

CHAPTER 167

EROSION CONTROL

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167.01 TITLE. This chapter shall be known as the “Clive Erosion Control Ordinance,” may be cited as such and will be referred to herein as “this chapter.”

167.02 PURPOSE. The purpose of this chapter is to care for and control the City streets, sidewalks and sewers to prevent the despoliation of the environment and to promote and preserve the rights, privileges, property, safety, health, welfare, comfort and convenience of the residents of and visitors to the City by regulating and controlling the design, construction, quality of material and use and maintenance of any development or other activity which disturbs or breaks the topsoil or otherwise results in the movement of soil in the City and by requiring property owners to abate certain accumulations of soil.

167.03 WARNING. NO PERSON SHALL PLACE RELIANCE UPON THIS CHAPTER, ANY INSPECTIONS PERFORMED OR CERTIFICATES ISSUED PURSUANT TO THIS CHAPTER, AS INDICATING THE SAFETY OF OR QUALITY OF CONSTRUCTION OF ANY PARTICULAR PREMISES. NEITHER THIS CHAPTER NOR INSPECTIONS MADE PURSUANT THERETO NOR CERTIFICATES ISSUED ARE INTENDED TO ASSUME THE DUTY OF ANY PERSON TO ADEQUATELY CONSTRUCT AND MAINTAIN A PREMISES OR PROVIDE A SAFE PREMISES OR TO, IN ANY WAY, INDICATE A DECREASE IN THE RISK ASSOCIATED WITH THE USE OR OCCUPANCY OF ANY PREMISES. A CERTIFICATION THAT A PREMISES HAS BEEN INSPECTED PURSUANT TO THIS CHAPTER SHALL NOT IN ANY WAY, CONSTITUTE A WARRANTY OR GUARANTEE OF THE SAFETY OR QUALITY OF THAT PREMISES.

167.04 INTERPRETATION. The foregoing statements of legislative intent shall govern and take precedence over any other language contained in this chapter.

167.05 DEFINITIONS. For the purpose of this chapter, the following terms have or include the following meanings:

1. “Board of Adjustment” means the Board of Adjustment of the City as the same is then constituted by applicable zoning ordinance or ordinances of the City.
2. “Building Official” means the person holding the office of Building Official under the Building Code of the City, as said Building Code may be from time to time amended or re-enacted. When said office is vacant or when such person is out of the City or away from his or her duties because of vacation or illness, “Building Official” means the person then holding the office of Director of Public Works in the City.
3. “Erosion” means the wearing away of ground surface as a result of the movement of wind, water and/or ice.
4. “Excavate” means the mechanical removal of soil or ground cover.
5. “Excavation bond” means a bond posted pursuant to Section 167.14 of this chapter.
6. “Excavation permit” means the permit required by Section 167.06 of this chapter.
7. “Fill” means the depositing of soil by artificial means.
8. “Horticultural activity” means the cultivation of a garden, orchard or nursery.
9. “Permit holder” means a person holding an excavation permit which has neither expired nor been revoked.
10. “Property” means land located in the City, whether or not improved with buildings or other structures.
11. “Property owner” means a person who, alone or with another person or other persons, holds the legal title to property; except, however, where property has been sold on contract to a person who has the present right to possess the property and the contract has been filed for record in the Office of the Recorder for Polk County, Iowa, the person so purchasing the property, whether alone or with another person or other persons, is the “property owner” and the person retaining bare legal title to the property as security for the balance of the purchase price.
12. “Sewer” or “City sewer” includes all pipes, culverts, channels, manholes, ditches and other structures or courses, manmade or natural, forming a part of the storm sewer system of the City.
13. “Sidewalk” or “City sidewalk” means that portion of a public street or thoroughfare in the City intended for the use of pedestrians.
14. “Soil” includes dirt, sand, loam, gravel, rock and other naturally occurring surficial deposits overlying bedrock.

