

ARTICLE I – GENERAL PROVISIONS

Section 101. Short Title

This Ordinance shall be known as “Atglen Borough’s Stormwater Management Ordinance.”

Section 102. Statement of Findings

The Atglen Borough Council finds that:

- A. Inadequate management of accelerated stormwater runoff resulting from land disturbance and development throughout a watershed increases flooding, flows and velocities, contributes to erosion and sedimentation, overtaxes the capacity of streams and storm sewers, greatly increases the cost of public facilities to convey and manage stormwater, undermines floodplain management and flood reduction efforts in upstream and downstream communities, reduces infiltration and groundwater recharge, increases nonpoint source pollution to waterways, and threatens public health and safety.
- B. Inadequate planning and management of stormwater runoff resulting from land disturbance and development throughout a watershed can harm surface water resources by changing the natural hydrologic patterns, accelerating stream flows (which increase scour and erosion of stream beds and stream banks, thereby elevating sedimentation), destroying aquatic habitat, and elevating aquatic pollutant concentrations and loadings such as sediments, nutrients, heavy metals, and pathogens. Groundwater resources are also impacted through loss of recharge.
- C. A comprehensive program of stormwater management, including minimization of impacts of New Development, Redevelopment, and other Earth Disturbance Activities causing accelerated runoff and erosion and loss of natural infiltration, is fundamental to the public health, safety, and general welfare of the people of the Borough and all of the people of the Commonwealth, their resources, and the environment.
- D. Stormwater is an important water resource that provides infiltration and groundwater recharge for water supplies and baseflow of streams, which also protects and maintains surface water quality.
- E. Impacts from stormwater runoff can be minimized by reducing the volume of stormwater generated and by using project designs that maintain the natural hydrologic regime and sustain high water quality, infiltration, stream baseflow, and aquatic ecosystems. Cost-effective and environmentally sensitive stormwater management can be achieved through the use of nonstructural Site design techniques that minimize Impervious Surfaces, reduce disturbance of land and natural resources, avoid sensitive areas (i.e., riparian buffers, floodplains, steep slopes, wetlands, etc.), and consider topography and soils to maintain the natural hydrologic regime.
- F. Public education on the control of pollution from stormwater is an essential component in successfully addressing stormwater.

- G. If the Federal and State regulations require the Borough to implement a program of stormwater controls. The Borough is required to obtain a permit and comply with its provisions for stormwater discharges from its Separate Storm Sewer System under the National Pollutant Discharge Elimination System (NPDES).
- H. Non-stormwater discharges to municipal or other storm sewer systems can contribute to pollution of the Waters of the Commonwealth.

Section 103. Purpose

The purpose of this Ordinance is to protect public health, safety and general welfare, property and water quality by implementing drainage and stormwater management practices, criteria, and provisions included herein for land development, construction and Earth Disturbance Activities, to achieve the following throughout the Borough:

- A. Reduce the frequency and magnitude of flooding and stormwater impacts affecting people, property, infrastructure and public services.
- B. Sustain or improve the natural hydrologic characteristics and water quality of groundwater and surface waters.
- C. Protect natural resources, including riparian and aquatic living resources and habitats.
- D. Maintain the natural hydrologic regime of Land Development Sites and their receiving watersheds.
- E. Minimize land disturbance and protect and incorporate natural hydrologic features, drainage patterns, infiltration, and flow conditions within land development Site designs.
- F. Reduce and minimize the volume of stormwater generated, and manage and release stormwater as close to the source of runoff as possible.
- G. Provide infiltration and maintain natural groundwater recharge to protect groundwater supplies and stream baseflows, prevent degradation of surface water and groundwater quality, and to otherwise protect water resources.
- H. Reduce stormwater pollutant loads to protect and improve the chemical, physical, and biological quality of ground and surface waters.
- I. Reduce scour, erosion and sedimentation of stream channels.
- J. Reduce flooding impacts and preserve and restore the natural flood-carrying capacity of streams and their floodplains.
- K. Protect adjacent and downgradient lands from adverse impacts of direct stormwater discharges.

