

Introduced by: Council Present

AN ORDINANCE OF THE CITY OF BERKELEY REPEALING CHAPTER 520, SOIL EXCAVATION AND EROSION CONTROL IN ITS ENTIRETY; AND REPLACING NEW PROVISIONS IN CHAPTER 520; ENTITLED, STORMWATER MANAGEMENT PROGRAM

Now, Therefore, Be it ordained by the City Council of the City of Berkeley, Missouri, as follows:

Section 1 Purpose

The purpose of this Chapter is to promote the public health, safety and general welfare; to lessen or avoid hazards to persons and property caused by uncontrolled stormwater runoff or by obstructions to drainage; to lessen the degradation of the quality of surface runoff; to control soil erosion on land that is undergoing development for non-agricultural uses; to facilitate adequate and coordinated provision for stormwater; and to preserve natural terrain and waterways within the City of Berkeley.

This Chapter establishes administrative, implementation and enforcement procedures for the protection and enhancement of the water quality of watercourses, water bodies and wetlands by controlling erosion, sedimentation and related environmental damage caused by land disturbing activities and by prohibiting illicit discharges.

Section 2 Objective

The objectives of this Chapter are to comply with all applicable State and Federal requirements for clean water, including limitations on the discharge of pollutants as set forth in the EPA's National Pollution Discharge Elimination System (NPDES) Phase II regulations; control the discharge of pollutants into State waters by establishing standards for erosion prevention and sediment reduction, prohibiting illicit discharges and prohibiting littering in any waters within the City; and maintain efficient control of stormwater flow through Berkeley such that flooding and erosion problems are kept to a minimum.

Section 3 Applicability

This Chapter is applicable to any impacts on stormwater and its conveyances in the City of Berkeley. This applies to control of runoff, erosion control activities, land disturbance activities, any discharges into the municipal separate storm sewer system (MS4), any substances placed or dumped into the MS4, all bodies of water and obstructions of any stream, creek, ditch, canal or rain and stormwater drainage facility which blocks, hinders, diverts, dams, changes or prevents the natural flow of rain and stormwater.

Section 4 Definitions

For the purpose of this Chapter, the following definitions shall apply in the interpretation and enforcement thereof:

ADVERSE IMPACT

A negative impact on land, water and associated resources resulting from a land disturbing activity. The negative impact includes increased risk of flooding, degradation of water quality, increased off-site sedimentation, reduced ground water recharge, adverse effects on aquatic organisms, wildlife and other resources and threats to public health.

APPLICANT

The person responsible for the land disturbing activity who executes the necessary forms to obtain approval or

a permit for a land disturbing activity subject to this Chapter.

BEST MANAGEMENT PRACTICES OR BMP

Management procedures, schedules of activities, prohibitions on practices, specific controls and other management practices which have been demonstrated to effectively control the quality and/or quantity of stormwater runoff and which are compatible with the planned land use.

CEASED

Any number of deliberate actions taken by the developer, contractor, operator or other responsible party that, taken together, reasonably indicate a site is no longer active, including, but not limited to, removal of equipment and machinery or failure to maintain perimeter erosion prevention/sediment controls.

CLEARING

The indiscriminate removal of trees, vegetation, shrubs and/or undergrowth from a site with the intent to prepare real property for non-agricultural use, but shall not include grubbing, scalping and other significant soil disturbance. In addition, clearing shall not include the selective removal of non-native trees or diseased or dead trees or normal moving operations.

CONSTRUCTION OR LAND DISTURBANCE SITE OR SITE

A parcel of land, or a contiguous combination thereof, where grading work is performed as part of a single unified plan of development.

CONTRACTOR

A person who contracts with the owner, developer or another contractor to undertake any or all the land disturbing activities covered by this Chapter. This definition encompasses subcontractors.

DEBRIS OR SILTING BASIN

A barrier or dam built across a waterway, excluding waters of the State or at other suitable locations to retain rock, sand, gravel, silt or other materials.

DEFAULT

A finding or declaration by the Public Works Director that the applicant or other responsible party has not completed the improvements or repairs within the specified time and the potential for harm, inconvenience or annoyance to others exists. These findings may be made if required temporary or permanent improvements or control measures have not been installed or maintained properly; the required vegetation and restoration of a site have not been completed as required; or damages to streets, curbs, sidewalks, trees, landscaping or any public facilities have occurred and repairs have not been completed as required.

DETENTION FACILITY

Permanent stormwater management structure whose primary purpose is to temporarily store stormwater runoff and release the stored runoff at controlled rates.

DEVELOPER

A person undertaking, or for whose benefit, any or all the activities covered by this Chapter are commenced or carried out.

DIVERSION

A channel with or without a supporting ridge on the lower side constructed across or at the bottom of a slope.

DRAINAGE WAY

Any channel that conveys surface runoff through a site.

EPA

Environmental Protection Agency.

EROSION

The wearing away of the land surface by the action of wind, water, gravity or any combination of those forces.

EROSION AND SEDIMENT CONTROL

The control of solid material, both mineral and organic, during a land disturbing activity to prevent its transport out of the disturbed area by means of air, water, gravity or ice.

EXCAVATION OR CUT

The removal, stripping or disturbance of soil, earth, sand, rock, gravel or other similar substances from the ground.

EXEMPTIONS

Those land disturbing activities that are not subject to the sediment and stormwater requirements contained in these regulations.

EXISTING GRADE

The vertical location of the existing ground surface prior to excavation or filling.

FILL OR FILLING

The placing of any soil, earth, sand, rock, gravel or other substance on the ground.

FINISHED GRADE

The final grade or elevation of the ground surface conforming to the proposed design.

GRADING

Any excavation or filling or combination thereof.

GROUND

It shall include, but shall not be limited to, the banks and beds of any river or waterway.

ILLICIT DISCHARGE

Any discharge to an MS4 that is not composed entirely of stormwater with some exceptions as listed herein.

INFILTRATION

The passage or movement of water through the soil profile.

INSPECTOR

A person who, under the direction of the Public Works Director or designee, reviews any land disturbing activity for compliance with this Chapter and any duly issued Site Disturbance Permit.

LAND DISTURBING ACTIVITY

All construction, reconstruction, modification, extension or expansion of buildings or structures or parking areas, placement of fill, dumping, storage of materials, land excavation, land clearing, clear-cutting, tree and vegetation removal, grubbing, bush hogging or any similar activity or combination thereof. This definition includes all land disturbing activity undertaken as part of a larger, common plan of development or sale.

LICENSED ENGINEER

A person registered as a professional engineer in the State of Missouri by the Missouri Board of Architects, Professional Engineers and Land Surveyors.

