

10.14 EROSION CONTROL ENFORCEMENT

Standard of Practice

Background

Protecting the City of Salem's stormwater is critical to the health of our City. Through the efforts of plan review and inspection, the City works with applicants to best prevent erosion and control sediment before it becomes a violation. Ensuring EPSC plans are adequately prepared and then following up with thorough inspections of EPSC sites will assist us in meeting or exceeding our permit requirements. There are circumstances, however, that require additional steps to be taken to enforce City codes and ordinances and comply with the permit requirements.

This Standard of Practice provides guidance in enforcing EPSC using established procedures to ensure fairness with permit holders and protection of the City's waters system.

References

The following documents provide Code support and Council approved actions concerning enforcement procedures for permitted projects. Enforcement officers shall be familiar with and the following used as references when reviewing EPSC plans for sufficiency and approval.

1. Salem Revised Code Chapter 20J, *Administrative Rule Making and Contested Case Procedures*.
2. Salem Revised Code Chapter 75, *Erosion Prevention and Sediment Control*.
3. December 10, 2012 Council Agenda Item 7(h) "Notice of Proposed Administrative Rulemaking for the Establishment of a Matrix for the Imposition of Civil Penalties"

Standard of Practice

Every effort should be made to work with developers, consultants, contractors, and permit holders during the construction process to achieve mutual success in meeting EPSC requirements. Normally, this can be achieved through standard communication channels verbally or through Inspection Reports. When these efforts fail to generate the required action to correct or implement EPSC measures the following enforcement steps will be taken.

Step 1—Inspection Notice of Correction

When a routine inspection identifies deficiencies that require corrections, written notice shall be given through the use of the **Notice of Public Works Inspection Site Development** form utilizing the Erosion Control section (Attachment A). This form will be given to the responsible EPSC person(s) on site when they have failed to heed the verbal or Daily Inspection Report direction to correct or implement new measures to prevent erosion. The responsible EPSC person(s) is the Authorized Agent or Applicant of the EPSC Permit.

The intent of this notice is to alert the responsible person(s) that corrective action must be taken **within three calendar days**. If there is an imminent threat of sedimentation leaving the site and entering a waterway or stormwater system a Stop Work Order will be issued as noted in Step 3.

Step 2—Notice of Non-Compliance Incident

If the responsible EPSC person does not complete correction items documented and distributed in Step 1 within the 3 days allowed, follow up formal notice will be given through the use of the **Notification of Erosion Sediment Control Non-Compliance Incident** form (Attachment B). This form will be given to the responsible EPSC person(s) to formally notify them that they are in non-compliance with permit conditions and/or City codes and ordinances. The intent of this notice is to provide a warning that serious consequences will result if non-compliant EPSC measures are not brought into compliance **within one day** of this notice. Again, if at this time there is an imminent threat of sedimentation leaving the site, a Stop Work Order will be issued as noted in Step 3.

A copy of the **Notice of Erosion Sediment Non-Compliance Incident** form shall also be sent to the EPSC Permit Holder as subsequent enforcement actions involve schedule and financial consequences.

Step 3—Stop Work Order

This notice will be given after Steps 1 and 2 have been issued and no satisfactory results have been achieved OR if there is an imminent threat of sediment leaving the site and violating SRC Chapter 75. The **Stop Work Order** form (Attachment C) will be issued in accordance with SRC Chapter 75, which requires the approval of the Public Works Director. Once the Stop Work Order is issued to the responsible EPSC person on site and the all work shall cease immediately EXCEPT for work necessary to achieve compliance with EPSC requirements.

A copy of the **Stop Work Order** form shall also be sent to the EPSC Permit Holder as productivity at the site has ceased and subsequent enforcement actions involve financial consequences.

The Stop Work Order will be lifted from the site when the site inspector reports that all EPSC measures have been brought into compliance and approval is granted by the Public Works Director.

For sites which are not currently active, a Stop Work Order is inconsequential and does not protect the City's resources. Proceeding directly to Step 4 is the logical course of action when Step 2 does not produce a compliant situation.

