



STAFF REPORT

Board of Aldermen

AN ORDINANCE AMENDING SECTION 94-10 AND APPENDIX A - FEE SCHEDULE OF THE BRANSON MUNICIPAL CODE PERTAINING TO LAND DISTURBANCE.

FIRST READING: NOVEMBER 26, 2024

FINAL READING: DECEMBER 10, 2024

Initiated By: Planning and Development

Approved By: *Cathy Stepp*

Financial Impact: No Impact/Not Applicable

Community Plan 2030: LU-5:Development Codes & Regulations

In the 1960's and 1970's, the City of Branson, Missouri ("City") adopted the Zoning Ordinance, now existing in Chapter 94, referred to as the Unified Development Code and Utilities Code to promote health, safety, morals and a general welfare of the community, including its aesthetic appearance; lessen congestion in the streets; secure safety from fires, panic and other dangers; provide adequate light and air; prevent the overcrowding of land; avoid undue concentration of population; bring about the gradual conformity of the uses of land and buildings throughout the City; facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements; protect and conserve the value of land throughout the City; and provide a policy to efficiently process permits and other applications by the City.

COMMUNITY PLAN 2030:

Action 5.1.5 "Review development regulations to determine if there are areas that can be more flexible in an effort to attract businesses to locate in Branson but that still require developers to meet the desired outcome (i.e. tree ordinance, stormwater runoff, riparian zone ordinances, etc.)."

HISTORY:

The National Pollutant Discharge Elimination System (NPDES), which was originally created as an amendment to the Clean Water Act (CWA) of 1972, established a permit program to control water pollution by regulating the discharge of pollutants to the waters of the United States in Municipal Separate Storm Sewer System (MS4) communities with population of more than 100,000. In 1999 the Environment Protection Agency (EPA) established Phase II of the NPDES, expanding the NPDES to include communities with populations greater than 10,000. At the state level, the NPDES is enforced by the Missouri Department of Natural Resources (MDNR) and a few additional requirements are added such as state MS4 permits. In November of 2016, the City of Branson, Missouri ("City") became a permitted MS4 and subject to state and federal NPDES requirements. One minimum requirement was to create a land disturbance ordinance for soil disturbing activities affecting greater than or equal to one acre of land.

In 2019, the city added the Land Disturbance Ordinance, now existing in Chapter 94, Zoning. The purpose of this ordinance is to control soil erosion and protect water quality on land undergoing

development for non-agricultural uses, and to preserve the natural terrain and waterways of land within the city. Development creates additional impervious surfaces and removes valuable topsoil and vegetation, all of which decreases infiltration and increases the rate of runoff and potential for erosion. This process not only causes property damage, but also degrades water quality and obstructs stormwater flows in storm sewers, road ditches, and natural water courses, which is why it is vital to promote land preservation and public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil, or results in the movement of earth.

Currently, the City's land disturbance ordinance requires a permit for "any land disturbance activit[y] affecting a total of 3,000 square feet or more of any parcel". This regulation is stricter than the state minimum of one acre (43,560 square feet), and several requirements in the land disturbance ordinance create a large hurdle for small projects. Certain requirements in the current ordinance can be very costly (such as hiring an engineer and surveyor) and often discourage development. Additionally, the land disturbance code speaks little to final stabilization and long-term maintenance of stormwater Best Management Practices (BMPs), both of which are state requirements.

SUMMARY OF CODE AMENDMENTS:

Existing code requires a land disturbance permit for projects affecting more than 3,000 square feet. It is proposed that land disturbance permits should only be issued to projects disturbing more one (1) or more acres, which better aligns with state requirements. The proposed ordinance includes language to reflect state requirements regarding stabilization, inspection frequency, and long-term operation and maintenance of structural and nonstructural BMPs. Fees were also added to compensate for city staff time spent during plan review and inspections. In addition, the code was restructured to simplify the ordinance and create a logical flow. Ultimately, the purpose of this code revision is to better align the City's ordinance with state requirements, which will promote development in the city while also protecting the MS4, neighboring residents, and waters of the state from construction site pollution. The following proposed code amendments are listed below:

- Sec 94-10.a - Purpose
- Sec 94-10.b – Applicability
- Sec 94-10.c - Permit application process
- Sec 94-10.d – Application submission content
- Sec 94-10.f – Performance guarantee
- Sec 94-10.g - Issuance of permit
- Sec 94-10.h - Transfer of permit
- Sec 94-10.i - Requirements before construction
- Sec 94-10.j - Plan modifications during construction
- Sec 94-10.k - Inspections and reports
- Sec 94-10.l – Closing of permit

DETAILED ANALYSIS:

Item #1:

As indicated below, clarification was added for the alignment of city code and state regulations.

