

CITY OF NEWPORT

ORDINANCE

OF THE

COUNCIL

NO.

AN ORDINANCE IN THE AMENDMENT OF TITLE 13 OF THE CODIFIED ORDINANCES OF THE CITY OF NEWPORT, RHODE ISLAND, REVISION OF 1994, AS AMENDED, ENTITLED, "PUBLIC SERVICES."

BE IT ORDAINED by the City of Newport:

ADD NEW CHAPTER

Chapter 13.11. STORMWATER MANAGEMENT FOR DEVELOPMENT AND REDEVELOPMENT

13.11.010. Purpose and intent.

The purpose of this chapter is to protect public health, safety, property, infrastructure, and receiving waters by managing stormwater runoff from development and redevelopment; preventing adverse drainage impacts; requiring appropriate structural and nonstructural best management practices; and ensuring proper installation, operation, maintenance, inspection, and correction of private stormwater controls.

This chapter prevents private development from transferring drainage burden, flood risk, water-quality impact, or maintenance cost to abutting property, public rights-of-way, the City stormwater system, or the stormwater utility established under Chapter 13.13. It complements Chapter 13.09 and does not replace illicit-discharge, connection, erosion-control, wetland, coastal, floodplain, building, zoning, or state permitting requirements.

13.11.020. Authority.

This chapter is enacted pursuant to the home rule and police powers of the City of Newport and R.I. Gen. Laws Chapters 45-61 and 45-61.2. It implements applicable requirements of the Federal Clean Water Act and the RIPDES permit for the City's municipal storm sewer system. Compliance with state stormwater rules, permits, and technical standards remains independently required where applicable.

13.11.030. Definitions.

Terms defined in Section 13.09.030 apply to this chapter. In addition:

"Director" means the Director of Utilities or a person authorized by the Director through a written delegation.

"Adverse drainage impact" means a condition in which stormwater is created, altered, redirected, concentrated, accelerated, or increased so as to cause or contribute to flooding, erosion, sedimentation, icing, structural damage, slope or wall instability, water-quality degradation, public-safety hazard, or increased maintenance burden on abutting property, public property, a public right-of-way, the City stormwater system, or receiving waters.

"Best management practice" or "BMP" means a structural or nonstructural practice used to prevent or reduce runoff volume, peak flow, erosion, sediment, or pollutant discharge and includes required installation, operation, maintenance, inspection, repair, and replacement.

"City stormwater system" means City-owned or City-operated infrastructure dedicated to stormwater collection, conveyance, storage, treatment, or discharge. It does not include a sanitary sewer or combined sewer.

"Impervious surface" means a surface that prevents or materially reduces infiltration of stormwater, including roofs, buildings, asphalt, concrete, brick, paving, compacted gravel or stone, and areas used for vehicle travel, parking, loading, outdoor storage, or similar developed use. Permeable pavement is included in gross regulated area and may qualify for treatment credit when approved. Impervious surface does not include landscape gravel or a gravel walkway that is not used for vehicle travel or parking, or an elevated deck with spaced boards over a pervious surface.

"Ordinary maintenance" means repair or replacement in kind that does not expand impervious area, change grading, redirect or concentrate runoff, change the point of discharge, materially change surface permeability, or connect to the City stormwater system. Pavement sealing, milling, resurfacing, or overlay without base reconstruction or regrading is ordinary maintenance.

"Reconstructed or altered impervious surface" means existing impervious surface subject to full-depth removal or replacement, base reconstruction, regrading, material change in permeability, drainage modification, or change in discharge location. It does not include ordinary maintenance.

"Redevelopment" means reconstruction or alteration of existing development, including a material change to grading, drainage conveyance, discharge location, stormwater connection, or impervious surface, whether or not net new impervious area is created.

"Responsible party" means the record owner and any association, lessee, operator, manager, successor, or other person assigned responsibility for a private stormwater control by an approved plan, maintenance agreement, permit, or recorded instrument.

"Utilities Stormwater Technical Standards Manual" means the controlled, publicly available standards, forms, and guides approved under Section 13.11.065. The Homeowners Guide to Stormwater Management is educational only and is not part of the Manual.

