

ORDINANCE NO. 1423

RED SOIL (CLAY AND SILT) ORDINANCE

**AN ORDINANCE TO REPEAL AND REPLACE
ORDINANCE NO. 759 AND ORDINANCE NO. 1313,
KNOWN AS THE COASTAL PROTECTION ORDINANCE.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIRHOPE,
ALABAMA FOLLOWS:

ARTICLE IV: Red Soil (Clay and Silt) Regulations for Critical Areas

Section A: Purpose

The purpose of this ordinance is to protect the water quality and environmental integrity of the watersheds within the Fairhope permitting jurisdiction. The purpose is to be accomplished specifically by limiting the use of red soil (clay and silt) which may harm aquatic plants or marine life, from being used in critical and coastal areas.

Section B: Objectives

1. To protect humans, wildlife and natural resources.
2. To prevent erosion and sedimentation (siltation)
3. To protect water clarity in local water bodies
4. To prohibit the use of red soil (clay and silt) in high risk "critical" areas

Section C: Definitions

Critical Areas – Environmentally and ecologically sensitive areas to include but not limited to high risk areas for erosion and/or within 100' of floodplains, wetlands, watercourses and gullies

Filling activity – means any soil or fill material brought from any other location to the site in question. For construction projects including, but not limited to, the following:

Roadways
Driveways
Bulkheads
Foundations
Fill

Permitting Jurisdiction - the boundaries set forth and shown on the most current "Permitting Jurisdiction" map, posted in the Planning and Building Department of the City of Fairhope

Red soil (clay and silt) – means dry soil material that has more than 10% by weight passing through a 200 mesh sieve, including those soils having chroma and color value which could pose a water clarity threat, as determined on a case by case basis, by the Building Official and/or his/her designee. Soil shall include, but not necessarily be limited to, the following:

Top soil
Subsoil
Sand

Watercourse – means gullies, rivers, streams, intermittent streams, ditches, brooks, channels, lakes, ponds, manmade ponds, estuarine waters, swamps, bogs, vernal pools and all other bodies of water which have defined banks of water at least a portion of each year.

Watershed – means the sum of the land that drains into a specified low point

Section D: Red Soil / Clay restricted areas

1. Southernmost permitting jurisdiction boundary on the west side of Highway 1 or flood zone whichever is greater to Scenic Highway 98.
2. West side of Scenic Highway 98 or flood zone whichever is greater to Fairhope Avenue.
3. All Coastal Bluff areas and flood zones from Fairhope Avenue to northernmost permitting jurisdiction.
4. Within permitting jurisdiction one hundred (100) feet outside the 100-year floodplain of all rivers, streams, creeks or tributaries.
5. Within permitting jurisdiction one hundred (100) feet beyond the outer boundary of all wetlands. Any delineation must be approved by appropriate agencies, and as per City of Fairhope Wetland Ordinance number 1370.
6. Within permitting jurisdiction one hundred (100) feet outside of critical areas (defined at top of bank, or floodplain, whichever is greater) including slopes 3:1 or greater.

Section E: Land disturbance permits.

- a. No person, firm or corporation shall commence to filling activity within the City permitting jurisdiction until the landowner or contractor has obtained a land disturbing permit from the City of Fairhope, in accordance with the Erosion and Sediment Control Ordinance Number 1398.

Exemption: This ordinance shall not apply to land disturbing activity that is occurring as part of farming.

Warning and disclaimer: The consent of the City to issue a permit based on a particular design for erosion control measures shall not constitute a representation, guaranty or warranty of any kind by the City of Fairhope or its agents, officers or employees of the practicability, adequacy or safety of such design.

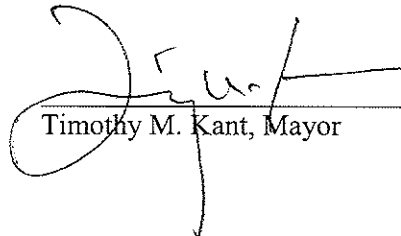
1. *Commencement of work:* No person, firm or corporation shall bring into the red soil / clay restricted areas any material herein known as “red soil”, “clay” or “clay and silt”. City may elect to require a third party review, at the expense of the permittee, for variations of this ordinance, in regards to red soil prohibitions and necessary usages.
2. *Maintenance of control measures:* It shall be the responsibility of the permittee to ensure compliance.
Failure or refusal to comply shall be cause for the city, through its enforcement officers, to issue Stop Work Orders suspending all work. Stop work orders shall not stop or delay remedies necessary to stabilize the property and/or to correct the deficiencies.
3. *Remedies:* In the event of imminent danger or damage to adjacent properties or downstream areas due to failure of permittee to comply, the City may perform, or cause to be performed, the work the City deems necessary to restore protection of such properties and the cost thereof shall be charged against the subject land as a municipal lien, such charges to be recovered in a lawsuit against the owner.

4. *Penalties:* Any person violating the provision of this ordinance shall, upon conviction thereof, be fined a sum of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) and, in addition thereto, may be sentenced to the City jail for a term of not more than six (6) months. Each day during which any violation of any of the provisions of this Ordinance is committed, continued, or permitted shall constitute a separate offense. Nothing herein contained shall prevent the City of Fairhope from taking such other lawful actions as are necessary to prevent or remedy any violation.

Section F: Miscellaneous Provisions

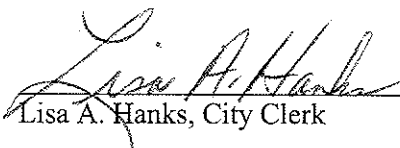
1. The sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, then such ruling shall not affect any other paragraphs and sections, since the same would have been enacted by the municipality council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph or section.
2. This ordinance shall take effect immediately upon its due adoption and publication as required by law.

ADOPTED THIS 24TH DAY OF MAY, 2010



Timothy M. Kant, Mayor

Attest:



Lisa A. Hanks, City Clerk