Step 4—Civil Penalties for Violations (Attachment D)

City Code SRC Chapter 75 provides for civil penalties to be issued to the responsible person(s) when there is an EPSC violation. Civil penalties will be levied in accordance with established processes in the amounts dictated by code and prescribed by Administrative Rule 109-001 *Enforcement of the Utility Code*.

Typically civil penalties will not be issued unless the Stop Work Order does not achieve the desired results; however, if the non-compliance issue is a repeated offense and/or the violation is serious enough, civil penalties may be levied at any time in the enforcement process.

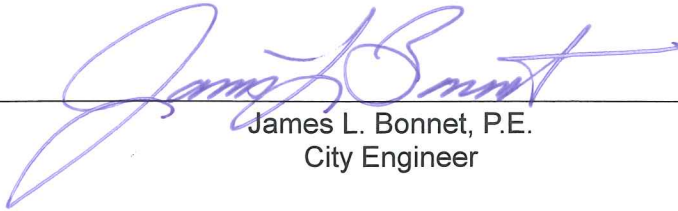
Administrative Rule 109-001 *Enforcement of the Utility Code* (Attachment D) is a guideline for uniform procedures and methodology for the imposition of civil penalties for SRC violations. Civil penalties shall be issued as approved by the Public Works Director.

Revisions

N/A

Attachments:

- A. Notice of Public Works Inspection Site Development form
- B. Notification of Erosion Sediment Control Non-Compliance Incident form
- C. Stop Work Order form
- D. Administrative Rule 109-001 Enforcement of the Utility Code



James L. Bonnet, P.E.
City Engineer

10-14-13

Date

NOTICE OF PUBLIC WORKS INSPECTION SITE DEVELOPMENT



Permit No. _____

Site Address: _____ Date: _____

☐ Erosion Control ☐ Driveway ☐ Sidewalk ☐ Sanitary ☐ Storm ☐ Street Trees ☐ PW ☐ Ex-Fill

Sidewalk or Driveway Approach or Street Opening

<u>Forms</u>	<input type="checkbox"/> Inspected	<u>Final</u>	<input type="checkbox"/> Inspected
	<input type="checkbox"/> Disapproved (No Fee Required)		<input type="checkbox"/> Disapproved (No Fee Required)
	<input type="checkbox"/> Disapproved (Reinspection Fee Due)		<input type="checkbox"/> Disapproved (Reinspection Fee Due)
	<input type="checkbox"/> Approved with Corrections		<input type="checkbox"/> Approved
	<input type="checkbox"/> Approved		

Ex-Fill or Sanitary or Storm or PW Inspection

<u>Partial</u>	<input type="checkbox"/> Inspected	<u>Final</u>	<input type="checkbox"/> Inspected
	<input type="checkbox"/> Disapproved (No Fee Required)		<input type="checkbox"/> Disapproved (No Fee Required)
	<input type="checkbox"/> Disapproved (Reinspection Fee Due)		<input type="checkbox"/> Disapproved (Reinspection Fee Due)
	<input type="checkbox"/> Approved		<input type="checkbox"/> Approved

Street Trees

Total Number of Street Trees _____

☐ Disapproved (No Fee Required) ☐ Disapproved (Reinspection Fee Due) ☐ Inspected

Erosion Control (COMPLETE THIS SECTION ON EVERY SITE VISIT)

<input type="checkbox"/> Inspected	<input type="checkbox"/> No Follow Up Needed
<input type="checkbox"/> Non-Compliant	<input type="checkbox"/> Follow Up Required
<input type="checkbox"/> Approved (FINAL INSPECTION ONLY)	Schedule Follow Up on: _____

Corrections/Comments:

**This inspection will remain open until a final inspection has been completed.
Call 503-589-2021 to schedule a final inspection.**

 Correction Notice: ☐ Posted or ☐ Delivered to: _____
RECEIVED BY / SIGNATURE

 Inspected by: _____
INSPECTED BY / SIGNATURE

 Reinspection Fee Due (\$74): ☐ Yes ☐ No _____
PRINT / TYPE INSPECTOR NAME

REINSPECTION PROCEDURE: If reinspection fees are noted above, they must be paid prior to further inspection. Fees are payable at the **Permit Application Center**, Room 320, Civic Center, 555 Liberty Street SE, Salem; or **online** by first calling 503-588-6211 to request online billing, then go to <http://splash.cityofsalem.net> to pay fees and/or request inspection.



