction site.
- c. "Cut." Portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to the excavated surface.
- d. "Developer." The person, firm, partnership, or corporation authorized by the owner to carry out the development of the land.
- e. "Development." The process of grading, clearing, filling, quarrying, construction,

or reconstruction to improved or unimproved real estate or other similar activities when not excluded by exemptions from this chapter.

- f. "Director of Engineering." Directs stormwater operations for the City of Hernando, Mississippi .
- g. "Erosion." The wearing away of land by action of wind, water, ice, or gravity.
- h. "Erosion prevention and sediment control plan" or "EPSC plan." A formal plan for the control of soil erosion and sediment resulting from land-disturbing activity. The plan shall be reviewed and approved before a grading permit may be issued. The plan may be included as part of a site plan required under another city ordinance or a separate plan following the specifications set out in this chapter.
- i. "Excavation." See "cut."
- j. "Fill." Portion of land surface or area to which soil, rock or other materials have been or will be added; height above original ground surface after the material has been or will be added.
- k. "Grading." Any operation or occurrence by which the existing site elevations are changed by cutting, filling, borrowing, stock piling, or where any ground cover, natural or man-made, is removed, or any building or other structures are removed or any water course or body of water, either natural or man-made, is relocated on any site, thereby creating an unprotected area. "Grading" shall be synonymous with "land-disturbing activity."
- l. "Grading permit." A permit issued to authorize excavation and/or fill to be performed under the guidelines of this chapter.
- m. "Grading Policy Manual." The document entitled Grading and Construction Site Pollution Management Policies and Procedures Manual. A document prepared and maintained by the City of Hernando which contains policies, procedures, technical criteria and guidelines and other supporting documentation or tools for implementation of the provisions of this ordinance. That the City of Hernando reserves the right to use the State of Mississippi Grading Policy in lieu of a policy prepared exclusively for the City of Hernando.
- n. "Land-disturbing Activity." Any activity on private or public land that may result in soil erosion and the movement of sediments. Land disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling, logging and/or tree chipping operations, haul roads associated with the development, and excavation.
- o. "NPDES." National Pollutant Discharge Elimination System
- p. "Operator." In the context of stormwater associated with construction activity, operator means any person associated with a construction project that meets either of the following two (2) criteria: (a) This person has operational control over construction plans and specifications, including the ability to authorize modifications to those plans and specifications. This person is typically the owner or developer of the project or a portion of the project; or (b) This person has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a site plan, EPSC plan or sketch plan for the site or other permit conditions. This person is typically a contractor or commercial builder and is often authorized to direct workers at a site to carry out activities

required by approved plans or comply with other permit conditions.

- q. "Owner." The legal owner of the property as recorded in the DeSoto County Chancery Clerk's Office at the time of application of the grading permit.
- r. "Priority construction activity." Any land-disturbing activity that is one (1) acre or greater that discharges into, or upstream of, waters the State of Mississippi recognizes as impaired for siltation or high quality waters. Also, priority construction activities can include land-disturbing activities of any size that, in the judgment of the director of engineering or his/her designee, require coordination with adjacent construction activities or have conditions that indicate a higher than normal risk for discharge of sediment or other construction related wastes.
- s. "Project." The entire proposed development regardless of the size of the area of land to be disturbed.
- t. "Redevelopment." The improvement of a lot or lots that have been previously developed.
- u. "Sediment." Solid material, both inorganic (mineral) and organic, that is in suspension, is being transported, or has been moved from the site of origin by wind, water, gravity, or ice as a product of erosion.
- v. "Sedimentation." The action or process of forming or depositing sediment.
- w. "Sketch plan." An erosion prevention and sediment control plan required for land-disturbing activities that are greater than one-tenth (0.1) acre and less than one (1) acre.
- x. "Slope." The degree of deviation of a surface from the horizontal, usually expressed in percent or degrees.
- y. "Soil stabilization." Measures which protect soil from erosion.
- z. "Waters of the state" Any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon Mississippi or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.
- aa. "Stripping." Any activity which removed or significantly disturbs the vegetative surface cover including clearing and grubbing operations.
- bb. "Total Maximum Daily Load (TMDL)" A calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the source(s) of the pollutant.
- cc. "Variance." A grant of relief from the requirements of this chapter that permit construction or activities in a manner otherwise prohibited by this chapter, where specified enforcement would result in unnecessary hardship.
- dd. "Vegetative buffer." The area of land adjacent to waters of the state in its undeveloped state of vegetation, which facilitates the protection of water quality and aquatic habitat
- ee. "Vegetative erosion prevention and sediment control practices." Measures for the stabilization of erosive or sediment producing area by covering the soil with:
 - i. Permanent seeding, sprigging or planting, producing long-term vegetative cover; (b) Temporary seeding, producing short-term vegetative cover; or
 - © Sodding, covering areas with turf or perennial sod-forming grass.

