

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILSON
TO AMEND THE CITY CODE
IN CHAPTER 32.5 SOIL EROSION AND SEDIMENTATION CONTROL

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WILSON:

SECTION 1. That in Chapter 32.5 of the City Code, entitled "SOIL EROSION AND SEDIMENTATION CONTROL shall be amended to read as follows:

ARTICLE I. - IN GENERAL

Sec. 32.5-1. - Title.

This article may be cited as the City of Wilson Soil Erosion and Sedimentation Control Ordinance.

Sec. 32.5-2. - Purpose.

This article is adopted for the purposes of:

- (a) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and
- (b) Establishing procedures through which these purposes can be fulfilled.

Sec. 32.5-3. - Definitions.

As used in this article, unless the context clearly indicates otherwise, the following definitions apply:

Accelerated erosion means any increase over the rate of natural erosion as a result of land-disturbing activity.

Act means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

Adequate erosion control measure, structure, or device means one which controls the soil material within the land area under responsible control of the Person conducting the land-disturbing activity.

Affiliate means a Person that directly, or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control of another Person.

Approving Authority means the Division or other State or a local government agency that has been delegated erosion and sedimentation plan review responsibilities in accordance with the provisions of the Act.

Being conducted means a land-disturbing activity has been initiated and not deemed complete by the Approving Authority.

Borrow means fill material which is required for on-site construction and is obtained from other locations.

Buffer zone means the strip of land adjacent to a lake or natural watercourse.

City means the City of Wilson.

Coastal counties means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.

Commission means the North Carolina Sedimentation Control Commission.

Completion of construction or development means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

Department means the North Carolina Department of Environmental Quality.

Director means the Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.

Discharge point means that point at which stormwater runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.

District means the Wilson County Soil and Water Conservation District created pursuant to G.S. Ch. 139.

Energy dissipator means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

Erosion means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.

Ground cover means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

Lake or natural watercourse means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond.

Land-disturbing activity means any use of the land by any Person in residential, industrial, education, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

Local government means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.

Natural erosion means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by humans.

Parent means an affiliate that directly, or indirectly through one (1) or more intermediaries, controls another Person.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

Person conducting land-disturbing activity means any Person who may be held responsible for violation unless expressly provided otherwise by this article, the Act, or any order adopted pursuant to this article or the Act.

Person Who Violates or Violator as used in G.S. 113A-64, means:

- (1) Any landowner or other Person who has financial or operation control over the land-disturbing activity; or
- (2) Who has directly or indirectly allowed the activity, and who has failed to comply with any provision of the Act, the rules of this Chapter or any order adopted pursuant to this article or the Act as it imposes a duty upon that Person.

Phase of grading means one (1) of two (2) types of grading: rough or fine.

Plan means an erosion and sedimentation control plan.

Sediment means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

Sedimentation means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

Siltation means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

Storm drainage facilities means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

Stormwater runoff means the surface flow of water resulting from precipitation in any form.

Subsidiary means an affiliate that is directly, or indirectly through one (1) or more intermediaries, controlled by another Person.

Ten-year storm means rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority to be equaled or exceeded, on the average, once in ten (10) years, and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

Tract means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

Twenty-five-year storm means rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority to be equaled or exceeded on the average, once in twenty-five (25) years, and of a duration which will

produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

Uncovered means the removal of ground cover from, on, or above the soil surface.

Undertaken means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

Velocity means the speed of flow through a cross section perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows.

Waste means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.

Sec. 32.5-4. - Scope and exclusions.

- (a) *Geographical scope of regulated land—disturbing activity.* This article shall apply to land-disturbing activity within the territorial jurisdiction of the City of Wilson and to the extraterritorial jurisdiction of the City of Wilson as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument or law.
- (b) *Exclusions from regulated land—Disturbing activity.* Notwithstanding the general applicability of this article to all land-disturbing activity, this article shall not apply to the following types of land-disturbing activity:
 - (1) An activity, including production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture for the production of plants and animals useful to humans, including, but not limited to:
 - (i) Forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
 - (ii) Dairy animals and dairy products.
 - (iii) Poultry and poultry products.
 - (iv) Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 - (v) Bees and apiary products.
 - (vi) Fur producing animals.
 - (vii) Mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.
 - (2) An activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water

Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract.