MDNR

Missouri Department of Natural Resources.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)

A conveyance or system of conveyances (including roads with drainage systems and municipal streets) that is owned or operated by the City of Berkeley or the St. Louis Metropolitan Sewer District and is designed or used for collecting or conveying stormwater and which is not a combined sewer and which is not part of a publicly owned treatment works.

OWNER

A person, firm or governmental agency holding legal title or in possession or control of the land who indirectly or directly allows the land disturbing activity or benefits from it.

PERIMETER CONTROL

A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

PERMANENT REVEGETATION

The establishment of an average of seventy percent (70%) permanent vegetative cover per sampling of one (1) square inch of seeded areas.

PERSON

Any individual, firm, partnership, joint venture, association, club, fraternal organization, corporation, estate, trust, receiver, organization, syndicate, City, County, municipality, district or other political subdivision or any other group or combination acting as a unit and any agency or instrumentality thereof.

PERSON RESPONSIBLE FOR THE LAND DISTURBING ACTIVITY

The person holding legal title to the land upon which the land disturbing activity will take place; the person in possession or control of the land or who directly allows the land disturbing activity or benefits from it; or any other person including, but not limited to, a developer or contractor, who has or represents having financial or operational control over the land disturbing activity.

PHASING

Clearing a parcel of land in distinct phases, with the stabilization of each phase substantially completed before the clearing of the next.

POST-DEVELOPMENT

The conditions which exist following the completion of the land disturbing activity in terms of topography, vegetation, land use and rate, volume or direction of stormwater runoff.

PRE-DEVELOPMENT

The conditions which existed prior to the initiation of the land disturbing activity in terms of topography, vegetation, land use and rate, volume or direction of stormwater runoff.

RESPONSIBLE PARTY OR PERSON

A person responsible for the land disturbing activity.

PUBLIC WORKS DIRECTOR

The Public Works Director for the City or the Public Works Director's authorized designee.

RETENTION FACILITY

Permanent stormwater management structure whose primary purpose is to permanently store a given volume of stormwater runoff. Release of the given volume is by infiltration and/or evaporation.

RUNOFF COEFFICIENT

The fraction of total rainfall that will appear at the outfalls from a site.

SEDIMENT

A solid particulate matter, both mineral and organic, that has been or is being transported by water, air, ice or gravity from its site of origin.

SITE DISTURBANCE AND STORMWATER POLLUTION PREVENTION PLAN (SD & SWPPP)

A plan that accurately depicts existing and proposed excavation, grading and filling along with the design, implementation, management and maintenance of BMPs in order to reduce the amount of sediment and other pollutants in stormwater discharges associated with land disturbance activities and shall comply with the Missouri Water Quality Standards and ensure compliance with the terms and conditions of the NPDES.

SITE DISTURBANCE PERMIT

A permit issued by the municipality authorizing disturbance of the land at a specific site subject to conditions stated in the permit.

STABILIZATION

The use of BMPs that prevent exposed soil from eroding including improvements and structures for the control of erosion, runoff and grading.

START OF CONSTRUCTION

The first land disturbing activity associated with a development, including land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

STOP WORK ORDER

An order directing the person responsible for the land disturbing activity to cease and desist all or any portion of the work which violates the provisions of this Chapter.

STORMWATER RUNOFF

The direct response of a watershed to precipitation and includes the surface and subsurface runoff that enters a ditch, stream, storm sewer or other concentrated flow during and following the precipitation.

WASH-OFF PAD

A stone base designed to provide a buffer area where construction vehicles can drop their mud to avoid transporting it onto public roads.

WATERCOURSE

A natural or artificial channel or body of water, including, but not limited to, lakes, ponds, rivers, streams, ditches and other open conveyances that carry surface runoff water either continuously or intermittently.

Section 5 Compliance with Other Chapters and Codes

Inclusion of other City ordinances/codes regulating stormwater management, erosion prevention and sediment reduction. The following ordinances or Code Sections are hereby included by reference: Ch. 500 International Codes, as adopted; Offenses and Nuisances Ch. 215; Swimming Pools, Ch. 225; Subdivision Regulations, Ch. 400; Floodplain Management, Ch. 410; Excavations, Ch. 500; Streets, Sidewalks and Public Works, Ch. 405; Sidewalk and Driveway Entrance Construction and Repair, Ch. 405; and Ch. 400, the Zoning Ordinance. All other current and future ordinances regulating stormwater management, erosion prevention and sediment reduction are hereby included.

Section 6 Permits

- A. Unless otherwise provided within this Chapter, the surface of land in the City of Berkeley shall not be disturbed or altered for any purpose whatsoever, except in accordance with a duly issued Site Disturbance Permit.
- B. Any person who buys a lot for construction from a person who has been issued a site disturbance permit through the City of Berkeley (unless purchased for the purpose of building their own private residence) must obtain a separate site disturbance permit unless the original permittee retains responsibility for the land disturbance activities on the sold lot.
- C. A Site Disturbance Permit shall not be required for the following classes of land disturbance activities provided that no change in drainage patterns onto adjacent properties will occur:
 1. Land disturbances less than or equal to three thousand (3,000) square feet. In those cases, the land disturbance activity is required to comply with the City's adopted standards and the person shall install erosion and sediment control measures.
 2. Land disturbance for residential purposes on lots of three-fourths ($\frac{3}{4}$) an acre or less containing a single-family residence for which an occupancy permit has been issued. The City reserves the right to require the owner to comply with the City's adopted standards and have the

owner install erosion and sediment control measures.

3. Land disturbance for residential purposes on lots of three-fourths ($\frac{3}{4}$) an acre or less consisting of the construction of any building, structure or swimming pool which are separately built and not part of multiple construction in a subdivision development and for which a building permit has been duly issued. The City reserves the right to require the owner to comply with the City's adopted standards and have the owner install erosion and sediment control measures.

4. Land disturbance activities by City departments. In those cases, the department is required to comply with the requirements of the City's adopted standards and the City's Building Code.

5. Farming. The provisions in this Chapter shall not be construed as prohibiting or limiting the lawful use of land for farming, nurseries or gardening or similar agricultural or horticultural use whenever there is substantial compliance with recommendations or standards of the local soil conservation authority.

6. Work to correct or remedy emergencies as long as said work is brought into agreement with this Chapter within the following six (6) months. This includes situations that pose an immediate danger to life or property, natural resources or substantial flood or fire hazards.

