

ORDINANCE #16-19

REPEALING AND RECREATING CHAPTER 42-  
CONSTRUCTION SITE EROSION CONTROL ZONING

WHEREAS, the Common Council of the City of De Pere, having reviewed the recommendation of the City Plan Commission regarding the repeal and recreation of De Pere Municipal Code Chapter 42 - Construction Site Erosion Control Zoning regulation under Wis. Stats. §62.234 and having scheduled a public hearing then to be decided by the Common Council; and

WHEREAS, the City Clerk-Treasurer, having published a Class 2 Notice of Public Hearing regarding such proposed repeal and recreation, and pursuant thereto, a public hearing having been held on the 20<sup>th</sup> day of September, 2016 at 7:35 p.m. and the Common Council having heard all interested parties or their agents and attorneys;

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF DE PERE,  
WISCONSIN, DO ORDAIN AS FOLLOWS:

Section 1. Chapter 42-Construction Site Erosion Control Zoning, is hereby repealed and recreated as follows:

**Sec. 42-1. - Authority.**

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

**Sec. 42-2. - 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 De Pere.

**Sec. 42-3. - Purpose.**

It is the purpose of this chapter to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion and sediment discharge; 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 De Pere.

**Sec. 42-4. - Applicability and jurisdiction.**

(a) Applicability.

- (1) Except as provided under subsection (2), this chapter applies to the following land disturbing construction activities site as defined under Sec. 42-5:
- (2) This chapter does not apply to the following:
  - a. Transportation facilities, except transportation facility construction projects that are part of a larger common plan of development such as local roads within a residential or industrial development.
  - b. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under chapter 40, Code of Federal Regulations, part 122, for land disturbing construction activity.
  - c. Nonpoint discharges from agricultural activity (facilities and practices).
  - d. Nonpoint discharges from silviculture activities.
  - e. Routine maintenance for project sites that have less than 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
- (3) Notwithstanding the applicability requirements in paragraph (1), this chapter applies to construction sites of any size that, as determined by the building inspector, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, or that increases water pollution by scouring or the transportation of particulate.

(b) Jurisdiction.

This chapter applies to land disturbing construction activities on lands within the boundaries and jurisdiction of the City of De Pere, as well as the extraterritorial division of land subject to an ordinance enacted pursuant to Wis. Stats. § 236.45(2) and (3).

(c) Exclusions.

This chapter is not applicable to activities conducted by a state agency, as defined under Wis. Stats. § 227.01 (1).

## **Sec. 42-5. - Definitions.**

“Administering authority” means the city building inspector or designee, empowered under Wis. Stats. § 62.234, designated by the City of De Pere to administer this ordinance.

“Agricultural facilities and practices” has the meaning in Wis. Stats. § 281.16(1), as may be amended from time to time.

“Best management practice” or “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.

“Business day” means a day the office of the building inspector is routinely and customarily open for business.

“Cease and desist order” means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the building inspector.

“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 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 long-range planning document that describes separate construction projects, such as a 20-year transportation improvement plan, is not a common plan of development.

“Design storm” means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.

“Division of land” means the creation from one or more parcels or building sites of additional parcels or building sites each in an area where such creation occurs at one time or through the successive partition within a five year period.

“Erosion” means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.

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

“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.

“Final stabilization” means that all land disturbing construction activities at the construction site have been completed and that 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.

“Governing body” means the Common Council of the City of De Pere.

“Land disturbing construction activity” means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

“Landowner” means any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of storm water BMPs on the property.

“Maximum Extent Practicable” or “MEP” means the highest level of performance that is achievable but is not equivalent to a performance standard identified in this chapter as determined in accordance with 42-6 of this ordinance.

“Performance standard” means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

“Permit” means a written authorization made by the building inspector to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

“Pollutant” has the meaning given in Wis. Stats. § 283.01 (13).

“Pollution” has the meaning given in Wis. Stats. § 281.01 (10).

“Responsible party” means the landowner or any other entity performing services to meet the requirements of this chapter through a contract or other agreement.

“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.

“Sediment” means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

“Silviculture activity” 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.

“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.

“Stop-work order” means an order issued by the building inspector which requires that all construction activity on the site be stopped.

“Technical standard” means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

“Transportation facility” means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements under Wis. Stats. § 85.095(1)(b). “Transportation facility” does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Department pursuant to Wis. Stats. § 281.33.

