

IX

R. C. No. 8 - 23 - 24. By PUBLIC WORKS COMMITTEE. May 15, 2023.


Your Committee to whom was referred Gen. Ord. No. 1-23-24 by Alderpersons Dekker and Rust repealing and recreating Appendix D, Construction Site Erosion Control, of the Sheboygan Municipal Code, providing for construction site erosion control at sites where the construction activities do not include the construction of a building, and repealing and recreating Appendix E, Post-Construction Stormwater Management Zoning Ordinance, of the Sheboygan Municipal Code, providing for the control of post-construction runoff to waters of the State; recommends adopting the Substitute Ordinance.

_____ Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor


Subs. of Gen. Ord. No. 1 - 23 - 24. By Alderpersons Dekker and Rust.
May 15, 2023.

AN ORDINANCE repealing and recreating Appendix D, Construction Site Erosion Control, of the Sheboygan Municipal Code, providing for construction site erosion control at sites where the construction activities do not include the construction of a building, and repealing and recreating Appendix E, Post-Construction Stormwater Management Zoning Ordinance, of the Sheboygan Municipal Code, providing for the control of post-construction runoff to waters of the State.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Appendix D, Construction Site Erosion Control, of the Sheboygan Municipal Code, providing for construction site erosion control at sites where the construction activities do not include the construction of a building is hereby repealed and recreated to read as follows:

"APPENDIX D - CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

Sections:

- Sec. 1.0 Authority.
- Sec. 2.0 Findings of Fact.
- Sec. 3.0 Purpose.
- Sec. 4.0 Applicability and Jurisdiction.
- Sec. 5.0 Definitions.
- Sec. 5.5 Applicability of Maximum Extent Practicable.
- Sec. 6.0 Technical Standards.
- Sec. 7.0 Performance Standards for Construction Sites Under One Acre.
- Sec. 8.0 Performance Standards for Construction Sites of One Acre or More.
- Sec. 9.0 Permitting Requirements, Procedures and Fees.
- Sec. 10.0 Erosion and Sediment Control Plan, Statement and Amendments.
- Sec. 11.0 Fee Schedule.
- Sec. 12.0 Inspection.
- Sec. 13.0 Enforcement.
- Sec. 14.0 Appeals.
- Sec. 15.0 Severability.
- Sec. 16.0 Effective Date.

Sec. 1.0. Authority.

- 1.1. This ordinance is adopted under the authority granted by Wis. Stat. § 62.234 and applies to land-disturbing construction activities and land-developing activities on land within the

boundaries and jurisdiction of the City. This ordinance supersedes all provisions of an ordinance previously enacted under Wis. Stat. § 62.23 that relate to construction site erosion control. Except as otherwise specified in Wis. Stat. § 62.234, Wis. Stat. § 62.23 applies to this ordinance and to any amendments to this ordinance.

- 1.2. The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
- 1.3. The Common Council hereby designates the Director of Public Works to administer and enforce the provisions of this ordinance.
- 1.4. The requirements of this ordinance do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits, or approvals, including those authorized under Wis. Stat. §§ 281.16 and 283.33;
 - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under Wis. Adm. Code § 151.004.

Sec. 2.0. Findings of Fact. The Common Council acknowledges that runoff from land-disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the State in the City of Sheboygan.

Sec. 3.0. Purpose. The purpose of this ordinance is to maintain safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion and sediment discharge; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land-disturbing construction activity to waters of the State in the City of Sheboygan.

Sec. 4.0. Applicability and Jurisdiction.

4.1. Applicability.

- (a) Except as provided under par. (b), this ordinance applies to any construction site as defined under section 5.0(g).

(b) This ordinance does not apply to the following:

1. Transportation facilities under the jurisdiction of the Wisconsin Department of Transportation or the Shoreline Metro Transit, except transportation facility construction projects that are part of a larger common plan of development such as local roads within a residential or industrial development. Municipal transportation projects under the jurisdiction of the City of Sheboygan are subject to ordinance requirements.
2. A construction project that is exempted by federal statutes or regulations from the requirements to have a national pollutant discharge elimination system permit issued under chapter 40, Code of Federal Regulations, part 122, for land-disturbing construction activity.
3. Nonpoint discharges from agricultural facilities and practices.
4. Nonpoint discharges from silviculture activities.
5. Routine maintenance for project sites that have less than five acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

(c) Notwithstanding the applicability requirements in par. (a), this ordinance applies to construction sites of any size, that, as determined by the Department of Public Works, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, or that increases water pollution by scouring or transporting particulate.

4.2. Jurisdiction. This ordinance applies to land-disturbing construction activities on lands within the boundaries and jurisdiction of the City of Sheboygan, as well as the extraterritorial division of land subject to an ordinance enacted pursuant to Wis. Stat. §§ 236.45(2) and (3).

4.3. Exclusions. This ordinance is not applicable to activities conducted by a state agency, as defined by Wis. Stat. § 227.01(1).

4.4. Interpretation. In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by Wisconsin law.

Sec. 5.0. Definitions.

- (a) "Administering Authority" means a governmental employee, or a regional planning commission empowered by Wis. Stat. § 62.234, that is designated by the City of Sheboygan to administer this ordinance.
- (b) "Agricultural Facilities and Practices" has the meaning in Wis. Stat. § 281.16(1).
- (c) "Best Management Practice" or "BMP" means structural or non-structural measures, practices, techniques, or devices employed to avoid or minimize soil, sediment, or pollutants carried in runoff to waters of the State.
- (d) "Business Day" means a day the offices of the City of Sheboygan are routinely and customarily open for business.
- (e) "Cease and Desist Order" means a court-issued order to halt land-disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the City.
- (f) "Commercial Land Use" means use of land for the retail or wholesale of goods or services.
- (g) "Construction Site" means an area upon which one or more land-disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land-disturbing construction activities may be taking place at different times on different schedules but under one plan. A long-range planning document that describes separate construction projects, such as a 20-year transportation improvement plan, is not a common plan of development.
- (h) "Construction Site Control Measure" means a control measure used to meet the requirements of section 6.0.
- (i) "Control Measure" means a practice or combination of practices to control soil erosion and attendant pollution.
- (j) "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.

- (k) "Division of Land" means the creation from one parcel of three or more parcels or building sites of five or fewer acres each by the successive division within a five-year period.
- (l) "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice, or gravity.
- (m) "Erosion Control Plan Statement" means a written description of the number, locations, sizes, and other pertinent information of control measures designed to meet the requirements of this ordinance submitted by the applicant for review and approval by the Department of Public Works, for developments of up to one acre or single lot, except for one- and two- family dwelling units.
- (n) "Erosion and Sediment Control Plan" means a written plan of the number, locations, sizes, and other pertinent information of control measures designed to meet the requirements of this ordinance submitted by the Applicant for review and approval by the Department of Public Works for development of greater than one acre or multiple lots.
- (o) "Extraterritorial" means the unincorporated area within three miles of the corporate limits of a first-, second-, or third-class city, or within 1.5 miles of a fourth-class city or village.
- (p) "Final Stabilization" means that all land-disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.
- (q) "Governing Body" means the City of Sheboygan Common Council.
- (r) "Land-Disturbing Construction Activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the State. Land-disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.
- (s) "Landowner" means any person holding fee title, an easement, or other interest in property, which allows the person to undertake cropping, livestock management, land-disturbing construction activity, or maintenance of stormwater BMPs on the property.
- (t) "Land User" means any person operating, leasing, renting, or having made other arrangements with the landowner by which the landowner authorizes use of their land.

- (u) "Maximum Extent Practicable" means the highest level of performance that is achievable but is not equivalent to a performance standard identified in this ordinance as determined in accordance with section 5.5.
- (v) "Performance Standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (w) "Permit" means a written authorization made by the Department of Public Works to the applicant to conduct land-disturbing construction activity or to discharge post-construction runoff to waters of the State.
- (x) "Pollutant" has the meaning given in Wis. Stat. § 283.01(13).
- (y) "Pollution" has the meaning given in Wis. Stat. § 281.01(1).
- (z) "Responsible Party" means the landowner and any other entity holding fee title to the property performing services to meet the requirements of this ordinance through a contract or other agreement.
- (aa) "Runoff" means stormwater or precipitation including rain, snow, or ice melt, or similar water that moves on the land surface via sheet or channelized flow.
- (bb) "Sediment" means settleable solid material that is transported by runoff, suspended within runoff, or deposited by runoff away from its original location.
- (cc) "Silviculture Activity" means activities, including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of a construction site area is not a silviculture activity.
- (dd) "Site" means the entire area included in the legal description of the land on which the land-disturbing construction activity is proposed in the permit application.
- (ee) "Stop Work Order" means an order issued by the Department of Public Works or Building Inspection Department, which requires that all construction activity on the site be stopped.
- (ff) "Technical Standard" means a document that specifies design, predicted performance, and operation and maintenance specifications for a material, device, or method.
- (gg) "Transportation Facility" means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail, or any other public work for transportation purposes such as harbor improvements under Wis. Stat. § 85.095(1)(b). "Transportation Facility" does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Wisconsin Department of Natural Resources pursuant to Wis. Stat. § 281.33.

- (hh) "Waters of the State" includes those portions of Lake Michigan and Lake Superior within the boundaries of this State, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems, and other surface water or groundwater - natural or artificial, public, or private - within this State or within its jurisdiction.

Sec. 5.5. Applicability of Maximum Extent Practicable. Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the Department of Public Works' satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

Sec. 6.0. Technical Standards. All BMPs required for compliance with this ordinance shall meet design criteria, standards, and specifications based on any of the following:

- (a) Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of Wis. Admin. Code Ch. NR 151.
- (b) Soil loss prediction tools, such as Universal Soil Loss Equation (USLE), when using an appropriate rainfall or runoff factor, also referred to as the "R factor," or an appropriate design storm and precipitation distribution, and when considering the geographic location of the site and the period of disturbance.
- (c) Technical standards and methods approved by the Department of Public Works.

Sec. 7.0. Performance Standards for Construction Sites Under One Acre.

- 7.1. Responsible Party. The responsible party shall comply with this section.
- 7.2. Erosion and Sediment Control Practices. Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:

- (a) The deposition of soil from being tracked onto streets by vehicles.
- (b) The discharge of sediment from disturbed areas into on-site storm water inlets.
- (c) The discharge of sediment from disturbed areas into adjacent waters of the State.
- (d) The discharge of sediment from drainage ways that flow off the site.
- (e) The discharge of sediment by dewatering activities.
- (f) The discharge of sediment eroding from soil stockpiles existing for more than seven days.
- (g) The transport by runoff into waters of the State of chemicals, cement, and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the State, such as constructing bridge footings or BMP installations, are not prohibited by this subdivision.

7.3. Location. The BMPs shall be located so that treatment occurs before runoff enters waters of the State.

7.4. Implementation. The BMPs used to comply with this section shall be implemented as follows:

- (a) Erosion and sediment control practices shall be constructed or installed before land-disturbing construction activities begin.
- (b) Erosion and sediment control practices shall be maintained until final stabilization.
- (c) Final stabilization activity shall commence when land-disturbing activities cease and final grade has been reached on any portion of the site.
- (d) Temporary stabilization activity shall commence when land-disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
- (e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

Sec. 8.0. Performance Standards for Construction Sites of One Acre or More.

8.1. Responsible Party. The responsible party shall comply with this section and implement the erosion and sediment control plan developed in accordance with Sec. 10.

8.2. Erosion and Sediment Control Plan. A written, site-specific erosion and sediment control plan shall be delivered in accordance with Sec. 10 of this ordinance and implemented for each construction site.

8.3. Erosion and Other Pollutant Control Requirements. The erosion and sediment control plan under Sec. 8.2 shall include the following:

(a) Erosion and Sediment Control Practices. Erosion and sediment control practices at each site where land-disturbing construction activity is to occur shall be used to prevent or reduce all of the following:

1. The deposition of soil from being tracked onto streets by vehicles.
2. The discharge of sediment from disturbed areas into on-site storm water inlets.
3. The discharge of sediment from disturbed areas into adjacent waters of the State.
4. The discharge of sediment from drainage ways that flow off the site.
5. The discharge of sediment by dewatering activities.
6. The discharge of sediment eroding from soil stockpiles existing for more than seven days.
7. The discharge of sediment from erosive flows at outlets and in downstream channels.
8. The transport by runoff into waters of the State of chemicals, cement, and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the State, such as constructing bridge footings or BMP installations, are not prohibited by this subsection.
9. The transport by runoff into waters of the State of untreated wash water from vehicle and wheel washing.

(b) Sediment Performance Standards. In addition to the erosion and sediment control practices under par. (a), the following erosion and sediment control practices shall be employed:

1. BMPs that, by design, discharge no more than five tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization.
2. No person shall be required to employ more BMPs than are needed to meet a performance standard in order to comply with maximum extent practicable. Erosion and sediment control BMPs may be combined to meet the requirements of this paragraph. Credit may be given toward meeting the sediment performance standard of this paragraph for limiting the duration or area, or both, of land-disturbing construction activity, or for other appropriate mechanisms.
3. Notwithstanding subd. 1, if BMPs cannot be designed and implemented to meet the sediment performance standards, the erosion and sediment control plan shall include a written, site-specific explanation of why the sediment performance standard cannot be met and how the sediment load will be reduced to the maximum extent practicable.

(c) Preventative Measures. The erosion and sediment control plan shall incorporate all of the following:

1. Maintenance of existing vegetation, especially adjacent to surface waters whenever possible.
2. Minimization of soil compaction and preservation of topsoil.
3. Minimization of land-disturbing construction activity on slopes of 20% or more.
4. Development of spill prevention and response procedures.

(d) Location. The BMPs used to comply with this section shall be located so that treatment occurs before runoff enters waters of the State.

8.4. Implementation. The BMPs used to comply with this section shall be implemented as follows:

- (a) Erosion and sediment control practices shall be constructed or installed before land-disturbing construction activities begin, in accordance with the erosion and sediment control plan developed in Sec. 8.2.
- (b) Erosion and sediment control practices shall be maintained until final stabilization.
- (c) Final stabilization activity shall commence when land-disturbing activities cease and final grade has been reached on any portion of the site.
- (d) Temporary stabilization activity shall commence when land-disturbing activities have temporarily ceased and will not resume for a period exceeding fourteen calendar days.
- (e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

Sec. 9.0. Permitting Requirements, Procedures, and Fees.

9.1. Permit Required. No responsible party may commence a land-disturbing construction activity subject to this ordinance without receiving prior approval of an erosion and sediment control plan for the site and a permit from the Department of Public Works.

9.2. Permit Application and Fees. The responsible party that will undertake a land-disturbing construction activity subject to this ordinance shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of Sec. 10, and shall pay an application fee to the Department of Public Works in the amount specified in Sec. 11. By submitting an application, the applicant is authorizing the Department of Public Works to enter the site to obtain information required for the review of the erosion and sediment control plan.

9.3. Permit Application Review and Approval. The Department of Public Works shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:

- (a) Within forty-five (45) business days of the receipt of a complete permit application, as required by Sec. 9.2,

the Department of Public Works shall inform the applicant whether the application and erosion and sediment control plan are approved or disapproved based on the requirements of this ordinance.

- (b) If the permit application and erosion and sediment control plan are approved, the Department of Public Works shall issue the permit.
- (c) If the permit application or erosion and sediment control plan is disapproved, the Department of Public Works shall state in writing the reasons for disapproval.
- (d) The Department of Public Works may request additional information from the applicant. If additional information is submitted, the Department of Public Works shall have thirty (30) business days from the date the additional information is received to inform the applicant that the erosion and sediment control plan is either approved or disapproved.
- (e) Failure by the Department of Public Works to inform the permit applicant of a decision within forty-five (45) business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.

9.4. Surety Bond. As a condition of approval and issuance of the permit, the Department of Public Works may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion and sediment control plan and any permit conditions.

9.5. Permit Requirements. All permits shall require the responsible party to:

- (a) Notify the Department of Public Works within forty-eight (48) hours of commencing any land-disturbing construction activity.
- (b) Notify the Department of Public Works of completion of any BMPs within fourteen (14) days after their installation.
- (c) Obtain permission in writing from the Department of Public Works prior to any modification pursuant to Sec. 10.3 of the erosion and sediment control plan.

- (d) Install all BMPs as identified in the approved erosion and sediment control plan.
- (e) Maintain all road drainage systems, stormwater drainage systems, BMPs, and other facilities identified in the erosion and sediment control plan.
- (f) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land-disturbing construction activities and document repairs in a site inspection log.
- (g) Inspect the BMPs within twenty-four (24) hours after each rain of 0.5 inches or more, which results in runoff during active construction periods, and at least once each week. Make needed repairs and install additional BMPs as necessary, and document these activities in an inspection log that also includes the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site.
- (h) Allow the Department of Public Works to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the erosion and sediment control plan. Keep a copy of the erosion and sediment control plan at the construction site.

