

TEMPORARY ORDINANCE NO. 4-14

PERMANENT ORDINANCE NO. _____

AN ORDINANCE TO AMEND LANCASTER CODIFIED ORDINANCE CHAPTER 919 STORM WATER SEDIMENT AND SOIL EROSION PROTECTION AND TO REPEAL EXISTING CHAPTER 919, AND TO DECLARE AN EMERGENCY

WHEREAS, the Law Committee has recommended updates;

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO:

SECTION 1. That Chapter 919 be amended pursuant to Exhibit A, attached hereto.

SECTION 2. That existing Chapter 919 be repealed in its entirety.

SECTION 3. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to properly regulate the streets and sidewalks as spring construction season begins, wherefore this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: _____ after _____ reading. Vote: Yeas _____ Nays _____

Approved: _____

President of Council

Clerk: _____

Mayor

Offered by: _____

Second by: _____

Requested by Law Committee

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on _____, 2014 and _____, 2014 the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

Clerk of Council

CHAPTER 919
Storm Water Sediment and Soil Erosion Protection

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CROSS REFERENCES

Storm Water Utility Program - see S.U. & P.S. Ch. 918

919.01 PURPOSE.

This chapter is adopted for the purpose of controlling the pollution of public waters by sediment from accelerated soil erosion and accelerated stormwater runoff caused by earth-disturbing activities and land use changes connected with developing urban areas. Control of such pollution shall promote and maintain the health, safety and general well-being of all inhabitants of the City.

(Ord. 9-03. Passed 4-14-03.)

919.02 DEFINITIONS.

For the purpose of this chapter, certain rules or word usage apply to the text as follows:

- (a) "City" means the City of Lancaster, Ohio or its duly designated representative.
- (b) "Channel" means a natural stream that conveys water; a ditch or channel excavated for the flow of water.
- (c) "Development area" means any contiguous area owned by one person or operated as one development unit and used or being developed for nonfarm commercial, industrial, residential or other nonfarm purposes upon which earth-disturbing activities are planned or under way.
- (d) "District" means the Fairfield Soil and Water Conservation District.
- (e) "Ditch" means an excavation either dug or natural for the purposes of drainage or irrigation with the intermittent flow.
- (f) "Drainageway" means an area of concentrated water flow other than river, stream, ditch or grassed waterway.
- (g) "Dumping" means leveling, pushing, piling, throwing, unloading or placing.
- (h) "Earth-disturbing activity" means any grading, excavating, filling or other alteration of the earth's surface where natural or manmade ground cover is destroyed and which may result in or contribute to erosion and sediment pollution.
- (i) "Earth material" means soil, sediment, rock, sand, gravel and organic material or residue associated with or attached to the soil.
- (j) "Erosion" means
 - (1) The wearing away of the land surface by running water, wind, ice, or other geological agents including such processes as gravitational creep.
 - (2) Detachment and movement of soil or rock fragments by wind, water, ice or gravity.
 - (3) "Erosion" includes
 - A. "Accelerated erosion": erosion occurring much more rapid than normal, natural or geologic erosion, primarily as the result of the influence of the activities of man.
 - B. "Floodplain erosion": abrading and wearing away of the overbank areas situated on either side of a channel due to overflow flooding.
 - C. "Gully erosion": the erosion process whereby water accumulates in narrow channels during and immediately after rainfall or snow or ice melt and actively removes the soil from this narrow area to considerable depths such that the channel would not be obliterated by normal smoothing or tillage operations.
 - D. "Natural erosion": geologic erosion or the wearing away of the earth's surface by water, ice or other natural environmental conditions of climate, vegetation, etc., undisturbed by man.
 - E. "Normal erosion": the gradual erosion of land used by man which does not greatly exceed natural erosion.
 - F. "Rill erosion": an erosion process in which numerous small channels only several inches deep are formed, occurs mainly on recently disturbed soils.

G. "Sheet erosion": the removal of a fairly uniform layer of soil from the land surface by wind or runoff water.

(k) "Grassed waterway" means a broad or shallow natural course or constructed channel covered with erosion-resistant grasses or similar vegetative cover and used to conduct surface water.

(l) "Landslide" means the rapid downward and outward movement of large rock matter and/or soil mass under the influence of gravity in which the movement of the soil mass occurs along an interior surface of sliding.

(m) "Person" means and individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, County or State agency, the Federal Government, or any combination thereof.

