

**THE CITY OF FREDERICK
MAYOR AND BOARD OF ALDERMEN**

ORDINANCE NO: G-13-11

AN ORDINANCE concerning

Erosion and Sediment Control

FOR the purpose of updating the City Code provisions relating to erosion and sediment control to ensure compliance with Maryland law.

BY repealing

Chapter 25, Article VI
The Code of the City of Frederick, 1966 (as amended)

BY adding

Chapter 24
The Code of the City of Frederick

SECTION I. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that Chapter 25, Article VI of The Code of the City of Frederick, 1966 (as amended) is hereby repealed.

SECTION II. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that Chapter 24 of The Code of the City of Frederick, 1966 (as amended) is hereby added to read as follows:

CHAPTER 24.
EROSION AND SEDIMENT CONTROL

§ 24-1. Purpose.

The purpose of this article is to protect, maintain and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with land disturbances. The goal is to minimize soil erosion and prevent off-site sedimentation by using soil erosion and sediment control practices designed in accordance with the Code of Maryland Regulations (COMAR) 26.17.01, the 2011 Maryland Standards and Specifications, and the Stormwater Management Act of 2007. Implementing this article will help reduce the negative impacts of land development on water resources, maintain the chemical, physical, and biological integrity of streams, and minimize damage to public and private property.

§ 24-2. Authority.

The provisions of this article are pursuant to Title 4, Subtitle 1 of the Environment Article of the Annotated Code of Maryland and shall apply to all land grading occurring within the City. The application of this article and the provisions set forth herein are the minimum erosion and sediment control requirements and shall not be deemed a limitation or repeal of any other powers granted by State statute.

§ 24-3. Definitions.

“Act” means Maryland’s Stormwater Management Act of 2007.

“Administration” means the Maryland Department of the Environment (MDE) Water Management Administration (WMA).

“Agricultural land management practices” means those methods and procedures used in the cultivation of land in order to further crop and livestock production and conservation of related soil and water resources. “Agricultural land management practices” does not include logging or timber removal operations.

“Applicant” means any person, firm, or governmental agency that executes the necessary forms to apply for a permit or approval to carry out construction of a project.

“Building Department” means the Building Department of The City of Frederick.

“Clear” means to remove the vegetative ground cover while leaving the root mat intact.

“Drainage area” means that area contributing runoff to a single point measured in a horizontal plane that is enclosed by a ridge line.

“Engineering Department” means the Engineering Department of The City of Frederick.

“Environmental site design” or **“ESD”** means using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources.

“Erosion” means the process by which the land surface is worn away by the action of wind, water, ice or gravity.

“Erosion and Sediment Control” means a system of structural and vegetative measures that minimize soil erosion and off-site sedimentation.

“Erosion and Sediment Control Plan” means an erosion and sediment control strategy or plan, to minimize erosion and prevent off-site sedimentation by containing sediment onsite or by passing sediment-laden runoff through a sediment control measure, prepared and approved in accordance with the specific requirements of the Engineering Department and this Code, and designed in accordance with the Standards and Specifications.

“Final erosion and sediment control plan” means, along with the final stormwater management plan, the last of three plans submitted under the comprehensive review and approval process required by the Act and described in COMAR 26.17.02. Final erosion and sediment control plans shall be prepared and approved in accordance with the specific requirements of the SCD and this article and designed in accordance with the Standards and Specifications.

“Grade” means to disturb earth by, including but not limited to, excavating, filling, stockpiling, grubbing, removing root mat or topsoil, or any combination thereof.

“Grading unit” means the maximum contiguous area allowed to be graded at a given time. For the purposes of this article, a grading unit is 20 acres or less.

“Highly erodible soils” means those soils with a slope greater than 15 percent or those soils with a soil erodability factor, K, greater than 0.35 and with slopes greater than 5 percent.

“Ordinance” means the Stormwater Management Ordinance of The City of Frederick, Chapter 25, Article VIII of the Frederick City Code, 1966 (as amended).

“Owner/Developer” means a person undertaking, or for whose benefit, activities covered by this article are carried on. General contractors or subcontractors, or both, without a proprietary interest in a project are not included within this definition.

