

**PROPOSED ORDINANCE NO. 2024-22**

**ORDINANCE NO. 5902**

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,  
AMENDING THE MUNICIPAL CODE  
BY UPDATING SEWER SERVICES TO COMPLY WITH EPA REGULATIONS**

WHEREAS, ensuring the health, safety, and welfare of our community is paramount and it is therefore necessary to set stringent standards for managing erosion, controlling stormwater pollution post-construction.

WHEREAS the Common Council believes it is in the best interests of the City to align our city's practices with the National Pollutant Discharge Elimination System (NPDES) permit process and Indiana Department of Environmental Management's (IDEM) Construction Stormwater General Permit (CSGP).

NOW, THEREFORE, BE IT ORDAINED, by the Common Council of the City of Mishawaka, Indiana, as follows:

**Section 1.** , We commit to safeguarding our environment and enhancing the quality of life for our citizens. It is therefore necessary to Amend and Approval of Chapter 117 EROSION CONTROL thus demonstrating our dedication to responsible environmental stewardship and community welfare by our focus in the following:

**Pollutant Regulation:** We aim to regulate pollutants entering our drainage systems, ponds, lakes, and other stormwater receivers, ensuring a cleaner environment.

**Storm Sewer System Protection:** Control stormwater discharges into the MS4 by any user, minimizing pollution at its source.

**Impact Mitigation:** Address and reduce the negative impacts of land disturbing activities on nearby properties and the public.

**Enforcement and Compliance:** Establish legal authority for inspection, surveillance, and monitoring to ensure adherence to the ordinance.

**Flood and Erosion Prevention:** Minimize flooding, siltation, stream temperature increases, and stream bank erosion, maintaining stream channel integrity and enforcing no net increase in stormwater runoff from new developments.

**Nonpoint Source Pollution Reduction:** Reduce nonpoint source pollution from stormwater runoff due to development, protecting local water quality.

**Erosion and Pollution Control:** Implement and maintain stormwater management controls to reduce soil erosion and nonpoint source pollution effectively.

## Chapter 117 EROSION CONTROL<sup>1</sup>

### ARTICLE I. IN GENERAL

#### Sec. 117-1. Purpose.

To provide for the health, safety, and general welfare of the public, the City finds it necessary to adopt standards concerning erosion control, post-construction stormwater pollution prevention, and other provisions related to the regulation of earthmoving, excavation, and stormwater discharge. This chapter provides methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process and the Indiana Department of Environmental Management's (IDEM) Construction Stormwater General Permit (CSGP). Specifically, the City has found that soil erosion resulting from nonagricultural land disturbing activities may cause a significant amount of sediment and other pollutants to be transported off-site to locations including adjacent properties, public streets, storm sewer structures, ditches, streams, wetlands, lakes and rivers. Furthermore, the proper installation and operation of stormwater management measures is necessary to ensure that soil erosion and stormwater quality issues do not arise after the completion of a land disturbing activity. The regulation of land disturbing activities will minimize the amount of sediment and other pollutants, resulting from soil erosion due to land disturbing activities, from being transported off site to adjacent public or private lands. It will also minimize erosion and stormwater quality issues that arise due to the long-term operation of the site after construction. This chapter applies to nonagricultural land disturbing activities, including industrial, commercial, institutional, residential, utility, and roadway development. The objectives of this chapter are:

- (1) To regulate the contribution of pollutants to the municipal drainageways, ponds, lakes, and other stormwater receivers.
- (2) To regulate the contribution of pollutants to municipal separate storm sewer system (MS4) by stormwater discharges by any user.
- (3) To reduce the potential negative impact of land disturbing activities on adjacent properties and the public at large.

<sup>1</sup>State law reference(s) – Legislative body carry out all inspection, surveillance and monitoring procedures, ability to adopt, necessary to ensure compliance, with this chapter.

- (5) To minimize or reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels and to continue to enforce no net increase of stormwater runoff from newly developed sites.
- (6) To minimize increases in nonpoint source pollution caused by stormwater runoff from development, which could otherwise degrade local water quality.
- (7) To reduce soil erosion, and nonpoint source pollution, wherever possible, through stormwater management controls and to ensure that these management controls are properly maintained.

(Ord. No. 5085, § 1(162.01), 12-4-2006)

## **Sec. 117-2. Definitions.**

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

*Administering authority* means the department of City planning, as it relates to the issuance of improvement location permits. The department of City planning, the Department of Engineering, or any duly authorized representative of the City utilities, as it relates to identifying violations and placing stop work orders.

*Agricultural land use* means use of land for the production of animal or plant life, including forestry, pasturing or yarding livestock, and planting, growing, cultivating, and harvesting crops for human or livestock consumption for profit. The term "agricultural land" further clarified as uses that require specific verifiable tax filings relative to the agricultural nature of the operation.

*Best management practices (BMPs)* means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants, directly or indirectly, into stormwaters, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials.

*City planner* means the City planner or their designated representative.

*Construction Stormwater Pollution Prevention Plan (SWPPP)* means a plan developed to minimize the impact of stormwater pollutants resulting from construction activities.

*Department of Engineering* means the City Department of Engineering as the designated unit of government given the authority to review the performance specifications of this chapter.

*Director of engineering* means the director of engineering or their designated representative.

*Erosion* means the detachment and movement of soil, sediment, or rock fragments by any means including water, wind, ice, or gravity.

*Erosion control measure* means a practice or a combination of practices to control erosion and resulting sedimentation.

*Erosion control plan* means a written and/or graphic description of pertinent information concerning erosion control measures designed to meet the requirements of this chapter as submitted by the applicant for review and approval by the department of City planning.

*Exposed land uses* means those activities that result in continuous or habitual nonagricultural disturbance of land not associated with construction. Exposed land uses shall include, but shall not be limited to, nonsurfaced public or private race tracks and recreational yards, driveways and parking areas, mining and extraction sites, manufacturing storage yards, site clearing and tree harvesting, and other manmade activities that cause land to be subject to erosion due to the lack of pavement, vegetative cover, or other stable surfacing. For the purposes of this chapter, gravel shall not be considered a stable surface when used for vehicular traffic and parking.

