

BLOOMINGDALE TOWNSHIP, VAN BUREN COUNTY, MICHIGAN

ADULT ENTERTAINMENT ORDINANCE Ordinance No. 128

The Bloomingdale Township Board, Van Buren County, Michigan, in order to regulate adult entertainment within the Township of Bloomingdale, Van Buren County, Michigan, and provide penalties for the violation hereof

THE TOWNSHIP OF BLOOMINGDALE, VAN BUREN COUNTY, MICHIGAN, HEREBY ORDAINS:

Section 1. Definitions.

The following definitions shall apply in the interpretation and enforcement of this Ordinance unless otherwise specifically stated:

(A) "Adult bookstore" - An establishment that has as a substantial portion of its stock-in trade and offers for sale, for any form of consideration, any one or more of the following:

(1) books, magazines, periodicals or other printed matter, or photographs, films, movies, motion pictures, video cassettes, slides, or other visual representations that are characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas, or

(2) instruments, devices, or paraphernalia designed for use as part of, or in connection with, specified sexual activities.

(B) "Adult cabaret" means a nightclub, restaurant, or other establishment which regularly features or displays:

(1) Live performances predominantly characterized by an emphasis on the exposure of any specified anatomical area or by any specified sexual activity; or

(2) Films, motion pictures, video cassettes, slides, other photographic reproductions, or visual media predominantly characterized by an emphasis on the depiction or description of any specified sexual activity or any specified anatomical area.

(C) "Adult merchandise store " means an establishment that emphasizes merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area. An establishment emphasizes merchandise that is predominantly distinguished by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area U any one or more of the following applies to the establishment:

(1) At least 25% of the establishment's retail floor space (i.e., excluding bathrooms, office areas, fitting rooms, eating areas, storage rooms/closets, etc.) is used for the sale of merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing

or relating to any specified sexual activity or any specified anatomical area.

(2) At least 25% of the establishment's visible inventory is comprised of merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area.

(3) 25% of the establishment's gross revenues are generated by the sale or rental of merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area.

(4) The establishment is operated consistent with its being an adult entertainment business (e. g., advertising is directed to an "adults only" market; the establishment self imposes [or imposes consistent with state or federal law] prohibitions on minors being present in the establishment; segregated areas of the business are devoted predominantly to the sale or rental of such merchandise; etc.),

(5) The establishment displays merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area such that that merchandise is visible to patrons in the store and without cover (as opposed to a situation where a deminimus amount of such merchandise, (while available for sale or rental, is covered or otherwise shielded from the view of patrons).

(6) A comparison between (a) the establishment's ratio of general product to merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing or relating to any specified sexual

activity or any specified anatomical area, and (b) other retail establishments' ratio of general product to merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area, indicates that the establishment emphasizes merchandise depicting, describing or relating to any specified sexual activity or any specified anatomical area.

(7) An Establishment with a segment or section devoted to the sale or display of Adult Entertainment Merchandise.

(D) "Adult motel" means a hotel, motel or similar establishment that:

(1) Offers accommodation to the public for any form of consideration and provides patrons with closed circuit television (as distinguished from commercial cable services) transmissions, films, motion pictures, video cassettes, slides, other photographic reproductions or visual media that are characterized by an emphasis on the depiction or description of any specified sexual activity or any specified anatomical area; or

(2) Offers a sleeping room for rent, or allows a tenant or occupant of a sleeping room to sub rent the room, for a period of time that is less than ten (10) hours, if the rental of such rooms accounts for more than ten percent (10%) of the establishments gross revenues.

(E) "Adult entertainment business" means a business or commercial establishment engaging in one or more of the following enterprises:

(1) adult cabaret; (2) adult merchandise store; (3) adult motel; (4) adult theater; (5) escort agency; (6) nude model studio; (7)sexual encounter center; or (8) adult bookstore.

(1*) adult theater" means a theater, concert hall, auditorium, or similar establishment which regularly features live performances predominantly characterized by an emphasis on the exposure of any specified anatomical area or by any specified sexual activity or which regularly or primarily shows films, motion pictures, video cassettes, slides, other photographic reproductions or visual media predominantly characterized by an emphasis on the depiction or description of any specified sexual activity or any specified anatomical area. This definition includes, without limitation, establishments which offer individual viewing booths.

(G) "Escort" means a person who, for any form of consideration and regardless of who pays that consideration, agrees to act or offers to act as a companion or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(H) "Escort agency " means a person or entity which furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration. An escort agency is deemed to be operated in the location where (1) a request for an escort is received, or (2) the escort and the person requesting the escort are together.