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(a) *Purpose.*

- (1) The purpose of this article is to control soil erosion on land that is undergoing development for non-agricultural uses, and to preserve the natural terrain and waterways of land within the city. Soil erosion may result in the loss of valuable topsoil, the degradation of water quality, and obstruct stormwater flows in storm sewers, road ditches, and natural watercourses.
- (2) The provisions in this article are intended to promote land preservation and the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil, or results in the movement of earth.
- (3) **This article is meant to set the minimum requirements necessary to comply with all city, state, and federal rules, regulations, codes, and statutes**

Item #2:

As indicated below, staff clarified that land disturbance permits are needed for projects disturbing 1 or more acres, cumulatively. This will prevent projects from subdividing to avoid the land disturbance requirements and is very similar language to state stormwater permits. An exception was added for projects under a acre as well as the ability for the planning and development director to take action in case of a violation.

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(b) *Applicability.*

- (1) A land disturbance permit is required for ~~[any]~~ land disturbance **sites** ~~[activities]~~ ~~[affecting]~~ **that disturb** ~~[a total of]~~ **one or more acres, or disturb less than one acre when part of a larger common plan of development or sale that will disturb a cumulative total of one or more acres over the life of the project.** ~~[3,000 square feet or more of any parcel]~~
- (2) The following activities are exempt from requiring a land disturbance permit ~~[provided that no change in drainage patterns or sedimentation onto adjacent~~

~~properties will occur~~]:

~~{a. Land disturbance activities within public rights-of-way;}~~

~~{b.}~~ **a.** Land disturbance activities for, or by any public utility for the installation, inspection, repair, or replacement of any of its facilities;

~~{c.}~~ **b.** Land disturbance activities in accordance with plans submitted with other permits, reclamation plans, or permitted sanitary landfills;

~~{d.}~~ **c.** Land disturbance activities of farming on land zoned agricultural, provided approval from the Taney County Soil and Water Conservation District;

~~{e.}~~ **d.** Gardening and similar activities on property within residential districts;~~{or}~~

~~{f.}~~ **e.** Any emergency activity that is immediately necessary for the protection of life, property, or natural resources~~[-];~~ **or**

f. Sites that disturb less than one acre of total land and are not part of a larger common plan of development or sale.

(3) Nothing shall prevent the planning and development director from taking action, including the requirement for issuance of any permits under this article, if any of the operations exempted under subsection (b)(2) of this section should cause pollution of the MS4 or waters of the state or otherwise violate this article.

Item #3:

As indicated below, staff clarified the difference between the preapplication and application review. The preapplication review is an under-utilized tool that developers can use (at no cost) to meet with city staff, outline their project, and gather essential information such as required submittal items.

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(c) *Permit application process.*

- (1) **Preapplication** - Prior to filing a land disturbance permit application for review, an applicant may submit the application for pre-application review. As far as may be practical on the basis of the application, the planning and development director will, in writing, advise the applicant as promptly as possible of the extent to which the proposed plan conforms to the design standards in this section, and will discuss possible modifications that may be necessary to secure conformance.
- (2) **Application** - An applicant shall be required to submit an application for a land disturbance permit on forms available from the planning and development department along with the applicable fee as provided in the city fee schedule.

~~[(3)]~~ **a.** The applicant may request a waiver of any application requirement to the planning and development director. The planning and development director may, in writing, grant the request for a waiver upon determining that the item to be waived is not applicable to the project under review, and that the remaining information submitted is sufficient to show that the work will comply with the purposes of this article.

