

HEARING BEFORE THE CITY COUNCIL, JULY 14, 2014

Hearing opened at 6:58 P.M. with Councillor Nickel Chair of the PUBLIC SERVICE COMMITTEE, presiding.

All members were present.

The following PETITION was the subject of the hearing:

89-14 National Grid and Verizon New England; Industrial Road – Install 1 jointly owned pole on Industrial Road Beginning at a point approximately 123 feet north of the centerline of the intersection of Keystone Drive.

Ken Dobie, representing National Grid, said they propose to install a service pole to feed a new home being constructed on Keystone Drive.

No one spoke in opposition of the petition.

No Councillors spoke.

HEARING ADJOURNED AT 7:01 P.M.

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Lynn A. Bouchard, City Clerk  
and Clerk of the City Clerk

HEARING BEFORE THE CITY COUNCIL, JULY 14, 2014

Hearing opened at 7:01 P.M. with Councillor Dombrowski, Chair of the LEGAL AFFAIRS COMMITTEE, presiding.

All members were present.

The following ORDINANCE was the subject of the hearing:

Relative to amending Section 21 of the Revised Ordinances entitled “Water and Sewers” by inserting a new Article VI, Sections 21-74 through 21-83 relative to “Stormwater and Erosion Control”.

No one spoke in favor or in opposition of the ordinance.

No Councillors spoke.

HEARING ADJOURNED AT 7:03 P.M.

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Lynn A. Bouchard, City Clerk  
and Clerk of the City Clerk

HEARING BEFORE THE CITY COUNCIL, JULY 14, 2014

Hearing opened at 7:03 P.M. with Councillor Dombrowski, Chair of the LEGAL AFFAIRS COMMITTEE, presiding.

All members were present.

The following PETITION was the subject of the hearing:

50-14 James Whitney and Ten Registered Voters: Amend the Leominster Zoning Ordinance Article I, Section 22-4 entitled Definitions by eliminating the sentence “Facilities that utilize animal testing of products are not included in this definition” from the Life sciences definition.

No one spoke in favor of this petition.

Arlene Cavanaugh, 535 Mohawk Trail Road, Shelburne Falls, Darlene Varnette and Darlene Daniels of Fitchburg Friends of Felines and David DiGiovanni of 39 Revolution Drive spoke in opposition of the petition.

## HEARING BEFORE THE CITY COUNCIL, JULY 14, 2014, continued

Councillor Bodanza said on May 14, 2014 an organization by the name of MassBio issued a press release indicating that Leominster is Bio ready. MassBio is a trade organization that rates the infrastructure and readiness of Massachusetts communities to accept biotech business in their communities. They have four different scales; bronze, silver, gold and platinum. That press release raised Leominster's readiness from gold to platinum, the highest rating. He said the idea is to give communities the ability to better market their capacity to attract biotech industry. All of us would, of course, be interested in attracting quality jobs to the community. The people that spoke tonight are not against jobs but jobs of this type and caliber in these types of industries are attractive jobs. We have worked as a community to get ourselves to this position for a number of years and according to this group we have achieved the highest rating. He said he was curious what other communities do so he contacted Northampton and spoke to their Planner. They do not have any prohibition against animal testing. He said he couldn't find a single community in Massachusetts that has a prohibition against animal testing. He said the petition that is before the Council is simply to remove a piece of language that is conflicting. If we remove the sentence we will have no language in respect to animal testing which is not unlike several other communities in the State. What we have in front of us tonight really doesn't go far enough to answer the policy question that the people in opposition spoke about which is whether there should be animal testing in the first place.

Councillor Bodanza said he asked himself what other laws are there, federal or state that deals with this particular problem. There is a Congressional Statement of Policy under a federal statute regarding animal welfare. In 1991 the Appeals Court ruled that the State could have their own separate regulations regarding animal welfare and the State of Massachusetts does. There is a statute in MGL Chapter 140, Section 74D that specifically deals with research institutions and the fact of what they require for licensing, deals with stray dogs and cats, and separate licenses used for animal testing.

Councillor Freda said statistics can be taken any way we want them to be taken. She doesn't think it is minimal as it's perceived to be because a company that wants to come here wouldn't be rejecting the move because of the line that is in there so it has to be significant. It has to be an issue to a company. We have seen what Mr. Whitney has done in the community and what he is bringing now, this has nothing to do with him. She said she thinks it is an issue about what we want our community to look like and how we look at the information. It's vague in a lot of cases and is specific in a lot of cases but if we don't know enough about it I am not sure if I am ready to vote on something like that. There are a lot of questions that remain unanswered because it is convoluted in the way it came to us. She said there are a lot of questions that need to be answered. Is there an alternative without the animal testing?

Council Bodanza said he read a lot of material regarding alternatives to animal testing. He hopes that day will come that it is a complete truth. He doesn't think it is here quite yet. They have made significant gains. He said sometimes we don't get enough community input on issues that are significant. We had Mr. Letter at the last meeting who had the opposite view. This is a big issue and he is all for taking our time to get it correct. He said he is all for more input.

