

ARTICLE 2. SOIL EROSION AND SEDIMENTATION CONTROL*

*State law references: Soil erosion and sedimentation control, MCL 324.9101 et seq.; local soil erosion and sedimentation control ordinance, MCL 324.9106.

DIVISION 1. GENERALLY

Sec. 78-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words, terms and phrases used in this article, unless defined in this section or section 1-2, shall have the meanings ascribed to them in the act.

Act means part 91 of the Natural Resources and Environmental Protection Act, being Public Act No. 451 of 1994 (MCL 324.9101 et seq.).

Certification of completion means a signed, written statement by the City Engineer that specific construction has been inspected and found to comply with all requirements specified in this article and any permit issued in accordance with this article.

City engineer means the City Engineer of the City of Kentwood or his duly authorized representative, who has completed the required MDEQ certification.

Earth change means a human-made change in the natural cover or topography of land including, but not limited to, cut, fill, grading, and stripping activities as defined in the definitions of the terms "excavation and cut," "grading" and "stripping," as defined in this section.

Erosion means the process by which land is worn away by action of wind, water or other force of nature, or a combination thereof.

Excavation and *cut* mean any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated and shall include the conditions which result from such activity.

Floodplain means that area which would be inundated by storm runoff or floodwater equivalent to that which would occur with a storm event of 100-year recurrence frequency after total development of the watershed.

Grading means any stripping, excavating, filling or stockpiling, or any combination of such activities, and shall include the land in its excavated or filled condition.

Permit means a permit issued to authorize work to be performed under this article in accordance with the act.

Stripping means any activity which removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.

(Ord. No. 04-02, § 25.202, 2-5-2002; Ord. No. 12-03, § 25.202, 9-2-2003)

Cross references: Definitions generally, § 1-2.

Sec. 78-32. Purpose.

The purpose of this article is to control soil erosion and sedimentation within the City, by requiring proper provision for water disposal and protection of soil surfaces during and after construction, in order to promote the safety, public health and general welfare of the City, as well as to limit the exposed area of any disturbed land for the shortest possible period of time.

(Ord. No. 04-02, § 25.201, 2-5-2002; Ord. No. 12-03, § 25.201, 9-2-2003)

Sec. 78-33. Violations; penalties; civil remedies.

(a) Any person who violates any provision of this article is responsible for a civil infraction and shall be fined

not less than \$2,500.00 for each violation. Any person who, after having been determined to be responsible for a violation of this article or the act, commits and is found responsible for a subsequent violation within a two-year period, shall be fined double the amount assessed for the immediate preceding violation.

(b) In addition to the penalties in subsection (a) of this section, the City may, following proper notification, enter the property for the purpose of correcting or abating the violation in accordance with the act and state law.

(c) A person found to be responsible for a violation shall pay the City's actual costs, direct or indirect, for correcting and abating the violation, and the actual costs, direct and indirect, to which the City has been put in correcting or abating the violation to the extent permitted by law. If the fines and costs are not fully paid within 30 days, the fines and costs may be added to, and made part of, the next City tax bill against the subject premises and may be collected in the same manner as provided by state law for the collection of City taxes on real estate.

(d) The City may also proceed against any person for a violation of this article by seeking injunctive relief and/or damages.

(Ord. No. 04-02, § 25.217, 2-5-2002; Ord. No. 12-03, §§ 25.217, 25.218, 9-2-2003)

Sec. 78-34. Variances and exceptions.

Where it is alleged that there is an error or misinterpretation in any order, requirement, determination or interpretation made by the City Engineer on non-part 91 issues, an appeal may be made by the applicant, in writing, to the City Commission Service Committee. The service committee may, by a majority vote of its members serving, affirm, reverse or affirm with conditions the appeal, consistent with the general purposes and the intent of this article.

(Ord. No. 04-02, § 25.215, 2-5-2002; Ord. No. 12-03, § 25.215, 9-2-2003)

Sec. 78-35. Enforcement official.

The City Engineer and his designees are hereby authorized to administer and enforce part 91 of Public Act No. 451 of 1994 (MCL 324.9101 et seq.).

(Ord. No. 04-02, § 25.200, 2-5-2002; Ord. No. 12-03, § 25.200, 9-2-2003)

Cross references: Administration, ch. 2.

Sec. 78-36. Inspection and enforcement.

(a) The City Engineer may enter at all reasonable times into or upon private or public property for the purpose of inspecting and investigating conditions or practices associated with the issuance of a permit. If the City Engineer finds that the permittee has not complied with the act or this article and that the work does not conform to the permit issued, a cease and desist order shall be issued and the permit shall be revoked. The permittee shall be notified of the City Engineer's determination by certified mail, return receipt requested. The permittee shall, within five calendar days following the issuance of the notice, implement and maintain soil erosion and sediment control measures consistent with the approved plans, the act and this article. The permittee shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred by the City in causing any and all work to be done to comply with the regulations.