Notification of Erosion Sediment Control Non-Compliance Incident

Date: _____ Time: _____

Weather Conditions: _____

Location of Incident (Use address, if possible; or block number and street; and a subdivision name, if applicable):

Description of Non-compliance Incident:

Possible Responsible Party for Non-compliance Incident (e.g., name of a builder, delivery truck, landscape company, property owner, etc.):

Contacted someone onsite regarding non-compliance incident? ☐ Yes ☐ No

Repeat Non-compliance Incident? ☐ Yes ☐ No

CORRECTION REQUIRED WITHIN 24 HOURS OF NOTIFICATION

Issued by: _____
SIGNATURE DATE

PRINT NAME TIME

TITLE



Authorized by Salem Revised Code Chapters 73 and 75

All persons are hereby ordered to **STOP WORK**

ADDRESS: _____ Salem, Oregon

PROJECT NAME: _____ PN _____

All Work On This Site Has Been Suspended Due To:

- | | | |
|------------------------------------|---|--|
| <input type="checkbox"/> No Permit | <input type="checkbox"/> Sanitary Sewer | <input type="checkbox"/> Catch Basin |
| <input type="checkbox"/> Sewer Cap | <input type="checkbox"/> Stormwater | <input type="checkbox"/> Erosion Control |

<input type="checkbox"/>	_____
<input type="checkbox"/>	_____
<input type="checkbox"/>	_____
<input type="checkbox"/>	_____

**CORRECTIVE ACTION ON ALL EROSION CONTROL DEFICIENCIES
SHALL BE ADDRESSED WHILE ORDER IS IN EFFECT**

Please Contact: City of Salem Public Works Inspections, Phone: 503-588-6211

Posted: _____	Signed by: _____
DATE	Print Name: _____
TIME	Title: _____

**DO NOT REMOVE THIS NOTICE UNTIL AUTHORIZED
BY THE PUBLIC WORKS DIRECTOR**

FOR COUNCIL MEETING OF:
AGENDA ITEM NO.:
PUBLIC WORKS FILE NO.:

June 9, 2014
7 (e)

TO: MAYOR AND CITY COUNCIL
THROUGH: LINDA NORRIS, CITY MANAGER
FROM: PETER FERNANDEZ, P.E., PUBLIC WORKS DIRECTOR
SUBJECT: NOTICE OF PROPOSED ADMINISTRATIVE RULEMAKING FOR
ENFORCEMENT OF PUBLIC WORKS REGULATIONS

ISSUE:

Notice of proposed administrative rulemaking to establish criteria for determining an appropriate civil penalty for violations of provisions in the *Salem Revised Code* for which the Public Works Director is responsible. This notice is given pursuant to *Salem Revised Code* 20J.040(a)(3).

RECOMMENDATION:

Information only.

SUMMARY AND BACKGROUND:

Salem Revised Code (SRC) 20J.140 authorizes imposing a civil penalty when a person has violated a provision of the SRC that specifically provides for a civil penalty as a sanction. SRC 20J.150 sets forth five general criteria upon which a civil penalty shall be based:

- a. The gravity and magnitude of the violation;
- b. Whether the violation was the result of events or circumstances not reasonably within the person's control, or whether the violation was the result of the person's negligent, knowing or intentional acts;
- c. The person's cooperativeness in correcting the violation;
- d. Whether the person has taken all feasible steps, or adopted necessary or appropriate procedures, to prevent future violations; and
- e. Any prior violations of the same or related provisions of the Code.

