



**GRADING AND FILL PERMIT APPLICATION**

Name of Applicant:		
Street Address:		
Telephone:	Home (     )	Work (     )
Site Address:		
Legal Description:		
Property Owner:		
Owner Address:		

Permit Application Fee:	\$200.00
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Special Conditions:

- No fill, excavation, nor grading materials shall be placed so as to be detrimental to public facilities such as water mains, sewer mains, and public streets or alleys.
- The permitted shall protect all public facilities, such as watermains, storm sewers, sanitary sewers, and streets. Damage to these facilities by the permitted, or his or her agent, will be repaired at the expense of the permitted.
- The final lift of cover material, unless area is to be used for parking or building, shall be capable of sustaining vegetation, and shall be graded and seeded. The seeding and topsoil shall proceed in stages with the completion of the fill in accordance with MPCA and City Code Section 520 requirement.
- All haul roads and entry roads shall be maintained dust free during operations.
- The permitted shall be responsible for removal of any mud, dirt, or debris deposited on public streets or alleys as a result of permitted operations. Should the permitted not comply with this provision, the City will provide necessary cleaning services without notice to the permitted. The costs of such services will be the obligation of the permitted.
- The fill material shall be leveled on a periodic basis and at no time shall it be left for a period exceeding thirty (30) days in the unleveled condition.



**CITY OF SOUTH ST. PAUL**

125 3<sup>rd</sup> Avenue North  
South St. Paul, MN 55075

Telephone: (651) 554-3210

FAX: (651) 554-3211

**REQUIREMENTS FOR ALL  
GRADING AND FILL PERMIT APPLICATIONS**

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All Grading and Fill Permit Applications **MUST** be accompanied by the following information:

- 1) A storm water management plan, designed by a licensed civil engineer, providing the following information:
  - a) Name & address of the application and the location of the activity.
  - b) Detailed project description and purpose.
  - c) Phasing of construction: time frames and schedules of the project including hours of operation.
  - d) A map of existing site conditions including topography, property information, steep slopes, existing drainage systems and patterns, waterways, wetlands, vegetative cover, flood plain boundaries, and buffer strips.
  - e) A list of haul routes on which fill will be transported.
  - f) A site construction plan that includes the location of the proposed land disturbing activities, stock pile locations, erosion and sediment control plan, construction schedule, and the plan for the maintenance and inspection of the storm water pollution control measures.
  - g) Adjacent areas: streams, lakes, residential areas, roads, etc., which might be affected by the land disturbing activity.
  - h) Designate the site areas that have potential erosion problems.
  - i) Dust, erosion and sediment control measures, both during and after construction.
  - j) Calculations: for all new homes, commercial, and industrial buildings and development, storm water calculations must be used for the design of sediment basins, wet detention basins, diversions, waterways, infiltration zones, and other applicable practices, subject to the review and approval of the City Engineer.
  - k) Any other criteria or information required in Mun. Code Chapter 110, Article IV.
- 2) A wetland delineation and protection plan, prepared by a trained and certified wetland delineator, if a wetland is impacted.
- 3) Permanent Storm Water Controls, if a grading and filling application is to disturb one (1) acre of land or greater, containing the following information:
  - a) MPCA approved storm water facilities to manage increased runoff, so that two (2) year, ten (10) year, and one-hundred (100) year peak storm discharge rates existing before the proposed grading and filling will not be increased.
  - b) Calculations: for all new homes, commercial, and industrial buildings and development, storm water calculations must be used for the design of sediment basins, wet detention basins, diversions, waterways, infiltration zones, and other applicable practices, subject to the review and approval of the City Engineer.

**IF ALL OF THE REQUIRED INFORMATION IS NOT RECEIVED AT THE TIME OF APPLICATION, CITY STAFF WILL NOT DEEM THE APPLICATION COMPLETE FOR SUBMITTAL, AS OUTLINED IN MINNESOTA STATE STATUTE 15.99.**

**City of South St. Paul  
Dakota County, Minnesota**

**ORDINANCE NO. 1293**

**AN ORDINANCE  
AMENDING SOUTH ST. PAUL CITY CODE CHAPTER 110, ARTICLE IV  
REGARDING STORMWATER MANAGEMENT**

The City Council of South St. Paul does ordain:

**SECTION 1. AMENDMENT.** South St. Paul City Code Chapter 110, Article IV is hereby amended as follows:

**ARTICLE IV. STORMWATER MANAGEMENT**

**Sec. 110-70. Findings.**

The city hereby finds that uncontrolled and inadequately planned use of wetlands, woodlands, natural habitat areas, areas subject to soil erosion and areas containing restrictive soils adversely affects the public health, safety, and general welfare by impacting water quality and contributing to other environmental problems, creating nuisances, impairing other beneficial uses of environmental resources and hindering the ability of the city to provide adequate water, sewage, flood control, and other community services. In addition, extraordinary public expenditures may be required for the protection of persons and property in such areas and in areas that may be affected by unplanned land usage.

**Sec. 110-71. Purpose.**

(a) The purpose of this subchapter is to control or eliminate stormwater pollution along with soil erosion and sedimentation within the city.

(b) It establishes standards and specifications for conservation practices and planning activities, which minimize stormwater pollution, soil erosion and sedimentation.

(c) Except where an exception is granted, any person, firm, sole proprietorship, partnership, corporation, state agency or political subdivision proposing a land disturbance activity within the city shall apply to the city for the approval of the stormwater pollution prevention plan or stormwater pollution control plan.

(d) No land shall be disturbed until the plan is approved by the city and conforms to the standards set forth herein.

## **Sec. 110-72. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

*Applicant.* Any person or entity that applies for a building permit, subdivision approval, or a permit to allow land disturbing activities. Applicant also means that person's agents, employees, and others acting under that person's direction.

*Best management practices (BMPs).* Erosion and sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing, and minimizing degradation of surface water, including construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by state or designated area-wide planning agencies.

*Buffer.* A protective vegetated zone located adjacent to a natural resource, such as a water of the state that is subject to direct or indirect human alteration. Acceptable *Buffer* vegetation includes preserving existing predevelopment vegetation and/or planting locally distributed native Minnesota trees, shrubs and grassy vegetation. Alteration of those areas is strictly limited.

*Common Plan of Development or Sale.* A contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

*Construction Activity.* Includes construction activity as defined in 40 CFR § 122.26(b)(14)(x) and small construction activity as defined in 40 CFR § 122.26(b)(15). This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling, and excavating. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) acre or more.

*Control measure.* A practice or combination of practices to control erosion and attendant pollution.

*Detention facility.* A permanent natural or manmade structure, including wetlands, for the temporary storage of runoff that contains a permanent pool of water.

*Engineering Design Standards.* A stormwater design manual set forth by the city for the land disturbance activities that occur within the city boundary. These standards are created within the lines to preserve, protect, and manage its water resources as well as to meet federal, state, and watershed stormwater regulations.

*Developer.* A person, firm, corporation, sole proprietorship, partnership, state agency or political subdivision thereof engaged in a land disturbance activity.

*Dewatering.* The removal of surface or ground water to dry and/or solidify a construction site to enable construction activity. Dewatering may require a Minnesota Department of Natural Resources water appropriation permit and, if dewatering water is contaminated, discharge of such water may require an individual MPCA NPDES/SDS Permit.

*Discharge.* The conveyance, channeling, runoff or drainage, of stormwater, including snowmelt, from a construction site.

*Erosion.* Any process that wears away the surface of the land by the action of water, wind, ice or gravity. *Erosion* can be accelerated by the activities of people and nature.

*Erosion Control.* Refers to methods employed to prevent erosion. Examples include soil stabilization practices, limited grading, temporary erosion protection or permanent cover and construction phasing.

*Erosion and Sediment Practice Specifications or Practice.* The management procedures, techniques and methods to control soil erosion and sedimentation as officially adopted by either the city, county or local watershed group, whichever is more stringent.

*Exposed Soil Areas.* All areas of the construction site where the vegetation (trees, shrubs, brush and the like) has been removed. This includes topsoil stockpile areas, borrow areas and disposal areas within the construction site. It does not include stockpiles or surcharge areas of sand, gravel, concrete or bituminous.

*Final Stabilization.* Required actions as defined in the NPDES/SDS General Stormwater Permit for Construction Activity taken after the completion of construction activities and prior to submitting the Notice of Termination that are intended to prevent discharge of pollutants associated with stormwater discharges from the project.

*Flood fringe.* The portion of the floodplain outside of the floodway.

*Floodway.* The channel of the watercourse, the bed of water basins, and those portions of the adjoining floodplains that are reasonably required to carry and discharge floodwater and provide water storage during a regional flood.

*Hydric soils.* Soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

*Hydrophytic vegetation.* Macrophytic plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

*Impervious Surface.*

(1) A constructed hard surface that either prevents or retards the entry of water into the soil, and causes water to run off the surface in greater quantities and at an increased rate of flow than existed prior to development.

(2) Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas and concrete, asphalt or gravel roads.

*Land disturbance activity.*

(1) Any activity that changes the volume or peak discharge rate of stormwater runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity that bares soil or rock or involves the diversion or piping of any natural or fabricated watercourse.

(2) Within the context of this rule, Land Disturbance Activity does not mean:

(a) Minor land disturbance activities such as home gardens and an individual's home landscaping, repairs and maintenance work;

(b) Construction, installation and maintenance of electric, telephone and cable television, utility lines or individual service connection to these utilities, which result in creating less than 5,000 square feet of exposed soil;

(c) Tilling, planting or harvesting of agricultural, horticultural or silvicultural crops;

(d) Installation of fence, sign, telephone and electric poles and other kinds of posts or poles that result in creating less than 5,000 square feet of exposed soil;

(e) Emergency work to protect life, limb or property and emergency repairs, unless the land disturbing activity would have required an approved erosion and sediment control plan, except for the emergency. If such a plan would have been required, then the disturbed land area shall be shaped and stabilized in accordance with the city's requirements as soon as possible; or

(f) Any activity that, in the discretion of the city, should be exempt from the provisions of this section. The city may exempt an activity from the provisions of this section if all of the following standards and requirements are met:

1. Existing draining and ponding patterns are not significantly altered so as to adversely affect adjoining land;

2. The resultant grade and slopes at the property line are in substantial conformity to the surrounding natural topography and are set so as to minimize erosion and provide for sufficient drainage so that both natural and stormwater enter and leave the property at the original or natural drainage points;

3. All banks will be left with a slope not greater than one foot vertical to four foot horizontal, except that greater slope shall be permitted if it is in substantial conformity to the immediately surrounding area, and in the judgment of the city, it is not expected to adversely affect future development of the site. All excavated areas shall be finally graded in substantial conformity to the surrounding natural topography; and
4. The property is or will be graded so that stagnant water will not be permitted to collect upon it.

