

ORDINANCE NO. 08-0726

**AN ORDINANCE TO CREATE CHAPTER 19A OF THE  
MUNICIPAL CODE OF THE CITY OF OCONOMOWOC  
RELATING TO SHORELAND WATER QUALITY STANDARDS**

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The Common Council of the City of Oconomowoc, Waukesha County, Wisconsin, do ordain as follows:

SECTION 1. Chapter 19A of the Municipal Code is hereby created as CHAPTER 19A, SHORELAND WATER QUALITY STANDARDS, which contains Sections 19A.01 through 19A.07 and which chapter is set forth on pages 2 through 6 of this ordinance.

SECTION 2. EFFECTIVE DATE: This Ordinance shall become effective upon passage and publication as required by law.

DATED: September 2, 2008

CITY OF OCONOMOWOC

By: 

Maury Sullivan, Mayor

ATTEST:

  
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Diane Coenen, Clerk

Date Adopted: September 2, 2008

Date Published: September 11, 2008

Effective Date: September 12, 2008

## CHAPTER 19A SHORELAND WATER QUALITY STANDARDS

19A.01      PURPOSE.   The resources of several lakes have defined the City since early settlement. While the City has developed around and outward from the lakes, protection of the quality resources remains a top priority. Land uses within the original central city and surrounding areas along the lakes were developed to take advantage of the economic opportunities that resulted from their location near the resources and providing goods and services to the surrounding community. Changes in resource management and economics in and around the central city have necessitated an evaluation of the historic development pattern. Opportunities have been identified that will sustain the economic vitality of the central city and surrounding areas combined with increased protection of the resources. Development standards set in place to protect the resources applicable to new development would restrict the sustainable use of the previously built development, as much of the older parts of the City were divided into parcels and buildings constructed prior to the establishment of any local land use controls. To place the same standards on an area with over a century of history that applies to new development is not in the best interest of the general public. This chapter of the Municipal Code is created to allow redevelopment of parcels within 75 feet of the ordinary high water mark of navigable waters within the city limits and to enhance the required standards to mitigate any impacts that may occur by way of the redevelopment in order to maintain and increase the useful resources of the lakes.

19A.02      APPLICABILITY.   The standards within this Chapter shall apply to all Shoreland within the City of Oconomowoc. Shoreland is defined as all land within 75 feet of the ordinary high water mark of navigable waters.

19A.03      DEFINITIONS.

- (1)    BEST MANAGEMENT PRACTICES. “Best management practices,” or “BMPs,” means structural or nonstructural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.
  
- (2)    LAND DISTURBANCE. “Land disturbance” means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative 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 disturbance includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.
  
- (3)    REDEVELOPMENT. Any man-made change to real estate including additions to, relocation of, or construction of buildings of other structures.

19A.04      APPROVAL PROCEDURE. The party proposing to redevelop within the shoreland area is hereby required to file a plan outlining the BMPs proposed to meet the shoreland water quality standards of this ordinance. The plan shall be filed with the City Engineer/Department of Public Works. Approval of the plan shall be granted by either the City Engineer or a representative of the Department of Public Works.

19A.05 WATER QUALITY STANDARDS. Any redevelopment in shoreland areas may be permitted, subject to the following shoreland water quality standards. The shoreland area of the City to which this ordinance applies is divided into three areas as set forth in the "Shoreland Water Quality Improvement Technical Memorandum" dated August 4, 2008, and on file in the office of the City Clerk, and any future amendments thereto, which memorandum is incorporated herein by reference.

- (1) AREAS 1 AND 2. Within Areas 1 and 2, any redevelopment site or combination of sites if so planned for redevelopment concurrently, shall be designed to provide a minimum 50 percent reduction in sediment when compared to the existing developed conditions. The best management practices (BMPs) or combination of practices to accomplish the minimum 50 percent reduction shall be selected to achieve the best efficiency within the particular redevelopment site or sites, as alternative practices are identified in the "Shoreland Water Quality Improvement Technical Memorandum." The BMPs shall be designed and the plans stamped by a Professional Engineer licensed in the State of Wisconsin, and shall be approved by the City Engineer. The approval of the design and implementation of the BMPs shall be required along with the approval of the site plan, architectural plans, or any other plans of the redevelopment site by the Common Council and Plan Commission as may be required by any other section of the Municipal Code.

This water quality standard involves only the quality of surface water run-off. The regulation of the quantity of surface water run-off shall conform to Chapter 19 of the Municipal Code—Storm Water Management and Erosion Control Ordinance, if applicable.

This water quality standard shall apply only to the portion of the site or sites where redevelopment land disturbance as defined herein is planned. Any portion of a site or sites that remain unchanged from prior development shall not be required to be included in the calculation of the water quality standard.

The City may (a) further regulate the continued maintenance of BMPs to ensure proper working order at all times, (b) require reimbursement for the design and/or construction of BMPs that serves more than one property, (c) coordinate cost share of BMPs that serves more than one property, or (d) set fees for regular City inspection of BMPs via the use of a Developer's Agreement or any other legal instrument allowed by Municipal Code or the statutes of the State of Wisconsin including, but not limited to, §66.0627, Wis. Stats.