The proposed administrative rule will establish a matrix and provide instructions to guide the City of Salem Public Works Department in determining the correct amount of civil penalty to be imposed on persons violating provisions of the SRC for which the Public Works Director is responsible. The amount of civil penalty will depend on: (1) the

Director's determination of the gravity and magnitude of the violation, which is defined in the rule as "Minor," "Moderate," or "Major" and (2) the total number of points assigned to enforcement evaluation criteria that are contained in the rule. There are five enforcement criteria:

1. Was the violation the result of events or circumstances not reasonably within the person's control?
2. Was the person negligent by failing to obtain or comply with the necessary permits and approvals?
3. Was the action a willful and knowing violation?
4. Was the person unresponsive in correcting the violation?
5. Is this a repeat violation of the same or related provisions of the SRC?

The amount of the civil penalty is subject to the review and approval of the Public Works Director. Unless otherwise specifically provided in the SRC, a civil penalty shall not exceed \$2,000 per day that the violation continues. If the civil penalty is other than \$2,000 per day, the amount of civil penalty determined with this rule shall be applied proportionately to the maximum civil penalty specified in the SRC.

FACTS AND FINDINGS:

The Notice of Administrative Rule Making (Attachment) will be posted June 9 through June 23, 2014. Interested parties will have 15 days to provide comment to staff. Subject to review by Council, the rule will become effective June 24, 2014.

Adoption of Administrative Rules does not require Council approval. Council may elect to review the proposed Administrative Rule; however, the scope of Council's review is limited to: (1) whether the rule is within the scope of the provision of the Code authorizing adoption; and (2) whether the rule is duplicative of, or conflicts with, another rule or other Federal, State or local law or regulation, or is outside of the range of staff's rulemaking authority. The Legal Department has reviewed the proposed rules for consistency with the code pursuant to SRC 20J.080.



Robert D. Chandler, Ph.D., P.E.
Assistant Public Works Director



NOTICE OF PROPOSED ADMINISTRATIVE RULEMAKING

Enforcement of Public Works Regulations

Public Works	109-100-001	
City Department	Administrative Rules Chapter Number	
Robert D. Chandler	555 Liberty Street SE, Room 325, Salem, OR, 97301	503-588-6008
Rules Coordinator	Address	Telephone

ADMINISTRATIVE RULE SUMMARY

The proposed administrative action to be taken is to adopt Administrative Rule 109-100-001 Enforcement of Public Works Regulations.

Salem Revised Code (SRC) 20J.140 authorizes imposing a civil penalty when a person has violated a provision of the SRC that specifically provides for a civil penalty as a sanction. SRC 20J.150 sets forth five general criteria upon which a civil penalty shall be based:

- a. The gravity and magnitude of the violation;
- b. Whether the violation was the result of events or circumstances not reasonably within the person's control, or whether the violation was the result of the person's negligent, knowing or intentional acts;
- c. The person's cooperativeness in correcting the violation;
- d. Whether the person has taken all feasible steps, or adopted necessary or appropriate procedures, to prevent future violations; and
- e. Any prior violations of the same or related provisions of the Code.

The proposed administrative rule attached to this Notice will establish a matrix and provide instructions for its use to guide the City of Salem Public Works Department in determining the correct amount of civil penalty to be imposed on persons violating provisions of the SRC for which the Public Works Director is responsible. The amount of civil penalty will depend on: (1) the Director's determination of the gravity and magnitude of the violation, which is defined in the rule as "Minor," "Moderate," or "Major" and (2) the total number of points assigned to enforcement evaluation criteria that are contained in the rule. There are five enforcement criteria:

1. Was the violation the result of events or circumstances not reasonably within the person's control?
2. Was the person negligent by failing to obtain or comply with the necessary permits and approvals?
3. Was the action a willful and knowing violation?
4. Was the person unresponsive in correcting the violation?
5. Is this a repeat violation of the same or related provisions of the *Salem Revised Code*?

The amount of the civil penalty is subject to the review and approval of the Public Works Director. Unless otherwise specifically provided in the SRC, a civil penalty shall not exceed \$2,000 per day that the violation continues. If the civil penalty is other than \$2,000 per day, the amount of civil penalty determined with this rule shall be applied proportionately to the maximum civil penalty specified in the SRC.

AUTHORITY

The authority to promulgate this administrative rule is set forth in SRC 2.200 and SRC 20J.030.