- L. Minimize Impervious Surfaces and connected Impervious Surfaces to promote infiltration and reduce the volume and impacts of stormwater runoff.
- M. Provide proper long-term operation and maintenance of all permanent stormwater management facilities, BMPs and Conveyances that are implemented within the Borough.
- N. Reduce the impacts of runoff from existing developed land undergoing Redevelopment while encouraging New Development and Redevelopment in urban areas and areas designated for growth.
- O. Implement an illicit discharge detection and elimination program that addresses non-stormwater discharges.
- P. Provide performance standards and design criteria based on watershed-based stormwater management planning.
- Q. Provide standards to meet certain NPDES stormwater permit requirements.
- R. Meet legal water quality requirements under State law, including regulations at 25 PA Code Chapter 93, to protect, maintain, reclaim and restore the existing and designated uses of the Waters of the Commonwealth.
- S. When required implement the requirements of Total Maximum Daily Load (TMDLs) where applicable to waters within or impacted by the Borough.
- T. Provide review procedures and performance standards for stormwater planning and management.
- U. Fulfill the purpose and requirements of PA Act 167 (PA Act 167, Section 3):

“(1) Encourage planning and management of storm water runoff in each watershed which is consistent with sound water and land use practices.

(2) Authorize a comprehensive program of stormwater management designated to preserve and restore the flood carrying capacity of Commonwealth streams; to preserve to the maximum extent practicable natural storm water runoff regimes and natural course, current and cross-section of water of the Commonwealth; and to protect and conserve ground waters and ground-water recharge areas.

(3) Encourage local administration and management of storm water consistent with the Commonwealth's duty as trustee of natural resources and the people's constitutional right to the preservation of natural, economic, scenic, aesthetic, recreational and historic values of the environment.”

Section 104. Statutory Authority

The Borough is empowered or required to regulate land use activities that affect runoff and surface and groundwater quality and quantity by the authority of:

- A. Act of October 4, 1978, P.L. 864 (Act 167) 32 P.S., Section 680.1 et seq., as amended, the “Storm Water Management Act” (hereinafter referred to as “the Act”);
- B. Borough Code, 53 P.S. Section 46201 et seq.;
- C. Act of July 31, 1968, P.L. 805, No. 247, 53 P.S. Section 10101, et seq., as amended, the Pennsylvania Municipalities Planning Code, Act 247 hereinafter referred to as the “MPC”).

Section 105. Applicability

A. The following activities are regulated by this Ordinance:

- 1. All Regulated Activities as defined in this Ordinance including, but not limited to, New Development, Redevelopment, and Earth Disturbance Activities that are located within the Borough shall be subject to regulation by this Ordinance.
- 2. When a building and/or grading permit is required for any Regulated Activity on an existing parcel or approved lot created by a subdivision and/or improved as a land development project, issuance of the permit shall be conditioned upon adherence to the terms of this Ordinance.
- 3. This Ordinance contains the stormwater management performance standards and design criteria that are necessary from a watershed-based perspective. The Borough’s stormwater management conveyance and system design criteria is included in Section 311 of this Ordinance.

B. Duty of Persons Engaged in a Regulated Activity

Notwithstanding any provision(s) of this Ordinance, including exemptions, any Landowner or any person engaged in a Regulated Activity, including but not limited to the alteration or development of land, which may affect stormwater runoff characteristics, shall implement such measures as are reasonably necessary to prevent injury to health, safety, or other property. Such measures also shall include actions as are required to manage the rate, volume, direction, and quality of resulting stormwater runoff in a manner which otherwise adequately protects health, property, and water quality of Waters of the Commonwealth.

C. Phased and Incremental Project Requirements

- 1. Any Regulated Activity (including but not limited to New Development, Redevelopment, or Earth Disturbance) that is to take place incrementally or in phases, or occurs in sequential projects on the same parcel or property, shall be subject to regulation by this Ordinance if the cumulative Proposed Impervious Surface or Earth Disturbance exceeds the corresponding threshold for exemption (as presented in Table 106.1).

2. The date of adoption of this Ordinance shall be the starting point from which to consider tracts as parent tracts relative to future subdivisions, and from which Impervious Surface and Earth Disturbance computations shall be cumulatively considered.