D. Each permit application shall be made by the owner or his authorized agent and shall be submitted to the Public Works Director on forms provided by the City. The application shall include the name, address and contact information of the owner, contractor and engineer of the site along with a detailed statement of proposed work and the purpose thereof and why the land disturbance is clearly incidental to the improvement of the property.

E. Each permit application shall be accompanied by a fee as specified in this Chapter.

F. Each permit application shall be accompanied by a Site Disturbance and Stormwater Pollution Prevention Plan as specified in this Chapter.

G. For all land disturbing activities requiring a Site Disturbance Permit under this Chapter, the applicant or other responsible party shall post a performance bond and with surety approved by the Public Works Director as specified in this Chapter.

H. The permit applicant will be required to obtain a land disturbance permit issued by the Missouri Department of Natural Resources for any site where one (1) acre or more of land will be disturbed, before beginning any site work authorized by a City permit. This requirement applies to sites of less than one (1) acre that are part of a larger common plan that will ultimately disturb one (1) acre or more.

I. The applicant shall acquire any applicable local, County, State or Federal permits and/or approvals.

Section 7 Site Disturbance and Stormwater Pollution Prevention Plan (SD & SWPPP)

A. The design standards and specifications in this Chapter shall be taken into consideration when developing the Site Disturbance and Stormwater Pollution Prevention Plan. Such plan shall consist of

three (3) sets of maps, plans and specifications showing proposed excavation, grading and filling along with the design, implementation, management and maintenance of BMPs in order to reduce the amount of sediment and other pollutants in stormwater discharges associated with site disturbance activities. Such plans shall be prepared by and shall bear the seal of a licensed engineer registered in the state of Missouri. All such plans shall be submitted on twenty-four (24) inches by thirty-six (36) inches sheets as well as in digital format or as specified by the Public Works Director or designee. All such plans shall be drawn to a scale of not less than one (1) inch equals one hundred (100) feet.

1. Specific requirements for the excavation, grading and filling portion of the SD & SWPPP include, but are not limited to, the following items:

- a. A key or location map showing the property and its relation to the surrounding area.
- b. A north arrow and graphic scale.
- c. Full name and address of property owner, developer and engineer.
- d. Designation of property by street address.
- e. Benchmark information.
- f. Delineation of 100-year floodplain and floodways.
- g. The outline of the total project area; the portion of the property that is to be disturbed and labeled with its area; existing land uses; location of retaining walls; locations and names of surface water bodies; locations of temporary and permanent BMPs and such other information as the Public Works Director or designee may require.
- h. The location of the premises and its geographic relation to neighboring properties showing all buildings and roads within one hundred (100) feet of the boundaries of the plot on which the land disturbance is proposed.
- i. Finish floor elevations of existing buildings.
- j. Any off-site grading easements and a copy of the actual agreement.
- k. The estimated maximum quantity of material to be excavated, graded or filled and the estimated part thereof that will be used for grading or filling.
- l. The location of any sewage disposal system or underground utility line, any part of which is within fifty (50) feet of the proposed excavation, grading or filling area and the location of any gas transmission pipeline operated at a maximum service pressure in excess of two hundred (200) p.s.i.g., any part of which is within one hundred (100) feet of the proposed excavation, grading or filling area.
- m. Existing topography and grade of the property at a contour interval of not more than two (2) feet and the proposed final contour and finished grade elevation at intervals of not more than two (2) feet, except that whenever the existing grade is extremely steep and hilly, the contour intervals may be not more than five (5) feet if first approved by the Public Works Director. Contours shall extend a minimum of one hundred (100) feet off-site or sufficient to show on-/off-site drainage. Contours shall be based on United States Geological Survey datum and shall show established elevations at buildings, walks, drives, streets and roads; and information on necessary clearing and grubbing, removal of existing structures, excavating, filling, spreading and compacting.
- n. The location and present status of any previous permitted site disturbance operations on the property.
- o. The details of any drainage system proposed to be installed and maintained by the applicant, designed to provide for proper surface drainage for land, both during the

performance of the work applied for and after the completion thereof.

p. The flow lines of surface water drainage, streams and any existing farm drains, inlets and outfalls, springs or other flowing wells and width of stream beds or flowage lines.

q. A comprehensive drainage plan designed to handle safely the surface water, streams or other natural drains following heavy rainstorms during grading operations.

r. If the proposed land disturbance is for the purpose of constructing a lake or pond, the details of the proposed dam or other structures and the embankments intended to impound the water, together with the details and locations of the proposed discharge to a valved outlet for drainage purposes and the proposed level of any impounded water.

s. The proposed truck and equipment access ways to the work site along with sources of off-site borrow material or spoil sites. A written report specifying the kind and description of trucks or hauling or grading equipment, the loaded and unloaded weight of trucks and hauling equipment, the number of each and the length of time they will be required to use the streets of the City and the route or routes to be used by trucks and hauling and grading equipment. All other information required to estimate or to determine the amount of wear and tear or damage, if any that may be caused to streets by such usage.

t. A statement from the owner or responsible party assuming full responsibility for the performance of the operation as stated in the application; this statement shall also contain an assurance that all City property or City roads will be adequately protected.

u. Stormwater management and stormwater drainage computations including an estimate of the runoff coefficient of the site prior to disturbance and the runoff coefficient after the construction addressed in the permit application is completed as required by St. Louis Metropolitan Sewer District and stable channel calculations (where applicable).

2. Specific requirements for the erosion and sediment control portion of the SD & SWPPP include, but are not limited to, the following items:

a. Details and descriptions of temporary and permanent erosion and sediment control measures and other protective measures intended for use.

b. All temporary and permanent spoil disposal areas, haul roads and construction staging areas shall be located to minimize erosion, sediment transport and disturbance to existing vegetation.

c. Sequencing — The anticipated sequence of construction and land disturbance activities, including installation of BMPs, removal of temporary BMPs, stripping and clearing; rough grading; construction of utilities, infrastructure and buildings; and final grading and landscaping. Sequencing shall identify the expected date(s) 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.

Construction sequencing shall be required to reduce erosion potential. Detailed specifications, including a schedule and time frame, shall show the relationship between the implementation and maintenance of controls and the various stages of construction.

d. Specifications for interim and permanent stabilization practices, including site specific scheduling of the implementation of the practices to include, at a minimum, the following activities as applicable:

- (1) Clearing and grubbing for those areas necessary for installation of perimeter controls;
- (2) Installation of sediment basins and traps;
- (3) Construction of perimeter controls;
- (4) Remaining clearing and grubbing;
- (5) Road grading;
- (6) Grading for the remainder of the site;
- (7) Utility installation and whether storm drains will be used or blocked until after completion of construction;
- (8) Final grading, landscaping or stabilization; and
- (9) Removal of sediment controls.

