

ORDINANCE NO. 482

**AN ORDINANCE AMENDING ORDINANCE NO. 148,
THE PUBLIC WORKS STANDARDS OF THE CITY OF WILSONVILLE,
AND DECLARING AN EMERGENCY. 96PC14**

WHEREAS, the City of Wilsonville makes the following Findings:

(1) The construction of streets, trails, and underground utilities, as well as other construction projects in general may, if not properly designed and constructed, result in unnecessary erosion and other damage to the environment.

(2) The City has established through the preparation, adoption, and periodic revision of its Comprehensive Plan, Primary Open Space areas that are regarded as the most significant natural resource areas within the community. The City has, through the implementation of its Comprehensive Plan, protected Primary Open Space areas from most forms of development, but has permitted the construction of streets, trails, and underground utilities through Primary Open Space areas.

(3) Due to increasing public concerns about the potential for the degradation of Primary Open Space areas, as well as other environmental concerns, the City of Wilsonville now finds it necessary and appropriate to establish standards and requirements for various construction projects within the City and to establish special provisions dealing with such projects in Primary Open Space areas.

(4) The proposed standards have been recommended by the City's Planning Director, working with the City Engineer, Community Development Director, and staff of the Public Works Department.

(5) The proposed standards have been reviewed and recommended by the City Planning Commission following public hearings conducted on December 11, 1996, February 12, 1997, and March 12, 1997. The Planning Commission has recommended the adoption of both Ordinance No. 482 and Ordinance No. 476, as the two Ordinances are intended to work together. The Planning Commission found that there is a need to balance the environmental impacts of allowing the construction of underground utilities, streets and trails within open space areas against the economic, energy, and social consequences of delaying or denying these projects. This Ordinance, by amending the public works standards, works with Ordinance No. 476, to strike a balance between environmental, social, economic and energy factors by increasing environmental protection without unnecessarily delaying construction projects that are intended to serve the public.

(6) Given the fact that the season when most construction projects are undertaken is now beginning, and the fact that the City is currently involved in litigation that may be affected by this Ordinance, an emergency exists which warrants having this Ordinance take effect immediately upon adoption.

NOW, THEREFORE, THE WILSONVILLE CITY COUNCIL ORDAINS AS FOLLOWS:

1. The above recited findings are incorporated by reference herein;
2. Ordinance No. 148, which established the City's Public Works standards is hereby amended with the addition of the following:

Section 1. General Policy

- A. All projects involving the construction of public trails (including bike paths and pedestrian ways), public or private streets, and underground utilities in existing public rights-of-way or areas designated as Primary Open Space in the City's Comprehensive Plan shall require the issuance of a Public Works Permit, unless specifically exempted from this requirement as provided herein. Public Works Permits required as specified herein shall include Erosion Control Permits. It is the policy of the City to require temporary and permanent measures for all construction projects, including but not limited to capital improvements, Public Works construction and utility installations, to minimize the adverse effects of construction on the environment. The responsible party shall properly install, operate and maintain both temporary and permanent measures as provided in this section and/or in an approved plan, to protect the environment during the term of the project. In addition, these policies shall apply to all properties within the City, regardless of whether the property is involved in a construction or development activity.
- B. Nothing in these policies shall relieve any person or organization from the obligation to comply with the regulations or permits of any federal, state, or local authority.
- C. All projects involving the construction of public trails (including bike paths and pedestrian ways), public or private streets, and underground utilities at locations other than public rights-of-way or Primary Open Spaces shall require the issuance of an Erosion Control Permit, unless specifically exempted from this requirement as provided herein. The following paragraphs specify the use of erosion prevention techniques, sediment control measures and other measures to protect the environment. The use of erosion prevention techniques shall be emphasized, rather than sediment control measures. This is especially important on larger construction sites immediately before and during the rainy portion of the year. Erosion prevention techniques are designed to protect soil particles from the forces of water and wind so that they will not erode. These techniques include such things as construction scheduling, ground cover, and matting. Sediment control measures are designed to capture soil particles after they have been

dislodged and attempt to retain the soil particles on-site. These measures include such things as silt fences and settling basins. Both erosion prevention techniques and sediment control measures have appropriate uses. However, numerous case studies have shown that sediment control measures are less effective in preventing soil movement than erosion prevention techniques.