9.6. Permit Conditions. Permits issued under this section may include conditions established by Department of Public Works in addition to the requirements set forth in Sec. 9.5, where needed to assure compliance with the performance standards in Sec. 7 or Sec. 8.

9.7. Permit Duration. Permits issued under this section shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The Department of Public Works may grant one or more extensions not to exceed 180 days cumulatively. The Department of Public Works may require additional BMPs as a condition of an extension if they are necessary to meet the requirements of this ordinance.

9.8. Maintenance. Throughout the duration of the construction activities, the responsible party shall maintain all BMPs necessary to meet the requirements of this ordinance until the site has undergone final stabilization.

Sec. 10.0. Erosion and Sediment Control Plan, Statement, and Amendments.

10.1. Erosion and Sediment Control Plan Statement. For each construction site identified under Sec. 4.1(c), an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the Department of Public Works. The erosion and sediment control plan statement shall briefly describe the site, the development schedule, the BMPs that will be used to meet the requirements of this ordinance, and shall include a site map.

10.2. Erosion and Sediment Control Plan Requirements.

- (a) An erosion and sediment control plan shall be prepared and submitted to the Department of Public Works.
- (b) The erosion and sediment control plan shall be designed to meet the performance standards in Secs. 7 & 8, and other requirements of this ordinance.
- (c) The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:
 - 1. Name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm. The application shall also include start and end dates for construction.
 - 2. Description of the construction site and the nature of the land-disturbing construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5-minute series topographic map.
 - 3. Description of the intended sequence of major land-disturbing construction activities for major portions of the construction site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of

temporary erosion and sediment control measures, and establishment of permanent vegetation.

4. Estimates of the total area of the construction site and the total area of the construction site that is expected to be disturbed by land-disturbing construction activities.
 5. Calculations to show the compliance with the performance standard in Sec. 8.3(b)1.
 6. Existing data describing the surface soil as well as subsoils.
 7. Depth to groundwater, as indicated by Natural Resources Conservation Service soil information where available.
 8. Name of the immediate named receiving water from the United States Geological Service 7.5-minute series topographic maps.
 9. Provisions for maintenance of the construction site control measures.
 10. A plan of final site conditions on the same scale as the existing map showing the site changes.
- (d) The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than 100 feet per inch and at a contour interval not to exceed five feet.
1. Existing topography, vegetative cover, natural and engineered drainage systems, roads, and surface waters. Lakes, streams, wetlands, channels, ditches, and other watercourses on an immediately adjacent to the site shall be shown. Any identified 100-year floodplains, flood fringes, and floodways shall also be shown.
 2. Boundaries of the construction site and immediately adjacent areas extending a minimum of two hundred (200) feet in each direction.
 3. Drainage patterns and approximate slopes anticipated after major grading activities.

4. Areas of soil disturbance.
 5. Location of major structural and non-structural controls identified in the erosion and sediment control plan.
 6. Location of areas where stabilization BMPs will be employed.
 7. Areas that will be vegetated following land-disturbing construction activities.
 8. Area(s) and location(s) of wetland on the construction site, and locations where stormwater is discharged to a surface water or wetland within one-quarter mile downstream of the construction site.
 9. Area(s) used for infiltration of post-construction stormwater runoff.
 10. An alphanumeric or equivalent grid overlying the entire construction site map.
 11. Locations and dimensions of utilities, structures, roads, highways, and paving.
 12. Primary and/or secondary environment corridors or other areas of significance.
 13. Locations and dimensions of all temporary soil or dirt stockpiles.
- (e) Each erosion and sediment control plan shall include a description of appropriate control BMPs that will be installed and maintained at the construction site to prevent pollutants from reaching waters of the State. The erosion and sediment control plan shall clearly describe the appropriate erosion and sediment control BMPs for each major land-disturbing construction activity and the timing during the period of land-disturbing construction activity that the erosion and sediment control BMPs will be implemented. The description of erosion and sediment control BMPs shall include, when appropriate, the following minimum requirements:

1. Description of interim and permanent stabilization practices, including a BMP implementation schedule. The erosion and sediment control plan shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.
2. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the Department of Public Works, structural measures shall be installed on upland soils.
3. Management of overland flow at all areas of the construction site, unless otherwise controlled by outfall controls.
4. Trapping of sediment in channelized flow.
5. Staging land-disturbing construction activities to limit exposed soil areas subject to erosion.
6. Protection of downslope drainage inlets where they occur.
7. Minimization of tracking at all vehicle and equipment entry and exit locations of the construction site.
8. Clean-up of off-site sediment deposits.
9. Proper disposal of building and waste material.
10. Stabilization of drainage ways.
11. Installation of permanent stabilization practices as soon as possible after final grading.
12. Minimization of dust to the maximum extent practicable.
13. Control of soil erosion from dirt stockpiles.

- (f) The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

10.3. Erosion and Sediment Control Plan Amendments. The applicant shall amend the erosion and sediment control plan if any of the following occur:

- (a) There is a change in design, construction, operation, or maintenance at the site, which has the reasonable potential for the discharge of pollutants to waters of the State and which has not otherwise been addressed in the erosion and sediment control plan.
- (b) The actions required by the erosion and sediment control plan fail to reduce the impacts of pollutants carried by construction site runoff.
- (c) The Department of Public Works notifies the applicant of changes needed in the erosion and sediment control plan.

Sec. 11.0. Fee Schedule. The fees referred to in other sections of this ordinance shall be established by the Department of Public Works and may be modified from time to time by resolution. A schedule of the fees established by the Department of Public Works shall be available for review at the Municipal Service Building. For one- and two-family residential, the appropriate fees are set forth in Section 26-38 of the Sheboygan Municipal Code and shall be submitted at the time of permit issuance. For commercial, industrial, and multi-family developments, the appropriate fees as established by resolution of the Common Council shall be submitted at the time of permit issuance.

Sec. 12.0. Inspection. The Department of Public Works shall be responsible for permitting and inspection of erosion control on public projects and work in the public right-of-way. The Building Inspection Department shall be responsible for inspection and erosion control on private lands.

The Building Inspector, City Engineer, or their designee shall inspect construction sites at least once a month during the period starting March 1 and ending October 31, and at least two times during the period starting November 1 and ending February 28, to ensure compliance with the erosion control plan. In addition, the Building Inspector, City Engineer, or their designee shall perform regular, year-

round inspections of construction sites to ensure compliance with the control plan, as needed.

If land-disturbing construction activities are occurring without a permit required by this ordinance, the Department of Public Works may enter the land pursuant to the provisions of Wis. Stat. §§ 66.0119(1), (2), and (3).

Sec. 13.0. Enforcement.

13.1. The Department of Public Works and/or Building Inspection Department may post a stop work order if any of the following occurs:

- (a) Land-disturbing construction activity regulated under this ordinance is occurring without a permit.
- (b) The erosion and sediment control plan is not being implemented in good faith.
- (c) The conditions of the permit are not being met.

13.2. If the responsible party does not cease activity as required in a stop work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the Department of Public Works may revoke the permit.

13.3. If the responsible party, where no permit has been issued or the permit has been revoked, does not cease the activity after being notified by the Department of Public Works, or if a responsible party violates a stop work order posted under Sec. 13.1, the Department of Public Works may request the City Attorney to obtain a cease and desist order in any court with jurisdiction.

13.4. The Department of Public Works may retract the stop work order issued under Sec. 13.1 or the permit revocation under Sec. 13.2.

13.5. Forty-eight (48) hours after posting a stop work order under Sec. 13.1, the Department of Public Works may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The Department of Public Works may go on the land and commence the work forty-eight (48) hours after issuing the notice of intent. The costs of the work performed by the Department of Public Works under this subsection, plus interest at the rate authorized by the Department of Public Works, shall be billed

to the responsible party. In the event a responsible party fails to pay the amount due, the City Clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to Wis. Stat. Ch. 66, Subch. VII.

- 13.6. Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$50.00 nor more than \$1000.00 and the costs of prosecution for each violation and, in default of payment of such forfeiture and costs, to imprisonment in the county jail until the forfeiture and costs are paid, but not to exceed forty (40) days for each offense. Each day a violation exists shall constitute a separate offense.
- 13.7. Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunction proceedings.
- 13.8. In the event of emergency conditions, as deemed by the Building Inspector, City Engineer, or their designee, whatever measures are necessary to bring the site into compliance shall be taken and all costs involved shall be paid by the responsible party.
- 13.9. In addition to stop work orders, other enforcement techniques, such as verbal warnings, written warnings, notice of violation, and civil penalty/citation are encouraged.

Sec. 14.0. Appeals.

- 14.1. Board of Zoning Appeals. The Board of Zoning Appeals created pursuant to section 15.934 of the Sheboygan Zoning Ordinance pursuant to Wis. Stat. § 61.354(4)(b):
 - (a) Shall hear and decide appeals where it is alleged that there is error in any order, decision, or determination made by the Department of Public Works in administering this ordinance except for cease and desist orders obtained under Sec. 13.3.
 - (b) May authorize, upon appeal, variances from the provisions of this ordinance which are not contrary to the public interest and where, owing to special

conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship.

- (c) Shall use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals and authorizing variances.

14.2. Who May Appeal. Appeals to the Board of Zoning Appeals may be taken by any aggrieved person or by any office, department, board, or bureau of the City of Sheboygan affected by any decision of the Department of Public Works within twenty days of such decision.

Sec. 15.0. Severability. If a court of competent jurisdiction judges any section, clause, provision, or portion of this ordinance unconstitutional or invalid, the remainder of this ordinance shall remain in force and not be affected by such judgment.

Sec. 16.0. Effective Date. This ordinance shall be in force and effect from and after its adoption and publication."

Section 2. Appendix E, Post-Construction Stormwater Management Zoning Ordinance, of the Sheboygan Municipal Code, providing for the control of post-construction runoff to reduce the discharge of pollutants carried in stormwater runoff to waters of the State, is hereby repealed and recreated to read as follows:

"APPENDIX E. POST-CONSTRUCTION STORMWATER MANAGEMENT ORDINANCE

Sections:

- Sec. 1.0 Authority.
- Sec. 2.0 Findings of Fact.
- Sec. 3.0 Purpose and Intent.
- Sec. 4.0 Applicability and Jurisdiction.
- Sec. 5.0 Definitions.
- Sec. 5.5 Applicability of Maximum Extent Practicable.
- Sec. 6.0 Technical Standards.
- Sec. 7.0 Performance Standards.
- Sec. 8.0 Permitting Requirements, Procedures, and Fees.
- Sec. 9.0 Stormwater Management Plan
- Sec. 10.0 Maintenance Agreement.
- Sec. 11.0 Financial Guarantee.
- Sec. 12.0 Fee Schedule.
- Sec. 13.0 Enforcement.
- Sec. 14.0 Appeals.
- Sec. 15.0 Severability.

Sec. 16.0 Effective Date.

Sec. 1.0. Authority.

- 1.1. This ordinance is adopted by the City of Sheboygan under the authority granted by Wis. Stat. § 62.234. This ordinance supersedes all provisions of an ordinance previously enacted under Wis. Stat. § 62.23 that relate to stormwater management regulations. Except as otherwise specified in Wis. Stat. § 62.234, Wis. Stat. § 62.23 applies to this ordinance and to any amendments to this ordinance.
- 1.2. The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the governing body.
- 1.3. The Common Council hereby designates the Department of Public Works to administer and enforce the provisions of this ordinance.
- 1.4. The requirements of this ordinance do not preempt more stringent stormwater management requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits, or approvals, including those authorized under Wis. Stat. §§ 281.16 and 283.33.
 - (b) Targeted non-agricultural performance standards promulgated by the Wisconsin Department of Natural Resources under Wis. Adm. Code § NR 151.004.

Sec. 2.0. Findings of Fact. The Common Council acknowledges that uncontrolled, post-construction runoff has a significant impact upon water resources and the health, safety, and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can:

- (1) Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.
- (2) Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens, and other urban pollutants.

- (3) After wetland communities by changing wetland hydrology and by increasing pollutant loads.
- (4) Reduce the quality of groundwater by increasing pollutant loading.
- (5) Threaten public health, safety, property, and general welfare by overtaxing storm sewers, drainage ways, and other minor drainage facilities.
- (6) Undermine floodplain management efforts by increasing the incidence and levels of flooding.

Sec. 3.0. Purpose and Intent.

- 3.1. Purpose. The general purpose of this ordinance is to establish long-term, post-construction runoff management requirements that will diminish the threats to public health, safety, welfare, and the aquatic environment. Specific purposes are to:
 - (a) Further the maintenance of safe and healthful conditions.
 - (b) Prevent and control the adverse effects of stormwater; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish, and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.
 - (c) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; and control increases in the scouring and transportation of particulate matter.
 - (d) Minimize the amount of pollutants discharged from the separate storm sewer to protect the waters of the State.
- 3.2. Intent. It is the intent of the Common Council that this ordinance regulates post-construction stormwater discharges to waters of the State. This ordinance may be applied on a site-by-site basis. The Common Council recognizes, however, that the preferred method of achieving the stormwater performance standards set forth in this ordinance is through the preparation and implementation of comprehensive,

systems-level stormwater management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional stormwater devices, practices, or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the State. Where such plans are in conformance with the performance standards developed under Wis. Stat. § 281.16 for regional stormwater management measures and have been approved by the Common Council, it is the intent of this ordinance that the approved stormwater management plan be used to identify post-construction management measures acceptable for the community.

Sec. 4.0. Applicability and Jurisdiction.

4.1. Applicability.

(a) Except as provided under par. (b), this ordinance applies to the following:

1. A post-construction site whereupon one acre or more of land-disturbing construction activity occurs during construction.
2. A post-construction site that had more than 1,000 square feet but less than one acre of land-disturbing activity shall be required to obtain a permit under this ordinance, but shall only be required to comply with the performance standards contained in section 7.4(b) regarding peak discharges unless otherwise required by the administering authority.

(b) A site that meets any of the criteria in this paragraph is exempt from the requirements of this ordinance:

1. A post-construction site with less than ten percent connected imperviousness, based on the area of land disturbance, provided the cumulative area of all impervious surfaces is less than one acre. However, the exemption of this paragraph does not include exemption from the protective area standard of this ordinance.
2. Agricultural facilities and practices.

3. Underground utility construction, but not including the construction of any above-ground structures associated with utility construction.

(c) Notwithstanding the applicability requirements in par. (a), this ordinance applies to post-construction sites of any size that, as determined by the Department of Public Works, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, causes undue channel erosion, or increases water pollution by scouring or the transportation of particulate matter.

4.2. Jurisdiction. This ordinance applies to post-construction sites within the boundaries and jurisdiction of the City of Sheboygan, as well as all lands located within the extraterritorial plat approval jurisdiction of the City of Sheboygan, even if plat approval is not involved.

4.3. Exclusions. This ordinance does not apply to activities conducted by a state agency, as defined under Wis. Stat. § 227.01(1).

Sec. 5.0. Definitions.

- (a) "Adequate Sod, or Self-Sustaining Vegetative Cover" means maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges, and duff layers of fallen leaves and woody debris.
- (b) "Administering Authority" means a governmental employee, or a regional planning commission empowered under Wis. Stat. § 62.234 that is designated by the Common Council to administer this ordinance.
- (c) "Agricultural Facilities and Practices" has the meaning given in Wis. Stat. § 281.16(1).
- (d) "Atlas 14" means the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.
- (e) "Average Annual Rainfall" means a typical calendar year of precipitation as determined by the Wisconsin Department of Natural Resources for users of models such as WinSLAMM, P8, or equivalent methodology. The average annual rainfall is chosen from a department publication for the location closest to the municipality.