- ff. "Watercourse." Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows either continuously or intermittently and which has a defined channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater.
- 4. Authority.
 - a. The director of engineering or his/her designee has the authority to promulgate rules, regulations, policies and guidance consistent with this chapter in order to carry-out the meaning and intent in a Grading and Construction Site Pollution Management Policies and Procedures Manual (henceforth referred to as the "grading policy manual"). The policies, criteria and requirements stated in the grading policy manual shall be enforceable, consistent with other provisions of this chapter.
 - b. In the event that the director of engineering or his/her designee determines that a violation of any provision of this chapter has occurred, or that work does not have a required grading permit, or that work does not comply with an approved plan or grading permit, the director of engineering or his/her designee may issue a notice of violation to the permittee or property owner and/or any other person or entity having responsibility for construction work performed at a site development, at which time the penalty provisions of this chapter shall be implemented
 - 5. Existing eroding areas. Upon written notification from the director of engineering or his/her designee, the owner or operator of a parcel of land which exhibits unstable or eroding soil conditions shall correct the problem within a thirty (30) calendar day period. This period may be extended upon request if conditions warrant. Minimum correction measures shall include soil stabilization and revegetation of all exposed soil surfaces and otherwise engaging in vegetative erosion prevention and sediment control practices. Before commencing corrective measures, the owner or operator shall consult with the director of engineering or his/her designee to determine an acceptable method of correction.
 - 6. Grading permit required. No individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, county, city, or other political subdivision, cooperative, or any other legal entity shall engage in any land-disturbing activity within the corporate limits of the City of Hernando without meeting the requirements of this chapter, unless exempted.
 - a. The owner or operator of land-disturbing activities not exempted under this ordinance must obtain a grading permit prior to commencing land disturbing activities.
 - b. A grading permit shall be required for the following land-disturbing activities:
 - i. Any residential development or redevelopment that will result in a land-disturbing activity that is less than one (1) acre. However, sketch plans are only required for land-disturbing activities greater than one-tenth (0.1) of an acre. Such activities shall also require:
 - (1) Grading permit application with one copy of a sketch plan if applicable;
 - (2) Appropriate fee, if applicable;

- (3) Review of plan by director of engineering or his/her designee for compliance with City of Hernando regulations and policies;
 - (4) Grading permit;
 - (5) Site inspection, performed in accordance with this chapter;
 - (6) Ongoing and final inspection.
 - ii. Any non-residential development or redevelopment of any size, or any residential development or redevelopment that will result in a land-disturbing activity that is greater or equal to one (1) acre. Such activities shall also require:
 - (1) Grading permit application with three (3) copies of legible EPSC plans, prepared in accordance with this chapter;
 - (2) Appropriate fee;
 - (3) Stormwater department review and approval of EPSC plan;
 - (4) Site inspection and inspection documentation, in accordance with this chapter;
 - (5) Grading permit;
 - (6) Ongoing and final inspection;
 - (7) Signature, after final inspection, for certificate of compliance from the director of engineering or his/her designee.
 - iii. Installation, maintenance and repair of any underground public utility lines when such activities occur within fifty (50) feet of waters of the state.
 - iv. The director of engineering or his/her designee may require developments or redevelopments that conform to a full EPSC plan, as set forth in this chapter and the grading policy manual, as deemed necessary to protect streams and adjacent properties from erosion and offsite sedimentation.
 - c. The owner or operator of land-disturbing activities not exempted under this chapter must obtain from the Mississippi Department of Environmental Quality a Notice of Coverage (NOC) under the State of Mississippi General NPDES Permit for Discharge of Stormwater Associated with Construction Activities, or certification that the land-disturbing activity does not require coverage under the state permit, prior to obtaining a grading permit. A copy of the NOC and the associated Stormwater Pollution Prevention Plan (SWPPP) or certification that the site does not require coverage under the state permit must be submitted with the AEPSA or sketch plan.
7. Exemptions. The exemptions listed in this section shall not be construed as exempting these land-disturbing activities from providing adequate erosion prevention and sediment control measures to protect adjoining property owners, nearby watercourses and the public right-of-way from sediment impacts. The owner or operator whose activities have been exempted from the requirements for a grading permit shall nevertheless be responsible for otherwise conducting all land-disturbing activities in accordance with the provisions of this chapter and other applicable laws including responsibility for controlling erosion, sedimentation and runoff. Grading permits are not required for the following land-disturbing activities:
- a. Installation, maintenance and repair of any underground public utility line when such activity has a land-disturbance less than one (1) acre, occurs on an existing