(n) ~~(m)~~ "Public waters" means water within rivers, streams, ditches and lakes except private ponds and lakes wholly within single properties or waters leaving property on which surface water originates.

(o) ~~(n)~~ "Sediment" means solid material both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by wind, water, gravity or ice, and has come to rest on the earth's surface above or below sea level.

(p) ~~(o)~~ "Sediment basin" means a barrier, dam or other suitable detention facility built across an area of waterflow to settle and retain sediment carried by the runoff waters.

(q) ~~(p)~~ "Sediment Control Plan" means a written description and graphical exhibit, acceptable to the City of methods for controlling sediment pollution from accelerated erosion on a disturbed development area of one or more contiguous acres or smaller areas that are part of a larger development over one acre.

(r) ~~(q)~~ "Sediment pollution" means failure to use management or conservation practice to abate wind or water erosion of the soil or to abate degradation of the waters of the State by soil sediment in conjunction with land grading, excavating, filling or other soil-disturbing activities.

(s) ~~(r)~~ "Slip" means a landslide as defined in subsection (l) hereof.

(t) ~~(s)~~ "Sloughing" means a slip or downward movement of an extended layer of soil resulting from the undermining action of water or the earth-disturbing activity of man.

(u) ~~(t)~~ "Soil loss" means soil relocation on or removed from a given site by the force of erosion and redeposit of the soil at another site on land or in a body of water.

(v) ~~(u)~~ "Storm frequency" means the statistical average time within which a storm of a given duration and intensity can be expected to be equaled or exceeded.

(w) ~~(v)~~ "Stream" means a body of water running or flowing on the earth's surface or channel in which such flow occurs. Flow may be seasonally intermittent.

(x) ~~(w)~~ "Topsoil" means surface and upper surface soils which presumably are darker colored, fertile soil materials, ordinarily rich in organic matter or humus debris.

(y) "100 year floodplain" means land susceptible to being inundated by water from a base flood that has a one percent or greater chance of being equaled or exceeded in any given year.

(z) "Clearing" means the removal of trees, brush, and other unwanted material in order to develop land for other uses, or to provide access for site work.

(aa) **“Best Management Practice (BMP)” means a range of management procedures, schedules of activities, prohibitions on practices and other management practices which have been demonstrated to effectively control the quality and/or quality of water runoff and which are compatible with the planned land use.**

(bb) **Municipal separate storm sewer system (MS4)” refers to a storm sewer system owned and operated by the Municipality in which it is located. These storm sewer systems may discharge into local rivers and streams and are regulated by the Environmental Protection Agency to reduce the amount of pollutants that reach these bodies of water from the storm sewer system.**

(Ord. 9-03. Passed 4-14-03.)

919.03 SCOPE.

(a) This chapter shall apply to earth-disturbing activities to areas designated below which are within the jurisdiction of the City unless otherwise excluded within this chapter or unless expressly excluded by State law; land used or being developed for commercial, industrial, residential, recreational, public service or other nonfarm purposes.

(b) This chapter shall not apply to:

- (1) Strip mining operations regulated by Ohio R.C. Chapter 1513; or
- (2) Surface mining operations regulated by Ohio R.C. Chapter 1514.

(Ord. 9-03. Passed 4-14-03.)

919.04 DISCLAIMER OF LIABILITY.

Neither submission of a plan under provisions of this chapter nor compliance with provisions of this chapter shall relieve any person from responsibility for damage to any person or property otherwise imposed by law, nor impose any liability upon the City for damage to any person or property.

(Ord. 9-03. Passed 4-14-03.)

919.05 SEVERABILITY.

If any clause, section or provision of this chapter is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.

(Ord. 9-03. Passed 4-14-03.)

919.06 REQUIREMENTS.

(a) No person shall cause or allow earth-disturbing activities on a development area prior to submittal and approval of a **stormwater pollution prevention plan (SWP3) sediment control plan** showing compliance with the standards and criteria set out in Chapter 919.

(b) No storm sewer tap under Section 913.10, zoning clearance under Section 1155.02, approval of plans under Section 1105.08, or Flood Plain development permit under Section 1331.12 shall be issued until the developer receives approval of a sediment control plan and methods for control of stream channel and floodplain erosion control showing compliance with the standard and criteria set out in Chapter 919.

(Ord. 9-03. Passed 4-14-03.)

