

AN ORDINANCE WITH SOIL EROSION.

THE CITY COUNCIL OF THE CITY OF OAK PARK HEIGHTS, WASHINGTON COUNTY, MINNESOTA, DOES ORDAIN:

310.010 Purpose.

The purpose of this Ordinance is to encourage and guide the use of land in accordance with the capabilities, to treat it according to its needs, to prevent the degradation of lands, streams, and rivers and to protect and promote the health, safety, and general welfare of the people of the City of Oak Park Heights.

310.020 Scope.

This Ordinance and soil loss limits specified within the Ordinance, apply to all incorporated land within the City of Oak Park Heights, including, but not limited to, agricultural land, woodland, pasture land, open space, and land subject to development activity.

310.030 Definitions.

For the purposes of this Ordinance, the following terms have the meanings given them in this Section:

- A. "Agricultural use" means use of land for the production of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock including sod, fruit, vegetables, forage and cash grains, forestry, or bees and apiary products. Wetlands, pasture, and woodlands accompanying land in agricultural use are also in agricultural use.
- B. "Conservation plan" means a document listing a set of practices that when implemented will decrease soil erosion to the soil loss limits on a particular parcel of land. The "time schedule" sets times to implement, make satisfactory progress, and complete and conservation plan.
- C. "Conservation practices" means practices and standards containing a definition, purpose, and conditions under which the practice applies, including design requirements, and specifications containing a statement of details required for installing a conservation practice, including kinds, quality, and quantity of work and materials needed to meet the standards.
  - 1. A conservation practice may be a permanent or temporary, a vegetative or structural measure that, when applied to the land, will contribute to the control of wind and water erosion and sedimentation.

2. Conservation practices may be used in a development activity area or an agricultural use area.
  3. Permanent practices are those that have an effective life of ten (10) years or more and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization structures, sediment retention structures, strip cropping, water and sediment control basins, and other permanent practices approved by the Minnesota Board of Water and Soil Resources.
  4. Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, fabric filter barriers, filter strips, storm water inlet and outlet protection and any other cultural practices approved by the Minnesota Board of Water and Soil Resources.
  5. The field office technical guide or other recognized technical procedures must be used to design, install, and certify practices.
- D. "City" means the elected governing body of the City of Oak Park Heights, or its designated officials or agents. Agents may include districts, water management organizations, joint powers boards, watershed districts, or other governmental entities responsible for resource management within the City of Oak Park Heights.
1. After adopting a Soil Loss Ordinance, the City may enter into an agreement with its agent allowing the agent to administer the functions and perform the duties of the city set out in sections 310.080, 310.090, 310.170, 310.180, and 310.210.
- E. "Development activity" means a physical disturbance, excluding agricultural use, of the land associated with activities that may result in sedimentation of adjacent lands or waters. These activities include, but are not limited to, clearing, grading, excavating, transporting, draining and filling lands. Federal, state, county, and municipal road construction designed and installed according to Department of Transportation standard specifications for construction are not development activities.
- F. "District" means a Soil and Water Conservation District organized under Minnesota Statutes, chapter 103C.
- G. "Erosion" means any process that wears away the surface of the land by the action of water, wind, ice, or gravity. Erosion can be accelerated by the activities of man and nature.

- H. "Excessive soil loss" means soil loss that is greater than the soil loss limits set out in Section 310.030.15, or which causes sedimentation or adjoining land or in a body of water, watercourse, or wetland.
- I. "Field Office Technical Guide" means the guide developed by the United States Department of Agriculture Soil Conservation Service and adopted by the district. The technical guide contains methods and procedures by which the various types of erosion can be estimated and conservation practice standards and specifications required in the application of soil and water conservation practices.
- J. "Land occupier" means a person, firm, corporation, municipality, or other legal entity that holds title to or is in possession of any land as owner, lessee, renter, tenant, or the occupier of the land if they are not the same.
- K. "Sediment" means solid mineral or organic material, that, in suspension, is being transported, or has been moved from its original site by air, water, gravity, or ice, and has been deposited at another location.
- L. "Sedimentation" means the process or action of depositing sediment that, upon inspection, is determined to have been caused by erosion.
- M. "Sedimentation control plan; time schedule" means a document listing a set of practices that, when implemented, will decrease sedimentation to the allowable level on a particular parcel of land. A "time schedule" must set times to implement, make satisfactory progress on, and complete the "sedimentation control plan."
- N. "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for growth of land plants.
- O. "Soil loss limit" means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, allowed on a particular soil. The soil loss limits for soils found in the City of Oak Park Heights are the soil loss tolerances for each soil series as described in the Field Office Technical Guide. The United States Department of Agriculture Soil Conservation Service has prepared a soil survey for Washington County that sets out the soil loss tolerances, according to the Field Office Technical Guide, for each soil series found in Washington County. The official Washington County Soil Survey is adopted by reference and declared to be a part of this Ordinance. The official Washington County Soil Survey shall be on file in the offices of the County Auditor and Zoning Administrator. The soil loss

limit for each soil series found in the City of Oak Park Heights is set forth on Attachment A annexed hereto and incorporated by reference herein.