(b) Upon satisfactory execution of all proposed earth change plans and other requirements, the permittee shall file a written notice of completion so that the City Engineer may make a final inspection and issue a certificate of completion and release of the bond. If the project is to be completed in different phases, the City Engineer may issue separate permits and certificates of completion and bond release for each phase of the

earth change project.

(c) Notwithstanding any other provision of this article, the City shall have the right to avail itself to all enforcement mechanisms provided for by the act.

(Ord. No. 04-02, § 25.216, 2-5-2002; Ord. No. 12-03, § 25.216, 9-2-2003)

Sec. 78-37. Certificate of completion.

Except with respect to a development for which no permit is required, a certificate of occupancy for any building shall not be issued unless the applicant first obtains a certificate of completion from the City Engineer.

(Ord. No. 04-02, § 25.203, 2-5-2002; Ord. No. 12-03, § 25.203, 9-2-2003)

Sec. 78-38. Minimum design standards.

All grading plans and specifications, including amendments to previously approved plans, shall include provisions for erosion and sediment control in accordance with, but not limited to, the standards contained in the Standards and Specifications for Soil Erosion and Sedimentation Control, published by the county drain commissioner. Copies of those standards shall be available for inspection in the office of the City Engineer.

(Ord. No. 04-02, § 25.214, 2-5-2002; Ord. No. 12-03, § 25.214, 9-2-2003)

Sec. 78-39. Maintenance requirements.

Persons carrying out soil erosion and sedimentation control measures under this article, and all subsequent owners of the property concerning which such measures have been taken, shall be liable to maintain all permanent antierosion and sediment control devices, retaining walls, structures, plantings and other protective devices.

(Ord. No. 04-02, § 25.213, 2-5-2002; Ord. No. 12-03, § 25.213, 9-2-2003)

Secs. 78-40--78-60. Reserved.

DIVISION 2. PERMIT AND SOIL EROSION AND SEDIMENTATION CONTROL PLAN

Sec. 78-61. Permit required.

A landowner, or designated agent who contracts for, allows or engages in an earth change in the City, shall obtain a permit from the City Engineer prior to commencement of an earth change which disturbs one or more acres of land, is adjacent to a public street, or is within 500 feet of waters of the state as defined by the act. A permit is not required for those activities which are exempt from permits as specified in state law. Failure to obtain a permit before initiating the earth change shall be deemed a violation of this article.

(Ord. No. 04-02, § 25.204(4.1), 2-5-2002; Ord. No. 12-03, § 25.204(4.1), 9-2-2003)

Sec. 78-62. Soil erosion and sedimentation control plan.

A soil erosion and sedimentation control plan shall be prepared for any earth change identified in section 78-61. The plan shall be designed to effectively reduce accelerated soil erosion and sedimentation, and shall identify factors which may contribute to soil erosion or sedimentation, or both. The plan shall include, but not be limited to, the following:

- (1) A soils survey or a written description of the exposed land area contemplated for the earth change.
- (2) Details for proposed earth changes, including:
 - a. A description and the location of the physical limits of each proposed earth change.
 - b. A description and the location of all existing and proposed on-site drainage and dewatering facilities.
 - c. The timing and sequence of each proposed earth change.
 - d. A description and the location of all proposed temporary soil erosion and sediment control measures.
 - e. A description and the location of all proposed permanent soil erosion and sediment control measures.
 - f. A program proposal for the continued maintenance of all permanent soil erosion and sediment control facilities which remain after project completion, including the designation of the person 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 control measures are located.
 - g. A statement of the quantity of excavation and fill involved.
- (3) A boundary line survey or legal description of the land on which the work is to be performed.
- (4) A plan of the site, at a scale of not more than 100 feet to the inch, showing the:
 - a. Name, address and telephone number of the landowner or designated agent.
 - b. Existing topography at a maximum of five-foot contour intervals.
 - c. Proposed topography at a maximum of five-foot contour intervals.
 - d. Location of any structure or natural feature on the site.
 - e. Location of any structure or natural feature on the land adjacent to the site within 50 feet of the site boundary line.

- f. Location of any proposed additional structures or development on the site.
- g. Proximity of any proposed earth change to lakes, drains, wetlands or streams.

(5) Such other information as requested by the City Engineer.

(Ord. No. 04-02, § 25.204(4.2), 2-5-2002; Ord. No. 12-03, § 25.204(4.2), 9-2-2003)

Sec. 78-63. Application review and permit procedures.

All application review and permit procedures shall be in accordance with the act and this article.

(Comp. Ords. 1987, § 25.205; Ord. No. 12-03, § 25.205, 9-2-2003)

Sec. 78-64. Fees.

