



KALAMAZOO COUNTY GOVERNMENT

In the Pursuit of Extraordinary Governance...

KALAMAZOO COUNTY SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE, AS AMENDED 2018

An Ordinance to provide for soil erosion and sedimentation control within Kalamazoo County.

THE PEOPLE OF KALAMAZOO COUNTY, MICHIGAN, DO ORDAIN:

CHAPTER 1: AUTHORITY & PURPOSE

The Kalamazoo County Board of Commissioners adopts this Ordinance pursuant to MCL 324.9101 et seq. Soil Erosion and Sedimentation Control, Part 91 PA 451 of 1994 (Part 91). The Kalamazoo County Soil Erosion and Sedimentation Control Ordinance is intended to protect the residents of Kalamazoo County and the general public by regulating earth change activities which can injure the environment through erosion and the unnatural accumulation of sediment.

CHAPTER 2: DEFINITIONS

Kalamazoo County adopts by reference the definitions contained in Part 91 and the Rules unless expressly given a different meaning by this Ordinance. The following definitions shall apply in the interpretation and enforcement of this Ordinance.

- SECTION 2.01 CONFIRMATION OF COMPLETION
"Confirmation of Completion" means an On Site Inspection Field Report sent to the Landowner or the Landowner's Designated Agent noting that the site final inspection is complete and confirming that all specific construction and inspections have been performed and that such work complies with the applicable requirements of Part 91, the Rules, and this Ordinance.
- SECTION 2.02 COUNTY
"County" means Kalamazoo County, Michigan.
- SECTION 2.03 EARTH CHANGE PERMIT
"Earth Change Permit" means a permit issued by the Soil Erosion Control Agent to authorize work to be performed under the provisions of Part 91, the Rules, and this Ordinance.

- SECTION 2.04 GRADING
 “Grading” means any stripping, excavating, filling, stockpiling or any combination thereof and shall include the land in its excavated or filled condition.
- SECTION 2.05 LANDOWNER
 “Landowner” means the Landowner or the Landowner’s Designated Agent, as defined by the Rules, to whom an Earth Change Permit is issued in accordance with this Ordinance.
- SECTION 2.06 REGULATED FEATURE
 “Regulated feature” means a stream or lake, as defined by Part 91, a county drain as defined by Act 40 of 1956, or a wetland, as defined by this Ordinance.
- SECTION 2.07 SOIL
 “Soil” means the natural medium composed of unconsolidated mineral or organic material on the surface of the land.
- SECTION 2.08 SOIL EROSION CONTROL AGENT
 “Soil Erosion Control Agent” means the Kalamazoo County Drain Commissioner or the Drain Commissioner’s duly authorized representative. The Soil Erosion Control Agent will hold current certificates of training under Section 9123 of Part 91.
- SECTION 2.09 WETLAND
 “Wetland” means 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. For the purposes of this Ordinance, wetlands are defined by the mapped areas of the most current version of the 2005 National Wetlands Inventory.

CHAPTER 3: GENERAL PROVISIONS

- SECTION 3.01 COUNTY ENFORCING AGENCY
 The Office of the County Drain Commissioner is hereby designated as the County Enforcing Agency responsible for administering and enforcing Part 91, the Rules, and this Ordinance.

SECTION 3.02

JURISDICTION

The Soil Erosion Control Agent shall administer and enforce this Ordinance throughout all of Kalamazoo County except within the territorial boundaries of a governmental unit that has adopted an ordinance pursuant to the provisions of Part 91, or earth changes undertaken by an Authorized Public Agency.

SECTION 3.03

RIGHT OF ENTRY AND INSPECTION

Where it is necessary to make an inspection to enforce the provisions of this Ordinance, or where the Soil Erosion Control Agent has reasonable cause to believe that there exists upon a premises a condition which is contrary to or in violation of Part 91, the Rules, or this Ordinance, the Soil Erosion Control Agent or the Soil Erosion Control Agent's representative is authorized to enter upon the premises at reasonable times to inspect or perform the duties imposed by this Part 91, the Rules, or this Ordinance, provided that if the premises be occupied that credentials be presented to the occupant and entry requested. If such premises be unoccupied, the Soil Erosion Control Agent shall first make reasonable efforts to locate the owner or other person having charge or control of the premises and request entry. If entry is refused, the Soil Erosion Control Agent shall have recourse to the remedies provided by law to secure entry.

