

**STATE OF WISCONSIN  
MILWAUKEE AND OZAUKEE COUNTIES  
VILLAGE OF BAYSIDE**

**ORDINANCE NO: 23-744**

**An Ordinance to Create Section 107-90 of the Municipal Code  
with Regard to Erosion Control Regulations**

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The Village Board of the Village of Bayside, Milwaukee and Ozaukee Counties, Wisconsin does ordain as follows:

Section One: Section 107-90 of the Municipal Code is hereby created to read as follows:

**ARTICLE IV. BAYSIDE CONSTRUCTION SITE EROSION CONTROL REGULATIONS**

**Sec. 107-90. Authority.**

- (a) This ordinance is adopted under the authority granted by s. 61.354, Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under s. 61.35, Wis. Stats., that relate to construction site erosion control. Except as otherwise specified in s. 61.354, Wis. Stats., s. 61.35, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.
- (b) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
- (c) The Village Board hereby designates the Village Engineer to administer and enforce the provisions of this ordinance.
- (d) The requirements of this ordinance do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:
  - (1) Wisconsin Department of Natural Resources administrative rules, permits or approvals, including those authorized under ss. 281.16 and 283.33, Wis. Stats.
  - (2) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

**Sec. 107-91. Findings of Fact.**

The Village Board acknowledges that runoff from land disturbing construction activity carries sediment and other pollutants to the waters of the state in the Village of Bayside.

**Sec. 107-92. Purpose.**

It is the purpose of this ordinance to maintain safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion and sediment discharge; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activity to waters of the state in the Village.

Sec. 107-93. Applicability and Jurisdiction.

(a) APPLICABILITY.

(1) This ordinance applies to land disturbing construction activity on lands within the boundaries and jurisdiction of the Village. Except as provided under par. (2), This section applies to the following sites of land or land disturbing activities:

- a. Those requiring a subdivision plat approval or the construction of houses or commercial, industrial or institutional buildings on lots;
- b. Those requiring a certified survey approval or the construction of houses or commercial, industrial or institutional buildings on lots;
- c. Those involving grading, removal of protective ground cover or vegetation, demolition, excavation, land filling or other land disturbing activity 2,000 square feet or more;
- d. Those involving excavation or filling or a combination of excavation and filling affecting 400 cubic yards or more of dirt, sand or other excavation or fill material;
- e. Those involving grading, removal of protective ground cover or vegetation, excavation, demolition, land filling or other land disturbing activity on slopes of ten percent or more.

(2) This ordinance does not apply to the following:

- a. Transportation facilities, except transportation facility construction projects that are part of a larger common plan of development such as local roads within a residential or industrial development.
- b. This ordinance is not applicable to activities conducted by a state agency, as defined under s.227.01 (1), Wis. Stats.
- c. Construction projects exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under chapter 40, Code of Federal Regulations, Part 122, for land disturbing construction activity.
- d. Routine maintenance for project sites that have less than 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.

(3) Notwithstanding the applicability requirements in par. (a), this ordinance applies to construction sites of any size that, as determined by the Village Engineer are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, or that

increases water pollution by scouring or transporting of particulate.

Sec. 107-94. Definitions.

- (a) "Best management practice" or "BMP" means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.
- (b) "BMP handbook" means the most recent edition of the state department of natural resources Wisconsin Construction Site Best Management Practices Handbook.
- (c) "Cease and desist order" means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the Village Engineer
- (d) "Construction site" means an area upon which one or more land disturbing construction activities occur on a residential site disturbing over 2,000 sq ft, or a, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan.
- (e) "Design Storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.
- (f) "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.
- (g) "Erosion and sediment control plan" means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.
- (h) "Final stabilization" means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70 percent of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.
- (i) "Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.
- (j) "Maximum extent practicable" means the highest level of performance that is achievable but is not equivalent to a performance standard identified in this ordinance.
- (k) "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (l) "Pollutant" has the meaning given in s. 283.01 (13), Wis. Stats.
- (m) "Pollution" has the meaning given in s. 281.01 (10), Wis. Stats.
- (n) "Responsible party" means the landowner or any other entity performing services to meet the requirements of this ordinance through a contract or other

agreement.

- (o) "Runoff" means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (p) "Sediment" means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.
- (q) "Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

#### Sec. 107-95. Applicability of Maximum Extent Practicable.

Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the Village Engineer's satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

#### Sec. 107-96. Technical Standards.

All BMPs required for compliance with this ordinance shall meet design criteria, standards and specifications based on any of the following:

- (a) Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.
- (b) Soil loss prediction tools (such as the Universal Soil Loss Equation (USLE)) when using an appropriate rainfall or runoff factor (also referred to as the R factor) or an appropriate design storm and precipitation distribution, and when considering the geographic location of the site and the period of disturbance.

