

ORDINANCE NO. 4.66.2, Series of 2011

TITLE: A BILL FOR AN ORDINANCE TO AMEND CHAPTER 11.10 OF THE PARKER MUNICIPAL CODE CONCERNING GRADING AND EARTH MOVEMENT

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. Section 11.10.020 of the Parker Municipal Code is amended by the addition of definitions for *developable property* and *nondevelopable property* to read as follows:

11.10.020 Definitions.

Developable property means any land that has been graded and is part of a platted lot or platted tract of record, that was platted for future development, including residential home construction or public improvements.

Nondevelopable property means land that has been graded and will not be further disturbed as part of any future development. Examples include, but are not limited to: parks, open space, homeowner association or business association platted tracts, detention ponds and drainageways.

Section 2. Section 11.10.040 of the Parker Municipal Code is amended to read as follows:

11.10.040 Standards.

All Construction Best Management Practice ("CBMP") plans and associated specifications for a permit shall meet the requirements contained in the Town of Parker Storm Drainage and Environmental Criteria Manual ("SDECM"), as amended. All plans shall be prepared and implemented to prevent damage to any adjacent property, to avoid the deposition of debris or sediment on any private or public property not designed or designated as an area to collect the sediment, to avoid any hazard to any persons or property, and to ensure there is no detrimental influence upon the public welfare or environment.

Section 3. Section 11.10.050 of the Parker Municipal Code is amended to read as follows:

11.10.050 Plans.

For each site upon which an excavation, grading or fill permit is required, the applicant shall submit a grading permit application, which includes all of the information described in the SDECM.

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Section 4. Section 11.10.060 of the Parker Municipal Code is amended to read as follows:

11.10.060 Exceptions.

A permit is required for any grading, compaction, filling or earth movement within the Town. However, no permit is required for the following projects:

(1) The Public Works Department determines that grading in an area of one (1) acre or less will not result in significant negative impact upon private or public property. However, this exception shall not apply to any individual lot or parcel which is part of a larger parcel or subdivision, or projects for which a site plan has been approved by the Town.

* * *

Section 5. Section 11.10.090 of the Parker Municipal Code is amended to read as follows:

11.10.090 Fees.

(a) At the time of filing an application for a grading permit, a nonrefundable filing fee of one hundred dollars (\$100.00) plus fifteen dollars (\$15.00) an acre shall be paid to the Town. The filing fee shall cover one (1) hour of administrative review and consultation with the Public Works Department. Any inspection or additional review time shall be subject to an additional charge of the actual cost plus administrative fees established by the Town's Finance Department, which amount shall be paid by the applicant within ten (10) days from the billing. Failing to pay the bill when due shall result in the withholding of the permit, building permit, temporary certificate of occupancy or certificate of occupancy, or the issuance of a stop work order.

* * *

Section 6. Section 11.10.100 of the Parker Municipal Code is amended to read as follows:

11.10.100 Security.

(a) Revegetation Security. To ensure the proper rehabilitation of the site and the proper installation and maintenance of CBMPs, as determined by the Public Works Department, there shall be required at the time the original permit is issued cash or a letter of credit acceptable to the Public Works Director ("security"), which shall name the Town as the protected party. The amount of the security and the requirements necessary for its release are as follows:

(1) Sites that are less than one (1) acre (if permit is necessary):

- a. Grading security will cover native revegetation and CBMPs.
- b. Grading security for revegetation is two thousand five hundred dollars (\$2,500) plus the amount shown on the Town-approved cost estimate for the construction site runoff control CBMPs.
- c. The Town will accept one (1) combined grading security or two (2) separate grading securities (one for native revegetation establishment and the other for construction site runoff control CBMPs.)
- d. The Town will accept grading securities in the form of letters of credit, cash or certificates of deposit in the Town's name acceptable to the Public Works Director.

(2) Sites that are greater than or equal to one (1) acre:

- a. *Minimum* grading security is five thousand dollars (\$5,000).
- b. Grading security will cover native revegetation and CBMPs.
- c. Grading security for revegetation is an additional one thousand dollars (\$1,000)/acre for *developable property* and two thousand five hundred dollars (\$2,500)/acre for *nondevelopable* property, plus the amount of the Town-approved cost estimate for the CBMPs.
- d. The Town will accept separate security for up to three (3) platted lots/tracts, which security may be released separately.
- e. The Town will accept grading securities in the form of letters of credit, cash or certificates of deposit in the Town's name acceptable to the Public Works Director.

(b) CBMP Security. The amount of the security shall be based upon an itemized estimate and total cost estimate of the required CBMPs, which estimate shall include quantities and unit costs.

(c) Grading Security Release Requirements.

