

**BOROUGH OF PENNDEL
BUCKS COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2023-1

AN ORDINANCE OF THE BOROUGH OF PENNDEL, BUCKS COUNTY, PENNSYLVANIA AMENDING NUMEROUS PROVISIONS CHAPTER 345 – “STORMWATER MANAGEMENT,” OF THE PENNDEL BOROUGH CODE OF ORDINANCES TO COMPLY WITH AND IMPLEMENT UPDATED PROVISIONS OF THE NESHAMINY CREEK WATERSHED ACT 167 STORMWATER MANAGEMENT PLAN.

WHEREAS, the Borough of Penndel (hereinafter referred to as the “Borough”) is organized and operating in accordance with the laws of the Commonwealth of Pennsylvania; and

WHEREAS, pursuant to the Borough Code of the Commonwealth of Pennsylvania, the Borough Council (hereinafter referred to as the “Council”) has the authority to enact, amend, and repeal the provisions of the Penndel Borough Code of Ordinances (hereinafter referred to as the “Code”); and,

WHEREAS, the Council is empowered by the Pennsylvania Borough Code, 8 Pa.C.S. §101, et seq., to enact certain regulations relating to the public health, safety, and welfare of the citizens of the community of the Borough; and

WHEREAS, the Council has determined that it is in the best interests of the Borough to amend numerous provisions of Chapter 345 – “Stormwater Management” of the Borough’s Code of Ordinances in order to ensure that the Borough’s stormwater management regulations are consistent with the Pennsylvania Department of Environmental Protection’s Model Ordinance pursuant to the Borough’s Small Municipal Separate Storm Sewer System (“MS4”) Permit, upon the advice of the Borough Engineer.

NOW, THEREFORE, be it and it is hereby **ORDAINED** and **ENACTED** as follows:

1. The Code of the Borough of Penndel, Chapter 345 – “Stormwater Management,” Article I – “General Provisions,” Section 2 – “Statement of Findings” is hereby amended to add a new Subsection G as follows:

“G. The use of green infrastructure and low impact development (LID) are intended to address the root cause of water quality impairment by using systems and practices which use or mimic natural processes to: 1) infiltrate and recharge, 2) evapotranspire, and/or 3) harvest and use precipitation near where it falls to earth. Green infrastructure practices and LID contribute to the restoration or maintenance of pre-development hydrology.”

2. The Code of the Borough of Penndel, Chapter 345 – “Stormwater Management,” Article I – “General Provisions,” is amended to add a new Section 8.1 – “Erroneous Permits” as follows:

“§345-8.1. Erroneous Permits.

Any permit or authorization issued or approved based on false, misleading or erroneous information provided by an applicant is void without the necessity of any proceedings for revocation. Any work undertaken or use established pursuant to such permit or other authorization is unlawful. No action may be taken by a board, agency or employee of the Municipality purporting to validate such a violation.”

3. The Code of the Borough of Penndel, Chapter 345 – “Stormwater Management,” Article I – “General Provisions,” is amended to add a new Section 8.2 – “Waivers” as follows:

“§345-8.2. Waivers.

- A. If the Municipality determines that any requirement under this Ordinance cannot be achieved for a particular regulated activity, the Municipality may, after an

evaluation of alternatives, approve measures other than those in this Ordinance, subject to paragraphs B and C of this Section.

B. Waivers or modifications of the requirements of this Ordinance may be approved by the Municipality if enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that the modifications will not be contrary to the public interest and that the purpose of the Ordinance is preserved. Cost or financial burden shall not be considered a hardship. Modification may be considered if an alternative standard or approach will provide equal or better achievement of the purpose of the Ordinance. A request for modifications shall be in writing and accompany the Stormwater Management Site Plan submission. The request shall provide the facts on which the request is based, the provision(s) of the Ordinance involved and the proposed modification.

C. No waiver or modification of any regulated stormwater activity involving earth disturbance greater than or equal to one acre may be granted by the Municipality unless that action is approved in advance by the Department of Environmental Protection (DEP) or the delegated county conservation district.”

