

Bill No.7656

Introduced in Council:

May 18, 2015

Introduced by:

EDWARD TALKINGTON

Adopted by Council:

June 1, 2015

Referred to:

ENVIRONMENT AND RECYCLING

Bill No. 7656 A BILL to enact Division II of Article VIII, Chapter 102 of the Municipal Code of the City of Charleston, as amended, to be known as the "City of Charleston Construction Site Erosion and Sediment Control Ordinance."

WHEREAS, the 1972 amendments to the Federal Water Pollution Control Act (referred to as the Clean Water Act or "CWA"), 33 U.S.C. §§ 1251-1387, prohibit the discharge of any Pollutant to navigable waters of the United States from a point source unless the discharge is authorized by a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") required by CWA § 402, 33 U.S.C. §§ 1342; and

WHEREAS, Municipal Separate Storm Sewer Systems ("MS4s") which convey urban runoff, including, but not limited to Stormwater runoff, are point sources under the CWA; and

WHEREAS, soil is highly vulnerable to erosion by wind and water during the construction process. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches and the dredging of waterways. In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat; and

WHEREAS, US EPA regulations require a municipality to implement a stormwater management plan that adopts measures for the protection of water quality by addressing erosion and sediment control during land disturbing activities; and

WHEREAS, the City of Charleston, as the owner and operator of its MS4, has the right and the duty to protect the integrity of its MS4 against Pollutants entering the MS4; and

WHEREAS, under the Constitution of West Virginia, West Virginia Code, and the City of Charleston Municipal Code, the City of Charleston has the authority to define public nuisances and to protect the environment and the public health and safety of the residents of and visitors to the City, by abating public nuisances.

Now, therefore, be it Ordained by the Council of the City of Charleston, West Virginia:

That Division II, Article VIII, Chapter 102 of the Municipal Code of the City of Charleston is hereby enacted to read as follows:

CHAPTER 102 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES
ARTICLE VIII – STORMWATER POLLUTION PREVENTION
DIVISION 2 – CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

Sec. 102-310. - Purpose/Intent.

The purpose of this Division is to provide for the protection of the health, safety, and general welfare of the citizens of the City of Charleston (“City”) through the regulation of those Construction projects where the discharge of sediment and other construction related pollutants into adjacent Waterways is likely to occur.

Sec. 102-311. - Definitions.

The following words, terms and phrases when used in this Division shall have the meanings ascribed to them in this Section except where the context clearly indicates a different meaning:

- (a) *Clearing* means any activity that removes or causes the removal of the vegetative surface cover.
- (b) *Construction* means the act of building, grading, shaping, removing, demolishing, repairing, erecting, extending, installing equipment on/in, or enlarging any building, structure, grounds, or premises.
- (c) *Construction Site* means a parcel of land or a contiguous combination thereof where Land Disturbing Activity occurs.
- (d) *Drainage Way* means any channel that conveys surface runoff throughout the Construction Site.
- (e) *Erosion* means the wearing away of land surface by natural or artificial forces such as wind, water, ice, gravity or vehicle traffic.
- (f) *Erosion Control* means a measure that is designed to prevent erosion.
- (g) *Erosion and Sediment Control Plan (“ESCP”)* means a set of plans indicating the specific measures and sequencing to be used to control Erosion and Sediment on a Construction Site.
- (h) *Grading* means the cutting and/or filling of the land surface to a desired slope, elevation, or contour.
- (i) *Impervious Area* means an area composed of any material which impedes or prevents the natural infiltration of water into the soil, including but not limited to, concrete, asphalt, and roof surfaces.

