

**ORDINANCE NO. O-23-26**

**AN ORDINANCE AMENDING CHAPTER 939 CONTROL OF POST-CONSTRUCTION STORMWATER RUNOFF TO THE CODIFIED ORDINANCES OF THE CITY OF WILMINGTON**

WHEREAS, Council finds that amendments to the post-construction stormwater runoff ordinance are required to comply with provisions of the current OEPA (Ohio Environmental Protection Agency) permit associated to the City’s Municipal Separate Storm Sewer System (MS4).

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILMINGTON, STATE OF OHIO:

[Additions to the CODIFIED ORDINANCES are in **bold** and deletions are ~~lined through~~ or noted below.]:

Section 1. That Chapter 939 CONTROL OF POST-CONSTRUCTION STORMWATER RUNOFF of the Codified Ordinances of the City of Wilmington is hereby amended to read in full as follows:

Chapter 939: ~~CONTROL OF POST-CONSTRUCTION STORMWATER RUNOFF~~  
**COMPREHENSIVE STORMWATER MANAGEMENT**

- 939.01 General Provisions
- 939.02 Definitions
- 939.03 Permit Procedures and Requirements
- 939.04 General Performance Criteria for Stormwater Management
- 939.05 Requirements for Stormwater Management Plan Approval
- 939.06 Construction Inspection Provisions
- 939.07 Maintenance and Repair Requirements
- 939.08 Enforcement and Violations

939.01 GENERAL PROVISIONS

- (a) *Statement of Purpose.* The purpose of this ordinance is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing in watersheds within this jurisdiction.
  
- (b) *Applicability.* This ordinance shall be applicable to all subdivision or site plan applications. The ordinance also applies to land development activities that are smaller than the minimum applicability criteria if such activities are part of a larger common plan of development that meets the following applicability criteria, even though multiple separate and distinct land development activities may take place at different times on different schedules. In addition, all plans may also be reviewed by the City of Wilmington, or representative thereof, so that that established water quality standards will be maintained during and after development of the site and that post-construction runoff levels are consistent with any local and regional watershed plans. To prevent the adverse effects of stormwater runoff, the City of Wilmington has developed a set of performance standards that must be met at new development and re-development sites. These standards apply to any construction activity disturbing one acre (43,560 square feet) or more of land. **Sites which disturb more than 0.1 acres shall comply with the Soil Erosion and Sediment Control portion of said standards.** The following activities may be exempt from these stormwater performance criteria:
  - (1) Additions or modification to existing single-family structures;
  - (2) Developments that do not disturb one (1) acre or more, provided they are not part of a larger common development plan;
  - (3) Repairs to any stormwater treatment practice deemed necessary by the

- City of Wilmington; and  
(4) Agricultural activity.

When a site development plan is submitted, decisions on permitting and on-site stormwater requirements shall be governed by stormwater ~~sizing criteria~~ **management criteria** established in most recent edition of the City of Wilmington Stormwater Management and Erosion Control Specification. Final authorization of all development or re-development projects will be determined after a review by the City of Wilmington, or designated representative. The City of Wilmington also reserves the right to request submission of a site development plan if the City of Wilmington, or designated representative, deems necessary and notifies the site owner in writing.

- (c) *Compatibility with Other Permit and Ordinance Requirements.* This ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law, including but not limited to the most recent edition of the Ohio Environmental Protection Agency (EPA) general permit for stormwater discharges associated with construction activities under the National Pollutant Discharge Elimination System (NPDES). The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.
- (d) *Severability.* If the provisions of any article, section, subsection, paragraph, subdivision or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this ordinance.

## 939.02 DEFINITIONS

*Accelerated erosion* means erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away by the action of water, wind, or chemical action.

*Applicant* means a property owner or agent of a property owner who has filed an application for a stormwater management permit.

*Best management practices (BMPs)* means measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and waterbodies.

*Building* means any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

*City* means the City of Wilmington, Ohio.

*Dedication* means the deliberate appropriation of property by its owner for general public use.

*Erosion and sediment control plan* means a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

*Hotspot* means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater

*Infiltration* means the process of percolating stormwater into the subsoil.

*Land disturbance activity* means any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

*Maintenance ~~agreement~~ covenant* means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

*Nonpoint source pollution* means pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, mining, construction, subsurface disposal and urban runoff sources.

*Redevelopment* means any construction, alteration or improvement **that changes the existing site footprint or offers new opportunities for stormwater control. Projects that disturb the underlying soil, remove surrounding vegetation, or change the area of impervious surface are considered redevelopment projects if they will alter the stormwater drainage characteristics of a site. exceeding 43,560 square feet in areas where existing land use is high density commercial, industrial, institutional or multi-family residential.**

*Stop work order* means an order issued which requires that all construction activity on a site be stopped.

