

Public Service

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ORDINANCE NO. 459 -2006 amending and/or supplementing Title 5, Chapter 50 of the Code of Ordinances of the City of Akron by enacting new section 50.80 entitled "Erosion and Sediment Control; Post-Construction Storm Water Quality"; and declaring an emergency.

WHEREAS, Article XVIII, Section 3 of the Ohio Constitution grants municipalities the authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws; and

WHEREAS, the U.S. Environmental Protection Agency promulgated the Combined Sewer Overflows ("CSO") Control Policy in 1994 which requires, *inter alia*, municipalities to develop and implement long term control plans to minimize and control CSOs so that they do not significantly contribute to violations of water quality standards or impairment of designated uses and to minimize the total loading of pollutants discharged during wet weather; and

WHEREAS, 40 C.F.R. Parts 9, 122, 123 and 124, referred to as NPDES Storm Water Phase I and Phase II Program, require designated communities, including the City of Akron, to develop and implement a Storm Water Management Program to address, among other components, erosion and sediment control during soil disturbing activities and post-construction storm water quality; and

WHEREAS, the Ohio Environmental Protection Agency issued an National Pollutant Discharge Elimination System ("NPDES") permit to the City of Akron (Ohio EPA Permit No. 3PI00002*BD) authorizing it to discharge from all portions of the municipal separate storm sewer system ("MS4") to surface waters of the State in accordance with the terms and conditions of the permit which includes, among other things, the adoption of an ordinance to require construction and post construction storm water controls for construction activities disturbing one acre or more; and

WHEREAS, the purpose of this ordinance is to establish technically feasible and economically reasonable standards to achieve a level of erosion and sediment control that will minimize damage to property and degradation of water resources and wetlands, and will promote and maintain the health and safety of the citizens; and

WHEREAS, this ordinance will allow development while minimizing increases in erosion and sedimentation; and

WHEREAS, this ordinance is intended to reduce water quality impacts to receiving water resources and wetlands that may be caused by new development or redevelopment activities.

NOW, THEREFORE, BE IT ENACTED by the Council of the City of Akron:

Section.1. That Title 5, Chapter 50 of the Code of Ordinances of the City of Akron be, and is hereby, amended and/or supplemented by the enactment of new section 50.80 "Erosion and Sediment Control; Post-Construction Storm Water Quality" which shall read as follows:

Section 50.80 Erosion and Sediment Control; Post-Construction Storm Water Quality.

A. GENERAL PROVISIONS

1. This section shall apply to all development areas drained by the City's municipal separate and combined sewer systems.
2. This section develops, implements and enforces a program to reduce pollutants in storm water runoff from construction activities that result in a land disturbance of greater than or equal to one acre or construction activities disturbing less than one acre if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more.
3. This section does not apply to activities regulated by, and in compliance with, the Ohio Agricultural Sediment Pollution Abatement Rules, Rules 1501:15-5-01 to 15-5-18 of the Ohio Administrative Code.
4. Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this regulation are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or for the benefit of any particular parcel of property.
5. This regulation shall not be construed as authorizing any person to maintain a private or public nuisance on their property, and compliance with the provisions of this regulation shall not be a defense in any action to abate such a nuisance.
6. Failure of the City to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the site owner from the responsibility for the condition or damage resulting therefrom, and shall not result in the City, its officers, employees, or agents being responsible for any condition or damage resulting therefrom.
7. Approvals issued in accordance with this regulation do not relieve the applicant of responsibility for obtaining all other necessary permits and/or approvals from the Ohio EPA, the US Army Corps of Engineers, and other federal, state, and/or county agencies. If requirements vary, the most restrictive requirement shall prevail.

B. DEFINITIONS

The definitions contained in Ohio Environmental Protection Agency General Permit Number "OHC000002", entitled "Authorization For Storm Water Discharges Associated With Construction Activity Under the National Pollutant Discharge Elimination System" in effect at the time a permit is applied for under this section, shall apply to this section, except for the following:

"APPLICANT": Any property owner and/or authorized agent seeking to undertake soil disturbing activities for all development areas of one (1) acre or more, including projects less than one (1) acre that are part of a larger common plan of development or sale.

