



## COUNCIL UPDATE

APRIL 18, 2019

### MEETINGS & REMINDERS

Monday, April 22	-	6:15 p.m.	-	Committee of the Whole
Tuesday, April 23	-	7:00 pm.	-	Transportation Advisory Committee
Wednesday, April 24	-	7:00 p.m.	-	11 <sup>th</sup> Annual Earth Day Run at Forest Hill Park
Thursday, April 25	-	6:00 p.m.	-	Meet Your Police
Saturday, April 27	-	10:00 a.m.	-	HRRC Housing Fair

### UPCOMING EVENTS

Sunday, May 5	-	2:00 p.m.	-	WOW (Women Out Walking) Kickoff
	-	5:00 p.m.	-	Jason D. West Memorial Scholarship Mega Raffle (more info below)
Monday, May 6	-	2:00 p.m.	-	American Red Cross Blood Drive at the Community Center

### LEGISLATION

- Small Cell Regulation Amendment, *Second Reading*. This legislation amends Chapter 943 which regulates small cell wireless facilities, and wireless support structures in compliance with a Federal Communications Commission ruling.
- National Preservation Month. This legislation declares May 2019, *National Preservation Month*.

- GPD. This legislation authorizes the City Manager to enter into an agreement with GPD Group for administration and inspection services for the Meadowbrook Boulevard Reconstruction Project.
- Bike Month. This legislation proclaims (i) May 2019, *Bike Month*; (ii) May 8, 2019, *Bike to School Day*; (iii) May 13-19, 2019, *Bike to Work Week*; and (iv) May 17, 2019, *Bike to Work Day* in the City of Cleveland Heights.
- Erosion and Sediment Control. This legislation enacts Codified Ordinance Chapter 1334, Erosion and Sediment Control.
- Stormwater Management. This legislation sets forth comprehensive stormwater management regulations, repealing current Chapter 1335 of the Codified Ordinances, and adopting a replacement Chapter 1335, Stormwater Management.
- Illicit Discharge and Illegal Connection Control. This legislation enacts Chapter 1336 of the Codified Ordinances relating to Illicit Discharge and Illegal Connection Control.

#### UPDATES

- Refuse & Recycling Task Force (RRTF)

The Task Force met on Thursday. All materials will continue to be posted at <https://www.clevelandheights.com/1146/Refuse-and-Recycling-Task-Force>.

- Noble Roman

The Division of Liquor Control reviewed Noble Roman Inc.'s 2018-2019 renewal application for its Class C-1`-2 liquor permit and held a hearing on February 12, 2019 to determine if the permit should be renewed or not. The Division of Liquor Control issued its ruling and rejected Noble Roman's 2018 – 2019 renewal application for a liquor permit. The Division reasoned that renewal of their liquor permit will continue to burden police resources and substantially interfere with the public decency, sobriety, peace or good order in this neighborhood. Furthermore, Noble Roman continues to demonstrate a disregard of the laws, regulations or ordinances of this State. Noble Roman has 30 days to file an appeal to this ruling.

- Mega Raffle

The Annual Jason D. West Memorial Scholarship Mega Raffle will be held on Sunday, May 5, 2019 from 5:00 pm to 8:00 pm at Nighttown. All proceeds from the raffle go to the Officer Jason D. West Memorial Scholarship Fund.





# CLEVELAND HEIGHTS

## Committee of the Whole

**April 22, 2019**

### Agenda

1. Report of City Council Members 6:15 p.m. – 6:45 p.m.  
*Goal: Mayor and City Council members will provide updates on items of interest*
2. Legislation Discussion 6:45 p.m. – 6:50 p.m.  
*Goal: Review upcoming legislation*
3. Proposed Storm Water Ordinances 6:50 p.m. – 7:10 p.m.  
*Goal: Staff will present draft ordinances to comply Ohio EPA order*
4. Council Operating Guidelines Prep 7:10 p.m. – 7:20 p.m.  
*Goal: Council will discuss process to finalize the Council's Operating Guidelines*
5. 2018 Year End and 1Q2019 Financial Reports 7:20 p.m. – 7:35 p.m.  
*Goal: Staff will present the monthly financials for previous months*

# Memo

To: Tanisha Briley, City Manager  
From: Laurie Sabin  
Date: April 16, 2019  
Re: December 2018 Financial Statements

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Attached please find the December 2018 Unencumbered Balances Statement for All Funds and Review of General Fund Statement.

## **Review of General Fund Statement**

### **Revenue:**

As of December 31, 2018, General Fund revenues are \$393,157 lower than 2017. This is mainly comprised of an increase of \$124,422 in property taxes, a decrease of \$193,557 in income taxes, an increase of \$472,926 in landfill fees, an increase of \$156,063 in building services permits, and a decrease of \$1,083,718 in operating transfers in from the budget stabilization fund. As you know, in 2017, landfill fees were billed monthly in January and February and were billed quarterly thereafter. Year-to-date December 2018 landfill fees are at 91% of budget in comparison to 70% in prior year.

### **Expenditures:**

Total General Fund expenditures are at 95% of the budgeted amount and were 104% of the total yearly expenditures for December 2017. December 2018 total General Fund expenditures are \$1,060,187 higher than prior year. This total increase is the combination of personal services expense increases of \$175,153 and other than personal services expense increases of \$885,037.

December 2018 personal services are \$175,173 higher than prior year and are at 98% of the 2018 budgeted amount. As previously explained, this increase is the combination of a decrease in personal services and, due to decreased prefunding in 2018, increases in Workers Compensation and hospitalization. Salaries are \$1,184,824 lower than prior year. Workers Compensation was not prefunded in 2018 and is \$391,304 higher than prior year. Hospitalization was prefunded \$1,000,000 in 2017 and \$500,000 in 2018 and is \$1,194,695 higher than prior year.

Expenses other than personal services as of December 2018 are \$885,037 higher in comparison to prior year. December 2018 encumbrances are \$444,239 lower than prior year. Expenditures are \$1,329,276 higher than prior year mainly due to differences in budgeted transfer amounts of \$628,913 for Joint Dispatch, increased transfer amounts for Police pension of \$244,357, increased transfer amounts for Fire pension of \$235,989, and increased Building Department outside contractual labor for Safebuilt, Ohio LLC services of \$130,345.

UNENCUMBERED BALANCES FOR ALL FUNDS  
AS OF 12/31/18  
Unadjusted for Revenue and Expense

FUND NUMBER	FUND NAME	UNENCUMBERED BALANCE AS ADJUSTED AS OF 1/1/18	YTD CREDITS	YTD DEBITS	ESTIMATED UNENCUMBERED BALANCE 12/31/2018
101	GENERAL	\$6,551,676	\$45,810,739	\$45,861,748	\$6,500,668
102	BUDGET STABILIZATION ACCOUNT	\$1,100,000	\$0	\$0	\$1,100,000
201	STREET CONSTRUCTION	\$2,088	\$1,794,165	\$1,791,013	\$5,240
202	FOUNDATION GRANTS	\$11,951	\$173,484	\$21,749	\$163,686
203	FIRST SUBURBS CONSORTIUM	\$82,238	\$0	\$0	\$82,238
204	COMMUNICATION SYSTEMS OPERATION	\$195,288	\$1,022,285	\$1,079,701	\$137,872
205	PUBLIC WORKS FACILITY IMPROVEMENT	\$0	\$0	\$0	\$0
206	LAW ENFORCEMENT TRUST	\$363,814	\$34,561	\$33,806	\$364,569
207	DRUG LAW ENFORCEMENT TRUST	\$16,140	\$116,054	\$128,001	\$4,193
208	CDBG RESOURCE	\$64	\$1,820,642	\$1,820,255	\$451
210	EPA BROWNFIELD GRANT	\$0	\$0	\$0	\$0
211	HOME PROGRAM	\$26,200	\$217,714	\$143,022	\$100,892
212	FEMA	\$101,668	\$288,300	\$213,914	\$176,054
213	POLICE FACILITY IMPROVEMENT	\$41,317	\$28,480	\$32,540	\$37,257
214	LOCAL TV PROGRAMMING	\$1,084,350	\$538,458	\$529,455	\$1,093,352
215	CAIN PARK	\$13,085	\$962,793	\$975,878	\$0
216	RECREATION FACILITY IMPROVEMENT	\$456,783	\$555,410	\$726,459	\$285,734
217	PUBLIC RIGHT OF WAY	\$122,267	\$34,689	\$0	\$156,956
221	INDIGENT DUI TREATMENT	\$225,860	\$18,869	\$0	\$244,729
222	MUNICIPAL COURT COMPUTERIZATION	\$15,316	\$172,733	\$188,049	(\$0)
223	DUI - ENFORCEMENT/EDUCATION	\$107,013	\$5,033	\$0	\$112,046
225	MUNI COURT - SPECIAL PROJECTS	\$1,925,865	\$109,698	\$63,385	\$1,972,178
226	LEAD SAFE PROGRAM - CUYAHOGA CNTY	\$6,600	\$331,102	\$207,827	\$129,875
227	NEIGHBORHOOD STABILIZATION PRGM	\$123,599	\$0	\$0	\$123,599
230	STREET LIGHTING	\$723,402	\$1,123,582	\$919,552	\$927,432
231	TREE FUND	\$585,101	\$982,730	\$98,905	\$1,468,926
232	POLICE PENSION	(\$51,553)	\$1,378,856	\$1,066,805	\$260,498
233	FIRE PENSION	(\$75,025)	\$1,645,206	\$1,570,181	(\$0)
234	EARNED BENEFITS	\$236,674	\$747,607	\$747,607	\$236,674
237	FIRST SUBURBS DEVELOPMENT COUNCIL	\$57,752	\$0	\$0	\$57,752
301	G.O. BOND RETIREMENT	\$2,148,196	\$1,311,226	\$1,730,235	\$1,729,187
402	FINANCED CAPITAL PROJECTS	\$672,418	\$584,349	\$1,256,767	(\$0)
411	ECONOMIC DEVELOPMENT	\$1,453,827	\$210,196	\$177,412	\$1,486,611
412	CITY HALL MAINTENANCE AND REPAIR	\$63,031	\$27,658	\$7,518	\$83,171
415	SEVERANCE RING ROAD RECONSTRUCTION	\$35,045	\$0	\$0	\$35,045
601	WATER	\$2,359,056	\$539,174	\$1,128,138	\$1,770,091
602	SEWER	\$244,790	\$4,499,362	\$3,585,377	\$1,158,775
603	PARKING	\$462,470	\$1,041,882	\$770,414	\$733,938
606	AMBULANCE SERVICES	\$1,352,098	\$904,148	\$495,372	\$1,760,874
701	HOSPITALIZATION	\$500,000	\$0	\$500,000	\$0
703	WORKERS COMPENSATION	\$194,768	\$0	\$0	\$194,768
804	OFFICE ON AGING	\$9,209	\$6,408	\$7,456	\$8,161
808	YOUTH RECREATION SCHOLARSHIP	\$38,511	\$11,613	\$0	\$50,124
809	POLICE MEMORIAL TRUST FUND	\$10,608	\$0	\$0	\$10,608
810	YOUTH ADVISORY COMMISSION	\$71	\$0	\$0	\$71
811	JUVENILE DIVERSION PROGRAM	\$4,465	\$5,600	\$6,268	\$3,797
857	SALES TAX	\$346	\$54	\$13	\$387
858	MISCELLANEOUS AGENCY	\$330,522	\$184,502	\$91,260	\$423,764
864	NEORS	\$0	\$5,602	\$2	\$5,600
TOTALS		\$23,928,964	\$69,244,962	\$67,976,084	\$25,197,842

**CITY OF CLEVELAND HEIGHTS  
REVIEW OF GENERAL FUND  
AT DECEMBER 31, 2018**

<b>REVENUES:</b>	12/31/2017 Actual	2018 Budget	12/31/2018 Actual	Percentage 2018 Budget	Difference 2018 vs 2017
Property Taxes	\$6,597,397	\$6,500,000	\$6,721,818	103%	\$124,422
Municipal Income Tax	\$27,770,905	\$26,875,000	\$27,660,803	103%	(\$110,102)
Other Local Taxes	\$57,636	\$90,000	\$53,020	59%	(\$4,616)
State Levied/Shared Taxes	\$1,425,910	\$1,479,000	\$1,455,809	98%	\$29,899
Intergovernmental Grants & Contracts	\$951,915	\$915,000	\$921,095	101%	(\$30,820)
Charges For Services	\$2,700,915	\$3,300,000	\$3,082,435	93%	\$381,520
Fees, Licenses, Permits	\$2,287,185	\$1,810,000	\$2,372,423	131%	\$85,239
Interest Earnings	\$242,877	\$50,000	\$379,304	759%	\$136,427
Fines and Forfeitures	\$1,791,182	\$1,610,000	\$1,811,449	113%	\$20,267
All Other Revenue	\$2,335,502	\$1,165,000	\$1,305,883	112%	(\$1,029,620)
Sale of Assets	\$42,473	\$10,000	\$46,700	467%	\$4,227
<b>Total Revenues</b>	<b>\$46,203,896</b>	<b>\$43,804,000</b>	<b>\$45,810,739</b>	<b>105%</b>	<b>(\$393,157)</b>

**EXPENDITURES:**

<b>Community Services</b>	12/31/2017 Actual	2018 Budget	12/31/2018 Actual	Percentage 2018 Budget	Difference 2018 vs 2017
Commission on Aging	\$0	\$250	\$0	0%	\$0
Community Relations Personal Services	\$48,169	\$53,888	\$49,828	92%	\$1,658
Community Relations Other	\$4,395	\$11,566	\$11,047	96%	\$6,653
Public Relations Personal Services	\$156,698	\$216,027	\$214,898	99%	\$58,201
Public Relations Other	\$30,153	\$107,000	\$85,085	80%	\$54,931
Community Services Admin Personal Services	\$263,827	\$244,152	\$207,431	85%	(\$56,396)
Community Services Administration Other	\$580	\$6,600	\$3,720	56%	\$3,140
Public Health Administration	\$182,574	\$208,529	\$202,219	97%	\$19,645
<b>Total Community Services</b>	<b>\$686,396</b>	<b>\$848,002</b>	<b>\$774,228</b>	<b>91%</b>	<b>\$87,832</b>

**Parks and Recreation**

Parks & Recreation Commission Personal Services	\$254,237	\$251,109	\$240,308	96%	(\$13,930)
Parks & Recreation Commission Other	\$27,211	\$28,060	\$27,023	96%	(\$188)
Swimming Pools Personal Services	\$278,197	\$286,882	\$286,882	100%	\$8,685
Swimming Pools Other	\$34,816	\$77,181	\$77,181	100%	\$42,365
Cain Park Transfer	\$95,000	\$160,000	\$160,000	100%	\$65,000
Ice Programs Personal Services	\$221,603	\$222,831	\$222,828	100%	\$1,225
Ice Programs Other	\$16,091	\$26,230	\$20,018	76%	\$3,927
General Recreation Programs Personal Services	\$92,010	\$125,385	\$87,048	69%	(\$4,962)
General Recreation Programs Other	\$13,863	\$44,247	\$35,867	81%	\$22,005
Sports Programs Personal Services	\$122,823	\$126,246	\$113,993	90%	(\$8,830)
Sports Programs Other	\$92,564	\$106,000	\$77,197	73%	(\$15,366)
Community Center Personal Services	\$512,297	\$454,982	\$461,143	101%	(\$51,154)
Community Center Other	\$432,786	\$494,339	\$348,015	70%	(\$84,770)
Office on Aging Personal Services	\$138,791	\$144,746	\$143,697	99%	\$4,907
Office on Aging Other	\$30,575	\$34,469	\$28,885	84%	(\$1,691)
<b>Total Parks and Recreation</b>	<b>\$2,362,864</b>	<b>\$2,582,707</b>	<b>\$2,330,086</b>	<b>90%</b>	<b>(\$32,778)</b>

**Finance Department**

Finance Department Personal Services	\$379,997	\$439,813	\$382,880	87%	\$2,883
Finance Department Other	\$110,258	\$138,454	\$69,072	50%	(\$41,186)
Income Tax	\$943,052	\$991,500	\$973,319	98%	\$30,267
<b>Total Finance Department</b>	<b>\$1,433,307</b>	<b>\$1,569,767</b>	<b>\$1,425,271</b>	<b>91%</b>	<b>(\$8,036)</b>

**Planning & Development**

Landmark Commission	\$30	\$4,150	\$614	15%	\$584
Planning Department Personal Services	\$408,512	\$395,477	\$393,910	100%	(\$14,602)
Planning Department Other	\$13,824	\$19,641	\$15,594	79%	\$1,771
Planning Commission Personal Services	\$6,556	\$8,370	\$4,844	58%	(\$1,712)
Planning Commission Other	\$1,114	\$3,250	\$1,943	60%	\$828
Architectural Board of Review Personal Services	\$6,184	\$8,738	\$6,555	75%	\$371
Architectural Board of Review Other	\$442	\$800	\$155	19%	(\$286)
Board of Zoning Appeals Personal Services	\$3,592	\$5,738	\$4,129	72%	\$537
Board of Zoning Appeals Other	\$906	\$3,215	\$2,092	65%	\$1,186
<b>Total Planning &amp; Development</b>	<b>\$441,159</b>	<b>\$449,379</b>	<b>\$429,836</b>	<b>96%</b>	<b>(\$11,324)</b>

**PAGE 2**  
**CITY OF CLEVELAND HEIGHTS**  
**REVIEW OF GENERAL FUND**  
**AT DECEMBER 31, 2018**

	12/31/2017	2018	12/31/2018	Percentage	Difference
<b>Public Safety</b>	Actual	Budget	Actual	2018 Budget	2018 vs 2017
Traffic Signs & Signals Personal Services	\$58,221	\$58,155	\$56,400	97%	(\$1,821)
Traffic Signs & Signals Other	\$134,276	\$186,754	\$185,933	100%	\$51,657
Police Administration Personal Services	\$8,622,477	\$8,535,705	\$8,204,868	96%	(\$417,609)
Police Administration Other	\$1,354,595	\$1,482,104	\$1,574,036	106%	\$219,442
Police Academy Personal Services	\$3,974	\$4,600	\$1,109	24%	(\$2,865)
Police Academy Other	\$71,994	\$86,000	\$70,984	83%	(\$1,011)
Police Vehicle Maintenance Personal Services	\$0	\$0	\$0	- -	\$0
Police Vehicle Maintenance Other	\$0	\$0	\$0	- -	\$0
Fire Administration Personal Services	\$6,815,305	\$6,462,445	\$6,430,447	100%	(\$384,858)
Fire Administration Other	\$1,372,055	\$1,703,410	\$1,675,735	98%	\$303,681
Joint Dispatch (Transfer)	\$444,000	\$1,072,913	\$1,072,913	100%	\$628,913
Fire Prevention Personal Services	\$114,236	\$152,542	\$149,110	98%	\$34,874
Fire Prevention Other	\$1,562	\$1,096	\$1,081	99%	(\$481)
Building Department Personal Services	\$7,940	\$0	\$0	- -	(\$7,940)
Building Department Other	\$359,937	\$512,250	\$511,719	100%	\$151,782
Housing Inspections Personal Services	\$506,157	\$513,019	\$512,943	100%	\$6,786
Housing Inspections Other	\$39,543	\$51,329	\$43,992	86%	\$4,449
Street Lighting (Transfer)	\$18,600	\$19,400	\$19,400	100%	\$800
Animal Control Personal Services	\$74,957	\$76,237	\$72,328	95%	(\$2,628)
Animal Control Other	\$22,385	\$32,000	\$28,000	88%	\$5,615
<b>Total Public Safety</b>	<b>\$20,022,214</b>	<b>\$20,949,959</b>	<b>\$20,610,999</b>	<b>98%</b>	<b>\$588,785</b>

**Public Works**

Service Administration Personal Services	\$376,972	\$319,216	\$319,198	100%	(\$57,774)
Service Administration Other	\$1,892	\$2,978	\$2,670	90%	\$778
Capital Projects Administration Personal Services	\$0	\$0	\$0	0%	\$0
Capital Projects Administration Other	\$21,150	\$43,500	\$31,000	71%	\$9,850
Refuse Collection Personal Services	\$1,731,891	\$1,607,346	\$1,585,773	99%	(\$146,118)
Refuse Collection Other	\$505,239	\$595,377	\$522,223	88%	\$16,984
Vehicle Maintenance Personal Services	\$765,281	\$806,168	\$786,050	98%	\$20,769
Vehicle Maintenance Other	\$1,246,908	\$1,606,174	\$1,340,667	83%	\$93,759
Street Maintenance Personal Services	\$1,246,914	\$1,159,635	\$1,152,680	99%	(\$94,234)
Street Maintenance Other	\$95,464	\$201,857	\$100,068	50%	\$4,604
Public Properties & Park Maint Personal Services	\$1,229,244	\$1,124,310	\$1,124,307	100%	(\$104,937)
Public Properties & Park Maintenance Other	\$956,383	\$1,072,259	\$1,068,642	100%	\$112,258
Forestry (Transfer)	\$22,264	\$24,300	\$24,300	100%	\$2,036
<b>Total Public Works</b>	<b>\$8,199,602</b>	<b>\$8,563,120</b>	<b>\$8,057,579</b>	<b>94%</b>	<b>(\$142,024)</b>

**General Government**

City Council Personal Services	\$79,765	\$77,951	\$77,884	100%	(\$1,881)
City Council Other	\$5,896	\$10,349	\$9,656	93%	\$3,760
City Manager Personal Services	\$483,935	\$441,240	\$437,624	99%	(\$46,311)
City Manager Other	\$13,311	\$19,223	\$17,377	90%	\$4,066
Civil Service Commission Personal Services	\$1,619	\$2,611	\$2,242	86%	\$623
Civil Service Commission Other	\$12,519	\$12,435	\$10,345	83%	(\$2,174)
General Operations Personal Services	\$59,327	\$450,633	\$440,033	98%	\$380,706
General Operations Other	\$1,071,469	\$3,727,465	\$762,248	20%	(\$309,221)
Management Information Systems Personal Services	\$365,097	\$245,344	\$334,423	136%	(\$30,674)
Management Information Systems Other	\$91,979	\$307,914	\$102,356	33%	\$10,377
County Fiscal Officer Deductions	\$202,227	\$233,589	\$208,074	89%	\$5,846
Law Department Personal Services	\$495,199	\$475,855	\$474,221	100%	(\$20,979)
Law Department Other	\$276,564	\$329,560	\$328,975	100%	\$52,411
Special Improvement Districts	\$342,627	\$351,131	\$347,255	99%	\$4,627
Municipal Court Personal Services	\$1,079,210	\$1,039,343	\$1,009,657	97%	(\$69,553)
Municipal Court Other	\$108,197	\$191,635	\$114,311	60%	\$6,113
<b>Total General Government</b>	<b>\$4,688,941</b>	<b>\$7,916,278</b>	<b>\$4,676,679</b>	<b>59%</b>	<b>(\$12,263)</b>

PAGE 3  
 CITY OF CLEVELAND HEIGHTS  
 REVIEW OF GENERAL FUND  
 AT DECEMBER 31, 2018

Other	12/31/2017 Actual	2018 Budget	12/31/2018 Actual	Percentage 2018 Budget	Difference 2018 vs 2017
Transfers & Advances	\$3,183,249	\$500,000	\$2,578,549	516%	(\$604,700)
Hospitalization	\$3,784,704	\$4,979,499	\$4,979,399	100%	\$1,194,695
<b>Total Other</b>	<b>\$6,967,953</b>	<b>\$5,479,499</b>	<b>\$7,557,948</b>	<b>138%</b>	<b>\$589,995</b>
<b>TOTAL GENERAL FUND EXPENDITURES</b>	<b>\$44,802,436</b>	<b>\$48,358,711</b>	<b>\$45,862,626</b>	<b>95%</b>	<b>\$1,060,187</b>
Excess Revenue Over/(Under) Expenses	\$1,401,460		(\$51,887)		
Unencumbered Balance 1/1/18 vs 1/1/17	\$3,857,077		\$6,272,206		
ADD:					
Balance of Previous Year Purchase Orders Voided in Current Fiscal Year					
Estimated Unencumbered Balance	\$5,258,537		\$6,220,319		
Total Personal Services	\$30,795,919	\$31,516,237	\$30,971,071	98%	\$175,153
Total OTPS	\$14,006,518	\$16,842,474	\$14,891,554	88%	\$885,037

# Memo

To: Tanisha Briley, City Manager  
From: Laurie Sabin  
Date: April 16, 2019  
Re: March 2019 Financial Statements

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Attached please find the March 2019 Unencumbered Balances Statement for All Funds and Review of General Fund Statement.

## **Review of General Fund Statement**

### **Revenue:**

As of March 31, 2019, General Fund revenues are \$211,850 lower than 2018. This is mainly comprised of a decrease of \$515,746 in property taxes, an increase of \$321,572 in income taxes, and an increase of \$114,565 in other revenue. The other revenue increase includes the following special assessments collected by Cuyahoga County: Landfill \$150,117, nuisance abatement and grass cutting \$27,300, and police action \$1,308.

### **Expenditures:**

Total general fund expenditures are at 25% of the budgeted amount and were 25% of the total yearly expenditures for March 2018. March 2019 total general fund expenditures are \$51,183 lower than prior year. This total decrease is the combination of personal services expense decreases of \$362,004 and other than personal services expense increases of \$310,821.

March 2019 personal services are \$362,004 lower than prior year and are at 21% of the 2019 budgeted amount. This decrease is mainly due to the timing of payment for Workers Compensation.

Expenses other than personal services as of March 2019 are \$310,821 higher in comparison to prior year and are at 33% of the 2019 budgeted amount. This increase is mainly due to encumbrances being higher than prior year for Police Administration, Fire Administration and Special Improvement Districts and timing in the billing of Income Tax collection costs and contractual expenses.

**UNENCUMBERED BALANCES FOR ALL FUNDS  
AS OF 3/31/19  
Unadjusted for Revenue and Expense**

<b>FUND NUMBER</b>	<b>FUND NAME</b>	<b>UNENCUMBERED BALANCE AS ADJUSTED AS OF 1/1/18</b>	<b>YTD CREDITS</b>	<b>YTD DEBITS</b>	<b>ESTIMATED UNENCUMBERED BALANCE 3/31/2018</b>
101	GENERAL	\$6,499,790	\$12,311,933	\$10,825,209	\$7,986,514
102	BUDGET STABILIZATION ACCOUNT	\$1,100,000	\$0	\$0	\$1,100,000
201	STREET CONSTRUCTION	\$5,240	\$375,030	\$73,484	\$306,786
202	FOUNDATION GRANTS	\$163,686	\$23,475	\$0	\$187,161
203	FIRST SUBURBS CONSORTIUM	\$82,238	\$0	\$5	\$82,233
204	COMMUNICATION SYSTEMS OPERATION	\$137,872	\$255,571	\$318,237	\$75,206
205	PUBLIC WORKS FACILITY IMPROVEMENT	\$0	\$0	\$0	\$0
206	LAW ENFORCEMENT TRUST	\$364,569	\$0	\$22,451	\$342,118
207	DRUG LAW ENFORCEMENT TRUST	\$4,193	\$11,710	\$66,956	(\$51,052)
208	CDBG RESOURCE	\$451	\$396,369	\$390,752	\$6,068
210	EPA BROWNFIELD GRANT	\$0	\$0	\$0	\$0
211	HOME PROGRAM	\$100,892	\$43,805	\$66,910	\$77,787
212	FEMA	\$176,054	\$21,671	\$44,545	\$153,180
213	POLICE FACILITY IMPROVEMENT	\$37,257	\$5,865	\$5,500	\$37,622
214	LOCAL TV PROGRAMMING	\$1,093,352	\$132,896	\$186,095	\$1,040,153
215	CAIN PARK	\$0	\$43,088	\$26,665	\$16,423
216	RECREATION FACILITY IMPROVEMENT	\$285,734	\$219,000	\$180,407	\$324,327
217	PUBLIC RIGHT OF WAY	\$156,956	\$6,309	\$0	\$163,265
221	INDIGENT DUI TREATMENT	\$244,729	\$3,386	\$0	\$248,115
222	MUNICIPAL COURT COMPUTERIZATION	\$0	\$15,180	\$0	\$15,180
223	DUI - ENFORCEMENT/EDUCATION	\$112,046	\$1,479	\$0	\$113,525
225	MUNI COURT - SPECIAL PROJECTS	\$1,972,178	\$25,253	\$11,304	\$1,986,127
226	LEAD SAFE PROGRAM - CUYAHOGA CNTY	\$129,875	\$107,712	\$61,575	\$176,012
227	NEIGHBORHOOD STABILIZATION PRGM	\$123,599	\$0	\$0	\$123,599
230	STREET LIGHTING	\$927,432	\$514,507	\$209,084	\$1,232,855
231	TREE FUND	\$1,468,926	\$603,198	\$554,552	\$1,517,572
232	POLICE PENSION	\$260,498	\$315,220	\$426,616	\$149,102
233	FIRE PENSION	\$0	\$396,315	\$580,107	(\$183,793)
234	EARNED BENEFITS	\$236,674	\$0	\$50,015	\$186,659
237	FIRST SUBURBS DEVELOPMENT COUNCIL	\$57,752	\$0	\$0	\$57,752
301	G.O. BOND RETIREMENT	\$1,729,187	\$547,519	\$0	\$2,276,706
402	FINANCED CAPITAL PROJECTS	\$0	\$13,473	\$0	\$13,473
411	ECONOMIC DEVELOPMENT	\$1,486,611	\$11,258	\$105,636	\$1,392,233
412	CITY HALL MAINTENANCE AND REPAIR	\$83,171	\$4,255	\$13,197	\$74,229
415	SEVERANCE RING ROAD RECONSTRUCTION	\$35,045	\$0	\$0	\$35,045
601	WATER	\$1,770,091	\$41,540	\$178,271	\$1,633,360
602	SEWER	\$1,158,775	\$1,198,827	\$1,171,178	\$1,186,424
603	PARKING	\$733,938	\$229,233	\$342,081	\$621,091
606	AMBULANCE SERVICES	\$1,760,874	\$220,127	\$114,100	\$1,866,901
701	HOSPITALIZATION	\$0	\$0	\$481,712	(\$481,712)
703	WORKERS COMPENSATION	\$194,768	\$0	\$0	\$194,768
804	OFFICE ON AGING	\$8,161	\$1,889	\$5,047	\$5,002
808	YOUTH RECREATION SCHOLARSHIP	\$50,124	\$1,700	\$3,874	\$47,951
809	POLICE MEMORIAL TRUST FUND	\$10,608	\$1,200	\$0	\$11,808
810	YOUTH ADVISORY COMMISSION	\$71	\$0	\$0	\$71
811	JUVENILE DIVERSION PROGRAM	\$3,797	\$2,800	\$529	\$6,068
857	SALES TAX	\$387	\$5	\$0	\$392
858	MISCELLANEOUS AGENCY	\$423,764	\$223,999	\$21,193	\$626,570
864	NEORS	\$5,600	\$0	\$0	\$5,600
<b>TOTALS</b>		<b>\$25,196,966</b>	<b>\$18,326,796</b>	<b>\$16,537,287</b>	<b>\$26,986,474</b>