right-of-way, and a cut or excavation permit has been obtained, except within fifty (50) feet of waters of the state, in which event a grading permit is required.

- b. Agricultural practices involving the establishment, cultivation or harvesting of products of the field or orchard, preparing and planting of pasture land, forestry land management practices including harvesting, farm ponds, dairy operations, and livestock and poultry management practices.
 - c. Emergency work to protect life or property. Upon completion of emergency work the disturbed area shall be shaped and stabilized in accordance with this chapter. The city must be contacted within seventy-two (72) hours of the incident.
8. Application and plan review process.
- a. No grading permit shall be issued until an EPSC or sketch plan (if required) has been approved by the director of engineering or his/her designee.
 - b. The plan shall comply with the requirements set forth in this chapter and in the grading policy manual. The director of engineering or his/her designee may require additional information if deemed necessary prior to reviewing a plan.
 - c. EPSC and sketch plan required components.
 - i. EPSC plans submitted to the director of engineering or his/her designee shall contain the required components, as listed in and in accordance with the grading policy manual and as applicable to the proposed land-disturbing activity.
 - ii. Sketch plans submitted to the director of engineering or his/her designee shall contain the required components, as listed in and in accordance with the grading policy manual and as applicable to the proposed land-disturbing activity.
 - iii. The director of engineering or his/her designee may request that additional information be submitted as necessary to allow a thorough review of the site conditions and proposed erosion prevention and sediment control measures.
 - iv. Omission of any required items shall render the plans incomplete and they will be returned to the applicant prior to review by the director of engineering or his/her designee.
 - v. All EPSC and sketch plans shall be developed by the owner or his/her agent.
 - vi. All EPSC plans shall be prepared and stamped by a professional engineer registered in the State of Mississippi .
 - vii. Any legally protected state or federally listed threatened or endangered species and/or critical habitat located in the area of land-disturbing activities (if any) shall be identified in the EPSC plan. If such species are identified in the EPSC plan or by the city, then the EPSC plan shall also include written documentation from the United States Fish and Wildlife Service that indicates:
 - (1) Approval of the best management practices that will be utilized to eliminate potential impacts to legally protected state or federally listed threatened or endangered species and/or critical habitat. Said best management practices shall also be included on the EPSC

plan; or,

- (2) A finding of no potential impact as a result of the proposed land-disturbing activity.

9. Conformity and amendments to approved plans.

- a. The approved EPSC or sketch plan, upon which subsequent permits may be issued by the City of Hernando, shall be adhered to during all grading and construction activities. Under no circumstance is the owner or operator allowed to deviate from the approved EPSC or sketch plan without prior approval of a plan amendment by the director of engineering or his/her designee.
- b. The director of engineering or his/her designee shall require the grading permit holder to take corrective actions, which may include amendment of an approved EPSC or sketch plan, if it is determined that the approved plan does not adequately protect against erosion, sedimentation or discharges of other construction related wastes despite the adherence of the owner or operator with approved protective practices.
- c. The owner or operator is required to resubmit an EPSC or sketch plan for approval by the director of engineering or his/her designee if site plans or conditions change during land-disturbing activities.
- d. Plan amendments must comply with this chapter and the grading policy manual.
- e. Pre-construction inspection and meeting.
 - i. For all land-disturbing activities greater than 0.10 acres, a grading permit shall be issued only after a pre-construction inspection by the director of engineering or his/her designee indicates that perimeter erosion prevention and sediment control measures have been installed in accordance with the approved plan.
 - ii. Attendance at a pre-construction meeting with the director of engineering or his/her designee prior to issuance of a grading permit is required for owners and operators of developments or redevelopments that are:
 - (1) New residential subdivisions; or
 - (2) A priority construction activity, as defined in this chapter. © Owners and operators of land development activities not listed in § 19-311(2) of this chapter may be required to attend a pre-construction meeting when coordination with adjacent construction activities is needed or when conditions indicate a higher than normal risk for pollutant discharges.