Changes to the sequence of construction operations may be modified by the person conducting the land disturbing activity or their representative and do not constitute a violation unless measures to control stormwater runoff and sediment are not utilized.

- e. The plans shall contain a description of the predominant soil types, forest cover and resources on the site as described by the appropriate soil survey information available through the local Conservation District and as protected under other Chapters of Berkeley Code.
- f. Details and specifications of soil preparation and of revegetation of the finished grade or of other methods of soil erosion control. Details and specifications shall include seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding rates, type and rate of lime and fertilizer application and kind and quantity of mulching for both temporary and permanent vegetative control measures.
- g. The location of temporary off-street parking, fueling and washdown areas for related vehicles. Wash-off pads may be required as directed by the Public Works Director. Wash-off pads shall be constructed and maintained as shown in the latest edition of Protecting Water Quality: A field guide to erosion, sediment and stormwater best management practices for development sites in Missouri, published by the Missouri Department of Natural Resources.
- h. A description of BMPs to be utilized to prevent other potential pollutants such as construction wastes, toxic or hazardous substances, petroleum products, pesticides, herbicides, site litter, sanitary wastes and other pollutants from entering the natural drainage ways during the period of construction and land disturbance.
- i. Plans for responding to any loss of contained sediment to include the immediate actions the permittee will take in case of a containment failure. This plan must include documentation of action and mandatory reporting to the Department of Public Works.

3. The applicant shall submit an estimate of cost for the completion of the proposed improvements. The applicant shall also submit an estimate of cost for the completion of the erosion prevention and sediment control improvements, maintenance of said improvements and restoration measures required under this Chapter, including labor costs.

Section 8 Design Standards and Specifications

- A. Approval of the Site Disturbance and Stormwater Pollution Prevention Plan shall be based upon the following general standards and review criteria:
 1. Stormwater management and stormwater drainage computations shall be done in

compliance with applicable laws, ordinances and codes and the latest version of the MSD Rules and Regulations and Engineering Design Requirements for Sanitary Sewage and Stormwater Drainage Facilities, published by the Metropolitan St. Louis Sewer District.

2. Erosion and sediment control best management practices shall be selected, installed, used, operated and maintained in accordance with the concepts and methods described in applicable laws, ordinances and codes and either of the following two (2) documents:

a. Stormwater Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices (document number EPA 832-R-92-005) published by the United States Environmental Protection Agency (USEPA) in September 1992.

b. Protecting Water Quality: A field guide to erosion, sediment and stormwater best management practices for development sites in Missouri, published by the Missouri Department of Natural Resources in November 1995.

B. Approval of the Site Disturbance and Stormwater Pollution Prevention Plans shall be based upon the following specific standards and review criteria:

1. All excavations, grading or filling shall have a finished grade not to exceed three to one (3:1), except that embankments less than three (3) feet in height shall be exempt therefrom if properly mulched and seeded. Steeper grades are allowed if the excavation is through rock. The Public Works Director may approve slopes steeper than three to one (3:1) if the excavation or fill is protected by a properly designed head wall or toe wall or the slope is properly designed using an approved engineering method of bank stabilization. If such walls or slopes exceed a height of six (6) feet, a protective fence or barrier may be required.

2. *Erosion control.* Erosion control requirements shall include:

a. Surface water from drainage areas in excess of two (2) acres that cross grades steeper than eight to one (8:1) shall be intercepted with diversions and lowered to a stable outlet constructed with concrete flumes, pipe or approved equivalent construction approved by the Public Works Director. The adjoining ground to the concerned plot shall be provided with protection from accelerated and increased surface water, silt from erosion and any other consequences of erosion. Where it is necessary for the protection of such property to enter upon private property for the purpose of taking appropriate protecting measures, the applicant shall obtain consent from the owner of such private property. The applicant shall, at its own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the grading and shall be responsible for all damage to public or private property or highways resulting from its failure to properly protect and carry out such grading.

b. All lots shall be seeded and mulched or sodded within ten (10) days after completion of the work or expiration of the permit, whichever occurs first; and all lots shall be seeded and mulched or sodded before an occupancy permit shall be issued except that an occupancy permit may be issued in cases of undue hardship because of unfavorable ground conditions.

- c. All swales, detention facilities and any areas found to be consistently eroding shall be stabilized using permanent sod or other means as approved and directed by the Public Works Director or designee within ten (10) days after completion of the work or expiration of the permit, whichever occurs first.
- d. All areas required to be sodded shall follow the latest edition of *Protecting Water Quality: A field guide to erosion, sediment and stormwater best management practices for development sites in Missouri*, published by the Missouri Department of Natural Resources.
- e. Preservation and maintenance of existing vegetation and trees. Limited exceptions are allowed for necessary surveying or site testing.
- f. Techniques shall be employed to divert upland runoff past disturbed slopes.
- g. Topsoil shall be stockpiled and preserved from erosion or dispersal both during and after site grading operations.

3. *Sediment control.* Sediment control requirements shall include:

- a. Settling basins, sediment traps or tanks and perimeter controls.
- b. Settling basins shall be provided for each drainage area with ten (10) or more acres disturbed at one time and shall be sized to contain one-half (0.5) inch of sediment from the drainage area and be able to contain a two (2) year, twenty-four (24) hour storm. If the provision of a basin of this size is impractical, other similarly effective BMPs, as evaluated and specified in the SD & SWPPP, shall be provided.
- c. Settling basins shall be designed in a manner that allows adaptation to provide long-term stormwater management as required by the Public Works Director.
- d. Settling basins shall have stabilized spillways to minimize the potential for erosion of the spillway or basin embankment.
- e. Protection for adjacent properties by the use of a vegetated buffer strip in combination with perimeter controls.
- f. Construction dewatering operations. Sediment control shall be provided before the discharge of construction dewatering enters the receiving water. Sediment traps and basins are often used to remove sediment from dewatering of excavation areas. Filtering shall also be provided when discharge results from dewatering a sediment trap or basin. In these cases, methods for filtering include sump pits, floating suction hoses and standpipes attached to the base of the sediment basin riser with slits to control inflow and wrapping of filter fabric to aid in filtering sediments.
- g. Techniques shall be employed to prevent the blowing of dust or sediment from the site.

