

CHAPTER 36
ORDINANCE NO. 2023-3

**AN ORDINANCE REGULATING EXCAVATIONS AND OTHER
SOIL DISTURBING ACTIVITIES IN EMMET COUNTY, IOWA,
FOR THE PURPOSE OF PREVENTING OR MINIMIZING THE
DISTURBANCE AND TRANSPORT OF SEDIMENT INTO
DRAINAGE DISTRICTS AND DRAINAGE DISTRICT
INFRASTRUCTURE**

WHEREAS, Emmet County (“the County”) has certain distinctive or uncommon soil types that are uniquely suited to cultivation and production of agricultural activities but which often require draining, tiling, or other similar infrastructure to achieve and maintain the soil’s productivity and usefulness; and

WHEREAS, such draining, tiling, and other similar infrastructure is constructed and maintained at great expense to the County and its landowners and is deserving of preservation and protection from damage or disturbance; and

WHEREAS, in accordance with the home rule powers granted to the County by Iowa Const. Art. III, § 39A, the County may by ordinance lawfully regulate and restrict excavations and other soil disturbing activities in order to minimize the disturbance, erosion, and transport of sediment into Drainage Districts and Drainage District Infrastructure; and

WHEREAS, the County intends to protect, maintain, and enhance the public health, safety, and welfare by protecting water quality, preventing erosion, preserving soil health, increasing agricultural productivity, and maintaining the integrity of drainage systems within its jurisdiction; and

WHEREAS, the County intends to establish a process for permitting Excavation or Soil Disturbing Activities in Emmet County for the purpose of preventing or minimizing the disturbance, erosion, and transport of Sediment into Drainage Districts and Drainage District Infrastructure located within Emmet County and governed by Iowa Code chapter 468.

NOW THEREFORE, BE IT ENACTED BY THE SUPERVISORS OF EMMET COUNTY, IOWA:

SECTION 1: TITLE. This Ordinance No. 2023-3 shall be entitled “AN ORDINANCE REGULATING EXCAVATIONS AND OTHER SOIL DISTURBING ACTIVITIES TO PREVENT OR MINIMIZE THE DISTURBANCE AND TRANSPORT OF SEDIMENT INTO DRAINAGE DISTRICTS AND DRAINAGE DISTRICT INFRASTRUCTURE.”

SECTION 2: DEFINITIONS. For the purposes of this Ordinance the following terms shall have the meanings given herein, unless otherwise expressly stated.

- a) “Applicant” means the person or entity requesting a permit to engage in excavations and other soil disturbing activity under this Ordinance.
- b) “Application” means an application for a Permit for Excavation or Other Soil Disturbing Activity.
- c) “Board” means the Board of Supervisors of Emmet County, Iowa.
- d) “County” means Emmet County, Iowa.
- e) “County Engineer” means the County Engineer of Emmet County, or its designee.
- f) “Drainage District” means any drainage district, levee district, multi-county drainage district, or multi-county levee district created under Iowa Code chapter 468, and located within the County.
- g) “Drainage District Infrastructure” means improvements and infrastructure owned, controlled, or associated with drainage districts, levee districts, multi-county drainage districts, and multi-county levee districts including but not limited to underground tiles, open ditches, pumping stations, levees, and related facilities.
- h) “Excavation” or “Soil Disturbing Activity” means an activity or use of land, other than cultivation or ordinary agricultural activity, that has a significant likelihood of disturbing Sediment and causing its transport into a Drainage District or Drainage District Infrastructure. Common activities contemplated under this definition include, but are not limited to, grading, excavation, compaction of the soil, or the creation of fills and embankments to prepare a site for the construction or perform construction. Such disturbance or transport of Sediment may cause a slowing of or blockage to the outlet of the Drainage District, or other damage or disruption to a Drainage District or Drainage District Infrastructure. The transport of Sediment resulting from Excavation or Soil Disturbing Activity includes transportation or relocation of Sediment by private tile, runoff, lakes, rivers or natural streams that drain into the Drainage District or Drainage District Infrastructure.
- i) “Permit” means written authorization by the Board granting permission to engage in Excavation or Soil Disturbing Activity.
- j) “Sediment” means silt, soil, or any type of debris derived from soil erosion, construction activities, or other land disturbance that can be transported by water.

