

Chapter 17 - SOIL EROSION AND SEDIMENTATION CONTROL^[1]

Footnotes:

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Cross reference— Buildings and building regulations, ch. 5; floods, ch. 9.

State Law reference— Municipal authority to enact and enforce soil erosion and sedimentation control ordinances, G.S. 160A-~~458922~~.

ARTICLE I. - IN GENERAL

Sec. 17-1. - Short title.

The rules and regulations prescribed by this chapter shall be known and may be cited as the "City of Charlotte Soil Erosion and Sedimentation Control Ordinance."

(Code 1985, § 18-21)

Sec. 17-2. - Statement of purpose.

The sedimentation of streams, lakes, wetlands and other waters of this state constitute a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters. Control of erosion and sedimentation is deemed vital to the public interest and necessary to public health and welfare, and expenditures of funds for erosion and sedimentation control programs shall be deemed for a public purpose. It is the purpose of this chapter to provide for creation, administration, and enforcement of the program through procedures and for the adoption of mandatory standards that will permit development of the county to continue with the least detrimental effects from pollution by sedimentation. In recognition of the desirability of early coordination of sedimentation control planning, it is the intention of the city council that preconstruction conferences be held among the affected parties.

(Code 1985, § 18-22)

Sec. 17-3. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accelerated erosion means any increase over the rate of natural erosion as a result of land disturbing activity.

Act means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

Adequate erosion control measures, structures, or devices means ones that control the soil material within the land area under responsible control of the person conducting the land disturbing activity.

Affiliate means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

Being conducted means a land disturbing activity has been initiated and permanent stabilization of the site has not been completed.

Borrow means fill material that is required for on-site construction and is obtained from other locations.

Certificate of occupancy means the document required by the state building code certifying that a new building shall not be occupied or a change made in occupancy, nature or use of a building until after all required building and services systems have been inspected for compliance with the technical codes and other applicable laws and ordinances and released by the code enforcement department.

City engineer means the city engineer or the director's duly authorized representatives.

Code enforcement department means the city engineering and property management department, land development division.

Commission means the state sedimentation control commission.

Committee means the Charlotte-Mecklenburg Storm Water Advisory Committee as established by the joint resolution of the city council and the county board of commissioners, together with any amendments thereto.

Competent person means a person that has obtained and maintains in good standing an approved certification that is recognized by the city engineer.

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

Contractor conducting the land disturbing activity means any person who participates in the land disturbing activity, including, but not limited to, the general contractor and subcontractors with the responsibility for supervising the work on the tract for the changing of the natural cover or topography of the tract or any part thereof.

Days means calendar days unless otherwise specified.

Department means the state department of environment and natural resources.

Director means the director of the division of land resources of the department of environment and natural resources.

Discharge point means that point at which concentrated flow runoff leaves a tract of land.

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

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

Forest practice guidelines means the written directions related to water quality prepared by the department's division of forest resources and the United States Forest Service, including, but not limited to, the Forestry Best Management Practices Manual prepared by the department.

Ground cover means any vegetative growth or other material that renders the soil surface stable against accelerated erosion.

Lake or watercourse means 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 means any use of the land by any person in residential, governmental, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the ground cover or topography and that may cause or contribute to sedimentation.

Local government means 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 means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

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

Performance reservation means the subjective evaluation that proposed measures may or may not be adequate to meet the design standard.

Permit means the permit to conduct land disturbing activities (grading permit) issued by the city engineer after a plan is approved.

Person means 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 responsible for the violation means:

- (1) The developer or other person who has or holds himself out as having financial or operational control over the land disturbing activity;
- (2) The landowner or person in possession or control of the land who has directly or indirectly allowed the land disturbing activity or has benefited from it or has failed to comply with any section of this chapter, the act, or any order adopted pursuant to this chapter or the act; and/or
- (3) The contractor with control over the tract or the contractor conducting the land-disturbing activity.

Phase of grading means one of two types of grading: rough or fine.

Plan means an erosion and sedimentation control plan.

Sediment means 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 means 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 wetland, lake or watercourse.

Storm drainage facilities means the system of inlets, conduits, channels, ditches and appurtenances that serve to collect and convey stormwater through and from a given drainage area.

Stormwater runoff means the direct runoff of water resulting from precipitation in any form.

