

5.5.4 Purposes and Expenditures. During each fiscal year, the Town may incur liabilities against and spend monies from the Electric Vehicle Charging Stations Revolving Fund for the operations and maintenance of electric vehicle (EV) charging stations located on Town-owned property in West Newbury.

5.5.5 Fiscal Years. The Electric Vehicle Charging Stations Revolving Fund shall operate for fiscal years that begin on or after July 1, 2021 and shall continue until such time as Town Meeting votes to eliminate the fund.

5.6.1 Curbside Collection of Trash, Recycling and Food Waste Revolving Fund.

5.6.2 Department. There shall be a separate fund called the Curbside Collection of Trash, Recycling and Food Waste Revolving Fund.

5.6.3 Revenues. The town accountant shall establish the Curbside Collection of Trash, Recycling and Food Waste Revolving Fund as a separate account and credit to the fund all the monies received in connection with fees charged for trash or recycling carts, trash stickers and bulk item stickers, donations, and any other source.

5.6.4 Purposes and Expenditures. During each fiscal year, the Town may incur liabilities against and spend monies from the Curbside Collection of Trash, Recycling and Food Waste Revolving Fund for the payment of expenses for trash or recycling carts and stickers and related expenses.

5.6.5 Fiscal Years. The Curbside Collection of Trash, Recycling and Food Waste Revolving Fund shall operate for fiscal years that begin on or after July 1, 2021 and shall continue until such time as Town Meeting votes to eliminate the fund.

XLI STORMWATER MANAGEMENT BYLAW

[Adopted at the October 23, 2021 Special Town Meeting, Approved by the Attorney General on March 3, 2022, Posted According to Law on April 1, 2022]

ARTICLE I – GENERAL PROVISIONS

SECTION 1. Purpose and Objective

- A. *The purpose of this Bylaw is to protect public health, safety, general welfare, and environment by controlling the adverse effects of*

construction site stormwater runoff and post-construction runoff. Stormwater runoff can be a major cause of:

- (1) Impairment of water quality and flow in lakes, ponds, streams, rivers, coastal waters, wetlands, groundwater and drinking water supplies;*
- (2) Contamination of drinking water supplies;*
- (3) Contamination of downstream coastal areas;*
- (4) Alteration or destruction of aquatic and wildlife habitat;*
- (5) Overloading or clogging of municipal stormwater management systems; and*
- (6) Flooding.*

B. The objectives of this Bylaw are to:

- (1) Protect water resources;*
- (2) Comply with state and federal statutes and regulations relating to stormwater discharges including total maximum daily load requirements;*
- (3) Prevent and reduce pollutants from entering the Town of West Newbury's municipal separate storm sewer system (MS4);*
- (4) Establish minimum construction and post construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;*
- (5) Establish provisions for the long-term responsibility for, and maintenance of, structural stormwater control facilities and nonstructural stormwater best management practices to ensure that they continue to function as designed are maintained, and pose no threat to public safety; and*
- (6) Recognize the Town of West Newbury's legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring, and enforcement.*

SECTION 2. Definitions

Unless a different definition is indicated in other sections of this Bylaw, the following definitions and provisions shall apply throughout this Bylaw. Additional definitions may be adopted by separate regulation:

ALTERATION: Any activity that will measurably change the ability of a ground surface area to absorb water, will change existing surface drainage patterns, or will increase or decrease the rate or volume of flow from a site.

BEST MANAGEMENT PRACTICE (BMP): Structural, non-structural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in stormwater volumes and flows, reduce point source and nonpoint source pollution, and promote stormwater quality and protection of the environment. "Structural" BMPs are devices that are engineered and constructed to provide temporary storage and treatment of stormwater runoff. "Nonstructural" BMPs use natural measures to reduce pollution levels, do not require extensive construction efforts, and/or promote pollutant reduction by eliminating the pollutant source.

CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL (CPESC): A certified specialist in soil erosion and sediment control. This certification program, sponsored by the Soil and Water Conservation Society in cooperation with the American Society of Agronomy, provides the public with evidence of professional qualifications.

DEVELOPMENT: The modification of land to accommodate a new use or expansion of an existing use, usually involving construction.

DISTURBANCE: Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material; results in an increased amount of runoff or pollutants; measurably changes the ability of the ground surface to absorb waters; removes trees or vegetation; clears or grades land; or results in an alteration of drainage characteristics.