1. Any other soil found in the City of Oak Park Heights and not listed herein has maximum soil loss tolerance of five (5) tons per acre per year.

P. "Soil loss tolerance" means the maximum level of soil erosion that will permit a high level crop productivity to be sustained economically and indefinitely.

310.040 Excessive soil loss prohibited.

A person may not cause, conduct for, or authorize an activity that causes excessive soil loss.

310.050 Agricultural activity.

A land occupier shall:

A. If engaged in an agricultural use, prevent excessive soil loss and ensure that proper management and conservation practices are being applied to the land;

B. If using wooded or open land for pasture, ensure that proper management is used to prevent excessive soil loss due to overgrazing or cattle paths;

C. If using wooded land for timber harvest, ensure that proper management is used to prevent excessive soil loss; and

D. If a body of water, watercourse, or wetland is located within an agricultural use area, wooded or open land used for pasture, or a wooded area used and conservation practices are being applied to the surrounding land.

310.060 Development activity.

A person engaged in a development activity that will disturb land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss or sediment from damaging adjacent land, bodies of water, watercourses, or wetlands to the local government or its agent for approval.

310.070 Exemptions.

An occupier of agricultural land is not violating Section 310.040 if the district report, as developed through Section 310.100, shows that existing farming practices and methods are being effectively applied to control soil loss.

- A. A land occupier engaged in federal, state, county, municipal, or township road construction and maintenance is not violating Section 310.040 if the road construction and maintenance is designed and installed according to Department of Transportation standard specifications for construction and maintenance.
  
- B. A land occupier engaged in a development activity will not be required to develop a sediment control plan and will not be considered in violation of Section 310.060 when involved in one of the following activities:
  - 1. Minor land disturbance activities such as home gardens and individual home landscaping, repairs, and maintenance work;
  - 2. Construction, installation, or maintenance of electric, telephone, and utility lines or individual service connection to utility lines;
  - 3. Septic tank lines or drainage fields unless included in an overall plan for a land development activity relating to construction of a building to be served by the septic tank system;
  - 4. Preparation for single-family residences separately built, unless in conjunction with multiple construction in subdivision development;
  - 5. Disturbance of land areas less than ten thousand (10,000) square feet for commercial or noncommercial uses, except that the governing body of the local unit of government may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception applies;
  - 6. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles; and
  - 7. Emergency work or repairs to protect life, limb or property.

SOIL EROSION CONTROL FOR AGRICULTURAL USE

310.080

Complaint.

An adversely affected land occupier, and elected or appointed official of the City or a district board member may submit a signed, written complaint to the City if conditions exist that indicate there is excessive soil loss from a tract of land.

A. Elements of complaint.

The signed, written complaint must contain:

1. The name and address of the allegedly offending land occupier;
2. The location of the tract of land with the alleged excessive soil loss;
3. Other land or water that is allegedly being affected by the excessive soil loss; and
4. A description of the nature of the alleged excessive soil loss and resulting sedimentation.

B. Complaint to district.

The City shall submit the complaint to the district for soil loss determination.

The local government shall notify the alleged offending land occupier of the complaint and that the district will be contacting the land occupier to review the site, determine the severity of the problem, and assist the land occupier in correcting the problem. The local government shall also name a contact person for further assistance.

310.090 District determination of soil loss.

The district shall determine the average annual soil loss in tons per acre per year for the tract of land cited in the complaint.

A. Entry for inspection.

The district may enter public or private land to make an inspection to determine soil loss or to complete the report. The land occupier must be notified of the time of the inspections and be given an opportunity to be present when the inspection is made.

1. The land occupier shall be notified of the time of inspection ten (10) days prior to the date of the inspection.
2. The notice shall be delivered either by personal service or by certified mail.
3. If the owner of the property and the occupier of the residence differ, both shall receive notification under the procedure stated above.

310.100 Report.

The district shall submit a report to the city that states the average soil loss in tons per acre per year for each tract of land and whether that soil loss is excessive under the applicable soil loss limits.