“Permittee” means any person to whom a building or grading permit has been issued.

“Person” includes the federal government, the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.

“Responsible personnel” means any foreman, superintendent, or project engineer who is in charge of on-site clearing and grading operations or the implementation and maintenance of an erosion and sediment control plan.

“Sediment” means soils or other surface materials transported or deposited by the action of wind, water, ice or gravity, as a product of erosion.

“Site” means any tract, lot, or parcel of land, or combination of tracts, lots or parcels of land that are in one ownership, or are contiguous and in diverse ownership, where development is to be performed as part of a unit, subdivision, or project.

“Site development plan” means the second of three plans submitted under the comprehensive review and approval process required by the Stormwater Management Act and described in COMAR 26.17.02. A site development plan shall include the information necessary to allow a detailed evaluation of a proposed project.

“Soil Conservation District” or **“SCD”** means the Frederick Soil Conservation District.

“Stabilization” means the protection of exposed soils from erosion by the application of seed and mulch, seed and matting, sod, other vegetative measures, and/or structural means.

“Standards and Specifications” means the “2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control” or any subsequent revisions.

“Stormwater” means water that originates from a precipitation event.

“Stormwater management system” means natural areas, ESD practices, stormwater management measures, and any other structure through which stormwater flows, infiltrates, or discharges from a site.

§ 24-4. Applicability.

- (a) **In General.** No person shall clear or grade land without implementing soil erosion and sediment controls in accordance with the requirements of this article except as otherwise provided in this section.

(b) Exemptions. The following activities are exempt from the requirements of this article:

- (1)** Agricultural land management practices and construction of agricultural structures;
- (2)** Clearing or grading activities that disturb less than 5,000 square feet of land area and disturb less than 100 cubic yards of earth.
- (3)** Clearing or grading activities that are subject exclusively to State approval and enforcement under State law and regulations.

§ 24-5. Review and Approval of Erosion and Sediment Control Plans.

- (a) Required.** A person must submit an erosion and sediment control plan and supporting computations to the City and to the SCD and obtain approval of the SCD before obtaining a permit to clear or grade land. The SCD shall review the plan to determine compliance with this article and the Standards and Specifications prior to approval. The plan shall serve as a basis for all subsequent grading and stabilization.
- (b) General process.** The review and approval process shall be in accordance with the comprehensive and integrated plan approval process described in the Standards and Specifications, the Ordinance, and the Act.
- (c) Concept plans.** At a minimum, a concept plan must include the mapping of natural resources and sensitive areas including highly erodible soils and slopes greater than 15 percent as well as information required under the Ordinance. These areas are to remain undisturbed or an explanation must be included with either the concept or site development plan describing enhanced protection strategies for these areas during construction.
- (d) Integration with stormwater management.** A site development plan submittal must include all concept information and indicate how proposed erosion and sediment control practices will be integrated with proposed stormwater management practices. The latter must be done through a narrative and an overlay plan showing both ESD and erosion and sediment control practices. An initial sequence of construction and proposed project phasing to achieve the grading unit restriction should be submitted at this time.
- (e) Final plan.** An applicant shall submit a final erosion and sediment control plan to the SCD for review and approval. The plan must include all of the information required by the concept and site development plans as well as any information in § 24-6 not already submitted.
- (f) Action on plans.** The SCD shall notify the applicant of approval or reasons for disapproval or modification within 30 business days after submission of the completed erosion and sediment control plan. If a decision is not made within 30 business days, the SCD shall inform the applicant of the status of the review process and the anticipated completion date. The plan shall not be considered approved without the inclusion of the signature and date of signature of an authorized agent of the SCD on the plan.
- (g) Conditions.** In approving a plan, the SCD may impose such conditions as may be deemed necessary to ensure compliance with the provisions of this article, the State Sediment Control Regulations, COMAR 26.17.01, the Standards and Specifications, or the preservation of public health and safety.

§ 24-6. Contents of Erosion and Sediment Control Plans.

