

ORDINANCE NO. 1 - 2018 SERIES

**AN ORDINANCE AMENDING ORDINANCE NO. 6-2005 SERIES RELATING TO
EROSION PROTECTION AND SEDIMENT CONTROL IN FRANKLIN COUNTY,
KENTUCKY**

WHEREAS, The Franklin County Fiscal Court, has been identified by the Commonwealth of Kentucky and the Federal Environmental Protection Agency as a Phase 2, Stormwater community; and

WHEREAS, the aforesaid designation requires that Franklin County Fiscal Court apply for a 5-year permit from the Commonwealth of Kentucky; and

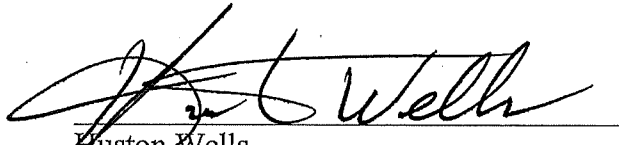
WHEREAS, one of the requirements in the 5-year permit is to prepare and adopt an Erosion Protection and Sediment Control ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF FRANKLIN, COMMONWEAL TH OF KENTUCKY, AS FOLLOWS:

The Erosion Protection and Sediment Control Ordinance, as provided for in the attached document is hereby adopted.

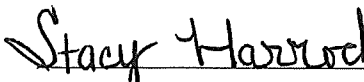
INTRODUCED AND GIVEN FIRST READING IN SUMMARY at a duly convened meeting of the Fiscal Court of Franklin County, Kentucky, held on the 14 day of December 2017.

GIVEN SECOND READING AND APPROVED at a duly convened meeting of the Fiscal Court of Franklin County, Kentucky, held on the 9 day of January 2018 and of record in Fiscal Court Order Book 28, Page 234. This Ordinance shall take effect and be in full force when passed, published and recorded according to law.



Huston Wells
Franklin County Judge/Executive

ATTESTED TO:



Stacy Harrod
Fiscal Court Clerk

**EROSION PROTECTION AND SEDIMENT CONTROL
ORDINANCE**

Franklin County

SECTION 1 - AUTHORITY

This Ordinance is adopted pursuant to the powers granted and limitations imposed by Kentucky laws, including the statutory authority granted to Kentucky cities and counties in Kentucky Revised Statutes (KRS), Chapter 67 and 100.

This Ordinance and all references made herein is adopted pursuant to the powers granted and limitations by the Federal Clean Water Act, and in particular those parts that authorize local governments to require any state or federal department or agency to comply with all local water pollution control requirements.

The Approving Agency for this chapter is the Franklin County Fiscal Court and their duly authorized designees, who are responsible for implementing all the provisions within and referenced by this chapter.

SECTION 2 - PURPOSE/SCOPE

The regulations set forth in this Ordinance are intended to protect the general health, safety, and welfare of the citizens of Franklin County, and more specifically;

1. To control or eliminate soil erosion and sedimentation resulting from land disturbing activities within Franklin County with appropriate erosion and sediment control BMPs;
2. Establish guidelines, conservation practices and planning activities which minimize adverse impacts to water quality and promote the utilization of Good Housekeeping measures that, at a minimum, are as proactive as Kentucky's General Permit for Stormwater Construction Sites;
3. Establish procedures for site-plan reviews that, at a minimum, verify compliance with local ordinances and submittal of an eNOI or NOI, and protect High Quality Waters that are being discharged into from construction sites;
4. Establish procedures for site inspections and enforcement of control measures;
5. Establish procedures for the receipt and consideration of information submitted by the public;
6. Comply with all applicable state and federal requirements for clean water, including limitations on the discharge of pollutants as set forth by the Kentucky Pollutant Discharge Elimination System (KPDES); and all applicable provisions of the Federal National Pollution Discharge Elimination System (NPDES) storm water general permit for Phase II communities.