Section 106. Exemptions and Modified Requirements

A. Requirements for Exempt Activities

1. An exemption from any requirement of this Ordinance shall not relieve the Applicant from implementing all other applicable requirements of this Ordinance or from implementing such measures as are necessary to protect public health, safety, and welfare, property and water quality.
2. An exemption shall not relieve the Applicant from complying with the requirements for State-designated special protection waters designated by PADEP as high quality (HQ) or exceptional value (EV) waters, or any other current or future State or municipal water quality protection requirements.
3. An exemption under this Ordinance shall not relieve the Applicant from complying with all other applicable Borough ordinances or regulations or subdivision and land development plan limits for existing development.

B. General Exemptions

Regulated Activities that:

1. Involve less than one thousand (1,000) square feet of Proposed Impervious Surfaces AND less than five thousand (5,000) square feet of Earth Disturbance; or
2. Are listed in Subsection 106.C,

are exempt from those (and only those) requirements of this Ordinance that are included in the sections and articles listed in Table 106.1. Exemptions are for the items noted in Table 106.1 only, and shall not relieve the Landowner from other applicable requirements of this Ordinance. Exemption shall not relieve the Applicant from implementing such measures as are necessary to protect health, safety, and welfare, property, and water quality.

TABLE 106.1

Thresholds for Regulated Activities that are Exempt from the Provisions of this Ordinance as Listed Below

Ordinance Article/Section	Activities Listed in Subsection 106.C.	< 1,000 sq. ft. of Proposed Impervious Surfaces AND < 5,000 sq. ft. of Proposed Earth Disturbance	≥ 1,000 sq. ft. of Proposed Impervious Surfaces OR ≥ 5,000 sq. ft. of Proposed Earth Disturbance
Article I- General Provisions	Not Exempt	Not Exempt	Not Exempt
Article II – Definitions	Not Exempt	Not Exempt	Not Exempt
Sections 302 (Permit Req.), 303 (EnS), 311 (Design Standards)	Not Exempt	Not Exempt	Not Exempt
Stormwater Standards - Sections 301, 304, 305, 306, 307, 308, 309, and 310	Exempt	Exempt	Not Exempt
Article IV – Plan Requirements	Exempt	Exempt	Not Exempt
Article V – Inspections and Final Plans	Exempt	Exempt	Not Exempt
Article VI – Fees and Expenses	Exempt	Exempt	Not Exempt
Article VII – Operation and Maintenance	Exempt	Exempt	Not Exempt
Article VIII - Prohibitions	Not Exempt	Not Exempt	Not Exempt
Article IX – Enforcement and Penalties	Not Exempt	Not Exempt	Not Exempt
Other Erosion, Sediment and Pollution Control Requirements	Must comply with Title 25, Chapter 102 of the PA Code and other applicable State and municipal codes, including the Clean Streams Law.		

Table 106.1 Notes:

- Specific activities listed in Subsection 106.C are exempt from the indicated requirements, regardless of size.
- A proposed Regulated Activity must be less than BOTH the Proposed Impervious Surfaces and proposed Earth Disturbance thresholds to be eligible for exemption from the requirements listed in this table.

C. Exemptions for Specific Activities

The following specific Regulated Activities are exempt from the requirements listed in Table 106.1, unless otherwise noted below. All other conveyance and system design standards established by the Borough in other codes or ordinances shall be required, and all other provisions of this Ordinance shall apply.