(1) Developable property: In order for the grading security to be released, the site must meet items a-h or item i (below).

- a. All soil-disturbing activities associated with the grading permit have permanently ceased.
- b. Uniform perennial vegetation cover has been established with an individual plant density of at least seventy percent (70%) of pre-disturbance levels.

c. All CBMPs have been properly removed from the site.

d. If any erosion is present, it is insignificant and is not leaving the site and/or leading into any on-site drainage infrastructure that may convey surface water off site.

e. Weeds represent no more than fifty percent (50%) of the total vegetation on the site.

f. No weeds are present from *List A* of the Colorado Noxious Weed List, as amended.

g. The site is predominantly free of weeds from *List B* of the Colorado Noxious Weed List, as amended.

h. Weeds are evenly distributed throughout the site with no large concentrations present.

i. A new grading permit and replacement security has been submitted and approved for the applicable site OR assignment as provided by Section 11.10.150 of this Code. It is the property owner's obligation at the time of closing to ensure that the new site owner has provided the Town with a replacement security.

(2) Nondevelopable property: In order for the grading security to be released, the site must meet items a-h and j, or items i and j (below).

a. All soil-disturbing activities associated with the grading permit have permanently ceased.

b. All CBMPs have been properly removed from the site.

c. Erosion is negligible, if even present.

d. The vegetation represents a perennial stand of a dense, uniform surface of grass with no area greater than one (1) square foot that is barren of desirable vegetation. Infrequent, widely scattered areas where native vegetation has not yet taken hold may qualify for acceptance at the discretion of the Town.

e. Weeds represent no more than ten percent (10%) of the total vegetation on site.

f. No weeds are present from *List A* of the Colorado Noxious Weed List, as amended.

g. The site is predominantly free of weeds from *List B* of the Colorado Noxious Weed List, as amended.

h. Weeds are evenly distributed throughout the site with no large concentrations present.

i. A new grading permit and replacement security has been submitted and approved for the applicable site OR the grading permit has been assigned as provided by Section 11.10.150 of this Code. It is the property owner's obligation, at the time of closing on the sale of a site that is subject to a grading permit, to ensure that the new property owner has provided the Town with a replacement security.

j. All known drainage issues associated with the project have been mitigated and a sufficient amount of time has passed to ensure that such issues have been corrected. This requirement does *not* include those drainage issues originating on residential lots.

(d) Noxious weeds must be controlled as provided under state law and Section 6.01.260 of this Code. Failure to control noxious weeds on the site may constitute a nuisance, subject to the penalties contained in the Code.

Section 7. Section 11.10.110 of the Parker Municipal Code is amended to read as follows:

11.10.110 Insurance.

Every applicant shall be insured against personal injury and property damage, from insurers acceptable to the Town, but in no event less than the coverages described as follows:

(1) Workers' Compensation Insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under the permit, and Employer's Liability Insurance with minimum limits of five hundred thousand dollars (\$500,000.00) each accident, five hundred thousand dollars (\$500,000.00) disease-policy limit, and five hundred thousand dollars (\$500,000.00) disease-each employee. If any work for the project is subcontracted, the applicant shall require each of its subcontractors to provide similar coverage for all of the subcontractor's employees to be engaged in such work, except as otherwise determined by the Risk Manager. Evidence of qualified self-insured status may be substituted for the workers' compensation requirements of this paragraph.

(2) Commercial General Liability Insurance to be written with a limit of liability of not less than one million dollars (\$1,000,000.00) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts), including death, at any time resulting therefrom, arising out of any one occurrence, and not less than two million dollars (\$2,000,000.00) general aggregate for all damages arising out of bodily injury, including death, at any time

resulting therefrom, during the policy period. The policy shall also include coverage for blanket contractual and independent contractor risks.

The limits of Commercial General Liability Insurance for broad-form property damage (including products and completed operations) shall be not less than one million dollars (\$1,000,000) for all damages arising out of injury to or destruction of property in any one occurrence, and not less than two million dollars (\$2,000,000) for all damages arising out of injury to, or destruction of property, including the Town's property during the policy period.

The Commercial General Liability Insurance policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

(3) Protective Liability and Property Damage insurance covering the liability of the Town, including any employee, officer or agent of the Town, with respect to all operations under the permit by the applicant or his subcontractors shall be obtained and maintained during the life of the permit. The limits of the Town's Protective Liability Policy, to be provided by the applicant, as described in this section, shall be increased to the same limits as described above for the applicant's Commercial General Liability Insurance.

(4) Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000.00) each occurrence, and one million dollars (\$1,000,000.00) aggregate with respect to each of the applicant's owned, hired, and nonowned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

(5) All insurance policies and certificates of insurance issued for the project shall name as additional insured(s) the Town, whether private or governmental, its officers and employees, and any other person(s), company(ies), or entity(ies) deemed necessary by the Town. The applicant shall be solely responsible for any deductible losses under any policy required herein.

