



Ruthanne Fuller  
Mayor

City of Newton, Massachusetts  
Office of the Mayor

#111-22

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January 10, 2021

Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Honorable City Councilors:

I respectfully submit this docket item to this Honorable Council requesting amendments to Chapter 29 by adding a new Article VI and to Chapter 17, Sections 16 and 17 of the Revised Ordinances to add defining language, provide for enforcement, establish permit fees and fines for violations of the stormwater management and erosion control ordinance.

The purpose of this ordinance is to protect, maintain, and enhance public safety as well as environmental health and general public welfare. The ordinance focuses on controlling the volume and rate of stormwater runoff resulting from land disturbing activities (both during and after such activities), managing stormwater at its source, and directing stormwater into the ground rather than sending it into storm drain pipes and channels. Adopting this ordinance or other regulatory mechanism to manage increased stormwater runoff from (re)development and reduce pollutants in stormwater runoff discharged from construction activities (greater than or equal to 1 acre) into the City's drainage system is a requirement of the City's National Pollution Discharge Elimination System (NPDES) Stormwater permit.

The proposed Ordinance will be complemented by Stormwater Management Erosion Control Rules and Regulations, which are attached. The rules and regulations provide applicability and exemption language, definitions of terms, application requirements, and design standards. Administration of these rules and regulations will be by the City Engineer through the Engineering Division. The Engineering Division will also collect the fees for all stormwater management permits.

The proposed permit fees to be added to Chapter 17, Section 16 are as follows:

Stormwater Permit Fees:

- (l) Land Disturbance (only) Permit: \$50
- (m) Minor Stormwater Permit: \$100
- (n) Major Stormwater Permit:

1-4 family dwellings \$300  
All other properties \$1,000

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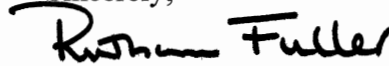
Proposed fine to be added to Chapter 17, Section 21 is as follows:

The proposed fine for violation of the stormwater management and erosion control ordinance is \$300 per offense as stated in Chapter 17, Section 21 of the Revised Ordinance and clarified in §29-153(b) of the proposed Ordinance. Each day the violation of the ordinance continues it is considered a separate offense.

Please see the attached memo from Commissioner of Public Works James McGonagle.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Ruthanne Fuller". The signature is written in a cursive style with a large initial "R" and a distinct "F".

Mayor Ruthanne Fuller

City of Newton



DEPARTMENT OF PUBLIC WORKS

OFFICE OF THE COMMISSIONER

1000 Commonwealth Avenue  
Newton Centre, MA 02459-1449

Ruthanne Fuller  
Mayor

To: Mayor Ruthanne Fuller  
From: James McGonagle – Commissioner DPW  
Subject: Stormwater Ordinance  
Date: January 10, 2022

I respectfully request amendments to Chapter 29 by adding a new Article VI and to Chapter 17, Sections 16 and 17 of the Revised Ordinances to add defining language, provide for enforcement, establish permit fees and fines for violations of the stormwater management and erosion control ordinance.

The City’s stormwater management system is strained by increased volumes of runoff from more frequent and higher intensity storms. Compounding the issue is a trend of increasing impervious areas and elevated grades around new structures limiting natural infiltration. Further, stormwater runoff from impervious surfaces is the greatest source of pollution to Newton’s ponds, lake, and waterways.

The purpose of this ordinance is to protect, maintain, and enhance public safety, environmental, health, and general public welfare by controlling the volume and rate of stormwater runoff resulting from land disturbing activities (during and after such activities), managing stormwater at its source, and directing it into the ground rather than sending it into a system of storm drain pipes and channels. Adopting this ordinance or other regulatory mechanism to manage increased stormwater runoff from (re)development and reduce pollutants in stormwater runoff discharged from construction activities (greater than or equal to 1 acre) into the City’s drainage system is a requirement of the City’s NPDES Stormwater permit.

The proposed Ordinance will be complemented by the attached Stormwater Management Erosion Control Rules and Regulations. The rules and regulations provide applicability and exemption language, definitions of terms, application requirements, and design standards. Administration of these rules and regulations will be administered by the City Engineer through the Engineering Division. The Engineering Division will also collect the fees for all stormwater management permits.

James McGonagle  
Commissioner

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**STORMWATER MANAGEMENT AND EROSION CONTROL ORDINANCE  
DRAFT WINTER 2021-2022**

**Article VI.  
STORMWATER MANAGEMENT AND EROSION CONTROL**

**§29-148 General provisions** (*Section 5.3 of Zoning will need to be deleted/updated concurrent with this ordinance adoption*)

**(a) Purpose**

The purpose of this ordinance is to protect, maintain, and enhance public safety, environmental health, and general public welfare by controlling the volume and rate of stormwater runoff resulting from land disturbing activities (during and after such activities), managing stormwater at its source and directing it into the ground rather than sending it into a system of storm drain pipes and channels.