- (2) AREA 3. Within Area 3, any redevelopment site or combination of sites if so planned for redevelopment concurrently shall be designed to provide a minimum 40 percent reduction in sediment when compared to the existing developed condition. The BMPs or combination of BMPs to accomplish the minimum 40 percent reduction shall be selected to achieve the best efficiency within the particular redevelopment site or sites, as alternative practices are identified in the "Shoreland Water Quality Improvement Technical Memorandum." The BMPs shall be designed and the plans stamped by a Professional Engineer licensed in the State of Wisconsin and shall be approved by the City Engineer. The approval of the design and implementation of the BMPs shall be required along with the approval of the site plan, architectural plans or any other plans of the

redevelopment site by the Common Council and Plan Commission as may be required by any other section of the Municipal Code.

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#### 19A.06 APPEAL.

- (1) ESTABLISHMENT. The City Council shall act as the board of appeals for considering appeals to this chapter.
- (2) RULES. The City Council, in acting as the board of appeals for considering appeals to this chapter, shall be bound by the rules and shall act in accordance with the rules established for the City of Oconomowoc Board of Zoning Appeals and §62.23, Wis. Stats.
- (3) POWERS. The City Council shall have the powers defined by the Wisconsin Statutes and the Municipal Code for Boards of Zoning Appeals, which shall include the following:
  - (a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Department of Public Works or the City Engineer in the enforcement of provisions of this chapter or as provided in §62.23, Wis. Stats.
  - (b) To authorize upon appeal in specific cases such variances from the terms of this chapter as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this chapter will in practical difficulty or unnecessary hardship so that the purpose of this chapter shall be observed, public safety and welfare secured and substantial justice done. Variances shall not be granted from the required minimum percent reduction in sediment when compared to the existing development conditions, as these percent reductions are established by NR Chapter 151 of the Wisconsin Administrative Code for redevelopments. The grant of variances shall be limited to the BMPs set forth in the "Shoreland Water Quality Improvement Technical Memorandum."

- (4) **HOW FILED.** Appeals to the City Council may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by a decision of the Department of Public Works or the City Engineer. Such appeal shall be taken within 20 days from the date of the decision of the Department of Public Works or the City Engineer by filing with the department or the City Engineer and with the City Council a notice of appeal specifying the grounds thereof. The Department of Public Works or the City Engineer shall forthwith transmit to the City Council all the papers constituting the record upon which the action appealed from was taken.
- (5) **STAY.** An appeal shall stay all legal proceedings in furtherance of the action appealed from unless the Department of Public Works or the City Engineer certifies to the City Council after the notice of appeal shall have been filed that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. In such cases proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the City Council or by a court of record on application, on notice to the Department of Public Works or the City Engineer, and on due cause shown.
- (6) **HEARING.** Each appeal shall be heard within a reasonable time and not to exceed 90 days from the time the appeal was filed with the City Council. Notice of hearing shall be given by publishing in the City's official newspaper at least once each week for two consecutive weeks and not less than seven days from the date of hearing. In addition, written notice shall be given to the Department of Public Works or the City Engineer, and by certified mail to the petitioner, the City Clerk, the owners of each parcel of land within 100 feet of the land in question, and other specially interested parties. At the hearing, any party may appear in person or by an agent or attorney.
- (7) **DECISION.** The decision on any appeal shall be made within 30 days after completion of the hearing thereon.
- (8) **ADDITIONAL REQUIREMENTS.** In making its determination, the City Council shall consider whether the proposed variance from the terms of this chapter would be hazardous, harmful, noxious or offensive or a nuisances to the surrounding neighborhood or surface waters by reason of pollution or other physical or economic effects and may impose such requirements and conditions with respect to construction, location, maintenance and operation or best management practices in addition to any which may be stipulated in this chapter as may be deemed necessary and appropriate for the protection of adjacent properties and the public interest and welfare.
- (9) **PERFORMANCE STANDARDS.** In order to reach a fair and objective decision, the City Council may utilize and give recognition to appropriate performance standards and methodologies which are available in model codes or ordinances or which may have been developed by planning, manufacturing, health, architectural, engineering, soil and agricultural agencies or other appropriate organizations, including those set forth in the "Shoreland Water Quality Improvement Technical Memorandum."
- (10) **ENFORCEMENT OF DECISION.** In exercising the above-mentioned powers, such City Council may, in conformity with the provisions of this

chapter, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Department of Public Works or the City Engineer and may issue or direct the issue of a permit, provided that no such action shall have the effect of permitting best management practices in contradiction of the purpose of this chapter or the Wisconsin Statutes or cause pollution of or result in granting variances to any other state, county or local ordinance.

- (11) **REQUIRED VOTE.** The concurring vote of six members of the City Council shall be necessary to reverse any order, requirement, decision or determination of the Department of Public Works or the City Engineer, or to decide in favor of the applicant on any matters upon which it is required to pass under this chapter, or to effect any variation therefrom. The grounds of every such determination shall be stated.
- (12) **FURTHER APPEAL.** Any person or persons, jointly or severally, aggrieved by any decision of the City Council, or any taxpayer, or any officer, department, board or bureau of the City may within 30 days after the filing of the decision in the office of the City Clerk, commence an action seeking the remedy available by *certiorari*. The court shall not stay proceedings upon the decision appealed from but may, on application, on notice to the City Council and on due cause shown, grant a restraining order. The City Council shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence, and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

19A.07 **SEVERABILITY.** The several sections of this chapter are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.