

**CITY OF WAUKEE, IOWA
CITY COUNCIL MEETING COMMUNICATION**

MEETING DATE: December 7, 2020

AGENDA ITEM: Consideration of approval of an ordinance amending Chapter 204D, Waukee Municipal Code, by repealing the current chapter and enacting in lieu thereof Chapter 204D, Post Construction Storm Water Management [introduction; first reading]

FORMAT: Ordinance

SYNOPSIS INCLUDING PRO & CON: In February 2018, Capital Crossroads met with MIALG, a group of central Iowa mayors, along with their city managers, to determine the next topic for Capital Crossroads Local Governance Collaborative (LGC). MIALG identified stormwater management as of regional importance and in need of improvement. Following MIALG, an education series was held. This series brought together staff and other interested parties from across the metro to learn about stormwater management methods and tools that are being done both in Iowa and in surrounding states and the improved outcomes derived from adopting new standards. Specifically discussed were the Iowa Stormwater Management Manual (ISWMM) and the Unified Sizing Criteria. After nine education sessions, it was decided that the project should continue and should develop new stormwater management standards for the metro area. Staff presented what they learned to the Des Moines Area HBA twice and to the Iowa Commercial Real Estate Association sharing lessons and inviting members of both groups to participate in the next phase developing standards.

Prior to convening to develop standards, two of the three Tri-Chairs for Capital Crossroads LGC, Mayor Sara Kurovski of Pleasant Hill and Mayor Bob Andeweg of Urbandale spent the summer of 2019 visiting all of the city councils in the metro, including Waukee, to inform them of the education their staff had received and the next steps for the project. There was agreement from all councils that the status quo of stormwater management in the region needed to change and approval was given for staff from each city to spend time working to develop new standards. Previous design standards are no longer sufficient and new standards are needed in order to avoid costs associated with perpetuation of designs and standards that are known to cause future problems. There are tested best management practices (BMPs) that are available in the Iowa Stormwater Management Manual, that provide real long-term benefit to cities.

The first steps for Waukee to implement the final recommendations from the above process is to amend Ordinance Chapter 204D to include the stormwater standard language produced from the Capital Crossroads effort. The second reading and waiving of the third is anticipated to occur at the December 21st regular City Council meeting. Further, consideration for approval of the updated Waukee Specifications for Public Improvements will also be on the December 21st meeting agenda, which also reflect the standard stormwater design language from the Capital Crossroads LGC effort.

FISCAL IMPACT INCLUDING COST/BENEFIT ANALYSIS:

COMMISSION/BOARD/COMMITTEE COMMENT:

STAFF REVIEW AND COMMENT:

RECOMMENDATION: Introduce the Ordinance and approve the first reading in title only.

ATTACHMENTS: I. Proposed Ordinance

PREPARED BY: Beth Richardson

REVIEWED BY: Rudy Koester **RK**

PUBLIC NOTICE INFORMATION –

NAME OF PUBLICATION:

DATE OF PUBLICATION:

ORDINANCE NO.

AN ORDINANCE TO AMEND CHAPTER 204D, WAUKEE MUNICIPAL CODE, BY REPEALING THE CURRENT CHAPTER AND ENACTING IN LIEU THEREOF CHAPTER 204D, POST CONSTRUCTION STORM WATER MANAGEMENT

SECTION 1. AMENDMENT. Chapter 204D, Post Construction Storm Water Management, should be and the same is hereby repealed and enacted in lieu thereof is as follows:

204D.1 PURPOSE

1. The U.S. EPA’s National Pollutant Discharge Elimination System (“NPDES”) permit program (“Program”) administered by the Iowa Department of Natural Resources (“IDNR”) requires that cities meeting certain demographic and environmental impact criteria obtain from the IDNR an NPDES permit for the discharge of storm water from a Municipal Separate Storm Sewer System (MS4). The City’s MS4 Permit is on file at the office of the city clerk and is available for public inspection during regular office hours.
2. As a condition of the City’s MS4 Permit, the City is obliged to develop, implement, and enforce a program to address storm water runoff from new construction and reconstruction projects for which State NPDES General Permit #2 storm water permit coverage is required by adopting a POST-CONSTRUCTION STORM WATER MANAGEMENT ORDINANCE designed:
 - (a) To require water quality and quantity components be considered in the design of new construction and implemented when practical; and
 - (b) To promote the use of storm water detention and retention, grass swales, buffer strips, and proper operation and maintenance of these facilities; and
 - (c) To allow use of bio-retention swales and riparian buffers where practical and the soils and topography are suitable to ensure such measures will be effective in accomplishing the purpose of this ordinance; and
 - (d) To prohibit construction activities from commencing until the plans for post-construction runoff controls have been submitted to the City; and
 - (e) To allow the City to have the ability to access private property for the purpose of enforcement procedures to promote compliance with the State NPDES General Permits #2 which require post-construction compliance by Applicants (“Applicants”).
3. No state or federal funds have been made available to assist the City with inspections, monitoring and/or enforcing the Program. Accordingly, the City shall fund its inspection, monitoring and enforcement responsibilities entirely by

fees imposed on the owners of properties which are made subject to the Program by virtue of state and federal law, and/or other sources of funding established by a separate ordinance.

