

## CHAPTER 8: SOIL EROSION AND SEDIMENTATION CONTROL

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### SEC. 9-8-1 TITLE.

This chapter may be cited as “The City of Greenville Soil Erosion and Sedimentation Control Ordinance” or “this chapter.”

(Ord. No. 98-7, passed 1-8-1998)

### SEC. 9-8-2 AUTHORITY AND PURPOSES.

This chapter is adopted under G.S. Chapter 113A; Part 6 Article 21 of Chapter 143 and Article 7, 9, and 11 of Chapter 160D for the purpose of:

- (A) Promoting the public health, safety, and general welfare; and
- (B) 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 within the city limits of the City of Greenville and the extraterritorial jurisdiction of the city; and
- (C) Establishing procedures through which these purposes can be fulfilled.

(Ord. No. 98-7, passed 1-8-1998; Ord. No. 06-50, § 1, passed 6-8-2006; Ord. No. 21-032, § 1, passed 6-21-2021)

### SEC. 9-8-3 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**Accelerated erosion.** Any increase over the rate of natural erosion as a result of land-disturbing activities.

**Act.** The North Carolina Sedimentation Pollution Control Act of 1973, being G.S. 113A-50 et seq., and all rules and orders adopted pursuant to it.

**Active construction.** Activities which contribute directly to the building of facilities including land-disturbing activities for roads, parking lots, footings and the like.

**Adequate erosion and control measure, structure or device.** One which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

**Affiliate.** A person who directly, or indirectly through one or more intermediaries' control, is controlled by or is under common control of another person.

**Being conducted.** A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

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

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

### **City. City of Greenville**

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

Commission. ~~The City of Greenville Planning and Zoning Commission~~ **The North Carolina Sedimentation Control Commission.**

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

Denuded. The removal of ground cover from, on or above the soil surface.

Department. The North Carolina Department of ~~Environment, Health, and Natural Resources~~ **Environmental Quality.**

Director. The Director of the ~~Division of Land Resources of the Department of Environment, Health, and Natural Resources~~ **Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality.**

Discharge point. That point at which runoff leaves a tract of land.

~~District. The Pitt County Soil and Water Conservation District created pursuant to G.S. Chapter 139 of the North Carolina General Statutes.~~

Drainage easement. A minimum strip of land reserved for conveyance of stormwater generally located along the rear or side lot lines but may cross lots at such points that will not pose a hazard to persons or property.

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

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

Extraterritorial jurisdiction. That territory surrounding the corporate limits of the city over which the city exercises its planning and zoning authorities as established by action of the City Council on June 26, 1972 and subsequently amended.

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

High quality water (HQW) zones. Areas in the Coastal Counties that are within 575 feet of high quality waters and for the remainder of the state areas that are within one mile and drain to HQWs.

High quality waters. Those classified as such in 15A NCAC **02B .0224 2B.0101(e)(5)**, **General Procedures**, which is incorporated herein by reference to include further amendments **and additions pursuant to G.S. Chapter 150B, Article 2A.**

**High Quality Water (HQW) Zones –means, for the Coastal Counties, areas within 575 feet of High Quality Waters; and for the remainder of the state, areas within one mile and draining to HQW’s.**

Lake or natural watercourse. Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension and which could be damaged by accumulation of sediment.

Land-disturbing activity. Any use of the land by any person in residential, industrial, educational, 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.

Land-disturbing permit. The approval document allowing land-disturbing activities to be initiated. A project may be developed in phases with separate permits for each phase.

Local government. 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. Wearing away of the earth’s surface by water, wind or other natural agents under natural environmental conditions undisturbed by mankind.

Parent. An affiliate that directly, or indirectly through one or more intermediaries, controls another person.

Person. 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. Any person who may be held responsible for a violation unless expressly provided otherwise by this chapter, the Act, or any order adopted pursuant to this chapter or the Act.

Person responsible for the violation. As used in this chapter and G.S. 113A-64, means:

- (1) The developer or other person who has or holds himself or herself out as having financial or operational control over the land-disturbing activity; or
- (2) The landowner or person in possession or control of the land when he or she has directly or indirectly allowed the land-disturbing activity or has benefitted from it, or he or she has failed to comply with any provision of this chapter, the Act or any order adopted pursuant to this chapter or the Act as imposes a duty upon him or her.

Phase of grading. One of two types of grading, rough or fine.

Plan. Erosion and Sedimentation Control Plan.

Protective cover. Natural or artificial ground cover of grass, trees, shrubs or mulch sufficient to reduce erosion potential.

Receiving watercourse. A lake, natural watercourse, or other natural or man-made area into which stormwater runoff flows from a land-disturbing activity.

Sediment. 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. 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. Sediment resulting from accelerated erosion which is settleable or removable by properly designed, constricted 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.

Special flood hazard area. The land located within the floodplain subject to a 1% or greater chance of flooding in any given year and subject to the conditions of Title 9, Chapter 6 of the City Code, Flood Damage Prevention.

Storm drainage facilities. 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. The direct runoff of water resulting from precipitation in any form.

Ten-year storm. The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten 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. All contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

Twenty-five-year storm. The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

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

Undertaken. 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. The average **speed** "~~velocity~~" of flow through the cross-section of the main channel at the peak flow of the storm of interest. The cross-section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing "velocity" of flow.

Wastes. Surplus materials resulting from on-site construction and disposed of at other locations.

Working days. Days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

(Ord. No. 98-7, passed 1-8-1998; Ord. No. 99-119, § 1, passed 9-9-1999)

#### SEC. 9-8-4 ~~SCOPE~~; EXCLUSIONS.

This chapter shall not apply to the following land-disturbing activities:

(A) Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to mankind, including but not limited to:

- (1) Forages and sod crops, grains and feed crops, tobacco, cotton and peanuts;
- (2) Dairy animals and dairy products;
- (3) Poultry and poultry products;
- (4) Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats;
- (5) Bees and apiary products; and
- (6) Fur-producing animals.

(B) Activities undertaken on forest land for the production and harvesting of timber and timber products and which are conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality as adopted by the **North Carolina Department of Agriculture and Consumer Services**. If land-disturbing activity undertaken on forest land 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 chapter shall apply to such activity and any related land-disturbing activity on the tract;~~and~~.

(C) Activities for which a permit is required under the Mining Act of 1971, being G.S. Chapter 74, Article 7 of the General Statutes;

(D) Land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a); and

(E) For the duration of an emergency, activities essential to protect human life.

**(F) 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.**

**(G) 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**

(Ord. No. 98-7, passed 1-8-1998)

## SEC. 9-8-5 GENERAL REQUIREMENTS.

(A) Plan and permit required. No person shall initiate any land-disturbing activity which uncovers more than one acre without having an erosion control plan and land-disturbing permit approved by the city. Additionally, no person shall initiate any land-disturbing activity greater than 5,000 square feet without having a land-disturbing permit approved by the city. Furthermore, no person shall initiate land-disturbing activity of any size within the special flood hazard area without first obtaining a land-disturbing permit and an approved sedimentation and erosion control plan meeting the requirements of this chapter and Chapter 6 entitled "Flood Damage Prevention."

(Ord. No. 99-119, §§ 2-6, passed 9-9-1999)

(B) Protection of property. Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by that activity.

(C) More restrictive rules shall apply. Whenever conflicts exist between federal, state or local laws, ordinances or rules, the more restrictive provision shall apply.

**(D) All measures shall be designed and constructed in accordance with the NC Erosion and Sediment Control Planning and Design Manual, as amended.**

(Ord. No. 98-7, passed 1-8-1998)

## SEC. 9-8-6 BASIC CONTROL OBJECTIVES.

(A) An erosion and sedimentation control plan may be disapproved pursuant to section 9-8-17 of this chapter if the plan fails to address the following control objectives:

(1) Identify critical areas. On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention;

(2) Limit time of exposure. All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time **specified in G.S. 113A-57 or this Chapter**;

(3) 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 time;

(4) Control surface water. Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure;

(5) Control sedimentation. All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage; and

(6) 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 watercourse, plans are to include measures to control the velocity at the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

(B) When deemed necessary by the approving authority, a preconstruction conference may be required.

(Ord. No. 98-7, passed 1-8-1998; Ord. No. 00-155, §§ 1, 2, passed 12-14-2000)

#### SEC. 9-8-7 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY.

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

(A) Buffer zone.

(1) 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 25% of the buffer zone nearest the land-disturbing activity, provided that 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.

(2) Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25% 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 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.

(Ord. No. 99-119, § 8, passed 9-9-1999; Ord. No. 11-018, § 1, passed 4-11-2011)

(C) Ground cover. Whenever land-disturbing activity is undertaken on a tract in excess of 5,000 square feet, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the 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 9-8-8(B)(5), provisions for ground cover sufficient to restrain erosion must be accomplished within 21 calendar days following completion of any phase of grading.

(Ord. No. 99-119, § 10, passed 9-9-1999; Ord. No. 00-155, §§ 3, 4, passed 12-14-2000; Ord. No. 06-50, § 2, passed 6-8-2006)



(D) Prior plan approval. No person shall initiate any land-disturbing activity on a tract if more than one acre is to be uncovered unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with and approved by the city.

(Ord. No. 98-7, passed 1-8-1998)

#### SEC. 9-8-8 DESIGN AND PERFORMANCE STANDARDS.

(A) Except as provided in subsection (B)(2) of this section, erosion and sedimentation control measures, structures and devices shall be so planned, designed and constructed as 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 USDA, **Soil Natural Resources Conservation Service's National Engineering Field Handbook Manual for Conservation Practices**, or other acceptable calculation procedures.

(B) In high quality water (HQW) zones the following design standards shall apply:

(1) Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.

(2) Erosion and sedimentation control measures, structures and devices within HQW zones shall be so planned, designed and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture **Soil Natural Resources Conservation Service's National Engineering Field Handbook Manual for Conservation Practices**, or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(3) Sediment basins within HQW zones shall be designed and constructed **according to the following criteria: such that the basin will have a settling efficiency of at least 70% for the 40 micron (0.04 mm) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's National Engineering field Manual for Conservation Practices or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.**

- (a) **use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;**
- (b) **have a minimum of 1800 cubic feet of storage area per acre of disturbed area;**
- (c) **have a minimum surface area of 325 square feet per cfs of the Twenty-five Year Storm (Q25) peak flow;**
- (d) **have a minimum dewatering time of 48 hours;**

- (e) **incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.**

**Upon a written request of the applicant, the City Engineer may allow alternative design and control measures in lieu of meeting the conditions required in subparagraphs (3)(b) through (3)(e) of this sub-section if the applicant demonstrates that meeting all of those conditions will result in design or operational hardships and that the alternative measures will provide an equal or more effective level of erosion and sediment control on the site. Alternative measures may include quicker application of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.**

(4) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical (2:1) if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(5) Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.

(Ord. No. 98-7, passed 1-8-1998)

#### SEC. 9-8-9 STORMWATER OUTLET PROTECTION.

(A) (1) 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:

- (a) The velocity established by the table in subsection (D) of this section; or

- (b) The velocity of the ten-year storm runoff in the receiving watercourse prior to development.

(2) If conditions (1)(a) or (b) of this subsection (A) 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 10%.

(B) 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 Commission 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 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 lieu of closed drains and high velocity paved sections;

(3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge (these may range from simple rip-rapped sections to complex structures); and

(4) Protect watercourses subject to accelerated erosion by improving cross-sections and/or providing erosion resistant lining.

(C) Exceptions. This rule shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

(D) 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.):**

~~Maximum Permissible Velocities for:~~

| <u>Material</u>                         | <u>F.P.S.</u> | <u>M.P.S.</u> |
|---|---------------|---------------|
| Fine sand (noncolloidal)                | 2.5           | 0.8           |
| Sandy loam (noncolloidal)               | 2.5           | 0.8           |
| Silt loam (noncolloidal)                | 3.0           | 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 (non colloidal) | 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.)

(Ord. No. 98-7, passed 1-8-1998)

#### SEC. 9-8-10 BORROW AND WASTE AREAS.

(A) 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 ~~Solid~~ 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.

(B) 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.

(Ord. No. 98-7, passed 1-8-1998)

Statutory reference:

State Mining Act of 1971, see G.S. 74-46 through 74-68

#### SEC. 9-8-11 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 that activity.

(Ord. No. 98-7, passed 1-8-1998)

#### SEC. 9-8-12 OPERATIONS IN LAKES OR NATURAL WATERCOURSES.

Land-disturbing activity in connection with construction in, on, over or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when necessary justification for significant alteration to flow characteristic is provided.

(Ord. No. 06-50, § 3, passed 6-8-2006)

#### SEC. 9-8-13 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 chapter, the Act, or any order adopted pursuant to this chapter 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.

(Ord. No. 98-7, passed 1-8-1998)

#### SEC. 9-8-14 ADDITIONAL MEASURES.

Whenever the city determines that significant sedimentation is occurring as a result of a land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.

(Ord. No. 98-7, passed 1-8-1998)

#### SEC. 9-8-15 EXISTING UNCOVERED AREAS.

(A) All uncovered areas existing on December 11, 1985, which resulted from land-disturbing activity, exceed one acre, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation shall be provided with a ground cover or other protective measures, structures or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

(B) The city will serve upon the landowner or other person in possession or control of the land a written notice of violation by registered or certified mail, return receipt requested or other means authorized under G.S. 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which the measures must be completed. In determining the measures required and time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits for compliance.

(Ord. No. 06-50, § 4, passed 6-8-2006)

(C) The city reserves the right to require preparation and approval of an erosion control plan in any instance wherein extensive control measures are required.

(D) This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

(Ord. No. 98-7, passed 1-8-1998)

#### SEC. 9-8-16 PERMITS.

(A) Required; exceptions. No person shall undertake any land-disturbing activity subject to this chapter without first obtaining a permit therefor from the city, office of the City Engineer, except that no permit shall be required for any land-disturbing activity as identified in section 9-8-4.

(Ord. No. 06-50, § 5, passed 6-8-2006)

(B) Fees. A fee established in accordance with the Manual of Fees adopted by the City Council shall be submitted with each application for a land-disturbing permit.

(C) Prerequisite to issue of building permit. No building permit shall be issued for a structure until the Building Inspector has obtained evidence that a valid land-disturbing permit has been obtained.

(Ord. No. 98-7, passed 1-8-1998; Ord. No. 99-119, § 11-14, passed 9-9-1999)

#### SEC. 9-8-17 EROSION AND SEDIMENTATION CONTROL PLANS.

(A) An erosion control plan shall be prepared for all land-disturbing activities subject to this chapter whenever the proposed activity is to be undertaken on a tract comprising more than one acre, if more than one acre is to be uncovered. The plan shall be filed with the city, office of the City Engineer ~~and the Pitt County Soil and Water Conservation District~~ at least 30 days prior to the commencement of the proposed activity. **This does not restrict the initiation of land disturbing activities when the plan is approved and the permit is issued in less than 30 days from initial submission.**

~~(B) Persons conducting land-disturbing activity on a tract which covers one or more acres shall file three copies of the erosion control plan with the office of the City Engineer at least three days prior to beginning the activity and shall keep another copy of the approved plan on file at the job site.~~ After approving the plan, if the office of the City Engineer, 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 office of the City Engineer will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority.

(C) Erosion control 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 or her attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their 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 chapter or rules or orders adopted or issued pursuant to this chapter. **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.**

~~—(D) The Pitt County Soil and Water Conservation District shall review the plan and submit any comments or recommendations to the office of the City Engineer within 20 days after the Soil and Water Conservation District received the erosion control plan, or within any shorter period of time as may be agreed upon by the Soil and Water Conservation District and the office of the City Engineer. Failure of the Soil and Water Conservation District to submit its comments~~

~~and recommendations within 20 days or within any agreed upon shorter period of time shall not delay final action on the plan.~~

**(DE)** The office of the City Engineer will review each complete plan submitted to it and within 30 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. The office of the City Engineer shall condition approval of a draft erosion control plan upon the applicant's compliance with federal and state water quality laws, regulations and rules. Failure to approve, or disapprove, approve with performance reservations, or approve with modifications a complete erosion and sedimentation control plan within 30 days of receipt shall be deemed approval. **If the plan is disapproved, the City Engineer shall notify the applicant and, if required, the Director of the Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality of such disapproval within ten days thereof. The City Engineer shall advise the applicant and the Director of the Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality, if required, in writing as to the specific reasons that the plan was disapproved.** ~~Disapproval of a plan or a revised erosion control plan must specifically state in writing the reasons for the disapproval.~~ The office of City Engineer must approve or ~~deny~~ **disapprove** a revised plan within 15 days of receipt, or it is deemed to be approved. If following commencement of a land-disturbing activity pursuant to an approved plan, the office of City Engineer determines that the plan is inadequate to meet the requirements of this chapter, the office of City Engineer may require any revisions as are necessary to comply with this chapter. Failure to approve, approve with modifications or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan.

(Ord. No. 00-155, §§ 5-6, passed 12-14-2000)

**(EF)** Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental 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 30-day time limit for review of the plan pursuant to subsection **(DE)** of this section shall not begin until a complete environmental document is available for review.

**(FG)** The plan required by this section shall contain architectural ~~and~~ **or** 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 chapter. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the office of the City Engineer, on request.

**(GH)** An erosion control plan may be disapproved upon a 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;

(4) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act. For purposes of this subsection (~~GH~~) an applicant's record may be considered for only the two years prior to the application date; or

(5) If implementation would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters under G.S. 113A-61(b1).

**In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the City pursuant to subsection (G) of this section, the City shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 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 9-8-18(A), the applicant may appeal the City's disapproval of the plan directly to the Commission.**

(Ord. No. 06-50, §§ 6-8, passed 6-8-2006)

(~~H~~) Applications for amendment of an erosion control 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 the amendment is approved by the office of City Engineer, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

(~~I~~) Any person engaged in land-disturbing activity who fails to file a sedimentation and erosion control plan and obtain a land-disturbing permit in accordance with this chapter, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan, shall be deemed in violation of this chapter.

(Ord. No. 99-119, § 15, passed 9-9-1999)

(~~J~~) An approved land-disturbing permit and/or erosion control plan shall be valid for a period of ~~two~~ three years from the date of approval.

(Ord. No. 99-119, § 16, passed 9-9-1999)

(~~K~~) A copy of the erosion control plan for any land-disturbing activity that involves the utilization of ditches for the purpose of dewatering or lowering the water table must be forwarded to the Director of the Division of Water **Resources Quality**.

(Ord. No. 00-155, § 7, passed 12-14-2000)

(~~L~~) No person may initiate a land-disturbing activity until notifying the office of the City Engineer of the date that the land-disturbing activity will begin.

(Ord. No. 00-155, § 7, passed 12-14-2000)



~~(MN)~~ A plan issued under this article shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed and the site has been stabilized. A copy of the approved plan should be kept on file at the job site.

(Ord. No. 06-50, § 9, passed 6-8-2006)

~~(NO)~~ The City Engineer 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 Engineer shall condition approval of plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The City Engineer may establish an expiration date, not to exceed three years, for plans approved under this chapter.

**(O) The City Engineer 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 Engineer may transfer a plan if all of the following conditions are met:**

**(a) 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.**

**(b) The City Engineer finds all of the following:**

**1. 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.**

**2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.**

**3. The successor-owner is the sole claimant of the right to engage in the permitted activity.**

**4. 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 Engineer 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 Engineer from requiring a revised plan pursuant to G.S. 113A-54.1(b).**

(Ord. No. 98-7, passed 1-8-1998; Ord. No. 06-50, § 9, passed 6-8-2006)

#### SEC. 9-8-18 APPEALS.

(A) The disapproval or modifications of any proposed plan by the office of City Engineer shall entitle the person submitting the plan to a public hearing, if the person submits written demand to the City Manager for a hearing within 15 days after receipt of written notice of disapproval or modification.

(B) Hearings held pursuant to this section shall be conducted by the ~~Planning and Zoning Commission~~ **Board of Adjustment** within 45 days after the date of the receipt of the written demand for a public hearing. ~~The date of the public hearing shall be advertised once a week for two successive calendar weeks in a newspaper having general circulation. The notice shall be published the first time not less than 15 days nor more than 25 days before the date fixed for the hearing.~~ **Appeals requests to the Board of Adjustment shall be made pursuant to Title 9, Article S of the city code. The City Engineer shall transmit to the Board of Adjustment all documents constituting the record on which the decision appealed from was taken.**

(C) The applicant requesting a public hearing under this section will be charged for the **hearing in accordance with the City of Greenville's Manual of Fees** ~~exact cost of the advertising charges plus \$5.~~

~~—(D) The Planning and Zoning Commission will render its final decision on any erosion control plan upon which a hearing is requested within 45 days of conducting the hearings.~~

(**DE**) If the ~~Planning and Zoning Commission~~ **Board of Adjustment** upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, the person submitting the plan shall then be entitled to appeal the local government's decision to the North Carolina Sedimentation Control Commission as provided in G.S. 113A-61(c) of the General Statutes of North Carolina and Title 15A, NCAC 4B.0118(**bd**).

(**EF**) In the event that an erosion control plan is disapproved pursuant to section 9-8-17 (**GH**), ~~the city shall notify the Director of Division of Land Resources of such disapproval within ten days. The city shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved.~~ ~~T~~the applicant may appeal the city's disapproval of the plan pursuant to section 9-8-17 (**GH**) directly to the Commission.

(Ord. No. 98-7, passed 1-8-1998)

#### SEC. 9-8-19 INSPECTIONS AND INVESTIGATIONS.

(A) The City Engineer and other appropriate officials of the city will periodically inspect land-disturbing activities to ensure compliance with the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval.

(B) 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) If it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter; 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 this chapter, or rules or orders adopted pursuant to this chapter, and inform the person of the actions that need to be taken to comply with this chapter, or rules, or orders adopted pursuant to this chapter. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his or her official duties. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this chapter.

(D) The city shall have the power to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this chapter 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) The city shall also have the power to require written statements or the filing of reports under oath with respect to pertinent questions relating to land-disturbing activity.

(Ord. No. 98-7, passed 1-8-1998)

#### SEC. 9-8-20 PENALTIES.

(A) Any person who violates any of the provisions of this chapter, or rules or orders adopted or issued pursuant to this chapter, 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 for a violation, other than a stop-work order issued under G.S. 113A-65.1, is \$5,000 per day. The maximum civil penalty for a violation of a stop-work order is \$5,000. **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).** No penalty shall be assessed until the

person alleged to be in violation has been notified of the violation as provided in section 9-8-19(C). A civil penalty may be assessed from the date of the violation. Refusal to accept the notice or failure to notify the City Engineer of a change of address shall not relieve the violator's obligation to comply with this chapter or to pay such penalty. ~~Each day of continuing violation shall constitute a separate violation.~~ A person may also be assessed a one-time civil penalty of up to \$5,000 for the day the violation is first detected.

(Ord. No. 00-155, §§ 8–10, passed 12-14-2000)

(B) The person responsible for the violation of this chapter shall be subject to a civil penalty in the amount of \$100 to \$5,000 per day maximum for the first offense, \$250 to \$5,000 per day maximum for the second offense during the life of the project, and \$5,000 per day maximum for the third and subsequent offenses for the life of the project. The offenses shall be considered on a site-by-site basis. The penalty shall be established by the City Engineer, depending on the existence of aggravating and/or mitigating circumstances surrounding the violation. Violations of this type may include but are not limited to the following:

- (1) Grading without a permit issued by the city;
- (2) Grading beyond the limits of an existing grading permit without approval of an amended grading permit;
- (3) Failure to properly install or maintain erosion control measures in accordance with the approved plan so as to prevent off-site sedimentation;
- (4) Failure to retain sediment from leaving a land-disturbing activity, in accordance with the approved plan or other terms, as required by this chapter;
- (5) Failure to restore off-site areas affected by sedimentation during the time limitation established in a notice of violation;
- (6) Any other violation of this chapter which resulted in off-site sedimentation and, in the discretion of the City Engineer, warrants an assessment of a civil penalty;
- (7) Failure to provide an angle on graded slopes sufficient to retain vegetative cover or other adequate erosion control devices or structures or failure to plant or otherwise provide with ground cover, devices or structures sufficient to restrain erosion within ~~15 working~~ **21 calendar** days of completion of any phase of grading on slopes left exposed;
- ~~—(8) Failure to provide a ground cover sufficient to prevent erosion within 30 working days or 120 calendar days, following completion of construction or development, whichever period is shorter;~~
- (98) Failure to submit to the office of the City Engineer for approval an acceptable revised erosion and sedimentation control plan after being notified by the City Engineer of the need to do so;
- (109) Failure to retain a buffer zone of sufficient width along a lake or natural watercourse to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity;

(~~110~~) Failure to schedule and conduct a preconstruction meeting prior to any land-disturbing activity, as required on the approved plan; and/or

(~~1211~~) Any other action that constituted a violation of this chapter.

(Ord. No. 00-155, § 11, passed 12-14-2000; Ord. No. 06-50, § 10, passed 6-8-2006)

(C) In determining the amount of the civil penalty, the City Engineer shall consider the following factors: the degree and extent of harm caused by the violation; the risk to receiving watercourses; the cost of rectifying the damage; whether the violator saved money by noncompliance; whether the violator took reasonable measures to comply with the notice of violation; whether the violation was committed willfully after being informed of the potential violation; and the prior record of the violator in complying or failing to comply with this chapter. The City Engineer is authorized to reduce the amount of the per diem penalty set out in subsection (B) above to take into account any relevant mitigating factors.

(Ord. No. 06-50, § 11, passed 6-8-2006)

(D) Notwithstanding any other provision of this chapter, no required time period need be given for compliance for failure to submit an erosion control plan and land-disturbing permit for greater than one acre before a land-disturbing activity occurs and the penalty for the commencement of the land-disturbing activity without submittal of such plan and permit shall be a minimum of \$500 and a maximum of \$5,000, if warranted, for the land-disturbing activity in question.

(Ord. No. 06-50, § 12, passed 6-8-2006)

(E) Any person who fails to protect adjacent properties from pollutants shall be subject to a civil action as provided in section 9-8-21. Civil penalties for pollutants leaving the construction site may be assessed based on those factors listed in subsection (C) of this section.

(Ord. No. 06-50, § 13, passed 6-8-2006)

(F) The City Engineer shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. 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 as specified in subsection (G). If a violator does not pay a civil penalty assessed by the City Engineer within ~~45~~ **30** days after it is due or does not request a hearing as provided in subsection (G), the City Engineer shall request the City Attorney to institute a civil action to recover the amount of the assessment. The civil action may be brought in Pitt County Superior Court or in the Superior Court for the county where the violator's residence or principal place of business is located.

(G) A violator may contest the assessment of a civil penalty by submitting a written request for a review of the assessment by the ~~City Engineer Director of Public Works~~ to the ~~City Engineer~~ **Director of Engineering** within 15 days after receipt of the notice of assessment. Upon receipt of the written request, the City Engineer shall confer with the Director of ~~Public Works~~ **Engineering** concerning the civil penalty; and after the conference, the Director of ~~Public Works~~ **Engineering** shall notify the violator within ten days after receipt of the written request for a

review whether the penalty has been upheld or modified. If the violator is not satisfied with the action of the Director of ~~Public Works Engineering~~, the violator may further contest the assessment by submitting a written demand for a public hearing before the Board of Adjustment to the ~~City Engineer~~ **Director of Engineering** and the Planning and Development Services Director within ~~45~~ **30** days after receipt of the initial notice of assessment from the City Engineer. **Appeals requests to the Board of Adjustment shall be made pursuant to Title 9, Article S of the city code. A hearing on a civil penalty shall be conducted by the Board of Adjustment within 45 days after receipt of the written demand for the hearing. The Board of Adjustment shall make its decision to uphold or modify the civil penalty within 30 days after the date of the hearing.** An appeal from the decision of the Board of Adjustment shall be to the Superior Court of Pitt County.

(H) A civil action **to recover the amount of the assessment** must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(I) Civil penalties collected pursuant to this chapter shall be credited 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.**

(Ord. No. 06-50, § 14, passed 6-8-2006)

(J) Any person who knowingly or willfully violates any provisions of this chapter 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 and may be subject to a fine not to exceed \$5,000 **in accordance with G.S. 113A-64.**

(K) A violation of this chapter that is not knowing or not willful shall not constitute a misdemeanor or infraction punishable under North Carolina G.S. 14-4, but instead shall be subject to the civil penalties provided in this section.

(Ord. No. 98-7, passed 1-8-1998; Ord. No. 99-119, § 17, passed 9-9-1999; Ord. 19-045, § 1, passed 9-12-2019)

#### SEC. 9-8-21 INJUNCTIVE RELIEF.

(A) Whenever the City Engineer has reasonable cause to believe that any person is violating or threatening to violate this chapter or any rule or order adopted or issued pursuant to this chapter or any term, condition or provision of an approved erosion control plan, it may, either before or after institution of any other action or proceeding authorized by this chapter, 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 Pitt County.

(B) 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 chapter.

(Ord. No. 98-7, passed 1-8-1998; Ord. No. 99-119, §§ 19, 20, passed 9-9-1999)

#### SEC. 9-8-22 RESTORATION OF AREAS AFFECTED BY FAILURE TO COMPLY.

The City Engineer 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 chapter.

(Ord. No. 98-7, passed 1-8-1998; Ord. No. 99-119, §§ 21, 22, passed 9-9-1999)

#### SEC. 9-8-23 SEVERABILITY.

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

(Ord. No. 98-7, § 1, passed 1-8-1998)