Subsidiary means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

Ten-year storm means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

Tract means all land and bodies of water being disturbed, developed or to be disturbed or developed as a unit, regardless of ownership.

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

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

Undertaken means 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 means the average velocity of flow through the cross section of the main channel at the peak flow of the design storm. 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.

Waste means surplus materials resulting from on-site construction and disposed of at other locations.

Watershed means any water supply watershed protection area regulated with various controls within the jurisdictional boundaries of the county.

Wetland means land having the vegetative, soil and hydrologic characteristics to be regulated by section 401 and 404 of the Federal Clean Water Act as defined by the United States Army Corps of Engineers.

Working days means days exclusive of Saturday, Sunday and county government holidays during which weather conditions or soil conditions permit land disturbing activity to be undertaken.

(Code 1985, § 18-23; Ord. No. 4051, § 1, 10-27-2008)

Cross reference— Definitions generally, § 1-2.

Sec. 17-4. - Scope and exclusions.

- (a) This chapter shall regulate land disturbing activity within the city and unincorporated areas of the county, the city's extraterritorial jurisdiction (ETJ) and sphere.
- (b) This chapter shall not apply to the following land disturbing activities:
 - (1) Activities including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 - a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
 - b. Dairy animals and dairy products.
 - c. Poultry and poultry products.
 - d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.
 - e. Bees and apiary products.
 - f. Fur-producing animals.
 - (2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in forest practice guidelines.
 - (3) Activities for which a permit is required under the Mining Act of 1971, G.S. 74-46 et seq.
 - (4) For the duration of an emergency, activities essential to protect human life.
 - (5) Land disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

(Code 1985, § 18-24; Ord. No. 4051, § 2, 10-27-2008)

Sec. 17-5. - Forest practice guidelines.

- (a) The city council adopts by reference the forest practice guidelines.

- (b) If land disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with forest practice guidelines, this chapter shall apply to such activity and any related land disturbing activity on the tract.

(Code 1985, § 18-25)

Secs. 17-6—17-30. - Reserved.

ARTICLE II. - EROSION CONTROL REQUIREMENTS

Sec. 17-31. - General requirements.

- (a) *Erosion and sedimentation control measures.* All land disturbing activities, including those that disturb less than an acre, shall provide adequate erosion control measures, structures, or devices in accordance with this chapter.
- (b) *Plan required.* No person shall initiate, direct, allow or conduct any land disturbing activity on a tract that meets any of the following criteria without having a copy of an approved erosion and sedimentation control plan on the job site or a plan approved by the city engineer with performance reservations on the job site:
 - (1) Uncovers one acre or more.
 - (2) In borrow and waste areas covered by section 17-34(f), with a disturbed area greater than one acre.
- (c) *Compliance.* Persons who submit a plan to the city engineer shall comply with sections 17-35 and 17-36 of this chapter.
- (d) *Protection of property.* Persons conducting land disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity and associated sedimentation.
- (e) *Applicability of more restrictive rules.* Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.
- (f) *Conflict of interest.* No staff member shall make a final decision on an administrative decision required by this chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this article unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the city to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the city, as determined by the city. For purposes of this article, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

(Code 1985, § 18-26)

Sec. 17-32. - Basic control objectives.

A plan may be disapproved pursuant to section 17-35 of this chapter if the plan fails to include adequate erosion control measures, structures, or devices to address the following control objectives:

- (1) *Identify critical areas.* On-site areas that are subject to severe erosion and off-site areas that are especially vulnerable to damage from erosion and/or sedimentation are to be identified and receive special attention.
- (2) *Limit on time of exposure.* All land disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- (3) *Limit on 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 of surface water.* Surface water runoff originating upgrate of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- (5) *Control of sedimentation.* All land disturbing activity is to be planned and conducted so as to prevent sedimentation damage.
- (6) *Management of 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 discharge point so as to minimize accelerated erosion of the site and to decrease sedimentation to any lake or watercourse.