*Stormwater management* means the use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.

*Stormwater manual* means the City of Wilmington Stormwater Management and *Erosion control specifications*, most recent edition.

*Stormwater Pollution Prevention Plan (SWP3)* means a plan that is **designed to provide erosion and sediment controls and which manages and treats runoff in accordance with the provisions of the Ohio EPA Construction General Permit.**

*Stormwater runoff* means flow on the surface of the ground, resulting from precipitation.

*Watercourse* means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

### 939.03 PERMIT PROCEDURES AND REQUIREMENTS

- (a) *Permit required.* No land owner or land operator shall receive any of the building, grading or other land development permits required for land disturbance activities without first meeting the requirements of this ordinance prior to commencing the proposed activity.
- (b) *Application requirements.* Unless specifically excluded by this ordinance, any land owner or operator desiring a permit for a land disturbance activity shall submit to the City a permit application on a form provided for that purpose. Unless otherwise excepted by this ordinance, a permit application must be accompanied by the following in order that the permit application be considered:
  - (1) A stormwater management plan.
  - (2) **A stormwater pollution prevention plan (SWP3) or abbreviated stormwater pollution prevention plan.**
  - (3) A maintenance ~~agreement~~ covenant.
  - (4) And a non-refundable permit review fee.

The stormwater management plan shall be prepared to meet the requirements of 939.04 of this ordinance and as outlined in the stormwater manual; the SWP3 shall be prepared to meet the requirements of the Ohio EPA Construction

**General Permit, Section 939.04, and as outlined in the stormwater manual;** the maintenance ~~agreement~~ **covenant** shall be prepared to meet the requirements of 939.09 of this ordinance, and fees shall be those established by the City.

- (c) *Application procedure.*
- (1) Applications for land disturbance activity permits must be filed with the City on any regular business day.
  - (2) A copy of this permit application shall be forwarded to the City for review.
  - (3) Permit applications shall include the following: two copies of the stormwater management ~~concept~~ plan, **two copies of the SWP3**, two copies of the maintenance ~~agreement~~ **covenant**, and any required review fees.
  - (4) Within thirty (30) business days of the receipt of a complete permit application, including all documents as required by this ordinance, the City shall inform the applicant whether the application, plan, **SWP3** and maintenance ~~agreement~~ **covenant** are approved or disapproved.
  - (5) If the permit application, stormwater management plan, **SWP3** or maintenance ~~agreement~~ **covenant** are disapproved, the applicant may revise the stormwater management plan, **SWP3** or ~~agreement~~ **covenant**. If additional information is submitted, the City shall have fifteen (15) business days from the date the additional information is received to inform the applicant that the plan, **SWP3** and maintenance ~~agreement~~ **covenant** are either approved or disapproved.
  - (6) If the permit application, final stormwater management plan, **SWP3** and maintenance ~~agreement~~ **covenant** are approved by the City, all appropriate land disturbance activity permits shall be issued.
- (d) *Permit duration.* Permits issued under this section shall be valid from the date of issuance through the date the City notifies the permit holder that all stormwater management practices have passed the final inspection required under permit condition.

#### 939.04 GENERAL PERFORMANCE CRITERIA FOR STORMWATER MANAGEMENT

- (a) Unless otherwise determined by the City to be exempt, the following performance criteria shall be addressed for stormwater management at all sites:
- (1) All site designs shall establish stormwater management practices ~~to control the peak flow rates of stormwater discharge~~ to comply with requirements described in the Stormwater Manual, including but not limited to, calculations for **water quality and stream protection, flood control, and stormwater pollution prevention.** ~~determining peak flows for sizing all stormwater management practices.~~
  - (2) **All sites which disturb one acre or more of land or will disturb less than one acre of land but are part of a larger common plan of development or sale that will ultimately disturb one or more acres of land shall prepare and submit a Stormwater Pollution Prevention Plan (SWP3) and shall file a notice of intent** ~~Certain industrial sites are required to prepare and implement a stormwater pollution prevention plan, and shall file a notice of intent (NOI) under the provisions of the National Pollutant Discharge Elimination System (NPDES) general permit. Sites which disturb more than 0.1 acres but less than one acres shall submit an Abbreviated SWP3. The stormwater pollution prevention plan requirement applies to both existing and new industrial sites.~~
  - (3) Stormwater discharges from land uses or activities with higher potential pollutant loadings, known as “hotspots”, may require the use of specific structural BMPs and pollution prevention practices.
  - (4) Prior to design, applicants are required to consult with the City to determine if they are subject to additional stormwater design

- requirements.
- (5) Comply with provisions of the latest edition of the Ohio Environmental Protection Agency (EPA) general permit for stormwater discharges associated with construction activities under the National Pollutant Discharge Elimination System (NPDES).