This Ordinance controls land disturbances, soil storage, and erosion and sedimentation resulting from such activities and establishes procedures for issuance, approval, administration, and enforcement of an Erosion Protection and Sediment Control (EPSC) Permit.

SECTION 3 - DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meaning stated below:

1. *Applicant* is the landowner or developer who submits an application to Franklin County for an EPSC Permit pursuant to this ordinance.
2. *Bedrock* is in place solidrock.
3. *Bench* is a relatively level step excavated into earth material on which fill is to be placed.
4. *Best Management Practices (BMP)* is a technique or series of techniques, which are proven to be effective in controlling runoff, erosion, and sedimentation.
5. *Borrow* is earth material acquired from an off-site location for use in grading on a site.
6. *Clearing and grubbing* is the cutting and removal of trees, shrubs, bushes, windfalls and other vegetation including removal of stumps, roots, and other remains in the designated areas.
7. *Contractor* is a person who contracts with the permittee, landowner, developer, or another contractor (i.e. subcontractor) to undertake any or all the land disturbance activities covered by this Ordinance.
8. *Co-Permittee* is any person, other than the permittee, including but not limited to a developer or contractor who has or represents financial or operational control over the land disturbing activity.
9. *County Planning and Zoning Director* is Franklin County Planning and Zoning Director and his/her authorized designees.
10. *Detention facility* is a temporary or permanent natural or man made structure that provides for the temporary storage of storm water runoff.
11. *Developer* is any person, firm, corporation, sole proprietorship; partnership, state agency, or political subdivision thereof engaged in a land disturbance activity.
12. *Engineer* is a professional engineer licensed in the Commonwealth of Kentucky to practice in the field of civil works.
13. *Erosion* is the wearing away of the ground surface as a result of the movement of wind, water, ice, and/or land disturbance activities.
14. *EPSC (Erosion Protection and Sediment Control)* is the prevention of soil erosion and control of solid material during land disturbing activity to prevent its transport out of the disturbed area by means of air, water, gravity, or ice.
15. *EPSC Design Manual and Standards* is a compilation of rules, design criteria, guidelines and standards adopted by Franklin County as being proven methods of controlling construction related surface runoff, erosion and sedimentation.
16. *EPSC Plan* is a detailed plan which includes a set of best management practices or equivalent measures designed to control surface runoff and erosion and to retain sediment on a specific development site or parcel of land during the period in which

pre-construction and construction related land disturbances, fills, and soil storage occur, and before final improvements are completed, all in accordance with this Ordinance.

17. *Erosion control inspector* is a person designated by the Issuing Authority who has attended a Frankfort/Franklin County-sponsored or approved training course in EPSC.
18. *Floodplain* is the one hundred (100) year floodplain which is that area adjoining a watercourse which could be inundated by a flood that has a one (1) percent chance of being equaled or exceeded in any given year and is delineated on the Federal Emergency Management Agency Floodway Maps.
19. *General Permit* is a KPDES Storm Water General Permit for storm water discharges related to construction activities that disturb one (1) acre or more. Coverage under this general storm water permit is obtained by filing a Notice of Intent (NOI) with the Kentucky Division of Water.
20. *Grade* is the vertical location of the ground surface.
 - *Existing grade* is the grade prior to grading.
 - *Rough grade* is the stage at which the grade approximately conforms to the approved plan.
 - *Finish grade* is the final grade of the site which conforms to the approved plan.
21. *Issuing Authority* is the Franklin County Planning and Zoning Director and their duly authorized designees.
22. *Land disturbance activity* is any land change that may result in soil erosion from wind, water and/or ice and the movement of sediments into or upon waters, lands, or rights-of-way within Franklin County, including but not limited to building demolition, clearing and grubbing, grading, excavating, transporting and filling of land. Land disturbance activity does not include the following:
 - Minor land disturbance activities including, but not limited to, underground utility repairs, replacement of existing utilities, home gardens, minor repairs, and maintenance work.
 - Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
 - Emergency work to protect life, limb, or property and emergency repairs. If the land disturbing activity would have required an approved EPSC except for the emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of this Ordinance.
23. *Outfall* is the point of discharge to any watercourse from a public or private stormwater drainage system.
24. *Permittee* is the applicant in whose name a valid EPSC Permit is duly issued pursuant

to this Ordinance and his/her agents, employees, and others acting under his/her direction.