(Code 1985, § 18-27)

Sec. 17-33. - 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:

- (1) *Lake, watercourse and wetland protection.* Additional erosion control measures, structures, or devices as specified in the policies and procedures statement issued by the city engineer shall be required to provide a higher level of protection to lakes, watercourses, and wetlands from sedimentation as specified in the policies and procedures statement issued by the city engineer.
- (2) *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 measures, structures, or devices. Permanent or temporary stabilization sufficient to restrain erosion is to be provided within 21 calendar days after completion of any phase of grading.
- (3) *Ground cover.* The person conducting the land-disturbing activity shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 21 calendar days following completion of construction or development. For an area of a site that is inactive for a period of 21 calendar days or longer, temporary ground cover is required.
- (4) *Prior plan approval.* No person shall initiate any land-disturbing activity on a tract if one acre or more is to be disturbed unless a plan for that activity has been submitted and approved in accordance with subsection 17-35(b).
- (5) *Pre-construction conference.* If one acre or more is to be uncovered, the person conducting land-disturbing activity or an agent of that person shall contact the city engineer at least 48 hours before commencement of the land-disturbing activity. The purpose is to arrange an on-site meeting with the city engineer or duly authorized representative to review and discuss the approved plan and the proposed land-disturbing activity.

- (6) *Monitoring.* The person conducting land-disturbing activity or an agent of that person shall inspect all erosion and sedimentation control measures at least once a week and within 24 hours after any storm event of greater than one-half inch of rain per 24 hour period or more frequently if required by state or federal law. The person performing this monitoring shall have certification approved by the city engineer.
- a. If one acre or more is to be disturbed, a record of inspections shall be kept by the person conducting the land-disturbing activity or an agent until six months after construction is completed and approved by the city engineer. The record shall include the date and time of inspection, weather conditions, any repairs or maintenance needed, and the signature and certification number of the person who performed the inspection. Additional record keeping may be required by state or federal law and as stated on the approved plans. Corrective action on the repairs and maintenance indicated on the record should be initiated within 24 hours after a rain event or within 24 hours of the last inspection if a rain event did not prompt the inspection, unless additional time is allowed by the city engineer. The date of the completion of such repairs shall be noted. The records of inspection shall be made available to the city engineer upon request.
 - b. Persons who have had a notice of violation or repeated warning about off-site sedimentation or nonmaintenance of adequate erosion control measures, structures, or devices may be required to provide the city engineer with a self-inspection record for the particular tract.

(Code 1985, § 18-28; Ord. No. 4051, § 3, 10-27-2008)

Sec. 17-34. - Design and performance standards.

- (a) *Design storm.* Adequate erosion control measures, structures, and devices shall be planned, designed, constructed and maintained so as to provide protection from the calculated maximum peak of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resource Conservation Service's (formerly Soil Conservation Service's) National Engineering Field Manual for Conservation Practices, or other acceptable calculation procedures including but not limited to the Charlotte-Mecklenburg Storm Water Design Manual.
- (b) *Innovative measures.* Erosion and sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and may be used following approval by the city engineer if it can be demonstrated that such techniques and ideas are likely to produce successful results.
- (c) *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 section of this chapter, the act, or any order adopted pursuant to this chapter or the act. After development, the landowner or person in possession or control of the land shall install and maintain all necessary permanent erosion and sediment control measures.
- (d) *Additional measures.* Whenever the city engineer determines that erosion and sedimentation will likely continue, despite installation and maintenance of protective practices, the person conducting the land disturbing activity will be required to take additional protective action.
- (e) *Storm drainage facilities protection.* Persons shall design the plan and conduct land disturbing activity so that the post-construction velocity of the ten-year storm does not exceed the maximum nonerosive velocity tolerated by the soil of the receiving watercourse or the soil of the receiving land.
- (f) *Borrow and waste areas.* When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, the following areas are considered as part of the land-disturbing activity.

- (1) Areas from which borrow is obtained that are not regulated by the provisions of the Mining Act of 1971, G.S. 74-46 et seq.; or
- (2) Waste areas for surplus materials other than landfills regulated by the department's division of solid waste management.

When the person conducting the land-disturbing activity is not the person conducting the borrow or waste disposal activity, the activity shall be considered a separate land-disturbing activity.

The responsible person conducting the borrow or waste areas shall provide adequate erosion control measures, structures, or devices and comply with all provisions of this chapter.

- (g) *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 such activity.
- (h) *Operations in lakes or watercourses.* Land disturbing activity in connection with construction in, on, over, or under a lake or watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the lake or watercourse. 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 justification for significant alteration to flow characteristic is provided.

(Code 1985, § 18-29; Ord. No. 4051, § 4, 10-27-2008)

Sec. 17-35. - Erosion and sedimentation control plans.