Councillor Salvatelli said he was taken back by the information that he received. Having worked at WPI for fourteen years and watching this particular program get bigger and bigger it was clear to him this is the way to go for jobs. While the information they said was not about jobs, he thinks to discount that would not be fair. Recently he read an article in a newspaper stating that Massachusetts now ranks 6<sup>th</sup> in the nation in total life science employment but #1 in jobs per capita. By 2012 the most recent year the statistics were available, there were 113,678 jobs in the industry ranking it behind California, New York, Texas, Pennsylvania and New Jersey. But controlling for population as size Massachusetts smaller size wrangled first per capita employment with 17,363 life science jobs for every one million people. So to say it isn't a job related issue is incorrect, it is. He said he is not sure our chances would be as great as people seem to think about getting an industry like this because there are, as the Councillor said, many more communities that have much more to offer. He said he is not degrading Leominster at all but it's very competitive out there to get these kinds of businesses. They pay considerable amount of money per hour, you have to have a considerable amount of education particularly in the STEM areas and it is beyond him to think we are that competitive. He said he is not at a point that he is comfortable voting yes or no. He also would like to have more input from the community.

Councillor Dombrowski said we have to remember what we are exactly talking about. We had a life science definition prior to the new zoning. The only change that was made was by VHB and it doesn't even make sense when you read the life science definition to have this particular sentence at the end. He said he doesn't know why it is there and wished it was picked up beforehand but unfortunately it wasn't. He doesn't think they should be governing this particular use by a single arbitrary sentence in a life science definition. We have federal regulations that govern this issue, we have state statutes that govern this issue and coincidentally no one else in the state has touched this issue, probably because it is already governed. He said he appreciates the passion of the animal rights activists who came down and appreciates the information they provided but he thinks what they are faced with today needs to be acted on.

Councillor Bodanza said the presence of this sentence or the elimination of this sentence doesn't have a real impact. Companies want clean zoning. They don't want to come into a community with any doubt that they are going to have a problem down the road with some archaic zoning provision. He said he is ready to vote.

Councillor Cormier said he had a brief discussion with Board of Health Director and was told this was highly regulated by the state. If our zoning did allow for this and anyone ever did have a real proposal to bring in any type of facility, it is highly regulated by the state and federal government. He said the Director was going to put a packet together but he has not seen it yet.

Councillor Feckley said she agrees that the sentence doesn't make any sense being there because its like it wants to say it is not included in this definition but it is included in some other definition and would allow animal testing by Special Permit of the Zoning Board or Special Permit of the City Council. She read the following letter from the Zoning Board of Appeals "they recommend that the sentence be eliminated if there is a condition set in the industrial zone specifying that a life science use that involves any animal testing requires a Special Permit by the Planning Board and the Zoning Board of Appeals. Life science use in the other three allowed zones already requires a Special Permit by both boards. This will allow other life science uses not using animal testing to be freely used in industrial zone and utilizing any animal testing to be renewed by the Boards." To her it's not included in this definition but it is included in another definition that you can have animal testing but needs to be by Special Permit.

HEARING BEFORE THE CITY COUNCIL, JULY 14, 2014, continued

HEARING ADJOURNED AT 7:45 P.M.

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Lynn A. Bouchard, City Clerk  
and Clerk of the City Clerk

REGULAR MEETING OF THE CITY COUNCIL, JULY 14, 2014

Meeting was called to order at 7:30 P.M.

Attendance was taken by a roll call vote; all members were present.

The Committee on Records reported that the records through June 9, 2014 were examined and found to be in order. The records were accepted.

A recess was called at 7:34 P.M. to continue the public hearing and to hold a public forum.

Meeting reconvened at 7:57 P.M.

The following COMMUNICATIONS were received, referred to the FINANCE COMMITTEE and given REGULAR COURSE.

- C-1 Relative to the appropriation of \$1,081,766.00 to the Highway Street Resurfacing Expense Account; same to be transferred from the Highway State Aid Reserved for Appropriation Account.
- C-2 Relative to the appropriation of \$50,000.00 to the School Department Capital Outlay Expense Account; same to be transferred from the Stabilization Fund.
- C-3 Relative to the appropriation of \$6,900.00 to the Gallagher Building Expense Account: same to be transferred from the Gallagher Building Revolving Fund.

The following COMMUNICATION was received under SUSPENSION OF THE RULES, referred to the LEGAL AFFAIRS COMMITTEE and given REGULAR COURSE. Vt. 9/0.

- C-4 Dean J. Mazarella, Mayor: Authorize the Mayor to enter into a Preservation Restriction Agreement on the Drake House, located at 21 Franklin Street.

The following PETITION was received, referred to the WAYS & MEANS AND VETERANS AFFAIRS COMMITTEE, given REGULAR COURSE and referred to the Treasurer.

