

**ENROLLED ORDINANCE  
NO. 2013- 150**

**INTRODUCED BY COMMISSIONER(S): Clark**

**AN ORDINANCE as required by Public Act 451 as amended, subsection 324.9105(3) to protect the land and the water resources of Lapeer County; to provide for administration and enforcement of soil erosion and sedimentation control laws; to provide for penalties and remedies; and to rescind the provisions of Lapeer County Ordinance number 2009-384.**

**ARTICLE I**

**A. AUTHORITY**

This Ordinance is adopted under the authority granted by Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. Part 91 being sections 324.9101 through 324.9123a of the Michigan Compiled Laws annotated. Part 91 is hereby incorporated into this Ordinance by reference and made a part thereof. If Part 91 is revised or amended, it shall continue to remain effective and enforceable under this Ordinance as revised, amended, or superseded. If any portion of the Part 91 is revised, amended, or rescinded, it shall continue to be effective and enforceable under this Ordinance as revised, amended, or superseded.

**B. RULES ADOPTED**

The soil and erosion and sedimentation control rules, which have been promulgated by the Michigan Department of Natural Resources and Environment, being R 323.1701 through R 323.1714 of the Michigan Administrative Code, are hereby incorporated into this Ordinance by reference and made a part thereof. If any of these rules are revised, amended, or rescinded, they shall continue to be effective and enforceable under this Ordinance as revised, amended, or superseded.

**C. DESIGNATION OF THE COUNTY ENFORCING AGENCY; AUTHORITY**

The Lapeer County Health Department is hereby designated the enforcing agency for the soil and erosion and sedimentation control in Lapeer County. The Lapeer County Health Department shall be responsible for the administration and enforcement of this Ordinance, Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and the rules promulgated under Part 91, within Lapeer County. The Lapeer County Health Department, and the agents which it designates, are hereby granted, to the extent permissible under the laws of the State of Michigan, those powers which are necessary and proper to enforce the provisions of this Ordinance and or the provisions of Part 91. Those powers shall include the authority to issue a municipal civil infraction for a violation of this Ordinance, and or a violation of Part 91, and or a violation of the Administrative Rules promulgated under Part 91.

**D. OBJECTIVES**

To prevent soil erosion and off-site sedimentation resulting from earth change activities by requiring proper provisions for drainage and the protection of soil surfaces during and after construction.

To prevent unnecessary stripping of vegetation and loss of soils, especially adjacent to surface water.

To ensure that all drainage, soil erosion and sedimentation control practices are incorporated into the site development in the planning and design process.

To ensure that all drainage, soil erosion and sedimentation control facilities are properly designed, constructed, and maintained so as to provide water quality protection and reduce the conveyance of sediment via wind and stormwater runoff.

To provide for enforcement of this Ordinance and establish penalties for violations.

## ARTICLE II

### A. DEFINITIONS

Unless otherwise stated herein, all terms shall have the meaning given to them by Part 91 and the rules promulgated thereunder. Said definitions are adopted and incorporated herein by reference.

**ACCELERATED SOIL EROSION** – the increased loss of the land surface that occurs as a result of human activities.

**AUTHORIZED PUBLIC AGENCY** - means a state agency or an agency of a local unit of government authorized under Section 9110 of Part 91 to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by it.

**AUTHORIZED REPRESENTATIVE** – means an individual having current certificates of training under Section 9123 of Part 91 and designated by the Health Officer of the Lapeer County Health Department as a person authorized to take enforcement action on behalf of the Department pursuant to this Ordinance.

**BOARD OF COMMISSIONERS** - means the Lapeer County Board of Commissioners.

**DEPARTMENT OF HEALTH OR HEALTH DEPARTMENT** – means the Lapeer County Health Department.

**EARTH CHANGE** - means a human made change in the natural cover or topography of the land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the State. Earth change does not include the practice of plowing or tilling soil for the purpose of crop production.

**LAKE** - means the Great Lakes and all natural and artificial inland lakes and /or impoundment's that have definite banks, a bed, visible evidence of a continued occurrence of water and a surface area of water that is equal to or greater than one acre. Lake does not include sediment basins and basins constructed for the sole purpose of storm water retention, cooling water or treating polluted water.

**LAND OWNER** - means the person who owns or holds a recorded easement on the property or who is engaged in construction in a public right-of-way in accordance with sections 13, 14, 15 and 16 of Act No. 368 of the Public Acts of 1925, as amended, being §§247.183, 247.185, and 247.186 of the Michigan Compiled Laws.

**MUNICIPAL ENFORCING AGENCY** - means an agency designated by a municipality under Section 9106 of Part 91 to enforce a local ordinance.