This ordinance establishes a permit system to ensure that all applicable projects are reviewed and comply with established standards, the city's legal authority to ensure compliance with the provisions of this ordinance through inspection, monitoring and enforcement and a mechanism by which the City can meet the requirements of its National Pollutant Discharge Elimination System (NPDES) general permit.

**(b) Definitions.** Definitions. For the purposes of this ordinance the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Alter or alteration:* Any activity on an area of land that changes the water quality, or the force, quantity, direction, timing, or location of runoff flowing from the area. Such changes include change from distributed runoff to confined, discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area. Alter may also be referred to as “alteration of drainage characteristics,” and “conducting land disturbance activities.”

*Best management practice (BMP):* A structural or nonstructural activity, procedure, restraint, or structural improvement that helps to reduce the quantity of or improve the quality of stormwater runoff. A structural stormwater best management practice may include a basin, discharge outlet, swale, rain garden, filter, or other stormwater treatment practice or measure either alone or in combination, including without limitation any overflow pipe, conduit, weir control structure that: (a) is not naturally occurring; (b) is not designed as a wetland replication area; and (c) has been designed, constructed, and installed for the purpose of conveying, collecting, storing, discharging, recharging, or treating stormwater. Nonstructural stormwater best management practices may include source control and pollution prevention measures.

*Conveyance:* Any structure or device, including, but not limited to, pipes, drains, culverts, curb breaks, paved swales and man-made swales, natural and man-made channels, and ditches, designed or utilized to move or direct stormwater runoff or existing water flow; any impervious

surface/sheet flow utilized to remove rainfall (for example, a parking lot) which drains directly onto a vegetated surface or public road without any curbing or stormwater system to intercept the flow.

*Erosion and sedimentation control plan:* A document containing a narrative, drawings and details developed by a registered professional civil engineer (PE), which includes best management practices, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land disturbance activities.

*Impervious Surface or Area:* Any material or structure in, on or above the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include, without limitation: paved surfaces (parking lots, sidewalks, driveways, etc.), roof tops, swimming pools, stone patios/pavers, gravel, and compacted dirt surfaces such as driveways and roads.

*Land disturbance:* Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material. Examples include, but are not limited to, demolition, construction (of buildings or retaining walls), site preparation, grading, paving, tree cutting, and earth moving.

*Low impact development (LID):* A site design strategy for managing stormwater by maintaining or replicating the predevelopment hydrologic functions using design techniques to create a functionally equivalent hydrologic landscape.

*Municipal Storm Drain System or Municipal Separate Storm Sewer System (MS4):* The system of conveyances designed or used for collecting or conveying stormwater, including any road with a stormwater management system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, or other drainage structure(s) that together comprise the storm drainage system owned or operated by the city.

*Person Aggrieved:* all record owners of the subject property or an owner of property directly abutting the subject property.

*Stormwater Management and Erosion Control Permit:* A permit issued by the Engineering Division of the Department of Public Works, after review of an application, plans, calculations, and other supporting documents, in accordance with the provisions of this ordinance.

*Stormwater management plan:* A plan submitted as part of an application for a stormwater management and erosion control permit, as required by Section 29-150(A) of this ordinance. A document containing narrative, drawings and details prepared by a registered professional civil engineer (PE), which includes structural and non-structural best management practices to manage and treat stormwater runoff generated from regulated development activity. A stormwater management plan also includes an operation and maintenance plan describing the maintenance requirements for structural best management practices.

*Stormwater management system:* the collective system for conveying, collecting, storing, discharging, recharging, or treating stormwater on-site, including stormwater best management practices, and any pipes and outlets intended to transport and discharge stormwater to the groundwater, a surface water, or a municipal separate storm sewer system.

**(c) Applicability**

This ordinance shall apply to all land-disturbing activities over the thresholds below, within the jurisdiction of the city. A stormwater management permit shall be required prior to undertaking any alteration or land disturbing activity as follows:

(1) Land disturbance

- (a) Projects that will or could disturb over 5,000 square feet (SF) of land (i.e., the limit of work line encompasses >5,000 SF of land).

(2) Minor stormwater management

- (a) Any residential development or redevelopment with four or fewer units, provided the land disturbance is less than 0.5-acre (or 21,780 SF) .
- (b) Any residential, commercial, industrial, institutional, or municipal alteration, development or redevelopment creating 401 to 1,000 SF of new impervious area.
- (c) The construction of any new retaining wall required due to proposed changes in grade, unless already approved by Special Permit (per Chapter 30 Sec. 5.4.2).
- (d) Trench excavation requiring dewatering.

(3) Major stormwater management

- (a) Any alteration, disturbance, development, or redevelopment exceeding the thresholds listed in § 29-148(C)(1) and (2) above.

**(d) Exemptions**

The commissioner of public works may establish exemptions from the requirements of this ordinance, which exemptions shall be set forth in the city of Newton stormwater management and erosion control rules and regulations.

**§29-149 Administration**

**(a) Administration**

The commissioner of public works or his or her designee shall administer, implement, and

enforce this ordinance.

**(b) Rules and regulations**

The commissioner of public works shall adopt, and periodically amend as deemed necessary, rules and regulations relating to the detailed requirements, procedures, and administration of this ordinance.

**§29-150 Permit procedures**

**(a) Permit required**

No land disturbing activity that meets the criteria specified in Section 29-148(c) may commence prior to the issuance of a stormwater management and erosion control permit as set forth in this ordinance.

**(b) Procedures and Requirements**

The commissioner of public works shall set forth the application procedures and requirements - including but not limited to content of applications, stormwater management plan and operations and maintenance plan contents, technical requirements, inspections, and project closeout process in the rules and regulations promulgated under section §29-149(b) of this ordinance.

**(c) Deadline for Action**

Failure of the commissioner of public works or his or her designee to take action within sixty (60) days of receipt of a complete stormwater management and erosion control permit shall be deemed approval of said application, unless extension of the sixty (60) days is agreed upon, in writing, by the applicant.

**§29-151 Entry, inspections and close-out**

To the extent permitted by law, the commissioner of public works or his or her designee may enter upon privately owned property for the purpose of performing their duties under this ordinance and may make or cause to be made such examinations, surveys or sampling as the commissioner of public works or his or her designee deems reasonably necessary to determine compliance with the permit

**§29-152 Final report and certificate of compliance**

Upon completion of the work done pursuant to a permit issued for a minor or major stormwater land disturbing activity, the permittee shall request a final inspection and submit the following: (Note: Land disturbance only permits do not require a certificate of compliance)



- (1) Certified as-built construction plans from a Massachusetts Registered Professional Engineer (P.E.) and/or Registered Professional Land Surveyor (P.L.S) depicting all final grade changes, water, sewer and stormwater utilities and any BMPs installed.
- (2.) A note on the As-built plan from the Engineer of Record indicating that the stormwater management system(s) have been constructed in accordance with, and meet the requirements of, the Stormwater Management Permit, including compliance with performance standards for Best Management Practices (BMPs) as noted in manufacturer's literature and/or Environmental Protection Agency's performance curves in the NPDES Small MS4 Permit. Any discrepancies between the approved plan and the as-built plan shall be noted.
- (3.) Proof of recording the Operations and Maintenance Plan at the South Middlesex County Registry of Deeds.

The city engineer will issue a certificate of compliance upon receipt of these items and upon determination that all work of the permit has been satisfactorily completed and is in conformance with this ordinance. the commissioner of inspectional services shall not issue a certificate of occupancy for any property subject to this Sec. 29 prior to receipt of such certificate of compliance.

**§29-153      Enforcement**

The commissioner of public works shall have authority to enforce this ordinance and the associated rules and regulations; issue orders, violation notices, and enforcement orders as necessary; and may pursue all available civil and criminal remedies for such violations.

**(a) Violation notices and enforcement orders**

- (1) The commissioner of public works may issue a written order to enforce the provisions of the stormwater management and erosion control ordinance or the rules and regulations, which may include demands to:
  - (a) Cease and desist from further alterations or land disturbance activity until there is compliance with the stormwater management and erosion control ordinance and/or the stormwater management and erosion control permit.
  - (b) Maintain, install or perform additional erosion and sedimentation control measures.
  - (c) Remediate erosion and sedimentation resulting directly or indirectly from land-disturbing activity.
  - (d) Remediate adverse impacts resulting directly or indirectly from malfunction of the stormwater management system.
  - (e) Eliminate discharges, directly or indirectly, into a watercourse or into the waters of the Commonwealth.

- (2) If the commissioner of public works determines that abatement or remediation of adverse impacts is required, the order shall set forth a deadline by which such abatement or remediation must be completed.
- (3) If a person violates the provisions of this ordinance, regulations, permit, notice, or order issued thereunder, the commissioner of public works may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**(b) Penalties**

Pursuant to Section 17-21 of the City Ordinances, any person who violates any provision of the Stormwater Management and Erosion Control Ordinance, or order or permit issued thereunder, may be ordered to correct the violation and/or shall be punished by a fine of not more than \$300.00 per violation, excluding the cost of damages. Each day or part thereof that such violation occurs or continues shall constitute a separate violation.

**(C) Non-Criminal Disposition**

As an alternative to criminal prosecution, the commissioner of public works may elect to utilize the non-criminal disposition procedure set forth in M.G.L. c. 40, § 21D.

**(D) Appeals**

Judicial review. Any person aggrieved by the grant or denial of a permit may seek relief therefrom by a civil action in any court of competent jurisdiction as provided by the laws of the Commonwealth of Massachusetts.

**§29-154 Severability**

Any finding of the invalidity of any section, provision, paragraph, sentence, or clause of this ordinance shall not invalidate any other section, provision, sentence, or clause thereof, nor shall it invalidate any permit or determination that has been previously issued under this ordinance.