

# IN THE YEAR TWO THOUSAND AND NINE

## FOURTH AMENDMENT TO CHAPTER 38 OF THE REVISED CODE OF ORDINANCES OF THE CITY OF HOLYOKE, MASSACHUSETTS 1997

### AN ORDINANCE

Be it ordained by the City Council of the City of Holyoke as follows:

**SECTION 1.** Chapter 38 entitled "Environment" of the Revised Code of Ordinances of the City of Holyoke, Massachusetts, 1997, as amended, is hereby further amended by the following:

#### ADDING:

### ARTICLE IV STORMWATER MANAGEMENT

#### Section 38-76 Purpose and Authority

- A. The purpose of this section is to protect, maintain, and enhance the public health, safety, and general welfare of the citizens of Holyoke by establishing minimum requirements and procedures to control the adverse impacts associated with stormwater runoff from new development and redevelopment.
- B. The objectives of this section are:
  - i. Establish regulations for land development activities that preserve the health of water resources by reducing the adverse impacts to water quality by or as a result of stormwater discharges to rivers, lakes, reservoirs and streams in order to attain federal water quality standards;
  - ii. Require that new development, redevelopment and all land conversion activities maintain the natural hydrologic characteristics of the land in order to reduce flooding, stream bank erosion, siltation, property damage and the integrity of aquatic habitats and stream channels;
  - iii. Prevent the discharge of pollutants, including hazardous chemicals, into stormwater runoff;
  - iv. Minimize the volume and rate of stormwater which is discharged, to rivers, streams, reservoirs, lakes and combined sewers that flow from any site during construction and following development, and reduce stream channel erosion caused by increased runoff;
  - v. Promote proper management of land to minimize the impacts of erosion and sedimentation;

- vi. Require post-development runoff volume and quality to be equivalent to or an improvement on pre-development runoff conditions by reducing runoff volumes, increasing infiltration, and improving runoff water quality.
- vii. Provide for the recharge of groundwater aquifers and maintain the base flow of streams;
- viii. Encourage the use of Low Impact Development (LID) practices such as reducing impervious cover, treating and infiltrating stormwater at the source, utilizing environmentally sensitive site design and, the preservation of open space and natural areas, to the maximum extent practicable;
- ix. Provide stormwater facilities that are functional, attractive, maintain the natural integrity of the environment, and are designed to protect public safety;
- x. Minimize damage to public and private property from flooding related to stormwater discharges;
- xi. Require maintenance provisions to ensure the stormwater treatment devices and facilities will continue to function as designed;
- xii. Establish procedures for the City's review of Stormwater Management Plans, and for the City's inspection of approved stormwater controls; and,
- xiii. Comply with state and federal statutes and regulations relating to stormwater discharges.

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. 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. This ordinance is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the rules and regulations of the federal Clean Water Act, 40 CFR 122.34, and as authorized by the residents of the City of Holyoke at City Council Meeting dated December 15, 2009.

## **Section 38-77 Definitions**

The following definitions shall apply in the interpretation and implementation of this Ordinance. Additional definitions may be adopted by separate regulation:

**Clean Water Act:** the Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.) as hereinafter amended.

**Construction activity:** significant disturbance of a site for the purpose of constructing buildings, structures or other areas of impervious surface. .

**Impervious surfaces:** developed areas which prevent the infiltration of water into the soil, including but not limited to buildings, rooftops, pavement and any other material or structure on or above the ground that prevents water from infiltrating the underlying soil.

**Land Development:** any construction activity or land disturbance of a site that is currently in a natural vegetated state or does not contain alteration by man-made activities.

**Land Disturbance:** any land clearing or grading by mechanical means including: excavation, bulldozing, digging or other similar activities.

**Low Impact Development (LID):** a set of approaches that seeks to mimic a site's pre-development hydrology by using design techniques that infiltrate, filter, store, evaporate and detain runoff close to its source. Instead of conveying, managing and/or treating stormwater in large, end-of-pipe facilities, LID utilizes small-scale, decentralized practices that infiltrate, treat, evaporate, and transpire rain water and snow melt including bioretention areas, grassed swales, reduced impervious areas, preserve open space, increase development density, and promote lot size, configuration, street design, parking design, and other structural stormwater treatment methods to achieve this end.