**MUNICIPALITY** - means a city, village, or charter township located in Lapeer County.

**PART 91** - means Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, being Sections 324.9101 through 324.9123a of the Michigan Compiled Laws.

**PERMANENT SOIL EROSION AND SEDIMENT CONTROL MEASURES** – means control measures which are installed or constructed to control erosion and sedimentation and which are maintained after project completion.

**PERSON** – means a property owner or any individual who is engaged in an earth change activity.

**SEDIMENT** – means solid particulate matter, including both mineral and organic matter that is in suspension in water, is being transported or has been removed from its site of origin by the action of wind, water, or gravity, and has been deposited elsewhere.

**SOIL EROSION** – means the wearing away of land by action of the wind, water, gravity, or a combination thereof.

**SOIL EROSION PERMIT** – a permit issued to authorize work to be performed under this Ordinance.

**SOIL EROSION PERMIT WAIVER** - a document granted by the local enforcing agency for an earth change activities. The landowner must submit a signed affidavit stating that the earth change will disturb less than 225 square feet or will be stabilized with-in 24 hours of the initial earth disturbance.

**STREAM** – means a river, creek, or other surface watercourse which may or may not be serving as a drain as defined in Act No. 40, of the Public Acts of 1956, as amended, being Section 280.1 *et seq* of the Michigan Compiled Laws, and which has definite banks, a bed, and visible evidence of continued occurrence of water, including the connecting waters of the Great Lakes.

**STABILIZATION** – means the establishment of vegetation or the proper placement, grading, or covering of soil to ensure its resistance to soil erosion, sliding, or other earth movement. The stabilization method shall follow the approved control plan requirements.

**SURFACE WATER** – any water including ponds, lakes, streams, rivers, county drains, storm drains, and wetlands, that holds or conveys water continually or seasonally.

**TEMPORARY SOIL EROSION AND SEDIMENTATION CONTROL MEASURES** - Means interim control measures which are installed or constructed to control soil erosion and sedimentation and which are not maintained after project completion.

**WATERS OF THE STATE** – means the Great Lakes and their connecting waters, inland lakes and streams as defined in the rules promulgated under Part 91, and wetlands regulated under Part 303.

### ARTICLE III

#### **REDUCTION OF SOIL EROSION AND SEDIMENTATION BY OWNER**

A person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of the waters of the State or to adjacent properties shall implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion and sedimentation from the land on which the earth change has been made. This Section is effective regardless of whether a Soil Erosion Permit is required.

### ARTICLE IV

#### **A. SOIL EROSION PERMIT**

Unless specifically exempted or waived under Part 91, the rules promulgated thereunder or this Ordinance, a landowner or designated agent who contracts for, allows, or engages in an earth change shall obtain a permit from the Lapeer County Health Department before commencing an earth change:

1. Which disturbs one (1) or more acres ; or
2. Is within 500 feet of a lake or stream as defined in Article II of this Ordinance.

A permit application shall be required and fee(s) paid as established by the Lapeer County Board of Commissioners. Provided a permit is obtained pursuant to this Ordinance, it shall be in the name of the landowner and not it's designated agent, if one exists.

#### **B. SOIL EROSION PERMIT WAIVERS**

The Lapeer County Health Department may grant a Soil Erosion Permit Waiver for an earth change after receiving a signed affidavit from the landowner that the earth change will disturb less than 225 square feet and that the earth change will not contribute sediment to the lakes or streams. The

issuance of a waiver shall not be construed as an exemption from the enforcement procedures if the activity otherwise results in a violation of Part 91, the Rules promulgated thereunder, or this Ordinance.

### **C. EXEMPTIONS**

Activities identified in Sections 9115 and 9115a of Part 91 and Rule 1705 promulgated under Part 91, and any future exemptions authorized by Part 91 are exempted from the permit provisions of this Ordinance. Exemptions from Soil Erosion permits shall not be construed as exemptions from enforcement procedures if the activity otherwise results in a violation of Part 91, the Rules promulgated thereunder or this Ordinance.

### **D. APPROVAL FROM OTHER GOVERNMENTAL AGENCIES**

1. Soil erosion permits and waivers issued in accordance with this Ordinance do not relieve the owner of responsibility for obtaining all other required permits or approvals from Federal, State, and /or local agencies.
2. Pursuant to Michigan Administrative Rules R 323.1711 (Building permits) Sub. Sections 1 and 2, a local agency or general law township that issues building permits shall notify the Lapeer County Health Department immediately upon receipt of a building permit application that includes activities requiring a soil erosion and sedimentation control permit.