*Land disturbing activity* means any manmade change of the land surface, including removing vegetative cover, excavating, filling, transporting, and grading. In the context of this chapter, it includes only nonagricultural land disturbing activities.

*Land users* means those entities, individually and collectively who are performing land disturbing activities or have caused these activities to occur. These include but are not limited to owners, lot operators, builders, contract agents, lessees, renters, and occupiers. For enforcement purposes, the owner is the entity continually responsible for meeting the performance requirements of this chapter.

*Long-term operation and maintenance agreement* means a written description of the pertinent information concerning the long-term maintenance schedule and expectations to ensure that stormwater management BMPs are kept functional. The maintenance agreement will specify minimum operation and maintenance requirements and intervals to be performed by the property owner.

*Lot Operator* means a builder, contractor or subcontractor working on an individual lot.

*Lot Owner* means a person who has a financial interest in the construction activities for an individual lot.

*Nonagricultural land use* means use of land for industrial, commercial, manufacturing, wholesale or retail sale of goods or services, residential, institutional, and recreational uses of land. These uses shall also include utility and public works projects including lanes, sewers, conduits, alleys, and streets, and other land uses not included under agricultural land use.

*Post-construction stormwater pollution prevention plan* means a written and/or graphic description of pertinent information concerning permanent stormwater pollution prevention measures designed to meet the requirements of this chapter and submitted for review prior to the issuance of an improvement location permit and approved by the Department of Engineering.

*Runoff* means the portion of precipitation from such sources as rainfall, snowmelt, or irrigation water that flows over the ground surface.

*Site* means the entire area included in the legal description of the land on which land disturbing activity has been proposed in the permit application or is currently occurring.

*Stormwater management system* means the structural or nonstructural practices that are designed and constructed to reduce stormwater runoff pollutant loads, discharge volumes, and/or establish storage rates on-site.

*Trained Individual* means an individual who is trained and experienced in the principles of stormwater management, including erosion and sediment control as is demonstrated by completion of coursework, state registration, professional certification, or annual training that enable the individual to make judgments regarding stormwater management, treatment, and monitoring.

(Ord. No. 5085, § 1(162.09), 12-4-2006)

### **Sec. 117-3. Authority.**

This chapter is adopted under the authority granted by IC 36-1-4-11. This authority provides for the administration, enforcement, and amendment of this chapter for controlling soil erosion and other provisions related to the regulation of stormwater in the City. No statement contained herein shall be construed to interfere or conflict with any additional ordinance, code, or law of the City. In addition, no statement contained herein shall be construed to interfere, conflict, or be deemed to fulfill the requirements of any other applicable authority or agency.

(Ord. No. 5085, § 1(162.02), 12-4-2006)

### **Sec. 117-4. Applicability of chapter provisions.**

This chapter applies to all nonagricultural land disturbing activities within the incorporated boundaries of the City. Projects approved by the City board of public works and safety funded in part by City tax dollars where performance and maintenance bonds are required are exempt from the permit and bonding requirements of this chapter, but shall be required to comply with all performance requirements of section 117-10.

Additionally, new retail gasoline outlets and new MS4-owned fueling areas or those that replace their existing tank systems, regardless of size are required to install appropriate measures to reduce lead, copper, zinc, and polyaromatic hydrocarbons in stormwater run-off.

(Ord. No. 5085, § 1(162.03), 12-4-2006)

### **Sec. 117-5. Calculation of areas and volumes.**

Due to the quantitative nature of calculating areas and volumes, fractional numbers may arise. For the purposes of this chapter, areas shall be calculated to the nearest square foot. Volumes shall be calculated to the nearest cubic yard.

(Ord. No. 5085, § 1(162.04), 12-4-2006)

### **Sec. 117-6. Classification of land disturbing activities.**

This chapter recognizes that different types of construction and the relative size of land disturbing activities inherently have differing degrees of potential impact relative to erosion and sediment runoff. As such, separate classifications have been established to vary the regulation of land disturbing activities proportionally to the potential impact of the activity. Any individual land disturbing less than the thresholds described must still adhere to the requirements of this section if it is part of a larger development falling within the thresholds described below.

(Ord. No. 5085, § 1(162.05), 12-4-2006)

### **Sec. 117-7. Light land disturbing activities.**

Nonagricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

- (1) Activities involving the excavation, filling, or combination thereof of no more than 40 cubic yards of soil, sand, gravel, stone, or similar material.
- (2) Activities which disturb no more than 2,000 square feet of land.
- (3) Emergency repair or replacement of existing utility lines located within easements or rights-of-way as required to restore interrupted service or imminent hazards.
- (4) Public utility improvements or other public projects that require a performance bond to the City relative to the satisfactory completion of land disturbing activities.

(Ord. No. 5085, § 1(162.06), 12-4-2006)

### **Sec. 117-8. Moderate land disturbing activities.**

Nonagricultural land disturbing activities including residential, industrial, commercial, Institutional, utility, and highway construction falling within the following parameters:

- (1) Activities involving the excavation, filling, or combination thereof of more than 40 cubic yards but less than or equal to 2,000 cubic yards of soil, sand, gravel, stone, or similar material.

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- (2) Activities which disturb more than 2,000 square feet of land but less than one acre of land.

(Ord. No. 5085, § 1(162.07), 12-4-2006)

### **Sec. 117-9. Significant land disturbing activities.**

Nonagricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

- (1) Activities involving the excavation, filling, or combination thereof of more than 2,000 cubic yards of soil, sand, gravel, stone, or similar material.
- (2) Activities that disturb one acre of land or more.

(Ord. No. 5085, § 1(162.08), 12-4-2006)

### **Sec. 117-10. Nonagricultural land disturbing activity performance requirements.**

Unless otherwise specified herein, the following requirements apply to all nonagricultural land disturbing activities, including the light, moderate, and significant levels as identified herein, within the incorporated boundaries of the City. Each item listed below may not be applicable to all land disturbing activities. As such, performance requirements may vary based on the specific land disturbing activities and soil characteristics. Best management practices shall be utilized to address the prevention, control, and reduction of stormwater pollutants on a site-specific basis.