No person shall unlawfully hinder, oppose or resist the Soil Erosion Control Agent, or the Agent's authorized representative, in the discharge of the duty and the enforcement of Part 91, the Rules, or this Ordinance.

SECTION 3.04

INTERFERENCE WITH NOTICES

No person shall remove, mutilate, or conceal any notice or placard posted by the Soil Erosion Control Agent except by written permission of the Soil Erosion Control Agent.

SECTION 3.05

FEE SCHEDULE

The Kalamazoo County Board of Commissioners shall establish the fees charged for services and permit applications identified in this Ordinance by adopting a Resolution setting forth a written Fee Schedule at a regular or special meeting of the Board of Commissioners. The Kalamazoo County Board of Commissioners may revise the Fee Schedule by adopting a written amendment.

- SECTION 3.06 VALIDITY
The County of Kalamazoo declares that the requirements and the various chapters, parts, sections, and clauses of this Ordinance are severable. If a court of competent jurisdiction determines that any chapter, part, sentence, paragraph, section or clause is unconstitutional or invalid, the remaining chapters, parts, portions and provisions of this Ordinance shall remain in full force and effect.
- SECTION 3.07 EFFECTIVE DATE
This Ordinance shall take effect forty-five (45) days after the Kalamazoo County Board of Commissioners adopts the Ordinance at a regular or special meeting of the Board of Commissioners, unless the Michigan Department of Environmental Quality has not approved of this Ordinance on that date. If the Michigan Department of Environmental Quality has not approved of this Ordinance forty-five (45) days after its adoption, then the Ordinance shall take effect ten (10) days after its approval by the Michigan Department of Environmental Quality.
- SECTION 3.08 REPEAL OF OTHER REGULATIONS
Subject to the provisions of Section 3.09 of this Ordinance, all other County Codes, Ordinances and Regulations and parts of Codes, Ordinances and Regulations, which conflict with the provisions of this Ordinance are repealed. This Ordinance also repeals and replaces the “Soil Erosion and Sedimentation Control Ordinance” adopted by the Kalamazoo County Board of Commissioners on July 2, 2002.
- SECTION 3.09 INJUNCTIVE PROCEEDING
Notwithstanding the existence or pursuit of any other remedy, the Soil Erosion Control Agent may maintain an action in a court of competent jurisdiction for the entry of an injunction or other process against any person to restrain, prevent, or correct violations of Part 91, the Rules, or this Ordinance.
- SECTION 3.10 ADOPTION OF THE RULES
The County hereby incorporates the Rules in this Ordinance and adopts those “Rules” by this reference. “Rules” means the rules promulgated pursuant to Part 91, Part 17 the Rules for Soil Erosion and Sedimentation Control, R323.1701-1714.

CHAPATER 4: BUILDING PERMITS

SECTION 4.01 A local agency or general law township that issues building permits shall notify the Soil Erosion Control Agent immediately upon receipt of an application for a building permit that requires an earth change which disturbs 1 or more acres or which is located within 500 feet of a stream or lake, as defined by Part 91; a county drain, as defined by Act 40 of 1956; or within 250 feet of a wetland, as defined by this Ordinance. These buffer distances are clearly indicated on the Soil Erosion and Sediment Control layer found on the Kalamazoo County Planning Department Geographical Information Systems (GIS) map. The Michigan Geographic Information Framework Data with Kalamazoo County GIS updates from aerial imagery will be used to determine locations of lakes, streams, and county drains. The most current version of the 2005 National Wetland Inventory will be used to determine the wetland areas for permitting purposes.

SECTION 4.02 A local agency or general law township shall not issue a building permit to a person engaged in an earth change if the change requires a permit under this Ordinance until the Soil Erosion Control Agent has issued the required permit for the earth change.

CHAPTER 5: EARTH CHANGE PERMITS

SECTION 5.01 Activities Which Require Earth Change Permits

- 1) A Landowner or a Landowner's Designated Agent who contracts for, allows, or engages in, an earth change within the jurisdiction of this Ordinance shall obtain an Earth Change Permit, unless exempted in Section 5.02 of this Ordinance, prior to commencement of an earth change which:
 - a. disturbs one or more acres of land; or
 - b. occurs within 500 feet of a stream, lake or county drain or 250 feet of a wetland, all as defined by this Ordinance regardless of the amount of land disturbed.