*MS4.* Means Municipal Separate Storm Sewer System.

*NPDES/SDS General Stormwater Permit for Construction Activity.* The National Pollutant Discharge Elimination System/State Disposal System General Stormwater Permit for Construction Activity as required by the Minnesota Pollution Control Agency.

*New Development.* All construction activity that is not defined as redevelopment.

*Notice of Termination or Not.* Notice to terminate coverage under this permit after construction is complete, the site has undergone Final Stabilization, and maintenance agreements for all permanent facilities have been established, in accordance with all applicable conditions of this permit.

*Owner(s).* A natural person, partnership, firm, association, public or quasi-public corporation, private corporation, or a combination of, with a legal or equitable interest in the parcel of record.

*Permanent Cover.* Surface types that will prevent soil failure under erosive conditions. Examples include: gravel, asphalt, concrete, rip rap, roof tops, perennial cover, or other landscaped material that will permanently arrest soil erosion. A uniform perennial vegetative cover (i.e. evenly distributed, without large bare areas) with a density of 70% of the native background vegetative cover for the area must be established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures. Permanent cover does not include the practices listed under temporary erosion protection.

*Person.* Any individual, firm, corporation, partnership, franchise, association, or government entity.

*Public waters.* Waters of the state, as defined in Minn. Stat. § 103G.055(15).

*Redevelopment.* Any projects with 1 acre or greater of impervious and reconstructing greater than 15 percent of the existing impervious surfaces the requirements of MIDS will apply to both the reconstructed and new impervious surface. For projects reconstructing less than 15 percent of the existing impervious only the new impervious will be subject to conformance with the Minimum Impact Design Standards set forth by the MPCA. (*MPCA, Tech Support Document for Post-Construction Stormwater Management*).

*Regional flood.* A flood that is representative of large floods known to have occurred generally in the state and reasonably characteristic of what can be expected in a 100-year flood occurrence.

*Retention facility.* A permanent natural or manmade structure that provides for the storage of stormwater runoff by means of a permanent pool of water.

*Saturated Soil.* The highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. Saturated soil is evidenced by the presence of redoximorphic features or other information.

*Sediment.* The product of an erosion process; solid material both mineral and organic, that is in suspension, is being transported, or has been moved by water, air or ice, and has come to rest on the earth's surface either above or below water level.

*Sedimentation.* The process or action of depositing sediment caused by erosion.

*Sediment Control.* The methods employed to prevent sediment from leaving the development site. *Sediment Control* practices include silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection and temporary or permanent sedimentation basins. A floating silt curtain placed in the water is not a sediment control BMP to satisfy perimeter control requirements, except as provided for in the NPDES/SDS General Stormwater Permit for Construction Activity.

*Soil.* The unconsolidated mineral and organic material on the immediate surface of the earth. For the purposes of this document stockpiles of sand, gravel, aggregate, concrete or bituminous materials are not considered *Soil* stockpiles.

*Stabilize, Stabilized, Stabilization.* The exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, erosion control blanket, mats or other material that prevents erosion from occurring. Grass, agricultural crop or other seeding alone is not stabilization. Mulch materials must achieve approximately 90 percent ground coverage (typically 2 tons/acre).

*Steep slope.* A slope with an average grade of 33 percent or greater and a slope vertical height of at least 25 feet. Within the Mississippi River Critical Corridor, a slope with an average grade of 12 percent and a slope vertical height of at least 25 feet.

*Stormwater.* Any precipitation runoff, stormwater runoff, snow melt off, and any other surface runoff and drainage as defined by Minn. R. 7090.0080, subp.12.

*Stormwater Pollution Control Plan.* A joint stormwater and erosion and sediment control plan that is a document containing the requirements of section 110-74, that when implemented will decrease soil erosion on a parcel of land and off-site nonpoint pollution and sediment damages.

*Stormwater Pollution Prevention Plan (SWPPP).* A joint stormwater and erosion and sediment control plan that is a document containing the requirements of section 110-73, that when implemented will decrease soil erosion on a parcel of land and off site nonpoint pollution and sediment damages.

*Structure.* Anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas.

*Subdivision.* Any tract of land divided into building lots for private, public, commercial, industrial and the like development. Minnesota Rule 6120.2500, subpart 17 defines a Subdivision as land that is divided for the purpose of sale, rent or lease, including planned unit development.

*Surface Water or Waters.* All streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses, and irrigation systems whether natural or artificial, public or private, except that surface waters do not include treatment basins or ponds that were constructed from upland.

*Temporary Erosion Protection.* Methods employed to prevent erosion during construction activities. Examples of temporary erosion protection include, but are not limited to: straw, wood fiber blanket, wood chips, vegetation, mulch, and rolled erosion control products.

*TP.* Means total phosphorus.

*TSS.* Means total suspended solids.

*Vegetated or Grassed Swales.* A vegetated earthen channel that conveys stormwater, while treating the stormwater by biofiltration. The swales remove pollutants by both filtration and infiltration.

*Waters of the State.* As defined in Minn.Stat. § 115.01(22), as it may be amended from time to time, the term means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

*Wetland or Wetlands.*

(1) As defined in Minn. Rules 7050.0130, subpart F, Wetlands are those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(2) Wetlands generally include swamps, marshes, bogs and similar areas.

- (3) Constructed Wetlands designed for wastewater treatment are not waters of the state.
- (4) Wetlands must have the following attributes:
  - (a) A predominance of hydric soils;
  - (b) Inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition; and
  - (c) Under normal circumstances support a prevalence of the vegetation.

**Sec. 110-73. Application requirements.** Unless otherwise exempted by this ordinance, an application for stormwater management approval shall include the following as a condition for its consideration:

- (1) A stormwater management plan;
- (2) A maintenance agreement.

The stormwater management plan shall be prepared to meet the requirements of Section 110-74 of this ordinance; the maintenance agreement shall be prepared to meet the requirements of Section 110-76 of this ordinance. In lieu of preparation of a stormwater management plan, major single-family residential projects and minor expansion projects may install a raingarden or similar stormwater treatment practice.

**Sec. 110-74. Stormwater management plan.**

Every applicant for a building permit, subdivision approval, or a permit to allow land disturbing activities must submit a stormwater management plan to the city engineer as well as conform to the construction site stormwater runoff control standards set forth in Section 110-74(3) of this ordinance, the Lower Mississippi River Watershed Management Organization's adopted watershed management plans and groundwater management plan prepared in accordance with Minn. Stat. § 103B.231, city's engineering design standards, NPDES Construction General Permit, and the city's MS4 Permit. Any construction activity that disturbs one or more acres is required to obtain a separate NPDES Construction Site Permit. A copy of this permit and erosion and sediment control plan shall be submitted to the city engineer. No building permit, subdivision approval, or permit to allow land disturbing activities shall be issued until the city engineer has approved this plan.

- (1) *Minimum requirements of the stormwater management plan.*
  - a. Name and address of the applicant and the location of the activity.
  - b. Project description.

- c. Phasing of construction: timeframes and schedules for the project.
- d. A map of the existing site conditions including the following: topography, property information, steep slopes, existing drainage systems/patterns, waterways, wetlands, vegetative cover, floodplain boundaries, buffer strips.
- e. A site construction plan that includes the location of the proposed land disturbing activities, stockpile locations, erosion and sediment control plan, construction schedule, and the plan for the maintenance and inspections of the stormwater pollution control measures.
- f. Adjacent areas: streams, lakes, residential areas, roads, etc., which might be affected by the land disturbing activity.
- g. Designate the site areas that have the potential for an erosion problem.
- h. Erosion and sediment control measures, both during and after construction.
- i. Permanent stabilization: How the site will be stabilized, timeframe, and schedules.
- j. For all new homes, commercial, and industrial buildings and development, stormwater calculations must be used for the design of sediment basins, wet detention basins, diversions, waterways, infiltration zones, and other applicable practices, subject to the review and approval of the city engineer.

(2) *General stormwater pollution control criteria.* The plan shall address the following:

- a. Stabilizing all exposed soils and soil stockpiles and the related timeframe or schedule.
- b. Establishing permanent vegetation and the related timeframe or schedule.
- c. Preventing sediment damage to adjacent properties and other designated areas such as streams, wetlands, lakes, and unique vegetation.
- d. Scheduling for erosion and sediment control practices.
- e. Location of permanent and temporary sedimentation control practices.
- f. Engineering for the construction and stabilization of steep slopes.
- g. Measures that will control the quality and quantity of stormwater leaving a site.
- h. Stabilizing all waterways and stormwater system outfalls.

- i. Protecting storm sewers from the entrance of sediment.
- j. Restabilizing utility construction areas as soon as possible.
- k. Protecting paved roads and sediment and mud brought in from access routes.
- l. Disposing of temporary erosion and sediment control measures.
- m. Maintenance plan for the temporary and permanent erosion and sediment control practices.

(3) *Minimum stormwater pollution control measures and related inspections.* Projects with land disturbing activities 1 acre or greater shall meet the current requirements for stormwater management as specified by the city's engineering design standards and MPCA Construction General Permit. All land disturbing activities within the city that will result in more than 100 cubic yards of cut or fill are only required to follow the construction site stormwater runoff control standards set within the city's engineering design standards. The standards should follow these requirements:

- a. Erosion Control
- b. Sediment Control Practices
- c. Temporary Sediment Basins
- d. Dewatering and Basin Draining
- e. Inspection and Maintenance
- f. Pollution Management Measures/Construction Site Waste Control
- g. Final Stabilization
- h. Training

(4) *Performance Criteria for Stormwater Management.* Unless determined by the city to be exempt or granted a waiver, all site designs shall establish stormwater management practices to control the peak flow rates and pollutants of stormwater discharge associated with specified design storms and runoff volumes, as detailed in the city's engineering design standards.

- a. *New Development:* Rate control, volume control, and water quality standards shall apply to all New Development. There shall be no net increase from pre-project conditions (on an average annual basis) of total volume, TSS and TP. New Development projects shall retain a runoff volume equal to one inch times the area of the proposed increase of impervious surfaces on-site.
- b. *Redevelopment:* Rate control, volume control and water quality standards shall apply to all Redevelopment. There shall be a net reduction in the amount of TP, TSS and stormwater runoff volume leaving the site as compared with pre-project conditions. For redevelopment projects where the project proposer intends to add more impervious surfaces, the new development treatment requirements must be applied to

the net increase of impervious surfaces. Additional treatment must also be included to reduce the volume, TP and TSS loads from the existing impervious surfaces.