(I) "Materials " means anything tangible, whether through the medium of reading, observation, sound or in any other manner, including, but not limited to, anything printed or written, any book, magazine, newspaper, pamphlet, picture, drawing, pictorial representation, motion picture, photograph, video tape, video disk, film, transparency, slide, audiotape, audio disk, computer tape, holographic images, or any other medium used to electronically produce or reproduce images, or any mechanical, chemical, or electronic reproduction. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects whether or not processing or other acts are required to make the content of the material apparent. This definition is intended to include material which is the product of any technology, whether that technology is available on the effective date of this Ordinance or becomes available after that date.

(J) "Merchandise " means material and novelties.

(K) "Novelty" means any instrument, device, or paraphernalia which depicts or describes any specific anatomical area or any specific sexual act, or which is designed for use, or commonly used, in connection with specific sexual activities, excluding condoms and other birth control and disease prevention products.

(L) "Nude model studio" means any place where a person displays any specified anatomical area is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by any other person who pays money or any form of consideration.

(M) "Sexual encounter center" means an establishment, except that which is part of the practice of and under the supervision and control of a physician, psychologist, or psychiatrist licensed to practice in Michigan that offers:

(1) Activities between male and female persons and/or persons of the same sex when one or more of the persons exposes or displays any specified anatomical area; or

(2) The matching and/or exchanging of persons for any specified sexual activities.

(N) "Specified anatomical area" means any one or more of the following:

(1) Less than completely and opaquely covered human genitals, anus, or female breast at or below the top of the areola; or

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(O) "Specified sexual activity" means any of the following:

(1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast; or

(2) A sex act, actual or simulated, including intercourse, oral copulation, or sodomy; or

(3) Masturbation, actual or simulated; or

(4) Excretory functions as part of or in connection with any of activities set forth in (1), (2) or (3) above; or

(5) Physical violence, bondage, mutilation, or rape, actual or simulated, as part of or as related to, any of the activities described above.

(P) "Substantial portion " means a use or activity accounting for more than twenty (25%) percent of any one or more of the following: stock-in-trade, display, space, floor space, or viewing time, movie display time, or entertainment time measured per month.

Section 2. General Requirements for Adult Entertainment Businesses.

All adult entertainment businesses shall comply with the following:

(4) No person under the age of 18 years shall enter or be on the premises of an adult entertainment business at any time the adult entertainment business is open, nor shall any owner, partner, performer, contractor, or employee of an adult entertainment business sell or provide goods, merchandise, or services to persons under the age of 18.

(B) No adult entertainment business may be established, operated, or maintained within 500 feet of a church, state licensed day care facility, public library, public park, pre-school, elementary school, middle school, or high school.

(C) No adult entertainment business may be established, operated or maintained within 500 feet of any other adult entertainment business.

(D) Distance limitations shall be measured in a straight line from the parcel or lot lines of both the subject parcel and the parcels occupied by uses specified above.

(E) No owner, employee or patron of an adult entertainment establishment shall promote, offer, solicit, allow or engage in acts of prostitution on the premises. Any adult entertainment business that is in violation of this subsection will be immediately shut-down from operation. No criminal charge need be brought for the closing of the premises. The acts described in this subsection may be proved by a preponderance of the evidence.

(F) The following shall not be visible or audible to a person outside the building in which an adult entertainment business is operated, whether through a window or doorway or otherwise:

(1) Any depiction or description in any material of any specified sexual activity or any specified anatomical area; or

(2) Any novelty; or

(3) Any person engaging in any specified sexual activity or exposing any specified anatomical area. .

(G) No person or establishment shall operate an adult entertainment business:

(1) Before 8:00 a.m. or after 1:00 a.m. Monday through Saturday; or

(2) On any Sunday or legal holiday. .

(H) No adult entertainment business shall engage in business unless each of the following are satisfied:

(1) At least two employees, excluding entertainers, are on the premises of the business at all times the business is open; and

(2) The business is equipped with operational security cameras which shall be used at all times the business is open.

(I) Any booth, room, or cubicle, located in any adult entertainment business, used by patrons for

the viewing of merchandise or any other entertainment must comply with all of the following requirements:

(1) It must be unobstructed by any door, lock, or other entrance and exit control device;

(2) One side must be totally open to a public, lighted aisle so that there is an unobstructed

view at all times from the adjoining aisle of any occupant;

(3) It must be illuminated such that a person of normal visual acuity looking into the booth,

room, or cubicle from the entrance adjoining the public lighted aisle can clearly determine the

number of people within; and

(4) There shall be no holes or openings in any side or rear wall not relating to utility, ventilation, or temperature control services or otherwise required by any governmental code or authority.

