

Amendment as approved on Second Reading October 15, 2007

STATE OF MICHIGAN

COUNTY OF WASHTENAW

ANN ARBOR CHARTER TOWNSHIP

ORDINANCE NO. 7-2007; AMENDMENT ORDINANCE NO. 10-2007

SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

An ordinance to reduce soil erosion and to protect the waters of the Township and State of Michigan from sedimentation (including wetlands regulated under Part 303 of 1994 PA451 as amended) and to protect properties adjacent to a potential earth change; to provide for penalties for violations of soil erosion and sedimentation control measures; to achieve compliance with state and federal regulations; and to protect the health, safety and general welfare of Ann Arbor Charter Township residents.

THE TOWNSHIP BOARD OF ANN ARBOR CHARTER TOWNSHIP, COUNTY OF WASHTENAW, STATE OF MICHIGAN ORDAINS:

Section 1 of Ordinance

A new ordinance of the Ann Arbor Charter Township shall be established, reading as follows:

ARTICLE I. AUTHORITY; PURPOSE; INTERPRETATION

Section 1.01 Authority

This ordinance is adopted under the authority granted by Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, Act 451 of 1994, MCL § 324.9101 *et seq.*, as amended.

Section 1.02 Purpose

The purposes of this Ordinance shall be:

- A. To protect our lakes, streams, rivers, wetlands and watercourses from unnecessary degradation due to soil erosion and sedimentation;
- B. To preserve high quality water essential to persons and the health of our natural environment;
- C. To protect vital land resources from soil erosion and sedimentation;

D. To protect the public health, safety and welfare of the people and land and to prevent flooding and damage to infrastructure and property as a result of movement, placement and stockpiling of soils, soil erosion and sedimentation.

Section 1.03 Intent

The intent of Part 91 and this Ordinance is to achieve effective and reasonable control of accelerated soil erosion to protect the waters of the State and Township (including wetlands) and to protect properties adjacent to any earth change. This shall be accomplished by requiring persons who own or possess 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 and Township (including wetlands) or that may result in damage to adjacent properties to implement and maintain soil erosion and sedimentation control measures. These measures shall effectively reduce soil erosion or sedimentation from the land on which the earth change has been made and shall require compliance with applicable Best Management Practices, in particular those relating to sedimentation control structures and managerial and vegetative establishment practices. The reduction of soil erosion or sedimentation is to be accomplished by using the best practical combination of procedures, techniques and people to prevent sediment, the product of accelerated soil erosion, from leaving construction sites and reaching the waters of the State of Michigan and Township wetlands. This is to be accomplished by the enforcement of soil erosion and sediment control programs by the Township.

Section 1.04 Incorporation by reference

For the purposes of this Ordinance, the following statute and related regulations and/or rules are incorporated by reference by the Township as part of this Ordinance: Part 91 of Act 451 of 1994, MCL § 324.9101 *et seq.*, and the rules promulgated pursuant to Part 91 by the Michigan Department of Environmental Quality, to the extent that this Ordinance is not more restrictive.

Section 1.05 Notification

This Ordinance is more restrictive than Part 91 and the Rules as it governs all earth changes regardless of size, unless otherwise exempted under this Ordinance. The Township shall notify a person receiving a permit under this Ordinance that the Ordinance is more restrictive than Part 91 and the Rules.

Section 1.06 Construction

The provisions of this Ordinance shall be construed, if possible, to be consistent with and in addition to relevant state regulations and statutes.

ARTICLE II. DEFINITIONS

Section 2.01 Definition of terms

The following terms, phrases, words and derivatives shall have the meaning defined below:

Best management practices. Those structural, vegetative or managerial practices used to treat, prevent or reduce water pollution such as temporary seeding on exposed soils, detention and retention basins for sediment control, and scheduling and implementation of all best management practices to ensure their effectiveness, and include the minimum control measures contained in

the most recent versions of the State of Michigan’s “Guidebook of Best Management Practices for Michigan Watersheds.”

Earth change. 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 of Michigan or onto properties adjacent to the change. This includes, but is not limited to, grading and preparation for wells, septic fields (including perimeter drains), driveways, foundations, backfill, final grade changes, and stockpiling of material. “Earth change” shall not apply to the practice of plowing and tilling soil for the purpose of crop production and ordinary household gardens.

Erosion. When land is diminished or worn away due to wind, water, or glacial ice. Often the eroded debris (silt or sediment) becomes a pollutant via stormwater runoff. Erosion occurs naturally but can be intensified by land clearing activities such as farming, development, road-building, and timber harvesting.

Major project. Major project means any earth change that will disturb 5 acres or more of property.

Minor project. Minor project means any earth change (other than on a Single Family Residential Project) that will disturb less than 5 acres of property.