13.11.040. Administration and coordination.

The Department of Utilities shall administer, interpret, implement, and enforce this chapter. All determinations concerning applicability, project classification, technical compliance, approvals, inspections, corrective actions, certifications, and enforcement shall be made by the Director or an authorized designee.

The Water Pollution Control Division is the operating division for this chapter and acts only under the authority and direction of the Director. The Director may delegate duties in writing and may revoke or modify a delegation in writing.

Other City departments may provide information and assistance but shall not issue an independent stormwater determination under this chapter. The Building Official retains only authority assigned by applicable building law and shall rely on the Department's written stormwater clearance when this chapter applies.

13.11.050. Applicability and ordinary maintenance.

- A. This chapter applies to development, redevelopment, additions, accessory structures, driveways, patios, parking areas, walkways, grading, resurfacing that expands the paved footprint, and other activity that adds impervious area or materially changes drainage.
- B. Ordinary maintenance is excluded unless the work expands impervious area, changes grading or drainage, redirects or concentrates runoff, changes the point of discharge, materially reduces permeability, or connects to the City stormwater system.

- C. Redevelopment involving more than two hundred (200) square feet of reconstructed or altered impervious surface is subject to the applicable tier in Section 13.11.060 based on the total affected area during the cumulative period. Only the reconstructed or altered area is subject to treatment unless the work changes drainage or a broader correction is reasonably necessary to prevent an adverse drainage impact.
- D. Regardless of area, Section 13.11.090 applies to any activity that causes or may cause an adverse drainage impact. The Director may require review under Section 13.11.070 when documented site risk warrants it.
- E. This chapter applies to City projects and to utility, franchise, and other work in a public right-of-way to the extent permitted by law when the work creates new or expanded impervious area, materially changes drainage, or constitutes reconstruction rather than ordinary in-kind restoration. State and federal projects are governed to the extent permitted by controlling law. The responsible City department or permittee shall obtain Department review before construction.

13.11.060. Tiered requirements.

- A. De minimis, two hundred (200) square feet or less. No formal stormwater management plan is required unless the work changes drainage, creates a concentrated discharge, may materially cause or contribute to an adverse drainage impact, or connects to the City stormwater system. An activity that materially changes grading, drainage conveyance, or discharge location but has no regulated impervious area requires a simplified stormwater permit under subsection B. Compliance with Chapter 13.09 remains required.
- B. Small project, over two hundred (200) through one thousand two hundred (1,200) square feet. A simplified stormwater permit is required. The applicant shall manage runoff from the new, expanded, reconstructed, or altered impervious surface. The required design storage volume is:
$$\frac{\text{regulated impervious area (square feet)} \times 2 \text{ inches}}{12} = \text{required storage volume (cubic feet)}$$

The design shall provide pretreatment where needed, a safe overflow path, protection of foundations and abutters, and a feasible discharge or drawdown method. An approved controlled discharge may be used where on-site retention or infiltration is infeasible under Section 13.11.080.
- C. Large project, over one thousand two hundred (1,200) square feet. A stormwater management plan prepared and stamped by a

Rhode Island licensed professional engineer is required. The plan shall demonstrate compliance with applicable state rules and permits, structural and nonstructural BMP requirements, water-quality treatment, runoff-volume reduction, peak-flow management, safe conveyance and overflow, no adverse drainage impact, long-term operation and maintenance, inspection access, and Sections 13.11.080 and 13.11.090. The regulated area shall not receive less design-volume management than required for a small project unless the engineer demonstrates that an applicable state-standard alternative provides equal or greater stormwater protection and the Director approves the basis in writing.

- D. Cumulative threshold. Regulated impervious area shall be calculated cumulatively by parcel over a rolling five-year period to prevent project segmentation. The period begins with the first permit approval or discovered unpermitted activity on or after the effective date of this chapter, runs with the parcel, and does not reset because of ownership, applicant, contractor, permit, parcel configuration, or project phasing. The Department shall maintain the controlling record. Discovered unpermitted work shall be included. The Director shall reasonably allocate project history when parcels are divided or consolidated and shall avoid double counting the same physical area unless it is materially altered again.
- E. State or federal approval. The Director may accept an applicable state or federal stormwater permit or approval as satisfying equivalent technical submissions, but acceptance does not waive the City's no-adverse-impact standard, local permit coordination, inspection, maintenance, or enforcement authority.