- 1-15 Christine DiMauro: Grant a second hand dealers license for My Uncle's Attic located at 609 Main Street.

The following PETITION was received, referred to the CITY PROPERTY AND PROPERTY OVERSIGHT COMMITTEE, given REGULAR COURSE and referred to the Purchasing Agent and the Mayor.

- 2-15 Eric D. Holt: Lease public land on the old Leominster dump to install a community solar farm.

The following PETITION was received, referred to the LEGAL AFFAIRS COMMITTEE, given REGULAR COURSE and referred to the Zoning Board of Appeals and the Planning Board. A hearing was set for August 11, 2014 at 7:00 P.M.

- 3-15 Leominster Planning Board and Peter Niall, Building Commissioner: Amend the Leominster Zoning Ordinance by adding "sales and service of all recreation vehicles and motor cycles" to Section 22-17, Underlying Districts Table of Uses and removing the word "vacant" from Article I, Section 22-10-1-1.

The following APPOINTMENT was received and referred to the WAYS & MEANS AND VETERANS AFFAIRS COMMITTEE and given REGULAR COURSE.

Lynn Gaudet – License Commission – term to expire April 15, 2020  
(to fill the unexpired term of Melissa Maguire)

## REGULAR MEETING OF THE CITY COUNCIL, JULY 14, 2014, continued

Upon request of the LEGAL AFFAIRS COMMITTEE, the following PETITION was given FURTHER TIME. Vt. 9/0

- 40-14 Leominster Planning Board: Amend the Leominster Zoning Ordinances by adding Article XVIII, Section 22-105 entitled "Medical Marijuana Facilities" to allow and regulate medical marijuana facilities in the city. (Hearing continued to July 28, 2014 at 6:45 P.M.)

Upon recommendation of the LEGAL AFFAIRS COMMITTEE, the following PETITION was GRANTED. Vt. 7 "yeas" and 2 "nays", Councillors Freda and Lanciani opposed.

- 50-14 James Whitney and Ten Registered Voters: Amend the Leominster Zoning Ordinance Article I, Section 22-4 entitled Definitions by eliminating the sentence "Facilities that utilize animal testing of products are not included in this definition" from the Life sciences definition.

Upon recommendation of the PUBLIC SERVICE COMMITTEE, the following PETITION was GRANTED. Vt. 8/0. Councillor Cormier abstained due to a possible conflict of interest.

- 89-14 National Grid and Verizon New England: Industrial Road – Install 1 jointly owned pole on Industrial Road beginning at a point approximately 123 feet north of the centerline of the intersection of Keystone Drive.

Upon request of the CITY PROPERTY AND PROPERTY OVERSIGHT COMMITTEE, the following COMMUNICATION was given FURTHER TIME. Vt. 8/1, Councillor Freda opposed. A motion was made by Councillor Nickel and seconded by Councillor Freda to RECONSIDER the vote. Vt. 9/0 The PETITION was GRANTED with conditions: 1.) Compliance with the procurement law, specifically, that the value of the easements granted is less than \$25,000. 2.) Language of the easement is ultimately approved by the City Solicitor. Vt. 9 "yeas"

- C-104 Dean J. Mazzearella, Mayor: Request a private utility easement for Romebeau Inc., owner of the Columbia Tavern on Manning Avenue.

Upon recommendation of the FINANCE COMMITTEE, the following COMMUNICATIONS were RATIFIED. Vt. 9 "yeas"

- C-105 Relative to the appropriation of \$1,922.00 to the City Clerk Salary & Wages Account; same to be transferred from the City Council Salary & Wages Account. (Granted with an Emergency Preamble on June 23, 2014; another vote is required.)
- C-106 Relative to the appropriation of \$9,000.00 to the Mayor's Salary & Wages Account; same to be transferred from the Mayor's Salary & Wages Account. (Granted with an Emergency Preamble on June 23, 2014; another vote is required.)
- C-107 Relative to the appropriation of \$15,000.00 to the Police Department Expense Account; same to be transferred from the Police Department Salary & Wages Account. (Granted with an Emergency Preamble on June 23, 2014; another vote is required.)

Upon recommendation of the PRESIDENT'S COMMITTEE ON SMALL BUSINESS/ECONOMIC DEVELOPMENT COMMITTEE, the following COMMUNICATION was GRANTED. Vt. 9/0

- C-108 Dean J. Mazzearella, Mayor: Vote of support for the Housing Development Incentive Program (HDIP) Preliminary Certification Application to the Department of Housing and Community Development (DHCD) for the Lofts at City Place located at 108 Adams Street, as shown on Assessor's Map 4, Parcel 1.