- (f) "Best Management Practice" or "BMP" means structural or non-structural measures, practices, techniques, or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the State.
- (g) "Business Day" means a day the office of the Department of Public Works is routinely and customarily open for business.
- (h) "Cease and Desist Order" means a court-issued order to halt land-disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the Department of Public Works.
- (i) "Combined Sewer System" means a system for conveying both sanitary sewage and stormwater runoff.
- (j) "Connected Imperviousness" means an impervious surface connected to the waters of the State via a separate storm sewer, an impervious flow path, or a minimally pervious flow path.
- (k) "Design Storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.
- (l) "Development" means residential, commercial, industrial, or institutional land uses and associated roads.
- (m) "Direct Conduits to Groundwater" means wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow, fractured bedrock.
- (n) "Division of Land" has the meaning given in Section 3 of the City of Sheboygan Subdivision Code.
- (o) "Effective Infiltration Area" means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms, or pretreatment.
- (p) "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice, or gravity.
- (q) "Exceptional Resource Waters" means waters listed in Wis. Adm. Code. § NR 102.11.
- (r) "Extraterritorial" means the unincorporated area within three miles of the corporate limits of a first-, second-, or third-class city, or within one- and one-half miles of a fourth-class city or village.
- (s) "Filtering Layer" means soil that has at least a three-foot deep layer with at least 20% fines; or at least a five-foot deep layer with at least 10% fines; or an engineered soil with an equivalent level of protection as determined by the regularity authority for the site.

- (t) "Final Stabilization" means that all land-disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.
- (u) "Financial Guarantee" means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guaranteed submitted to the Department of Public Works by the responsible party to assure that requirements of the ordinance are carried out in compliance with the stormwater management plan.
- (v) "Governing Body" means the Common Council of the City of Sheboygan.
- (w) "Impervious Surface" means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, gravel, or paved parking lots and streets are examples of areas that typically are impervious.
- (x) "In-fill" means an undeveloped area of land located within an existing urban sewer service area surrounded by development or development and natural or man-made features where development cannot occur.
- (y) "Infiltration" means the entry of precipitation or runoff into or through the soil.
- (z) "Infiltration System" means a device or practice such as a basin, trench, rain garden, or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns, or minimal infiltration from practices such as swales or roadside channels designed for conveyance and pollutant removal only.
- (aa) "Karst feature" means an area or surficial geologic features subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps, or swallets.
- (bb) "Land-Disturbing Construction Activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the State. Land-disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.

- (cc) "Landowner" means any person holding fee title, an easement, or other interest in property, which allows the person to undertake cropping, livestock management, land-disturbing construction activity, or maintenance of stormwater BMPs on the property.
- (dd) "Maintenance Agreement" means a legal document that provides for long-term maintenance of stormwater management practices.
- (ee) "Maximum Extent Practicable" means the highest level of performance that is achievable but is not equivalent to a performance standard identified in this ordinance as determined in accordance with Sec. 5.5 of this ordinance.
- (ff) "New Development" means development resulting from the conversion of previously undeveloped land or agricultural land uses.
- (gg) "NRCS MSE3 or MSE4 Distribution" means a specific precipitation distribution developed by the United States Department of Agriculture, Natural Resources Conservation Service, using precipitation data from Atlas 14.
- (hh) "Off-site" means located outside the property boundary described in the permit application.
- (ii) "On-site" means located within the property boundary described in the permit application.
- (jj) "Ordinary High-water Mark" has the meaning given in Wis. Adm. Code § NR 115.03(6).
- (kk) "Outstanding Resource Waters" means waters listed in Wis. Adm. Code § NR 102.10.
- (ll) "Percent Fines" means the percentage of a given sample of soil, which passes through a #200 sieve.
- (mm) "Performance Standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (nn) "Permit" means a written authorization made by the Department of Public Works to the applicant to conduct land-disturbing construction activity or to discharge post-construction runoff to waters of the State.
- (oo) "Permit Administration Fee" means a sum of money paid to the Department of Public Works by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.
- (pp) "Pervious Surface" means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests, or similar vegetated areas are examples of surfaces that typically are pervious.
- (qq) "Pollutant" has the meaning given in Wis. Stat. § 283.01(13).
- (rr) "Pollution" has the meaning given in Wis. Stat. § 281.01(10).

- (ss) "Post-construction Site" means a construction site following the completion of land-disturbing construction activity and final site stabilization.
- (tt) "Pre-development Condition" means the extent and distribution of land cover types present before the initiation of land-disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.
- (uu) "Preventative Action Limit" has the meaning given in Wis. Adm. Code § NR 140.05(17).
- (vv) "Protective Area" means an area of land that commences at the top of the channel of lakes, streams, and rivers, or at the delineated boundary of wetlands, and that is the greatest of the widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface.
- (ww) "Redevelopment" means areas where development is replacing older development.
- (xx) "Responsible Party" means the landowner or any other entity performing services to meet the requirements of this ordinance through a contract or other agreement.
- (yy) "Runoff" means stormwater or precipitation, including rain, snow or ice melt, or similar water that moves on the land surface via sheet or channelized flow.
- (zz) "Separate Storm Sewer" means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels, or storm drains, which meets all of the following criteria:
 - 1. Is designed or used for collecting water or conveying runoff;
 - 2. Is not part of a combined sewer system;
 - 3. Is not part of a publicly-owned wastewater treatment works that provides secondary or more stringent treatment;
 - 4. Discharges directly or indirectly to waters of the State.
- (ab) "Silviculture Activity" means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of construction site area is not a silviculture activity.
- (ac) "Site" means the entire area included in the legal description of the land on which the land-disturbing construction activity occurred.
- (ad) "Stop Work Order" means an order issued by the Department of Public Works which requires that all construction activity on the site be stopped.

- (ae) "Stormwater Management Plan" is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.
- (af) "Technical Standard" means a document that specifies design, predicted performance and operation, and maintenance specifications for a material, device, or method.
- (ag) "Top of Channel" means an edge, or point on the landscape landward from the ordinary high-water mark of a surface water of the State, where the slope of the land begins to be less than 12% or less continually for at least fifty (50) feet. If the slope of the land is 12% or less continually for the initial fifty (50) feet landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.
- (ah) "Total Maximum Daily Load" or "TMDL" means the amount of pollutants specified as a function of one or more water quality parameters, that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.
- (ai) "TP-40" means Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.
- (aj) "TR-55" means the United States Department of Agriculture, Natural Resources Conservation Service (previously, the Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986, which is incorporated by reference for this chapter.
- (ak) "Transportation Facility" means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail, or any other public work for transportation purposes such as harbor improvements under Wis. Stat. § 85.095(1)(b). "Transportation Facility" does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Department of Natural Resources pursuant to Wis. Stat. § 281.33.
- (al) "TSS" means total suspended solids.
- (am) "Type II Distribution" means a rainfall type curve as established in the United States Department of Agriculture, Natural Resources Conservation Service (previously, the Soil Conservation Service), Technical Paper 149, published in 1973.
- (an) "Waters of the State" includes those portions of Lake Michigan and Lake Superior within the boundaries of this State, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems, and other surface water or groundwater, natural or artificial, public or private, within this State or its jurisdiction.

Sec. 5.5. Applicability of Maximum Extent Practicable. Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the Department of Public Works' satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

Sec. 6.0. Technical Standards. The following methods shall be used in designing the water quality, peak discharge, and infiltration components of stormwater practices needed to meet the water quality standards of this ordinance:

1. Consistent with the technical standards identified, developed, or disseminated by the Wisconsin Department of Natural Resources under Wis. Adm. Code Ch. NR 151, Subch. V.
2. Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the Department of Public Works.
3. In this ordinance, the following year and location has been selected as average annual rainfall: Milwaukee, 1969 (Mar. 28 - Dec. 6.).

Sec. 7.0. Performance Standards.

- 7.1. Responsible Party. The responsible party shall comply with this section.
- 7.2. Stormwater Management Plan. A written stormwater management plan in accordance with Sec. 9.0 shall be developed and implemented for each post-construction site.
- 7.3. Maintenance of Effort. For redevelopment sites where the redevelopment will be replacing older development that was subject to post-construction performance standards of Wis. Adm. Code Ch. NR 151 in effect on or after October 1, 2004, the responsible party shall meet the total suspended solids reduction, peak flow control, infiltration, and protective areas standards applicable to the older development or meet

the redevelopment standards of this ordinance, whichever is more stringent.

7.4. Requirements. The stormwater management plan required under Sec. 7.2 shall include the following:

(a) Total Suspended Solids. BMPs shall be designed, installed, and maintained to control the total suspended solids carried off in runoff from the post-construction site as follows:

1. BMPs shall be designed in accordance with Table 1 or to the maximum extent practicable as provided in subd. 2. The design shall be based on an average annual rainfall, as compared to no runoff management controls. The stormwater plan shall include modeling of proposed stormwater BMPs for total phosphorus and reporting of TP reduction performance. Electronic stormwater quality model files shall be submitted with the stormwater plan.

Table 1. TSS Reduction Standards

Development Type	TSS Reduction
New Development	80%
In-fill Development	80%
Redevelopment	40% of load from parking areas and roads

2. Maximum Extent Practicable. If the design cannot meet a total suspended solids reduction performance standard of Table 1, the stormwater management plan shall include a written, site-specific explanation of why the total suspended solids reduction performance standard cannot be met and why the total suspended solids load will be reduced only to the maximum extent practicable.

3. Off-Site Drainage. When designing BMPs, runoff draining to the BMP from off-site shall be considered in determining the treatment efficiency of the practice. Any impact on the efficiency shall be compensated for by increasing the size of the BMP accordingly.

(b) Peak Discharge.

1. By design, BMPs shall be employed to maintain or reduce the 1-year, 2-year, and 10-year, 24-hour post-construction peak runoff discharge rates to the 1-year, 2-year, and 10-year, 24-hour predevelopment peak runoff discharge rates, respectively, or to the maximum extent practicable. The runoff curve numbers in Table 2 shall be used to represent the actual pre-development conditions. Electronic stormwater quantity model files shall be submitted with the stormwater plan.

For peak discharge control design, calculations shall use TR-55 runoff curve number methodology, Atlas 14 precipitation depths, and the NRCS Wisconsin MSE4 precipitation distribution. On a case-by-case basis, the Department of Public Works may allow the use of TP-40 precipitation depths and the Type II distribution.

The administrative authority may require additional retention up to and including the 100-year post-development storm frequency due to downstream threats to life and property resulting from the additional drainage.

The grading plan shall pass the 100-year storm around or through the development without causing harm to life or property.

Table 2. Maximum Pre-Development Runoff Curve Numbers				
Runoff Curve Number	Hydrologic Soil Group			
	A	B	C	D
Woodland	30	55	70	77
Grassland	39	61	71	78
Cropland	55	69	78	83

(c) Infiltration.

1. Best Management Practices. BMPs shall be designed, installed, and maintained to infiltrate runoff in accordance with the following or to the maximum extent practicable:
 - a. Low Imperviousness. For development up to 40% connected imperviousness, such as parks,

cemeteries, and low-density residential development, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90% of the predevelopment infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the post-construction site is required as an effective infiltration area.

- b. Moderate Imperviousness. For development with more than 40% and up to 80% connected imperviousness, such as medium and high density residential, multi-family development, industrial and institutional development, and office parks, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 75% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the post-construction site is required as an effective infiltration area.
- c. High imperviousness. For development with more than 80% connected imperviousness, such as commercial strip malls, shopping centers, and commercial downtowns, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the post-construction site is required as an effective infiltration area. The pre-development condition shall be the same as specified in Table 2 of the Peak Discharge section of this ordinance.

2. Source Areas.

- a. Prohibitions. Runoff from the following areas may not be infiltrated and may not qualify as contributing to meeting the requirements of

this section unless demonstrated to meet the conditions identified in s. 07(4)(c)6.:

- i. Areas associated with a tier 1 industrial facilities identified in Wis. Admin. Code s. NR 216.21(2)(a), including storage, loading, and parking. Rooftops may be infiltrated with the concurrence of the regulatory authority.
 - ii. Storage and loading areas of a tier 2 industrial facility identified in Wis. Admin. Code s. NR 216.21(2)(b).
 - iii. Fueling and vehicle maintenance areas. Runoff from rooftops of fueling and vehicle maintenance areas may be infiltrated with the concurrence of the regulatory authority.
- b. Exemptions. Runoff from the following areas may be credited toward meeting the requirement when infiltrated, but the decision to infiltrate runoff from these source areas is optional:
- i. Parking areas and access roads less than 5,000 square feet for commercial development.
 - ii. Parking areas and access roads less than 5,000 square feet for industrial development not subject to the Prohibitions under par. a.
 - iii. Except as provided under s. 07(3) redevelopment post-construction sites.
 - iv. In-fill development areas less than five acres.
 - v. Roads on commercial, industrial, and institutional land uses, and arterial residential needs.

3. Location of Practices.

a. Prohibitions. Infiltration practices may not be located in the following areas:

i. Areas within 1,000 feet upgradient or within 100 feet downgradient of karst features.

ii. Areas within 400 feet of a community water system well as specified in Wis. Admin. Code s. NR 811.16(4) or within the separation distances listed in Wis. Admin. Code s. NR 812.08 for any private well or non-community well for runoff infiltrated from commercial, including multi-family residential, industrial, and institutional land uses or regional devices for one- and two-family residential development.

iii. Areas where contaminants of concern, as identified in Wis. Admin. Code s. NR 720.03(2), are present in the soil through which infiltration will occur.

b. Separation Distances.

i. Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of seasonal high groundwater or the top of bedrock are in accordance with Table 3.

Table 3. Separation Distances and Soil Characteristics

Source Area	Separation Distance	Soil Characteristics
Industrial, Commercial, Institutional Parking Lots and Roads	5 feet or more	Filtering Layer
Residential Arterial Roads	5 feet or more	Filtering Layer
Roofs Draining to Subsurface Infiltration Practices	1 foot or more	Native or Engineered Soil with Particles Finer than Course Sand
Roofs Draining to Surface Infiltration Practices	Not Applicable	Not Applicable
All Other Impervious Source Areas	3 feet or more	Filtering Layer

- ii. Notwithstanding par. B., applicable requirements for injection wells classified under Wis. Admin. Code Ch. NR 815 shall be followed.
- c. Infiltration Rate Exemptions. Infiltration practices located in the following areas may be credited toward meeting the requirements under the following conditions, but the decision to infiltrate under these conditions is optional:
 - i. Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than 0.6 inches per hour using a scientifically credible field test method.
 - ii. Where the least permeable soil horizon to five feet below the proposed bottom of the infiltration system using the U.S. Department of Agriculture method of soils analysis is one of the following: sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, or clay.

4. Alternate Use. Where alternate uses of runoff are employed, such as for toilet flushing, laundry, or irrigation or storage on green roofs where an equivalent portion of the runoff is captured permanently by rooftop vegetation, such alternate use shall be given equal credit toward the infiltration volume required by this section.
5. Groundwater Standards.
 - a. Infiltration systems designed in accordance with this section shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventative action limit at a point of standards application in accordance with Wis. Admin. Code Ch. NR 140. However, if site-specific information indicates that compliance with a preventative action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.
 - b. Notwithstanding par. a., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.
6. Pretreatment. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial, and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subd. 6. Pretreatment options may include, but are not limited to, oil and grease separation, sedimentation, biofiltration, filtration, swales, or filter strips.
7. Maximum Extent Practicable. Where the conditions of subd. 3. and 4. limit or restrict the use of infiltration practices, the performance standard of

s. 07(4)(c) shall be met to the maximum extent practicable.

(d) Protective Areas.

1. Definition. In this section, "protective area" means an area of land that commences at the top of the channel of lakes, streams, and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this section, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, so that runoff cannot enter the enclosure at this location.
 - a. For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in Wis. Admin. Code s. NR 103.04, 75 feet.
 - b. For perennial and intermittent streams identified on a U.S. Geological Survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.
 - c. For lakes, 50 feet.
 - d. For wetlands not subject to par. e. or f., 50 feet.
 - e. For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps, and ephemeral ponds.
 - f. For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include: degraded wetland dominated by invasive species such as reed canary grass;

cultivated hydric soils; and any gravel pits, or dredged material or fill material disposal sites that take on the attributes of a wetland.

- g. In pars. d. to f., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in Wis. Admin. Code s. NR 103.03.
 - h. Wetland boundary delineation shall be made in accordance with Wis. Admin. Code s. NR 103.08(1m). This paragraph does not apply to wetlands that have been completely filled in compliance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in compliance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after a fill has been placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.
 - i. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.
 - j. Notwithstanding pars. a. to i., the greatest protective area width shall apply where rivers, streams, lakes, and wetlands are contiguous.
- 2. Applicability. This section applies to post-construction sites located within a protective area, except those areas exempted pursuant to subd. 4.
 - 3. Requirements. The following requirements shall be met:
 - a. Impervious surfaces shall be kept out of the protective area entirely or to the maximum extent practicable. If there is no practical alternative to locating an impervious surface in the protective area, the stormwater

management plan shall contain a written, site-specific explanation.