Municipal enforcing agency. The municipal enforcing agency shall be the Utilities Department of Ann Arbor Charter Township. One or more individuals affiliated with the Township Utilities Department shall have current certificates of training issued under Section 9123 of Part 91 to administer this Ordinance.

MDEQ. MDEQ means the Michigan Department of Environmental Quality or any successor agency.

NREPA. Natural Resources and Environmental Protection Act, Act 451 of 1994, MCL § 324.101 *et seq.*, as amended.

Part 91 and the Rules. Part 91, Soil Erosion and Sedimentation Control of NREPA (MCL§ 324.9101) and the rules promulgated under Part 91 by the Michigan Department of Environmental Quality.

Person. The word “person” means any individual, partnership, corporation, association, club, joint venture, estate, trust, governmental unit, and any other group or combination acting as a unit, and the individuals constituting such group or unit.

Sediment. Mineral or organic particulate matter that has been removed from its site of origin by the processes of soil erosion, is in suspension in water, or is being transported.

Single family residential project. Single family residential project means an earth change on a parcel containing an existing single family residence owned and occupied for single family residential purposes that disturbs less than one acre of property.

Soil erosion. The wearing away of land by the action of wind, water, gravity or a combination thereof.

Township. Ann Arbor Charter Township.

Township Board. Ann Arbor Charter Township Board.

ARTICLE III. GENERAL PROVISIONS

Section 3.01 Applicability; permit; permit waivers

A. A person shall not maintain or undertake an earth change governed by this Ordinance except as authorized by a permit issued by the municipal enforcing agency.

B. An owner of property in the Township who contracts for, allows, or engages in a public or private earth change shall obtain a permit from the Municipal Enforcing Agency before commencing an earth change, except: (i) earth changes by an authorized public agency approved under Section 9110 of Part 91, and (ii) earth changes exempted under Section 3.04 below. An earth change activity that does not require a permit under Section 3.04 is not exempt from enforcement procedures under this Ordinance, Part 91 or the Rules if the exempted activity causes or results in a violation of this Ordinance, Part 91 or the Rules.

C. An owner may request from the municipal enforcing agency a permit waiver for an earth change that will disturb less than 225 square feet and that will not contribute to sedimentation of lakes or streams, or adjacent properties.

D. At the time that the permit application is submitted to the municipal enforcing agency, the applicant shall also submit a soil erosion and sedimentation control plan as set forth in the SESC Plan Checklist attached to the permit application which is consistent with Part 91 and the Rules (including but not limited to Rules 323.1703 and 323.1708-1710), along with any other document required by the municipal enforcing agency. The soil erosion and sedimentation control measures shall also be implemented and maintained in accordance with Best Management Practices and the approved SESC Plan.

E. The owner of property that is subject to a permit under this Ordinance is responsible for compliance with the terms of the permit that apply to the owner's property.

F. The Township Building Official shall not issue a building permit for any proposed construction, alteration or improvement within the Township unless the applicant provides evidence that any necessary permit for an earth change under this Ordinance has been approved and all fees and deposits paid.

Section 3.02 Transfer

A. Except as provided in paragraph B below, if property subject to a permit under this Ordinance is transferred, both of the following are transferred with the property:

1. The permit, including the permit obligations and conditions.
2. Responsibility for any violations of the permit that exist on the date the property is transferred.

B. If property is subject to a permit under this Ordinance and a parcel of the property, but not the entire property, is transferred, both of the following are transferred with the parcel:

1. The permit obligations and conditions with respect to that parcel, but not the permit itself.

2. Responsibility for any violations of the permit with respect to that parcel that exist on the date the parcel is transferred.

C. If property subject to a permit under this Ordinance is proposed to be transferred, the transferor shall notify the transferee of the permit in writing on a form developed by the MDEQ. The notice shall inform the transferee of the requirements of Section 3.01, paragraph D above and, as applicable, paragraphs A and B of this Section 3.02. The notice shall include a copy of the permit. The transferor and transferee shall sign the notice, and the transferor shall submit the signed notice to the municipal enforcing agency before the property is transferred.

D. The municipal enforcing agency may charge a fee for the transfer of a permit under paragraphs A or B of this Section 3.02. The fee shall be established by resolution of the Township Board and shall not exceed the administrative costs of transferring the permit. Fees collected under this Section 3.02 shall only be used for the enforcement and administration of this Ordinance by the municipal enforcing agency.

Section 3.03 Fees, escrow deposits and performance guarantees

A. **MAJOR PROJECT OR MINOR PROJECT.** An applicant for a permit under this Ordinance for a major project or a minor project shall:

1. Administrative Fee. Pay a non-refundable administrative fee to be established from time to time by resolution of the Township Board.

