

ORDINANCE NO. 1398

FAIRHOPE EROSION AND SEDIMENT CONTROL ORDINANCE

**AN ORDINANCE REPEALING AND REPLACING ORDINANCE NUMBER 1000 AS
ADOPTED BY THE FAIRHOPE CITY COUNCIL ON SEPTEMBER 23, 1996.**

I. Title

This ordinance shall be known as and called the Erosion and Sediment Control Ordinance.

II. Jurisdiction

The provisions of this ordinance shall apply to all lands within the permitting jurisdiction of the City of Fairhope.

III. Purpose

During the construction process, soil is most vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches, dredging of watercourses, and causes air quality impacts when sediment particles become entrapped in the atmosphere. In addition, clearing and grading during construction causes the loss of native vegetation. Vegetation holds the soil in place, holds and filters stormwater, provides habitat for terrestrial and aquatic life, and provides a healthy living environment for Fairhope citizens.

As a result, the purpose of this local regulation is to safeguard persons, protect property, prevent damage to the environment and promote the public welfare by guiding and regulating the design, construction, use, and maintenance of land disturbances in the City of Fairhope.

IV. Definitions

Alabama Handbook means the most current issue of *Alabama Handbook for Erosion Control, Sediment Control and Stormwater Management on Construction Sites and Urban Areas* (Alabama Handbook) – Volume 1 and Volume 2 from the Alabama Soil and Water Conservation Committee provide guidance for the prevention or minimization of problems related to erosion, sedimentation and stormwater management on construction sites and erodible urban areas. *The Alabama Handbook* provides a basis for developing sound plans implementing appropriate measures (BMPs).

Best Management Practice (BMP) – An action which landowners, developers, and/or contractors can take to reduce the impact of human activity on the natural environment. BMPs to control pollutant discharges from land disturbance can be divided into two main categories: structural and non-structural measures to minimize quantity and maximize quality of stormwater runoff from a construction site. BMPs can include sediment and erosion control measures, good housekeeping measures, and stormwater measures. Erosion and sediment controls can each be further described as permanent controls and/or temporary controls. BMPs shall meet or exceed recognized effective industry standards as outlined in the *Alabama Handbook*.

BMP Minimum Requirements – Those basic and standard practices, devices and/or policies as set forth and approved by the City of Fairhope Enforcement Officers, to serve as a minimal (but not inclusive) level of protection on all sites requiring a land disturbance permit, including single family residential.

Buffer – an undisturbed area along a wetland, shoreline or watercourse where development and/or redevelopment is prohibited by any applicable law, ordinance, rule or regulation. The vegetated target for the buffer shall be undisturbed native vegetation.

Control Measures – those Best Management Practice devices as specified on the site Erosion and Sediment Control Plan (aka BMP plan), as well as those specified in the City of Fairhope “BMP Minimum Requirements” guideline. Control measures may include, but are

not limited to, hay bales, silt fences, earthen berms, retaining walls, temporary or permanent ditch checks, check dams, riprap dams, stormwater retention devices or sediment traps, and any measure certified by an Alabama Professional Engineer or QCP.

Critical Areas – Environmentally and ecologically sensitive areas to include but not limited to high risk areas for erosion and/or those within 100' of floodways, floodplains, wetlands, water courses and gullies, whether applicable to a single family dwelling or otherwise.

Drainage Way – Any channel that conveys surface runoff through the site, whether intermittent or permanent.

Erosion and Sediment Control Plan (BMP Plan, Construction Best Management Practices Plan or CBMPP) – Research, planning, processes, activities, and practices implemented for the prevention of pollutants in stormwater to the maximum extent practicable. This plan identifies site specific measures and sequencing to be used for the control of erosion and sediment on a development site before, during and after construction.

Erosion Control -- Measures that prevent erosion (process by which the land surface is worn away).

Grading – altering the shape of ground surfaces to a predetermined condition; this includes, but is not limited to stripping, cutting, filling, stockpiling and shaping or any combination thereof, and shall include the land in its cut or filled condition.

Land Disturbance – For purposes of this article, any grading, filling, draining, excavating, ditching or other earthmoving operation which could result in damage to adjacent lands, public or private, from erosion thereto or siltation thereof shall be deemed land-disturbance activity. The cutting of trees (i.e. silviculture) that does not create or aggravate erosion shall not be deemed land-disturbance.