EROSION AND SEDIMENT CONTROL PLAN: A document containing narrative, drawings and details—developed by a qualified professional engineer (PE) or a certified professional in erosion and sedimentation control (CPESC) — that includes best management practices or equivalent measures designed to control surface runoff, erosion, and sedimentation during construction and construction-related land disturbance activities.

IMPERVIOUS COVER: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious Cover includes without limitation roads, paved parking lots, sidewalks, and rooftops.

INFEASIBLE: Means not technologically possible, or not economically practicable and achievable in light of best industry practices.

INFILTRATION: The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a project site.

MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS: The latest version, as may be amended from time to time, of the Stormwater Management Standards and accompanying Stormwater Handbook issued by the Department of Environmental Protection pursuant to authority under the Wetlands Protection Act, M.G.L. c. 131, § 40, and the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53. The Stormwater Management Standards are incorporated in the Wetlands

Protection Act Regulations, 310 CMR 10.05(6)(k), and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of West Newbury.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT: A permit issued by United States Environmental Protection Agency (EPA) or jointly with the Commonwealth of Massachusetts that authorizes the discharge of pollutants to waters of the United States.

NPDES PHASE II REGULATED AREA: The area within West Newbury identified by EPA as “Designated MS4 Area” under the NPDES Phase II Stormwater Program.

NONPOINT SOURCE POLLUTION: Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and man-made pollutants finally depositing them into a water resource area.

NEW DEVELOPMENT: Any construction activities or land alteration resulting in earth disturbance on an area that has not previously been developed to include impervious cover.

NORMAL MAINTENANCE: Activities that are regularly scheduled to maintain the health and condition of a landscaped area. Examples include removal of weeds or invasive species, pruning, mowing, raking, and other activities that are done at regular intervals within the course of a year.

OPERATION AND MAINTENANCE PLAN: A plan that defines the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

POINT SOURCE: Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

POST-DEVELOPMENT: The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity in accordance with approved plans on a specific site or tract of land. Post-development refers to the

phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project

PRE-DEVELOPMENT: The conditions that exist prior to the proposed disturbance activity. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

RECHARGE: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

REDEVELOPMENT: Development, rehabilitation, expansion, demolition, construction, land alteration, or phased projects that disturb the ground surface, including impervious surfaces, on previously developed sites. The creation of new areas of impervious surface or new areas of land disturbance on a site constitutes new development, not redevelopment, even where such activities are part of a common plan which also involves redevelopment. Redevelopment includes maintenance and improvement of existing roadways including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems and repaving; and remedial projects specifically designed to provide improved stormwater management such as projects to separate storm drains and sanitary recharge and stormwater retrofit projects.

RUNOFF: Rainfall, snowmelt, or irrigation water flowing over the ground surface.

SEDIMENT: Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.

SEDIMENTATION: The process or act of deposition of Sediment.

SITE: Any lot or parcel of land or area of property where Land-Disturbing or Development Activities are, were, or will be performed.

STORMWATER AUTHORITY: Town of West Newbury Planning Board or the board, commission, or its agent, designated by the Planning Board to administer and enforce this Bylaw.

STORMWATER: Runoff from precipitation or snow melt and surface water runoff and drainage.

STORMWATER MANAGEMENT: The use of structural or nonstructural practices that are designed to control or treat stormwater runoff pollutant loads, discharge volumes, and/or peak flow discharge rates. Stormwater management includes the use of low-impact development (LID) management practices.

STORMWATER MANAGEMENT PERMIT (SMP): A permit issued by the Stormwater Authority, after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the Town from the deleterious effects of uncontrolled and untreated stormwater runoff.

TOTAL MAXIMIM DAILY LOAD or TMDL: the greatest amount of a pollutant that a water body can accept and still meet water quality standards for protecting public health and maintaining the designated beneficial uses of those waters for drinking,

swimming, recreation, and fishing. A TMDL is also a plan, adopted under the Clean Water Act, specifying how much of a specific pollutant can come from various sources, including stormwater discharges, and identifies strategies for reducing the pollutant discharges from these sources so as not to violate Massachusetts surface water quality standards. (314 CMR 4.00, *et seq.*)

TOTAL SUSPENDED SOLIDS OR TSS: Undissolved organic or inorganic particles in water.

SECTION 3. Authority

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Massachusetts home rule statutes, the regulations of the Federal Clean Water Act, 40 CFR 122.34, and as authorized by the residents of the Town of West Newbury at Town Meeting dated (insert date).

SECTION 4. Responsibility for administration

Stormwater Authority shall administer, implement and enforce this Bylaw. Any powers granted to or duties imposed upon Stormwater Authority may be delegated in writing by Stormwater Authority to its employees or agents.

