

# CHAPTER 26

## STORM WATER RUNOFF CONTROL

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# STORM WATER RUNOFF CONTROL

## 26.01 FINDINGS OF FACT AND DECLARATION OF POLICY

The City of Middleton finds that uncontrolled storm water runoff from land development activities has significant adverse impacts upon regional water resources and the health, safety, property and general welfare of the community, and diminishes the public enjoyment and use of natural resources. The City of Middleton further finds that effective storm water management depends on proper planning, design, and timely installation of conservation and management practices and their perpetual maintenance. Therefore, it is declared through this ordinance to be the policy of the City of Middleton to minimize the impact of additional storm water produced from urbanization and redevelopment. Specifically, soil erosion and/or storm water runoff can:

- (1) Carry sediment, nutrients, pathogens, organic matter, heavy metals, toxins and other pollutants to regional lakes, streams and wetlands.
- (2) Diminish the capacity of water resources to support recreational and water supply uses and a natural diversity of plant and animal life.
- (3) Clog existing drainage systems, increasing maintenance problems and costs.
- (4) Cause bank and channel erosion.
- (5) Increase downstream flooding.
- (6) Reduce groundwater recharge, which may in turn diminish stream base flows and lower water levels in regional lakes, ponds and wetlands.
- (7) Contaminate drinking water supplies.
- (8) Increase risk of property damage and personal injury.
- (9) Cause damage to agricultural fields and crops.

## 26.02 DEFINITIONS

- (1) The key terms, as they appear in this ordinance, are defined as follows:
- (2) AFFECTED means that a regulated activity, to a significant extent, has either:
  - (a) Caused negative impacts on water quality or the use or maintenance requirements of one's property or business.
  - (b) Endangered one's health, safety, or general welfare.
- (3) AGRICULTURAL means related to or used for the production of food or fiber, including but not limited to general farming, livestock and poultry enterprises, grazing, nurseries, horticulture, viticulture, truck farming, forestry, sod production, cranberry production and wild crop harvesting and includes lands used for on-site buildings and other structures necessary to carry out such activities.
- (4) ANTECEDENT means prior in time or order.
- (5) APPLICANT means any person or representative thereof who submits to the City for review any materials required by this ordinance for the purpose of obtaining approval to engage in land development activity.
- (6) APPROVAL means a written authorization made by the City of Middleton to the applicant to conduct land development activities including the approved storm water management practices.

- (7) AVERAGE ANNUAL RAINFALL RECORD means the record of hourly rainfall measured between March 12 and December 2, 1981 in Madison, Wisconsin.
- (8) BANK means the sloping margin or sharply rising ground bordering a stream, and serving to confine the water to the natural channel during the normal course of flow. It is best marked where a distinct channel has been eroded into the valley floor, or where there is a cessation of land vegetation.
- (9) BIORETENTION means a storm water infiltration device consisting of an excavated area that is backfilled with an engineered soil, covered with a mulch layer and planted with a diversity of woody or herbaceous vegetation.
- (10) BUSINESS DAY means a day on which the offices of the City of Middleton are routinely and customarily open for business.
- (11) CITY means the City of Middleton.
- (12) CITY ENGINEER means the City employee so designated by the city, or his or her designee.
- (13) CLOSED WATERSHED means any drainage basin or watershed that does not discharge storm water during a storm of twenty-four (24) hour duration and two (2) year recurrence interval with the land in its predevelopment condition. In this context, predevelopment shall have the meaning as defined in this section for new development.
- (14) COLD WATER COMMUNITY means surface waters capable of supporting a community of cold water fish, or serving as a spawning area for cold water fish species (NR 102.04(3)(a), Wisconsin Administrative Code).
- (15) DIRECTLY CONNECTED IMPERVIOUS AREA means an impervious surface that drains directly to a storm water conveyance system (storm sewer, creek, detention pond, etc) or water of the state via an impervious flow path without first flowing over at least 20 feet of pervious surface.
- (16) DISCHARGE VOLUME means the quantity of runoff discharged from the land surface as the result of a rainfall event and/or from snow or ice melt.
- (17) 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 separate pretreatment facilities.
- (18) EROSION (soil erosion) means the detachment and movement of soil or rock fragments by water, wind, ice or gravity.
- (19) EXCAVATION or EXCAVATING means any act by which organic matter, earth, sand, gravel, rock or any other similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated or bulldozed and shall include the resulting conditions.
- (20) FILL or FILLING means any act by which earth, sand, gravel, rock or any other material is deposited, placed, or moved to a new location and shall include the resulting conditions.
- (21) FINANCIAL GUARANTEE means a surety bond, performance bond, maintenance bond, irrevocable letter of credit, or similar guarantee submitted to the City Engineer to assure that requirements of this ordinance are carried out in compliance with the storm water management plan.
- (22) HEAVILY DISTURBED SITE means a site where an area of land is subjected to significant compaction due to the removal of vegetative cover or earthmoving activities, including filling and excavation.

