City of Troy

CITY COUNCIL ACTION REPORT

June 11, 2007

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Asst. City Manager/Economic Development Services
Steven J. Vandette, City Engineer

SUBJECT: Replacement of City Code Chapter 86, Soil Erosion and Sedimentation Control

Background:

- Under Michigan Department of Environmental Quality (DEQ) regulations, local Soil Erosion and Sedimentation Control (SESC) programs are required to be audited every five (5) years.
- Since state law pertaining to SESC changed significantly since the last audit, Chapter 86 needed rewriting to reflect all changes and requirements of the new law.
- After several years of DEQ reviews and conflicting changes dictated by multiple DEQ staff, the new ordinance was finally approved by the DEQ on April 5, 2007.
- The Water Bureau of the DEQ will formally approve Ordinance Chapter 86, pursuant to Section 9106(2) of Part 91 of the Natural Resources and Environmental Protection Act, upon receiving a copy of the adopted Ordinance and proof of adoption by the City Clerk.
- The Engineering and Law departments have worked together to develop the SESC Ordinance and recommend its adoption.
- Ordinance Chapter 86 is an entire re-write of the current ordinance. No language carries over from the existing ordinance to the Ordinance accepted for approval by the DEQ.

Financial Considerations:

- There are no financial considerations.

Legal Considerations:

- The City Attorney's office reviewed the DEQ accepted Ordinance Chapter 86 and has approved it as to its legality.

Policy Considerations:

- City of Troy Goal #1 - Enhance the livability and safety of the community.

Options:

- It is recommended that Ordinance Chapter 86, Soil Erosion and Sedimentation Control be approved so as to be in compliance with state law.

Approved as to Form and Legality:

Lori Grigg Bluhm, City Attorney

Prepared by: Jennifer E. Lawson, Environmental Specialist
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DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHEAST MICHIGAN DISTRICT OFFICE

JENNIFER M. GRANHOLM
GOVERNOR

STEVEN E. CHESTER
DIRECTOR

April 5, 2007

Mr. Steve Vandette, P.E.
City of Troy
500 West Big Beaver Road
Troy, Michigan 48084

Dear Mr. Vandette:

The draft Soil Erosion and Sedimentation Control (SESC) Ordinance (Ordinance) submitted by you on behalf of the City of Troy (City) on April 3, 2007, has been reviewed by the Department of Environmental Quality (DEQ), Water Bureau (WB). The Ordinance meets the minimum requirements of Part 91, SESC, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

The WB will formally approve the Ordinance pursuant to Section 9106(2) of Part 91 upon receiving a copy of the adopted Ordinance, as submitted on April 3, 2007, and proof of adoption by the City clerk. Please forward the certified copy of the Ordinance to me at the address below.

Please be advised that the Ordinance approval granted by the WB will only pertain to Part 91 requirements and will not apply to any additional regulations and requirements authorized in the Ordinance. The WB offers no comment regarding the appropriateness or the legality of any additional regulations or requirements. The WB does not have authority under Part 91 to review and approve portions of the proposed Ordinance that deal with issues other than those specifically addressed by Part 91 and the rules promulgated under Part 91.

Thank you for making all the requested revisions. If you have any questions, please contact me.

Sincerely,

Cheryl Petroski

Cheryl Petroski, M.S.
Southeast Michigan District Office
Water Bureau
586-753-3718

cc: Dick Mikula, DEQ
Hae-Jin Yoon, DEQ

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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 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.

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 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).

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 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 form 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 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 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 permitee requires an extension prior to the expiration of the initial period and no material change of circumstances has occurred.

11. A soil erosion permit issued under this ordinance shall not relieve the permitee 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 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.

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 Acts of 1893, being Sections 211.1 to 211.157 of the Michigan Complied 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.

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.