**CITY OF CLEVELAND HEIGHTS  
REVIEW OF GENERAL FUND  
AT MARCH 31, 2019**

<b>REVENUES:</b>	3/31/2018 Actual	12/31/2018 Actual	Percentage 2018 Actual	2019 Budget	3/31/2019 Actual	Percentage 2019 Budget	Difference 2019 vs 2018
Property Taxes	\$3,796,327	\$6,597,397	58%	\$6,500,000	\$3,280,581	50%	(\$515,746)
Municipal Income Tax	\$6,171,927	\$27,770,905	22%	\$26,875,000	\$6,493,499	24%	\$321,572
Other Local Taxes	\$17,650	\$57,636	31%	\$90,000	\$16,608	18%	(\$1,042)
State Levied/Shared Taxes	\$357,245	\$1,425,910	25%	\$1,479,000	\$352,423	24%	(\$4,822)
Intergovernmental Grants & Contracts	\$2,401	\$951,915	0%	\$915,000	\$3,380	0%	\$979
Charges For Services	\$771,722	\$2,700,905	29%	\$3,300,000	\$746,028	23%	(\$25,694)
Fees, Licenses, Permits	\$552,069	\$2,287,185	24%	\$1,810,000	\$515,147	28%	(\$36,922)
Interest Earnings	\$74,440	\$242,877	31%	\$50,000	\$123,510	247%	\$49,070
Fines and Forfeitures	\$447,821	\$1,791,183	25%	\$1,780,000	\$378,374	21%	(\$69,447)
All Other Revenue	\$279,753	\$2,870,512	10%	\$1,147,000	\$402,383	35%	\$122,630
Sale of Assets	\$44,362	\$42,473	104%	\$10,000	\$0	0%	(\$44,362)
<b>Total Revenues</b>	<b>\$12,515,717</b>	<b>\$46,738,896</b>	<b>27%</b>	<b>\$43,956,000</b>	<b>\$12,311,932</b>	<b>28%</b>	<b>(\$203,785)</b>

**EXPENDITURES:**

<b>Community Services</b>	3/31/2018 Actual	12/31/2018 Actual	Percentage 2017 Actual	2019 Budget	3/31/2019 Actual	Percentage 2019 Budget	Difference 2019 vs 2018
Commission on Aging	\$0	\$0	- -	\$250	\$0	0%	\$0
Community Relations Personal Services	\$9,348	\$48,169	19%	\$43,034	\$11,208	26%	\$1,860
Community Relations Other	\$1,046	\$11,872	9%	\$21,641	\$4,743	22%	\$3,696
Public Relations Personal Services	\$48,795	\$156,698	31%	\$213,027	\$49,273	23%	\$478
Public Relations Other	\$24,427	\$68,747	36%	\$107,531	\$27,904	26%	\$3,477
Community Services Admin Personal Services	\$46,839	\$272,950	17%	\$244,152	\$47,465	19%	\$626
Community Services Administration Other	\$0	\$589	0%	\$6,794	\$100	1%	\$100
Public Health Administration	\$105,425	\$183,174	58%	\$222,114	\$111,092	50%	\$5,668
<b>Total Community Services</b>	<b>\$235,880</b>	<b>\$742,198</b>	<b>32%</b>	<b>\$858,543</b>	<b>\$251,785</b>	<b>29%</b>	<b>\$15,904</b>

**Parks and Recreation**

Parks & Recreation Commission Personal Services	\$54,089	\$254,237	21%	\$236,564	\$54,157	23%	\$68
Parks & Recreation Commission Other	\$3,628	\$27,860	13%	\$34,641	\$5,106	15%	\$1,478
Swimming Pools Personal Services	\$3,950	\$278,197	1%	\$257,721	\$6,982	3%	\$3,032
Swimming Pools Other	\$15,608	\$35,184	44%	\$47,752	\$4,228	9%	(\$11,380)
Cain Park Transfer	\$20,000	\$95,000	21%	\$80,000	\$20,000	25%	\$0
Ice Programs Personal Services	\$68,032	\$221,603	31%	\$218,211	\$67,583	31%	(\$449)
Ice Programs Other	\$6,546	\$16,265	40%	\$24,455	\$2,717	11%	(\$3,829)
General Recreation Programs Personal Services	\$19,974	\$92,010	22%	\$130,632	\$17,433	13%	(\$2,541)
General Recreation Programs Other	\$4,489	\$27,613	16%	\$35,806	\$15,699	44%	\$11,211
Sports Programs Personal Services	\$16,805	\$122,823	14%	\$116,246	\$15,603	13%	(\$1,202)
Sports Programs Other	\$27,766	\$92,448	30%	\$109,987	\$24,386	22%	(\$3,380)
Community Center Personal Services	\$96,492	\$512,297	19%	\$499,420	\$138,598	28%	\$42,106
Community Center Other	\$135,722	\$425,476	32%	\$512,718	\$164,139	32%	\$28,417
Office on Aging Personal Services	\$29,648	\$138,791	21%	\$132,152	\$33,147	25%	\$3,499
Office on Aging Other	\$25,357	\$30,344	84%	\$41,697	\$29,426	71%	\$4,069
<b>Total Parks and Recreation</b>	<b>\$528,106</b>	<b>\$2,370,147</b>	<b>22%</b>	<b>\$2,478,002</b>	<b>\$599,206</b>	<b>24%</b>	<b>\$71,100</b>

**Finance Department**

Finance Department Personal Services	\$94,749	\$379,997	25%	\$453,113	\$86,503	19%	(\$8,246)
Finance Department Other	\$49,299	\$123,662	40%	\$83,929	\$57,344	68%	\$8,045
Income Tax	\$161,616	\$938,637	17%	\$901,500	\$301,872	33%	\$140,256
<b>Total Finance Department</b>	<b>\$305,664</b>	<b>\$1,442,296</b>	<b>21%</b>	<b>\$1,438,542</b>	<b>\$445,719</b>	<b>31%</b>	<b>\$140,055</b>

**Planning & Development**

Landmark Commission	\$0	\$35	0%	\$4,150	\$12,098	292%	\$12,098
Planning Department Personal Services	\$88,460	\$408,512	22%	\$92,397	\$92,397	100%	\$3,937
Planning Department Other	\$1,357	\$13,873	10%	\$309,363	\$7,525	2%	\$6,167
Planning Commission Personal Services	\$581	\$6,394	9%	\$7,670	\$969	13%	\$388
Planning Commission Other	\$400	\$856	47%	\$4,419	\$1,205	27%	\$804
Architectural Board of Review Personal Services	\$1,435	\$6,346	23%	\$5,478	\$1,938	35%	\$503
Architectural Board of Review Other	\$50	\$280	18%	\$1,135	\$50	4%	\$0
Board of Zoning Appeals Personal Services	\$1,163	\$3,592	32%	\$5,478	\$1,066	19%	(\$97)
Board of Zoning Appeals Other	\$240	\$910	26%	\$4,957	\$1,195	24%	\$955
<b>Total Planning &amp; Development</b>	<b>\$93,686</b>	<b>\$440,799</b>	<b>21%</b>	<b>\$435,047</b>	<b>\$118,441</b>	<b>27%</b>	<b>\$24,755</b>

PAGE 2  
 CITY OF CLEVELAND HEIGHTS  
 REVIEW OF GENERAL FUND  
 AT MARCH 31, 2019

	3/31/2018	12/31/2018	Percentage	2019	3/31/2019	Percentage	Difference
<b>Public Safety</b>	Actual	Actual	2018 Actual	Budget	Actual	2019 Budget	2019 vs 2018
Traffic Signs & Signals Personal Services	\$12,631	\$58,221	22%	\$58,155	\$12,573	22%	(\$58)
Traffic Signs & Signals Other	\$71,532	\$134,277	53%	\$146,873	\$98,878	67%	\$27,346
Police Administration Personal Services	\$1,989,905	\$8,606,833	23%	\$8,535,705	\$1,953,203	23%	(\$36,702)
Police Administration Other	\$459,376	\$1,349,765	34%	\$1,459,171	\$501,004	34%	\$41,628
Police Academy Personal Services	\$0	\$3,974	0%	\$4,500	\$830	18%	\$830
Police Academy Other	\$44,346	\$69,512	64%	\$89,500	\$39,057	44%	(\$5,290)
Police Vehicle Maintenance Personal Services	\$0	\$0	- -	\$0	\$0	- -	\$0
Police Vehicle Maintenance Other	\$219	\$878	25%	\$0	\$219	- -	\$0
Fire Administration Personal Services	\$1,502,339	\$6,780,787	22%	\$6,372,431	\$1,508,781	24%	\$6,441
Fire Administration Other	\$340,009	\$1,369,351	25%	\$1,917,612	\$397,775	21%	\$57,766
Joint Dispatch (Transfer)	\$255,571	\$444,000	58%	\$1,066,078	\$266,520	25%	\$10,949
Fire Prevention Personal Services	\$3,044	\$113,387	3%	\$94,580	\$29,414	31%	\$26,370
Fire Prevention Other	\$1,399	\$1,613	87%	\$6,200	\$460	7%	(\$939)
Building Department Personal Services	\$0	\$7,940	0%	\$0	\$0	- -	\$0
Building Department Other	\$83,759	\$359,977	23%	\$511,700	\$85,823	17%	\$2,064
Housing Inspections Personal Services	\$114,871	\$506,157	23%	\$487,348	\$114,167	23%	(\$704)
Housing Inspections Other	\$8,333	\$40,421	21%	\$88,273	\$8,577	10%	\$244
Street Lighting (Transfer)	\$4,650	\$18,600	25%	\$18,600	\$4,650	25%	\$0
Animal Control Personal Services	\$16,922	\$74,955	23%	\$71,237	\$18,312	26%	\$1,390
Animal Control Other	\$28,000	\$22,387	125%	\$29,688	\$30,000	101%	\$2,000
<b>Total Public Safety</b>	<b>\$4,936,906</b>	<b>\$19,963,033</b>	<b>404%</b>	<b>\$20,957,651</b>	<b>\$5,070,243</b>	<b>24%</b>	<b>\$133,337</b>

**Public Works**

Service Administration Personal Services	\$78,286	\$376,972	21%	\$45,084	\$45,084	100%	(\$33,202)
Service Administration Other	\$1,596	\$2,161	74%	\$265,907	\$487	0%	(\$1,110)
Capital Projects Administration Personal Services	\$0	\$0	- -	\$21,000	\$0	0%	\$0
Capital Projects Administration Other	\$21,000	\$21,150	99%	\$250	\$21,000	8400%	\$0
Refuse Collection Personal Services	\$370,011	\$1,731,891	21%	\$1,513,331	\$377,331	25%	\$7,320
Refuse Collection Other	\$162,660	\$504,193	32%	\$682,569	\$169,074	25%	\$6,414
Vehicle Maintenance Personal Services	\$179,726	\$765,281	23%	\$833,967	\$176,060	21%	(\$3,667)
Vehicle Maintenance Other	\$648,847	\$1,232,637	53%	\$1,422,185	\$467,277	33%	(\$181,570)
Street Maintenance Personal Services	\$289,167	\$1,247,185	23%	\$1,171,992	\$287,986	25%	(\$1,181)
Street Maintenance Other	\$14,844	\$88,886	17%	\$182,913	\$28,676	16%	\$13,832
Public Properties & Park Maint Personal Services	\$242,571	\$1,226,334	20%	\$953,887	\$250,428	26%	\$7,857
Public Properties & Park Maintenance Other	\$409,961	\$959,172	43%	\$1,259,529	\$360,306	29%	(\$49,655)
Forestry (Transfer)	\$4,650	\$26,405	18%	\$18,600	\$4,650	25%	\$0
<b>Total Public Works</b>	<b>\$2,423,320</b>	<b>\$8,182,267</b>	<b>30%</b>	<b>\$8,371,214</b>	<b>\$2,188,359</b>	<b>26%</b>	<b>(\$234,961)</b>

**General Government**

City Council Personal Services	\$17,973	\$80,765	22%	\$78,550	\$16,327	21%	(\$1,646)
City Council Other	\$3,900	\$5,610	70%	\$8,082	\$4,457	55%	\$557
City Manager Personal Services	\$101,331	\$483,935	21%	\$352,843	\$100,849	29%	(\$482)
City Manager Other	\$9,127	\$15,475	59%	\$102,582	\$20,278	20%	\$11,150
Civil Service Commission Personal Services	\$1,118	\$1,619	69%	\$1,096	\$0	0%	(\$1,118)
Civil Service Commission Other	\$1,445	\$12,519	12%	\$14,397	\$0	0%	(\$1,445)
General Operations Personal Services	\$511,235	\$59,327	862%	\$266,114	\$100,320	38%	(\$410,915)
General Operations Other	\$602,210	\$1,088,930	55%	\$819,900	\$604,329	74%	\$2,119
Management Information Systems Personal Services	\$75,389	\$365,097	21%	\$305,803	\$72,449	24%	(\$2,940)
Management Information Systems Other	\$53,758	\$89,719	60%	\$212,065	\$62,889	30%	\$9,131
County Fiscal Officer Deductions	\$96,344	\$202,227	48%	\$229,500	\$95,854	42%	(\$489)
Law Department Personal Services	\$104,200	\$495,199	21%	\$501,115	\$113,616	23%	\$9,416
Law Department Other	\$229,568	\$270,866	85%	\$317,857	\$261,050	82%	\$31,483
Special Improvement Districts	\$172,056	\$342,627	50%	\$371,961	\$248,267	67%	\$76,210
Municipal Court Personal Services	\$222,848	\$1,079,210	21%	\$1,039,343	\$243,007	23%	\$20,159
Municipal Court Other	\$24,007	\$109,842	22%	\$193,035	\$42,079	22%	\$18,072
<b>Total General Government</b>	<b>\$2,226,509</b>	<b>\$4,702,967</b>	<b>47%</b>	<b>\$4,814,243</b>	<b>\$1,985,770</b>	<b>41%</b>	<b>(\$240,738)</b>

PAGE 3  
CITY OF CLEVELAND HEIGHTS  
REVIEW OF GENERAL FUND  
AT MARCH 31, 2019

Other	3/31/2018 Actual	12/31/2018 Actual	Percentage 2018 Actual	2019 Budget	3/31/2019 Actual	Percentage 2019 Budget	Difference 2019 vs 2018
Transfers & Advances	\$125,000	\$2,695,356	5%	\$630,000	\$157,500	25%	\$32,500
Hospitalization	\$1,322	\$3,784,704	0%	\$4,079,277	\$8,187	0%	\$6,864
<b>Total Other</b>	<b>\$126,322</b>	<b>\$6,480,060</b>	<b>2%</b>	<b>\$4,709,277</b>	<b>\$165,687</b>	<b>4%</b>	<b>\$39,364</b>
<b>TOTAL GENERAL FUND EXPENDITURES</b>	<b>\$10,876,393</b>	<b>\$44,323,768</b>	<b>25%</b>	<b>\$44,062,519</b>	<b>\$10,825,210</b>	<b>25%</b>	<b>(\$51,183)</b>
Excess Revenue Over/(Under) Expenses	\$1,639,324	\$2,415,129			\$1,486,723		
Unencumbered Balance 1/1/19 vs 1/1/18	\$3,857,077	\$3,851,345			\$6,499,790		
ADD:							
Balance of Previous Year Purchase Orders Voided in Current Fiscal Year		\$5,732					
Estimated Unencumbered Balance	\$5,496,401	\$6,272,206			\$7,986,513		
Total Personal Services	\$6,415,250	\$30,752,387	21%	\$29,442,653	\$6,053,246	21%	(\$362,004)
Total OTPS	\$4,461,143	\$13,571,380	33%	\$14,619,866	\$4,771,963	33%	\$310,821

Proposed: 4/15/19

ORDINANCE NO. 29-2019 (SMS),  
*Second Reading*

By Council Member Yasinow

An Ordinance amending Chapter 943, “Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures,” of Part Nine, *Streets, Utilities and Public Services Code* of the Codified Ordinances of Cleveland Heights; and declaring an emergency.

WHEREAS, Substitute House Bill 478 (Sub. H.B. 478) took effect on August 1, 2018; and

WHEREAS, Sub. H.B. 478 amended Ohio Revised Code Chapter 4939 to provide, among other things, that municipalities must permit wireless service providers, cable providers, video service providers, and their designated agents to attach small cell wireless facilities to municipally owned support structures located in the right-of-way, including on utility poles, traffic signals, and street lights and to construct, maintain, modify, operate, or replace a wireless support structure in the right-of-way; and

WHEREAS, Sub. H.B. 478 contained provisions addressing the fees that local governments could charge to Facilities Operators for applications to install Small Cell Facilities in the public right-of-way and for attachment of Small Cell Facilities to municipally-owned wireless support structures, which fee amounts resulted from extensive discussions involving municipalities, the Ohio Municipal League, and wireless service providers including AT&T, Verizon Wireless and Sprint, and many comments and suggestions from electric utilities, cable television providers, and additional small cell facility owners and operators who supported the fee provisions as reasonable and acceptable; and

WHEREAS, Sub. H.B. 478 also revised ORC Chapter 4939 to authorize municipalities to adopt and enforce design guidelines applicable to small cell infrastructure deployments, provided that the guidelines must be reasonable, and written, and based upon objective criteria regarding (1) the location of ground-mounted small cell facilities; (2) the location of a small cell facility on a pole; (3) the appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, or landscaping; and (4) the design and appearance of wireless support structures including height limitations otherwise consistent with the statute; and

WHEREAS, this Council on July 16, 2018 adopted Ordinance No. 82-2018 creating a new Chapter 943 of the Codified Ordinances of the City of Cleveland Heights to regulate the use and occupancy of the public rights of way within the City for small cell wireless facilities and support structures as well as enacting design guidelines applicable to small cell wireless facilities and support structures pursuant to Sub. H.B. 478; and

ORDINANCE NO. 29-2019 (SMS)

WHEREAS, on September 27, 2018, the Federal Communications Commission released a Declaratory Ruling and Order known as the “Small Cell Order” that limits and revises state and local authority to manage and regulate certain small cell wireless installations within public rights-of-way nationwide, including local fees associated with such management and regulation, as well as the extent to which such regulations may deal with local aesthetic concerns, and preempts inconsistent state and local regulations; and

WHEREAS, the FCC in December 2018 denied local government-filed motions to stay the effective date of the Small Cell Order, which has been challenged in Court, such that the Order took effect on January 14, 2019; and

WHEREAS, this Council desires to amend its regulations applying to small cell facilities, new wireless support structures, and the persons and entities who desire to construct, operate, and maintain such facilities in the City together with its design guidelines applying to small cell facilities, including wireless support structures, found in Chapter 943, “Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures” of Part Nine, *Streets, Utilities and Public Services Code* of the Codified Ordinances of Cleveland Heights, to lawfully exercise municipal authority on this subject in a manner that is consistent with Ohio Revised Code Chapter 4939 and the FCC’s Small Cell Order.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Chapter 943, “Use of Public Ways for Small Cell Wireless Facilities and Wireless Support Structures” of Part Nine, *Streets, Utilities and Public Services Code* of the Codified Ordinances of Cleveland Heights shall be, and is hereby, enacted and adopted in its entirety to read as set forth in Exhibit A, attached hereto and fully incorporated herein. A complete copy of Exhibit A is also on file with the Clerk of Council.

SECTION 2. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to take immediate action to accommodate requests for Facilities permits filed pursuant to the FCC’s Small Cell Order which took effect on January 14, 2019. Wherefore, provided it receives the affirmative vote of five or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

ORDINANCE NO. 29-2019 (SMS)

---

CAROL ANN ROE, Mayor  
President of the Council

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SUANNA NIERMANN O'NEIL  
Acting Clerk of Council

PASSED:

# Exhibit A

## CHAPTER 943 USE OF PUBLIC WAYS FOR SMALL CELL WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES

### 943.01 OVERVIEW AND PURPOSE; DEFINITIONS; EFFECTIVE DATE

- (a) The purpose of this Chapter is to:
- (1) Protect the health, safety, and welfare of the residents of the City;
  - (2) Provide standards for the construction, installation, modification, operation, and removal of Facilities and Wireless Support Structures in the City's Right-of-Way to protect the health, safety, and welfare of the citizens of the City;
  - (3) Preserve the existing or intended character of the City, including the City's residential neighborhoods, commercial districts, other business districts and historic districts;
  - (4) Give guidance to wireless telecommunications providers to assist such companies in the timely, efficient, safe, and aesthetically pleasing installation of Facilities and Wireless Support Structures; and
  - (5) Comply with, and not conflict with or preempt, all applicable state and federal ~~laws.~~law; and
  - (6) Facilitate deployment of small cell Facilities and advanced wireless communications within the City in a manner that complies with the requirements of this Chapter and does not materially inhibit such deployment or the provision or availability of advanced wireless communications.

(b) For the purpose of this Chapter, and the interpretation and enforcement hereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

- (1) "Applicant" means any person or entity who submits an Application pursuant to this Chapter.

ORDINANCE NO. 29-2019 (SMS)

- (2) “Application” means all necessary documentation submitted by an Applicant to obtain a Small Cell Use Permit from the City to Collocate a Small Cell Facility and/or to construct, maintain, modify, operate, or replace a Wireless Support Structure.
- (3) “Accessory Equipment” means equipment used in conjunction with a Small Cell Facility and generally at the same location of the Small Cell Facility, including, but not limited to, electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, vertical cable runs and other appurtenances.
- (4) “City” means the City of Cleveland Heights.
- (5) “Collocation” or “Collocate” means to install, mount, maintain, modify, operate, or replace wireless Facilities on a Wireless Support Structure.
- (6) “Design Guidelines” means standards applicable to Small Cell Equipment and Wireless Support Structures in the Right-of-Way, established in Sections 943.21 et seq. herein.
- (7) “Eligible Facilities Request” means any request for modification of an existing support structure or base station that does not substantially change the physical dimension of such support structure involving Collocation of new Facilities; removal of Facilities; or replacement of Facilities. A substantial change means:
  - (i) A modification that changes the physical dimension of a Wireless Support Structure by increasing the height of the Wireless Support Structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater; and/or by adding an appurtenance to the body of the Wireless Support Structure that would protrude from the edge of the Wireless Support Structure by more than six (6) feet;
  - (ii) The installation of more than the standard number of equipment cabinets for the technology involved or the installation of more than (4) cabinets, whichever is less;
  - (iii) The installation for any new ground-mounted equipment cabinets if there are not existing ground-mounted equipment cabinets;
  - (iv) Any excavation or deployment outside of the current site of the Facility;

ORDINANCE NO. 29-2019 (SMS)

- (v) Removal of any concealment elements of the Facilities or the Wireless Support Structure; or
- (vi) Any change that does not comply with this Chapter, including but not limited to the Design Guidelines set forth in Sections 943.21 et seq. herein, or state or federal law and regulations.

The threshold for measuring increases that may constitute a substantial change are cumulative, measured from the Facilities as originally permitted (including any modifications that were reviewed and approved by the City prior to the enactment of the Spectrum Act on February 22, 2012).

- (8) “Facilities” means Small Cell Facilities, Accessory Equipment, and Wireless Support Structures.
- (9) “Facilities Operator” means the person or entity responsible for the installation, operation, maintenance, replacement, and modification of Facilities. Facilities Operator includes:
  - (i) Operators;
  - (ii) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to Ohio R.C. Section 4939.031(E) and who have obtained a Small Cell Use Permit; and
  - (iii) Applicants who applied for consent to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a new Wireless Support Structure pursuant to Ohio R.C. Section 4939.033 and who have obtained a Small Cell Use Permit.
- (10) “Historic District” means a building, property, or site, or group of buildings, properties, or sites that are either of the following:
  - (i) Listed in the national register of historic places or formally determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C;
  - (ii) A registered historic district as defined in section 149.311 of the Revised Code.

ORDINANCE NO. 29-2019 (SMS)

- (11) “Operator” means a wireless service provider, cable Operator, or a video service provider that operates a Small Cell Facility and provides wireless service, including a wireless service provider, cable operator, or a video service provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.
- (12) “Public Way” or “Right-of-Way” means the surface of, and the space within, through, on, across, above or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a comparable public use, which is owned or controlled by the City or other public entity or political subdivision.

- (13) “Small Cell Facility” means a wireless facility ~~that~~:

(i) That meets both of the following requirements:

- ~~(1)~~ Each antenna is located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than six (6) cubic feet in volume; and
- ~~(2)~~ All other wireless equipment associated with the facility is cumulatively not more than twenty-eight (28) cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services; and

(ii) That includes a “Small Wireless Facility,” which is a type of Small Cell Facility (i) in which each antenna is located within an enclosure of not more than three (3) cubic feet in volume or, in the case of an antenna with exposed elements, the antenna and all of its exposed elements can fit within an enclosure of not more than three (3) cubic feet in volume, (ii) where such antenna is associated with a structure (a) 50 feet or less in height, including the antenna, or (b) that is not more than 10 percent taller than adjacent structures, or (c) is not extended by more than 10 percent or to a

height exceeding 50 feet, whichever is greater, and (iii) that also otherwise satisfies the definition of “Small Wireless Facilities” found in the Federal Communications Commission’s September 26, 2018 Small Cell Order, FCC 18-133.

- (14) “Small Cell Equipment” means a Small Cell Facility and all Accessory Equipment.
- (15) “Small Cell Use Permit” means the permit granted by the City authorizing the Applicant to Collocate a Small Cell Facility or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way.
- (16) “Underground Area” means an area in the Right-of-Way where existing electric utilities, cable facilities, telecommunications facilities and other facilities, other than structures and facilities owned by the City or a transit authority, are located underground.
- (17) “Wireless Support Structure” means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen (15) feet or taller sign pole, or utility pole capable of supporting Small Cell Facilities. As used in this Chapter, “Wireless Support Structure” excludes ~~all of~~ the following except in connection with a Small Wireless Facility, in which case the following are not excluded:
  - (i) A utility pole or other facility owned or operated by a municipal electric utility; and
  - (ii) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

- (c) The effective date of this Chapter shall be ~~July 31, 2018~~ \_\_\_\_\_, 2019.

**943.02 CONSENT REQUIRED**

(a) Any person or entity seeking to Collocate a Small Cell Facility in the Right-of-Way, or to construct, maintain, modify, operate, or replace a Wireless Support Structure in the Right-of-Way, shall first file a written Application for a Small Cell Use Permit with the City Manager or designee in accordance with the requirements in this Chapter, including, but not limited to the Design Guidelines set forth in Sections 943.21 et seq. herein, Ohio R.C. Chapter 4939, and all applicable state and federal laws and regulations.

ORDINANCE NO. 29-2019 (SMS)

(b) Applicants are strongly encouraged to contact the City Manager or designee and request a pre-Application conference. This meeting will provide an opportunity for early coordination regarding proposed Facilities, locations, design, Application submittal, and the approval process in order to avoid any potential delays in the processing of an Application and deployment of Facilities in the City.

(c) A Small Cell Use Permit granted under this Chapter shall not convey any right, title or interest in the Right-of-Way, but shall be deemed a permit only to use and occupy the Public Ways for the limited purposes and term stated in the permit, this Chapter, and the Design Guidelines set forth in Sections 943.21 et seq. herein. Further, no Small Cell Use Permit shall be construed as any warranty of title.

**943.03 PERMIT APPLICATION TYPES**

Applicants shall classify their Application as one of the following types:

- (a) Type 1: Eligible Facilities Requests.
- (b) Type 2: Application for Collocation of Small Cell Equipment on a Wireless Support Structure that does not constitute an Eligible Facilities Request.
- (c) Type 3: New Wireless Support Structure. Such applications will address construction, modification, replacement, or removal of a Wireless Support Structure within the Right-of-Way. At the time of Application, Applicants shall certify that Small Cell Equipment will be placed on the Wireless Support Structure within 180 days from the date the Small Cell Use Permit is issued.
- (d) For Type 2 and Type 3 Applications, Applicants shall indicate whether the Application is or is not for a Small Wireless Facility.

**943.04 CONSOLIDATED CONSENT APPLICATIONS**

(a) Pursuant to Ohio R.C. Section 4939.0312, an Applicant may file one consolidated application for up to thirty (30) individual small cell Facilities or thirty (30) individual Wireless Support Structures as long as the facilities or structures for which consent is requested are substantially similar.

- (1) Small Cell Facilities shall be considered substantially similar when the Small Cell Equipment is identical in type, size, appearance and function.
- (2) Wireless Support Structures shall be considered substantially similar when the Wireless Support Structures are identical in type, size, appearance and function and are to be located in a similar location.

ORDINANCE NO. 29-2019 (SMS)

- (3) Applications for Facilities and Wireless Support Structures cannot be commingled.

(b) The City may, at its discretion, require separate Applications for any Small Cell Facilities or Wireless Support Structures that are not substantially similar.

(c) Although applications for Small Wireless Facilities may be filed on a consolidated basis, applications involving Small Wireless Facilities may not be commingled with applications for other Small Cell Facilities or Wireless Support Structures. The limit on the number of applications that may be filed in a consolidated application pursuant to Section 943.04(a) shall not apply to applications for Small Wireless Facilities.

**943.05 APPLICATION FEE**

(a) The fee for each application is Two Hundred Fifty Dollars (\$250.00). The City shall adjust the fee by ten percent (10%) every five (5) years, rounded to the nearest Five (5) Dollars, beginning in the year 2023.

(b) An Application shall not be deemed complete until the fee is paid.

(c) If Applications are consolidated, then the fee shall be the sum resulting from the fee set forth in subsection (a) multiplied by the total number of Facilities or Wireless Support Structures included in the consolidated Application.

**943.06 ATTACHMENT FEE**

(a) In addition to the Application Fee, an annual fee of Two Hundred Dollars (\$200.00) shall be paid to the City for each Small Cell Facility attached to a municipally-owned Wireless Support. The City shall adjust the attachment fee by ten percent (10%) every five years, rounded to the nearest five (5) dollars, beginning in the year 2023.

(b) The first-year attachment fee shall be paid when the collocation is complete, and no later than January 1 each year thereafter. The first-year attachment fee shall not be prorated, regardless of the date that the collocation is complete.

**943.07 REQUIRED APPLICATION MATERIALS**

The Applicant must submit the following documentation with each Application.

(a) Completed Application form including the identity, legal status and federal tax identification number of the Applicant, as well as all affiliates and agents of the Applicant that will use or be, in any way, responsible for the Facilities.

(b) The name, address, and telephone number of the local officer, agent, or employee responsible for the accuracy of the application to be notified in case of emergency.

ORDINANCE NO. 29-2019 (SMS)

(c) Fully dimensional scaled site plan (scale no smaller than one inch equals forty (40) feet). The site plan must include:

- (1) The exact proposed location of the Facilities within the Right-of-Way by GPS coordinates and/or in degrees, minutes and seconds (“DMS”);
- (2) All existing Facilities with all existing transmission equipment;
- (3) The location of all overhead and underground public utilities, telecommunications, cable, water, sanitary sewer, and storm water drainage utilities in the Public Way within one hundred (100) feet surrounding the proposed Facilities;
- (4) The legal property boundaries within one hundred (100) feet surrounding the proposed Facilities;
- (5) Indication of distance between the Facilities and existing curbs, driveways, sidewalks, trees, utilities, other poles, and existing buildings within one hundred (100) feet surrounding the proposed Facilities; and
- (6) Access and utility easements within one hundred (100) feet surrounding the proposed Facilities.

(d) Elevation drawings (scale no smaller than one inch equals ten (10) feet) of the proposed Facilities.

(e) Evidence that the Applicant provided notice by mail to all property owners within three hundred (300) feet of the proposed Facilities prior to submitting the Application. The notice shall include:

- (1) Name of the Applicant;
- (2) Estimated date Applicant intends to submit the Application;
- (3) Detailed description of the proposed Facilities and the proposed location; and
- (4) Accurate, to-scale color photo simulation of the proposed Facilities. Scale shall be no smaller than one inch equals forty (40) feet and shall depict surrounding area within one hundred (100) feet of the proposed Facilities.

(h) A preliminary installation/construction schedule and completion date.

(i) Structural calculations prepared, stamped and signed by an engineer licensed and registered by the State of Ohio showing that the Wireless Support Structure can accommodate the weight of the proposed small cell equipment.

ORDINANCE NO. 29-2019 (SMS)

(j) Analysis demonstrating that the proposed Facilities do not interfere with the City's public safety radio system, traffic and emergency signal light system, or other City safety communications components. It shall be the responsibility of the Applicant to evaluate, prior to making the Application for a Small Cell Use Permit, the compatibility between the existing City infrastructure and Applicant's proposed Facilities.

(k) A landscape plan that demonstrates screening of proposed small cell equipment.