- (a) **Application.** An applicant is responsible for submitting erosion and sediment control plans that meet the requirements of the SCD, this chapter, the Ordinance, the Standards and Specifications, and the Act. The erosion and sediment control plan shall include sufficient information to allow the SCD to evaluate the environmental characteristics of the affected areas, the potential impacts of the proposed grading on water resources, and the effectiveness and acceptability of measures proposed to minimize soil erosion and off-site sedimentation.
- (b) **Minimum application requirements.** At a minimum, the applicant shall submit a letter of transmittal and an application including the following:
- (1) A vicinity map indicating north arrow, scale and other information necessary to easily locate the property;
 - (2) Name, address and telephone number of:
 - (A) The owner of the property where the grading is proposed;
 - (B) The developer; and
 - (C) The applicant;
 - (3) Drainage area map(s) at a 1" = 200' minimum scale showing existing, interim, and proposed topography, proposed improvements, standard symbols for proposed sediment control features, and pertinent drainage information including provisions to protect downstream areas from erosion for a minimum of 200 feet downstream or to the next conveyance system;
 - (4) The location of natural resources, wetlands, floodplains, highly erodible soils, slopes 15 percent and steeper, and any other sensitive areas;
 - (5) A general description of the predominant soil types on the site, as described by the appropriate soil survey information available through the SCD or the USDA Natural Resources Soil Conservation District;
 - (6) Proposed stormwater management practices;
 - (7) Erosion and sediment control plans including:
 - (A) The existing topography and improvements as well as proposed topography and improvements at a scale between 1" = 10' and 1" = 50' with 2 foot contours or other approved contour interval. For projects with more than minor grading, interim contours may also be required;
 - (B) Scale, project and sheet title, and north arrow on each plan sheet;
 - (C) The limit of disturbance including:
 - (i) Limit of grading (grading units, if applicable); and

- (ii) Initial, interim, and final phases;
- (D) The proposed grading and earth disturbance including:
 - (i) Total disturbed area;
 - (ii) Cut and fill quantities; and
 - (iii) Volume of borrow and spoil quantities.
- (E) Storm drainage features, including:
 - (i) Existing and proposed bridges, storm drains, culverts, outfalls, etc.;
 - (ii) Velocities and peak flow rates at outfalls for the two-year and ten-year frequency storm events; and
 - (iii) Site conditions around points of all surface water discharge from the site.
- (F) Erosion and sediment control practices to minimize on-site erosion and prevent off-site sedimentation including:
 - (i) The salvage and reuse of topsoil;
 - (ii) Phased construction and implementation of grading unit(s) to minimize disturbances, both in extent and duration;
 - (iii) Location and type of all proposed sediment control practices;
 - (iv) Specifications for temporary and permanent stabilization measures including, at a minimum:
 - (a) The "Standard Stabilization Note" on the plan stating:

"Following initial soil disturbance or re-disturbance, permanent or temporary stabilization must be completed within:

 - (1) Three calendar days as to the surface of all perimeter dikes, swales, ditches, perimeter slopes, and all slopes greater than 3 horizontal to 1 vertical (3:1); and
 - (2) Seven calendar days as to all other disturbed or graded areas on the project site not under active grading.
- (G) Sequence of construction describing the relationship between the implementation and maintenance of controls, including permanent and temporary stabilization and the various stages or phases of earth disturbance and construction. Any changes or revisions to the sequence of construction must be approved by the SCD. The sequence of construction shall, at a minimum, include the following:

- (i) Request for a pre-construction meeting with the appropriate enforcement authority;
 - (ii) Clearing and grubbing as necessary for installation of perimeter controls;
 - (iii) Construction and stabilization of perimeter controls;
 - (iv) Remaining clearing and grubbing within installed perimeter controls;
 - (v) Road grading;
 - (vi) Grading for the remainder of the site;
 - (vii) Utility installation and connections to existing structures;
 - (viii) Final grading, landscaping and stabilization;
 - (ix) Installation of stormwater management measures;
 - (x) Approval of the appropriate enforcement authority prior to removal of sediment controls; and
 - (xi) Removal of controls and stabilization of areas that are disturbed by removal of sediment controls.
- (H) A statement requiring the owner or the developer to contact the SCD at the following stages of the project or in accordance with the approved erosion and sediment control plan, the grading permit, or building permit.
- (i) Prior to the start of earth disturbance;
 - (ii) Upon completion of the installation of perimeter erosion and sediment controls, but before proceeding with any other earth disturbance of grading;
 - (iii) Prior to the start of another phase of construction or opening of another grading unit; and
 - (iv) Prior to the removal of sediment control practices;
- (I) Certification by the owner or developer that any clearing, grading, construction or development will be done pursuant to the approved erosion and sediment control plan and that responsible personnel involved in the construction project have certification of training at an MDE approved training program for the control of sediment and erosion before beginning the project. The certification of training for responsible personnel requirement may be waived by the SCD on any project involving four or fewer residential lots. Additionally, the owner or developer shall allow right of entry for periodic on-site evaluation by the SCD, Building Department, Engineering Department, or MDE; and

- (J) Certification by a professional engineer, land surveyor, landscape architect, or forester (for forest harvest operations only) registered in the State that the plans have been designed in accordance with erosion and sediment control laws, regulations, and standards, if required by the SCD or the Administration.
- (K) Any additional information or data deemed appropriate by the SCD.

§ 24-7. Modifications to Erosion and Sediment Control Plans.

The SCD may revise approved plans as necessary. Modifications may be requested by the owner or developer, the Engineering Department, or Building Department in accordance with COMAR 26.17.01.09(H) Plan Modifications. The SCD may develop a list of minor modifications that may be approved as field revisions by the SCD. The Administration must approve any list of minor modifications prior to its implementation.

§ 24-8. Permits.

- (a) **Approved plan required.** Before a grading or building permit for any lot or parcel is issued by the City, the SCD must review and approve an erosion and sediment control plan for the site.
- (b) **Submittal requirements.** At the time of application for any grading or building permit for activities not exempt from the requirements of this article, the applicant must: **(1)** Submit an erosion and sediment control plan approved by the SCD; **(2)** Certify that all land clearing, construction, and development will be done under the plan; and **(3)** Demonstrate that SCD inspection fees have been paid.
- (c) **Conditions.** In issuing a grading or building permit, the Engineering or Building Department, respectively, may impose such conditions that may be deemed necessary to ensure compliance with this chapter or the preservation of the public health and safety.
- (d) **Suspension or revocation.** The Engineering Department may suspend any grading permit and the Building Department may revoke any building permit after providing written notification to the permittee based on any of the following reasons:
 - (1) Any violation of the terms or conditions of the approved erosion and sediment control plan or permit;
 - (2) Noncompliance with any violation notice or stop work order issued;
 - (3) Changes in site characteristics upon which plan approval and permit issuance was based; or
 - (4) Any violation of this chapter or any rules and regulations adopted under it.
- (e) **Suspension of plan approval.** If the SCD suspends its approval of a sediment and erosion control plan, any grading or building permit related to such plan shall be revoked by the Engineering Department or Building Department, respectively.
- (f) **Expiration.** A grading permit shall expire two years from the date of issuance unless extended or renewed by the Engineering Department. Application for permit renewal shall be made at least two months prior to the permit expiration date.

§ 24-9. Performance Bond.

The owner or developer shall furnish a surety to the City in the form of cash bond, irrevocable letter of credit, or other means of security acceptable to the City. The bond amount should be equal to at least the cost of the installation, maintenance, and removal of the erosion and sediment controls shown on the approved plan.

§ 24-10. Inspection.

- (a) **Copy of plan.** The owner or developer shall maintain a copy of the approved erosion and sediment control plan on site during the grading and construction processes.
- (b) **Notification by inspectors.** In the course of performing routine land development inspections, if a City site inspector or construction inspector observes a violation of the plan or any provision of this section, the inspector will notify the SCD for inspection.
- (c) **Frequency of inspection.** Every active site having a designed erosion and sediment control plan should be inspected for compliance with the plan, on the average, once every two weeks.
- (d) **Reports.** The SCD shall prepare written reports after every inspection. The inspection report shall describe:
 - (1) The date and location of the site inspection;
 - (2) Whether or not the approved plan has been properly implemented and maintained;
 - (3) Any practice or erosion and sediment control plan deficiencies; and
 - (4) If a violation exists, the type of enforcement action taken; and
 - (5) If applicable, a description of any modification to the plan.
- (e) **Notice of violations.** The SCD shall notify the on-site personnel or the owner/developer in writing when violations are observed, describing:
 - (1) The nature of the violation;
 - (2) The required corrective action; and
 - (3) The time in which to have the violation corrected.
- (f) **Right of entry.** It shall be a condition of every grading permit and every building permit issued by the City that the SCD has the right to enter property periodically to inspect for compliance with the approved plan and this chapter.
- (g) **Complaints.** MDE shall receive complaints and initiate enforcement procedures when violations are confirmed. Any complaint received shall be acted upon within three working days, and the complainant shall be notified of any action or proposed action within seven working days of receipt of the complaint.

§ 24-11. Enforcement.

If the violation persists after the date specified for corrective action in the notice of violation, MDE shall stop work on the site. MDE shall determine the extent to which work is stopped, which may include all work on the site except that work necessary to correct the violation.

- (a) **General.** When erosion and sediment control violations occur, MDE shall, through the authority of this chapter and COMAR 26.17.01, use enforcement actions including:
 - (1) Issuance of a corrective action order;
 - (2) Issuance of a stop work order, the extent of which is determined by the inspection agency;
 - (3) Issuance of a penalty or fine; and
 - (4) Referral for legal action.
- (b) **Denial of permits.** The Building Department may deny the issuance of a building permit and the Engineering Department may deny the issuance of a grading permit when the City or the SCD determines that the applicant is not in compliance with the provisions of any other building or grading permit or approved erosion and sediment control plan.
- (c) **Stop work.** MDE shall stop work on a site where land disturbance is occurring without an approved erosion and sediment control plan. Measures shall be required to be implemented to prevent off-site sedimentation.

§ 24-12. Variances.

The SCD may grant a written variance from the requirements of the Standards and Specifications if strict adherence to the Standards and Specifications will result in unnecessary hardship and not fulfill the intent of this chapter. The owner or developer shall submit a written request for a variance to the SCD. The request shall state the specific variances sought and reasons for requesting the variance. The SCD shall not grant a variance unless and until sufficient specific information is provided describing the unique circumstances of the site to justify the variance.

§ 24-13. Penalties.

- (a) **Misdemeanor.** Any person who violates any provision of this chapter is guilty of a misdemeanor, and upon conviction in a court of competent jurisdiction is subject to a fine not exceeding \$10,000 or imprisonment not exceeding one year or both for each violation with costs imposed in the discretion of the court. Each day upon which the violation occurs constitutes a separate offense.
- (b) **Injunctions.** Any agency whose approval is required under this chapter or any interested person may seek an injunction against any person who violates or threatens to violate any provision of this chapter.
- (c) **Civil penalties.** In addition to any other sanction under this chapter, a person who fails to install or maintain erosion and sediment controls in accordance with an approved plan is liable to the City or the State in a civil action, for damages in an amount equal to double the cost of installing or maintaining the controls.

- (d) **Fund.** If the City recovers damages in accordance with this subsection, it shall deposit them in a special fund, to be used solely for:
- (1) Correcting to the extent possible the failure to implement or maintain erosion and sediment controls; and
 - (2) Administration of the sediment control program.

SECTION II. In the event any provision, article, sentence, clause, or part of this ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, article, sentence, clause, or part of this ordinance, it being the intent of the City that such remainder shall be and shall remain in full force and effect.

SECTION III. This ordinance shall take effect on the date it is approved by the Mayor, and all other ordinances or parts of ordinances inconsistent with the provisions of this ordinance will as of that date be repealed to the extent of such inconsistency.

APPROVED: April 18, 2013

PASSED: April 18, 2013

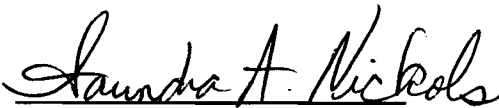


RANDY MCCLEMENT, Mayor



RANDY MCCLEMENT, President,
Board of Aldermen

Approved for Legal Sufficiency:



Sandra A. Nichols
City Attorney