

ORDINANCE NO. 3877

ORDINANCE AMENDING CHAPTER 7, ARTICLE XVIII, OF THE UNIFIED
DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF
ASHEVILLE PERTAINING TO ENFORCEMENT

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1: Section 7-18-2 (b)(2)(*Soil erosion and sedimentation control*) of Chapter 7 of the Unified Development Regulations of the Code of Ordinances of the City of Asheville is hereby repealed in its entirety and a new section 7-18-2 (b)(2) is inserted as follows:

Sec. 7-18-2(b) (2). *Stormwater Control, Soil Erosion and Sedimentation Control, Illicit Discharge and Connection.*

a. *Violation of soil erosion and sedimentation regulations:* Any person who violates any of the provisions of the soil erosion and sedimentation control requirements of section 7-12-2 and/or who initiates a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

b. *Violation of stormwater control, illicit discharge and connection regulations:* Any person who violates the stormwater control, illicit discharge and connection regulations of section 7-12-2, shall be subject to a civil penalty. The maximum civil penalty for a violation is twenty-five thousand dollars (\$25,000); however, for a continuing violation the maximum per day per violation penalty shall be ten thousand dollars (\$10,000), unless a civil penalty has been imposed against the violator within the five years preceding the current violation. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

c. *Assessment of Penalty:* The amount of the civil penalty shall initially be determined and assessed by the Stormwater Administrator in strict accordance with the table of penalties as set forth herein.

| Table of Penalties | | | | | | | | | | |
|--|--|--|---|---|--|---|---|---|--|---|
| Erosion and Sediment Control | | | | | | | | | | |
| | Grading without permit | Site/Plan not in accordance with approved plan | Failure to maintain erosion control measures | Offsite Sedimentation | Buffer zone violation | Graded slopes or fills not in compliance | Lack of ground cover | Improper fill material | Failure to file/falsification of inspection report | Other Violations of Erosion and Sediment Laws |
| Immediate Fine | \$100 per 2,000 SF disturbed max of \$5,000 NOV Issued | NOV Issued | NOV Issued | Slight-\$0 - \$500 Moderate \$501-\$2000 Severe \$2001 - \$5000 NOV Issued | \$100 per 5 SF disturbed, max of \$5,000, NOV Issued | NOV Issued | NOV Issued | NOV Issued | \$2000 for falsification of report | Possible \$0-\$5000 |
| On Going Violation (Failure to Comply with NOV) | Per day penalty equal to or greater than immediate penalty | \$500 per measure not installed correctly or \$1000 per measure not installed, max of \$5000 (every 100 L.F. of silt fence or diversion shall be counted as 1 measure) | \$500 per measure not maintained correctly, max of \$5000 (every 100 L.F. of silt fence or diversion shall be counted as 1 measure) | Per day penalty equal to or greater than immediate penalty | Per day penalty equal to or greater than immediate penalty | \$100 per 100 SF not compliant max of \$5,000 | \$100 per 100 SF not compliant max of \$5,000 | \$0-\$5000 (To be based on amount of improper fill and possible hazard for failure or leeching of pollutants) | \$200 per reporting period for each report not filed | Possible \$0-\$5000 |

d. *Guidelines for Penalty Assessment:* In determining the amount of the penalty to assess, the Stormwater Administrator shall be guided by the following:

1. *Soil erosion and sedimentation regulation:* The Stormwater Administrator shall be guided by the degree and harm caused by the violation; the cost of rectifying damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with referenced subsection.

2. *Stormwater control, illicit discharge and connection regulations:* The Stormwater Administrator shall be guided by the degree and extent of harm to the natural resources of the City, to the public health, or to private property resulting from the violation; the duration and gravity of the violation; the effect on ground or surface water quantity or quality or on air quality; the cost of rectifying the damage; the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with referenced subsection.

e. *Notice of Civil Penalty Assessment:* The Stormwater Administrator shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment in writing, within thirty (30) days after receipt of the notice of assessment.