Land Disturbance Permit – A permit issued by the City of Fairhope for the construction or alteration of ground.

Perimeter Control – A barrier that prevents sediment from leaving a site either by filtering sediment –laden runoff or diverting it to a sediment trap or basin.

Phasing – Land disturbance of a parcel of land in distinct phases, with the stabilization of each phase before the clearing of the next.

Pollutant – includes, but is not limited, to dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, sediment and industrial, municipal and agricultural waste discharged into water.

QCP - Qualified Credentialed Professional - means any staff member of the Alabama Department of Environmental Management (ADEM), designated by the Director of ADEM, a Professional Engineer, an Alabama Natural Resources Conservation Service professional designated by the State Conservationist, or a Certified Professional In Erosion And Sediment Control (CPESC). A QCP includes a registered landscape architect, a registered land surveyor, a Professional Geologist, a registered forester, a Registered Environmental Manager as determined by the National Registry of Environmental Professionals (NREP), and a Certified Professional Soil Scientist (CPSSc) as determined by ARCPACS, and other Department accepted professional designations, certifications, and/or accredited university programs that can document requirements regarding proven training, relevant experience, and continuing education, that enable recognized individuals to prepare CBMPPs, to make sound professional judgments regarding Alabama NPDES rules, the requirements of this chapter, planning, design, implementation, maintenance, and inspection of construction sites, receiving waters, BMPs, remediation/cleanup of accumulated offsite pollutants from the regulated site, and reclamation

or effective stormwater quality remediation of construction associated land disturbances, that meet or exceed recognized technical standards and guidelines, effective industry standard practices, and the requirements of this chapter. The QCP shall be in good standing with the authority granting the registration or designation.

QCI - Qualified Credentialed Inspector (QCI) means an operator, operator employee, or operator designated qualified person who has successfully completed initial training and annual refresher Qualified Credentialed Inspection Program (QCIP) training, and holds a valid certification from an ADEM Department approved cooperating training entity.

Sediment Control – Measures that prevent and/or minimize eroded sediments from leaving the site.

Silviculture – the care and cultivation of trees; forestry.

Stabilization – practices that prevent exposed soils from eroding.

Start of Construction – Beginning with the first land disturbance activity associated with a development, including installation of BMPs, and followed by land preparation such as clearing, excavation, grading, and filling.

Watercourse – means gullies, rivers, streams, intermittent streams, ditches, brooks, channels, lakes ponds, manmade ponds, estuarine waters, swamps, bogs, vernal pools, and all other bodies of water, natural or artificial, intermittent or permanent, public or private which have defined banks of water at least a portion of each year.

Waterway – A channel that directs surface runoff to a watercourse, or to the public storm drain.

Wetland – areas and waters that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated conditions. Wetlands generally include, but are not limited to, lands and water meeting this definition and otherwise often referred to as swamps, marshes, bogs, wetland meadows, ephemeral and tributary streams, grady ponds, vernal pools, banks, reservoirs, ponds, lakes and lands under water bodies. The primary ecological parameters for identifying wetlands include hydric soils, hydrophytic vegetation, and hydrologic conditions reflecting temporary or permanent inundation or saturation.

V. Permits

No person, firm or corporation shall engage in any land disturbance activity within the city permitting jurisdiction until the landowner has obtained a permit therefore from the city. Once permit is received, permittee should immediately install those control measures (BMPs) specified on the site Erosion & Sediment Control Plan, if any, as well as the City of Fairhope BMP Minimum Requirements. Furthermore, land disturbance activity (except that which is necessary to install such BMPs) shall not commence until an “Initial BMP Inspection” is completed, to ensure conformance with the developer’s plan as approved by the QCP and the City of Fairhope BMP Minimum Requirements.

In most cases, the land disturbance permit review period will be within 48 hours (for single family developments not near a critical area). For those projects requiring an erosion and sediment control plan, the review period shall be within 30 days.

A bond may be required as is deemed necessary by the City of Fairhope.

Under emergency conditions, including utility repairs, permit may be obtained on the next day of business.

Exemptions: Silviculture that does not involve removal of root systems, gardening, and agriculture. Refer to City of Fairhope Tree Ordinance.