1. Emergency Exemption – Emergency maintenance work performed for the protection of public health, safety and welfare. This exemption is limited to repair of the existing facility; upgrades, additions or other improvements are not exempt. A written description of the scope and extent of any emergency work performed shall be submitted to the Borough within two (2) calendar days prior to the commencement of the activity. A detailed plan shall be submitted no later than thirty (30) days following commencement of the activity. If the Borough finds that the work is not an emergency, then the work shall cease immediately and the requirements of this Ordinance shall be addressed as applicable.
2. Maintenance – Any maintenance to an existing stormwater management system, facility, BMP or Conveyance made in accordance with plans and specifications approved by the Borough or Borough Engineer. A sketch and narrative shall be provided to the Borough for review and approval.
3. Existing Landscaping – Use of land for maintenance, replacement or enhancement of existing landscaping.
4. Gardening – Use of land for gardening for home consumption.
5. Agricultural Related Activities –
 - a. Agricultural Activities, when performed in accordance with the requirements of 25 PA Code Chapter 102, which states Agricultural Activities with 5,000 square feet or more of tilling or animal heavy use area are required to have an Agricultural Erosion and Sedimentation Control Plan (or equivalent Conservation Plan).
 - b. Conservation Practices that do not involve construction of any new or expanded Impervious Surfaces.
6. Forest Management – Forest management operations, which are consistent with a sound forest management plan as filed with the Borough and which comply with the Pennsylvania Department of Environmental Protection’s management practices contained in its publication “Soil Erosion and Sedimentation Control Guidelines for Forestry” (as amended or replaced by subsequent guidance). Such operations are required to have an Erosion and Sedimentation Control Plan reviewed and approved by the Borough, which meets the requirements of 25 PA Code Chapter 102 and meets the erosion and sediment control standards of Section 303 of this Ordinance.
7. Maintenance of Existing Paved Surfaces – Replacement of existing paved surfaces shall meet the erosion and sediment control requirements of 25 PA Code Chapter 102 and Section 303 of this Ordinance, and is exempt from all other requirements of this Ordinance listed in

Subsection 106.C above. Resurfacing of existing paved surfaces is exempt from the requirements of this Ordinance listed above. Construction of new or additional Impervious Surfaces shall comply with all requirements of this Ordinance as indicated in Table 106.1.

8. Municipal Roadway Shoulder Improvements – Shoulder improvements conducted within the existing roadway cross-section of the Borough owned roadways, unless an NPDES permit is required, in which case the proposed work must comply with all requirements of this Ordinance.
9. In-Place Replacement of Residential Dwelling Unit – The replacement in the exact footprint of an existing one- or two-family dwelling unit.
10. In-Place Replacement, Repair, or Maintenance of Residential Impervious Surfaces – The replacement of existing residential patios, decks, driveways, pools, garages, and/or sidewalks that are accessory to an existing one- or two-family dwelling unit in the exact footprint of the existing Impervious Surface.

D. Modified Requirements for Small Projects

Regulated Activities that involve 1,000 to 2,000 square feet of Proposed Impervious Surfaces and 5,000 to 10,000 square feet of proposed Earth Disturbance may apply the modified requirements presented in the “Small Projects Application” (Appendix A- 2) to comply with the requirements of Sections 301, 304, 305, 306, 307, 308, 309, and 310, and Article IV, Article V, Article VI and Article VII of this Ordinance (as shown in Table 106.2). The Applicant shall first contact the Borough Engineer: to confirm that the proposed project is eligible for use of the Small Project option and is not otherwise exempt from these Ordinance provisions; to determine what components of the proposed project are to be considered as Impervious Surfaces; and to determine if other known Site or local conditions exist that may preclude the use of any techniques included in the Small Project option. Appendix A-2 includes instructions and procedures for preparation, submittal, review and approval of documents required when using the Small Project option and shall be adhered to by the Applicant. All other provisions of this Ordinance shall apply.”

TABLE 106.2**Thresholds for Regulated Activities that are Eligible for “Modified” Requirements for the Provisions of this Ordinance that are Listed Below**

Ordinance Article/Section	Activities Listed in Subsection 106. D
Article I – General Provisions	All Provisions Apply
Article II - Definitions	All Provisions Apply
Sections 302 (Permit Req.), 303 (EnS), 311 (Design Standards)	All Provisions Apply
Sections 301, 304, 305, 306, 307, 308, 309, and 310	Exempt if Modified Requirements of Subsection(s) 106.D are Applied
Article IV – Plan Requirements	Exempt if Modified Requirements of Subsection(s) 106.D are Applied
Article V – Inspections and Final Plans	Exempt if Modified Requirements of Subsection(s) 106.D are Applied
Article VI – Fees and Expenses	Exempt if Modified Requirements of Subsection(s) 106.D are Applied
Article VII – Operation and Maintenance	Exempt if Modified Requirements of Subsection(s) 106.D are Applied
Article VIII - Prohibitions	All Provisions Apply
Article IX – Enforcement and Penalties	All Provisions Apply
Other Erosion, Sediment and Pollution Control Requirements	Must comply with Title 25, Chapter 102 of the PA Code and other applicable State and municipal codes, including the Clean Streams Law.