## **ARTICLE V**

### **A. SOIL EROSION PERMIT PROCESS**

All applications for Soil Erosion Permits and Waivers shall be made through:

Lapeer County Health Department  
Environmental Health – SESC Program  
1800 Imlay City Road  
Lapeer, Michigan 48446

### **B. FEES**

All required fees and/or performance guarantees shall be paid to the Lapeer County Health Department at the time of the permit application in accordance with the fee schedule approved under separate resolution by the Lapeer County Board of Commissioners.

### **C. PERMIT APPROVAL**

The Lapeer County Health Department will make the determination to approve and issue a soil erosion and sedimentation control permit in Lapeer County. Formal notice of approval is indicated by the issuance of a soil erosion and sedimentation control permit outlining the work approved and specific permit conditions.

### **D. DENIAL OF PERMIT**

The Lapeer County Health Department will make the determination if the permit application and earth change plans do not meet the requirements of this Ordinance, Part 91, or the Rules promulgated thereunder.

### **E. PERMIT EXPIRATION**

Soil Erosion Permits shall expire automatically upon the expiration date provided on the permit.

### **F. PERMIT REVOCATION**

Soil Erosion Permits may be revoked for any of the following reasons:

1. Violation of any condition of the permit;
2. Misrepresentation or failure to disclose relevant facts in the application or plans submitted; or
3. Authorized work is abandoned or suspended.

## G. RE-APPLICATION PROCESS

In the event that earth change project continues beyond the permit expiration date, it shall be necessary to apply for a permit extension(s) that provides coverage until the completion of the project.

## ARTICLE VI

### A. PERMIT APPLICATIONS

A landowner or designated agent shall submit an application (on a form provided by the Lapeer County Health Department) and a soil erosion and sedimentation control plan. The plan shall be designed to effectively reduce "accelerated soil erosion," control any sediment generated and shall identify factors which may contribute to soil erosion or sedimentation or both. Plans shall be submitted with the application and the appropriate fee and must contain the following information required in 1 through 7.

1. Names and address, and telephone number of the owner and the plan designer and the person/contractor engaged in the earth change.
2. Legal description and /or survey drawing of the affected parcel of land with a general site location sketch.
3. A copy of the site development plan, drawn to scale of not more than 200 feet to the inch and contains the following:
  - a. location and written dimensions of all proposed construction on the site including buildings, driveways, roads, septic fields, wells, parking lots, walk-ways, retaining walls, retention basins, grassed areas, storm drainage facilities, all other construction including utilities, and other appropriate predominant land features or vegetation.
  - b. Location and written description of soil types in the earth change area.
  - c. Existing and proposed topography at a minimum of two (2) foot contour intervals extending 50 feet beyond the property lines.
  - d. Describe and delineate the physical limits of each proposed earth change area.
  - e. Location and distance of any proposed earth change to lakes or streams.
  - f. A description and location of all existing and proposed on-site drainage and dewatering facilities.
  - g. Location and description for installing and removing all proposed temporary soil erosion and sedimentation control measures.
  - h. Location and description of all permanent soil erosion and sedimentation control measures.
4. A schedule of timing and sequence for all proposed earth changes indicating dates for all events including but not limited to the following;
  - a. Installation of temporary soil erosion and sedimentation control measures.
  - b. Installation of gravel / construction access.
  - c. Land clearing.
  - d. Detention / retention/ sediment pond
  - e. Road construction
  - f. Utility installation.
  - g. Rough grade.
  - h. Final grade / seed
  - i. Installation of permanent soil erosion and sedimentation measures.
  - j. Removal of temporary soil erosion control measures.
5. Maintenance plan for permanent soil erosion and sediment control measures and statement of continued maintenance of all permanent soil erosion and sediment control measures including designation of person responsible for such maintenance. A program proposal for the continued maintenance of all permanent soil erosion and sediment control measures that remain after project completion, including the designation of the person responsible for the maintenance. Maintenance responsibilities shall become a part of any sales or exchange agreement for the land on which the permanent soil erosion control measures are located.
6. Additional information may be required to review the impact of the earth change in relation to the requirements of the Ordinance.
7. All plans shall be prepared by a person with a working knowledge of soil erosion and sedimentation control methods. For complex projects, the Lapeer County Health Department may require a professional engineer (PE) registered in Michigan, to prepare and/or seal all soil erosion and

sedimentation control plans submitted for review and approval.

**B. PERMIT MODIFICATIONS**

When it becomes necessary to engage in additional earth changes, not included on the permit and approved plans, the permit holder shall provide notice to the Lapeer County Health Department. Modifications may be added to the existing approved plan and submitted to Health Department.