- (1) *Site dewatering/discharge.* Sediment-laden water flowing from the site shall be detained to allow sediment to settle and accumulate prior to discharge. Water shall not be discharged in a manner that causes erosion, including the scouring of a receiving channel. Discharge into the existing storm sewer shall not be performed unless previously approved by the City Department of Engineering, or applicable jurisdictional agency.
- (2) *Waste and material disposal.* Wastes or unused building materials, including, but not limited to, garbage, debris, cleaning wastes, wastewater, toxic materials, and hazardous substances shall not be carried by runoff from a site. Proper disposal of all wastes and unused building materials, in line with the nature of the waste or material is required.
- (3) *Roadway protection.* Public or private roadways shall be kept cleared of accumulated sediment. If appreciable sedimentation occurs after a storm event, the sediment will be removed and deposited on the parcels of land from where it likely originated. Sediment being tracked from a site onto public or private roadways shall be minimized.
- (4) *Property protection.* Adjacent properties shall be kept cleared of accumulated sediment. If appreciable sedimentation occurs after a storm event, the sediment shall be removed and deposited on the parcels of land from where it likely originated, where legally permitted. Permission, means, and methods of clean up shall be secured from impacted property owners prior to removal.
- (5) *Drain inlet protection.* All storm drain inlets within land disturbing activity areas shall be protected against sedimentation with barriers meeting accepted design criteria, standards, and specifications. In addition, storm drain inlets located outside of land disturbing activity areas, which accept stormwater runoff from a land disturbing activity area, shall also be protected in an identical manner.
- (6) *Exposed land uses.* Exposed land uses shall be prohibited, except where specifically identified as a permitted or conditional use within chapter 137, zoning. Any exposed land use, either permitted by

right or conditional, shall require prior site plan approval pursuant to the requirements identified within section 137-35.

- (7) *On-site erosion control.* The following items apply to significant land disturbing activities and shall be required throughout the period of the time when land disturbing activities are taking place:
- a. Stormwater runoff passing through a site from adjacent areas shall be controlled by diverting it around disturbed areas whenever possible. Alternatively, the existing channel may be improved to prevent erosion or sedimentation from occurring.
  - b. Barring unforeseeable weather conditions, all disturbed ground left inactive for seven or more days shall be stabilized, by seeding, sodding, mulching, covering, sediment fences, or with other barriers meeting accepted design criteria, standards, and specifications.
  - c. With disturbed areas of more than ten acres, where drainage is in the same direction or where runoff will result in loss of soil, an abatement or recovery program is required. When the disturbed area is stabilized, the sediment basin can be removed. If erosion is likely to continue, the sediment basin shall be maintained by the existing or subsequent landowners. The discharge rate from a sediment basin shall not cause scouring in the receiving channel.
  - d. With disturbed areas of less than or equal to ten acres, filter fences, straw bales, or equivalent erosion control measures, placed along all side-slope and down-slope sides of the site, shall be required. Also, if concentrated runoff passes through the site, filter fences shall be placed along the edges of the concentrated flow area to reduce the amount of sediment removed from the site. If these measures are not sufficient to control off-site sedimentation, a sediment basin may still be required to manage severe slopes.
  - e. Erosion from all soil storage piles containing more than ten cubic yards of material shall be controlled by placing straw bales, filter fence, or other best management practices. Moreover, any soil storage pile containing more than ten cubic yards of materials shall be located at least 25 feet upslope from a roadway, drainage channel, or adjacent property. Furthermore, if remaining in existence for more than seven days, the storage pile shall be stabilized by mulching, vegetative cover, tarps, or other approved best management practice.

(Ord. No. 5085, § 1(162.10), 12-4-2006)

### **Sec. 117-11. Significant land disturbing activity post-construction performance requirements.**

Unless otherwise specified herein, the following requirements apply to all nonagricultural land disturbing activities classified as significant as identified herein, within the incorporated boundaries of the City. Performance requirements may vary based on the specific land disturbing activities and soil characteristics. Best management practices shall be utilized to address the prevention, control, and reduction of stormwater pollutants on a site-specific basis. Project completion and release of the performance bond shall not exempt the site owner from the performance activities listed below. The maintenance and inspection measures contained in this section are permanent measures that apply throughout the life of the site.

- (1) Install and maintain each post construction stormwater management system approved as part of the post-construction stormwater pollution prevention plan. Each measure shall be installed in accordance with the approved plan. As-builts of applicable stormwater management systems will be required and may be field verified prior to the release of the performance bond.
- (2) Maintain all drainage systems and stormwater management facilities in good working order.
- (3) Maintain natural drainage for any portion of the real estate not served by a constructed drainage system.

- (4) Maintain all erosion sediment control systems installed on the real estate or identified as part of the construction plan unless such systems were temporary measures only intended to be in place during construction.
- (5) Maintain all drainage channels, swales and basins installed or identified as part of the construction plan so that they do not cause erosion in the receiving channel, the outlet, or basin side-slope reducing the performance of the system. Keep all natural features such as wetlands and bodies of water protected from stormwater run-off pollutants.
- (6) Inspect all stormwater management facilities on a schedule sufficient to ensure compliance with this chapter. These inspections shall occur on at least an annual basis.
- (7) Provide for the removal of silt, litter, grass cuttings, vegetation and other debris from all catchbasins, inlets and stormwater retention/detention areas.
- (8) Maintain records of all maintenance and inspection activities related to the stormwater management measures. Records shall be retained for at least three years and must be made available to City personnel upon request.

(Ord. No. 5085, § 1(162.11), 12-4-2006)

### **Sec. 117-12. Design criteria, standards, and specifications for erosion control measures and post construction stormwater measures.**

All erosion control and post-construction stormwater management measures including, but not limited to, those required to comply with this chapter shall meet the design criteria, standards, and specifications for erosion control and stormwater management measures similar to or the same as those outlined in the Indiana Department of Environmental Management's Indiana Stormwater Quality Manual, or engineering standards as adopted by the City board of public works and safety, as may be amended.

