

Chapter 86 - Soil Erosion and Sedimentation Control

1. Short Title. This chapter shall be known as the City of Troy Erosion and Sedimentation Control Ordinance.
2. Purpose and Authority
 - A. The purpose of this ordinance is to control accelerated soil erosion and sedimentation in all construction practices and other earth change activities within the City, and protect the Waters of the State.
 - B. This ordinance is enacted pursuant to MCL 324.9106. Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, being Sections 324.9101 to 324.9123a of the Michigan Compiled Laws Annotated, and any amendment thereto, and Rules promulgated under Part 91, and any amendments thereto, are hereby incorporated into this ordinance and adopted by reference as part of this ordinance.
 - C. The City of Troy Engineering Design Standards and Details for Soil Erosion and Sedimentation Control as developed by the City Engineer and contained in the City of Troy Development Standards and Standard Detail Sheets are incorporated into this ordinance as the control measures and practices which must be complied with under this ordinance. In addition, the specifications and recommendations regarding soil erosion and sedimentation control measures and practices as provided by the "Guidebook of Best Management Practices for Michigan Watersheds", published by the Water Bureau, Michigan Department of Environmental Quality ("BMP guidebook") or subsequent version may be used for additional information. A complete copy of the BMP guidebook shall be kept available for public inspection at the Engineering Department at City Hall.
 - D. The City of Troy Engineering Department is hereby designated as the municipal enforcing agency responsible for the administration and enforcement of Part 91, the Rules and this ordinance. The Troy City Engineer is authorized to administer and enforce Part 91, the Rules and this ordinance.
 - E. The Troy City Engineer and/or his designees shall be the enforcement agents for this ordinance and are authorized to issue civil infraction tickets, stop work orders or to take any other actions allowed under Part 91, the Rules and this ordinance. The City Engineer and the person(s) designated shall have completed the entire Part 91 soil erosion and sedimentation control training and valid certificate issued by the Michigan Department of Environmental Quality.
3. Construction and Definitions:
 - A. Construction:
 1. For the purpose of this ordinance, terms, words and phrases shall have the meanings defined in Part 91 and the Rules unless otherwise defined

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in this ordinance. If there is a conflict between definitions in Part 91 and the Rules, Part 91 shall control. If there is a conflict in definitions between Part 91, the Rules and/or this ordinance, this ordinance shall control if the ordinance is more restrictive than Part 91 or the Rules.

2. Words or terms not specifically defined herein shall have the meaning commonly attributed to the word or term in the Standard English grammar.
3. The terms “shall” or “will” are mandatory; the term “may” is discretionary.

B. Definitions:

1. Accelerated Soil Erosion: The increased loss of the land surface that occurs as a result of human activities.
2. Certification: A signed written statement by the City Engineer, or the designated representative charged with enforcement of this ordinance, that specific construction, inspections, and tests where required have been performed and comply with this ordinance.
3. City: City of Troy, Michigan.
4. City Engineer: City Engineer for the City of Troy or any person designated by the City Engineer to act on his/her behalf in the administration and enforcement of this ordinance.
5. County: Oakland County, Michigan.
6. Design Standards: Construction methods and detailed drawings issued by the City Engineer, which pertain to this ordinance.
7. Designated Agent: A person who has written authorization from the landowner to sign the application and secure a permit in the landowner's name.
8. Earth Changes: A human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the Waters of the State. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.
9. Earth Disrupting Costs: The estimated total construction cost of all private or public improvements, which involve an earth change, excluding buildings.
10. Existing Grade: The ground elevation at a site prior to any earth change.

