



SHAKER HEIGHTS

Memorandum

To: Members of the Sustainability Committee

From: William M. Ondrey Gruber, Director of Law

cc: David E. Weiss, Mayor
Jeri Chaikin, CAO

Date: March 7, 2022

Re: **Proposed Amendments to the City's Stormwater Control Ordinance and Regulations**

The City's Administration is proposing that City Council adopt amendments to the City's existing "Storm Water, Erosion and Sediment Control" Ordinances in Chapter 1329 of the Building Code. Once adopted, the Public Works Director will issue revised Stormwater Management Regulations, Erosion and Sediment Control Regulations, and Riparian and Wetlands Setback Regulations, to replace the existing Storm Water Pollution Prevention Plan (SWP3) Regulations.

This memorandum describes the background of these ordinances and regulations, the legal requirement that the City has to enact and enforce these ordinances and regulations, and the process and substance of the proposed modifications. This memorandum is being presented to the Committee for discussion, comment and input. Staff will review all comments and take the actual ordinance thru the Safety and Public Works Committee and Council.

Current Ordinance and Regulations

The City has had a comprehensive stormwater control ordinance and regulations since 2009. The ordinance and regulations have been required by the Ohio Environmental Protection Agency (Ohio EPA), as part of the City's National Pollution Discharge Elimination System (NPDES) Storm Water Permit for General Construction.

On March 23, 2009, Council adopted Ordinance 09-36, which enacted Chapter 1329 - Storm Water, Erosion and Sediment Control, as part of the City's Codified Ordinances. Chapter 1329 was amended in Ordinance 13-114, enacted on 12-16-13. Also in 2009, the Public Works Director approved "Storm Water Pollution Prevention Plan (SWP3)" Regulations.

Based on the review of the City's current ordinance and regulations by the non-profit organization Chagrin River Watershed Partners (CRWP), and the City's consulting engineering firm, GPD Group, Inc. (GPD), it is recommended that Chapter 1329 be amended, and that the Storm Water Pollution Prevention Plan (SWP3) regulation be divided into three regulatory guidance documents, as follows:

- (1) Stormwater Management Regulations;
- (2) Erosion and Sediment Control Regulations; and
- (3) Riparian and Wetlands Setback Regulations.

Federal and State Requirements

The City is required by Federal and State law and regulations to obtain a Permit issued by the Ohio EPA, entitled a "General Storm Water Permit," for the handling, conveyance, and discharge of stormwater collected in the City into local streams and lakes. The City has been categorized as a "Phase II" community for Permit compliance, which stipulates that the community shall implement ordinances and regulations for erosion and sediment control, stormwater management, illicit discharges, and post-construction stormwater quality and quantity management.

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The most recent General Construction Permit (GCP) [OHC000005] was issued by Ohio EPA on April 23, 2018, and will expire on April 22, 2023. In addition, the new NPDES General Permit [OHQ000004] was issued on April 1, 2021, and will expire on March 31, 2026. Affected communities will be required to meet permit requirements by April 1, 2022.

Revision of Ordinance and Regulations to Comply with Federal and State Law and Regulation

Beginning in 2005, the Doan Brook Watershed Partnership (DBWP) worked with the Chagrin River Watershed Partners (CRWP) and other groups to develop a model to assist communities in implementing practices to control water quantity, as well as protect water quality, in order to meet the regulatory requirements established by the Ohio EPA.

These models represent a collaborative effort of CRWP, the Cuyahoga Soil and Water Conservation District (CSWCD), Lake County SWCD, Geauga SWCD, and CRWP member communities, with early contributions from John Aldrich, Camp Dresser and McKee, Inc. Additional technical support was provided by the Ohio Department of Natural Resources-Division of Soil and Water Resources. Revisions made in 2014-2015 were funded through the National Estuarine Research Reserve System Science Collaborative and the Lake Erie Protection Fund (LEPF). The LEPF is supported by citizens of Ohio through their purchase of the Lake Erie License Plate. Additionally, revisions to the model were prepared by CRWP under a grant from the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce through the Ohio Department of Natural Resources (ODNR), Office of Coastal Management.

In 2017, CRWP received a grant to review the City's ordinances and regulations based on the stormwater compliance requirements as stipulated in the General Permit. City officials met with CRWP and others on February 28, 2017, and agreed to participate in the grant-funded review. On October 5, 2017, the City received the initial recommendations which suggested a wholesale re-write based on two model codes.

The City requested that GPD provide its analysis regarding the recommended changes. This was completed and provided to the City on December 18, 2017. Subsequent meetings between City representatives, including, Public Works, Planning, Law, and Building, GPD, and CRWP staff were held on January 24, February 12, and February 16, 2018.

