

ORDINANCE NO. 22-42

BY: Nancy Moore

Amending Sections 1329.01 through 1329.12, and 1329.14, of the Building Code of the Codified Ordinances of the City of Shaker Heights regarding stormwater, erosion and sediment control in the City.

WHEREAS, Sections 1329.01 through 1329.12, and 1329.14, were enacted by Ordinance 09-36, on March 23, 2009, and Section 1329.01, Sections 1329.03 through 1329.12, and Section 1329.14 were amended by Ordinance 13-114, enacted December 16, 2013; and

WHEREAS, in 2009, the Public Works Director approved and issued "Storm Water Pollution Prevention Plan (SWP3)" Regulations to implement the Stormwater, Erosion and Sediment Control ordinances in Chapter 1329; and

WHEREAS, the City enacted the comprehensive stormwater control ordinance and issued the SWP3 Regulations to comply with requirements of 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, for the handling, conveyance, and discharge of stormwater collected in the City into local streams and lakes; and

WHEREAS, the City has been categorized as a "Phase II" community for Permit compliance, which stipulates that the City must implement ordinances and regulations for erosion and sediment control, stormwater management, illicit discharges, and post-construction stormwater quality and quantity management; and

WHEREAS, in order to comply with changes in EPA regulations, the City has undertaken a review of the City's ordinance and regulations, assisted by the non-profit organization Chagrin River Watershed Partners (CRWP), and the City's consulting engineering firm, GPD Group, Inc. (GPD), which have recommended that Chapter 1329 be amended, and that the Storm Water Pollution Prevention Plan (SWP3) regulation be divided into three regulatory guidance documents, to be issued by the Director of Public Works as (1) Stormwater Management Regulations, (2) Erosion and Sediment Control Regulations; and (3) Riparian and Wetlands Setback Regulations; and

WHEREAS, the Director of Public Works recommends that this Council enact these amendments to Chapter 1329, as recommended by our consulting engineer.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Shaker Heights, State of Ohio:

Section 1. Sections 1329.01 through 1329.12, and 1329.14, of the Building Code of the Codified Ordinances of the City of Shaker Heights as heretofore in effect are hereby repealed.

Section 2. Sections 1329.01 through 1329.12, and 1329.14, of the Building Code of the Codified Ordinances of the City of Shaker Heights are hereby enacted as amended, as follows:

CHAPTER 1329 - ~~Stormwater~~Storm Water, Erosion and Sediment Control

1329.01 DEFINITIONS.

The definitions contained in ~~the~~ Ohio Environmental Protection Agency Permit ~~Number "3GQ0037*AG",~~ entitled "Authorization for Storm Water DischargesGeneral Storm Water Permit Associated with Construction Activity under the National Pollutant Discharge Elimination System" that are in effect at the time a permit application is submitted under this Chapter shall apply to this Chapter, as well as the definitions contained in regulations adopted by the Director of Public Works to implement this Chapter, except for the following:

- (a) "Applicant" means any person requesting ~~a construction runoff control permit for land disturbing activity. a permit for or approval of a Comprehensive Stormwater Management Plan (CSMP), Stormwater Pollution Prevention Plan (SWP3), a property subdivision or consolidation, site plan, land development plan, or for any other activity which involves soil disturbing or land clearing.~~
- (b) "Commissioner" means the Commissioner of Building or the Commissioner's designee, except where otherwise specified.
- ~~(c) "Director" means the Director of Building and Housing, or the Director's designee.~~
- ~~(e) "Land disturbing activity" means 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.~~
- ~~(d) "Owner" shall mean the record or equitable owner of real property, a lessee in control, an agent of either the owner or lessee in control, and/or a person in control of real property.~~
- (e) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, or any other legal entity.
- ~~(f) "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.~~

1329.02 GENERAL PROVISIONS.

(a) This Chapter applies to all ~~soiland~~-disturbing activity in the City, including all such activity for which a building permit is required, and requires the plans and measures set forth in this Sectionfollowing,

~~without limitation, and as set forth in more detail in the Stormwater Management, Erosion and Sediment Control, and Riparian and Wetlands Setback Regulations adopted by the Director of Public Works and which are incorporated into this Chapter.~~

~~(1) The owner of each development area shall be responsible for developing a comprehensive Construction Site Conservation Plan, which must address storm water management (including volume and peak rate of runoff), soil erosion, sediment and other wastes control;~~

~~(2) The owner of each development area shall be responsible for developing a comprehensive Riparian Setback and Wetland Setback Plan for all land disturbing activities;~~

~~(3) An owner of real property where land disturbing activity is undertaken shall follow all federal, State and City regulations protecting riparian areas along watercourses and wetlands for certain existing and new construction and landscaping;~~