15. "Street" or "City street" means all of a public street or thoroughfare in the City, including the unpaved portions of a public right-of-way generally referred to as "public parking" but exclusive of sidewalks.
16. "Work" includes the activities of excavating and filling and the results of both.

167.06 EXCAVATION PERMIT REQUIRED. Unless permitted by Section 167.07 hereof, it is unlawful for any person to excavate or fill, or cause to be excavated or filled, any property in the City unless the owner of such property, or the grading or general contractor, if any, responsible for the work, holds for the property a current excavation permit issued by the Building Official permitting such work to be done. Each day excavating persists in violation of this section shall constitute a new and separate violation of this chapter. An excavation permit shall not be transferable to another person or property.

167.07 EXCEPTIONS. Any language in this chapter to the contrary notwithstanding, an excavation permit is not necessary when excavating or filling is done (1) to further a farming or horticultural activity, (2) by a public utility company for the purpose of installing underground utilities, (3) by City employees on City business or contractors under City's hire, (4) by or under the direction of a soil engineer or engineering geologist to investigate, test or evaluate earth materials in conjunction with the designing and engineering of buildings or other improvements, and (5) on property then occupied as the residence of the property owner and less than one hundred (100) cubic yards of soil are to be moved (excavated and/or filled) and no more than five hundred (500) square feet of existing ground cover will be disturbed.

167.08 CONTENTS AND DURATION OF PERMIT. Contents and duration shall be as follows:

1. Contents. An excavation permit shall, on its face or on an attachment thereto, list the name, mailing address and phone number (business and residential) of the permit holder and the property owner (if the same is other than the permit holder) and any person designated by the permit holder to receive from the Building Official the notices or orders contemplated by this chapter, shall adequately describe the property it covers and the type and extent of the work permitted thereby, and shall specify those conditions and requirements imposed by the Building Official pursuant to Section 167.11 of this chapter.
2. Duration. An excavation permit shall expire:
 - A. On its expiration date as established by the Building Official.
 - B. On the date ninety (90) days following its issuance if the permitted work has not then commenced.
 - C. On the date any portion of the fee therefor is refunded to the permit holder pursuant to Section 167.09 of this chapter, whichever of these dates is sooner.

3. Expiration Date. In establishing an expiration date, the Building Official is directed to consider the objectives and purpose of this chapter, the type and extent of the proposed work, and special problems, if any, facing the permit holder, and the time of year the work is to be performed. In any event, an excavation permit will not be issued for a period longer than three hundred sixty-five (365) days.

167.09 FEE FOR PERMIT. The fee for an excavation permit is one hundred thirty dollars (\$130.00) plus an additional eighty dollars (\$80.00) for each acre or portion thereof of the covered property that exceeds one (1) acre in area.

167.10 INFORMATION REQUIRED. Prior to the issuance of an excavation permit, the Building Official may require the submission of any or all of the following:

1. Sketch. A sketch showing the boundaries and dimensions of the property, the location of streets, sidewalks and sewers in the area of the property, and the actual location on the property of the proposed work.
2. Information. Information on the property and other properties in the area sufficient to show existing drainage patterns and drainage courses.
3. Schedule. The anticipated construction schedule.
4. Proposed Work. The extent and type of the proposed work.
5. Erosion. The methods and materials to be used to prevent erosion.
6. Other. Any other sketches, maps, studies, engineering reports, tests, profiles, cross sections, construction plans and specifications the Building Official deems necessary to fully analyze the risk of erosion and the procedures available to prevent the same.

167.11 CONDITIONS IMPOSED. An excavation permit may be issued with certain conditions and requirements to be met or fulfilled by the permit holder preliminary to or as part of the proposed work. Such conditions and requirements shall be those conditions and requirements deemed necessary or advisable by the Building Official to limit erosion and may include, without limitation, the following:

1. Conditions. A phased construction schedule exposing the smallest area of land as practical during any one time.
2. Requirements. Temporary and permanent plantings, structures, devices and methods designed to prevent or limit erosion.
3. Written Notice. If during the course of the work it becomes necessary or advisable in the opinion of the Building Official to impose other or additional conditions or requirements to be met or fulfilled by the permit holder to prevent or limit erosion, the Building Official may do so by written notice to the permit holder, or to the person designated by the permit holder to receive such notices for the permit holder, delivered either in person by the

Building Official or a police officer of the City or by certified mail, return receipt requested, to the address or addresses of the permit holder, or designee, as listed on the excavation permit.

