

ORDINANCE NO. 1313

AN ORDINANCE TO PROVIDE FOR THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE RESIDENTS OF THE CITY OF FAIRHOPE, ALABAMA BY LIMITING THE USE OF RED SOILS OR CLAYS UTILIZED IN OR ON A SITE IN SPECIFIED AREAS AT RISK OF CONTAMINATING WATERSHEDS.

Add to the City of Fairhope Code Book - Chapter 7, Article IV, Division 3.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIRHOPE, ALABAMA, as follows:

Section A: Purpose

The Purpose of this ordinance is to protect the water quality and environmental integrity for the area watersheds: streams, rivers, lakes, tributaries, and wetlands. The purpose is to be accomplished specifically by limiting the use of clays and red soils which may harm aquatic plants or marine life from being used in Flood zones, potential floodways, coastal frontages and waterways.

Section B: Definitions

1. Filling Activity defied: For purposes of this ordinance any soil material brought from any other location to the site in question. For construction projects including but not limited to, the following:
 - Roadways
 - Driveways
 - Bulkheads
 - Foundations
 - Fill

2. Soil Material: For purposes of this ordinance, Soil Material shall include, but shall not necessarily be limited to, the following:
 - Top Soil
 - Sub Soil
 - Sand

3. Watershed area: For the purposes of this ordinance, the following area will be affected:
 1. Southern most Police Jurisdiction boundary on the west side of Highway 1 or Flood Zone which ever is greater to Scenic Highway 98.
 2. West Side of Scenic Highway 98 or Flood Zone which ever is greater to Fairhope Ave
 3. All Coastal Bluff areas and Flood Zones from Fairhope Avenue to Northern most Police Jurisdiction
 4. Within Police Jurisdiction 100' outside the 100 year flood plane of all rivers, streams, creeks or tributaries.
 5. Within Police Jurisdiction 50' beyond the outer boundary of all wetland. Any delineation must be approved by appropriate agencies.

Section C:

1. No person, firm or corporation shall commence to filling activity within the City Permitting Jurisdiction until the land owner or contractor has obtained a land disturbing permit from the City of Fairhope. Where a

building permit application is received prior to commencement of land disturbing activities, the required land disturbance permit may be incorporated therein as a special condition of such building permit, provided the permit

includes the land owner's endorsement. There shall be no separate charge for the land disturbance permit.

Exemption: This article shall not apply to land-disturbing activity that is occurring as part farming.

Warning and Disclaimer: The consent of the City to issue a permit based on a particular design for erosion control measures shall not constitute a representation, guaranty or warranty of any kind by the City of Fairhope or its agents, officers or employees of the practicability, adequacy or safety of such design.

2. Commencement of Work: No person, firm or corporation shall bring into the Watershed areas any fill that material has more than 10% red or clay.
3. Maintenance of Control Measures: It shall be the responsibility of the permittee to ensure compliance.

Failure or refusal to comply shall be cause for the City, through its enforcement officers, to issue orders suspending all work. Provided, however, that the issuance of stop work orders shall not be a bar to the imposition of other remedies or penalties herein provided.

4. Remedies: In the event of an imminent danger or damage to adjacent properties or downstream areas due to failure of permittee to comply, the City may perform, or caused to be performed, the work the City deems necessary to restore protection of such properties and the cost thereof shall be charged against the subject land as a municipal lien, such charges to be recovered in a suit at law against the owner.
5. *Penalties: Any person violating the provision of this ordinance shall, upon conviction thereof, be fined a sum of not less than \$100 nor more than \$500 and, in addition thereto, may be sentenced to the City Jail for a term of not more than 6 months.*

Section D: Miscellaneous Provisions

1. Separability and Validity: Each part and each provision of this Ordinance is severable from all other parts or provision. Should any part or provision thereof be declared by the courts to be unconstitutional or invalid, such declaration shall not affect any other part or provision of this ordinance.
2. This ordinance shall take effect upon its due adoption and publication as required by law.

ADOPTED THIS THE 28th DAY OF August, 2006.

Timothy M. Kant, Mayor

ATTEST:

Geniece W. Johnson, City Clerk