~~(4) The owner of each development area shall be responsible for developing a Post-Construction Storm Water Management Plan, which shall be combined with the Construction Site Conservation Plan and the Riparian Setback and Wetland Setback Plan that are also developed for the site; and~~

~~(5) These plans shall contain a description of controls appropriate for each construction operation covered by this Chapter, and the owner, or the owner's agent operator, shall implement such controls in a timely manner.~~

(b) Prior to the start of any soil disturbing activity, a Comprehensive Stormwater Management Plan (CSMP) and a Storm Water Pollution Prevention Plan (SWP3) shall be developed, approved and implemented, along with a timetable for prompt implementation of all required Best Management Practices (BMPs) and Stormwater Control Measures (SCMs), for:

(1) All soil disturbing activities for commercial and industrial site development disturbing more than two-tenths (0.2) of an acre.

(2) All soil disturbing activities for residential, institutional or other properties, not including commercial or industrial property, that will be disturbing one (1) or more acres of total land, or less than one (1) acre if part of a larger common plan of development or sale disturbing one (1) or more acres of total land, and on which any regulated activity is proposed.

(3) All soil disturbing activities on sites disturbing less than one (1) acre if determined necessary by the Director.

(c) Prior to the start of any soil disturbing for the following activities an Abbreviated SWP3 shall be developed, approved and implemented, including a timetable for prompt implementation of any required controls:

(1) New single-family residential construction that disturbs 0.1 (one tenth) up to one (1) acre of land.

(2) Additions or accessory buildings for single-family residential construction that disturb 0.1 (one tenth) up to one (1) acre of land.

(3) All non-residential construction that disturb 0.1 (one tenth) - up to one (1) acre of land.

- (4) General clearing activities not related to construction that disturb 0.1 (one tenth) up to one (1) acre of land.
- (5) Activities disturbing 0.1 (one tenth) or less of an acre are not required to submit a SWP3, unless required by the Director. These activities must comply with all other provisions of this regulation.

(d) 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.

(e) 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, shall be responsible for delineating riparian and/or wetland setbacks as required by the Riparian and Wetlands Setback Regulations.

~~(fb) This Chapter shall apply to all areas drained by the City of Shaker Heights municipal storm water collection, storage and sewer system, as well as the natural watercourse in the City. These areas have been identified in the City of Shaker Heights Storm Water Program document, which was developed as a requirement for coverage under the Ohio Environmental Protection Agency Permit Number "3GQ0037*AG", entitled "General Storm Water Permit." This Program, with accompanying appendices, and any revisions, is adopted by reference and declared to be a part of this Chapter. The Program document is on file with the City of Shaker Heights Public Library, 16500 Van Aken Boulevard, Shaker Heights, Ohio 44120.~~

(ge) This Chapter is intended to be supplemental to any City regulation or policy governing the development of land, the removal of soil or other ~~land-disturbing~~soil-disturbing activity. The most restrictive standards imposed by any City ordinance, regulation, or policy shall apply.

(hd) The Director of Public Works is authorized to establish rules and regulations for storm water pollution prevention including, without limitation, a storm water pollution prevention plan for the City, consistent with this Chapter and any State and federal law and regulations applicable to such plans. The Director's rules and regulations may go above and beyond the requirements of State and federal law. Any such Rules and Regulations adopted by the Director shall be considered to be part of the requirements of this Chapter, including for any permittee.

1329.03 PERMIT REQUIRED.

(a) It shall be unlawful for any person to undertake any ~~soil~~land-disturbing activity without first obtaining a permit from the Director or the Director's designee~~Commissioner~~, unless otherwise exempted from such requirement in this Chapter.

(b) It shall be unlawful for any permittee to fail to comply with any permit issued to the permittee and the plans and specifications contained in the permittee's application for the permit.

(c) A Permit is required for the following activities occurring within any riparian or wetland setback, if such activities are otherwise allowed by law, including the City's Building and Zoning Codes:

- (1) Selective cutting or thinning of trees and brush upon presentation of a Forest Management and Harvest Plan prepared by a Qualified Forester and accepted by the Director.
- (2) Stream bank stabilization and erosion control measures that are ecologically compatible and substantially utilize natural materials and native plant species where practical, and based on an approved Soil Erosion and Sediment Control Plan.
- (3) Crossings of designated watercourses through riparian or wetland setbacks with roads, driveways, easements, bridges, culverts, utility service lines, or other means, provided such crossings minimize disturbance in riparian and wetland setbacks and mitigate any necessary disturbances, and are based on an approved Crossing Plan.
- (4) Unless otherwise prohibited, construction of fencing with the condition that reasonable efforts be taken to minimize the destruction of existing vegetation, provided that the fence does not impede stream or flood flow, and the disturbed area is replanted to the natural or preexisting conditions before the addition of the fence, as approved by the Director.

