

**ORDINANCE NO. 2023-XX**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH AMENDING CHAPTER XVII STREETS AND SIDEWALKS OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, TO ESTABLISH SOIL EROSION AND SEDIMENTATION CONTROL AS AN ONGOING PRIORITY AND SHALL ESTABLISH SOIL EROSION AND SEDIMENTATION CONTROL ENFORCEMENT; PROVIDING FOR CONFLICTS, SEVERABILITY, AND CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, sedimentation is the process by which eroded soil is deposited into water bodies or onto land surfaces; and

**WHEREAS**, sediment that erodes from exposed areas accumulates in lakes, natural watercourses, and on adjoining properties; and

**WHEREAS**, when sediment travels into water bodies, it can harm aquatic life, increase turbidity, and restrict the amount of sunlight reaching aquatic plants, endangering water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species; and

**WHEREAS**, sediment can also decrease the storage volume of water bodies and clog sewer storm drains which can increase the potential of flooding; and

**WHEREAS**, Best Management Practices (BMPs) can be used to control erosion and prevent off-site sedimentation, thus reducing water pollution due to sedimentation; and

**WHEREAS**, the City of North Miami Beach will establish soil erosion and sedimentation control as an ongoing priority and shall establish soil erosion and sedimentation control enforcement; and

**WHEREAS**, the City Commission of the City of North Miami Beach finds that it is in the best interests of its residents to adopt this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and City Commission of the City of North Miami Beach, Florida:

**Section 1.** That the recitals and finding contained in the forgoing “whereas” clauses are adopted by reference and incorporated as if fully set forth in this section.

**Section 2.** That Chapter XVII of the Code of Ordinances is amended as follows (*deletions and additions are identified using a strike-through and underline format, respectively*):

## **17-6 DISCHARGE OF POLLUTANTS, SEDIMENTS AND EROSION FROM LAND-DISTURBING ACTIVITY.**

### **17-6.1 Prohibition of Illegal Discharges to Watercourses from Construction Activities.**

No person shall discharge or cause to be discharged into the Municipal Separate Storm Sewer System (MS4), storm water drainage system and watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water unless otherwise approved and permitted by the City.

The commencement, conduct or continuance of any illegal discharge to the storm water drainage system is prohibited except as described as follows:

- a. The following discharges are exempt from discharge prohibitions established by this section: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, dechlorinated swimming pools (typically less than one PPM chlorine), firefighting activities, and any other water source not containing pollutants.
- b. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
- c. Dye testing is an allowable discharge but requires a verbal notification to the authorized enforcement agency prior to the time of the test.
- d. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations and provided that written approval has been granted for any discharge to the storm drain system.

### **17-6.2 General Requirements.**

- a. All tracts or any persons shall not intentionally or unintentionally discharge pollutants into a lake or watercourse and must provide adequate pollution control measures, structures, devices in accordance with this section.
- b. Erosion and Sedimentation Control Measures. All land-disturbing activities, including those that disturb less than an acre, shall provide adequate erosion control measures, structures, or devices in accordance with this section.
- c. Plan Required. No person shall initiate, direct, allow or conduct any land-disturbing activity on a tract that meets any of the following criteria without having copy of an approved Erosion and Sedimentation Control Plan on the job site ~~or a plan~~ that has been approved by the City Engineer with performance reservations on the job site.
  1. ~~Uncovers one (1) acre or more.~~ A site for new development tat is larger than a single lot.
  2. ~~Disturbed area greater than one (1) acre.~~

2. A site that uncovers and/or disturbs one (1) acre or more.
  3. A site that is a single lot size or smaller must, at a minimum, install inlet protection prior to construction initiation and must properly maintain the inlet protection until construction is completed and the ground has been stabilized.
- d. Protection of Property. Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity and associated sedimentation.
  - e. More Restrictive Rules Shall Apply. Whenever conflicts exist between Federal, State, or local laws, ordinances or rules, the more restrictive provision shall apply.
  - f. A Construction Generic Permit/Notice of Intent (CGP/NOI) shall also be required from the Florida Department of Environmental Protection for all land-disturbing activities of one (1) acre or more.
  - g. Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of North Miami Beach prior to the allowing of discharges to the MS4.