- (a) *Plan requirements.* All plans required for land disturbing activities as identified in section 17-31(b) of this chapter shall meet the following requirements:
 - (1) Plans shall contain architectural and 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 city engineer on request.
 - (2) Plans must contain an authorized statement of financial responsibility and ownership signed by the person financially responsible for the land disturbing activity or that person's 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 the state, an agent in the state must be designated in the statement for the purpose of receiving service of process and notice of compliance or noncompliance with the plan, the act, this chapter, or rules or orders adopted or issued pursuant to this chapter.
 - (3) 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.
 - (4) The land-disturbing activity described in the plan shall comply with all federal, state, and local water quality laws, rules and regulations, including, but not limited to, the Federal Clean Water Act. The city engineer may require supporting documentation.
 - (5) The land-disturbing activity described in the plan shall not result in a violation of rules adopted by the environmental management commission to protect riparian buffers along surface waters.
 - (6) The land-disturbing activity described in the plan shall not result in a violation of any local ordinance, law, rule or regulation, including but not limited to zoning; tree protection; stream, lake and watershed buffers; and flood plain regulations.

- (7) If the plan is submitted for land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1, et seq.), such as required on tracts involving public money or public land, a complete environmental document must be presented for review. The city engineer's time for reviewing the plan will not commence until a complete environmental document is available for review.
- (8) Copies of the plan shall be filed with the city engineer. A copy of the approved plan shall be maintained on the job site.
- (9) Effort should be made not to uncover more than 20 acres at any one time. If more than 20 acres are to be uncovered at any one time, the plan shall contain the following:
 - a. The method of limiting the time of exposure and amount of exposed area to achieve the objectives of this chapter.
 - b. A cut/fill analysis that shows where soil will be moved from one area of the tract to another as ground elevation is changed.
 - c. Construction sequence and construction phasing to justify the time and amount of exposure.
 - d. Techniques to be used to prevent sedimentation associated with larger disturbed areas.
 - e. Additional erosion control measures, structures, and devices to prevent sedimentation.
- (b) *Plan review process.* The city engineer will review each complete plan submitted and within 30 days of receipt thereof will notify the person submitting the plan, referred to as "the applicant," that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Should the plan be filed and not reviewed within the specified timeframe, the land disturbing activity may commence subject to section 17-33(5) and subsection (a)(5) of this section, and the city engineer will endeavor to review the plan on an expedited schedule. If the plan is disapproved, the city engineer shall notify the applicant and, if required, the director of such disapproval within ten days thereof. The city engineer shall advise the applicant and the director in writing as to the specific reasons that the plan was disapproved. The applicant shall have the right to appeal the city engineer's decision as provided in section 17-70 of this chapter. Plans for which land disturbing activity has not commenced within three years from the initial plan approval are void.
- (c) *Amendments to plans.* If the city engineer, either upon review of such plan or upon inspection of the job site, determines that the plan is inadequate to meet the requirements of this chapter or that a significant risk of accelerated erosion or off-site sedimentation exists, the city engineer may require a revised plan. Pending the preparation of the revised plan, work on the affected area may cease or may continue only under conditions outlined by the city engineer. Amendments or revisions to a plan must be made in written and/or graphic form and may be submitted at any time under the same requirements for submission of original plans. Until such time as the city engineer approves any amendments or revisions, the land disturbing activity shall not proceed, except in accordance with the plan as originally approved. The city engineer must approve, approve with modifications, approve with performance reservations, or deny a revised plan within 30 days of receipt, or it is deemed to be approved as submitted, unless such approval conflicts with other federal, state or local regulations.
- (d) *Grounds for disapproval of plans.* Any plan that is not in accordance with the requirements set forth in subsection (a) of this section shall be disapproved. In addition, a plan may be disapproved upon a finding that the financially responsible person or any parent or subsidiary thereof:
 - (1) Is conducting or has conducted land disturbing activity without an approved plan, or has received notice of violation or is not in compliance with the provisions of 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; or

- (4) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the act.
- (e) *Violations.* Any person engaged in land disturbing activity who fails to file a required plan in accordance with this chapter shall be deemed in willful violation of this chapter. Any person who conducts a land disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this chapter and shall, upon conviction, be punished in accordance with section 2-21.

(Code 1985, § 18-30; Ord. No. 4051, § 5, 10-27-2008)

Sec. 17-36. - Permits.