SECTION 5. Applicability

- A. This Bylaw shall be applicable to any alteration, disturbance, including clearing, grading, excavation, development, or redevelopment that will disturb land surface area equal to or greater than 1 acre (43,560 s.f.).
- B. This Bylaw shall apply to land or parcels of land that are held in common ownership (including ownership by related or jointly controlled persons or entities) as of the effective date of this Bylaw, if the total land-disturbing activities on said land or parcels, considered as a whole, would presently or ultimately exceed the minimum thresholds established in the West Newbury Stormwater Bylaw and are not exempted by Section 6, then no such activity shall commence until a permit under this Bylaw has been issued. A development shall not be segmented or phased in a manner to avoid compliance with this Bylaw.

SECTION 6. Exemptions

- A. Any activity which will disturb or alter land areas below the thresholds described in Section 5-A above.
- B. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulations, 310 CMR 10.04 and G.L. c. 40A, § 3.
- C. Any work or projects for which all necessary approvals and permits, including building permits, have been issued before the effective date of this Bylaw.
- D. Normal maintenance of existing lawn, landscaping or garden areas.

- E. Construction of any fence that will not alter existing terrain or drainage patterns.
- F. Construction of utilities (gas, water, sanitary sewer, electric, telephone, cable television, etc.) other than drainage which will not alter terrain, ground cover, or drainage patterns, provided that appropriate BMPs are used to prevent erosion, sedimentation and release of pollutants.
- G. Emergency repairs to any existing utilities (gas, water, sanitary sewer, electric, telephone, cable television, etc.) or emergency repairs to any stormwater management facility that poses a threat to public health or safety as determined by the Stormwater Authority. Where such work is subject to the jurisdiction of the Conservation Commission, the work shall not proceed without the issuance of an Emergency Certification by the Commission pursuant to 310 CMR 10.06.
- H. The maintenance or resurfacing (not including reconstruction) of any public or private way.
- I. The repair or replacement of an existing and lawfully located driveway servicing not more than two dwelling units (see definition of dwelling unit in the Town's Zoning Bylaw) provided that all work remains within the existing limits of the existing driveway, erosion control measures are utilized to prevent runoff and sediment from entering a traveled way or adjacent properties, and all surfaces are permanently stabilized within 14 days of final grade.

SECTION 7. Regulations

- A. The Stormwater Authority may adopt within one (1) year, and may periodically amend, regulations, rules and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures, and administration of this Stormwater Management Bylaw by majority vote after conducting a public hearing to receive comments. Such hearing shall be advertised in a newspaper of general local circulation, at least fourteen (14) days prior to the hearing date. Failure of the Stormwater Authority to issue such rules, or regulations, or a legal declaration of their invalidity by a court, shall not act to suspend or invalidate the effect of this Bylaw.
- B. Stormwater Management regulations, rules or guidance shall identify requirements for Stormwater Management Permits required by this Bylaw and not inconsistent with the most recent Small Municipal Separate Sewer System General Permit (MS4).

SECTION 8. Enforcement

The Stormwater Authority or its authorized agent shall enforce this Bylaw, and any associated regulations, orders, violation notices, and enforcement orders and may pursue all civil remedies for such violations.

- A. Civil relief. If a person violates the provisions of this Bylaw, regulations, permit, notice, or order issued there under, the Stormwater Authority may seek injunctive relief in a court of competent jurisdiction restraining the person from activities

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

B. Orders.

- (1) If the Stormwater Authority determines that a person's failure to follow the requirements of a Stormwater Management Permit and/or the related Erosion and Sedimentation Control Plan, and/or Operations and Maintenance Plan and/or any other authorization issued pursuant to this Bylaw or regulations issued hereunder, then the Stormwater Authority may issue a written order to the person to remediate the non-compliance and/or any adverse impact caused by it, which may include:
 - (a) A requirement to cease and desist from the land-disturbing activity until there is compliance with the Bylaw and provisions of the Stormwater Management Permit and/or other authorization;
 - (b) Maintenance, installation or performance of additional erosion and sediment control measures;
 - (c) Monitoring, analyses, and reporting;
 - (d) Remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity; and/or
 - (e) A requirement to eliminate discharges, directly or indirectly, into a watercourse or into the waters of the Commonwealth.
- (2) If the Stormwater Authority or its authorized agent determines that abatement or remediation of any adverse impacts caused by the permit holder is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further provide that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of West Newbury may, at its option, pursue a Court Order allowing the Town to undertake such work, and expenses thereof shall be charged to the violator pursuant to G.L. c. 40, §58.
- (3) Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town of West Newbury, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Stormwater Authority within 30 days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within 30 days following a decision of the Stormwater Authority affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a municipal charge against the property owner and shall constitute a lien on the owner's property for the amount of said costs pursuant to G.L. c 40, §58.