- b. Where land-disturbing construction activity occurs within a protective area, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained where no impervious surface is present. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat, and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion such as on steep slopes or where high velocity flows occur.
 - c. BMPs such as filter strips, swales, or wet detention ponds, that are designed to control pollutants from non-point sources, may be located in the protective area.
4. Exemptions. This section does not apply to any of the following:
- a. Except as provided under s. 7.3 redevelopment post-construction sites.
 - b. In-fill development areas less than 5 acres.
 - c. Structures that cross or access surface water such as boat landings, bridges, and culverts.
 - d. Structures constructed in accordance with Wis. Stat. § 59.692(1v).
 - e. Areas of post-construction sites from which the runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the local ordinance requirements for total suspended solids and peak flow reduction, except to the extent that vegetative ground cover is necessary to maintain bank stability.

(e) Fueling and Maintenance Areas. Fueling and vehicle maintenance areas shall have BMPs designed, installed, and maintained to reduce petroleum within runoff, so that the runoff that enters waters of the state contains no visible petroleum sheen or to the maximum extent practicable.

(f) Swale Treatment for Transportation Facilities.

1. Requirement. Except as provided in subd. 2., transportation facilities that use swales for runoff conveyance and pollutant removal are exempt from the requirements of local ordinance requirements for peak flow control, total suspended solids control, and infiltration, if the swales are designed to do all of the following or to the maximum extent practicable:

a. Swales shall be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.

b. Swales shall comply with sections V.F. (Velocity and Depth) and V.G. (Swale Geometry Criteria) with a swale treatment length as long as that specified in section V.C. (Pre-Treatment) of the Wisconsin Department of Natural Resources technical standard 1005 "Vegetated Infiltration Swales", dated May 2007, or a superseding document. Transportation facility swale treatment does not have to comply with other sections of technical standard 1005.

2. Other Requirements.

a. Notwithstanding subd. 1., the Department of Public Works may, consistent with water quality standards, require that other requirements, in addition to swale treatment, be met on a transportation facility with an average daily traffic rate greater than 2,500 and where the initial surface water of the state that the runoff directly enters is one of the following:

- i. An outstanding resource water.
- ii. An exceptional resource water.
- iii. Waters listed in section 303(d) of the Federal Clean Water Act that are identified as impaired in whole or in part, due to non-point source impacts.
- iv. Water where targeted performance standards are developed pursuant to Wis. Admin. Code s. NR 151.004.

b. The transportation facility authority shall contact the Department of Public Works to determine if additional BMPs beyond a water quality swale are needed under this subsection.

7.5. General Considerations for Stormwater Management Measures.
The following considerations shall be observed in on-site and off-site runoff management:

- (a) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.
- (b) Emergency overland flow for all stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.

7.6. BMP Location.

- (a) To comply with the performance standards required under s. 07 of this ordinance, BMPs may be located on-site or off-site as part of a regional stormwater device, practice, or system, but shall be installed in accordance with Wis. Admin. Code s. NR 151.003.
- (b) The Department of Public Works may approve off-site management measures provided that all of the following conditions are met:

1. The Department of Public Works determines that the post-construction runoff is covered by a stormwater management system plan that is approved by the City of Sheboygan and that contains management requirements consistent with the purpose and intent of this ordinance.
 2. The off-site facility meets all of the following conditions:
 - a. The facility is in place.
 - b. The facility is designed and adequately sized to provide a level of stormwater control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this ordinance.
 - c. The facility has a legally obligated entity responsible for its long-term operation and maintenance.
- (c) Where a regional treatment option exists such that the Department of Public Works exempts the applicant from all or part of the minimum on-site stormwater management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the Department of Public Works. In determining the fee for post-construction runoff, the Department of Public Works shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.
- (d) The BMPs may be located on-site or off-site as part of a regional stormwater device practice or system.
- 7.7. Foundation Drain Sump Pump Line and Building Roof Drain Discharge.
- (a) Foundation drain sump pump lines and building roof drains are prohibited from discharging directly onto any public property, public right-of-way, public street, or public sidewalk if such discharge creates or contributes to a public hazard or public nuisance. No person shall hereafter construct, build, establish, replace, or maintain any foundation drain sump pump line or building roof drain onto a public right-of-way, public street,

public sidewalk, roadside ditch, or other public property maintained by the City of Sheboygan without first obtaining written permission to do so from the Director of Public Works.

Failure to obtain written permission from the Director of Public Works for a foundation drain sump pump line or building roof drain discharge onto a public street, public sidewalk, or other public property shall be deemed a violation of the Post-Construction Stormwater Management Ordinance.

- (b) No foundation drain sump pump line or building roof drain shall convey or discharge stormwater to a point less than six feet from a building foundation or property line if reasonably possible. No detached accessory structure shall convey or discharge roof stormwater drainage to a point less than four feet from an accessory structure, building foundation, or property line if reasonable possible. If it is not possible to discharge such stormwater at least these distances, it shall be discharged as far as reasonably possible away from each foundation, structure or, property line.
- (c) Foundation drain sump pump lines or building roof drains may be routed to discharge underground via "mini" storm sewer into a stormwater inlet or catch basin if written permission is obtained from the Director of Public Works.
- (d) No foundation drain sump pump line or building roof drain shall be connected to a sanitary sewer.

7.8. Additional Requirements. The Department of Public Works may establish stormwater management requirements more stringent than those set forth in this ordinance if the Department of Public Works determines that the requirements are needed to control stormwater quantity or control flooding, comply with federally approved total maximum daily load requirements, or control pollutants associated with existing development or redevelopment.

Sec. 8.0. Permitting Requirements, Procedures, and Fees.

8.1. Permit Required. No responsible party may undertake a land-disturbing construction activity without receiving a post-

construction runoff permit from the Department of Public Works prior to commencing the proposed activity.

8.2. Permit Application and Fees. Unless specifically excluded by this ordinance, any responsible party desiring a permit shall submit to the Department of Public Works a permit application on a form provided by the Department of Public Works for that purpose.

(a) Unless otherwise excluded by this ordinance, a permit application must be accompanied by a stormwater management plan, a maintenance agreement, and a non-refundable permit administration fee.

(b) The stormwater management plan shall be prepared to meet the requirements of s. 07 and s. 08, the maintenance agreement shall be prepared to meet the requirements of s. 10, the financial guarantee shall meet the requirements of s. 11, and fees shall be those established by the Common Council as set forth in s. 12.

8.3. Permit Application Review and Approval. The Department of Public Works shall review any permit application that is submitted with a stormwater management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:

(a) Within 30 business days of the receipt of a complete permit application, including all items as required by sub. 2), the Department of Public Works shall inform the applicant whether the application, stormwater management plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.

(b) If the stormwater permit application, stormwater management plan, and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of stormwater management practices is made, the Department of Public Works shall issue the permit.

(c) If the stormwater permit application, stormwater management plan, or maintenance agreement is disapproved, the Department of Public Works shall detail in writing the reasons for the disapproval.

(d) The Department of Public Works may request additional information from the applicant. If additional

information is submitted, the Department of Public Works shall have ten business days from the date the additional information is received to inform the applicant that the stormwater management plan and maintenance agreement are either approved or disapproved.

- (e) Failure by the Department of Public Works to inform the permit applicant of a decision within 30 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.

8.4. Permit Requirements. All permits issued under this ordinance shall be subject to the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. The Department of Public Works may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Department of Public Works to suspend or revoke this permit may be appealed in accordance with s. 14.

- (a) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.
- (b) The responsible party shall design and install all structural and non-structural stormwater management measures in accordance with the approved stormwater management plan and this permit.
- (c) The responsible party shall notify the Department of Public Works at least two business days before commencing any work in conjunction with the stormwater management plan, and within two business days upon completion of the stormwater management practices. If required as a special condition under sub. 5), the responsible party shall make additional notification according to a schedule set forth by the Department of Public Works so that practice installations can be inspected during construction.
- (d) Practice installations required as part of this ordinance shall be certified "as built" or "record" drawings by a licensed professional engineer. Completed stormwater management practices must pass a final

inspection by the Department of Public Works or its designee to determine if they are in accordance with the approved stormwater management plan and ordinance. The Department of Public Works or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.

- (e) The responsible party shall notify the Department of Public Works of any significant modifications it intends to make to an approved stormwater management plan. The Department of Public Works may request that the proposed modifications be submitted to it for approval prior to incorporation into the stormwater management plan and execution by the responsible party.
- (f) The responsible party shall maintain all stormwater management practices in accordance with the stormwater management plan until the practices either become the responsibility of the City, or are transferred to subsequent private owners as specified in the approved maintenance agreement.
- (g) The responsible party authorizes the Department of Public Works to perform any work or operations necessary to bring stormwater management measures into conformance with the approved stormwater management plan, and consents to a special assessment or charge against the property as authorized under Wis. Stat. Ch. 66, subch. VII, or to charging such costs against the financial guarantee posted under s. 11.
- (h) If so directed by the Department of Public Works, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved stormwater management plan.
- (i) The responsible party shall permit property access to the Department of Public Works or its designee for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.
- (j) Where site development or redevelopment involves changes in direction, increases in peak rate, and/or total volume of runoff from a site, the Department of Public

Works may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.

- (k) The responsible party is subject to the enforcement actions and penalties detailed in s. 13- if the responsible party fails to comply with the terms of this permit.

8.5. Permit Conditions. Permits issued under this subsection may include conditions established by Department of Public Works in addition to the requirements needed to meet the performance standards in s. 07 or a financial guarantee as provided for in s. 11.

8.6. Permit Duration. Permits issued under this section shall be valid from the date of issuance through the date the Department of Public Works notifies the responsible party that all stormwater management practices have passed the final inspection required under sub. (4)(d).

Sec. 9.0. Stormwater Management Plan.

9.1. Stormwater Management Plan Requirements. The stormwater management plan required under s. 7.2. shall contain at a minimum, the following information.

- (a) Name, address, and telephone number for the following or their designees, landowner, developer, project engineer for practice design and certification, person(s) responsible for installation of stormwater management practices, and person(s) responsible for maintenance of stormwater management practices prior to the transfer, if any, of maintenance responsibility of another party.
- (b) A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.
- (c) Pre-development site conditions, including:
 - 1. One or more site maps at a scale of not less than 1-inch equals 100 feet. The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic

soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed 100 feet; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all stormwater conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the 100 year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to Wis. Admin. Code s. NR 811.16.

2. Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).

(d) Post-development site conditions, including:

1. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.
2. Explanation of any restrictions on stormwater management measures in the development area imposed by wellhead protection plans and ordinances.
3. One or more site maps at a scale of not less than 1-inch equals 100 feet showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for

all stormwater conveyance sections; location and type of all stormwater management conveyance and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainage way; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.

4. Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development, and the geographic areas used in making calculations shall be clearly cross-referenced to the required map(s).
 5. Results of investigations of soils and groundwater required for the placement and design of stormwater management measures. Detailed drawings including cross-sections and profiles of all permanent stormwater conveyance and treatment practices.
 6. A description and installation schedule for the stormwater management practices needed to meet the performance standards in s. 07.
- (e) A description and installation schedule for the stormwater management practices needed to meet the performance standards in s. 07.
 - (f) A maintenance plan developed for the life of each stormwater management practice including the required maintenance activities and maintenance activity schedule.
 - (g) Cost estimates for the construction, operation, and maintenance of each stormwater management practice.
 - (h) Other information requested in writing by the Department of Public Works to determine compliance of the proposed stormwater management measures with the provisions of this ordinance.
 - (i) All site investigations, plans, designs, computations, and drawings shall be certified by a licensed professional engineer to be prepared in accordance with

accepted engineering practice and requirements of this ordinance.

- 9.2. Alternative Requirements. The Department of Public Works may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under s. 7.5.

Sec. 10.0. Maintenance Agreement.

- 10.1. Maintenance Agreement Required. The maintenance agreement required under s. 8.2. for stormwater management practices shall be an agreement between the Department of Public Works and the responsible party to provide for maintenance of stormwater practices beyond the duration period of this permit. The maintenance agreement shall be filed with the County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the stormwater management practices.

- 10.2. Agreement Provisions. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by s. 9.1(f).

- (a) Identification of stormwater facilities and designation of the drainage area served by the facilities.
- (b) A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under s. 8.2.
- (c) Identification of the responsible party(s), organization, or city, county, town, or village responsible for long-term maintenance of the stormwater management practices identified in the stormwater management plan required under s. 8.2.
- (d) Requirement that the responsible party(s), organization, or city, county, town, or village shall maintain stormwater management practices in accordance with the schedule included in par. (b).
- (e) Authorization from the Department of Public Works to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.

- (f) A requirement on the Department of Public Works to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition.
- (g) Agreement that the party designated under par. (c) as responsible for long term maintenance of the stormwater management practices, shall be notified by the Department of Public Works of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Department of Public Works.
- (h) Authorization of the Department of Public Works to perform the corrected actions identified in the inspection report if the responsible party designated under par. (c) does not make the required corrections in the specified time period. The Department of Public Works shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Wis. Stat. Ch. 66, subch. VII.

Sec. 11.0. Financial Guarantee.

- 11.1. Establishment of the Guarantee. The Department of Public Works may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the Department of Public Works. The financial guarantee shall be in an amount determined by the Department of Public Works to be the estimated cost of construction and the estimated cost of maintenance of the stormwater management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the Department of Public Works the authorization to use the funds to complete the stormwater management practices if the responsible party defaults or does not properly implement the approved stormwater management plan, upon written notice to the responsible party by the Department of Public Works that the requirements of this ordinance have not been met.
- 11.2. Conditions for Release. Conditions for the release of the financial guarantee are as follows:

- (a) The Department of Public Works shall release the portion of the financial guarantee established under this section, less any costs incurred by the Department of Public Works to complete installation of practices, upon submission of "as built plans" or "record" drawings by a licensed professional engineer. The Department of Public Works may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.
- (b) The Department of Public Works shall release the portion of the financial guarantee established under this section to assure maintenance of stormwater practices, less any costs incurred by the Department of Public Works, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

Sec. 12.0. Fee Schedule. The fees referred to in other sections of this ordinance shall be established by the Common Council and may from time to time be modified by resolution. A schedule of the fees established by the Common Council shall be available for review in the Department of Public Works office.

Sec. 13.0. Enforcement.

- 13.1. Any land-disturbing construction activity or post-construction runoff initiated after the effective date of this ordinance by any person, firm, association, or corporation subject to the ordinance provisions shall be deemed a violation unless conducted in accordance with the requirements of this ordinance.
- 13.2. The Department of Public Works shall notify the responsible party by certified mail of any non-complying land-disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action that may be taken.
- 13.3. Upon receipt of written notification from the Department of Public Works under 13.2, the responsible party shall correct work that does not comply with the stormwater management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the Department of

Public Works in the notice as necessary to meet the specifications and schedule set forth by the Department of Public Works in the notice.

- 13.4. If the violations to a permit issued pursuant to this ordinance are likely to result in damage to properties, public facilities, or waters of the state, the Department of Public Works may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the Department of Public Works plus interest and legal costs shall be billed to the responsible party.
- 13.5. The Department of Public Works is authorized to post a stop work order on all land-disturbing construction activity that is in violation of this ordinance, or to request the City Attorney to obtain a cease and desist order in any court with jurisdiction.
- 13.6. The Department of Public Works may revoke a permit issued under this ordinance for non-compliance with ordinance provisions.
- 13.7. Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the Department of Public Works or by a court with jurisdiction.
- 13.8. The Department of Public Works is authorized to refer any violation of this ordinance, or a stop work order or cease and desist order issued pursuant to this ordinance, to the City Attorney for the commencement of further legal proceedings in any court with jurisdiction.
- 13.9. Any person, firm, association, or corporation who does not comply with the provisions of this ordinance shall be subject to a forfeiture of not less than \$50.00 or nor more than \$1,000 per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.
- 13.10. Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.
- 13.11. When the Department of Public Works determines that the holder of a permit issued pursuant to this ordinance has

failed to follow practices set forth in the stormwater management plan, or has failed to comply with schedules set forth in said stormwater management plan, the Department of Public Works or its designee may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved stormwater management plan. The Department of Public Works shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to s. 11 of this ordinance. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.

Sec. 14.0. Appeals.

14.1. Zoning Board of Appeals. The zoning board of appeals, created pursuant to Sheboygan Municipal Code s. 15.934 and Wis. Stat. s. 61.354(4)(b) shall hear and decide appeals where it is alleged that there is error in any order, decision, or determination made by the Department of Public Works in administering this ordinance. The board shall also use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals. Upon appeal, the board may authorize variances from the provisions of this ordinance that are not contrary to the public interest, and where owing to special conditions, a literal enforcement of the ordinance will result in unnecessary hardship.

14.2. Who May Appeal. Appeals to the zoning board of appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the City of Sheboygan affected by any decision of the Department of Public Works.

