



CITY OF BURTON
BURTON CITY COUNCIL MEETING
FEBRUARY 1, 2021
AGENDA

Council Chambers

Regular Meeting

7:00 PM

4303 S. CENTER ROAD
BURTON, MI 48519

A. MEETING INFORMATION

Burton City Council
Hosted by Racheal Boggs

<https://cityofburton.my.webex.com/cityofburton.my/j.php?MTID=m8e403a3b476284b0c2b2938cf6460680>

Monday, Feb 1, 2021 7:00 pm | 2 hours | (UTC-05:00) Eastern Time (US & Canada)

Meeting number: 182 609 1920

Password: BCC2021 (2222021 from phones and video systems)

Join by video system

Dial 1826091920@webex.com

You can also dial 173.243.2.68 and enter your meeting number.

Join by phone

+1-415-655-0001 US Toll

Access code: 182 609 1920

B. INVOCATION LED BY: DENNIS O'KEEFE

C. THE PLEDGE OF ALLEGIANCE IS LED BY: DENNIS O'KEEFE

D. ROLL CALL

Council members attending through the virtual forum must state their name and physical location.

E. STAFF PRESENT

F. APPROVAL OF MINUTES

1. City Council - Regular Meeting - Jan 21, 2021 7:00 PM

G. ADMINISTRATIVE REPORTS

H. COMMITTEE REPORTS

I. AUDIENCE PARTICIPATION

Now is the time set-aside for members of the audience to address the Burton City Council. I would ask each individual to give their name and address for the record and to limit their comments to three (3) minutes and to speak on the topics germane to City business. Public comment may be sent to: publiccomment@burtonmi.gov. Comments received prior to the meeting will be read into the record.

J. COUNCIL DISCUSSION**K. COUNCIL ACTION**

1. Approve and authorize the payment of Attorney Billing (Doyle) 1/14/21 to 1/26/21 in the amount of \$4,128.00.
2. Approve and Authorize the sale of a parcel of land that contains improved structures to the highest bidder with the condition that a building inspection be completed within 15 days and repair made within 90 days of the closing, to give final approval for the same of this improved lot, for the sum of cash or its equivalent and authorizing the Mayor and the Clerk to execute any and all documents required to effectuate the sale as follows: Parcel 59-32-552-045, 2089 Brady Ave. to MEY Investments, Inc 6089 Atlas Valley Dr. Grand Blanc, MI 48439 for the amount of \$5,101.00.
3. Approve and authorize the Mayor and Clerk to enter into a contract with J. Ranck Electric, Inc., 1993 Gover Parkway, Mt. Pleasant, MI 48858, in the amount Of \$24,440.00, which was the lowest responsive bid, for the traffic beacon installation project at Center Road and Leith Street in the City of Burton.

L. SECOND READING OF ORDINANCE

1. Approve and Authorize second reading of an ordinance to amend Chapter 154, the compiled ordinance, of the code of ordinances of the City of Burton to regulate erosion and sedimentation control.

Agendas and minutes may be found at www.burtonmi.gov



CITY OF BURTON

BURTON CITY COUNCIL MEETING

JANUARY 21, 2021

MINUTES

Council Chambers
Regular Meeting
7:00 PM

**4303 S. CENTER ROAD
BURTON, MI 48519**

This meeting was opened by President Steven Heffner at 7:00 PM.

A. MEETING INFORMATION

Burton City Council
Hosted by Racheal Boggs

<https://cityofburton.my.webex.com/cityofburton.my/j.php?MTID=m8190b3f2555c4abd8385abcd5339a960>

Thursday, Jan 21, 2021 7:00 pm | 2 hours | (UTC-05:00) Eastern Time (US & Canada)

Meeting number: 126 395 0563

Password: BCC2021 (2222021 from phones and video systems)

06b814222dee400c95c9b22f99415745

Join by video system

Dial 1263950563@webex.com

You can also dial 173.243.2.68 and enter your meeting number.

Join by phone

+1-415-655-0001 US Toll

Access code: 126 395 0563

B. INVOCATION LED BY: DANNY WELLS

C. THE PLEDGE OF ALLEGIANCE IS LED BY: DANNY WELLS

D. ROLL CALL

Physical location of council members attending through virtual forum:

Mr. O'Keefe, Burton, MI

Mr. Smith, Burton, MI

Mr. Heffner, Burton, MI

Mrs. Conley, Burton, MI

Mr. Martinbianco, Burton, MI

Attendee Name	Title	Status	Arrived
Tom Martinbianco	Councilman	Remote	
Dennis O'Keefe	Councilman	Remote	
Steven Heffner	President	Remote	
Danny Wells	Councilman	Present	
Vaughn Smith	Councilman	Remote	
Gregory Fenner	Vice President	Present	
Christina Conley	Councilwoman	Remote	

E. STAFF PRESENT

Duane Haskins, Mayor
 Racheal Boggs, City Clerk
 Charles Abbey, HR/DPW Director
 Amanda Doyle, City Attorney
 Amber Abbey, Deputy DPW Director
 Brian Ross, Police Chief
 Kirk Wilkinson, Fire Chief
 Mike Vogt, Assistant Fire Chief
 Steve Phillips, IT Director

F. APPROVAL OF MINUTES

1. City Council - Regular Meeting - Jan 7, 2021 7:00 PM

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Dennis O'Keefe, Councilman
SECONDER:	Christina Conley, Councilwoman
AYES:	Martinbianco, O'Keefe, Heffner, Wells, Smith, Fenner, Conley

G. ADMINISTRATIVE REPORTS

Mayor Haskins shared well wishes and prayers for Mr. & Mrs. O'Keefe. I am also glad Mrs. Conley is here tonight and doing well. The Health Department has been overwhelmed with people trying to get scheduled for the COVID vaccine. So much so that it was shutting down their system. They have come up with two different avenues to help with that. Residents can call our Senior Center at 810-744-0960 to leave their name and phone number and be added to a list for the Health Department to contact them when the vaccine becomes available. Right now, the qualifications for a vaccine seem to be anyone 65 years or older or anyone with extreme health conditions. The other option is to go online to register at www.gc4me.com/alert. Hopefully, more vaccines will become readily available. Johnson & Johnson has recently reported they will have a vaccine ready by the end of the month. We have the Retail Coach available tonight to give a presentation and answer questions the council may have.

1. January 2021 Investment Report

H. PRESENTATION

1. Retail Coach presentation and contract update.

Representatives from the Retail Coach, Caroline Harrelson and Austin Farmer provided a presentation on the following retail recruitment activities:

- The Retail Coach began recruitment with the city in October 2019.
- First 90-120 days we completed a retail market analysis.
- Met with key community stakeholders, officials and business owners to identify community dynamics and retail opportunities.
- Identified retail trade areas and put together marketing materials.
- Recruitment process began in February of 2020. Active recruiting will continue through the end of first quarter 2021.
- Used consumer cell phone data to identify where people are coming from to shop

and dine in Burton.

- Spent time in surrounding communities to fill retail gaps.
- Performed a demographic analysis and void analysis.
- Compiled a list of over 60 retailers and began actively recruiting them to the community.
- Performed a retail gap analysis to identify where people are going when leaving the community to buy goods and services.
- Looked at sites for new development and redevelopment and put together site profiles to create a list of retailers and developers.
- Put together marketing and branding materials through a retail market profile highlighting opportunities.
- Using an online dashboard to send to retailers with demographic and retail data about the community.
- Created custom retailer feasibility packages for retailers outlining the analysis and opportunities we found throughout the community to convince retailers to build or find locations in Burton.
- Talked to corporate real estate teams, brokerage teams and site selectors for over 60 different retailers.
- Representing the city at multiple industry events and retail conferences with the International Council of Shopping Centers (ICSC).
- Developed a pipeline of retailers that we communicate with weekly/monthly regarding opportunities in Burton.
- Collecting and tracking feedback when retailers are not interested, why the community is not a fit, what they would need to come to the community such as site needs or demographics.
- COVID hit shortly after recruitment and new expansions were placed on hold due to the inability to travel in many cases. Retailers are beginning to open back up and over the past 6 weeks we are starting to see more movement.
- Contract extended with the city for 5-6 months through the end of the first quarter.