"BEST MANAGEMENT PRACTICES (BMPs)": Schedule of activities, prohibitions of practices, maintenance procedures, management practices (both structural and non-structural) to minimize soil erosion and sedimentation and to prevent or reduce the pollution of water resources and wetlands, and any other storm water control mechanism required by the City in its discretion. BMPs may include treatment requirements, operating procedures, and practices to control facility and/or construction site runoff, spillage, or leaks; sludge or waste disposal; or drainage from raw material storage.

"BMP GUIDANCE DOCUMENT": A guidance document prepared by the City that describes the approved BMPs and control mechanisms to minimize soil erosion and sedimentation and to prevent or reduce the pollution of water resources and wetlands.

"EROSION": The process by which the land surface is worn away by the action of water, ice, gravity, or any combination of those forces.

"EROSION AND SEDIMENT CONTROL": The control of soil, both mineral and organic, to minimize the removal of soil from the land surface and to prevent its transport from a disturbed area by means of water, ice, gravity, or any combination of those forces.

"GENERAL CONSTRUCTION NPDES PERMIT": Ohio EPA's current and effective construction storm water general permit that authorizes storm water discharges associated with construction activity under the National Pollutant Discharge Elimination System (Ohio EPA Permit No. OHC000002).

"INDIVIDUAL CONSTRUCTION NPDES PERMIT": Ohio's EPA's construction storm water individual permit that authorizes storm water discharges associated with construction activity at a particular site under the National Pollutant Discharge Elimination System. It is usually issued by Ohio EPA when a facility's discharges are not covered by the General Construction NPDES Permit.

"NOTICE OF INTENT APPLICATION": Ohio EPA's one-page application form to request initial coverage or renew coverage under Ohio EPA's General NPDES

Permit for discharges associated with construction activity for all construction activities having a disturbed land area of one acre or more.

“PERSON”: Any individual, corporation, firm, trust, commission, board, public or private partnership, joint venture, agency, unincorporated association, municipal corporation, county or state agency, the federal government, other legal entity, or an agent thereof.

“PROFESSIONAL ENGINEER”: A Professional Engineer registered in the State of Ohio.

“SOIL DISTURBING ACTIVITIES”: Clearing, grading, excavating, filling, or other alteration of the earth’s surface where natural or human made ground cover is destroyed and that may result in, or contribute to, erosion and sediment pollution.

“STORM WATER MANAGEMENT APPLICATION AND PROCEDURE MANUAL”: A guidance document prepared by the City that contains the application procedures that must be completed prior to undertaking soil disturbing activities for all development areas of one (1) acre or more, including projects less than one (1) acre that are part of a larger common plan of development or sale.

“STORM WATER POLLUTION PREVENTION PLAN (SWP3)”: The written document that sets forth the plans and practices to be used to meet the requirements of this section.

C. STORM WATER POLLUTION PREVENTION PLAN (SWP3)

1. The SWP3 shall comply with the General Construction NPDES Permit or Individual Construction NPDES Permit.
2. The SWP3 shall contain a description and location of all Best Management Practices (BMPs) and erosion and sediment controls for each construction operation. The BMPs and erosion and sediment controls during active construction and post-construction shall meet the requirements and performance standards in the City’s BMP Guidance Document.
3. The post-construction BMPs required herein shall be maintained in perpetuity by the applicant or its heir(s), assign(s) or successor(s) of the property. The applicant or its heir(s), assign(s) or successor(s) shall perform one (1) inspection each year and submit a written report prepared by a professional engineer describing the status and maintenance of the post-construction controls along with applicable fees to the City or its authorized agent.
4. The City or its authorized agent may require the SWP3 to include a soils engineering report based upon the determination that the conditions of the soils are unknown or unclear to the extent that additional information is required to protect against erosion or other hazards. Recommendations included in the report and reviewed by the City and/or its authorized agent may be incorporated in the grading plans and/or other specifications for

site development.