- A. If the soil loss is excessive, the report must include identification of existing farming practices and a preliminary conservation plan and time schedule that will prevent excessive soil loss.
- B. If the district report shows that soil loss from the tract of land is equal to or below the soil loss tolerance for that soil series, the City may dismiss the complaint and notify the land occupier.

310.110 Notice of excessive soil loss.

The City shall issue a notice of excessive soil loss to the land occupier. The notice shall:

- A. Describe the land and state the extent to which soil loss exceeds the soil loss limits;
- B. Be delivered by either personal service or by certified mail; and
- C. State a time, not more than ninety (90) days after the date of delivery of the order, by which mitigation must be commenced.

310.120 Appointment of mediator.

The City may appoint the planning and zoning director, a planning commissioner, or other city official to act as mediator. The City may also contract with a mediation center to provide mediation services.

310.130 Settlement.

The land occupier and the City must attempt to agree on a conservation plan and time schedule that will reduce soil loss to the local soil loss limits.

310.140 Filing of Settlement.

A mediated settlement must be approved by the local government and the land occupier, put in writing, and filed with the county.

310.150 Cost-Share Funds.

The land occupier has ninety (90) days after the settlement is filed to apply for state cost-share funds that will provide seventy-five percent (75%) of the cost of the permanent conservation practices. Only fifty percent (50%) cost-share may be provided if the application is not made within ninety (90) days after the settlement is filed. The land occupier must apply for fifty percent (50%) cost-share within two hundred seventy (270) days after the mediated settlement is filed.

310.160 Penalty.  
A land occupier who does not comply with the provisions of the mediated written agreement is subject to a civil penalty up to Five Hundred Dollars (\$500.00).

310.170 Forwarding Complaint to County Attorney.  
If the City and land occupier do not reach a mediated settlement, or if the land occupier refuses to participate in mediation, the City shall forward the complaint to the county attorney. The county attorney may petition the district court for a hearing under Section 310.180.

310.180 District court hearing.  
If the land occupier and the City do not reach a mediated written agreement or if the land occupier has refused mediation, the county attorney may petition the district court for a hearing. The land occupier may present a conservation plan and time schedule as an alternative to the city's conservation plan and time schedule. The court shall follow the procedure and the criteria set out at Minnesota Rules, Part 8400.4055 in issuing an order for the implementation of a conservation plan and time schedule.

A. Cost-share funds.

If the court orders the implementation of:

1. The land occupier's conservation plan and time schedule, amends the conservation plan and time schedule, or develops a new conservation plan and time schedule, the land occupier is eligible to apply for seventy-five percent (75%) cost-share funds for permanent conservation practices. The land occupier must apply for the cost-share within ninety (90) days after the court order. If the land occupier does not apply within ninety (90) days after the cost-share funds, the cost-share must be reduced to fifty percent (50%). The court shall establish a time when the land occupier is not eligible for cost-share funds if an application is not made; or
2. The conservation plan and time schedule developed by the City the land occupier shall be eligible for fifty percent (50%) cost-share funds if the land occupier applies within ninety (90) days after the court order.

B. Penalty.

If the land occupier does not comply with the provisions of the court order, the land occupier is subject to a civil penalty up to Five Hundred Dollars (\$500.00).

310.190 District Assistance.

A land occupier who has filed a mediated written settlement under Section 310.130 or who has received a court order under Section 310.180 may request the district to assist in the planning, design, and application of practices necessary to reduce soil loss to the soil loss limits set out in Section 310.030.15. The district must give the land occupier a high priority for technical and cost-share fund assistance.

310.200 Cost-Share Application.

The method of application and eligibility requirements for cost-share funds shall follow Minnesota Rules, Parts 8400.0100 to 8400.2900. If any other state or federal cost-share funds are used, the method of application and eligibility requirements shall follow the current state or federal guidelines.

SOIL EROSION CONTROL FOR DEVELOPMENT ACTIVITIES

310.210 Sedimentation Control Plan for Development Activities.

The provisions of this Section only apply to the City of Oak Park Heights jurisdiction over unincorporated (incorporated) areas.

A. Sedimentation control plan.

A person engaged in a development activity that will disturb land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss or sediment from damaging adjacent land, bodies of water, watercourses, or wetlands, to the City or its agent for approval.

