

ORDINANCE

By Reich

Amending Title 3, Chapter 54 of the Minneapolis Code of Ordinances relating to Air Pollution and Environmental Protection: Storm Water Management.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Chapter 54, Sections 54.10 through 54.180, of the Minneapolis Code of Ordinances be and hereby is repealed in whole and replaced with a new Chapter 54, Sections 54.10 through 54.210, to read as follows:

CHAPTER 54. STORMWATER MANAGEMENT

54.10. – Authority. This ordinance is adopted pursuant to the authorization and policies contained in Minnesota Statutes, Chapter 103B, 115, 116, and 473, and Minnesota Administrative Rules Chapter 8410.

54.20. – Purpose. The purpose of this ordinance is to minimize negative impacts of stormwater runoff rates, volumes, and quality on Minneapolis lakes, streams, wetlands, and the Mississippi River by guiding development and redevelopment activity and by assuring the long-term effectiveness of stormwater best management practices. Chapter 54 establishes regulatory thresholds for conservation practices and planning activities to establish policies regarding water resource management and flood control as described in city, regional, state, and federal documents, and statutes.

54.30. – Minneapolis Stormwater and Sanitary Sewer Guide. The Minneapolis Stormwater and Sanitary Sewer Guide, also known as the Guide, summarizes stormwater review and approval processes, outlines project submittal requirements, and provides guidance for the development of a complete submittal package. The Guide also outlines the standards and requirements that must be met for compliance with this Chapter of the City Code of Ordinances and for approval. The Guide is available on the Minneapolis Department of Public Works, Surface Water and Sewers Division webpage.

54.40. – Definitions. For the purposes of Chapter 54, the following terms, phrases, words, and their derivatives shall have the meanings stated below:

Applicant is the individual or entity proposing a development, project, undertaking, or land-disturbing activity, including common plans of development or sale or phased or connected actions.

Best management practices—see Stormwater Best Management Practices.

City engineer is the city engineer of the City of Minneapolis and their duly authorized designees.

Common plan of development or sale is one proposed plan for a contiguous area where multiple separate and distinct land-disturbing activities may be taking place at different times on different schedules within a two-year period but under one proposed plan. One plan is broadly defined to include designs, permit applications, advertisements, or physical demarcations indicating that land-disturbing activities may occur. This are also referred to as connected or phased actions, as defined herein.

Connected actions are actions that are also defined in a common plan of development or sale; or two (2) or more projects, regardless of ownership, determined by the city engineer to be related in any of the following ways:

- (1) One project directly necessitates the other.
- (2) One project is a prerequisite for the other.
- (3) Neither project is justified by itself.

Development is any human-induced change to improved or unimproved real estate (public or private). This includes (but is not limited to) construction, installation, or expansion of a building or other structure; land division; street construction; drilling; and site alteration that involves dredging, grading, excavating, filling, clearing, or paving of parking/storage facilities. Development encompasses new development, redevelopment, and nonlinear projects.

Green infrastructure is a wide array of practices at multiple scales that manage wet weather through volume reduction and maintain or restore natural hydrology by infiltrating and evapotranspiring or harvesting and using stormwater.

Guide—see the Minneapolis Stormwater and Sanitary Sewer Guide, Section 54.30.

Impervious surface is one that does not allow rainfall to soak into the ground, including (but not limited to) rooftops and paved areas such as roads, parking lots, driveways, sidewalks, and plazas.

Land-disturbing activities are any activities that result in a change or alteration in the existing ground cover (both vegetative and nonvegetative) and/or the existing topography. Land-disturbing activities include (but are not limited to) the following: development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, stockpiling, excavating, and constructing borrow pits.

Linear project is the construction or reconstruction of public roads, trails, sidewalks, or rail lines.

Mill and overlay is the practice of resurfacing a paved area by first removing the pavement surface and a portion of the existing pavement base material followed by the placement of new pavement base material and surface. Projects that do not disturb the underlying soil below the base material are considered a mill and overlay. An overlay of an existing impervious surface that includes raising the grade of the impervious surface more than six (6) inches is not considered a mill and overlay.

Owner is any person with a legal or equitable interest in the land that includes one (1) or more stormwater best management practices.

Person is any individual, firm, corporation, partnership, franchisee, association, or governmental entity.

Phased actions are two (2) or more projects undertaken by the same proposer that the city engineer determines:

- (1) Will have environmental effects on the same geographic area; and
- (2) Are substantially certain to be undertaken sequentially over a limited period of time.