10. Grading permits - time limitations, phasing and conditions.

- a. Grading permits shall expire one (1) year from the date of permit issuance. After one (1) year, the grading permit will become null and void and the plan must be resubmitted for approval.
- b. If a tract is to be developed in phases, then a separate grading permit may be required for each phase.
- c. The issuance of a grading permit does not authorize the discharge of hazardous substances or oil resulting from a spill that occurs on the site of the land-disturbing activity.

11. Documentation kept at the project site. Owners or operators of land disturbing activities

that require an EPSC or sketch plan shall keep the documentation listed below at the site of the land-disturbing activity from the date that the grading permit is approved to the date of termination of coverage of the State of Mississippi General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, as identified on the Notice of Termination (NOT). Owners or operators with day-to-day operational control over implementation of the EPSC or sketch plan shall have a copy of the plan available at a central location on-site for the use of all operators and those identified as having responsibilities under the plan whenever they are on the site of the land-disturbing activity:

- a. A copy of the approved EPSC or sketch plan
 - b. Documentation of inspection of the erosion prevention and sediment control practices located on the site of the land-disturbing activity, prepared in accordance with the inspection documentation requirements of State of Mississippi General NPDES Permit for Discharges of Stormwater Associated with Construction Activities.
12. Inspections. The owner or operator, or his/her designee, shall perform regular, documented inspections of the land-disturbing activity in accordance with the inspection requirements of the State of Mississippi NPDES Permit for Discharges of Stormwater Associated with Construction Activities, this chapter and the City of Hernando Grading and Construction Pollution Management Policies and Procedures Manual.
13. Bond requirements.
- a. When reviewing any application for a grading permit, the city shall consider the past record of the permit applicant in complying with previous grading permits, plans, and this chapter. The city may require the permit applicant to post a performance bond prior to issuing the grading permit. If a permit applicant has had three (3) or more violations of previous permits or this article as amended within three (3) years prior to the date of filing of the application under consideration with city shall require a performance bond with the permit application.
 - b. Upon forfeiture, the city at its election may use the performance bond proceeds or any part thereof to hire a contractor to stabilize and place erosion control measures on the site of the land-disturbing activity.
 - c. A performance bond in the form of government security, cash, irrevocable letter of credit, or any combination must be provided for the following conditions:
 - i. Rough grading, site development, large residential developments, or commercial development when there is a disturbed area greater than five (5) acres.
 - ii. Where there exists a substantial likelihood for runoff or sediment problems to adversely impact city right-of-ways, other property, or waters of the state.
 - iii. When a site drains into sinkholes or when the site is used for a borrow pit or waste area.
 - iv. Any bond amount shall be based on a remediation and completion estimate as determined by the director of engineering or his/her designee based on the size of the disturbed area.

- v. The city may refuse brokers or financial institutions the right to provide surety bonds, letter of credit, etc. based upon past performance, ratings or the financial institution, or other appropriate sources of reference information.
 - vi. Within sixty (60) days of the final inspection, the balance of all bonds not extended or obligated shall be refunded or terminated except as otherwise provided therein.
 - vii. Performance bond is released upon receiving a satisfactory final inspection by the director of engineering or his/her designee.
- 14. Fees. The Mayor and Board of Aldermen at its discretion may set fees for obtaining a grading permit. Such fee schedule may be established by resolution. All development activities which require right-of-way cuts or excavation within the development site and shown on a site plan shall be subject to all applicable fees. Grading activities which involve no construction or right-of-way cuts shall be subject to the grading permit fee schedule only. After the city completes three (3) documented final land disturbance inspections requested by the permit holder for the same permit, a fee of fifty dollars (\$50.00) shall be required for each additional inspection request of the same land disturbance permit.
- 15. Existing uncovered areas. All uncovered areas existing on the effective date of this chapter which resulted from land-disturbing activities that are subject to continued accelerated erosion and are causing off-site damage from sedimentation shall be provided with a ground cover or other protective measures such as vegetative erosion prevention and sediment control practices, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.
- 16. General criteria. The following general criteria are minimum requirements for the control of pollutants from land-disturbing activities. All soil erosion prevention and sediment control measures and practices shall conform to the requirements of this chapter. The application or measures and practices shall apply to all features of the site including street, utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion and sediment pollution during all stages of any land-disturbing activity.
 - a. Requirements for best management practices. Owners and operators of land-disturbing activities shall implement appropriate erosion prevention and sediment control best management practices (BMPs). BMPs shall be maintained and repaired by the permittee or his/her designee as often as necessary to maintain compliance with the approved plan, this chapter, and the grading policy manual.
 - b. Technical design criteria. The design of erosion prevention and sediment and pollution management controls, including BMPs, stabilization practices and structural practices, shall be performed in accordance with criteria and requirements stated in the State of Mississippi General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, except where more stringent criteria are set forth in this chapter or are required by the director of engineering or his/her designee. All controls must be properly selected, installed, and maintained in accordance with the manufacturer's specifications (where applicable) and good engineering practices. Measures selected for erosion