(J) No sign or advertising for an adult entertainment business may include any photographs, silhouettes, drawings, or other representations of any specified anatomical area or any specified sexual activity.

(K) All adult entertainment businesses shall be open to inspection by the Township is ordinance enforcement officer, the building inspector any public safety officer, any police officer, any Sheriff's deputy, or any Michigan State Police trooper for the purpose of ensuring compliance with the law at any time the establishment is occupied or open for business.

(L) Each escort agency shall maintain permanent records on the premises showing the name, address, and telephone number of every person for whom an escort is provided, the fee paid, the name of the escort or escorts so provided, and the location where the escort and the person requesting the escort initially meet. These records shall be made available, upon demand and without prior notice, to any Township official inspecting the premises pursuant to this Ordinance.

(M) All adult entertainment businesses shall maintain a level of illumination in all common areas that will allow a clear determination of the number of people within that area.

(N) All adult entertainment businesses shall be maintained a clean and sanitary manner at all times.

(O) All adult entertainment businesses ' register of employees shall be available immediately for inspection by police or other authorized Township authorities upon demand.

Section 3. Additional Requirements for Adult Entertainment Businesses Offering Live Entertainment.

Live entertainment means for the purpose of this Ordinance any live performance predominantly characterized by an emphasis on the exposure of any specified anatomical area or by any specified sexual activity.

(A) Any adult entertainment business offering live entertainment shall provide all of the following:

(1) A dressing room for performers with direct access between the dressing area and the performance area or stage so that the performer may enter the performance area or stage without entering the area from which patrons will view the performance;

(2) That the access, performance area, or stage and dressing room is handicapped accessible to the extent required by the Americans With Disabilities Act and the Elliott Larsen Civil Rights Act;

(3) That all performances shall occur on a stage elevated at least 18 inches above the immediate floor level and removed at least six feet from the nearest employee or patron; and

(4) That the dressing area for performers be separate and not freely accessible from areas of the business accessible to patrons, and that the dressing area contains hot and cold running water and toilet facilities.

(B) There shall be no physical contact between any performer and any other performer or between any performer and any owner, independent contractor, employee, patron or other person during or for at least 15 minutes following such performance. "Physical contact" for purposes of this subsection includes, but is not limited to, any contact in which any part of the body or clothing of one person touches any part of the body or clothing of the other person or if a person causes anything under that persons direct control to touch any part of the body or clothing of another person. No specified sexual activity within its definition in this ordinance shall occur at any time at any establishment offering live entertainment within this section.

(C) No alcohol shall be served in any adult entertainment business offering live nude entertainment. Live nude entertainment means for the purpose of this Ordinance any live performance in which any pubic area of the performer is exposed in any way to patrons or employees.

Section 4. Registration.

Each adult entertainment business shall register its existence with the Township Clerk and will be subject to inspection by authorized Township authorities prior to commencing business. The registration shall provide the following information:

(A) The name including aliases, residence address and business address, telephone number, date of birth, last four digits of social security number, Michigan or other valid state vehicle operator 's license number of the applicant and manager. U the applicant is a partnership, limited liability company, corporation, or similar business entity, the name and residence address of each of the officers, directors, managers, and each of the owners, partners, or shareholders owning 10% interest or more, either directly or beneficially, shall also be provided.

(B) The name, address, and telephone number of the owner of the building where the business will be conducted; also, the name, address, and telephone number of the building manager (if different from the owner).

(C) The location, mailing address, and all telephone numbers where the business is to be conducted.

(D) A description of the adult entertainment to be provided by the business, hours of operations, proof of alcohol license K applicable, and proof of any permit required by local or county regulations.

Section. 5. Prohibited Conduct.

(4) Except on a stage or other area of performance as specified in Section 3, no person within an adult entertainment business shall display to the view of any other person any specified anatomical area.

(B) No person shall engage in any specified sexual activity on the premises of an adult entertainment business.

Section 6. Violations.

The following shall be a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500) and cost of prosecution or by imprisonment for a period not to exceed ninety (90) days, or both such fine and imprisonment in the discretion of the court:

(4) A violation of any provision of this Ordinance; or

(B) Permitting, allowing, encouraging, or promoting any violation of any provision of this Ordinance, including by any owner, manager, employee, patron, customer, officer, partner or other person; or

(C) Aiding, assisting, or abetting the violation of any provision of this Ordinance.

A violation of any provision of this Ordinance shall also be a nuisance per se and the Township may seek an injunction against the violation.

Section 7. Title.

This Ordinance shall be known as the Bloomingdale Township Adult Entertainment Ordinance.

Section 8. Severability.

