

ORDINANCE 2021-002

AN ORDINANCE OF THE BOROUGH OF CHESTER, MORRIS COUNTY, STATE OF NEW JERSEY, AMENDING THE CODE OF THE BOROUGH OF CHESTER, PART II (GENERAL LEGISLATION), CHAPTER 204 (STORMWATER MANAGEMENT) TO COMPLY WITH NJDEP AMENDMENTS TO NJAC 7-8.

WHEREAS, municipalities are empowered to make, amend, repeal, and enforce its ordinances pursuant to Statute (N.J.S.A. 40:48-1, et seq.); and

WHEREAS, municipalities are required by statute to follow specific procedures for the passage of ordinances (N.J.S.A. 40:49-2 et seq.); and

WHEREAS, in 2020, the NJDEP adopted amendments to N.J.A.C. 7:8, Stormwater Management, commonly known as the Stormwater Rule; and

WHEREAS, these amendments changed the definition of “major development” and also established a requirement that projects be designed using Green Infrastructure methods; and

WHEREAS, these amendments included a modification to the municipal stormwater permit that requires municipalities to adopt revised stormwater control ordinances to incorporate these revisions, said ordinances must be effective no later than March 2, 2021, and

WHEREAS, pursuant to those powers the Mayor and Council of the Borough of Chester wish to amend the Chapter 204 of the Borough Code to reflect the NJDEP amendments to N.J.A.C. 7:8; and

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Chester, County of Morris, State of New Jersey that the Borough Code is hereby amended and as follows:

SECTION 1. Part II (GENERAL LEGISLATION), Chapter 204 (STORMWATER MANAGEMENT) of the Borough Code shall be deleted and replaced with the following:

§ 204-1 Definitions.

All terms in this section shall be defined in the NJDEP Stormwater Rule (N.J.A.C. 7:8, et seq.). The following additional terms are defined for this Chapter only.

- A. **EXEMPT DEVELOPMENT** – Shall mean any development that creates an increase of less than 1,000 square feet of impervious area and disturbs less than 2,500 square feet of land. Further, an exempt development shall not meet the definition of "minor development."
- B. **MINOR DEVELOPMENT** – Shall mean any development that results in the creation of an increase of 1,000 square feet or more of impervious area or one that disturbs more than 2,500 square feet of land area. Further, a minor development shall not meet the definition of "major development".
- C. **MAJOR DEVELOPMENT** – Shall mean any individual “development,” as well as multiple developments that individually or collectively result in:
 - (1) The disturbance of one or more acres of land since February 2, 2004;
 - (2) The creation of one-quarter acre or more of “regulated impervious surface” since February 2, 2004;
 - (3) The creation of one-quarter acre or more of “regulated motor vehicle surface” since March 2,2021; or
 - (4) A combination of 2 and 3 above that totals an area of one-quarter acre or more. The same surface shall not be counted twice when determining if the combination area equals one quarter acre or more.

Major Development includes all developments that are part of a common plan of development or sale (for example, phased residential development) that collectively or individually meet any one or more of conditions 1, 2, 3, or 4 above. Projects undertaken by any government agency that otherwise meet the definition of “major development”, but which do not require approval under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., are also considered “major development”.

§ 204-2 Design Standards.

- A. **Exempt Developments.** Any project meeting the definition of "exempt development" shall be exempt from the provisions of this section.
- B. **Minor Developments.** Minor developments shall be designed to include the following stormwater management measures:
- (1.) Water Quality. Soil erosion and sediment control measures shall be installed in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey.
- (2.) Rate/Volume Control. Seepage pits or other infiltration measures shall be provided with a capacity of three (3") inches of runoff for each square foot of new impervious area. Stone used in the infiltration devices shall be two and one-half (2 1/2") inches clean stone and design void ratio of 33% shall be used. The infiltration measures shall be designed with an overflow to the surface which shall be stabilized and directed to an existing stormwater conveyance system or in a manner to keep the overflow on the developed property to the greatest extent feasible. If the new impervious surface is not roof area, an equivalent area of existing roof may be directed to the infiltration system. This shall be permitted where the existing roof is not already directed to infiltration devices.
- C. **Major Developments.** All major developments shall have their stormwater management designed in accordance with the Residential Site Improvement Standards (RSIS, N.J.A.C. 5:21) and the NJDEP Stormwater Rule (N.J.A.C. 7:8). These standards shall apply to all projects, residential and nonresidential as well as projects by the Borough, Board of Education and other agencies subject to review by the Borough.

§ 204-3 Waivers and Exceptions.

- A. **Standards for Relief.** Waivers from strict compliance with the design standards shall only be granted upon showing that meeting the standards would result in an exceptional hardship on the applicant or that the benefits to the public good of the deviation from the standards would outweigh ANY detriments of the deviation. A hardship will not be considered to exist if reasonable reductions in the scope of the project would eliminate the noncompliance.
- B. **Mitigation.** If the reviewing agency for the project determines that a waiver is appropriate, the applicant must execute a mitigation plan. The scope of the mitigation plan shall be commensurate with the size of the project and the magnitude of the relief required. The mitigation project may be taken from the list of projects in the Municipal Stormwater Management Plan. All mitigation projects are subject to the approval of the Borough Engineer.
- C. **Reviewing Agency.** All applications subject to the review of the Land Use Board shall be reviewed by the Board concurrently with subdivision or site plan review. Applications not subject to Land Use Board review shall be reviewed by the Borough Engineer.
- D. **Appeals.** The appeal of the determination of the Borough Engineer shall be made in accordance with N.J.S.A. 40:55D-70a.