prevention and sediment control must be able to slow runoff so that rill and gully formation is prevented. When steep slopes and/or fine particle soils are present at the site, additional physical or chemical treatment of stormwater runoff may be required, and must be fully described on the EPSC or sketch plan if required.

- c. Priority construction activities. Additional design, installation, inspection, inspection certification, and buffer zone requirements for discharges into impaired or high quality waters that are included in the State of Mississippi General NPDES Permit for Discharges of Stormwater Associated with Construction Activities shall be implemented for all priority construction activities, as defined in this chapter.
- d. Control measure construction and maintenance standards. The installation and maintenance of erosion prevention and sediment control practices, stabilization practices and structural practices shall be performed in accordance with the standards provided in the Mississippi Sediment and Erosion Control Handbook, latest edition, except where more stringent standards are set forth in this chapter, the grading policy manual, or are required by the director of engineering or his/her designee. If periodic inspections or other information indicate that a control measure has been used inappropriately, or incorrectly, the owner or operator must replace or modify the control for relevant site situations.
- e. More stringent criteria or standards. The director of engineering or his/her designee may require more stringent criteria and standards than those provided in this chapter and in the grading policy manual where deemed necessary to reduce the potential for pollution impacts to streams, public property or adjacent property from sediment-laden stormwater runoff or discharges of other construction related wastes.
- f. Control of other construction related wastes. Owners and operators of land-disturbing activities shall control other construction related wastes, as defined in this chapter, in accordance with the State of Mississippi General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, except where more stringent criteria are set forth in this chapter or are required by the director of engineering or his/her designee. The discharge of such wastes in the stormwater discharges from a land-disturbing activity shall be prevented or minimized in accordance with the EPSC or sketch plan for the site of the activity.
- g. Installation of controls before grading begins. Erosion prevention and sediment controls and measures for the control of other construction related wastes shall be in place and functional before earth moving operations begin, and must be constructed and maintained throughout land-disturbing activities. Temporary controls and measures may be removed at the beginning of the work day, but must be replaced at the end of the work day.
- h. Stabilization of disturbed areas and soil stockpiles. Stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than fourteen (14) days after the construction activity in that portion of the site has temporarily or permanently ceased. The following exceptions exist to this fourteen (14) day rule:

- (a) Where the initiation of stabilization measures by the fourteenth day is precluded by snow cover or frozen ground conditions, then stabilization measures shall be initiated as soon as practicable; or (b) Where construction activity on a portion of the site is temporarily ceased and land-disturbing activities will be resumed within fifteen (15) days. Soil stockpiles not stabilized by vegetation must be stabilized or protected with sediment trapping measures to prevent soil loss.
- i. Vegetative buffers during construction. Vegetative buffers during construction must be maintained in accordance with the Stormwater Quality Management and Vegetated Buffers ordinance. Exceptions may be allowed where the director of engineering or his designee determines mitigation efforts per the SWPPP.
 - j. Establishment of permanent vegetation. A permanent vegetative cover shall be established on disturbed areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved which, in the opinion of the director of engineering or his/her designee, is mature enough to control soil erosion satisfactorily and to survive seasonal weather conditions. If it is determined by the director of engineering or his/her designee that the vegetation will not withstand seasonal weather conditions, the release of unobligated monies or bonds shall be determined by the development standards board of appeals and may be reasonably delayed.
 - k. Protection of adjacent properties. Sediment controls shall be designed to retain mobilized sediment on the site of the land-disturbing activity. Properties adjacent to the site of a land-disturbance activity shall be protected from sediment deposition. If sediment escapes the construction site, off-site accumulations of sediment that have not reached a stream must be removed at a frequency sufficient to minimize offsite impacts (e.g., fugitive sediment that has escaped the construction site and has collected in a street must be removed so that it is not subsequently washed into storm sewers and streams by the next rain and/or so that it does not pose a safety hazard to users of public streets). Owners or operators shall not initiate remediation/restoration of a stream without first receiving approval from the City of Hernando and TDEC. Approval for remediation/restoration efforts from the City of Hernando does not authorize access to private property. Arrangements concerning removal of sediment on adjoining property must be settled by the owner or operator with the adjoining landowner.
 - l. Timing and stabilization of sediment trapping measures. Sediment basins and traps, perimeter dikes, and other measures intended to trap sediment on-site must be constructed as a first step in grading and be made functional before up slope land disturbance takes place. Earthen structures such as dams, dikes, and diversions must be stabilized within seven (7) days of construction. These measures must be maintained in good working order and must remain in place until such time as the director of engineering or his/her designee deems the area to be stabilized.
 - m. Sediment basins. Temporary sediment basins shall be designed in accordance with the State of Mississippi General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, except where more stringent

criteria are set forth in this chapter or are required by the director of engineering or his/her designee. Any equivalent control measure that is substituted for a temporary sediment basin must be justified and approved by the director of engineering or his/her designee. Permanent detention ponds that will be used as sediment basins during construction shall be designed so that the permanent detention pond outlet structure serves as the outlet structure of the sediment basin. All permanent detention ponds used as sediment basins shall be cleaned of loose sediments, re-graded to ensure design capacity, and stabilized prior to conversion. Converted detention ponds must be approved by the director of engineering or his/her designee prior to release of bond. In addition, sod shall be used as the stabilization method on sediment basins that must remain in place for an indefinite period of time, such as during residential subdivision development. Sod shall be installed from the permanent pool elevation to the top of the berm. Stabilization measures other than sod may be approved by the director of engineering or his/her designee.

- n. Sodding detention ponds, ditches and draining swales. Sod shall be used on detention ponds, ditches and drainage swales or if velocities warrant stabilization. Stabilization methods other than sod may be approved by the director of engineering or his/her designee. The owner or operator shall maintain sodded areas until vegetation is permanently established.
- o. Cut and fill slopes. Cut and fill slopes must be designed and constructed in a manner which will prevent erosion. Consideration must be given to the length and steepness of the slope, the soil type, upslope drainage area, groundwater conditions, and other applicable factors. Slopes which are found to be eroding excessively within one (1) year of project completion must be provided with additional slope stabilizing measures until the problem is corrected. The following guidelines shall be utilized to prepare and implement an adequate design for cut and fill slopes:
 - i. Topsoil for the area should be stockpiled and then used for replacement on the graded area.
 - ii. Roughened soil surfaces are generally preferred to smooth surfaces on slopes.
 - iii. Diversions should be constructed at the top of long steep slopes which have significant drainage areas above the slope. Diversions or terraces may also be used to reduce slope length.
 - iv. Concentrated stormwater should not be allowed to flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume, or slope drain structure.
 - v. Wherever a slope face crosses a water seepage plane which endangers the stability of the slope, adequate drainage or other protection should be provided.
 - vi. Slopes 3:1 or greater shall be stabilized with erosion control matting or other method(s) approved by the director of engineering or his/her designee. The owner or operator shall maintain matted areas until permanent vegetation is established.

