

ORDINANCE O-2-16

AN ORDINANCE REGARDING CONSTRUCTION SITE EROSION CONTROL

As Recommended by the Board of Public Works.

The Common Council of the City of Menasha does hereby ordain as follows:

SECTION 1: Repeal Title 6, Chapter 6 of the Code of Ordinances of the City of Menasha, Wisconsin, by recreating Title 6, Chapter 6 as follows.

SEC. 6-6-1 AUTHORITY.

- (1) This ordinance is adopted under the authority granted by s. 62.234, Wis. Stats. for cities. This ordinance supersedes all provisions of an ordinance previously enacted under s. 62.23, Wis. Stats., that relate to construction site erosion control. Except as otherwise specified in s. 62.234 Wis. Stats., s. 62.23, Wis. Stats. applies to this ordinance and to any amendments to this ordinance.
- (2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The Common Council of the City of Menasha hereby designates the Public Works Department to administer and enforce the provisions of this ordinance.
- (4) The requirements of this ordinance do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under ss. 281.16 and 283.33, Wis. Stats.
 - (b) Targeted performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

SEC. 6-6-2 FINDINGS OF FACT.

The Common Council finds that runoff from land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state in the City of Menasha.

SEC. 6-6-3 PURPOSE.

It is the purpose of this ordinance to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activity to waters of the state in the City of Menasha.

SEC. 6-6-4 APPLICABILITY AND JURISDICTION.

(1) APPLICABILITY.

- (a) Where not otherwise limited by law, this ordinance applies to all construction sites, unless the site is otherwise exempt under Sec. 6-6-4(1)(b) or (c):
 1. A permit is required for a construction site with 4,000 square feet or greater of land disturbing construction activity. The responsible party shall comply with all applicable provisions of this ordinance for a permitted site, including

the Sec. 6-6-7(2) performance standards, Sec. 6-6-8 permit requirements, and Sec. 6-6-9 plan requirements.

2. A permit is not required for a construction site with less than 4,000 square feet of land disturbing construction activity. The responsible party shall comply with all applicable provisions of this ordinance for a non-permitted site, including the Sec. 6-6-7(1) performance standards.
3. Notwithstanding the applicability requirements in Sec. 6-6-4(1)(a)1 and 2, a permit is required for a construction site with less than 4,000 square feet of land disturbing construction activity if the Public Works Department determines that permit coverage is needed in order to improve ordinance compliance, meet targeted performance standards, or protect waters of the state. If a permit is required, the responsible party shall comply with all applicable provisions of this ordinance for a permitted site, including the Sec. 6-6-7(2) performance standards, Sec. 6-6-8 permit requirements, and Sec. 6-6-9 plan requirements.

(b) This ordinance does not apply to the following:

1. Land disturbing construction activity that includes the construction of 1- and 2-family residential dwellings that are not part of a larger common plan of development or sale and that result in less than 1 acre of disturbance. These construction sites are regulated by the Wisconsin Department of Safety and Professional Services under s. SPS 321.125 Wis. Adm. Code and must adhere to the provisions of Title 15, Chapter 2 of the Menasha Code of Ordinances;
2. Nonpoint discharges from agricultural activity areas; and
3. Nonpoint discharges from silviculture activities.

(c) A construction site exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under 40 CFR 122, for land disturbing construction activity, shall comply with Sec. 6-6-7(1) performance standards if less than 1 acre of land disturbing construction activity. The Sec. 6-6-7(2) performance standards, Sec. 6-6-8 permit requirements, and Sec. 6-6-9 plan requirements are not applicable.

(2) **JURISDICTION.** This ordinance applies to land disturbing construction activity on construction sites located within the boundaries and jurisdiction of the City of Menasha.

(3) **EXCLUSIONS.** This ordinance is not applicable to activities conducted by a state agency, as defined under s. 227.01 (1), Wis. Stats., but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33 (2), Wis. Stats.

SEC. 6-6-5 DEFINITIONS.

(1) “Administering authority” means a governmental employee, or a regional planning commission empowered under s. 62.234, Wis. Stats., that is designated by the Common Council to administer this ordinance.

(2) “Agricultural activity area” means the part of the farm where there is planting, growing, cultivating, and harvesting of crops for human or livestock consumption and pasturing or outside yarding of livestock, including sod farms and silviculture. Practices in this area may

include waterways, drainage ditches, diversions, terraces, farm lanes, excavation, filling, and similar practices. The agricultural activity area does not include the agricultural production area.