(l) Detailed and/or shop drawings of the proposed Facilities. For all equipment depicted, the Applicant must also include, if applicable:

- (1) The manufacturer's name and model number;
- (2) Physical dimensions, including, without limitation, height, width, depth and weight with mounts and other necessary hardware; and
- (3) The noise level generated by the equipment, if any.

(m) If the Applicant is not an Operator, then the Applicant must provide proof that the Applicant has been engaged by a wireless service provider who will be the end-user of the Facilities.

**943.08 APPLICATION REVIEW**

(a) Applications shall be evaluated in the timeframes as follows:

- (1) Type 1 Applications 60 days
- (2) Type 2 Applications 90 days, except that for Small Wireless Facilities, the timeframe for a Type 2 Application shall be 60 days.
- (3) Type 3 Applications 120 days, except that for new Wireless Support Structures upon which a Small Wireless Facility is to be mounted, the timeframe for a Type 3 Application shall be 90 days.

(b) Applications shall be reviewed for completeness. If the Application is incomplete, then the Applicant shall be notified of the insufficiency, and the timeframes set forth in subsection (a) shall be tolled until the Application is made complete, as described below:

- (1) To toll the time period for incompleteness, the City must provide written notice to the Applicant, specifically identifying all missing documents or information, within thirty (30) days after receiving the Application; except that where an Applicant has indicated that the Application is for a Small Wireless Facility, or a Wireless Support Structure upon which a Small

Wireless Facility is to be mounted, the written notice shall be provided within ten (10) days after receiving the Application.

(A) In the case of a proper and timely initial written notice of incompleteness provided concerning an Application involving a Small Wireless Facility pursuant to subsection (b)(1), the time period set forth in subsection (a) shall be deemed never to have started running at all until the Applicant provides a supplemental submission.

(2) The time period set forth in subsection (a) will begin to run again when the Applicant provides a supplemental submission in response to the City's notice of incompleteness pursuant to subsection (b)(1), but may be tolled again if the City notifies the Applicant in writing, within ten (10) days of receiving a supplemental submission, that the Application remains incomplete and identifies which items specified in the original notice of incompleteness are still missing. Timely notice by the City of the deficiencies in a supplemental submission tolls the time period set forth in subsection (a) until the Applicant supplies the specified information

(c) The timeframes set out in subsection (a) may be tolled by mutual agreement between the Applicant and the City. The timeframes in subsections (a)(2) and (a)(3) may also be tolled as follows, except that where an Applicant has indicated that the Application is for a Small Wireless Facility, the provisions of subsections (c)(1) and (c)(2) below do not apply:

(1) If the City receives ~~more than~~ between twenty-five (25) and forty (40) applications in a thirty (30) day period, then the City may toll ~~each application received after the initial twenty five (within that 30 day period)~~ for an additional twenty-one (21) days beginning with the twenty-sixth (26th) application.

(2) If the City receives more than forty (40) applications in a thirty (30) day period, then the City may toll for an additional fifteen (15) days for ~~each batch of every~~ additional fifteen (15) applications received, up to a maximum tolling period of ninety (90) days, as indicated below:

(A) Applications 41-55: 36 additional days

(B) Applications 56-70: 51 additional days

(C) Applications 71-85: 66 additional days

(D) Applications 86-100: 81 additional days

(E) Applications 101+: 90 additional days.

~~(3) — By mutual written agreement between the Applicant and the City.~~

~~(4)~~(3) When an Applicant submits an underground area waiver pursuant to Section 943.32(d) herein, in which case the City may toll for an additional fourteen (14) days.

(d) If two Applicants request to Collocate on the same Wireless Support Structure or two Wireless Support Structures are proposed within a distance that would violate the spacing requirements set forth in Section 943.16 here, then the City Manager or designee may resolve the conflict in any reasonable and nondiscriminatory manner.

(e) If a request for Small Cell Use Permit is denied, the City shall provide, in writing, its reasons for denying the request, supported by substantial, competent evidence. The denial of consent shall not unreasonably discriminate against the Applicant. Grounds for denying an Application may include, but are not limited to:

- (1) Failure to provide information required under Section 943.07;
- (2) Failure to comply with Design Guidelines set forth in set forth in Sections 943.21 et seq. herein;
- (3) Failure to provide financial surety pursuant to Section 943.15;
- (4) Failure to remove abandoned Facilities as required under Section 943.12;
- (5) Conflict with the historic nature or character of the surrounding area;
- (6) Conflict with planned future improvements in the Right-of-Way; and
- (7) Failure to comply with generally applicable health, safety, and welfare requirements.

#### **943.09 PERMITTING PROCESS, DURATION, AND TERMINATION**

(a) Upon approval of its Application, an Applicant shall receive a Small Cell Use Permit indicating that the City has granted the Applicant consent to occupy the Right-of-Way.

(b) A Small Cell Use Permit issued to an Operator shall have duration of ten (10) years. Permits may be renewed for five year terms.

(c) A Small Cell Use Permit issued to a Facilities Operator who is not an Operator shall have a term of ten (10) years or the duration of the Facilities Operator's agreement with a wireless service provider provided pursuant to Section 943.07(k), whichever is shorter.

ORDINANCE NO. 29-2019 (SMS)

(d) A Small Cell Use Permit shall not be renewed if the Facilities Operator or the Facilities are not in compliance with each and every applicable law and regulation.

(e) Pursuant to Ohio R.C. Section 4939.0314(E), a Small Cell Use Permit shall be deemed terminated if the Facilities Operator has not completed construction of the Facilities or has failed to attach Small Cell Equipment to a Wireless Support Structure within one hundred eighty (180) days of issuance of the permit, unless the delay is caused by:

- (1) Make-ready work for a municipally-owned Wireless Support Structure; or
- (2) Due to the lack of commercial power or backhaul availability at the site, provided that the Operator has made a request for commercial power or backhaul services within sixty (60) days after the Small Cell Use Permit was granted.

If the additional time to complete the installation exceeds three hundred sixty days (360) after the issuance of the permit, then the permit shall be deemed terminated regardless of the cause of the delay.

(f) A Small Cell Use Permit for a new Wireless Support Structure shall be deemed terminated if the Facilities Operator fails to attach Small Cell Equipment to the new Wireless Support Structure within one hundred eighty (180) days of issuance of the Small Cell Use Permit.

(g) If the Facilities Operator fails to remit the annual attachment fee required pursuant to Section 943.06, then the Small Cell Use Permit will expire on the ninetieth (90th) day from the date the annual attachment fee was due.

(h) If the Facilities Operator fails to remit the annual registration required pursuant to Section 943.10, then the Small Cell Use Permit will expire on the ninetieth (90th) day from the date the annual registration was due.

(i) A Small Cell Use Permit may be terminated by the Facilities Operator at any time upon service of 60-days written notice to the City.

(j) Upon termination of a Small Cell Use Permit, the Facilities Operator shall restore and rehabilitate all City-owned Wireless Support Structures and the Right-of-Way to their former condition and utility.

(k) The City shall not issue any refunds for any amounts paid by the Facilities Operator upon termination of the permit.

**943.10 ANNUAL REGISTRATION**

Facilities Operators shall comply with the annual registration requirements set forth in Section 941.03 of Chapter 941, "Use of Public Ways by Service Providers."

**943.11 NONCONFORMING FACILITIES**

(a) Facilities in the Right-of-Way that are legally in existence on the date of the adoption of this Chapter but that do not comply with the requirements of this Chapter may remain in the Right-of-Way but shall be considered a Nonconforming Facility.

(b) Any person or entity who owns or operates a Nonconforming Facility shall register such facility pursuant to Section 941.03 by no later than November 1, 2018.

(c) If a Nonconforming Facility is damaged or destroyed beyond repair, any replacement facility must be designed in accordance with all provisions of this Chapter, the Design Guidelines established in Sections 943.21 et seq. herein, and state and federal law and regulations.

**943.12 ABANDONED AND DAMAGED FACILITIES**

(a) A Facilities Operator shall provide written notice to the City of its intent to discontinue use of any Facilities. The notice shall include the date the use will be discontinued. If Facilities are not removed within three hundred sixty five (365) days from the date the use was discontinued, the City may remove the Facilities at the expense of the Facilities Operator after providing thirty (30) days written notice to the Facilities Operator of its intent to do so.

(b) In the event that Facilities are damaged, the Facilities Operator shall promptly repair the damaged Facilities. Damaged Facilities shall be repaired no later than thirty (30) days after obtaining written notice that the Facilities were damaged. If the damaged Facilities are not repaired within thirty (30) days, then the City may repair or remove the damaged Facilities at the expense of the Facilities Operator after providing thirty (30) days written notice to the Facilities Operator of its intent to do so.

**943.13 INSURANCE REQUIREMENTS**

Facilities Operators shall comply with the insurance requirements set forth in Subsection 941.02(e).

**943.14 INDEMNIFICATION**

A Facilities Operator shall indemnify, protect, defend, and hold the City and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind

and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failure to act or misconduct of the Operator who owns or operates Small Cell Facilities and wireless service in the Right-of-Way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining Facilities in the Right-of-Way.

**943.15 FINANCIAL SURETY**

(a) Each Facilities Operator must procure and provide to the City a bond, escrow, deposit, letter of credit, or other financial surety to ensure compliance with this Chapter and Ohio R.C. Chapter 4939. The financial surety shall be in compliance with Subsection 941.02(g) or as otherwise determined reasonable by the City Manager or designee, such as being an amount sufficient to cover the cost of removal of all Facilities owned or operated by Facilities Operator.

(b) The City may, in its sole discretion, draw on the financial surety to remove abandoned, unused, or unsafe Facilities, remove or repair damaged Facilities, or to repair damage to any City property caused by the Facilities Operator or its agent. In such event, the Facilities Operator shall cause the financial surety be replenished to its prior amount within ten (10) business days after City notifies the Facilities Operator that it has drawn on the financial surety.

**943.16 RESERVED SPACE**

The City reserves the right to install, and permit others to install, Facilities in the Right-of-Way. The City may reserve space in the Right-of-Way and on Wireless Support Structures for future utility, safety, or transportation uses. Such space may be reserved in an ordinance or plan approved by the City Manager, City Council, Building Commissioner, or Planning Commission.

**943.17 REMOVAL OR RELOCATION OF FACILITIES**

(a) Consistent with R.C. 4939.08, the City may require a Facilities Operator to remove or relocate Facilities to accomplish construction and maintenance activities. The Facilities Operator shall remove or relocate the Facilities at no cost to the City. If the Facilities Operator fails to remove or relocate the Facilities within ninety (90) days of receiving a request to do so from the City, then the City may remove the Facilities at Facilities Operator's sole cost and expense, without further notice to the Facilities Operator.

(b) If the Facilities are placed in a location other than the location approved by the City, the Facilities Operator shall relocate the Facilities within thirty (30) days of receiving notice that the Facilities are located improperly.

**943.18 NOTICE OF WORK**

A Facilities Operator shall notify the City Manager or designee of all nonemergency work within ten (10) calendar days prior to performing any upgrades or maintenance on any Facilities, regardless of whether the work requires any permit or consent from the City.

**943.19 CONSTRUCTION PERMIT**

Facilities Operators are required to obtain a construction permit pursuant to Section 941.07 including, but not limited, to the construction bond set forth in Subsection 941.07(g), prior to commencing any of the following activities:

- (1) Collocation of small cell equipment on a Wireless Support Structure;
- (2) Replacement, modification, repair, or maintenance of small cell equipment;
- (3) Construction, replacement, modification, repair, or maintenance of a Wireless Support Structure associated with a small cell facility; and
- (4) Any excavation of the Right-of-Way in connection with the activities described in this Section.

**943.20 EXCAVATION PERMIT.**

If a Facilities Operator must construct, reconstruct, alter, repair, remove or replace any culvert, sidewalk or driveway in any public street or road Right-of-Way, then the Facilities Operator shall obtain the required permit pursuant to Section 941.07 including, but not limited, to the construction bond set forth in Subsection 941.07(g).

**943.21 GENERAL DESIGN STANDARDS**

(a) Facilities shall not be installed unless the Facilities are compliant with the Design Guidelines, set forth in Sections 943.21 et seq. herein, and any Application requirements, and all applicable local, state, and federal laws. Applicant shall have the burden to demonstrate by substantial and competent evidence that all Design Guidelines have been met.

(b) A Facilities Operator shall not construct, maintain, modify, operate, or replace any Facilities not clearly depicted in an Application for a Small Cell Use Permit.

(c) A Facilities Operator shall not construct, modify, or replace any Facilities without a construction permit pursuant to Section 941.07.

(d) All work shall be performed in a professional manner consistent with the highest standards of workmanship.

ORDINANCE NO. 29-2019 (SMS)

(e) Facilities shall be maintained in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

(f) Facilities shall not be installed in any location that causes any interference with the City's public safety radio system, traffic and emergency signal light system, or other City safety communications systems or system components.

(g) The City may propose an alternative location for proposed Facilities up to one hundred (100) feet from the proposed location or within a distance that is equivalent to the width of the Public Way, whichever is greater. The Facilities Operator shall utilize the alternative location unless the Facilities Operator shows that the alternative location is not technically feasible or would materially inhibit the provision of wireless services by the Facilities Operator within the City.

(h) Facilities shall not interfere with existing or planned City-owned trees.

(i) Signage shall be mounted on all new Facilities providing the Facilities Operator's name, an emergency contact phone number, an informational contact number, and all other information required by law. Unless otherwise prohibited by law, signage shall be discreet in color and shall match the Facilities and surrounding area and font size used on the sign shall be no smaller than 9 point font and no larger than 14 point font.

(j) Unless otherwise required by law, all manufacturer stickers and decals shall be removed from Facilities.

(k) A landscape plan, approved by the Director of Planning, shall be required for each Application. Facilities shall be camouflaged using existing land forms, vegetation, and structures to screen the Facilities from view and to blend in with the surrounding built and natural environment.

(l) The City may require the Facilities Operator to incorporate additional concealment elements before approving an Application. Concealment elements may include, but shall not be limited to, fencing, public art, strategic placement, and placement within existing or replacement street furniture.

(m) Facilities shall not have any flashing lights, sirens or regular noise other than a cooling fan that may run intermittently.

(n) All hardware, including antenna mounting brackets and hardware, antenna mounting posts, cables, shrouds and other equipment mounted shall be painted in a color designated by the City, and the color shall match the Facilities. The City may require the Facilities Operator use a different, non-matching color on a case-by-case basis when the City determines a non-matching color would better fulfill the purposes of these Design Guidelines or match the surrounding area.

(o) A Facilities Operator shall remove or paint over any graffiti on the Facilities at Facility Operator's sole expense as soon as practicable, but no later than thirty (30) days from the date the Facilities Operator receives notice of the graffiti. The City shall remove graffiti at the expense of the Facilities Operator after the thirty (30) days expires.

**943.22 DESIGN SPECIFICATIONS FOR COLLOCATION**

(a) Small Cell Equipment shall not interfere with the primary purpose of a Wireless Support Structure.

(b) Small Cell Equipment to be attached to a Wireless Support Structure shall be attached at least ~~six (6)~~six (8) feet above ground level. If Small Cell Equipment is projecting toward the street then the Small Cell Equipment shall be installed no less than sixteen (16) feet above ground level.

**943.23 DESIGN SPECIFICATIONS FOR ANTENNAS**

(a) Antennas and Accessory Equipment must be capable of fitting within an enclosure not larger than six (6) cubic feet in volume.

(b) Antennas and Accessory Equipment shall not increase the overall height of an existing Wireless Support Structure by more than five (5) feet; provided, however, that the permissible increase in height resulting from collocation or installation of a Small Wireless Facility on a Wireless Support Structure shall be as provided in Section 943.01(b)(13).

(c) Antennas mounted on a Wireless Support Structure shall be enclosed inside the Wireless Support Structure whenever possible and otherwise within a canister or other shroud. All Accessory Equipment associated with the antenna shall be concealed and shall not visibly protrude from the shroud or canister.

(d) The width of the canister or other shroud encasing the antenna and Accessory Equipment shall not exceed the width of the narrowest portion of the Wireless Support Structure.

(e) The enclosure or shroud shall be painted to match or complement the Wireless Support Structure.

(f) Antennas shall be installed in a manner that minimizes the visual impact to the general public.

(g) Antennas shall not impair light or substantially obstruct views from nearby window(s).

(h) Antennas located on the exterior of a Wireless Support Structure shall be top-mounted on a Wireless Support Structure. The City may approve a side-mounted antenna if, in the City's discretion, the side-mounted antenna would be more appropriate given the built

environment, neighborhood character, overall site appearance or would otherwise promote the purposes in these Design Guidelines.

**943.24 DESIGN SPECIFICATIONS FOR WIRELESS SUPPORT STRUCTURE-MOUNTED EQUIPMENT**

- (a) All Wireless Support Structure-mounted Small Cell Equipment other than the antenna(s) and electric meter must be concealed within an equipment cabinet.
- (b) Equipment cabinets shall be mounted flush to the Wireless Support Structure.
- (c) Equipment cabinets shall be stacked together on the same side of the Wireless Support Structure and oriented away from any windows and doorways to minimize visual impacts thereupon. The cabinet width shall not exceed the Wireless Support Structure's width unless technologically infeasible.
- (d) The equipment cabinets must be non-reflective and painted, wrapped or otherwise colored to match the Wireless Support Structure.

**943.25 DESIGN SPECIFICATIONS FOR GROUND-MOUNTED SMALL CELL EQUIPMENT**

- (a) The City shall not approve the proposed location of ground-mounted Small Cell Equipment unless the Applicant (1) proposes the ground-mounted equipment in connection with a Collocation, and (2) shows that the equipment cannot be feasibly placed on the Wireless Support Structure or in an underground vault.
- (b) If technically feasible, Small Cell Equipment should be located in a vault buried underground rather than being ground-mounted. If underground placement is not technically feasible, ground-mounted Small Cell Equipment shall be contained in a shroud or cabinet.
- (c) All ground-mounted Small Cell Equipment shall be installed in a manner that minimizes the visual and ingress/egress impact to the general public.
- (d) Ground-mounted Small Cell Equipment shall be placed as far as practicable from pedestrian sidewalks and shall neither block nor be placed within the sidewalk in any way. The Small Cell Equipment's height, width, length and placement should be as inconspicuous and as visually compatible with its context as practicable.

**943.26 DESIGN SPECIFICATIONS FOR CABLES**

- (a) All cables, conduit and wiring shall be located inside conduit and inside the Wireless Support Structure or an equipment cabinet.

(b) Excess cables and wiring shall not be spooled, coiled or otherwise stored on the exterior of the Wireless Support Structure unless within an enclosure. Cables shall not be externally visible.

**943.27 DESIGN SPECIFICATIONS FOR ELECTRICAL METERS**

(a) Facilities Operators shall use flat-rate electric service when available in order to eliminate the need for a meter.

(b) If a meter is required, then Facilities Operators shall use the smallest and least intrusive electric meter available. Whenever permitted by the electric service provider, the electric meter shall be painted to match the Wireless Support Structure.

**943.28 DESIGN SPECIFICATIONS FOR UTILITY LINES**

Service lines shall be underground to avoid additional overhead lines. The underground cables and wires must transition directly into the Wireless Support Structure base without any external junction box.

**943.29 DESIGN SPECIFICATIONS FOR REPLACEMENT OF WIRELESS SUPPORT STRUCTURES**

(a) Unless otherwise determined by City Manager or designee, a Facilities Operator shall be required to replace an existing Wireless Support Structure in the following circumstances:

- (1) The Wireless Support Structure upon which the Applicant has proposed to Collocate Small Cell Equipment is deemed incapable of bearing the added weight of the Small Cell Equipment; or
- (2) An existing Wireless Support Structure is located within one hundred (100) feet of the proposed site of a new Wireless Support Structure but the existing Wireless Support Structure is incapable of bearing the additional weight of the Small Cell Equipment.

(b) Designs for replacement of Wireless Support Structures shall be as architecturally similar as possible to the existing Wireless Support Structure to be replaced unless otherwise approved by the City.

- (1) All luminaire mast arms shall be the same length, arch, and style as the original luminaire arm, unless otherwise specified by the City.
- (2) The City may require the Facilities Operator to install a new metal Wireless Support Structure rather than a new wood support structure.

ORDINANCE NO. 29-2019 (SMS)

(c) Except in AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts, the overall height of a replacement Wireless Support Structure, including proposed Collocated antenna, shall not be more than forty (40) feet in height above ground level; provided, however, that the height of a Wireless Support Structure upon which a Small Wireless Facility is to be mounted shall be as provided in Section 943.01(b)(13). The overall height of a replacement Wireless Support Structure, including proposed Collocated antenna, shall not be more than thirty-five (35) feet in height above ground level in AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts so long as there is no Wireless Support Structure or utility pole taller than thirty feet located within three-hundred (300) feet of the location of the proposed replacement Wireless Support Structure. Unless technologically infeasible, all Small Cell Equipment, except for antennas and radios, shall be encapsulated within the Wireless Support Structure.

(d) All existing signs, traffic signals, emergency signal detection units, video detection cameras, video cameras, crosswalk service buttons, crosswalk signals, and any other pedestrian or traffic devices shall be reinstalled or replaced with new units by the Facilities Operator at no cost to the City.

(e) The concrete Wireless Support Structure foundation for the original Wireless Support Structure shall be removed either partially or completely by the Facilities Operator as instructed by the City.

- (1) If partially removed, the original Wireless Support Structure foundation shall be removed to a level that is twelve (12) inches below the existing grade and covered with four (4) inches of one-half ( $\frac{1}{2}$ ) inch to three-quarter ( $\frac{3}{4}$ ) inch rocks. The remaining eight (8) inches shall be topsoil.
- (2) If the entire original Wireless Support Structure foundation must be removed, then all foundation materials (concrete, rebar, metals, bolts, etc.) shall be removed. The Director of Planning shall determine the appropriate type of backfill material and compaction required in landscaped areas.

**943.30 DESIGN SPECIFICATIONS FOR NEW WIRELESS SUPPORT STRUCTURES**

(a) New Wireless Support Structures shall be designed and constructed to accommodate at least two sets of Small Cell Equipment on the same Wireless Support Structure.

(b) New Wireless Support Structures shall maintain a distance of three hundred (300) feet from existing monopoles, or utility poles unless otherwise determined by the City Manager or designee.

ORDINANCE NO. 29-2019 (SMS)

(c) Unless technologically infeasible, all Small Cell Equipment, except for antennas and radios, shall be encapsulated within the Wireless Support Structure.

(d) In residential zoning districts, new Wireless Support Structures shall be located at the shared property line between two residential parcels near where the parcels intersect the Right-of-Way when available.

(e) In commercial zoning districts, new Wireless Support Structures shall be located between tenant spaces, storefront bays, or adjoining properties at the shared property lines near where the parcels intersect the Right-of-Way.

(f) In park zoning districts, new Wireless Support Structures shall be located in the least visible location practicable, as determined by the City Manager or designee.

(g) New Wireless Support Structures shall not interfere with any metered parking space.

(h) A new Wireless Support Structure shall not be located in front of a building entrance or exit.

(i) Except in the AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts, the overall height of a new Wireless Support Structure, including proposed Collocated antenna, shall not be more than forty (40) feet in height above ground level; provided, however, that the height of a Wireless Support Structure upon which a Small Wireless Facility is to be mounted shall be as provided in Section 943.01(b)(13). The overall height of a new Wireless Support Structure, including proposed Collocated antenna, shall not be more than thirty-five (35) feet in height above ground level in the AA and A Single-Family Residential Districts, B Two-Family Residential Districts, and MF-1 Multiple-Family Residential District zoning districts so long as there is no Wireless Support Structure or utility pole taller than thirty feet located within three-hundred (300) feet of the location of the proposed new Wireless Support Structure.

(j) The City may require the Facilities Operator to install a metal Wireless Support Structure rather than a wood Wireless Support Structure. Unless otherwise specified by the City, new wood Wireless Support Structures are prohibited in the following zoning districts:

- (1) All residential zoning districts; and
- (2) All commercial zoning districts.

(k) Facilities Operators shall be discouraged from installing a new Wireless Support Structure within one hundred (100) feet of a building designated to be of historic importance under local, state or federal laws.

**943.31 HISTORIC DISTRICT DESIGN GUIDELINE REGULATIONS**

Except antennas, all Small Cell Equipment to be located in the Right-of-Way in a Historic District including, but not limited to, Ambler Heights Historic District, Euclid Golf Historic District, Euclid Heights Historic District, Fairhill Road Village Historic District, Fairmount Boulevard Historic District, Forest Hill Historic District, Herrick Mews (Overlook Road Carriage House) Historic District, Inglewood Historic District, Mayfield Heights Historic District, Shaker Farm Historic District, and Shaker Village Historic District, Nela Park Historic District, shall be located in an underground vault or shall be subject to such reasonable, technologically feasible, and non-discriminatory design or concealment measures as the City may specify, as long as such measures do not have the effect of prohibiting or materially inhibiting the Facilities Operator’s provision of service. Such measures are not considered part of the small cell facility for purposes of facility size restrictions in this Chapter. A waiver submitted pursuant to Section 943.32(d) will be considered if ~~it is~~ such measures are shown to be technologically infeasible.

**943.32 UNDERGROUND AREA DESIGN GUIDELINE REGULATIONS**

- (a) Subject to subsection (b), a Facilities Operator shall locate its Facilities underground in an Underground Area.
- (b) A Facilities Operator may replace an existing Wireless Support Structure or Collocate Small Cell Facilities on an Existing Wireless Support Structure even if the Wireless Support Structure is located in an Underground Area.
- (c) A Facilities Operator shall not install a new Wireless Support Structure in an Underground Area.
- (d) An Operator may apply to the City Manager or designee for a waiver of the underground placement requirement if the Operator is unable to achieve its service objective under the following circumstances:
  - (1) From a location in the public Right-of-Way where the prohibition does not apply;
  - (2) From a utility easement the service provider has the right to access; and
  - (3) From other suitable locations or structures made available by the City at reasonable rates, fees, and terms.
- (e) Submission of a waiver pursuant to Subsection (d) herein is subject to the Facilities Operator’s agreement to toll the timeframes set forth in Subsection 943.08(a) of the Codified Ordinances by fourteen (14) days.

**943.33 DISCRETIONARY WAIVER**

It is within the City Manager's reasonable discretion to waive a portion or portions of this Chapter, as permitted or warranted under state and federal law, where such requirements, in the City Manager's judgment, are not necessary and/or appropriate to protect the City's interests and/or not consistent with the purposes and intent of this Chapter.

**943.99 PENALTIES; EQUITABLE REMEDIES.**

(a) Criminal Penalties. Any Applicant of Operator or other Person acting as the agent of an Applicant or Operator who is found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter shall be guilty of a misdemeanor of the fourth (4th) degree. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

(b) Civil Violations and Forfeiture.

- (1) In lieu of the criminal penalties set forth above, the City Manager may make an initial finding of a civil violation by the Service Provider for violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Chapter.
- (2) The Civil Forfeiture shall be in an amount payable to the City of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.
- (3) An action for civil forfeiture shall be commenced by providing the Service Provider with written notice describing in reasonable detail the Service Provider's alleged violation of one or more provisions of this Chapter and the amount of the penalty that will be assessed against it.
- (4) The Service Provider shall have fifteen (15) days subsequent to receipt of the notice of violation in which to correct the violation before the City may assess penalties against the Service Provider. The time in which to cure the violation may be extended by the City if additional time is required to correct the violation; provided that the Service Provider commences corrective action within seven (7) days of the notice of violation and proceeds with reasonable diligence.
- (5) The Service Provider may dispute the alleged violation by providing the City with written notice within five (5) days of receipt of the notice of violation, setting forth in reasonable detail the reasons for its dispute. The City shall set a date for hearing of the alleged violation no sooner than

ORDINANCE NO. 29-2019 (SMS)

thirty (30) days and no later than sixty (60) days from receipt of the notice of dispute.

- (6) The City shall issue a written decision on the Service Provider's alleged violation within thirty (30) days of the hearing, which decision shall be final and subject to the administrative appeal procedures under Ohio law. If the City finds after hearing that the alleged violation(s) did occur, the penalty shall be assessed starting fifteen (15) days from the notice of violation and shall continue until the violation has been corrected.

(c) Other Remedies. Nothing in this Chapter shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Chapter.

Proposed: 5/06/2019

RESOLUTION NO. (PD)

By Councilmember

A Resolution declaring May 2019, *National Preservation Month*; and declaring an emergency.

WHEREAS, historic preservation is an effective tool for managing growth, revitalizing neighborhoods, fostering local pride, and maintaining community character while enhancing livability; and

WHEREAS, historic preservation is relevant for communities across the nation, both urban and rural, and for Americans of all ages, all walks of life, and all backgrounds; and

WHEREAS, it is important to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping to preserve the tangible aspects of the heritage that has shaped us as a people; and

WHEREAS, in past years City staff has been involved in a wide variety of projects that help the City preserve and promote its historic resources including helping residents research their homes' histories; entering original building permit data into a database; providing on-site rehabilitation advice on topics such as paint color selection, paint removal, and window repair; sponsoring lectures to educate people about architecture, preservation, and Cleveland Heights history; assisting residents in researching and listing neighborhoods to the National Register of Historic Places and installing signs recognizing this designation; and funding improvements through the City's Storefront Renovation Program; and

WHEREAS, Cleveland Heights has shown a continued dedication to promoting the City's history, architecture, and historic preservation through partnerships with the Cleveland Restoration Society to administer the Heritage Home Loan Program, a program that allows owners of older homes access to low-interest loans and the technical assistance necessary to sensitively rehabilitate their older homes; and

WHEREAS, on March 4, 2019, City Council adopted comprehensive amendments to the City's Landmark Commission ordinance to protect and enhance the historic and aesthetic qualities of the City for the enjoyment of the City's residents and visitors alike, and to further preservation goals by enabling the Landmark Commission to: safeguard locally designated properties, protect properties as they go through the Landmark designation process, designate local historic districts where more than 50% of property owners consent, and protect designated properties from inappropriate alterations or demolition; and

RESOLUTION NO. (PD)

WHEREAS, on March 4, 2019, City Council authorized the City to request a Certification as a Certified Local Government, a federal-state-local partnership that permits qualified local communities to conduct a wide range of historic preservation activities in close cooperation with the State Historic Preservation Office; and

WHEREAS, on March 8, 2019, the City of Cleveland Heights was designated a Certified Local Government by the United States Department of the Interior; and

WHEREAS Cleveland Heights operates the Cleveland Heights Historical Center at Superior Schoolhouse, which draws visitors and students for tours and research; and

WHEREAS, *National Preservation Month 2019* is cosponsored by the City of Cleveland Heights and the National Trust for Historic Preservation; and

WHEREAS, the City of Cleveland Heights has been hosting events to celebrate *National Preservation Month* since 2002; and

WHEREAS, in Cleveland Heights, *National Preservation Month 2019* will be observed through the following five (5) free events cosponsored by the City, Cleveland Heights Landmark Commission, Cleveland Heights Historical Society, Cleveland Restoration Society, and Heights Libraries:

*Wood Windows: Repair or Replace?*  
Thursday, April 25, 7:00 p.m.  
Noble Neighborhood Library, 2800 Noble Road  
Speaker: Margaret Lann

*In My Day Wrap Party*  
Saturday, May 4, 12:00 p.m.  
Heights Main Library, 2345 Lee Road

*Gatsby and the Van Sweringens with Christopher Whipple*  
Wednesday, May 22, 7:00 p.m.  
Heights Main Library, 2345 Lee Road  
Speaker: Christopher Whipple

*Sacred Landmarks Lecture*  
Wednesday, May 29, 7:00 p.m.  
Heights Main Library, 2345 Lee Road  
Speaker: Michael Fleenor

*Best of the Bricks Bike Tour*  
Saturday, June 1, 10:00 a.m.  
Meet: at Noble Neighborhood Library, 2800 Noble Road

RESOLUTION NO. (PD)

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. This Council does hereby proclaim May 2019 *National Preservation Month* and calls upon the residents of the City of Cleveland Heights to join their fellow citizens across the United States in recognizing and participating in this special observance.

