

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

Introduced November 8, 2021

AN ORDINANCE OF THE CITY COUNCIL TO UPDATE SECTIONS OF CHAPTER 17 STORMWATER MANAGEMENT

Be it ordained by the City Council of the City of Newburyport as follows:

THAT the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended for Chapter 17 – Stormwater Management as follows for the specific sections noted here; 17-1 – Authority, Section 17-2 – Definitions (formerly Section 17-3), Section 17-3 – Purposes, Objectives and Intent (formerly Section 17-2), Section 17-4 - Applicability, Section 17-6 - Regulations, Section 17-8 – Prohibited Activities, Section 17-9 - Exemptions, Section 17-11 – Notification of Spills, Section 17-12 – Permit Required, Section 17-13 – Exemptions and Section 17-14 - Waivers. These amendments are to read as follows, with deletions ~~double-stricken through and italicized~~, and additions double-underlined and italicized:

Sec. 17-1. - Authority.

This chapter is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to M.G.L. c. 83, §§ 1, 10, and 16, as amended by St. 2004, c. 149, §§ 135-140, and pursuant to the regulations of the Federal Clean Water Act (40 CFR 122.34).

Sec. 17-~~23~~ - Definitions.

Best ~~M~~anagement ~~P~~ractice (BMP) An activity, procedure, restraint, or structural or nonstructural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

Certified ~~P~~rofessional in ~~E~~rosion and ~~S~~ediment ~~C~~ontrol (CPESC). A certified specialist in soil erosion and sediment control. This certification program, sponsored by the Soil and Water Conservation Society in cooperation with the American Society of Agronomy, provides the public with evidence of professional qualifications.

Discharge of pollutants. The addition from any source of any pollutant or combination of pollutants into ~~a the municipal~~ storm drainage system or into the ~~waters~~ Waters of the United States or Commonwealth of Massachusetts from any source.

Erosion and Sediment Control Plan. A document containing narrative, drawings, and details developed by a Massachusetts Registered Professional Engineer (P.E.) or a Certified Professional in Erosion and Sediment Control (CPESC), which includes BMPs, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction-related land disturbances. The plan is required as part of the application for a stormwater management permit.

Illicit connection. A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drainage system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this chapter.

Illicit discharge. Direct or indirect discharge to a the municipal storm drainage system that is not composed entirely of stormwater, except as exempted in section 17-9. The term does not include a discharge in compliance with a NPDES Stormwater Discharge Permit or a Surface Water Discharge Permit, or resulting from fire fighting activities exempted pursuant to section 17-9.

Land disturbance. Any action that causes a change in the position, location, or arrangement of the land such as, soil, sand, rock, gravel, or similar earth material.

Massachusetts DEP Stormwater Management Policy Standards. The policy performance standards as further defined by the Massachusetts Stormwater Handbook, issued by the department of environmental protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act M.G.L. c. 131 § 40 and Massachusetts Clean Waters Act M.G.L. c. 21, § 23-56. The policy addresses stormwater impacts through implementation of performance standards to reduce prevent or prevent reduce pollutants from reaching water bodies and control the quantity of runoff from a site. In January 2008, this policy was incorporated into the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.00 et seq).

MS4 Permit – United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) general permits for stormwater discharges from small municipal separate storm sewer systems (MS4) in Massachusetts.

Municipal separate storm sewer system (MS4) or municipal storm drainage system. A The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the city.

Nonstormwater discharge. Discharge to a the municipal storm drainage system not composed entirely of stormwater.

Operation and maintenance plan. A plan setting up the functional, financial, and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to insure ensure that it continues to function as designed.

~~Owner~~ A person with a legal or equitable interest in property.

~~Ordinance.~~ Refers to chapter 17, stormwater management ordinance of the "Code of Ordinances of the City of Newburyport, Massachusetts".

Pollutant. Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works a stormwater drainage system or waters of the Commonwealth of Massachusetts. Pollutants shall include without limitation:

- (g) Dissolved and or toxic particulate metals;
- (i) Rock, sand, salt, soils, sediment;

Redevelopment. Development, rehabilitation, expansion, demolition, construction, land alteration or phased projects that disturb the ground surface, including or increase the impervious area surfaces, on

previously developed sites. The creation of new areas of impervious surface or new areas of land disturbing activity on a site constitutes development, not redevelopment, even where such activities are part of a common plan which also involves redevelopment. Redevelopment includes maintenance and improvement of existing roadways including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems and repaving; and remedial projects specifically designed to provide improved stormwater management such as projects to separate storm drains and sanitary sewers and stormwater retrofit projects. For purposes of this chapter redevelopment shall apply to both upland and land under the jurisdiction of the Wetlands Protection Act.

Storm Drainage System – A stormwater system comprised of all features and components, in its entirety to the final discharge into Waters of the Commonwealth, including, but not limited to, the collection systems (eg. catch basins, gutter inlets), treatment and attenuation systems (eg water quality unit, detention/retention pond, infiltration unit), conveyance systems (eg swales, pipes, culverts, roadway gutters, pumping stations) to the final discharge into Waters of the Commonwealth of Massachusetts.