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11. Finished Grade: The final ground elevation conforming to the proposed plan for an earth change.
12. Follow-up Maintenance: Maintenance necessary on all soil erosion or sedimentation control measures as a part of earth-change activities as well as after earth-change activities has been completed.
13. Lake: The Great Lakes and all natural and artificial inland lakes or impoundments that have definite banks, a bed, visible evidence of a continued occurrence of water, and surface area of water that is equal to, or greater than, 1 acre. "Lake" does not include sediment basins and basins constructed for the sole purpose of stormwater retention, cooling water, or treating polluted water.
14. Landowner: The person who owns property or holds a recorded easement on the property or who is engaged in construction in a public right of way in accordance with sections 13, 14, 15, and 16 of Act No. 368 of the Public Acts of 1925, as amended, being Sections 247.183, 247.184, 247.185 and 247.186 of the Michigan Compiled Laws, as amended.
15. Municipal Enforcement Agency: ("MEA") An agency designated by a municipality under MCL 324.9106 to enforce and administer Part 91, the Rules and/or a local ordinance. For purposes of this ordinance the municipal enforcement agency designated by the City of Troy is the City of Troy Engineering Department.
16. Nonerosive Velocity: A speed of water movement that is not conducive to the development of accelerated soil erosion.
17. Part 91: Part 91 of Act No. 451 of the Public Acts of 1994, as amended, being Sections 324.9101 to 324.9123a of the Michigan Compiled Laws.
18. Periodic Maintenance: maintenance necessary on soil erosion or sedimentation control measures to preserve effectiveness of the measures.
19. Permanent Soil Erosion and Sedimentation Control Measures: Control measures which are installed or constructed to control soil erosion and sedimentation and which are maintained after project completion.
20. Rules: The administrative rules promulgated by the Michigan Department of Environmental Quality pursuant to the administrative procedures act of 1969, 1969 PA 306, as amended. MCL 24.201, to MCL 24.328, as amended and referenced under MCL 324.9104(1).
21. Runoff: Rainfall which does not percolate into the ground or which is not absorbed by vegetative transpiration or other natural process on the site

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and which runs off the surface onto adjoining properties or into Waters of the State.

22. Sediment: “Sediment” means solid particulate matter, including both mineral and organic matter that is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water, or gravity and has been deposited elsewhere.
23. Sediment basin: A naturally occurring or constructed depression used for the sole purpose of capturing sediment during or after an earth change activity.
24. Soil Erosion and Sedimentation Control Permit: A permit required under Chapter 86 of the City of Troy Code of Ordinances, known as the Soil Erosion and Sedimentation Control Ordinance. Used to control erosion, not a permit to allow soil erosion.
25. Stabilization: The establishment of vegetation or the proper placement, grading, or covering of soil to ensure its resistance to soil erosion, sliding, or other earth movement.
26. Staging: Dividing a construction site into phases. Phase grading and stabilization are completed in each phase before proceeding to the next phase as required under Engineering Standards.
27. State: State of Michigan.
28. Storm Water Retention Basin: An area which is constructed to capture surface water runoff and which does not discharge directly to a lake or stream through an outlet. Water leaves the basin by infiltration and evaporation.
29. Stream: A river, creek, or other surface watercourse, which may or may not be serving as a drain as defined in Act No. 40 of the Public Acts of 1956, as amended, being §280.1 et seq. of the Michigan Compiled Laws, and which has definite banks, a bed, and visible evidence of the continued flow or continued occurrence of water, including the connecting waters of the Great Lakes.
30. Temporary Soil Erosion and Sedimentation Control Measures: Interim control measures that are installed or constructed to control soil erosion and sedimentation and which are not maintained after project completion.
31. Waters of the State: Means the Great Lakes and their connecting waters, inland lakes and streams as defined in rules promulgated under this part, and wetlands regulated under Part 303 of the Natural Resource and Environmental Protection Act (NREPA).

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32. Wetlands: Land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh, as regulated under Part 303 of the Natural Resource and Environmental Protection Act (NREPA).

4. Soil Erosion and Sedimentation Control Requirements

- A. It shall be a violation of this ordinance for any person to engage in and/or maintain any earth change activity in such a manner as to allow uncontrolled accelerated soil erosion and sedimentation to be transported off site onto adjacent properties and into the Waters of the State.
- B. It shall be a violation of this ordinance for any person to engage in and/or maintain any earth change activity, which is not in compliance with Part 91, the Rules and/or the provisions of this ordinance.
- C. Soil erosion and sedimentation control measures (“SESC”) shall be included with plans and specifications for a project, and submitted to the City with site plans and the soil erosion permit application for review. A copy of the approved plans will be kept at the site where it will be available for inspection. SESC plans will contain all Rule 1703 information and comply with Part 91 Rule requirements and design standards prepared by the City Engineer.
- D. No person shall engage in and/or maintain an earth change activity which will disturb more than 1 acre of land, or which lies within 500 feet of the water’s edge of a lake or stream, regardless of the amount of land disturbed, without a valid SESC permit issued under this ordinance.
 1. To assure compliance, all building permit applications will require any construction project to apply for a soil erosion permit. Upon submittal of application, the City Engineer or his/her designee will issue a soil erosion permit, if they meet the requirements found in this subsection.