13.11.065. Utilities Stormwater Technical Standards Manual.

Before this chapter takes effect, the Director shall approve and publish a controlled Utilities Stormwater Technical Standards Manual, including standard forms and a small-project guide. The Manual shall identify its effective date, revision date, controlling technical data sources, sizing methods, acceptable practices, siting controls, soil and seasonal-high-groundwater requirements, setbacks, drawdown and overflow requirements, installation details, maintenance and inspection requirements, professional certifications, and closeout forms.

The Director may revise the Manual by written administrative action. Each revision shall state its effective date, summarize material changes, and be published at least thirty (30) days before it takes effect. A revised edition applies prospectively to an application not determined complete before the revision's

effective date. The Manual may implement this chapter but may not create a new fee, penalty, prohibition, exemption, project threshold, appeal limit, or other substantive requirement. The Department shall maintain a revision history and make the current controlled edition publicly available at no charge.

The Homeowners Guide to Stormwater Management is educational only. It does not create an enforceable requirement and does not replace this chapter or the Manual.

13.11.070. Discretionary engineered review.

Regardless of area, the Director may require engineered review, field testing, soil evaluation, infiltration testing, seasonal-high-groundwater documentation, groundwater monitoring, contamination review, tidal or tailwater evaluation, or other technical information when warranted by documented site conditions, drainage risk, system complexity, or the proposed discharge method. Relevant conditions include an abutter, public right-of-way, public drainage system, steep slope, retaining wall, seawall, coastal or flood-prone area, documented basement flooding, contaminated site, drainage complaint, shallow groundwater, ledge, uncertain infiltration capacity, or a proposed connection to City stormwater infrastructure. The Director shall document the basis and information required.

13.11.080. Design standards and infeasibility path.

- A. Stormwater management shall comply with applicable Rhode Island rules and permits and the Manual. A permit approval shall identify the controlling criteria when standards differ. Visible BMP elements remain subject to applicable historic-district review, but historic approval does not waive stormwater performance requirements.
- B. Every project shall provide a stable and safe overflow path for storms exceeding the design storm and shall avoid dependence on pumping where a practical gravity alternative exists.
- C. For a large project in a coastal, flood-prone, tidally influenced, or documented drainage-limited area, the design professional shall evaluate reasonably foreseeable changes in rainfall intensity, tailwater, tidal boundary, sea level, groundwater, and receiving-system capacity over the anticipated service life using data and methods accepted by the City and applicable reviewing agencies. The design basis and limitations shall be stated in the plan.
- D. Where infiltration is infeasible because of shallow groundwater, ledge, contaminated soil or groundwater, coastal

constraints, small lot size, retaining walls, foundation risk, or similar documented conditions, the applicant may use detention, capture and reuse, filtration, safe overflow, controlled discharge, or engineered conveyance approved by the Director. Infeasibility shall be supported by site-specific information and retained in the permit record.

- E. An approval under this chapter does not represent a City guarantee that flooding will not occur or that downstream public infrastructure has unlimited capacity. The applicant remains responsible for accurate design information and compliance with the approved plan.

13.11.085. Below-grade drainage; prohibited sewer connections.

No person shall install, maintain, use, or permit any direct or indirect connection that discharges stormwater, groundwater, a foundation drain, footing drain, underdrain, sump pump, basement drainage, roof drainage, area drainage, construction dewatering, or other clear-water flow to a sanitary sewer or combined sewer, unless the connection is approved in writing by the Director under Section 13.08.030(R).

Every new building or redevelopment involving below-grade space shall provide a lawful discharge method approved in writing by the Director before issuance of the applicable building permit. An approved method may include properly designed infiltration, detention, reuse, discharge to an approved stormwater system or receiving water, or lawful off-site disposal.

Contaminated soil or groundwater shall be managed through a separately permitted treatment or disposal method. Existing connections prohibited by this section are not grandfathered and shall be disconnected in accordance with an order issued by the Director.