“Waters of the state” includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

#### **Sec. 42-6. – Applicability of maximum extent practicable.**

Maximum extent practicable applies when a person who is subject to a performance standard of this chapter demonstrates to the building inspector’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 that a level of performance different from the performance standard is the maximum extent practicable, the responsible party 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.

#### **Sec. 42-7. - Technical standards.**

- (a) All BMPs required for compliance with this chapter shall meet the design criteria, standards and specifications based on any of the following:
  - (1) 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.

- (2) Soil loss prediction tools (such as the Universal Soil Loss Equation (USLE)) when using an appropriate rainfall or runoff factor (also referred to as the R factor) or an appropriate design storm and precipitation distribution, and when considering the geographic location of the site and the period of disturbance.
- (3) Technical standards and methods approved by the building inspector.

**Sec. 42-8. - Performance standards for construction sites under one acre.**

- (a) Responsible party. The responsible party shall comply with this section.
- (b) Erosion and sediment control practices. Erosion and sediment control practices at each site where land disturbing construction activity is to occur 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 on-site storm water inlets.
  - (3) The discharge of sediment from disturbed areas into adjacent waters of 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.
  - (7) The transport by runoff into waters of the state of chemicals, cements, and other building compounds and materials on the construction site 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 subdivision.
- (c) Location. The BMPs shall be located so that treatment occurs prior to runoff entering waters of the state.
- (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 constructive 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.

**Sec. 42-9. – Performance standards for construction sites of one acre or more.**

- (a) Responsible party. The responsible party shall comply with this section and implement the erosion and sediment control plan developed in accordance with Sec. 42-11.
- (b) Erosion and sediment control plan. A written site-specific erosion and sediment control plan shall be developed in accordance with Sec. 42-11 of this chapter and implemented for each construction site.
- (c) Erosion and other pollutant control requirements. The erosion and sediment control plan requires under sub. (b) shall include the following:
  - (1) Erosion and sediment control practices. Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used 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 on-site 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 seven (7) days.
  - g. The discharge of sediment from erosive flows at outlets and in downstream channels.
  - h. The transport by runoff into waters of the state of chemicals, cement, and other building compounds and materials on the construction site 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 subdivision.
  - i. The transport by runoff into waters of the state of untreated wash water from vehicle and wheel washing.
- (2) Sediment performance standards. In addition to the erosion and sediment control practices under par. (1), the following erosion and sediment control practices shall be employed:
- a. BMPs that, by design, discharge no more than five (5) tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization.
  - b. No person shall be required to employ more BMPs than are needed to meet a performance standard in order to comply with maximum extent practicable. Erosion and sediment control BMPs may be combined to meet the requirements of this paragraph. Credit may be given toward meeting the sediment performance standard of this paragraph for limiting the duration or area, or both, of land disturbing construction activity, or for other appropriate mechanisms.
  - c. Notwithstanding sub. a., if BMPs cannot be designed and implemented to meet the sediment performance standard, the erosion and sediment control 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 maximum extent practicable.
- (3) Preventative measures. The erosion and sediment control plan shall incorporate all of the following:
- 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 percent or more.
  - d. Development of spill prevention and response procedures.
- (4) Location. The BMPs used to comply with this section shall be located so that treatment occurs before runoff enters waters of the state.
- (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 in accordance with the erosion and sediment control plan developed in Sec. 42-9(b).
  - (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.

**Sec. 42-10. - Permitting requirements; procedures and fees.**

- (a) Permit required. No responsible party may commence a land disturbing construction activity subject to this chapter without receiving prior approval of an erosion and sediment control plan for the site and a permit from the building inspector.
- (b) Permit application and fees. At least one responsible party desiring to undertake a land disturbing construction activity subject to this chapter shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of section 42-11 and shall pay an application fee to the building inspector in an amount to be determined by resolution of the common council. By submitting an application, the applicant is authorizing the building inspector to enter the site to obtain information required for the review of the erosion and sediment control plan.
- (c) Permit application review and approval. The building inspector shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:
  - (1) Within 20 business days of the receipt of a complete permit application, required by subsection (b), the building inspector shall inform the applicant whether the application and erosion and sediment control plan are approved or disapproved based on the requirements of this chapter.
  - (2) If the permit application and erosion and sediment control plan are approved, the building inspector shall issue the permit.
  - (3) If the permit application or erosion and sediment control plan is disapproved, the building inspector shall state in writing the reasons for disapproval.
  - (4) The building inspector may request additional information from the applicant. If additional information is submitted, the building inspector shall have 20 business days from the date the additional information is received to inform the applicant that the erosion and sediment control plan is either approved or disapproved.
  - (5) Failure by the building inspector 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.
- (d) Surety bond. As a condition of approval and issuance of the permit, the building inspector may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion and sediment control plan and any permit conditions.
- (e) Permit requirements. All permits shall require the responsible party to:
  - (1) Notify the building inspector within 48 hours of commencing any land disturbing construction activity.
  - (2) Notify the building inspector of completion of any BMPs within 14 business days after their installation.
  - (3) Obtain permission in writing from the building inspector prior to any modification pursuant to subsection 42-11(c) of the erosion and sediment control plan.
  - (4) Install all BMPs as identified in the approved erosion and sediment control plan.
  - (5) Maintain all road drainage systems, storm water drainage systems, BMPs and other facilities identified in the erosion and sediment control plan.

