

045

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

The 21st day of May, 2018.

No. 41142-052118.

AN ORDINANCE amending and reordaining the Code of the City of Roanoke (1979), as amended, by repealing Chapter 11.1, Erosion and Sediment Control, and adopting a new Chapter 11.7, Erosion and Sediment Control, a comprehensive revision of the erosion and sediment control regulations of the City; and dispensing with the second reading of this ordinance by title.

THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke as follows:

1. Chapter 11.1, Erosion and Sediment Control, consisting of Sections 11.1-1 through 11.1-16, of the Code of the City of Roanoke (1979), as amended, is hereby REPEALED.
2. The Code of the City of Roanoke (1979), as amended, is amended and reordained by the addition of a new Chapter 11.7, Erosion and Sediment Control, consisting of Sections 11.7-1 through 11.7-10, to read and provide as follows:

Chapter 11.7. Erosion and Sediment Control.

Sec. 11.7-1. Purpose of chapter.

The purpose of this chapter is to prevent degradation of properties, stream channels, waters, and other natural resources of the City by establishing requirements for the control of soil erosion, sediment deposition and non-agricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.

Sec. 11.7-2. Definitions.

As used in this chapter, unless the context requires a different meaning, the following terms shall have the following meanings:

“Agreement in lieu of a plan” means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence. The agreement may be executed by the plan-approving authority in lieu of a formal site plan.

“Applicant” means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

“Certified inspector” means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

“Certified plan reviewer” means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board’s training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect, land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1, or professional soil scientist as defined in § 54.1-2200.

“Certified program administrator” means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board’s training program for program administration and successfully completes such program within one year after enrollment.

“Department” means the Department of Environmental Quality.

“Director” means the Director of the Department of Environmental Quality.

“District” or “soil and water conservation district” means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1.

“Erosion and sediment control plan” or “plan” means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

“Erosion impact area” means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of ten thousand (10,000) square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

“Land-disturbing activity” means any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the land-disturbing activity shall not include:

- (a) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (b) Individual service connections;
- (c) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard-surfaced;
- (d) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- (e) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1 of the Code of Virginia;
- (f) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Section 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Section 10.1-1163;
- (g) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
- (h) Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Section 10.1-604 et seq. of the Code of Virginia), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;

- (i) Disturbed land areas of less than two thousand five hundred (2,500) square feet in size, but not including disturbed land areas of less than two thousand five hundred (2,500) square feet associated with the construction of any type of dwelling;
- (j) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles; and
- (k) Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of this chapter.

“Natural channel design concepts” means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

“Owner” means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

“Peak flow rate” means the maximum instantaneous flow from a given storm condition at a particular location.

“Permittee” means the person to whom the local permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

“Person” means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

“Runoff volume” means the volume of water that runs off the land development project from a prescribed storm event.

“Virginia Erosion and Sediment Control Program authority” or “VESCP” means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit

requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.

“Water quality volume” means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

Sec. 11.7-3. Local erosion and sediment control program and regulations.

Pursuant to Section 62.1-44.15:54 of the Code of Virginia, the City hereby establishes a VESCP program and adopts the regulations promulgated by the Virginia Department of Environmental Quality for the effective control of soil erosion and sediment depositing to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources, and the Virginia Erosion & Sediment Control Handbook, third edition.

Sec. 11.7-4. Timing of approvals; applicable regulations.

(a) Plans approved prior to July 1, 2014. In accordance with Section 62.1-44.15:52 of the Code of Virginia, any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over forty-eight (48) hours; (ii) detain and release over a twenty-four-hour (24-hour) period the expected rainfall resulting from the one-year, twenty-four-hour (24-hour) storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, twenty-four-hour (24-hour) storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with water quantity requirements specified in Section 62.1-44.15:24, et seq., of the Code of Virginia and 9VAC25-870-66 of the Virginia Stormwater Management Program regulations, unless such land-disturbing activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program regulations.