4. Terms used in this ordinance shall have the meanings specified as follows:
- (a) “Applicant” means any person, firm, or entity applying for a permit to develop, grade, or construct within the corporate limits of the City.
 - (b) “BMP” means Best Management Practice. Best Management Practices are physical practices or structures determined to be practices used to reduce pollutant loads, discharge volumes, peak flow discharge rates, and detrimental changes in stream temperature that affect water quality and habitat. BMPs can be structural or non-structural. Non-structural BMPs focus on preserving open space, protecting natural systems, and incorporating existing landscape features such as wetlands and stream corridors into a site plan to manage stormwater at its source. Structural BMPs include constructed ponds, pavement systems, oil/grease separators, planted vegetative areas such as grassed swales, bioretention and other infiltration based practices, outlet structures and other constructed facilities intended to manage stormwater.
 - (c) “Building” means any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property. For purposes of this chapter, structures not intended for shelter such as a pergola, trellis, gazebo and any other constructed obstacle shall also be considered to be buildings and shall be reviewed for impact on stormwater management.
 - (d) “City stormwater requirements” means the standards, sizing criteria, BMPs and other requirements established in this chapter.
 - (e) “Developer” means a person, persons, or entity who undertakes land disturbance activities.
 - (f) “Development” means: Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations whether as a single site or part of a larger common plan of development.
 - (g) “Land disturbance activity” means any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction,

substantial removal of vegetation, tree clearing, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

- (h) “Landowner” means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.
- (i) “Maintenance agreement and covenant” means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater BMPs.
- (j) “Redevelopment” means: Any manmade change to a previously developed site, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations whether as a single site or part of a larger common plan of development.
- (k) “Stormwater management” means the use of BMPs to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates, and improve stream quality.
- (l) “Stormwater management plan” means the plan produced by a Professional Engineer (P.E.) licensed in the State of Iowa demonstrating how stormwater management will be accomplished by a development.
- (m) “Stormwater Pollution Prevention Plan” (SWPPP) means a plan that is designed to minimize the accelerated erosion, sediment, and other pollutant runoff at a site before, during and after construction activities.
- (n) “Iowa Stormwater Management Manual (ISWMM)” means the current Iowa Stormwater Management Manual publication, by whatever name, as amended from time to time by Iowa Department of Natural Resources in collaboration with Iowa Stormwater Education Program and other partners.
- (o) The definitions provided in section 204A.1 of the Waukee Municipal Code are incorporated herein by this reference.

204D.2 APPLICABILITY & PROCEDURE FOR POST-CONSTRUCTION

- 1. Each Applicant who is required to have coverage under General Permit No. 2 for a site shall install post-construction stormwater management facilities as set forth herein and as approved by the City during site plan, platting, or construction plans.

2. Each Applicant or its successor person(s) or entity shall be responsible for maintaining all stormwater management facilities or BMPs as approved by the City.
3. For sites equal to or greater than one acre, each Applicant must provide to the City as-built plans detailing dimensions and elevations as well as a certification that stormwater management facilities or BMPs were built as part of the approved development that includes the site. For sites less than one acre that are part of a common plan of development and for which the Applicant establishes that stormwater management facilities or BMPs were or will be built to address all properties (either collectively or individually) within the development, each Applicant must provide to the City a copy of the Notice of Discontinuation for General Permit No. 2 applicable to the property.
4. The City of Waukee hereby adopts the Iowa Stormwater Management Manual (ISWMM) and the Waukee Standard Specifications for Public Improvements for management of stormwater. The ISWMM is written as a guideline recommending certain techniques and advising against others in order to accomplish goals related to managing water volume and quality. Therefore, where the ISWMM states a design element or technique is “Essential” it is required by the City of Waukee. Where ISWMM states a design element or technique is “Target” such design element or technique is desired by the City of Waukee and every effort shall be made to accomplish. Where ISWMM states a given design element or technique is “Advisory” this design element or technique shall not be used within the City of Waukee.
5. In cases where ISWMM does not speak to a stormwater issue, such as sizing or installation of pipes, the City of Waukee follows SUDAS and the Waukee Standard Specifications for Public Improvements or streambank stabilization in the Iowa River Restoration Toolbox as applicable.
6. Each Applicant must include in their site design those stormwater management facilities or BMP that will convey drainage through the property to one or more detention and/or treatment areas such that no development shall cause downstream property owners, water courses, channels, or conduits to receive storm water runoff from the proposed development site at a peak flow rate greater than that allowed by the policy or standard in effect at the time of approval of the development unless such requirements are waived by the City. Nothing contained herein shall prohibit the City from changing the policies or standards in the future, nor from requiring the site to comply with the new requirements.
7. Each Applicant shall comply with all other applicable City, state or federal permit requirements as they apply to the City or to the property.
8. At the discretion of the City, the Applicant may satisfy the post-construction stormwater management requirements by ensuring the conveyance of the

