

# Ordinance No. 861-2022

By Council Members Hairston and Griffin  
(by departmental request)

## AN EMERGENCY ORDINANCE

To amend various sections of Chapter 3116 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 807-09, passed July 1, 2009, relating to construction and post-construction site storm water runoff control; and to repeal Section 3116.12, relating to Waivers.

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

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

Section 1. That Sections 3116.01, 3116.05, 3116.06, 3116.07, 3116.08, and 3116.10, of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 807-09, passed July 1, 2009, are amended to read as follows:

### Section 3116.01      Definitions

The definitions contained in Ohio Environmental Protection Agency (“Ohio EPA”) General Permit Number “~~OHC000003~~ OHC000005”, entitled “Authorization for Storm Water Discharges Associated With Construction Activity under the National Pollutant Discharge Elimination System” in effect at the time a permit is applied for under this chapter shall apply to this chapter, except the following definitions shall apply:

(a) “Construction activity” for purposes of this chapter, means any clearing, grading, excavating, grubbing, trench dewatering, and/or filling activities that disturb one (1) or more acres of land. The threshold acreage includes the entire area disturbed in the larger common plan of development or sale.

(b) “Director” means the Director of Building and Housing or his or her designee.

(c) “Long-term inspection and maintenance covenant” means a legally recorded document that acts as a property deed restriction, and that requires the owner to inspect and maintain the post-construction storm water best management practices (“BMPs”) and measures in accordance with the post-construction operation plan, which is required as part of the Storm Water Pollution Prevention Plan (SWP3) and OHC000005.

(e d) “Ohio EPA Permit No. ~~OHC000003~~ OHC000005” means the Ohio EPA’s National Pollutant Discharge Elimination System construction general permit number ~~OHC000003~~ OHC000005, effective April ~~21~~ 23, ~~2008~~ 2018 and any subsequent generations versions of that permit issued by the Ohio EPA.

~~(d)~~(e) “Person” means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, or any other legal entity.

(f) “Storm Water Pollution Prevention Plan” (SWP3) means a document prepared in accordance with sound engineering and/or conservation practices by a professional experienced in the design and implementation of standard erosion and sediment controls and storm water management practices addressing all phases of construction and post-construction that meets all the requirements and contains all the

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information described in Ohio EPA Permit No. OHC000005, Part III, effective April 23, 2018 and any subsequent versions of that permit issued by the Ohio EPA.

## Section 3116.05 Permit Application; Fee

(a) The Director may charge a permit application fee as established from time to time by the Board of Control.

(b) Any person desiring a permit required by this chapter shall file an application with the Director. The application shall consist of:

(1) The permit application fee;

(2) ~~Two (2) or more copies of a SWP3; and Storm Water Pollution Prevention Plan (SWP3) prepared in accordance with sound engineering and/or conservation practices by a professional experienced in the design and implementation of standard erosion and sediment controls and storm water management practices addressing all phases of construction. The SWP3 is not complete unless it contains the information, including but not limited to the post-construction operation and maintenance plans, required in Ohio EPA Permit No. OHC000003 OHC000005 Part 3 “Storm Water Pollution Prevention Plan (SWP3)”.~~

(3) A long-term inspection and maintenance covenant that provides the City with a right of inspection and appropriate indemnification, and meets the inspection requirements described in Section 3116.08 and runs with the land, is binding upon the owner, the owner’s successors and assigns, and all subsequent owners of the property, and is recorded by the applicant with the Cuyahoga County Recorder’s Office. The applicant must provide the City with a recorded copy prior to the final inspection and approval.

## Section 3116.06 Approval or Disapproval of Storm Water Pollution Prevention Plan

(a) The Director shall review storm water pollution prevention plans submitted to him or her and grant written approval if he or she determines that the plan meets the requirements prescribed in Ohio EPA Permit No. ~~OHC000003~~ OHC000005 effective April 23, 2018 and any subsequent versions of that permit issued by the Ohio EPA and this chapter.

(b) When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant. The notice shall specify the modifications, terms and conditions that are necessary for approval of the plan.

## Section 3116.07 Issuance of Permit; Appeal

(a) The Director shall issue a permit approving construction activity under this chapter on approval of the SWP3, the post-construction and operation maintenance plan, and a recorded long-term inspection and maintenance covenant.