Pollutant is an elemental or physical material that can be mobilized or dissolved by water or air and creates a negative impact on human health and/or the environment. See the Guide for stormwater and other emerging pollutants.

Project is an undertaking that involves land-disturbing activities, including phased or connected actions or a common plan of development or sale.

Public waters are waters identified under Minnesota Statutes, Section 103G.005, Subdivision 15.

Receiving water body is the initial lake, stream, river, or wetland into which site runoff is conveyed whether directly or through the public storm drain system.

Regional stormwater BMP is a structure or device designed, approved by the city engineer, and constructed to capture and manage stormwater runoff from a large area or multiple properties.

Responsible party is the property owner and agents, employees, and others acting under the property owner's direction.

Sediment is soil or other particulate matter that can be transported by stormwater.

Site is the land on which the project is located, including a common plan of development or sale or phased or connected actions.

Storm sewer system refers to infrastructure including (but not limited to) pumping stations; enclosed storm sewers; outfall sewers; surface drains; street, curb, and alley improvements associated with storm or surface water improvements; natural and created wetlands; channels; ditches; rivers; streams; wet- and dry-bottom basins; pocket ponds; multiple pond systems; settling basins; infiltration trenches or basins; filter systems; bioretention areas; dry or wet swales; grass channels; rooftop detention; skimming devices; grit chambers; and other flood-control facilities. These systems work to collect, transport, convey, pump, treat, control, store, manage, and dispose of storm or surface water or pollutants originating from or carried by storm or surface water.

Stormwater means water that is generated by rainfall or snowmelt.

Stormwater banking is an approach where water quality or volume reductions in excess of the standards for its use on future projects unable to meet the standards, as calculated in compliance with a stormwater banking program and approved by the city engineer.

Stormwater best management practices (BMPs) are structural and nonstructural practices meant to prevent or reduce the discharge of pollutants from the storm sewer system to public waters. BMPs that use the properties of vegetation or soil to remove stormwater pollutants through physical and biological processes are often referred to as "green infrastructure." A partial list of nonstructural BMPs includes organic litter management, street or parking lot sweeping, and construction phasing to minimize the length of time soil areas are exposed. A partial list of structural BMPs and devices includes pond systems, detention facilities, infiltration cells ("rain gardens"), infiltration trenches, filtration systems, vegetated channels, grit chambers, and oil/water separators. BMPs are practices, techniques, or measures that are effective in managing one (1) or more of the following:

- (1) Stormwater runoff rate;
- (2) Stormwater runoff volume; or
- (3) Pollutants and sediments conveyed by stormwater runoff.

Stormwater infiltration refers to passage of stormwater into the ground through soil.

Stormwater management plan (Plan) is the set of drawings, calculations, operation and maintenance plans, and other documents that constitute all the information and specifications for the drainage systems, structures, concepts, and techniques that will be used to control stormwater as required by this Chapter and the Guide.

Stormwater runoff is water generated by rainfall or snowmelt that does not soak into the ground but flows over surfaces.

Wetlands are waters identified under Minnesota Statutes, Section 103G.005, Subdivision 19.

54.50. – Applicability. Chapter 54 establishes requirements for land-disturbing activities, new and existing BMPs, and activities implemented to meet the requirements of this Chapter.

(1) *Land-disturbing activities.* All land-disturbing activities in excess of half (0.5) an acre, including common plans of development or sale, are subject to the requirements of this Chapter.

(2) *Existing BMPs.* BMPs designed and constructed to comply with this version or previous versions of this Chapter are subject to annual site registration, annual inspection, and adherence to operations and maintenance plan requirements prescribed in the Guide.

(3) *Special conditions.* The city engineer may impose such conditions and requirements as deemed necessary to prevent degradation of the performance of the City's storm sewer system or creation of a nuisance or unreasonable hazard to persons or to a public or private property.

54.60. – Exemptions. The following are exempt from the requirements of Chapter 54:

(1) Land-disturbing activities that have received all necessary approvals from the City before the effective date of this ordinance as specified in Section 54.210.

(2) Emergency work to protect life, limb, or property.

(3) Installation of fence, sign, telephone, electric, or other kinds of posts or poles.

(4) Sidewalk or underground utility-only projects that restore the ground surface to its pre-project condition.

(5) Mill and overlay activities.

(6) Linear projects that involve noncontiguous disturbed areas, such that each noncontiguous disturbed area shall be considered a separate land-disturbance area, regardless of whether the noncontiguous areas are part of the same plan set.