13.11.090. No adverse drainage impact.

No person shall create, alter, redirect, concentrate, accelerate, or increase stormwater runoff in a manner that causes or contributes to flooding, erosion, sedimentation, icing, structural damage, slope or wall instability, water-quality degradation, public-safety hazard, or increased maintenance burden on abutting property, public property, public rights-of-way, the City stormwater system, or receiving waters. No new concentrated discharge shall be directed to an abutter, sidewalk, street, public right-of-way, retaining wall, seawall, building foundation, or City stormwater infrastructure unless expressly approved in writing by the Director. Approval under this section does not authorize a connection prohibited by

Section 13.11.085. This section applies independently of the area thresholds.

13.11.100. Operation, maintenance, inspection, and access.

- A. The responsible party shall operate, inspect, maintain, repair, and replace each private stormwater control so it continues to perform as approved. The obligation runs with the property and is not discharged by transfer, lease, vacancy, or change in management.
- B. A large project shall include an operation and maintenance plan identifying the owner and responsible party, control locations, inspection frequency, routine and nonroutine maintenance, performance indicators, sediment and waste disposition, access, recordkeeping, repair procedures, and funding responsibility.
- C. A maintenance agreement on a standard form approved by the City Solicitor shall be recorded in the land evidence records for a permanent control serving a large project, condominium, association, common parcel, or multiple parcels. The owner shall pay the recording cost. The Director may require recordation for another control when long-term access or shared responsibility is material.
- D. The responsible party for every large project or shared control shall inspect at least annually and after a major event or observed failure, retain supporting records for at least five (5) years, and submit an annual certification to the Director. Certification may be completed by the owner or a qualified inspector. The Director may require a Rhode Island licensed professional engineer when system complexity, condition, risk, failure, or compliance history warrants it.
- E. Upon reasonable notice, the responsible party shall provide the City or its authorized representative access at reasonable times to inspect a control and relevant maintenance records. The City may enter without prior notice in an emergency to the extent permitted by law. If access is denied, the City may seek an administrative warrant, court order, or other lawful process.
- F. If a control is obstructed, damaged, unsafe, improperly maintained, or not performing as approved, the Director may issue a written correction order stating the observed facts, required corrective action, documentation, compliance deadline, appeal rights, and potential consequences. An imminent threat may be addressed immediately to the extent permitted by law. After notice and expiration of the correction period, the City may perform or contract for

authorized work and recover reasonable documented costs by a remedy authorized by law.

13.11.110. Permit coordination, installation, and closeout.

- A. Application review. An application is not complete until it contains the information required for its tier. The Department shall notify the applicant of material completeness deficiencies within ten (10) business days after receiving the stormwater submission and shall issue an approval, conditional approval, denial, or written request for additional technical information within thirty (30) business days after receiving a complete submission, unless the applicant agrees to an extension or controlling law requires a different period. Review periods are suspended while requested applicant information is outstanding. Failure to act does not constitute approval.
- B. Permit coordination. To the extent permitted by controlling law, no building permit, driveway permit, zoning approval, or other permit authorizing regulated construction shall be issued until the Department provides written stormwater approval or documents that no approval is required. The Building Official shall coordinate Department review within applicable State Building Code deadlines, retains building-law authority, and shall rely on the Department's written stormwater clearance. No regulated drainage work may be commenced or concealed before Department approval.
- C. Construction. Approved stormwater controls shall be shown on the issued plans and protected during construction. A material field change requires Department approval before concealment or continued work affected by the change.
- D. Small-project closeout. Before final inspection, the applicant shall submit the approved one-page worksheet, sketch, impervious-area and sizing calculations, owner or contractor installation certification, post-installation photographs, and test results required by the approval.
- E. Large-project closeout. Before final inspection or certificate of occupancy, a Rhode Island licensed professional engineer shall certify substantial conformance with the approved plan and submit record drawings, test results, the final operation and maintenance plan, recorded maintenance agreement, responsible-party information, and any unresolved deviation.
- F. Performance security. The Director may require performance security for a large project, phased project, seasonal installation, or unresolved stormwater work. The amount and

form shall be reasonably related to the estimated cost of completion, stabilization, testing, and correction. The City shall release the security within thirty (30) days after accepted closeout or provide a written statement identifying the unresolved basis for retention.