5. An applicant must implement and comply with the terms and conditions of the approved SWP3.

D. REGULATED ACTIVITIES; EXEMPTIONS

1. No person shall undertake soil disturbing activities for any development areas of one (1) acre or more, including projects less than one (1) acre that are part of a larger common plan of development or sale without complying with the application procedures in subsection (E) and receiving an approval letter from the City under subsection (F).
2. An applicant must be issued an approval for coverage under the General Construction NPDES Permit or an Individual Construction NPDES Permit by Ohio EPA, if not otherwise exempt, prior to undertaking soil disturbing activities for all development areas of one (1) acre or more, including projects less than one (1) acre that are part of a larger common plan of development or sale.
3. An applicant that is granted a waiver or exemption from Ohio EPA for complying with the terms and conditions of the General Construction NPDES Permit is exempt from the requirements and provisions in this section. An applicant must submit proof to the City and/or authorized agent that the exemption has been approved by the Ohio EPA.

E. APPLICATION PROCEDURES AND REQUIREMENTS

1. Prior to undertaking soil disturbing activities, an applicant shall submit to the City the following in accordance with the Storm Water Management Application and Procedure Manual:
 - a. An application with applicable fees;
 - b. A Notice of Intent Application;
 - c. A Storm Water Pollution Prevention Plan (SWP3);
 - d. An executed easement approved and provided by the City to secure future access to all permanent post-construction controls (vegetative and mechanical BMPs); and
 - e. If exempt pursuant to subsection (D)(3), the applicant must submit proof to the City and/or its authorized agent that the exemption has been approved by Ohio EPA.

F. APPROVAL OR DISAPPROVAL OF APPLICATION AND STORM WATER POLLUTION PREVENTION PLAN

1. The City and/or its authorized agent shall approve the Storm Water Pollution Prevention Plans (SWP3) and other forms submitted under Subsection (E), or return with comments and recommendations for revisions. Upon approval, the City and/or its authorized agent shall send an approval letter to the applicant.

2. When the City and/or its authorized agent determines the SWP3 is inadequate, written notice of disapproval stating the specific reasons for the disapproval shall be communicated to the applicant. The notice shall specify the modifications, terms and conditions that are necessary for approval of the SWP3.
3. The City may require a pre-construction meeting between the City and/or authorized agent and applicant prior to soil disturbing activities.
4. Soil disturbing activities shall not begin, final plat approvals shall not be issued, and building and zoning permits shall not be issued until the City and/or its authorized agent issues an approval letter to the applicant.
5. An approved SWP3 shall remain valid for two years. If regulations concerning erosion and sediment control or storm water quality change prior to the beginning of active construction, the City may request an applicant to submit a revised SWP3 to the City and/or authorized agent.

G. INSPECTIONS

1. The City and/or its authorized agent may make periodic inspections of development areas subject to this section to determine whether the controls and measures required in the SWP3 are effective in controlling erosion and sedimentation during the active construction phase of the project. The applicant shall provide reasonable access to the City and/or its authorized agent.
2. The City and/or its authorized agent may make periodic inspections of development areas subject to this section to determine whether the controls and measures required in the SWP3 are effective in controlling erosion and sedimentation during the post construction phase of the project. The applicant shall secure future access to all permanent post-construction controls (vegetative and mechanical BMPs) by means of an easement that is acceptable to the City.

H. NOTICE AND ORDERS

1. **Written Notice or Order.** Whenever the City and/or its authorized agent is satisfied after inspection of a development area that the controls and measures required in the SWP3 have not been effective in controlling erosion and sedimentation during the active and/or post-construction phase of the project or the applicant has committed other acts in violation of this section, the City shall serve a written notice of violation and order to comply upon the applicant and the property owner directing the discontinuance of the illegal action and the remedying of the condition.

The notice and order shall:

- a. Be put in writing on an appropriate form as the City shall determine;

- b. Include a list of violations, refer to the sections and divisions violated, and order remedial action which will effect compliance with the provisions of this section;
- c. Specify a reasonable time within which to comply; and
- d. Be served on the applicant and/or property owner personally, or by certified mail and regular mail to the person's residence, regular place of business or last known address. If the certified or regular mail is returned undelivered, a copy shall be posted in a conspicuous place in or on the person's residence, regular place of business, last known address, or the development area affected.