Mayor Haskins stated the pandemic created a stalemate. If we get things opened and moving in the right direction, it seems there is positive intent. The future will only tell us what's next.

Mrs. Abbey stated she has met with the Retail Coach at our monthly standing meetings and a few times outside of that to go over recent things that have occurred. Unfortunately, with what is happening in the outside world, it has created a difficulty with bringing in new business.

Mr. O'Keefe stated he would like a confidential list of the 60 prospects so we can see some kind of movement.

Mr. Martinbianco stated he concurs with Mr. O'Keefe. Why aren't we given a representation of what transpired at these meetings with Mrs. Abbey? We need a work product that we can see so we can evaluate whether or not our association with them is really a benefit to the community. I have not seen a traffic study or anything like that. Because we are a commuter community, you would think that would be a logical thing to start with.

Mr. Farmer stated there is a real time dashboard that provides the city with updates

on every retailer, conversations we have with them, their feedback and their status, whether they are viewing sites or if they are interested in the community or not. It has full accessibility to Amber. We limit the number of people who have access to only a couple people in the city and they can communicate that out because it can provide a competitive disadvantage if the information gets out. If the information leaks or has any publicity, it can cause issues with the recruitment process. We talk through this every month with the city at our monthly updates. This is something we do in all the communities we work with. We can certainly, in some capacity, make that visible to the council.

Mr. O'Keefe stated there are seven council people up here and we pay the bill. We are not getting the results. I don't know if somebody else in the city is viewing this but I have heard nothing positive here in regards to the 60 prospects. We are results oriented and haven't seen anything yet.

Ms. Harrelson stated the confidentiality is something we do with all communities so we can represent the city as a whole and not just certain sites. It is to have the best interest of the city at all times. You have our contact information if you have questions or there is a specific retailer you want added to the list, we can do that.

Mayor Haskins stated I understand where Mr. O'Keefe is coming from. When you are on City Council, you want to be kept in the loop on every aspect of the city as possible especially when we are talking about things that benefit the city or generating business. We have taken a risk and brought in an outside agency to help do this. Just like when Northgate was coming into the city, there are things that are kept confidential because when things get out, it can squash the deal so to speak. The administration is not trying to keep secrets. Remember a couple years ago when the rumor started that Costco was coming into the Lowe's building? Costco was not even remotely interested in coming to Burton. There's a nondisclosure statement with businesses that are potentially interested and we sure don't want to kill a deal. COVID adds a little hardship to this as well because we are not here in person to have a closed session regarding this. When we get things confirmed, we can bring them to light a little more. I understand the frustration. I hope you understand that there are no secrets. The Retail Coach has not charged us any additional fees and they are still working for us and providing the best possible service they can at this point in time until things start opening back up and we can see the progress.

Mr. Smith stated I have a sales background and understand how this works. I would like the Retail Coach to establish a confidentiality agreement with the Mayor so they can share the leads with him on a more personal basis. We have done this in the past. The Mayor can then share his perspective on how things are going. I would like to see some results or at least some probability. I suggest we look at a three month contract rather than a year contract.

Mr. Wells stated since COVID began almost a year ago, I have watched businesses go out and shut down. Only the strong are surviving. Have you done an evaluation of the city and established what businesses might work here? We are a very unique community. I would like to see some sort of map with the top five retailers that might work here in Burton. I think right now, we are at a crossroads. We could be shut down again in June or July. I don't want to waste our taxpayers money.

Ms. Harrelson asked Mr. Farmer and Mrs. Abbey if we have shared the reports, demographics or leakage gap with the council.

Mayor Haskins stated before this pandemic hit us, the Retail Coach was actively working for us and we had businesses that were interested in coming to Burton. When the pandemic hit, everything stalled. The activity has not been able to progress because of the pandemic. Michigan shut down on March 13, 2020. The State of Emergency came on March 16, 2020. I just want to make sure everyone remembers and I want it to be clear that the Retail Coach had active businesses that were looking at property in Burton. They are not here asking for a contract renewal. Hopefully things will start opening up again. Back in February, things seemed promising.

Mr. Wells stated we should at least know what kind of places are looking to come to Burton. My customers are contractors and they are out building things. They are working on two projects right now on Irish Road, a Culvers and another restaurant which is two miles from us. Before that, they built a new taco bell. We need to see something for our money.

Mr. Heffner stated he agrees with the Mayor. In the news, they reported that 30% of businesses are never going to recover after the pandemic. I believe the Retail Coach will position us to put the City of Burton in a better position to make a comeback once this pandemic is finally put to rest. This is positive. They are offering to extend the contract for a couple of months at no cost. We need to take advantage of it and see what they can do.

Mr. Fenner asked, after your studies, what is lacking in Burton? What businesses would the Retail Coach suggest that we need? What is the feedback you are hearing about the city? There should be some information or feedback that is not confidential that will help us understand where we are headed and what has been accomplished. I look forward to getting the pandemic behind us. We have an attractive city with lots of retail spots available especially some midsize to large areas. I don't know that we have the marketing capability without some assistance. I would like to give them the time to complete their project but I would like some information that we can see that will not cause problems with confidentiality.

Mr. Farmer thanked the Mayor and council. It is true that COVID has stalled some activity with this project however, we are not comfortable using that as an excuse of why we don't have a retailer with a letter of intent yet. Given the economy and the way the world has been, that is why we are willing to extend the contract at no charge as a sign of good will for the community. Relationships are more important to us than getting another year on the contract. We value our relationship. A lot of the things you have mentioned, we have done. There has been a lot of analysis on what the community needs and what it can support. We have made a lot of positive ground even with COVID causing difficulties. That does not mean that our work stopped. We have been able to get Burton on the map with a lot of retailers that wouldn't have considered the community without us presenting a compelling case to them. If we get to the end of the first quarter and you feel the value is not there, we will not keep our contacts to ourselves. We will make the connection to Amber or the city. You own the reports, data and analysis so you will have everything you need to be successful if you choose to not renew the contract and do this on your own. There

has been a lack of visibility but we do have reports and data that we have shared with the city that we can share with the council as well. Please reach out to us if there is anything else we can offer.

I. COMMITTEE REPORTS

Mr. Smith stated he just saw that the U.S. Census will not meet the deadline that President Trump wanted them to meet. They are looking to get the information out on March 6, 2021. This is a tentative date. Hopefully, we can see how we did at that time. Mayor, have you heard anything different?

Mayor Haskins stated he has reached out to Congressman Kildee's Office and State Representative Sneller and neither have been able to provide me more information.

J. AUDIENCE PARTICIPATION

Public comment may be sent to: publiccomment@burtonmi.gov. Comments received prior to the meeting will be read into the record.

No audience participation.

K. COUNCIL DISCUSSION

Mr. Martinbianco stated he is concerned about the leak at Lippincott and Genesee. I want to make sure we didn't get charged for it. I don't know what happened there, how bad it was or how much water was lost but, how do they meter it and how is the county going to account for it?