~~[(4)]~~ **b.** The individual who prepares the application submissions shall have a thorough and demonstrable knowledge of erosion, sediment, and stormwater control practices. The plan shall include BMP's in accordance with the city's Design Criteria **and Technical Specifications** for Public Improvement Projects.

Item #4:

As indicated below, staff removed several previously required items and rearranged the section to flow logically. The plans are no longer required to be stamped by an engineer, and a survey by a PLS is not required. Instead, the plans can be prepared by a design professional with thorough and demonstrable knowledge of SWPPP requirements and erosion, sediment, and stormwater control practices. Other items removed from the required documents list include:

- names of adjacent property owners
- name and address of engineering firm or engineer
- United States Geological Society (USGS) benchmark source and site benchmark on USGS datum
- An estimated count and approximate location of all existing trees, six inches diameter or larger, measured at 4½ feet above grade, identification of all trees within that group that are identified for removal, and the required characteristics of all trees for tree preservation credit. A tree count is not required for areas of the site that will not be disturbed during construction
- Delineation of the tree preservation plan per this chapter
- City standard land disturbance activity notes, which includes a note stating that "The contractor shall request an inspection two days in advance of construction startup"
- City standard construction details
- A signed statement by the permittee assuming full responsibility for the performance of the land disturbance activities, and that all state, county, city, and private property or roads will be adequately protected

This section added the requirement to show all environmentally critical areas, which was broadened from the previous requirement. The requirement to identify hazardous materials as well as an emergency management plan was included in this section as well (moved from another

section). This section requires the submittal of long-term operation and maintenance plans/procedures for water quality best management practices. Permmitee inspections and reporting was moved to this section and is meant to align with all state requirements. Lastly, additional stabilization language was included to align with federal and state law.

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(d) *Application submission content.*

(1) A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared in accordance with all local, state, and federal regulations, including the city's Design Criteria and Technical Specifications for public improvement projects. The SWPPP shall include the following information at a minimum:

a. All submission content in subsection d.1.a.i shall be prepared by, or under the direction of a design professional with thorough and demonstrable knowledge of SWPPP requirements and erosion, sediment, and stormwater control practices.

[(+)] **(i.) General information.**

[a:] **1.** Name, address, and contact information of property owner or responsible party for the project.

[b:] **2.** Property address and location map of property to be disturbed.

[c:] **3.** [~~Property boundaries and total acreage of property.~~] **A Sediment and Erosion Control Plan, (SECP) conforming to the city's Design Criteria and Technical Specifications for public improvement projects. All sediment and erosion control measures must be clearly identified.**

[d:] [~~Names of adjacent property owners.~~]

[e:] **4.** A site map showing the outlines of the total project area and land disturbance areas, and their acreage.

[f:] [~~Name and address of engineering firm or engineer.~~]

[g:] **5.** Existing land use and zoning.

[h:] [~~United States Geological Survey (USGS) benchmark source and site benchmark on USGS datum.~~]

[i:] **6.** Existing surface contours at intervals no greater than two feet for the land disturbance activity area, and to at least 25 feet beyond the area.

- [j-] **7.** Proposed surface contours at intervals no greater than two feet for the land disturbance activity area, and to at least 25 feet beyond the area.
- [k-] **8.** Federal Emergency Management Agency (FEMA) flood panel number and delineation of 100-year floodplain and floodway.
- [l-] **9.** **All Environmentally Critical Areas (ECAs) including but not limited to .** [~~Location of wooded areas and any trees six inches and greater in diameter as measured 4 ½ feet above grade, watercourses, wetlands, surface water bodies, and~~ **known karst features.** ~~soil borings.~~]
- [m-] [~~Field surveyed natural watercourses showing top and toe of banks.~~]
- [n-] **10.** Location of all underground and above ground utilities, including pipelines operated at a service pressure in excess of 200 psig.
- [o-] [~~An estimated count and approximate location of all existing trees, six inches diameter or larger, measured at 4½ feet above grade, identification of all trees within that group that are identified for removal, and the required characteristics of all trees for tree preservation credit. A tree count is not required for areas of the site that will not be disturbed during construction.~~]
- [p-] [~~Delineation of the tree preservation plan per this chapter.~~]
- [q-] **11.** Delineation of the vegetative buffer plan per this chapter.
- [r-] **12.** Proposed access to the site either from public right-of-way under a permit issued by the governing agency, or through private property under an easement or license.
- [s-] **13.** All proposed permanent improvements to be constructed as part of the land disturbance activity.
- [t-] [~~City standard land disturbance activity notes, which includes a note stating that "The contractor shall request an inspection two days in advance of construction startup".~~]
- [u-] [~~City standard construction details.~~]
- [v-] [~~Signature, seal, and date of a licensed professional engineer.~~]
- [w-] [~~Signature, seal, and date of a registered land surveyor and his statement identifying sources of topographical information.~~]
- [x-] [~~A signed statement by the permittee assuming full responsibility for the~~]