4. Waiver. The Building Official may waive any condition or requirement imposed pursuant to this section if, in the opinion of the Building Official, such condition or requirement is no longer necessary or advisable to prevent or limit erosion.

5. Unlawful. It is unlawful for any person to excavate or fill, or cause to be excavated or filled, any property in the City covered by an excavation permit in violation of such conditions and requirements as have been imposed by the Building Official pursuant to this section. Each day excavating or filling persists in violation of this section shall constitute a new and separate violation of this chapter.

167.12 POSTING OF PERMIT. The permit holder shall keep his or her excavation permit and all initial attachments thereto and all notices of other and additional conditions and requirements at the property or at such other site convenient for inspection by the Building Official and by all persons performing, or directing the performance of, the work.

167.13 REVOCATION OF PERMIT. In the event a permit holder violates the terms of the excavation permit or any conditions or requirements imposed therewith by the Building Official pursuant to Section 167.11 of this chapter, conducts or carries on the permitted work in such a manner as to materially and adversely affect the health, welfare or safety of the persons residing or working in the neighborhood of the property, conducts or carries on the permitted work in a manner that is materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood, or violates Section 167.16 of this chapter, then the Building Official shall suspend or revoke the excavation permit and order that all work requiring an excavation permit immediately stop.

167.14 BOND. In addition to the excavation permit required by this chapter, and as a condition precedent to the issuance of an excavation permit, the Building Official may require a permit holder to file with the City Treasurer an excavation bond in such amount as the Building Official may deem necessary to assure that the permit holder meets and fulfills those conditions and requirements imposed upon the permit holder pursuant to Section 167.11 of this chapter. The excavation bond will be in cash or cash equivalent or issued by a solvent surety acceptable to the Building Official.

167.15 INDEMNITY. The applicant for any permit for a swimming pool, by making such application, assumes and agrees to pay for all loss or damage to property whatsoever, an injury to or death of any person or persons whomsoever, including all costs and expenses incident thereto, however, arising from or in connection with or related to the issuance of such permit or the doing of anything thereunder, or the failure of such applicant, or the agents, employees, or servants of such applicant, to abide by or comply with any of the provisions of this code or any other ordinance of

the City; and such applicant, by making such application, forever indemnifies the City, its officers and employees, and agrees to save it and them harmless from any and all claims, demands, lawsuits, or liability whatsoever for any loss, damage, injury or death, costs and expenses, by reason of the foregoing even though acts or omissions of the City, its officers or employees, may have caused or contributed thereto. The foregoing provisions shall be deemed to be a part of any permit issued under this or the following chapter whether expressly recited therein or not.

167.16 ABATEMENT OF SOIL ACCUMULATIONS. If, by erosion, vehicle tire or otherwise, soil shall be carried from private property in the City and shall accumulate on the City streets or sidewalks or in the City sewers or established streams and drainage ditches located in the City, and if such accumulation of soil is by its presence dangerous to the persons or properties of others or interferes with the safe use or efficient operation or maintenance of said streets, sidewalks, sewers, streams and drainage ditches, the owner of such property, and the permit holder for such property, if there be one, shall cause such accumulation of soil to be cleaned from said streets, sidewalks, sewers, streams and drainage ditches within forty-eight (48) hours of being ordered to do so by the Building Official (or within 24 hours if the Building Official determines that the continued presence of such accumulation of soil is hazardous to life and limb or materially disruptive of the normal use of such streets, sidewalks, sewers, streams or drainage ditches); provided, however, this section shall not be interpreted to require a property owner or a permit holder to clean from said streets, sewers, streams and drainage ditches any soil which originated from, and which accumulated on account of, the excavation of a public utility company. Cleanup orders issued pursuant to this section shall be in writing and shall be served in a manner prescribed for the service of civil process by the Iowa Rules of Civil Procedure; except, however, such an order to a permit holder for the property may also be given verbally by the Building Official, either in person or by telephone call, to the permit holder or to a person designated by the permit holder to receive such notices from the Building Official, or to a family member, employee or associate of such permit holder or designee as is found at the addresses or phone numbers of the permit holder or designee listed on the excavation permit. Each day a property owner or permit holder remains in violation of a cleanup order given pursuant to this section shall constitute a new and separate violation of this chapter.