Mr. Abbey stated that is county water. They had a valve break there. We did monitor it. They take the pipe size and how many gallons of water per hour and do an estimate. We get a credit on those. That offsets the sewer charges because as you know, our sewer charges are based on the water that goes through the system. The Mayor and I and my staff have a meeting with Mr. Wright and his team on that and other issues next Tuesday. They have always been good at giving us corrections on these types of things, it hasn't been an issue.

Mr. Martinbianco would like a report after the meeting with the Drain Commissioner.

Mr. Abbey stated we will get some answers and follow up with you.

Mr. Martinbianco gave kudos to the road crew for maintaining the roads during the weather transition.

Mr. Wells asked for a status on the demolitions.

Mrs. Abbey stated we are actively working with the individuals you gave extra time to. Ellis Park was given 60 days and that will be up in a week or two. Clarice, I believe you gave 120 days and it is well underway with rehabilitation. Bristol Road Plaza has been cleaned up and is closed out. We are currently out for bid for the demolitions. Bids are due the first week of February.

Mr. Wells stated the next time we have demos come up we need to take a different approach. We are too nice. It is our fault people let their stuff go. Once these are past the deadline and they are not doing anything, do we just demo?

Mrs. Abbey said, yes. According to each of those actions you took, there is a contingency that if they fail to meet the deadline, we can go out for demolition automatically.

Mr. Smith stated he talked to Greg and Jean Johnson today. We still have about \$9,000 left from the Burton Heats On project. If you know of anyone in need, please let me know.

L. COUNCIL ACTION

1. Approve and authorize the payment of Attorney Billing (Doyle) 1/1/21 to 1/13/21 in the amount of \$3,786.25.

RESULT:	CARRIED [UNANIMOUS]
MOVER:	Dennis O'Keefe, Councilman
SECONDER:	Danny Wells, Councilman
AYES:	Martinbianco, O'Keefe, Heffner, Wells, Smith, Fenner, Conley

2. Approve and authorize the payment of Attorney Billing (Masud) 12/1/2020 to 12/23/2020 in the amount of \$1,577.00.

RESULT:	CARRIED [6 TO 1]
MOVER:	Christina Conley, Councilwoman
SECONDER:	Tom Martinbianco, Councilman
AYES:	Martinbianco, Heffner, Wells, Smith, Fenner, Conley
NAYS:	O'Keefe

3. Approve and authorize the Mayor and City Clerk to sign Resolution 2021-02 Local Government Approval for a request for a new liquor license by Brothers Brunch House, Inc., formerly known as Brians Family Restaurant located at 4145 Davison Road, Burton, MI 48509 and forward recommendation of approval to the Michigan Liquor Control Commission (MCL 436.1501).

RESULT:	CARRIED [UNANIMOUS]
MOVER:	Danny Wells, Councilman
SECONDER:	Christina Conley, Councilwoman
AYES:	Martinbianco, O'Keefe, Heffner, Wells, Smith, Fenner, Conley

4. Approve and authorize the Mayor's appointment of Kevin Burge, 1415 S. Genevieve Street, Burton, MI 48509 to the City of Burton Park and Recreation Commission as the Bentley Community Schools Representative, Term to expire January 2024.

RESULT:	CARRIED [6 TO 1]
MOVER:	Vaughn Smith, Councilman
SECONDER:	Gregory Fenner, Vice President
AYES:	Martinbianco, O'Keefe, Heffner, Wells, Smith, Fenner
NAYS:	Conley

M. FIRST READING OF ORDINANCE

Minutes Acceptance: Minutes of Jan 21, 2021 7:00 PM (APPROVAL OF MINUTES)

1. Approve and Authorize second reading of an ordinance to amend Chapter 154, the compiled ordinance, of the code of ordinances of the City of Burton to regulate erosion and sedimentation control.

Mr. Martinbianco asked how this came up without going to the Legislative Committee. I don't understand the need for it. We already have a state act that regulates land removal and repositioning. I would like to know from the City Attorney where this is coming from.

Attorney Doyle stated this is mandated by the county. It is nothing incredibly different. I went over this with Amber. There are a few terms that needed to be redefined and inserted in order for us to enforce it properly.

Mr. Martinbianco stated this is governmental overreach as far as I am concerned. I am voting no. I don't agree with it.

Attorney Doyle stated this is simply something that came down from EGLE. There were just a few text changes that were mandated from the state.

Mayor Haskins stated this may cause us to fail our audit through EGLE. Mrs. Abbey is here to answer any questions you may have.

Discussion ensued regarding the changes mandated by the state and whether or not this needs to go to the Legislative Committee.

Mrs. Abbey stated every couple of years EGLE does an audit on our soil erosion ordinance to see how we enforce it and how we do. We have chosen to do our own soil erosion enforcement for the last 20 years. Every now and again we get audited and one of the things is how well we are doing. We have passed everything with flying colors. The last thing we had to do was some text changes to our ordinance. None of this changes enforcement or adds any additional regulations. We had to add a couple words to the land owner definition, edit some requirements to the map and checklist for the applications and edited some of the act numbers. There is nothing that changes what we have been doing for the past 20 years. They required the changes as part of their standard checklist for our audit.

Mr. Martinbianco expressed his displeasure in this governmental overreach. We have done everything right over the last 20 years. This is unfair that we have to rewrite our ordinance. This is a legislative mandate that comes from Lansing and Mr. Sneller should step in and say you can't do that.

Mr. Wells asked, what type of time constraints are we under?

Mr. Heffner stated this is just the first reading. If the Legislative Committee would like to have a meeting before the next City Council Meeting, they can do that.

RESULT:	CARRIED TO SECOND READING [5 TO 2] Next: 2/1/2021 7:00 PM
MOVER:	Gregory Fenner, Vice President
SECONDER:	Dennis O'Keefe, Councilman
AYES:	O'Keefe, Heffner, Wells, Smith, Fenner
NAYS:	Martinbianco, Conley

Agendas and minutes may be found at www.burtonmi.gov

Meeting was adjourned at 8:22 PM.

Minutes Acceptance: Minutes of Jan 21, 2021 7:00 PM (APPROVAL OF MINUTES)



Burton City Council
4303 S. Center Road
Burton, MI 48519

Meeting: 02/01/21 07:00 PM
Department: Clerk's Office
Category: Attorney Billing
Prepared By: Racheal Boggs
Department Head: Racheal Boggs

K.1

SCHEDULED

AGENDA ITEM (ID # 4999)

DOC ID: 4999

**Approve and authorize the payment of Attorney Billing
(Doyle) 1/14/21 to 1/26/21 in the amount of \$4,128.00.**



SCHEDULED

AGENDA ITEM (ID # 4997)

DOC ID: 4997

Approve and Authorize the sale of a parcel of land that contains improved structures to the highest bidder with the condition that a building inspection be completed within 15 days and repair made within 90 days of the closing, to give final approval for the same of this improved lot, for the sum of cash or its equivalent and authorizing the Mayor and the Clerk to execute any and all documents required to effectuate the sale as follows: Parcel 59-32-552-045, 2089 Brady Ave. to MEY Investments, Inc 6089 Atlas Valley Dr. Grand Blanc, MI 48439 for the amount of \$5,101.00.

ATTACHMENTS:

- Bid Tab 1-2021- 2089 Brady Ave. (PDF)

Bid Opening City Property Sales

Wednesday, January 27, 2021

10:00 a.m.