4. The Code of the Borough of Pennel, Chapter 345 – “Stormwater Management,” Article II – “Definitions,” Section 10 – “Definitions,” is hereby amended to include the term “Green Infrastructure” by inserting the underlined language in the appropriate place alphabetically within as follows:

“Green Infrastructure – Systems and practices that use or mimic natural processes to infiltrate, evapotranspire , or reuse stormwater on the site where it is generated.”

5. The Code of the Borough of Penndel, Chapter 345 – “Stormwater Management,” Article II – “Definitions,” Section 10 – “Definitions,” is hereby amended to repeal the term “Low-Impact Development (LID) Practices” and associated definition and to replace said repealed term and definition with the term “Low-Impact Development” by inserting the underlined language in the appropriate place alphabetically within as follows:

“**Low Impact Development (LID)** – Site design approaches and small-scale stormwater management practices that promote the use of natural systems for infiltration, evapotranspiration, and reuse of rainwater. LID can be applied to new development, urban retrofits, and revitalization projects. LID utilizes design techniques that infiltrate, filter, evaporate, and store runoff close to its source. Rather than rely on costly large-scale conveyance and treatment systems, LID addresses stormwater through a variety of small, cost-effective landscape features located on-site.”

6. The Code of the Borough of Penndel, Chapter 345 – “Stormwater Management,” Article II – “Definitions,” Section 10 – “Definitions,” is hereby amended to include the term “Riparian Buffer” by inserting the underlined language in the appropriate place alphabetically within as follows:

“**Riparian Buffer** – A permanent area of trees and shrubs located adjacent to streams, lakes, ponds and wetlands.”

7. The Code of the Borough of Penndel, Chapter 345 – “Stormwater Management,” Article III – “Stormwater Management Requirements,” Section 11 – “General Requirements” is hereby amended by deleting the words or letters indicated by strikethrough text and inserting the underlined language as follows:

“H. All regulated activities shall include such measures as necessary to:

- (1) Protect health, safety and property.
- (2) Meet the water quality goals of this chapter by implementing measures to:
 - (a) Minimize disturbance to floodplains, wetlands, and wooded areas.
 - (b) Create, maintain, repair or extend riparian buffers.
 - (c) Avoid erosive flow conditions in natural flow pathways.
 - (d) Minimize thermal impacts to waters of this commonwealth.
 - (e) Disconnect impervious surfaces (i.e., disconnected impervious areas, DIAs) by directing runoff to pervious areas, wherever possible. See Appendix F for detail on DIAs.
 - (f) To the maximum extent practicable, incorporate the techniques for low-impact development practices (e.g., protecting existing trees, reducing area of impervious surface, cluster development, and protecting open space) described in the Pennsylvania Stormwater Best Management Practices Manual, Pennsylvania Department of Environmental Protection (PADEP), No. 363-0300-002 (2006). See Appendix E for a summary description.
- ~~(3) To the maximum extent practicable, incorporate the techniques for low-impact development practices (e.g., protecting existing trees, reducing area of impervious surface, cluster development, and protecting open space) described in the Pennsylvania Stormwater Best Management Practices Manual, Pennsylvania Department of Environmental Protection (PADEP), No. 363-0300-002 (2006). See Appendix E for a summary description.~~

(3) If methods other than green infrastructure and LID methods are proposed to achieve the volume and rate controls required under this Ordinance, the SWM Site Plan must include a detailed justification demonstrating that the use of LID and green infrastructure is not practicable.

8. The Code of the Borough of Penn del, Chapter 345 – “Stormwater Management,” Article III – “Stormwater Management Requirements,” Section 15 – “Calculation Methodology,” Subsection A is hereby amended by adding the underlined language as follows:

“A. The following criteria shall be used for runoff calculations.

(1) For development sites not considered redevelopment, the ground cover used to determine the existing conditions runoff volume and flow rate shall be as follows:

(a) Wooded sites shall use a ground cover of “woods in good condition.” A site is classified as wooded if a continuous canopy of trees exists over 1/4 acre.

(b) The undeveloped portion of the site including agriculture, bare earth, and fallow ground shall be considered as "meadow in good condition," unless the natural ground cover generates a lower curve number (CN) or rational “c” value (i.e., woods), as listed in Table B-4 or B-7 in Appendix B of this chapter.

(2) For development and redevelopment sites, the ground cover used to determine the existing conditions runoff volume and flow rate for the developed portion of the site shall be based upon actual land cover conditions. If the developed site contains impervious surfaces, 20% of the

impervious surface area shall be considered meadow in the model for existing conditions.