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(b) Any denial of a permit under the provisions of this chapter may be appealed to the Board of Building Standards and Building Appeals as provided in the Charter and in Section 3103.20.

## Section 3116.08 Periodic Inspections of Construction Activities

(a) The Director may make periodic inspections of construction activities or land-disturbing activities to ensure compliance with this chapter. The right of inspection shall be inherent in the issuance of the permit under this chapter.

(b) All applicable permits and approved SWP3s under this chapter shall be made immediately available on site upon request of the Director or his or her authorized representative during working hours.

(c) The owner shall inspect all the storm water control BMPs and measures, at a minimum under the frequency required under Ohio EPA Permit No. ~~OHC000003~~ OHC000005 effective April 23, 2018 and any subsequent versions of that permit issued by the Ohio EPA, and every six months and after major storm events for the first year of operation, and at least once every year thereafter to ensure the storm water measures are functioning properly.

## Section 3116.10 Final Inspection, Certificate of Completion of Construction Activities and Post Construction Management

(a) Persons obtaining a permit under this chapter must continue to meet the applicable requirements of Ohio EPA Permit No. ~~OHC000003~~ OHC000005 effective April 23, 2018 and any subsequent versions of that permit issued by the Ohio EPA and this chapter until they receive, upon written request, a certificate of completion issued by the Director. A certificate of completion may be issued on finding satisfactory evidence of compliance with the approved SWP3, and submission of a long-term inspection and maintenance covenant showing proof of recording on the document, and the achievement of adequate stabilization. “Adequate stabilization” of the site shall be determined by the Director.

(b) The permittee, or any person identified in an approved SWP3 as responsible for the ~~continuing obligations for the inspection and maintenance of post-construction~~ construction storm water best management practices, shall ~~not be relieved of those continuing obligations once coverage under a permit is terminated or by the issuance of a~~ be responsible for inspecting and maintaining them until the receipt of a certificate of completion.

(c) The owner, the owner’s successors and assigns, and all subsequent owners of the property identified in an approved SWP3 and long-term inspection and maintenance covenant, who are responsible for the continuing obligations for the inspection and maintenance of post-construction best management practices, shall be responsible for the inspection and maintenance of post-construction best management practices and shall not be relieved of those continuing obligations once coverage under a permit is terminated or by the issuance of a certificate of completion.

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(d) The permittee must provide copies of all post-construction operation and management plans as a stand-alone document, the approved SWP3, and the long-term inspection and maintenance covenant, to the post-construction operator of the site (including homeowner associations) and land owners, upon completion of construction activities prior to termination of permit coverage.

(~~e~~ e) The post-construction operator of the site and the owner of the premises subject to the provisions of this Building Code shall continue to be responsible for maintenance and compliance with the post-construction storm water best management practices (“BMPs”) ~~BMPs~~ described in the approved SWP3 and as required by the long-term inspection and maintenance covenant.

(e f) A violation of a provision in this section requiring compliance with a ~~post-construction~~ storm water BMPs is a violation of this chapter.

Section 2. That existing Sections 3116.01, 3116.05, 3116.06, 3116.07, 3116.08, and 3116.10, of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 807-09, passed July 1, 2009, are repealed.

Section 3. That existing Section 3116.12, of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 807-09, passed July 1, 2009, is repealed.

Section 4. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

ST:nl  
9-12-2022  
FOR: Director Martin

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**REPORT  
after second Reading**

**By Council Members Hairston and Griffin (by departmental request)**

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**READ FIRST TIME on SEPTEMBER 12, 2022** **REPORTS**  
**and referred to DIRECTORS of Building and Housing, Finance, Law;**  
**COMMITTEES on Development Planning and Sustainability,**  
**Finance Diversity Equity and Inclusion**

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**CITY CLERK**

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**READ SECOND TIME**

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**CITY CLERK**

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**READ THIRD TIME**

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**PRESIDENT**

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**CITY CLERK**

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**APPROVED**

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**MAYOR**

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**PASSAGE RECOMMENDED BY  
COMMITTEE ON  
DEVELOPMENT, PLANNING AND  
SUSTAINABILITY**

FILED WITH COMMITTEE

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**PASSAGE RECOMMENDED BY  
COMMITTEE ON  
FINANCE, DIVERSITY, EQUITY  
and INCLUSION**

FILED WITH COMMITTEE

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