Upon recommendation of the WAYS & MEANS AND VETERANS AFFAIRS COMMITTEE, the following APPOINTMENTS were CONFIRMED. 9 "yeas"

Office of Emergency Management – Rehab Unit – Stephen Brodeur

Fire Department – Permanent Firefighters – William L. Schofield and Adam L. Studham  
Reserve Firefighter - Timothy R. Comeau

The following ORDINANCE was read a second time, ADOPTED as presented and passed to be ordained. Vt. 8 "yeas" and 1 "nay", Councillor Nickel opposed.

## THE CITY OF LEOMINSTER

In the year two thousand and fourteen

## AN ORDINANCE

Amending Chapter 21 of the Revised Ordinances entitled "Water and Sewers."

REGULAR MEETING OF THE CITY COUNCIL, JULY 14, 2014, continued

Be it ordained by the City Council of the City of Leominster, as follows:

Chapter 21 of the Ordinances is hereby amended by adding Article VI, "Stormwater and Erosion Control" Sections 21-74 through 21-83, as stated below:

**ARTICLE VI.  
STORMWATER AND EROSION CONTROL**

**Sec. 21-74. Purpose and Intent**

- (a) The purpose of this Ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare of the City by establishing minimum requirements and procedures to control the adverse effects of soil erosion and sedimentation, construction site runoff, increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment. It has been determined that proper management of stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, protect water and aquatic resources, protect and enhance wildlife habitat, and promote groundwater recharge to protect surface and groundwater drinking supplies. This Ordinance seeks to meet that purpose through the following objectives:
- (1) Establish a mechanism by which the municipality can monitor and ensure compliance with requirements of Phase II of the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and other applicable State and Federal mandates. Under the Phase II stormwater permit, the U.S. Environmental Protection Agency (EPA) required regulated municipalities to reduce the discharge of pollutants in stormwater to the maximum extent practicable and to adopt ordinances to address the control of sources of pollutants entering the municipal storm drain system.
  - (2) Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources.
  - (3) Require that new development, redevelopment and other land alteration activities maintain the after-development runoff characteristics as equal to or better than the pre-development runoff characteristics where appropriate in order to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats.
  - (4) Establish minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality; Establish minimum design criteria for the protection of properties and aquatic resources downstream from land development and land conversion activities from damages due to alterations in volume, velocity, frequency, duration, and peak flow rate of storm water runoff; Establish minimum design criteria for measures to eliminate or minimize to the extent feasible nonpoint source pollution from stormwater runoff which would otherwise degrade water quality.
  - (5) Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet or exceed the minimum post-development stormwater management standards.
  - (6) Encourage the use of nonstructural stormwater management, environmentally sensitive site design practices, and low-impact development practices, such as reducing impervious cover, increasing site-wide infiltration, and preserving open space and other natural areas, to the maximum extent practicable.
  - (7) Promote water conservation through the re-use of stormwater for irrigation.
  - (8) Establish provisions that require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities.
  - (9) Establish provisions to ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained.
  - (10) Establish provisions for the long-term operation and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety or the environment.
  - (11) Establish provisions to ensure there is an adequate funding mechanism, including surety, for the proper review, inspection and long-term maintenance of stormwater facilities implemented as part of this Ordinance.
  - (12) Establish certain administrative procedures and fees for the submission, review, approval or disapproval of stormwater management plans, erosion and sediment controls, the inspection of construction sites and approved active projects, and long-term monitoring.
  - (13) Ensure that construction and waste materials, toxic materials, hazardous materials, and other pollutants are prevented from mixing with stormwater runoff, which would degrade water quality.
  - (14) Establish the City of Leominster's legal authority and capacity to ensure compliance with the provisions of this Ordinance through funding, permitting, inspection, monitoring, and enforcement.
- (b) Nothing in this Ordinance is intended to replace the requirements of the City of Leominster Zoning Ordinance, the Massachusetts Wetlands Protection Act, the City of Leominster General Ordinance, any other Ordinance that may be adopted by the City of Leominster, or any Rules and Regulations adopted there under.

REGULAR MEETING OF THE CITY COUNCIL, JULY 14, 2014, continued

**Sec. 21-75. Authority**

This Ordinance is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34., and as authorized by the residents of the City of Leominster at City Council Meeting dated July 14, 2014.

**Sec. 21-76. Definitions**

The following definitions shall apply in the interpretation, implementation, and enforcement of this Ordinance:

**ALTER:** 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. Alter may be similarly represented as “alteration of drainage characteristics,” and “conducting land-disturbing activities”.

**APPLICANT:** Any person, individual, partnership, association, organization, firm, company, trust, corporation, agency, authority, department, or political subdivision of the commonwealth or the federal government, to the extent permitted by law, any officer, employee, or agent of such person who has filed an application for a Stormwater Permit.

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

**DISCHARGE OF POLLUTANTS:** The addition of any Pollutant or combination of Pollutants into the MS4 or into the waters of the United States or the waters of the Commonwealth, from any source.