~~(3)~~ (3) “Agricultural production area” means the part of the farm where there is concentrated production activity or impervious surfaces. Agricultural production areas include buildings, driveways, parking areas, feed storage structures, manure storage structures, and other impervious surfaces. The agricultural production area does not include the agricultural activity area.

~~(3)(4)~~ (3)(4) “Atlas 14” means the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.

~~(4)(5)~~ (4)(5) “Best management practice” (BMP) means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment, or pollutants carried in runoff to waters of the state.

~~(5)(6)~~ (5)(6) “Business day” means a day the office of the Public Works Department is routinely and customarily open for business.

~~(6)(7)~~ (6)(7) “Cease and desist order” means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit.

~~(7)(8)~~ (7)(8) “Common plan of development or sale” means a development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A common plan of development or sale includes, but is not limited to, subdivision plats, certified survey maps, and other developments.

~~(8)(9)~~ (8)(9) “Construction site” means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development.

~~(9)(10)~~ (9)(10) “Design storm” means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall. The ~~TR-55~~ TR-55TP-40, Type II, 24-hour design storms for City of Menasha are: 1-year, 2.2 inches; 2-year, 2.5 inches; 5-year, 3.3 inches; 10-year, 3.8 inches; 25-year, 4.4 inches; and 100-year, 5.3 inches. The Atlas 14, MSE4, 24-hour design storms for the City of Menasha are: 1-year, 2.19 inches; 2-year, 2.51 inches; 5-year, 3.09 inches; 10-year, 3.62 inches; 25-year, 4.42 inches; and 100-year, 5.83 inches.

~~(10)(11)~~ (10)(11) “Development” means residential, commercial, industrial, institutional, or other land uses and associated roads.

~~(11)(12)~~ (11)(12) “Division of land” means the creation from one or more parcels or building sites of additional parcels or building sites where such creation occurs at one time or through the successive partition within a 5 year period.

~~(12)(13)~~ (12)(13) “Erosion” means the process by which the land’s surface is worn away by the action of wind, water, ice, or gravity.

~~(13)(14)~~ (13)(14) “Erosion and sediment control plan” (plan) means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.

~~(14)(15)~~ (14)(15) “Extraterritorial” means the unincorporated area within 3 miles of the corporate limits

of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.

~~(15)~~(16) “Final stabilization” means all land disturbing construction activities at the construction site have been completed and a uniform perennial vegetative cover has been established, with a density of at least 70 percent of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.

~~(16)~~(17) “Governing body” means the city council, which is the City of Menasha Common Council.

~~(17)~~(18) “Land disturbing construction activity” (disturbance) means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, which may result in runoff and lead to an increase in soil erosion and movement of pollutants into the municipal separate storm sewer or waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, and soil stockpiling.

(19) “Maximum extent practicable” (MEP) means the highest level of performance that is achievable but is not equivalent to a performance standard identified within this ordinance. MEP applies when the permit applicant demonstrates to the Public Works Department’s satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and a level of performance different from the performance standard is the MEP, the permit applicant shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

~~(18)~~(20) “MSE3 or MSE4 distribution” means a [specific precipitation distribution developed by the USDA, NRCS, using precipitation data from Atlas 14.](#)

~~(19)~~(21) “Performance standard” means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

~~(20)~~(22) “Permit” means a written authorization made by the Public Works Department to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

~~(21)~~(23) “Pollutant” has the meaning given in s. 283.01 (13), Wis. Stats.

~~(22)~~(24) “Pollution” has the meaning given in s. 281.01 (14), Wis. Stats.

~~(23)~~(25) “Protective area” has the meaning given in the City of Menasha Post-Construction Storm Water Management Ordinance sec. 6-6-7 (3) (d) (1).

~~(24)~~(26) “Responsible party” means any entity holding fee title to the property or performing services to meet the performance standards of this ordinance through a contract or other agreement.

~~(25)~~(27) “Runoff” means storm water or precipitation including rain, snow or ice melt, or similar water that moves on the land surface via sheet or channelized flow.

~~(26)~~(28) “Sediment” means **solid material which can settle** that is transported by runoff, suspended within runoff, or deposited by runoff away from its original location.