City Hall, 4303 S. Center Rd. Burton, MI 48519

Bid Tab for:

Parcel	Address	Min Bid
59-32-552-045	2089 Brady Ave.	\$3,000.00

Bids Received:

Name	Amount	Bond	Signed
Mey Investments 6089 Atlas Valley Dr. Grand Blanc MI 48439	\$5,101.00	yes	yes
Daniel Helowski 3967 South Shore Dr. Lapeer MI 48446	\$5,000.00	yes	yes
Ronald Bowen 2058 Friel Burton MI 48529	\$4,100.00	yes	yes

Attachment: Bid Tab 1-2021- 2089 Brady Ave. (4997 : City Owned Property Sale)



Burton City Council
4303 S. Center Road
Burton, MI 48519

Meeting: 02/01/21 07:00 PM
Department: Mayor's Office
Category: Contract
Prepared By: Rik Hayman
Department Head: Rik Hayman

K.3

SCHEDULED

AGENDA ITEM (ID # 5000)

DOC ID: 5000

Approve and authorize the Mayor and Clerk to enter into a contract with J. Ranck Electric, Inc., 1993 Gover Parkway, Mt. Pleasant, MI 48858, in the amount Of \$24,440.00, which was the lowest responsive bid, for the traffic beacon installation project at Center Road and Leith Street in the City of Burton.

ATTACHMENTS:

- CenterLeithTrafficBeaconbidtab(PDF)

BID TABULATION				
Project: Center Road and Leith St. Traffic Beacon Bid opening at: Council Chambers/Virtual (Webex) Date & Time: Jan. 26, 2021 10:00 A.M.				
Bidder Name & Address		Rauhorn Electric, Inc. 14140 33 Mile Road Bruce Township, MI 48065	J. Ranck Electric, Inc. 1993 Grover Parkway Mt. Pleasant, MI 48858	
		\$24,614.00	\$24,440.00	
TOTAL				
5% Bid Bond		yes	yes	
Signed Bid		yes	yes	
Ranking		2	1	

Present:
Rik Hayman
Racheal Boggs
Lyndsey Burrough



SCHEDULED

AGENDA ITEM (ID # 4989)

DOC ID: 4989 A

Approve and Authorize second reading of an ordinance to amend Chapter 154, the compiled ordinance, of the code of ordinances of the City of Burton to regulate erosion and sedimentation control.

HISTORY:

01/21/21 City Council

CARRIED TO SECOND READING

Mr. Martinbianco asked how this came up without going to the Legislative Committee. I don't understand the need for it. We already have a state act that regulates land removal and repositioning. I would like to know from the City Attorney where this is coming from.

Attorney Doyle stated this is mandated by the county. It is nothing incredibly different. I went over this with Amber. There are a few terms that needed to be redefined and inserted in order for us to enforce it properly.

Mr. Martinbianco stated this is governmental overreach as far as I am concerned. I am voting no. I don't agree with it.

Attorney Doyle stated this is simply something that came down from EGLE. There were just a few text changes that were mandated from the state.

Mayor Haskins stated this may cause us to fail our audit through EGLE. Mrs. Abbey is here to answer any questions you may have.

Discussion ensued regarding the changes mandated by the state and whether or not this needs to go to the Legislative Committee.

Mrs. Abbey stated every couple of years EGLE does an audit on our soil erosion ordinance to see how we enforce it and how we do. We have chosen to do our own soil erosion enforcement for the last 20 years. Every now and again we get audited and one of the things is how well we are doing. We have passed everything with flying colors. The last thing we had to do was some text changes to our ordinance. None of this changes enforcement or adds any additional regulations. We had to add a couple words to the land owner definition, edit some requirements to the map and checklist for the applications and edited some of the act numbers. There is nothing that changes what we have been doing for the past 20 years. They required the changes as part of their standard checklist for our audit.

Mr. Martinbianco expressed his displeasure in this governmental overreach. We have done everything right over the last 20 years. This is unfair that we have to rewrite our ordinance. This is a legislative mandate that comes from Lansing and Mr. Sneller should step in and say you can't do that.

Mr. Wells asked, what type of time constraints are we under?

Mr. Heffner stated this is just the first reading. If the Legislative Committee would like to have a meeting before the next City Council Meeting, they can do that.

ATTACHMENTS:

- Chapter 154 Ord. revisionfinal. Council (PDF)

Agenda Item (ID # 4989)

Meeting of February 1, 2021

- Summary of Comments on Chapter 154 Entire Ord with highlighted changes and Summary (PDF)
- Letter for Council- Ord 154 EGLE required changes (PDF)

L.1

CITY OF BURTON
GENESEE COUNTY, MICHIGAN

ORDINANCE NO. 2021-2-154

AN ORDINANCE TO AMEND CHAPTER 154, the
COMPILED ORDINANCE, OF THE CODE OF
ORDINANCES OF THE CITY OF BURTON TO
REGULATE EROSION AND SEDIMENTATION
CONTROL

THE CITY OF BURTON ORDAINS:

SECTION I

Chapter 154 of the Code of ordinances of the City of Burton shall be amended by the modification of the following sections:

§ 154.02 DEFINITIONS.

LANDOWNER. 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 §§ 13,14,15 and 16 of Act No. 368 of the Public Acts of 1925, as amended, being M.C.L.A. §§ 247.183, 247.184, 247.185 and 247.186 and as otherwise defined in Part 91.

§ 154.04 SOIL EROSION AND SEDIMENTATION CONTROL PLAN REQUIREMENTS.

A person shall prepare 2 copies of the Soil Erosion and Sedimentation Control Plan for any earth change requiring of SESC permit. A person shall design the Plan to effectively reduce accelerated soil erosion and sedimentation and shall identify factors that may contribute to soil erosion and sedimentation, or both. The Plan shall be prepared pursuant to the guidelines set forth in the City of Burton SESC application package, and shall include, but shall not be limited to, all of the following:

1. A map or maps at a scale of not more than 200 feet to the inch.
2. Legal description of the property.
3. Site location sketch.
4. Proximity to lakes and streams.
5. Predominant land features.
6. Contour intervals or slope description.
7. Soils survey or written description of soils types.
8. Physical limits of earth change.
9. Location of existing and proposed on-site drainage and dewatering facilities.
10. Timing and sequence of each proposed earth change.
11. Location and description for installing and removing proposed temporary SESC measures, including the instructions for install which may be provided by the City of Burton if unable to provide them.
12. A description and location of all proposed permanent SESC measures, including a program proposal for continued maintenance of all permanent soil erosion control facilities which remain after project completion, including the designation of the person responsible for the maintenance. Maintenance responsibilities shall become part of any sales or exchange agreement for the land on which the permanent soil erosion control measures are located.

§ 154.05 SESC PERMIT REQUIREMENTS.

(A) A landowner or designated agent who contracts for, allows, or engages in an earth change in the city shall obtain a SESC permit from the DPW before commencing an earth change which disturbs 1 or more acres of land or which is within 500 feet of a lake or stream.

(B) An earth change activity, which does not require a SESC permit, remains subject to the enforcement procedures of this ordinance if the exempted activity causes or results in a violation of the ordinance.

§ 154.06 SESC PERMIT EXEMPTIONS.

(A) A SESC permit is not required for any of the following agricultural practices if the earth change activities do not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site, SESC Permit Exemptions are stated in Part 91 and include but are not limited to the following:

- (1) The construction, maintenance, or removal of fences and fence lines.
- (2) The removal of tree or shrub stumps or roots.
- (3) The installation of drainage tile, irrigation, or electrical lines.
- (4) The construction or maintenance of 1 or more ponds that meet all of the following:
 - (i) The earth change associated with the construction or maintenance is less than 5 acres.
 - (ii) The earth change associated with the construction or maintenance does not result in a discharge of storm water into the waters of the state.
 - (iii) The earth change associated with the construction or maintenance is not part of a larger plan of development. As used in this subparagraph, "larger plan of development" means a contiguous area where multiple separate and distinct construction activities are occurring under a single plan as identified in documentation or physical demarcation indicating where construction activities may occur.