~~CHAPTER 86~~

~~SOIL EROSION AND SEDIMENTATION CONTROL~~

~~1. Short Title. This chapter shall be known as the City of Troy Erosion 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, in order to promote the safety, health and general welfare of the City.~~

~~B. This ordinance is intended to comply with the Soil Erosion and Sedimentation Control Act 347, P.A. 1972, State of Michigan and with Oakland County Rules pertaining to the Act, the requirements of both of which are adopted by the City except as modified herein.~~

~~C. The control measures and practices necessary to carry out this law in the City will be developed as separate Engineering Design Standards for Soil Erosion and Sedimentation Control by the City Engineer.~~

~~D. A qualified person to be charged with enforcement of this ordinance will be designated by the City Engineer of the City. The person designated shall complete the soil erosion and sedimentation control training program sponsored by the Michigan Department of Natural Resources within 2 years after the date on which they begin administering this ordinance.~~

~~(Rev. 07-13-92)~~

~~3. Definitions: For the purpose of this chapter, certain terms, words and phrases shall have the meanings defined in this article. Other definitions shall apply as listed in Chapter 80, Soil Removal and Fill; Chapter 41, Subdivision Control, and in other chapters of the ordinances of the City of Troy as applicable.~~

~~A. Rules applying to the text of this Chapter:~~

~~1. The terms "shall" or "will" are mandatory; the term "may" is discretionary.~~

~~2. Words or terms not specifically defined herein shall be used in the sense of standard English grammar.~~

~~3. The terms "City" shall mean the City of Troy, Michigan; "County" shall mean Oakland County, Michigan; "State" shall mean the State of Michigan.~~

~~B. Definitions:~~

~~1. Accelerated Soil Erosion: The increased loss of soil through action of wind, water, ice, or gravity caused by man's activities in construction or in any other earth change.~~

~~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 chapter.~~

3. ~~Design Standards: Construction methods and detailed drawings issued by the City Engineer which pertain to this chapter.~~

4. ~~Earth Changes: Any cut, fill, excavation, stripping, clearing, grubbing, demolition or construction operations which alter the soil or its vegetative cover at a site.~~

5. ~~Earth Disrupting Costs: The estimated total construction cost of all private or public improvements which involve an earth change, excluding buildings.~~

6. ~~Existing Grade: The ground elevation at a site prior to any earth change.~~

7. ~~Finished Grade: The final ground elevation conforming to the proposed plan for an earth change.~~

8. ~~Runoff: Rainfall which does not percolate into the ground or which is not absorbed by vegetative transpiration or other natural process on the site and which runs off the surface into waterways.~~

9. ~~Sediment: Soil that is carried away from a site by runoff, wind, ice, or gravity and is deposited on other ground surface or in waterways.~~

10. ~~Permanent Control Structures: Measures taken to control erosion and sedimentation for a period exceeding 1 year, including follow up and periodic maintenance.~~

11. ~~Temporary Control Structures: Measures taken to control erosion and sedimentation for a period of 1 year or less, including follow-up maintenance.~~

12. ~~Waterway: Any natural or artificial drainage way herein waters flow in definite direction either continuously or intermittently, including any adjacent areas subject to flooding. Waterways include both natural and man-made open ditches, streams, enclosed storm drains, lakes and ponds.~~

13. ~~Staging: Dividing a construction site into sub-areas, in each of which sub-area grading and stabilization are completed before proceeding to the next sub-area.~~

14. ~~Follow-up Maintenance: Maintenance necessary on a soil erosion or sedimentation control structure as a part of final construction clean up operations.~~

15. ~~Periodic Maintenance: Maintenance necessary on a soil erosion or sedimentation control structure to preserve its effectiveness for the intended life of the structure.~~

16. ~~Exempted Public Agency: A designated public agency, which pursuant to Sec. 11, Act 347, 1972 State of Michigan has its own enforcement responsibility.~~

17. ~~Sediment Act means Act 347 of the Public Acts of 1972, State of Michigan.~~

~~(Rev. 07-13-92)~~

~~4. General~~

~~A. It shall be unlawful for any person to engage in any earth change activity in such a manner as to allow uncontrolled accelerated soil erosion to be transported away from the site of his activity.~~

~~(Rev. 07-13-92)~~

~~B. Plans: Soil erosion and sedimentation control procedures, structures and measures for earth change activities shall be included with plans and specifications for the project, and submitted to the City with site plans for review. A copy of the approved plans will be kept at the site where it will be available for inspection. Plans will comply with design standards prepared by the City Engineer.~~

~~C. Permit: Any person to engage in an earth change activity will first obtain a permit from the Engineering Department in the manner herein provided. See Section 5.~~