2. **Stop Work.** Whenever, in the opinion of the City, by reason of defective, reckless, careless, or other work done in violation of this section, the continuance of soil-disturbing activities is contrary to public welfare and safety, or when the applicant has failed to comply with the SWP3 or otherwise violated the provisions of this section, the City may order, either orally or in writing, work to be stopped until the violation has been remedied.

3. **Application Revocation.** The City may revoke an approved application if there has been any false statement or misrepresentation as to a material fact in the application or SWP3 on which the approval was based, or whenever work to be performed, or that was performed, under an approved SWP3, does not substantially conform to the SWP3. Written notice of revocation shall be provided to the applicant.

4. **Administrative Penalty.** Whenever a person violates or fails to comply with any of the provisions of this section, the City shall have the authority to impose an administrative penalty in accordance with subsection (J)(2). The City shall consider the following criteria in assessing an administrative penalty:

- a. The extent to which the person has benefited by the violation of this section;
- b. The degree of harm to the public health, safety, welfare and aesthetics as a result of the violation of this section;
- c. The recidivism of the person, including previous notices of violation and orders to comply and previous enforcement action;
- d. Good faith efforts of the person to remedy any violation of this section; and
- e. The duration of the violation after a notice of violation and order to comply was served pursuant to this section.

5. **Notice.** The imposition of an administrative fine shall be accomplished only after a notice and order to comply is provided to the person. Notice of a decision imposing an administrative fine shall:

- a. Be put in writing on an appropriate form as the City shall determine;
- b. State the basis for the administrative penalty, including the subsection of this section that has been violated;
- c. Specify the date and manner by which the penalty must be paid; and
- d. Be served on the person personally, or by certified mail and regular mail to the person's residence, regular place of business or last known address. If the certified or regular mail is returned undelivered, a copy shall be posted in a conspicuous place in or on the person's residence, regular place of business, last known address, or the premises affected.

I. REMEDIES

- 1. City to Remedy. If a person fails to correct any violations related to its erosion or sediment controls or comply with its approved SWP3 BMPs or post-construction erosion and sediment controls, the City may take the required action, and assess that cost as provided in subsection (I) (2), or take other appropriate action allowed by law.
- 2. Recovery of Costs. If, after giving notice in accordance with subsection (H)(1), the City has found it necessary to cause work to be performed as provided in this section, then all costs thereby incurred in the performance of the work, furnishing of materials, and advertising of notice shall be paid out of the City Treasury and promptly billed to the applicant or property owner. If the applicant or property owner fails, neglects, or refuses to pay the total cost within thirty days after the costs are billed, then the Director of Finance shall then certify the amount so paid by the City, including all necessary charges, to the County Fiscal Officer. The County Fiscal Officer shall enter the amount on the tax duplicate of the county as an assessment against the property owner's real estate at issue.

J. VIOLATIONS AND PENALTIES

- 1. No person shall violate or cause or knowingly permit to be violated any of the provisions of this section, or fail to comply with any of such provisions or with any lawful requirements made pursuant to this section, or knowingly use or cause or permit the use of any lands in violation of this section, or in violation of any permit granted under this section.
- 2. Any person who violates subsection (J)(1) shall be subjected to the civil penalties stated in § 50.99(C). In addition, the City may:
 - (a) Impose the following administrative penalties in accordance with the criteria stated in subsection (H)(4):
 - (i) For a first offense, an administrative fine of up to one hundred dollars.

- (ii) For a second offense, an administrative fine of up to five hundred dollars.
- (iii) For a third offense, an administrative fine of up to one thousand dollars.

(b) Suspend any active soil disturbing activity and may require immediate erosion and sediment control measures whenever the City determines that such activity is not meeting the intent of this regulation.

(c) Deny the issuance of any further plat approvals for the property in question until the site is brought into compliance with these regulations.

(d) Suspend the issuance of zoning certificates within developments that are not in compliance with these regulations.