Table 106.2 Notes:

- “Modified Requirements” – Regulated Activities listed within the Subsections of this Ordinance noted in Table 106.2 are eligible for exemption only from the indicated sections and subsections of this Ordinance and only if the modified requirements of Subsection 106.D are met to the satisfaction of the Borough ; all other provisions of this Ordinance apply.

Section 107. Repealer

Any ordinance or ordinance provision of the Borough inconsistent with any of the provisions of this Ordinance are hereby repealed to the extent of the inconsistency only.

Section 108. Severability

If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared the intent of the Atglen Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid provision, sentence, clause, section or part thereof not been included herein.

Section 109. Compatibility with Other Ordinances or Legal Requirements

- A. Approvals issued and actions taken pursuant to this Ordinance do not relieve the Applicant of the responsibility to secure and comply with other required permits or approvals for activities regulated by any other applicable code, rule, act, law, regulation, or ordinance.
- B. To the extent that this Ordinance imposes more rigorous or stringent requirements for stormwater management than any other code, rule, act, law, regulation or ordinance, the specific requirements contained in this Ordinance shall take precedence.
- C. Nothing in this Ordinance shall be construed to affect any of the Borough's requirements regarding stormwater matters that do not conflict with the provisions of this Ordinance, such as local stormwater management design criteria (e.g., inlet spacing, inlet type, collection system design and details, outlet structure design, etc.). The requirements of this Ordinance shall supersede any conflicting requirements in other Borough ordinances or regulations.

Section 110. Financial Security

Where required, the applicant shall file with the Borough Council financial security in an amount sufficient to cover the costs of all stormwater management facilities required by this Ordinance. Without limitation as to other types of financial security which the Borough may approve, which approval shall not be unreasonably withheld, Federal or Commonwealth chartered lending institution irrevocable letters of credit and restrictive or escrow accounts in such lending institutions shall be deemed acceptable financial security. Such financial security shall be posted with a bonding company or Federal or Commonwealth chartered lending institution chosen by the applicant provided said bonding company or lending institution is authorized to conduct such business within the Commonwealth. Such bond, or other security, shall provide for, and secure to the public, completion of all stormwater management facilities within one (1) year of the date fixed on the final approved plan for such facilities and shall:

- A. Be made payable to the Borough of Atglen;
- B. Be of an amount which shall provide for the completion of any improvements which may be required within one year of the date fixed in the plan or by separate agreement for the completion of such improvements;

- C. The amount of financial security to be posted for completion of the improvements shall be equal to 110% of the cost of completion. Annually, the Borough may adjust the amount of the financial security by comparing the actual cost of the improvements which have been completed and the estimated cost for the completion of the remaining improvements as of the expiration of the 90th day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, the Borough may require the developer to post additional security in order to assure that the financial security equals said 110%. Any additional security shall be posted by the developer in accordance with this section.
- D. The amount of financial security required shall be based upon an estimate of the cost of completion of the required improvements submitted by an applicant or developer and prepared by a professional engineer licensed as such in this Commonwealth and certified by such engineer to be a fair and reasonable estimate of such costs. The above costs shall be calculated based on the potential of public bidding and should attempt to cover the cost the Borough would be required to pay to complete the improvements. The Borough, upon the recommendation of the Borough engineer, may refuse to accept such estimate for good cause shown. If the applicant or developer and Borough are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the Borough and the applicant or developer. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is chosen, fees for the services of said engineer shall be paid equally by the Borough and applicant or developer.
- E. If the developer required more than one (1) year from the date of posting of the financial security to complete the required improvements, the amount of financial security may be increased by an additional ten (10%) percent for each one (1) year period beyond the first anniversary date from posting of financial security or to an amount not exceeding one hundred ten (110%) percent of the cost of completing the required improvements as reestablished on or about the expiration of the preceding one (1) year period by using the above procedures.
- F. The bond, certified check, or other financial security shall be reviewed and deemed satisfactory to the Council to cover the costs of improvements shown on the plan except to the extent that financial security for the cost of any of such improvements is required to be and is posted with the Pennsylvania Department of Transportation (PennDOT) in connection with a highway occupancy permit application.