**Sec. 110-75. Permanent stormwater pollution controls.** All new development and redevelopment projects that require a permanent stormwater pollution control shall adhere to the requirements set in the city's engineering design standards.

**Sec. 110-76. Stormwater treatment maintenance plan and agreement.**

(a) *Maintenance Agreement.* The Applicant shall enter into a maintenance agreement with the city that documents all responsibilities for operation and maintenance of all stormwater treatment practices. Such responsibility shall be documented in a maintenance plan and executed through a maintenance agreement. The maintenance agreement shall be executed and recorded against the parcel. The maintenance agreement shall be in a form approved by the city shall describe the inspection and maintenance obligations of this section and shall, at a minimum:

- (1) Designate the Applicant, who shall be permanently responsible for maintenance of the structural or nonstructural measures.
- (2) Pass responsibility for such maintenance to successors in title.
- (3) Grant the city and its representatives the right of entry for the purposes of inspecting all stormwater treatment practices.
- (4) Allow the city the right to repair and maintain the facility, if necessary maintenance is not performed after proper and reasonable notice to the Applicant.
- (5) Include a maintenance plan that contains, but is not limited to the following:
  - a. Identification of all stormwater treatment practices.
  - b. A schedule for regular inspection, monitoring, and maintenance for each practice. Monitoring shall verify whether the practice is functioning as designed and may include, but is not limited to quality, temperature, and quantity of runoff.
  - c. Identification of the Applicant for conducting the inspection, monitoring, and maintenance for each practice.
- (6) Identify a schedule and format for reporting compliance with the maintenance plan to the city.

(b) *Inspection of Stormwater Facility.*

- (1) Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or

areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater treatment practices.

- (2) When any new stormwater treatment practice is installed on private property, or when any new connection is made between private property and a public drainage control system, sanitary sewer, or combined sewer; the property owner shall grant to the city the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when the city has a reasonable basis to believe that a violation of this ordinance is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this ordinance.
- (3) The director of public works, or designated representative, shall inspect all stormwater management facilities during construction, during the first year of operation, and at least once every five years thereafter. The inspection records will be kept on file at the public works department for a period of 6 years. It shall be responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the stormwater management facilities for inspection and maintenance purposes.

(c) *Records of Installation and Maintenance Activities.* The Applicant shall make records of the installation and of all maintenance and repairs of the stormwater treatment practices, and shall retain the records for at least three (3) years. These records shall be made available to the city during inspection of the stormwater treatment practice and at other reasonable times upon request.

(d) *Failure to Maintain Practices.* If an Applicant fails or refuses to meet the requirements of the maintenance agreement, the city, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the stormwater treatment practice in proper working condition. In the event that the stormwater treatment practice becomes a danger to public safety or public health, the city shall notify the Applicant in writing. Upon receipt of that notice, the Applicant shall have thirty days to perform maintenance and repair of the facility in an approved manner. After proper notice, the city may specially assess the owner(s) of the stormwater treatment practice for the cost of repair work and any penalties; and the cost of the work shall be assessed against the property and collected along with ordinary taxes by the county.

**Sec. 110-77. Minimum design standards for stormwater detention treatment practices.** Where on site stormwater treatment practices are required, the applicant(s) will have to comply with the design and sizing requirements determined in the city's engineering design standards.

**Sec. 110-78. Delineation and minimum protection for natural wetlands.**

(a) Any and all wetlands on the subject site must be delineated by a trained, certified wetland delineator. A plan of said delineations must be submitted to the city for review and approval. Said delineation plan shall be the basis for any exemptions or permits needed as per the Wetlands Conservation Act.

(b) Runoff must not be discharged directly into wetlands without appropriate quality and runoff control, depending on the wetland type.

(c) At a minimum, a 30-foot setback is required for all protected wetlands.

(d) Wetlands may not be filled or drained, wholly or partially, unless replaced by restoring or creating wetland areas, as determined by the county soil and water conservation district (SWCD). Said wetland replacement plan is subject to the review and approval of the county SWCD.

**Sec. 110-79. Steep slopes.**

(a) Prior to any land disturbing or development activities on steep slopes, as defined within this Code, within the city, the developer/landowner shall provide to the city a detailed plan that sets forth:

- (1) The time period during which the proposed development or disturbance is to take place.
- (2) The soil types which are found on the site of the development.
- (3) A map showing the topography of the area to be developed.
- (4) A map showing any alteration in the topography that would result from the proposed development.
- (5) A description of the soil quality in the area to be developed including permeability of the soil, susceptibility of the soil to erosion, drainage of the soil, distance of the soil from underlying bedrock, and susceptibility of the soil to changes in physical volume when moistened and/or during periods of frost.
- (6) Information relative to whether the proposed development will cause and/or be affected by any erosion problems.

- (7) A description of any disturbance to vegetation and other natural features that will result from the development plus the manner in which the applicant proposes to protect vegetation and other natural features that will not be disturbed.
- (8) A copy of all specifications, blueprints, and other detailed plans for the development.
- (9) Information relative to the adequacy for the slope conditions and soil type of the foundation and underlying material of any structure, including roads.
- (10) Information relative to the adequacy of controls and protection existing uphill from the proposed development which are designed to guard structures or roads from being affected by mud, uprooted trees, or other material.
- (11) Information relative to the adequacy of construction of any retaining walls.

(b) No work shall be permitted until reviewed and approved by the city engineer. Neither the issuance of a permit nor compliance with the conditions thereof or with the provisions of this article shall relieve any person from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of any permit hereunder serve to impose liability on the city or its officers or employees for injury or damage to persons or property. An approval of an application issued pursuant to this article shall not relieve the applicant of the responsibility of complying with any other requirement established by law, regulation, or Code provision.

**Sec. 110-80. Lawn fertilizer regulations.**

No person shall apply fertilizer to or deposit grass clippings, leaves, or other vegetative materials on impervious surfaces or within stormwater drainage systems, natural drainageways, or wetland buffer areas. Fertilizer applications shall not be made within one rod (16.5 feet) of any protected wetland or water resource.

**Sec. 110-81. Other controls.**

In the event of any conflict between the provisions of this article and the provisions of an erosion control or shore land protection ordinance adopted by the city, the more restrictive standard prevails.

**Sec. 110-82. Financial securities.**

- (a) *Generally.*
  - (1) The applicant shall provide security for the performance of the work described and delineated on the approved grading plan involving the stormwater management plan and any SWPPP related remedial work in an amount of \$3,000 per gross acre or \$1,000 for each single- or two-family home, whichever is greater.
  - (2) This security must be available prior to commencing the project.

- (3) The form of the securities shall adhere to the following.
- a. The first \$3,000 (in U.S. currency) or 15%, whichever is greater, of this financial security must be by cash deposit to the city.
  - b. Deposit with the city, a responsible escrow agent or trust company, at the option of the city, money, an irrevocable letter of credit, negotiable bonds of the kind approved for securing deposits of public money or other instruments of credit from one or more financial institutions, subject to regulation by the state and federal government wherein the financial institution pledges that the funds are on deposit and guaranteed for payment. The type of security must be of a type acceptable by the city.
  - c. The city may request a greater financial security, if the city considers that the development site is especially prone to erosion or the resource to be protected is especially valuable.

(b) *Maintaining the financial security.*

- (1) If at any time during the course of the work this amount falls below 50% of the required deposit, the developer shall make another deposit in the amount necessary to restore the deposit to the required amount.
- (2) If the developer does not bring the financial security back up to the required amount within seven days after notification by the city that the amount has fallen below 50% of the required amount, the city may:
  - a. Withhold the scheduling of inspections and/or the issuance of a certificate of occupancy; and/or
  - b. Revoke any permit issued by the city to the applicant for the site in question.

(c) *Proportional reduction of the financial security.* When more than half of the development's exposed soil area achieves final stabilization, the city may reduce the total required amount of the financial security by half, if recommended by the City Engineer.

(d) *Action against the financial security.*

- (1) The city may act against the financial security if any of the conditions listed below exist.
- (2) The city shall use funds from this security to finance remedial work undertaken by the city or a private contractor under contract to the city and to reimburse the city for all direct cost incurred in the process of remedial work including, but not limited to, staff time, attorney's fees, consulting fees and any other fees related thereto.

- a. The developer ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.
- b. The developer fails to conform to the grading plan and/or stormwater management plan and/or the SWPPP as approved by the city.
- c. The techniques utilized under the stormwater management plan or SWPPP fail within one year of installation.
- d. The developer fails to reimburse the city for corrective action taken under section 110-83.

(e) *Returning the financial security.* Any unspent amount of the financial security deposited with the city for faithful performance of the stormwater management plan or SWPPP and any stormwater management plan or SWPPP related remedial work must be released six months after the completion of the installation of all stormwater pollution control measures as shown on the grading and/or the SWPPP and establishment of final stabilization.

**Sec. 110-83. Notification of failure of the stormwater management plan or SWPPP.**

The city shall notify the developer when the city is going to act on the financial securities part of this chapter.

(a) *Notification by the city.* The initial contact will be to a party or parties listed on the application. Forty-eight hours after notification by the city or 72 hours after the failure of erosion control measures, whichever is less, the city, at its discretion, may begin corrective work.

(b) *Erosion off-site.*

- (1) If erosion breaches the perimeter of the site, the applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-entry from the adjoining property owner, and implement the cleanup and restoration plan within 48 hours of obtaining the adjoining property owner's permission.
- (2) In no case, unless written approval is received from the city, shall more than seven calendar days go by without corrective action being taken.
- (3) If in the discretion of the city, the applicant does not repair the damage caused by the erosion, the city may do the remedial work required and charge the cost to the applicant.

(c) *Erosion into streets, wetlands or water bodies.*

- (1) If eroded soils (including tracked soils from construction activities) enter or appear likely to enter streets, wetlands or other water bodies, prevention strategies, cleanup and repair must be immediate.
- (2) The applicant shall provide all traffic control and flagging required to protect the traveling public during the cleanup operations.