(d) The Director or the Director's designee may, for good cause, attach such conditions as the Director deems appropriate. Permits issued under this regulation are issued to the applicant only, shall not be transferred, and shall be void if not implemented within one (1) year of issuance.

1329.04 PERMIT APPLICATION; FEE.

(a) The ~~Commissioner~~Director may charge a permit application fee as established from time to time by the ~~Commissioner~~Director.

(b) Any person desiring a permit required by this Chapter shall file an application with the ~~Commissioner~~Director. The application shall consist of:

- (1) The permit application fee;
- (2) ~~The Plans required by the Stormwater Management, Erosion and Sediment Control, and Riparian and Wetlands Setback Regulations~~At least two copies of a Storm Water Pollution Prevention Plan; and
- (3) ~~Two copies of a~~ completed Notice of Intent.

(c) The Plan(s) and Notice required in this Section~~subsection~~ shall ~~be prepared under~~ meet all requirements in the Ohio Environmental Protection Agency Permit ~~Number "3CQ0037*AG",~~ entitled "General Authorization for Storm Water Discharges Associated with Construction Activity Under the National Pollutant Discharge Elimination System Permit," that is in effect at the time a permit application is submitted under this Chapter.

1329.05 APPROVAL OR DISAPPROVAL OF STORM WATER POLLUTION PREVENTION PLAN.

(a) The Commissioner shall review the Comprehensive Stormwater Management Plan (CSMP), Storm Water Pollution Prevention Plan (SWP3), and any other Plans required by this Chapter and the City's regulations incorporated into this Chapter ~~a storm water pollution prevention plan~~

submitted with a permit application, and shall grant written approval without unreasonable or unnecessary delay if the Commissioner determines that the plans meets the requirements prescribed in this Chapter. Such plans shall also be reviewed and must be approved by the Directors of Public Works and Planning.

(b) When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant. The notice shall specify the modifications, terms and conditions that are necessary for approval of the plan.

1329.06 ISSUANCE AND TERM OF PERMIT.

The ~~Commissioner~~Director shall issue a permit certifying approval of the ~~soil~~land-disturbing activity upon:

- (a) Approval of the Comprehensive Stormwater Management Plan (CSMP), Storm Water Pollution Prevention Plan (SWP3), and/or any other Plans required by this Chapter and the City's regulations incorporated into this Chapter~~storm water pollution prevention plan~~; and
- (b) Submission of proof that the applicant has received approval from the Director of the Ohio Environmental Protection Agency for coverage as required by the Ohio Environmental Protection Agency Permit ~~Number "3GQ0037*AG",~~ entitled "Authorization for Storm Water Discharges Associated with Construction Activity under the National Pollutant Discharge Elimination System~~General Storm Water Permit~~" that is in effect at the time the permit application is submitted.

1329.07 PERIODIC INSPECTIONS OF LAND-DISTURBING~~SOIL-DISTURBING~~ ACTIVITIES.

The Commissioner or the Commissioner's designee may make periodic inspections of ~~land-disturbing~~soil-disturbing activities and land subject to permanent maintenance requirements and/or best management practices after land disturbing activities to ensure compliance with any approved Comprehensive Stormwater Management Plan (CSMP), Storm Water Pollution Prevention Plan (SWP3), and/or any other Plans required by this Chapter and the City's regulations incorporated into this Chapter~~storm water pollution prevention plan, this Chapter and the regulations adopted by the Director of Public Works~~, and to determine whether the measures required in the ~~P~~plans, this Chapter and City regulations are effective in controlling erosion and sedimentation resulting from the ~~land-disturbing~~soil-disturbing activity. The right of and consent to inspection shall be inherent in the application for, issuance of and acceptance of the permit under this Chapter and shall be a continuing right after completion of work under a permit for any activities required hereunder.

1329.08 AMENDMENT OF APPROVED PLAN.

A Comprehensive Stormwater Management Plan (CSMP), Storm Water Pollution Prevention Plan (SWP3), and/or any other Plans required by this Chapter and the City's regulations incorporated into this Chapter~~storm water pollution prevention plan approved under this Chapter~~ may be amended by the Commissioner in the following cases:

- (a) When inspection reveals that the plan is inadequate to satisfy applicable regulatory provisions; or
- (b) When the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and the person proposes amendments to the plan consistent with the requirements of this Chapter.