- p. Working in or crossing watercourses. Construction vehicles shall be kept out of watercourses. The channel (including bed and banks) must always be re-stabilized immediately after in-channel work is completed. Where a live watercourse must be crossed by construction vehicles construction, a temporary stream crossing must be provided, the design of which must be approved by the director of engineering or his/her designee and the State of Mississippi where appropriate.
 - q. Underground utility construction. The construction of underground utility lines shall be subject to the following criteria:
 - i. Where consistent with safety and space considerations, excavated material shall be placed on the uphill side of trenches.
 - ii. Trench dewatering devices shall discharge in a manner which will not adversely affect flowing streams, drainage systems, or off-site property.
 - r. Temporary stone construction entrance. Wherever construction access routes intersect paved public roads, provisions must be made to minimize the transport of sediment by runoff or vehicle tracking onto the paved surface by clearing the area at the entrance of all vegetation, roots, and other objectionable material and placing a two to three inch (2-3) diameter stone layer at least six (6) inches thick for a minimum of fifty (50) feet from the edge of the hard surface public road. The construction entrance must be underlain with filter fabric. This entrance shall be a minimum of twenty (20) feet in width, a minimum length of fifty (50) feet, and shall be maintained for the duration of the project or until a permanent access drive is constructed. The stone layer shall be replaced or overlain with new stone when necessary to ensure that sediment is not transported off the site of the land-disturbing activity. Where sediment is transported onto a public road surface, the roads shall be cleared thoroughly at the end of each day or more often if deemed necessary. Sediment shall be removed from roads by shoveling or sweeping and be transported to a sediment-controlled disposal area. Street washing shall be allowed only after sediment is removed in this manner.
 - s. Disposition of temporary measures. All temporary erosion prevention and sediment control measures shall be disposed of within thirty (30) days after final site stabilization is achieved or after the temporary measures are no longer needed, unless otherwise authorized by the director of engineering or his/her designee. Trapped sediment and other disturbed soft areas resulting from the disposition of temporary measures shall be properly disposed of and/or permanently stabilized to prevent further erosion and sedimentation.
17. Stripping, cleaning and grading to be minimized. Stripping of vegetation, regrading, and other development activities shall be conducted so as to minimize erosion. Clearing and grubbing must be held to the minimum necessary. Preconstruction vegetative cover shall not be destroyed, removed, or disturbed more than ten (10) calendar days prior to grading or earth moving. Construction must be sequenced to minimize the exposure time of cleared surface areas.
18. Variances. The director of engineering or his/her designee may waive or modify any of the general criteria which are deemed inappropriate or too restrictive for site conditions, by granting a variance as set forth herein. Variances may be granted in writing under the following conditions:

- a. At the time of plan submission, an applicant may request variances to become part of the approved erosion prevention and sediment control plan. The applicant must explain the reasons for requesting variances in writing. Specific variances which are allowed must be documented on the approved erosion prevention and sediment control plan.
 - b. During construction, a permit holder may request variances to the approved erosion prevention and sediment control plan. Until such time as the amended plan is approved by the city, the land-disturbing activity shall not proceed, except in accordance with the erosion prevention and sediment control plan as originally approved.
 - c. Absent universal circumstances, a response to the variance request should be given by the city within twenty (20) working days. Without a written approval, no variance shall be considered valid.
- 19. Right of entry. The director of engineering or his/her designee may enter upon any property which discharges or contributes, or is believed to discharge or contribute, to stormwater runoff or the stormwater system; stream; natural drainageway; or other stormwater system during reasonable hours to monitor, remove foreign objects or blockages, and to inspect for compliance with the provisions of this chapter.
- 20. Unlawful acts. The following are unlawful acts, any person who may:
 - a. Violate any provision of this chapter;
 - b. Violate the provisions of any permit issued pursuant to this chapter;
 - c. Fail or refuse to comply with any lawful notice to abate issued by the manager, which has not been timely appealed to the development standards board of appeals, within the time specified by such notice; or
 - d. Violate any lawful order of the city or the development standards board of appeals within the time allowed by such order shall be guilty of a violation. Each day of such violation or failure or refusal to comply shall be deemed a separate offense and punishable accordingly.
- 21. Penalties and enforcement.
 - a. Any person violating the provisions of this chapter shall be guilty of a misdemeanor and which may be punishable by a sentence of up to six months in jail and/or a fine in an amount to be determined by the court but not to exceed \$500.00, plus applicable court costs. That said fines, costs and punishment shall apply to each offense, should there be more than one. Each day that a continuing violation of this chapter is maintained or permitted to remain shall constitute a separate offense.
 - b. Any person violating the provisions of this chapter may be assessed a civil penalty by the city of not less than fifty dollars (\$50.00) nor more than five thousand dollars (\$5,000.00) per day for each day of the violation. Each violation shall constitute a separate violation. The city may also recover all damages proximately caused to the city by such violation.
 - c. In assessing the civil penalty, the city shall follow the provisions of the chart set forth herein and for any violation not listed may consider the following in determining the appropriate amount:
 - i. The harm done to the public health or the environment;