The insurance provided by the applicant shall be primary to insurance carried by the Town, and all other additional insureds, and the principal defense of any claims resulting from the applicant's obligations under the permit shall rest with the applicant's insurer.

(6) The certificate of insurance provided by the applicant shall be completed by the applicant's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the Town prior to issuance of the permit. No other form of certificate shall be used. The certificate shall identify this Section and the coverages afforded under the policies. The completed certificate of insurance shall be sent to:

Town of Parker
Attn: Risk Manager
20120 East Mainstreet
Parker, Colorado 80138

It is the affirmative obligation of the applicant to notify the Town's Risk Manager, as provided in the permit, including faxing or e-mailing (sbedard@parkeronline.org) a copy of the notice to the Risk Manager at fax no. 303-841-4814, within two (2) business days of the cancellation or substantive change to any insurance policy required under the permit, and failure to do so shall constitute a breach of the permit.

Failure on the part of the applicant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the Town may immediately terminate the permit, or, at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by the applicant to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to the applicant from the Town.

The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

The applicant understands and agrees that the Town, its officers and employees, is relying on, and does not waive or intend to waive by any provision of the permit, the monetary limitations (presently one hundred fifty thousand dollars (\$150,000) per person, and six hundred thousand dollars (\$600,000) per occurrence), or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as from time to time amended, or otherwise available to the Town, its officers, or its employees.

The insurance shall not be released until the Public Works Department has completed its final inspection and given its final approval of the project.

Section 8. Section 11.10.120 of the Parker Municipal Code is amended to read as follows:

11.10.120 Stop work order.

If the plan approved by the Public Works Department is not complied with or the time schedule is not met, the Public Works Department may issue a notice of intent to stop work on the project. Within the time period specified in the notice of intent to stop work, the work specified in the approved plan must be completed and, if necessary, any unauthorized deviations from the approved plan must be corrected, abated, removed or repaired. If the project is not in compliance with the approved plan within the time specified in the notice, the Public Works

Department shall issue a stop work order. Significant deviations from the approved plan may result in the immediate issuance of a stop work order and may constitute a violation of this Chapter of the Code and may result in the withholding of building permits and certificates of occupancy as provided in Section 11.10.130 of the Code. Work shall not resume on the project until the Public Works Department approves of a completion/ correction plan. Also, additional security may be required to ensure compliance with the completion/correction plan. The criteria specified in Section 11.10.100 above shall establish the type and amount of the additional security.

Section 9. Chapter 11.10 of the Parker Municipal Code is amended by the addition of a new Section 11.10.170 to read as follows:

11.10.170 Inspection of property.

(a) Authorized inspector. The Public Works Director or assignee shall have the power and authority to appoint and authorize any police officer, building inspector, code enforcement officer, Public Works Department employee or other officer of the Town to inspect and examine any public or private property in the Town for the purpose of ascertaining compliance with a grading permit.

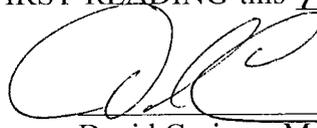
(b) Right of entry generally. Whenever it is necessary to make an inspection under this Chapter, or whenever an authorized inspector has reasonable cause to believe that there is a violation of the terms and conditions of a grading permit, the authorized inspector may enter such premises at all reasonable times to inspect the same or to perform any duty imposed on him or her.

Section 10. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the publication of an agenda that contains the title to this Ordinance in a newspaper of local circulation prior to first and second reading of this Ordinance creates a financial burden on the Town and that the title to this Ordinance was posted in two public places two days before the Town Council meeting as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 11. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 12. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this 17th day of October
2011.



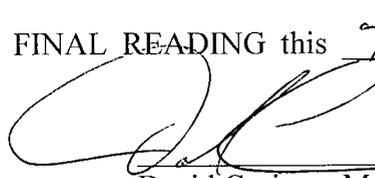
David Casiano, Mayor

ATTEST:



Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this 7th day of November
2011.



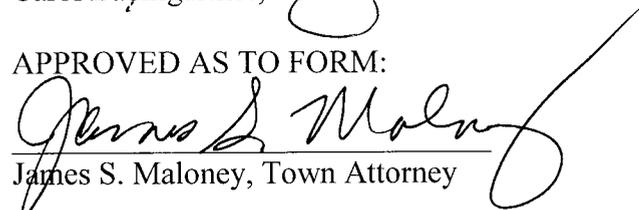
David Casiano, Mayor

ATTEST:



Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:



James S. Maloney, Town Attorney