- (3) An activity for which a permit is required under the Mining Act of 1971, Article 7 of G.S. Ch. 74.
 - (4) A land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. § 113A-56(a).
 - (5) An activity which is essential to protect human life during an emergency.
 - (6) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
 - (7) Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2
- (c) *Plan approval requirement for land-disturbing activity.* No Person shall undertake any land-disturbing activity subject to this article without first obtaining a plan approval therefore from the city.
- (d) *Protection of property.* Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.
- (e) *More restrictive rules shall apply.* Whenever conflicts exist between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.
- (f) *Plan approval exceptions.* Notwithstanding the general requirement to obtain a plan approval prior to undertaking land-disturbing activity, a plan approval shall not be required for land-disturbing activity that does not exceed forty-three thousand five hundred sixty (43,560) square feet in surface area for residential developments and twenty-one thousand seven hundred and eighty (21,780) square feet for commercial lots. In determining the area, lands under one (1) or diverse ownership being developed as a unit will be aggregated.
- g) Land Disturbances Not Requiring a Permit. Whenever land-disturbing activities disturb less than one acre and such disturbance is not part of a larger common plan of development, including without limitation a subdivision, an erosion and sedimentation control permit is not required. However, the person conducting the land disturbing activity must install and maintain erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during the development of said tract
- (1) Must install a construction entrance, 12 foot in width and 20 foot in length or equivalent, at the access point(s) for construction vehicles;
 - (2) Must install silt fence on all sides of the lot that due to the contour and topography of the development site, the erosion control measure would

substantially and materially retain the sediment generated by the land-disturbing activity with the boundaries of the tract during construction upon and development of the tract.

- (3) Must install silt fence prior to the initial footing inspection conducted by the Erosion Control Inspector.
- (4) Areas within 25 feet of the edge of pavement or gravel of the road must be stabilized before issuance of a Certificate of Occupancy
- (5) All uncovered areas that result from land disturbing activities, and are subject to continued and accelerated erosion, and are causing the movement of sediment offsite from the tract, must be provided with a ground cover or other protective measures, structures or devices sufficient to restrain accelerated erosion and control off-site sedimentation.
- (6) The property owner or agent must be given notice of responsibility for compliance at the issuance of a building permit for said land disturbing activity.
- (7) While a permit is not required for land disturbances of less than one acre that are not part of a larger common plan of development, the City retains the right to take enforcement actions and assess penalties if the movement of sediment offsite from the tract is observed during an inspection. Enforcement actions and penalties are described in 32.5-19 of this Article.
- (8) Notwithstanding the provisions of subsection (g) herein, a permit is not required for land disturbing activities that disturb less than one acre upon a lot for which a certificate of occupancy for a single-family dwelling previously has been issued.
- (9) Refer to the City of Wilson's Manual of Specifications, Standards, and Design.

Sec. 32.5-5. - Mandatory standards for land-disturbing activity.

No land-disturbing activity subject to the control of this article shall be undertaken except in accordance with the following mandatory standards:

(a) *Buffer zone.*

- (1) *Standard buffer.* No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five (25) percent of the buffer zone nearest the land-disturbing activity.
 - (i) Projects on, over or under water. This subsection shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
 - (ii) Buffer measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the twenty-five (25) percent of the strip

nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

- (b) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within twenty-one (21) calendar days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.
- (c) *Fill material.* Materials being used as fill shall be consistent with those described in 15A NCAC 13B .0562 unless the site is permitted by the Department's Division of Waste Management to operate as a landfill. Not all materials described in Section .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly.
- (d) *Ground cover.* Whenever land-disturbing activity that will disturb one (1) acre or more on a residential common plan of development or half ($\frac{1}{2}$) acre on a commercial lot in a common plan of development is undertaken on a tract, the Person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in section 32.5-8(b)(5) of this article, provisions for a ground cover sufficient to restrain erosion must be accomplished within ninety (90) calendar days following completion of construction or development.
- (e) *Prior plan approval.* No Person shall initiate any land-disturbing activity that will disturb one (1) acre or more on a residential common plan of development or half ($\frac{1}{2}$) acre for a commercial lot in a common plan of development. If more than the allowable acreage is to be uncovered then, thirty (30) or more days prior to initiating the activity, a plan for such activity is filed with and approved by the City of Wilson. The City of Wilson shall forward to the Director of the Division of Water Resources a copy of each plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract. For plans under the one (1) acre residential threshold and half ($\frac{1}{2}$) acre commercial threshold the erosion control plan will be submitted to NCDEMLR (Land Quality Section) for review and approval. The NCG01 permit will be issued separately by the state, but can't be issued until the erosion control plan approval is received; as this is a required step in the online NCG01 application process through the state's website.
- (f) *[Conformance with erosion and sedimentation control plan.]* The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

Sec. 32.5-6. - Erosion and sedimentation control plans.

The City of Wilson will review all Erosion and Sedimentation Control Plans for residential lots (total lots disturbed by each individual are cumulative) of one (1) acre or more in a common plan of development and all commercial lots of half (½) acre or more. All other plans that are required by the state but under the City's threshold will be submitted to the state for their review and approval. An approved plan is needed to be able to apply for a NCG010000 permit. Before any land disturbance begins that meets the state's threshold of one (1) acre or more or that which is in a common plan of development of one (1) acre or more, a General Permit NCG010000 for Construction Stormwater should be obtained through the NCDEMLR Land Quality Office.

- (a) *Plan submission.* A plan shall be prepared for all land-disturbing activities subject to this article whenever the proposed activity will disturb more than one (1) acre or more on a residential common plan of development or half (½) acre on a commercial lot in a common plan of development. Three (3) copies of the plan shall be filed with the City of Wilson, a copy shall be simultaneously submitted to the Wilson County Soil and Water Conservation District at least thirty (30) days prior to the commencement of the proposed activity.
- (b) *Financial responsibility and ownership.* Plans may be disapproved unless accompanied by an authorized statement of financial responsibility and documentation of property ownership. This statement shall be signed by the Person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of:
 - (1) The Person financially responsible;
 - (2) The owner of the land; and
 - (3) Any registered agents.

If the Person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this article, or rules or orders adopted or issued pursuant to this article. Except as provided in subsections (c) or (k) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.

- (c) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

- (d) *Environmental policy act document.* Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment Policy Act (G.S. § 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. The city shall promptly notify the Person submitting the plan that the thirty-day time limit for review of the plan pursuant to this section shall not begin until a complete environmental document is available for review.
- (e) *Content.* The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this article. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the city on request.
- (e) *Soil and water conservation district comments.* The district shall review the plan and submit any comments and recommendations to the city within twenty (20) days after the district received the plan, or within any shorter period of time as may be agreed upon by the district and the city. Failure of the district to submit its comments and recommendations within twenty (20) days or within any agreed-upon shorter period of time shall not delay final action on the plan.
- (f) *Timeline for decisions on plans.* The city will review each complete plan submitted to them and within thirty (30) days of receipt thereof will notify the Person submitting the plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a complete plan within thirty (30) days of receipt shall be deemed approval. The city will review each revised plan submitted to them and within fifteen (15) days of receipt thereof will notify the Person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve, approve with modifications, or disapprove a revised plan within fifteen (15) days of receipt shall be deemed approval.
- (g) *Approval.* The city shall only approve a plan upon determining that it complies with all applicable state and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The city shall condition approval of plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The city may establish an expiration date, not to exceed three (3) years, for plans approved under this article whereby no land-disturbing activity has been undertaken.
- (h) *Disapproval for content.* The city, may disapprove a plan or draft plan based on its content. A disapproval based upon a plan's content must specifically state in writing the reasons for disapproval.
- (i) *Other disapprovals.* The city shall disapprove a plan or draft plans if implementation of the plan would result in a violation of the rules adopted by the Environmental Management Commission to protect riparian buffers along

surface waters. A local government may disapprove a plan or disapprove a transfer of a plan under subsection (j) of this section upon finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the commission or a local government pursuant to the Act and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act or;
- (4) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.

For purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two (2) years prior to the application date.

In the event that a plan is disapproved pursuant to this subsection, the city shall notify the Director of the Division of Energy, Mineral, and Land Resources within ten (10) days of the disapproval. The city shall advise the applicant or the proposed transferee and the director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of Section 16(a), the applicant may appeal the local government's disapproval of the plan directly to the Commission.

- (j) *Transfer of Plans.* The city administering an erosion and sedimentation control program may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.
 - 1) The city may transfer a plan if all of the following conditions are met:
 - i. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and documentation of property ownership.
 - ii. The city finds all of the following:
 - a) The plan holder is one of the following:
 - i. A natural person who is deceased.
 - ii. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - iii. A Person who has been lawfully and finally divested of title to the property on which the

- permitted activity is occurring or will occur.
- iv. A Person who has sold the property on which the permitted activity is occurring or will occur.
 - b) The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - c) The successor-owner is the sole claimant of the right to engage in the permitted activity.
 - d) There will be no substantial change in the permitted activity.
 - 2) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
 - 3) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
 - 4) Notwithstanding changes to law made after the original issuance of the plan, the city may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the City from requiring a revised plan pursuant to G.S. 113A-54.1(b).
- (k) *Notice of activity initiation.* No Person may initiate a land-disturbing activity before notifying the agency that issued the plan approval of the date that land-disturbing activity will begin.
- (l) *Preconstruction conference.* When deemed necessary by the approving authority a preconstruction conference may be required and noted on the approved plan.
- (m) *Display of plan approval.* A plan approval issued under this article shall be prominently displayed until all construction is complete, all temporary measures have been removed, all permanent sedimentation and erosion control measures are installed and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site.
- (n) *Required revisions.* After approving a plan, if the city, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the city shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved plan, the city determines that the plan is inadequate to meet the requirements of this article, the city may require any revision of the plan that is necessary to comply with this article.
- (o) *Amendment to a plan.* Applications for amendment of a plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the city, the land-disturbing activity shall not proceed except in accordance with the plan as originally approved.

- (p) *Failure to file a plan.* Any Person engaged in land-disturbing activity who fails to file a plan in accordance with this article, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this article.
- (q) *Self-Inspections.* The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). In addition, weekly and rain-event self-inspections are required by federal regulations. The Person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.

Where inspections are required by Section 6(q) of this Ordinance or G.S. 113A-54.1(e), the following apply:

- (1) The inspection shall be performed during or after each of the following phases of the plan;
 - i. initial installation of erosion and sediment control measures;
 - ii. clearing and grubbing of existing ground cover;
 - iii. completion of any grading that requires ground cover;
 - iv. completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
 - v. transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or Person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item (iii) of this Item.
- (2) Documentation of self-inspections performed under Item (1) of this Rule shall include:
 - i. Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
 - ii. Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
 - iii. The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the DEMLR website at:

<https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.

- iv. A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. For the purpose of this Rule, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

Sec. 32.5-7. - Basic control objectives.

An erosion and sedimentation control plan may be disapproved if the plan fails to address the following control objectives:

- (a) *Identify critical areas.* On-site areas which are subject to severe erosion, and offsite areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
- (b) *Limit time of exposure.* All land-disturbing activities are to be planned and conducted to limit exposure to the shortest time specified in G.S. 113A-57, the rules of the aforementioned Chapter, or as directed by the Approving Authority.
- (c) *Limit exposed areas.* All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one (1) time.
- (d) *Control surface water.* Surface water runoff originating upgrate of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- (e) *Control sedimentation.* All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
- (f) *Manage stormwater runoff.* When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving stormwater conveyance or at the point of discharge, a plan is to include measures to minimize accelerated erosion of the site and within the project boundary and at the point of discharge.

Sec. 32.5-8. - Design and performance standards.