B. A sedimentation control plan and time schedule must specify how the movement of soil and damage to other lands and regions will be minimized during the construction process, these methods include, but are not limited to the use of: temporary and permanent seedings, fabric, plastic, or straw barriers, mulch, sediment controls basins, or other conservation practices adequate to prevent erosion and sediment damage. A sedimentation control plan is not required to the following development activities:

1. Minor land disturbance activities such as home gardens and individual home landscaping, repairs, and maintenance work;
2. Construction, installation, or maintenance of electric and telephone utility lines or individual service connection to the utility lines;
3. Septic tank lines or drainage fields, unless included in an overall plan for a land development activity relating to construction of a building to be served by the septic tank system;
4. Preparation for single-family residences separately built, unless in conjunction with multiple construction in subdivision development;

5. Disturbance of land areas less than ten thousand (10,000) square feet for commercial or noncommercial uses, except that the governing body of the local unit of government may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception applies;
  6. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles; and
  7. Emergency work and repairs to protect life, limb, or property.
- C. The following must be addressed in developing and implementing a sedimentation control plan:
1. Stabilization of denuded areas and stockpiles;
  2. Establishment of permanent vegetation;
  3. Protection of adjacent areas;
  4. Timing and stabilization of sediment trapping measures;
  5. Use of sediment basins;
  6. Stabilization of cut and fill slopes;
  7. Stormwater management for controlling off-site erosion;
  8. Stabilization of waterways and outlets;
  9. Storm sewer inlet protection;
  10. Working in or crossing water bodies;
  11. Underground utility construction;
  12. Construction access roads;
  13. Disposition of all temporary measures; and
  14. Maintenance of all temporary and permanent urban conservation practices.

- a. The time schedule accompanying the sedimentation control plan must establish deadlines for the implementation and completion of each phase or element of the sedimentation control plan.

310.220 Minimum Planning Standard.

The Minnesota Construction Site Erosion and Sediment Control Planning Handbook shall be the minimum planning standard for a sedimentation control plan. Additionally, all development shall comply with and follow all Best Management Practices, for erosion and sedimentation control as specified in the Minnesota Pollution Control Agency Publication "Protecting Water Quality in Urban Areas" as may be amended. Any other procedures must be approved by the local unit of government and the District prior to its use.

310.230 Any conservation practice developed for the sedimentation control plan may not be located in violation of any existing ordinance the city is currently enforcing.

310.240 Review.

- A. The City may appoint the zoning or planning director, building inspector, engineer, or district to review the sedimentation control plan and time schedule.
- B. The City must forward the sedimentation control plan and time schedule to the appointed reviewer within seven (7) days of receiving the sedimentation control plan and time schedule from the land occupier.
- C. The appointed reviewer must review the sedimentation control plan and time schedule within twenty-one (21) days of receiving the plan from the City. The City shall notify the land occupier of its decision after receipt of the comments from the reviewer and no more than twenty-eight (28) days after receiving the sedimentation control plan and time schedule from the land occupier.

310.250 Permit required.

- A. If the reviewer determines that the sedimentation control plan and time schedule will control sedimentation, the City shall issue a permit that authorizes the development activity contingent upon the implementation and completion of the sedimentation control plan.
- B. If the reviewer determines that the sedimentation control plan and time schedule do not control sedimentation, the City shall not issue a permit for the development activity. The sedimentation control plan and time schedule shall be re-submitted for approval before the development activity begins.

- 310.260 Penalty.  
A person engaged in a development activity who does not secure a sedimentation control plan and time schedule or make satisfactory progress to complete the plan and schedule or make satisfactory progress to complete the plan and schedule is subject to a civil penalty. The City shall file the complaint with the County Attorney.
- 310.270 Establishment of Cost-Share Funds.  
A. Except for development activity, a land occupier is entitled to apply for cost-share funds in the amounts set in Sections 310.150 and 310.180A  
  
B. If cost-share funds are not currently available, the land occupier and district shall enter into a priority cost-share assistance contract for future cost-share funds. The priority cost-share assistance contract shall state the percentage of cost-share funds as set in Sections 310.150 and 310.180A.  
  
C. With approval of the priority cost-share assistance contract, the land occupier shall be in compliance with the mediated or court ordered agreement.
- 310.280 Variance.  
A land occupier may petition the local government for a variance from the Ordinance.  
  
A. The land occupier must document in the variance the economic hardship or technical unfeasibility for the petition.
- 310.290 More restrictive standard controls.  
In the event of any conflict between the provisions of this Ordinance and the provisions of an erosion control ordinance adopted by any township or home rule or statutory city, the more restrictive stand prevails.
- 310.300 Severability.  
If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance is not affected.
- 310.310 Incorporation of rules and documents.  
Minnesota Rules, Parts 8400.4000 to 8400.4075, are incorporated by reference into this Ordinance. The priority cost-share assistance contract is incorporated by reference into this Ordinance.
- 310.320 Provisions are cumulative.

The provisions of this Ordinance are cumulative to all other laws, ordinances, and regulations heretofore passed, or which may be passed hereafter, covering any subject matter in this Ordinance.