performance of the land disturbance activities, and that all state, county, city, and private property or roads will be adequately protected.]

- [y] **14. Identify toxic or hazardous substances, petroleum products, pesticides, herbicides, and other pollutants that may be used or stored on site. Identify the pollution control method for each substance, and submit an emergency management plan for responding to any loss of toxic materials due to a containment failure. This plan must include documentation of actions and mandatory reporting to the fire department and the Taney County Health Department.**

- 15. Long-term operation and maintenance plans and procedures of post-construction structural and nonstructural BMPs. Operation and maintenance plans shall comply with all local, state, and federal stormwater laws, ordinances, and regulations.**

- [y] **16. Other items as required in the city's Design Criteria and Technical Specifications for Public Improvement Projects, or as required by the public works or planning and development director.**

[(2)] **(ii.) Specific design information.**

- [a.] **1.** A [~~geotechnical report~~] **statement** identifying the United States Department of Agriculture (USDA) soil textures throughout the site, slope stabilization analysis for cut and fill slopes, and other pertinent data related to erosion or sediment concerns during land disturbance activities as required by the **public works and/or** planning and development director.

- [b.] **2.** The sequence of all land disturbance activities shall be shown on the construction plans, including those listed below:

[(i)] **i.** Stripping and clearing;

[(ii)] **ii.** After changes in drainage courses;

[(iii)] **iii.** Construction of underground infrastructure;

[(iv)] **iv.** Construction of structures, such as buildings, pavement, and retaining walls;

[(v)] **v.** Final grading; and

[(vi)] **vi.** Landscaping.

- [e.] **3.** The planning and development director may require separate construction

plans to be submitted for separate phases of the project.

- [d.] **4.** Stabilization of any stream bank erosion problems existing in natural watercourses that are to be left undisturbed, or may jeopardize private lots, public utilities, or detention facilities.
 - [e.] **5.** Details of any temporary drainage system proposed to be installed in connection with any, and all phases of land disturbance activity.
 - [f.] **6.** Details of proposed water impoundment structures, embankments, sediment, or debris basins, grass or lined waterways, diversions with the details and locations of proposed stable outlets, and the location of any downstream impoundments which could be affected by the proposed land disturbance activities.
 - [g.] **7.** Location of construction traffic access and wash-off pad.
 - [h.] **8.** Description of erosion and sediment controls that will be installed prior to, and during, any land disturbance activity to control pollutants in stormwater discharges, along with a drainage area map with appropriate pre-development, appropriate interim, and post runoff calculations for each proposed stormwater conveyance system, and erosion and sediment control (Calculations shall conform to the city design standards).
 - [i.] **9.** Drawing depicting the runoff travel paths, which are the route taken by a drop of effective rainfall falling at the most hydraulically remote point, to the outlet of a drainage basin, to determine the time of concentration used in this article. Provide calculations for time of concentration and composite curve number (CN) for pre-developed watersheds.
 - [j.] **10.** Description and location of permanent erosion and sediment controls after land disturbance activities have ended.
 - [k.] **11.** Calculations required for the performance and design standards to reduce the amount of sediment and other pollutants in stormwater discharges associated with the land disturbance activities as required by these regulations. The applicant's engineer shall select and design erosion and sediment controls adequate to meet those requirements.
- b. Signature, seal, and date of a registered land surveyor and his statement identifying sources of topographical information; or accurate topographical information compliant with all requirements of this section.**
- c. A signed statement be the permittee assuming full responsibility for the performance of the land disturbance activities, and that all state, county, city, and private property or roads will be adequately protected.**

(2) Permittee inspections and reporting.