- (23)** HYDROLOGIC SOIL GROUP (HSG) has the meaning used in the runoff calculation methodology promulgated by the United States Natural Resources Conservation Service Engineering Field Manual for Conservation Practices.
- (24)** IMPERVIOUS SURFACE means any land cover that prevents rain or melting snow or ice from soaking into the ground, such as roofs (including overhangs), roads, sidewalks, patios, driveways and parking lots. For purposes of this chapter, all road, driveway or parking surfaces including gravel surfaces, shall be considered impervious, unless specifically designed to achieve infiltration and approved as such by the City Engineer.
- (25)** INFILTRATION for the purposes of this ordinance refers to any precipitation that does not leave the site as surface runoff which includes flow in pipes, conduits and channels, as well as overland flow.
- (26)** INFILTRATION SYSTEM means a device or practice such as a basin, trench, rain garden or swale designed and/or constructed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or incidental infiltration from practices such as swales or road side channels designed for conveyance and pollutant removal only.
- (27)** KARST FEATURE means an area or surficial geologic feature subject to bedrock dissolution so as to be likely to provide a direct conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.
- (28)** LAND DEVELOPMENT ACTIVITY means any human-made alteration of the land surface that results in a change in topography or existing vegetative and non-vegetative soil cover that may lead to changes in storm water runoff and result in increased soil erosion and movement of sediment into waters of the state.
- (29)** LAND DISTURBING ACTIVITIES means any human-made land alterations or disturbances that may result in soil erosion, sedimentation, or change in runoff including but not limited to removal of ground cover, grading, excavating, and filling of land. Pavement milling and overlaying is not considered a land disturbing activity if the base course is not disturbed.
- (30)** LAND DIVISION AND SUBDIVISION REGULATIONS means Chapter 19 of the City Code of Ordinances, adopted under chapter 236, Wis. Stats., to regulate the division of land.
- (31)** MAINTENANCE AGREEMENT means a legal document that is filed with the County Register of Deeds as a property deed restriction, and that provides for long-term inspection and maintenance of storm water management practices.
- (32)** MAXIMUM EXTENT PRACTICABLE means a level of implementing storm water management practices in order to achieve a performance standard specified in this chapter which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. Maximum extent practicable allows flexibility in the way to meet performance standards and may vary based on the performance standard and site conditions.
- (33)** NEW DEVELOPMENT means land development activity resulting in one or more of the following:
- (a) Creation or expansion of impervious surface(s).
  - (b) Sites, or area of a site where there is a change in land use from single-family or two-family residential use to a non-residential land use as defined in 26.02(35).
- (34)** NON-EROSIVE VELOCITY means a rate of flow of storm water runoff, usually measured in feet per second, that does not erode soils. Non-erosive velocities vary for individual sites, taking into account topography, soil type, and runoff rates.

- (35)** NON-RESIDENTIAL LAND DEVELOPMENT (OR USE) means the development (or use) of property for other than single- or two-family residential purposes, including but not limited to: commercial, industrial, multi-family residential, government, institutional, recreation, communication, and/or utilities, and any streets associated therewith. This does not include agricultural activity, but does include agricultural buildings, structures or other impervious areas.
- (36)** NON-STRUCTURAL MEASURE means a practice, technique, or measure to reduce the storm water volume, peak discharge rate, or the pollutants in storm water that does not require the design and installation of permanent storm water management infrastructure.
- (37)** PEAK FLOW means the maximum rate of flow of water at a given point in a channel, watercourse, or conduit resulting from a specified rainfall event.
- (38)** PERVIOUS SURFACE means any land cover that permits rain, melting snow or ice to soak into the ground.
- (39)** POINT OF STANDARDS APPLICATION means the specific location, depth or distance from a facility, activity or practice at which the concentration of a substance in groundwater is measured for purposes of determining whether a preventive action limit or an enforcement standard has been attained or exceeded.
- (40)** POST-DEVELOPMENT refers to the extent and distribution of land cover types anticipated to occur under conditions of full development of the submitted plan.
- (41)** PRACTICE or MANAGEMENT PRACTICE means practice, measure, or technique that is an effective practical means of reducing runoff, water pollution from runoff or both during and after land development activities. These can include structural measures or non-structural ones such as vegetative or operational practices.
- (42)** PREDEVELOPMENT: for new development, this term refers to the land cover types present prior to European settlement, with characteristics corresponding to the runoff curve numbers specified in 26.06; for redevelopment, this term refers to the land cover types present under conditions of existing development, including buildings, pavement and other impervious areas, existing prior to August 22, 2001.
- (43)** PRETREATMENT means the treatment of storm water prior to discharge in order to reduce pollutant loads to a level compatible with the handling capabilities of the receiving storm water management practice(s).
- (44)** RAIN GARDEN means a depression area, designed and constructed as a landscape feature, that is used primarily to infiltrate storm water runoff and that also may provide storm water quality improvement.
- (45)** RECHARGE means the portion of the average annual rainfall that infiltrates into the soil and becomes groundwater. Recharge does not include evaporation, transpiration or runoff from the site.
- (46)** REDEVELOPMENT means any land development activity that does not result in the creation of new impervious surface, on sites where the existing land use is predominantly non-residential. Projects may include a mix of redevelopment and new development.
- (47)** RESIDENTIAL LAND DEVELOPMENT means a land use that is designed for single family and two-family residential dwellings and all supporting attendant portions of the development including lawns, driveways, sidewalks, garages, and access streets.
- (48)** RUNOFF CURVE NUMBER (RCN) has the meaning used in the runoff calculation methodology promulgated by the United States Natural Resources Conservation Service Technical Release 55, "Urban Hydrology for Small Watersheds" (commonly known as TR-55).