Section 2. Public Meetings for Projects Involving Primary Open Space

- A. On projects involving the construction of trails, streets, or underground utilities directly affecting three or more tax lots, in areas designated as Primary Open Space in the City's Comprehensive Plan, applicants shall notify the owners of properties within 250 feet of the proposed project, as listed on the County Assessor's records provided to the City. A copy of this notice shall also be placed as either a legal or display advertisement in a newspaper of general circulation in Wilsonville. The required mailed notice and the newspaper advertisement shall include a map and a description of the proposed project and shall state that anyone in the vicinity may request a public meeting by filing such a request, in writing, with the City Engineering Division, not more than ten days after the postmarked or published date of the notification. The receipt of a written request for a public meeting shall cause the City Engineer to delay the issuance of a Public Works Permit for the proposed project until the owners of property in the vicinity can again be notified and a public meeting conducted to review the proposed project with interested persons, and allowing for the preparation of responses to concerns that may be raised in the public meeting.
- 1) Failure of any party to receive written or published notice shall not invalidate the process. However, the applicant shall provide a signed affidavit listing the names and addresses of those to whom the invitation was sent and an affidavit listing the newspaper and publication date.
 - 2) If the City Engineer determines that a sufficient effort has not been made to contact neighboring property owners, the City Engineer may require the applicant to schedule another meeting and improve the public notification.
 - 3) Public meetings may be conducted in City offices, with proper scheduling. The applicant shall be responsible for conducting the meeting, preparing minutes of the meeting, and shall prepare a written response to any and all concerns raised by the public in the meeting. That written information shall be provided to the City Engineer with the application for a Public Works Permit. The applicant shall specifically address each comment raised and shall indicate any changes to the proposed project that resulted from comments received from the public.

B. Exemptions from public meeting requirement. The following are exempt from the requirement of a public meeting listed above:

- 1) Projects where a public hearing has already been conducted by the City's Development Review Board, Planning Commission, or City Council on the proposal;
- 2) Projects where a public meeting has already been held and the owners of property within the neighborhood were invited to participate in that meeting, as provided in section 2, above;
- 3) Repairs to existing facilities;
- 4) Maintenance of existing facilities;
- 5) Individual underground utility service to not more than two tax lots;
- 6) Projects conducted entirely within existing, publicly owned right-of-way;
- 7) Emergency measures needed to protect lives or property.

Section 3. Erosion Control

Application and Purpose. It is a City requirement to reduce the amount of sediment and other pollutants reaching the public storm and surface water system resulting from development, construction, grading, excavating, clearing, and any other activity which accelerates erosion, to the limits prescribed herein. These provisions shall apply to all land within the City.

Section 4. Erosion Prohibited

Visible or measurable erosion as determined by the City Engineer, or the City Engineer's agent, which enters, or is likely to enter, the public storm or surface water system, is hereby prohibited, and is a violation of these rules. The owner of the property, the permittee under a Construction Permit Agreement, together with any person who causes or allows erosion to occur, shall be considered to be in violation of these rules.

In determining measurable erosion, the City will rely on the adopted Water Quality Standard that are not to be exceeded for the waters of the Willamette Basin (OAR 340-41-445). They currently include standards for dissolved oxygen, temperature, turbidity, pH, bacteria, and total dissolved solids.

