

COUNCIL BILL NO. CB07-030  
ORDINANCE NO. 4081

AN ORDINANCE AMENDING SECTION 52 OF CHAPTER 50 AND ARTICLE IV OF  
CHAPTER 50 OF THE ARVADA CITY CODE TO PROVIDE A SYSTEM FOR APPROVAL  
AND ENFORCEMENT OF SITE DEVELOPMENT PERMITS FOR EROSION AND  
SEDIMENT CONTROL

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. Section 50-52 titled, "Unlawful discharges into storm drainage system." of Article III of Chapter 50 of the Arvada City Code is hereby amended to read as follows:

**"Sec. 50-52. Unlawful discharges into storm drainage system.**

(a) It shall be unlawful for any person to discharge or cause to be discharged or spilled into the city's storm drainage system any substance, including but not limited to dirt, mud, landscape materials, hazardous substances such as but not limited to oil products or gasoline, paint, concrete, or any type of cleaning waste or residue. Only naturally occurring stormwater runoff can be discharged into the city's storm drainage system, with the following exceptions: return flows from irrigation, water from building foundation drainage, runoff from noncommercial car washing, dechlorinated water from swimming pools or water mains, water used for firefighting, discharges of water from ditches and canals as necessary to protect public drinking water supplies, and other waters determined by the city to be noncontaminated and acceptable for return to the storm drainage system and stream system. Nothing contained herein shall be construed to relieve any person discharging water into the storm drainage system from any liability for damage caused by the volume or quality of water thus discharged. For purposes of this section the term "storm drainage system" shall be defined as provided in Section 50-51 and the term "stormwater runoff" shall be defined to include any flow of water resulting from rain or other forms of natural precipitation.

(b) The discharge prohibition shall not apply to any non-stormwater discharge permitted under the Colorado Discharge Permit System, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the City does not determine that the discharge is a significant source of contamination."

Section 2. Article IV of Chapter 50 of the Arvada City Code is hereby retitled "Site Development Permit" and if further amended in it's entirety to read as follows:

"ARTICLE IV.  
SITE DEVELOPMENT PERMIT

**Sec. 50-70. Short title.**

This Article shall be known and may be cited as the "Site Development Permit ordinance."

## Sec. 50-71. Introduction/ Purpose.

The purpose of this Article is to establish a system of permitting, inspection, and enforcement to control soil erosion from wind and water on land that is undergoing earth disturbing activities and to prevent sediment and eroded soil from being transported onto adjacent property, and into storm drainage systems, waterways, streams, rivers, ponds, or other areas.

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## Sec. 50-72. Definitions.

*Applicant* means any person that files an application for a permit pursuant to this Article.

*Best Management Practices (BMPs)* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce pollution. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

*City Engineer* means the manager of the city's Engineering Division, or the manager's designated representatives, designees or agents.

*Clearing* means any activity which removes whether purposefully or incidentally the vegetative surface cover.

*Director* means the Director of the city's Utilities Department or the Director's representative, designee or agent.

*Drainageway* means any channel whether manmade or natural, that conveys surface runoff throughout the site.

*Earth disturbance or earth disturbing activity* means any manmade change in the natural vegetative or soil cover or the change in the existing topography of land, including all grading, filling, excavating, stripping, construction of improvements, or other activities, which may result in or contribute to soil erosion or sedimentation into any storm drainage system or waterway, or create airborne dust.

*Emergency Activity / Emergency work* means work made necessary to restore property to a safe condition following a public calamity or work required to protect persons or property from imminent exposure to danger. (see Chapter 38 – Environment)

*Erosion means the process by which the ground surface is worn away by action of wind, water, gravity, or a combination thereof.*

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*Erosion Control* means measures that prevent soil erosion from wind or water on land that is undergoing earth disturbing activity.

Excavation means any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced, relocated, or stockpiled.

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Filling means any act by which soil, rock or other construction materials are placed, stockpiled, relocated, moved, dumped, or a combination thereof onto the surface of the earth.

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Grading means any stripping, excavating, filling, or stockpiling of soil or rock, or any combination thereof, and also included shall be the land and its excavated or filled condition.

Grading Plan means a set of plans showing the changes being proposed to the current land surface.

*Perimeter Control* means a barrier that prevents sediment from leaving a site either by filtering sediment-laden runoff, or diverting it to a sediment trap or basin.