#### **17-6.3 Inspection and Enforcement**

- a. The City of North Miami Beach shall periodically inspect the City's drainage structures and properties for evidence of eroded soil and sedimentation. If, through inspection, it is determined that any construction site has contributed eroded soil and sedimentation to drainage structures, lakes, watercourses or properties of the City or other properties, a written notice of this determination shall be served to the developer, contractor, or subcontractor of such property. The notice shall require the measures which the developer, contractor or subcontractor must take to remove soil and sediment from streets and sidewalks and shall expressly prohibit such persons or entities from removing or attempting to remove soil and sediment from storm drains. The building official is authorized to issue a "stop work" order to such projects until soil erosion is under control and all resulting damage has been remedied.
- b. The City of North Miami Beach manager or his designee shall have the power to conduct such investigations as may reasonably be deemed necessary in order to carry out the duties as prescribed in this division, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the site.
- c. No person shall refuse entry or access to any authorized representative or agent of the City of North Miami Beach who requests entry for the purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such representative while in process of carrying out his official duties.
- d. the City of North Miami Beach ready access to all parts of the premises for the purposes of inspection, sampling, and examination, and the performance of any additional duties as defined by state and federal law.

- e. The City of North Miami Beach shall have the right to set up any devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the storm water discharge.
- f. The City of North Miami Beach has the right to require the discharger to install monitoring equipment as necessary. The sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- g. Any temporary or permanent obstruction to safe and easy access to the property to be inspected and/or sampled shall be promptly removed by the property owner or occupant at the written or oral request of the City of North Miami Beach and shall not be replaced. The costs of clearing such access shall be borne by the property owner.
- h. If the City of North Miami Beach has been refused access to any part of the premises from which the discharge originates, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

#### **17-6.4 Notice of Violation, Fees, Liens, and Penalties**

- a. Notice of Violation: When the City of North Miami Beach finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
  - i. The performance of monitoring, analyses, and reporting.
  - ii. The elimination of illicit connections or discharges.
  - iii. That violating discharges, practices, or operations shall cease and desist.
  - iv. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property.
  - v. Payment of a fine to cover administrative and remediation costs.
  - vi. The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency, or a contractor and the expense thereof shall be charged to the violator.

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within 14 days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within 14 days from the date of receipt of

the notice of appeal. The decision of the municipal authority or their designee shall be final.

- b. Fees: Any developer, contractor, or subcontractor of property from which eroded soil or sedimentation escapes and encroaches onto City of North Miami Beach owned drainage structures or other City properties shall pay a maintenance, repair, or clean-up fee to be established by the City. The City shall have a lien against such property for costs of maintenance, repair, or clean-up, effective as of the date of the eroded soil or sedimentation encroachment onto any City drainage structure of other City properties. The developer, contractor, or subcontractor shall pay the established fee within 30 days after receipt of a bill from the City in such an amount. The lien for nonpayment of the fee shall be superior to all other liens, except a lien for nonpayment of ad valorem taxes. Enforcement and foreclosure of such lien shall be as provided by law. The City shall be entitled to collect reasonable attorney's fees from any fee payer for services rendered by the City's attorney in collection of such charges, or in the institution of prosecution of any foreclosure proceedings.
- c. Penalties: Any developer, contractor, or subcontractor of property violating shall be subject to the jurisdiction of the code enforcement board. Additionally, the City of North Miami Beach may withhold a certificate of occupancy or final inspection or may ask the building official to intercede and issue a "stop work" order under the provisions of the City building code until such violation ceases and the provisions of this division are complied with.

**Section 3.** All ordinances or parts of ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 4.** If any clause, section, other part, or application of this Ordinance is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Ordinance.

**Section 5.** It is the intention of the City Commission of the City of North Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami Beach, Florida. The Sections of this Ordinance may be renumbered or re-lettered to accomplish this intention and the word "Ordinance" may be changed to "Section," "Article," or other word as the codified may deem appropriate.

**Section 6.** **Effective Date.** This Ordinance shall become effective ten (10) days after adoption on second reading.

**APPROVED** on the first reading this \_\_\_\_ **day of May 2023**.

**APPROVED AND ADOPTED** on second reading this \_\_\_\_ **day of \_\_\_\_\_ 2023**.

ATTEST:

\_\_\_\_\_  
ANDRISE BERNARD, MMC  
CITY CLERK

(CITY SEAL)

\_\_\_\_\_  
ANTHONY F. DEFILLIPO  
MAYOR

APPROVED AS TO FORM, LANGUAGE  
AND FOR EXECUTION

\_\_\_\_\_  
JOHN HERIN  
CITY ATTORNEY