Section 5. Erosion Control Permits

- a. Except as noted herein, no person shall cause any change to improved or unimproved real property that causes, will cause, or is likely to cause, a temporary or permanent increase in the rate of soil erosion from the site without first obtaining a permit from the City and paying prescribed fees. Such changes to land shall include, but are not limited to, grading, excavating, filling, working of land, or stripping of soil or vegetation from land. Any work requiring a Grading Permit, as specified in the applicable Building Code, shall require an Erosion Control Permit, unless specifically exempted from this requirement as specified in subsection 5(c), below. Where a Grading Permit is being issued for on-site work, the Grading Permit may include the Erosion Control Permit.
- b. No utility company or contractor shall begin construction, grading, excavation, fill, or the clearing of land without first verifying in writing that the City has issued an Erosion Control Permit covering such work, or the City has determined that no such Permit is required. No public agency or body shall undertake any public works project without first obtaining an Erosion Control Permit covering such work, or receiving a determination from the City that none is required.
 - 1) Construction on slopes greater than 5%, or on highly erodible soils, shall be subject to limitations or conditions of approval that may limit excavation or other construction from November 1 through April 30.
 - 2) Limits of work are to be specified in the Erosion Control Permit. The Contractor shall provide a tentative construction schedule and shall notify the City Engineer's office at least 24 hours before the start of excavation or construction.
- c. No Erosion Control Permit (from the City) is required for the following:
 - 1) For work of a minor nature, provided that all of the following criteria are met:
 - a) The land development does not require a Grading Permit or a development permit, from the City, and
 - b) No land development activity or disturbance of land surface occurs within 100 feet of a Primary Open Space, as defined in the City's Comprehensive Plan, and

- c) The slope of the site is less than 12 percent, and
 - d) The work on the site involves the disturbance of less than 500 square feet of land surface, and
 - e) The excavation, fill, or combination thereof involves a total of less than 20 cubic yards of material.
- 2) Permits and approvals for land division, interior improvements to an existing structure, and other approvals for which there is no physical disturbance to the surface of the land.
 - 3) Activities within the City which constitute accepted farming practices as defined in ORS 215.203, and which are permitted by City zoning.
 - 4) Exception from the permit requirement does not exempt the property owner from the responsibilities outlined herein.

Section 6. Erosion Control Permit Process

- a. Applications for Erosion Control Permit. Application for a Permit shall include a grading and erosion control plan which contains methods and interim facilities to be constructed or used concurrently and to be operated during construction to control erosion. The grading and erosion control plan shall meet the requirements herein. The grading and erosion control plan shall be prepared using either of the following methods:
 - 1) Using the techniques and methods contained and prescribed in the Erosion Prevention and Sediment Control Plans--Technical Guidance Handbook, City of Portland and Unified Sewerage Agency, Revised, February 1994, together with the exceptions herein. This document is hereby adopted by reference.
 - 2) A site-specific plan outlining the protection techniques to control soil erosion and sediment transport from the site to less than one ton per acre per year as calculated using the Soil conservation Service Universal Soil Loss Equation or other equivalent methods established by Board rule. An Erosion Control Information Form (from Appendix B of the Technical Guidance Handbook), shall be filled out for all private developments, public rights-of-way and public works construction sites.

Section 7. Maintenance

The applicant shall maintain the facilities and techniques contained in the approved Erosion Control Permit so as to assure that they remain effective during the construction or other permitted activity. If the facilities and techniques approved in an Erosion Control Permit are not effective or sufficient as determined through site inspection, the permittee shall submit a revised plan within three working days of written notification by the City. Upon approval of the revised plan by the City, the permittee shall immediately implement the additional facilities and techniques of the revised plan. In cases where erosion is occurring, the City may require the applicant to install interim control measures prior to submittal of the revised erosion control plan.

Section 8. Inspection

Prior to the foundation inspection of a building, the permittee shall call the City for an inspection of the erosion control measures for that property. On a site development project, the erosion control measures shall be installed prior to the start of any excavation work.

Section 9. Physical Erosion

No person shall drag, drop, track, or otherwise place or deposit, or permit to be deposited, mud, dirt, rock or other such debris upon a public street or into any part of the public storm and surface water system, or any part of a private storm and surface water system. Any such deposit of material shall be immediately removed using hand labor or mechanical means. No material shall be washed or flushed into any part of the storm and surface water system without erosion control measures installed to the satisfaction of the City and any such action shall be an additional violation.

Section 10. Permit Fee

The City shall collect a fee to defray the costs of review of plans, administration, enforcement, and field inspection to carry out the rules contained herein.