4. *Watercourse protection.* Watercourse protection requirements shall include:

- a. Encroachment into or crossings of active waterways/riparian areas and wetlands shall be avoided to the maximum extent feasible. Where applicable, all local, State and Federal permits and approvals (e.g., compliance with local floodplain requirements and Federal 404 permits for wetlands) shall be provided to the Public Works Director and shall be in place prior to issuance of a Site Disturbance Permit or under this Chapter.
- b. Stabilization adequate to prevent erosion shall be provided at the outlets of all

pipes and paved channels.

c. When work in a live waterway is performed, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area to the greatest extent possible before, during and after construction.

d. If a defined watercourse is to be realigned or reconfigured, clearing and grubbing activities within fifty (50) feet of the watercourse shall not begin until all materials and equipment necessary to protect the watercourse and complete the work are on site. Once started, work shall be completed as soon as possible. Areas within fifty (50) feet of the watercourse shall be recontoured and revegetated, seeded or otherwise protected within five (5) working days after grading has ceased.

e. Stream buffer. Planned residential developments occurring in the CUP and PUD zoning districts which are developed along natural watercourses depicted by a solid or dashed blue line on the most current United States Geological Survey (U.S.G.S.) 7.5 Minute Series (Topographical) Maps for Missouri shall maintain a natural vegetative buffer. Such natural buffer shall be a minimum of twenty-five (25) feet, measured horizontally, on both banks (as applicable) of the stream as measured from the top of the stream bank. The area contained within these limits shall remain free from development with the exception of utilities, pedestrian trails, public access, stream crossings and stormwater BMPs.

The described natural stream buffer shall be designated as common ground and drainage easement to be maintained by the trustees or homeowners' association of the subdivision. In lieu of the common ground requirement, this section of land can be (i) private property with an easement dedicated to the trustees or homeowners' association requiring maintenance of the areas as the responsibility of the trustees or homeowners' association, (ii) private property subject to a conservation easement in favor of an organization or land trust dedicated to environmental protection or land preservation such as Trailnet, Inc., Gateway Greenway, the Open Space Council for the St. Louis region or similar organization, (iii) set aside in a stream bank mitigation program approved by the United States Army Corps of Engineers under the provisions of the Clean Water Act. In addition to the twenty-five (25) feet natural vegetative buffer, a minimum setback of fifty (50) feet from the top of the existing bank shall be maintained to any building structure requiring a building permit that necessitates excavation or also requires a foundation. Any variance from these regulations shall be directed to the Board of Adjustment.

5. *Construction site access.* Construction site access requirements shall include:

a. Truck and equipment access ways to the site of the operation shall be located so as to minimize danger to traffic and nuisance to surrounding properties. Such access shall be kept wet or paved to the extent necessary to prevent any dust nuisance to surrounding properties. All such access ways shall be clearly marked with signs and shall be posted approximately two hundred (200) feet distant from such access ways or other traveled areas. Such signs shall read "Caution: Trucks Entering Highway" and be of size, type, coloring, lettering and format as shown in the Manual on Uniform Traffic Control Devices. Debris, soil and other materials shall be removed daily from public streets and sidewalks.

b. Vehicle tracking of sediments from land disturbing activities onto paved public roads carrying significant amounts of traffic (average daily traffic of twenty-five (25)

vehicles/day or greater) shall be minimized.

c. The number of temporary access points to the site for land disturbing or construction activities shall be minimized and stabilized construction entrances and exits shall be provided.

6. *Tree protection.*

a. Protective devices shall be used to protect tree trunks from being scarred by machinery and building materials. Refer to Tree Preservation Ordinance 4342.

b. Wells or revetments shall be constructed around trees where the grade is made higher or lower, respectively.

7. *Phasing.* Phasing shall be required on all sites disturbing greater than thirty (30) acres, with the size of each phase to be established at plan review and as approved by the Department of Public Works.

8. *Clean fill.* Filling or grading with anything other than clean earth type material is prohibited. "*Clean earth type material*" is defined as earth with reasonable amounts of inert materials such as rock, sand, gravel, asphalt, brick and/or concrete without re-enforcing rods. No demolition type materials such as plaster, metals, wood, shingles, plastics, paper, electrical wiring, conduit, etc., may be used. A "final" cover of at least three (3) feet of earth soil shall be used such as to support vegetation, grass, shrubs and trees. No inert materials with a maximum dimension greater than eight (8) inches shall be buried or placed in any fill unless permitted by the Public Works Director after receipt of a report by a soil engineer certifying that he or she has investigated the property and the fill material and that a fill including such greater size material may be constructed to meet the requirements of this paragraph. When such greater size material is placed in fills, it shall be done under the direction and supervision of a soil engineer.

9. It shall be unlawful to use as fill material or to dump or place on any property any construction material or debris from another site.

10. *Construction dirt, debris and waste.*

a. *BMPs at construction site.* After excavation or construction is commenced on any lot or tract of land in the City and until sodding, planting, concreting, paving or other final surfacing is in place which will avoid washing or spreading of dirt and mud onto other property, sidewalks, curbs, gutters, streets and the space between sidewalks and curbs, the permittee, the owner of the property, contractor or developer in charge of work shall construct and maintain temporary siltation control devices or other approved measures to prevent such washing or spreading of mud or dirt. As may be required throughout the day, during the course of excavating or construction, dirt and mud on the sidewalks, curbs, gutters and streets and the space between sidewalk and street, resulting from work, must be removed.

b. *Removing mud from vehicle wheels.* The owners, contractors, subcontractors and builders, jointly and severally, shall provide his personnel with equipment as necessary to remove dirt from the wheels of all vehicles leaving any grading site where mud has

accumulated on the wheels, before such vehicles enter any public or private street within the City.

c. *Spilling materials on streets.*

(1) The owners, contractors, subcontractors and builders, jointly and severally, who may load dirt, mud or other materials on any vehicle at any grading site in the City, during construction or otherwise, shall so load the same that no portion thereof shall be spilled or be liable to be spilled on the streets within the City. All material shall be covered with tarps in compliance with State law. It shall be unlawful for any such person to permit any vehicle to enter upon the streets within the City loaded in violation of this provision and it shall be unlawful for any driver to operate a vehicle on the streets within the City which is loaded in such manner that it spills or is liable to spill mud, dirt or other materials on the streets.

(2) All streets and rights-of-way shall be kept clean of dirt and debris. Any dirt and/or debris left on the streets or rights-of-way shall be cleaned off immediately.

(3) If upon notice by the City of a quantity of mud, dirt or other materials found on the streets and the failure thereupon to remove such materials, then the City shall have the right to remove said illicit materials and to charge the offending party the cost of doing so.