Stormwater Management Plan. A plan required as part of the application for a stormwater management permit.

~~Stormwater. Stormwater runoff, snow melt runoff, and surface water runoff and drainage.~~

Surface water discharge permit. A permit issued by the department of environmental protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to Waters of the Commonwealth of Massachusetts.

Toxic or hazardous material or waste. Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under M.G.L. c. 21C and c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

Waters of the Commonwealth of Massachusetts. All waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, ~~coastal~~ coastal waters, and groundwater.

Wetlands. Coastal and freshwater wetlands, including wet meadows, marshes, swamps, and bogs, as defined and determined pursuant to M.G.L. c. 131, § 40 and 310 CMR 10.00 et seq.

Sec. 17-~~32~~ - Purposes, objectives and intent.

Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding. Regulation of illicit connections and discharges to a the municipal storm drainage system is necessary for the protection of the city's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment.

The purposes, objectives and intent of this chapter are as follows:

(a) *Detection and elimination of illicit discharges, connections and/or obstructions.*

(1) To minimize adverse impacts resulting from stormwater runoff;

(2) To prevent pollutants from entering storm drainage systems the city's municipal separate storm sewer system (MS4) and Waters of the Commonwealth of Massachusetts;

(~~3~~) To prohibit illicit discharges, connections and obstructions to the storm drainage systems MS4;

(~~4~~) To require the removal of all such illicit discharges, connections and/or obstructions;

- (54) To comply with state and federal statutes and regulations relating to stormwater discharges; and
- (65) To establish the legal authority to ensure compliance with the provisions of this chapter through inspection, monitoring, and enforcement.

(b) *Control of construction and post-construction run-off.*

- (4) To ~~encourage~~ require that the use of nonstructural stormwater management practices ~~or~~ (i.e., "low-impact development practices (LID) and numerous related BMPs) are incorporated into the design", ~~wherever practicable;~~
- (6) To prevent pollutants from entering ~~the city's municipal separate storm sewer drainage system and Waters of the Commonwealth. (MS4).~~

Sec. 17-4. - Applicability.

- (1) ~~Municipal separate storm sewer system (MS4)~~ Storm drainage systems and Waters of the Commonwealth of Massachusetts. This chapter shall apply to ~~flows~~ all stormwater entering a storm drainage system or entering, directly or indirectly, into ~~the city's municipal separate storm sewer system (MS4) and the~~ Waters of the Commonwealth of Massachusetts, except as explicitly exempted in this chapter or where the department of public services has issued a waiver in accordance with Sec. 17-14.
- (2) *Construction and post-construction activities.* ~~Any~~ This chapter applies to any construction and/or land-disturbance activity, including clearing, grading, and excavation that will disturb equal to or greater than ten thousand (10,000) square feet of land or will disturb less than ten thousand (10,000) square feet of land but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than ten thousand (10,000) square feet of land in the City of Newburyport.

After the initial common plan construction activity is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development. For example, after a house is built and occupied, any future construction on that lot (e.g., reconstructing after fire, adding a pool or parking area, etc.), would stand alone as a new common plan for purposes of calculating area disturbed to determine if a stormwater management permit is required. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or the original purpose of the site.

Sec. 17-6. - Regulations.

The department of public services may adopt and periodically amend rules and regulations, not inconsistent herewith, to effectuate the purposes of this chapter. Said regulations may include, but shall not be limited to provisions regarding: Administration; application requirements and fees; permitting procedures and requirements; design standards; surety requirements; inspection and site supervision requirements; waivers and exemptions; and enforcement procedures. ~~Said~~ These regulations shall be adopted within ninety (90) days of the effective date of this chapter in consultation with the stormwater advisory committee appointed by the mayor which must include a representative from the department of public services, the office of planning and development and the health department. Failure by the department of public services to adopt such rules and regulations or a legal declaration of their invalidity by a court of law shall not have the effect of suspending or invalidating this chapter.

Sec. 17-7. - Enforcement.

The department of public services shall enforce this chapter and any regulations, orders, violation notices, enforcement orders and permit conditions on behalf of the ~~city, and city and~~ may pursue all civil and criminal remedies for such violations pursuant thereto.

- (2) Criminal Penalty. Any person who violates any provision of this chapter and/or any regulations, orders, violation notices, enforcement orders and permit conditions issued hereunder, shall be punished by a fine of \$300. Each day or part thereof that such violation occurs or continues to

occur by failure to comply with an order or notice from the Department of Public Services shall constitute a separate violation.