5. Permit and Plan Requirements; Permit Applications; Soil Erosion & Sedimentation Control (SESC) Plans; Review Procedures and Requirements

- A. After the effective date of this ordinance, no person shall maintain or undertake an earth change on any land within the City that requires a soil erosion permit without a soil erosion permit and approved soil erosion and sedimentation control plan as provided by Part 91, the Rules, and this ordinance.
 1. An application for a soil erosion permit shall be submitted to the City engineer by the owner of the land upon which the earth change is proposed to be made or by the owner’s designated agent. The applicant, if not the owner, shall have written authorization from the landowners to sign the soil erosion permit application and secure a soil erosion permit in

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the landowners' name.

2. The application shall be on forms provided by the Engineering Department and accompanied by an application review and inspection fee made payable to the City of Troy in the amount provided in the Development Standards adopted by the resolution of the City Council.
3. The application shall also be accompanied by a soil erosion and sedimentation control plan that includes the following required data:
 - a. A vicinity sketch of the site location and the proximity of any proposed earth change to the surface Waters of the State or to drains or storm water inlets leading directly to the surface Waters of the State.
 - b. A boundary line survey or legal description of the site.
 - c. The name, address, and telephone number of the landowner or designated agent, and of the developer, if different from the landowner.
 - d. A plan of the site at a scale of not more than 100 feet to an inch or as otherwise determined adequate by the City Engineer, showing existing topography or slope description at five-foot intervals.
 - e. A soil survey map or written description of the soil types of the exposed land area contemplated for the earth change.
 - f. Details for the proposed each change including:
 - 1) A description of the location of the physical limits of each proposed earth change.
 - 2) A description of the location of all existing and proposed on-site drainage and dewatering facilities.
 - 3) The timing sequence of each proposed earth change, such as starting and completion dates of the development sequence and time exposure of each area prior to the completion of effective soil erosion and sediment control measures.
 - 4) The location and description for installing and removing all proposed temporary soil erosion and sedimentation control measures and their established cost.
 - 5) A description and the location of all proposed permanent soil erosion and sedimentation control measures and their

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estimated cost.

- 6) A statement of the quantity of the excavation and fill involved.
 - 7) A program proposal for the continued maintenance of all permanent soil erosion and sedimentation control measures which remain after the project completion, including the designation of the person or organization responsible for the maintenance. Maintenance responsibilities shall become a part of any sales or exchange agreement for the land on which the permanent soil erosion and sedimentation control measures are located.
4. The soil erosion and sedimentation plan shall be reviewed by the city Engineer and/or his designee.
 5. All earth changes shall be designed, constructed, implemented and maintained in accordance with the minimum requirements for earth changes as provided by Part 91, the Rules, and this ordinance, and shall also comply with any structural, vegetative, or managerial practices to effectively prevent or reduce soil erosion and sedimentation as determined necessary by the City Engineer. In determining the adequacy and effectiveness of the design, implementation and maintenance of proposed soil erosion and sedimentation control measures for purposes of this ordinance the City Engineer shall consider:
 - a. Site-specific factors and information of the type required to be included in the soil erosion and sedimentation control plan for the property; and
 - b. The specifications and recommendations regarding soil erosion and sedimentation control measures and practices as provided by the "Guidebook of Best Management Practices for Michigan Watersheds", published by the Water Bureau, Michigan Department of Environmental Quality ("BMP guidebook") or subsequent version. A complete copy of the BMP guidebook shall be kept available for public inspection at the Engineering Department at City Hall.
 6. The City Engineer shall approve, disapprove or require modification of the application for the soil erosion permit and accompanying SESC plan within 30 calendar days following receipt of a complete application. Notification of disapproval shall be made by certified mail. If the application is disapproved, the City Engineer shall advise the applicant of the reasons for disapproval and conditions required for approval. The requirement of notification by certified mail is not necessary if the

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applicant is personally given written approval or disapproval of the application.

7. A soil erosion permit shall not be issued where:
 - a. The proposed work would cause uncontrolled soil erosion and sedimentation; or
 - b. The proposed work would cause hazards to the public safety and welfare; or
 - c. The work, as proposed by the applicant, will damage any public or private property or interfere with any existing drainage course in such a manner as to cause damage to any adjacent property or result in the deposition of debris or sediment on any public way or into any Waters of the State or create an unreasonable hazard to persons or property; or
 - d. The land area for which work is subject to geological hazard to the extent that no reasonable amount of corrective work can eliminate or sufficiently reduce settlement, slope instability or any other such hazard to persons or property; or the land area for which the work is proposed lies within the one hundred (100) year floodplain of any stream, unless a permit from the Michigan Department of Environmental Quality accompanies the application and a hydrologic report prepared by a licensed an professional engineer is submitted to certify that the proposed work will have, in the City Engineer's opinion, no detrimental influence on the public welfare or upon the total development of the watershed.
8. No soil erosion permit shall be issued until the applicant has paid applicable permit and inspection fees to the City Treasurer in accordance with the fee schedule adopted by resolution of the City Council. The City Engineer shall calculate the fee after reviewing the application and plan.
9. Upon a determination by the City Engineer that an applicant has met all applicable requirements under this ordinance and other applicable laws and regulations, and that the applicant has paid all applicable fees, the City Engineer shall issue a permit for the proposed earth change. The permit shall be kept available on the site of the proposed earth change at all times for inspection by the City.
10. If the earth change for which a permit has been issued has not been commenced within one year from the date of issuance of the permit, the permit shall lapse, provided that the City Engineer may extend the time for commencement of the earth change if the permittee requires an extension prior to the expiration of the initial period and no material change of