Section 111. Financial Security for Staged Development

In the case where development is projected over a period of years, the Borough Council may authorize submission of stormwater management plan applications by section or stages of development subject to such requirements or guarantees as to stormwater management facilities in future sections or stages of development as it finds essential for the protection of any approved section of the development.

Section 112. Release from Improvements/Construction Guarantees

- A. **Engineering Inspection.** When the applicant/developer has completed a portion of the necessary and appropriate improvements, the developer shall notify the Borough in writing by of the completion of the improvements and shall send a copy to the Borough Engineer. The Borough Manager shall within ten (10) days after the receipt of such notice, direct and authorize the Borough Engineer to inspect all of the improvements. The Borough Engineer shall file a report, in writing, with the Borough Manager and shall promptly mail a copy of the same to the developer. The report shall be made and mailed within thirty (30) days after the receipt by the Borough Engineer of the authorization by the Borough Manager. The report shall be detailed and shall recommend approval or rejection of the improvement either in whole or in part. If said improvements or any portion thereof shall not be recommended for approval or shall be recommended for rejection by the Borough Engineer, the report shall contain a statement of reasons for not approving the improvements.
- B. **Review by Council.** At the next regularly scheduled meeting of the Council following receipt by the Borough Manager of the Engineer's report, the Council shall act upon said report to either approve or reject the improvements. Such action may include any modifications to the report deemed appropriate by Council. Notification of the action of Council shall be made in writing and sent to the developer by certified or registered mail within fifteen (15) days of the Council's action.
- C. **Municipal Default.** If the Council or the Borough Engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved, and the developer shall be released from all liability, pursuant to the performance guaranty bond or other security agreement.
- D. **Municipal Rejection of Improvements.** If any portion of the improvements shall be rejected by the Council, the developer shall proceed to complete the same per the instructions of Council and, upon completion, shall subject the said improvements to the procedures for notification and review as outlined in Sections 112.A through Section 112.C of this Ordinance.
- E. **Municipal acceptance of Improvements.** At such time that the developer has completed and installed the required improvements to the satisfaction of the Borough Council, the developer shall be refunded the bond or other security being held in escrow as a performance guarantee, either in whole or in part depending upon the portion of the improvements which have been completed.

Section 113. Waivers

- A. The requirements of this Ordinance are essential and shall be strictly adhered to. For any Regulated Activity where, after a close evaluation of alternative Site designs, it proves to be impracticable to meet any one or more of the mandatory minimum standards of this Ordinance on the Site, the Borough may approve measures other than those in this Ordinance, subject to Subsections 113.B and 113.C.

- B. The Borough Council shall have the authority to waive or modify the requirements of one or more provisions of this Ordinance if the literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that such modification will not be contrary to the public interest and that the purpose and intent of the Ordinance is observed. Cost or financial burden shall not be considered a hardship. Modification may also be considered if an alternative standard or approach can be demonstrated to provide equal or better achievement of the results intended by the Ordinance. A request for modification shall be in writing and accompany the SWM Site Plan submission. The request shall state in full the grounds and facts on which the request is based, the provision or provisions of the Ordinance involved, the justification of why the Ordinance requirement cannot be met and the minimum modification necessary.
- C. **PADEP Approval Required.** For any proposed Regulated Activity involving Earth Disturbance equal to or greater than one (1) acre, the Borough may approve measures for minimum volume and infiltration control other than those required in this Ordinance only after consultation with and evaluation by PADEP that the alternate Site design meets State water quality requirements and does not conflict with State law, including, but not limited to, the PA Clean Streams Law, 35 P.S. Section 691.1, et seq.

Section 114. Erroneous Permit

Any permit or authorization issued or approved based on false, misleading or erroneous information provided by an Applicant is void without the necessity of any proceedings for revocation. Any work undertaken or use established pursuant to such permit or other authorization is unlawful.