A designated agent may secure the Earth Change Permit on behalf of a Landowner, but the Earth Change Permit must be

issued in the name of the Landowner. The Landowner's Designated Agent must have written authority from the Landowner to sign the application and secure an Earth Change Permit in the Landowner's name.

- 2) If an earth change is under the jurisdiction of two or more municipal or county enforcing agencies, an Earth Change Permit from the County is required for the activities under the jurisdiction of this Ordinance.
- 3) If a Soil Erosion Control Agent serves a notice of violation in person or by certified mail, with return receipt requested, to 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 adjacent properties or regulated features, the Landowner or Landowner's Designated Agent shall obtain an Earth Change Permit and implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion or sedimentation from the land on which the earth change has been made.
- 4) An earth change activity that does not require an Earth Change Permit under Part 91, the Rules, or this Ordinance is not exempt from enforcement procedures under Part 91, the Rules or this Ordinance, if the activity exempted results in soil erosion and off-site sedimentation to adjacent properties or regulated features.

SECTION 5.02

Activities Which Do Not Require Earth Change Permits

(See R 323.1705 and MCL 924.9115 and 924.9115a)

An Earth Change Permit is not required for the following activities:

- 1) Projects undertaken by agencies that have been designated an Authorized Public Agency by the Department of Environmental Quality, however the Authorized Public Agency must notify the Soil Erosion Control Agent of each proposed earth change.
- 2) A beach nourishment project permitted under part 325 of Act No. 451 of the Public Acts of 1994, as amended, being 324.32501 et seq. of the Michigan Compiled Laws.

- 3) Normal road and driveway maintenance, such as grading or leveling, that does not increase width or length of the road or driveway and that will not contribute sediment to a regulated feature.
- 4) An earth change of a minor nature that is stabilized within twenty-four (24) hours of the initial disturbance and that will not contribute sediment to a regulated feature.
- 5) Installation of oil, gas, and mineral wells under permit from the supervisor of wells if the owner-operator is found by the supervisor of wells to be in compliance with the conditions of Part 91.
- 6) The Soil Erosion Control Agent may grant a permit waiver for an earth change after receiving a signed affidavit from the Landowner or Landowner's Designated Agent stating that the earth change will disturb less than 225 square feet and that the earth change will not contribute sediment to a regulated feature.
- 7) The following agricultural practices if the earth change activities do not result in or contribute to soil erosion or sedimentation to regulated features or a discharge of sediment off-site:
 - a. The construction, maintenance, or removal of fences and fence lines.
 - b. The removal of tree or shrub stumps or roots.
 - c. The installation of drainage tile, irrigation, or electrical lines.
 - d. The construction or maintenance of 1 or more ponds that meet all of the following:
 - (i) The earth change associated with the construction or maintenance is less than 5 acres.

- (ii) The earth change associated with the construction or maintenance does not result in a discharge of storm water to regulated features.
- (iii) The earth change associated with the construction or maintenance is not part of a larger plan of development. As used in this subparagraph, "larger plan of development" means a contiguous area where multiple separate and distinct construction activities are occurring under a single plan as identified in documentation or physical demarcation indicating where construction activities may occur.

- 8) Notwithstanding any other provision of this Ordinance, a residential property owner who causes the following activities to be conducted on individual residential property owned and occupied by him or her is not required to obtain an Earth Change Permit under this Ordinance if the earth change activities do not result in or contribute to soil erosion or sedimentation to regulated features or a discharge of sediment off-site:
- a. An earth change of a minor nature that is stabilized within twenty-four (24) hours of the initial earth disturbance.
 - b. Gardening, if the natural elevation of the area is not raised.
 - c. Post holes for fencing, decks, utility posts, mailboxes, or similar applications, if no additional grading or earth change occurs for use of the post holes.
 - d. Removal of tree stumps, shrub stumps, or roots resulting in an earth change not to exceed 100 square feet.
 - e. All of the following activities, if soil erosion and sedimentation controls are implemented, the earth change is stabilized within 24 hours of the initial disturbance, and soil erosion or sedimentation to adjacent properties or regulated features has not or will not reasonably occur:

- (i) Planting of trees, shrubs, or other similar plants.
 - (ii) Seeding or reseeding of lawns closer than 100 feet from regulated features if the area to be seeded or reseeded does not exceed 100 square feet.
 - (iii) The temporary stockpiling of soil, sand, or gravel not greater than a total of 10 cubic yards on the property if the stockpiling occurs at least 100 feet from regulated features.
 - (iv) Seawall maintenance that does not exceed 100 square feet.
- 9) Metallic mineral mining activity regulated under a mining and reclamation plan under Part 631 or 634 of a mining, reclamation, and environmental protection plan under Part 642, if the plan contains soil erosion and sedimentation control provisions and is approved by the Michigan Department of Environmental Quality.
- 10) Earth change associated with well locations, surface facilities, flowlines, or access roads relating to oil or gas exploration and development activities regulated under Part 615 of mineral well exploration and development activities regulated under Part 625, if the application for a permit to drill and operate contains a Soil Erosion and Sedimentation Control Plan that is approved by the department under Part 615 or 625. However, those earth changes shall conform to the same standards as required for a permit under Part 91. This subsection does not apply to multisource commercial hazardous waste disposal well as defined in section 62506a.
- 11) 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 an Earth Change Permit under this Ordinance. Provided, however, that all earth changes associated with the activities listed in this section shall conform to the same standards as if they required a permit under Part 91. Mining does not include the removal of clay, gravel, sand, peat, or topsoil. The exemption from obtaining a permit under this subsection does not apply to either of the following:

- a. Access roads to and from the site where active mining or logging is taking place.
- b. Ancillary activities associated with logging and mining.

12) While an Earth Change Permit is not required for the activities described in this section, a person who owns land on which such earth change activities occur shall plan, implement and maintain soil erosion and sedimentation control measures that effectively reduce soil erosion or sedimentation from the land on which the earth change(s) has been made. Further, if the exempted activity causes or results in a violation of this Ordinance, Part 91, or the Rules, the Landowner or Landowner's Designated Agent will be subject to the penalties established for a violation of this Ordinance, Part 91, or the Rules. Once those proceedings commence, a permit shall be required before work may resume.

SECTION 5.03

Application for Permit; Pre-Permitting Meeting with Soil Erosion Control Agent

- 1) Before commencing any earth change activity which requires an Earth Change Permit, the Landowner, or the Landowner's Designated Agent shall submit an Earth Change Permit application to the Soil Erosion Control Agent.
- 2) The Landowner or the Landowner's Designated Agent, shall, if requested by the Soil Erosion Control Agent, meet with the Soil Erosion Control Agent to ensure that the Landowner or Landowner's Designated Agent's Soil Erosion and Sedimentation Control Plan complies with the provisions of this Ordinance.
- 3) The Earth Change Permit Application shall be accompanied by a Soil Erosion and Sedimentation Control Plan, the required application fees and any other documents which the Soil Erosion Control Agent may require.
- 4) If an earth change activity that requires a permit begins prior to obtaining a permit, the permit fee shall be doubled if the

Landowner or Landowner's Designated Agent has knowingly failed to apply for a permit.

- 5) A site that is found to be in violation of Part 91, the Rules or this Ordinance will be required to obtain an Earth Change Permit.

SECTION 5.04

Soil Erosion and Sedimentation Control Plan; Contents

- 1) Soil Erosion and Sedimentation Control Plan shall be designed to effectively reduce accelerated soil erosion and sedimentation during an earth change and shall identify factors which may contribute to soil erosion or sedimentation or both. The plan shall include, but is not limited to the following:
 - a. A site location sketch.
 - b. A legal description of the site.
 - c. The proximity of any proposed earth change to lakes, streams, wetlands, or county drains.
 - d. The predominant land features.
 - e. Name, address and telephone number of the Landowner and Landowner's Designated Agent (if applicable).
 - f. A plan of the site of a scale of not more than 200 feet to the inch or as otherwise determined by the Soil Erosion Control Agent.
 - g. The existing topography at four foot, or less, contour intervals, and proposed topography at two foot, or less, contour intervals. Single family home construction projects, or similar projects in size and shape, may submit written information concerning the slope of the project area instead of a topographical sketch or map unless the Soil Erosion Control Agent determines, in writing, that a topographical sketch or map is needed in order to effectuate the provisions of this Ordinance.

- h. A soil survey map or detailed written description of the soil types of the exposed land area contemplated for the earth change.
- i. Details of the proposed earth change, including:
 - (i) A description and the location of the physical limits of each proposed earth change.
 - (ii) A description and the location of all existing and proposed on-site drainage facilities.
 - (iii) A completed Timing Sequence Schedule, on a form approved by the Soil Erosion Control Agent, for each proposed earth change.
 - (iv) The location, and a description for installing and removing all proposed temporary soil erosion and sediment control measures.
 - (v) The location and a description of all proposed permanent soil erosion and sedimentation control measures.
 - (vi) A program proposal for the continued maintenance of all permanent soil erosion and sedimentation control measures which remain after project completion, including the designation of the person responsible for the maintenance. Maintenance responsibility shall become a part of any sales or exchange agreement for the land on which the permanent soil erosion control measures are located.
- j. Any other information required by the Soil Erosion Control Agent.

SECTION 5.05

Minimum Design Standards for Soil Erosion and Sedimentation Control Measures and Facilities

The temporary and permanent soil erosion and sedimentation control measures and facilities shown in the Soil Erosion and Sedimentation Control Plan shall be designed, constructed,

completed, and maintained so as to comply with all of the following provisions:

- 1) Limit the exposed area of any disturbed land for the shortest possible period of time.
- 2) Remove sediments caused by accelerated soil erosion from the runoff water before it leaves the site of the earth change.
- 3) Temporary or permanent facilities designed and constructed for the conveyance of water around, through or from, the earth change area shall limit the water flow to a non-erosive velocity.
- 4) Temporary soil erosion control measures and facilities shall be installed before or upon commencement of the earth change activity and maintained in accordance with the standards and specifications of the product manufacturer, the local conservation district, the Michigan Department of Environmental Quality, the Michigan Department of Transportation and this Ordinance. Temporary soil erosion control measures shall be removed after permanent soil erosion measures have been implemented. All earth change areas shall be graded and stabilized with permanent soil erosion control measures as shown on the approved Soil Erosion and Sedimentation Control Plan.
- 5) Permanent soil erosion control measures and facilities shall be installed and maintained in accordance with the standards and specifications of the product manufacturer, the local conservation district, the Michigan Department of Environmental Quality, the Michigan Department of Transportation and this Ordinance. Permanent soil erosion control measures for all slopes, channels, ditches or any disturbed land area shall be completed within 5 calendar days after final grading or completion of the final earth change. When it is not possible to permanently stabilize a disturbed area after an earth change has been completed or where significant earth change activity ceases, temporary soil erosion control measures shall continue to be maintained and shall be maintained until permanent measures are in place.

SECTION 5.06

Application Review and Permit Procedures

- 1) The Soil Erosion Control Agent shall approve, disapprove or require modification of an application for an Earth Change Permit within 30 calendar days following the receipt of the application. If disapproved, the Landowner or Landowner's Designated Agent shall be advised of all of the reasons for disapproval and conditions required for approval. Notification of approval or disapproval shall be made in writing through email, mail, or by personally serving the notification upon the Landowner or Landowner's Designated Agent and obtaining the Landowner or Landowner's Designated Agent's signed receipt for the notification.
- 2) If a permit Landowner or Landowner's Designated Agent has met all the requirements of the Rules, Part 91, and this Ordinance, the Soil Erosion Control Agent shall issue a permit for the proposed earth change.
- 3) The Soil Erosion Control Agent shall issue the Earth Change Permit on a form which contains state prescribed information.
- 4) The Landowner or the Landowner's Designated Agent shall arrange to keep the Earth Change Permit at the site of the earth change and shall make the permit easily available for inspection at all times.

SECTION 5.07

Permit Application Disapproval

The Soil Erosion Control Agent shall disapprove an Earth Change Permit application where:

- 1) The proposed work would cause uncontrolled soil erosion and/or sedimentation; or
- 2) The Earth Change Permit application is incomplete or does not comply with the provisions of Part 91, the Rules, or this Ordinance.

SECTION 5.08

Modification of Earth Change Permit; Earth Change Permit Revocation or Suspension

- 1) The Soil Erosion Control Agent may permit modifications to an Earth Change Permit or the approved Soil Erosion and Sedimentation Control Plan upon receiving a written application from the Landowner or the Landowner's Designated Agent. The Landowner or the Landowner's Designated Agent shall include all relevant necessary sustaining reports and supporting documentation with the modification application. No work in connection with any proposed modification shall take place without the approval of the Soil Erosion Control Agent.
- 2) Any permit issued under this Ordinance may be revoked or suspended for any of the following reasons:
 - a. A violation of the condition of the Earth Change Permit.
 - b. Misrepresentation or failure to fully disclose relevant facts in the application or in the Soil Erosion and Sedimentation Control Plan.
 - c. A change in a condition that requires a temporary or permanent change in the activity.
 - d. Authorized work is abandoned or suspended for a period of six (6) months.
 - e. Notice will be given to the permit holder of revocation or suspension of the permit in person or by certified mail. If the permit has been revoked for any reason, a new earth change permit application accompanied by a Soil Erosion and Sedimentation Control Plan and associated fees would be required for any earth change activities.

SECTION 5.09

Extension of Time

- 1) Earth Change Permits shall expire automatically upon the expiration date specified in the permit. If the project is not completed within the specified time in the Earth Change Permit, the Landowner or the Landowner's Designated Agent

may request an extension of time to complete the earth change work.

- 2) The Landowner or the Landowner's Designated Agent must submit the written application for an extension of time to the Soil Erosion Control Agent at least 10 days prior to the expiration date of the Earth Change Permit. The Landowner or the Landowner's Designated Agent shall include all relevant necessary sustaining reports, supporting documentation, and fees with the extension application.
- 3) If the Soil Erosion Control Agent grants additional time for the completion of the earth change work, the Soil Erosion Control Agent shall issue a written extension which specifies a new expiration date.
- 4) An extension does not release the owner or the surety on a bond, or the person furnishing an irrevocable letter credit, or a person furnishing a cash bond, or a person furnishing a certificate of self-insurance from their responsibilities and/or liabilities thereunder.

SECTION 5.10

Responsibility of the Landowner or the Landowner's Designated Agent

During earth change work operations the Landowner or the Landowner's Designated Agent shall be responsible for carrying out the proposed work in accordance with the approved Soil Erosion and Sedimentation Control Plan and in compliance with all the requirements of the Earth Change Permit, Part 91, the Rules, and this Ordinance.

SECTION 5.11

Earth Change Requirements Generally
(see R 323.1702 and R 323.1707 (4))

- 1) The Landowner or the Landowner's Designated Agent engaged in an earth change shall:
 - a. Conduct the earth change in a manner that will effectively reduce accelerated soil erosion and resulting sedimentation.

- b. Plan, implement, and maintain acceptable soil erosion and sedimentation control measures in conformance with Part 91, the Rules, and this Ordinance, which effectively reduce accelerated soil erosion and off-site sedimentation.
- c. Carry out the earth change activities in accordance with an approved Soil Erosion and Sedimentation Control Plan and in compliance with all the requirements of the Earth Change Permit, Part 91, the Rules, and this Ordinance.
- d. The Earth Change Permit must be posted on-site and clearly visible from the road. The Soil Erosion and Sedimentation Control Plan must be available for inspection at the site of the earth change at all times.

CHAPTER 6: EARTH CHANGE PERMIT; BOND REQUIREMENTS (see 324.9108)

SECTION 6.01 Surety Bond; Cash Bond; Irrevocable Letter of Credit

- 1) The Soil Erosion Control Agent, may as a condition for issuing an Earth Change Permit, require the Landowner or the Landowner’s Designated Agent to post a cash bond or an irrevocable letter of credit in an amount equal to 100% of the estimated cost of the necessary soil erosion and sedimentation controls with Soil Erosion Control Agent. In lieu of a cash bond or an irrevocable letter of credit, the Earth Change Permit Landowner or Landowner’s Designated Agent may file a surety bond in the amount of 125% of the estimated cost of the necessary soil erosion and sedimentation control measures with the Soil Erosion Control Agent. The surety bond shall be executed by the Landowner or the Landowner’s Designated Agent and a corporate surety with authority to do business in this state as a surety.
- 2) The surety bond shall be in a form approved by the County Corporation Counsel, or the Corporation Counsel’s duly authorized agent, and shall be issued to the County.
- 3) A surety bond, cash bond or irrevocable letter of credit, shall include and be made on, the conditions that the Landowner or the Landowner’s Designated Agent shall comply with all of the provisions of this Ordinance; all terms and conditions of

the permit; and that the Landowner or the Landowner's Designated Agent shall complete all work contemplated under the permit within the time limit specified in the permit.

