

**BOROUGH OF FOX CHAPEL
ORDINANCE NO. 696**

**AN ORDINANCE OF THE BOROUGH OF FOX CHAPEL AMENDING THE
SUBDIVISION ORDINANCE (ORDINANCE NO. 437, as amended)**

WHEREAS, Ordinance No. 437, as amended, (the "Subdivision Ordinance") has been enacted to establish rules, regulations and standards governing the subdivision and development of land within the Borough; and

WHEREAS, Section 404 of the Subdivision Ordinance is the Borough's Stormwater Management Ordinance, Ordinance No. 668 (the "SMO"); and

WHEREAS, the Pennsylvania Department of Environmental Protection ("DEP") is requiring the Borough to amend the SMO to incorporate various miscellaneous updates, which updates are the subject of a separate ordinance also being adopted on the date hereof; and

WHEREAS, one of DEP's requirements is the removal of Section 2.10 entitled "Prohibited Discharges and Connections" from the SMO and the inclusion of it in a separate ordinance; and

WHEREAS, Part 3.I. of the Subdivision Ordinance duplicates verbatim Part 4, sections 201 through 203 of that Ordinance; and

WHEREAS, Borough Council desires to amend the Subdivision Ordinance to comply with said DEP requirement of a separate Prohibited Discharge Ordinance and to remove the said redundant language;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Borough of Fox Chapel and it is hereby ordained and enacted by the authority of the same as follows:

TABLE OF CONTENTS

Article I – General Provisions

Section 101.	Short Title
Section 102.	Statement of Findings
Section 103.	Purpose
Section 104.	Statutory Authority
Section 105.	Applicability
Section 106.	Repealer
Section 107.	Severability
Section 108.	Compatibility with Other Requirements

Article II – Definitions

Article III – Stormwater Management Requirements

Section 301.	General Requirements
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Article IV – Operation and Maintenance

Section 401.	Responsibilities of Developers and Landowners
Section 402.	Operation and Maintenance Agreements

Article V – Prohibitions

Section 501.	Prohibited Discharges and Connections
Section 502.	Roof Drains and Sump Pumps

Article VI – Enforcement and Penalties

Section 601.	Right-of-Entry
Section 602.	Inspection
Section 603.	Enforcement
Section 604.	Suspension and Revocation
Section 605.	Penalties
Section 606.	Appeals

Article VII – References

Article VIII -- Repeal

ARTICLE I - GENERAL PROVISIONS

Section 101. Short Title

This Ordinance shall be known and may be cited as the “Borough of Fox Chapel MS4 Prohibited Discharge Ordinance.”

Section 102. Statement of Findings

The governing body of the Borough of Fox Chapel finds that:

- A. Inadequate maintenance of stormwater facilities contributes to erosion and sedimentation, overtaxes the carrying capacity of streams and storm sewers, increases the cost of public facilities to carry and control stormwater, undermines flood plain management and flood control efforts in downstream communities, reduces groundwater recharge, threatens public health and safety, and increases pollution of water resources.
- B. Reasonable regulation of connections and discharges to the Borough’s separate storm sewer systems is fundamental to the public health, safety, and welfare and the protection of people of the Commonwealth, their resources, and the environment.
- C. Stormwater is an important water resource, which provides groundwater recharge for water supplies and base flow of streams, which also protects and maintains surface water quality.
- D. Federal and state regulations require certain municipalities to obtain a permit for stormwater discharges from their separate storm sewer systems under the National Pollutant Discharge Elimination System (NPDES). Permittees are required to enact, implement, and enforce a prohibition of non-stormwater discharges to the permittee’s regulated small municipal separate stormsewer systems (MS4s).