(a) No person shall undertake any land disturbing activity subject to this chapter without first obtaining a permit from the city engineer. The only exception to this requirement is a land disturbing activity that:

- (1) Has been preapproved by the city engineer at a preconstruction conference;
- (2) Is for the purpose of fighting fires;
- (3) Is for the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures are utilized to protect against off-site damage; or
- (4) Does not exceed one acre of disturbed area. In determining the size of the disturbed area, lands being developed as a unit will be aggregated regardless of ownership. Although a plan and a permit may not be required for activity comprising less than one acre, such activity is subject to all other requirements of this chapter.

(b) The permit obtained pursuant to subsection (a) shall expire one year after issuance unless work authorized by the permit has substantially commenced.

(Code 1985, § 18-31)

Secs. 17-37—17-65. - Reserved.

ARTICLE III. - ADMINISTRATION, ENFORCEMENT AND APPEALS²

Footnotes:

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Cross reference— Administration, ch. 2.

Sec. 17-66. - Inspections and investigations.

- (a) The city engineer is authorized, upon presentation of proper credentials, or inspection warrant if necessary, to inspect the sites of land disturbing activity at all reasonable hours to determine compliance with the act, this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the activity is being conducted in accordance with this chapter and the approved plan and 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 each plan approval or issuance of the permit.

- (b) No person shall willfully resist, delay, or obstruct the city engineer while the city engineer is inspecting or attempting to inspect a land disturbing activity under this chapter.
- (c) If, through inspection, 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, or has failed to comply with an approved plan, the city engineer will serve upon the landowner, the landowner's agent, or other person in possession or control of the land a written notice of violation. The notice may be served by any means authorized under G.S. 1A-1, rule 4, or other means reasonably calculated to give actual notice. Notice given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. A notice of violation shall identify the nature of the violation and set forth the measures necessary to achieve compliance with this chapter. The notice shall, if required, specify a date by which the person must comply with this chapter and shall advise that the person is subject to civil penalty or that failure to correct the violation within the time specified will subject that person to the civil penalties, including those provided in section 17-67 of this chapter or any other authorized enforcement action. The notice of violation need not be given for those violations identified in subsection (f) of this section.
- (d) In determining the measures required and the time for achieving compliance, the city engineer shall take into consideration the technology and quantity of work required and shall set reasonable and attainable time limits.
- (e) The city engineer shall use local rainfall data approved by the city engineer to determine whether the design storm identified in section 17-34(a) has been exceeded.
- (f) Penalties may be assessed concurrently with a notice of violation for any of the following:
 - (1) Failure to submit a plan.
 - (2) Performing land disturbing activities without an approved plan and preconstruction conference, or permit.
 - (3) Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties.
 - (4) A repeated violation for which a notice was previously given on the same tract or to the person responsible for the violation.
 - (5) Willful violation of this chapter.
 - (6) Failure to install or maintain adequate erosion control measures, structures, or devices per the approved plan and additional measures per section 17-34(d) such that it results in sedimentation in a wetland, lake or watercourse, or other designated protected areas.
 - (7) Failure to install or maintain adequate erosion control measures, structures, or devices per the approved plan and additional measures per section 17-34(d) such that it results in off-site sedimentation.
- (g) The city engineer shall have the power to conduct such investigation as he may reasonably deem necessary to carry out his 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. No person shall refuse entry or access to the city engineer who requests entry for purpose of inspection or investigation and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with the city engineer while in the process of carrying out official duties.
- (h) The city engineer shall also have the power to require written statements or the filing of reports under oath as a part of investigating land disturbing activity.
- (i) With regard to the development of any tract that is subject to this chapter, the code enforcement department shall not issue a certificate of occupancy where any of the following conditions exist:

- (1) There is a violation of this chapter with respect to the tract.
- (2) If there remains due and payable to the city civil penalties that have been levied against the person conducting the land disturbing activity for violations of this chapter. If a penalty is under appeal, the city engineer may require that the amount of the fine, and any other amount that the person would be required to pay under this chapter if the person loses the appeal, be placed in a refundable account or surety prior to issuing the certificate of occupancy.
- (3) The requirements of the plan have not been completed and the building for which a certificate of occupancy is requested is the only building then under construction on the tract.
- (4) On the tract which includes multiple buildings on a single parcel, the requirements of the plan have not been completed and the building for which a certificate of occupancy is requested is the last building then under construction on the tract.
- (5) On a tract which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the plan have not been completed with respect to the parcel for which the certificate of occupancy is requested.