At the time of filing an application for a permit, a nonrefundable fee shall be charged for plan review. Upon approval of the plans, a permit will be issued and a fee shall be made for the permit, including inspections. Fees will be in accordance with a fee schedule adopted from time to time by resolution of the City Commission.

(Comp. Ords. 1987, § 25.206; Ord. No. 12-03, § 25.206, 9-2-2003)

Sec. 78-65. Bond.

(a) A permit shall not be issued for an earth change unless the permittee first posts with the City a bond, executed by the owner or the owner's contractor, issued by a surety authorized to do business within the state; provided, however, that a bond shall not be required for single-family residential units less than one acre in size.

(b) The bond shall be in a form approved by the City Attorney, payable to the City and in an amount sufficient to ensure the installation and completion of such protective and corrective measures as may be required by the City. The bond shall include penalty provisions for failure to complete the work on schedule as specified in the permit.

(c) Every bond shall include language requiring the permittee to comply with all of the provisions of this article and all terms and conditions of the permit, and to complete all work contemplated under the permit within the time limit specified in the permit. If no time limit is specified, the project shall be completed within 365 days after the date of the issuance of the permit.

(Ord. No. 04-02, § 25.207, 2-5-2002; Ord. No. 12-03, § 25.207, 9-2-2003)

Sec. 78-66. Permit denial.

Permits shall not be issued where the:

- (1) Proposed work would cause uncontrolled soil erosion and sedimentation;
- (2) Proposed work would cause hazard to the public safety and welfare;
- (3) Proposed work will damage any public or private property, interfere with an existing drainage course so as to cause damage to adjacent property, result in the deposit of debris or sediment on any public way or waters of the state, or create an unreasonable hazard to persons or property;
- (4) Land area in which work is to occur is subject to geological hazard such that no reasonable amount of corrective work can eliminate or sufficiently reduce settlement, slope instability or any other

such hazard to persons or property;

(5) Land area in which the work is to occur is within the floodplain of any stream or watercourse, unless a permit from the MDEQ approving the work accompanies the application and a hydrologic report prepared by a professional engineer is submitted certifying that the proposed work will have no detrimental influence on the public welfare or upon the total development of the watershed; or

(6) Proposed work unreasonably exposes the land to repeated disturbances.

(Ord. No. 04-02, § 25.210, 2-5-2002; Ord. No. 12-03, § 25.210, 9-2-2003)

Sec. 78-67. Time extensions.

Not less than ten days prior to the expiration date of a permit, a permittee may present in writing to the City Engineer a request for an extension where the permittee asserts that it is unable to complete the work within the specified time. For good cause shown, the City Engineer may grant additional time for completion, but no extension shall be treated or interpreted as a release of the surety bond.

(Ord. No. 04-02, § 25.208, 2-5-2002; Ord. No. 12-03, § 25.208, 9-2-2003)

Sec. 78-68. Modification of approved plans.

Any modification of an approved plan must be submitted to and approved by the City Engineer. All necessary supplemental reports shall be submitted with the proposal to modify the approved plan. No work in connection with any proposed modification shall be permitted without the prior approval of the City Engineer.

(Ord. No. 04-02, § 25.211, 2-5-2002; Ord. No. 12-03, § 25.211, 9-2-2003)

Sec. 78-69. Failure to complete work.

(a) In the event of failure to complete work required as part of an approved permit, the City Engineer may order such work, as necessary, to provide for effective soil erosion and sedimentation control. The permittee and the surety executing the bond shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred by the City in causing any and all work to be done in compliance with the permit.

(b) Notwithstanding the provisions of subsection (a) of this section, the City may avail itself of all the rights provided under the act if a permittee fails to comply with an approved soil erosion and sediment control plan.

(Ord. No. 04-02, § 25.209, 2-5-2002; Ord. No. 12-03, § 25.209, 9-2-2003)

Sec. 78-70. Responsibility of permittee.

During operations associated with the approved soil erosion and sedimentation control plan, the permittee shall be responsible for:

(1) Prevention of damage to, or sedimentation of, adjacent properties or public areas, or waters of the state. No person shall grade on land so close to a property line as to endanger any public street, sidewalk, alley or any public or private property without supporting and protecting such property from settling, cracking or other damage that might result. Similarly, no person shall permit sediment or runoff to occur on public streets, sidewalks, alleys or other public areas.

(2) Carrying out the proposed work in accordance with the approved plans and in compliance with all the requirements of the permit, this article and the act.

(3) Prompt removal of any sediment that may inadvertently be deposited in any lake, drain, stream or wetland.

(4) Complete restoration of the site within five business days following final grading of the site.

(Ord. No. 04-02, § 25.212, 2-5-2002; Ord. No. 12-03, § 25.212, 9-2-2003)

Secs. 78-71--78-100. Reserved.