(4) *Boards over sidewalks.* Boards, tracks or other protection must be laid over sidewalks, curbs and gutters to avoid dirt and mud accumulating therein as completely as possible and to prevent breakage or damage to such installations of whatever material constructed. Damage to walks, curbs and gutters will be repaired by the contractor or the Public Works Director may cause to have them repaired at the contractor's expense.

(5) *Waste material.* During the course of construction, excavation or grading, the permittee, owners, contractors and developers are required to collect and dispose of all paper, refuse, sticks, lumber and other building waste and all other waste material daily and to prevent the same from blowing or otherwise being scattered over adjacent public or private property. Wash-out from concrete trucks must be controlled in a manner so as not to adversely impact the site, adjacent public or private property or adjacent streams and storm sewer systems.

(6) *Sanitary facilities.* Adequate provisions must be made for sufficient temporary sanitary facilities to serve the number of workers on the site.

11. *Spill prevention and control facilities.*

a. The permittee shall take appropriate measures to prevent spills and shall develop necessary control facilities for materials such as paint, solvents, petroleum products, chemicals, toxic or hazardous substances, substances regulated under Resource Conservation and Recovery Act (RCRA) or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and any wastes generated from the use of such materials and substances, including their containers. Any containment systems employed to meet this requirement shall be constructed of materials compatible with the substances contained and shall be adequate to protect both surface and ground water.

b. On-site fueling facilities shall adhere to applicable Federal and State regulations concerning storage and dispensers.

12. *Temporary stabilization measures.* Where construction or land disturbance activity will or has temporarily ceased on any portion of a site, temporary site stabilization measures shall be required as soon as practicable, but no later than fourteen (14) days after the activity has ceased.

13. *Temporary structural controls.* Temporary structural controls installed during construction shall be designed to accomplish stabilization and control of erosion and sedimentation to the maximum extent practicable and shall be installed, maintained and removed according to the guidelines set forth in the above-referenced documents.

14. *Permanent structural controls.* All permanent structural controls, including drainage facilities such as channels, storm sewer inlets, detention/retention facilities or basins, shall be designed according to the guidelines set forth in the above-referenced documents.

Section 9 Fees

A. With the submittal of the application for a *Site Disturbance Permit* as defined in this Chapter, the applicant shall pay a fee to cover the cost of administration, plan review and inspection services associated with the Site Disturbance Permit. The minimum fee shall be two hundred twenty-five dollars (\$225.00). For any land disturbance greater than three-fourths ($\frac{3}{4}$) an acre, the fee shall be based on the area of land to be disturbed in accordance with the following:

$$(\$300.00 \text{ per acre disturbed}) \times (\text{acres disturbed}) = \text{permit fee}$$

B. The cost to extend a Site Disturbance Permit for an additional one (1) year period shall be fifty dollars (\$50.00) per acre. Such extension shall be based on the information shown in this Chapter.

C. In the case of an appeal to a denied Site Disturbance Permit, the appeal fee shall be three hundred dollars (\$350.00).

Section 10 Fiscal Surety

A. The applicant and all responsible parties shall be responsible for completion of the improvements as submitted in the site disturbance application. They shall also be responsible for the installation, good repair and proper functioning of all temporary and permanent erosion prevention and sedimentation controls.

B. *Fiscal Surety Required.* For all land disturbing activities requiring a Site Disturbance Permit under this Chapter, the applicant or other responsible party shall post a performance bond with surety approved by the Public Works Director for the cost of the approved improvements, the erosion prevention and sedimentation controls to be installed on the site, any prescribed site revegetation or restoration measures, maintenance of erosion and sedimentation control facilities and for a guarantee to the City for repair of any possible damages to streets, curbs, sidewalks, trees, landscaping or any public facilities. The City may accept a letter of credit, a certified bank officer's check or other surety from a bank or financial institution in lieu of a bond.

1. *Amount of surety.* For activities subject to a Site Disturbance Permit, the amount of the surety for completion of the proposed improvements shall cover one hundred percent (100%) of the costs of the approved improvements and one hundred twenty-five percent (125%) of the costs

of the approved erosion prevention and sediment control improvements and restoration measures required under this Chapter, plus labor costs. Such costs shall be in the amount calculated by the applicant subject to the approval of the Public Works Director and the amount of the surety shall be in addition to any other surety required as part of subdivision or development approval.

2. *Timing of surety.* The fiscal surety required by this Section shall be posted before a Site Disturbance Permit can be issued.

3. *Use of surety.* The Public Works Director or designee may declare a default upon occurrence of facts entitling the Public Works Director to declare a default under the definition of "Default" in this Chapter. Upon declaration of default, the Public Works Director shall collect such amounts from the surety or otherwise as is required to remedy the default.

4. *Release of surety.* A request for release of a fiscal surety required by this Chapter shall be made in writing with the City of Berkeley. Within sixty (60) days of receipt of request for release of a surety, City of Berkeley may make an inspection of the property and shall grant a release of the surety upon determining that:

- a. Site construction is finished,
- b. Damages to any public facilities have not occurred or are in good repair,
- c. The Site Disturbance Permit has been terminated,
- d. Permanent revegetation has been established,
- e. The required improvements and stormwater control BMPs are properly installed, are in good repair and are functioning properly,
- f. All temporary stormwater control BMPs have been removed,
- g. There is no reason to believe that construction on the lot has or will cause the malfunctioning of installed improvements on other property,
- h. The site has passed the final inspection,
- i. The as-builts, if applicable, have been submitted to the City of Berkeley, and
- j. All systems have been cleaned.

C. *Imposition of Lien.* In addition to or as an alternative to use of any fiscal surety, the City of Berkeley shall have the option of placing a lien on any property on which the applicant or any responsible party has failed to properly install, keep in good repair or maintain the proper functioning of all required temporary and permanent improvements or has failed to complete required revegetation or restoration measures. The amount of the lien may cover necessary costs of ensuring compliance with applicable provisions of this Chapter, including, but not limited to, any necessary remedial and restoration measures both on- and off-site and all associated administrative costs.

D. *Additional Fiscal Surety Required.* Before construction actually commences or while the work is in progress, the Public Works Director may require the applicant or other responsible party to post increased surety bond or insurance with the City if the Public Works Director determines the cost or the scope of the work has changed. The amount of such increase shall be based on the amount of any increased cost as determined by the Public Works Director.