- (49) SEDIMENT means solid mineral or organic material that is in suspension, is being transported, or has been moved from its location of origin by air, water, gravity or ice, and come to rest on the earth's surface at a different location.
- (50) SEDIMENTATION means the deposition of sediment, usually at a location different from the eroded source location.
- (51) SITE means the bounded area described in an erosion control plan or storm water management plan.
- (52) STOP WORK ORDER means an order issued by the City Engineer that requires that all construction activity on the site be stopped.
- (53) STORM WATER means the flow of water that results from, and occurs during and immediately following, a rainfall, or snow or ice melt event.
- (54) STORM WATER MANAGEMENT means any measures taken to permanently reduce or minimize the negative impacts of storm water runoff quantity and quality after land development activities.
- (55) STORM WATER MANAGEMENT PLAN (SWMP) means one or more documents that together identify the actions to be taken and/or the practices to be installed to reduce storm water peak discharge rates, volumes and pollutant loads that may result from land development activity to levels meeting the purpose and intent of this ordinance.
- (56) STORM WATER RUNOFF means the waters derived from rains falling or snow melt or ice melt occurring within a drainage area, flowing over the surface of the ground and/or collected in channels, watercourses or conduits.
- (57) STREET RECONSTRUCTION means removal and replacement of the road structure including its subgrade.
- (58) STRUCTURE means any human-made object with form, shape and utility, either permanently or temporarily attached to, placed upon, or set into the ground, stream bed or lake bed.
- (59) STRUCTURAL MEASURE means a constructed practice, conveyance measure, and/or end-of-pipe treatment that is designed to manage or convey storm water runoff pollutant loads, discharge volumes, or peak discharge rates. Channels, weirs, swales, detention and retention ponds, rain gardens, bioretention facilities, and overflow and outfall structures are all examples of structural measures.
- (60) SUBMISSION means the plan materials specifications and/or calculations required to be presented to the City for review.
- (61) SUBMITTAL means the act of presenting or submitting plan materials, specifications and/or calculations to the City for review.
- (62) TR-55 means the Technical Release 55, "Urban Hydrology for Small Watersheds", published by the Engineering Division, United States Natural Resources Conservation Service, United States Department of Agriculture, June 1992.
- (63) UNNECESSARY HARDSHIP means that circumstance where special conditions that were not self-created affect a particular property and make strict conformity with regulations unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.
- (64) WATERS OF THE STATE means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, 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 the State or its jurisdiction under s. 281.01(18), Wis. Stats. except those waters that are entirely confined and retained completely within the property of a person or business.

- (65) WETLAND FUNCTIONAL VALUES means the type, quality and significance of the ecological and cultural benefits provided by wetland resources, such as: flood storage, water quality protection, groundwater recharge and discharge, shoreline protection, fish and wildlife habitat, floral diversity, aesthetics, recreation and education.
- (66) WETLANDS means an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophilic vegetation and that has soils indicative of wet conditions. This includes both natural and restored wetlands.
- (67) WRMC means City of Middleton Water Resources Management Commission.

### **26.03 PURPOSE AND GOALS**

- (1) The purpose of this chapter is to set forth the minimum requirements for storm water management in order to diminish threats to public health, safety, public and private property and natural resources of City of Middleton.
- (2) This chapter is intended to regulate storm water runoff to accomplish the following objectives:
  - (a) Minimize flooding, sedimentation, water pollution from nutrients, heavy metals, chemical and petroleum products and other contaminants to the water resources of the City.
  - (b) Promote infiltration and groundwater recharge.
  - (c) Protect functional values of natural water courses and wetlands.
  - (d) Provide a set of performance standards that are consistent with the standards set forth by Dane County and the Wisconsin Department of Natural Resources' runoff management standards contained in NR 151.
  - (e) Achieve an 80% reduction in sediment load rates to Dane County waters compared to no controls for all new development and a 40% reduction in sediment load rates compared to no controls for all redevelopment and street reconstruction.
  - (f) Ensure no increase in temperature of existing waters due to inflow of post-construction storm water in order to protect cold water communities.
  - (g) Ensure no increase in the flow rate of surface water drainage from sites during or after construction.
  - (h) Protect public and private property from damage resulting from runoff or erosion.

### **26.04 APPLICABILITY**

- (1) Unless otherwise exempted by section 26.05, a storm water control permit application under section 26.10(1) shall be required and all storm water management provisions of this chapter shall apply to any of the following activities within the City of Middleton. In this section, new development includes the cumulative measurement, within the bounds of the site, parcel, certified survey map or plat, of all new impervious surface created after August 22, 2001 for which storm water controls meeting the standards of this ordinance have not been provided.
  - (a) Any land development activity for which a subdivision plat, as defined in Chapter 19 of this Code of Ordinances, Land Division and Subdivision Regulations, is created.
  - (b) Any land development activity for which a certified survey map, as defined in Chapter 19 of this Code of Ordinances, Land Division and Subdivision Regulations, is created for property intended for non-residential use as defined in section 26.02(35).



- (c) Any land development activity that results in one of the following:
1. New development that results in the creation of new impervious surface area that equals or exceeds 20,000 square feet.
  2. Redevelopment that involves a land disturbance, impervious or otherwise, that equals or exceeds 4,000 square feet.
  3. A mix of new development and redevelopment that results in new impervious surface and other land disturbance of existing impervious surface area that combined equals or exceeds 20,000 square feet and where the area of disturbed existing impervious surface is less than 4000 square feet. Such developments shall meet in their entirety the standards for new development.
  4. A mix of new development and redevelopment that results in impervious surface and other land disturbance that combined equals or exceeds 4,000 square feet but is less than 20,000 square feet, and where the area of disturbed existing impervious surface is less than 4000 square feet. Such developments shall meet in their entirety the standards for redevelopment unless or until the new impervious portions exceed 20,000 square feet as measured cumulatively within the applicable bounds of the site, parcel, certified survey map or plat.
- (d) Other land development activities, including but not limited to redevelopment or alteration of existing buildings or other structures, that the City Engineer determines may increase significantly downstream runoff volumes, flooding, soil erosion, water pollution, property damage, or have a significantly adverse impact on a lake, stream, or wetland area. All such determinations shall be made in writing unless waived by the applicant.

**(2) Clarification**

Land development activities may involve both new development and redevelopment meeting the applicability standards of sections 26.04(1)(c)1. and 2. respectively. Such projects, at the discretion of the developer, shall either:

- (a) Provide on-site practices to meet separately the new development and redevelopment standards for their respective portions of the site; or
- (b) Provide on-site practices to meet the new development standards for both the new development and redevelopment portions of the site.

## **26.05 EXEMPTIONS**

Any activity directly related to the planting, growing and harvesting of agricultural crops shall be exempt from all requirements of this ordinance. This does not include agricultural buildings or other impervious surfaces.