- (a) Except as provided in subsection 32.5-8(b)(2) of this article, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures

in the United States Department of Agriculture (USDA), Natural Resources Conservation Service's "National Engineering Field Handbook", or other acceptable calculation procedures.

Sec. 32.5-9. - Stormwater outlet protection.

- (a) *Intent.* Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.
- (b) *Performance standard.* Persons shall conduct land-disturbing activity so that the post construction velocity of the ten-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - (1) The velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
 - (2) The velocity of the ten-year storm runoff in the receiving watercourse prior to development.

If condition (1) or (2) of this paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by ten (10) percent.

Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for stormwater discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

Material	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source—Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

- (c) *Acceptable management measures.* Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The city recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:
- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
 - (2) Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
 - (3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
 - (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
 - (5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.
- (d) *Exceptions.* This rule shall not apply where it can be demonstrated to the city that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

Sec. 32.5-10. - Borrow and waste areas.

When the Person conducting the land-disturbing activity is also the Person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the department's division of waste management shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the Person conducting the land-disturbing activity is not the Person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity by the Approving Authority

Sec. 32.5-11. - Access and haul roads.

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

Sec. 32.5-12. - Operations in lakes or natural watercourses.

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize changes in the stream flow characteristics.

Sec. 32.5-13. - Responsibility for maintenance.

During the development of a site, the Person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this article, the Act, or any order adopted pursuant to this article or the Act. After site development, the landowner or Person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

Sec. 32.5-14. - Additional measures.

Whenever the city, determines that accelerated erosion and sedimentation continues despite installation and maintenance of protective practices, the City shall direct the Person conducting the land-disturbing activity to take additional protective action to achieve compliance with the conditions specified in the Act or its rules.

Sec. 32.5-16. - Fees.

- (a) The city, may establish a fee schedule for the review and approval of plans.
- (b) In establishing the fee schedule, the city shall consider the administrative and personnel costs incurred for reviewing the plans and for related compliance activities.

Sec. 32.5-17. - Plan appeals.

- (a) Except as provided in subsection 32.5-17(b) of this article, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:
 - (1) The disapproval or modification of any proposed plan by the city, shall entitle the Person submitting the plan to a hearing before the public services director or his or her designee if such Person submits written demand for a hearing within fifteen (15) business days after receipt of written notice of disapproval of a plan or disapproval of modifications. Such appeals are to be heard by the public services director or his or her designee.
 - (2) A hearing held pursuant to this section shall be conducted by the city within fifteen (15) days after the date of the appeal or request for a hearing.
 - (3) After conducting the hearing, the public services director or his or her designee shall issue an order upholding, reversing, or modifying the original decision. If the appealing party, following notice thereof, fails to appear at said hearing and has not contacted the stormwater management office to request a rescheduling, the appeal will be dismissed and the original decision upheld.
 - (4) The order of the public services director or his or her designee may be appealed in writing within ten (10) business days after receipt of written notice of the decision. Such appeals are to be heard by the city council.
 - (5) Appeal from the decision of the city council shall be to the Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B.0118(d).
- (b) In the event that a plan is disapproved pursuant to subsection 32.5-6(i) of this article, the applicant may appeal the city's disapproval of the plan directly to the Commission.

Sec. 32.5-18. - Inspections and investigations.

- (a) *Inspection.* Agents, officials, or other qualified persons authorized by the city, will periodically inspect land-disturbing activities to ensure compliance with the Act, this article, or rules or orders adopted or issued pursuant to this article, and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each plan.
- (b) *Willful resistance, delay or obstruction.* No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the city, while

that person is inspecting or attempting to inspect a land-disturbing activity under this section.

- (c) *Notice of violation.* If the city determines that a Person engaged in land-disturbing activity has failed to comply with the Act, this article, or rules, or orders adopted or issued pursuant to this article, a notice of violation shall be served upon that Person. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. The notice shall specify a date by which the Person must comply with the Act, or this article, or rules, or orders adopted pursuant to this article, and inform the Person of the actions that need to be taken to comply with the Act, this article, or rules or orders adopted pursuant to this article. Any Person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this article. If the Person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the city shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program on behalf of the Approving Authority, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. The notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.
- (d) *Investigation.* The city, shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this article, and who presents appropriate credentials and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.
- (e) *Statements and reports.* The city, shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

Sec. 32.5-19. - Penalties.