#### 939.05 REQUIREMENTS FOR STORMWATER MANAGEMENT PLAN APPROVAL

- (a) *Stormwater management plan required for all developments.* No application for development will be approved unless it includes a stormwater management plan detailing in concept how runoff and associated water quality impacts resulting from the development will be controlled or managed. **The stormwater management plan should be prepared according to the criteria outlined in the stormwater manual.** This plan must be prepared by an individual approved by the City and must indicate whether stormwater will be managed on-site or off-site and, if on-site, the general location and type of practices. The stormwater management plan(s) shall be referred for comment to all other interested agencies, and any comments must be addressed in a final stormwater management plan. This final plan must be signed by a licensed professional engineer (PE), who will verify that the design of all stormwater management practices meet the submittal requirements outlined in the Submittal Checklist found in the Stormwater Manual. No building, grading, or sediment control permit shall be issued until a satisfactory final stormwater management plan, or a waiver thereof, shall have undergone a review and been approved by the City after determining that the plan or waiver is consistent with the requirements of this ordinance
  
- (b) *Stormwater management plan requirements.* A stormwater management plan shall be required with all permit applications and will include sufficient information (e.g., maps, hydrologic calculations, etc) to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development of the site, both present and future, on the water resources, and the effectiveness and acceptability of the measures proposed for managing stormwater generated at the project site. The stormwater management plan shall **be prepared according to the criteria in the stormwater manual** and include all of the information required in the Stormwater Management Plan checklist found in the Stormwater Manual. This includes:
  - (1) *Contact information:* The name, address, and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected.
  - (2) A map (or maps) indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural stormwater management and sediment control facilities. The map(s) will also clearly show proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns; locations of utilities, roads and easements; the limits of clearing and grading; A written description of the site plan and justification of proposed changes in natural conditions may also be required.
  - (3) *Topographic base map:* A topographic base map of the site which indicates existing surface water drainage including streams, ponds, culverts, ditches, and wetlands; current land use including all existing structures; locations of utilities, roads, and easements; and significant natural and manmade features not otherwise shown.
  - (4) Sufficient engineering analysis to show that the proposed stormwater management measures are capable of controlling runoff from the site in compliance with this ordinance and the specifications of the Stormwater Manual.
  - (5) *Calculations:* Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms as specified in this Stormwater Manual.
  - (6) *Soils information:* If a stormwater management control measure depends

on the hydrologic properties of soils (e.g., infiltration basins), then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the control measure.

- (7) A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project and a description of the watershed and its relation to the project site. This description should include a discussion of soil conditions, forest cover, topography, wetlands, and other native vegetative areas on the site. Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.
- (8) A written description of the required maintenance burden for any proposed stormwater management facility.
- (9) *Maintenance and repair plan*: The design and planning of all stormwater management facilities shall include detailed maintenance and repair procedures to ensure their continued function. These plans will identify the parts or components of a stormwater management facility that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.
- (10) *Maintenance easements*: The applicant must ensure access to all stormwater treatment practices at the site for the purpose of inspection and repair by securing all the maintenance easements needed on a permanent basis. These easements will be recorded with the plan and will remain in effect even with transfer of title to the property.
- (11) *Maintenance ~~agreement~~ covenant*: The applicant must execute an easement and an inspection and maintenance ~~agreement~~ **covenant** binding on all subsequent owners of land served by an on-site stormwater management measure in accordance with the specifications of this ordinance.
- (12) Erosion and sediment control plans for construction of stormwater management measures: The applicant must prepare an erosion and sediment control plan for all construction activities related to implementing any on-site stormwater management practices.
- (13) The City may also require a concept plan to consider the maximum development potential of a site under existing zoning, regardless of whether the applicant presently intends to develop the site to its maximum potential.
- (14) For development or redevelopment occurring on a previously developed site, an applicant shall be required to include within the stormwater concept plan measures for controlling existing stormwater runoff discharges from the site in accordance with the standards of this Ordinance ~~to the maximum extent practicable~~ **and according to the provisions in the Stormwater Manual.**
- (15) *Other environmental permits*: The applicant shall assure that all other applicable environmental permits have been acquired for the site prior to approval of the final stormwater design plan.