## **26.06 STORM WATER MANAGEMENT STANDARDS**

### **(1) Storm Water Discharge Quality**

Except as provided in 26.06(5) of this ordinance, all persons who engage in land development activities subject to this ordinance shall establish on-site management practices to control the quality of storm water discharged from the site. On-site management practices shall be designed assuming no sediment resuspension in ponds where the permanent pool depth is three feet or more, and shall meet the following minimum standards:

(a) Sediment Control

1. For new development, practices shall be designed to reduce by 80% the total suspended solids load within storm water runoff based on the average annual rainfall record, as compared to no runoff management controls.
2. For redevelopment, practices shall be designed to reduce by 40% the total suspended solids load within storm water runoff based on the average annual rainfall record, as compared to no runoff management controls.
3. Under no circumstances shall the sediment trapping efficiency of the site's existing structural controls be reduced as a result of land development activity.

(b) Oil and Grease Control

For all parking lots draining to a storm sewer system or directly to other impervious conveyance such as a street, and all other uses where the potential for pollution by oil, grease or both exists, the first 0.5 inches of runoff will be treated using the best available oil and grease removal technology.

(c) Temperature Control

The storm water management plan shall include provisions and management practices to reduce the temperature of runoff from sites located within the watershed of a river or stream identified as thermally sensitive by the Wisconsin Department of Natural Resources, unless the applicant can justify, using a model approved by the Dane County Conservationist, that practices are not necessary because the temperature increase of runoff from the site post-development will be zero. Watersheds identified as thermally sensitive include:

1. Cold Water Communities as identified through Wis. Adm. Code §NR 102.04(3)(a), and Class I, Class II, and Class III Trout Streams identified in "Wisconsin Trout Streams," DNR publication PUB-FH-806-2002 or its successors.
2. Rivers and streams proposed by the Wisconsin Department of Natural Resources as Cold Water Communities, and Class I, II, and III Trout Streams.

(d) Protection of Wetlands and Special Resource Waters

Pollutant-laden urban storm water discharged to wetlands shall be pre-treated whenever possible and to the maximum extent practicable for the site. The impact of such proposed discharges on wetland functional values shall be assessed using a method acceptable to the City Engineer. Significant degradation of wetland functional values due to storm water pollutant loads shall be avoided.

(e) Protection of Water Supply Wells

Storm water ponds shall not be located closer to water supply wells than as specified below:

1. 100 feet from a well serving a private water system or a transient, non-community public water system.
2. 400 feet from a municipal well or a community water supply well as specified in Wis. Adm. Code § NR 811.16(4).

## **(2) Storm Water Discharge Quantity**

Except as provided in section 26.06(5), persons engaging in any land development activities subject to this ordinance shall establish on-site management practices to control the volume and peak discharge rates of storm water runoff leaving the site. On-site management practices shall meet the following minimum performance standards:

### **(a) Runoff Rate Control**

1. For new development, storm water management practices shall be designed and implemented to maintain post-development peak runoff discharge rates for the 1, 2, 5, 10, 25, and 100-year 24-hour design storms so as not to exceed those rates for each respective design storm under predevelopment conditions.
2. For redevelopment, storm water management practices shall be designed and implemented to maintain post-development peak runoff discharge rates for the 1, 2, 5, and 10- year, 24-hour design storms under predevelopment conditions, so as not to exceed those rates for each respective design storm under predevelopment conditions.
3. When determining the volume of runoff generated by and the peak rate of runoff discharged from watershed areas located within the development site, pervious areas and directly connected impervious areas shall be modeled separately. For purposes of complying with this paragraph, pervious areas include non-directly connected impervious areas.
4. When determining post-development peak discharge rates, it shall be assumed that:
  - a. No infiltration is occurring within infiltration facilities.
  - b. The permanent storage areas of infiltration facilities are filled with water to the level of the lowest surface outlet, unless the facility has an underdrain.
5. Storm water discharge from any new concentrated discharge point(s) must have a stable outlet(s) capable of carrying the design flow at velocities that are non-erosive to the outlet and downstream receiving areas.
6. Peak discharge rates shall be calculated using the Natural Resources Conservation Service MSE4 storm distribution and the rainfall depths occurring over a 24-hour period specified for Dane County, Wisconsin in the following publications: National Oceanic and Atmospheric Administration (NOAA) Atlas 14; and the Wisconsin Supplement, WI 650.290, to the National Engineering Handbook Part 650 Engineering Field Handbook, Chapter 2 (EFH-2). For the 1, 2, 5, 10, 25, and 100-year, 24-hour design storm events, these depths are 2.49, 2.84, 3.49, 4.09, 5.01, and 6.66 inches, respectively.
7. All hydrologic calculations shall be according to the methodology described in the Natural Resources Conservation Service's Technical Release 55, "Urban Hydrology for Small Watersheds" (commonly known as TR-55), or other methodology approved by the WRMC.
8. Runoff Curve Numbers
  - a. Predevelopment conditions shall assume "good hydrologic conditions" for appropriate land covers as identified in TR-55 or an equivalent methodology. Table 1 identifies runoff curve numbers to be used for predevelopment land cover for new development.

<b>Table 1 Maximum Predevelopment Runoff Curve Numbers for New Development</b>				
Hydrologic Soil Group	A	B	C	D
Runoff Curve Number	30	58	71	78

- b. The post-development runoff curve number used for lands that will be regularly irrigated such as golf courses shall reflect wet antecedent soil moisture conditions.
  - c. Unless practices are implemented that restore soil structure to predevelopment conditions, the post-development runoff curve number used for heavily disturbed sites shall be adjusted one hydrologic soil group relative to the native hydrologic soil group classification of the site (according to Table 1, above), unless the native soil is classified as belonging to hydrologic soil group D. Specifically, A becomes B, B becomes C, C becomes D, and D remains as D.
9. This subsection of the ordinance does not apply to the portion of any parcel that is directly adjacent and discharges directly to Lake Mendota without passing through any other privately or publicly owned lands.