Section 103. Purpose

The purpose of this Ordinance is to promote health, safety, and welfare within the municipality and its watershed by minimizing the harms and maximizing the benefits described in Section 102 of this Ordinance, through provisions designed to:

- A. Provide standards to meet National Pollution Discharge Elimination System (NPDES) permit requirements.
- B. Meet legal water quality requirements under state law, including regulations at 25 Pa. Code 93 to protect, maintain, reclaim, and restore the existing and designated uses of the waters of this Commonwealth.
- C. Preserve the natural drainage systems as much as possible.
- D. Maintain groundwater recharge to prevent degradation of surface and groundwater quality and to otherwise protect water resources.
- E. Prevent scour and erosion of stream banks and streambeds.

- F. Provide proper operation and maintenance of all facilities and all SWM BMPs that are implemented within the municipality.

Section 104. Statutory Authority

The Borough also is empowered to regulate land use activities that affect runoff by the authority of the Act of July 31, 1968, P.L. 805, No. 247, The Pennsylvania Municipalities Planning Code, as amended.

Section 105. Applicability

All activities related to proper operation and maintenance of approved stormwater management BMPs and all activities that may contribute non-stormwater discharges to a regulated small MS4 are subject to regulation by this Ordinance.

Section 106. Repealer

Any other ordinance provision(s) or regulation of the Borough inconsistent with any of the provisions of this Ordinance is hereby repealed to the extent of the inconsistency only.

Section 107. Severability

In the event that a court of competent jurisdiction declares any section or provision of this Ordinance invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance.

Section 108. Compatibility with Other Requirements

Actions taken under this Ordinance do not affect any responsibility, permit or approval for any activity regulated by any other code, law, regulation, or ordinance.

ARTICLE II - DEFINITIONS

For the purposes of this Ordinance, certain terms and words used herein shall be interpreted as follows:

- A. Words used in the present tense include the future tense; the singular number includes the plural, and the plural number includes the singular; words of masculine gender include feminine gender; and words of feminine gender include masculine gender.
- B. The word “includes” or “including” shall not limit the term to the specific example but is intended to extend its meaning to all other instances of like kind and character.
- C. The words “shall” and “must” are mandatory; the words “may” and “should” are permissive.

Best Management Practice (BMP) – Activities, facilities, designs, measures, or procedures used to manage stormwater impacts from regulated activities, to meet state water quality requirements, to promote groundwater recharge, and to otherwise meet the purposes of this Ordinance. Stormwater BMPs are commonly grouped into one of two broad categories or measures: “structural” or “nonstructural.” In this Ordinance, nonstructural BMPs or measures refer to operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff whereas structural BMPs or measures are those that consist of a physical device or practice that is installed to capture and treat stormwater runoff. Structural BMPs include, but are not limited to, a wide variety of practices and devices, from large-scale retention ponds and constructed wetlands, to small-scale underground treatment systems, infiltration facilities, filter strips, low impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention basins, and manufactured devices. Structural stormwater BMPs are permanent appurtenances to the project site.

Conservation District – A conservation district, as defined in Section 3(c) of the Conservation District Law (3 P. S. § 851(c)) that has the authority under a delegation agreement executed with DEP to administer and enforce all or a portion of the regulations promulgated under 25 Pa. Code 102.

DEP – The Pennsylvania Department of Environmental Protection.

Earth Disturbance Activity – A construction or other human activity which disturbs the surface of the land, including, but not limited to: clearing and grubbing; grading; excavations; embankments; road maintenance; building construction; and the moving, depositing, stockpiling, or storing of soil, rock, or earth materials. Earth disturbance activity is subject to regulation under 25 Pa. Code 92, 25 Pa. Code 102, or the Clean Streams Law.

Municipality – Borough of Fox Chapel, Allegheny County, Pennsylvania.

NPDES – National Pollution Discharge Elimination System

NRCS – USDA Natural Resources Conservation Service (previously SCS).

Regulated Activities – Any activities that may affect stormwater runoff and any activities that may contribute non-stormwater discharges to a regulated small MS4.

State Water Quality Requirements – The regulatory requirements to protect, maintain, reclaim, and restore water quality under Title 25 of the Pennsylvania Code and the Clean Streams Law.

Stormwater – Drainage runoff from the surface of the land resulting from precipitation or snow or ice melt.