SECTION 2. Notice of passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to join with the other communities in this celebration and the need to proclaim *National Preservation Month* on a timely basis. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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CAROL ANN ROE, Mayor  
President of the Council

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SUSANNA NIERMANN O'NEIL  
Acting Clerk of Council

PASSED:

Proposed:

RESOLUTION NO. (SMS)

By Council Member

A Resolution authorizing the City Manager to enter into an agreement with GPD Group for administration and inspection services for the Meadowbrook Boulevard Reconstruction Project; providing compensation therefor; and declaring an emergency.

WHEREAS, the City requires professional services of an engineering consultant concerning the City's Meadowbrook Boulevard Reconstruction Project; and

WHEREAS, the City Manager has recommended that the services offered by GDP Group best meets the City's needs; and

WHEREAS, such services are professional services for which no bidding is necessary.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The City Manager be, and she is hereby, authorized to enter into an agreement with GPD Group for administration and inspection services for the Meadowbrook Boulevard Reconstruction Project. The contract shall be in accordance with the terms and conditions set forth in the proposed agreement for professional services submitted by GPD Group, copy of which is on file with the Clerk of Council. Compensation for the services detailed therein shall not exceed Seventy Seven Thousand Five Hundred and Fifteen Dollars (\$77,515.00). All agreements hereunder shall be approved as to form by the Director of Law.

SECTION 2. Notice of the passage of this Resolution shall be given by publishing the title and abstract of contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to commence the above-described improvements at the earliest possible time to protect the safety and welfare of those persons using the roads and streets of the City. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

RESOLUTION NO. (SMS)

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CAROL ANN ROE, Mayor  
President of the Council

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SUSANNA NIERMANN ONEIL  
Acting Clerk of Council

PASSED:

Proposed: 05/06/2019

RESOLUTION NO. (HT)

By Councilmember

A Resolution proclaiming (i) May 2019, *Bike Month*; (ii) May 8, 2019, *Bike to School Day*; (iii) May 13-19, 2019, *Bike to Work Week*; and (iv) May 17, 2019, *Bike to Work Day* in the City of Cleveland Heights; and declaring an emergency.

WHEREAS, bicycling is a sociable, healthy, green and economical mode of travel; and

WHEREAS, the United States Department of Transportation since 2010, has adopted a policy stating that “walking and bicycling are considered as equals with other transportation modes” and “not an afterthought in roadway design;” and

WHEREAS, the State of Ohio recognizes bicycles as valid vehicles for use on all Cleveland Heights roads; and

WHEREAS, Cleveland Heights streets and buildings are ideally arranged in a compact, well-connected pattern making it easy to walk and bike to businesses, schools, and recreational and cultural facilities; and

WHEREAS, Cleveland Heights continues to assess its transportation network and connections to other cities, finding grants for projects that improve the safety and comfort of bicyclists, such as the Cedar Glen Trail that connects Cedar Fairmount to University Circle and to the Lake to Lakes Trail and the bike lane buffers on North Park Boulevard; and

WHEREAS, Cleveland Heights was recognized as a bronze-level, Bicycle Friendly Community by the League of American Bicyclists in 2013 and 2017; and

WHEREAS, educating cyclists on the proper and safe operation of bicycles and motorists on how to properly share roads with bicyclists (including our school children) is important to ensure the safety and well-being of all; and

WHEREAS, the League of American Bicyclists, the Heights Bicycle Coalition, and transportation and fitness bicyclists in Cleveland Heights and other cities are promoting greater public awareness of cycling during the month of May through events such as *National Bike to School Day* on Wednesday, May 8, 2019, and the *Ride of Silence* on Wednesday, May 15, 2019, in which Cleveland Heights will participate with hundreds of other cities internationally to honor those killed or injured while riding on public streets and which, in the Heights area, will be routed from University Heights through Cleveland Heights to University Circle where Heights riders will join bicyclists from a Cleveland route; and

RESOLUTION NO. (HT)

WHEREAS, the Heights Bicycle Coalition will provide free coffee and bagels for bicycle commuters during the morning rush hour on *Bike to Work Day*, Friday, May 17, 2019, at the intersection of Edgemoor and Overlook roads (one of the busiest bicycle routes in Northeast Ohio), the culmination of *Bike to Work Week* during May 13-19, 2019.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. This Council does hereby proclaim (i) May 2019, *Bike Month*; (ii) May 8, 2019, *Bike to School Day*; (iii) May 13-19, 2019, *Bike to Work Week*; and (iv) May 17, 2019, *Bike to Work Day*, in the City of Cleveland Heights; and encourages all residents to review the laws and regulations governing bicycle safety and to use a bicycle for transportation to work and school, especially for trips within the City of Cleveland Heights.

SECTION 2. Notice of passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to join with the other communities in this celebration and the need to proclaim *Bike Month* and related events on a timely basis. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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CAROL ANN ROE, Mayor  
President of the Council

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SUSANNA NIERMANN O'NEIL  
Acting Clerk of Council

PASSED:

**CITY OF CLEVELAND HEIGHTS  
LAW DEPARTMENT  
MEMORANDUM**

TO: Mayor Carol Roe  
Members of City Council

FROM: L. James Juliano, Jr., Director of Law *JJJ/lxs*  
Collette Clinkscale, Director of Public Works

CC: Tanisha R. Briley, City Manager  
Department Directors

RE: Three Proposed Model Ordinances –First Reading May 6, 2019

DATE: April 19, 2019

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The purpose of this memo is to summarize three proposed model ordinances being provided to you with the Council packet;

1. New Chapter 1334, Erosion and Sediment Control;
2. Replacement Chapter 1335, Comprehensive Stormwater Management; and
3. New Chapter 1336, Illicit Discharge and Illegal Connection Control.

Since 2017, the City has been working with the Ohio Environmental Protection Agency, the Chagrin River Watershed Partners, and other advisors to develop improved regulations relating to stormwater management and control of illicit discharges into the storm drainage system.

A summary outline may be helpful.

***New Chapter 1334, Erosion and Sediment Control***

This is a new chapter. This regulation will allow development while minimizing increases in erosion and sedimentation. Generally, Chapter 1334 applies to development activities during the course of construction.

The Administrator (to be appointed by the City Manager) will require a storm water pollution prevention plan (SWP3) or, in certain cases, an abbreviated SWP3. Section 1334.05.

Chapter 1334 provides details for the application and technical requirements, including fees and a bond (Sections 1334.11 and 1334.12).

***Replacement Chapter 1335, Stormwater Management***

This regulation requires ongoing stormwater management in the form of a Comprehensive Stormwater Management Plan (CSMP). Section 1335.06.

Technical process requirements for the application and CSMP appear in Sections 1335.07 through 1335.12.

Application fees and bonds appear in Sections 1335.15 and 1335.16.

***New Chapter 1336, Illicit Discharge and Illegal Connection Control***

This new chapter will prohibit illicit discharges and illegal connections to the Municipal Separate Storm Sewer System (MS4).

This regulation prohibits illicit discharges into the MS4 throughout the City. Section 1336.08. It requires the City to maintain a program to detect and eliminate illicit discharges and illegal connections. Section 1336.09.

Chapter 1336 applies to both commercial and residential properties.

LJJ/aks

Proposed: 5/6/2019

ORDINANCE NO. -2019 (SMS)

By Councilmember

An Ordinance enacting Codified Ordinance Chapter 1334, Erosion and Sediment Control, and declaring an emergency.

**WHEREAS**, soil is most vulnerable to erosion by wind and water during soil disturbing activities and this eroded soil necessitates repair of sewers and ditches and dredging of rivers, harbors, and lakes; accelerates downstream bank erosion and damage to public and private property; damages water resources by reducing water quality; and causes the siltation of aquatic habitat; and

**WHEREAS**, communities throughout the watershed(s) in which the City of Cleveland Heights (“City”) is located have experienced and continue to experience costs associated with inadequate erosion and sediment control and increased State and Federal regulation; and

**WHEREAS**, there are watershed-wide efforts to reduce sedimentation in the Doan Brook watershed and the Dugway Brook watershed and Nine Mile Creek watershed and to protect and enhance the unique water resources or wetlands of these watersheds;

**WHEREAS**, the City is a member of the Doan Brook Watershed Partnership and recognizes the need to reduce sedimentation and to protect water quality by controlling soil disturbing activities within its borders; and

**WHEREAS**, 40 C.F.R. Parts 9, 122, 123 and 124, referred to as NPDES Stormwater Phase II, require designated communities, including the City, to develop and implement a Stormwater Management Program to address, among other components, erosion and sediment control during soil disturbing activities; and

**WHEREAS**, Article XVIII, Section 3 of the Ohio Constitution grants municipalities the legal authority to adopt rules to abate soil erosion and water pollution by soil sediments; and

**NOW, THEREFORE BE IT ORDAINED** by the Council of The City of Cleveland Heights, County of Cuyahoga, State of Ohio, that:

**SECTION 1:** Codified Ordinance **Chapter 1334, Erosion and Sediment Control**, is hereby adopted to read in total set forth in Exhibit A hereto:

**SECTION 2:** Notice of passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

**SECTION 3:** This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to commence the regulations set forth herein on a timely basis. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

ORDINANCE NO. -2019 (SMS)

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CAROL ANN ROE, Mayor  
President of the Council

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SUSANNA NIERMANN O'NEIL  
Acting Clerk of Council

PASSED:

**EXHIBIT A**

**CHAPTER 1334  
EROSION AND SEDIMENT CONTROL**

**1334.01 PURPOSE AND SCOPE**

- (a) The purpose of this regulation is to establish technically feasible and economically reasonable standards to achieve a level of erosion and sediment control that will minimize damage to property and degradation of water resources, and will promote and maintain the health and safety of the citizens of the City of Cleveland Heights (“City”)
- (b) This regulation will:
  - (1) Allow development while minimizing increases in erosion and sedimentation.
  - (2) Reduce water quality impacts to receiving water resources-that may be caused by new development or redevelopment activities.
- (c) This regulation applies to all parcels, located within the City, used or being developed, either wholly or partially, for new or relocated projects involving highways, underground cables, or pipelines; subdivisions or larger common plans of development; industrial, commercial, institutional, or residential projects; building activities on farms; redevelopment activities; general clearing; and all other uses that are not specifically exempted in Section 1334.01 (d), 1 Acre or greater in area.
- (d) This regulation does not apply to activities regulated by, and in compliance with, the Ohio Agricultural Sediment Pollution Abatement Rules.

**1334.02 DEFINITIONS**

For purpose of this regulation, the following terms shall have the meaning herein indicated:

- (a) **ABBREVIATED STORMWATER POLLUTION PREVENTION PLAN (ABBREVIATED SWP3):** The written document that sets forth the plans and practices to be used to meet the requirements of this regulation.
- (b) **ACRE:** A measurement of area equaling 43,560 square feet.
- (c) **ADMINISTRATOR:** The person or entity having the responsibility and duty of administering and ensuring compliance with this regulation. The Administrator shall be the city engineer or other person designated by the City Manager.
- (d) **BEST MANAGEMENT PRACTICES (BMPs):** Also **STORMWATER CONTROL MEASURE (SCM).** Schedule of activities, prohibitions of practices, maintenance procedures, and other management practices (both structural and non-structural) to prevent or reduce the pollution of water resources. BMPs also include treatment requirements, operating procedures, and practices to control facility and/or construction site runoff, spillage or leaks, sludge or waste disposal; or drainage from raw material storage.

ORDINANCE NO. -2019 (SMS)

- (e) CITY: The City of Cleveland Heights, its designated representatives, boards, or commissions.
- (f) COMMENCEMENT OF CONSTRUCTION: The initial disturbance of soils associated with clearing, grubbing, grading, placement of fill, or excavating activities or other construction activities.
- (g) CONCENTRATED STORMWATER RUNOFF: Any stormwater runoff that flows through a drainage pipe, ditch, diversion, or other discrete conveyance channel.
- (h) CONSTRUCTION ENTRANCE: The permitted points of ingress and egress to development areas regulated under this regulation.
- (i) DEVELOPMENT AREA: A parcel or contiguous parcels owned by one person or persons, or operated as one development unit, and used or being developed for commercial, industrial, residential, institutional, or other construction or alteration that changes runoff characteristics.
- (j) DEWATERING VOLUME: See current Ohio Rainwater and Land Development Manual or other standard acceptable to the Administrator.
- (k) DISCHARGE: The addition of any pollutant to surface waters of the state from a point source.
- (l) DISTURBANCE: Any clearing, grading, excavating, filling, or other alteration of land surface where natural or man-made cover is destroyed in a manner that exposes the underlying soils.
- (m) DISTURBED AREA: An area of land subject to erosion due to the removal of vegetative cover and/or soil disturbing activities such as grading, excavating, or filling.
- (n) DRAINAGE: (1) The area of land contributing surface water to a specific point. (2) The removal of excess surface water or groundwater from land by surface or subsurface drains.
- (o) DRAINAGE WATERSHED: For the purpose of this regulation the total contributing drainage area to a BMP, i.e., the “watershed” directed to the practice. This includes offsite contributing drainage.
- (p) DRAINAGE WAY: A natural or manmade channel, ditch, or waterway that conveys surface water in a concentrated manner by gravity.
- (q) EROSION: The process by which the land surface is worn away by the action of wind, water, ice, gravity, or any combination of those forces.
- (r) EROSION AND SEDIMENT CONTROL: The control of soil, both mineral and organic, to minimize the removal of soil from the land surface and to prevent its transport from a disturbed area by means of wind, water, ice, gravity, or any combination of those forces.
- (s) FINAL STABILIZATION: All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of at least 80% coverage for the

ORDINANCE NO. -2019 (SMS)

area has been established or equivalent stabilization measures, such as the use of mulches or geotextiles, have been employed. In addition, all temporary erosion and sediment control practices are removed and disposed of and all trapped sediment is permanently stabilized to prevent further erosion. Final stabilization also requires the installation of permanent (post-construction) stormwater control measures (SCMs).

- (t) GRADING: The excavating, filling, or stockpiling of earth material, or any combination thereof, including the land in its excavated or filled condition.
- (u) GRUBBING: removing or grinding of roots, stumps and other unwanted material below existing grade.
- (v) IMPERVIOUS: That which does not allow infiltration.
- (w) LANDSCAPE ARCHITECT: A Professional Landscape Architect registered in the State of Ohio.
- (x) LARGER COMMON PLAN OF DEVELOPMENT OR SALE: A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.
- (y) MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that are:
  - (1) Owned or operated by the federal government, state, municipality, township, county, district, or other public body (created by or pursuant to state or federal law) including a special district under state law such as a sewer district, flood control district or drainage districts, or similar entity, or a designated and approved management agency under Section 208 of the Federal Water Pollution Control Act that discharges into surface waters of the state; and
  - (2) Designed or used for collecting or conveying solely stormwater,
  - (3) Which is not a combined sewer, and
  - (4) Which is not a part of a publicly owned treatment works.
- (z) NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES): The national program for issuing, modifying, revoking and reissuing, termination, monitoring and enforcing permits and enforcing pretreatment requirements, under sections 307, 402, 318, 405 under the Clean Water Act.
- (aa) OPERATOR: Any party associated with a construction project that meets either of the following two criteria:
  - (1) The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
  - (2) The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with A Stormwater Pollution Prevention Plan (SWP3) for the site or other permit conditions (e.g. they are authorized to direct

ORDINANCE NO. -2019 (SMS)

workers at a site to carry out activities required by the SWP3 or comply with other permit conditions.

- (bb) **OWNER OR OPERATOR:** Any person who owns or operates any facility or activity subject to regulation under the NPDES program.
- (cc) **PARCEL:** Means a tract of land occupied or intended to be occupied by a use, building or group of buildings and their accessory uses and buildings as a unit, together with such open spaces and driveways as are provided and required. A parcel may contain more than one contiguous lot individually identified by a 'Permanent Parcel Number' assigned by the Cuyahoga County Auditor's Office.
- (dd) **PERCENT IMPERVIOUSNESS:** The impervious area created divided by the total area of the project site.
- (ee) **PERMANENT STABILIZATION:** Establishment of permanent vegetation, decorative landscape mulching, matting, sod, rip rap, and landscaping techniques to provide permanent erosion control on areas where construction operations are complete or where no further disturbance is expected for at least one year.
- (ff) **PERSON:** Any individual, corporation, firm, trust, commission, board, public or private partnership, joint venture, agency, unincorporated association, municipal corporation, county or state agency, the federal government, other legal entity, or an agent thereof.
- (gg) **PHASING:** Clearing a parcel of land in distinct sections, with the stabilization of each section before the clearing of the next.
- (hh) **POINT SOURCE:** Any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or the floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.
- (ii) **PRE-CONSTRUCTION MEETING:** A meeting between the City and all principal parties, prior to the start of any construction, at a site that requires a Stormwater Pollution Prevention Plan.
- (jj) **PRE-WINTER STABILIZATION MEETING:** A meeting between the City and all principal parties, prior to October 1, in order to plan winter erosion and sediment controls for a site that requires a Stormwater Pollution Prevention Plan.
- (kk) **PROFESSIONAL ENGINEER:** A Professional Engineer registered in the State of Ohio.
- (ll) **QUALIFIED INSPECTION PERSONNEL:** A person knowledgeable in the principles and practice of erosion and sediment controls, who possess the skills to assess all conditions at the construction site that could impact stormwater quality and to assess the effectiveness of any sediment and erosion control measure selected to control the quality of stormwater discharges from the construction activity.
- (mm) **RAINWATER AND LAND DEVELOPMENT:** Ohio's standards for stormwater management, land development, and stream protection. The most current edition of these standards shall be used with this regulation, subject to Administrator's reasonable

ORDINANCE NO. -2019 (SMS)

discretion to apply a different standard that is consistent with the purpose of this regulation.

- (nn) **RIPARIAN AREA:** The transition area between flowing water and terrestrial (land) ecosystems composed of trees, shrubs and surrounding vegetation which serve to stabilize erodible soil, improve both surface and ground water quality, increase stream shading and enhance wildlife habitat.
- (oo) **RUNOFF:** The portion of rainfall, melted snow, or irrigation water that flows across the ground surface and is eventually conveyed to water resources or wetlands.
- (pp) **RUNOFF COEFFICIENT:** The fraction of rainfall that will appear at the conveyance as runoff.
- (qq) **SEDIMENT:** The soils or other surface materials that are transported or deposited by the action of wind, water, ice, gravity, or any combination of those forces, as a product of erosion.
- (rr) **SEDIMENTATION:** The deposition or settling of sediment.
- (ss) **SEDIMENT SETTLING POND:** A sediment trap, sediment basin or permanent basin that has been temporarily modified for sediment control, as described in the latest edition of Rainwater and Land Development or such other standard acceptable to the Administrator.
- (tt) **SEDIMENT STORAGE VOLUME:** See current edition of online edition of Rainwater and Land Development as published by the Ohio Environmental Protection Agency or such other standard acceptable to the Administrator.
- (uu) **SENSITIVE AREA:** An area or water resource that requires special management because of its susceptibility to sediment pollution, or because of its importance to the well-being of the surrounding communities, region, or the State and includes, but is not limited to, the following:
  - (1) Ponds, wetlands or small lakes with less than five acres of surface area;
  - (2) Small streams with gradients less than ten feet per mile with average annual flows of less than 3.5 feet per second containing sand or gravel bottoms;
  - (3) Drainage areas of a locally or Ohio designated Scenic River; or
  - (4) Riparian and wetland areas.
- (vv) **SETBACK:** A designated transition area around water resources that is left in a natural, usually vegetated, state to protect the water resources from runoff pollution. Soil disturbing activities in this area are restricted by this regulation.
- (ww) **SITE OWNER/OPERATOR:** Any individual, corporation, firm, trust, commission, board, public or private partnership, joint venture, agency, unincorporated association, municipal corporation, county or state agency, the federal government, other legal entity, or an agent thereof that is responsible for the overall construction site or for any soil disturbing activity.

ORDINANCE NO. -2019 (SMS)

- (xx) **SOIL DISTURBING ACTIVITY:** Clearing, grading, excavating, filling, grubbing or stump removal that occurs during clearing or timber activities, or other alteration of the earth's surface where natural or human made ground cover is destroyed and that may result in, or contribute to, erosion and sediment pollution.
- (yy) **SOIL & WATER CONSERVATION DISTRICT:** An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Cuyahoga County Soil and Water Conservation District Board or its designated employee(s). Hereafter referred to as SWCD.
- (zz) **STABILIZATION:** The use of BMPs, such as seeding and mulching, that reduce or prevent soil erosion by water, wind, ice, gravity, or a combination of those forces.
- (aaa) **STEEP SLOPES:** Slopes that are 15 percent or greater in grade. NOTE: If otherwise defined in community zoning, use community definition.
- (bbb) **STORMWATER POLLUTION PREVENTION PLAN (SWP3):** The written document that sets forth the plans and practices to be used to meet the requirements of this regulation.
- (ccc) **STORMWATER:** Stormwater runoff, snow melt and surface runoff and drainage.
- (ddd) **SUBDIVISIONS, MAJOR AND MINOR:** See Ohio Administrative Code 711.001 for definition.
- (eee) **SURFACE OUTLET:** A dewatering device that only draws water from the surface of the water.
- (fff) **SURFACE WATER OF THE STATE:** Also Water Resource or Water Body. Any-stream, lake, reservoir, pond, marsh, wetland, or other waterway situated wholly or partly within the boundaries of the state, except those private waters which do not combine or affect a junction with surface water. Waters defined as sewerage systems, treatment works or disposal systems in Section 6111.01 of the Ohio Revised Code are not included.
- (ggg) **TEMPORARY STABILIZATION:** The establishment of temporary vegetation, mulching, geotextiles, sod, preservation of existing vegetation, and other techniques capable of quickly establishing cover over disturbed areas to provide erosion control between construction operations.
- (hhh) **TOPSOIL:** The upper layer of the soil that is usually darker in color and richer in organic matter and nutrients than subsoil.
- (iii) **TOTAL MAXIMUM DAILY LOAD:** If applicable by law, the sum of the existing and/or projected point source, nonpoint source, and background loads for a pollutant to a specified watershed, water resource or wetland, or water resource or wetland segment. A TMDL sets and allocates the maximum amount of a pollutant that may be introduced into the water and still ensure attainment and maintenance of water quality standard.

ORDINANCE NO. -2019 (SMS)

- (jjj) UNSTABLE SOILS: A portion of land that is identified by the Administrator as prone to slipping, sloughing, or landslides, or is identified by the U.S. Department of Agriculture Natural Resource Conservation Service methodology as having a low soil strength.
- (kkk) WATER QUALITY VOLUME (WQv): The volume of stormwater runoff which must be captured and treated prior to discharge from the developed site after construction is complete. WQv is based on the expected runoff generated by the mean storm precipitation volume from post-construction site conditions at which rapidly diminishing returns in the number of runoff events captured begins to occur.
- (lll) WATER RESOURCE Also SURFACE WATER OF THE STATE: Any stream, lake, reservoir, pond, marsh, wetland, or waterway situated wholly or partly within the boundaries of the state, except those private waters which do not combine or affect a junction with surface water. Waters defined as sewerage systems, treatment works or disposal systems in Section 6111.01 of the Ohio Revised Code are not included.
- (mmm) WATERSHED: The total drainage area contributing runoff to a single point.
- (nnn) WETLAND: Those areas, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas (40 CFR 232, as amended).

**1334.03        DISCLAIMER OF LIABILITY**

Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this regulation are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or for the benefit of any particular parcel of property.

**1334.04        CONFLICTS, SEVERABILITY, NUISANCES AND RESPONSIBILITY**

- (a) Where this regulation is in conflict with other provisions of law, ordinance, regulation, or judicial order, the Administrator shall determine within the Administrator's reasonable discretion which provision shall prevail, provided that the Administrator's determination shall be consistent with the purposes of this regulation.
- (b) If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.
- (c) This regulation shall not be construed as authorizing any person to maintain a private or public nuisance on their property, and compliance with the provisions of this regulation shall not be a defense in any action to abate such a nuisance.
- (d) Failure of the City to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the site owner from the responsibility for the condition or damage resulting therefrom, and shall not result in the City, its officers, employees, or agents being responsible for any condition or damage resulting therefrom.

**1334.05        DEVELOPMENT OF STORMWATER POLLUTION PREVENTION PLANS**

ORDINANCE NO. -2019 (SMS)

- (a) This regulation requires that a Stormwater Pollution Prevention Plan (SWP3) be developed and implemented for all soil disturbing activities disturbing one (1) or more acres of total land, or less than one (1) acre if part of a larger common plan of development or sale disturbing one (1) or more acres of total land. A Stormwater Pollution Prevention Plan must be developed and implemented for all commercial and industrial site development. The Administrator may require a Stormwater Pollution Prevention Plan on sites disturbing less than 1 acre, when stormwater runoff from these sites discharges to sensitive areas or areas of known flooding or water quality problems.
- (b) The following activities shall submit an Abbreviated SWP3:
  - (1) New single-family residential construction. If such activities disturb one (1) acre or more, or are part of a larger common plan of development or sale disturbing one (1) acre or more, a full SWP3 and compliance with the Ohio EPA Construction General Permit are required.
  - (2) Additions or accessory buildings for single-family residential construction. If such activities disturb one (1) acre or more, or are part of a larger common plan of development or sale disturbing one (1) acre or more, a full SWP3 and compliance with the Ohio EPA Construction Site General Permit are required.
  - (3) All non-residential construction on parcels of less than one (1) acre.
  - (4) General clearing activities not related to construction. If such activities disturb one (1) acre or more, or are part of a larger common plan of development or sale disturbing one (1) acre or more, compliance with the Ohio EPA Construction Site General Permit and a full SWP3 are required.
- (c) Activities disturbing 1/10 (one tenth) or less of an acre are not required to submit a SWP3 or an Abbreviated SWP3, unless required by the Administrator. These activities must comply with all other provisions of this regulation.

**1334.06 APPLICATION PROCEDURES**

- (a) **SOIL DISTURBING ACTIVITIES SUBMITTING A STORMWATER POLLUTION PREVENTION PLAN (SWP3):** The applicant shall submit two (2) sets of the SWP3 and the applicable fees to the City and two (2) sets of the SWP3 to the SWCD as follows:
  - (1) For developments: After the approval of the preliminary plans and with submittal of the improvement plans.
  - (2) For other construction projects: Before issuance of all applicable permits by the City.
  - (3) For general clearing projects: Prior to issuance of all applicable permits by the City.
- (b) **SOIL DISTURBING ACTIVITIES SUBMITTING AN ABBREVIATED STORMWATER POLLUTION PREVENTION PLAN (SWP3):** The applicant shall submit two (2) sets of the Abbreviated SWP3 and the applicable fees to the City and two (2) sets of the Abbreviated SWP3 and the applicable fees to the SWCD as follows:

ORDINANCE NO. -2019 (SMS)

- (1) For single-family home construction: Before issuance of all applicable permits by the City.
  - (2) For other construction projects: Before issuance of all applicable permits by the City
  - (3) For general clearing projects: Prior to issuance of all applicable permits by the City.
- (c) The Administrator and the SWCD shall review the plans submitted under 1334.06 (a) or (b) for conformance with this regulation and approve, or return for revisions with comments and recommendations for revisions. A plan rejected because of deficiencies shall receive a narrative report stating specific problems and the procedures for filing a revised plan.
- (d) Soil disturbing activities shall not begin and City permits shall not be issued without
- (1) Approved SWP3 or Abbreviated SWP3
  - (2) Installation of erosion and sediment controls
  - (3) Physical marking in the field of protected areas or critical areas, including wetlands and riparian areas
- (e) SWP3 for individual sublots in a subdivision will not be approved unless the larger common plan of development or sale containing the subplot is in compliance with this regulation.
- (f) The developer, engineer and contractor, and other principal parties, shall meet with the Administrator for a Pre-Construction Meeting no less than seven (7) days prior to soil-disturbing activity at the site to ensure that erosion and sediment control devices are properly installed, limits of disturbance and buffer areas are properly delineated and construction personnel are aware of such devices and areas. Pre-Construction Meetings for Abbreviated SWP3s may be waived at the discretion of the Administrator.
- (g) Approvals issued in accordance with this regulation shall remain valid for one (1) year from the date of approval.

**1334.07 COMPLIANCE WITH STATE AND FEDERAL REGULATIONS**

Approvals issued in accordance with this regulation do not relieve the applicant of responsibility for obtaining all other necessary permits and/or approvals from the Ohio EPA, the US Army Corps of Engineers, and other federal, state, and/or county agencies or judicial order. If requirements vary, the most restrictive requirement shall prevail. These permits may include, but are not limited to, those listed below. All submittals required to show proof of compliance with these state and federal regulations shall be submitted with SWP3s or Abbreviated SWP3s. Design, selection and maintenance of construction and post-construction storm water control measures shall, at a minimum, meet the requirements of the Ohio EPA General NPDES Permit for Storm Water Associated with Construction Activities in effect at the time of plan submittal to the City.

ORDINANCE NO. -2019 (SMS)

- (a) Ohio EPA NPDES Permits authorizing stormwater discharges associated with construction activity or the most current version thereof: Proof of compliance with these requirements shall be the applicant's Notice of Intent (NOI) number from Ohio EPA, a copy of the Ohio EPA Director's Authorization Letter for the NPDES Permit, or a letter from the site owner certifying and explaining why the NPDES Permit is not applicable.
- (b) Section 401 of the Clean Water Act: Proof of compliance shall be a copy of the Ohio EPA Water Quality Certification application tracking number, public notice, project approval, or a letter from the site owner certifying that a qualified professional has surveyed the site and determined that Section 401 of the Clean Water Act is not applicable. Wetlands, and other waters of the United States, shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this regulation.
- (c) Ohio EPA Isolated Wetland Permit: Proof of compliance shall be a copy of Ohio EPA's Isolated Wetland Permit application tracking number, public notice, project approval, or a letter from the site owner certifying that a qualified professional has surveyed the site and determined that Ohio EPA's Isolated Wetlands Permit is not applicable. Isolated wetlands shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this regulation.
- (d) Section 404 of the Clean Water Act: Proof of compliance shall be a copy of the U.S. Army Corps of Engineers Individual Permit application, public notice, or project approval, if an Individual Permit is required for the development project. If an Individual Permit is not required, the site owner shall submit proof of compliance with the U.S. Army Corps of Engineer's Nationwide Permit Program. This shall include one of the following:
  - (1) A letter from the site owner certifying that a qualified professional has evaluated the site and determined that Section 404 of the Clean Water Act is not applicable, and provide documentation.
  - (2) A site plan showing that any proposed fill of waters of the United States conforms to the general and special conditions specified in the applicable Nationwide Permit. Wetlands, and other waters of the United States, shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this regulation.
- (e) Ohio Dam Safety Law: Proof of compliance shall be a copy of the ODNR Division of Water permit application tracking number, a copy of the project approval letter from the ODNR Division of Water, or a letter from the site owner certifying and explaining why the Ohio Dam Safety Law is not applicable.

**1334.08      STORMWATER POLLUTION PREVENTION PLAN (SWP3)**

- (a) In order to control sediment pollution of water resources, the applicant shall submit a SWP3 in accordance with the requirements of this regulation.
- (b) The SWP3 shall include Best Management Practices (BMPs) and Stormwater Control Measures (SCMs) adequate to prevent pollution of public waters by soil sediment from accelerated storm water runoff from development areas.