E. *Cash Deposit Required For Street Cleaning.* Before construction actually commences or while

the work is in progress, the Public Works Director may require the applicant or other responsible party to post a cash deposit for street cleaning. The amount of cash deposit will depend on the number of construction entrances and the number of months of construction as per the following formula:

$\$100.00 \times (\text{number of months of construction}) \times (\text{number of construction entrances}) = \text{amount of cash deposit}$

Submission of such cash deposit does not relieve the applicant or other responsible party of their responsibility to keep the streets clean. The amount of said deposit may be refunded at the discretion of the Public Works Director. An additional cash deposit may be required as deemed necessary by the Public Works Director.

Section 11 Conditions of Permit Issuance

A. The Public Works Director or designee shall establish the amount of fiscal surety, if any, and if the application and plan comply with the standards contained in this Chapter, he shall issue a permit in accordance therewith. In acting upon such an application and plan, the Public Works Director shall be guided by and shall take into consideration the public health, safety and general welfare and particular consideration shall be given as to whether the plan will create any of the following conditions:

1. Interfere with surface water flow and drainage;
2. Interfere with lateral supports and slopes;
3. Cause excessive erosion or alteration of the natural topography and grade of land, depletion of natural deposits of topsoil and other natural materials, disturbance of the plant and wildlife, creation of nuisance and dangerous open pits and creation of stagnant water pools.

B. The Public Works Director or designee shall not grant a permit for any land disturbance that does not comply with the standards, requirements and provisions of this Chapter. The Public Works Director may impose such conditions or requirements upon the issuance of a permit as he deems necessary or proper to assure faithful compliance with this Chapter.

C. Construction Traffic Routes. The Public Works Director shall approve or change the route or routes to be used by trucks and hauling and grading equipment. The applicant or responsible party shall be charged with the duty of seeing that the trucks or equipment use only the route or routes designated. In the event of any emergency requiring a change in route or routes or if the Public Works Director finds or determines that any route or routes so designated are not safe or that excessive damage is being caused to any street or streets in the City by such usage or if he finds the welfare of the City so requires, he may, upon one (1) days' notice to the contractor in writing, designate an alternate route or routes and it shall thereupon be the duty of the applicant or responsible party to see that the trucks or equipment use only the alternate route or routes so designated by the Public Works Director.

D. The permittee shall amend the Stormwater Pollution Prevention Plan whenever:

1. Design, operation or maintenance of BMPs is changed;
2. Design of the construction project is changed that could significantly affect the quality of the stormwater discharges;
3. Site operator's inspections indicate deficiencies in the SD & SWPPP or any BMP;
4. Inspections by the City or by the Missouri Department of Natural Resources indicate deficiencies in the SD & SWPPP or any BMP;
5. The SD & SWPPP is determined to be ineffective in significantly minimizing or controlling erosion or excessive sediment deposits in streams or lakes;

6. The SD & SWPPP is determined to be ineffective in preventing pollution of waterways from construction wastes, chemicals, fueling facilities, concrete truck washouts, toxic or hazardous materials, site litter or other substances or wastes likely to have an adverse impact on water quality;
7. Total settleable solids from a stormwater outfall exceeds one-half (0.5) ml/L/hr if the discharge is within the prescribed proximity of a "Valuable Resource Water" as defined by the MDNR;
8. Total settleable solids from a stormwater outfall exceeds two and one-half (2.5) ml/L/hr for any other outfall; or
9. The City of Berkeley or the Missouri Department of Natural Resources determines violations of water quality standards may occur or have occurred.

E. The permittee shall:

1. Notify all contractors and other entities (including utility crews, City employees or their agents) who will perform work at the site of the existence of the SD & SWPPP and what actions or precautions shall be taken while on site to minimize the potential for erosion and the potential for damaging any BMP;
2. Determine the need for and establish training programs to ensure that all site workers have been trained, as a minimum, in erosion control, material handling and storage and housekeeping; and
3. Provide copies of the SD & SWPPP to all parties who are responsible for installation, operation or maintenance of any BMP.
4. Maintain a current copy of the SD & SWPPP on the site at all times.

Section 12 Permit Expiration

A permit issued under this Chapter shall expire one (1) year from the date of issuance, except that the Public Works Director may, for due cause shown, extend any permit for one (1) year periods after complete review of all plans and examination of work accomplished and proposed, provided application is made at least thirty (30) days prior to the expiration date of such permit. In no case shall a permit be extended if the provisions of this regulation have not been complied with; provided however, that in connection with continuing operations, the Public Works Director may waive for a one (1) year period those requirements which would make continuing operations impractical.

Section 13 Hours of Operation

It shall be unlawful to conduct grading operations between the hours of 10:00 P.M. and 7:00 A.M.; grading operations are permitted on Saturday, Sunday or a national holiday between the hours of 8:00 A.M. and 4:00 P.M.

Section 14 Inspection

- A. The City of Berkeley shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the Site Disturbance and Stormwater Pollution Prevention Plan as approved. Plans for grading, stripping, excavating and filling work bearing the stamp of the City of Berkeley office of the Public Works Director shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the Department of Public Works at least two (2) working days before the following:

1. Start of construction.
2. Installation of sediment and erosion measures.
3. Completion of site clearing.
4. Completion of rough grading.
5. Completion of final grading.
6. Close of the construction season.
7. Completion of final landscaping.

B. The permittee or his/her agent shall make regular inspections of the land disturbance site, including all erosion and sediment and other pollutant control measures, outfalls and off-site receiving waters, in accordance with the inspection schedule outlined in the approved SD & SWPPP. Inspections must be scheduled at least once per week and no later than seventy-two (72) hours after heavy rain. The purpose of such inspections will be to ensure proper installation, operation and maintenance of BMPs and determine the overall effectiveness of the SD & SWPPP and the need for additional control measures. All inspections shall be documented in written form on weekly reports with copies submitted to the Department of Public Works at the time interval specified in the permit. The inspection reports are to include the following minimum information:

1. Inspector's name and signature;
2. Date of inspection;
3. Observations relative to the effectiveness of the BMPs;
4. Actions taken or necessary to correct deficiencies; and
5. A listing of areas where land disturbance operations have permanently or temporarily stopped.

In addition, the permittee shall notify the site contractor(s) responsible for any deficiencies identified so that deficiencies can be corrected within seven (7) calendar days of the weekly inspection report.

C. The City of Berkeley shall conduct inspections as deemed necessary to ensure compliance with approved plans, to ensure the validity of the reports filed under Subsection (B) above, examine field practices to ensure proper installation, operation and maintenance of stormwater BMPs are adequate to advance the purposes of this Chapter and to determine the overall effectiveness of the SD & SWPPP and the need for additional control measures. Authorized enforcement agencies and inspectors shall have the power to periodically inspect any land disturbing activity upon presentation of appropriate identification and to require monitoring and reports from the applicant or other on-site responsible party.