Stormwater Management Plan - The stormwater management plan managing stormwater runoff adopted by Allegheny County as required by the Act of October 4, 1978, P.L. 864, (Act 167), as amended, and known as the “Stormwater Management Act”.

Stormwater Management Site Plan – The plan prepared by the developer or his representative indicating how stormwater runoff will be managed at the development site in accordance with this Ordinance. Stormwater Management Site Plan will be designated as SWM Site Plan throughout this Ordinance.

USDA – United States Department of Agriculture.

Waters of this Commonwealth – Any and all rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, wetlands, ponds, springs, and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of the Commonwealth of Pennsylvania.

ARTICLE III – STORMWATER MANAGEMENT REQUIREMENTS

Section 301. General Requirements

- A. For all regulated earth disturbance activities, erosion and sediment control BMPs shall be designed, implemented, operated, and maintained during the regulated earth disturbance activities (e.g., during construction) to meet the purposes and requirements of this Ordinance and to meet all requirements under Title 25 of the Pennsylvania Code and the Clean Streams Law. Various BMPs and their design standards are listed in the *Erosion and Sediment Pollution Control Program Manual (E&S Manual)*², No. 363-2134-008 (April 15, 2000), as amended and updated.
- B. Stormwater flows onto adjacent property shall not be created, increased, decreased, relocated, or otherwise altered without written notification of the adjacent property owner(s) by the developer. Such stormwater flows shall be subject to the requirements of this Ordinance.
- C. For all regulated activities, SWM BMPs shall be implemented, operated, and maintained to meet the purposes and requirements of this Ordinance and to meet all requirements under Title 25 of the Pennsylvania Code, the Clean Streams Law, and the Storm Water Management Act.
- D. Various BMPs and their design standards are listed in the BMP Manual¹.

ARTICLE IV – OPERATION AND MAINTENANCE

Section 401. Responsibilities of Developers and Landowners

- A. Facilities, areas, or structures used as Stormwater Management BMPs shall be enumerated as permanent real estate appurtenances and recorded as deed restrictions or conservation easements that run with the land.
- B. Operation and Maintenance (O&M) Plans for stormwater management approved pursuant to 25 Pa. Code §102 after the date of this Ordinance shall be recorded as a restrictive deed covenant that runs with the land.
- C. The Borough may take enforcement actions against an owner for any failure to satisfy the provisions of this Ordinance.

Section 402. Operation and Maintenance Agreements

- A. Prior to completing construction of a SWM Site Plan, the property owner shall sign and record an Operation and Maintenance (O&M) Agreement (see Appendix A) covering all stormwater control facilities which are to be privately owned.
 - 1. The owner, successor and assigns shall operate and maintain all facilities in accordance with the approved schedule(s) in the O&M Plan.
 - 2. The owner shall convey to the Borough conservation easements to assure access for periodic inspections by the Borough and maintenance, as necessary.
 - 3. The owner shall keep on file with the Borough the name, address, and telephone number of the person or company responsible for operation and maintenance activities. In the event of a change, new information shall be submitted by the owner to the Borough within ten (10) working days of the change.
- B. The owner is responsible for operation and maintenance (O&M) of the SWM BMPs. If the owner fails to adhere to the O&M Agreement, the Borough may perform the services required and charge the owner appropriate fees. Nonpayment of fees may result in a lien against the property.

ARTICLE V - PROHIBITIONS

Section 501. Prohibited Discharges and Connections

- A. Any drain or conveyance, whether on the surface or subsurface, that allows any non-stormwater discharge including sewage, process wastewater, and wash water to enter a regulated small MS4 or to enter the waters of this Commonwealth is prohibited.
- B. No person shall allow, or cause to allow, discharges into a regulated small MS4, or discharges into waters of this Commonwealth, which are not composed entirely of stormwater, except (1) as provided in Subsection C below and (2) discharges allowed under a state or federal permit.