§ 204-4 Application and Review Fees.

There shall be no additional fees for stormwater review for applications to the Land Use Board. Minor Development applications to the Borough Engineer shall be accompanied by a review

fee in the amount of \$250. Major Development applications shall be accompanied by a review fee in the amount of \$1,000. If a project is approved, an inspection escrow deposit shall be made in an amount to be determined by the Borough Engineer.

§ 204-5 Maintenance and repair.

A. **Applicability.** Projects subject to review as in § 204-1 of this Chapter shall comply with the requirements of § 204-5 (B) and (C).

B. General Maintenance.

(1) The design engineer shall prepare a maintenance plan for the stormwater management measures incorporated into the design of a major development.

(2) The maintenance plan shall contain specific preventative maintenance tasks and schedules; cost estimates, including estimated cost of sediment, debris, or trash removal; and the name, address, and telephone number of the person or persons responsible for preventative and corrective maintenance (including replacement). Maintenance guidelines for stormwater management measures are available in the New Jersey Stormwater Best Management Practices Manual. If the maintenance plan identifies a person other than the developer (for example, a public agency or homeowners' association) as having the responsibility for maintenance, the plan shall include documentation of such person's agreement to assume this responsibility, or of the developer's obligation to dedicate a stormwater management facility to such person under an applicable ordinance or regulation.

(3) Responsibility for maintenance shall not be assigned or transferred to the owner or tenant of an individual property in a residential development or project, unless such owner or tenant owns or leases the entire residential development or project.

(4) If the person responsible for maintenance identified under § 204-5B(2) above is not a public agency, the maintenance plan and any future revisions based on § 204-5B(7) below shall be recorded upon the deed of record for each property on which the maintenance described in the maintenance plan must be undertaken.

(5) Preventative and corrective maintenance shall be performed to maintain the function of the stormwater management measure, including repairs or replacement to the structure; removal of sediment, debris, or trash; restoration of eroded areas; snow and ice removal; fence repair or replacement; restoration of vegetation; and repair or replacement of non-vegetated linings.

(6) The person responsible for maintenance identified under § 204-5B(2) above shall maintain a detailed log of all preventative and corrective maintenance for the structural stormwater management measures incorporated into the design of the development, including a record of all inspections and copies of all maintenance-related work orders.

(7) The person responsible for maintenance identified under § 204-5B(2) above shall evaluate the effectiveness of the maintenance plan at least once per year and adjust the plan and the deed as needed.

(8) The person responsible for maintenance identified under § 204-5B(2) above shall retain and make available, upon request by any public entity with administrative, health, environmental, or safety authority over the site, the maintenance plan and the documentation required by § 204-5B(6) and B(7) above.

(9) The requirements of § 204-5B(3) and B(4) do not apply to stormwater management facilities that are dedicated to and accepted by the municipality or another governmental agency.

(10) In the event that the stormwater management facility becomes a danger to public safety or public health, or if it is in need of maintenance or repair, the municipality shall so notify the responsible person in writing. Upon receipt of that notice, the responsible person shall have 14 days to effect maintenance and repair of the facility in a manner that is approved by the Municipal Engineer or his designee. The municipality, in its discretion, may extend the time allowed for effecting maintenance and repair for good cause. If the responsible person fails or refuses to perform such maintenance and repair, the municipality or county may immediately proceed to do so and shall bill the cost thereof to the responsible person.

C. Nothing in this section shall preclude the municipality in which the major development is located from requiring the posting of a performance or maintenance guarantee in accordance with N.J.S.A. 40:55D-53.

§ 204-6 Violations and penalties.

Any person who erects, constructs, alters, repairs, converts, maintains, or uses any building, structure or land in violation of this chapter shall be subject to one or more of the following penalties: Imprisonment for a term not exceeding 90 days; a fine not exceeding \$2,000; and a period of community service not to exceed 90 days.

SECTION 2. If any Chapter, Article, Section or Subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any court of competent jurisdiction such decisions shall not affect the remaining portions of this Ordinance.

SECTION 3: All ordinances or rules or regulations of the Borough of Chester, which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 5: This ordinance shall take effect on March 2, 2021 after passage and appropriate publication according to law.

Dated: February 16, 2021

Janet Hoven, Mayor

Attest:

Denean Probasco, Municipal Clerk

NOTICE OF FINAL ADOPTION

Notice is hereby given that the Ordinance published herewith was introduced and passed upon first reading at a meeting of the Mayor and Council of the Borough of Chester, in the County of Morris, New Jersey, held on the 5th day of January, 2021, and the same came up for final passage at a remote meeting of said Borough Council on the 16th day of February, 2021 at which time, after persons interested were given an opportunity to be heard concerning said ordinance, the same was passed and will be in full force in the Borough according to law. By order of the Borough Council of the Borough of Chester, County of Morris and State of New Jersey.

Denean Probasco, Municipal Clerk