Sec. 11.7-5. Plan-approving authority.

- (a) Pursuant to Section 62.1-44.15:53 of the Code of Virginia, an erosion and sediment control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The Erosion Control Program of the City shall employ a person or persons to be a certified program administrator, a certified plan reviewer, and a certified inspector.
- (b) The director of the Department of Planning, Building, and Development shall designate a Program Administrator for all land-disturbing activities in the City of Roanoke, unless exempted or otherwise regulated. The Program Administrator shall have plan-approving authority and inspection authority and may delegate such authorities to appropriately certified staff.

Sec. 11.7-6. Plan requirements.

- (a) Except as provided herein, no person may engage in any land-disturbing activity until an erosion and sediment control plan for the land-disturbing activity has been submitted to the Program Administrator and has been approved by the Program Administrator. No approval to begin a land disturbing activity will be issued unless evidence of state permit coverage is obtained where it is required.
- (b) Required contents for an erosion and sediment control plan and required certification of the plan preparer shall be as set forth below:
 - (1) Where the land disturbance involves the construction of any single-family dwelling and such disturbed area is less than ten thousand (10,000) square feet:
 - (i) The plan shall consist of an agreement in lieu of a plan, such agreement to be supplied by the Department of Planning, Building and Development.
 - (ii) When the agreement in lieu of a plan form is submitted with a building and zoning permit application, it shall be considered as an executed agreement between the owner and the City when the building and zoning permit is issued. The Program Administrator may impose additional requirements as a condition of approval or as field changes require once the project is underway.
 - (2) Where the disturbed area is two thousand five hundred (2,500) square feet or more, but less than ten thousand (10,000) square feet:
 - (i) The plan shall consist of a site plan demonstrating compliance with 9VAC25-840-40, Minimum Standards

1 through 18. The Program Administrator may require documentation of compliance with Minimum Standard 19, if the Program Administrator determines that a proposed conveyance or downstream channel is inadequate based on documented flooding issues, or the proposed work could impede flow causing upstream flooding.

- (ii) The plan shall be prepared by a certified responsible land disturber, a certified landscape architect, or a professional engineer.
 - (iii) Exception – the Program Administrator may allow an agreement in lieu of a plan for temporary activities, such as a construction laydown area, when the area of disturbance will be restored by a permanent seeding, or by permanent seeding or restoration to its original established condition if the existing condition is not a lawn or yard
- (3) Where the disturbed area is ten thousand (10,000) square feet or more:
- (i) The plan shall consist of a site plan and narrative demonstrating compliance with 9VAC25-840-40, Minimum standards 1 through 19.
 - (ii) The plan shall be prepared by a certified landscape architect or a professional engineer.
 - (iii) When an erosion and sediment control plan or agreement in lieu of a plan is required, it shall be incorporated into the basic development plan or comprehensive development plan required by Chapter 36.2, Zoning, of the City Code, or into a subdivision site plan required by Chapter 31.1, Subdivisions, of the City Code. The review of such plan or agreement shall occur within sixty (60) days of their submittal, or such review time frames as set out for such plans in Chapters 31.1, Subdivisions, and 36.2, Zoning of the City Code, whichever is shorter.
 - (iv) The standards contained within the Virginia Erosion and Sediment Control Regulations and the Virginia Erosion and Sediment Control Handbook, as amended, are to be used by the applicant when making a submittal under the provisions of this chapter and in the preparation of an erosion and sediment control plan. The Program Administrator, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines.

When the standards vary between the publications, the State regulations shall take precedence.

- (c) The Program Administrator shall review erosion and sediment control plans submitted to the City and grant written approval if the Program Administrator determines that the plan meets the requirements of Sections 62.1-44.15:51 through Section 62.1-44.15:65 of the Code of Virginia and the regulations promulgated by the Virginia Department of Environmental Quality, and if the person responsible for carrying out the plan certifies that such person will properly perform the measures included in the plan and will conform to the provisions of this chapter. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of the responsible land disturber, to the program authority, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of the responsible land disturber, prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this chapter.
- (1) When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant. The notice shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within forty-five (45) days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.
- (2) The Program Administrator shall approve or disapprove any erosion and sediment control plan that has been previously disapproved within twelve (12) business days after the plan has been revised and resubmitted.
- (d) The Program Administrator shall approve the plan when it is determined that the plan meets the requirements of Sections 62.1-44.15:51 through Section 62.1-44.15:65 of the Code of Virginia and the regulations promulgated by the Virginia Department of Environmental Quality and the applicant certifies on the plan that such applicant will properly perform the measures included in the plan and will conform to the provisions of this chapter.
- (e) Once a land disturbing permit has been issued, the Program Administrator may require changes to an approved plan if an inspection reveals that the plan is inadequate to satisfy applicable regulations, or if the permittee finds that the approved plan cannot be effectively carried out because of changed circumstances or for other reasons. Any proposed amendments

to the plan shall be consistent with the requirements of this chapter and agreed to by the Program Administrator and the permittees.

- (f) Variances: The Program Administrator may waive or modify any of the standards that are deemed to be inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:
1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the Program Administrator shall be documented in the plan.
 2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the Program Administrator. The Program Administrator shall respond in writing either approving or disapproving such a request. If the Program Administrator does not approve a variance within ten (10) days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.
 3. The Program Administrator shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.
- (g) In order to prevent further erosion, the Program Administrator may require approval of a plan for any land identified in the local program as an erosion impact area.
- (h) When a land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.
- (i) In accordance with the procedure set forth in Section 62.1-44.15:55 (E) of the Code of Virginia, any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetland mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Virginia Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for

wetland mitigation or stream restoration banks annually with the Virginia State Water Control Board for review and approval consistent with guidelines established by the Virginia State Water Control Board. Approval of general erosion and sediment control specifications does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.

- (j) State agency and Federal entity projects are exempt from the provisions of this chapter except as provided for in Section 62.1-44.15:56 of the Code of Virginia.

Sec. 11.7-7. Permits; fees; security for performance.

- (a) The Program Administrator shall issue a land disturbing permit when the applicant meets the following conditions:
- (1) A plan or an agreement in lieu of a plan has been approved by the Program Administrator.
 - (2) The applicant submits to the Program Administrator certification that the plan will be followed and evidence of state permit coverage where it is required.
 - (3) The applicant has provided the name of the certified responsible land disturber who will be in charge of and responsible for carrying out the land-disturbing activity. The Program Administrator may waive the requirement for a certified responsible land disturber for any project disturbing less than ten thousand (10,000) square feet of area. However, if a violation occurs during the land-disturbing activity, then the person responsible for carrying out the plan shall correct the violation and the Program Administrator may require a certified responsible land disturber to be identified.
 - (4) All applicable fees have been paid. The schedule of fees and charges shall be as set forth in the fee compendium of the City as adopted and amended from time to time by City Council. Such fees and charges shall be paid (a) in full upon application, or (b) pursuant to the deferred payment program set forth in Section 2-178.2 of the City Code.
 - (5) Where the estimated cost for initiating and maintaining appropriate erosion and sediment control measures is five thousand dollars (\$5,000) or more, the applicant shall provide to the Program Administrator a cash escrow or an irrevocable letter of credit, or insurance bond acceptable to the City to ensure that measures

could be taken by the City, or on behalf of the City, at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of the applicant by the approved plan as a result of the applicant's land-disturbing activity.

The amount of the performance guarantee shall not exceed the total of the estimated cost to initiate and maintain appropriate erosion and sediment control measures based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed ten percent (10%) of the cost of the measures. Should it be necessary for the City to install erosion and sediment control measure, the City may collect from the permittee any costs in excess of the amount of the performance guarantee held.

Within sixty (60) days of adequate stabilization, as determined by the Program Administrator, in any project or section of a project, such performance guarantee or the unexpended or unobligated portion thereof, shall either be refunded to the permittee or be terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

Sec. 11.7-8. Monitoring, reports, and inspections.

- (a) The responsible land disturber shall be in charge of and responsible for carrying out the land-disturbing activity and provide for periodic inspections of the land-disturbing activity. The Program Administrator may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
- (b) The Program Administrator shall periodically inspect the land-disturbing activity in accordance with 9VAC25-840-60 of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.

If the Program Administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person

responsible for carrying out the plan by mailing with confirmation of delivery to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be subject to the penalties provided by this chapter.

- (c) Upon issuance of an inspection report denoting a violation of Sections 62.1-44.15:55 and 62.1-44.15:56 of the Code of Virginia, the Program Administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan, the Program Administrator may issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the alleged violator has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the alleged violator has failed to comply with such a notice to comply.

The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven (7) days from the date of service pending application by the City or permit holder for appropriate relief to the Roanoke City Circuit Court. The City shall serve such order for disturbance without an approved plan or permits upon the owner by mailing with confirmation of delivery to the address specified in the land records. Said order shall be posted on the site where the disturbance is occurring, and shall remain in effect until permits and plan approvals are secured, except in such situations where an agricultural exemption applies.

If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of the order, the Program Administrator may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been

obtained. Such an order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the permit application or the land records of the City.

The owner may appeal the issuance of an order to the Roanoke City Circuit Court.

Any person violating or failing, neglecting or refusing to obey an order issued by the Program Administrator may be compelled in a proceeding instituted in the Roanoke City Circuit Court to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

Nothing in this section shall prevent the Program Administrator from taking any other action authorized by this chapter.

Sec. 11.7-9. Penalties, injunctions, and other legal actions.

- (a) Violators of this ordinance shall be guilty of a Class I misdemeanor.
- (b) Any person who violates any provision of Sections 62.1-44.15:55 or 62.1-44.15:56 of the Code of Virginia shall, upon a finding of the Roanoke City General District Court, be assessed a civil penalty. The civil penalty for any one violation shall be not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000), except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be one thousand dollars (\$1,000). Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of ten thousand dollars (\$10,000), except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of ten thousand dollars (\$10,000). Any such civil penalties shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of Section 62.1-44.15:63 of the Code of Virginia.
- (c) The Program Administrator, or the owner or property which has sustained damage or which is in imminent danger of being damaged, may apply to the Roanoke City Circuit Court to enjoin a violation or a threatened violation of Sections 62.1-44.15:55 or 62.1-44.15:56 of the Code of Virginia, without the necessity of showing that an adequate remedy at law does not exist.

However, an owner of property shall not apply for injunctive relief unless such owner has notified in writing the person who has violated the local program, and the Program Administrator, that a violation of the local program has caused, or creates a probability of causing, damage to such owner's property, and neither the person who has violated the local program nor the program authority has taken corrective action within fifteen (15) days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

- (d) In addition to any criminal or civil penalties provided under this ordinance, any person who violates any provision of Sections 62.1-44.15:55 through 62.1-44.15:65 of the Code of Virginia may be liable to the City in a civil action for damages.
- (e) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$2,000) for each violation. A civil action for such violation or failure may be brought by the City.

Any civil penalties assessed by a court shall be paid into the treasury of the City, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

- (f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, or order of the Program Administrator, the City may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection e of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsections b or e of this section.
- (g) The Commonwealth's Attorney shall, upon request of the City, take legal action to enforce the provisions of this chapter.
- (h) Compliance with the provisions of this ordinance shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

Sec. 11.7-10. Appeals and judicial review.

- (a) Final decisions of the Program Administrator under this chapter shall be subject to review by the Roanoke City Circuit Court, provided an appeal is

filed within thirty (30) days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

3. This ordinance will become effective immediately upon adoption.

4. Pursuant to the provisions of Section 12 of the City Charter, the second reading of this ordinance by title is hereby dispensed with.

ATTEST:


Asst. Deputy City Clerk.