(b) Conveyance Systems

All storm water conveyance systems within a proposed development shall be designed to the following standards:

1. Storm sewer pipes shall convey completely the peak discharge from a 10-year, 24-hour storm event with no surcharge or pressurizing.
2. Open channel conveyance systems shall contain completely the peak discharge from a 25-year, 24-hour storm event within the channel bottom and banks.
3. Streets and other paved areas shall contain completely the peak discharge from a 25-year, 24-hour storm event within the street section to the top of the curb or, if curb is absent, as directed by the City Engineer.
4. Overland drainage ways and culverts where no overflow path or structure exists shall contain completely within the drainage way or culvert the peak discharge rate from the 100-year, 24-hour storm event.
5. Proposed discharges shall not exceed the safe capacity of the downstream receiving systems.

**(3) Infiltration and Recharge**

(a) New Development

Residential and nonresidential new developments shall include storm water management practices designed to meet the following standards:

1. Infiltration

For all new development, practices shall be designed so that the post-development infiltration volume is at least 90% of the predevelopment infiltration volume, based on average annual rainfall. Notwithstanding this standard, the effective infiltration area shall not be required to exceed 2% of the site area, except in closed watersheds, provided a partial fee is paid in lieu of full compliance.

## 2. Recharge

For all new development, infiltration systems and pervious surfaces for both residential and nonresidential development shall be designed to meet or exceed the predevelopment average annual groundwater recharge rate, which for any site shall be determined from the Wisconsin Geological and Natural History Survey's 2009 report, *Groundwater Recharge in Dane County, Estimated by a GIS-Based Water-Balanced Model*, or subsequent updates to this report, or by a site specific analysis using other appropriate techniques.

### (b) Redevelopment

Residential and nonresidential redevelopments shall include storm water management practices designed to meet standards equal to half of the new development standards required under 26.06 (3) (a).

(c) For new development and redevelopment, the runoff curve numbers used for calculating pre-development conditions shall be as specified in 26.06(2)(a)8.a.

### (d) Closed Watersheds

For new and redevelopment sites located wholly or in part within a closed watershed, practices shall be designed to infiltrate one hundred percent of the average annual predevelopment infiltration volume, regardless of the effective area of the infiltration system.

### (e) Pretreatment

Pretreatment practices must be installed upstream of infiltration facilities that receive runoff from parking lots or from streets in residential areas. Pretreatment shall meet the technical standards adopted by the Wisconsin Department of Natural Resources pursuant to Wis. Admin. Code §NR 151.

### (f) Maximum Depth

The maximum depth of the infiltration device shall be dependent on the design infiltration rate and shall be such that the maximum draw down time for the surface water portion of the device is 24 hours. Under no circumstances shall the depth of the above ground surface ponding area of the infiltration device exceed 24 inches.

### (g) Greater Standards

On sites where it is feasible, the WRMC may require greater standards than those in paragraphs (a) and (b), and provide reimbursement for the additional incremental cost. This paragraph shall not be construed as granting the WRMC spending powers independent of any other existing or future authorization of the City Council.

### (h) Prohibitions

Notwithstanding paragraphs (a) through (g), infiltration systems may not be installed in any of the following:

1. Areas associated with tier 1 industrial facilities identified in Wis. Admin. Code § NR 216.21(2)(a), including storage, loading, rooftop and parking.
2. Storage and loading areas of tier 2 industrial facilities identified in Wis. Admin. Code § NR 216.21(2)(b).
3. Fueling and vehicle maintenance areas.
4. Areas within 1,000 feet up gradient or 100 feet down gradient of karst features.

5. Areas with less than three feet separation distance between the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock, except that this provision does not prohibit infiltration of roof runoff.
  6. Areas with runoff from non-residential parking lots and roads or any arterial roads with less than five feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.
  7. Areas within 400 feet of a municipal well or a community water supply well as specified in Wis. Admin. Code § NR 811.16(4), that infiltrate runoff from a single site with a non-residential land use, or that function as regional devices to infiltrate runoff from any type of land use.
  8. Areas where contaminants of concern, as defined in Wis. Admin. Code § NR 720.03(2), are present in the soil through which infiltration will occur.
  9. Any area where the soil does not exhibit one of the following characteristics between the bottom of the infiltration system and the seasonal high groundwater and top of bedrock: at least a 3-foot soil layer with 20% fines or greater; or at least a 5 foot soil layer with 10% fines or greater. This provision does not apply where the soil medium within the infiltration system provides an equivalent level of protection. This provision does not prohibit infiltration of roof runoff.
- (i) Alternative Use of Runoff
- Where alternative uses of runoff are employed such as for toilet flushing, laundry or irrigation, such alternative uses shall be given equal credit toward the infiltration volume required by this section.
- (j) Minimizing Groundwater Pollution
- Infiltration systems designed in accordance with this section shall be required to reduce the level of pollutants infiltrating to groundwater to the maximum extent practicable and shall maintain compliance with the Groundwater Preventative Action Limit at a point of standards application in accordance with Wis. Admin. Code Chap. NR 140.

#### **(4) Wetland Hydrology**

Increases and decreases in the volume and rate of runoff discharged to wetlands shall be minimized to the extent practicable. Where modifications to the hydrology are proposed, the impact of the proposal on wetland functional values shall be assessed using methods approved by the City Engineer in his or her reasonable exercise of discretion. Significant changes to wetland functional values shall be avoided.

