"A Historic Past" *"A Bright Future"*

CITY OF DELAWARE CITY
407 Clinton Street - P.O. Box 4159
Delaware City, Delaware 19706
302-834-4573

CITY OF DELAWARE CITY

DELAWARE CITY, DELAWARE

Ordinance No. 14 – 1215-02

ORDINANCE TO AMEND CHAPTER 31 (STORMWATER) OF THE CITY CODE OF DELAWARE CITY, TO ADOPT THE DELAWARE SEDIMENT AND STORMWATER MANAGEMENT REGULATIONS, AND TO MAKE OTHER CHANGES RELATING TO STORMWATER

The City of Delaware City

WHEREAS, pursuant to Article V, Section 5-02(A) of The City of Delaware City Charter ("Charter"), and pursuant to the "Powers of the City," outlined in Article II, § 2-1 of the Charter, the Mayor and the Council of The City of Delaware City ("City Council") possess the authority to adopt, amend, modify, or repeal The City of Delaware City Code ("Code");

WHEREAS, the Mayor and City Council desire add new code Sections 31-21 through 31-31 ("Proposed Code Sections") relating to stormwater, and desire to adopt and incorporate by reference the Delaware Sediment and Stormwater Management Regulations as may be amended from time to time;

WHEREAS, the City Council of the City of Delaware City intends to adopt additional ordinances, contemporaneously herewith, which establish other standards and requirements for building and subdivision among others;

WHEREAS, the City Council has reviewed the Proposed Code Sections and finds that they are consistent with the City's Comprehensive Development Plan (as amended);

WHEREAS, the Proposed Code Sections were introduced at a regular meeting, duly read in full or in abstract, and prominently posted for seven (7) days in The City of Delaware City.

NOW, THEREFORE, making the express finding that the Proposed Code Sections outlined herein are for and enhance the health, safety, and welfare of the City of Delaware City, the Mayor and the City Council of The City of Delaware City hereby ordain that:

Section 1. **Adoption of Amendments to Chapter 31 (Stormwater).** City Code of the City of Delaware City is hereby amended to add the following Code Sections:

Section 31-21 Adoption of Delaware Sediment And Stormwater Management Regulations

A certain document, a copy of which is on file at City Hall of the City of Delaware City, being marked and designated as the Delaware Sediment and Storm Water Regulations issued by the Delaware Department of Natural Resources and Environmental Control ("DNREC"), as may be amended by DNREC from time to time, is hereby adopted by the City of Delaware City as if set forth fully herein. Except as exempted in the Delaware Sediment and Stormwater Regulations, no person or entity shall engage in any land-disturbing activity in the City until such person or entity has submitted and obtained approval for a sediment and stormwater permit.

Section 31-22. Applicable Definitions

The definitions in the Delaware Sediment and Stormwater Management Regulations shall apply to Section 31-21 through Section 31-30 of this Chapter and shall not apply to Sections 31-1 through 31-20 of this Chapter.

Section 31-23 – Delegation and Variances.

The Delegated Agency under the Delaware Sediment and Storm Water Regulations for all districts, except for the Historic Preservation and Redevelopment ("HPR") District, is the New Castle County Conservation District. The Delegated Agency for the HPR District is DNREC. The New Castle County Conservation District or DNREC (as applicable) shall be responsible for, among other things, plan reviews, plan approvals, pre and post construction reviews, inspection, monitoring, maintenance reviews, and enforcement pursuant to the Delaware Sediment and Stormwater Management Regulations (Sections 3.0- 10.0). All requests for variances from the requirements of the Delaware Sediment and Stormwater Regulations adopted hereunder by the City of Delaware City shall be directed to DNREC, as provided for in Section 1.5 of the Delaware Sediment and Storm Water Regulations as may be amended from time to time. The decision and appeals provision therein shall govern all variances and other requests.

Section 31-24. Plans and Approvals.

Whenever a sediment and/or stormwater management plan is required, the plans shall conform to the most current Delaware Sediment and Stormwater Regulations. Applicants are

required to pay all fees and fines assessed or charged by DNREC or the New Castle County Conservation District. No subdivision approvals, building permit approvals, or other land use related approvals shall be granted unless and until DNREC or the New Castle Conservation District confirms, in writing, that all necessary approvals have been received, and that all financial guarantees (if applicable) have been implemented.

Section 31-25 Right of Entry and Certified Construction Reviewer Reports

Whenever the Delaware Sediment and Stormwater Regulations allow for a site visit, a construction review, or a maintenance review, the City Manager or persons authorized by the City Manager in writing may visit the site, perform a review, inspect, or attend meetings in the same manner as a representative of DNREC or the New Castle County Conservation District is authorized. Copies of all Certified Construction Reviewer Reports shall be submitted to the City at the same time such reports are submitted to DNREC or the New Castle County Conservation District.

Section 31-26 Maintenance Responsibility Obligations

Delaware City shall not accept maintenance responsibility for any stormwater management system unless a legal agreement between the Owner of the system and the City is approved by the City Council.

Section 31-27 Violations And Withholding of Permit Approvals

If DNREC or the New Castle County Council Conservation District find violations, seek enforcement, or if fines and penalties are outstanding, upon request of the requesting agency, the City of Delaware City shall withhold any future permits for the project until DNREC or the New Castle County Council Conservation District confirm in writing that the violations or applicable penalties are remedied.

Section 31-28 Liability

Nothing in this Chapter shall create any liability for loss for damage resulting from the failure of the City to perform any responsibility stated in this Chapter or obligate the City to make any appropriation or to expend any money not appropriated for any purpose stated in this Chapter.

Section 31-29 Minimum Requirements

The Delaware Sediment and Stormwater Regulations are minimum requirements. The City, DNREC, or the New Castle County Conservation District may require more stringent requirements in certain situations based on historical drainage, flooding problems, preservation of environmentally sensitive areas, or based on site specific circumstances.

Section 31-30 Conflict

Where there is a conflict between a provision in this Chapter and another chapter of the City Code or the Delaware Sediment and Stormwater Regulations, the more restrictive provision or interpretation shall apply.

Section 31-31 Injunctive Relief

In addition to the penalties and enforcement mechanisms available to DNREC or the New Castle County Conservation District, the City Manager or the City Council may authorize the City to seek injunctive relief for violations of the Delaware Sediment and Stormwater Management Regulations adopted by reference hereunder. If the City prevails in an action for injunctive relief, the City shall receive an award of all attorneys' fees and costs incurred, which may be enforced against the violator and/or the property owner jointly and severally.

Section 2. **Severability.** The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that City Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with City Council's intent.

Section 3. **Effective Date.** This Ordinance shall become effective immediately upon its adoption by City Council.

Signature Page Follows

ADOPTED BY THE MAYOR AND COUNCIL, this _____ day of _____, 2014.

ATTEST:

_____
City Secretary

_____
Mayor

APPROVED AS TO FORM:

_____
Council Member

_____
City Solicitor

_____
Council Member

_____
Council Member

_____
Council Member

_____
Council Member

First Reading on: December 15, 2014

Date of Publication: November 26 & December 3, 2014

Second Reading, Public Hearing, and Final Passage on: _____.