(B) Notwithstanding any other provision of this part, a residential property owner who causes the following activities to be conducted on individual residential property owned and occupied by him or her is not required to obtain a permit under this part if the earth change activities do not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:

- (1) An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance.
- (2) Gardening, if the natural elevation of the area is not raised.
- (3) Post holes for fencing, decks, utility posts, mailboxes, or similar applications, if no additional grading or earth change occurs for use of the post holes.
- (4) Removal of tree stumps, shrub stumps, or roots resulting in an earth change not to exceed 100 square feet.
- (5) All of the following activities, if soil erosion and sedimentation controls are implemented, the earth change is stabilized within 24 hours of the initial earth disturbance, and soil erosion or sedimentation to adjacent properties or the waters of the state has not or will not reasonably occur:
 - (i) Planting of trees, shrubs, or other similar plants.
 - (ii) Seeding or reseeding of lawns of less than 1 acre if the seeded area is at least 100 feet from the waters of the state.

(iii) Seeding or reseeding of lawns closer than 100 feet from the waters of the state if the area to be seeded or reseeded does not exceed 100 square feet.

(iv) The temporary stockpiling of soil, sand, or gravel not greater than a total of 10 cubic yards on the property if the stockpiling occurs at least 100 feet from the waters of the state.

(v) Seawall maintenance that does not exceed 100 square feet.

(C) Exemptions provided in this section shall not be construed as exemptions from enforcement procedures under this part or the rules promulgated under this part if the exempted activities cause or result in a violation of this part or the rules promulgated under this part.

(D) An earth change activity that does not require a SESC permit, is not exempt from enforcement procedures if the activity, which is exempt from the SESC permit requirements, cause or results in a violation of this ordinance, Part 91 or the Rules.

§ 154.08 APPLICATION REVIEW AND SESC PERMIT PROCEDURES.

(A) Prior to issuance of any SESC Permit, the DPW Director or his or her designee may enter at all reasonable times, and upon reasonable notice of the landowner, in or upon any private or public property for the purpose of inspecting and investigating site conditions or proposed measures set forth in the soil erosion and sedimentation permit application or plan.

(B) The DPW shall approve or disapprove an application within 30 calendar days following receipt of a complete application, as may have been modified. The DPW shall notify an applicant of approval by first-class mail. If an application is disapproved, then the DPW shall advise the applicant by certified mail of its reasons for disapproval and conditions required for approval. The DPW need not notify an applicant of approval or disapproval by mail if the applicant is given written approval or disapproval of the application in person. A SESC permit given to the applicant either in person or by first-class mail constitutes approval.

(C) If applicable upon a determination that a SESC permit applicant has met all of the requirements of this ordinance, Part 91 and the Rules, the DPW shall issue a SESC permit for the proposed earth change.

(D) As a condition for the issuance of a SESC permit, the DPW may require the Applicant to deposit with the City Clerk, in the form of a certified check, an irrevocable bank letter of credit, or a surety or performance bond acceptable to the city, in an amount sufficient to assure the installation and completion of such protective or corrective measures as may be required by the DPW.

§ 154.10 STANDARDS AND SPECIFICATIONS.

(A) A person shall complete all temporary and permanent erosion and sedimentation control measures according to the approved plan and/or the SESC permit conditions.

(B) A person shall install and maintain control measures in accordance with the standards and specifications of the City of Burton and Michigan Department of Environment, Great Lakes, and Energy (EGLE).

§ 154.12 NOTICE OF VIOLATION.

(A) Within 5 days after a notice of violation has been issued under this ordinance, a person who owns the subject land shall implement and maintain soil erosion and sedimentation control measures in conformance with this ordinance, Part 91 and the Rules.

(B) No sooner than 5 days after the notice of violation has been mailed under this ordinance, if the condition of the land, in the opinion of the DPW results in or contributes to the soil erosion and sedimentation of adjacent properties or to the lake or stream, and if soil erosion and sedimentation control measures in conformance with this ordinance, Part 91 or the Rules are not in place, the DPW Director or his or her designee may authorize

entry upon the land and construct, implement, and maintain soil erosion and sedimentation control measures in conformance with this ordinance, Part 91 or the Rules.

SECTION II

All other provisions of this Chapter shall be and are hereby ratified.

SECTION III

The violation of the terms of this Ordinance shall be a municipal civil infraction.

SECTION IV

This Ordinance, or a synopsis thereof, shall be published in a newspaper of general circulation within the City of Burton, Genesee County, Michigan, and shall become effective 30 days after publication.

SECTION V

A copy of this Ordinance may be inspected at the City Hall, 4303 S. Center Road, Burton, Michigan, during regular business hours.

CITY OF BURTON,

By: Duane Haskins, MAYOR

By: Racheal Boggs, CLERK

Ordinance introduced on:

Second Reading:

Publication date:

Effective date:

CHAPTER 154:

EROSION AND SEDIMENTATION CONTROL

Section

- 154.01 Purpose
- 154.02 Definitions
- 154.03 Earth change requirements
- 154.04 Soil erosion and sedimentation control plan requirements
- 154.05 SESC permit requirements
- 154.06 SESC permit exemptions
- 154.07 Application for SESC permit fee
- 154.08 Application review and SESC permit procedures
- 154.09 Soil and sediment removal, design, installation and control measures
- 154.10 Standards and specifications
- 154.11 Enforcement
- 154.12 Notice of violation
- 154.13 Reimbursement to city; lien for expenses; collection
- 154.14 Penalties

§ 154.01 PURPOSE.

The purpose of this ordinance is to set forth the standards to control soil erosion and sedimentation within the city by requiring compliance with the Rules established in Part 91, Soil Erosion and Sedimentation Control, of the Natural Resources and Environmental Protection Act 451 of Public Acts of Michigan of 1994, as amended ("Part 91"). The city hereby incorporates by reference Part 91 and the Rules.

§ 154.02 DEFINITIONS.

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DEPARTMENT OF PUBLIC WORKS or DPW. The City of Burton Department of Public Works, which is designated as the municipal enforcing agency for the City of Burton.

DPW DIRECTOR. The City of Burton Director of Public works.

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

LAKE. The Great Lakes and all natural and artificial inland lakes or impoundments that have definite banks, a bed, visible evidence of continued occurrence or water, and a surface area of water that is equal to or greater than 1 acre. **LAKE** does not include sediment basins and basins constructed for the sole purpose of storm water retention, cooling water, or treating polluted water.

1

LANDOWNER. 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 §§ 13,14,15 and 16 of Act No. 368 of the Public Acts of 1925, as amended, being M.C.L.A. §§ 247.183, 247.184, 247.185 and 247.186 and as otherwise defined in Part 91.

NON-EROSIVE VELOCITY. A speed of water movement that is not conducive to the development of accelerated soil erosion.

PART 91. Part 91 of the Natural Resources and Environmental Protection Act, being Public Act 451 of the Public Acts of Michigan of 1994, as amended.

PERMANENT SOIL EROSION AND SEDIMENTATION CONTROL MEASURES. Control measures which are installed or constructed to control soil erosion and sedimentation and which are maintained after project completion.

PERSON. Any individual, firm, corporation, partnership, association, trust, agency or other entity.

REPEAT OFFENSE. A second (or any subsequent) municipal civil infraction violation of the same requirement or provision of this ordinance, which is committed by the same person within any 6 month period and for which the person

Summary of Comments on Chapter 154 Entire Ord with highlighted changes - Nuance Power PDF Advanced

Page:1



Number: 1 Author:abbeya Subject:Note Date:1/28/2021 11:54:01 AM

The definition of Landowner was modified in Part 91 since our ordinance was developed. EGLE suggested just adding “and as otherwise defined in Part 91” or we could have to modify the exact definition every time that the changed in Part 91 again.

admits responsibility or is determined to be responsible.