VI. Erosion and Sediment Control Plan

- A. Applicable for developments classified as multifamily (3 units or more), subdivisions, commercial, and industrial construction, and/or those in critical areas.
- B. Plan shall be prepared by a certified erosion and sediment control specialist, such as a qualified credentialed professional (QCP), a Certified Professional of Erosion and Sediment Control (CPESC) and/or a professional engineer.
- C. Plan shall at a minimum include the following:
 - 1. Map identifying topography, natural features such as watercourses, waterways, and wetlands, buffers, and proposed construction areas.
 - 2. Sequence (and timeline) of construction of the development, such as BMP installation, phasing, clearing and grading, drainage installation, utility installation, infrastructure and building construction, and landscaping.
 - 3. Erosion and sediment controls used throughout all phases of construction and details of permanent stabilization methods to be used at completion.
 - 4. Provisions for maintenance of erosion and sediment controls, as well as daily and rain event inspections for effectiveness of controls.
- D. Submittal, Review, and Approval Procedures:
 - 1. Erosion and Sediment Control Plan shall be submitted in conjunction with the land disturbance permit application.
 - 2. Review of each Erosion and Sediment Control Plan shall be within thirty (30) days of submittal to determine the plan's conformance with these provisions
 - 3. The City shall:
 - a. Review the plan with reasonable, justifiable conditions to accomplish objectives and ensure that the plan meets or exceeds the provisions of the City of Fairhope BMP Minimum Requirements and the *Alabama Handbook*
 - b. City may elect to require a third party review for sites in or near critical areas.
- E. Modifications to the Plan
 - 1. Major modifications to the Erosion and Sediment Control Plan, such as the redesign of BMPs or removal of BMPs, shall be submitted to the City of Fairhope Building Department and shall be processed and approved, or disapproved, in the same manner as the original plan.
 - 2. Minor modifications to the Erosion and Sediment Control Plan, such as the use of additional temporary BMPs, may be addressed on site as needed to ensure compliance with the provisions.
 - 3. IF a BMP failure occurs, as deemed by the City of Fairhope Inspector, the City of Fairhope may require that the Erosion and Sediment Control plan be modified and resubmitted.
- F. All sites, including single family residential, shall comply with the City of Fairhope BMP Minimum Requirements specifications, as well as the Erosion and Sediment Control Plan (if any).

VII. Erosion and Sediment Control Training

Contractors, developers and landowners applying for a Land Disturbance or Building (construction) permit must be currently CPESC (Certified Professional in Erosion and Sediment Control), QCP or QCI qualified, unless an Erosion and Sediment Control Plan prepared by a certified erosion and sediment control specialist has been submitted. Home/property owners acquiring a land disturbance/building / construction permit shall verify receipt of "*The Alabama Handbook*" and shall be responsible for reviewing the methods described within.

VIII. Design Requirement

Erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth in the most recent version of the *Alabama Handbook* and shall be adequate to prevent transportation of sediment from the site to the satisfaction of the City of Fairhope.

A. Clearing and Grading

1. Clearing and grading of natural resources, such as wetlands, waterways, and watercourses, shall not be permitted, except when in compliance with all other chapters of this Code and as permitted by the City of Fairhope Wetland Ordinance No. 1370, United States Army Corps of Engineers, the Alabama Department of Environmental Management, and any and all federal, state and local regulations.
2. Clearing techniques that retain natural vegetation and natural drainage patterns are strongly encouraged.
3. Phasing shall be required on all sites, with the size of each phase to be established by the QCP and approved by the City of Fairhope. The Fairhope Planning Commission may allow exceptions on a case by case basis for a justifiable reason. A BMP or Erosion Control Plan will be required for each phase of clearing. City of Fairhope strongly encourages that parcels/lots not be cleared unless construction will begin immediately.
4. Clearing, except as is necessary to install BMPs, shall not begin until the City of Fairhope's BMP Minimum Requirements are met and the Initial BMP Inspection has been completed and approved.
5. Cut and fill slopes shall be no greater than 3:1, except as approved by the City of Fairhope.

B. Erosion Control

1. Stabilization Requirements – Any area of land from which the natural vegetative cover has been either partially or wholly cleared or removed by development activities shall be revegetated within ten (10) days from the substantial completion of such clearing and construction. The following criteria shall apply to revegetation efforts: Reseeding must be done with an annual or perennial cover crop accompanied by placement of a mulch material or its equivalent of sufficient coverage to control erosion until such time as the cover crop is established over 90 percent (90%) of the seeded area.
2. If vegetative erosion control methods, such as seeding, have not germinated to a coverage of at least ninety percent (90%) within ten (10) days, the City of Fairhope may require that the site be reseeded, sodded, or stabilized with alternative cover.
3. Replanting with native woody and herbaceous vegetation must be accompanied by placement of mulch material or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion. Revegetation sites must exhibit a survival rate of at least seventy-five percent (75%) of the cover crop throughout the year immediately following the revegetation. Revegetation must be repeated in successive years until the minimum seventy-five (75%) survival rate for one (1) year is achieved.
4. On steep slopes or in drainage ways, special techniques that meet or exceed design criteria outlined in the *Alabama Handbook* shall be used to ensure stabilization.
5. Soil stockpiles must be stabilized at the end of each work week or if a rain event is predicted.
6. Techniques, as referenced The *Alabama Handbook* shall be employed to prevent the blowing of dust or sediment from the site onto adjacent properties. The use of chemical agents in or near critical areas is discouraged.
7. Right of way disturbances shall be stabilized with sod or a combination of sod and seed/mulch. Seed and mulch alone shall not be acceptable.
8. Techniques shall be employed to divert upland runoff past or around disturbed slopes.

C. Sediment Controls

1. Sediment controls shall be provided in the form of perimeter controls, such as silt fences, sediment basins and/or sediment traps.
2. Where possible, sediment basins shall be designed in a manner that allows adaptation to provide long term stormwater management.
3. Adjacent properties shall be protected.

D. Waterways and Watercourses

1. When a watercourse must be crossed regularly during construction, a temporary stream crossing shall be provided, and an approval obtained from the United States Army Corps of Engineers, State and Federal agencies, and the City of Fairhope.
2. When in-channel work is conducted, the channel shall be stabilized after the work is completed.
3. Any construction of a crossing of a waterway or watercourse in a floodway must be engineered with a No-Rise Certificate and shall have minimal temporary or permanent disturbance of the floodways bottom condition.
4. All on-site stormwater conveyance channels shall be designed according to the criteria outlined in the *Alabama Handbook*.
5. Outlets of all pipes and paved channels shall have adequate stabilization to prevent erosion. Riprap may be required for stabilization if vegetative measures prove to be ineffective at controlling erosion in waterways or watercourses.

E. Construction Site Access

1. A stabilized construction access (construction entrance) shall be required on all development and construction sites, including single family residence, in order to ensure sediment is not tracked on to public streets from the construction site.
2. Sediment accumulation and tracking on public right of ways, such as streets, alleys, ditches and sidewalks, is not allowed and shall be removed daily.

F. Completion of Construction Activities

1. All open channels and ditches shall be permanently vegetated upon final inspection. Seed and mulch shall not be accepted. If sod is used on slopes, corners will need to be pinned per the *Alabama Handbook*.
2. Common areas, such as detention basins, shall be permanently stabilized upon final inspection. Seed and mulch shall not be accepted.
3. Prior to final inspection, all construction waste and debris, silt fences, hay bales, inlet protection, and other BMPs shall be removed, except those required for the next phase of construction, or those deemed necessary for continued stabilization by the Building Official.
- 4.

IX. Inspections

A. The City of Fairhope shall conduct random and scheduled Erosion and Sediment Control inspections of the construction activity and shall determine compliance or non-compliance with the provisions of this Ordinance. The following inspections shall be performed at a minimum on development and construction sites, including single family residential:

1. Initial BMP inspection
2. After clearing and grading has been completed (including detention/ retention pond installation).
3. After drainage features have been installed.
4. Each phase of construction shall require a separate site inspection, before the next phase begins.
5. Before construction completion (before issuance of Certificate of Occupancy or other final building department inspection).
6. City of Fairhope Erosion and Sediment Control inspections in no way supersede or replace any State or Federal inspection requirements.

- B. The owner or contractor shall also make daily and rain event inspections of all control measures throughout the construction process to ensure the overall effectiveness of the Erosion and Sediment Control Plan.