- 4) In the event that the Landowner or the Landowner's Designated Agent fails to comply with the terms and conditions of the Earth Change Permit; or fails to comply with the provisions of this Ordinance; or fails to implement the approved soil erosion and sedimentation control measures, the Soil Erosion Control Agent may order such work as necessary to provide for effective soil erosion and sedimentation control. The Landowner or the Landowner's Designated Agent and the surety executing the bond or person issuing the irrevocable letter of credit, or making the cash deposit shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that the County incurs in causing any and all work to be done to comply with this Ordinance. In the case of a cash bond, the Soil Erosion Control Agent shall refund any unused portion to the person who posted the bond.

CHAPTER 7: CONFIRMATION OF COMPLETION

SECTION 7.01

The Landowner or the Landowner's Designated Agent shall contact the Soil Erosion Control Agent upon satisfactory execution of all proposed earth change plans and other requirements imposed under this Ordinance. The Soil Erosion Control Agent shall make a final inspection within thirty (30) days of Landowner or Landowner's Designated Agent contact. If no performance deposit was required, an On Site Inspection Field Report will be sent to the Landowner or Landowner's Designated Agent noting that the final inspection is complete. If a performance bond or letter of credit was required as part of the project, the On Site Inspection Field Report gives confirmation to a third party that the final inspection has been performed and that such work complies with the applicable requirements of Part 91, the Rules, and this Ordinance. At that time, the performance bond or letter of credit will be also returned. If cash or check was submitted, a check will be refunded to the Landowner or Landowner's Designated Agent within six weeks. If the project is to be completed in different sections, the Soil Erosion Control Agent may issue separate confirmations of completion and

authorize a proportionate release of a cash bond for each completed section of the project.

CHAPTER 8: APPEALS TO CIRCUIT COURT

Any Earth Change Landowner or Landowner’s Designated Agent who disagrees with a decision of the Soil Erosion Control Agent or the Soil Erosion Control Agent’s authorized representative in administering this Ordinance, may appeal that decision to the appropriate Circuit Court. Said appeal must be taken within twenty-one (21) days of the entry of the Soil Erosion Control Agent or the Soil Erosion Control Agent’s authorized representative decision.

CHAPTER 9: ENFORCEMENT, NOTICE OF VIOLATION, COMPLIANCE TIME, VIOLATIONS AND PENALTIES (Section 324.9121)

SECTION 9.01 Enforcement (See R 323.1712)

The Soil Erosion Control Agent may issue a municipal civil infraction citation, Stop Work Order, Cease and Desist Order, or revoke a permit upon its findings that there is a violation of Part 91, the Rules, or this Ordinance, or a finding that there is a violation of a permit or an approved Soil Erosion and Sedimentation Control Plan.

SECTION 9.02 Notice of Violation (see 324.9117)

If the Soil Erosion Control Agent determines that soil erosion or sedimentation to adjacent properties or regulated features has or will reasonably occur from land in violation of Part 91, the Rules or this Ordinance, the Soil Erosion Control Agent may seek to enforce a violation by notifying the Landowner or Landowner’s Designated Agent through a notice of violation served in person or by certified mail, with return receipt requested, of its 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 Part 91, the Rules, and this Ordinance.

SECTION 9.03 Compliance; Time (see 324.9118)

Within 5 days after a notice of violation has been issued under Section 9.02 of this Ordinance, a person who owns land subject

to Part 91, the Rules, or this Ordinance shall implement and maintain soil erosion and sedimentation control measures in conformance with Part 91, the Rules, or this Ordinance.

SECTION 9.04

Entry upon Land; Construction; Implementation, and Maintenance of Soil Erosion and Sedimentation Control Measures; Cost (see 324.9119)

Not sooner than 5 days after notice of violation has been served in person or mailed under Section 9.02 of this Ordinance, if the condition of the land, in the opinion of the Soil Erosion Control Agent, may result in or contribute to soil erosion or sedimentation to adjacent properties or to regulated features, and if soil erosion and sedimentation control measures in conformance with Part 91, the Rules, and this Ordinance are not in place, the Soil Erosion Control Agent, or their designee, 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. However, the Office of the County Drain Commissioner shall not expend more than \$10,000 for the cost of the work, materials, labor, and administration without prior written notice in the Notice of Violation provided in Section 9.02 of this Ordinance to the Landowner or Landowner's Designated Agent that the expenditure of more than \$10,000 may be made. If more than \$10,000 is to be expended under this section, then the work shall not begin until at least 10 days after the notice of violation has been mailed by certified mail with return receipt requested or served in person.