#### **(5) Exceptions**

The City Engineer may establish storm water management requirements either more stringent or less stringent than those set forth in section 26.06, provided that all the requirements are met for conveyance systems as specified in section 26.06(2)(b) and at least one of the following conditions applies:

- (a) Provisions are made to manage storm water with an off-site facility. This requires that the off-site facility is in place, is adequately designed and sized to provide a level of storm water control that is equal to or greater than that which would be afforded by on-site practices meeting the requirements of this ordinance, and has a legally obligated entity responsible for long-term operation and maintenance of the facility.
- (b) The City Engineer in cooperation with the WRMC finds that due to field conditions not anticipated by this ordinance, meeting the minimum on-site management requirements

herein would not protect adequately, within the intent of this ordinance, properties or sensitive environmental features from potential damage or degradation that may result from the effects of storm water runoff.

### **(6) Fees in Lieu of Compliance**

For developments where on-site compliance is not feasible or not desirable as determined by the City Engineer in consultation with the WRMC and Applicant is not able to provide off-site storm water management for the development, fees shall be paid in lieu of installing on-site storm water management practices in accordance with section 26.10(4). The fee in lieu of any storm water management practice for redevelopment shall be half that for new development.

### **(7) General Considerations for On-site and Off-site Storm Water Management Measures**

The following considerations shall be observed in managing storm water runoff:

- (a) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltration 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 shall be provided for all storm water facilities to prevent exceeding the safe capacity of the facility itself and of downstream drainage facilities, to prevent endangerment of downstream or adjacent property, and to ensure public safety.
- (c) The following storm water management measures selected for inclusion into the storm water management plan should be considered as may be appropriate for the specific site conditions taking into consideration all relevant factors including, but not necessarily limited to natural site characteristics, financial impacts, type of development, legal rights in redirecting storm water flows, and other restrictions specified in local ordinances, State of Wisconsin Administrative Code and Post-Construction Storm Water Management Technical Standards adopted by the Wisconsin Department of Natural Resources pursuant to Wis. Admin. Code §NR 151.31:
  1. Bioretention.
  2. On-site and off-site conveyance measures with infiltration enhancement or capability.
  3. Off-site regional wet detention measures.
  4. Off-site regional dry detention measures.
  5. On-site wet detention measures.
  6. On-site dry detention measures.
  7. Enhancement of current detention measures.
  8. Off-site infiltration measures.

## **26.07 STORM WATER MANAGEMENT PLAN**

### **(1) Required Information**

Any person who proposes to engage in any land development activities subject to this ordinance as provided in section 26.04 shall be required to submit to the City a Storm Water Management Plan that includes at a minimum the information listed on the Storm Water Management Plan Requirements Checklist, on file with the City Engineer, as may be amended from time to time.

## **(2) Technical Standards**

The following methods, standards and specifications shall be used in designing components of storm water management practices needed to meet the water quality, quantity and infiltration standards of this ordinance:

- (a) The Post-Construction Storm Water Management Technical Standards adopted by the Wisconsin Department of Natural Resources pursuant to Wis. Admin. Code §NR 151.31.
- (b) Dane County Erosion Control and Storm Water Management Manual on file with the City Engineer.
- (c) City of Middleton Standard Specifications for construction on file with the City Engineer.
- (d) "Urban Hydrology for Small Watersheds" (TR-55).
- (e) Standard engineering practice.
- (f) Other methods and references as approved by the City Engineer and the Dane County Conservationist in their reasonable exercise of discretion.

## **(3) Detention Facilities Maintenance**

Unless on-site storm water management is infeasible, as determined by the Water Resources Management Commission, the person engaging any land development activities shall install storm water management facilities as follows:

- (a) When storm water will be managed in regional facilities that are intended ultimately to be owned by the public, any facilities may not be accepted for maintenance by the City until:
  - 1. No fewer than 90 percent of the lots draining to a regional facility have completed structures with occupancy permits issued;
  - 2. The person engaging in the land development activities completes a clean-out of the facility, returning it substantially to its design condition, in a manner approved by the City Engineer; and
  - 3. Approved plantings within the regional facility have survived at least three growing seasons, are in good condition with proper density, and are substantially free of species not in compliance with the planting plan.

Following an approved inspection by the City, thereafter the facility shall be maintained by the City and the person engaging in the land development activities will be released from the maintenance obligations of the recorded Storm Water Management System Maintenance Agreement pertaining to the facility.

- (b) Where storm water will be managed in facilities that are intended ultimately to be privately owned and maintained, the Storm Water Management System Maintenance Agreement will remain in effect in perpetuity, obliging either the person engaging in the land development or a private entity to perform the periodic maintenance of said facilities as specified in the agreement. Such person shall provide an easement granted to the City along with an access route to enable the City to perform maintenance of the facilities at the expense of the owners thereof upon default of maintenance. The person engaged in the land development activities shall furnish the City with an executed copy of said maintenance agreement in a form approved by the City Engineer duly recorded at the Dane County Register of Deeds.



#### **(4) Exceptions**

The City Engineer may prescribe alternative submission requirements for applicants seeking an exemption to the on-site storm water management performance standards required by this ordinance.

### **26.08 OFF-SITE STORM WATER MANAGEMENT**

- (1)** The City Engineer may establish off-site storm water management facilities and associated fees.
- (2)** Off-site facilities may be used to meet the storm water management standards contained in section 26.06 for land development activity regulated by this ordinance, provided that all of the following conditions are met prior to the commencement of any land disturbing or development activity:
  - (a)** The off-site facility is in place.
  - (b)** The off-site facility is designed and adequately sized to provide a level of storm water control that meets at a minimum the ordinance standards.
  - (c)** The City Engineer is satisfied that the off-site facility has a legally obligated entity responsible for its long-term operation and maintenance.
- (3)** Adequate storm water conveyance systems as specified in section 26.06(2)(b) must be in place or be provided as part of the land development activity.