(3) The proposed conditions design shall provide added capacity to mitigate the lesser of:

(a) One thousand (1,000) square feet of additional future impervious areas for each lot; or

(b) The maximum impervious area allowable in Chapter 405, the Penndel Borough Zoning Ordinance for the applicable District.

9. The Code of the Borough of Penndel, Chapter 345 – “Stormwater Management,” Article III – “Stormwater Management Requirements,” is hereby amended to add a new Section, Section 15.1 – “Riparian Buffers” as set forth in Exhibit “A” hereto.

10. The Code of the Borough of Penndel, Chapter 345 – “Stormwater Management,” Article IV – “Stormwater Management Site Plan Requirements,” Section 18 – “SWM Site Plan Requirements,” Subsection B – “Plans,” Part 2 is hereby amended by adding a new Subpart “e” (§405-18(B)(2)(e)) as follows:

“e. A justification must be included in the SWM Site Plan if BMPs other than green infrastructure methods and LID practices are proposed to achieve the volume, rate and water quality controls under this Ordinance.”

11. The Code of the Borough of Penndel, Chapter 345 – “Stormwater Management,” Article IV – “Stormwater Management Site Plan Requirements,” Section 18 – “SWM Site Plan Requirements,” Subsection B – “Plans,” Part 3 is hereby amended by adding a new Subpart “h,” (§405-18(B)(3)(h)), as follows:

“h. A tabulation of existing and proposed impervious surface areas. Also note any additional square footage of future impervious area accommodated by the design.”

Current subparts “h,” “i,” and “j” of Chapter 345 – “Stormwater Management,” Article IV – “Stormwater Management Site Plan Requirements,” Section 18 – “SWM Site Plan Requirements,” Subsection B – “Plans,” Part 3, shall be redesignated as subparts “i,” “j,” and “k,” respectively.

12. The Code of the Borough of Penndel, Chapter 345 – “Stormwater Management,” Article IV – “Stormwater Management Site Plan Requirements,” Section 20 – “Stormwater Management Site Plan Review” is hereby repealed and replaced with the contents of a new Section 20 – “Stormwater Management Site Plan Review” as set forth in Exhibit “B” hereto.

13. The Code of the Borough of Penndel, Chapter 345 – “Stormwater Management,” Article V – “Inspections” is hereby amended to revise the title of Article V to “Construction Inspections.”

14. The title of Section 24 of Chapter 345 (§345-24) is hereby amended to revise the title to “Construction Inspections.”

15. The Code of the Borough of Penndel, Chapter 345 – “Stormwater Management,” Article VI – “Fees and Expenses,” Section 26 – “Expenses Covered by Fees” is hereby amended by adding a new Section E, (§405-26(E)), as follows:

“E. Meeting attendance.”

Current Sections “E,” “F,” and “G” of Chapter 345 – “Stormwater Management,” Article VI – “Fees and Expenses,” Section 26 – “Expenses Covered by Fees” shall be redesignated as Sections “F,” “G,” and “H,” respectively.

16. The Code of the Borough of Penndel, Chapter 345 – “Stormwater Management,” Article IX – “Enforcement and Penalties,” Section 36 – “Inspection,” is hereby amended by adding the underlined language as follows:

“Stormwater management (SWM) best management practices (BMPs) should be inspected for proper operation by the landowner or the owner's designee (including the municipality for dedicated and owned facilities) according to the following list of minimum frequencies:

- A. Annually for the first five years;
- B. Once every three years thereafter;
- C. During or immediately after the cessation of a ten-year or greater storm; and/or
- D. As specified in the operations and maintenance (O&M) agreement.

A written inspection report shall be created to document each inspection. The inspection report shall contain the date and time of the inspection, the individual(s) who completed the inspection, the location of the BMP, facility or structure inspected, observations on performance, and recommendations for improving performance, if applicable. Inspection reports shall be submitted to the Municipality within 30 days following completion of the inspection.”