919.07 EXCEPTIONS.

(a) When the proposed earth-disturbing activity includes less than one acre and the development is exclusively one-, two- and three family housing not part of a larger development, it is not necessary to submit a sediment control plan; however, compliance with the other provisions of this chapter is required.

~~—(b) No sediment control plan shall be required for public roads, highways, other transportation or drainage improvements or maintenance thereof, undertaken by a government agency or entity if such agency or entity plans to follow a sediment control policy which complies with this chapter.~~

(Ord. 9-03. Passed 4-14-03.)

919.08 STANDARDS AND CRITERIA.

In order to control sediment pollution of water resources, the owner or person responsible for the development area shall use conservation planning and practices to maintain the level of conservation established by standards set forth by the Ohio Department of Natural Resources, Division of Soil and Water Conservation and the City Engineer.

- (a) Development shall comply with the Ohio Environmental Protection Agency General Construction Permit.**
- (b) Discharges from dewatering activities, including discharges from dewatering trenches and excavations, are prohibited unless managed by appropriate controls.**
- (c) Development shall design, install, implement and maintain effective pollution prevention measures to minimize the discharge of pollutions from equipment and vehicle washing, exposure of building materials and construction waste.**
- (d) The following discharges are prohibited**
 - i. Wastewater from washout of concrete, unless managed by an appropriate control;**
 - ii. Wastewater from washout and cleanout of stucco, paint, from release oils, curing compounds and other construction materials;**
 - iii. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and**
 - iv. Soaps or solvents used in vehicle and equipment washing.**

(Ord. 9-03. Passed 4-14-03.)

919.09 SHEET AND RILL EROSION.

To control pollution of public waters by soil sediment from accelerated sheet and rill erosion of development areas, the person responsible shall:

- (a) Construct and maintain sediment basins sized in accordance with the Ohio Department of Natural Resources handbook, "Rainfall and Land Development"; or
- (b) Use other Best Management Practices designed in accordance with the Ohio Department of Natural Resources handbook "Rainfall and Land Development" to control sediment pollution, provided those methods are acceptable to the City.

(c) Stabilize disturbed areas in accordance with the Ohio Environmental Protection Agency General Construction Permit.

(Ord. 9-03. Passed 4-14-03.)

919.10 CONCENTRATED WATER EROSION.

To control pollution of public waters by soil sediment from accelerated erosion in drainageways, grassed waterways, streams and ditches disturbed or modified in conjunction with the development process, the person responsible for the change shall:

- (a) Design, construct and maintain sediment basins sized in accordance with the Ohio Department of Natural Resources handbook, "Rainwater and Land Development"; or,

(b) Use other Best Management Practices designed in accordance with the Ohio Department of Natural Resources handbook "Rainfall and Land Development" to control sediment pollution provided those methods are acceptable to the City.

(c) Stabilize disturbed areas in accordance with the Ohio Environmental Protection Agency General Construction Permit.

(Ord. 9-03. Passed 4-14-03.)

919.11 SLOUGHING, LANDSLIDING AND DUMPING.

To control sediment pollution of public waters caused by sloughing, landsliding or dumping of earth material, or placing of earth material into such proximity that it may readily slough, slide or erode into public waters by natural forces, no person shall:

(a) Dump or place earth material into public waters or into such proximity that it may readily slough, slide or erode into public waters unless such dumping or placing is authorized by the City for such purposes as constructing bridges, culverts, erosion control structures and other in-stream or channel bank improvement works; or,

(b) Grade excavate, fill or impose a load upon any soil or slope known to be prone to slipping or landsliding, thereby causing it to become unstable, unless qualified engineering assistance has been employed to explore the stability problems and make recommendations to correct, eliminate or adequately address the problems. Grading, excavating, filling or construction shall commence only after the City has reviewed and approved the exploratory work and recommendations and only in accordance with the approved recommendations.

(c) Stabilize disturbed areas in accordance with the Ohio Environmental Protection Agency General Construction Permit.

(Ord. 9-03. Passed 4-14-03.)

919.12 STREAM CHANNEL AND FLOODPLAIN EROSION.

(a) To control pollution of public waters by soil sediment from accelerated stream channel erosion and to control floodplain erosion caused by accelerated stormwater runoff from the development areas, the increased peak rates and volumes of runoff shall be controlled such that the peak rate of runoff from the twenty four hour storm having a recurrence frequency of 100 years occurring on the development area does not exceed the peak rate of runoff from a two year frequency, twenty four hour storm occurring on the same area under predevelopment conditions.

