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# City of Proctor

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*You Have A Place In Proctor*

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## ORDINANCE 05-22

### AN ORDINANCE REPLACING PROCTOR MUNICIPAL CODE CHAPTER 152 CONSTRUCTION SITE AND POST-CONSTRUCTION STORMWATER MANAGEMENT

Chapter 152 of the Proctor Municipal Code shall be replaced in its entirety to read as follows:

#### **Section 152.01 PURPOSE AND INTENT.**

The purpose of this regulatory mechanism is to set forth minimum requirements for stormwater management that will prevent or reduce water pollution during and after land disturbance activities to safeguard persons, protect property, and prevent damage to the environment in the City of Proctor.

#### **152.02 DEFINITIONS.**

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BEST MANAGEMENT PRACTICES or BMP.** Practices to prevent or reduce the pollution of the waters of the state, including schedules of activities, prohibitions or practices, and other management practices, and also includes treatment requirements, operating procedures and practices to control site runoff, spillage or leaks, sludge, or waste disposal or drainage from raw material storage.

**CONSTRUCTION ACTIVITY.** A disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. This may include clearing, grading, filling, and excavating.

**CITY.** The City of Proctor.

**COMMON PLAN OF DEVELOPMENT OR SALE.** A contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

**DEWATERING.** The removal of surface or ground water to dry and/or solidify a construction site to enable construction activity. Dewatering may require a Minnesota Department of Natural Resources water appropriation permit and, if dewatering water is contaminated, discharge of such water may require an individual MPCA NPDES/SDS permit.

**ENERGY DISSIPATION.** Method employed at pipe outlets to prevent erosion caused by the rapid discharge of water scouring soils.

**EROSION CONTROL MEASURE.** A measure that prevents soil particles exposure and detachment.

**GREEN INFRASTRUCTURE.** A wide array of practices at multiple scales that manages wet weather and that maintains or restores natural hydrology by infiltrating, evapotranspiring, or harvesting and using stormwater. On a regional scale, green infrastructure is the preservation or restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduce overall imperviousness in a watershed. On the local scale, green infrastructure consists of site and neighborhood-specific practices.

**LAND DISTURBANCE.** Any project or activity, including removal of vegetation, excavations, clearing, filling, stockpiling, grading, or other earth change that directly or indirectly affects slopes, water bodies, the moving of ground cover or which may result in the movement of sediment.

**KARST ACTIVE.** A geographic area underlain by carbonate bedrock (or other forms of bedrock that can erode or dissolve) with less than 50 feet of sediment cover.

**MPCA CONSTRUCTION STORMWATER PERMIT.** The most current Minnesota Pollution Control Agency (MPCA) General Permit to Discharge Stormwater Associated with Construction Activity Under the National Pollution Discharge Elimination System State Disposal System Program (NPDES/SDS).

**MUNICIPAL SEPARATE STORM SEWER SYSTEM or MS4.** The conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains owned and operated by the City of Proctor.

**NEW DEVELOPMENT.** All construction activity that is not defined as redevelopment and areas where new impervious is being created.

**OWNER.** includes the plural as well as the singular, and where appropriate shall include a natural person, partnership, firm, association, public, or quasi-public corporation, private corporation, or a combination of any of them, with legal or equitable interest in the parcel of record or as identified on the grading permit.

**RECEIVING WATER.** Any lake, river, stream, or wetland that receives stormwater discharges from the MS4.

**REDEVELOPMENT.** Any construction activity where, prior to the start of construction, the areas to be disturbed have 15 percent or more of existing impervious surface(s).

**SATURATED SOIL.** The highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids filled with water. Evidence of saturated soil is the presence of redoximorphic features or other information.

**SEDIMENT CONTROL MEASURE.** A measure that prevents eroded sediment from leaving the site.

**STORMWATER.** Stormwater runoff, snow melt runoff, and surface runoff and drainage.

**STRUCTURAL STORMWATER BMPS.** Stationary and permanent BMPs designed, constructed, and operated to prevent or reduce the discharge of pollutants in stormwater.

**Steep Slopes.** Slopes that are 1:3 (V:H) (33.3 percent) or steeper in grade.

**STORMWATER POLLUTION PREVENTION PLAN or SWPPP.** A comprehensive plan developed to manage and reduce the discharge of pollutants in stormwater.

**WATERS OF THE STATE.** All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

#### **152.03 APPLICABILITY.**

This ordinance shall apply to all land disturbance and construction activity that disturbs land of equal to or greater than 2,500 square feet, and includes the disturbance of less than one 2,500 square feet of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one 2,500 square feet or as deemed necessary by the City of Proctor to safeguard persons, protect property, and prevent degradation to the environment in the City of Proctor.

#### **152.04 REQUIRED GRADING PERMIT.**

The permit authorizes, subject to the terms and conditions of this ordinance, land disturbance and the discharge of stormwater.

(A) Prior to the commencement of any land disturbing activities on lands subject to this ordinance the Owner shall obtain a Grading Permit from the City of Proctor.

(B) The following activities are not required to obtain a Grading Permit:

(1) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.

(2) Nursery, home gardening, and agricultural operations conducted as a permitted main or accessory use.

(3) Maintenance work conducted by City of Proctor employees.

#### **152.05 GRADING PERMIT PROCESS AND DATA REQUIREMENTS.**

(A) An application and applicable application fee for a grading permit shall be filed with the City of Proctor on an approved form, with accompanying documents, and Stormwater Pollution

**Prevention Plan (SWPPP) if required, meeting the requirements set forth in the City of Proctor Stormwater Management Design Standards.**

**(B) The City of Proctor or City representative will review each application. It is the responsibility of the applicant to meet the provisions of this ordinance and the City of Proctor Stormwater Management Design Standards.**

**(C) The City of Proctor shall in writing:**

- (1) Approve the permit application;**
- (2) Approve the permit application subject to such reasonable conditions as may be necessary to substantially secure the objectives of this regulation, and issue the permit subject to these conditions; or**
- (3) Disapprove the permit applications, indicating the reason(s) and procedure for submitting a revised application and/or submission.**

**(D) Each application shall include:**

- (1) Application form and fee.**
- (2) Project name.**
- (3) Project narrative describing type of work and proposed disturbance.**
- (4) Address of the proposed land disturbing activities.**
- (5) Total acres to be disturbed.**
- (6) Name, address, and contact information of the owner and/or developer of the site.**
- (7) Name and contact information of consulting firm retained by applicant, if applicable.**
- (8) Stormwater Pollution Prevention Plan (SWPPP) if required, meeting the requirements set forth in the City of Proctor Stormwater Management Design Standards.**
- (9) Details, plans, specifications, calculations, and any other documentation needed to verifying compliance with this ordinance and the City of Proctor Stormwater Management Design Standards.**
- (10) Private Stormwater BMP Maintenance Agreement, if applicable.**

## **152.06 MAINTENANCE OF STRUCTURAL BMPS.**

Any structural BMPs which are designed and installed to meet the Post-construction Stormwater Management Requirements set forth in the City of Proctor Stormwater Management Design Standards shall meet the following requirements:

### **(A) *Private Facilities:***

(1) A permanent public easement shall be provided to the City for access for inspection and/or maintenance purposes. Costs incurred by the City for any maintenance of private systems will be billed and/or assessed to the owner/operator.

(2) The owner shall enter into a Maintenance Agreement with the City of Proctor. The agreement shall include as an attachment a maintenance plan which identifies and defines inspection and maintenance responsibilities. Agreements are transferrable to any party that becomes the owner/operator of the site.

(3) If site configurations or structural stormwater BMPs change, causing decreased BMP effectiveness, new or improved structural stormwater BMPs must be designed and implemented to meet the requirements of the set forth in the City of Proctor Stormwater Management Design Standards for Post-construction Stormwater Management. New and/or improved BMP design information and plans must be submitted to the City of Proctor for review and approval.

**(B) *Public Facilities.*** A permanent public easement shall be provided to the City for access for inspection and/or maintenance purposes prior to final acceptance of the project.

## **152.07 INSPECTION & FEES.**

(A) The City of Proctor or City representative shall review all documents and material submitted showing compliance with this ordinance and the City of Proctor Stormwater Management Design Standards. The costs associated with the review process, including but not limited to, staff hours, engineering fees, administrative tasks, reproductions and other expenses associated with the review, shall be charged back to the applicant, including any follow-up reviews for incomplete or non-compliant submittals.

(B) The City of Proctor or City representative may make inspections during the construction and land disturbance activity. Upon inspection the City of Proctor shall notify the permittee wherein the work fails to comply with this ordinance or the site-specific Stormwater Pollution Prevention Plan as approved.

(C) The permitted or his/her agent shall make regular inspections of the property, construction activity, land disturbance activity in accordance with this ordinance and the site-specific Stormwater Pollution Prevention Plan as approved. All inspections shall be documented in written form and made available upon request to the City of Proctor or City representative.

(D) The City of Proctor or City representative shall be allowed access to enter the property of the applicant as deemed necessary to make inspections to ensure the validity and compliance with this ordinance and the site-specific Storm Water Pollution Prevention Plan as approved.

(E) See Schedule of Charges and Fees for associated fees.

#### **152.08 FINANCIAL SECURITY.**

The City of Proctor may require at their discretion the submittal of a letter of credit or other financial security in a form acceptable to the City in the amount of 150% of the total estimated construction cost of the stormwater management systems.

#### **152.09 ENFORCEMENT.**

##### **(A) *Violations.***

(1) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

(2) In the event the violation constitutes an immediate danger to public health or public safety, the City of Proctor is authorized to enter upon the subject private property, without giving prior notice, to take all measures necessary to abate the violation and/or restore the property. The City of Proctor is authorized to seek costs of the abatement as outlined in Section 152.16.

(B) *Warning Notice.* When the City of Proctor finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the City of Proctor may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the violator to immediately investigate the matter and to seek a resolution whereby any offending violation will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the City of Proctor to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

##### **(C) *Notice of Violation.***

(1) Whenever the City of Proctor finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the City of Proctor may order compliance by written notice of violation to the responsible person.

(2) The Notice of Violation shall contain:

(a) The name and address of the alleged violator;

(b) The address when available or a description of the building, structure or

land upon which the violation is occurring, or has occurred;

(c) A statement specifying the nature of the violation;

(d) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;

(e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;

(f) A statement that the determination of violation may be appealed to the City of Proctor by filing a written notice of appeal within 30 days of service of notice of violation; and

(g) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency, or a contractor and the expense thereof shall be charged to the violator.

(3) Such notice may require without limitation, at their own expense:

(a) The performance of monitoring, analyses, and reporting;

(b) The elimination of the violation(s);

(c) That violating discharges, practices, or operations shall cease and desist;

(d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;

(e) Payment of a fine to cover administrative and remediation costs; and

(f) The implementation of source control or treatment BMPs.

#### **152.10 COSTS.**

In addition to the other penalties provided herein, the City may recover engineering fees, court costs, court reporter's fees, attorney fees, and other expenses of litigation or enforcement by an appropriate action against the person or entity found to have violated this ordinance or the orders, rules, regulations, and permits issued hereunder.

#### **152.11 STOP WORK ORDER.**

*Revocation of Permit.* In the event that any person holding a grading permit pursuant to this ordinance violates the terms of the permit and is found non-compliant with the permit or implements site development construction practices in such a manner as to materially adversely

affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the City of Proctor may suspend or revoke the grading permit. The City shall notify the owner in writing with a notice of violation of the approved Grading Permit to remove such conditions or remedy such defects. Such notice shall require the owner to remove or abate said violations within forty-eight (48) hours of notification.

#### **152.12 CIVIL PENALTIES.**

In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten (10) days, or such greater period as the City of Proctor shall deem appropriate, after the City of Proctor has taken one or more of the actions described above, the City of Proctor may impose a penalty not to exceed \$ 1,000.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

#### **152.13 CRIMINAL PENALTIES.**

Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$ 1,000.00 or by imprisonment for not to exceed ninety (90) days or both.

#### **152.14 APPEAL OF NOTICE OF VIOLATION.**

Any person receiving a Notice of Violation may appeal the determination of the City of Proctor. The notice of appeal must be received within thirty (30) days from the date of the Notice of Violation, except in the instance where a Stop Work Order is issued as described in Section 152.11, then the notice of appeal must be received within two (2) days from the date of the Stop Work Order Hearing on the appeal before the appropriate authority or his/her designee shall take place within thirty (30) days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

#### **152.15 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 two (2) days of the decision of the municipal authority upholding the decision of the City of Proctor, then representatives of the City of Proctor 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.

#### **152.16 COST OF ABATEMENT OF THE VIOLATION.**

(A) Within forty-five (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 protest objecting to the amount of the assessment within thirty (30) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority 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.

(B) Any person violating any of the provisions of this article shall become liable to the City of Proctor by reason of such violation. The liability shall be paid in not more than twelve (12) equal payments. Interest at the rate of eight (8) percent per annum shall be assessed on the balance beginning on the first day following discovery of the violation.

#### **152.17 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.

#### **152.18 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 City of Proctor to seek cumulative remedies. The City of Proctor may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Ordinance declared adopted this 8<sup>th</sup> day of August 2022.

  
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Mayor

ATTEST:

  
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City Clerk/Administrator

First Reading: July 5<sup>th</sup>, 2022  
Second Reading: August 8, 2022  
Published Proctor Journal: July 28<sup>th</sup>, 2022