RULES. Part 91 Rules promulgated by the State of Michigan Department of Environmental Quality, pursuant to the Administrative Procedures Act, Act 306 of the Public Acts of Michigan 1969, as amended.

SEDIMENT. Solid particulate matter, including both mineral and organic, which is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water or gravity and has been deposited elsewhere.

SOIL EROSION. The wearing away of land by the action of wind, water, gravity or a combination of wind, water or gravity.

STABILIZATION. 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.

STREAM. A river, creek, or other surface watercourse which may or may not be serving as a drain, as defined in Public Act 40 of 1956, as amended, and which has definite banks, a bed, and visible evidence of the continued flow or continued occurrence of water, including the connecting waters of the Great Lakes.

TEMPORARY SOIL EROSION AND SEDIMENTATION CONTROL MEASURES. 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. The Great Lakes and their connecting water, inland lakes and streams as defined in Part 91 and the Rules, and wetlands which are regulated under Part 303 of Public Act 451 of 1994, as amended.

WETLANDS. Land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh, which is regulated by Part 303 of Public Act 451 of 1994, as amended.

§ 154.03 EARTH CHANGE REQUIREMENTS.

(A) A person shall conduct an earth change in a manner that will effectively reduce accelerated soil erosion and resulting sedimentation.

(B) A person engaged in an earth change, as identified herein, shall plan, implement, and maintain acceptable soil erosion and sedimentation control measures in conformance with this ordinance, which effectively reduce accelerated soil erosion and off-site sedimentation.

(C) A person shall set forth soil erosion and sedimentation control measures in a plan as prescribed by this ordinance. A person shall take the plan available for inspection at all times at the site of the earth change.

(D) A person shall obtain a SESC permit containing and all information prescribed herein and make the SESC permit available for inspection at the site of the earth change, Part 91 or the Rules.

§ 154.04 SOIL EROSION AND SEDIMENTATION CONTROL PLAN REQUIREMENTS.

A person shall ¹ prepare 2 copies of the Soil Erosion and Sedimentation Control Plan for any earth change requiring of SESC permit. A person shall design the Plan to effectively reduce accelerated soil erosion and sedimentation and shall identify factors that may contribute to soil erosion and sedimentation, or both. The Plan shall be prepared pursuant to the guidelines set forth in the City of Burton SESC application package, and shall include, but shall not be limited to, all of the following:

- ² 1. A map or maps at a scale of not more than 200 feet to the inch.
- ³ 2. Legal description of the property.
3. Site location sketch.
4. Proximity to lakes and streams.
5. Predominant land features.
6. Contour intervals or slope description.
7. Soils survey or written description of soils types.
8. Physical limits of earth change.
9. Location of existing and proposed on-site drainage and dewatering facilities.
10. Timing and sequence of each proposed earth change.
11. Location and description for installing and removing proposed temporary SESC measures, including the instructions for install which may be provided by the City of Burton if unable to provide them.
12. A description and location of all proposed permanent SESC measures, including a program proposal for continued maintenance of all permanent soil erosion control facilities which remain after project completion, including the designation of the person responsible for the maintenance. Maintenance responsibilities shall become part of any sales or exchange agreement for the land on which the permanent soil erosion control measures are located.

§ 154.05 SESC PERMIT REQUIREMENTS.

(A) A landowner or designated agent who contracts for, allows, or engages in an earth change in the city shall obtain a SESC permit from the DPW before commencing an earth change which disturbs 1 or more acres of land or which is within 500 feet of a lake or stream.



Number: 1 Author:abbeya Subject:Note Date:1/28/2021 11:55:11 AM

The old Ord stated 3 copies of the SESC plan shall be prepared but our residential application states that 2 plans shall be submitted. Made the change to 2 to have the two numbers be the same. With technology we are able to use scanning and have the plans available for the inspector in the field without carrying around the paper copy.



Number: 2 Author:abbeya Subject:Note Date:1/28/2021 11:31:10 AM

The checklist in the Ordinance did not match the checklist from the current application. The SESC application was more detailed and less confusing so EGLE suggested that we take the checklist straight from the application and include the exact wording the updated Ordinance



Number: 3 Author:abbeya Subject:Note Date:1/28/2021 11:56:12 AM

Our old ordinance requires a permit within "waters of the state". That was ok but it was more restrictive than Part 91 which only states "lake or stream". So we removed the additional restriction

(B) An earth change activity, which does not require a SESC permit, remains subject to the enforcement procedures of this ordinance if the exempted activity causes or results in a violation of the ordinance.

§ 154.06 SESC PERMIT EXEMPTIONS.

1. A) A SESC permit is not required for any of the following agricultural practices if the earth change activities do not result in contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site, SESC Permit Exemptions are stated in Part 91 and include but are not limited to the following:

(1) The construction, maintenance, or removal of fences and fence lines.

(2) The removal of tree or shrub stumps or roots.

(3) The installation of drainage tile, irrigation, or electrical lines.

(4) The construction or maintenance of 1 or more ponds that meet all of the following:

(i) The earth change associated with the construction or maintenance is less than 5 acres.

(ii) The earth change associated with the construction or maintenance does not result in a discharge of storm water into the waters of the state.

(iii) The earth change associated with the construction or maintenance is not part of a larger plan of development. As used in this subparagraph, "larger plan of development" means a contiguous area where multiple separate and distinct construction activities are occurring under a single plan as identified in documentation or physical demarcation indicating where construction activities may occur.

(B) Notwithstanding any other provision of this part, a residential property owner who causes the following activities to be conducted on individual residential property owned and occupied by him or her is not required to obtain a permit under this part if the earth change activities do not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:

(1) An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance.

(2) Gardening, if the natural elevation of the area is not raised.

(3) Post holes for fencing, decks, utility posts, mailboxes, or similar applications, if no additional grading or earth change occurs for use of the post holes.

(4) Removal of tree stumps, shrub stumps, or roots resulting in an earth change not to exceed 100 square feet.

(5) All of the following activities, if soil erosion and sedimentation controls are implemented, the earth change is stabilized within 24 hours of the initial earth disturbance, and soil erosion or sedimentation to adjacent properties or the waters of the state has not or will not reasonably occur:

(i) Planting of trees, shrubs, or other similar plants.

(ii) Seeding or reseeded of lawns of less than 1 acre if the seeded area is at least 100 feet from the waters of the state.

(iii) Seeding or reseeded of lawns closer than 100 feet from the waters of the state if the area to be seeded or reseeded does not exceed 100 square feet.

(iv) The temporary stockpiling of soil, sand, or gravel not greater than a total of 10 cubic yards on the property if the stockpiling occurs at least 100 feet from the waters of the state.

(v) Seawall maintenance that does not exceed 100 square feet.

(C) Exemptions provided in this section shall not be construed as exemptions from enforcement procedures under this part or the rules promulgated under this part if the exempted activities cause or result in a violation of this part or the rules promulgated under this part.

(D) An earth change activity that does not require a SESC permit, is not exempt from enforcement procedures if the activity, which is exempt from the SESC permit requirements, cause or results in a violation of this ordinance, Part 91 or the Rules.

§ 154.07 APPLICATION FOR SESC PERMIT FEE.

(A) Applications for soil erosion and sedimentation control permits shall be available at the DPW offices. Any landowner or designated agent shall submit an application to the DPW, which includes a Soil Erosion and Sedimentation Control Plan, as set forth in this ordinance, and any other documentation that the DPW may require.