~~(32)~~ *Orders.*

a. The department of public services may issue a written order to enforce the provisions of this chapter and any regulations, orders, violation notices, enforcement orders and permit conditions hereunder, which may include requirements to:

- (i) Cease and desist from construction or land disturbance until there is compliance with this chapter, and an approved ~~S~~stormwater ~~M~~management ~~P~~ermit, including the ~~S~~stormwater ~~M~~management ~~P~~lan and the ~~E~~rosion and ~~S~~ediment ~~C~~ontrol ~~P~~lan;
- (v) Elimination of illicit discharges, connections and/or obstructions to a storm drainage system~~the MS4~~;
- (vi) ~~Performance~~ Elimination of discharges to a storm drainage system or, directly or indirectly, into a watercourse or into the waters of the commonwealth~~of monitoring, analyses, and reporting~~;

~~(3) *Criminal Penalty.* Any person who violates any provision of this chapter and/or any regulations, orders, violation notices, enforcement orders and permit conditions issued hereunder, shall be punished by a fine of three hundred dollars (\$300.00). Each day or part thereof that such violation occurs or continues to occur by failure to comply with an order or notice from the department of public services shall constitute a separate violation.~~

(4) *Non-criminal disposition.* As an alternative to criminal prosecution or civil action, the city may elect to utilize the noncriminal disposition procedure set forth in M.G.L. c. 40, § 21D and adopted by the city as a general ordinance⁴ in which case the department of public services of the city shall be the enforcing person. The penalty for the 1st violation (failure to comply with an order or notice from the department of public services) shall be one hundred dollars (\$100.00). The penalty for the 2nd violation shall be two hundred dollars (\$200.00). The penalty for the 3rd and subsequent offenses shall be three hundred dollars (\$300.00). Each day or part thereof that such violation occurs or continues to occur shall constitute a separate offense.

(6) *Appeals.* Decisions or orders of the director of public services and department of public services shall be final. Further relief of a decision made under this chapter shall be reviewable in Superior Court in an action filed in accordance with M.G.L. c. 249, § 4.

(7) *Remedies not exclusive.* The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law.

ARTICLE II. - NON-STORMWATER DISCHARGES, CONNECTIONS AND OBSTRUCTIONS

Sec. 17-8. - Prohibited activities.

- (a) *Illicit discharges.* No person shall dump, discharge, spill, cause or allow to be discharged any pollutant or non-stormwater discharge into ~~the municipal separate~~ storm sewer drainage system (MS4), onto an impervious surface directly connected to a storm drainage system, or, directly or indirectly, into a watercourse, or into the waters of the Commonwealth of Massachusetts.
- (b) *Illicit connections.* No person shall construct, use, allow, maintain or continue any illicit connection to ~~the municipal~~ a storm drainage system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
- (c) *Obstruction of municipal storm drainage system.* No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drainage system without prior written approval from the department of public services.

Sec. 17-9. - Exemptions.

The following exemptions are applicable to section 17-8:

- (a) Discharge or flow resulting from ~~fire fighting~~ fire fighting activities.
- (b) The following non-stormwater discharges or flows are exempt from the prohibition of non-stormwaters provided that the source is not a significant contributor of a pollutant to ~~a the municipal~~ storm drainage system or, directly or indirectly, the Waters of the Commonwealth of Massachusetts:

Sec. 17-11. - Notification of spills.

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to a storm ~~the municipal~~ drainage system or Waters of the Commonwealth of Massachusetts, the person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the fire and police departments, health department, and the department of public services. In the event of a release of nonhazardous material, the reporting person shall notify the department of public services no later than the next business day. The reporting person shall provide to the department of public services written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

ARTICLE III. - CONSTRUCTION AND POST CONSTRUCTION STORMWATER MANAGEMENT OF NEW DEVELOPMENTS AND REDEVELOPMENTS

Sec. 17-12. - Permit required.

No person may undertake any construction and/or land-disturbance activity ~~(as defined stated in subsection 17-4(2), "applicability")~~, without first obtaining a ~~including clearing, grading, and excavation that will disturb equal to or greater than ten thousand (10,000) square foot of land or will disturb less than ten thousand (10,000) square foot of land but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than ten thousand (10,000) square foot of land in the City of Newburyport without a stormwater management permit from the department of public services pursuant to this Article~~ this chapter and regulations promulgated hereunder.

Sec. 17-13. - Exemptions.

The following exemptions are applicable to section 17-12:

- (3) Maintenance of existing landscaping, gardens or lawn areas associated with a ~~single family~~ single-family dwelling that will not alter existing terrain or drainage patterns;

Sec. 17-14. - Waivers.

The following exemptions are applicable to section 17-12:

- (a) The director of public services may waive strict compliance with any requirement of section 17-12, or the rules and regulations promulgated hereunder, where:
 - (1) allowed by federal, state and local statutes and/or regulations;
 - (2) is such action is in the public interest; and
 - (3) ~~is~~ is not inconsistent with the purpose and intent of this chapter, ~~and~~

Councillor Afroz K. Khan

In City Council November 8, 2021:

Motion to refer to Neighborhood & City Services by Councillor Khan, seconded by Councillor Wallace. So voted.

In City Council December 13, 2021:

Motion to invoke Rule 7H to move collectively to the next City Council Session by Councillor Connell, seconded by Councillor Devlin. So Voted.