(Ord. No. 5085, § 1(162.12), 12-4-2006)

### **Sec. 117-13. Permit requirements.**

Where required, no land user shall begin a land disturbing activity subject to this chapter without receiving prior approval of an improvement location permit. Improvement location permits shall be issued in accordance with the requirements of chapter 137, zoning. Permits may be issued specifically for land disturbing activities or in conjunction with planned improvements that require land disturbing activity. An improvement location permit shall be required as follows:

- (1) Light land disturbing activity: No permit required.
- (2) Moderate land disturbing activity: Permit required.
- (3) Significant land disturbing activity: Permit required.

Any land disturbing activity greater than or equal to 1 acre must submit a Notice of Intent (NOI) to obtain permit coverage from IDEM and meet all applicable requirements of IDEM's CSGP.

(Ord. No. 5085, § 1(162.15), 12-4-2006)

### **Sec. 117-14. As-built requirements.**

- (a) Prior to final release of the bond provided for in section 117-47, the as-built condition of critical stormwater management features must be identified and approved.



- (b) The volume, slopes, configuration, condition and topographic information of all detention, retention and water quality practices shall be certified by a professional engineer licensed in the state. This information shall be provided to the City in the form of a scaled as-built drawing or other electronic form accepted by the City. The as-built certification shall indicate if final conditions are consistent with, or exceed, the provisions of the post-construction stormwater pollution prevention plan (SWPPP).
- (c) If it is determined that information provided in the as-built drawing, certification, inspection or survey of the site does not meet or exceed the post-construction SWPPP provisions, the City reserves the right to withhold the final bond until such time as site conditions meet or exceed the plan provisions. Furthermore, other enforcement mechanisms may be applied to the permittee or persons making certifying statements.

(Ord. No. 5085, § 1(162.31), 12-4-2006)

**Secs. 117-15—117-31. Reserved.**

***ARTICLE II. ADMINISTRATION AND ENFORCEMENT***

**Sec. 117-32. Responsibility.**

Control of erosion and sediment relative to land disturbing activities shall be the responsibility of the land users.

(Ord. No. 5085, § 1(162.13), 12-4-2006)

**Sec. 117-33. Penalty for proceeding without permit.**

No land user shall begin a land disturbing activity subject to the provisions of this chapter without receiving prior approval of an improvement location permit where required. The fee for improvement location permits issued following proceeding land disturbing activity shall increase by a factor of ten (ten times the normal associated fee). Land users notified of a lack of permit shall have three business days from the date of notification to obtain a permit. Failure to obtain a permit following notification shall be subject to penalty provisions identified by chapter 137, zoning.

(Ord. No. 5085, § 1(162.16), 12-4-2006)

**Sec. 117-34. Bonding requirements.**

No land user shall begin a land disturbing activity subject to this chapter without receiving prior submission of a surety bond where required. Administration of surety bonds shall rest with the Department of Engineering. The amount of the surety shall be as identified by this chapter and shall be submitted prior to or concurrently with an improvement location permit to the Department of Engineering. Surety shall remain in full force and effect during and after land disturbing activities until Notice of Termination (NOT) requirements have been met, City has inspected and accepted project site for compliance, and NOT has been submitted to IDEM. Surety bonds shall be required as follows:

- (1) Light land disturbing activity: No surety required.
- (2) Moderate land disturbing activity: No surety required.
- (3) Significant land disturbing activity: Surety required.

(Ord. No. 5085, § 1(162.17), 12-4-2006)

### **Sec. 117-35. Determination of required surety.**

The required dollar amount of the surety bond where required shall be determined as identified below. The largest dollar amount shall apply:

- (1) *Area calculation.*
  - a. Up to five acres of disturbed land area: \$5,000.00 per acre.
  - b. For each additional acre of disturbed land area: \$2,500.00 per acre.
- (2) *Volume calculation.* 1 dollar per cubic yard of disturbed material including both cut and fill.

(Ord. No. 5085, § 1(162.18), 12-4-2006)

### **Sec. 117-36. Erosion control plan or construction stormwater pollution prevention plan (SWPPP) required.**

An erosion control plan as identified herein shall be required for all moderate land disturbing activities. A Construction SWPPP as identified herein shall be required for all significant land disturbing activities. No land user shall begin a moderate or significant land disturbing activity without submitting and obtaining approval for an erosion control plan or Construction SWPPP, respectively. Two copies of the erosion control plan or Construction SWPPP shall be submitted prior to or concurrently with the improvement location permit. Erosion control plans submitted and approved as part of the review of final development plans need not be resubmitted and can merely be referenced on the improvement location permit application. Although subject to the performance requirements of section 117-10, projects approved by the City under the IDEM CSGP prior to the establishment of this chapter shall not be required to submit an erosion control plan as required herein.

(Ord. No. 5085, § 1(162.19), 12-4-2006)

### **Sec. 117-37. Content of erosion control plan—Moderate land disturbing activity.**

All applications for an improvement location permit for moderate land disturbing activity shall include the following information:

- (1) Site boundaries and adjacent lands which accurately identify the site location;
- (2) Site construction/grading plan. Erosion control plans submitted concurrently with final site plans need not duplicate information except as necessary for plan clarity. Site construction/grading plans shall include at a minimum:
  - a. Locations and approximate dimensions of all proposed land disturbing activities;
  - b. Locations and approximate dimensions of all temporary soil stockpiles;
  - c. Locations and approximate dimensions of all erosion control measures necessary to meet the performance requirements of this chapter;
  - d. Schedule of the anticipated starting and completion dates of each land disturbing activity, including the installation of erosion control measures needed to meet the requirements of this chapter; and
- (3) Any additional information deemed necessary by the Department of Engineering where specific or unique site conditions warrant clarification identifying that the performance requirements of section 117-10, pertaining to nonagricultural land disturbing activity performance requirements, are met.