167.17 CLEANUP BY CITY. If the property owner or permit holder fails to clean accumulations of soil from the City streets and sidewalks, City sewers or established streams and drainage ditches in the City within the time period prescribed by the Building Official in the order given pursuant to Section 167.16 of this chapter, the City may do so by its own crews or by persons under its hire and assess against the property owner and permit holder the City's costs therefor. Said costs shall include the salaries earned by City employees during such cleanup operations, a charge for City machinery used comparable to the going rental rates for the use of similar equipment for a similar period of time and such other costs and expenses as the City actually incurred. To the extent allowed by Iowa law, such costs and expenses may be assessed against the property and collected in the same manner as a property tax.

167.18 APPEAL. Any person who has been aggrieved by an order, requirement, decision or determination of the Building Official in the enforcement of this chapter may, within thirty (30) days thereof, appeal such action to the Board of Adjustment by filing with the Building Official and with the Board of Adjustment a Notice of Appeal specifying the grounds therefor. The Building Official shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from is taken. Before an appeal is filed with the Board of Adjustment, the appellant shall pay to the City Treasurer a fee as prescribed for the taking of appeals to the Board of Adjustment by the then applicable zoning ordinance or ordinances of the City. Such fee shall be credited to the General Fund of the City. The Chairperson of the Board of Adjustment, or in the absence of the Chairperson the Acting Chairperson, shall, by written order, fix a date, time and place for a hearing on the appeal and prescribe the notice thereof and the parties to whom notice shall be given. At the hearing, any party may appear in person, by agent or by attorney. The Board of Adjustment may, so long as such action is in conformity with the terms of the ordinance, modify, reverse or affirm, wholly or partly, the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have powers of the Building Official. The Board of Adjustment shall not have the power to grant exceptions or variances to the requirements of this chapter. The concurring vote of three (3) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Building Official; provided, however, the action of the Board of Adjustment shall not become effective until after the resolution of the Board of Adjustment, setting forth the full reason for its decision and the vote of each member participating therein, has been filed. Such resolution, immediately following the Board of Adjustment's final decision, shall be filed in the Office of the Board of Adjustment and shall be open to public inspection. Decisions of the Board of Adjustment may be appealed by the appellant, the Building Official, or both, to the City Council in the same manner as appeals from the order, requirement, decision or determination of the Building Official. The concurring vote of three (3) members of the City Council shall be necessary to reverse or modify any decision of the Board of Adjustment.

167.19 RESPONSIBILITY. The failure of City officials to observe or foresee hazardous or unsightly conditions, or to impose other or additional conditions or requirements on permit holders, or to deny or revoke an excavation permit, or to stop work in violation of this chapter shall not relieve the property owners or permit holders of the consequences of their actions or inactions or result in the City, its officers or agents being liable therefor or on account thereof.

167.20 PENALTY. Unless another penalty is expressly provided by this chapter for any particular provision or section, any person violating any provision of this chapter or any rule or regulation adopted herein by reference shall be subject to a civil penalty as set forth in the Schedule of Civil Penalties in Chapter 4 of this Code of Ordinances. Each day that a municipal infraction occurs and/or is permitted to exist constitutes a separate offense.

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