DOCUMENTS, REPORTS AND STUDIES

The City relied upon some of the definitions found in *Oregon Revised Statutes* in preparing this proposed administrative rule.

A copy of the Oregon Revised Statutes can be found online at <http://www.leg.state.or.us/ors/> and in the Salem Public Library located at 585 Liberty Street SE, Salem, Oregon.

Salem Revised Code can be found online at:

<http://www.cityofsalem.net/departments/legal/pages/salemrevisedcodes.aspx>

All documents, reports, or studies relied upon are available for public inspection by contacting:
Robert D. Chandler, Assistant Public Works Director, at 555 Liberty Street SE, Room 325, Salem, OR, 97301, 503-88-6008, rhandler@cityofsalem.net.

PUBLIC COMMENT

Interested Persons must submit written comments to Robert D. Chandler, Assistant Public Works Director, at 555 Liberty Street SE, Room 325, Salem, OR, 97301 or via e-mail to rhandler@cityofsalem.net.

ALL COMMENTS MUST BE RECEIVED NO LATER THAN JUNE 23, 2014, TO BE CONSIDERED.

Peter Fernandez, Public Works Director

Department Head Signature

Printed Name

Date

CITY OF SALEM
DEPARTMENT OF PUBLIC WORKS
ADMINISTRATIVE RULE
CHAPTER 109
DIVISION 100-1
ENFORCEMENT OF PUBLIC WORKS REGULATIONS

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1.1 Purpose

The purpose of this administrative rule is to provide a clear and consistent methodology for determining the amount of a civil penalty to be imposed by the City of Salem on persons violating provisions of the *Salem Revised Code* for which the Public Works Director is responsible. This administrative rule provides criteria and a penalty matrix and is based on *Salem Revised Code* 20J.150.

1.2 Applicability

This administrative rule applies to any section of the following chapters of *Salem Revised Code* that the Director has responsibility for administering, implementing, or enforcing: SRC Chapter 65 (Excavations and Fills), SRC Chapter 68 (Preservation of Trees and Vegetation), SRC Chapter 70 (Utilities General), SRC Chapter 71 (Stormwater), SRC Chapter 72 (Water), SRC Chapter 73 (Sewers), SRC Chapter 74 (Pretreatment Provisions), SRC Chapter 75 (Erosion Prevention and Sediment Control), SRC Chapter 76 (Permits, Streets, and Public Ways), SRC Chapter 77 (Permits and Street Improvements), SRC Chapter 78 (Sidewalks), SRC Chapter 79 (Paving of Parking Areas), SRC Chapter 81 (Excavations), SRC Chapter 82 (Sidewalk Benches), SRC Chapter 83 (Moving Buildings), SRC Chapter 86 (Trees and Shrubs), SRC Chapter 94 (Offenses in Parks), SRC Chapter 110 (Administration), SRC Chapter 601 (Floodplain Overlay Zones), SRC Chapter 805 (Vision Clearance), and SRC Chapter 808 (Preservation of Trees and Vegetation).

1.3 Definitions

(a) Unless the context otherwise specifically requires, as used in this administrative rule the following terms mean:

- (1) Director means the Director of Public Works or the Director's designee.
- (2) Knowing means that a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists.
- (4) Major violation means any violation that created a significant risk to public health and safety, caused significant damage to the environment, or had a significant adverse impact to public infrastructure.
- (5) Minor violation means any violation that did not create risk to public health and safety, caused no damage to the environment, and did not adversely impact public infrastructure.
- (6) Moderate violation means any violation that may, or is likely to have created a risk to public health and safety, damaged the environment, or adversely impacted public infrastructure, to a degree determined to be less than significant.
- (7) Willful means that a person acts with a conscious objective to cause the result, or to engage in the conduct, so described.

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(b) Words and phrases shall be construed according to their customary and usual meaning unless the context indicates a special or technical meaning. Words used in the present tense include the future, the singular number includes the plural, and the word "shall" is mandatory and not directory.