- a. An individual shall be designated by the permittee as responsible for environmental matters; this individual shall have a thorough and demonstrable knowledge of the site's SWPPP and erosion and sediment control practices in general. The individual responsible for environmental matters or a designated inspector knowledgeable in erosion, sediment, and stormwater control principles shall conduct inspections as required by the SWPPP. A log of such activities shall be maintained on site and made available to the city upon request.**
- b. The planning and development director may make additional inspections as necessary to ensure the validity of the reports filed and to confirm the correction of any deficiencies reported or observed.**

(3) Stabilization. Final and interim stabilization shall be in accordance with the SWPPP and determined by an on-site inspection by the planning and development director. All federal, state, and local stabilization requirements apply.

Item #5:

As indicated below, not much changed in this subsection; staff clarified that the applicant must request a inspection to receive a partial refund of performance guarantee funds.

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- (f) Performance guarantee.*** An applicant shall provide the city with a performance guarantee to insure or guarantee the stabilization of the site upon completion or stoppage of the land disturbance activity.

(1) Form of guarantee.

- a. If the performance guarantee is a lender's or escrow agreement, that agreement shall:
 - (i) Be prepared on forms approved by the city and signed by the **public works and/or** planning and development director;
 - (ii) Ensure or guarantee the installation of sediment and erosion controls, and the final stabilization of ground cover as defined in **this section**, based on amounts established in the design calculations and approved by the public

works and/or planning and development director; and

(iii) Be held in a special account by the escrow holder or lender, and the funds shall be subject to the audit of the city.

b. If the performance guarantee is a standby letter of credit, that document may be prepared on forms approved by the financial institution on which it is drawn, but must provide for automatic extensions for additional one-year terms unless, at 45 days prior to the letter's current expiration date, the financial institution issuing the letter provides written notice of non-renewal to the city.

(2) *Amount.* Applicants shall work with the planning and development director to agree on the amount of guarantee required using one of the two following calculation methods:

a. *Estimated cost of improvements.*

(i) The amount of the guarantee may be determined from the estimated land disturbance acreage, rounded up to the nearest tenth of an acre, times the cost per acre according to the following schedule:

Land Disturbance Acreage	Cost per Acre
<5.0	\$3,000.00
5.0 to 20.0	\$2,500.00
>20.0	\$2,000.00

(ii) Additional amounts shall be required equal to the costs of other proposed construction items referenced in the submission content sections of this section.

b. *Line-item cost of improvements.* Alternatively, the guarantee amount may be calculated based on a line-item cost estimate for all erosion and sediment controls, and other proposed construction items included in the application for a land disturbance permit.

(3) *Release.*

- a. The planning and development director may authorize release up to 50 percent of any performance guarantee funds upon confirming by inspection that all erosion and sediment controls are in place and functioning properly, including establishment of vegetation and other proposed construction items referenced in the submission content sections of this section.
- b. The planning and development director may authorize release up to 90 percent of any performance guarantee funds subject to an escrow or lender's agreement upon confirming by inspection that vegetation has been established and ongoing maintenance has been provided for all installed erosion and sediment controls. However, the amount retained shall not be reduced to less than the cost of maintaining the erosion and sediment controls.
- c. The planning and development director shall authorize release of all remaining performance guarantee funds only when all land disturbance work has been completed and all soil subject to the land disturbance permit ~~[is stabilized, including permanent vegetation.]~~ **has achieved final stabilization as defined in this section.**
- d. If the permittee wishes to receive a partial refund of any performance guarantee funds during the life of the project, the permittee must notify the planning and development director at least two working days prior to obtaining a timely inspection.**
- ~~{d.}~~ **e.** In the event of a violation or deficiency that is not resolved in a reasonable time, the performance guarantee proceeds may be used by the city to install pollution prevention controls to stabilize the site subject to the land disturbance permit. Prior to resumption of work, the permittee must post a new performance guarantee in the amount determined pursuant to this article.

Item #6:

In this section, staff felt it is necessary to pay all associated fees prior to obtaining the permit and made the receipt of the fees a prerequisite to permit issuance.