17. The provisions of this Ordinance are severable. If any section, clause, sentence part or provision thereof shall be held illegal, invalid, or unconstitutional by a court of competent jurisdiction, such decision of the court shall not affect or impair any of the remaining sections, clauses, sentences, parts or provisions of this Ordinance. It is hereby declared to be the intent of Borough Council that this Ordinance would have been adopted if such illegal, invalid or unconstitutional section, clause, sentence or part of a provision had not been included herein.

18. This Ordinance shall be effective immediately upon the Approval of the Mayor or immediately upon a majority of Council plus one voting to override the Mayor's veto.

ENACTED AND ORDAINED BY THE BOROUGH OF PENNDEL THIS 5TH DAY OF JUNE, 2023.

BOROUGH COUNCIL
PENNDEL BOROUGH

By: _____,
John Stratz, Council President

ATTEST:

Marie Serota, Borough Secretary/Treasurer

EXAMINED and **APPROVED** by me this 5th day of June, 2023.

Thomas C. Sodano, Jr. Mayor

EXHIBIT A

Chapter 345 – “Stormwater Management”

Article III – “Stormwater Management Requirements”

§345-15.1. Riparian Buffers.

- A. In order to protect and improve water quality, a Riparian Buffer Easement shall be created and recorded as part of any subdivision or land development that encompasses a Riparian Buffer.
- B. Except as required by 25 Pa. Code Chapter 102, or any successor regulations, the Riparian Buffer Easement shall be measured to be the greater of the limit of the 100-year floodplain or a minimum of 35 feet from the top of the streambank (on each side).
- C. Minimum Management Requirements for Riparian Buffers.
 - (1) Existing native vegetation shall be protected and maintained within the Riparian Buffer Easement.
 - (2) Whenever practicable invasive vegetation shall be actively removed, and the Riparian Buffer Easement shall be planted with native trees, shrubs and other vegetation to create a diverse native plant community appropriate to the intended ecological context of the site.
- D. The Riparian Buffer Easement shall be enforceable by the Borough of Penndel and shall be recorded in the Bucks County Recorder of Deeds Office, so that it shall run with the land and shall limit the use of the property located therein. The easement shall allow for the continued private ownership and shall count toward the minimum lot area a required by Zoning, unless otherwise specified in Chapter 405 – “Zoning.”
- E. Any permitted use within the Riparian Buffer Easement shall be conducted in a manner that will maintain the extent of the existing 100-year floodplain, improve or maintain the stream stability, and preserve and protect the ecological function of the floodplain.
- F. The following conditions shall apply when public and/or private recreation trails are permitted within Riparian Buffers:
 - (1) Trails shall be for non-motorized use only.
 - (2) Trails shall be designed to have the least impact on native plant species and other sensitive environmental features.
- G. Septic drainfields and sewage disposal systems shall not be permitted within the Riparian Buffer Easement and shall comply with setback requirements established under 25 Pa. Code Chapter 73.

EXHIBIT B

Chapter 345 – “Stormwater Management”

Article IV – “Stormwater Management Site Plan Requirements”

§345-20. Stormwater Management Site Plan Review.

- A. The SWM Site Plan shall be reviewed by The Penndel Borough Municipal Engineer on behalf of the municipality for consistency with the provisions of this Ordinance.
- B. After review, the Municipal Engineer shall provide a written recommendation for the municipality to approve or disapprove the SWM Site Plan. If it is recommended to disapprove the SWM Site Plan, the Municipal Engineer shall state the reasons for the disapproval in writing. The Municipal Engineer also may recommend approval of the SWM Site Plan with conditions and, if so, shall provide the acceptable conditions for approval in writing. The SWM Site Plan review and recommendations shall be completed within the time allowed by the Municipalities Planning Code for reviewing subdivision plans.
- C. For any SWM Site Plan that proposes to use any BMPs other than green infrastructure and LID practices to achieve the volume and rate controls required under this Ordinance, the Municipality will not approve the SWM Site Plan unless it determines that green infrastructure and LID practices are not practicable.
- D. The municipality will notify the applicant in writing within 45 days whether the SWM Site Plan is approved or disapproved. If the SWM Site Plan involves a Subdivision and Land Development Plan, the notification period is 90 days. If a longer notification period is provided by other statute, regulation, or ordinance, the applicant will be so notified by the municipality. If the municipality disapproves the SWM Site Plan, the municipality shall cite the reasons for disapproval in writing.