(Code 1985, § 18-32; Ord. No. 4051, §§ 6, 7, 10-27-2008)

Sec. 17-67. - Penalties.

- (a) Any person who violates any of the sections 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. A civil penalty may be assessed from the date the violation first occurs. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation except as provided in section 17-66(f) of this chapter. 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 a penalty.
- (b) The maximum civil penalty for each violation of this chapter is \$5,000.00. Each day of continuing violation shall constitute a separate violation.
- (c) The amount of the civil penalty shall be assessed pursuant to the following:
 - (1) *Violations involving conducting a land disturbing activity without an approved plan.* Any person engaged in a land disturbing activity without a required approved plan and preconstruction conference or permit in accordance with this chapter or who initiates, directs or allows a land disturbing activity without a required, approved plan and preconstruction conference or permit shall be subject to a civil penalty of \$5,000.00 per day, per violation. The penalty may be decreased based on mitigating circumstances.
 - (2) *Violations resulting in sediment entering a wetland, lake or watercourse.* Violations resulting in sediment entering a wetland, lake or watercourse subjects the violator to a civil penalty of \$3,000.00 per day, per violation. The penalty may be increased up to \$5,000.00 per day or decreased.
 - (3) *Violations resulting in off-site sedimentation.* Violations of this chapter that result in off-site sedimentation subject the violator to a civil penalty of \$1,000.00 per day, per violation. The penalty may be increased up to \$5,000.00 per day or decreased. Violations of this type may include, but are not limited to, the following:
 - a. Conducting land disturbing activities beyond the limits of an existing permit without approval of an amended plan and permit that results in off-site sedimentation.
 - b. Failure to properly install or maintain erosion control measures in accordance with the approved plan or the Charlotte Land Development Standards Manual that results in off-site sedimentation.

- c. Failure to retain sediment from leaving a land disturbing activity as required by this chapter.
 - d. Failure to restore off-site areas affected by sedimentation during the time limitation established in a notice of violation and as prescribed in the policies and procedures statement.
 - e. Any other violation of this chapter that results in off-site sedimentation.
- (4) *Violations of chapter not resulting in off-site sedimentation.* Violations of this chapter that do not result in off-site sedimentation subject the violator to a civil penalty of \$500.00 per day, per violation. The penalty may be increased up to \$5,000.00 per day or decreased. Violations of this type may include, but are not limited to, the following:
- a. Failure to comply with the mandatory standards for land-disturbing activity as specified in section 17-33, except subsections 17-33(d) and 17-33(e).
 - b. Failure to submit to 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.
 - c. Failure to maintain adequate erosion control measures, structures, or devices to confine sediment.
 - d. Failure to follow the provisions on the approved plan.
 - e. Any other action or inaction that constitutes a violation of this chapter that did not result in off-site sedimentation.
- (d) In determining the amount of the civil penalty, the city engineer shall consider any relevant mitigating and aggravating factors, including, but not limited to:
- (1) The effect, if any, of the violation;
 - (2) The degree and extent of harm caused by the violation;
 - (3) The cost of rectifying the damage;
 - (4) Whether the violator saved money through noncompliance;
 - (5) Whether the violator took reasonable measures to comply with this chapter;
 - (6) Whether the violation was committed willfully;
 - (7) Whether the violator reported the violation to the city engineer; and
 - (8) The prior record of the violator in complying or failing to comply with this chapter or any other erosion and sedimentation control ordinance or law.

The city engineer is authorized to vary the amount of the per-diem penalty set out in subsection (c) of this section to take into account any relevant mitigating factors.

- (e) Repeat violators may be charged by a multiple of the base penalty determined in subsection (c). The penalty for a repeat violator may be doubled for each previous time the person responsible for the violation was notified of a violation of this chapter or any other soil erosion and sediment control ordinance or the act. In no case may the penalty exceed the maximum allowed by subsection (b).
- (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 section 17-70. Notice given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. If a violator does not pay a civil penalty assessed by the city engineer within 30 days after it is due, or does not request a hearing as provided in section 17-70, the city engineer shall request the city attorney to institute a civil action to recover the amount of the assessment. The civil action shall be brought in the county superior court or in any other court of competent jurisdiction.