(Ord. No. 5085, § 1(162.20), 12-4-2006)

**Sec. 117-38. Content of construction stormwater pollution prevention plan (SWPPP)  
—Significant land disturbing activity.**

All applications for an improvement location permit for significant land disturbing activity shall include, but not be limited to, the following content and Construction SWPPP in accordance with IDEM's CSGP:

- (1) An index indicating the location, in the construction plan, of all information required by this Section.
- (2) A vicinity map depicting the project site location in relationship to recognizable local landmarks, towns, and major roads.
- (3) A project narrative and supporting plan documents (documentation may be included on the plan sheets or in a separate document), which must include:
  - a. A description of the nature and purpose of the project.
  - b. A legal description of the project site. The description must include the legal section(s), or alternative land division(s), township and range.
  - c. The latitude and longitude in decimal representation at:
    - i. The approximate entrance to the project site that is obtaining permit coverage if the project is not linear.
    - ii. The beginning of the project site for linear projects.
  - d. The size of the project area expressed in acres.
  - e. The total expected land disturbance expressed in acres.
  - f. Construction support activities that are expected to be part of the project.
  - g. The soil properties, characteristics, limitations, and hazards associated with the project site and the measures that will be integrated into the project to overcome or minimize adverse soil conditions.
  - h. The general construction sequence related to phasing of the project.
  - i. A reduced plat or project site map that is submitted on a sheet or sheets no larger than eleven (11) inches by seventeen (17) inches for all phases or sections of the project site (multiple sheets may be submitted to meet this requirement) and includes:
    - i. The boundaries of the project site as represented in the full construction plans and for which the notice of intent (NOI) will be submitted.
    - ii. The boundaries of each phase, section, or other divisions of the project site associated with the construction activity.
    - iii. When applicable, the lot numbers, lot boundaries, road layout, and road names.
    - iv. A legend.
  - j. The identification and location of all wetlands, lakes and water courses on or adjacent to the project site.
  - k. The location of any in-stream activities that are planned for the project including, but not limited to stream crossings and pump arounds.
  - l. The identification and status of any other state or federal water quality permits or authorizations that are required for construction activities associated with the project site. If the permit or authorization has not been obtained, provide the expected timeline for obtaining the permit or authorization.

- m. The Identification of a U.S. EPA approved or established TMDL, including the name of the TMDL and the pollutant(s) for which there is a TMDL.
  - n. The Identification of discharges to a water on the current 303(d) list of impaired waters and the pollutant(s) for which it is impaired.
- (4) An existing project site layout which must include:
- a. The identification of all wetlands, lakes, and water courses on, or adjacent to, the project site.
  - b. The location of all existing structures on the project site.
  - c. The boundaries of the one hundred (100) year flood plains, floodway fringes, and floodways.
  - d. A soil map of the predominant soil types, as determined by the United States Department of Agriculture, Natural Resources Conservation Service (USDA, NRCS) Soil Survey, an equivalent publication, or as determined by a soil scientist. A soil legend must be included with the soil map.
  - e. The identification and delineation of natural buffers and existing vegetative cover, such as crop or crop residue, grass, weeds, brush, and trees.
  - f. The land use of all adjacent properties.
  - g. The existing topography at a contour interval appropriate to indicate drainage patterns.
  - h. The location(s) of where run-off enters the project site.
  - i. The location(s) of where run-off discharges from the project site.
- (5) The final project site layout which must include:
- a. The location of all proposed site improvements, including roads, utilities, lot delineation and identification, proposed structures, and common areas.
  - b. The boundaries of one hundred (100) year floodplains, floodway fringes, and floodways.
  - c. The proposed final topography at a contour interval appropriate to indicate drainage patterns.
  - d. The boundaries of natural features or unique resource areas that will be left undisturbed or preserved including, but not limited to, wetlands, steep slopes, riparian corridors, and natural buffers
- (6) A grading plan which must include:
- a. A delineation of all proposed land-disturbing activities, including known off-site activities that will provide services to the project site.
  - b. The location of all on-site soil stockpiles and borrow areas and, when known at the time of submittal, the location of all off-site borrow, soil stockpiles, and disposal areas.
  - c. The existing and proposed topography.
- (7) A drainage plan which must include:
- a. The location, size, and dimensions of all stormwater drainage systems, such as culverts, storm sewers, and conveyance channels.
  - b. The locations of specific points where concentrated stormwater and non-stormwater discharges will leave the project site.
  - c. The locations where stormwater may be directly discharged into ground water, such as abandoned wells, sinkholes, or karst features.

- d. The name(s) of the receiving water(s) and, when the discharge is to a system (storm sewer, stormwater management measure, etc.) owned/or operated by a municipality, city, town, or county, the name of the system operator and the ultimate receiving water.
  - e. The location, size, and dimensions of features, such as existing permanent retention or detention facilities, including manmade wetlands, designed for the purpose of stormwater management.
- (8) A SWPPP associated with construction activities. The plan must be designed and implemented to achieve the minimum performance requirements of Section 3.0 of the IDEM CSGP and must include:
- a. A description of the potential pollutant generating sources and pollutants, including all potential non-stormwater discharges that are associated with the construction activities, which may reasonably be expected to contribute pollutants to stormwater discharges.
  - b. The location, dimensions, detailed specifications, and construction details of all temporary and permanent stormwater quality measures , Including , but not limited to:
    - i. Erosion control measures;
    - ii. Sediment control measures;
    - iii. Perimeter control measures;
    - iv. Run-off control measures;
    - v. Dewatering applications and management methods;
    - vi. Measures utilized to cross water resources for the accessibility needed to perform construction;
    - vii. Measures utilized to isolate or separate construction activities from work within waterbodies; and
    - viii. Concrete and cementitious washout areas and management measures.
  - c. Temporary stabilization and permanent stabilization plans, including the sequence of implementation planned to minimize the footprint of disturbed, unstable soil and the following information:
    - i. Specifications and application rates for soil amendments and seed mixtures.
    - ii. The type and application rate for anchored mulch, erosion control blanket, and other appropriate stabilization options.
  - d. For each temporary stormwater measure, a maintenance standard, including a threshold of when each requires corrective action and/or replacement with alternative measures.
  - e. The planned construction sequence describing the relationship between implementation of stormwater quality measures, including temporary and permanent stabilization and stages of construction activities. The sequence must include the measures that will be implemented prior to land disturbance in a specific drainage area and those that will be implemented as construction progresses throughout the life of the project.
  - f. The provisions for erosion and sediment control on individual building lots regulated under the permit.
  - g. A material handling and spill prevention and spill response plan meeting the requirements in 327 IAC 2-6. 1, including contact information for local emergency personnel and the IDEM Emergency Spill Line (888)233-7745 or (317)233-7745
  - h. The material handling and storage procedures associated with construction activity describing the management and disposal of construction products and waste.

- (9) *Additional information as deemed necessary.* Any additional information deemed necessary by the Department of Engineering where specific or unique site conditions warrant clarification identifying that the performance requirements of section 117-10, pertaining to nonagricultural land disturbing activity performance requirements, are met.
- (10) *Signature of a "trained individual".* The Construction SWPPP must be signed by a trained individual as defined in Sec. 117-2.

(Ord. No. 5085, § 1(162.21), 12-4-2006)

### **Sec. 117-39. Post-construction stormwater pollution prevention plan required.**

A post-construction stormwater pollution prevention plan (SWPPP) as identified herein shall be required for all significant land disturbing activities. No land user shall begin a significant land disturbing activity without submitting and obtaining approval for a post-construction SWPPP. Two copies of the post-construction SWPPP shall be submitted prior to or concurrently with the improvement location permit application and erosion control plan. Post-construction SWPPPs submitted and approved as part of the review of final development plans need not be resubmitted and can merely be referenced on the improvement location permit application. Although subject to the performance requirements of section 117-10, projects approved by the City IDEM's CSGP prior to the establishment of this chapter shall not be required to submit a post-construction SWPPP as required herein.

(Ord. No. 5085, § 1(162.22), 12-4-2006)

### **Sec. 117-40. Content of post-construction stormwater pollution prevention plan.**

The post-construction stormwater pollution prevention plan (SWPPP) must include, but not be limited to the following information, in accordance with IDEM's CSGP :

- (1) A description of potential pollutant generating sources and a list of pollutants from the proposed land use that may reasonably be expected to contribute pollutants to stormwater discharges.
- (2) A description of stormwater quality and stormwater management measures that will be installed to address post-construction sources that are expected to generate pollutants in stormwater discharges after construction activities have been completed. The measures selected should achieve, at a minimum, the following objectives:
  - a. Stormwater quality measures that target pollutants of concern and are designed to remove or minimize pollutants from stormwater run-off that is associated with the final land use.
  - b. Stormwater quality measures that will be implemented to prevent or minimize adverse impacts to aquatic resources including, but not limited to, wetlands, streams, karst features, and riparian habitats.
  - c. Stormwater management measures that will address the potential impacts of increased run-off from the project. Measures must be designed and approved according to the CSGP and this ordinance. A trained individual must approve that the design meets the applicable requirement(s).
  - d. Measures, including structural and those based on low impact development principles, selected to address the pollutant(s) of concern, reduction of peak flows, and ability to infiltrate.
  - e. Protective measures that will be implemented during active construction when the type of post-construction measure(s) planned are susceptible to pollutants, specifically sediment that may be generated during land-disturbing activities.
- (3) The location, dimensions, detailed specifications, and construction details of all post-construction stormwater quality and stormwater management measures.

- (4) A sequence describing when each post-construction stormwater measure will be installed in relation to project construction.
- (5) An operation and maintenance manual that includes a description of the maintenance guidelines for all post-construction stormwater measures to facilitate their proper long-term function. This operation and maintenance manual must be provided to City and any additional future parties who will assume responsibility for the operation and long-term maintenance of the post-construction stormwater measures.
- (6) When known at the time of plan submittal, the entity that will be responsible for operation and maintenance of the post-construction system.

Additionally, the post construction stormwater pollution prevention plan must also include a long-term operation and maintenance agreement containing maintenance guidelines for all post-construction stormwater quality measures to facilitate their proper long-term function.

(Ord. No. 5085, § 1(162.23), 12-4-2006)

#### **Sec. 117-41. Long-term operation and maintenance agreement.**

- (a) Long-term operation and maintenance agreements shall include a maintenance plan for all stormwater quality best management practices (BMPs) for all projects covered under this chapter that require more than general maintenance (e.g., periodic mowing). The long-term operation and maintenance agreements shall be recorded.
- (b) The plan will be developed to ensure that the stormwater management BMPs are kept functional. The maintenance agreement will specify minimum operation and maintenance requirements and intervals to be performed by the property owner. The operation and maintenance requirements shall be in accordance with the operation and maintenance procedures and schedules listed in the state stormwater quality manual.
- (c) The plan shall address schedules for inspections and techniques for operation and maintenance including vegetation clearing or mowing and removing accumulated trash, debris, sediment pollutants and other forms of pollution.
- (d) It is the obligation of the project owners and their successors in interest to provide this agreement to future parties, including property owners, who will assume responsibility for the operation and maintenance of the post-construction stormwater quality measures.
- (e) When a stormwater quality BMP serves more than one parcel, an owners' association or binding contract for the purpose of operation and maintenance is required. The owners association shall be responsible for operation and maintenance as directed by this article.
- (f) Where stormwater detention and/or retention systems are used, care must be taken to ensure that the systems do not become nuisances or health hazards. Detention and retention facilities should be designed to require minimal maintenance, and maintenance expectations must be clearly stated in the long-term operation and maintenance agreement.

(Ord. No. 5085, § 1(162.24), 12-4-2006)

#### **Sec. 117-42. Easement requirements.**

All permanent stormwater management systems identified in the post-construction stormwater pollution prevention plan (SWPPP), including detention or retention basins, filter strips, infiltration systems, conveyance systems, and structures located outside of the right-of-way shall be designated as common areas or incorporated into permanent easements if the permanent systems serve the City, County Drainage Board Regulated Drains, or other lot owners (i.e. subdivisions). For the purposes of access, monitoring, inspection, and general maintenance

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activities, an adequate easement width beyond the actual footprint of the stormwater quality management facility as well as a 20-foot-wide access easement from a public right-of-way to each BMP shall be provided. If the permanent stormwater management systems are required solely for the benefit of the individual lot owner, then a permanent easement will not be required. The easement requirements noted may be changed by the City as deemed necessary for specific cases.