25. *Public Works Director* is the City of Frankfort Public Works Department Director and City Engineer.
26. *Retention facility* is a temporary or permanent natural or manmade structure that provides for the storage of storm water runoff by means of a permanent pool of water.
27. *Runoff* is rainfall, snowmelt, or irrigation water flowing over the ground surface.
28. *Sediment* is soils or other surficial materials transported by surface water as a product of erosion.
29. *Sedimentation* is the process or action of deposition sediment that is determined to have been caused by erosion.
30. *Site* is the entire area of land on which the land disturbance activity is proposed in the site disturbance permit application.
31. *EPSC Permit* is a permit required by this Ordinance for land disturbance activities.
32. *Site plan* is a plan or set of plans showing the details of any land disturbance activity of a site including but not limited to the construction of: structures, open and enclosed drainage facilities, stormwater management facilities, parking lots, driveways, curbs, pavements, sidewalks, bike paths, recreational facilities, ground covers, plantings, and landscaping.
33. *Slope* is the incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.
34. *Soil* is naturally occurring surficial deposits overlying bedrock.
35. *Stripping* is any activity which removes or significantly disturbs the vegetative surface cover including clearing, grubbing of stumps and root mat, and topsoil removal.
36. *Structure* is anything manufactured, constructed or erected which is normally attached to or positioned on land, including buildings, portable structures, earthen structures, roads, parking lots, and paved storage areas.
37. *Topsoil* is the upper layer of soil.
38. *Utility* is the owner/operator of any underground facility including an underground line, facility, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, heat, gas, oil, petroleum products, potable water, stormwater, steam, sewage and other similar substances.
39. *Watercourse* is any natural or improved stream, river, creek, ditch, channel, canal, conduit, gutter, culvert, drain, gully, swale, or wash in which waters flow either continuously or intermittently.
40. *Watershed* is a region draining to a specific river, river system, or body of water.
41. *Wetlands* is a lowland area such as a marsh that is saturated with moisture, as defined in Sec. 404, Federal Water Pollution Control Act Amendments of 1987.

SECTION 4 – DESIGN AND MAINTENANCE REQUIREMENTS

Franklin County has adopted a Stormwater Procedures Manual that is a compilation of rules, design criteria, and standards of proven methods for controlling construction related surface runoff, erosion, and sedimentation. The Stormwater Procedures Manual shall be used as a guide during the design and selection of appropriate erosion protection and sediment control (EPSC) measures and required as part of any Land Disturbance Activity in Franklin County. Maintenance of EPSC measures shall also be performed to further minimize adverse impacts on water quality.

SECTION 5 - PERMITTING PROCESS

The Stormwater Procedures Manual describes the Land Disturbance permitting process within Franklin County. It includes the types of permits required by the County for land disturbance activities, lists the required submittal materials, and describes the review process for the each application. Complying with the provisions of this chapter and references materials does not exempt the permittee (applicant in whose name a valid Land Disturbance Permit is duly issued) from obtaining coverage from the Kentucky Division of Water (KDOW) under the KPDES Storm Water General permit for storm discharges related to construction activities. By approving a plan under this chapter, Franklin County does not accept responsibility for the design, installation, and operation and maintenance of stormwater BMPs.