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(g) *Issuance of permit.* A land disturbance permit shall be issued by the city only if:

- (1) The application for the permit is complete and includes all submission requirements

of this section, unless waived pursuant to this section;

- (2) The design submitted with the application is consistent with the design standards established or authorized by this section; ~~[and]~~
- (3) A performance guarantee has been accepted by the city~~[-];~~ **and**
- (4) There is a receipt of permit fee**

Item #7:

A section of the ordinance (Transfer of permit) was removed. This section was removed to simplify the land disturbance permit process. Currently, other city permits cannot be transferred. The associated performance guarantee would not transfer and a new performance guarantee would need to be in place prior to new ownership as well as the delegation of responsibility from one party to the next. It will be simpler for all parties involved to obtain a new permit.

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~~[(h) *Transfer of permit.*]~~

~~[(1) Unless a permittee transfers a land disturbance permit as provided herein, that permittee remains bound by the terms of that permit even after transfer of ownership of land subject to it.]~~

~~[(2) A land disturbance permit may be transferred only if all of the following conditions are met:]~~

~~[a. The permittee must file a request for transfer with the planning and development director cosigned by the transferee, which must include:]~~

~~[(i) A legal description of the area to be transferred; and]~~

~~[(ii) A map or plan showing the area to be transferred.]~~

~~[b.- The planning and development director must determine from the request and supporting documentation that the area to be transferred includes substantially all of any drainage basin or basins, wholly or partly within the area subject to the originally issued permit, and give permittee and transferee written notice of that determination.]~~

~~[c.- The transferee must submit to the planning and development director:]~~

~~[(i)- A performance guarantee as provided in this section; and]~~

~~[(ii)- A copy of the Missouri Department of Natural Resources land disturbance permit ownership transfer documentation per 10 CSR 20-6.200 for the same transfer. No city permit may be transferred without this document.]~~

Item #8:

Staff clarified that this section is for requirements before land disturbance rather than construction. It was made clear that stormwater BMPs must be in place prior to disturbance. Other items were removed as they were repetitive of the submission content requirements.

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~~[(i)]~~ **(h)** *Requirements before ~~[construction]~~ land disturbance.* It is the responsibility of the permittee to ensure that the following items are performed prior to ~~[construction startup]~~ **land disturbance**, unless deemed non-applicable to the project by the planning and development director:

- (1) Schedule a pre-construction conference with the planning and development director prior to the start of the ~~[construction phase of]~~ land disturbance activity, including installation of the temporary construction entrance. The permittee will be responsible for notifying all contractors and other entities, including utility crews that will perform work at the site, to be in attendance. Additional meetings may be required by the city.

- (2) Supply in writing to the planning and development director, the name and contact information of all contractors and subcontractors, and identify the permittee's designated agent supervising and directing all land disturbance activities on-site.
- (3) Stake and post signs of ~~[tree preservation areas and]~~ vegetated buffer areas per this Code.
- (4) **Stormwater BMPs must be in place prior to disturbance and as required by the SWPPP or site plan, no disturbance shall occur without permission from the planning and development director** ~~[Identify in writing, each erosion and sediment control product that is not a specification authorized by this section, and submit manufacturer specifications and installation techniques for approval by the planning and development director for performance equivalency with city specifications.]~~
- ~~[(5) Identify proposed best management practices to control general site pollutants, such as construction wastes, site litter, construction debris, dust, and sanitary wastes.]~~
- ~~[(6) Identify toxic or hazardous substances, petroleum products, pesticides, herbicides, and other pollutants that will be used on site. Identify the pollution control method for each substance, and submit an emergency management plan for responding to any loss of toxic materials due to a containment failure. This plan must include documentation of actions and mandatory reporting to the fire department and the Taney County Health Department.]~~
- ~~[(7) Provide a location map depicting any proposed borrow or fill sites in the city, and the proposed truck haul routes through the city.]~~
- ~~[(8) Provide an erosion and sediment control installation sequencing schedule for approval by the planning and development director. The schedule should be a graph or tabulation of each erosion and sediment control installation consistent with the sequence of all land disturbance activities including those listed below, and all installations of erosion and sediment controls listed below, shall be shown on construction plans:~~
 - ~~a. Stripping and clearing;~~