**LAND-DISTURBING ACTIVITY:** Any action that causes a change in the existing soil cover which includes the position or location of soil, sand, rock, gravel, or similar earth material. Land-disturbing activities include, but are not limited to, clearing, clearing of trees, grubbing, filling and excavation.

**ENVIRONMENTALLY SENSITIVE SITE DESIGN:** Design that incorporates low impact development techniques to prevent the generation of stormwater and nonpoint source pollution by reducing impervious surfaces, disconnecting stormwater sheet flow paths and treating stormwater at its source, maximizing open space, minimizing disturbance, protecting natural features and processes, and/or enhancing wildlife habitat, as defined in 310 CMR 10.

**IMPERVIOUS COVER (IC) or IMPERVIOUS AREA (IA):** Any material or structure on, above or below the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include, without limitation: roads, paved surfaces (parking lots, sidewalks, and driveways), concrete, brick, stone, and roof tops.

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

**LAND DISTURBANCE:** Any action that causes removal of vegetation (including tree cutting) or that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material. See also ALTER.

**LOW IMPACT DEVELOPMENT (LID) TECHNIQUES:** Innovative stormwater management systems that are modeled after natural hydrologic features. See 310 CMR 10 for further clarification.

**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 Massachusetts Department of Environmental Protection Agency 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, §§ 26-53. 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 conveyance or system of conveyances designed or used for collecting or conveying stormwater, which is not a combined sewer, including any road with a drainage system, municipal street, catch basins, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, ditch, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of Leominster.

**NONPOINT SOURCE:** Any source from which pollution is discharged which is not identified as a point source, including, but not limited to urban, agricultural, or silvicultural runoff. Nonpoint source pollution emanates from many diffuse sources caused by rainfall, snowmelt, or other methods of pollutant transport moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

**POINT SOURCE:** The term “point source” means 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, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

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

**POLLUTANT:** Any element or property of sewage, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works, ground water or surface water.

Pollutants shall include, without limitation:

## REGULAR MEETING OF THE CITY COUNCIL, JULY 14, 2014, continued

- (1) Paints, varnishes, and solvents;
- (2) Oil and other automotive fluids;
- (3) Non-hazardous liquid and solid wastes and yard wastes;
- (4) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, accumulations and floatables;
- (5) Pesticides, herbicides, and fertilizers;
- (6) Hazardous materials and wastes; sewage, fecal coliform, and pathogens;
- (7) Dissolved and particulate metals;
- (8) Animal wastes;
- (9) Rock, sand, salt, soils, with the exception of winter salting and sanding in quantities that will not clog or otherwise impair the performance of the MS4 and stormwater management systems;
- (10) Construction wastes and residues; and
- (11) Noxious or offensive matter of any kind.

**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.

**RECHARGE:** The replenishment of underground water reserves.

**RECONSTRUCTION:** Any action causing complete removal and replacement of paved surfaces, such as driveways, parking areas and roads.

**REDEVELOPMENT:** Any construction, alteration, improvement, repaving, or resurfacing on a previously-developed site.

**RUNOFF:** Rainfall or snowmelt water flowing over the ground surface or other source that may result in transport of pollutants.

**SITE:** Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

**STOCKPILING:** The storage of unsecured material for future use, excluding the storage of materials 10 cubic yards or less when secured utilizing erosion controls to prevent erosion of material.

**STORMWATER:** Stormwater runoff, snow melt runoff, and surface water runoff or drainage.

**STORMWATER BEST MANAGEMENT PRACTICE (BMP):** A structural or non-structural technique for managing stormwater to prevent or reduce nonpoint source pollutants from entering surface waters or ground waters, as defined in 310 CMR 10. A structural stormwater best management practice includes a basin, discharge outlet, swale, rain garden, filter, or other stormwater treatment practice or measure either alone or in combination including, without limitation, any overflow pipe, conduit, weir control structure that:

- (1) Is not naturally occurring;
- (2) Is not designed as a wetland replication area; and
- (3) Has been designated, constructed, and installed for the purpose of conveying, collecting, storing, discharging, recharging or treating stormwater.

Nonstructural stormwater best management practices include source control and pollution prevention measures.

**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 City from the deleterious effects of uncontrolled and untreated stormwater runoff.

**SURFACE WATERS:** All water other than groundwater within the jurisdiction of the Commonwealth including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, and coastal waters, as defined in 310 CMR 10.00.

**TOXIC MATERIAL OR HAZARDOUS MATERIAL OR WASTE:** Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious, or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous material include any synthetic organic chemical, petroleum, product, heavy metal, radioactive or infectious waste, acid, and alkali, and any substance defined as Toxic or Hazardous under G.L. Ch. 21C and Ch. 21E, and the regulations at 310 CMR 30.300 and 310 CMR 40.0000.

## REGULAR MEETING OF THE CITY COUNCIL, JULY 14, 2014, continued

Additional terms that apply to the issuance of a Stormwater Management Permit established by this Ordinance shall be defined and included as part of the rules and regulations promulgated and, from time to time, amended under Section VI of this Ordinance. Terms not defined in said rules and regulations or pertinent statutes shall be construed according to their customary and usual meaning unless the context indicated a special or technical meaning.