(e) Suspend the issuance of occupancy certificates within developments that are not in compliance with these regulations.

(f) Impose any other remedy to improve erosion and sediment control at the development area where the violation is found.

3. If a person fails, neglects or refuses to pay an administrative penalty within the time ordered pursuant to subsection (H)(5)(c), then the Director of Public Service shall so notify the Director of Finance. The Director of Finance shall certify the administrative penalty to the County Fiscal Officer. The County Fiscal Officer shall enter the amount on the tax duplicate of the county as an assessment against the person's real estate at issue.

K. APPEALS AND HEARINGS

1. Appeals. Any person affected by any notice and order which has been issued in connection with the enforcement of any of the provisions of this section may request and shall be granted a hearing on the matter before the Director of Public Service or his designee. The person shall file, in the office of the Director of Public Service, a written request for the hearing and shall set forth the name, address, and phone number of the appellant and a brief statement of the grounds for the hearing and appeal from any order of the City made in enforcement of this section. Requests shall be filed within ten days after the day the notice and order is served and shall be accompanied by a deposit of fifteen dollars, which deposit shall be non-refundable. On receipt of the request, the Director of Public Service shall set a time and place for a hearing. The hearing shall be held within a reasonable time after a request has been filed. At the hearing, the appellant shall be given an opportunity to be heard and to show cause why the notice and order should be modified or dismissed. The failure of the appellant or his representative to appear and present his position at the hearing shall be grounds for dismissal of the request.

2. Notice. Written notice of the hearing shall be given by the Director of Public Service to the appellant. The notice shall be sent by ordinary U.S. mail at least five days prior to the date of the hearing.

3. Decisions. On hearing, the Director of Public Service may affirm, disaffirm, modify, or dismiss the notice and order. The appellant shall be notified in writing of the findings.

4. Records. The proceedings at the hearings, including the findings and decision of the Director of Public Service and reasons therefor, shall be summarized in writing and entered as a matter of public record in the office of the Director of Public Service. The record shall also include a copy of every notice and order issued in connection with the matter. Any person aggrieved by the decision of the Director of Public Service may seek relief therefrom in any court of competent jurisdiction as provided by the laws of the state.

Section 2. That Title 5, Chapter 50, Section 50.99 "Penalty" of the Code of Ordinances of the City of Akron be, and is hereby, amended and/or supplemented to read as follows:

50.99 Penalty.

A. Whoever violates any of the provisions of §§50.01 through 50.15 is guilty of a misdemeanor of the fourth degree and shall be fined not more than two hundred fifty dollars or imprisoned for not more than thirty days, or both. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

B. Whoever is found to have violated an order of the city or who has failed to comply with any provision of §§50.44 through 50.76, and the regulations, or rules of the city, or orders of any court of competent jurisdiction or permits, issued hereunder, is guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars and imprisoned not more than six months. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

C. Civil Penalties.

1. Any discharger, significant industrial user, person or governmental entity, or storm water discharger, or community who is found to have violated an order of the city or who has failed to comply with any provision of this article and the regulations or rules of the city, or orders of any court of competent jurisdiction, or permits issued hereunder shall be subject to the imposition of a civil penalty. Such civil penalty shall be in an amount not to exceed twenty-five thousand dollars per day for each day of violation concerning pretreatment or storm water discharge standards and requirements as specified in §§50.44 through ~~50.76~~50.80.

2. All other civil penalty violations shall be in an amount of not more than twenty-five thousand dollars per day for all other violations.

3. All civil penalties shall be deemed to be also based on a breach of the permit issued and of any orders issued in considering whether a violation has occurred.

Section 3. If any clause, section, or provision of this ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.

Section 4. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health, safety and welfare for the reason that the NPDES permit issued by the Environmental Protection Agency mandates that the regulations be in place by September 30, 2006, and provided this ordinance receives the affirmative vote of two-thirds of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

Passed September 18, 2006

Cheryl C Prang
Clerk of Council

Mario A. Zornillo
President of Council

Approved September 28, 2006

Adm

[Signature]
MAYOR

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