**Massachusetts Stormwater Management Policy:** the Policy issued by the Massachusetts Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act. G.L. c. 131 § 40 and Massachusetts Clean Waters Act G.L. c. 21 §23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and to control the quantity of runoff from a site.

**Owner:** every person or entity who alone, jointly or severally with others: (a) has legal title to any building, structure or parcel of land; or (b) has care, charge or control of any building, structure, or parcel of land in any capacity including but not limited to, an agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or (c) a lessee under a written lease agreement; or, (d) a mortgagee in possession; or, (e) an agent, trustee or other person appointed by the courts.

Person: any individual, association, partnership, corporation, company, business, organization, trust, estate, administrative agency, public or quasi-public corporation or body, the commonwealth or political subdivision thereof or the federal government, to the extent permitted by law and agent of such person.

Post-development: The state of a site after development-related construction activities are completed.

Pre-development. The state of a site prior to development. The pre-development state shall be interpreted as the state of a site at the time of permitting for a development project.

Redevelopment: Development of a site that has been previously been altered by the addition of buildings or impervious surfaces. Redevelopment may include alterations to existing infrastructure, demolition and replacement of existing infrastructure, or addition of new infrastructure. For the purposes of this ordinance, development of an agricultural property to an agricultural or any other another use does not constitute a redevelopment, but is instead classified as development of a site that has not been previously developed.

Site: the parcel of land being developed, or a designated planning area in which the land development or redevelopment project is located.

Stormwater Authority: the Stormwater Authority shall be the Board of Public Works. The Stormwater Authority is responsible for coordinating the review, approval and permit process as defined in this ordinance. Other Boards and/or departments participate in the review process as defined in the Stormwater Regulations adopted in accordance with this ordinance.

Stormwater Management: the use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, and/or peak flow discharge rates. Stormwater management includes the use of LID management practices.

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 for the deleterious affects of uncontrolled and untreated stormwater runoff.

### **Section 38-78 Administration**

- A. Stormwater Authority: The Stormwater Authority shall administer, implement and enforce this Ordinance. Any powers granted to or duties imposed upon the Stormwater Authority may be delegated in writing by the Stormwater Authority to its employees or agents.

- B. Stormwater Regulations: The Stormwater Authority may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures and administration of this Stormwater Management Ordinance by majority vote of the Stormwater Authority after conducting a public hearing to receive comments on any proposed regulations or revisions. Such hearing dates shall be advertised in a newspaper of general local circulation at least seven (7) days prior to the hearing date. After public notice and public hearing, the Stormwater Authority may promulgate rules and regulations to effectuate the purposes of this Ordinance. Failure by the Stormwater Authority 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 Stormwater Authority will utilize the policy, criteria and information including specifications and standards of the latest edition of the Massachusetts Stormwater Management Policy, for execution of the provisions of this Ordinance. This Policy includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. The Policy may be updated and expanded periodically, based on improvements in engineering, science, monitoring, and local maintenance experience. Unless specifically altered in the Stormwater Regulations, stormwater management practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to be protective of Massachusetts water quality standards.
- D. Actions by the Stormwater Authority. The Stormwater Authority may take any of the following actions as a result of an application for a Stormwater Management Permit as more specifically defined as part of Stormwater Regulations promulgated as a result of this Ordinance: Approval, Approval with Conditions, Disapproval, or Disapproval without Prejudice.
- E. Appeals of Action by the Stormwater Authority. A decision of the Stormwater Authority shall be final. Further relief of a decision by the Stormwater Authority made under this Ordinance shall be reviewable in the superior court in accordance with M.G.L. Ch. 30A, Sec. 14 in an action filed within 30 days thereof.