SECTION 3: APPLICABILITY AND REQUIREMENT OF EXCAVATION OR SOIL DISTURBING ACTIVITY PERMIT

- a) The permit requirement pursuant to this Ordinance shall apply to all persons or entities engaging in any Excavation or Soil Disturbing Activity within the Drainage District. However, notwithstanding the foregoing, the permit requirement pursuant to this

Ordinance shall not apply to Excavation or Soil Disturbing Activity by the Drainage District or land owners within the Drainage District.

- b) No person or entity shall engage in any Excavation or Soil Disturbing Activity without obtaining a Permit from the Board. An Application for a Permit shall be filed with the County Engineer at least 30 days in advance of conducting the Excavation or Soil Disturbing Activity.
- c) The Permit application shall include the following information:
 - 1. Project Details:
 - i. Location of the Excavation or Soil Disturbing Activity
 - ii. Purpose and Scope of the Excavation or Soil Disturbing Activity
 - iii. Duration of the Excavation or Soil Disturbing Activity
 - iv. Estimated total area of land to be disturbed
 - 2. Site Plans and Maps
 - i. Detailed site plan or map showing the project area and its surroundings
 - ii. Existing natural or artificial drainage features, including streams, rivers, ditches and drainage tiles
 - iii. Location of any Drainage Districts or Drainage District Infrastructure that would be impacted by the Excavation or Soil Disturbing Activity
 - 3. Erosion and Sediment Control Measures
 - i. Description of erosion and sediment control measures to be implemented in preparation for, during, and after the Excavation or Soil Disturbing Activity
 - A) Any temporary and permanent erosion control practices, such as sediment barriers, silt fences, sediment basins, or sediment traps
 - B) Proposed stabilization measures for disturbed areas, including seeding, mulching, or other appropriate methods
 - 4. Additional information
 - i. Any additional information as the Board or County Engineer may deem necessary for the purposes of this Ordinance.

SECTION 4: FEES

Any Applicant seeking a Permit under this Ordinance shall pay a fee set by resolution after final reading. Such fee shall be due and paid at the time the Applicant submits their Application and prior to any review or consideration of the Application by the Board, the County Engineer, or other County personnel.

SECTION 5: WAIVER

- a) In response to a request, the Board may grant a waiver from the Permit requirement, in whole or in part, as applied to the specific circumstances giving rise to such waiver request, if the Board concludes the following:
 - 1. The proposed Excavation or Soil Disturbance Activity would not pose a substantial risk to any Drainage District or Drainage District Infrastructure, if the Board approved the request to waive regulations or requirements of this Ordinance;
 - 2. Application of the regulations in this Ordinance would pose an undue hardship on the person for whom the waiver is requested;
 - 3. The waiver would not prejudice the substantial legal rights of any person;
 - 4. The provisions of the Ordinance subject to a waiver request are not specifically mandated by statute or another provision of law; and
 - 5. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than those prescribed in the Ordinance for which the waiver is requested.
- b) A waiver request shall state the relevant facts and the reasons why the person requesting it believes a waiver is warranted. The burden of persuasion rests with the person who is requesting a waiver. If the above criteria are met, a waiver may be granted at the discretion of the Board after consideration of all relevant factors.
- c) The waiver request shall also state the scope and operative period of the requested waiver. If the request is for a permanent waiver, the requester must state reasons why a temporary waiver would be impractical. When the Board grants or denies a waiver request, the Board shall provide a statement of the facts and reasons upon which the decision is based. The Board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the Ordinance. The Board may at any time cancel or modify the terms of a waiver after providing appropriate notice and opportunity for hearing.

SECTION 6: INSPECTIONS AND ENFORCEMENT

- a) The Board, or its authorized representatives, shall have the authority to conduct inspections to verify compliance with this Ordinance.
- b) A violation of this Ordinance is a county infraction punishable by a civil penalty. A violation of this Ordinance may also result in further enforcement action, including but not limited to, revocation of Excavation or Soil Disturbing Activity Permits, fines for cost of reparation, or other legal action as deemed appropriate by the Board.

SECTION 7: SEVERABILITY AND REPEAL

- a) If any provision of this Ordinance or its application to any person is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application.
- b) All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 8: EFFECTIVE DATE

This Ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

First Reading Passed:

Second Reading Passed:

Third Reading Passed:

Passed and adopted this XX day of November, 2023.

Todd Glasnapp, Chairperson

ATTEST:

Heidi Goebel, County Auditor

AUDITOR'S CERTIFICATE

I hereby certify that the foregoing Ordinance No. 2023-3 was published as required by law on the XX day of November 2023 in the Estherville News and the XXday of November 2023 in the Armstrong Journal.

EMMET COUNTY, IOWA,

Heidi Goebel, County Auditor