**Sec. 21-77. Applicability**

- (a) This Ordinance shall be applicable to the following activities. Compliance with all provisions of this Ordinance, to the maximum extent practicable as determined by the Stormwater Authority, shall be a requirement for issuance of a Stormwater Management Permit.
- (1) All subdivisions as defined in the Massachusetts Subdivision Control Law (MGL c. 41 §§ 81K – 81GG) requiring approval of a definitive subdivision plan;
  - (2) Any activity that will result in a land disturbance of one acre or greater within the City of Leominster; and
  - (3) Land-disturbing activity occurring at least in part within the City of Leominster that will disturb equal to or greater than 5,000 square feet but less than one acre are subject to the provisions of this Ordinance and shall meet the minimum criteria included in the regulations promulgated pursuant to this Ordinance.
- (b) This Ordinance 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 Ordinance, if the total land-disturbing activities on said land or parcels, considered as a whole, would presently or ultimately exceed the minimum thresholds in this ordinance. A development shall not be segmented or phased in a manner to avoid compliance with this Ordinance. The Building Department shall review all Building Permits to determine if a Storm Water Management Permit will be required, and, if required, will direct the applicant or potential applicant to the designated contact person at the Department of Public Works.”
- (c) Coordination with Other City Permits.
- (1) No Building Permit, Subdivision approval, Special Permit, variance, or finding shall constitute compliance with this Ordinance. For a project or activity that meets the Scope and Applicability of Section IV of this Ordinance, no work may commence until the site owner or his agent submits a complete Stormwater Management Permit Application, the Stormwater Authority issues a Stormwater Permit, and the site owner and responsible parties sign and certify that all land clearing, construction and development will be done pursuant to the approved Plans and Permit.
  - (2) The Ordinance is not intended to interfere with, abrogate, or annul any other Ordinance, rule or regulation, statute, or other provision of law. The requirements of this Ordinance should be considered minimum requirements, and where any provision of this Ordinance imposes restrictions different from those imposed by any other Ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence.
  - (3) In case of conflicting requirements, applicable state and or federal statutes and regulations shall be considered the more restrictive or more protective of human health and the environment, and shall take precedence over the City of Leominster’s Stormwater and Erosion Control Ordinance and the Rules and Regulations promulgated thereunder. These state statutes and regulations include, but are not limited to the Massachusetts Wetlands Protection Act, the Massachusetts Rivers Act, the Massachusetts Watershed Protection Act, and the Massachusetts Stormwater Management Standards, as amended.
  - (4) In no instances shall a Stormwater Management Permit constitute authorization for alteration of wetland resources subject to the jurisdiction of the Wetlands Protection Act.

**Sec. 21-78. Exemptions**

Exemptions from this Ordinance apply to the following activities, provided that a project is solely comprised of any one of these activities:

- (a) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.04 (“Agricultural”), M.G.L c. 40A, §3 and the conversion of additional land to agricultural use, when undertaken in such a manner as to prevent erosion and siltation through the use of Best Management Practices recommended by the U.S. Department of Agriculture Natural Resources Conservation Service or the Massachusetts Department of Agricultural Resources.
- (b) Any work or projects for which all necessary approvals and permits were issued before the effective date of this Ordinance. All applicable and relevant regulations must be met; City, State and Federal. (This exemption does not apply to amendments or extensions of approved projects that have not started construction. In these cases, the applicant may need to re-design the project to comply with these requirements.)
- (c) Routine maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling. Routine maintenance includes 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.



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- (d) Construction of any fence that will not alter existing terrain or drainage patterns.
- (e) Construction, reconstruction, operation and maintenance of utilities (including but not limited to gas, water, sanitary sewer, electric, telephone, or cable television) excluding the construction of new MS4, where the surface vegetation and contours of the area shall be substantially restored and are conducted in accordance with an approved Stormwater Pollution Plan which is prepared in accordance with the Stormwater & Erosion Control Regulations promulgated under Section VI of this Ordinance and on file with the Stormwater Authority.
- (f) Emergency repairs to any existing utilities (gas, water, sanitary sewer, septic, electric, telephone, cable television, etc.) and emergency repairs to any stormwater management facility that poses a threat to public health or safety, as deemed necessary by the Department of Public Works. Stormwater erosion controls must be used in all emergency repairs. Where such activity is subject to the jurisdiction of the Conservation Commission, the work shall not proceed without the issuance of an Emergency Certification by the Commission.
- (g) The maintenance and improvement of any public or private roadway/driveway when conducted in accordance with an approved Stormwater Pollution Plan which is prepared in accordance with the Stormwater & Erosion Control Regulations promulgated under Section VI of this Ordinance and on file with the Stormwater Authority.
- (h) Repair, replacement or expansion of septic systems. Note – Proper erosion controls must be used.
- (i) Stormwater discharges resulting from the activities identified in Section IV that are subject to jurisdiction under the Wetlands Protection Act (MGL CH 131 s 40) and demonstrate compliance with the Massachusetts Stormwater Management Standards as reflected in an Order of Conditions issued by the Leominster Conservation Commission.