CRWP issued its final recommendations on March 23, 2018, including certain specific recommendations, as follows:

- Require post-construction stormwater management on commercial and industrial sites that include an earth disturbed area (EDA) of less than one acre.
- Utilize Building and Housing Department for plan submission, approval and enforcement.
- Utilize Cuyahoga Soil and Water Conservation District for plan review and inspection, as needed.
- Implement a fee to cover administrative costs of the program.

Further revisions and implementation of these recommendation was postponed to correspond with delays in the issuance by Ohio EPA of final requirements, which did not occur until April 1, 2021. Since then staff has worked to prepare the final proposed regulations and the appropriate amendments to the Ordinance.

To meet the CRWP models, the City proposes to amend Chapter 1329 of the Codified Ordinances, and revise the current Stormwater Pollution Prevention Plan (SWP3) Regulations into 3 separate documents as listed below:

- (1) Stormwater Management Regulations;
- (2) Erosion and Sediment Control Regulations; and
- (3) Riparian and Wetlands Setback Regulations.

The proposed modifications of the ordinance and regulations are summarized below.

Chapter 1329 Codified Ordinances

The current ordinance applies to any:

“Land-disturbing activity,” which is defined as “any land change, including but not limited to clearing, grading, excavating, transporting, and filling of land, which may result in soil erosion from water or wind and the movement of sediments into the waters or onto adjacent properties.”

The proposed changes would apply to the same activity (now called “soil-disturbing activity”), but the new language will clarify what the ordinance was always intended to apply to, as follows (the newly added language is highlighted and underlined):

“Soil-disturbing activity” means any land change, including but not limited to clearing, grading, excavating, transporting, or filling of land, **grubbing or stump removal that occurs during clearing or timber activities, or other alteration of the earth’s surface where natural or human made ground cover, including but not limited to plants or trees, is removed or destroyed that may result in, or contribute to, increased stormwater quantity and/or decreased stormwater quality,** erosion from water or wind, the movement of sediments into the waters or onto adjacent properties, or the degradation or filling of wetlands. Soil-disturbing activity shall include land clearing activity.

Currently, the ordinance applies to all land-disturbing activity in the City, including all such activity for which a building permit is required, and requires the following, as set forth in the City’s Storm Water Pollution Prevention Plan (SWP3) Regulations:

- (1) The owner of each development area must submit:
 - (a) A **Construction Site Conservation Plan;**
 - (b) A **Riparian Setback and Wetland Setback Plan;**
 - (c) A **Post-Construction Storm Water Management Plan.**
 - (d) Under the Regulations, these three Plans serve as the “**Comprehensive Storm Water Management Plan**” and “**Storm Water Pollution Prevention Plan (SWP3).**”
- (2) The land disturbing activities for which these Plans must be submitted are:
 - (a) Residential, institutional, commercial and industrial site development of 1 acre or more, or less than 1 acre if part of a larger common plan of development or sale disturbing 1 or more acres of total land;
 - (b) An **Abbreviated Storm Water Pollution Prevention Plan (SWP3)** must be submitted for sites larger than 8,000 square feet in size, but less than 1 acre.

The amended Ordinance would require the following prior to the start of any soil disturbing activity,:

- (1) The owner of each development area must submit:
 - (a) A **Comprehensive Stormwater Management Plan (CSMP);** and
 - (b) A **Storm Water Pollution Prevention Plan (SWP3).**
- (2) The soil disturbing activities for which these Plans must be submitted are:
 - (a) Commercial and industrial site development of any size or acreage;
 - (b) Residential, institutional or other properties when disturbing 1 or more acres of total land, or less than 1 acre if part of a larger common plan of development or sale disturbing 1 or more acres of total land; and
 - (c) Residential, institutional or other properties when disturbing less than 1 acre if determined necessary by the Director.
- (3) An **Abbreviated Storm Water Pollution Prevention Plan (SWP3)** can be submitted in the following situations:
 - (a) New single-family residential construction;
 - (b) Additions or accessory buildings for single-family residential construction; and
 - (c) General clearing activities not related to construction, if disturbing less than 1 acre, and is not part of a larger common plan of development or sale disturbing 1 acre or more.

Activities disturbing 1/10 or less of an acre are not required to submit a SWP3 or an Abbreviated SWP3, unless required by the Director, but such activities must comply with all other provisions of the Erosion and Sediment Control Regulations.

In addition, an applicant for property subdivision or consolidation, site plan approval, land development plan approval, or for a permit which involves soil disturbing or land clearing activities, must delineate riparian and/or wetland setbacks as required by the Riparian and Wetlands Setback Regulations.

The current and the proposed amended ordinance *both* provide for the following:

- Owners must get a permit for any land-disturbing activity.
- Building may charge a fee.
- Owner must submit 2 copies of the Storm Water Pollution Prevention Plan and Notice of Intent.
- Plan must be approved by Building Commissioner, and Directors of Public Works, and Planning.
- Building may inspect periodically.
- The Plan may be amended.
- Must be final inspection within 45 days of completion.
- Building may charge a fee for inspections.
- Building may waive or modify regulations.

The proposed ordinance also requires a permit for the following activities within any riparian or wetland setback:

- Selective cutting or thinning of trees and brush based on a Forest Management and Harvest Plan.
- Stream bank stabilization and erosion control measures based on Soil Erosion and Sediment Control Plan.
- Crossings of designated watercourses through riparian or wetland setbacks based on Crossing Plan.
- Fencing.

Both the current and proposed ordinance provide for:

- Appeals to the Board of Building Code Appeals, per Chapter 1311 Building Code,
- Variances by the Building and Housing Department
- That violations are first degree misdemeanors.
- That Building and Housing or Public Works may issue stop work orders, or orders that the work on a site must be modified or removed and/or redone.

Comprehensive Stormwater Management Regulations

The current and proposed Regulations both apply to all land, or soil, disturbing activity in the City, including all such activity for which a building permit is required. Although some of the titles of plans are changing, both the current and proposed regulations require a Comprehensive Stormwater Management Plan (CSMP) and Storm Water Pollution Prevention Plan (SWP3) prior to the start of land/soil disturbing activity.

The main difference between the current and proposed regulations is that the Plans noted above are required for any commercial or industrial site development of any size or acreage, while currently the Plans are required for such development only when it disturbs 1 acre or more, or less than 1 acre if part of a larger common plan of development or sale disturbing 1 or more acres of total land.

The new regulations will, as do the current regulations, still apply to residential, institutional or other properties when 1 or more acres of total land is disturbed, or less than 1 acre if part of a larger common plan of development or sale disturbing 1 or more acres of total land. There will be discretion for the Director to require the Plans for residential, institutional or other properties when disturbing less than 1 acre if it is determined to be necessary in certain circumstances.

Proposed changes in the regulations:

- Allow for an Abbreviated Storm Water Pollution Prevention Plan (SWP3) under the following situations:
 - New single-family residential construction;
 - Additions or accessory buildings for single-family residential construction; and General clearing activities not related to construction, if disturbing less than 1 acre, and is not part of a larger common plan of

- development or sale disturbing 1 acre or more.
- Add a subpart to the Regulations that stipulates activities disturbing one-tenth (1/10) or less of an acre are not required to submit a SWP3 or an Abbreviated SWP3, unless required by the Director, but such activities must comply with all other provisions of the Erosion and Sediment Control Regulations.

The current Regulations allow for requests for the following exemption for areas being redeveloped:

Redevelopment Exemption: Owners of development sites that were created by demolishing an older existing structure may request, in writing, that the Director exempt them from the storm water regulations if the total soil surface area being made impermeable is the same or less than the total soil surface area that was impermeable due to the structure(s) being torn down and removed.

The revised Regulations would change this to the following:

- Comprehensive Stormwater Management Plans for redevelopment projects must accomplish one of the following options:
 - A 20% net reduction of the site's water volume runoff coefficient through impervious area reduction with soil restoration or replacing impervious roof area with green roof area (for these purposes green roofs shall be considered pervious surface); or
 - Treatment of 20% of the Water Quantity Volume (WQv) for the previously developed area using a practice meeting the requirements in the General Construction Permit (GCP).

Erosion and Sediment Control Regulations

The proposed Erosion and Sediment Control Regulations apply to development sites and soil-disturbing activities, and require that a Storm Water Pollution Prevention Plan (SWP3) be developed and implemented the same as for the Comprehensive Stormwater Management Regulations described above.

The current SWP3 Regulations do not clearly define pre-construction meeting requirements, scheduling, and/or fees due. The proposed new regulations will do the following:

- The developer, engineer and contractor, and other principal parties, must meet with the City for a Pre-Construction Meeting no less than 7 days prior to soil-disturbing activity at the site to ensure that erosion and sediment control devices are properly installed, limits of disturbance and buffer areas are properly delineated and construction personnel are aware of such devices and areas.
- The Pre-Construction Meetings for Abbreviated SWP3s may be waived at the discretion of the Director.

Riparian and Wetland Setback Regulations

The current Storm Water Pollution Prevention Plan (SWP3) Regulation does not clearly define the responsible party for delineation of riparian and/or wetland setbacks.

The proposed Regulation would require delineation of riparian and/or wetland setbacks and a Building Permit, as follows:

- Require an applicant for property subdivision or consolidation, site plan approval, land development plan approval, or for a permit which involves soil disturbing or land clearing activities to delineate riparian and/or wetland setbacks.
- For selective cutting or thinning of trees and brush based on a Forest Management and Harvest Plan.
- For stream bank stabilization and erosion control measures based on a Soil Erosion and Sediment Control Plan.
- For crossings of designated watercourses through riparian or wetland setbacks based on a Crossing Plan.
- For fencing in the setback area.