**C. DESIGN STANDARDS AND SPECIFICATIONS FOR EROSION AND SEDIMENTATION CONTROL MEASURES**

1. All soil erosion and sedimentation control plans shall include provisions for temporary and permanent soil erosion and sedimentation control measures. The planned provisions and measures shall be implemented and maintained in accordance with the approved plans or the established operating procedures. In addition, a person shall install and maintain control measures in accordance with the Lapeer County Health Department, the product manufacturer, and the SESC permit. In the event of a conflict between standards or product specifications the Lapeer County Health Department shall determine what shall apply.
2. A person shall install temporary soil and sedimentation control measures before or upon commencement of the earth change activity and shall maintain the measures on a daily basis.
3. All earth changes shall limit exposed areas of any disturbed land for the shortest possible time as determined by the Lapeer County Health Department.
4. A person shall complete permanent soil erosion control measures for all slopes, channels, ditches or any disturbed land area within 5 calendar days after final grading or the final earth change has been completed. If it is not possible to permanently stabilize a disturbed area after an earth change has been completed or if significant earth change activity ceases, then a person shall maintain temporary soil erosion and sedimentation control measures until permanent soil erosion control measures are in place and the area is stabilized.
5. A person shall remove temporary soil erosion and control measures after permanent soil erosion control measures are in place and the area is stabilized.

**ARTICLE VII**

**A. INSPECTIONS**

1. At any reasonable time, an agent ( of the Lapeer County Health Department) may enter upon any private or public property for the purpose of inspecting and investigating conditions or practices that may be in violation of this Ordinance, or the provision of MCL 324.9101 et seq., or the rules promulgated thereto. However, an inspection shall comply with the United States constitution and the Michigan constitution of 1963.
2. The schedule of on-site inspections shall be determined by the Lapeer County Health Department and the County Enforcing Agent. Permitted earth change activities will be inspected as required and by the erosion and sedimentation risk potential upon receiving a complaint or becoming aware of a violation.

**ARTICLE VIII**

**A. PERFORMANCE GUARANTEES**

The Lapeer County Health Department may require a performance bond or guarantee to provide an assurance that all exposed soil surfaces will be properly stabilized should the development discontinue or proper control measures are not installed and/or maintained. The performance guarantee shall cover all anticipated expenses incurred by Lapeer County, including administrative and legal costs, required to implement and maintain soil erosion and sedimentation controls until the site is stabilized. The performance guarantee shall be in the form of cash, certified check, an irrevocable bank letter of credit, or proof that a bond is being held by another governmental body. The bond shall be in an amount that is sufficient to assure the installation and completion of proper protective and corrective measures. The bond may be drawn upon to implement and maintain soil erosion and sedimentation control measures in conformance with Part 91, the rules promulgated under Part 91, and this Ordinance. The Lapeer County Health Department may establish a list of pre-qualified contractors for use in ordering work required

under this section.

#### **B. NOTICE OF COMPLETION; CERTIFICATE OF COMPLETION**

Upon satisfactory execution of the approved plans and permit conditions and other requirements imposed under this ordinance, the landowner shall file a written "notice of completion" with the soil erosion agent control agent. When conditions allow, the agent shall make a final determination or inspection with-in 30 days of receiving the notice of completion and shall issue a certificate or letter of completion for permitted earth changes. The performance guarantee will be returned to the applicant when the permitted project site is completely and permanently stabilized and has met all of the permit requirements, the Ordinance and Part 91. If the earth change project is to be completed in different phases, the landowner may submit a written "notice of completion" for a project phase and the soil control agent may issue separate certificates of completion and authorize a proportionate release of the performance guarantee for each completed project phase.

### **ARTICLE IX**

#### **A. ENFORCEMENT;**

A designated soil erosion control agent of the Lapeer County Health Department may issue a uniform, municipal civil infraction citation, stop work order, cease and desist order, or revoke a permit upon it's findings that there is a violation of Part 91, the Rules, or this Ordinance, or finding that there is violation of a permit or an approved soil and erosion and sedimentation control plan.

#### **B. NOTICE OF DETERMINATION;**

If a soil erosion control agent determines that soil erosion or sedimentation of adjacent properties or the waters of the State has or will reasonably occur, from land in a violation of Part 91, the Rules or this Ordinance, the Lapeer County Health Department, may seek to enforce a violation by notifying the landowner through a notice of non-compliance served in person or by certified mail. The notice shall contain a description of the violation and what must be done to remedy the violation and shall specify a time to comply with Part 91, the Rules, and this Ordinance. The corrective action listed in the notification shall be implemented with-in 5 calendar days from the date the notice is mailed.

### **ARTICLE X**

#### **A. REMEDIES AND PENALTIES**

1. A person who violates Part 91, the promulgated administrative Rules thereunder, or this Ordinance is considered a municipal civil infraction and may be subject to a fine of not less than \$50.00 and not more than \$2,500.00 per incident and/or per day of the infraction.
2. A person who knowingly violates Part 91, the Rules promulgated under Part 91, or this Ordinance, or knowingly makes a false statement in an application for a permit or in a soil and erosion and sedimentation control plan is responsible for the payment of a civil fine of not less than \$100.00 or more than \$10,000.00 for each day of the violation.
3. A person who knowingly violates Part 91, the Rules promulgated under Part 91, or this Ordinance after receiving a notice of non-compliance by the Lapeer County Health Department under Article IX of this Ordinance is responsible for the payment of civil fine of not less than \$2,500.00 or more than \$25,000.00 for each day of the violation.
4. Civil fines collected under this section that are payable to the County of Lapeer shall be deposited in the Lapeer County Health Department fund.
5. Except as otherwise provided in this section, not sooner than 5 days after notice of violation ( or determination) of this part has been mailed under section 9117, if the condition of the land, in the opinion of the county enforcing agency, may result in or contribute to soil erosion or sedimentation of adjacent properties or to the waters of the state, and if soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance are not in place, the county enforcing agency may enter upon the land and construct, implement, and maintain soil erosion and sedimentation measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance. However, the enforcing agency shall not expend any monies for the cost of the work, materials, labor, and

administration without prior written notice in the notice provided in section 9117 for the person who owns the land and without the consent of the County Administrator, then the work shall not begin until at least 10 days after the notice of violation has been mailed.

6. The Health Department shall have a lien for the expenses incurred for bringing the land into conformance with Part 91, the rules promulgated under Part 91, and this Ordinance. With respect to single-family homes or multi-family residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after such date of such expenditure. With respect to other property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.
7. As an alternative to prosecuting a municipal civil infraction, the Lapeer County Health Department may enter into a consent agreement with the person, corporation, or legal entity, which is alleged to have committed the violation(s). The consent agreement shall contain (1) an admission of responsibility for the violation(s) by the responsible party, and (2) an agreement by the responsible party to remedy the violation(s) in manner that is satisfactory to the Lapeer County Health Department. The consent agreement may resolve disputed claims, provide a grace period for compliance, and assess fines, costs, and or other financial assurances as required by the Lapeer County Health Department. The consent agreement shall be made in writing, and be signed by the parties to be charged.
8. Notwithstanding any other remedy, Lapeer County may seek injunctive relief against the violator to restrain or prevent violations of the Ordinance, Part 91, and the Rules promulgated thereunder.

## ARTICLE XI

### **SEVERABILITY**

Should any section, paragraph, clause or provision of the Ordinance be declared invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision and such holding shall not affect validity of the other provisions of this Ordinance.

## ARTICLE XII

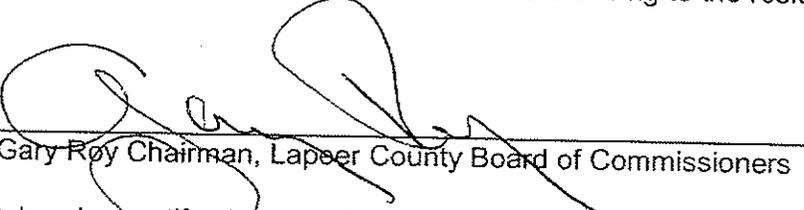
### **EFFECTIVE DATE**

This Ordinance shall take effect thirty (30) days following the adoption and publication in a newspaper of general circulation with-in the County. This Ordinance replaces all previous ordinances or resolutions adopted by Lapeer County for regulation and enforcement for soil erosion and sedimentation control.

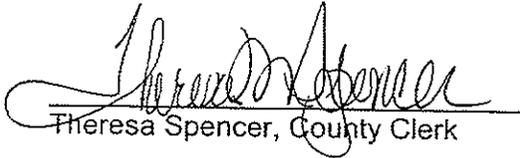
## ARTICLE XIII

### **IMPLEMENTATION**

It is the intent of the Lapeer County Board of Commissioners that this ordinance, and all the rules, policies and procedure referenced herein, shall be applied by the agents of Lapeer County with common sense, fairness and understanding to the resident of our county.

  
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Gary Roy Chairman, Lapeer County Board of Commissioners

I hereby certify that the foregoing Resolution was adopted by a vote at a meeting of the Board of Commissioners of the County of Lapeer, State of Michigan, on this 16<sup>th</sup> day of May, 2013.

  
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Theresa Spencer, County Clerk