- (g) A civil action 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.
- (h) Civil penalties collected pursuant to this chapter shall be credited to the city's general fund as nontax revenue.
- (i) Any person who knowingly or willfully violates any section 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 \$5,000.00. This is in addition to any civil penalties that may be charged. Each day of continuing violation shall constitute a separate violation.
- (j) A violation of this chapter that is not knowing or not willful shall not constitute a misdemeanor or infraction punishable under G.S. 14-4, but instead shall be subject to the civil penalties provided in this section.

(Code 1985, § 18-33; Ord. No. 4051, §§ 8—10, 10-27-2008)

Sec. 17-68. - 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 term, condition, or provision of an approved plan, the city engineer may, either before or after the institution of any other action or proceeding authorized by this chapter, authorize the city attorney to institute a civil action in the name of city for injunctive relief to restrain the violation or threatened violation. The action shall be brought pursuant to G.S. 153A-123 in the county superior court.
- (b) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this chapter.

(Code 1985, § 18-34)

Sec. 17-69. - Restoration of areas affected by failure to comply.

The city engineer may require a person who engaged in any land disturbing activity and failed to retain sediment generated by the activity 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 penalty or injunctive relief authorized under this chapter.

(Code 1985, § 18-35)

Sec. 17-70. - Appeals.

- (a) *Generally.* The stormwater advisory committee (SWAC or committee), as established by the city, as shall hear and decide appeals from the requirements of this chapter.

(1) *Conflict of Interest.* Members of SWAC shall not participate in or vote on any matter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member or if the applicant or other person subject to that decision is a person with whom the SWAC member has a close familial, business, or other associational relationship. In exercising quasi-judicial functions, members of SWAC shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons'

constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

a. Resolution of Objection. If an objection is raised to a SWAC member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of SWAC shall by majority vote rule on the objection.

b. Familial Relationship. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

(2) Oath of Office. Any member of SWAC must take an oath-of-office before commencing any duties of the committee.

(3) Meeting Minutes. Minutes of the meeting proceedings must be taken and kept pursuant to the North Carolina Retention Schedule.

(4) Rules of Procedure. A copy of the Rules of Procedure adopted by SWAC shall be maintained by the clerk or other designated official and posted on the City of Charlotte website.

(b) *Disapproval or modification of proposed plan.* Procedures for an appeal of the disapproval or modification of the proposed plan are as follows:

(1) The disapproval or modification of any proposed plan by the city engineer shall entitle the person submitting the plan (petitioner) to a public hearing before the committee if such person submits written demand for a hearing to the clerk of the committee (clerk) within 30 days after receipt of written notice of the disapproval or modification. Notice of the disapproval or modification sent by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. The demand for a hearing filed with the clerk shall be accompanied by a filing fee as established by the committee. The committee may order the refund of all or any part of the filing fee if it rules in favor of the petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this chapter, and the committee shall have no jurisdiction to hear the appeal.

(2) Within five days of receiving the demand for a hearing, the clerk shall notify the chairman of the committee of the demand for a hearing. As soon as possible after the receipt of the notice, the chairman shall set a time and place for the hearing and notify the petitioner by mail of the date, time and place of the hearing. As per G.S. § 160D-406, notices of hearings shall be mailed to (1) the person or entity whose appeal, application or request is the subject of the hearing; (2) to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and (3) to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the committee from the submission of the notice, as soon thereafter as practical, or at a special meeting. The hearing shall be conducted by the committee in accordance with subsection (c) of this section.

(3) If the committee upholds the disapproval or modification of a proposed plan following the public hearing, the petitioner shall have 30 days from the receipt of the decision to appeal the decision to the state sedimentation control commission pursuant to title 15, chapter 4B, section .0018(b) of the North Carolina Administrative Code and G.S. 113A-61(c). Notice given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(c) *Issuance of notice of violation with assessment of civil penalty.* Procedures for an appeal of the issuance of a notice of violation with an assessment of a civil penalty are as follows:

(1) The issuance of a notice of violation with an assessment of a civil penalty by the city engineer shall entitle the person responsible for the violation of this chapter (petitioner) to a public hearing

before the committee if such person submits written demand for a hearing to the clerk of the committee (clerk) within 30 days of the receipt of the notice of violation, assessment of a civil penalty or order of restoration. Notice of violation given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. The demand for a hearing filed with the clerk shall be accompanied by a filing fee as established by the committee. The committee may order the refund of all or any part of the filing fee if it rules in favor of the petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this chapter, and the committee shall have no jurisdiction to hear the appeal.

