



## STAFF REPORT ON PROPOSED LEGISLATION

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To: Mayor Gavin Buckley

From: David Jarrell, City Manager and Jacqueline Guild, Deputy City Manager for Resilience and Sustainability

Date: January 23, 2022

Subject: R-7-22, An Emergency Declaration Concerning Pollution Discharges

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The purpose of this resolution is to declare that any pollution discharged from a construction site is prohibited by the Annapolis City Code and the Maryland Department of the Environment (MDE) sediment and erosion control standards and regulations, and affirming the imposition of stricter enforcement of City Code provisions by City staff for such violations, particularly greater and swifter use of citations and stop work orders.

The resolution is intended to apply to all current and future construction sites but is prompted, and described as an "emergency declaration", in response to violations of the Annapolis City Code and MDE sediment and erosion control requirements at the Parkside Preserve construction site located off of Annapolis Neck Road. Erosion and Sediment Control (ESC) deficiencies resulted in off-site discharges of turbid water containing sediment. The "Whereas" clauses of the resolution note four separate sediment discharges from the site. Citations for violations at the site have been issued by the City, and field correction notices of deficiencies have resulted in de facto stop work orders on several occasions. A formal stop work order is currently in place due to problems with the stockpiling of fill on the site. There have been no suspensions nor revocations of the grading permit for the project.

The resolution calls for the City Department of Public Works (DPW) to adhere strictly to enforcement provisions in the City Code and specifies particular enforcement responses allowed by the Code to particular circumstances. The resolution specifies that stop work orders will be issued for any off-site discharge where the site is not in 100% compliance with City or MDE sediment and erosion control standards, and when any orders given by the City are not met within a specified deadline for compliance, no matter the severity of the deficiency. Field correction notices will be required to mandate that corrections be made within 24 hours, unless the Director approves a longer period due to factors such as longer material or equipment delivery times. Any deficiency causing non-compliance with City or MDE standards will result in a failed inspection. Immediate suspension or revocation of a permit will result where three or more off-site discharges of pollution have occurred and where a contractor has failed continually

to meet standards after being issued field correction notices. After suspension or revocation of a permit, an agreement between the City and contractor shall be executed to ensure that all applicable requirements are met and that a third-party inspector conducts daily site inspections.

The resolution also includes the acceptance by the City of photographs and video supplied by the general public to use in enforcement activities. Although not stated by the resolution, standard rules of evidence will have to apply, including proof of the date, time, and location of the photographs and video. Currently, photographs, video, audio recordings, and written and oral complaints submitted to the City by the general public are followed by City inspections. Such documentation of site conditions and activities can be used by DPW as support for enforcement actions and may be introduced as evidence in court, if needed, when authenticated properly. However, such documentation is not used as the sole basis for enforcement actions by DPW. Further review is required by the Office of Law to determine the extent to which enforcement actions may be based on documentation provided by the general public.

The resolution also allows City inspectors to provide the "ways and means" to achieve rapid compliance, when necessary. This is contrary to standard practice in construction in that contractors are normally required to determine means and methods based on the requirements of the work. Contractors oftentimes apply more innovative or more aggressive techniques than may be directed by the regulatory agency. If the regulatory agency (the City) dictates the means and methods, any failures in the properly installed corrective measure become the responsibility of the agency, and the contractor is absolved of responsibility. Standards and preferred practices are for regulations and the regulatory agency to dictate "what" needs to be achieved, and the contractor to determine "how" the requirements are achieved.

Notably, the resolution calls for the immediate suspension of the grading permit for Parkside Preserve for repeated violations of the City and MDE sediment and erosion control standards and regulations, pending a review by DPW and the Deputy City Manager for Resilience and Sustainability, with feedback from the public. It should be noted that the Maryland Department of Environment (MDE) has conducted numerous inspections of the Parkside Preserve site after deficiencies have been noted by City inspectors, and have not recommended citations, stop work orders or permit suspension or revocation. Rather, due to MDE's belief that the deficiencies did not rise to the level of requiring more severe penalties, MDE discussed a range of potential corrective options that the contractor could consider.

Overall, the resolution is in line with the actions DPW has taken and continues to take to ensure that all site requirements are met. The Code confers discretion to the City regarding its enforcement action in response to the severity of violations by construction contractors. Generally, DPW follows its standard operating procedures (SOP) for issuing warnings, field correction notices, citations, and stop work orders. These operating procedures are under review and revision to ensure that corrections are made swiftly (in most instances 24 hours of the noted deficiency), enforcement is triggered immediately following non-compliance, and the level of enforcement escalates more rapidly than under the current SOP. City inspectors are instructed to make comprehensive lists of deficiencies during inspections, provide short correction deadlines, and issue citations for non-compliance and stop work orders when correction deadlines are not met and when off-site discharges occur.

Recently, DPW required that changes be implemented immediately at the site to ensure proactive sediment and erosion control compliance and more effective third party inspections. This direction resulted in the contractor hiring a third party inspector, a highly qualified independent environmental firm, to perform its daily erosion and sediment erosion control inspections. This action will go far in ensuring that the site is meeting all City and MDE requirements.

Amendment 1 requires suspension of the grading permit for Parkside Preserve. We agree that permit suspension and revocation are and should remain tools for achieving compliance with the Annapolis City Code and the Maryland Department of the Environment (MDE) sediment and erosion control standards and regulations. These tools should be used when the lesser penalties, including citations and stop work orders, have proven to be ineffective in achieving compliance. For this project, the field correction notices and citations have resulted in the contractor addressing the deficiencies and achieving compliance with the regulations. Additionally, the implementation of a strong third-party inspection program for the project is expected to markedly improve the performance and compliance of the ESC measures. We recommend that Amendment 1 not be passed by the City Council.

*Prepared by: David Jarrell, City Manager and Jacqueline Guild, Deputy City Manager for Resilience and Sustainability*