C. The following discharges are authorized unless they are determined to be significant contributors to pollution of a regulated small MS4 or to the waters of this Commonwealth:

- Discharges from firefighting activities	- Flows from riparian habitats and wetlands
- Potable water sources including water line flushing	- Uncontaminated water from foundations or from footing drains
- Irrigation drainage/water	- Lawn watering
- Air conditioning condensate	- Dechlorinated swimming pool discharges
- Springs	- Uncontaminated groundwater
- Water from crawl space pumps	- Water from individual residential car washing
- Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spill material has been removed) and where detergents are not used	- Routine external building wash down (which does not use detergents or other compounds)
Diverted stream flows	

D. In the event that the Borough or DEP determines that any of the discharges identified in Subsection C significantly contribute pollutants to a regulated small MS4 or to the waters of this Commonwealth, the Borough or DEP will notify the responsible person(s) to cease the discharge.

Section 502. Roof Drains and Sump Pumps

Roof drains and sump pumps shall discharge to infiltration or vegetative BMPs.

ARTICLE VI – ENFORCEMENT AND PENALTIES

Section 601. Right-of-Entry

Upon presentation of proper credentials, the Borough may enter at reasonable times upon any property within the Borough to inspect the condition of the stormwater structures and facilities in regard to any aspect regulated by this Ordinance.

Section 602. Inspection

SWM BMPs should be inspected by the landowner, or the owner's designee (including the Borough for dedicated and owned facilities), according to the following list of minimum frequencies:

1. Annually for the first 5 years following construction.
2. Once every 3 years thereafter.
3. During or immediately after the cessation of a 10-year or greater storm.

Section 603. Enforcement

It is unlawful for any person to modify, remove, fill, landscape, or alter any approved SWM BMPs, facilities, areas, or structures without the written approval of DEP or a delegated County Conservation District, and the Borough.

Section 604. Suspension and Revocation

- A. Any approval or permit issued by the municipality may be suspended or revoked for:
 1. Non-compliance with or failure to implement any provision of an approved SWM Site Plan or O&M Agreement.
 2. A violation of any provision of this Ordinance or any other applicable law, ordinance, rule, or regulation relating to a Regulated Activity.
 3. The creation of any condition or the commission of any act which constitutes or creates a hazard, nuisance, pollution, or endangers the life or property of others.
- B. A suspended approval may be reinstated by the Borough when:
 1. The Borough has inspected and approved the corrections to the violations that caused the suspension.
 2. The Borough is satisfied that the violation has been corrected.
- C. An approval that has been revoked by the Borough cannot be reinstated. The applicant may apply for a new approval under the provisions of this Ordinance.

- D. If a violation causes no immediate danger to life, public health, or property, at its sole discretion, the Borough may provide a limited time period for the owner to correct the violation. In these cases, the Borough will provide the owner, or the owner's designee, with a written notice of the violation and the time period allowed for the owner to correct the violation. If the owner does not correct the violation within the allowed time period, the Borough may revoke or suspend any, or all, applicable approvals and permits pertaining to any provision of this Ordinance.

Section 605. Penalties

- A. Anyone violating the provisions of this Ordinance shall be guilty of a summary offense, and upon conviction, shall be subject to a fine of not more than \$1,000.00 for each violation, recoverable with costs. Each day that the violation continues shall be a separate offense and penalties shall be cumulative.
- B. In addition, the Borough may institute injunctive, mandamus, or any other appropriate action or proceeding at law or in equity for the enforcement of this Ordinance. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus, or other appropriate forms of remedy or relief.

Section 606. Appeals

- A. Any person aggrieved by any action of the Borough or its designee, relevant to the provisions of this Ordinance, may appeal to Borough Council within 30 days of that action.
- B. Any person aggrieved by any decision of the Borough, relevant to the provisions of this Ordinance, may appeal to the County Court of Common Pleas in the county where the activity has taken place within 30 days of the Borough's decision.

ARTICLE VII – REFERENCES

- 1. Pennsylvania Department of Environmental Protection. No. 363-0300-002 (December 2006), as amended and updated. *Pennsylvania Stormwater Best Management Practices Manual*. Harrisburg, PA.
- 2. Pennsylvania Department of Environmental Protection. No. 363-2134-008 (April 15, 2000), as amended and updated. *Erosion and Sediment Pollution Control Program Manual*. Harrisburg, PA.