(B) Any landowner or designated agent seeking a soil erosion and sedimentation permit shall submit a review fee with the SESC permit application. The review fee schedule shall be established by resolution of City Council and may be amended from time to time by resolution of City Council.

§ 154.08 APPLICATION REVIEW AND SESC PERMIT PROCEDURES.

(A) Prior to issuance of any SESC Permit, the DPW Director or his or her designee may enter at all reasonable times, and upon reasonable notice of the landowner, in or upon any private or public property for the purpose of inspecting and investigating site conditions or proposed measures set forth in the soil erosion and sedimentation permit application.



Number: 1 Author:abbeya Subject:Note Date:1/28/2021 11:35:11 AM

SESC permit exemptions - this does not contain all the exemptions under the Part 91. So we added the additional exemptions that EGLE has made to activities that will not require SESC permits

(B) The DPW shall approve or disapprove an application within 30 calendar days following receipt of a complete application, as may have been modified. The DPW shall notify an applicant of approval by first-class mail. If an application is disapproved, then the DPW shall advise the applicant by certified mail of its reasons for disapproval and conditions required for approval. The DPW need not notify an applicant of approval or disapproval by mail if the applicant is given written approval or disapproval of the application in person. A SESC permit given to the applicant either in person or by first-class mail constitutes approval.

1. If applicable upon a determination that a SESC permit applicant has met all of the requirements of this ordinance, Part 91 and the Rules, the DPW shall issue a SESC permit for the proposed earth change.

(D) As a condition for the issuance of a SESC permit, the DPW may require the Applicant to deposit with the City Clerk, in the form of a certified check, an irrevocable bank letter of credit, or a surety or performance bond acceptable to the city, in an amount sufficient to assure the installation and completion of such protective or corrective measures as may be required by the DPW.

§ 154.09 SOIL AND SEDIMENT REMOVAL, DESIGN, INSTALLATION AND CONTROL MEASURES.

(A) A person shall design, construct and complete an earth change in a manner that limits the exposed area of any disturbed land for the shortest possible period of time, as determined by the DPW.

(B) A person shall remove sediment caused by accelerated soil erosion from runoff water before it leaves the site of the earth change.

(C) A person shall design a temporary or permanent control measure that is designed and constructed for the conveyance of water around, through, or from the earth change area to limit the water flow to a non-erosive velocity.

(D) A person shall install temporary soil erosion and sedimentation control measures before or upon commencement of the earth change activity and shall maintain the measures on a daily basis. A person shall remove temporary soil erosion and sedimentation control measures after permanent soil erosion measures are in place and the area is stabilized. A person shall stabilize the area with permanent soil erosion control measures under approved standards and specifications as prescribed by this ordinance.

(E) 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.

§ 154.10 STANDARDS AND SPECIFICATIONS.

(A) A person shall complete all temporary and permanent erosion and sedimentation control measures according to the approved plan and/or the SESC permit conditions.

2. A person shall install and maintain control measures in accordance with the standards and specifications of the City of Detroit and Michigan Department of Environment, Great Lakes, and Energy (EGLE).

§ 154.11 ENFORCEMENT.

(A) An authorized municipal official may issue a cease and desist order or the DPW may revoke a SESC permit upon its finding that there is a violation of this ordinance, Part 91 or the Rules, or upon its finding that there is a violation of SESC permit or an approved Soil Erosion and Sedimentation Control Plan.

(B) Notwithstanding the existence or pursuit of any other remedy, the city may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against a person to restrain or prevent violations of this ordinance.

(C) The DPW Director or his or her designee may enter, at all reasonable times, in or upon any private or public property for the purpose of inspecting and investigating conditions or practices that may be in violation of this ordinance.

(D) If the DPW determines that soil erosion or sedimentation of adjacent properties or lake or stream has or will reasonably occur from land in violation of this ordinance, the DPW may seek to enforce a violation of this ordinance by notifying the person who owns the land, by mail, with return receipt requested, of its determination. 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 this ordinance.

§ 154.12 NOTICE OF VIOLATION.

(A) Within 5 days after a notice of violation has been issued under this ordinance, a person who owns the subject land shall implement and maintain soil erosion and sedimentation control measures in conformance with this ordinance, Part 91 and the Rules.

3. No sooner than 5 days after the notice of violation has been mailed under this ordinance, if the condition of the land, in the opinion of the DPW results in or contributes to the soil erosion and sedimentation of adjacent properties or to the lake or stream, and if soil erosion and sedimentation control measures in conformance with this ordinance, Part 91 or the Rules are not in place, the DPW Director or his or her designee may authorize entry upon the land and construct,



Number: 1 Author:abbeya Subject:Note Date:1/28/2021 11:57:01 AM

Revised the sentence clarify because the wording was confusing from the original Ordinance

went from:

Upon a determination that a SESC permit applicant has met all of the requirements of this ordinance, Part 91 and the Rules. If applicable, the DPW shall issue a SESC permit for the proposed earth change.

to what is here



Number: 2 Author:abbeya Subject:Note Date:1/28/2021 11:39:37 AM

Removed the reference to other entities standards and specifications, and only include the City of Burton and EGLE.

Changed DEQ to EGLE



Number: 3 Author:abbeya Subject:Note Date:1/28/2021 11:57:38 AM

Changed out the wording "waters of the State" to "lake or stream" because it was less restrictive and complies with the EGLE standard

Also removed (C) because the 10 days conflicted with the 5 days. The City is allowed under the Part 91 to bring the property into compliance after the 5th day and re coop any costs that are incurred.

implement, and maintain soil erosion and sedimentation control measures in conformance with this ordinance, Part 91 or the Rules.

§ 154.13 REIMBURSEMENT TO CITY; LIEN FOR EXPENSES; COLLECTION.

(A) All expenses incurred by the city under this ordinance, to construct, implement, and maintain soil erosion and sedimentation control measures and to bring land into conformance with this ordinance, Part 91 or the Rules shall be reimbursed to the city by the person who owns the land.

(B) The city shall have a lien for the expenses incurred under this ordinance of bringing the land into conformance with this ordinance, Part 91 or the Rules. However, with respect to property being currently occupied for single-family or multi-family residential uses, the lien for the expenses shall have priority over all liens and encumbrances filed or recorded after the date of the expenditure. With respect to all other property, the lien for the expenses shall be collected and treated in the same manner as provided for property tax liens under the General Property Tax Act, being Act 206 of the Public Acts of Michigan 1893, as amended.

§ 154.14 PENALTIES.

(A) Any person who shall violate this ordinance shall be deemed responsible for a municipal civil infraction.

(B) In addition to such fines, costs and other penalties which may apply for the violation of any city municipal civil infraction, a person who violates Part 91, the Rules or this ordinance shall be subject to such penalties, fines and other relief as provided in Part 91.

This page contains no comments

January 29, 2021

Council:

I have been requested to send a copy of the letter from EGLE requiring the changes. I have highlighted the comments made by EGLE that directly relate to the Ordinance change.

Please keep in mind that our Audit began with emails in March of 2020. When the Pandemic hit, the audit paused with EGLE until August when she was able to come to the DPW for our Site visit. We have checked off all items that were requested. However, we waited on the Ordinance hoping that we would be back to face to face meetings and we would be able to explain the changes in person, EGLE also thought that would be the best avenue. Since it appears virtual meetings will be continuing for some time now, EGLE asked us to move forward with the revisions.

Please let me know if you have any further questions on the matter.