2. Escrow Deposit. Deposit in escrow with the Township an amount sufficient for payment of all review, inspection, consultant and attorneys' fees incurred by the Township pertaining to the permit, which amount shall be determined from time to time by resolution of the Township Board. From time to time, the Township may require the applicant to deposit an additional amount into escrow not to exceed half of the original escrow amount if the amount remaining in escrow drops to approximately twenty-five percent (25%) of the original escrow amount. If the applicant fails to pay any additional deposit required in a timely manner, then the municipal enforcing agency shall issue a stop-work order, the escrow account shall be deemed inactive and an additional administration fee shall be required to activate such escrow account. Any funds remaining in escrow after the property is completely (permanently) stabilized and has met all requirements set forth by this Ordinance, Part 91 and the Rules will be returned to the applicant.

3. Performance Guarantee. As a condition for the issuance of a permit, the applicant shall post a performance guarantee in the form of cash, certified funds or a letter of credit in an amount sufficient to assure the installation, continuation and completion of such protective or corrective measures as may be required by the municipal enforcing agency in accordance with this Ordinance and removal of temporary measures after permanent stabilization of the Project. The amount of the performance guarantee shall be established by the Township Board to assure proper installation, continuation and completion of all soil erosion and sediment control measures and appurtenant activities. The Township may deduct from the performance guarantee any reasonable and necessary Township costs and expenditures incurred in stabilizing the Project and the cost of any inspection related to such stabilization. Upon permanent restabilization of all

disrupted earth areas, removal of temporary measures and approval of final inspection, the performance guarantee or residual balance will be returned to the permittee along with an accounting of any funds used.

B. **SINGLE FAMILY RESIDENTIAL PROJECT.** An applicant for a permit for a Single Family Residential Project, as described in Section 2.01 above, shall pay a non-refundable administrative fee as established by resolution of the Township Board which may include the cost of one or more inspections. Fees for inspections not included in the initial administrative fee shall be at the rate established by the Township Board and shall be paid by the applicant at the time of inspection.

C. **WAIVER FEES.** An applicant for a permit waiver shall pay for a non-refundable permit waiver fee in the amount established by resolution of the Township Board at the time of filing the permit waiver affidavit described in Section 3.04B.

Section 3.04 Exempt activities; waivers

A. Notwithstanding the requirements of Section 3.01, a permit shall not be required for:

1. **Logging, mining, land plowing or tilling.**

(a) Subject to this paragraph A, section 2 below, 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 from obtaining a permit does not include any of the following:

(i) Access roads to and from the site where active mining or logging is taking place.

(ii) Ancillary activities associated with logging and mining.

(iii) Removal of clay, gravel, sand, peat or top soil.

(b) This Ordinance does not apply to a 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 State of Michigan under Part 631 of NREPA.

(c) A person is not required to obtain a permit for earth changes associated with well locations, surface facilities, flowlines, or access roads relating to oil or gas exploration and development activities regulated under Part 615 of NREPA if the application for a permit to drill and operate under Part 615 contains a soil erosion and sedimentation control plan that is approved by the State of Michigan 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.

2. **Earth change of a minor nature.** An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance and that will not contribute sediment to lakes or streams, or adjacent properties.

3. Residential earth change activities not requiring a permit.

A residential property owner who causes the following activities to be conducted on individual residential property owned and occupied by such property owner is not required to obtain a permit under this Ordinance if the earth change activities do not result in or contribute to soil erosion or sedimentation of the waters of the State of Michigan or a discharge of sediment off-site:

- (a) Gardening, if the natural elevation of the area is not raised.
- (b) Post holes for fencing, decks, utility posts, mailboxes, or similar applications, if no additional grading or earth change occurs for use of the post holes.
- (c) Removal of tree stumps, shrub stumps, or roots resulting in an earth change not to exceed 100 square feet.
- (d) All of the following activities, if soil erosion and sedimentation controls are implemented, the earth change is stabilized within 24 hours of the initial earth disturbance, and soil erosion or sedimentation to adjacent properties or the waters of the State of Michigan has not or will not reasonably occur:
 - (i) Planting of trees, shrubs, or other similar plants.
 - (ii) Seeding or reseeded of lawns of less than 1 acre if the seeded area is at least 100 feet from the waters of the State of Michigan.
 - (iii) Seeding or reseeded of lawns closer than 100 feet from the waters of the State of Michigan if the area to be seeded or reseeded does not exceed 100 square feet.
 - (iv) The temporary stockpiling of soil, sand, or gravel not greater than a total of 10 cubic yards on the property if the stockpiling occurs at least 100 feet from the waters of the State of Michigan.
 - (v) Seawall maintenance that does not exceed 100 square feet.

4. Road and Driveway Maintenance. Normal road and driveway maintenance, such as grading or leveling, that does not increase the width or length of the road or driveway and that will not contribute sediment to lakes or streams, or adjacent properties.