- (6) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in a site inspection log.
- (7) Inspect the BMPs within 24 hours after each rain of 0.5 inches or more which results in runoff during active construction periods, and at least once each week. Make needed repairs and install additional BMPs as necessary, and document these activities in an inspection log that also includes the date of inspection, the name of individual who performed the inspection and a description of the present phase of the construction at the site.
- (8) Allow the building inspector 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 erosion and sediment control plan. Keep a copy of the erosion and sediment control plan at the construction site.
- (9) The permit applicant shall post the "certificate of permit coverage" in a conspicuous location at the construction site.
- (f) Permit conditions. Permits issued under this section may include conditions established by building inspector in addition to the requirements set forth in subsection (e), where needed to assure compliance with the performance standards in section 42-8 or 42-9.
- (g) 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 building inspector may grant one or more extensions not to exceed 180 days cumulatively. The building inspector may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this chapter.
- (h) Maintenance. The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this chapter until the site has undergone final stabilization.

**Sec. 42-11. - Erosion and sediment control plan, statement and amendments.**

- (a) Erosion and sediment control plan statement. For each construction site identified under subsection 42-4 (a)(3), an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the building inspector. The erosion and sediment control plan statement shall briefly describe the site, the development schedule, and the BMPs that will be used to meet the requirements of the chapter. A site map shall also accompany the erosion and sediment control plan statement.
- (b) Erosion and sediment control plan requirements.
  - (1) An erosion and sediment control plan shall be prepared and submitted to the building inspector.
  - (2) The erosion and sediment control plan shall be designed to meet the performance standards in Sec. 42-8, Sec. 42-9 and other requirements of this ordinance.
  - (3) The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:
    - a. Name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm. The application shall also include start and end dates for construction.
    - b. Description of the construction site and the nature of the land disturbing construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5 minute series topographic map.
    - c. Description of the intended sequence of major land disturbing construction activities for major portions of the construction site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping.



Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.

- d. Estimates of the total area of the construction site and the total area of the construction site that is expected to be disturbed by land disturbing construction activities.
  - e. Calculations to show the compliance with the performance standard in Sec. 42-9(c)(2) a.
  - f. Existing data describing the surface soil as well as subsoils.
  - g. Depth to groundwater, as indicated by Natural Resources Conservation Service soil information where available.
  - h. Name of the immediate named receiving water from the United States Geological Service 7.5 minute series topographic maps.
- (4) The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than 100 feet per inch and at a contour interval not to exceed five (5) feet.
- a. Existing topography, vegetative cover, natural and engineered drainage systems, roads and surface waters. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site shall be shown. Any identified 100-year flood plains, flood fringes and floodways shall also be shown.
  - b. Boundaries of the construction site.
  - c. Drainage patterns and approximate slopes anticipated after major grading activities.
  - d. Areas of soil disturbance.
  - e. Location of major structural and non-structural controls identified in the erosion and sediment control plan.
  - f. Location of areas where stabilization BMPs will be employed.
  - g. Areas which will be vegetated following land disturbing construction activities.
  - h. Area(s) and location(s) of wetland on the construction site, and locations where storm water is discharged to a surface water or wetland within one-quarter mile downstream of the construction site.
  - i. Area(s) used for infiltration of post-construction storm water runoff.
  - j. An alphanumeric or equivalent grid overlying the entire construction site map.
- (5) Each erosion and sediment control plan shall include a description of appropriate control BMPs that will be installed and maintained at the construction site to prevent pollutants from reaching waters of the state. The erosion and sediment control plan shall clearly describe the appropriate erosion and sediment control BMPs for each major land disturbing construction activity and the timing during the period of land disturbing construction activity that the erosion and sediment control BMPs will be implemented. The description of erosion and sediment control BMPs shall include, when appropriate, the following minimum requirements:
- a. Description of interim and permanent stabilization practices, including a BMP implementation schedule. The erosion and sediment control plan shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.
  - b. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the building inspector, structural measures shall be installed on upland soils.

- c. Management of overland flow at all areas of the construction site, unless otherwise controlled by outfall controls.
  - d. Trapping of sediment in channelized flow.
  - e. Staging land disturbing construction activities to limit exposed soil areas subject to erosion.
  - f. Protection of downslope drainage inlets where they occur.
  - g. Minimization of tracking at all vehicle and equipment entry and exit locations of the construction site.
  - h. Clean up of off-site sediment deposits.
  - i. Proper disposal of building and waste material.
  - j. Stabilization of drainage ways.
  - k. Installation of permanent stabilization practices as soon as possible after final grading.
  - l. Minimization of dust to the maximum extent practicable.
- (6) The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

Note to users: The erosion and sediment plan requirements of this subsection will meet the erosion control plan requirements of § NR 216.46, Wis. Adm. Code, when prepared in accordance with good engineering practices and the design criteria, standards and specifications published by the Wisconsin Department of Natural Resources under subchapter V of ch. NR 151, Wis. Adm. Code.

- (c) Erosion and sediment control plan amendments. The applicant shall amend the erosion and sediment control plan if any of the following occur:
- (1) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the erosion and sediment control plan.
  - (2) The actions required by the erosion and sediment control plan fail to reduce the impacts of pollutants carried by construction site runoff.
  - (3) The building inspector notifies the applicant of changes needed in the erosion and sediment control plan.

**Sec. 42-12. - Fee schedule.**

The fees referred to in other sections of this chapter shall be established by resolution of the common council and may from time to time be modified. A schedule of the fees established by the common council shall be available for review in the building inspection office.

**Sec. 42-13. - Inspection.**

If land disturbing construction activities are being carried out without a permit required by this chapter, the building inspector may enter the land pursuant to the provisions of Wis. Stats. §§ 66.0119(1), (2), and (3).

**Sec. 42-14. - Enforcement.**

- (a) The building inspector may post a stop-work order if any of the following occurs:
- (1) Any land disturbing construction activity regulated under this chapter is occurring without a permit;

- (2) The erosion and sediment control plan is not being implemented in a good faith manner;
  - (3) The conditions of the permit are not being met.
- (b) 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 building inspector may revoke the permit.
  - (c) If the responsible party, where no permit has been issued or the permit has been revoked, does not cease the activity after being notified by the building inspector, or if a responsible party violates a stop-work order posted under subsection (a) of this section, the building inspector may request the city attorney to obtain a cease and desist order in any court with jurisdiction.
  - (d) The board of appeals may retract the stop-work order issued under subsection (a) or the permit revocation under subsection (b) of this section.
  - (e) After posting a stop-work order under subsection (a), the building inspector may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this chapter. The building inspector may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this subsection by the building inspector, plus interest at the rate authorized by the common council, shall be billed to the responsible party. 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 Wis. Stats. ch. 66., subch. VII.
  - (f) Any person violating any of the provisions of this chapter shall be subject to a forfeiture of not less than \$200.00 nor more than \$1,000.00 and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.
  - (g) Compliance with the provisions of this chapter 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 injunctive proceedings.

**Sec. 42-15. - Appeals.**

- (a) Board of appeals. The board of appeals created pursuant to Sec. 14-21 of the city's ordinance pursuant to Wis. Stats. § 62.23(7)(e):
  - (1) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the building inspector in administering this chapter except for cease and desist orders obtained under subsection 42-14(c).
  - (2) May authorize, upon appeal, variances from the provisions of this chapter which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of this chapter will result in unnecessary hardship; and
  - (3) Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- (b) Who may appeal. Appeals to the board of appeals may be taken by any aggrieved person or by any office, department, board, or bureau of the city affected by any decision of the building inspector.

**Sec. 42-16. - Severability.**

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

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. This ordinance shall take effect upon its passage and publication.

Adopted by the Common Council of the City of De Pere, Wisconsin, this 20th day of September, 2016.

APPROVED:

---

Michael J. Walsh, Mayor

ATTEST:

---

Shana D. Ledvina, Clerk-Treasurer

Ayes: 8

Nays: 0

Board/Committee Approval: 08/22/16

Publication Date: 9/23/16

Effective Date: 9/23/16