(b) Methods for controlling increases in stormwater runoff peaks and volumes may include but are not limited to:

(1) Retarding flow velocities by increasing friction; for example, grassed road ditches rather than paved street gutters where practical, low density development areas, access roads, etc; discharging roof water to vegetated areas; or grass- and rock-lined drainage channels;

(2) Grading and construction of terraces and diversions to slow runoff and use of grade control structures to provide a level of control in flow paths and stream gradients;

(3) Inducted infiltration of increase stormwater runoff into the soil where practical; for example, constructing special infiltration area where soils are suitable; retaining topsoil for all areas to be revegetated; or providing good infiltration areas with proper emergency overflow facilities. **However, no concentrated infiltration technology will be permitted within the Wellhead Protection Zone 1 or Wellhead Protection Zone 2 as defined by 1335.04; and,**

(4) Provisions for detention and retention; for example, permanent ponds and lakes with stormwater basins provided with proper drainage, multiple use areas for stormwater detention and recreation, wildlife, transportation, fire protection, aesthetics or subsurface storage areas.

(c) **Where required by the City Engineer, provide a 50 foot undisturbed natural buffer around surface waters of the state.**

(d) **Stabilize disturbed areas in accordance with the Ohio Environmental Protection Agency General Construction Permit.**

(Ord. 9-03. Passed 4-14-03.)

919.13 SEDIMENT CONTROL PLAN CONTENT.

In compliance with Section 919.06 a Stormwater Pollution Prevention Plan (SWP3) ~~Sediment Control Plan~~ for the proposed development area, with maps drawn to scale of not less than one inch equals one hundred feet shall be submitted containing the following information:

(a) **All items listed in Part III G of the Ohio Environmental Protection Agency General Construction Permit.**

(b) Structural Post Construction Best Management Practices shall be limited to Dry Extended Detention Basin including underground detention tanks, Wet Extended Detention Basin and Bioretention Areas unless approved by the City Engineer.

~~(a) Location of the area and its relation to its general surroundings including but not limited to:~~

~~—— (1) Adjacent properties~~

~~—— (2) Major drainage and waterways~~

~~—— (3) Off-site areas susceptible to sediment deposits or to erosion caused by accelerated runoff from the site.~~

~~—— (4) Off-site areas affecting potential accelerated runoff and erosion control.~~

~~—— (b) Existing topography of the development area and adjacent land within 100 feet of the boundaries. A topographic map should contain an appropriate contour interval to clearly portray the drainage pattern of the area;~~

~~—— (c) The location of existing buildings, structures, utilities, water bodies, drainage facilities, vegetative cover, paved areas and other significant natural or manmade feature on the development area and adjacent land within 100 feet of the boundaries;~~

~~—— (d) A general description of the predominate soil types, their location and their limitations for the proposed use;~~

~~—— (e) Proposed use of the development area including present development and ultimate utilization with detail on soil cover, both vegetative and impervious;~~

~~—— (f) All proposed earth disturbance including:~~

~~—— (1) Areas of excavating, grading and filling.~~

~~—— (2) The finished grade, stated in feet horizontal to feet vertical of cut and fill slopes.~~

~~—— (3) Kinds of utilities and proposed areas of installation.~~

~~—— (4) Proposed total paved and covered areas in square feet or to scale on a plan map.~~

~~—— (5) Makeup of proposed surface soil, the upper six inches, on areas not covered by buildings, structures or pavement. Description shall be in such terms as: original surface soil, subsoil, sandy, heavy clay, stony, etc.~~

~~—— (6) Proposed kind of cover of areas not covered by buildings, structures or pavement. Description shall be in such terms as: lawn, turfgrass, shrubbery, trees, forest cover, rip-rap, mulch, etc.~~

~~—— (g) Provisions for temporary and permanent erosion control;~~

~~—— (h) Provisions for construction site waste management including but not limited to demolition and debris, material storage, sanitary waste, wash water, chemicals and petroleum.~~

~~—— (i) Provisions for the management of stormwater, derived both on-site and from upper watershed areas, including the control of accelerated on-site runoff, to a stable receiving outlet;~~

~~—— (j) Provisions for inspection and maintenance of control facilities including easement to insure short as well as long-term erosion and sediment pollution control and stormwater management;~~

~~—— (k) Proposed construction sequence and time schedule for all earth-disturbing activities and installation of facilities for erosion and stormwater management;~~