stormwater discharge from the property to a regional detention facility. For purposes of this ordinance, a “regional detention facility” shall be wet or dry detention basins, which are designed to accept storm water runoff from two or more sites that are required to obtain a state NPDES General Permit No. 2 and that otherwise complies with all city, state or federal permit requirements as they apply to stormwater management requirements for those sites.

9. New Development: Any new development of land adding more than 10,000 square feet of new impervious surface shall provide stormwater management as outlined in the ISWMM and the Waukee Standard Specifications for Public Improvements. This threshold is a cumulative amount of new square footage and may be reached over time in increments. At such time that a development site exceeds 10,000 cumulative square feet of new impervious surface the site will be required to come into compliance with this ordinance.
10. Redevelopment: Any redevelopment adding more than 10,000 square feet of new impervious surface but disturbing less than 50% of the site shall provide stormwater management at the Water Quality standard and shall be asked to also meet the Channel Protection standard or demonstrate why doing so is infeasible. This threshold is a cumulative amount of new square footage and may be reached over time in increments. At such time that a development site exceeds 10,000 cumulative square feet of new impervious surface the site will be required to come into compliance with this ordinance.
11. Any redevelopment disturbing 50% or more of a site shall be required to meet the same stormwater management standards as a new development.
12. City Projects: Stormwater management standards shall apply to all City projects including new City parks and buildings.
13. Exemptions: The following activities shall be exempted from meeting the stormwater management standards of this ordinance:
 - (a) Development or redevelopment adding less than 10,000 square feet of new impervious surface and if in compliance with a previously approved stormwater management plan.
 - (b) Removal and replacement of impervious surface exactly matching location and area.
 - (c) Logging or agricultural activity that is consistent with an approved soil conservation plan or timber management plan prepared or approved by the appropriate agency, as applicable.
 - (d) Additions or modifications to single family structures.
 - (e) Repairs to any stormwater management BMP deemed necessary by the City.
 - (f) Linear projects such as road construction.

204D.3

MAINTENANCE AND REPAIR OF STORM WATER FACILITIES & BMPs

1. Prior to the issuance of any permit that has a stormwater management facility or BMP as one of the requirements of the permit, the Applicant or owner of the site must execute a maintenance easement agreement that shall be binding on all subsequent owners of land served by the stormwater management facility or BMP. The agreement shall provide for access to the facility or BMP at reasonable times for periodic inspection by the City, or its contractor or agent, to ensure that the facility or BMP is maintained in proper working condition to meet design standards and any other provisions established by this ordinance. The easement agreement shall be recorded by the City in the land records.
2. Maintenance of all stormwater management facilities or BMP shall be ensured through the creation of a formal maintenance covenant that must be approved by the City and recorded into the land record at the time of final plat or site plan approval. As part of the covenant, a schedule shall be developed for when and how often maintenance will occur to ensure proper function of the storm water management facility or BMP. The covenant shall identify the parts or components of the stormwater management facility or BMP and include information related to the equipment and skills needed to maintain the stormwater management facilities or BMPs. The covenant shall also include plans for periodic inspections by the Applicant, owner, or assigns to ensure proper performance of the facility or BMP.
3. The City, in lieu of a maintenance covenant, may at its discretion, but not obligated, accept dedication of any existing or future stormwater BMP to include City responsibility for maintenance and repair, provided that: the maintenance and repair of such element will not impose an undue burden on other City taxpayers, the BMP meets all the requirements of this chapter; and the dedication includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance. By mutual agreement of the City and the party responsible for maintenance for a stormwater management facility or BMP (developer, builder, HOA), the City may receive an annual payment to cover costs of maintenance and assume maintenance responsibilities. Said payment will be calculated to cover the expected costs of maintenance.
4. Requirements for Maintenance Covenants. All stormwater management facilities and BMPs must undergo, at the minimum, an annual inspection by the responsible party to document maintenance and repair needs and ensure compliance with the requirements of this chapter. Any required maintenance identified by inspection must be corrected by the responsible party under a written maintenance agreement within 30 days. The inspection and maintenance requirement may be increased as deemed necessary to ensure proper functioning of the stormwater management facilities and BMPs. In the event the identified maintenance or repair cannot be completed within 30 days of notice, the responsible party must contact the city with 30 days of notice to explain why

repair or maintenance cannot be completed within 30 days and provide a plan for completing repair or maintenance.