## 939.06 CONSTRUCTION INSPECTION

- (a) *Notice of construction commencement*. The applicant must notify the City in advance before the commencement of construction. Regular inspections of the stormwater management system construction shall be conducted by the City, or designated representative. All inspections shall be documented and written reports prepared that contain the following information:
  - (1) The date and location of the inspection;
  - (2) Whether construction is in compliance with the approved stormwater management plan;

- (3) Variations from the approved construction specifications; and
- (4) Any violations that exist
  - (i) If any violations are found, the property owner shall be notified in writing of the nature of the violation and the required corrective actions. No additional work shall proceed until any violations are corrected and all work previously completed has received approval by City.
- (b) *As-built plans.* All applicants are required to submit actual “as built” plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities. A final inspection by the City may be required, at the City’s discretion, before the release of any performance securities can occur.
- (c) ***On-going Inspections.*** **The applicant shall assign qualified inspection personnel to conduct inspections throughout construction to ensure that control practices are functional and to evaluate whether the SWP3 or Abbreviated SWP3 is adequate and properly implemented in accordance with the schedule and guidelines in the Ohio EPA Construction General Permit and stormwater manual. Following each inspection a checklist must be completed and signed by the qualified inspection personnel representative.**

### 939.07 MAINTENANCE AND REPAIR OF STORMWATER FACILITIES

- (a) *Maintenance easement.* Prior to the issuance of any permit that has a stormwater management facility as one of the requirements of the permit, the applicant or owner of the site must execute a maintenance easement agreement that shall be binding on all subsequent owners of land served by the stormwater management facility. The agreement shall provide for access to the facility at reasonable times for periodic inspection by the City, or their contractor or agent, and for regular or special assessments of property owners to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this ordinance. The easement agreement shall be recorded by the City in the land records.
- (b) *Maintenance covenants.* Maintenance of all stormwater management facilities shall be ensured through the creation of a formal maintenance covenant that must be approved by the City and recorded into the land record prior to final plan approval. As part of the covenant, a schedule shall be developed for when and how often maintenance will occur to ensure proper function of the stormwater management facility. The covenant shall also include plans for periodic inspections to ensure proper performance of the facility between scheduled cleanouts. The City, in lieu of a maintenance covenant, may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this chapter and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.
- (c) *Requirements for maintenance covenants.* All stormwater management facilities are subject to inspection to document maintenance and repair needs and ensure compliance with the requirements of this ordinance and accomplishment of its purposes. These needs may include; removal of silt, litter and other debris from all catch basins, inlets and drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation. Any maintenance needs found must be addressed in a timely manner, as determined by the City and the inspection and maintenance requirement may be increased as deemed necessary to ensure proper functioning of the stormwater management facility.
- (d) *Inspection of stormwater facilities.* Inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or

sediment quality standards or the NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater treatment practices.

- (e) *Right-of-entry for inspection.* When any new drainage control facility is installed on private property, or when any new connection is made between private property and a public drainage control system, or sanitary sewer, the property owner shall grant to the City the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this ordinance is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this ordinance.
- (f) *Records of installation and maintenance activities.* Parties responsible for the operation and maintenance of a stormwater management facility shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least 5 years. These records shall be made available to the City during inspection of the facility and at other reasonable times upon request.
- (g) *Failure to maintain practices.* If a responsible party fails or refuses to meet the requirements of the maintenance covenant, the City, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the stormwater management facility becomes a danger to public safety or public health, the City shall notify the party responsible for maintenance of the stormwater management facility in writing. Upon receipt of that notice, the responsible person shall have 30 days to effect maintenance and repair of the facility in an approved manner. After proper notice, the City may assess the owner(s) of the facility for the cost of repair work and any penalties; and the cost of the work shall be a lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as ordinary taxes by the City.

#### 939.08 ENFORCEMENT AND PENALTIES

- (a) *Violations.* Any development activity that is commenced or is conducted contrary to this Ordinance, may be restrained by injunction or otherwise abated in a manner provided by law.
- (b) *Notice of violation.* When the City determines that an activity is not being carried out in accordance with the requirements of this Ordinance, it shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:
  - (1) The name and address of the owner or applicant;
  - (2) The address when available or a description of the building, structure or land upon which the violation is occurring;
  - (3) A statement specifying the nature of the violation;
  - (4) A description of the remedial measures necessary to bring the development activity into compliance with this Ordinance and a time schedule for the completion of such remedial action;
  - (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
  - (6) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within fifteen (15) days of service of notice of violation.
- (c) *Stop work orders.* Persons receiving a notice of violation will be required to halt all construction activities. This “stop work order” will be in effect until the City confirms that the development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation in a timely manner can result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this ordinance.

- (d) *Restoration of lands.* Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the City may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

Section 2. That it is found that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3. That this ordinance shall have full force and effect from the earliest period allowed by law.

Passed this 20<sup>th</sup> day of July 2023.

---

President of Council

ATTEST:

---

Clerk of Council

Approved by me this 20<sup>th</sup> day of July 2023.

---

Mayor