(d) *Failure to do corrective work.* When an applicant fails to conform to any provision of this policy within the time stipulated, the city may take the following actions:

- (1) Withhold the scheduling of inspections and/or the issuance of a certificate of occupancy;
- (2) Revoke any permit issued by the city to the applicant for the site in question;
- (3) Direct the correction of the deficiency by city forces or by a separate contract. The issuance of a permit constitutes a right-of-entry for the city or its contractor to enter upon the construction site for the purpose of correcting deficiencies in erosion control;
- (4) All costs incurred by the city in correcting stormwater pollution control deficiencies must be reimbursed by the applicant. If payment is not made within 30 days after costs are incurred by the city, payment will be made from the applicant's financial securities as described in section 110-82; and
- (5) If there is an insufficient financial amount, in the applicant's financial securities as described in section 110-82, to cover the costs incurred by the city, then the city may assess the remaining amount against the property.

#### **Sec. 110-84. Inspection.**

(a) *Notification.* The erosion control inspector shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the applicant wherein the work fails to comply with the Erosion and Sediment Control Plan as approved.

(b) *Procedure.* The Applicant is responsible for regular inspections and record keeping needed to document compliance with the permit requirements. The Applicant must inspect the construction project once per week and within 24 hours after a rain event greater than 0.5 inches. The city may conduct inspections as needed to ensure that both Erosion and Sediment Control and Stormwater measures are properly installed and maintained prior to construction, during construction, and at the completion of the project. The Applicant shall notify the city a minimum of seventy-two (72) hours prior to the following required city inspections:

- (1) *Initial Inspection* - when all Erosion and Sediment Control BMPs are installed. This inspection must be completed before a building permit can be issued.

- (2) *Project Complete Inspection* – when the project is complete including, but not limited to, final grading, installation of all stormwater management facilities, and Final Stabilization measures are complete. One (1)-year warranty begins after inspector approves project.
- (3) *Warranty Inspection* – completed one (1) year later to confirm that permanent site stabilization methods have been successful and vegetation, has been established.

(c) *Reporting.* The Applicant shall submit reports to the City Engineer under the following circumstances and shall submit recommendations for corrective measures, if appropriate, with such reports:

- (1) There are delays of more than seven (7) days in obtaining materials, machinery, services or manpower necessary to the implementation of the stormwater management plan as scheduled.
- (2) There are delays of seven (7) days in land disturbing or filling activities or Soil storage.
- (3) The work is not being done in conformance with the approved plans and permit. Any changes to the approved plan must be submitted to the City Engineer for review and approval before work can commence.

**Sec. 110-85. Right of entry.**

The issuance of a permit constitutes a right-of-entry for the city or its contractor to enter the construction site. The Applicant shall allow the city and its authorized representatives, to:

- (a) Enter the permitted site for the purpose of obtaining information, examining records, conducting investigations or surveys;
- (b) Bring such equipment on the site as is necessary to conduct such surveys and investigations;
- (c) Examine and copy any books, papers, or digital files pertaining to activities or records required to be kept under the terms and conditions of the permitted site;
- (d) Inspect the stormwater pollution control measures;
- (e) Sample and monitor any items or activities pertaining to stormwater pollution control measures;
- (f) Correct deficiencies in Stormwater and Erosion and Sediment Control measures consistent with the city's ordinances.

**Sec. 110-86. Search warrants.**

If city employees have been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of a search warrant from any court of competent jurisdiction.

**Sec. 110-87. Penalty.**

Any person, firm or corporation violating any provision of this ordinance shall be sent a notice of violation and if there is no compliance the city may take actions pursuant to this section.

(a) *Notice of violation.* When the city determines that an activity is not being carried out in accordance with the requirements of this ordinance, it shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:

- (1) The name and address of the owner;
- (2) The address when available or a description of the land upon which the violation is occurring;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to bring the development activity into compliance with this ordinance and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and
- (6) A statement that the determination of violation may be appealed to the city by filing a written notice of appeal within 15 days of services notice of violation.

(b) *Stop Work Orders.* Persons receiving a notice of violation will be required to halt all construction activities. This stop work order will be in effect until the city confirms that the Land Disturbance Activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this ordinance.

(c) *Civil and Criminal Penalties.* In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this ordinance shall be guilty of a misdemeanor and subject to prosecution. Such person shall be guilty of a separate offense for

each day during which the violation occurs or continues. In the alternative, an administrative citation may be issued pursuant to chapter 38.

(d) *Restoration of Lands.* Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the city may take necessary corrective action, the cost of which may, after notice and opportunity for hearing, be specially assessed against the property and collected along with the ordinary taxes by the county.

**Sec. 110-88. Appeals.**

Any person aggrieved by the action of any official charged with the enforcement of this ordinance, as the result of the disapproval of a properly filed application for approval, issuance of a written notice of violation, or an alleged failure to properly enforce the ordinance in regard to a specific application, shall have the right to appeal the action to the city by following the appeal process in chapter 38.

**SECTION 3. SUMMARY PUBLICATION.** Pursuant to Minn. Stat. § 412.191, in the case of a lengthy Ordinance, a summary may be published. While a copy of the entire Ordinance is available without cost at the office of the Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire Ordinance:

This Ordinance will allow the City to control or eliminate Stormwater pollution, soil erosion and sedimentation by establishing standards and specifications for conservation practices and planning activities. The Ordinance defines several new terms, used in implementing this Ordinance and is consistent with the City’s Engineering Design Standards, State Statutes and State Rules regulating these activities. The Ordinance establishes escrow requirements for any land disturbing activities and certain building permit activities. The Ordinance also establishes the City’s authority and procedure to enter and inspect any property to ensure compliance with this Ordinance.

**SECTION 4. EFFECTIVE DATE.** This Ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

Ayes:                      Nays:

Attest:

\_\_\_\_\_  
Mayor  
James Francis

\_\_\_\_\_  
City Clerk  
Deanna Werner

## ARTICLE IV. - STORMWATER MANAGEMENT

*Footnotes:*

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**Editor's note**— Ord. No. 1293, § 1, adopted April 6, 2015, amended article IV in its entirety to read as herein set out. Former article IV, §§ 110-70—110-80, pertained to similar material, and derived from the Code of 1992, §§ 520.02—520.09, 520.14, 520.15 and 520.17.

### Sec. 110-70. - Findings.

The city hereby finds that uncontrolled and inadequately planned use of wetlands, woodlands, natural habitat areas, areas subject to soil erosion and areas containing restrictive soils adversely affects the public health, safety, and general welfare by impacting water quality and contributing to other environmental problems, creating nuisances, impairing other beneficial uses of environmental resources and hindering the ability of the city to provide adequate water, sewage, flood control, and other community services. In addition, extraordinary public expenditures may be required for the protection of persons and property in such areas and in areas that may be affected by unplanned land usage.

(Ord. No. 1293, § 1, 4-6-2015)

### Sec. 110-71. - Purpose.

- (a) The purpose of this article is to control or eliminate stormwater pollution along with soil erosion and sedimentation within the city.
- (b) It establishes standards and specifications for conservation practices and planning activities, which minimize stormwater pollution, soil erosion and sedimentation.
- (c) Except where an exception is granted, any person, firm, sole proprietorship, partnership, corporation, state agency or political subdivision proposing a land disturbance activity within the city shall apply to the city for the approval of the stormwater pollution prevention plan or stormwater pollution control plan.
- (d) No land shall be disturbed until the plan is approved by the city and conforms to the standards set forth herein.

(Ord. No. 1293, § 1, 4-6-2015)

### Sec. 110-72. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Applicant* means any person or entity that applies for a building permit, subdivision approval, or a permit to allow land disturbing activities. Applicant also means that person's agents, employees, and others acting under that person's direction.

*Best management practices (BMPs)* means erosion and sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing, and minimizing degradation of surface water, including construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by state or designated area-wide planning agencies.

*Buffer* means a protective vegetated zone located adjacent to a natural resource, such as a water of the state that is subject to direct or indirect human alteration. Acceptable buffer vegetation includes preserving existing predevelopment vegetation and/or planting locally distributed native Minnesota trees, shrubs and grassy vegetation. Alteration of those areas is strictly limited.

*Common plan of development or sale* means a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.

*Construction activity* means and includes construction activity as defined in 40 CFR § 122.26(b)(14)(x) and small construction activity as defined in 40 CFR § 122.26(b)(15). This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated stormwater runoff, leading to soil erosion and movement of sediment into surface waters or drainage systems. Examples of construction activity may include clearing, grading, filling, and excavating. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more.

*Control measure* means a practice or combination of practices to control erosion and attendant pollution.

*Detention facility* means a permanent natural or manmade structure, including wetlands, for the temporary storage of runoff that contains a permanent pool of water.

*Engineering design standards* means a stormwater design manual set forth by the city for the land disturbance activities that occur within the city boundary. These standards are created within the lines to preserve, protect, and manage its water resources as well as to meet federal, state, and watershed stormwater regulations.

*Developer* means a person, firm, corporation, sole proprietorship, partnership, state agency or political subdivision thereof engaged in a land disturbance activity.

*Dewatering* means the removal of surface or ground water to dry and/or solidify a construction site to enable construction activity. Dewatering may require a Minnesota Department of Natural Resources water appropriation permit and, if dewatering water is contaminated, discharge of such water may require an individual MPCA NPDES/SDS permit.

*Discharge* means the conveyance, channeling, runoff or drainage, of stormwater, including snowmelt, from a construction site.

*Erosion* means any process that wears away the surface of the land by the action of water, wind, ice or gravity. Erosion can be accelerated by the activities of people and nature.

*Erosion control* refers to methods employed to prevent erosion. Examples include soil stabilization practices, limited grading, temporary erosion protection or permanent cover and construction phasing.

*Erosion and sediment practice specifications or practice* means the management procedures, techniques and methods to control soil erosion and sedimentation as officially adopted by either the city, county or local watershed group, whichever is more stringent.

*Exposed soil areas* means all areas of the construction site where the vegetation (trees, shrubs, brush and the like) has been removed. This includes topsoil stockpile areas, borrow areas and disposal areas within the construction site. It does not include stockpiles or surcharge areas of sand, gravel, concrete or bituminous.

*Final stabilization* means required actions as defined in the NPDES/SDS general stormwater permit for construction activity taken after the completion of construction activities and prior to submitting the notice of termination that are intended to prevent discharge of pollutants associated with stormwater discharges from the project.

*Flood fringe* means the portion of the floodplain outside of the floodway.

*Floodway* means the channel of the watercourse, the bed of water basins, and those portions of the adjoining floodplains that are reasonably required to carry and discharge floodwater and provide water storage during a regional flood.