- (j) *Land Disturbing Activity ("LDA")* means any activity that results in the movement or manipulation of soil, rock or other earth materials. This includes, but is not limited to, Clearing and grubbing, Grading, excavation, filling, embankment construction, road grading, ditch cleaning, mineral extraction, commercial timbering, initial landscape preparation and stockpiling of earth materials. The activities set forth in Section 102-314(b) of this Division are exempt from the definition of Land Disturbing Activity for purposes of this ordinance.
- (k) *Perimeter Control* means a barrier that prevents Sediment from leaving a site by filtering Sediment-laden runoff or diverting it to a Sediment trap or basin.
- (l) *Person* means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.
- (m) *Phasing* means disturbing a parcel of land in distinct phases, with the Stabilization of each phase completed before disturbance of the next phase.
- (n) *Sediment* means soil, sand, silt, and minerals washed from land into water.
- (o) *Sediment Control* means measures that prevent eroded Sediment from leaving a Construction Site.
- (p) *Stabilization* means the use of practices that prevent exposed soil from eroding.
- (q) *Start of Construction* means the first Land Disturbing Activity associated with a Construction project.
- (r) *Stormwater Compliance Officer* (hereinafter referred to as "*Compliance Officer*") means an employee of the City of Charleston City Engineer's Office or City Building Department designated by the City to administer, implement and enforce this article.
- (s) *Watercourse* means a body of water flowing in a reasonably defined channel with a bed and banks.
- (t) *Waterway* means a channel that directs surface runoff to a Watercourse or to the MS4.

Sec. 102-312. - Applicability.

This Division shall apply to all Construction projects located within the City that involve Land Disturbing Activity ("LDA") exceeding 5000 square feet or an increase in Impervious Area by 1000 square feet or greater unless exempted by Section 102-314(b) this Division.

Sec. 102-313. - Responsibility for administration.

The City of Charleston City Engineer's Office and City of Charleston Stormwater Compliance Officers shall administer, implement, and enforce the provisions of this ordinance.

Sec. 102-314. - Approval of Land Disturbing Activity.

- (a) Any Person applying for a City of Charleston building permit that proposes a Construction project involving LDA exceeding 5000 square feet, or an increase in Impervious Area by 1000 square feet or greater, is required to obtain approval for such LDA from the City Engineer's Office. Requests for approval shall be made at the time of application for a building permit; provided, however, that a building permit shall not be issued in the absence of prior approval of LDA by the City Engineer's Office.
- (b) Notwithstanding Sec. 102-314(a) herein, approval for LDA shall not be required for the following activities:
 - (1) Interior renovations;
 - (2) Roof repair;
 - (3) Building façade maintenance;
 - (4) Milling and repaving of existing asphalt or concrete streets, parking lots, or sidewalks;
 - (5) Maintenance of existing landscaping or gardens;
 - (6) Cutting of trees and brush (provided the area remains vegetated and no grubbing of root system occurs); and
 - (7) Maintenance of pervious sports fields such as replacement of the clay surface to baseball infields, turf plugging of golf fairways and greens.

Sec. 102-315. - Submission of Erosion and Sediment Control Plan; modifications.

- (a) Any Person requesting approval of LDA is required to submit an Erosion and Sediment Control Plan ("ESCP") to the City Building Department as part of the building permit application for review and approval by the City Engineer's Office. The ESCP shall comply with the provisions set forth in the City of Charleston Stormwater Management Guidance Manual regarding Erosion and Sediment Control measures. The Stormwater Management Guidance Manual will be available to the public on the City's website, as well as on file at the City Engineer's Office.
- (b) All control measures set forth in an approved ESCP shall be followed and maintained at all times during the Construction project unless modified with the approval of the City Engineer's Office. Any significant modifications to an ESCP must be approved by the City Engineer's Office via written authorization to the permittee. Minor modifications to the ESCP may be approved by the City Engineer's Office at the Construction Site.
- (c) A copy of the approved ESCP shall be kept on the Construction Site during all stages of a Construction project and shall be made available for review upon request by a

Compliance Officer.

Sec. 102- 316. - Erosion and Sediment Control Design Requirements.