~~(Rev. 07-13-92)~~

~~D. Jurisdiction: This ordinance shall apply and be enforced with regard to all private and public land uses within the City, except land uses of an authorized public agency designated pursuant to Sec. 11, Act 347, 1972.~~

~~(Rev. 07-13-92)~~

~~5. Permit Requirements~~

~~A. Requirement: No person shall engage in an earth change activity which will disturb more than 1 acre of land, or which lies within 500 feet of a lake or waterway, without a valid permit issued under this ordinance. Each separate earth change activity will require a separate permit.~~

~~B. Exemption: Unless an earth change project is causing severe soil erosion and sedimentation problems, the requirement for a permit will not apply to existing projects involving earth changes on which firm bids have been taken before March 1, 1975, which is within 60 days after the effective date of the law on which this ordinance is based.~~

~~(Rev. 07-13-92)~~

~~C. Earth change Activities Requiring Permits:~~

~~1. Transportation facilities, including streets, highways, railroads, airports, common carrier pipeline and mass transit facilities, except normal maintenance procedures such as earth or gravel road leveling and minor repairs or alterations to rights-of-way not affecting a lake or stream.~~

~~2. Subdivision or lot development, mobile home parks and multiple housing and the preparation of a site for a single family residence, except normal maintenance and landscaping activities or both.~~

~~(Rev. 07-13-92)~~

3. ~~Industrial or commercial development, except normal maintenance or landscaping activities or both.~~

~~(Rev. 07-13-92)~~

4. ~~Service facilities such as shopping centers, schools, utilities and others, except normal maintenance or landscaping activities or both.~~

~~(Rev. 07-13-92)~~

5. ~~Recreational facilities such as parks, campgrounds, trails, athletic fields and courts, except normal maintenance or landscaping activities or both.~~

~~(Rev. 07-13-92)~~

6. ~~Agricultural practices after January 1, 1979 except:~~

   a. ~~Normal agricultural and land management practices by owners or operators of land areas of 5 acres or less.~~

   b. ~~Normal agricultural and land management practices by owners or operators of more than 5 acre land areas carried out subject to a current soil conservation plan developed according to a plan approved by the appropriate soil conservation district.~~

D. ~~Application:~~

1. ~~The Applicant will be the owner or his authorized agent for private or public projects. The applicant will state his authority and position if not the owner. The applicant will state his possessory interest in the project.~~

~~(Rev. 07-13-92)~~

2. ~~The applications shall be on forms provided by the Engineering Department.~~

~~(Rev. 07-13-92)~~

3. ~~Supporting Data shall include the soil erosion and sedimentation control plan, which will be prepared by a Registered Professional Engineer, Architect or Land Surveyor. Engineering Design Standards of the City of Troy will apply. The data shall also include an estimate of the cost of the control measures of the plan, listed as temporary and as permanent measures.~~

~~(Rev. 05-12-75)~~

4. ~~A Fee for review of the plans and inspection of the work shall be paid at the time of application.~~

~~(Rev. 07-13-92)~~

~~E. Building Permit:~~

~~No building permit will be issued by the Chief Building Inspector until the permit required by this ordinance is issued. Building permits shall include permits for footings, foundations or other soil or earth change activities or alterations.~~

~~(Rev. 07-13-92)~~

~~F. Right of Entry:~~

~~The designated representative of the City Engineer shall have right of entry under any permit to inspect the earth change activity for compliance with this ordinance.~~

~~This right of entry shall apply to any City work forces under the order of the City Engineer to repair or complete required work which the permittee has failed to complete.~~

~~(Rev. 07-13-92)~~

~~G. Compliance Requirements:~~

~~1. For site plan or final preliminary plat approval, the soil erosion and sediment control plan must be approved by the City.~~

~~2. For occupancy, certification by the City Engineer or his designated representative that all required work under the permit has been completed satisfactorily shall be required.~~

~~(Rev. 07-13-92)~~

~~H. Denial of Permit:~~

~~The permit required under this ordinance shall be denied if the proposed earth change project would be subject to any of the following conditions:~~

~~1. A hazard to public safety, health, and welfare would be caused by the project.~~

~~2. Accelerated sedimentation would be caused on adjacent property or in any waterways.~~

~~3. The land site of the proposed project in the judgment of the City Engineer may lie within the 100 year flood plain of a waterway. A hydrological backwater study by a Registered Professional Engineer may be submitted in this case to prove either that the site in fact lies above the 100 year flood plain or that the proposed earth change would not cause a hazard to public safety, health, and welfare.~~

~~(Rev. 07-13-92)~~

~~4. The land site of the proposed project, in the judgment of the City Engineer, may lie within an area designated as a "wetland" by the Michigan Department of Natural Resources.~~

~~(07-13-92)~~

~~I. Modifications of Approved Plans shall require the approval of the City Engineer before any work altering the approved final grades may be done.~~

~~J. Responsibility of Permittee:~~

~~1. During construction of an earth change project the permittee shall:~~

~~a. Prevent damage to any public roads, utilities or services, and to any private property by accelerated soil erosion or sedimentation.~~

~~b. Take necessary measures, whether or not they be included in plans and specifications, to prevent settlement, cracking or other damage which might be caused by the work. Such measures may include shoring, revetment or other methods of temporary support.~~

~~c. Carry out the work according to the approved plan to completion.~~

~~d. Remove sediment or debris caused by the work on other property or in waterways where they constitute public nuisance.~~

~~2. After completion of the project, the permittee shall maintain, or cause all subsequent owners to maintain, all permanent structures or measures taken to control erosion and sedimentation at the site.~~

~~6. Engineering Design Standards~~

~~A. Minimum design standards for structures and measures necessary to control accelerated soil erosion and sedimentation in the City are prepared and administered by the City Engineer. These Engineering Design Standards are incorporated into the City ordinances and made a part hereof.~~

~~B. Principles and Intent in Control Design:~~

~~1. Any earth change must be planned and executed to fit the natural topography of the site and thus enhance conservation of natural soil and vegetal resources.~~

~~2. The time of exposure of an earth change must be a minimum during which it is vulnerable to accelerated erosion.~~

~~3. Work at a site must be staged by increments of proper size and duration to ensure minimal loss of soil cover.~~

~~4. During construction, temporary control measures may be taken until permanent stabilization of the soil and earth slopes has been achieved. It may be necessary to construct permanent structures whose sole function is to limit soil erosion and sedimentations.~~

~~5. Erosion control measures shall include:~~

~~a. Minimum necessary destruction of natural vegetal cover.~~

~~b. Special grading methods.~~

~~c. Temporary and permanent vegetation, i.e. grass, legumes, vines, shrubs, trees.~~

~~6. Sedimentation control measures shall include:~~

~~a. Diversion ditches~~

~~b. Sediment traps~~

~~c. Vegetative filters~~

~~d. Sediment basins~~

~~e. Any necessary combination of measures to prevent any sediment, once it is produced during construction, from leaving the site of the project.~~

~~7. Plans shall include immediate follow-up and periodic maintenance as necessary to render the control measures effective.~~

~~a. Follow-up maintenance operations occur during construction and as a part of final construction clean-up operations.~~

~~b. Periodic maintenance occurs for an indefinite period during construction and the total life of the project after it has been completed.~~

~~7. Enforcement, Penalties, and Other Remedies~~

~~A. Violations:~~

~~1. If the City determines that soil erosion and sedimentation of the waters of this state has or will reasonably occur from a parcel of land in violation of this ordinance it may seek to enforce this ordinance by notifying the person who owns the land, by mail, with return receipt requested, of its determination.~~

~~The notice shall contain a description of specific soil and sedimentation control measures which, if implemented by the landowner, would bring the landowner into compliance with this ordinance, and would prevent soil erosion and sedimentation of the waters of this state.~~

~~2. A person who owns land subject to this ordinance shall implement and maintain soil erosion and sedimentation control measures in conformance with this ordinance within 10 days after the notice of violation of this ordinance is given under Section 7.A.1.~~

~~(Rev. 07-13-92)~~

~~B. Remedies:~~

~~1. Except as otherwise provided in this section, no sooner than 10 days after notice of violation of this ordinance has been mailed under Section 7.A.1, if the condition of the land, in the opinion of the City, may result in or contribute to soil erosion and sedimentation of the waters of this state, and if soil erosion and sedimentation control measures in conformance with 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 this ordinance.~~