ORDINANCE NO. -2019 (SMS)

- (c) The SWP3 shall be certified by a professional engineer, a registered surveyor, certified professional erosion and sediment control specialist, or a registered landscape architect.
- (d) The SWP3 shall be amended whenever there is a change in design, construction, operation or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the state or if the SWP3 proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity.
- (e) The SWP3 shall incorporate measures as recommended by the most current online edition of Rainwater and Land Development as published by the Ohio Environmental Protection Agency and shall include the following information:
  - (1) A cover page or title identifying the name and location of the site, the name and contact information of all construction site operators, the name and contact information for the person responsible for authorizing and amending the SWP3, preparation date, and the estimated start and completion dates for construction.
  - (2) A copy of the permit requirements (attaching a copy of the current Ohio EPA NPDES Construction General Permit is acceptable).
  - (3) Site description: The SWP3 shall provide:
    - (A) A description of the nature and type of the construction activity (e.g. residential, shopping mall, highway, etc.).
    - (B) Total area of the site and the area of the site that is expected to be disturbed (i.e., grubbing, clearing, excavation, filling or grading, including off-site borrow areas).
    - (C) An estimate of the impervious area and percent of imperviousness created by the land disturbance.
    - (D) A calculation of the run-off coefficients for both the pre-construction and post-construction site conditions.
    - (E) Existing data describing the soil and, if available, the quality of any known pollutant discharge from the site such as that which may result from previous contamination caused by prior land uses.
    - (F) A description of prior land uses at the site.
    - (G) An implementation schedule which describes the sequence of major soil-disturbing operations (i.e., grubbing, excavating, grading, utilities and infrastructure installation) and the implementation of erosion and sediment controls to be employed during each operation of the sequence.
    - (H) The location and name of the immediate receiving stream or surface water(s) and the first subsequent receiving water(s) and the aerial extent and description of wetlands or other special aquatic sites at or near the site which will be disturbed or which will receive discharges from disturbed areas of the project. For discharges to a municipal separate

ORDINANCE NO. -2019 (SMS)

storm sewer system (MS4), the point of discharge to the MS4 and the location where the MS4 ultimately discharges to a water resource shall be indicated.

- (I) List TMDLs applicable for the site and demonstrate that appropriate BMPs or stormwater control measures (SCMs) have been selected to address these TMDLs. Prior to the development of TMDLs, SCMs should be selected to address potential future TMDL requirements for pollutants including bacteria, dissolved oxygen and organic enrichment, flow, habitat, nutrients, and suspended solids (sediment) unless demonstrated that receiving water quality is not negatively impacted by these pollutants.
- (J) For - developments a detail drawing of a typical individual lot showing standard individual lot erosion and sediment control practices. This does not remove the responsibility to designate specific erosion and sediment control practices in the SWP3 for areas such as steep slopes, stream banks, drainage ways, and riparian zones.
- (K) Location and description of any stormwater discharges associated with dedicated asphalt and dedicated concrete plants associated with the development area and the best management practices to address pollutants in these stormwater discharges.
- (L) A log documenting grading and stabilization activities as well as amendments to the SWP3, which occur after construction activities commence.
- (M) Each temporary and permanent stormwater practice shall be designated with an individual identification number.
- (N) Site map showing:
  - (i) Limits of soil-disturbing activity of the site, including off site spoil and borrow areas.
  - (ii) Soils types should be depicted for all areas of the site, including locations of unstable or highly erodible soils.
  - (iii) Existing and proposed one-foot (1') contours. This must include a delineation of drainage watersheds expected during and after major grading activities as well as the size of each drainage watershed in acres.
  - (iv) Surface water locations including springs, wetlands, streams, lakes, water wells, etc., on or within 200 feet of the site, including the boundaries of wetlands or stream channels and first subsequent named receiving water(s) the applicant intends to fill or relocate for which the applicant is seeking approval from the Army Corps of Engineers and/or Ohio EPA.
  - (v) Existing and planned locations of buildings, roads, parking

facilities, and utilities.

- (vi) The location of all erosion and sediment control practices, including the location of areas likely to require temporary stabilization during the course of site development.
- (vii) Sediment and stormwater management basins including their sediment settling volume and the maximum expected disturbed area that will be directed to the sediment pond during construction. The plan should include a summary of the following:
  - (a) The required sediment storage and dewatering volumes
  - (b) The provided sediment storage and dewatering volumes
  - (c) The weir length or skimmer size, as applicable
  - (d) The weir length or skimmer size provided
- (viii) Data sheets for all sediment traps, sediment basins, and SCMs that identify contributing drainage area, disturbed area, water quality volume, sedimentation volume, dewatering volume, practice surface area, facility discharge and dewatering time, outlet type and dimensions, and any other relevant parameters for each practice.
- (ix) A separate plan and profile view of each individual sediment settling pond and its outlet structure. Detail drawings of the outlet structure shall indicate the following elevations:
  - (a) Pond bottom
  - (b) Elevation required to store the required sediment storage volume
  - (c) For sediment basins, the elevation at which the skimmer is attached
  - (d) For sediment traps, the top and bottom of the stone outlet section
  - (e) Elevation required to store the dewatering volume, exclusive of the sediment storage volume
  - (f) Elevation of the top of embankment
  - (g) Crest of the emergency spillway
- (x) Where used as a sediment-settling pond during construction, the plan shall include a detail drawing of the temporary outlet configuration of the permanent storm water basin with the following information specified:

ORDINANCE NO. -2019 (SMS)

- (a) Storage volume provided below the elevation at which the skimmer or other surface dewatering device is attached
  - (b) Elevation at which the skimmer or other surface dewatering device is attached
  - (c) Elevation at which the full dewatering zone is stored above the skimmer invert
  - (d) Any temporary modification to permanent outlet orifices or weirs required to ensure no discharge below the skimmer invert and only the skimmer controls the discharge up to the top of the dewatering volume.
  - (e) Calculations of the sediment storage volume, dewatering volume and skimmer drawdown time shall also be provided
- (xi) The location of permanent SCMs to be used to control pollutants in stormwater after construction operations have been completed.
  - (xii) Areas designated for the storage or disposal of solid, sanitary and toxic wastes, including dumpster areas, areas designated for cement truck washout, and vehicle fueling.
  - (xiii) Methods to minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, and sanitary waste to precipitation, stormwater runoff, and snow melt.
  - (xiv) Measures to prevent and respond to chemical spills and leaks. Applicants may also reference the existence of other plans (i.e., Spill Prevention Control and Countermeasure (SPCC) plans, spill control programs, Safety Response Plans, etc.) provided that such plan addresses this requirement and a copy of such plan is maintained on site.
  - (xv) Methods to minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. No detergents may be used to wash vehicles. Wash waters shall be treated in a sediment basin or alternative control that provides equivalent treatment prior to discharge.
  - (xvi) The location of designated stoned construction entrances where the vehicles will ingress and egress the construction site.
  - (xvii) The location of any in-stream activities including stream crossings.
- (4) A soils engineering report. The Administrator may require the SWP3 to include

## ORDINANCE NO. -2019 (SMS)

a Soils Engineering Report based upon his/her determination that the conditions of the soils are unknown or unclear to the extent that additional information is required to protect against erosion or other hazards. This report shall be based on adequate and necessary test borings, and shall contain all the information listed below. Recommendations included in the report and approved by the Administrator shall be incorporated in the grading plans and/or other specifications for site development.

- (A) Data regarding the nature, distribution, strength, and erodibility of existing soils.
- (B) If applicable, data regarding the nature, distribution, strength, and erodibility of the soil to be placed on the site.
- (C) Conclusions and recommendations for grading procedures.
- (D) Conclusions and recommended designs for interim soil stabilization devices and measures, and for permanent soil stabilization after construction is completed.
- (E) Design criteria for corrective measures when necessary.
- (F) Opinions and recommendations covering the stability of the site.

### **1334.09 PERFORMANCE STANDARDS**

The SWP3 must contain a description of the controls appropriate for each construction operation and the applicant must implement such controls. The SWP3 must clearly describe for each major construction activity the appropriate control measures; the general sequence during the construction process under which the measures will be implemented; and the contractor responsible for implementation (e.g., contractor A will clear land and install perimeter controls and contractor B will maintain perimeter controls until final stabilization).

The approved SWP3, and the sediment and erosion controls, and non-sediment pollution controls contained therein, shall be implemented upon the commencement of construction. Perimeter controls must be installed two working days prior to commencement of construction. The approved plan must be implemented until the site reaches final stabilization. All properties adjacent to the site of soil-disturbing activity shall be protected from soil erosion and sediment run-off and damage, including, but not limited to, private properties, natural and artificial waterways, wetlands, storm sewers and public lands.

It is the Site Owner's responsibility to maintain current records of any Site Operators responsible for implementation the SWP3 and providing that information to Administrator. The SWP3 shall identify all contractors and subcontractor Site Operators engaged in activities that could impact stormwater runoff. The SWP3 shall contain signatures from all of the identified Site Operators indicating that they have been informed and understand their roles and responsibilities in complying with the SWP3. The applicant shall review the SWP3 with the primary Site Operator prior to commencement of construction activities and keep a SWP3 training log to demonstrate that this review had occurred.

Erosion and sediment controls shall be designed, installed and maintained effectively to minimize the discharge of pollutants during the course of earth disturbing activities. The controls shall include the following minimum components:

- (a) **NON-STRUCTURAL PRESERVATION MEASURES:** The SWP3 must make use of practices that preserve the existing natural condition to the maximum extent practicable. Such practices may include preserving riparian areas, preserving existing vegetation and vegetative buffer strips, phasing of construction operations in order to minimize the amount of disturbed land at any one time, minimizing disturbance of steep slopes, designation of tree preservation areas or other protective clearing or grubbing practices. Soil compaction shall be minimized and, unless infeasible, topsoil shall be preserved. Provide and maintain a 50-foot buffer of undisturbed natural vegetation around surface waters of the state, or riparian or wetland setbacks, if applicable, whichever is greater, unless maintaining this buffer is infeasible (e.g., stream crossings for roads or utilities, or for channel and floodplain rehabilitation and restoration). Direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration.
  
- (b) **EROSION CONTROL PRACTICES:** The SWP3 must make use of erosion controls that are capable of providing cover over disturbed soils. The amount of soil exposed during construction activity shall be minimized. A description of control practices designed to restabilize disturbed areas after grading or construction shall be included in the SWP3. The SWP3 must provide specifications for stabilization of all disturbed areas of the site and provide guidance as to which method of stabilization will be employed for any time of the year. Such practices may include: temporary seeding, permanent seeding, mulching, matting, sod stabilization, vegetative buffer strips, phasing of construction operations, the use of construction entrances, and the use of alternative ground cover.

Erosion control practices must meet the following requirements:

- (1) Stabilization. Disturbed areas must be stabilized as specified in Tables 1 and 2 below.

**Table 1: Permanent Stabilization**

Area requiring permanent stabilization	Time frame to apply erosion controls
Any area that will lie dormant for one year or more.	Within 7 days of the most recent disturbance.
Any area within 50 feet of a surface water of the state and at final grade.	Within 2 days of reaching final grade.
Any other areas at final grade.	Within 7 days of reaching final grade within that area.

**Table 2: Temporary Stabilization**

Area requiring temporary stabilization	Time frame to apply erosion controls
Any disturbed area within 50 feet of a surface water of the state and not at final grade.	Within 2 days of the most recent disturbance if that area will remain idle for more than 14 days.
For all construction activities, any disturbed area, including soil stockpiles that will be dormant for more than 14 days but less than one year, and not within 50 feet of a surface water of the state.	Within 7 days of the most recent disturbance within the area.  For residential subdivisions, disturbed areas must be stabilized at least 7 days prior to transfer of ownership or operational responsibility.
Disturbed areas that will be idle over winter.	Prior to November 1 or the onset of winter weather, whichever occurs first.

**Note:** Where vegetative stabilization techniques may cause structural instability or are otherwise unobtainable, alternative stabilization techniques must be employed.

- (2) Permanent stabilization of conveyance channels. Applicants shall undertake special measures to stabilize channels and outfalls and prevent erosive flows. Measures may include seeding, dormant seeding, mulching, erosion control matting, sodding, riprap, natural channel design with bioengineering techniques, or rock check dams, all as defined in the most recent edition of Rainwater and Land Development or the Field Office Technical Guide available at [www.nrcs.usda.gov/technical/efotg/](http://www.nrcs.usda.gov/technical/efotg/).
- (c) **RUNOFF CONTROL PRACTICES.** The SWP3 shall incorporate measures that control the volume and velocity of stormwater runoff within the site to prevent erosion. Peak flow rates and total stormwater volume shall be controlled to minimize erosion and outlets, downstream channel and streambank erosion. Such practices may include rock check dams, pipe slope drains, diversions to direct flow away from exposed soils and protective grading practices. These practices shall divert runoff away from disturbed areas and steep slopes where practicable. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.
- (d) **SEDIMENT CONTROL PRACTICES.** The SWP3 shall include a description of, and detailed drawings for, all structural practices that shall store runoff, allowing sediments to settle and/or divert flows away from exposed soils or otherwise limit runoff from exposed areas to minimize sediment discharges from the site. Structural practices shall be used to control erosion and trap sediment from a site remaining disturbed for more than 14 days. Such practices may include, among others: sediment settling ponds, silt fences, storm drain inlet protection, and earth diversion dikes or channels which direct runoff to a sediment settling pond. The design, installation and maintenance of erosion and sediment controls shall address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site.
- (e) All sediment control practices must be capable of ponding runoff in order to be considered functional. Earth diversion dikes or channels alone are not considered a sediment control practice unless used in conjunction with a sediment settling pond.

Sediment control practices must meet the following requirements:

- (1) Timing. Sediment control structures shall be functional throughout the course of earth disturbing activity. Sediment basins and perimeter sediment barriers shall be implemented prior to grading and within seven (7) days from the start of grubbing. They shall continue to function until the up slope development area is restabilized. As construction progresses and the topography is altered, appropriate controls must be constructed or existing controls altered to address the changing drainage patterns.
- (2) Sediment settling ponds. A sediment settling pond, or equivalent best management practice upon approval from the Administrator and/or the SWCD, is required for any one of the following conditions:

ORDINANCE NO. -2019 (SMS)

- (A) Concentrated stormwater runoff.
- (B) Runoff from drainage areas which exceeds the design capacity of silt fence (see Table 3)- inlet protection, or other sediment barriers;
- (C) Runoff from common drainage locations with 10 or more acres of disturbed land.

Sediment settling ponds shall be provided in the form of a sediment trap or sediment basin as defined in the latest edition of Rainwater and Land Development. The maximum allowable contributing drainage area to a sediment trap shall be limited to less than 5 acres. Contributing-drainage areas of 5 acres or more shall be treated with a sediment basin. An equivalent best-management practice may be utilized upon approval from the City.

The sediment-settling pond shall provide both a sediment storage zone and a dewatering zone. The volume of the dewatering zone shall be at least 1,800 cubic feet of storage per acre of total contributing drainage area. The dewatering structure of sediment basins shall be designed to have a minimum 48-hour drain time, and, unless infeasible, be designed to always withdraw runoff from the surface of the pond throughout the storm cycle. As such, a skimmer discharge device consistent with Rainwater and Land Development shall be provided to dewater sediment basins. Sediment traps shall also provide both a sediment storage zone and dewatering zone, but the outlet structure shall be constructed consistent with the specifications contained in the latest edition of Rainwater and Land Development.

When post-construction detention/water quality ponds are to be used as temporary sediment trapping BMPs, a skimmer discharge device consistent with Rainwater and Land Development shall be utilized during construction phase and until the site is deemed by the City to be permanently stabilized.

The skimmer shall be designed per the equivalent requirements of sediment basins and the operator must ensure that the outlet structure of the pond provides an equivalent or better sediment storage zone and dewatering zone. As such, temporarily while the site is under construction, there shall be no discharge of runoff below the elevation required for the sediment storage zone and the discharge of stormwater within the dewatering zone shall only occur through the skimmer.

The volume of the sediment storage zone shall be calculated by one of the following methods:

- Method 1: The volume of the sediment storage zone shall be 1000ft<sup>3</sup> per disturbed acre within the watershed of the basin.
- Method 2: The volume of the sediment storage zone shall be the volume necessary to store the sediment as calculated with RUSLE or other generally accepted erosion prediction model.

When determining the total contributing drainage area, off-site areas and areas which remain undisturbed by construction activity must be included unless runoff from these areas is diverted away from the sediment settling pond and is not comingled with sediment-laden runoff. The depth of the dewatering zone must be less than or equal to five (5) feet. The configuration between the inlets and the outlet of the sediment-settling pond must provide at least two units of length for each one unit of width  $\geq 2:1$  length-to-width ratio; however, a length to width ratio of  $\geq 4:1$  is recommended. Sediment must be removed from the sediment-settling pond when the design capacity of the sediment storage zone has been completely filled by sediment accumulations - This limit is typically reached when sediment occupies one-half of the basin depth. When designing sediment settling ponds, the applicant must consider public safety, especially as it relates to children, as a design factor for the sediment basin and alternative sediment controls must be used where site limitations would preclude a safe design. The use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal is encouraged.

- (3) Silt fence and diversions. Sheet flow runoff from denuded areas shall be intercepted by silt fence or diversions to protect adjacent properties and water resources from sediment transported via sheet flow. Where intended to provide sediment control, silt fence shall be placed on a level contour and shall be capable of temporarily ponding runoff. The relationship between the maximum drainage area to silt fence for a particular slope range is shown in Table 3 below. Placing silt fence in a parallel series does not extend the size of the permissible drainage area.

**Table 3: Maximum Drainage Area to Silt Fence Based on Slope**

Maximum Drainage Area (acres) to 100 linear feet of silt fence	Range of slope for a drainage area (%)
0.5	<2%
0.25	$\geq 2\%$ but < 20%
0.125	$\geq 20\%$ but < 50%

- (4) Alternative perimeter controls for sheet flow discharges may be considered by the City, but their use shall not exceed the limitations indicated in Table 3 above. Detail drawings and plan notes shall specify the diameter of filter socks, compost berms and other such alternative perimeter controls if used instead of silt fence.
- (5) Stormwater diversion practices shall be used to keep runoff away from disturbed areas and steep slopes. Such devices, which include swales, dikes or berms, may receive storm water runoff from areas up to 10 acres.
- (6) Inlet protection. Erosion and sediment control practices, such as boxed inlet protection, shall be installed to minimize sediment-laden water entering active storm drain systems. All inlets receiving runoff from drainage areas of one or more acres will require a sediment settling pond. Straw or hay bales and filter socks around catch basins are not acceptable forms of inlet protection.
- (7) Off-site tracking of sediment and dust control. Best management practices must

ORDINANCE NO. -2019 (SMS)

be implemented to ensure sediment is not tracked off-site and that dust is controlled. These best management practices must include, but are not limited to, the following:

- (A) Construction entrances shall be built and shall serve as the only permitted points of ingress and egress to the development area. These entrances shall be built of a stabilized pad of aggregate stone or recycled concrete or cement sized greater than 2" in diameter, placed over a geotextile fabric, and constructed in conformance with specifications in the most recent edition of Rainwater and Land Development.
- (B) Streets and catch basins adjacent to construction entrances shall be kept free of sediment tracked off site. Streets directly adjacent to construction entrances and receiving traffic from the development area, shall be cleaned daily to remove sediment tracked off-site. If applicable, the catch basins on these streets nearest to the construction entrances shall also be cleaned weekly and protected from sediment-laden runoff, if feasible without posing a public safety hazard.

Based on site conditions, the Administrator and/or the SWCD may require additional best management practices to control off site tracking and dust. These additional BMPs may include:

- (C) Fencing shall be installed around the perimeter of the development area to ensure that all vehicle traffic adheres to designated construction entrances.
  - (D) Designated vehicle and wheel-washing areas. Wash water from these areas must be directed to a designated sediment trap, the sediment-settling pond, or to a sump pump for dewatering in conformance with Section 1334.09 (f) of this regulation. No surfactants or detergents may be used to wash vehicles.
  - (E) Applicants shall take all necessary measures to comply with applicable regulations regarding fugitive dust emissions, including obtaining necessary permits for such emissions. The Administrator and/or the SWCD may require dust controls including the use of water trucks to wet disturbed areas, tarping stockpiles, temporary stabilization of disturbed areas, and regulation of the speed of vehicles on the site.
- (8) Surface Waters of the State protection. Construction vehicles shall avoid water resources. A 50 foot undisturbed natural buffer shall be provided around surface waters of the state unless infeasible. If it is infeasible to provide and maintain an undisturbed 50-foot natural buffer, the SWP3 shall comply with the stabilization requirements in 1334.09 (b) (1) for areas within 50 feet of a surface water or riparian or wetland setbacks if applicable, whichever is greater; and minimize soil compaction and, unless infeasible, preserve topsoil. If a riparian or wetland setback is greater than 50 feet, no disturbance of natural vegetation shall occur within the riparian or wetland setback unless a variance to the riparian or wetland setback regulation has been granted. If the applicant is permitted to disturb areas within 50 feet of a water resource, the following conditions shall be addressed in the SWP3:

ORDINANCE NO. -2019 (SMS)

- (A) All BMPs and stream crossings shall be designed as specified in the most recent edition of Rainwater and Land Development.
  - (B) Structural practices shall be designated and implemented on site to protect water resources from the impacts of sediment runoff.
  - (C) No structural sediment controls (e.g., the installation of silt fence or a sediment settling pond in-stream) shall be used in water resources or wetlands.
  - (D) Where stream crossings for roads or utilities are necessary and permitted, the project shall be designed such that the number of stream crossings and the width of the disturbance are minimized.
  - (E) Temporary stream crossings shall be constructed if water resources or wetlands will be crossed by construction vehicles during construction.
  - (F) Construction of bridges, culverts, or sediment control structures shall not place soil, debris, or other particulate material into or close to the water resources or wetlands in such a manner that it may slough, slip, or erode.
  - (G) Concentrated stormwater runoff from BMPs to natural wetlands shall be converted to diffuse flow through the use of level spreaders or other such appropriate measure before the runoff enters the wetlands. The flow should be released such that no erosion occurs downslope. Level spreaders may need to be placed in series to ensure non-erosive velocities.
  - (H) Protected areas or critical areas, including wetlands and riparian areas shall be physically marked in the field prior to earth disturbing activities.
- (9) Modifying controls. If periodic inspections or other information indicates a control has been used inappropriately or incorrectly, the applicant shall replace or modify the control for site conditions.
- (f) **NON-SEDIMENT POLLUTANT CONTROLS:** No solid or liquid waste, including building materials, shall be discharged in stormwater runoff. The applicant must implement site best management practices to prevent toxic materials, hazardous materials, or other debris from entering water resources, wetlands or the MS4. These practices shall include but are not limited to the following:
- (1) Waste Materials: A covered dumpster shall be made available for the proper disposal of garbage, plaster, drywall, grout, gypsum, and other waste materials.
  - (2) Concrete Truck Wash Out: The washing of concrete material into a street, catch basin, other public facility, natural resource or water of the state is prohibited. A designated area for concrete washout shall be made available.
  - (3) Disposal of Other Wastewaters: The discharge of washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials to a street, catch basin, other public facility, natural resource or waters

of the state is prohibited. The discharge of soaps or solvents used in vehicle and equipment washing is also prohibited. If generated, these wastewaters must be collected and disposed of properly.

- (4) Fuel/Liquid Tank Storage: All fuel/liquid tanks and drums shall be stored in a marked storage area. A dike shall be constructed around this storage area with a minimum capacity equal to 110% of the volume of the largest containers in the storage area and/or a spill kit shall be provided to clean up spills. The SWP3 shall contain spill prevention and response procedures and these procedures shall be discussed at the pre-construction meeting.
- (5) Toxic or Hazardous Waste Disposal: Any toxic or hazardous waste shall be disposed of properly. The discharge of fuels, oils, and other pollutants used in vehicle and equipment operation and maintenance is prohibited.
- (6) Contaminated Soils Disposal and Runoff: Discovery of previously unknown contaminated soils onsite shall be self-reported to Ohio EPA, City, and applicable local authorities. Contaminated soils from redevelopment sites shall be disposed of properly. Runoff from contaminated soils shall not be discharged from the site. Proper permits shall be obtained for development projects on solid waste landfill sites or redevelopment sites. Where construction activities are to occur on sites with contamination from previous activities, operators shall be aware that concentrations of materials that meet other criteria (i.e. not considered a Hazardous Waste, meeting Voluntary Action Program (VAP standards)) may still result in stormwater discharges in excess of Ohio Water Quality Standards. Such discharges are not authorized by this code. Control measures which may be utilized to meet this requirement include, but are not limited to:
  - (A) Use berms, trenches, pits or tanks to collect contaminated runoff and prevent discharge.
  - (B) Pump runoff from contaminated soils to the sanitary sewer with the prior approval of the sanitary sewer system operator, or pump into a container for transport to an appropriate treatment or disposal facility; and
  - (C) Cover areas of contamination with tarps, daily cover or other such methods to prevent storm water from coming into contact with contaminated materials.

The SWP3 must include methods to minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, and sanitary waste to precipitation, stormwater runoff, and snow melt. The SWP3 shall include measures to prevent and respond to chemical spills and leaks. Applicants may also reference the existence of other plans (i.e., Spill Prevention Control and Countermeasure (SPCC) plans, spill control programs, Safety Response Plans, etc.) provided that such plan addresses this requirement and a copy of such plan is maintained on site.

- (g) **COMPLIANCE WITH OTHER REQUIREMENTS**. The SWP3 shall be consistent with applicable State and/or local waste disposal, sanitary sewer, or septic system regulations, including provisions prohibiting waste disposal by open burning, and shall provide for the proper disposal of contaminated soils located within the development area.
- (h) **TRENCH AND GROUND WATER CONTROL**. There shall be no sediment-laden or

ORDINANCE NO. -2019 (SMS)

turbid discharges to water resources or wetlands resulting from dewatering activities. If trench or ground water contains sediment, it must pass through a sediment-settling pond or other equally effective sediment control device, prior to being discharged from the construction site. Alternatively, sediment may be removed by settling in place or by dewatering into a sump pit, filter bag or comparable practice. Ground water dewatering which does not contain sediment or other pollutants is not required to be treated prior to discharge. However, care must be taken when discharging ground water to ensure that it does not become pollutant-laden by traversing over disturbed soils or other pollutant sources.

- (i) INTERNAL INSPECTIONS. All controls on the site shall be inspected a at least once every seven calendar days and within 24 hours after any storm event greater than one-half inch of rain per 24 hour period. The inspection frequency may be reduced to at least once every month if the entire site is temporarily stabilized or runoff is unlikely due to weather conditions (e.g., site is covered with snow, ice, or the ground is frozen). A waiver of inspection requirements is available until one month before thawing conditions are expected to result in a discharge if prior written approval has been attained from the Administrator and/or the SWCD and all of the following conditions are met:
- (1) The project is located in an area where frozen conditions are anticipated to continue for extended periods of time (i.e. more than one (1) month).
  - (2) Land disturbance activities have been suspended, and temporary stabilization is achieved.
  - (3) The beginning date and ending dates of the waiver period are documented in the SWP3.
  - (4) For sites that will not be completed by October 1, a Pre-Winter Stabilization Meeting shall be held by the landowner and the developer, engineer and contractor of the project and the City prior to October 1, in order to plan and approve winter erosion and sediment controls as defined in the most current online edition of Rainwater and Land Development.

The applicant shall assign qualified inspection personnel to conduct these inspections to ensure that the control practices are functional and to evaluate whether the SWP3 is adequate, or whether additional control measures are required. Qualified inspection personnel are individuals with knowledge and experience in the installation and maintenance of sediment and erosion controls. Certified inspection reports shall be submitted to the Administrator within seven (7) working days from the inspection and retained at the development site.

These inspections shall meet the following requirements:

- (1) Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of or the potential for, pollutants entering the drainage system.
- (2) Erosion and sediment control measures identified in the SWP3 shall be observed to ensure that they are operating correctly. The applicant shall utilize an inspection form provided by the City or an alternate form acceptable to the Administrator. The inspection form shall include:

ORDINANCE NO. -2019 (SMS)

- (A) The inspection date.
  - (B) Names, titles and qualifications of personnel making the inspection.
  - (C) Weather information for the period since the last inspection, including a best estimate of the beginning of each storm event, duration of each storm event and approximate amount of rainfall for each storm event in inches, and whether any discharges occurred.
  - (D) Weather information and a description of any discharges occurring at the time of inspection.
  - (E) Locations of:
    - (i) Discharges of sediment or other pollutants from site.
    - (ii) BMPs that need to be maintained.
    - (iii) BMPs that failed to operate as designed or proved inadequate for a particular location.
    - (iv) Where additional BMPs are needed that did not exist at the time of inspection.
  - (F) Corrective action required including any necessary changes to the SWP3 and implementation dates.
- (3) Discharge locations shall be inspected to determine whether erosion and sediment control measures are effective in preventing significant impacts to the receiving water resource or wetlands.
- (4) Locations where vehicles enter or exit the site shall be inspected for evidence of off-site vehicle tracking.
- (5) The applicant shall maintain for three (3) years following final stabilization the results of these inspections, the names and qualifications of personnel making the inspections, the dates of inspections, major observations relating to the implementation of the SWP3, a certification as to whether the facility is in compliance with the SWP3, and information on any incidents of non-compliance determined by these inspections.
- (i) **MAINTENANCE.** The SWP3 shall be designed to minimize maintenance requirements. All BMPs shall be maintained and repaired as needed to ensure continued performance of their intended function until final stabilization. All sediment control practices must be maintained in a functional condition until all up slope areas they control reach final stabilization. The applicant shall provide a description of maintenance procedures needed to ensure the continued performance of control practices and shall ensure a responsible party and adequate funding to conduct this maintenance, all as determined by the Administrator.

ORDINANCE NO. -2019 (SMS)

When inspections reveal the need for repair, replacement, or installation of erosion and sediment control BMPs, the following procedures shall be followed:

- (1) When BMPs require repair or maintenance. If an internal inspection reveals that a BMP is in need of repair or maintenance, with the exception of a sediment-settling pond, it must be repaired or maintained within three (3) days of the inspection. Sediment settling ponds must be repaired or maintained within ten (10) days of the inspection.
  - (2) When BMPs fail to provide their intended function. If an internal inspection reveals that a BMP fails to perform its intended function as detailed in the SWP3 and that another, more appropriate control practice is required, the SWP3 must be amended and the new control practice must be installed within three (3) to ten (10) days of the inspection as determined by the community engineer or site inspector.
  - (3) When BMPs depicted on the SWP3 are not installed. If an internal inspection reveals that a BMP has not been implemented in accordance with the schedule, the control practice must be implemented within ten (10) days from the date of the inspection. If the internal inspection reveals that the planned control practice is not needed, the record must contain a statement of explanation as to why the control practice is not needed.
- (j) FINAL STABILIZATION. Final stabilization shall be determined by the Administrator. Once a definable area has achieved final stabilization, the applicant may note this on the SWP3 and no further inspection requirement applies to that portion of the site. Final stabilization also requires the installation of permanent (post-construction) stormwater control measures (SCMs). Obligations under this ordinance shall not be completed until installation of post-construction BMPs is verified.

**1334.10 ABBREVIATED STORMWATER POLLUTION PREVENTION PLAN (SWP3).**

- (a) In order to control sediment pollution of water resources, the applicant shall submit an Abbreviated SWP3 in accordance with the requirements of this regulation.
- (b) The Abbreviated SWP3 shall be certified by a professional engineer, a registered surveyor, certified professional erosion and sediment control specialist, or a registered landscape architect.
- (c) The Abbreviated SWP3 shall include a minimum of the following BMPs. City may require other BMPs as site conditions warrant.
  - (1) Construction Entrances: Construction entrances shall be built and shall serve as the only permitted points of ingress and egress to the development area. These entrances shall be built of a stabilized pad of aggregate stone or recycled concrete or cement sized greater than 2" in diameter, placed over a geotextile fabric, and constructed in conformance with specifications in the most recent edition of Rainwater and Land Development.
  - (2) Concrete Truck Wash Out: The washing of concrete material into a street, catch basin, or other public facility or natural resource is prohibited. A designated area

for concrete washout shall be indicated on the plan. Use for other waste and wastewater is prohibited.