*Hydric soils* means soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

*Hydrophytic vegetation* means macrophytic plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

*Impervious surface* means:

- (1) A constructed hard surface that either prevents or retards the entry of water into the soil, and causes water to run off the surface in greater quantities and at an increased rate of flow than existed prior to development.
- (2) Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas and concrete, asphalt or gravel roads.

*Land disturbance activity* means:

- (1) Any activity that changes the volume or peak discharge rate of stormwater runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity that bares soil or rock or involves the diversion or piping of any natural or fabricated watercourse.
- (2) Within the context of this rule, land disturbance activity does not mean:
  - a. Minor land disturbance activities such as home gardens and an individual's home landscaping, repairs and maintenance work;
  - b. Construction, installation and maintenance of electric, telephone and cable television, utility lines or individual service connection to these utilities, which result in creating less than 5,000 square feet of exposed soil;
  - c. Tilling, planting or harvesting of agricultural, horticultural or silvicultural crops;
  - d. Installation of fence, sign, telephone and electric poles and other kinds of posts or poles that result in creating less than 5,000 square feet of exposed soil;
  - e. Emergency work to protect life, limb or property and emergency repairs, unless the land disturbing activity would have required an approved erosion and sediment control plan, except for the emergency. If such a plan would have been required, then the disturbed land area shall be shaped and stabilized in accordance with the city's requirements as soon as possible; or
  - f. Any activity that, in the discretion of the city, should be exempt from the provisions of this section. The city may exempt an activity from the provisions of this section if all of the following standards and requirements are met:
    1. Existing draining and ponding patterns are not significantly altered so as to adversely affect adjoining land;
    2. The resultant grade and slopes at the property line are in substantial conformity to the surrounding natural topography and are set so as to minimize erosion and provide for sufficient drainage so that both natural and stormwater enter and leave the property at the original or natural drainage points;
    3. All banks will be left with a slope not greater than one foot vertical to four feet horizontal, except that

greater slope shall be permitted if it is in substantial conformity to the immediately surrounding area, and in the judgment of the city, it is not expected to adversely affect future development of the site. All excavated areas shall be finally graded in substantial conformity to the surrounding natural topography; and

4. The property is or will be graded so that stagnant water will not be permitted to collect upon it.

*MS4* means municipal separate storm sewer system.

*NPDES/SDS general stormwater permit for construction activity* means the National Pollutant Discharge Elimination System/State Disposal System General Stormwater Permit for Construction Activity as required by the Minnesota Pollution Control Agency.

*New development* means all construction activity that is not defined as redevelopment.

*Notice of termination* or *NOT* means notice to terminate coverage under this permit after construction is complete, the site has undergone final stabilization, and maintenance agreements for all permanent facilities have been established, in accordance with all applicable conditions of this permit.

*Owner(s)* means a natural person, partnership, firm, association, public or quasi-public corporation, private corporation, or a combination of, with a legal or equitable interest in the parcel of record.

*Permanent cover* means surface types that will prevent soil failure under erosive conditions. Examples include: gravel, asphalt, concrete, rip rap, roof tops, perennial cover, or other landscaped material that will permanently arrest soil erosion. A uniform perennial vegetative cover (i.e. evenly distributed, without large bare areas) with a density of 70 percent of the native background vegetative cover for the area must be established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures. Permanent cover does not include the practices listed under temporary erosion protection.

*Person* means any individual, firm, corporation, partnership, franchise, association, or government entity.

*Public waters* means waters of the state, as defined in Minn. Stat. § 103G.055(15).

*Redevelopment* means any projects with one acre or greater of impervious and reconstructing greater than 15 percent of the existing impervious surfaces the requirements of MIDS will apply to both the reconstructed and new impervious surface. For projects reconstructing less than 15 percent of the existing impervious only the new impervious will be subject to conformance with the Minimum Impact Design Standards set forth by the MPCA. (MPCA, Tech Support Document for Post-Construction Stormwater Management.)

*Regional flood* means a flood that is representative of large floods known to have occurred generally in the state and reasonably characteristic of what can be expected in a 100-year flood occurrence.

*Retention facility* means a permanent natural or manmade structure that provides for the storage of stormwater runoff by means of a permanent pool of water.

*Saturated soil* means the highest seasonal elevation in the soil that is in a reduced chemical state because of soil voids being filled with water. Saturated soil is evidenced by the presence of redoximorphic features or other information.

*Sediment* means the product of an erosion process; solid material both mineral and organic, that is in suspension, is being transported, or has been moved by water, air or ice, and has come to rest on the earth's surface either above or below water level.

*Sedimentation* means the process or action of depositing sediment caused by erosion.

*Sediment control* means the methods employed to prevent sediment from leaving the development site. Sediment control practices include silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection and temporary or permanent sedimentation basins. A floating silt curtain placed in the water is not a sediment control BMP to satisfy perimeter control requirements, except as provided for in the NPDES/SDS general stormwater permit for construction activity.

*Soil* means the unconsolidated mineral and organic material on the immediate surface of the earth. For the purposes of this document stockpiles of sand, gravel, aggregate, concrete or bituminous materials are not considered soil stockpiles.

*Stabilize, stabilized, stabilization* means the exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, erosion control blanket, mats or other material that prevents erosion from occurring. Grass, agricultural crop or other seeding alone is not stabilization. Mulch materials must achieve approximately 90 percent ground coverage (typically two tons/acre).

*Steep slope* means a slope with an average grade of 33 percent or greater and a slope vertical height of at least 25 feet. Within the Mississippi River Critical Corridor, a slope with an average grade of 12 percent and a slope vertical height of at least 25 feet.

*Stormwater* means any precipitation runoff, stormwater runoff, snow melt off, and any other surface runoff and drainage as defined by Minn. R. 7090.0080, subpart 12.

*Stormwater pollution control plan* means a joint stormwater and erosion and sediment control plan that is a document containing the requirements of section 110-74, that when implemented will decrease soil erosion on a parcel of land and off-site nonpoint pollution and sediment damages.

*Stormwater pollution prevention plan (SWPPP)* means a joint stormwater and erosion and sediment control plan that is a document containing the requirements of section 110-73, that when implemented will decrease soil erosion on a parcel of land and off site nonpoint pollution and sediment damages.

*Structure* means anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas.

*Subdivision* means any tract of land divided into building lots for private, public, commercial, industrial and the like development. Minnesota Rule 6120.2500, subpart 17 defines a subdivision as land that is divided for the purpose of sale, rent or lease, including planned unit development.

*Surface water or waters* means all streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses, and irrigation systems whether natural or artificial, public or private, except that surface waters do not include treatment basins or ponds that were constructed from upland.

*Temporary erosion protection* means methods employed to prevent erosion during construction activities. Examples of temporary erosion protection include, but are not limited to: Straw, wood fiber blanket, wood chips, vegetation, mulch, and rolled erosion control products.

*TP* means total phosphorus.

*TSS* means total suspended solids.

*Vegetated or Grassed Swales* means a vegetated earthen channel that conveys stormwater, while treating the stormwater by biofiltration. The swales remove pollutants by both filtration and infiltration.

*Waters of the state* means as defined in Minn. Stat. § 115.01(22), as it may be amended from time to time, the term means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

*Wetland or wetlands* means:

- (1) As defined in Minn. Rules 7050.0130, subpart F, wetlands are those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
- (2) Wetlands generally include swamps, marshes, bogs and similar areas.
- (3) Constructed wetlands designed for wastewater treatment are not waters of the state.
- (4) Wetlands must have the following attributes:
  - a. A predominance of hydric soils;
  - b. Inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition; and
  - c. Under normal circumstances support a prevalence of the vegetation.

(Ord. No. 1293, § 1, 4-6-2015)

#### Sec. 110-73. - Application requirements.

Unless otherwise exempted by this article, an application for stormwater management approval shall include the following as a condition for its consideration:

- (1) A stormwater management plan;
- (2) A maintenance agreement.

The stormwater management plan shall be prepared to meet the requirements of section 110-74 of this article; the maintenance agreement shall be prepared to meet the requirements of section 110-76 of this article. In lieu of preparation of a stormwater management plan, major single-family residential projects and minor expansion projects may install a rain garden or similar stormwater treatment practice.

(Ord. No. 1293, § 1, 4-6-2015)

#### Sec. 110-74. - Stormwater management plan.

Every applicant for a building permit, subdivision approval, or a permit to allow land disturbing activities must submit a stormwater management plan to the city engineer as well as conform to the construction site stormwater runoff control standards set forth in section 110-74(3) of this article, the Lower Mississippi River Watershed Management Organization's adopted watershed management plans and groundwater management plan prepared in accordance with Minn. Stat. § 103B.231, city's engineering design standards, NPDES construction general permit, and the city's MS4 permit. Any construction activity that disturbs one or more acres is required to obtain a separate NPDES construction site permit. A copy of this permit and erosion and sediment control plan shall be submitted to the city engineer. No building permit, subdivision approval, or permit to allow land disturbing activities shall be issued until the city engineer has approved this plan.

- (1) *Minimum requirements of the stormwater management plan.*

- a. Name and address of the applicant and the location of the activity.
  - b. Project description.
  - c. Phasing of construction: timeframes and schedules for the project.
  - d. A map of the existing site conditions including the following: topography, property information, steep slopes, existing drainage systems/patterns, waterways, wetlands, vegetative cover, floodplain boundaries, buffer strips.
  - e. A site construction plan that includes the location of the proposed land disturbing activities, stockpile locations, erosion and sediment control plan, construction schedule, and the plan for the maintenance and inspections of the stormwater pollution control measures.
  - f. Adjacent areas: streams, lakes, residential areas, roads, etc., which might be affected by the land disturbing activity.
  - g. Designate the site areas that have the potential for an erosion problem.
  - h. Erosion and sediment control measures, both during and after construction.
    - i. Permanent stabilization: How the site will be stabilized, timeframe, and schedules.
    - j. For all new homes, commercial, and industrial buildings and development, stormwater calculations must be used for the design of sediment basins, wet detention basins, diversions, waterways, infiltration zones, and other applicable practices, subject to the review and approval of the city engineer.
- (2) *General stormwater pollution control criteria.* The plan shall address the following:
- a. Stabilizing all exposed soils and soil stockpiles and the related timeframe or schedule.
  - b. Establishing permanent vegetation and the related timeframe or schedule.
  - c. Preventing sediment damage to adjacent properties and other designated areas such as streams, wetlands, lakes, and unique vegetation.
  - d. Scheduling for erosion and sediment control practices.
  - e. Location of permanent and temporary sedimentation control practices.
  - f. Engineering for the construction and stabilization of steep slopes.
  - g. Measures that will control the quality and quantity of stormwater leaving a site.
  - h. Stabilizing all waterways and stormwater system outfalls.
    - i. Protecting storm sewers from the entrance of sediment.
    - j. Restabilizing utility construction areas as soon as possible.
  - k. Protecting paved roads and sediment and mud brought in from access routes.
  - l. Disposing of temporary erosion and sediment control measures.
  - m. Maintenance plan for the temporary and permanent erosion and sediment control practices.
- (3) *Minimum stormwater pollution control measures and related inspections.* Projects with land disturbing activities one acre or greater shall meet the current requirements for stormwater management as specified by the city's engineering design standards and MPCA construction general permit. All land disturbing activities within the city that will result in more than 100 cubic yards of cut or fill are only required to follow the construction site stormwater runoff control standards set within the city's engineering design standards. The standards should follow these requirements:
- a. Erosion control;
  - b. Sediment control practices;

- c. Temporary sediment basins;
  - d. Dewatering and basin draining;
  - e. Inspection and maintenance;
  - f. Pollution management measures/construction site waste control;
  - g. Final stabilization;
  - h. Training.
- (4) *Performance criteria for stormwater management.* Unless determined by the city to be exempt or granted a waiver, all site designs shall establish stormwater management practices to control the peak flow rates and pollutants of stormwater discharge associated with specified design storms and runoff volumes, as detailed in the city's engineering design standards.
- a. *New development.* Rate control, volume control, and water quality standards shall apply to all new development. There shall be no net increase from pre-project conditions (on an average annual basis) of total volume, TSS and TP. New development projects shall retain a runoff volume equal to one inch times the area of the proposed increase of impervious surfaces on-site.
  - b. *Redevelopment.* Rate control, volume control and water quality standards shall apply to all redevelopment. There shall be a net reduction in the amount of TP, TSS and stormwater runoff volume leaving the site as compared with pre-project conditions. For redevelopment projects where the project proposer intends to add more impervious surfaces, the new development treatment requirements must be applied to the net increase of impervious surfaces. Additional treatment must also be included to reduce the volume, TP and TSS loads from the existing impervious surfaces.

(Ord. No. 1293, § 1, 4-6-2015)

Sec. 110-75. - Permanent stormwater pollution controls.

All new development and redevelopment projects that require a permanent stormwater pollution control shall adhere to the requirements set in the city's engineering design standards.

(Ord. No. 1293, § 1, 4-6-2015)

Sec. 110-76. - Stormwater treatment maintenance plan and agreement.

- (a) *Maintenance agreement.* The applicant shall enter into a maintenance agreement with the city that documents all responsibilities for operation and maintenance of all stormwater treatment practices. Such responsibility shall be documented in a maintenance plan and executed through a maintenance agreement. The maintenance agreement shall be executed and recorded against the parcel. The maintenance agreement shall be in a form approved by the city shall describe the inspection and maintenance obligations of this section and shall, at a minimum:
- (1) Designate the applicant, who shall be permanently responsible for maintenance of the structural or nonstructural measures.
  - (2) Pass responsibility for such maintenance to successors in title.
  - (3) Grant the city and its representatives the right of entry for the purposes of inspecting all stormwater treatment practices.
  - (4) Allow the city the right to repair and maintain the facility, if necessary maintenance is not performed after proper and reasonable notice to the applicant.

- (5) Include a maintenance plan that contains, but is not limited to the following:
    - a. Identification of all stormwater treatment practices.
    - b. A schedule for regular inspection, monitoring, and maintenance for each practice. Monitoring shall verify whether the practice is functioning as designed and may include, but is not limited to quality, temperature, and quantity of runoff.
    - c. Identification of the applicant for conducting the inspection, monitoring, and maintenance for each practice.
  - (6) Identify a schedule and format for reporting compliance with the maintenance plan to the city.
- (b) *Inspection of stormwater facility.*
- (1) Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater treatment practices.
  - (2) When any new stormwater treatment practice is installed on private property, or when any new connection is made between private property and a public drainage control system, sanitary sewer, or combined sewer; the property owner shall grant to the city the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when the city has a reasonable basis to believe that a violation of this article is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this article.
  - (3) The director of public works, or designated representative, shall inspect all stormwater management facilities during construction, during the first year of operation, and at least once every five years thereafter. The inspection records will be kept on file at the public works department for a period of six years. It shall be responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the stormwater management facilities for inspection and maintenance purposes.
- (c) *Records of installation and maintenance activities.* The applicant shall make records of the installation and of all maintenance and repairs of the stormwater treatment practices, and shall retain the records for at least three years. These records shall be made available to the city during inspection of the stormwater treatment practice and at other reasonable times upon request.
- (d) *Failure to maintain practices.* If an applicant fails or refuses to meet the requirements of the maintenance agreement, the city, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the stormwater treatment practice in proper working condition. In the event that the stormwater treatment practice becomes a danger to public safety or public health, the city shall notify the applicant in writing. Upon receipt of that notice, the applicant shall have 30 days to perform maintenance and repair of the facility in an approved manner. After proper notice, the city may specially assess the owner(s) of the stormwater treatment practice for the cost of repair work and any penalties; and the cost of the work shall be assessed against the property and collected along with ordinary taxes by the county.

(Ord. No. 1293, § 1, 4-6-2015)

Sec. 110-77. - Minimum design standards for stormwater detention treatment practices.

Where on site stormwater treatment practices are required, the applicant(s) will have to comply with the design and sizing requirements determined in the city's engineering design standards.

(Ord. No. 1293, § 1, 4-6-2015)

Sec. 110-78. - Delineation and minimum protection for natural wetlands.

- (a) Any and all wetlands on the subject site must be delineated by a trained, certified wetland delineator. A plan of said delineations must be submitted to the city for review and approval. Said delineation plan shall be the basis for any exemptions or permits needed as per the Wetlands Conservation Act.
- (b) Runoff must not be discharged directly into wetlands without appropriate quality and runoff control, depending on the wetland type.
- (c) At a minimum, a 30-foot setback is required for all protected wetlands.
- (d) Wetlands may not be filled or drained, wholly or partially, unless replaced by restoring or creating wetland areas, as determined by the county soil and water conservation district (SWCD). Said wetland replacement plan is subject to the review and approval of the county SWCD.

(Ord. No. 1293, § 1, 4-6-2015)

Sec. 110-79. - Steep slopes.

- (a) Prior to any land disturbing or development activities on steep slopes, as defined within this Code, within the city, the developer/landowner shall provide to the city a detailed plan that sets forth:
  - (1) The time period during which the proposed development or disturbance is to take place.
  - (2) The soil types which are found on the site of the development.
  - (3) A map showing the topography of the area to be developed.
  - (4) A map showing any alteration in the topography that would result from the proposed development.
  - (5) A description of the soil quality in the area to be developed including permeability of the soil, susceptibility of the soil to erosion, drainage of the soil, distance of the soil from underlying bedrock, and susceptibility of the soil to changes in physical volume when moistened and/or during periods of frost.
  - (6) Information relative to whether the proposed development will cause and/or be affected by any erosion problems.
  - (7) A description of any disturbance to vegetation and other natural features that will result from the development plus the manner in which the applicant proposes to protect vegetation and other natural features that will not be disturbed.
  - (8) A copy of all specifications, blueprints, and other detailed plans for the development.
  - (9) Information relative to the adequacy for the slope conditions and soil type of the foundation and underlying material of any structure, including roads.
  - (10) Information relative to the adequacy of controls and protection existing uphill from the proposed development which are designed to guard structures or roads from being affected by mud, uprooted trees, or other material.

(11) Information relative to the adequacy of construction of any retaining walls.

- (b) No work shall be permitted until reviewed and approved by the city engineer. Neither the issuance of a permit nor compliance with the conditions thereof or with the provisions of this article shall relieve any person from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of any permit hereunder serve to impose liability on the city or its officers or employees for injury or damage to persons or property. An approval of an application issued pursuant to this article shall not relieve the applicant of the responsibility of complying with any other requirement established by law, regulation, or Code provision.

(Ord. No. 1293, § 1, 4-6-2015)

Sec. 110-80. - Lawn fertilizer regulations.

No person shall apply fertilizer to or deposit grass clippings, leaves, or other vegetative materials on impervious surfaces or within stormwater drainage systems, natural drainageways, or wetland buffer areas. Fertilizer applications shall not be made within one rod (16.5 feet) of any protected wetland or water resource.

(Ord. No. 1293, § 1, 4-6-2015)

Sec. 110-81. - Other controls.

In the event of any conflict between the provisions of this article and the provisions of an erosion control or shore land protection ordinance adopted by the city, the more restrictive standard prevails.

(Ord. No. 1293, § 1, 4-6-2015)

Sec. 110-82. - Financial securities.

(a) *Generally.*

- (1) The applicant shall provide security for the performance of the work described and delineated on the approved grading plan involving the stormwater management plan and any SWPPP related remedial work in an amount of \$3,000.00 per gross acre or \$1,000.00 for each single- or two-family home, whichever is greater.
- (2) This security must be available prior to commencing the project.
- (3) The form of the securities shall adhere to the following:
  - a. The first \$3,000.00 (in U.S. currency) or 15 percent, whichever is greater, of this financial security must be by cash deposit to the city.
  - b. Deposit with the city, a responsible escrow agent or trust company, at the option of the city, money, an irrevocable letter of credit, negotiable bonds of the kind approved for securing deposits of public money or other instruments of credit from one or more financial institutions, subject to regulation by the state and federal government wherein the financial institution pledges that the funds are on deposit and guaranteed for payment. The type of security must be of a type acceptable by the city.
  - c. The city may request a greater financial security, if the city considers that the development site is especially prone to erosion or the resource to be protected is especially valuable.

(b) *Maintaining the financial security.*

- (1) If at any time during the course of the work this amount falls below 50 percent of the required deposit, the developer shall make another deposit in the amount necessary to restore the deposit to the required amount.

- (2) If the developer does not bring the financial security back up to the required amount within seven days after notified by the city that the amount has fallen below 50 percent of the required amount, the city may:
  - a. Withhold the scheduling of inspections and/or the issuance of a certificate of occupancy; and/or
  - b. Revoke any permit issued by the city to the applicant for the site in question.
- (c) *Proportional reduction of the financial security.* When more than half of the development's exposed soil area achieves final stabilization, the city may reduce the total required amount of the financial security by half, if recommended by the city engineer.
- (d) *Action against the financial security.*
  - (1) The city may act against the financial security if any of the conditions listed below exist.
  - (2) The city shall use funds from this security to finance remedial work undertaken by the city or a private contractor under contract to the city and to reimburse the city for all direct cost incurred in the process of remedial work including, but not limited to, staff time, attorney's fees, consulting fees and any other fees related thereto.
    - a. The developer ceases land disturbing activities and/or filling and abandons the work site prior to completion of the grading plan.
    - b. The developer fails to conform to the grading plan and/or stormwater management plan and/or the SWPPP as approved by the city.
    - c. The techniques utilized under the stormwater management plan or SWPPP fail within one year of installation.
    - d. The developer fails to reimburse the city for corrective action taken under section 110-83.
- (e) *Returning the financial security.* Any unspent amount of the financial security deposited with the city for faithful performance of the stormwater management plan or SWPPP and any stormwater management plan or SWPPP related remedial work must be released six months after the completion of the installation of all stormwater pollution control measures as shown on the grading and/or the SWPPP and establishment of final stabilization.

(Ord. No. 1293, § 1, 4-6-2015)

Sec. 110-83. - Notification of failure of the stormwater management plan or SWPPP.

The city shall notify the developer when the city is going to act on the financial securities part of this chapter.

- (1) *Notification by the city.* The initial contact will be to a party or parties listed on the application. Forty-eight hours after notification by the city or 72 hours after the failure of erosion control measures, whichever is less, the city, at its discretion, may begin corrective work.
- (2) *Erosion off-site.*
  - a. If erosion breaches the perimeter of the site, the applicant shall immediately develop a cleanup and restoration plan, obtain the right-of-entry from the adjoining property owner, and implement the cleanup and restoration plan within 48 hours of obtaining the adjoining property owner's permission.
  - b. In no case, unless written approval is received from the city, shall more than seven calendar days go by without corrective action being taken.
  - c. If in the discretion of the city, the applicant does not repair the damage caused by the erosion, the city may do the remedial work required and charge the cost to the applicant.
- (3) *Erosion into streets, wetlands or water bodies.*

- a. If eroded soils (including tracked soils from construction activities) enter or appear likely to enter streets, water bodies, prevention strategies, cleanup and repair must be immediate.
  - b. The applicant shall provide all traffic control and flagging required to protect the traveling public during the cleanup operations.
- (4) *Failure to do corrective work.* When an applicant fails to conform to any provision of this policy within the time stipulated, the city may take the following actions:
- a. Withhold the scheduling of inspections and/or the issuance of a certificate of occupancy;
  - b. Revoke any permit issued by the city to the applicant for the site in question;
  - c. Direct the correction of the deficiency by city forces or by a separate contract. The issuance of a permit constitutes a right-of-entry for the city or its contractor to enter upon the construction site for the purpose of correcting deficiencies in erosion control;
  - d. All costs incurred by the city in correcting stormwater pollution control deficiencies must be reimbursed by the applicant. If payment is not made within 30 days after costs are incurred by the city, payment will be made from the applicant's financial securities as described in section 110-82; and
  - e. If there is an insufficient financial amount, in the applicant's financial securities as described in section 110-82, to cover the costs incurred by the city, then the city may assess the remaining amount against the property.

(Ord. No. 1293, § 1, 4-6-2015)

Sec. 110-84. - Inspection.

- (a) *Notification.* The erosion control inspector shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the applicant wherein the work fails to comply with the erosion and sediment control plan as approved.
- (b) *Procedure.* The Applicant is responsible for regular inspections and record keeping needed to document compliance with the permit requirements. The Applicant must inspect the construction project once per week and within 24 hours after a rain event greater than one-half inches. The city may conduct inspections as needed to ensure that both erosion and sediment control and stormwater measures are properly installed and maintained prior to construction, during construction, and at the completion of the project. The applicant shall notify the city a minimum of 72 hours prior to the following required city inspections:
  - (1) *Initial inspection.* When all erosion and sediment control BMPs are installed. This inspection must be completed before a building permit can be issued.
  - (2) *Project complete inspection.* When the project is complete including, but not limited to, final grading, installation of all stormwater management facilities, and final stabilization measures are complete. One-year warranty begins after inspector approves project.
  - (3) *Warranty inspection.* Completed one year later to confirm that permanent site stabilization methods have been successful and vegetation, has been established.
- (c) *Reporting.* The applicant shall submit reports to the city engineer under the following circumstances and shall submit recommendations for corrective measures, if appropriate, with such reports:
  - (1) There are delays of more than seven days in obtaining materials, machinery, services or manpower necessary to the implementation of the stormwater management plan as scheduled.
  - (2) There are delays of seven days in land disturbing or filling activities or soil storage.

- (3) The work is not being done in conformance with the approved plans and permit. Any changes to the approved plans shall be submitted to the city engineer for review and approval before work can commence.

(Ord. No. 1293, § 1, 4-6-2015)

Sec. 110-85. - Right of entry.

The issuance of a permit constitutes a right-of-entry for the city or its contractor to enter the construction site. The applicant shall allow the city and its authorized representatives, to:

- (1) Enter the permitted site for the purpose of obtaining information, examining records, conducting investigations or surveys;
- (2) Bring such equipment on the site as is necessary to conduct such surveys and investigations;
- (3) Examine and copy any books, papers, or digital files pertaining to activities or records required to be kept under the terms and conditions of the permitted site;
- (4) Inspect the stormwater pollution control measures;
- (5) Sample and monitor any items or activities pertaining to stormwater pollution control measures;
- (6) Correct deficiencies in stormwater and erosion and sediment control measures consistent with the city's ordinances.

(Ord. No. 1293, § 1, 4-6-2015)

Sec. 110-86. - Search warrants.

If city employees have been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of a search warrant from any court of competent jurisdiction.

(Ord. No. 1293, § 1, 4-6-2015)

Sec. 110-87. - Penalty.

Any person, firm or corporation violating any provision of this article shall be sent a notice of violation and if there is no compliance the city may take actions pursuant to this section.

- (1) *Notice of violation.* When the city determines that an activity is not being carried out in accordance with the requirements of this article, it shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:
  - a. The name and address of the owner;
  - b. The address when available or a description of the land upon which the violation is occurring;
  - c. A statement specifying the nature of the violation;
  - d. A description of the remedial measures necessary to bring the development activity into compliance with this article and a time schedule for the completion of such remedial action;
  - e. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and

f. A statement that the determination of violation may be appealed to the city by filing a written notice of appeal within 10 days of services notice of violation.

- (2) *Stop work orders.* Persons receiving a notice of violation will be required to halt all construction activities. This stop work order will be in effect until the city confirms that the land disturbance activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this article.
- (3) *Civil and criminal penalties.* In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a misdemeanor and subject to prosecution. Such person shall be guilty of a separate offense for each day during which the violation occurs or continues. In the alternative, an administrative citation may be issued pursuant to chapter 38.
- (4) *Restoration of lands.* Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the city may take necessary corrective action, the cost of which may, after notice and opportunity for hearing, be specially assessed against the property and collected along with the ordinary taxes by the county.

(Ord. No. 1293, § 1, 4-6-2015)

Sec. 110-88. - Appeals.

Any person aggrieved by the action of any official charged with the enforcement of the ordinance from which this article is derived, as the result of the disapproval of a properly filed application for approval, issuance of a written notice of violation, or an alleged failure to properly enforce the ordinance from which this article is derived in regard to a specific application, shall have the right to appeal the action to the city by following the appeal process in chapter 38.

(Ord. No. 1293, § 1, 4-6-2015)

Secs. 110-89—110-103. - Reserved.

**216D.03 NOTIFICATION CENTER.**

Subdivision 1. **Participation.** An operator shall participate in and share in the costs of one statewide notification center operated by a vendor selected under subdivision 2.

Subd. 2. **Establishment of notification center; rules.** (a) The notification center services must be provided by a nonprofit corporation approved in writing by the commissioner. The nonprofit corporation must be governed by a board of directors of up to 20 members, one of whom is the director of the Office of Pipeline Safety. The other board members must represent and be elected by operators, excavators, and other persons eligible to participate in the center. In deciding to approve a nonprofit corporation, the commissioner shall consider whether it meets the requirements of this paragraph and whether it demonstrates that it has the ability to contract for and implement the notification center service.

(b) The commissioner shall adopt rules:

(1) establishing a notification process and competitive bidding procedure for selecting a vendor to provide the notification service;

(2) governing the operating procedures and technology needed for a statewide notification center; and

(3) setting forth the method for assessing the cost of the service among operators.

(c) The commissioner shall select a vendor to provide the notification center service. The commissioner may advertise for bids as provided in section 16C.06, subdivisions 1 and 2, and base the selection of a vendor on best value as provided in section 16C.06, subdivision 6. The commissioner shall select and contract with the vendor to provide the notification center service, but all costs of the center must be paid by the operators. The commissioner may at any time appoint a task force to advise on the renewal of the contract or any other matter involving the center's operations.

(d) An operator may submit a bid and be selected to contract to provide the notification center service under paragraph (a) or (c). The commissioner shall annually review the services provided by the nonprofit corporation approved under paragraph (a) or the vendor selected under paragraph (c).

Subd. 3. **Cooperation with local government.** In establishing operating procedures and technology for the statewide notification center, the board of directors or the commissioner must work in cooperation with the League of Minnesota Cities, the Association of Minnesota Counties, and the Township Officers' Association. The purpose of this cooperation is to maximize the participation of local governmental units that issue permits for activities involving excavation to assure that excavators receive notice of and comply with the requirements of sections 216D.01 to 216D.07.

Subd. 4. **Notice to local government.** The notification center shall provide local governmental units with a master list, by county, of the operators in the county who are participants in the notification center, and the telephone number and mailing address of the notification center.

Subd. 5. **Performance reporting.** (a) Each operator must submit a report to the Office of Pipeline Safety on a quarterly basis, using a form or database entry designated by the Office of Pipeline Safety. The report must contain the following information:

(1) the total number of notifications and the number of notifications, itemized by type;

(2) for each notification type, the percentage of notifications marked by the start time on the notice; and

(3) the number of utility damages, itemized by the cause of the damages.

(b) Except for a pipeline operator that is subject to chapter 299F or 299J, an operator with fewer than 5,000 notifications received during the previous calendar year is exempt from the reporting requirement under paragraph (a).

(c) The data collected under this subdivision may not be used to initiate an enforcement action by the Office of Pipeline Safety.

(d) The commissioner must annually publish a report on the data collected under this subdivision and make the report available on the Office of Pipeline Safety website.