- (a) *Civil penalties.*
- (1) *Civil penalty for a violation.* Any Person who violates any of the provisions of this article, or rule or order adopted or issued pursuant to this article, or who initiates or continues a land-disturbing activity for which a plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty amount that the city may assess per violation is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the Person has not been assessed any civil penalty under this subsection for any previous violation, and that Person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with

the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).

- (2) *Civil penalty assessment factors.* The stormwater director shall determine the amount of the civil penalty based upon the following factors:
 - (i) The degree and extent of harm caused by the violation,
 - (ii) The cost of rectifying the damage,
 - (iii) The amount of money the violator saved by noncompliance,
 - (iv) Whether the violation was committed willfully, and
 - (v) The prior record of the violator in complying or failing to comply with this article.
- (3) *Notice of civil penalty assessment.* The stormwater director shall provide notice of the civil penalty amount and basis for assessment to the Person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within thirty (30) business days after receipt of the notice of assessment, by filing a petition for contested case in the Office of Administrative Hearing in accordance with G.S. Ch. 150 B, Art. 3, or file a request with the City for remission of the assessment within 30 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based.
- (4) *Remission of Civil Penalties.* A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the City within 30 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. The following factors shall be considered in determining whether a civil penalty remission request will be approved:
 - (1) Whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.
 - (2) Whether the petitioner promptly abated continuing environmental damage resulting from the violation.
 - (3) Whether the violation was inadvertent or a result of an accident.
 - (4) Whether the petitioner had been assessed civil penalties for any previous violations.

- (5) Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
 - (6) The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.
- (4) *Appeal of decision of administrative law judge.* The decision of the Administrative Law Judge may be appealed in writing within ten (10) business days after receipt of written notice of the decision. Such appeals are to be heard by the city council.
- (5) *Appeal of final decision.* Appeal from the final decision of the city council shall be to the Superior Court of the county where the violation occurred. Such appeals must be made within thirty (30) days of the final decision of the city council.
- (6) *Collection.* If payment is not received within thirty (30) days after it is due, the city may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested and a remission that is not requested is due when the violator is served with a notice of assessment. An assessment that is contested or a remission that is requested is due at the conclusion of the administrative and judicial review, if any, of the assessment.
- (7) *Credit of civil penalties.* The clear proceeds of civil penalties collected by the city pursuant to this article shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the city may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by the city for the prior fiscal year.
- (b) *Criminal penalties.* Any Person who knowingly or willfully violates any provision of this article, or rule or order adopted or issued by the Commission or a local government, or who knowingly or willfully initiates or continues a land-disturbing activity for which a plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed five thousand dollars (\$5,000.00) as provided in G.S. 113A-64.

Sec. 32.5-20. - Injunctive relief.

- (a) *Violation of local program.* Whenever the governing body has reasonable cause to believe that any Person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the city or any term,

condition, or provision of an approved plan, it may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the city, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.

- (b) *Abatement of violation.* Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this article.

Sec. 32.5-21. - Restoration after noncompliance.

The city may require a Person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this article.

Section 32.5-22. Severability

If any section or section or sections of this ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

SECTION 5. That any violation of this ordinance shall subject the offender to a civil penalty to be recovered by the City in a civil action in the nature of a debt if the offender does not pay any penalty called for hereunder within the prescribed period of time after being cited for violation of the ordinance.

SECTION 6. That this ordinance may be enforced by an appropriate, equitable remedy such as injunction or order of abatement issued from any court of competent jurisdiction.

SECTION 7. That this ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed above.

SECTION 8. That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 9. That if any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 10. That this ordinance shall become effective immediately upon its adoption.

DULY ADOPTED this 16th day of June, 2022.

Carlton L. Stevens Mayor

Attest:

Tonya A. West, City Clerk

Project# 22-177