Sec. 15.0. Severability. If any section, clause, provision, or portion of this ordinance is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the ordinance shall remain in force and not be affected by such judgment.

Sec. 16.0. Effective Date. This ordinance shall be in force and effect from and after its adoption and publication."

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

Gen. Ord. No. 1 - 23 - 24. By Alderpersons Dekker and Rust. May 1, 2023.

AN ORDINANCE repealing and recreating Appendix D, Construction Site Erosion Control, of the Sheboygan Municipal Code, providing for construction site erosion control at sites where the construction activities do not include the construction of a building, and repealing and recreating Appendix E, Post-Construction Stormwater Management Zoning Ordinance, of the Sheboygan Municipal Code, providing for the control of post-construction runoff to waters of the State.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Appendix D, Construction Site Erosion Control, of the Sheboygan Municipal Code, providing for construction site erosion control at sites where the construction activities do not include the construction of a building is hereby repealed and recreated to read as follows:

"APPENDIX D - CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

Sections:

- Sec. 1.0 Authority.
- Sec. 2.0 Findings of Fact.
- Sec. 3.0 Purpose.
- Sec. 4.0 Applicability and Jurisdiction.
- Sec. 5.0 Definitions.
- Sec. 5.5 Applicability of Maximum Extent Practicable.
- Sec. 6.0 Technical Standards.
- Sec. 7.0 Performance Standards for Construction Sites Under One Acre.
- Sec. 8.0 Performance Standards for Construction Sites of One Acre or More.
- Sec. 9.0 Permitting Requirements, Procedures and Fees.
- Sec. 10.0 Erosion and Sediment Control Plan, Statement and Amendments.
- Sec. 11.0 Fee Schedule.
- Sec. 12.0 Inspection.
- Sec. 13.0 Enforcement.
- Sec. 14.0 Appeals.
- Sec. 15.0 Severability.
- Sec. 16.0 Effective Date.

Sec. 1.0. Authority.

- 1.1. This ordinance is adopted under the authority granted by Wis. Stat. § 62.234 and applies to land-disturbing construction activities and land-developing activities on land within the boundaries and jurisdiction of the City. This ordinance

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supersedes all provisions of an ordinance previously enacted under Wis. Stat. § 62.23 that relate to construction site erosion control. Except as otherwise specified in Wis. Stat. § 62.234, Wis. Stat. § 62.23 applies to this ordinance and to any amendments to this ordinance.

- 1.2. The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
- 1.3. The Common Council hereby designates the Director of Public Works to administer and enforce the provisions of this ordinance.
- 1.4. The requirements of this ordinance do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits, or approvals, including those authorized under Wis. Stat. §§ 281.16 and 283.33;
 - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under Wis. Adm. Code § 151.004.

Sec. 2.0. Findings of Fact. The Common Council acknowledges that runoff from land-disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the State in the City of Sheboygan.

Sec. 3.0. Purpose. The purpose of this ordinance is to maintain safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion and sediment discharge; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land-disturbing construction activity to waters of the State in the City of Sheboygan.

Sec. 4.0. Applicability and Jurisdiction.

4.1. Applicability.

- (a) Except as provided under par. (b), this ordinance applies to any construction site as defined under section 5.7.

(b) This ordinance does not apply to the following:

1. Transportation facilities under the jurisdiction of the Wisconsin Department of Transportation or the Shoreline Metro Transit, except transportation facility construction projects that are part of a larger common plan of development such as local roads within a residential or industrial development. Municipal transportation projects under the jurisdiction of the City of Sheboygan are subject to ordinance requirements.
2. A construction project that is exempted by federal statutes or regulations from the requirements to have a national pollutant discharge elimination system permit issued under chapter 40, Code of Federal Regulations, part 122, for land-disturbing construction activity.
3. Nonpoint discharges from agricultural facilities and practices.
4. Nonpoint discharges from silviculture activities.
5. Routine maintenance for project sites that have less than five acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

(c) Notwithstanding the applicability requirements in par. (a), this ordinance applies to construction sites of any size, that, as determined by the Department of Public Works, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, or that increases water pollution by scouring or transporting particulate.

4.2. Jurisdiction. This ordinance applies to land-disturbing construction activities on lands within the boundaries and jurisdiction of the City of Sheboygan, as well as the extraterritorial division of land subject to an ordinance enacted pursuant to Wis. Stat. §§ 236.45(2) and (3).

4.3. Exclusions. This ordinance is not applicable to activities conducted by a state agency, as defined by Wis. Stat. § 227.01(1).

4.4. Interpretation. In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by Wisconsin law.

Sec. 5.0. Definitions.

- (a) "Administering Authority" means a governmental employee, or a regional planning commission empowered by Wis. Stat. § 62.234, that is designated by the City of Sheboygan to administer this ordinance.
- (b) "Agricultural Facilities and Practices" has the meaning in Wis. Stat. § 281.16(1).
- (c) "Best Management Practice" or "BMP" means structural or non-structural measures, practices, techniques, or devices employed to avoid or minimize soil, sediment, or pollutants carried in runoff to waters of the State.
- (d) "Business Day" means a day the offices of the City of Sheboygan are routinely and customarily open for business.
- (e) "Cease and Desist Order" means a court-issued order to halt land-disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the City.
- (f) "Commercial Land Use" means use of land for the retail or wholesale of goods or services.
- (g) "Construction Site" means an area upon which one or more land-disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land-disturbing construction activities may be taking place at different times on different schedules but under one plan. A long-range planning document that describes separate construction projects, such as a 20-year transportation improvement plan, is not a common plan of development.
- (h) "Construction Site Control Measure" means a control measure used to meet the requirements of section 6.0.
- (i) "Control Measure" means a practice or combination of practices to control soil erosion and attendant pollution.
- (j) "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.

- (k) "Division of Land" means the creation from one parcel of three or more parcels or building sites of five or fewer acres each by the successive division within a five-year period.
- (l) "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice, or gravity.
- (m) "Erosion Control Plan Statement" means a written description of the number, locations, sizes, and other pertinent information of control measures designed to meet the requirements of this ordinance submitted by the applicant for review and approval by the Department of Public Works, for developments of up to one acre or single lot, except for one- and two- family dwelling units.
- (n) "Erosion and Sediment Control Plan" means a written plan of the number, locations, sizes, and other pertinent information of control measures designed to meet the requirements of this ordinance submitted by the Applicant for review and approval by the Department of Public Works for development of greater than one acre or multiple lots.
- (o) "Extraterritorial" means the unincorporated area within three miles of the corporate limits of a first-, second-, or third-class city, or within 1.5 miles of a fourth-class city or village.
- (p) "Final Stabilization" means that all land-disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.
- (q) "Governing Body" means the City of Sheboygan Common Council.
- (r) "Land-Disturbing Construction Activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the State. Land-disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.
- (s) "Landowner" means any person holding fee title, an easement, or other interest in property, which allows the person to undertake cropping, livestock management, land-disturbing construction activity, or maintenance of stormwater BMPs on the property.
- (t) "Land User" means any person operating, leasing, renting, or having made other arrangements with the landowner by which the landowner authorizes use of their land.

- (u) "Maximum Extent Practicable" means the highest level of performance that is achievable but is not equivalent to a performance standard identified in this ordinance as determined in accordance with section 5.5.
- (v) "Performance Standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (w) "Permit" means a written authorization made by the Department of Public Works to the applicant to conduct land-disturbing construction activity or to discharge post-construction runoff to waters of the State.
- (x) "Pollutant" has the meaning given in Wis. Stat. § 283.01(13).
- (y) "Pollution" has the meaning given in Wis. Stat. § 281.01(1).
- (z) "Responsible Party" means the landowner and any other entity holding fee title to the property performing services to meet the requirements of this ordinance through a contract or other agreement.
- (aa) "Runoff" means stormwater or precipitation including rain, snow, or ice melt, or similar water that moves on the land surface via sheet or channelized flow.
- (bb) "Sediment" means settleable solid material that is transported by runoff, suspended within runoff, or deposited by runoff away from its original location.
- (cc) "Silviculture Activity" means activities, including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of a construction site area is not a silviculture activity.
- (dd) "Site" means the entire area included in the legal description of the land on which the land-disturbing construction activity is proposed in the permit application.
- (ee) "Stop Work Order" means an order issued by the Department of Public Works or Building Inspection Department, which requires that all construction activity on the site be stopped.
- (ff) "Technical Standard" means a document that specifies design, predicted performance, and operation and maintenance specifications for a material, device, or method.
- (gg) "Transportation Facility" means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail, or any other public work for transportation purposes such as harbor improvements under Wis. Stat. § 85.095(1)(b). "Transportation Facility" does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Wisconsin Department of Natural Resources pursuant to Wis. Stat. § 281.33.

- (hh) "Waters of the State" includes those portions of Lake Michigan and Lake Superior within the boundaries of this State, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems, and other surface water or groundwater - natural or artificial, public, or private - within this State or within its jurisdiction.

Sec. 5.5. Applicability of Maximum Extent Practicable. Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the Department of Public Works' satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

Sec. 6.0. Technical Standards. All BMPs required for compliance with this ordinance shall meet design criteria, standards, and specifications based on any of the following:

- (a) Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of Wis. Admin. Code Ch. NR 151.
- (b) Soil loss prediction tools, such as Universal Soil Loss Equation (USLE), when using an appropriate rainfall or runoff factor, also referred to as the "R factor," or an appropriate design storm and precipitation distribution, and when considering the geographic location of the site and the period of disturbance.
- (c) Technical standards and methods approved by the Department of Public Works.

Sec. 7.0. Performance Standards for Construction Sites Under One Acre.

- 7.1. Responsible Party. The responsible party shall comply with this section.
- 7.2. Erosion and Sediment Control Practices. Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:

- (a) The deposition of soil from being tracked onto streets by vehicles.
- (b) The discharge of sediment from disturbed areas into on-site storm water inlets.
- (c) The discharge of sediment from disturbed areas into adjacent waters of the State.
- (d) The discharge of sediment from drainage ways that flow off the site.
- (e) The discharge of sediment by dewatering activities.
- (f) The discharge of sediment eroding from soil stockpiles existing for more than seven days.
- (g) The transport by runoff into waters of the State of chemicals, cement, and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the State, such as constructing bridge footings or BMP installations, are not prohibited by this subdivision.

7.3. Location. The BMPs shall be located so that treatment occurs before runoff enters waters of the State.

7.4. Implementation. The BMPs used to comply with this section shall be implemented as follows:

- (a) Erosion and sediment control practices shall be constructed or installed before land-disturbing construction activities begin.
- (b) Erosion and sediment control practices shall be maintained until final stabilization.
- (c) Final stabilization activity shall commence when land-disturbing activities cease and final grade has been reached on any portion of the site.
- (d) Temporary stabilization activity shall commence when land-disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
- (e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

Sec. 8.0. Performance Standards for Construction Sites of One Acre or More.

8.1. Responsible Party. The responsible party shall comply with this section and implement the erosion and sediment control plan developed in accordance with Sec. 10.

8.2. Erosion and Sediment Control Plan. A written, site-specific erosion and sediment control plan shall be delivered in accordance with Sec. 10 of this ordinance and implemented for each construction site.

8.3. Erosion and Other Pollutant Control Requirements. The erosion and sediment control plan under Sec. 8.2 shall include the following:

(a) Erosion and Sediment Control Practices. Erosion and sediment control practices at each site where land-disturbing construction activity is to occur shall be used to prevent or reduce all of the following:

1. The deposition of soil from being tracked onto streets by vehicles.
2. The discharge of sediment from disturbed areas into on-site storm water inlets.
3. The discharge of sediment from disturbed areas into adjacent waters of the State.
4. The discharge of sediment from drainage ways that flow off the site.
5. The discharge of sediment by dewatering activities.
6. The discharge of sediment eroding from soil stockpiles existing for more than seven days.
7. The discharge of sediment from erosive flows at outlets and in downstream channels.
8. The transport by runoff into waters of the State of chemicals, cement, and other building compounds and materials on the construction site during the construction period. However, projects that require the placement of these materials in waters of the State, such as constructing bridge footings or BMP installations, are not prohibited by this subsection.
9. The transport by runoff into waters of the State of untreated wash water from vehicle and wheel washing.

(b) Sediment Performance Standards. In addition to the erosion and sediment control practices under par. (a), the following erosion and sediment control practices shall be employed:

1. BMPs that, by design, discharge no more than five tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization.
2. No person shall be required to employ more BMPs than are needed to meet a performance standard in order to comply with maximum extent practicable. Erosion and sediment control BMPs may be combined to meet the requirements of this paragraph. Credit may be given toward meeting the sediment performance standard of this paragraph for limiting the duration or area, or both, of land-disturbing construction activity, or for other appropriate mechanisms.
3. Notwithstanding subd. 1, if BMPs cannot be designed and implemented to meet the sediment performance standards, the erosion and sediment control plan shall include a written, site-specific explanation of why the sediment performance standard cannot be met and how the sediment load will be reduced to the maximum extent practicable.

(c) Preventative Measures. The erosion and sediment control plan shall incorporate all of the following:

1. Maintenance of existing vegetation, especially adjacent to surface waters whenever possible.
2. Minimization of soil compaction and preservation of topsoil.
3. Minimization of land-disturbing construction activity on slopes of 20% or more.
4. Development of spill prevention and response procedures.

(d) Location. The BMPs used to comply with this section shall be located so that treatment occurs before runoff enters waters of the State.

8.4. Implementation. The BMPs used to comply with this section shall be implemented as follows:

- (a) Erosion and sediment control practices shall be constructed or installed before land-disturbing construction activities begin, in accordance with the erosion and sediment control plan developed in Sec. 8.2.
- (b) Erosion and sediment control practices shall be maintained until final stabilization.
- (c) Final stabilization activity shall commence when land-disturbing activities cease and final grade has been reached on any portion of the site.
- (d) Temporary stabilization activity shall commence when land-disturbing activities have temporarily ceased and will not resume for a period exceeding fourteen calendar days.
- (e) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

Sec. 9.0. Permitting Requirements, Procedures, and Fees.

9.1. Permit Required. No responsible party may commence a land-disturbing construction activity subject to this ordinance without receiving prior approval of an erosion and sediment control plan for the site and a permit from the Department of Public Works.

9.2. Permit Application and Fees. The responsible party that will undertake a land-disturbing construction activity subject to this ordinance shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of Sec. 10, and shall pay an application fee to the Department of Public Works in the amount specified in Sec. 11. By submitting an application, the applicant is authorizing the Department of Public Works to enter the site to obtain information required for the review of the erosion and sediment control plan.

9.3. Permit Application Review and Approval. The Department of Public Works shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:

- (a) Within forty-five (45) business days of the receipt of a complete permit application, as required by Sec. 9.2,

the Department of Public Works shall inform the applicant whether the application and erosion and sediment control plan are approved or disapproved based on the requirements of this ordinance.

- (b) If the permit application and erosion and sediment control plan are approved, the Department of Public Works shall issue the permit.
- (c) If the permit application or erosion and sediment control plan is disapproved, the Department of Public Works shall state in writing the reasons for disapproval.
- (d) The Department of Public Works may request additional information from the applicant. If additional information is submitted, the Department of Public Works shall have thirty (30) business days from the date the additional information is received to inform the applicant that the erosion and sediment control plan is either approved or disapproved.
- (e) Failure by the Department of Public Works to inform the permit applicant of a decision within forty-five (45) business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.

9.4. Surety Bond. As a condition of approval and issuance of the permit, the Department of Public Works may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion and sediment control plan and any permit conditions.

9.5. Permit Requirements. All permits shall require the responsible party to:

- (a) Notify the Department of Public Works within forty-eight (48) hours of commencing any land-disturbing construction activity.
- (b) Notify the Department of Public Works of completion of any BMPs within fourteen (14) days after their installation.
- (c) Obtain permission in writing from the Department of Public Works prior to any modification pursuant to Sec. 10.3 of the erosion and sediment control plan.

- (d) Install all BMPs as identified in the approved erosion and sediment control plan.
- (e) Maintain all road drainage systems, stormwater drainage systems, BMPs, and other facilities identified in the erosion and sediment control plan.
- (f) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land-disturbing construction activities and document repairs in a site inspection log.
- (g) Inspect the BMPs within twenty-four (24) hours after each rain of 0.5 inches or more, which results in runoff during active construction periods, and at least once each week. Make needed repairs and install additional BMPs as necessary, and document these activities in an inspection log that also includes the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site.
- (h) Allow the Department of Public Works to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the erosion and sediment control plan. Keep a copy of the erosion and sediment control plan at the construction site.