### **26.09 STORM WATER MANAGEMENT SYSTEM MAINTENANCE AGREEMENT**

#### **(1) Maintenance Agreement Requirements**

Any person who proposes to construct any storm water management practices as part of land development activities subject to this ordinance as provided in section 26.04 shall be required to enter into a maintenance agreement with the City. Such agreement shall provide for maintenance of said storm water practices subsequent to completion of construction or implementation. The agreement shall be recorded with the County Register of Deeds so that it is binding upon all subsequent owners of land upon which the storm water management practices were constructed.

#### **(2) Content**

The maintenance agreement shall contain at a minimum the information and language as specified in the template Storm Water Management System Maintenance System Agreement form on file with the City Engineer, modified as appropriate to address the specifics of the site.

#### **(3) Periodic Storm Water Management Report**

Each person who is granted a storm water management permit, and who has signed and recorded the required maintenance agreement, shall submit to the City Engineer an annual report on the condition of the site's storm water management facilities. This report shall be submitted by June 30 in each of the first two years following the City's acceptance of a regional storm water management facility. The annual report shall be completed and sealed by a Professional Engineer currently licensed in the State of Wisconsin, on forms provided by the City Engineer. The City Engineer, at his or her discretion, may allow other appropriately credentialed professionals to complete and seal this work. The requirement that the annual report be sealed by a Professional Engineer or other approved credentialed professional may be omitted in the case of a storm water management plan consisting solely of storm sewer inlet filters and/or catch basin sumps, provided that the applicant can provide the appropriate documentation and dated photos acceptable to the City Engineer.

Following the first two years' reports, subsequent report submittals shall be due every even numbered year thereafter. The City Engineer, at his or her discretion, may allow the topographic survey to be submitted less frequently, or may allow that the survey be satisfied through the submittal of adequate photographic documentation.

Upon receipt of the annual report, if requested on the cover letter accompanying the report or by separate email, the City Engineer shall provide an email response to the contact listed on the reporting forms stating that the report was received. This response from the City Engineer shall be made within 15 working days of receiving the report. The annual report shall include the following:

- (a) Documentation of the completion of the required periodic maintenance, as required by the Storm Water Management System Maintenance Agreement for the site, including copies of receipts (actual prices paid need not be reported) from agents hired to perform the work and the date the work was completed.
- (b) Photos of the storm water management facility at the time of inspection. This shall include photos of the existing conditions and photos after completion of any required maintenance.
- (c) If any report reveals any shortcomings in a required storm water maintenance facility, the person or association responsible for the maintenance shall complete the maintenance within 90 days of the date the report is filed. Such maintenance shall include, but not be limited to, dredging and vegetative restoration, as applicable.
- (d) If a person fails to timely submit any required report, or fails to complete any required maintenance, the City Engineer shall authorize completion of the report or required maintenance, with the cost charged back under Wis. Stats. § 66.0627.

#### **(4) Exceptions**

The City may waive the requirement for a separate maintenance agreement for cases in which:

- (a) The City intends to accept the practices for ownership and maintenance upon completion of construction and expiration of any warranty period.
- (b) An alternative agreement, such as a City/Developer agreement, is in place to provide for maintenance during the warranty period.

## **26.10 ADMINISTRATION**

### **(1) Application**

Any person who proposes to engage in any land development activities subject to this ordinance as provided in section 26.04 shall be required to apply for and obtain a Storm Water Runoff Control permit prior to commencing the proposed activity. The permit application shall be submitted concurrently with the required plan materials as specified in sections 26.06 and 26.07, a maintenance agreement as outlined in section 26.09, and fees as outlined in section 26.10. The application must be signed by the landowner or include a notarized statement signed by the landowner authorizing the applicant to act as the landowner's agent and bind the landowner to the terms of this ordinance. If the landowner appoints an agent to submit an application, the landowner shall be bound by all of the requirements of this ordinance and the terms of the permit issued to the agent. By submitting an application, the applicant authorizes the City Engineer to enter the site of the proposed land development to obtain or verify specific information required for review of the storm water management plan.

## **(2) Review**

The City Engineer shall review only those permit applications that are submitted with a storm water management plan, a maintenance agreement, and the required fee. The following approval procedure shall be used:

- (a) Within 60 calendar days of the receipt of a complete application, the City Engineer shall inform the applicant whether the application, management plan and maintenance agreement are approved or disapproved. The City Engineer shall base the decision on requirements set forth in sections 26.06, 26.07, 26.09 and 26.10 of this ordinance.
- (b) If the Storm Water Runoff Control permit application, management plan and maintenance agreement are approved, or if an agreed-upon payment of fees in lieu of storm water management practices is made, the City Engineer shall issue the permit.
- (c) If the Storm Water Runoff Control permit application, storm water management plan or maintenance agreement is not approved, the City Engineer shall provide in writing the reasons for disapproval.
- (d) If additional information is submitted, the City Engineer shall have 60 calendar days from the date the additional information is received to inform the applicant that the permit plan and maintenance agreement are either approved or disapproved.
- (e) Failure by the City Engineer to inform the applicant of a decision within 60 calendar days of a submittal shall be deemed to mean approval of the submission, and the applicant may proceed as if a permit had been issued.

## **(3) Fees**

- (a) Applicant shall pay a fee as set forth in the Fee Schedule under Section 3.12 at the time of filing the application.
- (b) In addition to the fee in subsection (a), the applicant shall pay the actual costs incurred by the City from any consultants or agents with whom the City may contract to provide services relating to the administration of this Code. The City shall bill the applicant for such charges, which shall be paid within thirty (30) days. Any unpaid charges shall be assessed to the subject property as a special charge pursuant to Wis. Stats. § 66.0627 and place on the tax roll.