SECTION 9.05

Reimbursement of County Expenses; Lien for Expenses (see 324.9120)

All expenses incurred by the Office of the County Drain Commissioner under Section 9.04 of this ordinance to construct, implement, and maintain soil erosion and sedimentation control measures to bring land into compliance with Part 91, the Rules, and this Ordinance shall be reimbursed to the Office of the County Drain Commissioner by the Landowner.

The Office of the County Drain Commissioner shall have a lien on the property for the expenses incurred under Section 9.04 of this Ordinance of bringing the land into conformance with Part 91,

the Rules, or this Ordinance. However, with respect to single-family 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, 1893 PA 206, being Sections 211.1 to 211.157 of the Michigan Compiled Laws.

SECTION 9.06

Violation; Penalties (Section 324.9121)

- 1) A person who violates Part 91, the Rules, or this Ordinance, is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00.
- 2) A person who knowingly violates Part 91, the Rules, or 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 of not more than \$10,000.00 for each day of violation.
- 3) A person who knowingly violates Part 91, the Rules, or this Ordinance after receiving a notice of violation under Section 9.02 is responsible for payment of a civil fine of not less than \$2,500.00 or more than \$25,000.00 for each day of the violation.
- 4) Civil fines collected under subsection (1) shall be deposited into the Soil Erosion and Sedimentation Control Fund. Civil fines collected under subsections (2) or (3) that are payable to the County shall be deposited into the County General Fund.
- 5) A default in payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the Revised Judicature Act of 1961, 1961 PA 236, as amended, MCL 600.101 to MCL 600.9948.
- 6) In addition to a fine assessed under this section, a person who violates Part 91, the Rules, or this Ordinance is liable to the State of Michigan for damages for injury to, destruction

of, or loss of natural resources resulting from the violation. The court may order a person who violates this part to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.

- 7) Lessees, contractors, or other individuals undertaking an earth change, as well as the Landowner and the Landowner's Designated Agent, are liable for civil penalties prescribed in Section 9.01.

SECTION 9.07 All persons that receive municipal civil infraction violation notices shall have thirty (30) days to pay the fine to the Office of the County Drain Commissioner. If responsibility is denied or the fine is unpaid after thirty (30) days, a municipal civil infraction citation shall be filed with the District Court for resolution pursuant to Chapter 87 of the Revised Judicature Act, MCL 600.8701 et seq. Either party may request a formal hearing before a judge.

CHAPTER 10: SOIL EROSION AND SEDIMENTATION CONTROL FUND

SECTION 10.01 The Soil Erosion and Sedimentation Control Fund is created within the county treasury.

SECTION 10.02 The county treasurer may receive money or other assets from any source for deposit into the Soil Erosion and Sedimentation Control Fund. The county treasurer shall direct the investment of the Soil Erosion and Sedimentation Control Fund. The county treasurer shall credit to the Soil Erosion and Sedimentation Control Fund interest and earnings from fund investments. The county treasury may transfer money from the Soil Erosion and Sedimentation Control Fund to the General Fund by resolution of the County Board of Commissioners.

SECTION 10.03 All fees, cash bonds, money received from an irrevocable letter of credit or a certificate of self-insurance, and reimbursements for expenses incurred by the Office of the County Drain Commissioner made payable to the County with regard to Part 91, the Rules or this Ordinance shall be deposited by the County Treasurer into the Soil Erosion and Sedimentation Control Fund.

SECTION 10.04 Money in the Soil Erosion and Sedimentation Control Fund at the close of the fiscal year shall remain in the fund and shall not lapse to the county general fund.

SECTION 10.05 The Office of the County Drain Commissioner's shall expend money from the fund only to administer and enforce Part 91, the Rules, or this Ordinance.

This Ordinance shall take effect on the 16th day of April, 2019.

COUNTY OF KALAMAZOO



Julie M. Rogers, Chairperson
Board of Commissioner

Date: 4.16.19



Timothy A. Snow
County Clerk/Register

Date: 4.16.19