- ~~(27)~~(29) “Separate storm sewer” means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels, or storm drains, which meets all of the following criteria:
- (a) Is designed or used for collecting water or conveying runoff,
 - (b) Is not part of a combined sewer system,
 - (c) Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment, and
 - (d) Discharges directly or indirectly to waters of the state.
- ~~(28)~~(30) “Silviculture activities” means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.
- ~~(29)~~(31) “Site” means the entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application.
- ~~(30)~~(32) “Stop work order” means an order issued by the Public Works Department which requires all construction activity on the site be stopped.
- ~~(31)~~(33) “Targeted performance standard” means a performance standard that will apply in a specific area, where additional practices beyond those contained in this ordinance, are necessary to meet water quality standards. A total maximum daily load is an example of a targeted performance standard.
- ~~(32)~~(34) "Technical standard" means a document that specifies design, predicted performance and operation, and maintenance specifications for a BMP, material, device, or method.
- ~~(33)~~(35) “Total maximum daily **load**” (TMDL) means the amount of pollutants specified as a function of one or more water quality parameters that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.
- ~~(33)~~(36) [“TP-40” means the Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.](#)
- ~~(34)~~(37) “TR-55” means the United States department of agriculture, natural resource conservation service (previously soil conservation service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986, which is incorporated by reference for this ordinance.
- ~~(35)~~(38) “Type II distribution” means a rainfall type curve as established in the “United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published 1973,” which is incorporated by reference for this ordinance. The Type II curve is applicable to all of Wisconsin and represents the most intense storm pattern.
- ~~(36)~~(39) “Waters of the state” has the meaning given in s. 283.01 (20), Wis. Stats.

SEC. 6-6-6 TECHNICAL STANDARDS.

- (1) **DESIGN CRITERIA, STANDARDS AND SPECIFICATIONS.** All BMPs required to comply with this ordinance shall meet the design criteria, standards and specifications based on any of the following:

- (a) Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.
 - (b) Technical standards and other guidance identified within the City of Menasha Storm Water Reference Guide.
 - (c) Soil loss prediction tools such as the Revised Universal Soil Loss Equation 2 (RUSLE2) that estimate the sediment load leaving the site under varying land and management conditions may be used to show compliance with the sediment performance standards contained in Sec. 6-6-7(2).
 - (d) For this ordinance, average annual basis is calculated using the appropriate annual rainfall or runoff factor, also referred to as the R factor, or an equivalent design storm using a [MSE3](#) or Type II distribution, with consideration given to the geographic location of the site and the period of disturbance.
- (2) **OTHER STANDARDS.** Other technical standards not identified in Sec. 6-6-6 may be used provided that the methods have been approved by the Public Works Department.

SEC. 6-6-7 PERFORMANCE STANDARDS.

(1) **NON-PERMITTED SITES.**

- (a) **RESPONSIBLE PARTY.** The landowner of the construction site or other person contracted or obligated by other agreement with the landowner to implement and maintain construction site BMPs is a responsible party and shall comply with this ordinance.
- (b) **REQUIREMENTS.** At each site where land disturbing construction activity is to occur, BMPs shall be used to prevent or reduce all of the following:
 1. The deposition of soil from being tracked onto streets by vehicles;
 2. The discharge of sediment from disturbed areas into storm water inlets;
 3. The discharge of sediment from disturbed areas into adjacent waters of the state;
 4. The discharge of sediment from drainage ways that flow off the site;
 5. The discharge of sediment by dewatering activities;
 6. The discharge of sediment eroding from soil stockpiles existing for more than 7 days; and
 7. The discharge of onsite chemicals, cement and other building compounds, and materials into waters of the state or offsite separate storm sewers during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this ordinance.
- (c) **LOCATION.** BMPs shall be located so that treatment occurs before runoff enters waters of the state and offsite separate storm sewers. However, projects that require BMP placement in waters of the state, such as a turbidity barrier, are not prohibited by this ordinance.

- (d) **IMPLEMENTATION.** The BMPs used to comply with this section shall be implemented as follows:
1. Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin;
 2. Erosion and sediment control practices shall be maintained until final stabilization;
 3. Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site;
 4. Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days;
 5. BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.
- (e) **ALTERNATE REQUIREMENTS.** The Public Works Department may establish erosion and sediment control requirements more stringent than those set forth in this ordinance if the Public Works Department determines that an added level of protection is needed to protect resources.

(2) **PERMITTED SITES.**

- (a) **RESPONSIBLE PARTY.** The landowner or other person performing services to meet the performance standards of this ordinance, through a contract or other agreement with the landowner, is a responsible party and shall comply with this ordinance.
- (b) **PLAN.** A written erosion and sediment control plan shall be developed and implemented by the responsible party in accordance with Sec. 6-6-9. The erosion and sediment control plan shall meet all of the applicable requirements contained in this ordinance.
- (c) **REQUIREMENTS.** The erosion and sediment control plan shall meet all of the following requirements and standards.
1. The plan shall use BMPs to prevent or reduce all of the following:
 - a. The deposition of soil from being tracked onto streets by vehicles;
 - b. The discharge of sediment from disturbed areas into storm water inlets;
 - c. The discharge of sediment from disturbed areas into adjacent waters of the state;
 - d. The discharge of sediment from drainage ways that flow off the site;
 - e. The discharge of sediment by dewatering activities;
 - f. The discharge of sediment eroding from soil stockpiles existing for more than 7 days;
 - g. The discharge of sediment from erosive flows at outlets and in downstream channels;

- h. The discharge of onsite chemicals, cement, and other building compounds and materials into waters of the state or offsite separate storm sewers during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this ordinance; and
 - i. The discharge of untreated wash water from vehicle and wheel washing into waters of the state or offsite separate storm sewers.
- 2. For sites with 1 acre or more of land disturbing construction activity the plan shall meet the following sediment performance standards:
 - a. BMPs that, by design, discharge no more than 5 tons per acre per year, or to the **MEP**, of the sediment load carried in runoff from initial grading to final stabilization;
 - b. Except as provided in Sec. 6-6-7(2)(f), the Public Works Department may not require any person to employ more BMPs than are needed to meet the 5 tons per acre per year sediment performance standard in order to comply with **MEP**. Erosion and sediment control BMPs may be combined to meet the sediment performance standard. The Public Works Department may give credit toward meeting the sediment performance standard for limiting the duration, area, or both of land disturbing construction activity or for other appropriate mechanisms; and
 - c. Notwithstanding Sec. 6-6-7(2)(c)2(a) and (b), if BMPs cannot be designed and implemented to meet the 5 tons per acre per year sediment performance standard, the plan shall include a written, site-specific explanation of why the sediment performance standard cannot be met and how the sediment load will be reduced to the **MEP**.
- 3. The plan shall incorporate all of the following preventative measures:
 - a. Maintenance of existing vegetation, especially adjacent to surface waters whenever possible;
 - b. Minimization of soil compaction and preservation of topsoil;
 - c. Minimization of land disturbing construction activity on slopes of 20% or more; and
 - d. Development of spill prevention and response procedures.
- (d) **LOCATION.** BMPs shall be located so that treatment occurs before runoff enters waters of the state and offsite separate storm sewers. However, projects that require BMP placement in waters of the state, such as a turbidity barrier, are not prohibited by this ordinance.
- (e) **IMPLEMENTATION.** The BMPs used to comply with this ordinance shall be implemented as follows:
 - 1. In accordance with the plan developed pursuant to Sec. 6-6-9, the erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin;

2. Erosion and sediment control practices shall be maintained until final stabilization;
 3. Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site;
 4. Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days; and
 5. BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.
- (f) **TARGETED PERFORMANCE STANDARDS.** The Public Works Department may establish numeric water quality requirements that are more stringent than those set forth in Sec. 6-6-7(2)(c) in order to meet targeted performance standards, total maximum daily loads, and/or water quality standards for a specific water body or area. The numeric water quality requirements may be applicable to any permitted site, regardless of the size of land disturbing construction activity.
- (g) **ALTERNATE REQUIREMENTS.** The Public Works Department may establish erosion and sediment control requirements more stringent than those set forth in this section if the Public Works Department determines that an added level of protection is needed to protect resources. Also, the Public Works Department may establish erosion and sediment control requirements less stringent than those set forth in this section if the Public Works Department determines that less protection is needed to protect resources. However, the alternative requirements shall not be less stringent than those requirements promulgated in rules by Wisconsin Department of Natural Resources under NR 151 Wisconsin Administrative Code.

SEC. 6-6-8 PERMITTING REQUIREMENTS, PROCEDURES, AND FEES.

