

S U B S T I T U T E
O R D I N A N C E

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

WHEREAS, The City of Chicago ("City") is a home-rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois and may exercise any power pertaining to its local government and affairs; and

WHEREAS, In recent years, the growth of construction and development in the City also has increased the amount of impermeable surfaces in the City, which increases stormwater runoff; and

WHEREAS, Excessive stormwater runoff can result in inundation of and damage to property, erosion, de-stabilization of downstream waters, and pollution of land and water resources; and

WHEREAS, The City desires to diminish threats to public health, safety, and welfare, and to the environment, caused by excessive runoff of stormwater as a result of new development and redevelopment; and

WHEREAS, It is therefore beneficial to the City and all its residents to put in place sound and sensible practices and requirements for stormwater management, site operation and maintenance and sediment and erosion control; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Title 11 of the Municipal Code of Chicago is hereby amended by adding a new Chapter 11-18, as follows:

Chapter 11-18 Stormwater Management

11-18-010 Title and purpose.

This Chapter shall be known and may be cited as the "Chicago Stormwater Management Ordinance." It is hereby declared to be the policy of the City to promote programs that minimize the negative stormwater impacts of new development and redevelopment.

11-18-020 Definitions.

For the purposes of this Chapter, unless the context requires otherwise, the following terms, regardless of whether or not they are capitalized, shall have the definitions set forth below:

Applicant. A person applying for a Stormwater Management Plan approval or an amendment thereto or variance therefrom. An Applicant must be the Owner or Developer of the Regulated

Development specified in the Plan.

Average dry-weather flow. Non-stormwater flow that consists of either (a) sanitary flow as quantified in 35 Ill. Admin. Code, Subtitle C, Chapter II, Part 370, Appendix B (“Table No. 2 - Commonly Used Quantities of Sewage Flows From Miscellaneous Type Facilities”), as amended, or (b) industrial process water flow as quantified by determining the cubic feet per second released during the average of seven consecutive 24-hour periods.

Best Management Practice (BMP). A measure approved by the commissioner and used to control the adverse stormwater-related effects of development.

Commissioner. The commissioner of water management or his designee.

Developer. Any person who manages, organizes, oversees, plans or supervises the creation of a Regulated Development.

Drainage Area. Any location from which or through which stormwater moves to a drainage system.

Executive Director. The executive director of construction and permits or his designee.

Existing Conditions. The condition of a site in the ten years prior to the date of a Plan submission, as shown on historical aerial photographs or other verifiable documentation. If a site has been demolished and/or cleared within such ten-year period, its conditions prior to such demolition and/or clearing may be used as a basis for existing conditions.

Impervious Surface. A surface which substantially precludes the infiltration of water, such as concrete, asphalt, tile or compacted gravel.

Infiltration. The passage, movement or percolation of water into and through soil surfaces, including soil surfaces on roofs and in landscaped areas.

Owner. The owner, manager, agent or other person in charge, possession or control of a Regulated Development or any part thereof.

Plan. The Stormwater Management Plan required by this Chapter.

Regulated Development or Development. Any construction activity, excavation or grading, commencing on or after January 1, 2008, that:

(a) disturbs a land area or substantially contiguous land areas of 15,000 or more square feet in the aggregate. Land areas separated by public right-of-way at the conclusion of development shall not be deemed “substantially contiguous” to each other for purposes of this definition. For purposes of calculating square footage pursuant to this paragraph (a),

“land area” shall include twenty-five percent of the square footage of the sidewalls of a building that directly connects to the sewer system via side gutters, and shall also include any average dry-weather flow based on a conversion rate of 1.0 cfs (cubic feet per second) into one acre (43,560 square feet), or

(b) creates an at-grade impervious surface of 7,500 or more substantially contiguous square feet, or

(c) results in any discharges of stormwater into any waters or separate sewer system.

For purposes of this definition, square footage shall be calculated based upon the project as a whole, regardless of whether construction proceeds in phases. A Regulated Development shall not include projects located entirely within the public right-of-way at the conclusion of development. With respect to a project located both on the public right-of-way and on private property at the conclusion of development, that portion of the project located on the public right-of-way will not be included in calculating the square footage thresholds of subparagraphs (a) and (b) of this definition. If a project includes Residential Development, the Residential Development will not be included in calculating the square footage thresholds of subparagraphs (a) and (b) of this definition.

Residential Development. A Regulated Development, or portion thereof, which upon completion will result in the subdivision of land into detached single-family or two-family dwellings.

Runoff. The water derived from precipitation falling onto a Regulated Development which is in excess of the infiltration capacity of the soils of that Development, which flows over the surface of the ground or is collected in any watercourse.

Stormwater. Water derived from any form of precipitation.

Stormwater Drainage System. Any and all natural and artificial means used in combination to conduct stormwater to, through, or from a Drainage Area to the point of infiltration or final outlet from a Regulated Development. A Stormwater Drainage System includes, but is not limited to, any of the following: conduits and appurtenance features, canals, channels, ditches, streams, culverts, streets, storm sewers, detention basins, swales, vegetated areas, and pumping stations.

Stormwater Management Plan. A detailed formulation of a program of action which describes a proposed or existing Stormwater Drainage System and environmental features applicable to a Regulated Development. The Plan shall include programs for grading and drainage, operations and maintenance, and soil, sediment and erosion control. These programs shall consist of written documentation, scaled maps and drawings with supporting engineering calculations.

Watercourse. Any channel, natural or artificial, lined or unlined, through which water flows or may flow.

Waters. All watercourses and all lakes, ponds, wetlands and other bodies of water, whether natural or artificial, that are located wholly or partly within or adjoining the territorial boundaries of the City.

11-18-030 Stormwater Management Plan - Required.

Every Regulated Development shall at all times have in place a Plan approved by the City. In addition to such other requirements as the commissioner may set forth by regulation, the Plan shall include the following:

(a) Provisions for stormwater management:

(1) Rate Control. Stormwater Drainage Systems shall manage the peak rate of discharge from the Regulated Development, incorporating the maximum permissible release rate. Provided, however, that Developments that create an at-grade impervious surface of less than 7,500 substantially contiguous square feet and that directly discharge to waters shall not be subject to the rate control requirements of this subparagraph (a)(1).

(2) Volume Control. Stormwater drainage systems shall reduce the volume of runoff from a Regulated Development by one of the following measures:

(A) Capture one-half inch of runoff from all impervious surfaces in accordance with volume control BMPs; or

(B) For Developments that do not directly discharge to waters or to a municipal separate storm sewer system, achieve a fifteen-percent reduction in impervious surfaces from existing conditions.

(b) Provisions for sediment and erosion control.

(c) Provisions for operations and maintenance.

11-18-040 Stormwater Management Plan - Exceptions.

(a) A Plan shall not be required for Residential Development.

(b) The volume control requirements of a Plan shall not apply to the following:

(1) Developments that do not directly discharge to waters or to a municipal separate storm sewer system and that will upon completion of development have less than fifteen percent impervious surfaces.

(2) Developments consisting of surfaces at an airport that are intended for aircraft operation.

(3) Developments taking place at any facility that is operating under a permit

issued pursuant to the National Pollution Discharge Elimination System, 40 C.F.R. Part 122, as amended, for industrial or municipal discharges.

11-18-050 Stormwater Management Plan - Submission, approval, and compliance.

(a) The submission of the Plan required by this Chapter shall be made by the Applicant to the executive director in such form(s) and format(s) as the commissioner may require. As part of the Plan submission, the Applicant shall provide such information regarding the site and its proposed uses as the application may require. The Plan submission shall be submitted as part of the sewer permit review process required by Chapter 11-16 of the Code. The executive director shall be the custodian of all such submissions.

(b) The Plan shall be valid only upon approval by the executive director.

(c) Before a Plan may be approved, the Applicant must certify to the executive director that the Applicant has met or will meet, in addition to the requirements of this Chapter, all other city, county, state, and federal requirements related to floodplains, wetlands, and water quality.

(d) Following Plan approval and completion of construction, the Owner shall provide to the executive director, in such timeframe as established by regulation, as-built drawings of the Development in such form(s) and format(s) as the commissioner may require. Consistent with applicable law, the executive director shall treat such as-built drawings as confidential trade secrets, and shall provide the Owner with a copy of any appeal, received by the executive director, of the executive director's notice of denial provided to a third party seeking inspection and copies of such drawings.

11-18-060 Stormwater Management Plan - Amendment.

A Regulated Development shall be developed, operated, and maintained in compliance with its approved Plan until such time as the City approves an amendment or other modification of the Plan for that Regulated Development. The submission of a request for amendment shall be made to the executive director in such form(s) and format(s) as the commissioner may require. The executive director shall review any request for amendment and shall notify the Applicant of the result of such review. An amendment may only be granted if the executive director determines that the amendment will not have a detrimental effect on the Plan.

11-18-070 Change of Ownership.

(a) Upon a change of ownership of a Regulated Development, each new Owner of the Regulated Development or any part thereof shall comply with the Plan approved for that Regulated Development until such time as the executive director approves an amendment or other modification of the Plan for that Development.

(b) A change of ownership of a Regulated Development shall not be considered to be an amendment. However, the Owner of a Regulated Development for which a Plan is required or has been approved shall notify each new Owner of the applicability of the Plan to the Regulated Development, and provide each new Owner with a copy of the Plan, before consummation of the sale of the Development. A violation of this subsection (b) shall be punishable by a fine of \$500.00.

11-18-080 Stormwater Management Plan - Fees.

A non-refundable fee for review of a Plan submission or variance request shall be remitted to the executive director as part of the Plan submission or variance request. The fee for review of a Plan submission, or variance request based upon Section 11-18-090(b)(2), (3) or (4), shall be as follows:

- (a) For Regulated Developments affecting less than 50,000 square feet -- \$1,000.00.
- (b) For Regulated Developments affecting 50,000 or more square feet -- \$3,000.00.

The fee for review of a variance request based upon Section 11-18-090(b)(1) shall be 50% greater than the amounts specified in (a) and (b) above.

(c) For amendments to a Plan submitted within one year of Plan approval, the fee shall be \$350.00 per submission. For amendments submitted over one year after Plan approval, the fee shall be \$500.00 per submission.

11-18-090 Variance.

(a) Upon written petition of the Applicant demonstrating that exceptional circumstances exist, the commissioner may grant a variance, in whole or in part, from the requirements of Section 11-18-030. To the extent that the Applicant can comply with Section 11-18-030, the Applicant must do so.

(b) Exceptional circumstances justifying the application of this section shall exist only where the Applicant can clearly demonstrate, to the satisfaction of the commissioner, that one of the following four circumstances exists:

(1) The Applicant cannot comply with Section 11-18-030 because of the site's exceptional physical conditions or circumstances. To demonstrate that such conditions or circumstances exist, the Applicant must provide supporting documentation. At a minimum, the Applicant must show that the site is designed to minimize the peak rate of discharge and volume of stormwater from the Development. Such showing must include a BMP feasibility evaluation for each building, parking area, landscaped area, and each other significant footprint at the site. The evaluation must include all necessary technical computations and analyses (examples include engineering, architectural, and horticultural analyses) to assess fully the applicability of pertinent BMPs and the extent to which they can be applied to comply with Section 11-18-030.

(2) The Applicant cannot comply with Section 11-18-030 without causing a public nuisance.

(3) The Applicant cannot comply with Section 11-18-030 without violating the Building Code or the Fire Code, as those terms are defined in section 1-4-090 of the

code, or a state or Federal law.

(4) The Regulated Development is a registered landmark and compliance with Section 11-18-030 would violate the Regulated Development's landmark status.

(c) Applications for a variance shall be in a form prescribed by the commissioner. All applications for a variance shall bear the notarized signature and certification of a professional architect, engineer or geologist licensed in the State of Illinois.

(d) In applying for a variance, an Applicant may propose, and the commissioner may consider, alternative measures to accomplish the stormwater management goals of this Chapter.

11-18-100 Site inspections.

To enable the commissioner of the environment and the commissioner, or their respective designees, to monitor compliance with this Chapter, the Owner shall permit access during reasonable hours to those areas of a Regulated Development affected by the Plan.

11-18-110 Regulations.

The commissioner is authorized to promulgate regulations to effectuate the purposes of this Chapter. Any regulations so promulgated shall be considered as an integral part of the Chicago Stormwater Management Ordinance and shall be enforceable, and their violation subject to the same penalties, as set forth in this Chapter.

11-18-120 Chapter requirements not exclusive.

The requirements of this Chapter shall be in addition to, and shall not relieve any person from compliance with, all other applicable provisions of the Code.

11-18-130 Enforcement and penalties.