9.6. Permit Conditions. Permits issued under this section may include conditions established by Department of Public Works in addition to the requirements set forth in Sec. 9.5, where needed to assure compliance with the performance standards in Sec. 7 or Sec. 8.

9.7. Permit Duration. Permits issued under this section shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The Department of Public Works may grant one or more extensions not to exceed 180 days cumulatively. The Department of Public Works may require additional BMPs as a condition of an extension if they are necessary to meet the requirements of this ordinance.

9.8. Maintenance. Throughout the duration of the construction activities, the responsible party shall maintain all BMPs necessary to meet the requirements of this ordinance until the site has undergone final stabilization.

Sec. 10.0. Erosion and Sediment Control Plan, Statement, and Amendments.

10.1. Erosion and Sediment Control Plan Statement. For each construction site identified under Sec. 4.1(c), an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the Department of Public Works. The erosion and sediment control plan statement shall briefly describe the site, the development schedule, the BMPs that will be used to meet the requirements of this ordinance, and shall include a site map.

10.2. Erosion and Sediment Control Plan Requirements.

- (a) An erosion and sediment control plan shall be prepared and submitted to the Department of Public Works.
- (b) The erosion and sediment control plan shall be designed to meet the performance standards in Secs. 7 & 8, and other requirements of this ordinance.
- (c) The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:
 - 1. Name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm. The application shall also include start and end dates, for construction.
 - 2. Description of the construction site and the nature of the land-disturbing construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5-minute series topographic map.
 - 3. Description of the intended sequence of major land-disturbing construction activities for major portions of the construction site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of

temporary erosion and sediment control measures, and establishment of permanent vegetation.

4. Estimates of the total area of the construction site and the total area of the construction site that is expected to be disturbed by land-disturbing construction activities.
 5. Calculations to show the compliance with the performance standard in Sec. 8.3(b)1.
 6. Existing data describing the surface soil as well as subsoils.
 7. Depth to groundwater, as indicated by Natural Resources Conservation Service soil information where available.
 8. Name of the immediate named receiving water from the United States Geological Service 7.5-minute series topographic maps.
 9. Provisions for maintenance of the construction site control measures.
 10. A plan of final site conditions on the same scale as the existing map showing the site changes.
- (d) The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than 100 feet per inch and at a contour interval not to exceed five feet.
1. Existing topography, vegetative cover, natural and engineered drainage systems, roads, and surface waters. Lakes, streams, wetlands, channels, ditches, and other watercourses on an immediately adjacent to the site shall be shown. Any identified 100-year floodplains, flood fringes, and floodways shall also be shown.
 2. Boundaries of the construction site and immediately adjacent areas extending a minimum of two hundred (200) feet in each direction.
 3. Drainage patterns and approximate slopes anticipated after major grading activities.

4. Areas of soil disturbance.
 5. Location of major structural and non-structural controls identified in the erosion and sediment control plan.
 6. Location of areas where stabilization BMPs will be employed.
 7. Areas that will be vegetated following land-disturbing construction activities.
 8. Area(s) and location(s) of wetland on the construction site, and locations where stormwater is discharged to a surface water or wetland within one-quarter mile downstream of the construction site.
 9. Area(s) used for infiltration of post-construction stormwater runoff.
 10. An alphanumeric or equivalent grid overlying the entire construction site map.
 11. Locations and dimensions of utilities, structures, roads, highways, and paving.
 12. Primary and/or secondary environment corridors or other areas of significance.
 13. Locations and dimensions of all temporary soil or dirt stockpiles.
- (e) Each erosion and sediment control plan shall include a description of appropriate control BMPs that will be installed and maintained at the construction site to prevent pollutants from reaching waters of the State. The erosion and sediment control plan shall clearly describe the appropriate erosion and sediment control BMPs for each major land-disturbing construction activity and the timing during the period of land-disturbing construction activity that the erosion and sediment control BMPs will be implemented. The description of erosion and sediment control BMPs shall include, when appropriate, the following minimum requirements:

1. Description of interim and permanent stabilization practices, including a BMP implementation schedule. The erosion and sediment control plan shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.
2. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the Department of Public Works, structural measures shall be installed on upland soils.
3. Management of overland flow at all areas of the construction site, unless otherwise controlled by outfall controls.
4. Trapping of sediment in channelized flow.
5. Staging land-disturbing construction activities to limit exposed soil areas subject to erosion.
6. Protection of downslope drainage inlets where they occur.
7. Minimization of tracking at all vehicle and equipment entry and exit locations of the construction site.
8. Clean-up of off-site sediment deposits.
9. Proper disposal of building and waste material.
10. Stabilization of drainage ways.
11. Installation of permanent stabilization practices as soon as possible after final grading.
12. Minimization of dust to the maximum extent practicable.
13. Control of soil erosion from dirt stockpiles.

- (f) The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

10.3. Erosion and Sediment Control Plan Amendments. The applicant shall amend the erosion and sediment control plan if any of the following occur:

- (a) There is a change in design, construction, operation, or maintenance at the site, which has the reasonable potential for the discharge of pollutants to waters of the State and which has not otherwise been addressed in the erosion and sediment control plan.
- (b) The actions required by the erosion and sediment control plan fail to reduce the impacts of pollutants carried by construction site runoff.
- (c) The Department of Public Works notifies the applicant of changes needed in the erosion and sediment control plan.

Sec. 11.0. Fee Schedule. The fees referred to in other sections of this ordinance shall be established by the Department of Public Works and may be modified from time to time by resolution. A schedule of the fees established by the Department of Public Works shall be available for review at the Municipal Service Building. For one- and two-family residential, the appropriate fees are set forth in Section 26-38 of the Sheboygan Municipal Code and shall be submitted at the time of permit issuance. For commercial, industrial, and multi-family developments, the appropriate fees as established by resolution of the Common Council shall be submitted at the time of permit issuance.

Sec. 12.0. Inspection. The Department of Public Works shall be responsible for permitting and inspection of erosion control on public projects and work in the public right-of-way. The Building Inspection Department shall be responsible for inspection and erosion control on private lands.

The Building Inspector, City Engineer, or their designee shall inspect construction sites at least once a month during the period starting March 1 and ending October 31, and at least two times during the period starting November 1 and ending February 28, to ensure compliance with the erosion control plan. In addition, the Building Inspector, City Engineer, or their designee shall perform regular, year-

round inspections of construction sites to ensure compliance with the control plan, as needed.

If land-disturbing construction activities are occurring without a permit required by this ordinance, the Department of Public Works may enter the land pursuant to the provisions of Wis. Stat. §§ 66.0119(1), (2), and (3).

Sec. 13.0. Enforcement.

- 13.1. The Department of Public Works and/or Building Inspection Department may post a stop work order if any of the following occurs:
 - (a) Land-disturbing construction activity regulated under this ordinance is occurring without a permit.
 - (b) The erosion and sediment control plan is not being implemented in good faith.
 - (c) The conditions of the permit are not being met.
- 13.2. If the responsible party does not cease activity as required in a stop work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the Department of Public Works may revoke the permit.
- 13.3. If the responsible party, where no permit has been issued or the permit has been revoked, does not cease the activity after being notified by the Department of Public Works, or if a responsible party violates a stop work order posted under Sec. 13.1, the Department of Public Works may request the City Attorney to obtain a cease and desist order in any court with jurisdiction.
- 13.4. The Department of Public Works may retract the stop work order issued under Sec. 13.1 or the permit revocation under Sec. 13.2.
- 13.5. Forty-eight (48) hours after posting a stop work order under Sec. 13.1, the Department of Public Works may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The Department of Public Works may go on the land and commence the work forty-eight (48) hours after issuing the notice of intent. The costs of the work performed by the Department of Public Works under this subsection, plus interest at the rate authorized by the Department of Public Works, shall be billed

to the responsible party. In the event a responsible party fails to pay the amount due, the City Clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to Wis. Stat. Ch. 66, Subch. VII.

13.6. Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$50.00 nor more than \$1000.00 and the costs of prosecution for each violation and, in default of payment of such forfeiture and costs, to imprisonment in the county jail until the forfeiture and costs are paid, but not to exceed forty (40) days for each offense. Each day a violation exists shall constitute a separate offense.

13.7. Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunction proceedings.

13.8. In the event of emergency conditions, as deemed by the Building Inspector, City Engineer, or their designee, whatever measures are necessary to bring the site into compliance shall be taken and all costs involved shall be paid by the responsible party.

13.9. In addition to stop work orders, other enforcement techniques, such as verbal warnings, written warnings, notice of violation, and civil penalty/citation are encouraged.

Sec. 14.0. Appeals.

14.1. Board of Zoning Appeals. The Board of Zoning Appeals created pursuant to section 15.934 of the Sheboygan Zoning Ordinance pursuant to Wis. Stat. § 61.354(4)(b):

(a) Shall hear and decide appeals where it is alleged that there is error in any order, decision, or determination made by the Department of Public Works in administering this ordinance except for cease and desist orders obtained under Sec. 13.3.

(b) May authorize, upon appeal, variances from the provisions of this ordinance which are not contrary to the public interest and where, owing to special

conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship.

- (c) Shall use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals and authorizing variances.

14.2. Who May Appeal. Appeals to the Board of Zoning Appeals may be taken by any aggrieved person or by any office, department, board, or bureau of the City of Sheboygan affected by any decision of the Department of Public Works within twenty days of such decision.

Sec. 15.0. Severability. If a court of competent jurisdiction judges any section, clause, provision, or portion of this ordinance unconstitutional or invalid, the remainder of this ordinance shall remain in force and not be affected by such judgment.

Sec. 16.0. Effective Date. This ordinance shall be in force and effect from and after its adoption and publication."

Section 2. Appendix E, Post-Construction Stormwater Management Zoning Ordinance, of the Sheboygan Municipal Code, providing for the control of post-construction runoff to reduce the discharge of pollutants carried in stormwater runoff to waters of the State, is hereby repealed and recreated to read as follows:

"APPENDIX E. POST-CONSTRUCTION STORMWATER MANAGEMENT ORDINANCE

Sections:

- Sec. 1.0 Authority.
- Sec. 2.0 Findings of Fact.
- Sec. 3.0 Purpose and Intent.
- Sec. 4.0 Applicability and Jurisdiction.
- Sec. 5.0 Definitions.
- Sec. 5.5 Applicability of Maximum Extent Practicable.
- Sec. 6.0 Technical Standards.
- Sec. 7.0 Performance Standards.
- Sec. 8.0 Permitting Requirements, Procedures, and Fees.
- Sec. 9.0 Stormwater Management Plan
- Sec. 10.0 Maintenance Agreement.
- Sec. 11.0 Financial Guarantee.
- Sec. 12.0 Fee Schedule.
- Sec. 13.0 Enforcement.
- Sec. 14.0 Appeals.
- Sec. 15.0 Severability.

Sec. 16.0 Effective Date.

Sec. 1.0. Authority.

- 1.1. This ordinance is adopted by the City of Sheboygan under the authority granted by Wis. Stat. § 62.234. This ordinance supersedes all provisions of an ordinance previously enacted under Wis. Stat. § 62.23 that relate to stormwater management regulations. Except as otherwise specified in Wis. Stat. § 62.234, Wis. Stat. § 62.23 applies to this ordinance and to any amendments to this ordinance.
- 1.2. The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the governing body.
- 1.3. The Common Council hereby designates the Department of Public Works to administer and enforce the provisions of this ordinance.
- 1.4. The requirements of this ordinance do not preempt more stringent stormwater management requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits, or approvals, including those authorized under Wis. Stat. §§ 281.16 and 283.33.
 - (b) Targeted non-agricultural performance standards promulgated by the Wisconsin Department of Natural Resources under Wis. Adm. Code § NR 151.004.

Sec. 2.0. Findings of Fact. The Common Council acknowledges that uncontrolled, post-construction runoff has a significant impact upon water resources and the health, safety, and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can:

- (1) Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.
- (2) Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens, and other urban pollutants.

- (3) After wetland communities by changing wetland hydrology and by increasing pollutant loads.
- (4) Reduce the quality of groundwater by increasing pollutant loading.
- (5) Threaten public health, safety, property, and general welfare by overtaxing storm sewers, drainage ways, and other minor drainage facilities.
- (6) Undermine floodplain management efforts by increasing the incidence and levels of flooding.

Sec. 3.0. Purpose and Intent.

3.1. Purpose. The general purpose of this ordinance is to establish long-term, post-construction runoff management requirements that will diminish the threats to public health, safety, welfare, and the aquatic environment. Specific purposes are to:

- (a) Further the maintenance of safe and healthful conditions.
- (b) Prevent and control the adverse effects of stormwater; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish, and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.
- (c) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; and control increases in the scouring and transportation of particulate matter.
- (d) Minimize the amount of pollutants discharged from the separate storm sewer to protect the waters of the State.

3.2. Intent. It is the intent of the Common Council that this ordinance regulates post-construction stormwater discharges to waters of the State. This ordinance may be applied on a site-by-site basis. The Common Council recognizes, however, that the preferred method of achieving the stormwater performance standards set forth in this ordinance is through the preparation and implementation of comprehensive,

systems-level stormwater management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional stormwater devices, practices, or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the State. Where such plans are in conformance with the performance standards developed under Wis. Stat. § 281.16 for regional stormwater management measures and have been approved by the Common Council, it is the intent of this ordinance that the approved stormwater management plan be used to identify post-construction management measures acceptable for the community.

Sec. 4.0. Applicability and Jurisdiction.

4.1. Applicability.

(a) Except as provided under par. (b), this ordinance applies to the following:

1. A post-construction site whereupon one acre or more of land-disturbing construction activity occurs during construction.
2. A post-construction site that had more than 1,000 square feet but less than one acre of land-disturbing activity shall be required to obtain a permit under this ordinance, but shall only be required to comply with the performance standards contained in section 7.4(b) regarding peak discharges unless otherwise required by the administering authority.

(b) A site that meets any of the criteria in this paragraph is exempt from the requirements of this ordinance:

1. A post-construction site with less than ten percent connected imperviousness, based on the area of land disturbance, provided the cumulative area of all impervious surfaces is less than one acre. However, the exemption of this paragraph does not include exemption from the protective area standard of this ordinance.
2. Agricultural facilities and practices.

3. Underground utility construction, but not including the construction of any above-ground structures associated with utility construction.

(c) Notwithstanding the applicability requirements in par. (a), this ordinance applies to post-construction sites of any size that, as determined by the Department of Public Works, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, causes undue channel erosion, or increases water pollution by scouring or the transportation of particulate matter.

4.2. Jurisdiction. This ordinance applies to post-construction sites within the boundaries and jurisdiction of the City of Sheboygan, as well as all lands located within the extraterritorial plat approval jurisdiction of the City of Sheboygan, even if plat approval is not involved.

4.3. Exclusions. This ordinance does not apply to activities conducted by a state agency, as defined under Wis. Stat. § 227.01(1).

Sec. 5.0. Definitions.

- (a) "Adequate Sod, or Self-Sustaining Vegetative Cover" means maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges, and duff layers of fallen leaves and woody debris.
- (b) "Administering Authority" means a governmental employee, or a regional planning commission empowered under Wis. Stat. § 62.234 that is designated by the Common Council to administer this ordinance.
- (c) "Agricultural Facilities and Practices" has the meaning given in Wis. Stat. § 281.16(1).
- (d) "Atlas 14" means the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.
- (e) "Average Annual Rainfall" means a typical calendar year of precipitation as determined by the Wisconsin Department of Natural Resources for users of models such as WinSLAMM, P8, or equivalent methodology. The average annual rainfall is chosen from a department publication for the location closest to the municipality.

- (f) "Best Management Practice" or "BMP" means structural or non-structural measures, practices, techniques, or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the State.
- (g) "Business Day" means a day the office of the Department of Public Works is routinely and customarily open for business.
- (h) "Cease and Desist Order" means a court-issued order to halt land-disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the Department of Public Works.
- (i) "Combined Sewer System" means a system for conveying both sanitary sewage and stormwater runoff.
- (j) "Connected Imperviousness" means an impervious surface connected to the waters of the State via a separate storm sewer, an impervious flow path, or a minimally pervious flow path.
- (k) "Design Storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.
- (l) "Development" means residential, commercial, industrial, or institutional land uses and associated roads.
- (m) "Direct Conduits to Groundwater" means wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow, fractured bedrock.
- (n) "Division of Land" has the meaning given in Section 3 of the City of Sheboygan Subdivision Code.
- (o) "Effective Infiltration Area" means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms, or pretreatment.
- (p) "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice, or gravity.
- (q) "Exceptional Resource Waters" means waters listed in Wis. Adm. Code. § NR 102.11.
- (r) "Extraterritorial" means the unincorporated area within three miles of the corporate limits of a first-, second-, or third-class city, or within one- and one-half miles of a fourth-class city or village.
- (s) "Filtering Layer" means soil that has at least a three-foot deep layer with at least 20% fines; or at least a five-foot deep layer with at least 10% fines; or an engineered soil with an equivalent level of protection as determined by the regularity authority for the site.