B. The municipal enforcing agency 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 225 square feet and that the earth change will not contribute sediment to lakes, streams or onto adjacent properties.

C. Exemptions provided in this Article III and Part 91 and the Rules shall not be construed as exemptions from enforcement procedures under this Ordinance, Part 91 and the Rules if the exempted activities cause or result in a violation of this Ordinance, Part 91 or the Rules.

ARTICLE IV. ENFORCEMENT; PENALTIES

Section 4.01 Notice of Determination; Remedies and Penalties

A. Notice of Violation; Stop Work Order. If the municipal enforcing agency determines a violation of a permit issued under this ordinance, or of any other provision of this ordinance, or Part 91 or the rules promulgated under Part 91, has or reasonably may occur, the municipal enforcing agency shall notify the person who owns the land, by personal delivery or by mail, with return receipt requested, of the violation. 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 the permit, this ordinance, Part 91 or the rules. At the same time, the Zoning official or the municipal enforcing agency may issue a stop work order until the violation is corrected.

1. After a notice of violation has been issued under Section 4.01 A above, a landowner or any person who causes, contributes, maintains, or commits such a violation shall comply with the permit, Part 91, the rules and this ordinance and shall implement and maintain soil erosion and sedimentation control measures in conformance with the permit, this ordinance, Part 91 and the rules.

2. Not sooner than 5 days after personal delivery or mailing of a notice of violation described in Section 4.01 A above, if the condition of the land, in the opinion of the municipal enforcing agency may result in or contribute to accelerated soil erosion or sedimentation to adjacent properties, or to the waters of the State, or Township wetlands, and if soil erosion and sedimentation control measures to correct the violation in conformance with Part 91, the rules, the permit and this ordinance are not in place, the municipal enforcing agency, after consultation with the Township Supervisor, may enter upon the land and construct, implement, and maintain soil erosion and sedimentation control measures to correct such violation. However, the municipal enforcing agency shall not expend more than the amount held in escrow and the performance guaranty for the cost of the work, materials, labor, and administration to correct such violation without notice as provided in Section 4.01 A. above to the person who owns the land that the expenditure in excess of the escrow deposit and performance guaranty may be made and such amount may be collected in accordance with this ordinance.

3. All expenses including all administrative, attorney or other professional fees incurred by the municipal enforcing agency to construct, implement, and maintain soil erosion and sedimentation control measures to bring land into conformance with a permit, Part 91, the rules or this ordinance shall be reimbursed to the Township by the person who owns the land.

4. The Township shall have a lien against the land upon which a permit is issued or upon which the violation occurred for all expenses incurred by the municipal enforcing agency to correct a violation and bring the land into conformance with a permit, Part 91, the rules and this ordinance. In addition, the Township may draw on any escrow deposit or performance guarantee for all such expenses. 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, 1893 PA 206, MCL 211.1 to 211.157.

B. Remedies; Penalties; Enforcement.

1. A person who violates a permit, this ordinance, Part 91 or the rules is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00.

2. A person who knowingly violates a permit, this ordinance, Part 91 or the rules 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 of not more than \$10,000.00 for each date of violation.

3. A person who knowingly violates a permit, this ordinance, Part 91 or the rules after receiving a notice of violation under this ordinance and/or Part 91 is responsible for the payment of a civil fine of not less than \$2,500.00 or more than \$25,000.00 for each day of violation.

4. Civil fines collected under subsections (2) and (3) above shall be deposited as follows:

(a) If the municipal enforcing agency filed the action under this Section 4.01(B), with the Township.

(b) If an action was filed jointly by the State of Michigan and the municipal enforcing agency, the civil fines collected under this Section 4.01(B) shall be divided in proportion to each agency's involvement as mutually agreed upon by the agencies.

5. A default in the payment of a civil fine or costs ordered under this Section 4.01(B) or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

6. In addition to a fine assessed under this Section 4.01, a person who violates this ordinance, Part 91 or the rules is liable to the State of Michigan for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The court may order a person who violates this ordinance, Part 91 or the Rules to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.

7. Persons authorized by the Township Board to enforce municipal civil infractions and the municipal enforcing agency are authorized to enforce the provisions of this ordinance.

Section 2 of Ordinance

CERTIFICATION

It is hereby certified that the foregoing Ordinance amendment was adopted by the Township Board of Ann Arbor Charter Township, Washtenaw County, Michigan, at a meeting of the Board duly called and held on October 15, 2007.

ANN ARBOR CHARTER TOWNSHIP

By: _____
Michael C. Moran, Supervisor

By: _____
Rena Basch, Clerk

Amendment adopted October 15, 2007
Published & Effective: October 22, 2007