(a) Except as otherwise specifically provided in this Chapter, the commissioner of the environment and the commissioner, and their respective designees, are jointly and severally authorized to enforce this Chapter and any regulations promulgated hereunder, including the issuance of citations for violations.

(b) Owners, Developers and any other persons who violate any provision of this Chapter shall be jointly and severally liable for each such violation.

(c) The failure to obtain a Plan approval if required by this Chapter shall subject the violator to a civil penalty of \$5,000.00 to \$10,000.00. Except as otherwise specifically provided, other violations of this Chapter shall be punishable by a civil penalty of \$100.00 to \$1,000.00 for each such violation. In addition to any penalties imposed for violations of this Chapter, violations of any Plan requirement or condition shall be punishable by a penalty of not less than \$100.00 and not more than \$1,000.00 for each such violation. Each day a violation continues shall be considered to be a separate violation. In addition to the civil penalties specified herein, the City may recover as an additional civil penalty its attorneys' fees and three times the amount of all costs and expenses incurred by the City in abating or remediating a violation of this Chapter.

(d) In addition to any other remedies, penalties or means of enforcement provided in this Chapter, if the commissioner of the environment or the commissioner, on due investigation, makes a determination of non-compliance, either of them may request the corporation counsel to make application on behalf of the City to the Circuit Court of Cook County for such other order as the Court may deem necessary or appropriate to secure compliance. The corporation counsel may then institute proceedings on behalf of the City, as provided by law.

11-18-140 Cease and desist orders.

(a) Either the commissioner of the environment or the commissioner, or both of them, may issue a cease and desist order to stop any person from proceeding with any activity regulated under this Chapter when the commissioner(s) has reason to believe that such activity is in violation of this Chapter, or that the activity endangers human or animal health, endangers the environment, or has the potential to cause or worsen flooding or wasteful use of water. The commissioner(s) may enforce a cease and desist order pursuant to this section or pursuant to section 11-18-130(d).

(b) Prior to imposing the penalty specified by this section, the commissioner(s) issuing the cease and desist order shall serve the respondent with a copy of the order, stating the nature and location of the violation, the date by which the respondent must cease and desist the illicit activity, the amount of the applicable penalty for noncompliance, the respondent's right to request an administrative hearing to contest the merits of the order, and the time and manner in which a hearing may be requested. Service of the cease and desist order shall be in the manner set forth in section 2-14-074 of this code.

(c) (1) Within 10 days of service of the cease and desist order, the respondent may submit to the commissioner(s) a written request for a hearing to be conducted by the City's department of administrative hearings. Upon receipt of a timely request for a hearing, either or both of the commissioners shall institute an enforcement action with the department of administrative hearings. Notice of the administrative hearing shall be given to the respondent in the manner set forth in section 2-14-074 of this code.

(2) In the event the respondent fails to comply with a cease and desist order or fails to request a hearing within the 10-day period provided in subsection (c)(1) of this section, the commissioner(s) issuing the order may institute an action to enforce the order with the department of administrative hearings. Notice of the administrative hearing shall be given to the respondent in the manner set forth in section 2-14-074 of this code.

(d) Upon the initiation of an enforcement action pursuant to subsection (c) of this section, the department of administrative hearings shall appoint an administrative law officer who shall conduct the hearing within 30 days of receiving the request. Chapter 2-14 of the code shall apply to any hearing conducted pursuant to this section. The cease and desist order shall remain in effect until the department of administrative hearings has taken final action on the matter. In addition to imposing fines and penalties consistent with this section, the administrative hearing officer shall have the authority to affirm, vacate or modify the cease and desist order.

(e) The penalty specified by this section shall be imposed either upon expiration of the

time period in which the respondent may seek review by the department of administrative hearings, or upon the administrative law officer's finding adverse to the respondent, as applicable.

(f) Violations of an order issued under this section shall be punishable by a penalty of \$10,000.00. Each day that the violation continues beyond the specified cessation date shall be deemed a separate offense.

SECTION 2. Following due passage and publication, this Ordinance shall be in full force and effect on January 1, 2008 and shall apply to all persons making application for a sewer permit issued pursuant to Section 11-16-030 of the Municipal Code or water permit issued pursuant to Section 11-12-050 or Section 18-29-603 of the Municipal Code on and after that date.