- (2) Within five days of receiving the petitioner's demand for a hearing, the clerk shall notify the chairman of the committee of the request for a hearing. As soon as possible after the receipt of the notice, the chairman shall set a time and place for the hearing and notify the petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the committee from the submission of the notice, as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to subsection (c) of this section.
- (3) Any party aggrieved by the decision of the committee with regard to the issuance of a notice of violation, assessment of civil penalties or order of restoration shall have 30 days from the receipt of the decision of the committee to file a petition for review in the nature of certiorari in Mecklenburg County Superior Court.
- (d) *Hearing procedure.* In determining appeals of administrative decisions, SWAC shall conduct an evidentiary hearing and follow the statutory procedures for all quasi-judicial decisions as required by G.S. Sec. 160D-406. The following shall be applicable to any hearing conducted by the committee pursuant to subsection (a) or (b) of this section:
 - (1) At the hearing, all parties with standing, including the petitioner and the city engineer, shall have the right to be present and to be heard, to be represented by counsel, and shall be allowed to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments. ~~to present evidence through witnesses and competent testimony relevant to the issue before the committee.~~ For appeals of administrative decisions, the administrator or staff person who made the decision (or his or her successor, if the person is no longer employed) shall be present at the hearing to appear as a witness.
 - (2) Rules of evidence shall not apply to a hearing conducted pursuant to this chapter, and the committee may give probative effect to competent, substantial and material evidence.
 - (3) At least seven days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. The parties shall submit a copy of this information to the clerk. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the committee.
 - (4) Witnesses shall testify under oath or affirmation to be administered by the court reporter or another duly authorized official.
 - (5) The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing. ~~Both the representative for the city and for the petitioner shall have the right to cross examine witnesses.~~
 - (6) At the conclusion of the hearing, the committee shall render its decision on the evidence submitted at such hearing and not otherwise.
 - a. If, after considering the evidence presented at the hearing, the committee concludes by a preponderance of the evidence that the grounds for the city engineer's actions, including the amount assessed as a civil penalty, with regard to either disapproving or modifying a

proposed plan, issuing a notice of violation, assessing a civil penalty or ordering restoration are true and substantiated, the committee shall uphold the action on the part of the city engineer.

- b. If, after considering the evidence presented at the hearing, the committee concludes by a preponderance of the evidence that the grounds for the city engineer's actions, including the amount assessed as a civil penalty, are not true and substantiated, the committee shall, as it sees fit, either reverse or modify any order, requirement, decision or determination of the city engineer. The committee bylaws will determine the number of concurring votes needed to reverse or modify any order, requirement, decision or determination of the city engineer. If the committee finds that the violation has occurred, but that in setting the amount of a penalty the city engineer has not considered or given appropriate weight to either mitigating or aggravating factors, the committee shall either decrease or increase the per-day civil penalty within the range allowed by this chapter. Any decision of the committee which modifies the amount of the civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which mitigating or aggravating factors exist and the appropriate weight that should have been given to such factors by the city engineer in setting the amount of the civil penalty levied against the petitioner.

c. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.

- (7) The committee shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the committee shall be based on findings of fact and conclusions of law to support its decision.
- (8) The committee's decision shall be reduced to writing and reflect the committee's determination of contested facts and their application to the applicable standards. The committee shall send a copy of its findings and decision to the applicant/petitioner and the city engineer. The decision of the committee shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the city engineer, applicant/petitioner, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made. If either party contemplates an appeal to a court of law, the party may request and obtain, at that party's own cost, a transcript of the proceedings.
- (9) The decision of the committee shall constitute a final decision. Any party aggrieved by a final decision of the committee may seek judicial review in the nature of certiorari instituted in the Superior Court of Mecklenburg County. Any petition for a review of the committee's decision must be filed with the clerk of superior court by the later of: (1) 30 days after the decision is effective, or (2) 30 days after a written copy of the decision is provided to the petitioning party. If the notice of the decision is sent by mail, three days shall be added to the time to file the petition.

(Code 1985, § 18-36)

Sec. 17-71. - Revisions.

The city shall incorporate revisions required by the state sedimentation control commission within eight months following receipt of the required revisions.

(Code 1985, § 18-39)