- ii. Whether the civil penalty imposed will be of substantial economic detriment to the illegal activity;
 - iii. The economic benefit gained by the violator;
 - iv. The amount of effort put forth by the violator to remedy this violation;
 - v. Any unusual or extraordinary enforcement costs incurred by the municipality;
 - vi. The amount of penalty established by ordinance or resolution for specific categories for violations; and
 - vii. All equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.
- d. In addition to the civil penalty, the city may recover all damages proximately caused by the violator to the city which may include any reasonable expenses and attorney's fees incurred in investigating, enforcing and/or correcting the violations of this chapter.
- e. The city may bring legal action to enjoin the continuing violation of this chapter and the existence of any other remedy in law or equity shall be no defense to any such action. The city attorney may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to publicly owned storm water facilities by any person.
- f. The remedies set forth in this section shall be cumulative, not exclusive, and is not to be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted.
- g. If the director of engineering or his/her designee finds any person, firm, or entity has engaged in or directed land-disturbing activities without having obtained a required grading permit, the following shall occur:
 - i. First offense - A stop work order and a notice of violation will be issued.
 - ii. If work continues - Assessment of civil penalties in the minimum amount of fifty dollars (\$50.00) and a maximum amount of five thousand dollars (\$5,000.00) for each day work continues without a grading permit.
 - iii. The permit fees will atomically double.
- h. If it is determined that the grading permit holder has failed to properly install, maintain or use proper structural erosion and sedimentation control measures or other erosion control measures as specified on the approved plan, the following shall occur:
 - i. First offense - Written warning with a maximum of two (2) days for compliance. If conditions warrant, a stop work order will be immediately issued.
 - ii. Second offense - Notice of violation, stop work order, suspension of all building until violation corrected, and MDEQ notification.
 - iii. Third offense - Imposition of a civil penalty in accordance with the following:
 - iv. An additional penalty of five hundred dollars (\$500.00) shall be added to the schedule of penalties, up to a maximum of five thousand dollars (\$5,000.00), for any person or entity that has more than three (3) related offenses or has a documented history of three (3) or more offenses at

- multiple development or redevelopment sites in the City of Hernando.
- v. Any performance bond posted may be forfeited based on the circumstances if compliance is not achieved after notice of violation within the time specified in the notice. Any grading permit granted may also be suspended.
 - i. All stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred, and the City of Hernando has released the stop work order after inspection of the site indicates conformance. Such notice shall be in writing and shall be given to the owner of the property, or an agent of the owner, or the person in charge of the job site, or conspicuously posted at the project location, and shall state the necessary corrective actions with a completion date before other activities can resume.
 - j. Any person or entity who receives three (3) related written notices of violations shall be required to retake or, in the case of an entity, to have its management retake the Level I Fundamentals of Erosion Prevention and Sediment Control Workshop sponsored by the MDEQ or approved equal. If after completing the course again, the same person or entity receives a subsequent written environmental violation within three (3) years of completing the course, requests for other city grading permits will be denied to that person. The person may appeal within thirty (30) days of the denial by requesting a hearing by city manager or his designee to attempt to obtain the desired permits.
22. Notice of violation. Whenever the director of engineering or his/her designee determines that a violation of any provision of this chapter has occurred, or that a land-disturbing activity is being performed without a required plan or permit, or that the land-disturbing activity does not comply with an approved plan or permit, the director of engineering or his/her designee may issue a notice of violation to the property owner or operator, utility, facility operator, lessee, tenant, contractor, permittee; the equipment operator and/or any other person or entity doing work on the site of the land-disturbing activity. The notice of violation shall:
- a. Be in writing;
 - b. Include a description of the property sufficient for identification of where the violation has occurred;
 - c. List the violation;
 - d. State the action required;
 - e. Provide a deadline for compliance or to stop work.
23. That in the event any part or provision of this ordinance shall be held to be invalid for any reason by a court of competent jurisdiction, such shall not affect the remaining provision of this ordinance.
24. THIS ORDINANCE SHALL BECOME EFFECTIVE ONE MONTH FROM THE DATE OF PASSAGE.