Thank you,

Amber Abbey

Attachment: Letter for Council- Ord 154 EGLE required changes (4989 : Second Reading of Ordinance)

Amber N. Abbey

From: Meyer, Cheri (EGLE) <MeyerC2@michigan.gov>
Sent: Friday, April 10, 2020 10:38 AM
To: Amber N. Abbey
Subject: Burton Part 91 document comments
Attachments: wrd-stormwater-PermitObTransfer_391930_7.doc; wrd-stormwater-PermitTransferForm_391932_7.doc

Hi Amber,

I have reviewed the documents you forwarded for the City of Burton's Municipal Enforcing Agency's Part 91 Audit and have the following questions and comments. Also I didn't see an example permit or an application for commercial projects. Can you please forward?

SESC Waiver

1. There are other activities that are exempted from Part 91. Out of curiosity, how did choose which to include? I'm just wondering whether it may be good to include others as well.
2. The first paragraph allows the designated agent to put in his name but the form needs to be signed by the owner. Can it be signed by the designated agent if he has a written release by the owner? If so, I would add a line for the designated owner as well.
3. The following paragraphs do not include the correct citation. I've revised as follows.

The proposed project involves the planting of trees, shrubs, or other similar plants and soil erosion and sedimentation controls will be implemented as required, the earth change will be stabilized within twenty-four (24) hours of the initial earth disturbance, and soil erosion or sedimentation will not reasonably occur to any adjacent properties or the waters of the state. (See MCL § 324.9115a(2)(e)(i)).

The proposed project involves the seeding or reseeding of lawns of less than one (1) acre, the seeded area is at least one hundred feet (100') from the waters of the state, and soil erosion and sedimentation controls will be implemented as required, the earth change will not be stabilized within twenty-four (24) hours of the initial earth disturbance, and soil erosion or sedimentation will not reasonably occur to any adjacent properties or the waters of the state. (See MCL § 324.9115a(2)(e)(ii)).

The proposed project involves the seeding or reseeding of lawns closer than one hundred feet (100') from the waters of the state if the area to be seeded or reseeded does not exceed one hundred square feet (100 ft²), and soil erosion and sedimentation controls will be implemented as required, the earth change will be stabilized within twenty-four (24) hours of the initial earth disturbance, and soil erosion or sedimentation will not reasonably occur to any adjacent properties or the waters of the state. (See MCL § 324.9115a(2)(e)(iii)).

The proposed project involves the temporary stockpiling of soil, sand, or gravel not greater than a total of ten cubic yards (10 yds³) on the property, the stockpiling will occur at least one hundred feet (100') from the waters of the state, and soil erosion and sedimentation controls will be implemented as required, the earth change will be stabilized within twenty-four (24) hours of the initial earth disturbance, and soil erosion or sedimentation will not reasonably occur to any adjacent properties or the waters of the state. (See MCL § 324.9115a(2)(e)(iv)).

Designated agent is defined as "a person who has written authorization from the landowner to sign the application and secure a permit in the landowner's name." (See R323.1701(1)(c)).

4. In regards to the following paragraph, just be aware that ALL earth change activities can be subject to enforcement under Part 91 regardless if a permit is required or a waiver is issued. Let me know if you want to discuss further (have since seen you mention this in your ordinance but I want to make sure you don't have questions about enforcing Part 91 outside of permits).

I understand that if a soil erosion and sedimentation control permit OR a waiver of a soil erosion and sedimentation control permit is issued, the above-mentioned property is not exempt from enforcement procedures under Part 91, of Act No. 451 of the Public Acts of 1994, as amended, being MCL § 324.32501 et. seq.

SESC Application – GOOD

SESC Plan Submittal Checklist

1. FYI that there is no requirement for the scale of the site location sketch.
A vicinity sketch to scale of 1 inch = 200 feet, indicating the site location, as well as the adjacent properties within 500 feet of the site boundaries.
2. FYI that Part 91 requires no more than 200 ft per inch. Do you want to make this more restrictive? Also, you have two #2's. This should be #3.
*A SESC site plan (scale of not more than 1" = 100', or **scale agreeable with the director**) of the property with the items below clearly labeled: (Residential submitted on letter or legal paper)*
3. Much of what you have is more restrictive than Part 91 and it's not stated like this in your ordinance. We should discuss if it's necessary to have all this because if you ask for it and then they have to give it to you. Let's discuss further because this checklist should either be amended or your ordinance will need to be revised.
4. Curious why you are requiring the MUKS? They still need to have installation instructions for SESC measures with this. For residential projects I find that sometimes it's easier for the agency to print out the instructions and just attach them to the plan. When you send the approved plan back to them they will then have the instructions. Same with soils info.
Description and location of ALL temporary and permanent soil erosion measures, with measures clearly drafted and labeled with the Mich. Unified Keying System.
5. Also need soils survey or description of soils, location and description for installing and removing all temporary SESC measures, limits of earth change, description and location of all existing and proposed on-site drainage and dewatering facilities. It may be easier to include our checklist and then add the extra things you'd like (assuming they are also in your ordinance). Again, let's discuss.

Transfer Form – Part 91 requires that you use the State's transfer form and there are actually 2 of them. One is if the entire parcel is being transferred and the other is if a portion of the parcel is being transferred. Transfers can be confusing so let me know if you have questions on this. I have attached for your use. We also have them in PDF form if you'd like. I can forward or you can get from our website.

Ordinance

1. The definition of Landowner was modified since your ordinance was developed. You can either include the entire definition or state something like "and as otherwise defined in Part 91".
2. It states 3 copies of the SESC plan shall be prepared but I believe the residential application states that 2 plans shall be submitted. I recommend changing to 2 plans (or explain reasoning for 3 to me). One of the submitted plans should be marked as approved and returned to the permittee.

3. SESC plan requirements don't include a scale of 200 feet or less per inch. Also, this doesn't match your residential plan checklist.
4. Your ordinance requires a permit within waters of the state. That is OK but realize this is more restrictive than Part 91 which only states "lake or stream". So your definition would include regulated wetlands. How do you determine if an area is a regulated wetland and therefore needs a permit?
5. SESC permit exemptions – this does not contain all the exemptions. Either include them all or just include a reference to Part 91
6. First sentence needs to be revised for clarity:
(C) Upon a determination that a SESC permit applicant has met all of the requirements of this ordinance, Part 91 and the Rules. If applicable, the DPW shall issue a SESC permit for the proposed earth change.
7. I would suggest taking this part out as MDOT, Drain Commissioner, etc. each have their own procedures and the city and permittee would have to be responsible for knowing all of them. Let's discuss further. We may be able to come up with something better address your concerns. Also, change DEQ to EGLE where appropriate 😊.
A person shall install and maintain control measures in accordance with the standards and specifications of all of the following:
(1) The product manager;
(2) Genesee County Drain Commissioner;
(3) The Michigan Department of Environmental Quality;
(4) The Michigan Department of Transportation; and
(5) The City of Burton.
(C) If a conflict exists between the standards and specifications, then the DPW shall determine which specifications are appropriate for the project.
8. Not sure I understand this part. Can you explain?
However, no more than shall be expended for the cost of the work, materials, labor and administration without prior written notice that an expenditure of more than an amount set by City Council, and amended by resolution from time to time may be made. If more than the set amount is to be expended under this section, then the work shall not begin until at least 10 days after the notice of violation has been mailed.

I will review the questionnaire and provide comments separately on it. Please let me know of any questions. Due to COVID 19, I'm not requiring a response by a specific due date at this time.

Stay healthy! Cheri

Cheri Meyer

Water Resources Division – Lansing District Office
 Michigan Department of Environment, Great Lakes, and Energy
 517-282-9108 | meyerc2@michigan.gov
 Follow Us | Michigan.gov/EGLE