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circumstances has occurred.

11. A soil erosion permit issued under this ordinance shall not relieve the permittee from complying with any other applicable statutes, ordinances, rules or regulations.
12. The failure to comply with any term or condition of an approved permit or to timely complete all work as set forth in an approved plan constitutes a violation of this ordinance.
13. An “authorized public agency” as defined by Part 91 is exempt from obtaining a soil erosion permit but shall notify the City Engineering Department in advance of such proposed earth change.
14. An earth change activity that does not require a permit under this ordinance is not exempt from enforcement procedures under this ordinance, Part 91 & the Rules, if the activity exempted by Part 91, the Rules and/or this ordinance causes or results in a violation of Part 91, the Rules and/or this ordinance.

6. Inspections:

- A. The City Engineer or his designee shall inspect all work covered by a soil erosion permit issued pursuant to this ordinance and is hereby authorized to enter property in the City covered by a permit for the purpose of performing any duties under this ordinance. Inspection fees shall be paid as provided according to the fee schedule.
- B. The City Engineer or his designee may enter at all reasonable times in or upon any private or public property for the purpose of inspection and investigating conditions or practices that may be a violation of Part 91, the Rules, or this ordinance.

7. Permit Required Prior To Issuance Of Building Permit:

- A. A building permit shall not be issued for any property upon which a soil erosion permit is required until the soil erosion permit has been issued for the property as provided by this ordinance.

8. Logging, Mining, Land Plowing Or Tilling And Permit Exemption:

- A. A person engaged in the logging industry, the mining industry, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops is not required to obtain a permit under this ordinance. However, all earth changes associated with the activities listed in this section shall conform to the same standards as if they required a permit under this ordinance. The exemption

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from obtaining a permit under this subsection does not include either of the following:

1. Access roads to and from the site where active mining or logging is taking place.
 2. Ancillary activities associated with logging and mining.
- B. This ordinance does not apply to metallic mineral mining activity that is regulated under a mining and reclamation plan that contains soil erosion and sedimentation control provisions and that is approved by the Michigan Department of Environmental Quality (MDEQ).
- C. A person is not required to obtain a permit from the City for earth changes associated with well locations, surface facilities, flow lines, or access roads relating to oil or gas exploration and development activities regulated under Part 615 of Act 451 of 1994; MCL 324.61501, et seq., if the application to drill and operate under Part 615 contains a soil erosion and sedimentation control plan that is approved by the Michigan Department of Environmental Quality (MDEQ) under Part 615. However, those earth changes shall conform to the same standards as required for a permit under this ordinance. This subsection does not apply to a multisource commercial hazardous waste disposal well as defined in Section 62506a of Act 451.
- D. As used in this section, “mining” does not include the removal of clay, gravel, sand, peat or topsoil.
- E. This ordinance does not apply to exempted activities identified in section 9115a of Part 91 and Rule 323.1705.
- F. The City Engineer may grant a permit waiver for an earth change after receiving a signed affidavit from the landowner stating that the earth change will disturb less than two hundred twenty-five (225) square feet and that the earth change will not contribute sediment to lakes or streams.
9. Reduction of Soil Erosion or Sedimentation by Owner:
- A. A person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of the Waters of the State shall implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion and sedimentation from the land on which the earth change has been made.
- B. This section is effective whether or not this ordinance requires a soil erosion permit.