(Ord. No. 5085, § 1(162.25), 12-4-2006)

**Sec. 117-43. Review of erosion control plan, construction stormwater pollution prevention plan (SWPPP), post-construction stormwater pollution prevention plan (SWPPP), and long-term operation and maintenance agreement.**

- (a) Upon submission, the City planner shall review the submission requirements of the erosion control plan, construction stormwater pollution prevention plan (SWPPP), post-construction stormwater pollution prevention plan (SWPPP), and long-term operation and maintenance agreement. These documents shall not be evaluated by the City planner in regards to the performance requirements of this chapter. The City planner shall promptly forward complete submissions to the Department of Engineering for review of the performance requirements of this chapter.
- (b) For moderate land disturbing activities, the City planner may issue an improvement location permit prior to the review of the Department of Engineering. For significant land disturbing activities, the City planner may not issue an improvement location permit prior to the review of the Department of Engineering. When questions arise or specific unique site circumstances dictate it, the City planner may also withhold the issuance of any improvement location permit pending the review of the Department of Engineering.
- (c) The Department of Engineering shall promptly review erosion control plans, construction- and post-construction SWPPPs, and long-term operation and maintenance agreements. If the submission is deficient or held for the review of the Department of Engineering, the City planner shall inform the applicant in writing and require additional information where applicable. When additional information is submitted, the City planner shall again determine whether the plan meets the submission requirements of this chapter. If the plan is disapproved or requires modification based on the review of the Department of Engineering, the City planner shall inform the applicant in writing giving reasons for disapproval or the need for modifications.
- (d) In the case where the City planner has issued an improvement location permit prior to the review of the Department of Engineering, comments of the Department of Engineering received following the issuance of an improvement location permit shall be forwarded in writing to the land user. If the plan is disapproved or requires modification based on the review of the Department of Engineering, the City planner shall inform the applicant in writing giving reasons for disapproval or the need for modifications. The review and approval of an erosion control plan by the City planner and/or the Department of Engineering shall not be construed as more than meeting the submission requirements of this chapter. The review and approval of an erosion control plan by the City planner and/or the Department of Engineering shall not exempt, remove, or otherwise modify the obligations of the land user relative to the performance requirements of this chapter. Thus, if the proposed erosion control measures are approved but yet fail to meet the performance requirements identified in section 117-10, the land user shall be responsible for installing additional measures, performing maintenance, and taking any measure necessary to ensure compliance with performance requirements on a continual basis.
- (e) Approval of the provisions of the erosion control plan and post-construction stormwater pollution prevention plan as allowed by this chapter shall not be construed as compliance with any other applicable state, federal, or local ordinances.

(Ord. No. 5085, § 1(162.26), 12-4-2006)



## **Sec. 117-44. Inspection.**

- (a) To ensure compliance with the erosion control plan, the City shall inspect sites having ongoing land disturbing activities as deemed appropriate. Inspections may be undertaken by the department of planning, the Department of Engineering, or any other representative employed by or contracted with the City for said purpose.
  - (1) Inspection programs may be established on any reasonable basis, including, but not limited to:
    - a. Routine inspections;
    - b. Random inspections;
    - c. Inspections based upon complaints or other notice of possible violations;
    - d. Inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants;
    - e. Inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the NPDES stormwater permit; and
    - f. Joint inspections with other departments or agencies inspecting under environmental or safety laws.
  - (2) Inspections may include, but are not limited to:
    - a. Reviewing maintenance and repair records;
    - b. Sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and
    - c. Evaluating the condition of drainage control facilities and other stormwater treatment practices.
- (b) When any new drainage or erosion control facility is installed on private property, or when any new connection is made between private property and a public storm sewer system, the property owner shall grant to the City the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this chapter has occurred.
- (c) The site owner is responsible for implementing a self-monitoring program, as required by CSGP Section 3.6. The self-monitoring program shall include the following:
  - (1) A trained individual shall perform a written evaluation of the project site:
    - a. Twenty-four (24) hours prior to a qualifying precipitation event or by the end of the next business day following each measurable storm event; which is defined as a precipitation accumulation equal to, or greater than, one-half (0.50) inch of rainfall within a 24-hour period; and
    - b. If no rain event occurs within the work week a minimum of one inspection must occur per week.
    - c. In the event of multiple qualifying events during the work week, no more than three (3) inspections would be required to meet the self-monitoring commitment.
  - (2) The evaluation must:
    - a. Address the maintenance of existing stormwater quality measures to ensure they are functioning properly; and
    - b. Identify additional measures necessary to remain in compliance with all applicable statutes and rules.

- (3) Written evaluation reports must include:
  - a. The name of the individual performing the evaluation;
  - b. The date of the evaluation;
  - c. Problems identified at the project site; and
  - d. Details of corrective actions recommended and completed.
- (d) All evaluation reports for the project site must be made available to the City within 48 hours of a request.  
(Ord. No. 5085, § 1(162.27), 12-4-2006)

### **Sec. 117-45. Responsibility of the Department of Engineering.**

The administration of this chapter, as identified, is the responsibility of the City planner. However, based on the technical requirements of this chapter, the Department of Engineering shall be responsible for the review and evaluation of all land disturbing activities compliance with the performance requirements of this chapter. The City planner may only pursue the administration of this chapter relative to performance requirements when the lack of compliance has been documented in writing by the Department of Engineering.