- (1) **PERMIT REQUIRED.** When a permit is required, no responsible party may commence a land disturbing construction activity subject to this ordinance without receiving prior approval of an erosion and sediment control plan for the site and a permit from the Public Works Department.
- (2) **PERMIT APPLICATION AND FEES.** When a permit is required, at least one responsible party desiring to undertake a land disturbing construction activity subject to this ordinance shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of Sec. 6-6-9 and shall pay an application fee as established by the [City's Common Council](#) ~~Public Works Department~~. By submitting an application, the applicant is authorizing the Public Works Department to enter the site to obtain information required for the review of the erosion and sediment control plan.
- (3) **REVIEW AND APPROVAL OF PERMIT APPLICATION.** The Public Works Department shall review any permit application submitted with an erosion and sediment control plan and the required fee. The following approval procedure shall be used.
 - (a) Within 20 business days of the receipt of a complete permit application, as required by Sec. 6-6-8(2), the Public Works Department shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this ordinance.

- (b) If the permit application and plan are approved, the Public Works Department shall issue the permit.
 - (c) If the permit application or plan is disapproved, the Public Works Department shall state in writing the reasons for disapproval.
 - (d) The Public Works Department may request additional information from the applicant. If additional information is submitted, the Public Works Department shall have 20 business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.
 - (e) Failure by the Public Works Department to inform the permit applicant of a decision within 20 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- (4) **FINANCIAL GUARANTEE.** As a condition of approval and issuance of the permit, the Public Works Department may require the applicant to deposit a surety bond, cash escrow, or irrevocable letter of credit to guarantee a good faith execution of the approved erosion and sediment control plan and any permit conditions.
- (5) **PERMIT REQUIREMENTS.** All permits issued under this ordinance shall be subject to the following conditions and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. The Public Works Department may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Public Works Department to suspend or revoke this permit may be appealed in accordance with Sec. 6-6-13.
- (a) Notify the Public Works Department within 48 hours of commencing any land disturbing construction activity.
 - (b) Notify the Public Works Department of completion of any BMPs within 10 business days after their installation.
 - (c) Obtain permission in writing from the Public Works Department prior to any modification pursuant to Sec. 6-6-9(2) of the erosion and sediment control plan.
 - (d) Install all BMPs as identified in the approved erosion and sediment control plan.
 - (e) Maintain all road drainage systems, stormwater drainage systems, BMPs and other facilities identified in the erosion and sediment control plan.
 - (f) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in weekly inspection reports.
 - (g) Conduct construction site inspections at least once per week and within 24 hours after a precipitation event of 0.5 inches or greater. Repair or replace erosion and sediment control BMPs as necessary within 24 hours of an inspection or notification that repair or replacement is needed. Maintain weekly written reports of all inspections at the construction site. Weekly inspection reports shall include all of the following: date, time, and location of the construction site inspection; the name of individual who performed the inspection; an assessment of the condition of erosion and sediment controls; a description of any erosion and sediment control BMP implementation and maintenance performed; and a description of the present phase of land disturbing construction activity at the construction site.

- (h) Allow the Public Works Department to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the control plan. Keep a copy of the erosion and sediment control plan, storm water management plan, amendments, weekly inspection reports, and permit at the construction site until permit coverage is terminated.
- (i) The permit applicant shall post the “Certificate of Permit Coverage” in a conspicuous location at the construction site.
- (6) **PERMIT CONDITIONS.** Permits issued under this section may include conditions established by Public Works Department in addition to the requirements set forth in Sec. 6-6-8(5), where needed to assure compliance with the performance standards in Sec. 6-6-7.
- (7) **PERMIT DURATION.** Permits issued under this section shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The Public Works Department may extend the period one or more times for up to an additional 180 days. The Public Works Department may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this ordinance.
- (8) **MAINTENANCE.** The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this ordinance until the site has undergone final stabilization.
- (9) **ALTERNATE REQUIREMENTS.** The Public Works Department may prescribe requirements less stringent for applicants seeking a permit for a construction site with less than 1 acre of land disturbing construction activity.

SEC. 6-6-9 EROSION AND SEDIMENT CONTROL PLAN.