- (a) Grading, Erosion Control practices, Sediment Control practices, and Waterway crossings shall meet the design criteria set forth in the most recent version of the City's Stormwater Management Guidance Manual and shall be adequate to prevent transportation of Sediment from the Construction Site to the satisfaction of the City Engineer's Office.
- (b) Clearing and Grading of natural resources, such as protected habitats and wetlands, shall not be permitted, except when in compliance with the Stormwater Management Guidance Manual.
- (c) Clearing, except to the extent necessary to establish Sediment Control devices, shall not begin until all Sediment Control devices have been installed and have been stabilized.
- (d) Minimum Erosion Control requirements shall include:
 - (1) Temporary seeding must be applied if the Construction Site is idle for more than 21 days.
 - (2) Special techniques that meet the design criteria outlined in the Stormwater Management Guidance Manual on steep slopes or in Drainage Ways shall be used to ensure Stabilization.
 - (3) Soil stockpiles must be stabilized or covered at all times.
 - (4) The entire Construction Site must be stabilized at the close of the Construction season, which may include but is not limited to, temporary seeding, mulching, and the use of Erosion Controls.
 - (5) Techniques shall be employed to prevent the transportation of dust or Sediment from the Construction Site.
 - (6) Techniques shall be employed to divert upstream runoff away from LDA without causing any additional Erosion.
- (e) Minimum Sediment Control requirements shall include: Sediment basins, Sediment traps, and/or Perimeter controls.
- (f) Minimum Waterway and Watercourse protection requirements shall include:
 - (1) Approval of a Waterway or Watercourse crossing by all applicable federal and state agencies having jurisdiction, which may include, but is not limited to, West Virginia Department of Natural Resources, United States Army Corps of Engineers, and the United States Environmental Protection Agency.
 - (2) Stabilization of a Watercourse before, during, and after any in-channel work.

- (3) All on-site stormwater conveyance channels designed according to the criteria outlined in the Stormwater Management Guidance Manual.
- (4) Stabilization adequate to prevent Erosion located at the outlets of all pipes and paved channels.

(g) Construction Site access requirements shall include: establishment and maintenance of a stabilized Construction Site entrance as outlined in the Stormwater Management Guidance Manual.

Sec. 102-317. - Review and approval of Land Disturbing Activity and Erosion and Sediment Control Plan by City Engineer's Office.

The City Engineer's Office shall review each request for approval of LDA and the corresponding ESCP to determine conformance with the requirements of this Division. Within 10 days after receiving a building permit application and corresponding ESCP, the City Engineer's Office shall, in writing:

- 1) approve the requested LDA and corresponding ESCP;
- 2) approve the requested LDA and corresponding ESCP subject to conditions as may be necessary to satisfy the objectives of this Division; or
- 3) deny the requested LDA and corresponding ESCP, indicating the reason(s) for denial and the procedure for submitting a revised ESCP, if appropriate.

Sec. 102-318. - Inspection of Construction Site.

(a) All Construction Sites involving LDA and requiring an approved ESCP shall be inspected and approved by a Compliance Officer at each stage of Construction consistent with the seven stages set forth in this subsection. Compliance Officers shall inspect Construction Sites as authorized by this Section and shall either approve that portion of the work completed or shall notify the Person receiving approval for the LDA that the work is not in compliance with the approved ESCP. Plans for Grading, stripping, excavating, and filling work bearing the stamp of approval of a Compliance Officer shall be maintained at the Construction site during all stages of the project. To obtain the required inspections for each stage of Construction, the Person receiving approval for the LDA shall notify the City Engineer's Office at least two working days before each of the following stages:

- (1) Installation of Erosion and Sediment Control measures;
- (2) Start of Construction;
- (3) Completion of site Clearing and rough Grading;
- (4) Installation of any stormwater conveyance structures;
- (5) Completion of final Grading;
- (6) Close of the Construction season; and
- (7) Completion of project.

(b) The Person receiving approval for LDA and corresponding ESCP shall make regular

inspections of all control measures in accordance with the inspection schedule outlined in the approved ESCP. The purpose of such inspections will be to determine the overall effectiveness of the ESCP and the potential need for additional control measures. All inspections shall be documented in writing and submitted to the City Engineer's Office at the time intervals specified in the Stormwater Management Guidance Manual.

Sec. 102-319. - Notice of Noncompliance and Order to Correct.