~~However, the City shall not expend more than $500.00 for the cost of the work, materials, or labor without prior written notice in the notice provided in Section 7.A.1 for the person who owns the land that the expenditure of more than $500.00 may be made. If more than $500.00 is to be expended under this section, then the work shall not begin until at least 20 days after the notice of violation has been mailed.~~

~~(07-13-92)~~

~~2. All expenses incurred by the City under Section 7.B.1 to construct, implement and maintain soil erosion and sedimentation control measures to bring the land in conformance with this ordinance shall be reimbursed to the City by the person who owns the land.~~

~~(Rev. 07-13-92)~~

~~3. The City shall have a lien for the expenses incurred under Section 7.B.1 of bringing the land into conformance with this ordinance. However, with respect to single or multi-family residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of such 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 Acts of 1893, being Sections 211.1 to 211.157 of the Michigan Compiled Laws.~~

~~(Rev. 07-13-92)~~

~~C. Penalties for Violations:~~

~~1. Except as otherwise provided in specific sections of this Chapter, a violation of any section of Chapter 86 is a Municipal Civil Infraction subject to the provisions of Chapter 100 of the Code of the City of Troy. Sanctions for each violation of Chapter 86 shall include a fine of not more than $500, costs, damages and injunctive orders as authorized by Chapter 100.~~

~~(Rev. 03-01-06)~~

~~2. A default in the payment of a civil fine or costs ordered under this ordinance or an installment of the fine or cost may be remedied by any means authorized under the revised judicature act of 1961, being Sections 600.101 to 600.9947 of the Michigan Compiled Laws, as amended.~~

~~(Rev. 03-01-06)~~

3. ~~Fines, Costs, Damages, Injunctive Orders:~~

~~The owner of any land, premises or part thereof, where any condition in violation of this Chapter shall exist or shall be created, and who has assisted knowingly in the commission of such violation shall be responsible for a separate offense and upon a finding or admission of responsibility for such offense thereof shall be responsible for payment of fines, costs and damages and subject to each applicable injunctive order.~~

~~(Rev. 03-01-06)~~

4. ~~Each Day a Separate Offense:~~

~~A separate offense shall be deemed committed upon each day during or when a violation occurs or continues.~~

~~(Rev. 07-13-92)~~

5. ~~Rights and Remedies are Cumulative:~~

~~The rights and remedies provided herein are cumulative and in addition to any other remedies provided by law.~~

~~(Rev. 07-13-92)~~

6. ~~If any part of this ordinance is declared by a court to be invalid, the invalid part shall not affect the remaining parts of the ordinance which can be given effect without the invalid part. The validity of the ordinance as a whole, or in part, shall not be affected other than the part invalidated.~~

~~(07-13-92)~~

~~8. Fees and Bonds.~~

~~A. Fees: At the time of filing an application for a permit under this ordinance, a fee for Engineering Plan Review shall be paid in cash to the City Clerk. This fee shall be unrefundable and shall amount to $20.00 per acre of the site involved, with a $20.00 minimum.~~

~~At the time the permit is issued, a total fee for engineering inspection will be paid in cash by the owner at a rate of 1/4 of 1% of all earth disrupting costs up to $400,000.00 plus 1/10 of 1% of all earth disrupting costs in excess of $400,000.00. This cash fee shall be deposited with the City Treasurer.~~

~~(Rev. 07-13-92)~~

~~B. Bond or Escrow Deposit: A certified check, a certificate of deposit, an irrevocable letter of credit, or a cash escrow deposit in the amount of the estimated cost of the work, or in the amount of $1,000.00, whichever is larger, will be required by the City for any permit under this ordinance. This bond or escrow may be coincident with and a part of a Contract for Construction of Municipal Improvements with the City executed by the owner as required by City Ordinances. Cash escrow shall be deposited with the City Treasurer.~~

~~The City Attorney shall review letters of credit and bonds for acceptability. Upon completion of a project or upon issuance of Certificate of Occupancy, the City will rebate~~

~~any remaining cash bond or will return any letter of credit to the permittee.~~

~~A 3-year Maintenance Bond for all permanent soil erosion prevention structures will be required on completion of the project. The Maintenance Bond shall be in the amount of 1/3 of the total construction cost of the permanent soil erosion prevention structure.~~

~~(Rev. 07-13-92)~~