SECTION 6 - INSPECTION

Any person who takes responsibility for any land development shall ensure that soil erosion, sedimentation, increased pollutant loads, and changes in water flow characteristics resulting from the activity are controlled so as to minimize pollution of receiving waters. The Approving Agency or its duly authorized representatives shall make inspections of land disturbing activities subject to this chapter, to ensure compliance with the approved Land Disturbance Permit and to examine field practices to determine if control measures are adequate. Authorized inspectors of the Approving Agency shall have the power to inspect any land disturbing activity and to review the records of all inspections, repairs and modifications made by the permittee. The permittee shall be self-policing and shall correct or remedy any EPSC measures that are not effective or functioning properly at all times during the various phases of construction. All updates to EPSC measures shall be accurately noted in the SWPPP.

SECTION 7 - ENFORCEMENT

1. The Issuing Authority shall be responsible for the enforcement of this Ordinance. Duly authorized representatives have the authority to issue Notices of Violation (NOV) and

Stop Work Orders (SWO).

2. A NOV and/or SWO may be posted for the entire project or any specified part thereof if any of the following conditions exist:
 - Any land disturbance activity regulated under this Ordinance is being undertaken without a permit.
 - The SWPPP is not being fully implemented.
 - Any of the conditions of the Land Disturbance Permit are not being met.
 - An offense of the same nature as a previous offense, even if previously corrected under a NOV, will constitute a second offense to be enforced.
3. For the purposes of this section, a NOV and/or SWO is validly posted by posting a copy of the NOV and/or SWO on the site of the land disturbing activity in reasonable proximity to a location where the land disturbing activity is taking place. Additionally, a copy of the NOV and/or SWO, in the case of work for which there is a Land Disturbance Permit, shall be mailed by first class mail, postage pre-paid, to the address listed by the Permittee on the permit. In the case of work for which there is no permit, a copy of the order shall be mailed to the person listed as the landowner of the property. Offenses enforced through a NOV must be corrected within five (5) calendar days of the date of issuance or a Stop Work Order will be issued.
4. If the Permittee does not comply with the SWPPP, or Land Disturbance Permit conditions within five (5) calendar days, the Approving Agency may revoke the permit.
5. If the landowner or developer where no Land Disturbance Permit has been issued does not cease the land disturbance activity, the Approving Agency may request the County Attorney to seek to obtain injunctive relief.
6. Upon revocation of permit, the permittee shall bring the site back into compliance prior to re-inspection by the County. If the site is found acceptable, and receipt of any subsequent fines or penalties, the County will reinstate the permit.
7. Ten (10) calendar days after posting a stop-work order, the Approving Agency may issue a Notice of Intent to the Permittee, landowner, or land user the Approving Agency's intent to perform work necessary to comply with Ordinance. The Approving Agency may go on the land and commence work after fourteen (14) days from issuing the Notice of Intent. The costs incurred by the Approving Agency to perform this work shall be paid by the landowner or Permittee. In the event no EPSC permit was issued or no bond was posted, the cost, plus a reasonable administrative and attorneys fee shall be billed to the owner.
8. Compliance with the provisions of this Ordinance may also be enforced by injunction.
9. The Approving Agency is authorized to require immediate abatement of any violation of this Ordinance that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately, the Issuing Authority is authorized to enter onto private or public property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the Issuing Authority shall be fully reimbursed by the property owner and/or

responsible party.

SECTION 8 – PENALTY

Any person, firm, corporation or agency acting as principal, agent, employee or otherwise, who fails to comply with the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00), or by imprisonment for not more than ninety (90) days, or both, for each separate offense. Each day there is a violation of any part of this Ordinance shall constitute a separate offense.

Should the issuing authority or city take legal action to enforce the provisions of this chapter, the issuing authority or County shall be entitled to collect any and all costs in instituting and taking such legal action, including but not limited to its court costs and attorney's fees

SECTION 9 – COMPATABILITY WITH OTHER PERMITS AND ORDINANCE REQUIREMENTS

The requirements of this chapter should be considered minimum requirements, and where any provisions of this chapter impose restrictions different from those imposed by any other applicable ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence

SECTION 10 – SEVERABILITY

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this chapter.