The phrases, sentences, sections, and provisions of this Ordinance are severable and the finding that any portion hereof is unconstitutional or otherwise unenforceable shall not detract from or affect the enforceability of the remainder of this Ordinance.

Section 9. Effective Date.

This Ordinance shall become effective upon publication in a newspaper of general circulation in the Township.

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TOWNSHIP OF BLOOMINGDALE, VAN BUREN COUNTY, MICHIGAN

November 16, 2005

SOCIAL SECURITY NUMBER PRIVACY POLICY ORDINANCE

1. PURPOSE.

The Township of Bloomingdale is required by the Michigan Social Security Number Privacy Act, Public Act 454 of 2004, MLC 445.81 et. seq., (the "Act") to create a privacy policy concerning the Social Security numbers that it possesses or obtains. Pursuant to the Act, the privacy must at least:

- a. Ensure to the extent practicable the confidentiality of the Social Security numbers.
- b. Prohibit unlawful disclosure of the Social Security numbers.
- c. Limit who has access to information or documents that contain the Social Security numbers.
- d. Describe how to properly dispose of documents that contain the Social Security numbers.
- e. Establish penalties for violation of the privacy policy.

This Privacy Policy sets forth the Township's policies and procedures regarding how Social Security numbers are obtained, stored, transferred, used, disclosed and disposed.

2. POLICY.

It is the policy of the Township to protect the confidentiality of Social Security numbers obtained in the ordinary course of township business from employees, vendors, contractors, customers or others. No person shall knowingly obtain, store, transfer, use, disclose, or dispose of a Social Security number that the Township obtains or possesses except in accordance with the Act and this Privacy Policy.

3. PROCEDURE.

a. **Obtaining Social Security Numbers.** Social Security numbers should be collected only where required by federal and state law or as otherwise permitted by federal and state law for legitimate reasons consistent with this Privacy Policy. Legitimate reasons for collecting a Social Security number include, but are not limited to:

Applicants may be required to provide a Social Security number for purposes of a Pre-employment background check.

Copies of Social Security cards may be obtained for purposes of verifying employee eligibility for employment.

Social Security numbers may be obtained from employees for tax reporting purposes, for new hire reporting or for purposes of enrollment in any Township employee benefit plans.

Social Security numbers may be obtained from creditors or vendors for tax reporting purposes.

b. **PUBLIC DISPLAY.** All or more than four sequential digits of a Social Security number shall not be placed on identification cards, badges, time cards, employee rosters, bulletin boards, permits, licenses or any other materials or documents designed for public display. Documents, materials or computer screens that display all or more than four sequential digits of Social Security number shall be kept out of public view at all times.

c. **ACCOUNT NUMBERS.** All or more than four sequential digits of a Social Security number shall not be used as a primary account number for an individual.

d. **COMPUTER TRANSMISSION.** All or more than four sequential digits of a Social Security number shall not be used or transmitted on the Internet or on a computer system or network unless the connection is secure or the transmission is encrypted.

e. **MAILED DOCUMENTS.** Township documents containing all or more than four sequential digits of a Social Security number shall only be sent in cases where state or federal law, rule, regulation, or court order or rule authorizes, permits or requires that a Social Security number appear in the document. Documents containing all or more than four sequential digits of a Social Security number, that are sent through the mail, shall not reveal the number through the envelope window or otherwise be visible from outside the envelope or package.

f. **FREEDOM OF INFORMATION ACT.** Where all or more than four sequential digits of a Social Security number are contained within a document subject to release under the Freedom of Information Act, the Social Security number shall be redacted or otherwise rendered unreadable before the document or copy of a document is disclosed.

g. **STORAGE.** All documents containing Social Security numbers shall be stored in a physically secure manner. Social Security number shall not be stored on computers or other electronic devices that are not secured against unauthorized access.

h. **ACCESS TO SOCIAL SECURITY NUMBERS.** Only personnel who have legitimate business reasons to know will have access to records containing Social Security numbers.

The department heads having access to records containing Social Security numbers shall determine which other personnel within their departments have a legitimate reason in the Township's ordinary course of business to have access to such Social Security numbers. Personnel using records containing Social Security numbers must take appropriate steps to secure such records when not in immediate use.

i. **DISPOSAL.** Documents containing Social Security numbers will be retained in accordance with the requirements of state and federal laws. At such time as documents containing Social Security numbers may be

disposed of such disposal shall be accomplished in a manner that protects the confidentiality of the Social Security numbers, such as shredding.

j. UNAUTHORIZED USE OR DISCLOSURE OF SOCIAL SECURITY NUMBERS.