Permanent Stabilization means that vegetative cover has been established at least seventy percent (70%) density, or that best management practices preventing exposed soil from eroding were implemented.

*Permittee* is the person who is designated the owner/developer on the Site Development Permit Application.

Person means a natural person, firm, corporation (either profit or nonprofit), partnership, association, group or business entity.

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*Phasing* means clearing a parcel of land in distinct areas, with the stabilization of each disturbance before the clearing of the next.

*Project* means all of the development to be performed by the applicant as described in the proposed plan, including all phases of a proposed subdivision, or the development by the applicant of multiple lots or parcels that are contiguous, abutting, adjacent, adjoining, bordering, neighboring, or tangential to each other.

*Sediment Control* means measures that prevent eroded sediment from leaving the site.

*Significant Storm Event* means any event, such as precipitation, snowmelt, or wind, which results in visible erosion of any portion of the site.

*Site* means a parcel of land, or a contiguous combination thereof, where earth disturbing activity is performed.

*Site Development Permit* means a permit issued by the City of Arvada for the control of erosion, runoff, and grading when altering the ground, or constructing improvements and structures.

*Site Development Permit Contact* means an individual who has received erosion and sediment control training and is responsible for installation, inspection, and maintenance of erosion and sediment control practices, and recordkeeping.

*Stabilized* means adequate measures are in place, vegetative, structural or both, to prevent erosion from occurring.

*Stormwater Management Plan (SWMP)* means a plan required by the State of Colorado as part of the permitting process to be in compliance with the State General Permit for Stormwater Discharges Associated with Construction Activities, which “describes the appropriate controls and measures to improve water quality by reducing pollutants in stormwater discharges and ensure permittee compliance with the requirements of the stormwater permit.”<sup>1</sup>

Temporary soil, sediment and erosion control measures means interim or temporary control measures which are installed or constructed and maintained to control, manage, or prevent accelerated soil erosion which occurs from earth disturbing activities until permanent stabilization measures are implemented, installed, or completed.

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*Waterway* means a channel that directs surface runoff to any body of water, including, but not limited to lakes, ponds, rivers, and streams, or to the public storm drain.

#### Sec. 50-73. Site Development Permits.

(a) A Site Development Permit is required for earth disturbing activities which disturbs an area of more than 10,000 square feet, except:

- (1) Any emergency activity which is immediately necessary for the protection of life, property, or natural resources as approved by the Director.
- (2) Nursery and agricultural operations.

(b) A separate Site Development Permit is required for each site and/or subdivision filing. Sites 10,000 square feet or less, that are a part of a larger development, whereas the obligations under the Site Development Permit for that parcel have been transferred to the person intending to improve the parcel, will be issued a Site Development Permit by the city in accordance with Section 50-78 of this Article.

(c) Each application shall be accompanied by an Application Fee in accordance with the Table below:

Disturbed Earth square feet (SF)	Application Fee	Resubmittal Fee
0 – 10,000	\$ 0	\$0
10,001 – 50,000	\$ 50	\$25
50,001 - 250,000	\$ 75	\$38
250,001 – 500,000	\$100	\$50
Greater than 500,000	\$125	\$63

(d) Except as provided in this subsection (d)(2), no Site Development Permit shall be issued until such time as a cash escrow or letter of credit has been received and approved by the city. Public and quasi-governmental entities are waived from the cash escrow or letter of credit

requirement. This cash escrow or letter of credit shall serve as security for the performance of work necessary to stabilize the site if the permittee with the Site Development Permit fails to install or maintain the necessary BMPs or to complete the work under the permit.

(1) Upon the effective date of this article, before the first permit required by this article is issued to, or on behalf of, any person, the applicant shall post with the Director as security for said permit, a cash escrow or a letter of credit in the amount of \$2,000 plus \$200 per acre for any parcel that is the subject of a Site Development Permit.

(2) The cash escrow or letter of credit shall be executed consistent with Section 78-298 (c) of the City Code.

(3) The cash escrow or letter of credit shall remain at the amounts specified herein. In the event the city draws against the security, the developer in question shall replenish the security to the amount required within 30 days after notice by the city to do so.

(4) This section shall not apply to permittees who have already posted a cash escrow or letter of credit.

(5) Notwithstanding the requirements for providing security set forth in Section 78-298 of this Code, the Director may waive posting of a cash escrow or letter of credit.