### **Section 38-79 Applicability**

A. Permit or Waiver Required

Prior to the commencement of any of the following activities a Stormwater Management Permit, or a waiver of the requirement for a Stormwater Management Permit, must be issued by the Stormwater Authority:

i. Large Developments

- a. Multifamily residential developments involving four or more units;
  - b. Any new land development which results in the creation of at least 5,000 total square feet of impervious surface on a site;
  - c. Any redevelopment or additions to existing uses which will result in the addition, reuse, reconstruction, refurbishing or repaving of at least 5,000 total square feet of impervious surface area on a site;
  - d. Any land disturbance or construction activities disturbing greater than or equal to one acre;
  - e. Land Development or redevelopment involving multiple separate activities in discontinuous locations or on different schedules if the activities are part of a larger common plan of development that together disturbs one or more acres, or adds 5,000 total square feet of impervious surface.
- ii. Small Developments
- a. Any new land development which results in the creation of at least 2,000 but less than 5,000 total square feet of impervious surface on site;
  - b. Any redevelopment or additions to existing uses which will result in the addition, reuse, reconstruction, refurbishing or repaving of at least 2,000 but less than 5,000 total square feet of impervious surface area on site;
  - c. Any land disturbance or construction activities disturbing greater than one-half acre but less than one acre, or adds at 2,000 but less than 5,000 total square feet of impervious surface.

## B. Exemptions

The following uses and activities are exempt from the requirements for Stormwater Management Permit:

- i. Any agricultural activity which is consistent with an approved soil conservation plan prepared or approved by the Natural Resources Conservation Service;
- ii. Any logging which is consistent with a timber management plan approved under the Forest Cutting Practices Act by Massachusetts Department of Environmental Management;

- iii. Repairs to any stormwater treatment system deemed necessary by the Holyoke Department of Public Works;
- iv. Any emergency activity that is immediately necessary for the protection of life, property or the environment, as determined by the Holyoke Department of Public Works; and
- v. Any other uses and activities not specified in 38-79(A).

#### **Section 38-80 Permit Procedures and Performance Standards**

- A. Procedures, requirements and fee schedules for Stormwater Management Permits, and stormwater and LID performance standards shall be defined and included as part of any rules and regulations promulgated as permitted under this ordinance.
- B. Issuance of a Stormwater Management Permit shall not be construed as a guarantee by the City of Holyoke, the Stormwater Authority or its employees or agents, of the design or efficiency of the approved stormwater management system.

#### **Section 38-81 Enforcement**

- A. The Stormwater Authority, or an authorized agent of the Stormwater Authority shall enforce this ordinance, regulations adopted hereunder and violation notices and enforcement orders issued hereunder, and may pursue all civil and criminal remedies for such violations. Enforcement procedures shall be further defined and included as part of any rules and regulations promulgated as permitted under this ordinance.
- B. Criminal and Civil Penalties. Any person who violates any provision of this ordinance, valid regulation adopted hereunder or the terms and conditions in any permit or order issued hereunder, shall, be subject to a fine not to exceed \$300.00 per violation, per site for each day such violation continues or may be subject to a civil penalty, which may be assessed in an action brought on behalf of the City of Holyoke in any court of competent jurisdiction. Each day that such violation continues shall be considered a separate offense.
- C. Non-criminal disposition. As an alternative to criminal prosecution or civil action, the Stormwater Authority may elect to utilize the non-criminal disposition procedures set forth in M.G.L. Ch. 40, Sec. 21D. The penalty for the first violation shall be \$100.00. The penalty for the second violation shall be \$200.00. The penalty for the third and subsequent violations shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

- D. Restoration of Lands. Any violator shall be required to restore land to its undisturbed condition, condition prior to the violation or other solution deemed appropriate by the Stormwater Authority. In the event that restoration is not undertaken within the time proscribed by the Stormwater Authority, after notice, the City of Holyoke may undertake the necessary corrective action, the cost of which shall become a lien on the property until paid.

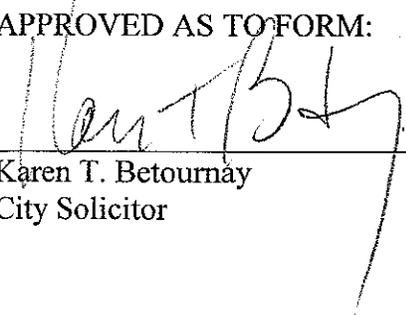
**Section 38-82 Severability**

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

**SECTION 2.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION 3.** This ordinance shall take effect on the date of passage.

APPROVED AS TO FORM:

  
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Karen T. Betournay  
City Solicitor