- (3) Street Sweeping: Streets directly adjacent to construction entrances and receiving traffic from the development area shall be cleaned daily to remove sediment tracked off-site. If applicable, the catch basins on these streets nearest to the construction entrances shall be cleaned weekly.
- (4) Stabilization. The development area shall be stabilized as detailed in Table 4.

**Table 4: Stabilization**

Area requiring stabilization	Time frame to apply erosion controls
Any disturbed area within 50 feet of a surface water of the state and not at final grade.	Within 2 days of the most recent disturbance if that area will remain idle for more than 14 days
For all construction activities, any disturbed area, including soil stockpiles that will be dormant for more than 14 days but less than one year, and not within 50 feet of a stream.	Within 7 days of the most recent disturbance within the area
Disturbed areas that will be idle over winter	Prior to November 1
<b>Note:</b> Where vegetative stabilization techniques may cause structural instability or are otherwise unobtainable, alternative stabilization techniques must be employed. These techniques may include mulching or erosion matting.	

- (5) Inlet Protection. Erosion and sediment control practices, such as boxed inlet protection, shall be installed to minimize sediment-laden water entering active storm drain systems, including rear yard inlets. Straw, hay bales, and filter socks are not acceptable forms of inlet protection.
- (6) Silt Fence and Other Perimeter Controls. Silt fence and other perimeter controls approved by the City shall be used to protect adjacent properties and water resources from sediment discharged via sheet (diffused) flow. Silt fence shall be placed along level contours and the permissible drainage area is limited to those indicated in Table 3 in 1334.09 of these regulations.
- (7) Internal Inspection and Maintenance. All controls on the development area shall be inspected at least once every seven calendar days and within 24 hours after any storm event greater than one-half inch of rain per 24 hour period. Maintenance shall occur as detailed below:
  - (A) When BMPs require repair or maintenance. If the internal inspection reveals that a BMP is in need of repair or maintenance, with the exception of a sediment-settling pond, it must be repaired or maintained within three (3) days of the inspection. Sediment settling ponds must be repaired or maintained within ten (10) days of the inspection.
  - (B) When BMPs fail to provide their intended function. If the internal inspection reveals that a BMP fails to perform its intended function and that another, more appropriate control practice is required, the Abbreviated SWP3 must be amended and the new control practice must be installed within ten (10) days of the inspection.

ORDINANCE NO. -2019 (SMS)

(C) When BMPs depicted on the Abbreviated SWP3 are not installed. If the internal inspection reveals that a BMP has not been implemented in accordance with the schedule, the control practice must be implemented within ten (10) days from the date of the inspection. If the inspection reveals that the planned control practice is not needed, the record must contain a statement of explanation as to why the control practice is not needed.

(8) Final Stabilization: Final stabilization shall be determined by the Administrator.

**1334.11 FEES**

The SWP3 and Abbreviated SWP3 review, filing, and inspection fee is part of a complete submittal and is required to be submitted to the City before the review process begins. The Administrator shall have the discretion to adjust all or part of these fees in light of fees that may be paid pursuant to Chapter 1334 and Chapter 1335.

Disturbed Areas	Review fee*	Reserve Deposit for Inspection during construction	Annual post construction BMP fee per site
Less than 1 acre	\$250	\$250	n/a
One acre to five acres	\$500	\$1,000	\$300
Greater than five acres	\$250 per whole acre rounded up	\$500 per whole acre rounded up	\$500

\* Additional re-review of plan submissions shall be charged 25 percent of the review fee per submittal.

**1334.12 BOND**

- (a) If a SWP3 or Abbreviated SWP3 is required by this regulation, soil disturbing activities shall not be permitted until a cash bond or deposit has been deposited with the City Finance Department. The amount shall be \$2,500 for one acre to five acres and \$5,000 for more than five acres. The bond will be used for the City to perform the obligations otherwise to be performed by the Site Owner or Site Operator of the development area as stated in this regulation and to allow all work to be performed as needed in the event that the applicant fails to comply with the provisions of this regulation. The cash bond shall be returned, less administrative fees as detailed in Chapter 1334 of the Codified Ordinances, after all work required by this regulation has been completed and final stabilization has been reached, all as determined by the Administrator. In implementing these regulations, the Administrator or other City officials may consult with the local county SWCD, state and federal agencies and other technical experts as necessary. Any costs associated with such consultations may be assessed to the applicant or his or her designated representative.
- (b) No project subject to this regulation shall commence without a SWP3 or Abbreviated SWP3 approved by the Administrator.

**1334.13 ENFORCEMENT**

- (a) Notice of Violation. When the City finds that a person, including but not limited to a Site Owner or Site Operator, has violated a prohibition or failed to meet a requirement of this regulation, the City may order compliance by written Notice of Violation, including but

ORDINANCE NO. -2019 (SMS)

not limited to a stop work order. Such notice must specify the violation and shall be hand delivered, and/or sent by certified mail with return receipt and first class mail, to the owner/operator of the facility.

- (b) If abatement or remediation of a violation and/or restoration of affected property are required, the Notice of Violation shall set forth a deadline within which such remediation or restoration must be completed. Said Notice shall further advise that, should the facility owner/operator fail to abate, remediate, or restore within the established deadline, a legal action for enforcement may be initiated.
- (c) Any person receiving a Notice of Violation must meet compliance standards within the time established in the Notice of Violation.
- (d) The Administrator shall have the authority to make immediate on-site adjustments to the SWP3 in order to achieve compliance with this ordinance.
- (e) A final inspection will be made to determine if the criteria of this code have been satisfied and a report will be presented to the City on the site's compliance status.
- (f) The Administrator will monitor soil-disturbing activities for non-farm residential, commercial, industrial, or other non-farm purposes on land of less than one contiguous acre to ensure compliance required by these Rules.
- (g) The Administrator shall notify the U.S. Army Corps of Engineers when a violation on a development project covered by an Individual or Nationwide Permit is identified. The Administrator shall notify the Ohio Environmental Protection Agency when a violation on a development project covered by a Section 401 Water Quality Certification and/or Isolated Wetland Permit is identified.
- (h) The City shall not issue building permits for projects regulated under this code that have not received approval for an SWP3 for said project(s).
- (i) Administrative Hearing: Any person receiving a Notice of Violation may request an administrative hearing by hand delivery or sending by certified mail with return receipt and first class mail a request for hearing to the Administrator with a copy to the Director of Law. Said request must be received within ten (10) calendar days of the date of the Notice of Violation. The City shall schedule an administrative hearing. Notice of the administrative hearing shall be hand delivered and/or sent certified mail and first class mail. The hearing shall be held before the Nuisance Abatement Review Board (“NARB”) pursuant to Cod. Ord. Chapter 553. The decision of the NARB shall be final without further appeal within the City, and the Administrator or other authorized City official shall proceed according to the NARB’s decision.
- (j) Injunctive Relief: It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this regulation. If a person has violated or continues to violate the provisions of this regulation, the City may, pursuant to federal, state, or local laws and regulations, petition a court of competent jurisdiction for a preliminary or permanent injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.

ORDINANCE NO. -2019 (SMS)

After exhaustion of the administrative steps herein, including Section 1334.13 (i), a person aggrieved by any final order, requirement, determination, or any other final action by the City in relation to this regulation may appeal to the court of common pleas. Such an appeal shall be made in conformity with Ohio Rev. Code Ch. 2506. Written notice of appeal shall be served on the City to the attention of the City Manager and the Director of Law and a copy shall be provided to the SWCD.

**1334.15 REMEDIES NOT EXCLUSIVE**

The remedies listed in this regulation are not exclusive of any other remedies available under any applicable federal, state or local law and it is in the discretion of the City to seek cumulative remedies.

**1334.99 PENALTY**

- (a) No person shall violate, or cause, or knowingly permit to be violated, any of the provisions of this chapter, or fail to comply with any such provisions or with any lawful requirements of any public authority made pursuant to this chapter, or knowingly use or cause or permit the use of any lands in violation of this chapter or in violation of any permit granted under this chapter.
- (b) Whoever violates or fails to comply with any provision of this regulation is guilty of a misdemeanor of the first degree and shall be fined no more than one thousand dollars (\$1,000.00) or imprisoned for no more than one hundred eighty (180) days, or both, for each offense.
- (c) A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

Proposed: 5/6/2019

ORDINANCE NO. -2019(SMS)

By Councilmember

An Ordinance setting forth comprehensive stormwater management regulations, repealing current Chapter 1335 of the Codified Ordinances, and adopting a replacement Chapter 1335, Stormwater Management, and declaring an emergency.

**WHEREAS**, flooding is a significant threat to property and public health and safety and stormwater management lessens flood damage by reducing and holding runoff and releasing it slowly; and,

**WHEREAS**, streambank erosion is a significant threat to property and public health and safety and stormwater management slows runoff and reduces its erosive force; and,

**WHEREAS**, insufficient control of stormwater can result in significant damage to receiving water resources, impairing the capacity of these areas to sustain aquatic systems and their associated aquatic life use designations; and,

**WHEREAS**, land development projects and associated increases in impervious cover alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, and sediment transport and deposition; and,

**WHEREAS**, stormwater runoff contributes to increased quantities of pollutants to water resources; and,

**WHEREAS**, stormwater runoff, stream channel erosion, and nonpoint source pollution can be controlled and minimized through the regulation of runoff from land development projects; and,

**WHEREAS**, there are watershed-wide efforts to reduce flooding, erosion, and water quality problems in the Doan Brook watershed and the Dugway Brook watershed and Nine Mile Creek watershed; and,

**WHEREAS**, the City of Cleveland Heights (“City”) finds that the lands and waters within its borders are finite natural resources and that their quality is of primary importance in promoting and maintaining public health and safety within its borders; and,

**WHEREAS**, the City desires to establish standards, principles, and procedures for the regulation of soil disturbing activities that may increase flooding and erosion and may cause adverse impacts to water resources, resulting from stormwater runoff; and,

**WHEREAS**, the use of green infrastructure and runoff reduction practices improves water quality in our streams and Lake Erie and reduces the magnitude and frequency of flooding and combined sewer overflow events through the infiltration, evapotranspiration, treatment and reuse of stormwater runoff; and

**WHEREAS**, the use of green infrastructure produces community benefits including reduced

ORDINANCE NO. -2019(SMS)

crime, increased property values, increased retail sales and lower infrastructure costs; and

**WHEREAS**, the City is a member of the Doan Brook Watershed Partners and recognizes the need to manage stormwater within its borders; and

**WHEREAS**, 40 C.F.R. Parts 9, 122, 123, and 124, and Ohio Administrative Code 3745-39 require designated communities, including the City to develop a Stormwater Management Program that, among other components, requires the City to implement standards, principles, and procedures to regulate the quality of stormwater runoff during and after soil disturbing activities; and,

**WHEREAS**, Article XVIII, Section 3 of the Ohio Constitution grants municipalities the legal authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Cleveland Heights, County of Cuyahoga, State of Ohio, that:

**SECTION 1:** Current Chapter 1335 is hereby repealed in its entirety.

**SECTION 2:** Codified Ordinance **Chapter 1335 Stormwater Management** is hereby adopted to read in total as set forth in Exhibit A hereto.

**SECTION 3:** Notice of passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

**SECTION 4:** This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to commence the regulations set forth herein on a timely basis. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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CAROL ANN ROE, Mayor  
President of the Council

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SUSANNA NIERMANN O'NEIL  
Acting Clerk of Council

PASSED:

**EXHIBIT A**

**CHAPTER 1335  
STORMWATER MANAGEMENT**

**1335.01 PURPOSE AND SCOPE**

- (a) The purpose of this regulation is to establish technically feasible and economically reasonable stormwater management standards to achieve a level of stormwater quality and quantity control that will minimize damage to public and private property and degradation of water resources and will promote and maintain the health, safety, and welfare of the citizens of the City of Cleveland Heights (“City”):
- (b) This regulation requires owners who develop or re-develop their property within the City to:
  - (1) Control stormwater runoff from their property and ensure that all Stormwater Control Measures (“SCM”(s)) are properly designed, constructed, and maintained.
  - (2) Reduce water quality impacts to receiving water resources that may be caused by new development or redevelopment activities.
  - (3) Control the volume, rate, and quality of stormwater runoff originating from their property so that surface water and groundwater are protected and flooding and erosion potential are not increased.
  - (4) Minimize the need to construct, repair, and replace subsurface storm drain systems.
  - (5) Preserve natural infiltration and ground water recharge, and maintain subsurface flow that replenishes water resources, except in slippage prone soils.
  - (6) Incorporate stormwater quality and quantity controls into site planning and design at the earliest possible stage in the development process.
  - (7) Reduce the expense of remedial projects needed to address problems caused by inadequate stormwater management.
  - (8) Maximize use of SCMs that serve multiple purposes including, but not limited to, flood control, erosion control, fire protection, water quality protection, recreation, and habitat preservation.
  - (9) Design sites to minimize the number of stream crossings and the width of associated disturbance in order to minimize the City’s future expenses related to the maintenance and repair of stream crossings.

ORDINANCE NO. -2019(SMS)

- (10) Maintain, promote, and re-establish conditions necessary for naturally occurring stream processes that assimilate pollutants, attenuate flood flows, and provide a healthy water resource.
- (c) This regulation shall apply to all parcels used or being developed, either wholly or partially, for new or relocated projects involving highways and roads; subdivisions or larger common plans of development; industrial, commercial, institutional, or residential projects; redevelopment activities; grading; and all other uses that are not specifically exempted in this Section 1335.01.
- (d) Public entities, including the State of Ohio, Cuyahoga County, and the City shall comply with this regulation for roadway projects initiated after March 10, 2006 and, to the maximum extent practicable, for projects initiated before that time.
- (e) This regulation does not require a storm water management plan for routine public maintenance projects, such as sewer and water main replacement or street reconstruction, which does not result in the installation of additional impervious surface.
- (f) This regulation does not apply to activities regulated by, and in compliance with, the Ohio Agricultural Sediment Pollution Abatement Rules.
- (g) This regulation does not require a Comprehensive Stormwater Management Plan for linear construction projects, such as pipeline or utility line installation, that do not result in the installation of impervious surface as determined by the Administrator. Such projects must be designed to minimize the number of stream crossings and the width of disturbance. Linear construction projects must comply with the requirements of Chapter 1334 Erosion and Sediment Control.

**1335.02 DEFINITIONS**

For the purpose of this regulation, the following terms shall have the meaning herein indicated:

- (a) ACRE: A measurement of area equaling 43,560 square feet.
- (b) ADMINISTRATOR: The person or entity having the responsibility and duty of administering and ensuring compliance with this regulation. The Administrator shall be the city engineer or other person designated by the City Manager.
- (c) AS-BUILT SURVEY: A survey shown on a plan or drawing prepared by a registered professional surveyor indicating the actual dimensions, elevations, and locations of any structures, underground utilities, swales, detention facilities, and sewage treatment facilities after construction has been completed.
- (d) BEST MANAGEMENT PRACTICES (BMP): Also STORMWATER CONTROL MEASURE (SCMs). Schedule of activities, prohibitions of practices, operation and maintenance procedures, treatment requirements, and other management practices (both structural and non-structural) to prevent or reduce the pollution of water resources and to control stormwater volume and rate. This includes practices to control runoff, spillage or

ORDINANCE NO. -2019(SMS)

leaks, sludge or waste disposal, or drainage from raw material storage. For guidance, please see U.S. EPA's National Menu of BMPs at <http://water.epa.gov/polwaste/npdes/swbmp/index.cfm>.

- (e) CITY: The City of Cleveland Heights, its designated representatives, boards, and commissions.
- (f) CLEAN WATER ACT: Pub. L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4, 33 U.S.C. 1251 et. seq. Referred to as the Federal Water Pollution Control Act or the Federal Water Pollution Control Act Amendments of 1972.
- (g) COMPREHENSIVE STORMWATER MANAGEMENT PLAN: The written document and plans meeting the requirements of this regulation that sets forth the plans and practices to minimize stormwater runoff from a development area, to safely convey or temporarily store and release post-development runoff at an allowable rate to minimize flooding and stream bank erosion, and to protect or improve stormwater quality and stream channels.
- (h) CRITICAL STORM: A storm that is determined by calculating the percentage increase in volume of runoff by a proposed development area for the 1 year 24 hour event. The critical storm is used to calculate the maximum allowable stormwater discharge rate from a developed site.
- (i) DEVELOPMENT AREA: A parcel or contiguous parcels owned by one person or persons, or operated as one development unit, and used or being developed for commercial, industrial, residential, institutional, or other construction or alteration that changes runoff characteristics.
- (j) DEVELOPMENT DRAINAGE AREA: A combination of each hydraulically unique watershed with individual outlet points on the development area.
- (k) DISTURBED AREA: An area of land subject to erosion due to the removal of vegetative cover and/or soil disturbing activities.
- (l) DRAINAGE: The removal of excess surface water or groundwater from land by surface or subsurface drains.
- (m) EROSION: The process by which the land surface is worn away by the action of wind, water, ice, gravity, or any combination of those forces.
- (n) EXTENDED DETENTION FACILITY: A stormwater control measure that replaces and/or enhances traditional detention facilities by releasing the runoff collected during the stormwater quality event over at least 24 to 48 hours, retarding flow and allowing pollutants to settle within the facility.
- (o) FINAL STABILIZATION: All soil disturbing activities at the site have been completed

ORDINANCE NO. -2019(SMS)

and a uniform perennial vegetative cover with a density of at least 80% coverage for the area has been established or equivalent stabilization practices, such as the use of mulches or geotextiles, have been employed.

- (p) GRADING: The process in which the topography of the land is altered to a new slope.
- (q) GREEN INFRASTRUCTURE: Wet weather management approaches and technologies that utilize, enhance or mimic the natural hydrologic cycle processes of infiltration, evapotranspiration and reuse.
- (r) HYDROLOGIC UNIT CODE: a cataloging system developed by the United States Geological Survey and the Natural Resource Conservation Service to identify watersheds in the United States.
- (s) IMPERVIOUS COVER: Any surface that cannot effectively absorb or infiltrate water. This may include roads, streets, parking lots, rooftops, sidewalks, and other areas not covered by vegetation.
- (t) INFILTRATION CONTROL MEASURE: A stormwater control measure that does not discharge to a water resource during the stormwater quality event, requiring collected runoff to either infiltrate into the groundwater and/or be consumed by evapotranspiration, thereby retaining stormwater pollutants in the facility.
- (u) LARGER COMMON PLAN OF DEVELOPMENT: A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.
- (v) LOW IMPACT DEVELOPMENT: Low-impact development (LID) is a site design approach, which seeks to integrate hydrologically functional design with pollution prevention measures to compensate for land development impacts on hydrology and water quality. LID's goal is to mimic natural hydrology and processes by using small-scale, decentralized practices that infiltrate, evaporate, detain, and transpire stormwater. LID stormwater control measures (SCMs) are uniformly and strategically located throughout the site.
- (w) MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that are:
  - (1) Owned or operated by the federal government, state, municipality, township, county, district, or other public body (created by or pursuant to state or federal law) including a special district under State law such as a sewer district, flood control district or drainage districts, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act that discharges into water resources; and
  - (2) Designed or used for collecting or conveying solely stormwater,

ORDINANCE NO. -2019(SMS)

- (3) Which is not a combined sewer, and
- (4) Which is not a part of a publicly owned treatment works.
- (x) National Pollutant Discharge Elimination System (NPDES): A regulatory program in the Federal Clean Water Act that prohibits the discharge of pollutants into surface waters of the United States without a permit.
- (y) NONSTRUCTURAL STORMWATER CONTROL MEASURE (SCM): Any technique that uses natural processes and features prevent or reduce the discharge of pollutants to water resources and control stormwater volume and rate.
- (z) PERSON: Any individual, corporation, firm, trust, commission, board, public or private partnership, joint venture, agency, unincorporated association, municipal corporation, county or state agency, the federal government, other legal entity, or an agent thereof.
- (aa) POST-DEVELOPMENT: The conditions that exist following the completion of soil disturbing activity in terms of topography, vegetation, land use, and the rate, volume, quality, or direction of stormwater runoff.
- (bb) PRE-CONSTRUCTION MEETING: Meeting prior to construction between all parties associated with the construction of the project including government agencies, contractors and owners to review agency requirements and plans as submitted and approved.
- (cc) PRE-DEVELOPMENT: The conditions that exist prior to the initiation of soil disturbing activity in terms of topography, vegetation, land use, and the rate, volume, quality, or direction of stormwater runoff.
- (dd) PROFESSIONAL ENGINEER: A Professional Engineer registered in the State of Ohio with specific education and experience in water resources engineering, acting in conformance with the Code of Ethics of the Ohio State Board of Registration for Engineers and Surveyors.
- (ee) RAINWATER AND LAND DEVELOPMENT: State of Ohio standards for stormwater management, land development, and stream protection. The most current edition of these standards, issued by Ohio Department of Natural Resources, Division of Soil and Water, shall be used with this regulation, subject to Administrator's reasonable discretion to apply a different standard that is consistent with the purpose of this regulation.
- (ff) REDEVELOPMENT: A construction project on land that has been previously developed and where the new land use will not increase the runoff coefficient used to calculate the water quality volume. If the new land use will increase the runoff coefficient, then the project is considered to be a new development project rather than a redevelopment project.
- (gg) RIPARIAN AREA: Land adjacent to any brook, creek, river, or stream having a defined bed and bank that, if appropriately sized, helps to stabilize streambanks, limit erosion,

ORDINANCE NO. -2019(SMS)

reduce flood size flows, and/or filter and settle out runoff pollutants, or performs other functions consistent with the purposes of this regulation.

- (hh) **RIPARIAN AND WETLAND SETBACK:** The real property adjacent to a water resource on which soil disturbing activities are limited, all as defined by the applicable City ordinances, if any.
- (ii) **RUNOFF:** The portion of rainfall, melted snow, or irrigation water that flows across the ground surface and is eventually returned to water resources.
- (jj) **SEDIMENT:** The soils or other surface materials that can be transported or deposited by the action of wind, water, ice, or gravity as a product of erosion.
- (kk) **SEDIMENTATION:** The deposition of sediment in water resources.
- (ll) **SENSITIVE AREA:** An area or water resource that requires special management because of its susceptibility to sediment pollution, or because of its importance to the well-being of the surrounding communities, region, or the State and includes, but is not limited to, the following:
  - (1) Ponds, wetlands or small lakes with less than five acres of surface area;
  - (2) Small streams with gradients less than ten feet per mile with average annual flows of less than 3.5 feet per second containing sand or gravel bottoms;
  - (3) Drainage areas of a locally or Ohio designated Scenic River; or
  - (4) Riparian and wetland areas.
- (mm) **SITE OWNER/OPERATOR:** Any individual, person, corporation, firm, trust, commission, board, public or private partnership, joint venture, agency, unincorporated association, municipal corporation, county or state agency, the federal government, other legal entity, or an agent thereof that is responsible for the overall construction site or for any soil disturbing activity.
- (nn) **SOIL AND WATER CONSERVANCY DISTRICT:** An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Cuyahoga County Soil and Water Conservancy District Board or its designated employee(s). Hereafter referred to as SWCD.
- (oo) **SOIL DISTURBING ACTIVITY:** Clearing, grading, excavating, filling, or other alteration of the earth's surface where natural or human made ground cover is destroyed that may result in, or contribute to, increased stormwater quantity and/or decreased stormwater quality.
- (pp) **STABILIZATION:** The use of Best Management Practices or Stormwater Control Measures that reduce or prevent soil erosion by stormwater runoff, trench dewatering,

ORDINANCE NO. -2019(SMS)

wind, ice, gravity, or a combination thereof.

- (qq) **STORMWATER OR STORM WATER:** Defined at 40 CFR 122.26(b)(13) and means stormwater runoff, snow melt runoff and surface runoff and drainage.
- (rr) **STORMWATER CONTROL MEASURE (SCM):** Also Best Management Practice (BMP). Schedule of activities, prohibitions of practices, operation and maintenance procedures, treatment requirements, and other management practices (both structural and non-structural) to prevent or reduce the pollution of water resources and to control stormwater volume and rate. This includes practices to control runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. For guidance, please see U.S. EPA's National Menu of BMPs at <http://water.epa.gov/polwaste/npdes/swbmp/index.cfm>.
- (ss) **STRUCTURAL STORM WATER MANAGEMENT PRACTICE OR STORMWATER CONTROL MEASURE (SCM):** Any constructed facility, structure, or device that prevents or reduces the discharge of pollutants to water resources and controls stormwater volume and rate.
- (tt) **SURFACE WATER OF THE STATE:** Also Water Resource. Any stream, lake, reservoir, pond, marsh, wetland, or other waterway situated wholly or partly within the boundaries of the state, except those private waters which do not combine or affect a junction with surface water. Waters defined as sewerage systems, treatment works or disposal systems in Section 6111.01 of the Ohio Revised Code are not included.
- (uu) **TOTAL MAXIMUM DAILY LOAD:** The sum of the existing and/or projected point source, nonpoint source, and background loads for a pollutant to a specified watershed, water body, or water body segment. A TMDL sets and allocates the maximum amount of a pollutant that may be introduced into the water and still ensure attainment and maintenance of water quality standards.
- (vv) **WATER QUALITY VOLUME:** "Water Quality Volume (WQv)" means the volume of post-construction stormwater runoff produced by a 0.75" rainfall event.
- (ww) **WATER RESOURCE:** Also SURFACE WATER OF THE STATE. Any stream, lake, reservoir, pond, marsh, wetland, or waterway situated wholly or partly within the boundaries of the state, except those private waters which do not combine or affect a junction with surface water. Waters defined as sewerage systems, treatment works or disposal systems in Section 6111.01 of the Ohio Revised Code are not included.
- (xx) **WATER RESOURCE CROSSING:** Any bridge, box, arch, culvert, truss, or other type of structure intended to convey people, animals, vehicles, or materials from one side of a watercourse to another. This does not include private, non-commercial footbridges or pole mounted aerial electric or telecommunication lines, nor does it include below grade utility lines.
- (yy) **WATERSHED:** The total drainage area contributing stormwater runoff to a single point.

ORDINANCE NO. -2019(SMS)

- (zz) **WETLAND:** Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas (40 CFR 232, as amended).

**1335.03           DISCLAIMER OF LIABILITY**

- (a) Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this regulation are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or any particular parcel of property.
- (b) By approving a Comprehensive Stormwater Management Plan under this regulation, the City does not accept responsibility for the design, installation, and operation and maintenance of SCMs.

**1335.04           CONFLICTS, SEVERABILITY, NUISANCES & RESPONSIBILITY**

- (a) Where this regulation is in conflict with other provisions of law, ordinance, regulation, or judicial order, the most restrictive provisions, as determined by the Administrator within the Administrator's reasonable discretion consistent with the purposes of this regulation, shall prevail.
- (b) If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.
- (c) This regulation shall not be construed as authorizing any person to maintain a nuisance on their property, and compliance with the provisions of this regulation shall not be a defense in any action to abate such a nuisance.
- (d) Failure of the City to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the site owner from the responsibility for the condition or damage resulting therefrom, and shall not result in the City, its officers, employees, or agents being responsible for any condition or damage resulting therefrom.

**1335.05           CONSULTATIONS**

In implementing this chapter the Administrator or other City official may consult with the SWCD, the Cuyahoga County Board of Health, state and/or federal agencies, and other technical experts as necessary. Any costs associated with such consultations may be assessed to the applicant.

**1335.06           DEVELOPMENT OF COMPREHENSIVE STORMWATER MANAGEMENT PLANS**

- (a) This regulation requires that a Comprehensive Stormwater Management Plan be

ORDINANCE NO. -2019(SMS)

developed and implemented for all soil disturbing activities disturbing one (1) or more acres of total land, or less than one (1) acre if part of a larger common plan of development or sale disturbing one (1) or more acres of total land, and on which any regulated activity of Section 1335.01 (c) is proposed. A Comprehensive Stormwater Management Plan must be developed and implemented for all commercial and industrial site development. The Administrator may require a comprehensive stormwater management plan on sites disturbing less than 1 acre, when stormwater runoff from these sites discharges to sensitive areas or areas of known flooding or water quality problems.

- (b) The City shall administer this regulation, shall be responsible for determination of compliance with this regulation, and shall issue notices and orders as may be necessary. The City may consult with the SWCD, state agencies, private engineers, stormwater districts, or other technical experts in reviewing the Comprehensive Stormwater Management Plan.

**1335.07 APPLICATION PROCEDURES**

- (a) Pre-Application Meeting: The applicant shall attend a Pre-Application Meeting with the Administrator to discuss the proposed project, review the requirements of this regulation, identify unique aspects of the project that must be addressed during the review process, and establish a preliminary review and approval schedule.
- (b) Preliminary Comprehensive Stormwater Management Plan: The applicant shall submit two (2) sets of a Preliminary Comprehensive Stormwater Management Plan (Preliminary Plan) and the applicable fees to the Administrator. The Preliminary Plan shall show the proposed property boundaries, setbacks, dedicated open space, public roads, water resources, stormwater control facilities, and easements in sufficient detail and engineering analysis to allow the Administrator to determine if the site is laid out in a manner that meets the intent of this regulation and if the proposed SCMs are capable of controlling runoff from the site in compliance with this regulation. The applicant shall submit two (2) sets of the Preliminary Plan and applicable fees as follows:
  - (1) For developments: In conjunction with the submission of the preliminary development plan.
  - (2) For other construction projects: In conjunction with the application for a building permit.
  - (3) For general clearing projects: In conjunction with the application for a building or other applicable permit.
- (c) Final Comprehensive Stormwater Management Plan: The applicant shall submit two (2) sets of a Final Comprehensive Stormwater Management Plan (Final Plan) and the applicable fees to the Administrator in conjunction with the submittal of the final plat, improvement plans, or application for a building permit for the site. The Final Plan shall meet the requirements of Section 1335.09 and shall be approved by the Administrator prior to approval of the final plat and/or before issuance of a building permit.

ORDINANCE NO. -2019(SMS)

- (d) Review and Comment: The Administrator shall review the Preliminary and Final Plans submitted, and shall approve or return for revisions with comments and recommendations for revisions. A Preliminary or Final Plan rejected because of deficiencies shall receive a narrative report stating specific problems and the procedures for filing a revised Preliminary or Final Plan.
- (e) Approval Necessary: Land clearing and soil-disturbing activities shall not begin and building permits shall not be issued without an approved Comprehensive Stormwater Management Plan.
- (f) Valid for Two Years: Approvals issued in accordance with this regulation shall remain valid for two (2) years from the date of approval. The Administrator may extend this date of expiration up to 12 months if the applicant submits, within a reasonable time before the termination date, a written request containing information that adequately justifies an extension, in the judgment of the Administrator or his/her designee.
- (g) The City or designee will perform construction inspections until the site reaches final stabilization as determined by the Administrator or his/her designee.
- (h) The SWMP review, filing and inspection fee is part of the complete application submittal and must be paid in full by the applicant or owner prior to the commencement of any reviews by the City. The Administrator shall establish a fee schedule based upon the actual estimated cost for providing these services. At such time as the fee reserve balance falls below 35% (thirty-five percent) of its original balance, the applicant or site owner/operator will be required to deposit additional funds to cover the anticipated costs of future fees or return the reserve to the original balance, as determined by the Administrator. Upon final inspection approval and acceptance as provided by Section 1335.13 below, all funds remaining will be returned to the applicant or site owner/operator. Unless otherwise provided herein, the fee schedule set forth in section 1335.15 shall apply.

**1335.08 COMPLIANCE WITH STATE AND FEDERAL REGULATIONS**

Approvals issued in accordance with this regulation do not relieve the applicant of responsibility for obtaining all other necessary permits and/or approvals from other federal, state, and/or county agencies. If requirements vary, the most restrictive shall prevail. These permits may include, but are not limited to, those listed below. Applicants are required to show proof of compliance with these regulations before the City will issue a building permit.

- (a) Ohio Environmental Protection Agency (Ohio EPA) National Pollutant Discharge Elimination System (NPDES) Permits authorizing stormwater discharges associated with construction activity or the most current version thereof: Proof of compliance with these requirements shall be the applicant's Notice of Intent (NOI) number from Ohio EPA, a copy of the Ohio EPA Director's Authorization Letter for the NPDES Permit, or a letter from the site owner certifying and explaining why the NPDES Permit is not applicable.
- (b) Section 401 of the Clean Water Act: Proof of compliance shall be a copy of the Ohio EPA Water Quality Certification application tracking number, public notice, project

ORDINANCE NO. -2019(SMS)

approval, or a letter from the site owner certifying that a qualified professional has surveyed the site and determined that Section 401 of the Clean Water Act is not applicable. Wetlands, and other waters of the United States, shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time of application of this regulation.

- (c) Ohio EPA Isolated Wetland Permit: Proof of compliance shall be a copy of Ohio EPA's Isolated Wetland Permit application tracking number, public notice, project approval, or a letter from the site owner certifying that a qualified professional has surveyed the site and determined that Ohio EPA's Isolated Wetlands Permit is not applicable. Isolated wetlands shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time of application of this regulation.
- (d) Section 404 of the Clean Water Act: Proof of compliance shall be a copy of the U.S. Army Corps of Engineers Individual Permit application, public notice, or project approval, if an Individual Permit is required for the development project. If an Individual Permit is not required, the site owner shall submit proof of compliance with the U.S. Army Corps of Engineer's Nationwide Permit Program. This shall include one of the following:
  - (1) A letter from the site owner certifying that a qualified professional has surveyed the site and determined that Section 404 of the Clean Water Act is not applicable.
  - (2) A site plan showing that any proposed fill of waters of the United States conforms to the general and special conditions specified in the applicable Nationwide Permit. Wetlands, and other waters of the United States, shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time of application of this regulation.
- (e) Ohio Dam Safety Law: Proof of compliance shall be a copy of the ODNR Division of Soil and Water Resources permit application tracking number, a copy of the project approval letter from the ODNR Division of Soil and Water Resources, or a letter from the site owner certifying and explaining why the Ohio Dam Safety Law is not applicable.

**1335.09**

**COMPREHENSIVE STORMWATER MANAGEMENT PLAN**

- (a) Comprehensive Stormwater Management Plan Required: The applicant shall develop a Comprehensive Stormwater Management Plan describing how the quantity and quality of stormwater will be managed after construction is completed for every discharge from the site and/or into a water resource or small municipal separate storm sewer system (MS4). The Plan will illustrate the type, location, and dimensions of every structural and non-structural SCM incorporated into the site design, and the rationale for their selection. The rationale must address how these SCMs will address flooding within the site as well as flooding that may be caused by the development upstream and downstream of the site. The rationale will also describe how the SCMs minimize impacts to the physical, chemical, and biological characteristics of on-site and downstream water resources and, if necessary, correct current degradation of water resources that is occurring or take measures to prevent predictable degradation of water resources.

ORDINANCE NO. -2019(SMS)

- (b) Preparation by Professional Engineer: The Comprehensive Stormwater Management Plan shall be prepared by a registered Professional Engineer and include supporting calculations, plan sheets, and design details. To the extent necessary, as determined by the Administrator, a site survey shall be performed by a Registered Professional Surveyor to establish boundary lines, measurements, or land surfaces.
- (c) Procedures: The Administrator shall prepare and maintain procedures providing specific criteria and guidance to be followed when designing the stormwater management system for the site. These procedures may be updated from time to time, at the discretion of the Administrator based on improvements in engineering, science, monitoring, and local maintenance experience. The Administrator shall make the final determination of whether the practices proposed in the Comprehensive Stormwater Management Plan meet the requirements of this regulation. The Administrator may also maintain a list of acceptable SCMs that meet the criteria of this regulation to be used in the City.
- (d) Contents of Comprehensive Stormwater Management Plan: The Comprehensive Stormwater Management Plan shall contain an application, narrative report, construction site plan sheets, a long-term Inspection and Maintenance Plan and Inspection and Maintenance Agreement, and a site description with the following information provided:
  - (1) Site description:
    - (A) A description of the nature and type of the construction activity (e.g. residential, shopping mall, highway, etc.).
    - (B) Total area of the site and the area of the site that is expected to be disturbed (i.e. grubbing, clearing, excavation, filling or grading, including off-site borrow areas).
    - (C) A description of prior land uses at the site.
    - (D) An estimate of the impervious area and percent imperviousness created by the soil-disturbing activity at the beginning and at the conclusion of the project.
    - (E) Selection (source and justification) and/or calculations of runoff coefficients for water quality volume determination, peak discharge control (curve number/critical storm method).
    - (F) Existing data describing the soils throughout the site, including soil map units including series, complexes, and association, hydrologic soil group, porosity, infiltration characteristics, depth to groundwater, depth to bedrock, and any impermeable layers.
    - (G) If available, the quality of any known pollutant discharge from the site such as that which may result from previous contamination caused by prior land uses.

ORDINANCE NO. -2019(SMS)

- (H) The location and name of the immediate water resource(s) and the first subsequent water resource(s).
- (I) The aerial (plan view) extent and description of water resources at or near the site that will be disturbed or will receive discharges from the project.

If applicable, identify the point of discharge to a municipal separate storm sewer system and the location where that municipal separate storm sewer system ultimately discharges to a stream, lake, or wetland. The location and name of the immediate receiving stream or surface water(s) and the first subsequent receiving water(s) and the aerial extent and description of wetlands or other special aquatic sites at or near the site which will be disturbed or which will receive discharges from undisturbed areas of the project.

If TMDLs apply to the site (see TMDL community identifier table at <http://www.neohiostormwater.com>, demonstrate that appropriate (SCMs) have been selected to address these TMDLs. Prior to the development of TMDLs, SCMs should be selected to address potential future TMDL requirements for pollutants including bacteria, dissolved oxygen and organic enrichment, flow, habitat, nutrients, and suspended solids (sediment) unless demonstrated that receiving water quality is not negatively impacted by these pollutants.

- (J) For each SCM, identify the drainage area, percent impervious cover within the drainage area, runoff coefficient for water quality volume, peak discharge, and the time of concentration for each subwatershed per Appendix 1 of Ohio's stormwater manual, Rainwater and Land Development. Pervious and impervious areas should be treated as separate subwatersheds unless allowed at the discretion of the City. Identify the SCM surface area, discharge and dewatering time, outlet type and dimensions. Each SCM shall be designated with an individual identification number.
- (K) Describe the current condition of water resources including the vertical stability of stream channels and indications of channel incision that may be responsible for current or future sources of high sediment loading or loss of channel stability.

(2) Site map showing:

- (A) Limits of soil-disturbing activity on the site.
- (B) Soils map units for the entire site, including locations of unstable or highly erodible soils.

ORDINANCE NO. -2019(SMS)

- (C) Existing and proposed one-foot (1') contours. This must include a delineation of drainage watersheds expected before, during, and after major grading activities as well as the size of each drainage watershed in acres.
  - (D) Water resource locations including springs, wetlands, streams, lakes, water wells, and associated setbacks on or within 200 feet of the site, including the boundaries of wetlands or streams, intermittent streams with a defined bed and bank, and first subsequent named receiving water(s) the applicant intends to fill or relocate for which the applicant is seeking approval from the Army Corps of Engineers and/or Ohio EPA.
  - (E) Existing and planned locations of buildings, roads, parking facilities, and utilities.
  - (F) The location of any in-stream activities including stream crossings.
  - (G) Conservation easements.
  - (H) Other sensitive natural resources.
  - (I) Sensitive Areas receiving runoff from the development.
  - (J) Off-site utility installation areas that relate to the development.
- (3) Contact information: Company name and contact information as well as contact name, addresses, and phone numbers for the following:
- (A) The Professional Engineer who prepared the Comprehensive Stormwater Management Plan.
  - (B) The site owner.
- (4) Phase, if applicable, of the overall development plan.
- (5) List of permanent parcel numbers if project is a subdivision.
- (6) Ohio EPA NPDES Permit Number and other applicable state and federal permit numbers, if available, or status of various permitting requirements if final approvals have not been received.
- (7) Location, including complete site address and subplot number if applicable.
- (8) Location of any easements or other restrictions placed on the use of the property.
- (9) A site plan sheet showing:
- (A) The location of each proposed post-construction SCMs.

ORDINANCE NO. -2019(SMS)

- (B) The geographic coordinates of the site AND each proposed practice in North American Datum Ohio State Plane North.

It is preferred that the entire site be shown on one plan sheet to allow a complete view of the site during plan review. If a smaller scale is used to accomplish this, separate sheets providing an enlarged view of areas on individual sheets should also be provided.

- (10) Inspection and Maintenance Agreement. The Inspection and Maintenance Agreement required for SCMs under this regulation as a stand-alone document between the City and the applicant. A copy of this agreement should be attached to the property deed. The agreement shall contain the following information and provisions:
  - (A) Identification of the landowner(s), organization, or municipality responsible for long-term inspection and maintenance, including repairs, of the SCMs.
  - (B) The landowner(s), organization, or municipality shall maintain SCMs in accordance with this regulation.
  - (C) The City has the authority to enter upon the property to conduct inspections as necessary, with prior notification of the property owner, to verify that the SCMs are being maintained and operated in accordance with this regulation.
  - (D) The City shall maintain public records of the results of site inspections, shall inform the landowner(s), organization, or municipality responsible for maintenance of the inspection results, and shall specifically indicate in writing any corrective actions required to bring the SCMs into proper working condition.
  - (E) If the City notifies the landowner(s), organization, or municipality responsible for maintenance of the maintenance problems that require correction, the specific corrective actions shall be taken within a reasonable time as determined by the City.
  - (F) The City is authorized to enter upon the property and perform the corrective actions identified in the inspection report if the landowner(s), organization, or municipality responsible for maintenance does not make the required corrections in the specified time period. The City shall be reimbursed by the landowner(s), organization, or municipality responsible for maintenance for all expenses incurred within 10 days of receipt of invoice from the City, or more with written approval from the Administrator.
  - (G) The method of funding long-term maintenance and inspections of all

ORDINANCE NO. -2019(SMS)

SCMs.

- (H) A release of the City from all damages, accidents, casualties, occurrences, or claims that might arise or be asserted against the City from the construction, presence, existence, or maintenance of the SCMs.
- (11) Inspection and Maintenance Plan. This plan will be developed by the applicant and reviewed by the City. Once the Inspection and Maintenance Plan is approved, a recorded copy of the Plan must be submitted to the City as part of the final inspection approval as described in 1335.13. The plan will include at a minimum:
- (A) The location of each SCM and identification of the drainage area served by each SCM.
  - (B) Photographs of each SCM, including all inlets and outlets upon completion of construction.
  - (C) Schedule of inspection.
  - (D) A schedule for regular maintenance for each aspect of the stormwater management system and description of routine and non-routine maintenance tasks to ensure continued performance of the system as is detailed in the approved Comprehensive Stormwater Management Plan. A maintenance inspection checklist written so the average person can understand it shall be incorporated. The maintenance plan will include a detailed drawing of each SCM and outlet structures with the parts of the outlet structure labeled. This schedule may include additional standards, as required by the Administrator, to ensure continued performance of SCMs permitted to be located in, or within 50 feet of, water resources.
  - (E) The location and documentation of all access and maintenance easements on the property.

Alteration or termination of these stipulations is prohibited.

- (12) Required Calculations: The applicant shall submit calculations for projected stormwater runoff flows, volumes, and timing into and through all SCMs for flood control, channel protection, water quality, and the condition of the habitat, stability, and incision of each water resource and its floodplain, as required in Section 1335.10 of this regulation. These submittals shall be completed for both pre- and post-development land use conditions and shall include the underlying assumptions and hydrologic and hydraulic methods and parameters used for these calculations. The applicant shall also include critical storm determination and demonstrate that the runoff from offsite areas have been considered in the calculations.
- (13) List of all contractors and subcontractors before construction: Prior to

ORDINANCE NO. -2019(SMS)

construction or before the pre-construction meeting, provide the list of all contractors and subcontractors and their names, addresses, and phones involved with the implementation of the Comprehensive Stormwater Management Plan including a written document containing signatures of all parties as proof of acknowledgment that they have reviewed and understand the requirements and responsibilities of the Comprehensive Stormwater Management Plan.

- (14) Existing and proposed drainage patterns: The location and description of existing and proposed drainage patterns and SCMs, including any related SCMs beyond the development area and the larger common development area.
- (15) For each SCM to be employed on the development area, include the following:
  - (A) Location and size, including detail drawings, maintenance requirements during and after construction, and design calculations, all where applicable.
  - (B) Final site conditions including stormwater inlets and permanent nonstructural and structural SCMs. Details of SCMs shall be drawn to scale and shall show volumes and sizes of contributing drainage areas.
  - (C) Any other structural and/or non-structural SCMs necessary to meet the design criteria in this regulation and any supplemental information requested by the Administrator.
  - (D) Each SCM shall be designated with an individual identification number.

**1335.10 PERFORMANCE STANDARDS**

- (a) General: The stormwater system, including SCMs for storage, treatment and control, and conveyance facilities, shall be designed to prevent structure flooding during the 100-year, 24-hour storm event; to maintain predevelopment runoff patterns, flows, and volumes; and to meet the following criteria:
  - (1) Integrated practices that address degradation of water resources. The SCMs shall function as an integrated system that controls flooding and minimizes the degradation of the physical, biological, and chemical integrity of the water resources receiving stormwater discharges from the site. Acceptable practices shall:
    - (A) Not disturb riparian areas, unless the disturbance is intended to support a watercourse restoration project and complies with City's riparian setback regulations, if any.
    - (B) Maintain predevelopment hydrology and groundwater recharge on as much of the site as practicable.

ORDINANCE NO. -2019(SMS)

- (C) Only install new impervious surfaces and compact soils where necessary to support the future land use.
- (D) Compensate for increased runoff volumes caused by new impervious surfaces and soil compaction by reducing stormwater peak flows to less than predevelopment levels.
- (E) Be designed according to the methodology included in the most current edition of Rainwater and Land Development or another design manual acceptable for use by the City and Ohio EPA.

SCMs that meet the criteria in this regulation, and additional criteria required by the Administrator, shall comply with this regulation.

- (2) Practices designed for final use: SCMs shall be designed to achieve the stormwater management objectives of this regulation, to be compatible with the proposed post-construction use of the site, to protect the public health, safety, and welfare, and to function safely with routine maintenance.
- (3) Stormwater management for all lots: Areas developed shall provide stormwater management and water quality controls for the development of all lots. This shall include provisions for lot grading and drainage that prevent structure flooding during the 100-year, 24-hour storm; and maintain, to the extent practicable, the pre-development runoff patterns, volumes, and peaks from each lot.
- (4) Stormwater facilities in water resources: SCMs and related activities shall not be constructed in water resources unless the applicant shows proof of compliance with all appropriate permits from the Ohio EPA, the U.S. Army Corps, and other applicable federal, state, and local agencies as required in Section 1335.08 of this regulation, and the activity is in compliance with Chapter 1334 and City's riparian setback regulations, if any, all as determined by the Administrator.
- (5) Stormwater ponds and surface conveyance channels: All stormwater pond and surface conveyance designs must provide a minimum of one (1) foot freeboard above the projected peak stage within the facility during the 100-year, 24-hour storm. When designing stormwater ponds and conveyance channels, the applicant shall consider public safety as a design factor and alternative designs must be implemented where site limitations would preclude a safe design.
- (6) Exemption: The site where soil-disturbing activities are conducted shall be exempt from the requirements of this Section 1335.10 if it can be shown to the satisfaction of the Administrator that the site is part of a larger common plan of development where the stormwater management requirements for the site are provided by any existing SCMs, or if the stormwater management requirements for the site are provided by practices defined in a regional or local stormwater management plan approved by the Administrator.
- (7) Maintenance: All SCMs shall be maintained in accordance with the Inspection

ORDINANCE NO. -2019(SMS)

and Maintenance Plan and Agreements approved by the Administrator as detailed in Section 1335.09.

- (8) Ownership: Unless otherwise required by the City, SCMs serving multiple lots in subdivisions shall be on a separate lot held and maintained by an entity of common ownership or, if compensated by the property owners, by the City. SCMs serving single lots shall be placed on these lots, protected within an easement, and maintained by the property owner.
- (9) Preservation of Existing Natural Drainage: Practices that preserve and/or improve the existing natural drainage shall be used to the maximum extent practicable. Such practices may include minimizing site grading and compaction; protecting and/or restoring water resources, riparian areas, and existing vegetation and vegetative buffer strips; phasing of construction operations in order to minimize the amount of disturbed land at any one time, and designation of tree preservation areas or other protective clearing and grubbing practices; and maintaining unconcentrated stormwater runoff to and through these areas. Post-construction stormwater practices shall provide perpetual management of runoff quality and quantity so that a receiving stream's physical, chemical and biological characteristics are protected and ecological functions are maintained.
- (10) Preservation of Wetland Hydrology: Concentrated stormwater runoff from SCMs to wetlands shall be converted to diffuse flow before the runoff enters the wetlands in order to protect the natural hydrology, hydroperiod, and wetland flora. The flow shall be released such that no erosion occurs down slope. Practices such as level spreaders, vegetative buffers, infiltration basins, conservation of forest covers, and the preservation of intermittent streams, depressions, and drainage corridors may be used to maintain the wetland hydrology.

If the applicant proposes to discharge to natural wetlands, a hydrological analysis shall be performed to demonstrate that the proposed discharge matches the pre-development hydroperiods and hydrodynamics that support the wetland.

Soil Preservation and Post-Construction Soil Restoration: To the maximum extent practicable leave native soil undisturbed and protect from compaction during construction. Except for areas that will be covered by impervious surface or have been incorporated into an SCM, the soil moisture-holding capacity of areas that have been cleared and graded must be restored to that of the original, undisturbed soil to the maximum extent practicable. Areas that have been compacted or had the topsoil or duff layer removed should be amended using the following steps: 1. till subsoil to a depth of 15-18 inches, 2. incorporate compost through top 12 inches, 3. Replace with stockpiled site or imported suitable topsoil to a minimum depth of 4 inches.

- (b) Stormwater Conveyance Design Criteria: All SCMs shall be designed to convey stormwater to allow for the maximum removal of pollutants and reduction in flow velocities. This shall include but not be limited to:

ORDINANCE NO. -2019(SMS)

- (1) Surface water protection: The Administrator may allow modification to streams, rivers, lakes, wetlands or other surface waters only if the applicant shows proof of compliance with all appropriate permits from the Ohio EPA, the U.S. Army Corps, and other applicable federal, state, and local agencies as required in Section 1335.08 of this regulation, and the activity is in compliance with Chapter 1334 relating to erosion and sediment control and City's riparian setback regulations, if any, all as determined by the Administrator. At a minimum, stream relocation designs must show how the project will minimize changes to the vertical stability, floodplain form, channel form, and habitat of upstream and downstream channels on and off the property.
- (2) Off-site stormwater discharges: Off-site stormwater runoff that discharges to or across the applicant's development site shall be conveyed through the stormwater conveyance system planned for the development site at its existing peak flow rates during each design storm. Off-site flows shall be diverted around stormwater quality control facilities or, if this is not possible, the stormwater quality control facility shall be sized to treat the off-site flow. Comprehensive Stormwater Management Plans will not be approved until it is demonstrated to the satisfaction of the Administrator that off-site runoff will be adequately conveyed through the development site in a manner that does not exacerbate upstream or downstream flooding and erosion.
- (3) Sheet flow: The site shall be graded in a manner that maintains sheet flow over as large an area as possible. The maximum area of sheet flow shall be determined based on the slope, the uniformity of site grading, and the use of easements or other legally-binding mechanisms that prohibit re-grading and/or the placement of structures within sheet flow areas. In no case shall the sheet flow length be longer than 300 feet, nor shall a sheet flow area exceed 1.5 acres. Flow shall be directed into an open channel, storm sewer, or other SCMs from areas too long and/or too large to maintain sheet flow, all as determined by the Administrator.
- (4) Open channels: Unless otherwise allowed by the Administrator, drainage tributary to SCMs shall be provided by an open channel with vegetated banks and designed to carry the 10-year, 24-hour stormwater runoff from upstream contributory areas.
- (5) Open drainage systems: Open drainage systems shall be preferred on all new development sites to convey stormwater where feasible. Storm sewer systems shall be allowed only when the site cannot be developed at densities allowed under City zoning or where the use of an open drainage system affects public health or safety, all as determined by the Administrator. The following criteria shall be used to design storm sewer systems when necessary:
  - (A) Storm sewers shall be designed such that they do not surcharge from runoff caused by the 5-year, 24-hour storm, and that the hydraulic grade line of the storm sewer stays below the gutter flow line of the overlying

ORDINANCE NO. -2019(SMS)

roadway, or below the top of drainage structures outside the roadway during a 10-year, 24-hour storm. The system shall be designed to meet these requirements when conveying the flows from the contributing drainage area within the proposed development and existing flows from offsite areas that are upstream from the development.

- (B) The minimum inside diameter of pipe to be used in public storm sewer systems is 12 inches. Smaller pipe sizes may be used in private systems, subject to the approval of the Administrator.
  - (C) All storm sewer systems shall be designed taking into consideration the tailwater of the receiving facility or water resource. The tailwater elevation used shall be based on the design storm frequency. The hydraulic grade line for the storm sewer system shall be computed with consideration for the energy losses associated with entrance into and exit from the system, friction through the system, and turbulence in the individual manholes, catch basins, and junctions within the system.
  - (D) The inverts of all curb inlets, manholes, yard inlets, and other structures shall be formed and channelized to minimize the incidence of quiescent standing water where mosquitoes may breed.
  - (E) Headwalls shall be required at all storm sewer inlets or outlets to and from open channels or lakes.
- (6) Water Resource Crossings. The following criteria shall be used to design structures that cross a water resource in the City:
- (A) Water resource crossings other than bridges shall be designed to convey the stream's flow for the minimum 25-year, 24-hour storm.
  - (B) Bridges, open bottom arch or spans are the preferred crossing technique and shall be considered in the planning phase of the development. Bridges and open spans should be considered for all State Scenic Rivers, coldwater habitat, exceptional warmwater habitat, seasonal salmonid habitat streams, and Class III headwater streams. The footers or piers for these bridges and open spans shall not be constructed below the ordinary high water mark.
  - (C) If a culvert or other closed bottom crossing is used, twenty-five (25) percent of the cross-sectional area or a minimum of 1 foot of box culverts and pipe arches must be embedded below the channel bed. The conduit or conveyance must to be sized to carry the 25-year storm under these conditions.
  - (D) The minimum inside diameter of pipes to be used for crossings shall be 12 inches.

ORDINANCE NO. -2019(SMS)

- (E) The maximum slope allowable shall be a slope that produces a 10-fps velocity within the culvert barrel under design flow conditions. Erosion protection and/or energy dissipaters shall be required to properly control entrance and outlet velocities.
  - (F) All culvert installations shall be designed with consideration for the tailwater of the receiving facility or water resource. The tailwater elevation used shall be based on the design storm frequency.
  - (G) Headwalls shall be required at all culvert inlets or outlets to and from open channels or lakes.
  - (H) Streams with a drainage area of 5 square miles or larger shall incorporate floodplain culverts at the bankfull elevation to restrict head loss differences across the crossing so as to cause no rise in the 100-year storm event.
  - (I) Bridges shall be designed such that the hydraulic profile through a bridge shall be below the bottom chord of the bridge for either the 100-year, 24-hour storm, or the 100-year flood elevation as determined by FEMA, whichever is more restrictive.
- (7) Overland flooding: Overland flood routing paths shall be used to convey stormwater runoff from the 100-year, 24-hour storm event to an adequate receiving water resource or SCM such that the runoff is contained within the drainage easement for the flood routing path and does not cause flooding of buildings or related structures. The peak 100-year water surface elevation along flood routing paths shall be at least one foot below the finished grade elevation of all structures. When designing the flood routing paths, the conveyance capacity of the site's storm sewers shall be taken into consideration.
- (8) Compensatory flood storage mitigation: In order to preserve floodplain storage volumes and thereby avoid increases in water surface elevations, any filling within floodplains approved by the City must be compensated by providing an equivalent storage volume. First consideration for the location(s) of compensatory floodplain volumes should be given to areas where the stream channel will have immediate access to the new floodplain within the limits of the development site. Consideration will also be given to enlarging existing or proposed retention basins to compensate for floodplain fill if justified by a hydraulic analysis of the contributing watershed. Unless otherwise permitted by the City, reductions in volume due to floodplain fills must be mitigated within the legal boundaries of the development. Embankment slopes used in compensatory storage areas must reasonably conform to the natural slopes adjacent to the disturbed area. The use of vertical retaining structures is specifically prohibited.
- (9) Velocity dissipation: Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall to provide non-erosive flow velocity from the structure to a water resource so that the natural physical and biological

characteristics and functions of the water resource are maintained and protected.

(c) Stormwater Quality Control:

(1) Direct runoff to an SCM: The site shall be designed to direct runoff to one or more of the following SCMs. These practices are listed in Table 2 of this regulation and shall be designed to meet the following general performance standards:

- (A) Extended detention facilities that detain stormwater; settle or filter particulate pollutants; and release the controlled stormwater to a water resource.
- (B) Infiltration facilities that retain stormwater; promote settling, filtering, and biodegradation of pollutants; and infiltrate captured stormwater into the ground. The Administrator may require a soil engineering report to be prepared for the site to demonstrate that any proposed infiltration facilities meet these performance standards.

For sites less than five (5) acres, but required to create a comprehensive stormwater management plan, the Administrator may approve other SCMs if the applicant demonstrates to the Administrator's satisfaction that these SCMs meet the objectives of this regulation as stated in Section 1335.10.

- (C) For sites greater than five (5) acres, or less than five (5) acres but part of a larger common plan of development or sale which will disturb five (5) or more acres, the Administrator may approve other SCMs if the applicant demonstrates to the Administrator's satisfaction that these SCMs meet the objectives of this regulation as stated in Section 1335.10, and has prior written approval from the Ohio EPA.
- (D) For the construction of new roads and roadway improvement projects by public entities (i.e. the state, counties, townships, cities, or villages), the Administrator may approve SCMs not included in Table 2 of this regulation, but must show compliance with the current version of the Ohio Department of Transportation "Location and Design Manual, Volume Two Drainage Design".

(2) Criteria applying to all SCMs. SCMs chosen must be sized to treat the water quality volume (WQv) and to ensure compliance with Ohio Water Quality Standards (OAC Chapter 3745-1).

(A) The WQv shall be equal to the volume of runoff from a 0.75-inch rainfall event and shall be determined according to one of the following methods:

- (iii) Through a site hydrologic study approved by the Administrator

that uses continuous hydrologic simulation; site-specific hydrologic parameters, including impervious area, soil infiltration characteristics, slope, and surface routing characteristics; proposed SCMs controlling the amount and/or timing of runoff from the site; and local long-term hourly records, or

- (iv) Using the following equation:  
 $WQ_v = C * P * A / 12$   
 where terms have the following meanings:  
 $WQ_v$  = water quality volume in acre-feet  
 $C$  = runoff coefficient appropriate for storms less than 1 in.  
 $P$  = 0.75 inch precipitation depth  
 $A$  = area draining into the stormwater practice, in acres.

Runoff coefficients required by the Ohio Environmental Protection Agency (Ohio EPA) for use in determining the  $WQ_v$  can be determined using the list in Table 1 or using the following equation to calculate the runoff coefficient

$C = 0.858i^3 - 0.78i^2 + 0.774i + 0.04$ , where:  
 $i$  = fraction of the drainage area that is impervious

**Table 1: Runoff Coefficients Based on the Type of Land Use**

Land Use	Runoff Coefficient
Industrial & Commercial	0.8
High Density Residential (>8 dwellings/acre)	0.5
Medium Density Residential (4 to 8 dwellings/acre)	0.4
Low Density Residential (<4 dwellings/acre)	0.3
Open Space and Recreational Areas	0.2
Where land use will be mixed, the runoff coefficient should be calculated using a weighted average. For example, if 60% of the contributing drainage area to the stormwater treatment structure is Low Density Residential, 30% is High Density Residential, and 10% is Open Space, the runoff coefficient is calculated as follows $(0.6)(0.3) + (0.3)(0.5) + (0.1)(0.2) = (0.35)$	

- (B) An additional volume equal to 20% of the  $WQ_v$  shall be incorporated into the stormwater practice for sediment storage. This volume shall be incorporated into the sections of stormwater practices where pollutants will accumulate.
- (C) Each individual SCM must be sized to treat the  $WQ_v$  associated with its entire contributing drainage area. Exceptions to this may be granted by the Administrator and/or the OEPA on a case-by-case basis.
- (D) Stormwater quality management practices shall be designed such that the drain time is long enough to provide treatment and protect against downstream bank erosion, but short enough to provide storage available for successive rainfall events as defined in Table 2.

- (E) Sites within watersheds of coldwater habitat streams shall include SCMs to infiltrate the water quality volume or reduce the temperature of discharged runoff. SCMs that reduce the temperature of discharged runoff include bioretention, permeable pavement, underground detention, and incorporation of shading and infiltration in parking lot design.
- (F) Each practice shall be designed to facilitate sediment removal, vegetation management, debris control, and other maintenance activities defined in the Inspection Plan and Maintenance Agreement for the site.

**Table 2: Draw Down Times for Stormwater Control Measures**

<b>Stormwater Control Measure</b>	<b>Drain Time of WQ<sub>v</sub></b>
Infiltration Basin or Trench <sup>1</sup>	48 hours
Permeable Pavement – Infiltration <sup>1</sup>	48 hours
Permeable Pavement – Extended Detention	24 hours
Extended Detention Facilities	
▪ Dry Extended Detention Basin <sup>2</sup>	48 hours
▪ Wet Extended Detention Basin <sup>3</sup>	24 hours
▪ Constructed Wetlands (above permanent pool) <sup>4</sup>	24 hours
▪ Bioretention Area/Cell <sup>*5,6</sup>	24 hours
▪ Sand and other Media Filtration <sup>5</sup>	24 hours
▪ Pocket Wetland <sup>7</sup>	24 hours
<sup>1</sup> Practices designed to fully infiltrate the WQ <sub>v</sub> shall empty within 48 hours to provide storage for subsequent storm events. <sup>2</sup> The use of a forebay and micropool is required on all dry extended detention basins. Each is to be sized at a minimum 10% of the WQ <sub>v</sub> . <sup>3</sup> Provide both a permanent pool and an extended detention volume above the permanent pool, each sized with at least 0.75*WQ <sub>v</sub> . <sup>4</sup> Extended detention shall be provided for the WQ <sub>v</sub> above the permanent water pool. <sup>5</sup> The surface ponding area shall completely empty within 24 hours so that there is no standing water. Shorter drawdown times are acceptable as long as design criteria in Rainwater and Land Development have been met. <sup>6</sup> This includes grassed linear bioretention, which was previously titled enhanced water quality swale. <sup>7</sup> Pocket wetlands must have a wet pool equal to the WQ <sub>v</sub> , with 25% of the WQ <sub>v</sub> in a pool and 75% in marshes. The ED <sub>v</sub> above the permanent pool must be equal to the WQ <sub>v</sub> .	

(3) Additional criteria applying to infiltration facilities.

- (A) Infiltration facilities should be designed to meet all criteria in Rainwater and Land Development.
- (B) All runoff directed into an infiltration basin must first flow through a pretreatment practice such as a grass channel or filter strip to remove coarser sediments that could cause a loss of infiltration capacity.
- (C) During construction, all runoff from disturbed areas of the site shall be diverted away from the proposed infiltration basin site. No construction equipment shall be allowed within the infiltration basin site to avoid soil

compaction.

(4) Additional criteria for extended detention facilities:

(A) The outlet shall be designed to not release more than the first half of the water quality volume in less than 1/3<sup>rd</sup> of the drain time. The outlet shall be designed to minimize clogging, vandalism, maintenance, and promote the capture of floatable pollutants.