**Sec. 21-79. Administration and Permitting Process**

- (a) Stormwater Authority. The Conservation Commission is hereby designated as the Stormwater Authority. The Stormwater Authority, or his/her agent, shall administer, implement, and enforce this Ordinance. The Conservation Commission may delegate in writing another City department, commission or board to act as his/her agent to review application submittals and for site inspections and enforcement of this Ordinance. The Conservation Commission hereby delegates its authority to the Department of Public Works to act as his/her designated agent to review and approve Stormwater Management Permit applications for projects subject to this Ordinance under Section IV.A.1-3.
- (b) Stormwater & Erosion Control Regulations (“Regulations”). The Stormwater Authority may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), delegation of authority, procedures and administration of this Ordinance after conducting a public hearing to receive comments on the proposed rules and regulations or any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation at least seven (7) days prior to the hearing date. Failure of the Stormwater Authority to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this Ordinance.
- (c) Stormwater Management Handbook. The Stormwater Authority will utilize the Massachusetts Stormwater Management Policy and the Massachusetts Stormwater Handbooks Volumes 1, 2 and 3, as amended from time to time, for criteria and information including specifications and standards of the latest edition of the Massachusetts Stormwater Management Handbook for the execution of the provisions of this Ordinance. These include a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. Unless specifically made more stringent in this Ordinance and the rules and regulations promulgated hereunder, stormwater management practices that are designed, constructed, and maintained in accordance with the Massachusetts Stormwater Handbooks’ design and sizing criteria shall be presumed by the Stormwater Authority to be protective of the Massachusetts Water Quality Standards.
- (d) Stormwater Management Permit. The Stormwater Authority shall have the authority to issue a Stormwater Management Permit (SMP) for projects exceeding the thresholds defined in this Ordinance. Requirements of the SMP may be defined and included within the regulations promulgated pursuant to this Ordinance.
- (e) Stormwater Management Permit Application and Approval Process.

Application Process. Permit procedures and requirements, including permit submittals, right-of-entry, coordination with other City departments, and public hearing process, shall be defined and included as part of the Regulations promulgated under Section VI.B of this Ordinance.

- (f) Actions by Stormwater Authority
  - (1) Determination of Completeness. The Stormwater Authority shall review the application submission and issue a determination stating whether the application is complete and whether it complies with the Design Standards established in the Stormwater Rules and Regulations, as may be waived in accordance with this Ordinance.
  - (2) Incomplete Applications. If the Stormwater Authority determines the application is incomplete, including insufficient information to describe the site, the work, or the effect of the work on water quality and runoff volume, the Stormwater Authority may require the submission of additional information and/or disapprove the application and deny the Permit.
  - (3) Applications deemed to be complete and in compliance with Design Standards. Each application for a Stormwater Management Permit that complies with the Design Standards, and is determined to be a complete application by the Stormwater Authority, shall be acted upon within thirty (30) days of the date of filing with the Stormwater Authority, unless such application has been withdrawn from consideration. The Stormwater Agent may:

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- a. Approve the Permit Application upon finding that the proposed plan will protect water resources and meets the objectives and requirements of this Ordinance;
  - b. Approve the Permit Application with conditions, modifications or restrictions that are required to ensure that the project will protect water resources and meets the objectives and requirements of this Ordinance; or
  - c. Disapprove the Permit Application if the proposed plan will not protect water resources or fails to meet the objectives and requirements of this Ordinance.
- (4) Applications not in compliance with Design Standards. For an application where the Design Standards cannot be met or the applicant wishes to propose an alternative design not consistent with the Design Standards, the applicant may request a Public Hearing. (See Sec. VI-E 2).
- (5) Fee Schedule. A fee schedule shall be established in the regulations and reviewed annually by the Stormwater Authority.
- (g) Public Hearing Process
- (1) The Stormwater Authority shall hold a public hearing for SMP applications where Design Standards cannot be met or the applicant wishes to propose an alternative design not consistent with the Design Standards. Notices of public hearings shall be published in a newspaper of general circulation for two (2) consecutive weeks. The first publication date shall be not less than fourteen (14) days before the day of the hearing. A copy of the hearing notice shall be posted in the Office of the City Clerk for a period of not less than fourteen (14) days before the date of the hearing. Copies of the notice shall be mailed, postage prepaid, to the applicant, property owner (if different) and to direct abutters and owners of land directly opposite on a public or private way as they appear on the most recent Assessor's list.
- (2) The Stormwater Authority may take any of the following actions following the close of the public hearing for an SMP application:
- a. Approve the Permit Application upon finding that the proposed plan will protect water resources and meets the objectives and requirements of this Ordinance;
  - b. Approve the Permit Application with conditions, modifications or restrictions that are required to ensure that the project will protect water resources and meets the objectives and requirements of this Ordinance; or
  - c. Disapprove the Permit Application if the proposed plan will not protect water resources or fails to meet the objectives and requirements of this Ordinance.
- (3) Waivers. The Stormwater Authority may waive strict compliance with any of the requirements of this Ordinance or the rules and regulations promulgated hereunder, if it determines that some of the application requirements are unnecessary because of the size or character of the development project or because of the natural conditions at the site and where such action is:
- a. Allowed by federal, state and local statutes and/or regulations;
  - b. In the public interest, and
  - c. Not inconsistent with the purpose and intent of this Ordinance.
- Any request from an Applicant for a waiver of these rules shall be submitted, in writing, to the Stormwater Authority at the time of submission of the application. Such requests shall clearly identify the provision(s) of the rule from which relief is sought and be accompanied by a statement setting forth the reasons why, in the applicant's opinion, the granting of such a waiver would be in the public interest or the specific information required to show strict compliance is irrelevant to the project, and why a waiver would be consistent with the intent and purpose of this Ordinance and the rules and regulations promulgated hereunder.
- (f) Appeals of Actions by the Stormwater Authority. A decision by the Stormwater Authority made under this Ordinance shall be final. Further relief shall be to the Superior Court in accordance with the provisions of M.G.L. c. 249, § 4.