1329.09 FINAL INSPECTION AND CERTIFICATE OF COMPLETION OF ~~LAND-DISTURBING~~SOIL-DISTURBING ACTIVITIES.

(a) Within forty-five days of completing all permitted ~~land-disturbing~~soil-disturbing activity, the permittee shall notify the Ohio Environmental Protection Agency and Commissioner by submitting a Notice of Termination on the form provided by the Ohio Environmental Protection Agency. The Commissioner shall make a final inspection of the project. On finding satisfactory evidence of compliance with the approved Comprehensive Stormwater Management Plan (CSMP), Storm Water Pollution Prevention Plan (SWP3), and/or any other Plans required by this Chapter and the City's regulations incorporated into this Chapter~~storm water pollution prevention plan~~, and the achievement of adequate stabilization, the Commissioner shall issue a Ceertificate of Ceompletion. "Adequate stabilization" of the site shall be determined by the Commissioner.

(b) The permittee, or any person identified in an approved Comprehensive Stormwater Management Plan (CSMP), Storm Water Pollution Prevention Plan (SWP3), and/or any other Plans required by this Chapter and the City's regulations incorporated into this Chapter~~storm water pollution prevention plan~~ as responsible for the continuing obligations for the maintenance of post-construction best management practices, shall not be relieved of those continuing obligations by the issuance of a Ceertificate of Ceompletion.

1329.10 PERIODIC AND FINAL INSPECTION FEES.

The ~~Commissioner~~Director is authorized to charge fees at the time of a periodic or final inspection according to an inspection fee schedule fixed from time to time by the ~~Commissioner~~Director.

1329.11 WAIVERS.

The ~~Commissioner~~Director may waive or modify any of the regulations that are deemed inappropriate or too restrictive on the applicant's proof of compliance with the waiver conditions contained in the Ohio Environmental Protection Agency Permit ~~Number "3GQ0037*AG",~~ entitled "General Storm Water Authorization for Storm Water Discharges Associated with Construction Activity under the National Pollutant Discharge Elimination System~~Permit~~" that is in effect at the time a permit application is submitted.

1329.12 APPEALS AND VARIANCES.

(a) Any denial, revocation or modification of a permit, any denial of a variance authorized by this Chapter, or any violation notice or stop work order issued pursuant to the provisions of this Chapter may be appealed to the Board of Building Code Appeals as provided in Chapter 1311 of this Building Code, except as otherwise set forth in this Chapter or the regulations adopted by the Director of Public Works pursuant to the authority of this Chapter.

(b) The ~~Commissioner~~Director may grant a variance from the provisions of this Chapter as permitted in any regulations adopted by the Director of Public Works, or as set forth herein. A variance may be granted only if the ~~Commissioner~~Director finds there is unnecessary hardship or practical difficulty such as to justify the granting of a variance. The ~~Commissioner~~Director shall consider whether a variance will have a significant negative impact on any of the purposes of this Chapter or the regulations adopted by the Director of Public Works pursuant to the authority of this Chapter, including, but not limited to, the potential harm to or reduction in storm water quality, storm water quantity control, or riparian or wetland area functions that may be caused by a proposed structure or use. In making a variance determination, the City shall consider any standards set forth in the regulations adopted by the Director of Public Works pursuant to the authority of this Chapter.

1329.14 ENFORCEMENT; PENALTY; AND STOP WORK OR REMEDIAL ORDERS.

(a) The City may enforce this Chapter through administrative, civil or criminal actions, as the City deems appropriate, as set forth herein and in Section 1301.08 of this Building Code.

(b) Any person convicted for any violation of this Chapter shall be guilty of and subject to the penalties for a first degree misdemeanor. Each day of such violation or failure to comply shall constitute a separate offense.

(c) The Commissioner or the Director of Public Works may issue an order that all or any portion of work on a site must not be started or must stop and not continue until the Director of Public Works or Commissioner issuing the order is satisfied that the person is in compliance and will remain in compliance with this Chapter. Either the Commissioner or Director of Public Works may issue an order that the work on a site must be modified or removed and/or redone in order to bring the person and property into compliance with these regulations. Any such notice shall be in writing and shall be given to the owner, agent or person in control or responsible for the site and/or property, or the person performing the work, and shall state the conditions under which such work may be resumed; provided, however, in instances where immediate action is deemed necessary for public safety or the public interest, the Commissioner or the Director of Public Works issuing the order may require that work be stopped upon verbal order pending issuance of the written order.

Section 3. This Ordinance shall be effective on the earliest date permitted by law.

Enacted May 23, 2022.

Approved this _____ day of _____, 2022.

DAVID E. WEISS, Mayor

Attest:

WILLIAM M. ONDREY GRUBER
Clerk of Council Pro Tem