(B) The basin design shall incorporate the following features to maximize multiple uses, aesthetics, safety, and maintainability:

(i) Basin side slopes above the permanent pool shall have a run to rise ratio of 4:1 or flatter.

(ii) The perimeter of all permanent pool areas deeper than 4 feet shall be surrounded by an aquatic bench that extends at least 8 feet and no more than 15 feet outward from the normal water edge. The 8 feet wide portion of the aquatic bench closest to the shoreline shall have an average depth of 6 inches below the permanent pool to promote the growth of aquatic vegetation. The remainder of the aquatic bench shall be no more than 15 inches below the permanent pool to minimize drowning risk to individuals who accidentally or intentionally enter the basin, and to limit growth of dense vegetation in a manner that allows waves and mosquito predators to pass through the vegetation. The maximum slope of the aquatic bench shall be 10 (H) to 1 (V). The aquatic bench shall be planted with native plant species comparable to wetland vegetation that are able to withstand prolonged inundation. The use of invasive plant species is prohibited.

(iii) A forebay designed to allow larger sediment particles to settle shall be placed at basin inlets. The forebay and micropool volume shall be equal to at least 10% of the water quality volume (WQv).

(iv) Detention basins shall be provided with an emergency drain, where practicable, so that the basin may be emptied if the primary outlet becomes clogged and/or to drain the permanent pool to facilitate maintenance. The emergency drain should be designed to drain by gravity where possible.

(5) Criteria for the Acceptance of Alternative post-construction SCMs: The applicant may request approval from the Administrator for the use of alternative structural post-construction SCMs if the applicant shows to the satisfaction of the Administrator that these SCMs are equivalent in pollutant removal and runoff flow/volume reduction effectiveness to those listed in Table 2. If the site is

ORDINANCE NO. -2019(SMS)

greater than five (5) acres, or less than five (5) acres but part of a larger common plan of development or sale which will disturb five (5) or more acres, prior approval from the Ohio EPA is necessary. To demonstrate the equivalency, the applicant must show:

- (A) The alternative SCM has a minimum total suspended solid (TSS) removal efficiency of 80 percent, using the Level II Technology Acceptance Reciprocity Partnership (TARP) testing protocol.
- (B) The water quality volume discharge rate from the selected SCM is reduced to prevent stream bed erosion, unless there will be negligible hydrologic impact to the receiving surface water of the State. The discharge rate from the SCM will have negligible impacts if the applicant can demonstrate one of the following conditions:
  - (i) The entire water quality volume is recharged to groundwater.
  - (ii) The development will create less than one acre of impervious surface.
  - (iii) The development project is a redevelopment project with an ultra-urban setting, such as a downtown area, or on a site where 100 percent of the project area is already impervious surface and the stormwater discharge is directed into an existing storm sewer system.
  - (iv) The stormwater drainage system of the development discharges directly into a large river of fourth order or greater or to a lake, and where the development area is less than 5 percent of the water area upstream of the development site, unless a TMDL has identified water quality problems in the receiving surface water of the State.
- (d) Stormwater Quantity Control: The Comprehensive Stormwater Management Plan shall describe how the proposed SCMs are designed to meet the following requirements for stormwater quantity control for each watershed in the development:
  - (1) The peak discharge rate of runoff from the Critical Storm and all more frequent storms occurring under post-development conditions shall not exceed the peak discharge rate of runoff from a 1-year, 24-hour storm occurring on the same development drainage area under pre-development conditions.
  - (2) Storms of less frequent occurrence (longer return periods) than the Critical Storm, up to the 100-year, 24-hour storm shall have peak runoff discharge rates no greater than the peak runoff rates from equivalent size storms under pre-development conditions. The 1, 2, 5, 10, 25, 50, and 100-year storms shall be considered in designing a facility to meet this requirement.

ORDINANCE NO. -2019(SMS)

- (3) The Critical Storm for each specific development drainage area shall be determined as follows:
- (A) Determine, using a curve number-based hydrologic method or other hydrologic method approved by the Administrator, the total volume (acre-feet) of runoff from a 1-year, 24-hour storm occurring on the development drainage area before and after development. These calculations shall meet the following standards:
- (i) Calculations shall include the lot coverage assumptions used for full build out as proposed.
  - (ii) Calculations shall be based on the entire contributing watershed to the development area.
  - (iii) Model pervious, directly connected impervious and disconnected impervious areas as separate subwatersheds.
  - (iv) Drainage area maps shall include area, curve number, time of concentrations. Time of concentration shall also show the flow path and the separation in flow type.
  - (v) Rainfall Depth - For the most accurate, up-to-date, location-specific rainfall data for stormwater design, use the Precipitation-Frequency Atlas of the United States, NOAA Atlas 14, Vol. 2(3).
  - (vi) Temporal Distribution – Use the SCS Type II rainfall distribution for all design events with a recurrence interval greater than 1 year. Include lot coverage assumptions used for full build out of the proposed condition.
  - (vii) Curve numbers for the pre-development condition shall reflect the average type of land use over the past 10 years and not only the current land use.
    - (a) Pre-development Curve Numbers – For wooded or brushy areas, use listed values from TR-55 NRCS USDA Urban Hydrology for Small Watersheds, 1986 in good hydrologic condition. For meadows, use listed values. For all other areas (including all types of agriculture), use pasture, grassland, or range in good hydrologic condition.
    - (b) Post-development Curve Numbers - Open space areas shall use post-construction HSGs from Rainwater and Land Development unless the soil is amended after development according to the following protocol: till the

subsoil to 15-18 inches, then till using a chisel, spader, or rotary tillage and incorporate compost through top 12 inches, replace topsoil to a minimum depth of 4 inches. All undisturbed areas or open space with amended soils shall be treated as “open space in good condition.”

- (viii) Time of Concentration\_ - Use velocity based methods from (TR-55 NRCS USDA Urban Hydrology in Small Watersheds, 1986) to estimate travel time (Tt) for overland (sheet) flow, shallow concentrated flow and channel flow.
  - (a) Maximum sheet flow length is 100 ft.
  - (b) Use the appropriate “unpaved” velocity equation for shallow concentrated flow from Soil Conservation Service National Engineer Handbook Section 4 – Hydrology (NEH-4).
- (ix) The volume reduction provided by permeable pavement, bioretention, or other LID SCMs may be subtracted from the post development stormwater volume. Volume reductions for these practices may be demonstrated using methods outlined in Rainwater and Land Development or a hydrologic model acceptable to the Administrator.
- (B) To account for future post-construction improvements to the site, calculations shall assume an impervious surface such as asphalt or concrete for all parking areas and driveways, regardless of the surface proposed in the site description except in instances of engineered permeable pavement systems. From the volume determined in Section 1335.10(d)(3)(A), determine the percent increase in volume of runoff due to development. Using the percentage, select the 24-hour Critical Storm from Table 3.

**Table 3: 24-Hour Critical Storm**

If the Percentage of Increase in Volume of Runoff is:		The Critical Storm will be:
Equal to or Greater Than:	and Less Than:	
----	10	1 year
10	20	2 year
20	50	5 year
50	100	10 year

ORDINANCE NO. -2019(SMS)

100	250	25 year
250	500	50 year
500	---	100 year
<p>For example, if the percent increase between the pre- and post-development runoff volume for a 1-year storm is 35%, the Critical Storm is a 5-year storm. The peak discharge rate of runoff for all storms up to this frequency shall be controlled so as not to exceed the peak discharge rate from the 1-year frequency storm under pre-development conditions in the development drainage area. The post-development runoff from all less frequent storms need only be controlled to meet pre-development peak discharge rates for each of those same storms.</p>		

(e) Stormwater Management on Redevelopment Projects

- (1) Comprehensive Stormwater Management Plans for redevelopment projects must accomplish one of the following options:
  - (A) Reduce existing site impervious areas by at least 25 percent, a one-for-one credit towards the 25 percent net reduction of impervious area can be obtained through the use green roofs.
  - (B) Infiltrate at least 25 percent of the WQv.
  - (C) Capture, treat and release 50 percent of the WQv.
- (2) Where projects are a combination of new development and redevelopment, the total water quality volume required to be treated shall be calculated by a weighted average based on acreage, with the new development at 100 percent water quality volume and redevelopment at 25% infiltration of the WQv or 50% treatment of the WQv.
- (3) Where conditions prevent impervious area reduction or on-site stormwater management for redevelopment projects, practical alternatives as detailed in Section 1335.11 may be approved by the Administrator.

**1335.11 ALTERNATIVE ACTIONS**

- (a) When the City determines that site constraints compromise the intent of this regulation, off-site alternatives may be used that result in an improvement of water quality and a reduction of stormwater quantity. Such alternatives shall meet the following standards:
  - (1) Shall achieve the same level of stormwater quantity and quality control that would be achieved by the on-site controls required under this regulation.
  - (2) Implemented in the same Hydrologic Unit Code (HUC) 12 watershed unit as the proposed development project.
  - (3) The mitigation ratio of the water quality volume is 1.5 to 1 or the water quality volume at the point of retrofit, whichever is greater.

ORDINANCE NO. -2019(SMS)

- (4) An inspection and maintenance agreement as described in Section 1335.09 (d) (10) is established to ensure operations and treatment in perpetuity.
- (5) Obtain prior written approval from Ohio EPA.
- (b) Alternative actions may include, but are not limited to the following. All alternative actions shall be approved by the Administrator:
  - (1) Fees, in an amount specified by the City to be applied to SCMs.
  - (2) Implementation of off-site SCMs and/or the retrofit of an existing practice to increase quality and quantity control.
  - (3) Stream, floodplain, or wetland restoration.
  - (4) Acquisition or conservation easements on protected open space significantly contributing to stormwater control such as wetland complexes.

**1335.12 EASEMENTS**

Access to SCMs as required by the Administrator for inspections and maintenance shall be secured by easements. The following conditions shall apply to all easements:

- (a) Easements shall be included in the Inspection and Maintenance Agreement submitted with the Comprehensive Stormwater Management Plan.
- (b) Easements shall be approved by the City prior to approval of a final plat and shall be recorded with the Cuyahoga County Fiscal Officer or other appropriate official and on all property deeds.
- (c) Unless otherwise required by the Administrator, access easements between a public right-of-way and all SCMs shall be no less than 25-feet wide. The easement shall also incorporate the entire practice plus an additional 25-foot wide band around the perimeter of the SCM.
- (d) The easement shall be graded and/or stabilized as necessary to allow maintenance equipment to access and manipulate around and within each facility, as defined in the Inspection and Maintenance Agreement for the site.
- (e) Easements to structural SCMs shall be restricted against the construction therein of buildings, fences, walls, and other structures that may obstruct the free flow of stormwater and the passage of inspectors and maintenance equipment; and against the changing of final grade from that described by the final grading plan approved by the City. Any re-grading and/or obstruction placed within a maintenance easement may be removed by the **City** at the property owners' expense.

**1335.13 MAINTENANCE AND FINAL INSPECTION APPROVAL**

ORDINANCE NO. -2019(SMS)

To receive final inspection and acceptance of any project, or portion thereof, the following must be completed by the applicant and provided to the Administrator:

- (a) Final stabilization must be achieved and all permanent SCMs must be installed and made functional, as determined by the Administrator and per the approved Comprehensive Stormwater Management Plan.
- (b) An As-Built Certification, including As-Built Survey and Inspection, must be sealed, signed and dated by a Professional Engineer and a Professional Surveyor with a statement certifying that the stormwater control measures, as designed and installed, meet the requirements of the Comprehensive Stormwater Management Plan approved by the Administrator. In evaluating this certification, the Administrator may require the submission of a new set of stormwater practice calculations if he/she determines that the design was altered significantly from the approved Comprehensive Stormwater Management Plan. The As-Built Survey must provide the location, dimensions, and bearing of such practices and include the entity responsible for long-term maintenance as detailed in the Inspection and Maintenance Agreement.
- (c) A copy of the complete and recorded Inspection and Maintenance Plan and Inspection and Maintenance Agreement as specified in Section 1335.09 must be provided to the Administrator.

**1335.14 ON-GOING INSPECTIONS**

The owner shall inspect SCMs regularly as described in the Inspection and Maintenance Plan and Inspection and Maintenance Agreement. The City has the authority to enter upon the property to conduct inspections as necessary, with prior notification of the property owner, to verify that the SCMs are being maintained and operated in accordance with this regulation. Upon finding a malfunction or other need for maintenance or repair, the City shall provide written notification to the responsible party, as detailed in the Inspection and Maintenance Agreement, of the need for maintenance. Upon notification, the responsible party shall have five (5) working days, or other mutually agreed upon time, to makes repairs or submit a plan with detailed action items and established timelines. Should repairs not be made within this time, or a plan approved by the Administrator for these repairs not in place, the City may undertake the necessary repairs and assess the responsible party.

**1335.15 FEES**

The Comprehensive Stormwater Management Plan review, filing, and inspection fee is part of a complete submittal and is required to be submitted to the City before the review process begins. The Administrator shall establish a fee schedule based upon the actual estimated cost for providing these services. The Administrator shall have the discretion to adjust all or part of these fees in light of fees that may be paid pursuant to Chapter 1334 or Chapter 1335.

Disturbed Areas	Review fee*	Reserve Deposit for Inspection during construction	Annual post construction BMP fee per site
Less than 1 acre	\$250	\$250	n/a
One acre to five acres	\$500	\$1,000	\$300

ORDINANCE NO. -2019(SMS)

Greater than five acres	\$250 per whole acre rounded up	\$500 per whole acre rounded up	\$500
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**\*Additional re-review of plan submissions shall be charged 25 percent of the review fee per submittal.**

**1335.16 BOND**

- (a) If a Comprehensive Stormwater Management Plan is required by this regulation, soil-disturbing activities shall not be permitted until a cash bond of 5% of the total project cost has been deposited with the City Finance Department. This bond shall be posted for the City to perform the obligations otherwise to be performed by the owner of the development area as stated in this regulation and to allow all work to be performed as needed in the event that the applicant fails to comply with the provisions of this regulation. The stormwater bond will be returned, less City administrative fees when the following three criteria are met:
  - (1) After 80% of the lots of the project have been complete or 100% of the total project has been permanently stabilized or three (3) years from the time of permanent stabilization have passed.
  - (2) An As-Built Inspection of all stormwater control measures as described in 1335.13 is approved by the Administrator.
  - (3) An Inspection and Maintenance Plan has been approved by the City and Inspection and Maintenance Agreement has been signed by the developer, the contractor, the City, and the private owner or homeowners association who will take long term responsibility for these SCMs, is accepted by the Administrator.
- (b) Once these criteria are met, the applicant shall be reimbursed all bond monies that were not used for any part of the project. If all of these criteria are not met after three years of permanent stabilization of the site, the City may use the bond monies to fix any outstanding issues with all stormwater management structures on the site and the remainder of the bond shall be given to the private lot owner/homeowners association for the purpose of long term maintenance of the project.

**1335.17 INSTALLATION OF WATER QUALITY STORMWATER CONTROL MEASURES**

The applicant may not direct runoff through any water quality structures or portions thereof that would be degraded by construction site sediment until the entire area tributary to the structure has reached final stabilization as determined by the Administrator. This occurs after the completion of the final grade at the site, after all of the utilities are installed, and the site is subsequently stabilized with vegetation or other appropriate methods. The developer must provide documentation acceptable to the Administrator to demonstrate that the site is completely stabilized. Upon this proof of compliance, the water quality structure(s) may be completed and placed into service. Upon completion of installation of these practices, all disturbed areas and/or exposed soils caused by the installation of these practices must be

ORDINANCE NO. -2019(SMS)

stabilized within 2 days.

**1335.18 ENFORCEMENT**

- (a) Notice of Violation. When the City finds that a person, including but not limited to a Site Owner and Site Operator, has violated a prohibition or failed to meet a requirement of this regulation, the City may order compliance by written Notice of Violation, including but not limited to a stop work order. Such notice must specify the violation and shall be hand delivered, and/or sent by certified mail with return receipt and first class mail, to the owner/operator of the facility.
- (b) If abatement or remediation of a violation and/or restoration of affected property are required, the Notice of Violation shall set forth a deadline within which such remediation or restoration must be completed. Said Notice shall further advise that, should the facility owner/operator fail to abate, remediate, or restore within the established deadline, a legal action for enforcement may be initiated.
- (c) Any person receiving a Notice of Violation must meet compliance standards within the time established in the Notice of Violation.
- (d) Administrative Hearing: Any person receiving a Notice of Violation may request an administrative hearing by hand delivery or sending by certified mail with return receipt and first class mail a request for hearing to the Administrator with a copy to the Director of Law. Said request must be received within ten (10) calendar days of the date of the Notice of Violation. The City shall schedule an administrative hearing. Notice of the administrative hearing shall be hand delivered and/or sent certified mail and first class mail. The hearing shall be held before the Nuisance Abatement Review Board (“NARB”), pursuant to Cod. Ord. Chapter 553. The decision of the NARB shall be final without further appeal within the City, and the Administrator or other authorized City official shall proceed according to the NARB’s decision.
- (e) Injunctive Relief: It shall be unlawful for any owner/operator to violate any provision or fail to comply with any of the requirements of this regulation. If an owner/operator has violated or continues to violate the provisions of this regulation, the City may, pursuant to federal, state, or local laws and regulations, petition a court of competent jurisdiction for a preliminary or permanent injunction restraining the owner/operator from activities that would create further violations or compelling the owner/operator to perform abatement or remediation of the violation.

**1335.19 APPEALS**

After exhaustion of the administrative steps herein, including Section 1335.18 (d), a person aggrieved by any final order, requirement, determination, or any other final action by the City in relation to this regulation may appeal to the court of common pleas. Such an appeal shall be made in conformity with Ohio Rev. Code Chapter 2506. Written notice of appeal shall be served on the City Manager and the Director of Law.

**1335.20            REMEDIES NOT EXCLUSIVE**

The remedies listed in this regulation are not exclusive of any other remedies available under any applicable federal, state or local law and it is in the discretion of the City to seek cumulative remedies.

**1335.99            PENALTY**

- (a) No person shall violate, or cause, or knowingly permit to be violated, any of the provisions of this chapter, or fail to comply with any such provisions or with any lawful requirements of any public authority made pursuant to this chapter, or knowingly use or cause or permit the use of any lands in violation of this chapter or in violation of any permit granted under this chapter.
- (b) Whoever violates or fails to comply with any provision of this regulation is guilty of a misdemeanor of the first degree and shall be fined no more than one thousand dollars (\$1,000.00) or imprisoned for no more than one hundred eighty (180) days, or both, for each offense.
- (c) A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

Proposed: 5/6/2019

ORDINANCE NO. -2019(SMS)

By Councilmember

An Ordinance enacting Chapter 1336 of the Codified Ordinances relating to Illicit Discharge and Illegal Connection Control; and declaring an emergency.

**WHEREAS**, illicit discharges to the City of Cleveland Heights (“City”) separate storm sewer system create water quality risks to public health, safety, and general welfare; and,

**WHEREAS**, illicit discharges may necessitate repair of storm sewers and ditches; damage to public and private property; and may damage water resources by reducing water quality; and,

**WHEREAS**, there are watershed-wide efforts to reduce illicit discharges to the Doan Brook watershed and the Dugway Brook watershed and Nine Mile Creek watershed and to protect and enhance the unique water resources of these watersheds; and,

**WHEREAS**, the City is a member of the Doan Brook Watershed Partners and recognizes the need to control illicit discharges and to protect water quality within its borders; and,

**WHEREAS**, 40 C.F.R. Parts 9, 122, 123, and 124, and Ohio Administrative Code 3745-39 require designated communities, including the City, to develop a Storm Water Management Program that, among other components, requires the City to prohibit illicit discharges to their storm water system and to implement appropriate enforcement procedures and actions to detect and eliminate such illicit discharges; and,

**WHEREAS**, Article XVIII, Section 3 of the Ohio Constitution grants municipalities the legal authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws.

**NOW, THEREFORE BE IT ORDAINED** by the Council of the City of Cleveland Heights, County of Cuyahoga, State of Ohio, that:

**SECTION 1:** Codified Ordinance Chapter 1336 Illicit Discharge and Illegal Connection Control is hereby adopted to read in total as set forth in Exhibit A hereto:

**SECTION 2:** Notice of passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

**SECTION 3:** This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to commence the regulations set forth herein on a timely basis. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

ORDINANCE NO. -2019(SMS)

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CAROL ANN ROE, Mayor  
President of the Council

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SUSANNA NIERMANN O'NEIL  
Acting Clerk of Council

PASSED:

**EXHIBIT A**

**CHAPTER 1336  
Illicit Discharge and Illegal Connection Control**

**1336.01 PURPOSE AND SCOPE**

The purpose of this regulation is to provide for the health, safety, and general welfare of the citizens of the City through the regulation of illicit discharges to the municipal separate storm sewer system (MS4). This regulation establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process as required by the Ohio Environmental Protection Agency (Ohio EPA). The objectives of this regulation are:

- (a) To prohibit illicit discharges and illegal connections to the MS4.
- (b) To establish legal authority to carry out inspections, monitoring procedures, and enforcement actions necessary to ensure compliance with this regulation.

**1336.02 APPLICABILITY**

This regulation shall apply to all residential, commercial, industrial, or institutional facilities responsible for discharges to the MS4 and on any lands in the City, except for those discharges generated by the activities detailed in Section 1336.08 (a)(1) to (a)(3) of this regulation.

**1336.03 DEFINITIONS**

The words and terms used in this regulation, unless otherwise expressly stated, shall have the following meaning:

- (a) Administrator: The person or entity having the responsibility and duty of administering and ensuring compliance with this regulation. The Administrator shall be the person designated by the City Manager.
- (b) Best Management Practices (BMPs): means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to storm water. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- (c) City means the City of Cleveland Heights, its designated representatives, boards, or commissions.
- (d) Floatable Material: in general this term means any foreign matter that may float or remain suspended in the water column, and includes but is not limited to, plastic, aluminum cans, wood products, bottles, and paper products.
- (e) Hazardous Material: means any material including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential

hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

- (f) Illicit Discharge: as defined at 40 C.F.R. 122.26 (b)(2) means any discharge to an MS4 that is not composed entirely of storm water, except for those discharges to an MS4 pursuant to a NPDES permit or noted in Section 1336.08 of this regulation.
- (g) Illegal Connection: means any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the MS4.
- (h) Municipal Separate Storm Sewer System (MS4): as defined at 40 C.F.R. 122.26 (b)(8), municipal separate storm sewer system means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
  - (1) Owned or operated by a State, city, town, borough, county, parish, district, municipality, township, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over sewage, industrial wastes, including special districts under State law such as a sewer district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to waters of the United States;
  - (2) Designed or used for collecting or conveying storm water;
  - (3) Which is not a combined sewer; and
  - (4) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F.R. 122.2.
- (i) National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: means a permit that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area wide basis.
- (j) Off-Lot Discharging Household Sewage Treatment System: means a system designed to treat household sewage on-site and discharges treated wastewater effluent off the property into a storm water or surface water conveyance or system.
- (k) Owner/Operator: means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or on the owner's behalf.
- (l) Pollutant: means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, solvents, oil and other automotive fluids, non-hazardous liquid and solid wastes, yard wastes, refuse, rubbish, garbage, litter or other discarded or abandoned objects, floatable materials, pesticides, herbicides, fertilizers, hazardous materials, wastes, sewage, dissolved and particulate metals, animal wastes, residues that result from constructing a structure, and noxious or offensive matter of any kind.

- (m) Soil and Water Conservancy District: An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Cuyahoga County Soil and Water Conservancy District Board or its designated employee(s). Hereafter referred to as SWCD.
- (n) Storm Water: any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- (o) Wastewater: Spent water, including but not limited to the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions.

**1336.04           DISCLAIMER OF LIABILITY**

Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this regulation are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or for the benefit of any particular parcel of property.

**1336.05           CONFLICTS, SEVERABILITY, NUISANCES & RESPONSIBILITY**

- (a) Where this regulation is in conflict with other provisions of law, ordinance, regulation, or judicial order, the most restrictive provisions, as determined by the City.
- (b) If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.
- (c) This regulation shall not be construed as authorizing any person to maintain a nuisance on their property, and compliance with the provisions of this regulation shall not be a defense in any action to abate such a nuisance.
- (d) Failure of the City to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the site owner from the responsibility for the condition or damage resulting therefrom, and shall not result in the City, its officers, employees, or agents being responsible for any condition or damage resulting therefrom.

**1336.06           CONSULTATIONS**

In implementing this chapter the Administrator or other City official may consult with the SWCD, the Cuyahoga County Board of Health, state and/or federal agencies, and other technical experts as necessary. Any costs associated with such consultations may be assessed to the person in violation.

**1336.07           RESPONSIBILITY FOR ADMINISTRATION**

The City shall administer, implement, and enforce the provisions of this regulation. The City may contract with other parties, including but not limited to Cuyahoga County, to conduct inspections and monitoring and to assist with enforcement actions.

**1336.08 DISCHARGE AND CONNECTION PROHIBITIONS**

(a) Prohibition of Illicit Discharges. No person shall discharge, or cause to be discharged, an illicit discharge into the MS4. The commencement, conduct, or continuance of any illicit discharge to the MS4 is prohibited except as described below:

- (1) Water line flushing; landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration; uncontaminated pumped ground water; discharges from potable water sources; foundation drains; air conditioning condensate; irrigation water; springs; water from crawl space pumps; footing drains; lawn watering; individual residential car washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; street wash water; and discharges or flows from firefighting activities. These discharges are exempt until such time as they are determined by the City to be significant contributors of pollutants to the MS4.
- (2) Discharges specified in writing by the City as being necessary to protect public health and safety.
- (3) Discharges from off-lot discharging household sewage treatment systems existing prior to January 1, 2007 and permitted by the Cuyahoga County Board of Health for the purpose of discharging treated sewage effluent in accordance with Ohio Administrative Code 3701-29, or other applicable Cuyahoga County Board of Health regulations, until such time as the Ohio Environmental Protection Agency issues an NPDES permitting mechanism for household sewage treatment systems existing prior to January 1, 2007. These discharges are exempt unless such discharges are deemed to be creating a public health nuisance by the Cuyahoga County Board of Health. Discharges from new or replacement off-lot household sewage treatment systems installed after January 1, 2007 are not exempt from the requirements of this regulation.

In compliance with the City Storm Water Management Program, discharges from all off-lot discharging household sewage treatment systems must either be eliminated or have coverage under an appropriate NPDES permit issued and approved by the Ohio Environmental Protection Agency. When such permit coverage is available for systems existing prior to January 1, 2007, discharges from off-lot discharging household sewage treatment systems existing prior to January 1, 2007 will no longer be exempt from the requirements of this regulation.

(b) Prohibition of Illegal Connections. The construction, use, maintenance, or continued existence of illegal connections to the MS4 is prohibited.

- (1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (2) A person is considered to be in violation of this regulation if the person connects a line conveying illicit discharges to the MS4, or allows such a connection to continue.

**1336.09 MONITORING OF ILLICIT DISCHARGES AND ILLEGAL CONNECTIONS**

- (a) Establishment of an Illicit Discharge and Illegal Connection Monitoring Program: The City shall maintain a program to detect and eliminate illicit discharges and illegal connections to the MS4. This program shall include the mapping of the MS4, including MS4 outfalls and household sewage treatment systems; the routine inspection of storm water outfalls to the MS4, and the systematic investigation of potential residential, commercial, industrial, and institutional facilities for the sources of any dry weather flows found as the result of these inspections.
- (b) Inspection of Residential, Commercial, Industrial, or Institutional Facilities.
  - (1) The City shall be permitted to enter and inspect facilities subject to this regulation as often as may be necessary to determine compliance with this regulation.
  - (2) The City shall have the right to set up at facilities subject to this regulation such devices as are necessary to conduct monitoring and/or sampling of the facility's storm water discharge, as determined by the City.
  - (3) The City shall have the right to require the facility owner/operator to install monitoring equipment as necessary. This sampling and monitoring equipment shall be maintained at all times in safe and proper operating condition by the facility owner/operator at the owner/operator's expense. All devices used to measure storm water flow and quality shall be calibrated by the City to ensure their accuracy.
  - (4) Any temporary or permanent obstruction to safe and reasonable access to the facility to be inspected and/or sampled shall be promptly removed by the facility's owner/operator at the written or oral request of the City and shall not be replaced. The costs of clearing such access shall be borne by the facility owner/operator.
  - (5) Unreasonable delays in allowing the City access to a facility subject to this regulation for the purposes of illicit discharge inspection is a violation of this regulation.
  - (6) If the City is refused access to any part of the facility from which storm water is discharged, and the City demonstrates probable cause to believe that there may be a violation of this regulation, or that there is a need to inspect and/or sample as part of an inspection and sampling program designed to verify compliance with this regulation or any order issued hereunder, or to protect the public health, safety, and welfare, the City may seek issuance of a search warrant, civil remedies including but not limited to injunctive relief, and/or criminal penalties as set forth in 1336.99 from any court of appropriate jurisdiction.
  - (7) Any costs associated with these inspections shall be assessed to the facility owner/operator.

**1336.10 ENFORCEMENT**

- (a) Notice of Violation. When the City finds that a person has violated a prohibition or failed to meet a requirement of this regulation, the City may order compliance by written Notice of Violation, including but not limited to a stop work order. Such notice must specify the violation and shall be hand delivered, and/or sent by certified and first class mail, to the owner/operator of the facility. Such notice may require abatement or remediation of the violation, including but not limited to the following actions:
- (1) The performance of monitoring, analyses, and reporting;
  - (2) The elimination of illicit discharges or illegal connections;
  - (3) That violating discharges, practices, or operations cease and desist;
  - (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; or
  - (5) The implementation of source control or treatment BMPs.
- (b) If abatement or remediation of a violation and/or restoration of affected property are required, the Notice of Violation shall set forth a deadline within which such remediation or restoration must be completed. Said Notice shall further advise that, should the facility owner/operator fail to abate, remediate, or restore within the established deadline, a legal action for enforcement may be initiated, including but not limited to recovery of the City's cost to obtain full and timely compliance.
- (c) Any person receiving a Notice of Violation must meet compliance standards within the time established in the Notice of Violation.
- (d) Administrative Hearing: If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, the City shall schedule an administrative hearing to determine reasons for non-compliance and to determine the next enforcement activity. Notice of the administrative hearing shall be hand delivered and/or sent certified mail and first class mail. The hearing shall be held before the Nuisance Abatement Review Board ("NARB") pursuant to Cod. Ord. Chapter 553. The decision of the NARB shall be final without further appeal within the City, and the Administrator or other authorized City official shall proceed according to the NARB's decision.
- (e) Injunctive Relief: It shall be unlawful for any owner/operator to violate any provision or fail to comply with any of the requirements of this regulation. If an owner/operator has violated or continues to violate the provisions of this regulation, the City may, pursuant to federal, state, or local laws and regulations, petition a court of competent jurisdiction for a preliminary or permanent injunction restraining the owner/operator from activities that would create further violations or compelling the owner/operator to perform abatement or remediation of the violation and to reimburse the City for the cost of obtaining compliance.

**1336.11 REMEDIES NOT EXCLUSIVE**

The remedies listed in this regulation are not exclusive of any other remedies available under any applicable federal, state or local law and it is in the discretion of the City to seek cumulative remedies.

**1336.99 PENALTY**

- (a) No person shall violate, or cause, or knowingly permit to be violated, any of the provisions of this chapter, or fail to comply with any such provisions or with any lawful requirements of any public authority made pursuant to this chapter, or knowingly use or cause or permit the use of any lands in violation of this chapter or in violation of any permit granted under this chapter.
- (b) Whoever violates or fails to comply with any provision of this regulation is guilty of a misdemeanor of the first degree and shall be fined no more than one thousand dollars (\$1,000.00) or imprisoned for no more than one hundred eighty (180) days, or both, for each offense.
- (c) A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.