ARTICLE VIII – REPEAL

Sections 180 through 182, of Ordinance 681, enacted November 21, 2011, entitled the "Fox Chapel Natural Resources Assessment and Protection Ordinance of 2011," Code of Ordinances Chapter 10 entitled "Health and Safety," Part 3.I. entitled "Protection of Watercourses," are hereby repealed as duplicative of Sections 201 through 203 of Ordinance 479, enacted July 20, 1987, Code of Ordinances Chapter 10, Part 4, sections 201 through 203.

ORDAINED AND ENACTED this 16th day of March, 2015.

President of Council

ATTEST:

Secretary

EXAMINED AND APPROVED by me this 16th day of March, 2015.

Mayor

**APPENDIX A
OPERATION AND MAINTENANCE (O&M) AGREEMENT
STORMWATER MANAGEMENT BEST MANAGEMENT PRACTICES (SWM BMPs)**

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between _____ and _____, (hereinafter the "Landowner") and the Borough of Fox Chapel, Allegheny County, Pennsylvania, (hereinafter "Municipality");

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property located in the Borough of Fox Chapel at _____, Pittsburgh, PA 152____ as recorded by deed in the land records of Allegheny County, Pennsylvania, Deed Book _____, Page_____, Block and Lot No. _____ (hereinafter "Property").

WHEREAS, the Landowner is proposing to undertake Regulated Activities, as defined in the Municipalities Stormwater Management Ordinance, on the Property; and

WHEREAS, the SWM BMP Operation and Maintenance (O&M) Plan approved by the Municipality (hereinafter referred to as the "O&M Plan") for the property identified herein, which is attached hereto as Appendix A and made part hereof, as approved by the Municipality, provides for management of stormwater within the confines of the Property through the use of BMPs; and

WHEREAS, the Municipality, and the Landowner, his successors and assigns, agree that the health, safety, and welfare of the residents of the Municipality and the protection and maintenance of water quality require that on-site SWM BMPs be constructed and maintained on the Property; and

WHEREAS, the Municipality requires, through the implementation of the SWM Site Plan, that SWM BMPs as required by said SWM Site Plan and the Municipal Stormwater Management Ordinance be constructed and adequately operated and maintained by the Landowner, successors, and assigns.

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The Landowner shall construct the BMPs in accordance with the plans and specifications identified in the SWM Site Plan.
2. The Landowner shall operate and maintain the BMPs as shown on the SWM Plan in good working order in accordance with the specific operation and maintenance requirements noted on the approved O&M Plan.
3. The Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the property, at reasonable times and upon presentation of proper credentials, to inspect the BMPs whenever necessary. Whenever possible, the Municipality shall notify the Landowner prior to entering the property.
4. In the event the Landowner fails to operate and maintain the BMPs per paragraph 2, the Municipality or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s). It is expressly understood and agreed that the Municipality is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Municipality.
5. In the event the Municipality, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Municipality for all expenses (direct and indirect) incurred within 10 days of receipt of invoice from the Municipality.

6. The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMPs by the Landowner; provided, however, that this Agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.
7. The Landowner, its executors, administrators, assigns, and other successors in interests, shall release the Municipality from all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against said employees and representatives from the construction, presence, existence, or maintenance of the BMP(s) by the Landowner or Municipality.
8. The Municipality intends to inspect the BMPs at a minimum of once every three years to ensure their continued functioning.

This Agreement shall be recorded at the Office of the Recorder of Deeds of Allegheny County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, his administrators, executors, assigns, heirs, and any other successors in interests, in perpetuity.

IN WITNESS WHEREOF, each of the parties has signed this agreement, intending to be legally bound thereby, as of the day and year first-above written.

(Printed Name)

Signature)

(Printed Name)

(Signature)

BOROUGH OF FOX CHAPEL

Gary J. Koehler
Borough Manager