(7) Construction or reconstruction of a single-family home or duplex.

(8) BMPs implemented for reasons other than to comply with the requirements of this Chapter.

54.70. – Stormwater management plan approval requirement. No person shall disturb land in excess of half (0.5) an acre without having first obtained approval of a stormwater management plan (Plan), in conformance with this ordinance, from the city engineer.

54.80. – Plan requirements. (a) *On-site management.* Measures to achieve stormwater management standards shall be incorporated on all sites. Where it has been evaluated and approved by the city engineer using the stormwater banking approach outlined in the Guide, entities may create regional stormwater BMPs that exceed stormwater management standards and bank them for use.

(b) *Full or partial off-site management.* When incorporating stormwater management standards on site becomes impossible due to development density, topographic features, site constraints, or soil or vegetation conditions, the responsible party may apply for approval of full or partial participation in a regional stormwater BMP. The Guide shall provide the method for calculating and documenting stormwater credits or cost of full or partial off-site management in lieu of full on-site management through a stormwater banking program. The City will provide standards for administration of a stormwater banking program for approved governmental entities. Off-site management shall not circumvent the general purposes and intent of this ordinance.

(c) *Plan design standards.*

(1) *Water quality standards according to receiving waterbody.* Water quality discharge standards, as contained in the Guide, shall apply.

(2) *Peak discharge rate control.* Peak discharge rates shall be maintained at or below the existing condition rates for the disturbed land area.

(3) *Volume control.* Volume control shall be addressed as follows:

a. New development, redevelopment, and nonlinear projects on sites without restrictions shall capture and retain on-site 1.1 inches of runoff from the new and fully reconstructed impervious surfaces within the disturbed area.

b. Linear projects on sites without restrictions shall capture and retain the larger of the following:

1. 0.55 inch of runoff from the new and fully reconstructed impervious surfaces within the disturbed land area.

2. 1.1 inches of runoff from the net increase in impervious area.

3. Stormwater infiltration practices may be restricted or prohibited in areas defined in the Guide and the City's current MPCA NPDES/SDS Municipal Separate Storm Sewer Systems (MS4) permit.

(4) *Operations and Maintenance (O&M) Plan.* The Plan shall include an O&M Plan that defines the maintenance regimen, including the type and interval of inspection and maintenance, and party responsible for conducting such inspection and maintenance.

(5) *Accessibility for maintenance.* All BMPs shall be accessible for maintenance and inspection.

(6) *Impacts on other properties.* No Plan shall cause unreasonable damage or unreasonable environmental, health, or safety conditions on adjacent properties.

(7) *Conformity with other requirements.* Plans must conform to all applicable federal, state, city, and water management organization requirements, ordinances, and regulations.

(8) *Conditions of approval.* In granting approval pursuant to Chapter 54, the city engineer may impose such conditions as may be reasonably necessary to prevent creation of a nuisance or unreasonable hazard to persons or to a public or private property.

(9) *Changes to plans.* Any modifications to an approved Plan must be submitted to the city engineer for review and approval. Modifications to any aspect of an approved Plan that are not approved by the city engineer shall be considered noncompliant with this Chapter.

54.90. – Denial. If the city engineer determines that the Plan does not meet the requirements of this Chapter, the Plan will not be approved. A revised Plan must be submitted and approved before any land-disturbing activity begins.

54.100 – Appeal. Any applicant may appeal the city engineer's decision by following the procedures established in the Minneapolis Zoning Code, Chapter 525 – Administration and Enforcement, Article IV. Appeals.

54.110. – Responsibility during construction/completion. (a) *Inspection of BMPs.* The applicant shall notify the city engineer prior to construction of the stormwater management BMP to allow for inspection of the BMP.

(b) *Construction/completion final report and certification.* The applicant shall submit a final report, as outlined in the Guide, to validate compliance with the approved Plan.

54.120. – Responsibility following construction/completion. (a) *Duration.* An approved Plan shall remain in effect unless cancellation is approved by the city engineer. All site areas used for the purpose of reducing pollutants and nutrients, for managing peak flow rates, and for maximizing infiltration shall be preserved and maintained for those uses, including areas required for maintenance and inspection.

(b) *Annual site registration.* The responsible party of a BMP installed under this Chapter shall register it annually with the city engineer and remit an annual registration fee at the rate established in the Annual License Fee Schedule.

(c) *Inspection of BMPs.* All BMPs are subject to inspection by the city engineer. If the city engineer deems that BMPs are not functioning satisfactorily, a notice of noncompliance may be issued, and procedures followed as described in Section 54.130.