- b. ~~After changes in drainage courses;~~
- e. ~~Construction of underground infrastructure;~~
- d. ~~Construction of structures, such as buildings, pavement, retaining walls;~~
- e. ~~Final grading; and~~
- f. ~~Landscaping.]~~

Item #9:

Staff clarified that this section is for plan modifications during land disturbance rather than during construction

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~~[(j)]~~ **(i)** *Plan modifications during ~~[construction]~~ land disturbance.*

- (1) *Field modifications.* The permittee shall modify already approved plans or descriptions of pollution prevention methods in any of the following circumstances:
 - a. Inspections by the planning and development director, Missouri Department of Natural Resources, or United States Environmental Protection Agency (USEPA) which indicate deficiencies;
 - b. Inspections by the permittee which indicate deficiencies;
 - c. Either the permittee or the planning and development director determines that the current installations are ineffective in significantly minimizing or controlling erosion of land or sedimentation in streams or lakes;
 - d. Either the planning and development director or the Missouri Department of Natural Resources determines that total settleable solids from a stormwater outfall exceeds 2½ milliliters per liter per hour (ml/L/hr), or one-half ml/L/hr when the land disturbance activity is within a valuable water resource area as

determined by the Missouri Department of Natural Resources;

- e. Either the planning and development director or the Missouri Department of Natural Resources determines that violations of Water Quality Standards 10 CSR 20-7.031(3) may occur or have occurred; or
- f. Either the planning and development director or the Missouri Department of Natural Resources determines that the pollution prevention methods submitted to the planning and development director as required by plan submittal requirements within this section are 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.

Item #10:

Staff added and defined two inspection types: base inspections and reinspections. These inspections each have an associated fee added to the fee schedule in Appendix A. A big part of this section was moved to subsection d to improve the logical flow. Requirements for the inspection of long-term water quality BMPs were added at the end of this section.

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~~[(k)]~~ **(j)** *Inspections and reports.*

(1) *City inspections.*

- a. The permittee consents to the city inspecting the permitted site and all work in progress. If necessary, additional inspection fees above the base inspection fee may be applied as provided in the city fee schedule.

(i) **Base Inspection – Base inspections are a group of standard land disturbance inspections covered under a single fee. These inspections include:**

1. Preconstruction meeting;

2. Inspection of the installation of erosion prevention and sediment control products;

3. Periodic site visits initiated by the planning and development director;

4. Post rain event inspections initiated by the planning and development director;

5. Inspections requested for the purpose of performance guarantee releases;

6. Unique circumstances and/or phased projects requiring multiple partial inspections; and

7. Final inspections to ensure the stability of the site.

(ii) Reinspection – A project will be reinspected if it is found to be out of compliance with the SWPPP and/or this code. A reinspection fee may occur for each inspection outside of the base inspections.

b. The planning and development director shall inspect the property periodically for compliance with these regulations, after a substantial rain event and upon receipt of a citizen complaint concerning erosion or sediment control issues.

c. The planning and development director shall make inspections and either approve any portion of the work completed, or notify the permittee in writing when the work fails to comply with the conditions of the land disturbance permit. **The planning and development director shall reinspect the property until it is compliant.**

~~[d. The permittee shall notify the planning and development director at least two working days before the following activities to obtain timely inspection:]~~

~~[(i) Establishment of tree preservation and stream buffer boundaries;]~~

~~[(ii) Start of land disturbance or construction;]~~

~~[(iii) Installation of erosion and sediment controls;]~~

~~[(iv) Completion of site clearing;]~~

~~[(v) Completion of rough grading;]~~

~~[(vi) Completion or suspension of final land disturbance activity;]~~

~~[(vii) Close of the construction season; and]~~

~~[(viii) Completion of final landscaping.]~~

~~[(2) *Permittee inspections and reporting.*]~~

~~[a. The permittee shall make regular inspections of the permitted site, observing all erosion and sediment control and other pollutant control measures, outfalls, and off-site receiving waters. The inspections must be conducted by a person knowledgeable in the principles and practice of erosion and sediment controls, and who possess the skills to assess conditions at the construction site that could impact stormwater quality and the effectiveness of the erosion and sediment controls used.]~~