The Township shall take reasonable measures to enforce this Privacy and to correct and prevent the reoccurrence of any known violations. Any employee, who knowingly obtains, uses or discloses Social Security numbers for unlawful purposes or contrary to the requirements of this privacy policy shall be subject to discipline up to and including discharge. Additionally, certain violations of the Act carry criminal and/or civil sanctions. The Township will cooperate with appropriate law enforcement or administrative agencies in the apprehension and prosecution of any person who knowingly obtains, uses or discloses Social Security numbers through the Township for unlawful purposes.

ADOPTED: NOVEMBER 16, 2005

Linda Stange, Clerk

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VAN BUREN COUNTY DRAIN COMMISSIONER

SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

Preamble

An Ordinance to provide for the administration of a soil erosion and sedimentation control

program for those areas within Van Buren County except for those of the county where a Part 91

Municipal Enforcement Agency program or Authorized Public Agency program is in effect, in order to encourage and regulate the proper use and protection of natural resources, to provide for administration and enforcement, to establish civil penalties for violations, and to provide for reimbursement of costs incurred by the County Enforcing Agency pursuant to this Ordinance and to Part 91, Act 451 of 1994, as amended.

Whereas, after careful study of the proposed Soil Erosion and Sedimentation Control (SESC) Ordinance, The Committee of the Whole has recommended adoption of the Ordinance to the Van Buren County Board of Commissioners.

Therefore, pursuant to the authority set forth in MCL 46.11(j) and MCL 324.9105(3), the Board of Commissioners of the County of Van Buren, Michigan, ordains:

Article 1. Short Title

This Ordinance shall be known, and may be cited, as the "Van Buren County Soil Erosion and Sedimentation Control Ordinance". All Articles, Sections, and other topical headings are for reference only and shall not be construed to be part of this Ordinance.

Article 2. Intent and Purpose

2.1. Intent

The Van Buren County SESC Ordinance is based upon and incorporates the provisions of Part 91 of the Natural Resources and Environmental Protection Act, being Public Act 451 of 1994, as amended (MCL 324.9101 through 324.9123a), and its attendant rules, hereinafter referred to as "Part 91". Van Buren County assumes responsibility for the administration and enforcement of Part 91 within its political boundaries, except for those areas of the county where a Part 91 Municipal Enforcement Agency program or Authorized Public Agency program is in effect.

2.2. Purpose

The purpose of this Ordinance is to protect the surface water resources within Van Buren

County by providing for the administration and enforcement of the Van Buren County SESC Ordinance. All earth change activity described or defined in Part 91 shall be regulated under this Ordinance. No person shall maintain or undertake an earth change governed by this Ordinance, except in compliance with this Ordinance, and pursuant to a SESC permit issued by the County Enforcing Agency if required.

2.3. Right to Farm

Plowing and tilling of land for the purpose of crop production or the harvesting of crops does not require a permit under Article 5. The Van Buren County Drain Commissioner may, on his own volition, pursue separate legal action against an agricultural operator for sediment discharges to a county or inter-county drain from the plowing and tilling of land under Public Act 40 of 1956, as amended, to protect a county or inter-county drain.

Article 3. Administration and Enforcement

3.1. County Enforcing Agency

The Van Buren County Drain Commissioner is the County Enforcing Agency responsible for administering and enforcing this ordinance.

3.2. Relief from Personal Responsibility

The County Enforcing Agency, or any other county employee or officer charged with duties and responsibilities pursuant to this Ordinance, while acting within the scope of their authority, are hereby relieved from all personal liability for damages to persons or property resulting from the exercise or discharge of their duties. Any civil or criminal action brought against an officer or employee of the county, while acting within the scope of authority granted under this Ordinance, may be defended by the legal representative of the County until final termination of proceedings. If a judgment for damages is awarded against the above mentioned officers or employees as a result of a civil action for personal injury or property damage caused while acting within the scope of the individual's employment or while acting within the scope of authority of this Ordinance, the County of Van Buren may pay, or compromise, the judgment.

3.3. Duties of the County Enforcing Agency

It shall be the responsibility of the County Enforcing Agency to enforce the provisions of this Ordinance, and in doing so, to perform the following duties:

3.3.1. Issue Permits and Certificates: Applications for permits required by this Ordinance shall be submitted to the County Enforcing Agency, which shall issue SESC Permits and Certificates of Completion when applicable provisions of this Ordinance have been fulfilled.

3.3.2. Maintain Records: Records for active SESC permits shall be available for public inspection during regular business hours. Upon written request, copies of documents may be furnished at cost to any person consistent with policy of the Board of Commissioners.

3.3.3. Mitigation: It shall be the responsibility of the County Enforcing Agency to conduct such activity as is deemed necessary to remove an immediate threat to environmental resources, property or public safety.