#### Sec. 107-97. Performance Standards for Construction Sites Under One Acre.

- (a) Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:
  - (1) The deposition of soil from being tracked onto streets by vehicles.
  - (2) The discharge of sediment from disturbed areas into on-site storm water inlets, adjacent waters of the state, drainage ways that flow off the site, dewatering activities, or sediment eroding from soil stockpiles existing for more than 7 days.
  - (3) The transport by runoff into waters of the state of chemicals, cement, and other building compounds and materials on the construction site during the

construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this subdivision.

- (b) The BMPs shall be located so that treatment occurs before runoff enters waters of the state.
- (c) The BMPs used to comply with this section shall be implemented as follows:
  - (1) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.
  - (2) Erosion and sediment control practices shall be maintained until final stabilization.
  - (3) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
  - (4) Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
  - (5) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

#### Sec. 107-98 Performance Standards for Construction Sites of One Acre or More.

- (a) The responsible party shall comply with this section and implement the erosion and sediment control plan developed.
- (b) A written site-specific erosion and sediment control plan shall be developed in accordance with this ordinance and implemented for each construction site.
- (c) Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:
  - (1) The deposition of soil from being tracked onto streets by vehicles.
  - (2) The discharge of sediment from disturbed areas into on-site storm water inlets, adjacent waters of the state, drainage ways that flow off the site, dewatering activities, eroding from soil stockpiles existing for more than 7 days, and erosive flows at outlets and in downstream channels.
  - (3) The transport by runoff into waters of the state of chemicals, cement, and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this subdivision.
  - (4) The transport by runoff into waters of the state of untreated wash water from vehicle and wheel washing.
  - (5) In addition to the erosion and sediment control practices under par. (1), the following erosion and sediment control practices shall be employed:
    - a. BMPs that, by design, discharge no more than 5 tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization.
    - b. No person shall be required to employ more BMPs than are needed to

meet a performance standard in order to comply with maximum extent practicable. Erosion and sediment control BMPs may be combined to meet the requirements of this paragraph. Credit may be given toward meeting the sediment performance standard of this paragraph for limiting the duration or area, or both, of land disturbing construction activity, or for other appropriate mechanisms.

- (6) The erosion and sediment control plan shall incorporate all of the following:
  - a. Maintenance of existing vegetation, especially adjacent to surface waters whenever possible.
  - b. Minimization of soil compaction and preservation of topsoil.
  - c. Minimization of land disturbing construction activity on slopes of 10 percent or more.
  - d. Development of spill prevention and response procedures.
- (7) The BMPs used to comply with this section shall be located so that treatment occurs before runoff enters waters of the state.
- (d) The BMPs used to comply with this section shall be implemented as follows:
  - (1) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin in accordance with the erosion and sediment control plan developed.
  - (2) Erosion and sediment control practices shall be maintained until final stabilization.
  - (3) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
  - (4) Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
  - (5) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

#### Sec. 107-99. Permitting requirements, procedures, and fees.

- (a) No responsible party may commence a land disturbing construction activity subject to this ordinance without receiving prior approval of an erosion and sediment control plan for the site and a permit.
- (b) The responsible party that will undertake a land disturbing construction activity subject to this ordinance shall submit an application for a permit and an erosion and sediment control plan that meets the requirements and shall pay an application fee to the Village Clerk, such fee to be adjusted from time to time. By submitting an application, the applicant is authorizing the Village Engineer or designee to enter the site to obtain information required for the review of the erosion and sediment control plan.
- (c) The Village Engineer or designee shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:

- (1) Erosion control plans for sites of one or more acres of land development or land disturbing activity. Within 30 working days of receipt of the application, control plan, and fee, the department of public works shall review the application and control plan to determine if the requirements of this article are met. The Village Engineer may request comments from other agencies. If the requirements of this article are met, the Village Engineer shall approve the plan, inform the applicant and issue a permit. If the conditions are not met, the Village Engineer shall inform the applicant in writing and may either require needed information or disapprove the plan. Within 30 working days of receipt of needed information, the Village Engineer shall again determine if the plan meets the requirements of this article. If the plan is disapproved, the Village Engineer shall inform the applicant in writing of the reasons for disapproval.
  - (2) Erosion control plans for sites of less than one acre of land development or land disturbing activity. Within ten working days of receipt of the application, control plan statement, and fee, the Village Engineer shall review the application and control plan statement to determine if requirements of this article are met. The Village Engineer may request comments from other staff or agencies. If requirements of this article are met, the department of public works shall approve the plan, inform the applicant and issue a permit. If the conditions are not met, the department of public works shall inform the applicant in writing and may either require needed information or disapprove the plan. Within ten working days of receipt of needed information, the Village Engineer shall again determine if the plan meets requirements of this article. If the plan is disapproved, the Village Engineer shall inform the applicant in writing of the reasons for disapproval.
  - (3) Other requirement. No building permit or footing and foundation permit shall be issued for a site subject to this article without an erosion control permit.
- (d) All permits shall require the responsible party to:
- (1) Notify the Village Engineer within three working days of commencing any land development and land disturbing activity;
  - (2) Notify the Village Engineer of completion of any best management practices within the next working day after their installation;
  - (3) Obtain permission in writing from the Village Engineer prior to modifying the erosion control plan;
  - (4) Install all best management practices as identified in the approved erosion control plan;
  - (5) Maintain all road drainage systems, stormwater drainage systems, best management practices and other facilities identified in the erosion control plan;
  - (6) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land development or land disturbing activities and document repairs in the weekly inspection reports.
  - (7) Conduct construction site inspections at least once per week and within 24 hours after a precipitation event of 0.5 inches or greater. Repair and replace erosion and sediment control BMPs as necessary within 24 hours of an inspection or