~~[b. Inspections must be made by the permittee at least once per week, and no later than two days after a substantial rain event. A reduction in the weekly inspections may be waived by the planning and development director for the following reasons:]~~

~~[(i) The entire site is temporarily stabilized;]~~

~~[(ii) Runoff is unlikely due to winter conditions, such as snow cover or frozen ground; or]~~

~~[(iii) Construction is during arid periods when no erosion or sediment has occurred.]~~

~~[e. All inspections by the permittee shall be documented in written form on reports with copies submitted to the planning and development director at the time interval specified in the permit. A report of each inspection shall be kept on site by the permittee, if possible. Otherwise, the inspection form will be retained by the permittee at its closest business office located within the city. Falsification of reports is in violation of the permit and cause of immediate suspension or revocation of the permit. The inspection reports are to include the following minimum information:]~~

~~[(i) Inspector's name and signature;]~~

~~[(ii) Date of inspection;]~~

~~[(iii) Observations relative to the effectiveness and deficiencies of the erosion and sediment controls and other pollution prevention controls; and]~~

~~[(iv) Actions taken or necessary to correct deficiencies, including the log of field changes to the approved plan during the period covered by the report as follows:]~~

~~[1. A listing of areas where land disturbance activities have permanently or temporarily stopped; and]~~

~~[2. Stormwater sampling information and analytical results, when applicable.]~~

~~[d. The permittee shall be responsible for correcting any deficiencies identified within seven calendar days of the date of inspection required by this section to identify these deficiencies.]~~

~~[e. The planning and development director shall make additional inspections as necessary to ensure the validity of the reports filed and, where applicable, to confirm the correction of reported deficiencies.]~~

(3) Long-term operation and maintenance of post-construction structural and nonstructural BMPs

- a. The planning and development director shall inspect, or order MS4 operators or property owners to inspect structural and non-structural BMPs according to the following at a minimum:
 - (i) A minimum of one (1) inspection shall be conducted during construction, and one (1) inspection before the site is finalized, to verify water quality facilities are built as designed and any applicable boundaries or practices for nonstructural BMPs are being observed.
 - 1. The inspector shall have access to the approved plans to ensure proper installation
 - (ii) A minimum of once in the first three years after installation
- b. Inspection of structural and non-structural BMPs must be completed annually by the owner or operator of the post-construction BMP, or by the MS4 operator. If completed by the BMP owner or operator, this person shall be deemed competent in sediment and erosion controls; this inspection report shall be submitted to the director of planning and development for evaluation and review.

Item #11:

Staff clarified that the project must be in full compliance with this section prior to the close of the permit and refund of the performance guarantee.

**CHAPTER 94
ARTICLE IV. RULES AND REGULATIONS**

Sec. 94-10. – Land Disturbance

~~[(4)](k)~~ *Closing of permit.* The planning and development director shall close land disturbance permits upon permittee's stabilization of all soil at the site subject to the permit~~[-]~~ and **the project is in complete compliance with this section. The planning and development director shall release the entire performance guarantee as authorized by this section.**

Item #12:

Staff updated the fee schedule to include fees for land disturbance permits and inspections.

Appendix A - FEE SCHEDULE

Code Section	Description	Fee
94-10	Land disturbance permit	<u>150.00</u>
<u>94-10</u>	<u>Land Disturbance Base Inspection Fee</u>	<u>100.00</u>

<u>94-10</u>	<u>Land Disturbance Reinspection Fee</u>	<u>100.00</u> <u>per</u> <u>inspectio</u> <u>n</u>
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STAFF RECOMMENDATION:

In November of 2016, the City of Branson, Missouri (“City”) became a permitted MS4 and became subject to state and federal NPDES requirements. A minimum state requirement was to create a land disturbance ordinance for soil disturbing activities affecting greater than or equal to one acre of land.

Staff supports the proposed code amendments which are required to align the Branson Municipal Code with minimum State and Federal regulations.

BACKUP DOCUMENTATION:

Staff Report Exhibit 1- Stormwater Pollution Prevention Plan Form

Staff Report Exhibit 2- Resolution No. MC24-05