3.3.4. Prepare Invoices and Record Liens: Invoices for mitigation expense shall be mailed by certified mail to the owner(s) of the land on which the violation occurred. Property liens against the land in violation shall be recorded at the Van Buren County Register of Deeds for all invoices remaining unpaid thirty (30) days after mailing. The owner of the land shall be responsible for all costs associated with the recording and subsequent release of a lien.

3.3.5. Legal Remedy: The County Enforcing Agency may issue a Notice of Violation and/or a municipal civil infraction citation to the property owner, contractor, or individual who is not the property owner and who violates this ordinance. The County Enforcing Agency may also take other legal action deemed appropriate against an individual or the owner of a property in violation.

3.3.6. Official Copies: The County Enforcing Agency shall maintain one official copy of this Ordinance, which shall be available for public inspection during regular office hours.

3.3.7. Inspections: The County Enforcing Agency is empowered to conduct inspections of property undergoing earth change in order to properly carry out the enforcement of this Ordinance.

3.3.8 Document Retention: Permits, plans and associated documents for all projects, permitted under this ordinance, may be disposed of three years after the project is completed.

3.4. Interpretation. The County Enforcing Agency shall have full authority to make interpretations as to the scope and applicability of this Ordinance, including but not limited to determinations of violations, acceptability of plans and sureties, necessity for mitigation, and substantial completion. All such determinations by the County Enforcing Agency are considered final.

3.5. Fees, Fines and Sureties

3.5.1. Fees and Fines. The County Board of Commissioners shall periodically adopt a schedule of fees and fines to cover the cost of administration and enforcement of this Ordinance. Adjustment of the schedule of fees and fines will not invalidate other provisions of this Ordinance.

3.5.2. Sureties. Financial surety in form acceptable to the County Enforcing Agency may be required as a condition of a SESC Permit. The amount required may be periodically adjusted by the Board of Commissioners in conjunction with scheduled review of other administrative fees.

Surety is required for all of the following:

3.5.2.1. The area impacted by any earth change exceeding three (3) acres.

3.5.2.2. Mass clearing or land balancing greater than one (1) acre of disturbance.

3.5.2.3. A single or multiple family detached dwelling if final grading and seeding is not part of the builders contract.

3.5.2.4. The property owner, contractor or individual who failed to immediately correct an earlier violation issued pursuant to this Ordinance.

3.5.3. Return of Surety Unused portion of sureties shall be returned upon successful completion of a permitted activity.

Article 4. Rules and Definitions

4.1. Rules Adopted. The County of Van Buren adopts by reference the rules promulgated by the Department of Environmental Quality pursuant to Part 91, as they currently exist and as they may be amended. Said rules shall be available for public distribution at a reasonable charge and will be available for public inspection at the Office of the County Clerk and the County Enforcing Agency.

4.2. Definitions. The County hereby adopts by reference the definitions contained in Part 91. In addition, the following definitions shall apply in the interpretation and enforcement of this ordinance:

- 3.1. **Cease and Desist Order.** An order that stops that portion of the work relative to a project that is causing a violation of this Ordinance or Part 91 until said violation is corrected.
- 3.2. **Certification of Completion.** A signed written statement by the County Enforcing Agency, indicating that specific construction has been completed, inspected and found to be in compliance with all aspects of this Ordinance and Part 91.
- 3.3. **Van Buren County Drain Commissioner.** The County Agency responsible for administration and enforcement of this ordinance in the name of the County of Van Buren, and including agents acting on behalf of or appointed by the Drain Commissioner for administration and enforcement of this Ordinance.
- 3.4. **Mitigation.** Actions taken by the County Enforcing Agency to temporarily or permanently bring a parcel of land into compliance with this ordinance.
- 3.5. **Notice of Intent to File Lien.** Written notice to the owner of a property of intent to file a property lien to secure repayment of mitigation expense, including legal expense associated with a particular mitigation effort. Outstanding liens on property will be collected according to Article 7.
- 3.6. **Notice of Intent to Mitigate.** Legal notice to the owner of a property in violation of this Ordinance of intent to conduct mitigation to remove an immediate threat to natural resources, property or public safety.
- 3.7. **Notice of Taking Action.** Legal notice to the owner of a property in violation of this Ordinance of action already taken to remove an immediate threat to natural resources, property or public safety.

- 3.8. **Notice of Violation.** Written notice to the owner of a property that activity at that site is in violation of the Soil Erosion and Sedimentation Control Act and this Ordinance. Corrective action is required within 5 calendar days.

- 3.9. **SESC.** Abbreviation for "Soil Erosion and Sedimentation Control".

- 3.10. **Stop Work Order.** An order that stops all work on a project until any and all violations of this Ordinance or Part 91 are corrected, except for remedial measures to correct the violation.
- 3.11. **Waters of the state.** The Great Lakes and their connecting waters, inland lakes, streams and wetlands as defined in this ordinance.

- 9.1 **"Lake"** means the Great Lakes and all natural and artificial inland lakes or impoundments that have definite banks, a bed, visible evidence of a continued occurrence of water, and a surface area of water that is equal to, or greater than, 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.
- 9.2 **"Stream"** means a river, creek, or other surface watercourse which may or may not be serving as a drain as defined in Act No. 40 of the public Acts of 1956, as amended, being §280.1 et seq. of the Michigan Compiled Laws, 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.
- 9.3. **"Wetland"** means 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 and which is any of the following:
- a. Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.
 - b. Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and more than 5 acres in size.
 - c. Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and 5 acres or less in size if the Michigan Department of Environmental Quality determines that protection of the area is essential to the preservation of the natural resources of the state from pollution, impairment, or destruction and the State has so notified the owner.

Article 5. Application and Permit

5.1. Application and Permit

A person shall not maintain or undertake an earth change governed by this Ordinance, except in compliance with Part 91 and this Ordinance. The SESC Permit Application form and SESC Permit form shall contain all information required by Part 91 and this Ordinance. An Application, together with instructive information as deemed appropriate, shall be provided at no cost to each applicant by the County Enforcing Agency. The County Enforcing Agency shall approve or deny an application for a SESC permit within 30 days after the filing of a complete application for a SESC permit and the payment of the appropriate fees and sureties.

5.1.1 Permits Required:

A landowner or designated agent who contracts for, allows, or engages in, an earth change within the jurisdiction of the Van Buren County Enforcing Agency shall obtain a SESC Permit from the County Enforcing Agency before

commencing an earth change which disturbs 1 or more acres of land or which is within 500 feet of the water's edge of a lake, stream, or other waters of the state unless exempted in 5.1.2.

An earth change activity that does not require a permit under 5.1.2 of this ordinance is not exempt from enforcement procedures under part 91 or this ordinance, if the activity exempted by 5.1.2 of this ordinance causes or results in a violation of part 91 or this ordinance.

5.1.2 Permit Exemptions:

5.1.2.1 A SESC Permit is not required for any of the following:

- a. A beach nourishment project permitted under part 325 of Act No. 451 of the Public Acts of 1994, as amended, being § 324.32501 et seq. of the Michigan Compiled Laws.
- b. Normal road and driveway maintenance, such as grading or leveling, that does not increase the width or length of the road or driveway and that will not contribute sediment to lakes or streams.
- c. An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance and that will not contribute sediment to lakes or streams.
- d. Installation of oil, gas, and mineral wells under permit from the state if the owner-operator is found by the state to be in compliance with the conditions of part 91.

5.1.2.2 The County Enforcing Agency may grant a SESC Permit waiver for an earth change after receiving a signed affidavit from the landowner stating that the earth change will disturb less than 225 square feet and that the earth change will not contribute sediment to lakes or streams.

5.1.2.3 An exemption provided for in 5.1.2.1 and 5.1.2.2 may be subject to enforcement procedures under this ordinance, if the activity causes or results in a violation of part 91 or this ordinance.

5.1.2.4 Logging, mining, or land plowing or tilling; permit exemptions.

5.1.2.4.1 Subject to 5.1.2.4.2, a person engaged in the logging industry, the mining industry, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops is not required to obtain a permit under this part. However, all earth changes associated with the activities listed in this section shall conform to the same standards as if they required a permit under this part. The exemption from obtaining a permit under this subsection does not include either of the following:

- (a) Access roads to and from the site where active mining or logging is taking place.
- (b) Ancillary activities associated with logging and mining.

5.1.2.4.2 This part does not apply to a metallic mineral mining activity that is regulated under a mining and reclamation plan that contains soil erosion and sedimentation control provisions and that are approved by the State.

5.1.2.4.3 A person is not required to obtain a permit from a county enforcing agency or a municipal enforcing agency for earth changes associated with well locations, surface facilities, flow lines, or access roads relating to oil or gas exploration and development activities regulated under part 615, if the application for a permit to drill and operate under part 615 contains a soil erosion and sedimentation control plan that is approved by the department under part 615. However, those earth changes shall conform to the same standards as required for a permit under this part. This subsection does not apply to a multisource commercial hazardous waste disposal well as defined in section 62506a.

5.1.2.4.4 As used in this section, "mining" does not include the removal of clay, gravel, sand, peat, or topsoil.

5.2. Permit Termination

5.2.1. Expiration: SESC Permits shall expire on the date indicated on the permit. The holder of a valid permit may request an extension of coverage.