- (t) "Final Stabilization" means that all land-disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.
- (u) "Financial Guarantee" means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guaranteed submitted to the Department of Public Works by the responsible party to assure that requirements of the ordinance are carried out in compliance with the stormwater management plan.
- (v) "Governing Body" means the Common Council of the City of Sheboygan.
- (w) "Impervious Surface" means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, gravel, or paved parking lots and streets are examples of areas that typically are impervious.
- (x) "In-fill" means an undeveloped area of land located within an existing urban sewer service area surrounded by development or development and natural or man-made features where development cannot occur.
- (y) "Infiltration" means the entry of precipitation or runoff into or through the soil.
- (z) "Infiltration System" means a device or practice such as a basin, trench, rain garden, or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns, or minimal infiltration from practices such as swales or roadside channels designed for conveyance and pollutant removal only.
- (aa) "Karst feature" means an area or surficial geologic features subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps, or swallets.
- (bb) "Land-Disturbing Construction Activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the State. Land-disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.

- (cc) "Landowner" means any person holding fee title, an easement, or other interest in property, which allows the person to undertake cropping, livestock management, land-disturbing construction activity, or maintenance of stormwater BMPs on the property.
- (dd) "Maintenance Agreement" means a legal document that provides for long-term maintenance of stormwater management practices.
- (ee) "Maximum Extent Practicable" means the highest level of performance that is achievable but is not equivalent to a performance standard identified in this ordinance as determined in accordance with Sec. 5.5 of this ordinance.
- (ff) "New Development" means development resulting from the conversion of previously undeveloped land or agricultural land uses.
- (gg) "NRCS MSE3 or MSE4 Distribution" means a specific precipitation distribution developed by the United States Department of Agriculture, Natural Resources Conservation Service, using precipitation data from Atlas 14.
- (hh) "Off-site" means located outside the property boundary described in the permit application.
- (ii) "On-site" means located within the property boundary described in the permit application.
- (jj) "Ordinary High-water Mark" has the meaning given in Wis. Adm. Code § NR 115.03(6).
- (kk) "Outstanding Resource Waters" means waters listed in Wis. Adm. Code § NR 102.10.
- (ll) "Percent Fines" means the percentage of a given sample of soil, which passes through a #200 sieve.
- (mm) "Performance Standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (nn) "Permit" means a written authorization made by the Department of Public Works to the applicant to conduct land-disturbing construction activity or to discharge post-construction runoff to waters of the State.
- (oo) "Permit Administration Fee" means a sum of money paid to the Department of Public Works by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.
- (pp) "Pervious Surface" means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests, or similar vegetated areas are examples of surfaces that typically are pervious.
- (qq) "Pollutant" has the meaning given in Wis. Stat. § 283.01(13).
- (rr) "Pollution" has the meaning given in Wis. Stat. § 281.01(10).

- (ss) "Post-construction Site" means a construction site following the completion of land-disturbing construction activity and final site stabilization.
- (tt) "Pre-development Condition" means the extent and distribution of land cover types present before the initiation of land-disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.
- (uu) "Preventative Action Limit" has the meaning given in Wis. Adm. Code § NR 140.05(17).
- (vv) "Protective Area" means an area of land that commences at the top of the channel of lakes, streams, and rivers, or at the delineated boundary of wetlands, and that is the greatest of the widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface.
- (ww) "Redevelopment" means areas where development is replacing older development.
- (xx) "Responsible Party" means the landowner or any other entity performing services to meet the requirements of this ordinance through a contract or other agreement.
- (yy) "Runoff" means stormwater or precipitation, including rain, snow or ice melt, or similar water that moves on the land surface via sheet or channelized flow.
- (zz) "Separate Storm Sewer" means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels, or storm drains, which meets all of the following criteria:
 - 1. Is designed or used for collecting water or conveying runoff;
 - 2. Is not part of a combined sewer system;
 - 3. Is not part of a publicly-owned wastewater treatment works that provides secondary or more stringent treatment;
 - 4. Discharges directly or indirectly to waters of the State.
- (ab) "Silviculture Activity" means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of construction site area is not a silviculture activity.
- (ac) "Site" means the entire area included in the legal description of the land on which the land-disturbing construction activity occurred.
- (ad) "Stop Work Order" means an order issued by the Department of Public Works which requires that all construction activity on the site be stopped.

- (ae) "Stormwater Management Plan" is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.
- (af) "Technical Standard" means a document that specifies design, predicted performance and operation, and maintenance specifications for a material, device, or method.
- (ag) "Top of Channel" means an edge, or point on the landscape landward from the ordinary high-water mark of a surface water of the State, where the slope of the land begins to be less than 12% or less continually for at least fifty (50) feet. If the slope of the land is 12% or less continually for the initial fifty (50) feet landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.
- (ah) "Total Maximum Daily Load" or "TMDL" means the amount of pollutants specified as a function of one or more water quality parameters, that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.
- (ai) "TP-40" means Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.
- (aj) "TR-55" means the United States Department of Agriculture, Natural Resources Conservation Service (previously, the Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986, which is incorporated by reference for this chapter.
- (ak) "Transportation Facility" means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail, or any other public work for transportation purposes such as harbor improvements under Wis. Stat. § 85.095(1)(b). "Transportation Facility" does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Department of Natural Resources pursuant to Wis. Stat. § 281.33.
- (al) "TSS" means total suspended solids.
- (am) "Type II Distribution" means a rainfall type curve as established in the United States Department of Agriculture, Natural Resources Conservation Service (previously, the Soil Conservation Service), Technical Paper 149, published in 1973.
- (an) "Waters of the State" includes those portions of Lake Michigan and Lake Superior within the boundaries of this State, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems, and other surface water or groundwater, natural or artificial, public or private, within this State or its jurisdiction.

Sec. 5.5. Applicability of Maximum Extent Practicable. Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the Department of Public Works' satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

Sec. 6.0. Technical Standards. The following methods shall be used in designing the water quality, peak discharge, and infiltration components of stormwater practices needed to meet the water quality standards of this ordinance:

1. Consistent with the technical standards identified, developed, or disseminated by the Wisconsin Department of Natural Resources under Wis. Adm. Code Ch. NR 151, Subch. V.
2. Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the Department of Public Works.
3. In this ordinance, the following year and location has been selected as average annual rainfall: Milwaukee, 1969 (Mar. 28 - Dec. 6.).

Sec. 7.0. Performance Standards.

- 7.1. Responsible Party. The responsible party shall comply with this section.
- 7.2. Stormwater Management Plan. A written stormwater management plan in accordance with Sec. 9.0 shall be developed and implemented for each post-construction site.
- 7.3. Maintenance of Effort. For redevelopment sites where the redevelopment will be replacing older development that was subject to post-construction performance standards of Wis. Adm. Code Ch. NR 151 in effect on or after October 1, 2004, the responsible party shall meet the total suspended solids reduction, peak flow control, infiltration, and protective areas standards applicable to the older development or meet

the redevelopment standards of this ordinance, whichever is more stringent.

7.4. Requirements. The stormwater management plan required under Sec. 7.2 shall include the following:

(a) Total Suspended Solids. BMPs shall be designed, installed, and maintained to control the total suspended solids carried off in runoff from the post-construction site as follows:

1. BMPs shall be designed in accordance with Table 1 or to the maximum extent practicable as provided in subd. 2. The design shall be based on an average annual rainfall, as compared to no runoff management controls. The stormwater plan shall include modeling of proposed stormwater BMPs for total phosphorus and reporting of TP reduction performance. Electronic stormwater quality model files shall be submitted with the stormwater plan.

Table 1. TSS Reduction Standards

Development Type	TSS Reduction
New Development	80%
In-fill Development	80%
Redevelopment	40% of load from parking areas and roads

2. Maximum Extent Practicable. If the design cannot meet a total suspended solids reduction performance standard of Table 1, the stormwater management plan shall include a written, site-specific explanation of why the total suspended solids reduction performance standard cannot be met and why the total suspended solids load will be reduced only to the maximum extent practicable.

3. Off-Site Drainage. When designing BMPs, runoff draining to the BMP from off-site shall be considered in determining the treatment efficiency of the practice. Any impact on the efficiency shall be compensated for by increasing the size of the BMP accordingly.

(b) Peak Discharge.

1. By design, BMPs shall be employed to maintain or reduce the 1-year, 2-year, and 10-year, 24-hour post-construction peak runoff discharge rates to the 1-year, 2-year, and 10-year, 24-hour predevelopment peak runoff discharge rates, respectively, or to the maximum extent practicable. The runoff curve numbers in Table 2 shall be used to represent the actual pre-development conditions. Electronic stormwater quantity model files shall be submitted with the stormwater plan.

For peak discharge control design, calculations shall use TR-55 runoff curve number methodology, Atlas 14 precipitation depths, and the NRCS Wisconsin MSE4 precipitation distribution. On a case-by-case basis, the Department of Public Works may allow the use of TP-40 precipitation depths and the Type II distribution.

The administrative authority may require additional retention up to and including the 100-year post-development storm frequency due to downstream threats to life and property resulting from the additional drainage.

The grading plan shall pass the 100-year storm around or through the development without causing harm to life or property.

Table 2. Maximum Pre-Development Runoff Curve Numbers				
Runoff Curve Number	Hydrologic Soil Group			
	A	B	C	D
Woodland	30	55	70	77
Grassland	39	61	71	78
Cropland	55	69	78	83

(c) Infiltration.

1. Best Management Practices. BMPs shall be designed, installed, and maintained to infiltrate runoff in accordance with the following or to the maximum extent practicable:
 - a. Low Imperviousness. For development up to 40% connected imperviousness, such as parks,

cemeteries, and low-density residential development, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90% of the predevelopment infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the post-construction site is required as an effective infiltration area.

- b. Moderate Imperviousness. For development with more than 40% and up to 80% connected imperviousness, such as medium and high density residential, multi-family development, industrial and institutional development, and office parks, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 75% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the post-construction site is required as an effective infiltration area.
- c. High imperviousness. For development with more than 80% connected imperviousness, such as commercial strip malls, shopping centers, and commercial downtowns, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the post-construction site is required as an effective infiltration area. The pre-development condition shall be the same as specified in Table 2 of the Peak Discharge section of this ordinance.

2. Source Areas.

- a. Prohibitions. Runoff from the following areas may not be infiltrated and may not qualify as contributing to meeting the requirements of

this section unless demonstrated to meet the conditions identified in s. 07(4)(c)6.:

- i. Areas associated with a tier 1 industrial facilities identified in Wis. Admin. Code s. NR 216.21(2)(a), including storage, loading, and parking. Rooftops may be infiltrated with the concurrence of the regulatory authority.
 - ii. Storage and loading areas of a tier 2 industrial facility identified in Wis. Admin. Code s. NR 216.21(2)(b).
 - iii. Fueling and vehicle maintenance areas. Runoff from rooftops of fueling and vehicle maintenance areas may be infiltrated with the concurrence of the regulatory authority.
- b. Exemptions. Runoff from the following areas may be credited toward meeting the requirement when infiltrated, but the decision to infiltrate runoff from these source areas is optional:
- i. Parking areas and access roads less than 5,000 square feet for commercial development.
 - ii. Parking areas and access roads less than 5,000 square feet for industrial development not subject to the Prohibitions under par. a.
 - iii. Except as provided under s. 07(3) redevelopment post-construction sites.
 - iv. In-fill development areas less than five acres.
 - v. Roads on commercial, industrial, and institutional land uses, and arterial residential needs.

3. Location of Practices.

a. Prohibitions. Infiltration practices may not be located in the following areas:

i. Areas within 1,000 feet upgradient or within 100 feet downgradient of karst features.

ii. Areas within 400 feet of a community water system well as specified in Wis. Admin. Code s. NR 811.16(4) or within the separation distances listed in Wis. Admin. Code s. NR 812.08 for any private well or non-community well for runoff infiltrated from commercial, including multi-family residential, industrial, and institutional land uses or regional devices for one- and two-family residential development.

iii. Areas where contaminants of concern, as identified in Wis. Admin. Code s. NR 720.03(2), are present in the soil through which infiltration will occur.

b. Separation Distances.

i. Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of seasonal high groundwater or the top of bedrock are in accordance with Table 3.

Table 3. Separation Distances and Soil Characteristics

Source Area	Separation Distance	Soil Characteristics
Industrial, Commercial, Institutional Parking Lots and Roads	5 feet or more	Filtering Layer
Residential Arterial Roads	5 feet or more	Filtering Layer
Roofs Draining to Subsurface Infiltration Practices	1 foot or more	Native or Engineered Soil with Particles Finer than Course Sand
Roofs Draining to Surface Infiltration Practices	Not Applicable	Not Applicable
All Other Impervious Source Areas	3 feet or more	Filtering Layer

- ii. Notwithstanding par. B., applicable requirements for injection wells classified under Wis. Admin. Code Ch. NR 815 shall be followed.
- c. Infiltration Rate Exemptions. Infiltration practices located in the following areas may be credited toward meeting the requirements under the following conditions, but the decision to infiltrate under these conditions is optional:
 - i. Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than 0.6 inches per hour using a scientifically credible field test method.
 - ii. Where the least permeable soil horizon to five feet below the proposed bottom of the infiltration system using the U.S. Department of Agriculture method of soils analysis is one of the following: sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, or clay.

4. Alternate Use. Where alternate uses of runoff are employed, such as for toilet flushing, laundry, or irrigation or storage on green roofs where an equivalent portion of the runoff is captured permanently by rooftop vegetation, such alternate use shall be given equal credit toward the infiltration volume required by this section.
5. Groundwater Standards.
 - a. Infiltration systems designed in accordance with this section shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventative action limit at a point of standards application in accordance with Wis. Admin. Code Ch. NR 140. However, if site-specific information indicates that compliance with a preventative action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.
 - b. Notwithstanding par. a., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.
6. Pretreatment. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial, and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subd. 6. Pretreatment options may include, but are not limited to, oil and grease separation, sedimentation, biofiltration, filtration, swales, or filter strips.
7. Maximum Extent Practicable. Where the conditions of subd. 3. and 4. limit or restrict the use of infiltration practices, the performance standard of

s. 07(4)(c) shall be met to the maximum extent practicable.

(d) Protective Areas.

1. Definition. In this section, "protective area" means an area of land that commences at the top of the channel of lakes, streams, and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this section, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, so that runoff cannot enter the enclosure at this location.
 - a. For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in Wis. Admin. Code s. NR 103.04, 75 feet.
 - b. For perennial and intermittent streams identified on a U.S. Geological Survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.
 - c. For lakes, 50 feet.
 - d. For wetlands not subject to par. e. or f., 50 feet.
 - e. For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps, and ephemeral ponds.
 - f. For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include: degraded wetland dominated by invasive species such as reed canary grass;

cultivated hydric soils; and any gravel pits, or dredged material or fill material disposal sites that take on the attributes of a wetland.

- g. In pars. d. to f., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in Wis. Admin. Code s. NR 103.03.
 - h. Wetland boundary delineation shall be made in accordance with Wis. Admin. Code s. NR 103.08(1m). This paragraph does not apply to wetlands that have been completely filled in compliance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in compliance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after a fill has been placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.
 - i. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.
 - j. Notwithstanding pars. a. to i., the greatest protective area width shall apply where rivers, streams, lakes, and wetlands are contiguous.
- 2. Applicability. This section applies to post-construction sites located within a protective area, except those areas exempted pursuant to subd. 4.
 - 3. Requirements. The following requirements shall be met:
 - a. Impervious surfaces shall be kept out of the protective area entirely or to the maximum extent practicable. If there is no practical alternative to locating an impervious surface in the protective area, the stormwater

management plan shall contain a written, site-specific explanation.

- b. Where land-disturbing construction activity occurs within a protective area, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained where no impervious surface is present. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat, and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion such as on steep slopes or where high velocity flows occur.
 - c. BMPs such as filter strips, swales, or wet detention ponds, that are designed to control pollutants from non-point sources, may be located in the protective area.
4. Exemptions. This section does not apply to any of the following:
- a. Except as provided under s. 7.3 redevelopment post-construction sites.
 - b. In-fill development areas less than 5 acres.
 - c. Structures that cross or access surface water such as boat landings, bridges, and culverts.
 - d. Structures constructed in accordance with Wis. Stat. § 59.692(1v).
 - e. Areas of post-construction sites from which the runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the local ordinance requirements for total suspended solids and peak flow reduction, except to the extent that vegetative ground cover is necessary to maintain bank stability.