**History:** 1987 c 353 s 9; 1997 c 187 art 1 s 15; 1998 c 386 art 2 s 69; 2024 c 104 art 1 s 89

**216D.04 EXCAVATION; LAND SURVEY.**

Subdivision 1. **Notice required; contents.** (a) Except in an emergency, an excavator must and a land surveyor may contact the notification center and provide notice at least 48 hours, excluding the day of notification, Saturdays, Sundays, and holidays and not more than 14 calendar days before beginning any excavation or boundary survey. An excavation or boundary survey begins, for purposes of this requirement, the first time excavation or a boundary survey occurs in an area that was not previously identified by the excavator or land surveyor in the notice.

(b) The notice may be oral or written, and must contain the following information:

- (1) the name of the individual providing the notice;
- (2) the precise location of the proposed area of excavation or survey;
- (3) the name, address, and telephone number of the individual or individual's company;
- (4) the field telephone number, if one is available;
- (5) the type and extent of the activity;
- (6) whether or not the discharge of explosives is anticipated;
- (7) the date and time when the excavation or survey is to commence; and
- (8) the estimated duration of the activity.

Subd. 1a. **Plans for excavation.** (a) Any person, prior to soliciting bids or entering into a contract for excavation, must provide a proposed notice to the notification center to obtain from the affected operators of underground facilities the type, size, and general location of underground facilities. Affected operators must provide the information within 15 working days. An operator who provides information to a person who is not a unit of government may indicate any portions of the information which are proprietary and may require the person to provide appropriate confidentiality protection. The information obtained from affected operators must be submitted on the final drawing used for the bid or contract and must depict the utility quality level of that information. This information must be updated not more than 90 days before completion of the final drawing used for the bid or contract.

(b) This subdivision does not apply to bids and contracts for:

- (1) routine maintenance of underground facilities or installation, maintenance, or repair of service lines;
- (2) excavation for operators of underground facilities performed on a unit of work or similar basis; or
- (3) excavation for home construction and projects by home owners.

(c) A person required by this section to show existing underground facilities on its drawings must conduct one or more preliminary design meetings during the design phase to communicate the project design and project scope and timeline and to coordinate utility relocation. Affected facility operators must attend these meetings. Project owners must provide project start dates, duration information, and scope of work.

(d) A person required by this section to show existing underground facilities on its drawings must conduct one or more preconstruction meetings to communicate the project design and project scope and timeline and to coordinate utility relocation. Affected facility operators and contractors must attend these meetings.

(e) This subdivision does not affect the obligation to provide a notice of excavation as required under subdivision 1.

Subd. 1b. **On-site meet.** (a) An on-site meet may be requested for any excavation at the discretion of the excavator. The meet request must include the entire geographic area of the proposed excavation and the specific location of the meet.

(b) Unless otherwise agreed to between an excavator and operator, an on-site meet is required for:

(1) an excavation notice that involves excavation of one mile or more in length; or

(2) any combination of notices provided for adjacent geographic sections that, when combined, meet or exceed the minimum excavation length under clause (1).

(c) The excavator must provide a precise geographic area of the proposed excavation and use markings as specified under section 216D.05, clause (2).

(d) An affected operator must (1) attend the on-site meet at the proposed date and time, or (2) contact the excavator before the meet and (i) reschedule the meet for a mutually agreed date and time, or (ii) reach an agreement with the excavator that a meet is not required. At the meet, the operator and the excavator must reach an agreement on any subsequent planned meets or further communication.

(e) The on-site meet date and time must occur at least 48 hours after the notice, excluding Saturdays, Sundays, and holidays. The excavation start time must be at least 48 hours after the proposed meet date and time specified on the notice, excluding Saturdays, Sundays, and holidays.

(f) The excavator and the operator must submit documentation of each on-site meet to the notification center, in the manner specified by the notification center. The documentation must include:

(1) the date and time of the meet;

(2) the names, company affiliations, and contact information of the attendees of each meet;

(3) a diagram, sketch, or description of the precise excavation locations, dates, and times; and

(4) the agreed schedule of any future on-site meets or communications.

Subd. 2. **Duties of notification center; regarding notice.** The notification center must assign an inquiry identification number to each notice and retain a record of all notices received for at least six years. The center must immediately transmit the information contained in a notice to every operator that has an underground facility in the area of the proposed excavation or boundary survey.

Subd. 3. **Locating underground facility; operator.** (a) Prior to the conclusion of the locate period, an operator must locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator and provide readily available information regarding the operator's abandoned and out-of-service underground facilities as shown on maps, drawings, diagrams, or other records used in the operator's normal course of business, without cost to the excavator. The excavator must determine the precise location of the underground facility, without damage, before excavating within two feet of the marked location of the underground facility.

(b) Within 96 hours or the time specified in the notice, whichever is later, after receiving a notice for boundary survey from the notification center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the land surveyor and operator, an operator must locate and mark or otherwise provide

the approximate horizontal location of the underground facilities of the operator, without cost to the land surveyor.

(c) For the purpose of this section, the approximate horizontal location of the underground facilities is a strip of land two feet on either side of the underground facilities.

(d) Markers used to designate the approximate horizontal location of underground facilities are subject to the following requirements:

(1) markers must be a combination of paint markings and at least one of the following: (i) a flag or flags, (ii) a stake or stakes, or (iii) a whisker or whiskers;

(2) all markers under clause (1) must follow the current color code standard used by the American Public Works Association;

(3) markers must be located within a plus or minus two-foot tolerance; and

(4) the name of the operator must be indicated on each flag, stake, or whisker.

If the surface being marked is hard, markers without flags, stakes, or whiskers may be used but must comply with the color code standard and tolerance requirement under clauses (2) and (3).

(e) If the operator cannot complete marking of the excavation or boundary survey area before the excavation or boundary survey start time stated in the notice, the operator must promptly contact the excavator or land surveyor.

(f) Operators must maintain maps, drawings, diagrams, or other records of any underground facility abandoned or out-of-service after December 31, 1998.

(g) An operator or other person providing information pursuant to this subdivision is not responsible to any person, for any costs, claims, or damages for information provided in good faith regarding abandoned, out-of-service, or private or customer-owned underground facilities.

(h) An operator must use geospatial location information or an equivalent technology to develop as-built drawings of newly installed or newly abandoned facilities if exposed in the excavation area. The requirements under this paragraph apply (1) on or after January 1, 2026, or (2) on or after January 1, 2027, for an operator that provided services to fewer than 10,000 customers in calendar year 2025.

**Subd. 4. Locating underground facility; excavator or land surveyor.** (a) The excavator or land surveyor must determine the precise location of the underground facility, without damage, before excavating within two feet on either side of the marked location of the underground facility.

(b) Activities in the proposed area of excavation or boundary survey must take place before the expiration date and time on the notification. If the excavator or land surveyor cancels the excavation or boundary survey, the excavator or land surveyor must cancel the notice through the notification center.

(c) The notice is valid for 14 calendar days from the start time stated on the notice. If the activity will continue after the expiration time, then the person responsible for the activity must serve an additional notice at least 48 hours, excluding Saturdays, Sundays, and holidays, before the expiration time of the original notice, unless the excavator makes arrangements with the operators affected to periodically verify or refresh the marks, in which case the notice is valid for six months from the start time stated on the notice.

(d) The excavator is responsible for reasonably protecting and preserving the marks until no longer required for proper and safe excavation near the underground facility. If the excavator has reason to believe the marks are obliterated, obscured, missing, or incorrect, the excavator must notify the facility operator or notification center in order to have an operator verify or refresh the marks.

**History:** *1987 c 353 s 10; 1992 c 493 s 5; 1993 c 341 art 1 s 21; 1997 c 196 s 1; 1998 c 348 s 1-3; 2004 c 163 s 2-6; 2024 c 104 art 1 s 90*

**216D.05 PRECAUTIONS TO AVOID DAMAGE.**

(a) An excavator must:

(1) plan the excavation to avoid damage to and minimize interference with underground facilities in and near the construction area;

(2) for proposed excavations, use (i) white markings or black markings in wintery conditions, or (ii) electronic marking as provided in paragraph (b);

(3) maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility;

(4) provide support for underground facilities in and near the construction area, including during backfill operations, to protect the facilities; and

(5) conduct the excavation in a careful and prudent manner.

(b) An excavator may use electronic marking under paragraph (a), clause (2), if:

(1) the marking provides at least as much proposed excavation information as equivalent physical markings; and

(2) electronic marking used prior to January 1, 2026, is accompanied by equivalent physical markings as provided under paragraph (a), clause (2).

(c) Following submission of electronic marking, an operator may require the excavator to use physical markings.

**History:** *1987 c 353 s 11; 1998 c 348 s 4; 2004 c 163 s 7; 2024 c 104 art 1 s 91*

**216D.06 DAMAGE TO FACILITY.**

Subdivision 1. **Notice; repair.** (a) If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator promptly. When the operator receives a damage notice, the operator shall promptly dispatch personnel to the damage area to investigate. If the damage results in the escape of any flammable, toxic, or corrosive gas or liquid or endangers life, health, or property, the excavator responsible shall immediately notify the operator and the 911 public safety answering point, as defined in section 403.02, subdivision 19, and take immediate action to protect the public and property. The excavator shall also attempt to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and completed their assessment. The 911 public safety answering point shall maintain a response plan for notifications generated by this section.

(b) An excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.

(c) An excavator who knowingly damages an underground facility, and who does not notify the operator as soon as reasonably possible or who backfills in violation of paragraph (b), is guilty of a misdemeanor.

Subd. 2. **Cost reimbursement.** (a) If an excavator damages an underground facility, the excavator shall reimburse the operator for the cost of necessary repairs, and for a pipeline the cost of the product that was being carried in the pipeline and was lost as a direct result of the damage.

(b) Reimbursement is not required if the damage to the underground facility was caused by the sole negligence of the operator or the operator failed to comply with section 216D.04, subdivision 3.

Subd. 3. MS 2022 [Repealed, 2024 c 104 art 1 s 110]

**History:** 1987 c 353 s 12; 1999 c 43 s 1

**216D.07 EFFECT ON LOCAL ORDINANCES.**

(a) Sections 216D.01 to 216D.07 do not affect or impair local ordinances, charters, or other provisions of law requiring permits to be obtained before excavating.

(b) A person with a permit for excavation from the state or a public agency is subject to sections 216D.01 to 216D.07. The state or public agency that issued a permit for excavation is not liable for the actions of an excavator who fails to comply with sections 216D.01 to 216D.07.

**History:** *1987 c 353 s 13*