f. *Appeal to Erosion Control Plan Review Committee:* Any aggrieved party may file an appeal of the penalty assessment made by the Stormwater Administrator to the Erosion Control Plan Review Committee (Committee) within thirty (30) days of receipt of the penalty assessment. The appeal must be submitted in writing to the Stormwater Administrator and shall specify the grounds for appeal. The Stormwater Administrator shall forthwith transmit to the Committee all documents constituting the record on which the decision appeal was taken. A hearing for the appeal shall be held within thirty (30) working days after the receipt of the written appeal. The

hearing shall be quasi-judicial with the right of the aggrieved party to have counsel present, to confront and examine witnesses and to review all documents. In the absence of an appeal to the Committee, the penalty assessment of the Stormwater Administrator shall be final. The Committee may reverse or affirm, wholly or partly, or may modify the penalty appealed from along with the associated findings made therein to support the penalty. To this end, the Committee shall have all the powers of the Stormwater Administrator from whom the appeal is taken.

g. *Appeal to Superior Court:* Every decision of the Committee shall be subject to review by the Superior Court by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the clerk of Superior Court within thirty (30) days after the decision of the Committee is filed in the office of the Stormwater Administrator or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Committee at the time of its hearing of the case, whichever is later. The decision of the Committee may be delivered to the aggrieved party either by personal service, by registered mail or certified mail returned receipt requested or by any means authorized under G.S. 1A-1, Rule 4. The appeal shall be limited to the record before the Committee.

h. *Failure to Appeal and/or Pay:* Any civil penalty assessed a person who violates the provisions of section 7-12-2 of this chapter shall be recovered by the City in a civil action in the nature of debt, to be brought in the Buncombe County Superior Court if the offender fails to give notice of timely appeal and fails to pay the penalty within the prescribed period of time after he or she has been cited for the violation.

Section 2: Section 7-18-2 (c) (Criminal Penalties) of Chapter 7 of the Unified Development regulations of the Code of Ordinances of the City of Asheville is hereby repealed in its entirety and a new section 7-18-2 (c) is inserted as follows:

(c) *Criminal penalties.*

(1) *Stormwater Control, Soil Erosion and Sedimentation Control, Illicit Discharge and Connection:* Any person, who knowingly or willfully violates provisions of section 7-12-2 of this chapter, shall be guilty of a misdemeanor, which may include a fine not to exceed \$5,000.00.

(3) *Flood protection:* Any person who violates any of the provisions of section 7-5-12 or section 7-12-1 of this chapter shall be guilty of a Class I misdemeanor. Failure to remove any artificial obstruction or enlargement or replacement thereof that violates any of the provisions of section 7-12-1 shall constitute a separate violation for each ten days that such failure continues after written notice from the city.

(4) *Subdivisions:* Any person who, being the owner or agent of the owner of any land located within the planning and regulations jurisdiction of the city, subdivides his/her land in violation of the requirements of section 7-15 of this chapter or who transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the requirements of this chapter and recorded in the Office of the Register of Deeds for Buncombe County shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer of other document used in the process of selling or transferring land shall not exempt the transaction from this penalty.

Section 3: Section 7-18-3(a) (Notice Required before Penalty) of Chapter 7 of the Unified Development Regulations of the Code of Ordinances of the City of Asheville is hereby repealed in its entirety and a new section 7-18-3 (a) is inserted as follows:

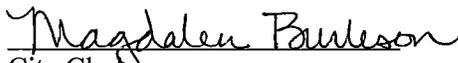
(a) *Notice required before penalty:* No penalty shall be assessed pursuant to section 7-18-2 above unless and until the person alleged to be in violation has been notified of the violation in accordance with this section. Provided however, for purposes of section 7-12-2 of this chapter, notice shall be deemed sufficient to comply with this paragraph if the notice of violation is issued simultaneously with the penalty assessment.

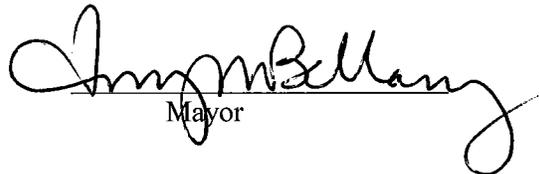
Section 4: Invalidity: That if any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 5: Conflict: That all ordinances and clauses in conflict herewith be and are hereby repealed to the extent of such conflict.

Section 6: Full force and effect. Except where herein specified, this Ordinance shall be in full force and effect upon adoption.

Read, approved and adopted this 8th day of June, 2010..


City Clerk


Mayor

Approved as to form:


City Attorney