5.2.2. Construction Not Begun: SESC Permit coverage will automatically terminate if construction has not commenced within four (4) months of the date of issuance. A new plan and application, with fees, are required to obtain a SESC Permit for any site where a permit has been terminated for any reason.

5.3. Permit Suspended/Revoked

A SESC permit issued under this Ordinance may be revoked or suspended at the discretion of the County Enforcing Agency for any of the following reasons:

- 5.3.1. A violation of a condition of the SESC Permit.
- 5.3.2. Misrepresentation or failure to fully disclose relevant facts in the application or plan.
- 5.3.3. A change in land ownership.
- 5.3.4. Work already in progress is abandoned or suspended for a period of four months.

Article 6. Enforcement

6.1. Enforcement

This Ordinance shall be enforced by the County Enforcing Agency. The County Enforcing Agency may issue Notices of Violation, citations, stop work orders, cease and desist orders, or may revoke a SESC Permit upon finding that there is a violation of Part 91 or this Ordinance, and may pursue such legal action as may be necessary to correct a violation.

6.2. Municipal Civil Infractions; Authorized Enforcement Officials; Violation Bureau.

6.2.1. Municipal Civil Infractions. Violation of this Ordinance shall be a municipal civil infraction, as authorized under Chapter 87 of 1961 PA 23 6, as amended, and other applicable laws. A violation includes any act that is prohibited or made or declared to be unlawful, and any omission or failure to act where the act is required by this Ordinance. Each day that a violation exists constitutes a separate infraction. .

6.2.2. Authorized Enforcement Officials. The Van Buren County Drain Commissioner, the County Enforcing Agent (CEA), agents appointed by or acting on behalf of the CEA or Drain Commissioner, deputies of the Van Buren County Sheriffs Office, and other persons specifically designated by this Ordinance are the County officials authorized to issue municipal civil infraction citations and municipal civil infraction violation notices for violations of this Ordinance.

6.2.3. Municipal Civil Infractions Violations Bureau. The Municipal Civil infractions Violations Bureau, for disposition of violation notices issued under this Ordinance, shall be located at the Van Buren County Drain Commissioners Office, 219 E. Paw Paw Street, Suite 301, Paw Paw, MI 49079. .

6.3. Violations and Penalties; Injunction

6.3.1. A person who violates this Ordinance is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not less than \$250.00, and not more than \$2,500.00, plus costs of enforcement.

6.3.2. A person who knowingly makes a false statement in an Application or in a SESC plan is responsible for a civil fine of up to \$10,000.00 for each day of violation, plus costs of enforcement.

6.3.3. A person who knowingly continues to violate this Ordinance after receiving a Notice of Violation is responsible for payment of a civil fine of not less than \$2,500.00 nor more than \$25,000.00 for each day the violation continues to exist, plus costs of enforcement.

6.3.4. A default in payment of a civil fine or costs ordered under this section may be remedied by any means authorized under the Revised Judicature Act of 1961, as amended, being sections 600.101 to 600.9948 of the Michigan Compiled Laws as amended.

6.3.5. In addition to any fines and costs assessed under this section, a person who violates this Ordinance is liable to the State of Michigan for any damages for injury to, destruction of or loss of natural resources resulting from the violation.

6.3.6. Notwithstanding the existence or pursuit of any other remedy, the County may maintain an action in a court of competent jurisdiction for money damages and may request an injunction or other process against a person to restrain or prevent violations of this Ordinance.

6.4. Enforcement and Fines

6.4.1. Costs of Enforcement. The County Enforcing Agency shall maintain a record of all expenses relative to the enforcement of this Ordinance.

6.4.2. Fines. Fines levied and paid pursuant to legal action undertaken by the County Enforcing Agency shall be deposited with the county, and shall be used for enforcement of this Ordinance. Landowners, individuals and contractors undertaking an earth change in violation of this Ordinance or Part 91 are subject to the penalties prescribed herein.

Article 7. Reimbursement for Expense

7.1. Reports. It shall be the duty of the County Enforcing Agency to report to the Board of Commissioners, no later than the last Wednesday in September of each year, all unpaid property liens filed in conjunction with this Ordinance.

7.2. Assessment. It shall be the duty of the County Treasurer to place on the winter tax statement of each property for which there is an amount outstanding the full amount of the outstanding lien.

Article 8. Severability.

If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Article 9. Repeal

All ordinances in conflict are repealed only to the extent necessary to give this Ordinance full force and effect.

Article 10. Savings Clause.

This Ordinance shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this Ordinance takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent if this Ordinance had not been adopted.

Article 11. Effective Date 1-9-07