Section 11. Exceptions to Erosion Control Techniques and Methods

The erosion control techniques and methods in the Erosion Prevention and Sediment Control Plans--Technical Guidance Handbook dated February 1994 may be used, with the following exceptions:

- a. A gravel construction entrance shall be required, rather than an option. If there is more than one vehicle access point, a gravel construction entrance shall be required at each entrance. The responsibility for design and performance of the driveway remains with the applicant. Under no circumstance shall vehicles or equipment enter a property adjacent to a stream, water course, or other storm and surface water facility, or a wetland, such that it would not be possible to avoid contaminating or depositing mud, dirt, or debris into the water or wetland.
- b. Silt Barriers. The use of straw bales as a silt barrier is discouraged.
- c. Exceptions to Silt Barrier Requirement. Silt barriers are not required on a site:
 - 1) Where a Community Erosion Control Plan is in effect.
 - 2) Where there are no concentrated flows and the slope being protected has a grade of less than 2 percent.
 - 3) Where flows are collected through the use of temporary or permanent grading or other means such that the flows are routed to an approved settling pond, filtering system, or silt barrier.
 - 4) Where there are no concentrated flows, slopes are less than 10 percent, and where the run-off passes through a grassed area which is either owned by the applicant, or approved for such use in writing by the owner of the grassed area. The grass area shall be at least equal in dimensions to the area being protected.
 - 5) Where the surface is protected by appropriate ground cover or matting.
- d. Neighborhood Erosion Control Plan. Any individual or group may submit a plan to control erosion from multiple lots. This shall be referred to as a "Neighborhood Erosion Control Plan." In such case, the group of lots will be evaluated as if they were one lot.

If an individual lot in a Neighborhood Erosion Control Plan changes ownership, the new owners may either join the Neighborhood Erosion Control Plan (with the approval of the other "neighborhood" owner or owners), or will need to submit their own Erosion Control Plan if erosion potential still exists on the parcel. If a lot changes ownership and the new

owner does not join the Neighborhood Erosion Control Plan, then the Plan must be revised to provide for the exclusion.

- e. **Protection Measure Removal.** The erosion control facilities and techniques shall remain in place and be maintained in good condition until all disturbed soil areas are permanently stabilized by installation and establishment of landscaping, grass, mulching, or otherwise covered and protected from erosion. A final erosion control inspection shall be required prior to any change in ownership of the subject property.
- f. **Catch Basin Protection.** A filter system may not be used on catch basins in public streets as a part of erosion control plans for development of a single family residential area unless it is a part of a Neighborhood Erosion Control Plan and none of the individual lots are being occupied.
- g. **Plastic Sheeting.** Plastic sheeting shall generally not be used as an erosion control measure in single family house construction. Plastic sheeting may be used to protect small, highly erodible areas, or temporary stockpiles of material. If used, the path of concentrated flow from the plastic must be protected.
- h. **Ground Cover Establishment.** On sites where vegetation and ground cover have been removed from more than one acre of land, ground cover shall be re-established by seeding and mulching on or before September 1 with the ground cover established by October 15. As an alternative to seeding and mulching, or if ground cover is not established by October 15, the open areas shall be protected through the winter with straw mulch, erosion blankets, or other similar method. Ivy shall not be used as a ground cover for erosion control purposes.

Section 12. 1200-C Permit (Erosion Control Joint Permit)

The Department of Environmental Quality (DEQ) requires permits for construction activities which will disturb five or more acres. The 1200-C permit is required for compliance with the Federal NPDES rules contained in 40 CFR Parts 122, 123, and 124 adopted by EPA November 16, 1990. All persons and organizations involved in construction activities shall comply with all additional requirements specified in that permit.

Section 13. Activities in Wetlands

Both the Army Corps of Engineers and the Oregon Division of State Lands have permit procedures for construction activities in wetlands that are within the

jurisdiction of those agencies. Applicants for Public Works Permits shall be required to demonstrate their compliance with all applicable requirements of those agencies, including any required mitigation.

The construction of underground utilities in wetland areas shall require the use of impermeable barriers, in such a manner as to avoid draining the wetlands.

Section 14. Work in Flood Prone Areas

Work in flood prone areas shall be subject to the requirements of Section 4.162 of the Wilsonville Code and to all applicable Federal Emergency Management Agency (FEMA) flood insurance standards.

Section 15. Geotechnical Investigation

Work on slopes exceeding 12%, which is not exempt from the Public Works Permit requirements included herein, shall require a written report from a civil engineer with geotechnical expertise. That report shall verify that the potential hazards of construction in the area have been considered and that adequate measures will be included in the design and construction to assure that risks to life, property and the environment will be avoided or mitigated.

Section 16. Dust

Dust shall be minimized to the extent practicable, utilizing all measures necessary, including, but not limited to:

- a. Sprinkling haul and access roads and other exposed dust producing areas with water.
- b. Applying dust palliatives on access and haul roads.
- c. Establishing temporary vegetative cover.
- d. Placing wood chips or other effective mulches on vehicle and pedestrian use areas.
- e. Maintaining the proper moisture condition on all fill surfaces.
- f. Prewetting cut and borrow area surfaces.
- g. Use of covered haul equipment.

Section 17. Maintaining Water Quality

- a. Construction within the banks of a stream shall be kept to a minimum.
- b. Pollutants such as fuels, lubricants, bitumens, raw sewage, and other harmful materials shall not be discharged into or near rivers, streams, impoundments, or drainage systems.
- c. All sediment-laden water from construction operations shall be routed through stilling basins, filtered or otherwise treated to reduce the sediment load.

Section 18. Fish and Wildlife Habitat

- a. The construction shall be done in a manner to minimize the adverse effects on wildlife and fishery resources.
- b. The requirements of local, state, and federal agencies charged with wildlife and fish protection shall be adhered to by the entire construction work force.

Section 19. Existing Vegetation

- a. As far as is practicable, the existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage. Trees shall not be used as anchors for stabilizing working equipment.
- b. Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated, and the vegetation established, as soon as practicable. Ivy shall not be used as a ground cover for erosion control purposes.
- c. Work in areas with one or more trees (having a diameter of six or more inches at a height of 4 1/2 feet) shall be subject to the applicable standards and requirements of Section 4.600 of the Wilsonville Code.

Section 20. Contaminated Soils

In the event the construction process reveals soils contaminated with hazardous materials or chemicals, the Contractor shall stop work immediately, ensure no contaminated material is hauled from the site, remove his/her work force from the immediate area of the contamination, leaving all machinery and equipment, and

secure the area from access by the public until such a time as a mitigation team has relieved them of that responsibility. Contractor shall immediately notify the City and an emergency response team of the situation upon its discovery.

Section 21. Underground Utilities (exposed areas)

Utilities that are otherwise located under ground, but which are visible where they cross swales, channels, or other intermittent low spots, shall be considered to be underground utilities, as the term is used in this ordinance.

Section 22. Enforcement

Failure to comply with any provision of this Chapter or with any condition of a Permit, shall be deemed a violation of this ordinance and subject to enforcement action pursuant to applicable City ordinance.

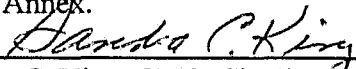
Section 23. Severability

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 24. Emergency Enactment.

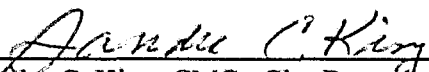
The matters herein concern the public health, safety and welfare, and in consideration that the construction season has commenced, and in view of prevailing economic conditions, an emergency is declared to exist and this Ordinance shall take effect immediately upon its adoption by the City Council.

SUBMITTED to the Wilsonville City Council and read for the first and second time at a regular meeting thereof on the 21st day of April, 1997, commencing at the hour of 7 p.m. at the Community Development Annex.



Sandra C. King, CMC, City Recorder

ENACTED by the City Council on the 21st day of April, 1997, by the following votes: YEAS: -5- Nays: -0-



Sandra C. King, CMC, City Recorder

DATED and signed by the Mayor this 22nd day of April, 1997.



CHARLOTTE LEHAN, Mayor

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor MacDonald	Yes
Councilor Luper	Yes
Councilor Helser	Yes
Councilor Barton	Yes