D. Notice of such right of inspection shall be included in the Site Disturbance Permit and such right shall include the right to enter the property and inspect with or without notice. All such inspections shall be at the discretion of the inspector. All inspectors are hereby given the authority to issue notices of violations, stop work orders and summons to court.

Section 15 Maintenance

A. *Maintenance during Construction.*

1. The applicant or responsible party shall be required to conduct continuing inspections of all erosion prevention and sediment control measures and direct the appropriate persons to make any repairs or modifications necessary within forty-eight (48) hours of the initial discovery of a

control failure or violation. At a minimum, such inspections shall occur every seven (7) calendar days and within twenty-four (24) hours after each storm event that produces one-half (0.5) inches or more of precipitation. A written record of all inspections shall be maintained on site during the duration of the construction or land disturbing activity (see paragraph (3) below).

2. In addition, silt accumulation upstream of temporary controls shall be removed when the control reaches the storage capacity established for the particular type of control in either the MDNR document or the EPA document referenced in the code.

3. A copy of the latest approved SD & SWPPP and records of all inspections, repairs and modifications shall be kept on site during the duration of the construction or land disturbing activity. All records of inspection shall be in a form specified by the City of Berkeley and shall include the date and time of inspection and the name and signature of the inspector.

B. *Post-Construction Maintenance.* Following release or acceptance of a project (and termination of the Site Disturbance Permit), the owner shall be responsible for maintaining the project site in a manner to prevent soil erosion and sedimentation in violation of this Chapter.

C. *General Maintenance and Upkeep.* All owners within the City of Berkeley shall be responsible for maintaining their property in a manner to prevent soil erosion and sedimentation in violation of this Chapter.

Section 16 Enforcement

A. *Agency Responsibility.* Enforcement of this Chapter shall be the responsibility of the City of Berkeley or official as determined by the City.

B. *Responsible Parties For Enforcement Purposes — Defined.* The party or parties responsible and liable for actions or non-action taken in relation to this Chapter, including responsibility for curing violations of this Chapter, shall be the applicant, any co-applicants and any other responsible party.

C. *Complaints.* The City of Berkeley shall receive complaints and inquiries and route the complaint/inquiry to the appropriate responsible enforcement agency.

D. *Enforcement Procedures.*

1. *Notice of violation/stop work order.* If a complaint investigation or inspection results in a finding of non-compliance with this Chapter, the appropriate inspector is authorized to issue a notice of violation (NOV) that may, at the discretion of the inspector, include a stop work order. A stop work order shall be required when the violation is causing off-site adverse impacts and degradation.

a. *Content of NOV.* The NOV shall specify the deficiencies, what corrective action is necessary and a specific time frame within which the authority expects reasonable progress to be made on compliance (no longer than seventy-two (72) hours, unless extenuating or unusual circumstances such as weather justify a longer time frame).

b. *Stop work order.* Issuance of a stop work order shall result in a suspension of the project development or site plan approval and except for work related to remediation of the violation, no additional land disturbing activity shall occur and no additional grading or

building permits shall be issued until the violation is resolved to the enforcement agency's satisfaction. Stop work orders shall specifically state the provisions of this Chapter being violated.

c. *Service of NOV and stop work order.* The written NOV, including a stop work order as applicable, shall be delivered to the applicant, owner or other on-site responsible party and a certified copy shall be sent to the applicant and/or owner and/or design engineer. Notice of the NOV, including a stop work order, may be given by registered mail to the applicant, owner or other responsible party after two (2) reasonable efforts to serve the notice personally have failed.

2. *Issuance of summons to court.* It shall be the responsibility of the owner to ensure that no violation of this Chapter occurs on his property. If the applicant or other responsible party fails to comply with the NOV or there is no immediate settlement, the inspector is authorized to issue a summons to court to the applicant or other responsible party. The summons to court shall contain all the information required by this Code, including the potential civil fines that will be imposed for the violation if the person does not contest the summons to court and the maximum fine that may be imposed if the person elects to contest the summons to court. The appropriate inspection agency shall have the option of issuing a summons to court immediately upon discovery of a violation in lieu of a NOV. Any person, firm or corporation found guilty of violating any provisions of this Chapter shall, upon conviction, be punished as provided in this Code.

E. *Repeated and Serious Violations/Failure to Perform.* In cases in which an applicant or other responsible party has a record of serious violations and/or repeated violations of the provisions of this Chapter or has repeatedly violated the requirements of a Site Disturbance Permit as set forth in this Chapter, the City of Berkeley shall be authorized to undertake any or all of the following actions:

1. To refuse to accept applications for any development or land disturbing activity or to process any such application of the applicant or responsible party;
2. To revoke a Site Disturbance Permit as it applies to any development or land disturbing activity carried out by the applicant or responsible party.

Section 17 Appeals

Denial of Site Disturbance Permit. Any person denied a Site Disturbance Permit as herein provided shall have the right to appeal such denial to the Board of Adjustment or other board established by the City within thirty (30) days of the date of such denial. The appeal fee is \$350.00 per appeal.

Section 18 Penalties

- A. **Civil Infraction.** All violations of this Chapter shall be classified as civil offenses.
- B. **Civil Fines.** The civil fine for each violation of this Chapter shall be set by a court of competence jurisdiction.
- C. **Continuing Offense.** Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense.

D. Remedies Not Exclusive. In addition to any remedies provided for in this Chapter, any equitable or other applicable remedies may be sought.

Section 19 That all ordinances and parts of ordinances in conflict herewith are hereby repealed for purposes of this ordinance only, and only to the extent of the conflict.

1st Reading this _____ day of _____ 2018

2nd Reading this _____ day of _____ 2018

3rd Reading, PASSED and APPROVED, this _____ **day of** _____ **2018**

Theodore Hoskins, Mayor

ATTEST:

Deanna L. Jones, City Clerk

Approved As To Form:
Donnell Smith, City Attorney

Final Roll Call:

Mayor Hoskins	Aye	___	Nay	__	Absent	__	Abstain	__
Councilwoman Hoskins	Aye	___	Nay	__	Absent	__	Abstain	__
Councilwoman Kirkland	Aye	___	Nay	__	Absent	__	Abstain	__
Councilwoman Mathison	Aye	___	Nay	__	Absent	__	Abstain	__
Councilman-at-Large McDaniel	Aye	___	Nay	__	Absent	__	Abstain	__
Councilwoman Mitchell	Aye	___	Nay	__	Absent	__	Abstain	__
Councilwoman Williams	Aye	___	Nay	__	Absent	__	Abstain	__