(d) *Operation and maintenance of BMPs.* The entirety of the BMPs required under this ordinance shall be maintained and kept in operating condition by the owner at levels outlined in the approved Plan. Any failure to maintain a BMP and keep it in operating condition adequate to meet the water quality, rate control, and volume control requirements under this ordinance may result in the city engineer issuing remedial action per Section 54.130.

54.130. – Inspections, remedial actions, and compliance procedures. (a) The city engineer will carry out routine inspections for compliance with the provisions of this Chapter and the O&M Plan. In the event of noncompliance, the following remedial actions, penalties, or assessments may be applied:

(1) *Tier 1. Written notice.* If noncompliance with Chapter 54 is identified by the city engineer, the city engineer shall issue a Tier 1 written notice to the responsible party of the BMP specifying each item or instance of noncompliance with this Chapter or the O&M Plan. The BMP(s) shall be subject to reinspection within the time outline in the written notice by the city engineer.

(2) *Tier 2. Second written notice and escalation.* If noncompliance is still identified after the time outline in the Tier 1 written notice, the city engineer shall issue a Tier 2 written notice to the responsible party of the BMP. Within thirty (30) days of issuance of a Tier 2 written notice, the responsible party must submit, to the city engineer for review and acceptance, a plan outlining corrective procedures necessary for compliance with this Chapter or the O&M Plan, including timeframes to complete such procedures.

(3) *Tier 3. Written notice, citations, and civil fines.* Any responsible party that has received a Tier 2 written notice and is noncompliant with this Chapter or the O&M Plan requirements and compliance procedures may receive a Tier 3 written notice and may be subject to administrative enforcement pursuant to Chapter 2 of this Code or any other appropriate and available enforcement provided by law. Administrative citations may be issued for Tier 3 noncompliance or to continuing violators.

(4) *Tier 4. Performing necessary maintenance and assessing cost.* In addition to all other rights and remedies the City may have at law or in equity, the city engineer shall retain the right to reject defective or incomplete work. The city engineer is authorized to remedy any such deficiency and to determine the cost. Any cost incurred by the City to remedy a deficiency may be charged to the owner of the BMP(s) for such defective or incomplete work. If said charges are not paid within ninety (90) days after a bill of charges has been mailed to the owner, the City Council shall assess and levy the amount as a special assessment upon and against the property benefited in the manner provided by law for other assessments.

(b) Any person, firm, corporation, or agency acting as property owner, responsible party, or otherwise who fails to comply with the provisions of this Chapter shall be guilty of a misdemeanor.

54.140. – Prohibited discharges to storm sewer system. No person shall discharge or cause to be discharged into the storm sewer system any non-stormwater discharges, sewage, or wastewater, including (but not limited to) contact cooling water, groundwater, or surface water that is determined to be contaminated. Discharges permitted pursuant to an approved industrial NPDES permit or as a result of firefighting activities are permissible discharges.

54.150. – Liability. The responsible party is responsible for safe and legal compliance with this Chapter. Neither approval under the provisions of Chapter 54 nor compliance with the provisions hereto or with any condition imposed by the issuing authority shall relieve any person from responsibility for damage to persons or property resulting therefrom, or as otherwise imposed by law, nor impose any liability upon the City for damages to persons or property.

54.160. – Interpretation. In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the City and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

54.170. – Severability. If any section, clause, provision, or portion of this Chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Chapter shall not be affected thereby.

54.180. – Disclaimer. The City in no way guarantees or implies that areas will be free from flooding or flood damages. The City does not assume a specific duty as to individual property owners to enforce this ordinance but is enacting this Chapter as a general regulation. This ordinance shall not create liability on the part of the City or its officers or employees for any flood damage that may result from the failure to comply with any portion of this Chapter or any administrative decisions made pursuant thereto, whatever the cause.

54.190. – Abrogation and greater restrictions. It is not intended by this Chapter to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Chapter imposes greater restrictions, the provisions of this Chapter shall prevail. All other ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

54.200. – Relation to other laws. Neither Chapter 54 nor any administrative decision made under it exempts the applicant or any other person from procuring other required permits or complying with the requirements and conditions of such permits or limits the right of any person to maintain, at any time, any appropriate action, at law or in equity, for relief or damages against the applicant or any other person arising from activity regulated by Chapter 54.

54.210. – Effective date. This ordinance shall become effective on January 1, 2022.