- ~~— (l) — Design computation and applicable assumptions for all structural measures for erosion and sediment pollution control and water management. Volume and velocity of flow shall be given for all surfaces provided for surface water outlets.~~
- ~~— (m) — Seeding mixtures and rates, lime and fertilizer application rates and kind and quantity of mulching for both temporary and permanent vegetative control measures;~~
- ~~— (n) — Estimate of the cost of erosion and sediment control and water management structures and features;~~
- ~~— (o) — Title, scale, direction, legend and date of all plan maps;~~
- ~~— (p) — Name and address of the person(s) preparing the plan, the owners and the person responsible for the development area.~~

(Ord. 9-03. Passed 4-14-03.)

919.14 EXCEPTIONS.

The City Engineer may waive specific requirements for the plan detail if the area is covered by a previously approved plan or is incorporated into a development permit under Chapter 1331.

(Ord. 9-03. Passed 4-14-03.)

919.15 PLAN REVIEW.

The City shall, in a reasonable time period, indicate its approval or disapproval to the person who filed the plan. Indication of disapproval shall include the plan deficiencies and the procedures for filing a revised plan. Pending preparation and approval of a revised plan, earth disturbing activities shall proceed only in accordance with conditions outlined by the City.

(Ord. 9-03. Passed 4-14-03.)

919.16 INSPECTION TO ENSURE COMPLIANCE.

The City or its authorized representative may inspect development areas to determine compliance with these regulations and the approved sediment control plan. If it is determined that a violation of these regulations exists, the responsible person shall be notified of the deficiencies or noncompliance. After a reasonable time for voluntary compliance, the inspector or inspecting agency shall report the deficiency or noncompliance to the City. The City, upon determining that a person is not complying with these regulations, may issue an order to comply. The order shall describe the problem and the work needed, and specify a date when the work shall be completed. The City maintains the right to issue a stop-work order for non-compliance with specified time schedule or upon City determination of a need to remedy of a serious problem.

(Ord. 9-03. Passed 4-14-03.)

919.17 MAINTENANCE.

(a) When a site is developed under single ownership, the costs of maintaining any soil sediment control facilities shall be the responsibility of the property owner.

(b) When the benefiting area will involve two or more property owners, the person(s) developing the site shall provide for the permanent maintenance of structures and other facilities designed to control erosion and manage stormwater through the formation of an owners association. The cost of maintenance of all stormwater facilities shall be the responsibility of the association.

(Ord. 9-03. Passed 4-14-03.)

919.18 APPEAL OF NOTICE OF VIOLATION

(a) Right to Appeal. Any person affected by a decision of the Service Safety Director or his authorized designee or a notice or order issued under this Chapter shall have the right to appeal to the Hearing Board established under Section 918.08, provided that a written application for appeal is filed within twenty days after the day the decision, notice or order was served.

(b) Limitation of Authority. An application for appeal shall be based on a claim that the true intent of the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not apply, or the requirements of this code are adequately satisfied by other means.

919.19 ENFORCEMENT MEASURES AFTER APPEAL

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 30 days of the decision of the Board upholding the decision of the Service Safety Director or his authorized designee, then the Service Safety Director or his authorized designee shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

919.20 COST OF ABATEMENT OF THE VIOLATION

Within 45 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written appeal of the amount of the assessment within 20 days. If the amount due is not paid within a timely manner as determined by the decision Service Safety Director or his authorized designee or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the city by reason of such violation.

919.21 INJUNCTIVE RELIEF

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the Service Safety Director or his authorized designee may petition for a preliminary or permanent injunction restraining the person from activities

which would create further violations or compelling the person to perform abatement or remediation of the violation.

919.22 RIGHT TO REIMBURSEMENT

The Service Safety Director or his authorized designee may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

919.23 REMEDIES NOT EXCLUSIVE

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Service Safety Director or his authorized designee to seek cumulative remedies.

919.24 ADOPTION OF ORDINANCE

This ordinance shall be in full force and effect immediately after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

919.25 VIOLATIONS DEEMED A PUBLIC NUISANCE

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

919.99 CRIMINAL PENALTY.

Whoever violates any section of this chapter shall be deemed guilty of an unclassified misdemeanor subject to thirty days jail and a maximum fine of one thousand dollars (\$1,000.00).

(Ord. 25-03. Passed 8-11-03.