**Sec. 21-80. Performance Standards**

Criteria for Stormwater Management Standards shall be defined and included as part of any Rules and Regulations promulgated under Section VI.C of this Ordinance.

**Sec. 21-81. Enforcement**

- (a) The Stormwater Authority, or an authorized agent of the Stormwater Authority, shall enforce this Ordinance, and any Regulations, permit orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for violations.
- (b) If a person violates the provisions of this Ordinance or its Regulations, or a permit, notice or order issued there under, the Stormwater Authority may seek injunctive relief in a court of competent jurisdiction to restrain the person from

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activities which would create further violations or to compel the person to perform abatement or remediation of the violation.

(c) The Stormwater Authority, or an authorized agent of the Stormwater Authority, may issue a written order to enforce the provisions of this Ordinance or the Regulations, which may include requirements to:

- (1) Cease and desist from land-disturbing activity until there is compliance with the Ordinance or provisions of an approved SMP;
- (2) Maintain, install or perform additional erosion and sediment control measures;
- (3) Perform monitoring, analyses, and reporting;
- (4) Remediate erosion and sedimentation resulting directly or indirectly from land-disturbing activity;
- (5) Comply with requirements in the SMP for operation and maintenance of stormwater management systems; and
- (6) Remediate adverse impacts resulting directly or indirectly from malfunction of the stormwater management systems.

If the Stormwater Authority or its authorized agent determines that abatement or remediation is required, the order shall set forth a deadline by which such abatement or remediation must be completed.

(d) Criminal Penalties. Any person who violates any provisions of this Ordinance, regulation, order or permit issued hereunder, shall be punished by a fine of not more than \$300. Each day a violation exists shall constitute a new and separate violation.

(e) Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Stormwater Authority may elect to utilize the non-criminal disposition procedure set forth in M.G.L. Ch. 40, §21D, in which case any police officer of the City of Leominster, the City Engineer, and such other persons as are authorized by the Stormwater Authority shall be the enforcing person. If non-criminal disposition is used, any person who violates any provision of this Ordinance, regulation, order or permit issued thereunder, shall be punished as follows:

- (1) First Violation: Warning
- (2) Second violation: \$100
- (3) Third violation: \$200
- (4) Fourth and subsequent violations: \$300.
- (5) Each day a violation exists shall constitute a separate violation. Each day of non-compliance shall constitute a new and separate violation.

The Conservation Agent, DPW personnel and any other City Employee designated in writing by the Conservation Commission, may as an alternative to initiating criminal proceedings, seek the noncriminal disposition of violations of the Storm Water Ordinance, by following the procedure set forth in section 21D of chapter 40 of the General Laws. Any person, corporation, company, or partnership that violates any provision of this ordinance shall be subject to a penalty of one hundred dollars for the second offense, two hundred dollars for the third offense, and three hundred dollars for the fourth and each additional offense.

(f) Remedies Not Exclusive. The remedies listed in this Ordinance are not exclusive of any other remedies available to the Stormwater Authority or the City under any applicable federal, state or local law.

### **Sec. 21-82. Severability**

The invalidity of any section, provision, paragraph, sentence, or clause of this Ordinance shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

### **Sec. 21-83. Effective Date**

This Ordinance shall take effect on August 4, 2014.

MEETING ADJOURNED AT 8:55 P.M.

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Lynn A. Bouchard, City Clerk  
and Clerk of the City Clerk