(e) The city will review each Site Development Permit application or revised application to determine its conformance with the provisions of this Chapter, the Land Development Code, and the Engineering Code of Standards and Specifications. Within thirty (30) business days after physical receipt of an application or within twenty (20) business days after physical receipt of a revised application, the city shall, in writing:

(1) Approve the permit application; or

(2) Approve the permit application subject to such reasonable conditions as may be necessary to substantially secure the objectives of this Article, and issue the permit subject to such conditions; or

(3) Disapprove the permit application, indicating the deficiencies. The applicant may submit a revised Site Development Permit Application for review and approval, subject to a resubmittal fee set forth herein. An additional twenty 20 business days may be required for review.

(f) Failure of the city to approve, conditionally approve, or disapprove each original application within thirty (30) business days of physical receipt of the original application or within twenty (20) business days of physical receipt of the revised application, shall be deemed conditional authorization for the applicant to proceed in accordance with the plans as filed unless time for approval is extended by agreement between the applicant and the Director.

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**Sec. 50-74. Site Development Permit Application.**

(a) The Site Development Permit Application supporting documentation must show the following:

- (1) Construction site boundaries and all areas of earth disturbance, including areas of cut and fill, locations of springs, wetlands, and other surface waters including dry drainageways.
- (2) Contours will not be more than one (1) foot intervals on individual lots, will not be more than two (2) foot intervals on other submittals, and shall show both existing and proposed grade on an appropriate scale and proposed parcel-specific and lot-specific drainage.
- (3) A sequence of construction, including 1) stripping, clearing, and rough grading, 2) expected date on which clearing will begin, 3) the sequence of clearing, 4) the estimated duration of exposure of cleared areas, 5) installation of temporary erosion and sediment control measures, 6) construction of utilities and infrastructure, and 7) construction of buildings, final grading and landscaping, and 8) establishment of temporary and permanent vegetation.
- (4) Erosion and sediment control measures necessary to meet the objectives of this Article throughout all phases of construction and permanently, after completion of development of the site.
- (5) Installation details of each erosion and sediment control practice to be utilized on-site in accordance with the specifications found in the most recent version of Urban Storm Drainage Criteria Manual, Volume 3---Best Management Practices, published by the Urban Drainage and Flood Control District.
- (6) Erosion and sediment control practices to be utilized on-site are in accordance with the State of Colorado Stormwater Discharges Associated with Construction Activity Permit standards.
- (7) For any development proposed within the city for which a Stormwater Management Plan must be prepared and implemented pursuant to the laws or regulations of the State, a copy of the Plan shall be submitted to the city along with the Site Development Permit Application.
- (8) Any additional information needed by the city to properly evaluate the application.

**Sec. 50-75. Site Development Permit Requirements.**

(a) Once earth disturbing activities begin, the permit must be followed until such time as the site has reached final stabilization.

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(b) The Director is authorized to create standardized permit conditions and enforce those conditions to give effect to the purpose of this Article.

(c) Clearing and Grading.

(1) Clearing techniques that retain natural vegetation and retain natural drainage patterns shall be incorporated to the maximum extent practicable.

(2) Phasing shall be required on all sites. The maximum area of earth disturbance at any one time is sixty (60) acres, with the size of each phase to be established at plan review and approved by the Director. Exceptions to this phasing requirement, up to fifty (50) percent of the maximum sixty (60) acres, may be granted with written approval from the Director.

(3) Clearing, except that which is necessary to establish sediment control devices, shall not begin until initial sediment control devices have been installed.

(4) Cut and fill slopes shall be no greater than 3:1, except as approved by the City Engineer to meet other community or environmental objectives.

(5) Final grading shall be performed in such a manner as to provide adequate drainage. Drainage from the project must be controlled so it will not result in property damage.

(d) Erosion and Sediment Control.

(1) BMPs shall be employed that divert runoff around disturbed areas and prevent the movement of dust or sediment from the site.

(2) Soil must be stabilized within forty-five (45) days of inactivity.

(3) If vegetative erosion control methods, such as seeding, have not become established within the time frame designated in the permit conditions, the Director may require that an additional vegetative option, or a non-vegetative option be employed.

(4) On slopes 3:1 or greater or in drainageways, special techniques that meet the design criteria in the most recent version of Urban Storm Drainage Criteria Manuals published by the Urban Drainage and Flood Control District, the city's Engineering Standards and Specifications, and the city's Land Development Code shall be used to ensure stabilization.