- (a) When a Compliance Officer determines after reasonable observation or investigation that a Person has not complied with any provision of this Division or has failed to comply with an approved ESCP, the Compliance Officer may order compliance by written Notice of Noncompliance and Order to Correct.
- (b) Notice(s) of Noncompliance and Order(s) to Correct shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that a method of service effectuated by a mailing by the clerk of a court (e.g., service pursuant to West Virginia Rule of Civil Procedure 4(d)(1)(D)) shall be deemed to be effectuated by a mailing by a Compliance Officer. If service is made by certified mail consistent with West Virginia Rule of Civil Procedure 4(d)(1)(D) and delivery of the Notice of Noncompliance and Order to Correct is refused, the Compliance Officer, promptly upon the receipt of the notice of such refusal, shall mail to the Person being noticed, by first class mail, postage prepaid, (1) a copy of the Notice of Noncompliance and Order to Correct (2) a notice that despite such refusal, the Notice of Noncompliance and Order to Correct is valid, and (3) advising that the City will proceed to enforce the Notice of Noncompliance and Order to Correct. So long as such first class mailing is not returned as undeliverable by the U.S. Postal Service, service of the Notice of Noncompliance and Order to Correct will be conclusively presumed to have been effectuated. Proof of service shall be made at the time of service by a written declaration, under oath, executed by the enforcement official effecting service and shall declare the time, date and manner by which service was made.
- (c) Any Notice of Noncompliance and Order to Correct under this section shall be in writing and shall contain the following:
 - (1) the date the Notice of Noncompliance and Order to Correct is given;
 - (2) the name and address of the Person(s) charged with the noncompliance;
 - (3) the nature of the noncompliance;
 - (4) a statement of the action required to be taken in order to correct the noncompliance and further prevent it;
 - (5) the time period allowed for correction. When determining the time period allowed for correction, a Compliance Officer shall take into consideration the threat posed by the noncompliance to the health, safety and welfare of the public and the nature of the work required to correct the noncompliance;

- (6) the maximum fines that may be assessed if the noncompliance is not corrected and a citation is issued; and
 - (7) the name, address and telephone number of the Compliance Officer issuing the Notice of Noncompliance and Order to Correct.
- (d) Nothing in this section shall limit the authority of Compliance Officers to take any other lawfully prescribed enforcement action, including emergency actions or any other enforcement action, without first issuing a Notice of Noncompliance and Order to Correct.
- (e) Failure to correct the noncompliance by the date set forth in the Notice of Noncompliance and Order to Correct shall be reported to the Building Department. Any subsequent work performed shall constitute work being performed in a dangerous or unsafe manner or in a manner contrary to the W.Va. State Building Code, as adopted by Charleston Municipal Code Section 14-33(a), and the Person charged with the noncompliance may be issued a stop work order or the building permit may be revoked.

Sec.102-320. - Injunctive relief.

It shall be unlawful for any Person to violate any provision or fail to comply with any of the requirements of this Division. If a Person has violated or continues to violate the provisions of this Division, the City may petition a court of competent jurisdiction for a preliminary or permanent injunction restraining the Person from activities which would create further violations or compelling the Person to perform abatement or remediation of the violation. Any such Person against whom such an injunction is issued shall be responsible for paying all costs of the City in obtaining and enforcing such injunction, including the court costs and attorney's fees.

Sec. 102-321. - Violations deemed a public nuisance; Penalties.

- (a) In addition to the enforcement processes and penalties provided in this Division, any condition caused or permitted to exist in violation of any of the provisions of this Division shall be considered a threat to the public health, safety, welfare and the environment, may be declared and deemed a nuisance, and may be summarily abated and/or restored by, or at the direction of, the City, by and through its Compliance Officer. The City may initiate any administrative or civil actions as necessary and appropriate to abate, enjoin or otherwise compel the cessation of such nuisance.
- (b) The cost of any such abatement and/or restoration by the City shall be the sole responsibility of the owner of the property and the cost thereof shall be a lien upon and against the property. Such lien shall continue in existence until the same shall be paid.

Sec. 102-322. - Criminal prosecution.

In addition to any administrative remedy provided in this Division, violations of this Division constitute a criminal misdemeanor, subject to criminal citation and punishable by a fine of not less than Five Hundred Dollars (\$500.00). Every day or portion thereof that a Person fails or refuses to remedy a violation shall be considered a separate offense. Fines may be reduced by the municipal court only upon agreement of the City by and through its prosecutor.

Sec. 102-323. - Remedies not exclusive.

The remedies listed in this Division are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City to seek cumulative remedies.

Sec. 102-324. - Severability.

The provisions of this Division are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article, or the application thereof to any Person, establishment, or circumstances, shall be held invalid, such invalidity shall not affect the other provisions or application of this Division.

Sec. 102-325 through Sec. 102-330 reserved.