(Ord. No. 5085, § 1(162.28), 12-4-2006)

### **Sec. 117-46. Enforcement.**

The following practices shall be utilized regarding the enforcement of this chapter:

- (1) Land users shall be notified in writing of noncompliance following the inspection and verification of the department of planning and/or Department of Engineering.
- (2) If, within five days after notification, a permit holder does not correct said noncompliance, the City planner may pursue issuing a stop work order in accordance with the requirements identified herein.
- (3) The City planner may also immediately post a stop-work order if:
  - a. Any land disturbing activity requiring an improvement location permit and/or bond under this chapter is being undertaken without a permit and/or bond;
  - b. If the approved erosion control plan has not been implemented in good faith concurrent with construction; or
  - c. The land disturbing activity does not comply with the performance requirements of this chapter and poses an imminent negative impact to the public health, safety, and welfare as determined by the Department of Engineering following an on-site inspection.
- (4) Upon correction of the violation, land users may appeal to the City to retract a stop-work order.
- (5) Ten days after posting a stop-work order, the City may issue a notice of intent to the violator stating the intent of the City to use or draw upon the surety bond, where required, to perform work necessary to provide compliance with this chapter. All expenses for work, administration, and legal fees associated with providing compliance with this chapter which exceeds the amount of the surety bond may be billed to the land user. For all other land disturbing activities where surety was not required, the City may perform the work necessary to provide compliance with this chapter. All expenses for work, administration, and legal fees associated with providing compliance with this chapter may be billed to the land user.

(Ord. No. 5085, § 1(162.29), 12-4-2006)

**Sec. 117-47. Project completion.**

- (a) Land users shall complete land disturbing activities in a timely and orderly manner. Land disturbing activities shall be considered complete when the disturbed area has been stabilized with improvements, vegetative cover, or other Department of Engineering approved means and when discharges of stormwater associated with construction activity have ceased. When a project has been completed for a significant land disturbing activity, the person holding the permit shall petition, in writing, indicating project completion and submittal of Notice of Termination for approval by the City and filed with IDEM.
- (b) For significant land disturbing activities, as-builts of permanent stormwater management systems must be submitted prior to or concurrently with the project completion notice and request for bond release. The City shall have 28 calendar days to perform an inspection and respond to the request for release. City
- (c) Upon inspection and verification of satisfactory land disturbing completion, any surety bonds shall be released by the Department of Engineering forthrightly. Maintenance responsibilities of completed land disturbing activities shall remain with the person owning the land.
- (d) If the stormwater management systems on site are deemed to be insufficient, not appropriate and/or inconsistent with the post-construction stormwater pollution prevention plan (SWPPP) or objectives stated in this chapter, then approval will not be granted.

(Ord. No. 5085, § 1(162.30), 12-4-2006)

**Sec. 117-48. Appeals.**

Any order, requirement, decision, or determination made by an administrative official or staff member may be appealed in the same manner that any provision of chapter 137, zoning. This process is identified in chapter 137.

(Ord. No. 5085, § 1(162.37), 12-4-2006)

**Secs. 117-49—117-69. Reserved.**

***ARTICLE III. NONCONFORMING USES***

**Sec. 117-70. Correction of nonconforming situations—General compliance standard.**

Land users who are currently in violation or are out of compliance with the performance standards identified within section 117-10 pertaining to nonagricultural land disturbing activity performance requirements shall have 30 calendar days from the receipt of notice of violation identified under section 117-46, enforcement, to apply for the applicable permits or bring the property into compliance with this chapter.

(Ord. No. 5085, § 1(162.32), 12-4-2006)

**Sec. 117-71. Same—Compliance standard for existing gravel drive, parking area or alley.**

Land users who are currently in violation or are out of compliance with the performance standards identified within section 117-10 pertaining to nonagricultural land disturbing activity performance requirements due to an existing gravel drive, parking area, or alley may add gravel as a surfacing material to meet the performance requirements of this chapter provided the area of the existing gravel surface is not expanded. Land users shall have 30 calendar days from the receipt of notice of violation identified under section 117-46, enforcement, to apply for the applicable permits or bring the property into compliance with this chapter.

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(Ord. No. 5085, § 1(162.33), 12-4-2006)

**Sec. 117-72. New or expanded gravel drives, parking areas, and alleys prohibited.**

New or expanded permanent non-construction-related drives, parking areas, alleys shall be hard-surfaced. Gravel or stone surfaces shall not be considered an acceptable stable surface when used for vehicular traffic and parking.

(Ord. No. 5085, § 1(162.34), 12-4-2006)

**Secs. 117-73—117-102. Reserved.**

***ARTICLE IV. MAINTENANCE MEASURES***

**Sec. 117-103. Maintenance of erosion control measures.**

During the period of land disturbance at a site, all sediment basins and other erosion control measures necessary to meet the performance requirements of this chapter shall be applied by the land user. If sedimentation is likely to be a problem after land disturbing activities have ceased, some or all of the sediment basins, as well as other erosion control measures shall be maintained by the land user or subsequent landowner for as long as the problem exists.

(Ord. No. 5085, § 1(162.14), 12-4-2006)

**Sec. 117-104. Maintenance of permanent measures.**

All stormwater/erosion control management facilities must be maintained by the property owner to ensure compliance with the requirements of this chapter and accomplishment of its purposes. Maintenance needs may include the removal of silt, litter and other debris from all catch basins, inlets and drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation. Any maintenance needs found must be addressed in a timely manner, as determined by the City.

(Ord. No. 5085, § 1(162.35), 12-4-2006)

**Sec. 117-105. Failure to maintain permanent measures.**

The responsible party must ensure that all permanent stormwater management measures are maintained so that they operate according to the approved design. If a responsible party fails or refuses to perform the required maintenance, the City, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. If the erosion control/stormwater management facility becomes a danger to public safety or public health, the City shall notify the party responsible for maintenance of the facility, in writing. Upon receipt of that notice, the responsible person shall immediately effect maintenance and repair of the facility in an approved manner. After proper notice, the City may assess the owner of the facility for the cost of repair work and any penalties.

(Ord. No. 5085, § 1(162.36), 12-4-2006)

This Ordinance shall be in full force and effect upon its passage, approval, and publication pursuant to Indiana law.

Passed by the Common Council of the City of Mishawaka, Indiana, on this 19 day of August, 2024.

Gregg Hixenbaugh /s/  
Gregg Hixenbaugh, President

ATTEST:

Deborah S. Block /s/  
Deborah S. Block, IAMCA, CMO, MMC  
City Clerk

Presented to the Mayor this 20 day of August, 2024.

Deborah S. Block  
Deborah S. Block, IAMC, CMO,  
City Clerk

/s/  
MMC

Approved this 20 day of August, 2024.

David A. Wood  
David A. Wood  
Mayor

/s/