- (1) **PLAN REQUIREMENTS.** The erosion and sediment control plan required under Sec. 6-6-7(2) shall comply with the City of Menasha Storm Water Reference Guide and contain at a minimum the following information.
 - (a) Name, address, and telephone number of the landowner and responsible parties.
 - (b) A legal description of the property proposed to be developed.
 - (c) A site map with property lines, disturbed limits, and drainage patterns.
 - (d) Total area of the site and total area of the construction site that is expected to be disturbed by construction activities.
 - (e) Performance standards applicable to site.
 - (f) Proposed best management practices.
 - (g) Erosion and sediment control plan narrative.
 - (h) Construction sequence and construction schedule.
- (2) **AMENDMENTS.** The applicant shall amend the plan if any of the following occur:
 - (a) There is a change in design, construction, operation, maintenance, or schedule at the site which has the reasonable potential for the discharge of pollutants to waters of the state or separate storm sewers, and which has not otherwise been addressed in the plan;

- (b) The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff; or
 - (c) The Public Works Department notifies the applicant of changes needed in the plan.
- (3) **ALTERNATE REQUIREMENTS.** The Public Works Department may prescribe requirements less stringent for applicants seeking a permit for a construction site with less than 1 acre of disturbance.

SEC. 6-6-10 FEE SCHEDULE.

The fees referred to in other sections of this ordinance shall be established by the Common Council of the City of Menasha and may from time to time be modified by resolution. A schedule of the fees established by the Common Council shall be available for review in City Hall.

SEC. 6-6-11 INSPECTION.

Whenever land disturbing construction activities are being carried out, the Public Works Department may enter the land pursuant to the provisions of ss. 66.0119(1), (2), and (3), Wis. Stats.

SEC. 6-6-12 ENFORCEMENT.

- (1) The Public Works Department may post a stop-work order if any of the following occurs:
 - (a) Any land disturbing construction activity is being undertaken without a permit and, pursuant to Sec. 6-6-4(1) of this ordinance, a permit is required for the construction site;
 - (b) The erosion and sediment control plan is not being implemented in a good faith manner;
 - (c) The conditions of the permit are not being met; or
 - (d) Any land disturbing construction activity is in violation of the ordinance.
- (2) If the responsible party does not cease activity as required in a stop-work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the Public Works Department may revoke the permit.
- (3) If the responsible party, where no permit has been issued, does not cease the activity after being notified by the Public Works Department, or if a responsible party violates a stop-work order posted under Sec. 6-6-12(1), the Public Works Department may request the City Attorney to obtain a cease and desist order in any court with jurisdiction.
- (4) The Board of Public Works may retract the stop-work order issued under Sec. 6-6-12(1) or the permit revocation under Sec. 6-6-12(2).
- (5) After posting a stop-work order under Sec. 6-6-12(1), the Public Works Department may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The Public Works Department may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this ordinance by the Public Works Department, plus interest at the rate authorized by the Common Council shall be billed to the responsible party or recovered from the surety bond, cash escrow, or irrevocable letter of credit. In the event a responsible party fails to pay the amount due, the clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to such. VII of ch. 66, Wis. Stats.

- (6) Any person violating any of the provisions of this ordinance shall be subject to a forfeiture in accordance with Sec. 1-1-7 and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.
- (7) Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunction proceedings.

SEC. 6-6-13 APPEALS.

- (1) **BOARD OF PUBLIC WORKS.** The Board of Public Works created pursuant to Sec. 2-2-5 of the City's ordinance pursuant to 62.23(7)(e), Wis. Stats.:
 - (a) Shall hear and decide appeals where it is alleged that there is error in any order, decision, or determination made by the Public Works Department in administering this ordinance except for cease and desist orders obtained under Sec. 6-6-12(3);
 - (b) Upon appeal, may authorize variances from the provisions of this ordinance which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship; and
 - (c) Shall use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- (2) **WHO MAY APPEAL.** Appeals to the Board of Public Works may be taken by any aggrieved person or by any office, department, board, or bureau of the City of Menasha affected by any decision of the Public Works Department. Such appeal shall be filed within 10 days of the alleged grievance

SEC. 6-6-14 SEVERABILITY.

If a court of competent jurisdiction judges any section, clause, provision, or portion of this ordinance unconstitutional or invalid, the remainder of the ordinance shall remain in force and not be affected by such judgment.

SECTION 2: This ordinance shall become effective upon its passage and publication as provided by law.

Passed and approved this _____ day of April, 2016.

Donald Merkes, Mayor

ATTEST:

Deborah A. Galeazzi, City Clerk