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10. Notice of Violation; Cost of Recovery

- A. If the City Engineer determine that soil erosion and sedimentation of the Waters of the State or adjacent properties, has or is reasonably likely to occur from a parcel of land in violation of this ordinance, the City Engineer shall notify the person who owns the land by certified mail, with return receipt required, of that determination. The notice shall contain a description of the violation and what must be done to remedy the violation and shall specify a time to comply with this ordinance.
- B. Within five days after the notice of violation is mailed, the landowner shall implement and maintain soil erosion and sedimentation control measures in conformance with the ordinance, as specified by the notice or as otherwise determined adequate by the City Engineer to prevent soil erosion and sedimentation of the Waters of the State.
- C. If after five days from the date that a notice of violation is mailed, the condition of the land, in the opinion of the City Engineer, may result, in or contribute to, soil erosion and sedimentation of adjacent properties or the Waters of the State, and if soil erosion and sedimentation control measures in conformance with Part 91, the Rules and this ordinance are not in place, the City may enter upon the land and construct, implement and maintain soil erosion and sedimentation control measures in conformance with Part 91, the Rules and this ordinance. The City shall not expend more than \$10,000.00 for the cost of the work, materials, or labor unless the notice of violation contained written notice that such costs might exceed \$10,000.00. Further, if more than \$10,000.00 is to be expended under this section, then the work shall not begin until at least 10 days of the notice of violation is mailed.
- D. All expenses incurred by the City under this section to construct, implement, or maintain soil erosion and sedimentation control measures to bring the land into conformance with Part 91, the Rules and this ordinance shall be reimbursed to the City by the person who owns the land. The costs recovered by the City shall be in addition to any civil fines, damages, expenses or costs payable to the City as a result of a violation. Further, the abatement by the City of a violation of this ordinance and subsequent recovery of costs incurred by the City shall not be a defense to any action by the City against any person for the violation, including without limitation, any action by the City to collect civil fines, damages, expenses or costs as authorized by law.
- E. The City shall have a lien for the expenses incurred under this section in bringing the land into conformance with Part 91, the Rules and this ordinance. With respect to single or multifamily residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of the expenditure. With respect to all other property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, Act No. 206 of the Public

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Acts of 1893, being Sections 211.1 to 211.157 of the Michigan Compiled Laws, as amended.

11. Enforcement Authority

Upon a finding that there has been a violation of a provision, requirement or condition of this ordinance or of any permit or plan issued or approved under this ordinance, the City may take any enforcement action authorized by Part 91, the Rules, this ordinance, or by other applicable laws, regulations and ordinances. In addition to other remedies provided in this ordinance, the City Engineer's enforcement authority and/or his designees also includes, without limitation, the ability to issue cease and desist orders and to revoke soil erosion permits. Failure to comply with a cease and desist order or revocation of a soil erosion permit shall constitute a violation of this ordinance.

12. Municipal Civil Infraction

- A. A person who violates any provision of this ordinance is responsible for a municipal civil infraction, subject to payment of a civil fine as provided by law, plus costs and other sanctions for each day of violation.
- B. A person who knowingly violates any provision of this ordinance or knowingly makes a false statement in an application for a permit or in a soil erosion and sedimentation control plan is responsible for the payment of a civil fine as provided by law for each day of violation.
- C. A person who knowingly violates any provision of this ordinance after receiving a notice of determination under section 10a of this ordinance is responsible for the payment of a civil fine as provided by law for each day of violation.
- D. Civil fines collected under subsections A, b, and C above shall be deposited with the City Treasurer.
- E. A default in the payment of a civil fine or costs ordered under this section or an installation of the fine or costs may be remedied by any means set out in Chapter 100 of the Troy Code of Ordinances or under the Revised Judicature Action, P.A. 261 of 1961, as amended (MCL 600.101, et seq.).
- F. Notwithstanding the existence of any other remedy, the City may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against a person to restrain or prevent violations of Part 91, the Rules, or this ordinance.
- G. In addition to a fine assessed under this ordinance, a person who violates this ordinance is liable to the state for damages for injury to, or destruction of, or loss of natural resources resulting from the violation. The court may order a person who violates this part to restore the area or areas affected by the violation to their conditions as existing immediately prior to the violation.

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- H. Each day on which a violation of Part 91, the rules and/or this ordinance continues constitutes a separate violation and shall be subject to sanctions or penalties as provided in this section as a separate violation.
- I. The Code Enforcement Officers are hereby designated as the authorized City officials to issue municipal civil infraction citations directing alleged violators to appear in court.
- J. Chapter 100 of the Troy Code of Ordinances shall govern municipal civil infractions. If there is a conflict between Chapter 100 and Chapter 86, Chapter 86 shall apply.

13. Severability Clause

Should any word, phrase, sentence, paragraph or section of this ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

14. Effective Date

This ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

(06/18/2007)