5. Inspection of Stormwater Management Facilities and BMPs. Inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; 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 joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in stormwater BMPs, and evaluating the condition of stormwater management facilities and BMPs.

6. As-Built Drawings. At the time of Final Plat an as-built drawing will be provided to the City for all stormwater management facilities and BMPs. At such time as a developer transfers control of stormwater management facilities and BMPs to an HOA, the City other responsible party, the developer shall provide notice to the City and the City shall have the right to confirm stormwater management facilities and BMPs match the as-built provided at Final Plat prior to transfer. A maintenance bond, agreement to complete, or letter of credit shall be provided to the City for any required work to stormwater management facilities or BMPs to correct to as-built standard prior to transfer of ownership or responsibility. After transfer of ownership or responsibility, the bond or letter of credit will be released.

7. The City shall be permitted to enter and inspect any property subject to regulation under this section as often as is necessary to document maintenance and repair needs and determine compliance with the requirements of this ordinance. If a Responsible Party owning, controlling or possessing a property has security measures that require identification and clearance before entry to its property, such Responsible Party shall make the necessary arrangements to allow access by the City. By way of specification but not limitation:
 - (a) A Responsible Party shall allow the City ready access to all parts of the property for purposes of inspection, examination, and copying of records related to compliance with this ordinance.

 - (b) Any temporary or permanent obstruction that obstructs the safe and easy access to property to be inspected and shall be promptly removed by the Responsible Party at the written or oral order of the City and shall not be

replaced. The costs of clearing such access shall be borne by the Responsible Party.

- (c) An unreasonable delay in allowing the City access to a property is a violation of this chapter.
- 8. Parties responsible for the operation and maintenance of a stormwater management facility or BMP shall make records of the installation and of all maintenance and repairs, and shall retain said records. Copies of the as-built plans and records of all self inspections, maintenance, and repairs shall be kept on-site and shall be made available to the City during inspection of the facility or BMP and at other reasonable times upon request.
- 9. Failure to Maintain Stormwater Management Facilities and BMPs. If a responsible party fails or refuses to meet the requirements of the maintenance covenant or any provision of this chapter, the City, after reasonable notice, may correct a violation by performing all necessary work to place the stormwater management facility or BMP in proper working condition. In the event that the stormwater management facility or BMP becomes a danger to public safety or public health, the City shall notify the party responsible for maintenance of the stormwater management facility or BMP in writing. Upon receipt of that notice, the responsible person shall have thirty (30) days to effect maintenance and repair of the stormwater management facility or BMP in an approved manner. After proper notice, the City may assess, jointly and severally, the owners of the stormwater management facility or BMP or the property owners or the parties responsible for maintenance under any applicable written agreement for the cost of repair work and any penalties; and the cost of the work shall be a lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as ordinary taxes.

204D.4 ENFORCEMENT BY LEGAL OR ADMINISTRATIVE ACTION

- 1. A violation of this chapter is a simple misdemeanor. Each Day that a violation continues to exist shall constitute a separate offence.
- 2. A violation of any provision of this ordinance may also be enforced as a municipal infraction within the meaning of Code of Iowa 364.22, pursuant to the City's municipal infraction ordinance and in addition to the imposition of the Civil penalties may include appropriate injunctive relief, an order for abatement and the pursuit of a personal judgment for the costs of abatement including, but not limited to, attorney's fees associated with the City's pursuit of the matter as a municipal infraction, together with any and all other relief authorized under applicable Iowa Law.

3. The penalty for each violation of this chapter shall not exceed the maximum penalty set forth in section 103.4 of the Waukees Municipal Code for each violation.
4. Enforcement pursuant to this section shall be undertaken by the enforcement officer upon the advice and consent of the City Attorney.
5. The City may issue a stop work order for violation of any provision of this chapter. The stop work order shall be applicable to the lot within the development causing the violation and shall remain in effect until the violation is corrected and a subsequent inspection completed. In the event a building is completed and occupied when a violation occurs, the City will not issue additional permits for that property.
6. Any violator may be required to restore land to its approved design condition. In the event that restoration is not undertaken within a reasonable time after notice, the City may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
7. Final Certificate of Occupancy shall not be granted until all stormwater BMPs have been inspected and approved by City Engineer or their designee.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provisions or part thereof not adjudged invalid or unconstitutional.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

Passed by the Council the ____ day of _____, 2020, and approved this ____ day of _____, 2020.

Courtney Clarke, Mayor

Attest:

Rebecca D. Schuett, City Clerk