(e) Fueling and Maintenance Areas. Fueling and vehicle maintenance areas shall have BMPs designed, installed, and maintained to reduce petroleum within runoff, so that the runoff that enters waters of the state contains no visible petroleum sheen or to the maximum extent practicable.

(f) Swale Treatment for Transportation Facilities.

1. Requirement. Except as provided in subd. 2., transportation facilities that use swales for runoff conveyance and pollutant removal are exempt from the requirements of local ordinance requirements for peak flow control, total suspended solids control, and infiltration, if the swales are designed to do all of the following or to the maximum extent practicable:

a. Swales shall be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.

b. Swales shall comply with sections V.F. (Velocity and Depth) and V.G. (Swale Geometry Criteria) with a swale treatment length as long as that specified in section V.C. (Pre-Treatment) of the Wisconsin Department of Natural Resources technical standard 1005 "Vegetated Infiltration Swales", dated May 2007, or a superseding document. Transportation facility swale treatment does not have to comply with other sections of technical standard 1005.

2. Other Requirements.

a. Notwithstanding subd. 1., the Department of Public Works may, consistent with water quality standards, require that other requirements, in addition to swale treatment, be met on a transportation facility with an average daily traffic rate greater than 2,500 and where the initial surface water of the state that the runoff directly enters is one of the following:

- i. An outstanding resource water.
- ii. An exceptional resource water.
- iii. Waters listed in section 303(d) of the Federal Clean Water Act that are identified as impaired in whole or in part, due to non-point source impacts.
- iv. Water where targeted performance standards are developed pursuant to Wis. Admin. Code s. NR 151.004.

b. The transportation facility authority shall contact the Department of Public Works to determine if additional BMPs beyond a water quality swale are needed under this subsection.

7.5. General Considerations for Stormwater Management Measures.
The following considerations shall be observed in on-site and off-site runoff management:

- (a) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.
- (b) Emergency overland flow for all stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.

7.6. BMP Location.

- (a) To comply with the performance standards required under s. 07 of this ordinance, BMPs may be located on-site or off-site as part of a regional stormwater device, practice, or system, but shall be installed in accordance with Wis. Admin. Code s. NR 151.003.
- (b) The Department of Public Works may approve off-site management measures provided that all of the following conditions are met:

1. The Department of Public Works determines that the post-construction runoff is covered by a stormwater management system plan that is approved by the City of Sheboygan and that contains management requirements consistent with the purpose and intent of this ordinance.
 2. The off-site facility meets all of the following conditions:
 - a. The facility is in place.
 - b. The facility is designed and adequately sized to provide a level of stormwater control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this ordinance.
 - c. The facility has a legally obligated entity responsible for its long-term operation and maintenance.
- (c) Where a regional treatment option exists such that the Department of Public Works exempts the applicant from all or part of the minimum on-site stormwater management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the Department of Public Works. In determining the fee for post-construction runoff, the Department of Public Works shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.
- (d) The BMPs may be located on-site or off-site as part of a regional stormwater device practice or system.
- 7.7. Foundation Drain Sump Pump Line and Building Roof Drain Discharge.
- (a) Foundation drain sump pump lines and building roof drains are prohibited from discharging directly onto any public property, public right-of-way, public street, or public sidewalk if such discharge creates or contributes to a public hazard or public nuisance. No person shall hereafter construct, build, establish, replace, or maintain any foundation drain sump pump line or building roof drain onto a public right-of-way, public street,

public sidewalk, roadside ditch, or other public property maintained by the City of Sheboygan without first obtaining written permission to do so from the Director of Public Works.

Failure to obtain written permission from the Director of Public Works for a foundation drain sump pump line or building roof drain discharge onto a public street, public sidewalk, or other public property shall be deemed a violation of the Post-Construction Stormwater Management Ordinance.

- (b) No foundation drain sump pump line or building roof drain shall convey or discharge stormwater to a point less than six feet from a building foundation or property line if reasonably possible. No detached accessory structure shall convey or discharge roof stormwater drainage to a point less than four feet from an accessory structure, building foundation, or property line if reasonable possible. If it is not possible to discharge such stormwater at least these distances, it shall be discharged as far as reasonably possible away from each foundation, structure or, property line.
- (c) Foundation drain sump pump lines or building roof drains may be routed to discharge underground via "mini" storm sewer into a stormwater inlet or catch basin if written permission is obtained from the Director of Public Works.
- (d) No foundation drain sump pump line or building roof drain shall be connected to a sanitary sewer.

7.8. Additional Requirements. The Department of Public Works may establish stormwater management requirements more stringent than those set forth in this ordinance if the Department of Public Works determines that the requirements are needed to control stormwater quantity or control flooding, comply with federally approved total maximum daily load requirements, or control pollutants associated with existing development or redevelopment.

Sec. 8.0. Permitting Requirements, Procedures, and Fees.

8.1. Permit Required. No responsible party may undertake a land-disturbing construction activity without receiving a post-

construction runoff permit from the Department of Public Works prior to commencing the proposed activity.

8.2. Permit Application and Fees. Unless specifically excluded by this ordinance, any responsible party desiring a permit shall submit to the Department of Public Works a permit application on a form provided by the Department of Public Works for that purpose.

(a) Unless otherwise excluded by this ordinance, a permit application must be accompanied by a stormwater management plan, a maintenance agreement, and a non-refundable permit administration fee.

(b) The stormwater management plan shall be prepared to meet the requirements of s. 07 and s. 08, the maintenance agreement shall be prepared to meet the requirements of s. 10, the financial guarantee shall meet the requirements of s. 11, and fees shall be those established by the Common Council as set forth in s. 12.

8.3. Permit Application Review and Approval. The Department of Public Works shall review any permit application that is submitted with a stormwater management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:

(a) Within 30 business days of the receipt of a complete permit application, including all items as required by sub. 2), the Department of Public Works shall inform the applicant whether the application, stormwater management plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.

(b) If the stormwater permit application, stormwater management plan, and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of stormwater management practices is made, the Department of Public Works shall issue the permit.

(c) If the stormwater permit application, stormwater management plan, or maintenance agreement is disapproved, the Department of Public Works shall detail in writing the reasons for the disapproval.

(d) The Department of Public Works may request additional information from the applicant. If additional

information is submitted, the Department of Public Works shall have ten business days from the date the additional information is received to inform the applicant that the stormwater management plan and maintenance agreement are either approved or disapproved.

- (e) Failure by the Department of Public Works to inform the permit applicant of a decision within 30 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.

8.4. Permit Requirements. All permits issued under this ordinance shall be subject to the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. The Department of Public Works may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Department of Public Works to suspend or revoke this permit may be appealed in accordance with s. 14.

- (a) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.
- (b) The responsible party shall design and install all structural and non-structural stormwater management measures in accordance with the approved stormwater management plan and this permit.
- (c) The responsible party shall notify the Department of Public Works at least two business days before commencing any work in conjunction with the stormwater management plan, and within two business days upon completion of the stormwater management practices. If required as a special condition under sub. 5), the responsible party shall make additional notification according to a schedule set forth by the Department of Public Works so that practice installations can be inspected during construction.
- (d) Practice installations required as part of this ordinance shall be certified "as built" or "record" drawings by a licensed professional engineer. Completed stormwater management practices must pass a final

inspection by the Department of Public Works or its designee to determine if they are in accordance with the approved stormwater management plan and ordinance. The Department of Public Works or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.

- (e) The responsible party shall notify the Department of Public Works of any significant modifications it intends to make to an approved stormwater management plan. The Department of Public Works may request that the proposed modifications be submitted to it for approval prior to incorporation into the stormwater management plan and execution by the responsible party.
- (f) The responsible party shall maintain all stormwater management practices in accordance with the stormwater management plan until the practices either become the responsibility of the City, or are transferred to subsequent private owners as specified in the approved maintenance agreement.
- (g) The responsible party authorizes the Department of Public Works to perform any work or operations necessary to bring stormwater management measures into conformance with the approved stormwater management plan, and consents to a special assessment or charge against the property as authorized under Wis. Stat. Ch. 66, subch. VII, or to charging such costs against the financial guarantee posted under s. 11.
- (h) If so directed by the Department of Public Works, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved stormwater management plan.
- (i) The responsible party shall permit property access to the Department of Public Works or its designee for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.
- (j) Where site development or redevelopment involves changes in direction, increases in peak rate, and/or total volume of runoff from a site, the Department of Public

Works may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.

- (k) The responsible party is subject to the enforcement actions and penalties detailed in s. 13- if the responsible party fails to comply with the terms of this permit.

8.5. Permit Conditions. Permits issued under this subsection may include conditions established by Department of Public Works in addition to the requirements needed to meet the performance standards in s. 07 or a financial guarantee as provided for in s. 11.

8.6. Permit Duration. Permits issued under this section shall be valid from the date of issuance through the date the Department of Public Works notifies the responsible party that all stormwater management practices have passed the final inspection required under sub. (4)(d).

Sec. 9.0. Stormwater Management Plan.

9.1. Stormwater Management Plan Requirements. The stormwater management plan required under s. 7.2. shall contain at a minimum, the following information.

- (a) Name, address, and telephone number for the following or their designees, landowner, developer, project engineer for practice design and certification, person(s) responsible for installation of stormwater management practices, and person(s) responsible for maintenance of stormwater management practices prior to the transfer, if any, of maintenance responsibility of another party.
- (b) A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.
- (c) Pre-development site conditions, including:
 - 1. One or more site maps at a scale of not less than 1-inch equals 100 feet. The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic

soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed 100 feet; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all stormwater conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the 100 year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to Wis. Admin. Code s. NR 811.16.

2. Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).

(d) Post-development site conditions, including:

1. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.
2. Explanation of any restrictions on stormwater management measures in the development area imposed by wellhead protection plans and ordinances.
3. One or more site maps at a scale of not less than 1-inch equals 100 feet showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for

all stormwater conveyance sections; location and type of all stormwater management conveyance and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainage way; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.

4. Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development, and the geographic areas used in making calculations shall be clearly cross-referenced to the required map(s).
 5. Results of investigations of soils and groundwater required for the placement and design of stormwater management measures. Detailed drawings including cross-sections and profiles of all permanent stormwater conveyance and treatment practices.
 6. A description and installation schedule for the stormwater management practices needed to meet the performance standards in s. 07.
- (e) A description and installation schedule for the stormwater management practices needed to meet the performance standards in s. 07.
 - (f) A maintenance plan developed for the life of each stormwater management practice including the required maintenance activities and maintenance activity schedule.
 - (g) Cost estimates for the construction, operation, and maintenance of each stormwater management practice.
 - (h) Other information requested in writing by the Department of Public Works to determine compliance of the proposed stormwater management measures with the provisions of this ordinance.
 - (i) All site investigations, plans, designs, computations, and drawings shall be certified by a licensed professional engineer to be prepared in accordance with

accepted engineering practice and requirements of this ordinance.

- 9.2. Alternative Requirements. The Department of Public Works may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under s. 7.5.

Sec. 10.0. Maintenance Agreement.

- 10.1. Maintenance Agreement Required. The maintenance agreement required under s. 8.2. for stormwater management practices shall be an agreement between the Department of Public Works and the responsible party to provide for maintenance of stormwater practices beyond the duration period of this permit. The maintenance agreement shall be filed with the County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the stormwater management practices.

- 10.2. Agreement Provisions. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by s. 9.1(f).

- (a) Identification of stormwater facilities and designation of the drainage area served by the facilities.
- (b) A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under s. 8.2.
- (c) Identification of the responsible party(s), organization, or city, county, town, or village responsible for long-term maintenance of the stormwater management practices identified in the stormwater management plan required under s. 8.2.
- (d) Requirement that the responsible party(s), organization, or city, county, town, or village shall maintain stormwater management practices in accordance with the schedule included in par. (b).
- (e) Authorization from the Department of Public Works to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.

- (f) A requirement on the Department of Public Works to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition.
- (g) Agreement that the party designated under par. (c) as responsible for long term maintenance of the stormwater management practices, shall be notified by the Department of Public Works of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Department of Public Works.
- (h) Authorization of the Department of Public Works to perform the corrected actions identified in the inspection report if the responsible party designated under par. (c) does not make the required corrections in the specified time period. The Department of Public Works shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Wis. Stat. Ch. 66, subch. VII.

Sec. 11.0. Financial Guarantee.

- 11.1. Establishment of the Guarantee. The Department of Public Works may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the Department of Public Works. The financial guarantee shall be in an amount determined by the Department of Public Works to be the estimated cost of construction and the estimated cost of maintenance of the stormwater management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the Department of Public Works the authorization to use the funds to complete the stormwater management practices if the responsible party defaults or does not properly implement the approved stormwater management plan, upon written notice to the responsible party by the Department of Public Works that the requirements of this ordinance have not been met.
- 11.2. Conditions for Release. Conditions for the release of the financial guarantee are as follows:

- (a) The Department of Public Works shall release the portion of the financial guarantee established under this section, less any costs incurred by the Department of Public Works to complete installation of practices, upon submission of "as built plans" or "record" drawings by a licensed professional engineer. The Department of Public Works may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.
- (b) The Department of Public Works shall release the portion of the financial guarantee established under this section to assure maintenance of stormwater practices, less any costs incurred by the Department of Public Works, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

Sec. 12.0. Fee Schedule. The fees referred to in other sections of this ordinance shall be established by the Common Council and may from time to time be modified by resolution. A schedule of the fees established by the Common Council shall be available for review in the Department of Public Works office.

Sec. 13.0. Enforcement.

- 13.1. Any land-disturbing construction activity or post-construction runoff initiated after the effective date of this ordinance by any person, firm, association, or corporation subject to the ordinance provisions shall be deemed a violation unless conducted in accordance with the requirements of this ordinance.
- 13.2. The Department of Public Works shall notify the responsible party by certified mail of any non-complying land-disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action that may be taken.
- 13.3. Upon receipt of written notification from the Department of Public Works under 13.2, the responsible party shall correct work that does not comply with the stormwater management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the Department of

Public Works in the notice as necessary to meet the specifications and schedule set forth by the Department of Public Works in the notice.

- 13.4. If the violations to a permit issued pursuant to this ordinance are likely to result in damage to properties, public facilities, or waters of the state, the Department of Public Works may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the Department of Public Works plus interest and legal costs shall be billed to the responsible party.
- 13.5. The Department of Public Works is authorized to post a stop work order on all land-disturbing construction activity that is in violation of this ordinance, or to request the City Attorney to obtain a cease and desist order in any court with jurisdiction.
- 13.6. The Department of Public Works may revoke a permit issued under this ordinance for non-compliance with ordinance provisions.
- 13.7. Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the Department of Public Works or by a court with jurisdiction.
- 13.8. The Department of Public Works is authorized to refer any violation of this ordinance, or a stop work order or cease and desist order issued pursuant to this ordinance, to the City Attorney for the commencement of further legal proceedings in any court with jurisdiction.
- 13.9. Any person, firm, association, or corporation who does not comply with the provisions of this ordinance shall be subject to a forfeiture of not less than \$50.00 or nor more than \$1,000 per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.
- 13.10. Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.
- 13.11. When the Department of Public Works determines that the holder of a permit issued pursuant to this ordinance has

failed to follow practices set forth in the stormwater management plan, or has failed to comply with schedules set forth in said stormwater management plan, the Department of Public Works or its designee may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved stormwater management plan. The Department of Public Works shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to s. 11 of this ordinance. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.

Sec. 14.0. Appeals.

14.1. Zoning Board of Appeals. The zoning board of appeals, created pursuant to Sheboygan Municipal Code s. 15.934 and Wis. Stat. s. 61.354(4)(b) shall hear and decide appeals where it is alleged that there is error in any order, decision, or determination made by the Department of Public Works in administering this ordinance. The board shall also use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals. Upon appeal, the board may authorize variances from the provisions of this ordinance that are not contrary to the public interest, and where owing to special conditions, a literal enforcement of the ordinance will result in unnecessary hardship.

14.2. Who May Appeal. Appeals to the zoning board of appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the City of Sheboygan affected by any decision of the Department of Public Works.

Sec. 15.0. Severability. If any section, clause, provision, or portion of this ordinance is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the ordinance shall remain in force and not be affected by such judgment.

Sec. 16.0. Effective Date. This ordinance shall be in force and effect from and after its adoption and publication."

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

Dean Decker

[Signature]

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor