



# CITY OF NEW BEDFORD

In the Year Two Thousand and Fifteen

## AN ORDINANCE

Amending Chapter 16, Municipal Utilities and Services

31- 509

Be it ordained by the City Council of the City of New Bedford as follows:—

### SECTION 1.

Chapter 16 is hereby amended by inserting the following ARTICLE VIII Stormwater Management at the end of the chapter:

Chapter 16, Article VIII. Stormwater Management

#### Sec. 16-131. Purpose and Intent

A) *Purpose:* The purpose of this Ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff, nonpoint source pollution associated with new development and redevelopment, and erosion and sedimentation associated with construction. Utilizing better site design and proper management of post-development stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the health, safety, environment and general welfare of the public, protect water and aquatic resources, and promote groundwater recharge to protect surface and groundwater drinking supplies. This Ordinance seeks to meet that purpose through the following objectives:

1. Establish decision-making processes surrounding land alteration activities that protect the integrity of the watershed and preserve the health of water resources;
2. Require that new development, redevelopment and all land alteration activities maintain or, to the maximum extent technically feasible, restore the natural

hydrologic characteristics of the land to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to improve the integrity of stream channels and aquatic habitats;

3. Establish minimum post-development stormwater management standards and design criteria to control stormwater runoff quantity and quality;
4. Establish minimum design criteria for the protection of properties and aquatic and groundwater resources downstream from land development and land alteration activities and to minimize nonpoint source pollution from stormwater runoff, which would otherwise degrade water quality;
5. Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet the minimum post-development Stormwater Management Standards, as established by the Massachusetts Department of Environmental Protection and by Site Plan Review Requirements of the City of New Bedford Planning Department;
6. Encourage the use of Low Impact Development (LID) practices that reduce runoff volume, such as reducing impervious cover and the preservation of green space and other natural areas;
7. Prohibit illicit connections and illicit discharges to the municipal storm drain systems and require the removal of all such illicit connections;
8. Establish provisions for the long-term responsibility and maintenance of structural stormwater control facilities and non-structural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety;
9. Establish provisions to ensure there is an adequate funding mechanism, including surety, for the proper review, inspection and long-term maintenance of stormwater facilities implemented as part of this Ordinance;
10. Establish administrative procedures for the submission, review, approval or disapproval of stormwater management plans and for the inspection of approved active projects and long-term follow up;
11. Establish certain administrative procedures and fees for the submission, review, approval, or disapproval of stormwater plans, and the inspection of approved projects;
12. Establish enforcement mechanisms for failure to comply with provisions of this ordinance; and
13. Establish a mechanism by which the City can meet requirements of its National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s).

B) *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. The requirements of this ordinance shall be considered minimum requirements and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, 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.

**Sec. 16-132. Administration.**

A) *Department of Public Infrastructure:* The Commissioner of the Department of Public Infrastructure shall be the Stormwater Authority and shall be responsible to administer, implement and enforce this Ordinance. Any powers granted to or duties imposed upon the Commissioner may be delegated in writing by the Commissioner to his or her employees or agents.

B) *Stormwater Rules and Regulations:* After conducting a public hearing, the Department of Public Infrastructure shall adopt rules and regulations, relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures, and administration of this Stormwater Ordinance in accordance with the objectives set forth herein. The Department of Public Infrastructure may periodically amend said rules and regulations after conducting a public hearing to receive comments on any proposed revisions. After public notice and public hearing, the Department of Public Infrastructure may promulgate rules and regulations to effectuate the purposes of this Ordinance. The adoption and amendment of regulations shall comply with the provisions of the New Bedford Code of Ordinances, Section 2-9, as amended. Failure of the Department of Public Infrastructure to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this Ordinance.

C) *Stormwater Management Manual:* The Department of Public Infrastructure will utilize the policies, criteria and information, including specifications and standards, of the latest edition of the Massachusetts *Stormwater Management Handbook* for the execution of the provisions of this Ordinance, unless noted within the Ordinance or Regulations. Unless specifically provided for in this Ordinance or the New Bedford Stormwater Regulations, stormwater management practices that are designed, constructed, and maintained in accordance with the Massachusetts *Stormwater Management Handbook* design and sizing criteria will be presumed to be protective of Massachusetts water quality standards and the requirements of this Ordinance.

D) *Urban Stormwater Management Guidebook:* The Department of Public Infrastructure shall within one year of adopting Rules and Regulations, prepare a City of New Bedford *Urban Stormwater Management Guidebook*, which will be available to the public for assistance in meeting the requirements of this Ordinance. This Guidebook will include guidance regarding permit eligibility, preferred stormwater best management practices, recommended “better site design” practices, and general design guidelines for urban stormwater management. The Guidebook will be updated and expanded periodically by the Department of Public Infrastructure, based on improvements in engineering, science, monitoring, and local maintenance experience.

E) *Actions by the Department of Public Infrastructure:* The Department of Public Infrastructure may take any of the following actions as a result of an application for a Stormwater Permit: Approval, Approval with Conditions, Disapproval, or Disapproval without Prejudice. These actions are specifically defined as part of the Stormwater Rules and Regulations promulgated as part of this Ordinance.

F) *Appeals of Action by the Department of Public Infrastructure:* A decision of the Department of Public Infrastructure shall be final. Further relief of a decision by the Department of Public Infrastructure made under this Ordinance shall be reviewable in the Superior Court in an action filed within 60 days thereof, in accordance with M.G.L. Ch 249 § 4.

### **Sec. 16-133. Definitions.**

The definitions contained herein apply to the interpretation and implementation of this Ordinance. Terms not defined in this section shall be construed according to their customary and usual meaning unless the context indicates a special or technical meaning. Additional definitions may be adopted by separate regulation.

*ALTER:* Any activity, which will measurably change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Alter may be similarly represented as “alteration of drainage characteristics,” and “conducting land disturbance activities.”

*APPLICANT:* A property owner or duly designated agent who has filed an application for a Stormwater Management Permit with the Department of Public Infrastructure.

*BETTER SITE DESIGN:* Site design approaches and techniques that can reduce a site’s negative impact on water quality and the natural environment through the use of nonstructural stormwater management practices. “better site design” includes conserving and protecting natural areas and green space, reducing impervious cover, disconnecting impervious cover, and using natural features for stormwater management.

*CONVEYANCE:* Any structure or device, including pipes, drains, culverts, curb breaks, paved swales or man-made swales of all types designed or utilized to move or direct stormwater runoff or existing water flow.

*DEPARTMENT OF PUBLIC INFRASTRUCTURE:* The Commissioner of the Department of Public Infrastructure or a designee authorized in writing by the Commissioner.

*DEVELOPMENT:* The modification of land to accommodate a new use or expansion of use, usually involving construction.

*EMERGENCY REPAIR:* A condition that poses a threat to public health and/or safety. Such conditions include, but are not limited to, a utility gas leak, electric problem, collapsed or blocked drain, water leak, etc.

*ILLICIT CONNECTION:* Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the municipal storm drain system, including, but not limited to, any conveyance which allows any non-stormwater discharge such as sewage, process wastewater and other wastewater products to enter the municipal storm drain system and any connections to the municipal storm drain system from indoor drains and sinks, regardless of whether said drain or connection has been previously allowed, permitted, or approved by an authorized enforcement agency.

*ILLICIT DISCHARGE:* Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in the Stormwater Rules and Regulations.

*IMPERVIOUS COVER:* Any material or structure on or above the ground that prevents water from infiltrating through the underlying soil. Impervious cover includes, without limitation, paved parking lots, sidewalks, rooftops, driveways, patios, compacted gravel, and compacted bare soil- surfaced roads.

*LOW IMPACT DEVELOPMENT (LID):* The incorporation of non-structural and natural approaches to new and redevelopment projects to reduce adverse effects on water quality and the natural environment by conserving natural areas, reducing impervious cover, and better integrating stormwater treatment.

*MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS (MASWMS):* The Standards issued by the Department of Environmental Protection (DEP), and as amended, that coordinate the requirements prescribed by State regulations promulgated under the authority of the Massachusetts WETLANDS PROTECTION ACT, M.G.L. c. 131, § 40, Massachusetts WETLAND PROTECTION REGULATIONS 310 CMR 10.00, and the Massachusetts CLEAN WATER ACT, M.G.L. c. 21, §§ 23-56. The standards address stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

*MUNICIPAL STORM DRAIN SYSTEM:* The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of New Bedford.

*NEW DEVELOPMENT:* Any construction or land disturbance of a parcel of land, including all projects requiring Planning Board Site Plan Review, that is currently

in a natural vegetated state and does not currently contain alteration by man-made activities at the location of the proposed land disturbance.

*NONPOINT SOURCE POLLUTION:* Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and man-made pollutants, finally depositing them into water resource areas.

*NON-STORMWATER DISCHARGE:* Discharge to the City of New Bedford municipal storm drain system not composed entirely of stormwater.

*PERSON/* Includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to City ordinances, administrative agency, public or quasi-public corporation or body, the City of New Bedford, and any other legal entity, its legal representatives, agents, or assigns.

*POINT SOURCE:* Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

*POST-DEVELOPMENT:* The condition that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

*REDEVELOPMENT:* Any construction, alteration, or improvement on existing land that contains impervious cover, including all projects requiring Planning Board Site Plan Review, and provided that the activity does not involve an increase in the net amount of impervious cover.

*SITE:* Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

*STORMWATER AUTHORITY:* The Commissioner of the Department of Public Infrastructure for the City of New Bedford or and employee or agent designated by the Commissioner in writing.

*STORMWATER MANAGEMENT:* The use of structural and/or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, and/or peak flow discharge rates.

*STORMWATER MANAGEMENT PERMIT (SMP):* A permit issued by the Stormwater Authority, after review of an application, plans, calculations, and other supporting

documents, which is designed to protect the environment of the City from the deleterious effects of uncontrolled and untreated stormwater runoff.

**Sec. 16-134. Scope and Applicability.**

A) No person shall alter land within the City of New Bedford without having obtained a Stormwater Management Permit (SMP). The Storm Water Authority may seek input from City departments during the review of a Storm Water Permit Application. City Departments shall provide input to the Storm Water Authority, upon request.

1. New Development:

- a. Except as expressly provided herein, stormwater runoff from all industrial, commercial, institutional, office, residential, roadway, and transportation projects, including site preparation, construction, and additions/expansions, and all point source and nonpoint source stormwater discharges from said projects shall be managed according to the Stormwater Rules and Regulations and shall require a SMP.
- b. Linear projects, including those not more than 10 feet in width, including footpaths, bikepaths, and other paths for pedestrian and/or non-motorized vehicle access, shall also meet the Stormwater Rules and Regulations and shall require a SMP.

2. Redevelopment

- a. Except as expressly provided herein, stormwater from all redevelopment projects as defined in Sec. 16-133. Definitions of this ordinance shall be managed according to the Stormwater Rules and Regulations and shall require a SMP.

B) *Exemptions:* No person shall alter land within the City of New Bedford without having obtained a SMP with the following exceptions:

1. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act 310 CMR 10.04 and MGL Chapter 40A Section 3;
2. Maintenance of existing landscaping, gardens or lawn areas;
3. Any work or projects for which all necessary approvals and permits have been issued before the effective date of this Ordinance;
4. Repair or replacement of an existing roof, if said roof contains 4,000 square feet or less;
5. The construction or repair of any fence or wall that will not alter the existing

terrain or drainage patterns;

6. Construction of a garage, addition, pool, or accessory building/structure (e.g. shed) of 500 sf or less on parcels that contain up to six-family dwelling units.
7. Construction of utilities (gas, water, electric, telephone, etc.) other than drainage, which will not permanently alter terrain, ground cover, or drainage patterns;
8. Emergency repairs (as defined in Sec. 16-133. Definitions) that pose a threat to public health, safety, the environment, provided notification is given to the Stormwater Authority within 24 hours of said repair and all required environmental protection, while performing said repair, is followed; or as deemed necessary by the City of New Bedford; provided that the original design location, size, and technology of such facility remain the same. Any work conducted beyond that necessary to abate the emergency shall require the filing of a SMP. No work may be authorized beyond 30 business days from the date of notification to the Stormwater Authority without written approval from the Stormwater Authority.
9. Work performed by the City of New Bedford;
10. New residential driveways that are constructed with porous asphalt, permeable pavers, and pervious concrete or existing residential driveways that are repaved within the same footprint.

#### **Sec. 16-135. Fees.**

At the time of an application, the applicant shall pay a filing fee pursuant to a fee schedule, which shall be determined by the Commissioner of the Department of Public Infrastructure and approved by the City Council. Any subsequent changes to the fee schedule shall be submitted to the City Council for approval.

Pursuant to rules and regulations promulgated by the Commissioner of the Department of Public Infrastructure, reasonable fees may be imposed upon applicants for the purpose of securing outside consultants including, engineers or other experts, in order to aid in the review of proposed projects. Such funds shall be deposited into a revolving fund, which shall be established specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account and expenditures may be made at the sole discretion of the Department of Public Infrastructure. Any consultant hired under this provision shall be selected by and report exclusively to the Department of Public Infrastructure. The Department of Public Infrastructure shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for



payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

**Sec. 16-136. Permit Procedures.**

Permit Procedures and Requirements, including right-of-entry, and fee schedule, shall be defined and included as part of the Stormwater Rules and Regulations.

**Sec. 16-137. Performance Standards.**

Criteria for Stormwater Performance Standards shall be defined and included as part of the Stormwater Rules and Regulations.

**Sec. 16-138. Performance Guarantee.**

The Department of Public Infrastructure may require the applicant to post a surety bond, cash, or other acceptable security, approved by the Commissioner of the Department of Public Infrastructure.

**Sec. 16-139. Enforcement.**

The Department of Public Infrastructure, its agents, officers, and employees shall have authority to enter upon privately owned land 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 Department of Public Infrastructure deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Department of Public Infrastructure shall enforce this ordinance; any rules and regulations, orders, violation notices, and enforcement orders issued pursuant thereto, and may pursue all civil and criminal remedies for such violations. Enforcement shall be further defined and included as part of any stormwater regulations promulgated as permitted under Section 16-132, subsection B of this ordinance.

The Department of Public Infrastructure may seek remedies under the ordinance, and the regulations promulgated hereunder, including instituting a civil action to obtain an injunction, criminal enforcement up to Three Hundred (\$300.00) Dollars per violation per day, and/or non-criminal citations, up to Three Hundred (\$300.00) Dollars per violation per day pursuant to G.L. c. 40, § 21D and G.L. c. 40U.

**Sec. 16-140. Severability.**

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 previously has been issued.

Section 2.

This ordinance shall take effect, in accordance with the provisions of Chapter 43 of the General Laws.