(5) Soil stockpiles must be stabilized or covered when remaining in place for 14 days or more.

(6) Sediment controls shall prevent impact to adjacent properties.

(e) Best management practices shall be installed to control potential tracking onto roads and city right-of-way. Should off-site tracking occur, all practicable measures to clean roads and storm drainageways, at a minimum by the end of each work day, must be utilized. The Director is authorized to order a cleanup of a road more frequently.

(f) The permittee or his/her agent shall conduct inspections of all erosion and sediment control measures at least every fourteen (14) days. Post-storm inspections must be conducted within 24 hours after the end of any precipitation, windstorm, or snowmelt event that causes surface erosion.

- (1) Inspections shall include observations of the construction site perimeter, all disturbed areas, material storage areas that are exposed to precipitation, discharge locations, and locations where vehicles access the site for evidence of, or potential for, pollutants entering the stormwater drainage system. Erosion and sediment control practices identified in the Site Development Permit and/or SWMP shall be evaluated to ensure that they are operating correctly.
- (2) All inspections shall be documented in written form and maintained with the onsite Site Development Permit. The documented permittee inspections must contain, at a minimum, the name of the inspector, the date of the inspection, any concerns noted during the inspection, the date that each concern was addressed, and any revisions to the Site Development Permit as a result of the inspection. A copy of the inspection must be made available to the Director upon request.
- (3) Should revisions to the best management practices be implemented as a result of deficiencies noted during site inspections, those revisions must be approved by the Director and recorded immediately on the approved supporting documentation for the Site Development Permit.

(g) As a condition of receipt of a Site Development Permit, the authorized representatives of the city staff, including a designated agent, may enter the development site identified in the permit as necessary to make regular inspections to ensure the validity of the reports filed pursuant to this Article. Unless emergency work is necessary, the person to whom the permit has been issued shall have a maximum of seven (7) calendar days from receipt of a city inspection that notes where work fails to comply with the Site Development Permit or SWMP to repair, replace, or otherwise remediate noncompliance conditions or activity noted on the inspection report unless otherwise advised. A written request for an extension may be submitted to the Director, who is authorized to grant or deny such extensions.

#### **Sec. 50-76. Site Development Permit Compliance and Enforcement.**

(a) No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this Article or the approved Site Development Permit.

- (1) Any permittee violating any of the provisions of this Article or the approved Site Development Permit shall be deemed guilty of a misdemeanor, and each day



during which any violation of any of the provisions of this Article is committed, continued or permitted, shall constitute a separate offense.

- (2) Upon conviction of any such violation, such permittee shall be punished by a fine of not more than \$999 for each offense. In addition to any other penalty authorized by this section, any permittee, partnership, or corporation convicted of violating any of the provisions of this ordinance shall be required to bear the expense of such restoration.
- (3) The city may withhold city inspections, building permits, or Certificates of Occupancy for any site which is not in compliance with the Site Development Permit.
- ~~(4) The penalties provided in this Article shall be cumulative and not in lieu of each other and may be exercised in any order.~~

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(b) In the event any person holding a Site Development Permit pursuant to this Article violates the requirements or terms of this Article, or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site, so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, or so as to be materially detrimental to the environment or nearby waterways, the Director may stop work on the site, as described in Section 9.5.1.D.1 of the Arvada Land Development Code, until such time the site returns to a reasonable compliance level as determined by the Director.

(c) In the event any person holding a Site Development Permit pursuant to this Article fails to comply with a notice of violation or order to stop work, fails to remedy the violation to the satisfaction of the Director within the required period of time, or repeatedly is in violation due to systemic issues within the management of the site, then the Director, in consultation with the Zoning Enforcement Officer, the Community Development Director, and City Attorney, shall determine whether to subject the violator to criminal prosecution pursuant to Section 9.5.2 of the Arvada Land Development Code, or to any other remedy available.

(d) In the event any person holding a Site Development Permit pursuant to this Article fails to comply with all of the terms of the Site Development Permit or if the erosion and sediment control measures fail to function properly, the city may do the required work or cause it to be done and collect from the person or their security all costs incurred, including a fifty (50) percent administrative and inspection fee. Any remaining portion of a deposit or letter of credit shall be refunded to the person after deduction by the city of one hundred and fifty (150) percent of the cost of the work.