X. Enforcement

- A. It shall be unlawful to violate any provision(s) of this Ordinance.
- B. The City of Fairhope may issue Stop Work Orders, Municipal Offense Tickets and Notice of Violations, as well as suspend construction and building inspections for the following reasons:
 - 1. Violations of the terms of the permit.
 - 2. Site development which may adversely affect the health, welfare, or safety of persons residing or working in the neighborhood.
 - 3. Site development that is detrimental to the public welfare or injurious to property or improvements in the neighborhood.
 - 4. Violations which are detrimental to the environment, including sensitive habitats and aquatic resources.
 - 5. Any offsite sedimentation
 - 6. Any water quality impact, as defined by State and/or Federal agencies.
- C. Additionally, whenever the City of Fairhope determines that off site sedimentation is occurring or has occurred as a result of a land disturbance activity, despite application and maintenance of protective practices, the person conducting the land disturbance activity or the person responsible for maintenance will be required to take additional protective action. Furthermore, if it is to be determined that sedimentation has occurred off site onto right-of-way, or into manmade stormwater drainage systems, the sediment shall be removed in its entirety. In stream and/or wetland sedimentation removal shall be determined by appropriate State and Federal agencies.

Whenever the development is determined to be in noncompliance, the owner, contractor, and/or permittee shall be notified of the violations and/or deficiencies. Upon notification, the owner/contractor/permittee shall have 48 hours to bring the site into compliance. If rainfall is predicted, then the site must be in compliance prior to that rainfall event. If the site fails to come into compliance, the owner/contractor/permittee may be found in violation of the Ordinance.

Any person who violates this Ordinance shall, upon conviction thereof, shall be guilty of a misdemeanor and shall be fined not less than \$100 or more than \$500, and /or sentenced to not more than 6 months in jail; and in addition shall pay all costs and expenses involved in the case. Each day during which any violation of any of the provisions of this Ordinance is committed, continued, or permitted shall constitute a separate offense. Nothing herein contained shall prevent the City of Fairhope from taking such other lawful actions as are necessary to prevent or remedy of any violation.

- D. Should the City of Fairhope, or an agent thereof, undertake needed remedies due to contractor negligence, the City shall bill the permittee or responsible party for an amount based on actual costs of hourly labor and materials, and at a minimum of two (2) hours at a minimum of \$150 / hour. This fee shall apply to, but not be limited to, city street; sidewalk, right of way and storm drain clean up of sedimentation and/or other pollutants. The City of Fairhope may also withhold any forthcoming Certificate of Occupancies or Final Inspections that are relative to the clean up charges, until the bill is paid in full.

XI. Remedies

In the event of imminent danger of damage to adjacent properties or downstream areas due to failure of the permittee to maintain control measures or abandonment of work, the city may perform, or cause to be performed, the work the city deems necessary to restore protection to 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 of law against the owner.

XII. Abrogation and Greater Restrictions

This ordinance is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

XIII. Interference

No person shall hinder, prevent, delay or interfere with the City while engaged in carrying out the execution or enforcement of this ordinance; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the municipality.

XIV. Permit Fees

The Permit Fee for a Land Disturbance Permit is as follows:

Residential (One and Two Family)	\$ 25
Commercial and Multi-Family (3 units or more)	\$100 up to 5 acres plus
.....	\$ 75 for each additional 5 acre increment

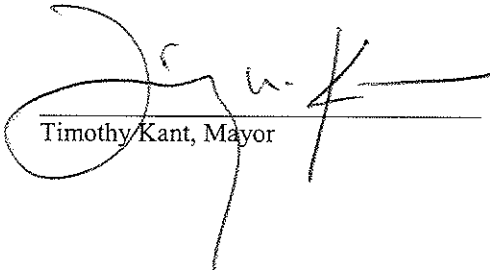
XV. Severability

The sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, then such ruling shall not affect any other paragraphs and sections, since the same would have been enacted by the municipality council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph or section.

XVI. Effective Date.

This ordinance shall take effect immediately upon its due adoption and publication as required by law.

ADOPTED THIS 10TH DAY OF AUGUST, 2009



Timothy Kant, Mayor

ATTEST:



Lisa A. Hanks, City Clerk