notification that repair or replacement is needed. Maintain, at the construction site, weekly written reports of all inspections. Weekly inspection reports shall include all of the following: date, time and location of inspection; an assessment of the condition of erosion and sediment controls; a description of any erosion and sediment control BMP implementation and maintenance performed; and a description of the present phase of land disturbing construction activity at the construction site;

- (8) Allow Village personnel or other agents authorized by the Village to enter the site for the purpose of inspecting compliance with the erosion control plan or for performing any work necessary to bring the site into compliance with the erosion control plan; and
- (9) Keep a copy of the erosion control plan on the site.
- (e) Erosion control permits shall be valid for the length of the building permit or other construction authorizations from the date of issuance. The Village Engineer may require additional best management practices as a condition of the extension if they are necessary to meet the requirements of this article. No permit may be open for more than 24 months, after which the applicant must re apply for coverage.
- (f) The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this article until the site has undergone final stabilization.

#### Sec. 107-100. Erosion and Sediment Control Plan, Statement and Amendments.

- (a) For each construction site identified, an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the Village Engineer. The erosion and sediment control plan statement shall briefly describe the site, the development schedule, and the BMPs that will be used to meet the requirements of the ordinance. A site map shall also accompany the erosion and sediment control plan statement.
- (b) EROSION AND SEDIMENT CONTROL PLAN REQUIREMENTS.
  - (1) The erosion and sediment control plan shall be designed to meet the performance standards and other requirements of this ordinance.
  - (2) Content of erosion control plan statement for land development and land disturbing activities. An erosion control plan statement (with site map) shall be submitted to the Village Engineer to briefly describe:
    - a. Name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm. The application shall also include start and end dates for construction.
    - b. Property boundaries and area to be disturbed;
    - c. Description of the construction site and the nature of the land disturbing construction activity.
    - d. Description of the intended sequence of major land disturbing construction activities for major portions of the construction site,



including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.

- e. Existing and proposed buildings and other improvements;
  - f. Best management practices necessary to meet the requirements of this article;
  - g. Description of vegetation and other materials to be used to stabilize the site, including a schedule for installation and maintenance;
  - h. Estimates of the total area of the construction site and the total area of the construction site that is expected to be disturbed by land disturbing construction activities.
  - i. Calculations to show the compliance with the performance standard
  - j. Name, address, and daytime telephone number of the applicant and the person responsible for maintenance of best management practices.
  - k. Start and end dates of land disturbing activities.
- (3) The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than 100 feet per inch and at a contour interval not to exceed five feet.
- a. Existing topography, vegetative cover, natural and engineered drainage systems, roads and surface waters. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site shall be shown. Any identified 100-year flood plains, flood fringes and floodways shall also be shown.
  - b. Boundaries of the construction site.
  - c. Drainage patterns and approximate slopes anticipated after major grading activities.
  - d. Areas of soil disturbance.
  - e. Location of major structural and non-structural controls identified in the erosion and sediment control plan.
  - f. Location of areas where stabilization BMPs will be employed.
  - g. Areas which will be vegetated following land disturbing construction activities.
  - h. Area(s) and location(s) of wetland on the construction site, and locations where storm water is discharged to a surface water or wetland within one-quarter mile downstream of the construction site.
  - i. Areas(s) used for infiltration of post-construction storm water runoff.
  - j. An alphanumeric or equivalent grid overlying the entire construction site map.
- (4) Each erosion and sediment control plan shall include a description of

appropriate control BMPs that will be installed and maintained at the construction site to prevent pollutants from reaching waters of the state. The erosion and sediment control plan shall clearly describe the appropriate erosion and sediment control BMPs for each major land disturbing construction activity and the timing during the period of land disturbing construction activity that the erosion and sediment control BMPs will be implemented. The description of erosion and sediment control BMPs shall include, when appropriate, the following minimum requirements:

- a. Description of interim and permanent stabilization practices, including a BMP implementation schedule. The erosion and sediment control plan shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.
- b. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the Public Works Department, structural measures shall be installed on upland soils.
- c. Management of overland flow at all areas of the construction site, unless otherwise controlled by outfall controls.
- d. Trapping of sediment in channelized flow.
- e. Staging land disturbing construction activities to limit exposed soil areas subject to erosion.
- f. Protection of downslope drainage inlets where they occur.
- g. Minimization of tracking at all vehicle and equipment entry and exit locations of the construction site.
- h. Clean up of off-site sediment deposits.
- i. Proper disposal of building and waste material.
- j. Stabilization of drainage ways.
- k. Installation of permanent stabilization practices as soon as possible after final grading.
- l. Minimization of dust to the maximum extent practicable.

(5) The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

(c) The applicant shall amend the erosion and sediment control plan if any of the following occur:

- (1) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the erosion and sediment control plan.
- (2) The actions required by the erosion and sediment control plan fail to reduce the impacts of pollutants carried by construction site runoff.

- (3) The Village notifies the applicant of changes needed in the erosion and sediment control plan.

Sec. 107-101. Fee Schedule.

Fees referred to in this article shall be established by the Village Board in a fee schedule, and may from time to time be modified by resolution. Fees shall be related to costs involved in handling permit applications, reviewing control plans, conducting site inspections, and administering the erosion control program by Village personnel. All costs incurred by the Village in processing a permit or application under this article, including, but not limited to, engineering, legal, and other expert and professional fees, shall be paid to the Village by the applicant. Failure to pay such fees be charged in accordance with Section 125-34 of the Village Code. As a condition of approval and issuance of the permit, the Village shall require the applicant to specify the project duration in months and prepay for monthly inspections for specified duration in advance of the issuance of the permit to guarantee the good faith execution of the approved erosion control plan and any permit conditions.

Sec. 107-102. Inspection.

If land development or land disturbing activities are being carried out without a permit, Village personnel shall enter the land pursuant to the provisions of Wis. Stats. § 66.0119.

Sec. 107-103. Enforcement.

- (a) The Village Engineer or designate may issue a notice of violation or post a stop-work order, or both, if:
  - (1) Any land development or land disturbing activity regulated under this article is being undertaken without an erosion control permit;
  - (2) The erosion control plan is not being implemented in a good faith manner; or
  - (3) The conditions of the permit are not being met.
- (b) If the permittee does not cease the activity or comply with the erosion control plan or permit conditions within 24 hours, the Village Engineer, building inspector director of public works or designee may revoke the erosion control permit.
- (c) If the landowner or land user where no erosion control permit has been issued does not cease the activity within 24 hours, the building inspector may request the Village attorney to obtain a cease and desist order.
- (d) The building inspector or director of public works or designate may retract the stop-work order or the erosion control permit revocation.
- (e) After posting a stop-work order, the building inspector or director of public works or designate may issue a notice of intent to the permittee or landowner or land user of the Village's intent to perform work necessary to comply with this article. Village personnel or other agents authorized by the Village board may go on the land and commence the work three working days after the notice of intent is mailed or served.

- (f) Any person violating any of the provisions of this article shall be subject to the penalty provisions of section 1-13. Each day a violation exists shall constitute a separate offence.
- (g) Compliance with the provisions of this article may also be enforced by injunction, citation, abatement of nuisances, or other appropriate and available remedy.

Sec. 107-104. Appeals.

- (a) Board of appeals. The board of appeals created pursuant to section 125-57, as authorized by Wis. Stats. §§ 62.23(7)(e) and 68.11:
  - (1) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Village in administering this article;
  - (2) Upon appeal, may authorize variances from the provisions of this article which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of this article will result in unnecessary hardship; and
  - (3) Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.
- (b) Who may appeal. Appeals to the board of appeals may be taken by any aggrieved party.

Section Two: Severability: In the event that any provision of this Ordinance is for any reason held to be invalid, unconstitutional, or unenforceable by any court of contempt jurisdiction, such portions of this Ordinance shall be deemed separate, distinct and independent provisions of the Ordinance and all remaining portions of this Ordinance shall remain in full force and effect.

Section Three: All ordinances or parts of ordinances conflicting with the provisions of this ordinance are hereby to such extent repealed.

Section Four: This ordinance shall take full effect and be in force after its passage and posting pursuant to law.

PASSED AND ADOPTED by the Village Board of Trustees of the Village of Bayside this fourteenth day of December, 2023.

VILLAGE OF BAYSIDE

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Eido M. Walny, Village President

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Rachel A. Safstrom, Administrative Service Director