- G. Final approval. The Building Official controls final inspection and certificates of occupancy. The Department controls technical stormwater closeout. Conditional or phased occupancy may be authorized only when remaining work is secured and the site is protected from adverse drainage impact under a written plan approved by the responsible City officials.
- H. Approval expiration. An approval under this chapter expires if regulated construction has not commenced within two (2) years after issuance. A new application subject to the requirements and Manual then in effect is required after expiration.

13.11.115. Fees and stormwater utility credits.

- A. The City Council may establish reasonable application, technical-review, inspection, reinspection, and administrative fees by fee schedule. The City may require reimbursement of actual outside technical-review cost for a complex application when disclosed to the applicant before the cost is incurred.
- B. Installation of a BMP required by this chapter does not automatically qualify a parcel for a stormwater utility credit under Chapter 13.13. Credit eligibility is determined under the adopted credit manual and may be limited to performance exceeding the minimum requirement or to a documented reduction of City stormwater cost or burden.

13.11.120. Enforcement and unpermitted work.

The Director may issue stop-work, correction, restoration, and abatement orders; withhold technical closeout; direct that final inspection or a certificate of occupancy be withheld when authorized; suspend or revoke an approval; perform authorized emergency work; recover lawful costs; and seek civil, injunctive, or other relief authorized by law. An enforcement notice shall state the observed facts, violation, required correction, deadline, responsible official, and available appeal.

A violation of this chapter or of an order issued under it is punishable by a fine not exceeding five hundred dollars (\$500) or imprisonment not exceeding thirty (30) days under R.I. Gen. Laws Section 45-6-2. The sewer and pretreatment penalty

authority in R.I. Gen. Laws Section 45-6-2.3 does not apply to this chapter, and this chapter creates no other fine. Each day a violation continues after the compliance deadline has passed and the order has become final constitutes a separate violation to the extent permitted by law.

Where impervious area is added, drainage is altered, or a prohibited connection is installed or maintained without approval, the Director may require survey, testing, retroactive engineering review, disconnection, correction, restoration, removal, performance security, or monitoring reasonably necessary to establish compliance. Existing prohibited connections receive no grandfathered right to continue.

13.11.130. Administrative appeal and service.

- A. A person aggrieved by a final determination, notice of violation, correction order, or stop-work order issued by the Director may file a written appeal within ten (10) days after service. The appeal shall state the grounds and include available supporting evidence.
- B. The appeal shall be heard by the independent Administrative Hearing Officer appointed under Section 13.09.140 and shall be governed by the qualifications, procedures, standard of review, finality, and judicial-review provisions of that section. The Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, does not apply.
- C. Filing an appeal does not stay a stop-work order, emergency action, or requirement necessary to prevent an imminent adverse drainage impact unless the Director, Hearing Officer, or a court grants a written stay.
- D. Service shall be made and documented as provided in Section 13.09.140(H).

13.11.140. Transition, readiness, and severability.

- A. An application filed before the effective date may be governed by prior requirements only if it is determined complete under those requirements within ninety (90) days after the effective date and the permit or approval authorizing regulated construction is issued within two (2) years after the effective date, unless the applicant elects to proceed under this chapter. The Director and Building Official may extend the two-year issuance period in writing only for delay caused by City review or a timely administrative or judicial proceeding when the applicant diligently pursued approval. A material post-effective-date amendment to regulated area, grading, drainage, BMP type or size, discharge

location, project phasing, or another stormwater design basis is subject to this chapter.

- B. Unpermitted work, an incomplete application, and an expired approval receive no grandfathered status. Lawful approvals and enforcement actions issued under prior law remain valid according to their terms.
- C. At least sixty (60) days before the effective date, the Director and Building Official shall file with the City Manager and City Council a written readiness certification confirming that referral procedures, forms, the Manual, the City-Solicitor-approved maintenance agreement form required by Section 13.11.100(C), inspection and certification procedures, cumulative-threshold tracking, permit holds, and public guidance are in place, and stating the projected workload, assigned staffing, service-level targets, and any proposed fees.
- D. If a provision or application of this chapter is held invalid, the remaining provisions and applications are severable and shall not be affected.

SECTION 2. This ordinance shall take effect on July 1, 2027, or sixty (60) days after the readiness certification required by Section 13.11.140(C) is filed, whichever is later, and all ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**IN COUNCIL
READ AND PASSED**

LAURA C. SWISTAK, CMC
CITY CLERK