(e) Notwithstanding the availability of any other remedy, any violation of this article shall constitute a violation of f the City Code and shall be subject to the general penalty and continuing violation provisions of Section 1-5 of the Code of the City of Arvada, Colorado.

#### **Sec. 50-77. Appeals.**

(a) Appeals as a result of enforcement of this article may be made pursuant to Article V of Chapter 2, of the Code of the City of Arvada, with the determination made by any authorized representative or employee of the city.

(b) Intermediate appeals as a result of enforcement of this article shall be by petition to the Director from the Site Development Permit holder for a hearing on a revision, adjustment or modification of the enforcement action. The Director may hold the appeals hearing, or designate another as a hearing officer with authority to hold such hearing. The filing of a petition shall not stay any owner's obligation to comply with the enforcement during pendency of the hearing.

(c) Any petition filed pursuant to this article shall be in writing, and the facts submitted shall be likewise submitted in writing as sworn statements, in form generally acceptable in similar proceedings. Any hearing shall take place within the city at a date and time set by the Director, but no later than 7 working days from the date of receipt of the petition by the Director, unless a different time and date is agreed to by the petitioner and the Director. Hearings held pursuant to this article shall be held in accordance with the procedures set forth in Chapter 2, Section 2-171 *et. seq.* of this Code.

(d) The Director shall make a final determination and may confirm or modify the enforcement remedy in accordance with facts submitted. The Director's decision shall be in writing and shall be mailed to or served upon petitioner within ten business days of the conclusion of the hearing. Service by certified mail, return receipt requested, shall be conclusive evidence of notice for the purpose of this article. The decision of the Director following an appeal pursuant to this Article shall be considered a final order of the Director, and any review thereof shall be by the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(e) Contest of any criminal citation shall be in the Arvada Municipal Court.

**Sec. 50-78. Site Development Permit Transfers, Awards, or Termination.**

(a) In the event an applicant sells, conveys, assigns, dedicates or otherwise effectuates a change in ownership of all or part of a site, subdivision filing, or lot that is subject to a valid Site Development Permit, the new owner of the site, subdivision filing, or lot, or an authorized representative of the new owner shall either (i) take such interest subject to the existing Site Development Permit or (ii) must obtain a new and separate Site Development Permit. The new owner of the site and/or subdivision filing, or an authorized representative of the new owner, shall either:

- (1) Agree with and be subject to the terms and conditions of the Site Development Permit as approved that are applicable to the portion of the site acquired by the new owner, in which case the Site Development Permit, or a portion thereof, can, upon payment of a transfer fee and execution of an acknowledgment of transfer, be transferred to the new owner, or

(2) If the new owner does not agree with the terms and conditions under the Site Development Permit and submits a new application to be reviewed and approved under the provisions of this Article, the terms and conditions of the existing Site Development Permit shall apply during any review period.

(b) In all cases, a new Site Development Permit Contact will be assigned to the site.

(c) Should the portion of the Site Development Permit assigned to a new owner contain an area 10,000 square feet or less, a new Site Development Permit will be awarded to the new owner.

(d) The sale of individual lots where structures have been built and completed to private homeowners will not release the person first obtaining a Site Development Permit from the obligation to prevent sediment from moving from these lots onto the areas still covered under the Site Development Permit.

(e) Termination of a Site Development Permit requires that 1) the site is permanently stabilized, 2) final site conditions are in accordance with permit conditions, 3) approval by the Director, and 4) completed Site Development Permit Termination Form. The city may terminate a permit based upon inactivity and permanent stabilization without a form submitted, upon notice sent to the Site Development Permit contact when to do so is in the best interest of the city.

(f) Nothing herein shall be construed to modify the time period for the city to complete its final inspection and approval, nor shall anything herein be deemed to constitute a termination of a Site Development Permit other than as set forth in Section 50-78(a) of this Article.

**Sec. 50-79. 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 3. Except as amended herein, the remaining terms and provisions of Chapter 50 of the Arvada City Code shall remain unchanged.

Section 4. This ordinance shall be effective five days after publication following final passage.

INTRODUCED, READ AND ORDERED PUBLISHED this 6th day of August, 2007.

PASSED, ADOPTED AND APPROVED this 20th day of August, 2007

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Ken Fellman, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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Christopher K. Daly, City Attorney

Publication dates: August 9, 2007  
August 23, 2007