C. Noncriminal disposition. As an alternative to a civil action, the Town of West Newbury may elect to utilize the noncriminal disposition procedure set forth in

M.G.L. c. 40, § 21D in which case the agent of the Stormwater Authority shall be the enforcing person. The penalty for the first violation shall be a warning. The penalty for the second violation shall be \$100. The penalty for the third and subsequent violation shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

- D. Entry to perform duties under this Bylaw. To the extent permitted by local, state, or federal law, or if authorized by the owner or other party in control of the property, the Stormwater Authority, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this Bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Stormwater Authority deems reasonably necessary.
- E. Appeals. The decisions or orders of the Stormwater Authority shall be final. Further relief shall be appealed to a court of competent jurisdiction.
- F. Remedies not exclusive. The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law.

SECTION 9. Severability

The provisions of this Bylaw are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this Bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Bylaw.

ARTICLE II– STORMWATER MANAGEMENT PERMITS

SECTION 1. Applicability

No person may undertake a construction activity or land disturbance, including clearing, grading, excavation or redevelopment that will disturb equal to or greater than 1 acre without a Stormwater Management Permit approved by a majority of the Stormwater Authority members or as otherwise provided in this Bylaw.

Any person that fails to follow the requirements of a Stormwater Management Permit and the related Erosion and Sedimentation Control Plan, and Operations and Maintenance Plan, or any Permit issued under the Stormwater Management Regulations shall be in violation of this Bylaw.

SECTION 2. Approval and/or Permit

A Stormwater Management Permit must be obtained prior to the commencement of Land Disturbing Activity or Redevelopment based on the thresholds established in this Bylaw. An applicant seeking an approval and/or permit shall file an appropriate application with the Stormwater Authority in a form and containing information as specified in this Bylaw and in regulations adopted by the Stormwater Authority.

SECTION 3. *Consent to Entry onto Property*

An applicant should consent to entry of Stormwater Authority or its authorized agents in or on the site to verify the information in the application and to inspect for compliance with Review or Permit conditions. Refusal to grant access may constitute grounds for denial and/or revocation of a Stormwater Management Permit.

SECTION 4. *Inspection and Site Supervision*

The Stormwater Authority or its designated agent shall make inspections as outlined in the Stormwater Management Regulations to verify and document compliance with the Stormwater Management Permit.

SECTION 5. *Compliance with the provisions of EPAs General Permit for MS4s in Massachusetts*

This Bylaw and its related Stormwater Management Regulations shall be implemented in accordance with the requirements of United States Environmental Protection Agency's most recent Massachusetts Small Municipal Separate Storm Sewer System (MS4s) General Permit relating to construction site runoff, and post-construction stormwater management, as well as the Massachusetts Wetlands Protection Act (WPA) and Regulations as may be amended. Where conflicts exist between the MS4 Permit and the WPA, the stricter shall prevail. The Stormwater Authority may establish additional requirements by regulation to further the purposes and objectives of this Bylaw so long as they are not less stringent than those in the MS4 General Permit for Massachusetts.

SECTION 6. *Surety*

Pursuant to M.G.L. c. 44, § 53G ½, the Stormwater Authority may require the applicant to post before the start of land disturbance or construction activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by the Stormwater Authority and be in an amount deemed sufficient by the Stormwater Authority to ensure that the work will be completed in accordance with the permit. If the project is phased, the Stormwater Authority may release part of the bond as each phase is completed in compliance with the permit.

SECTION 7. *Final Reports*

Upon completion of the work, the applicant shall submit a report (including certified as-built construction plans) from a Professional Engineer (P.E.), surveyor, or Certified Professional in Erosion and Sedimentation Control (CPESC), certifying that all BMPs, erosion and sedimentation control devices, and approved changes and modifications, have been completed in accordance with the conditions of the approved Erosion and Sediment Control Plan and Stormwater Management Plan. The Stormwater Authority may, by regulation, require ongoing reporting to ensure long-term compliance, including, but not limited to, appropriate operation and maintenance of stormwater BMPs. Any discrepancies shall be noted in the cover letter.