1.4 Determination of Civil Penalty

(a) To calculate the amount of a civil penalty for a single violation, the Director shall:

(1) Establish the gravity and magnitude of the violation as minor, moderate, or major based on the degree to which the violation created a risk to public health or safety, caused damage to the environment, or adversely impacted public infrastructure, as defined in Section 1.3.

(2) Use the matrix provided in Table 1 to determine the total criteria score, using the criteria rating guidance provided in Section 1.5.

(3) Calculate the civil penalty based on the total criteria score and the gravity and magnitude of the violation as provided in Table 2.

(b) The amounts of any civil penalty calculated shall be approved by the Director before being imposed.

(c) The notice of civil penalty and all enforcement proceedings shall be in accordance with *Salem Revised Code* Chapter 20J.

Table 1. Enforcement Penalty Matrix

Enforcement Evaluation Criterion	0 points	1 point	2 points	3 points
1. Was the violation the result of events or circumstances not reasonably within the person's control?				
2. Was the person negligent by failing to obtain or comply with the necessary permits and approvals?				
3. Was the action a willful and knowing violation?				
4. Was the person unresponsive in correcting the violation?				
5. Is this a repeat violation of the same or related provisions of the <i>Salem Revised Code</i> ?				

Total Criteria Score: _____

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Table 2. Assessment of Penalty Based on Gravity or Magnitude of Violation

Total Criteria Score	Gravity or Magnitude of Violation		
	Minor	Moderate	Major
1 – 4 points	\$50	\$100	\$200
5 – 6 points	\$150	\$300	\$600
7 – 8 points	\$250	\$500	\$1,000
9 – 10 points	\$375	\$750	\$1,500
Over 10 points	\$500	\$1,000	\$2,000

Assessed Penalty: _____

1.5 Criteria Rating Guidance

(a) The guidance below is to be used by the Director as considerations when rating each criterion of the enforcement penalty matrix.

- (1) Was the violation the result of events or circumstances not reasonably within the person's control?

Points = 0 If the person had no control over the events or circumstances contributing to the violation.

Points = 1 If the person is likely to have had some control over the events or circumstances contributing to the violation.

Points = 2 If the person had, or should have had some discernible control over the events or circumstances contributing to the violation.

Points = 3 If the person clearly had control over the events or circumstances contributing to the violation.

- (2) Was the person negligent by failing to obtain or comply with the necessary permits and approvals?

Points = 0 If no permits or approvals were required or if the documentation was complete and appropriate for the job or task that caused the violation.

Points = 1 If the person obtained and received approval for some but not all of the required permits and approvals.

Points = 2 If the person obtained some but not all of the required permits and approvals and did not receive approvals for the job or task that caused the violation.

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Points = 3 If the person either did not obtain the necessary permits and approvals or did obtain permits and approvals but did not comply with their conditions.

(3) Was the action a willful and knowing violation?

Points = 0 If the person did not know and had no way of knowing that the action or inaction constituted a violation.

Points = 1 If the person should have known the action or inaction constituted a violation.

Points = 2 If it is likely the person knew the action or inaction constituted a violation.

Points = 3 If the person clearly knew the action or inaction constituted a violation or if the violator had been previously informed by the Director that the action or inaction constituted a violation.

(4) Was the person unresponsive in correcting the violation?

Points = 0 If steps were taken to correct the cause of the violation as soon as the person learned of it.

Points = 1 If the cause of the violation was eventually corrected, but not in timely or cooperative fashion.

Points = 2 If the person made little effort or was ineffective in attempts to correct the cause of the violation and the cause of the violation was not corrected.

Points = 3 If the person made no attempt to correct the cause of the violation.

(5) Is this a repeat violation of the same or related provisions of the *Salem Revised Code*?

Points = 0 If there have been no prior violations by the same person or at the same site within the preceding five years.

Points = 1 If there has been one prior violation by the same person or at the same site that became a final order or decision of the Director or a court within the preceding five years.

Points = 2 If there have been two prior violations by the same person or at the same site that became a final order or decision of the Director or a court within the preceding five years.

Points = 3 If there have been three or more prior violations by the same person or at the same site that became a final order or decision of the Director or a court within the preceding five years.