## **(4) Fees in Lieu of On-site Storm Water Management Practices**

- (a) For any public or private development for which implementation of storm water management practices as required by this ordinance is determined not to be feasible, the applicant shall pay to the City a fee in lieu of implementation. Separate fees shall be calculated and paid for any of the following practices not implemented:
  1. Peak Flow Rate of Control
  2. Runoff Volume Control
  3. Infiltration
  4. Recharge
  5. Sediment Control
  6. Temperature Control
- (b) The City Engineer in consultation with the WRMC shall make the determination of feasibility in each case. The calculation of storm water fees shall be based on a uniform procedure, as determined by and on file with the City Engineer, to estimate the cost of

implementing storm water controls in a development. The fee calculation shall include the cost of land, engineering, and construction. In order for the City to accept fees in lieu of constructing on-site storm water control practices as per the requirements of the ordinance, alternative off-site practices sufficient to meet the storm water control requirements of 26.06(5)(b) must be in place downstream of the proposed development and upstream of the point of discharge to a sensitive water feature. The requisite off-site control may be an existing practice, or may be achieved through modification of an existing practice or construction of a new practice.

- (c) Partial fees shall be paid in lieu of full compliance for any public or private development where the City Engineer determines that only partial implementation of the practices or controls is feasible, or where the Applicant elects to limit the size of effective infiltration areas to 2% of the site area despite failing to achieve infiltration of the required volume. The partial fees shall be based upon the percentage of required storm water control or infiltration that the practices to be implemented fail to achieve.
- (d) The schedule of fees in lieu of on-site storm water management practices can be obtained from the office of the City Engineer. All such fees collected shall be placed in a designated fund to be used exclusively for funding future City projects that have as their primary goal the protection and enhancement of water resources of the City of Middleton. Such projects may include land acquisition for detention or infiltration, storm water management plans or studies, and design or construction of detention facilities, associated outfall control structures, or infiltration enhancement practices. Expenditures should be based on the recommendations of the WRMC with concurrence of the City Council. Fees shall not be used for routine maintenance and repair of storm water control facilities, channels, ponds or structures or for relocation of waterways.

#### **(5) Duration of Permit**

Permits issued under this section shall be valid from the date of issuance through the expiration date specified on the permit form by the City Engineer. If the implementation of the storm water management plan is not completed by the expiration date, the applicant shall apply for a new permit and pay an additional permit application fee. At the discretion of the City Engineer, an extension of the existing permit may be granted with no additional fee.

#### **(6) Warranty and Financial Guarantee**

The City Engineer may require that storm water control measures be warranted by developer or contractor for a period not to exceed five years. The City Engineer may also require submittal of Financial Guarantee prior to issuance of the approval in order to insure that the storm water practices are installed and maintained throughout the warranty period by the applicant as required by the storm water management plan. In every instance where the cost of storm water practices exceeds five thousand dollars (\$5,000.00) as determined by the City Engineer, a Financial Guarantee shall be required.

- (a) The amount of the Installation Financial Guarantee shall be determined by the City Engineer and shall not exceed the total estimated construction costs of the approved storm water management practices, plus 25%. The amount of the Maintenance Financial Guarantee shall be determined by the City Engineer, and shall not exceed the estimated maintenance and repair costs for the period during which the responsible party has maintenance responsibility. These Financial Guarantees shall contain forfeiture provisions for failure to complete work specified in the storm water management plan.
- (b) Conditions for release of Financial Guarantee are as follows:
  - 1. The Installation Financial Guarantee shall be released in full only upon submittal of written certification by a registered State of Wisconsin Professional Engineer that

the storm water management practices have been installed in accordance with the approved plan and all applicable provisions of this ordinance. The City Engineer may make provisions for a partial pro-rata release of the Installation Financial Guarantee based on the completion of various development stages.

2. The Maintenance Financial Guarantee, minus any cost incurred by the City to conduct required maintenance, shall be released at such time that the responsibility for practice maintenance is passed on to another private entity, via an approved maintenance agreement, or to the City.

## **(7) Conditions of Approval**

All permits issued under this ordinance shall be subject to the following conditions, and all applicants issued permits under this ordinance shall be deemed to have accepted these conditions. The City Engineer may suspend or revoke permit for violation of an approval condition following written notification to the responsible party. An action by the City Engineer to suspend or revoke any permit may be appealed in accordance with section 26.12(2).

- (a) Compliance with the permit does not relieve the applicant of the responsibility to comply with other applicable federal, state, and local laws and regulations.
- (b) The applicant shall design and install all structural and non-structural measures for storm water management in accordance with the approved storm water management plan and this ordinance.
- (c) Where a storm water management plan involves changes in direction, increases in peak rate, and/or increases in total volume of runoff from a site, the City Engineer may require the applicant to make appropriate legal arrangements with adjacent property owners to address potential endangerment of property or safety.
- (d) The applicant shall notify the City Engineer at least two business days before commencing any work in conjunction with the storm water management plan, and within five business days upon completion of the storm water management practices. If required as a special condition, the applicant shall make additional notification according to a schedule set forth by the City Engineer so that practice installations can be inspected during construction.
- (e) The applicant shall notify the City Engineer prior to proceeding with any modifications to the approved storm water management plan. The City Engineer may require that the proposed modifications be submitted for approval prior to incorporation into the storm water management plan and construction.
- (f) Completed storm water management practices must pass a final inspection to verify they are in compliance with the approved storm water management plan and with this ordinance. The City Engineer shall notify the applicant in writing of any changes required to bring the storm water management practice into compliance with the conditions of the approval.
- (g) The applicant shall maintain all storm water management practices in accordance with the storm water management plan until the practices either become the responsibility of the City, or are transferred to subsequent private owners or a responsible party as specified in the approved maintenance agreement.
- (h) The applicant shall allow the City Engineer access to the property for the purpose of inspecting the storm water management practices for compliance with the approved storm water management plan, maintenance agreement and this ordinance.
- (i) The applicant authorizes the City Engineer to perform any work or operations necessary to bring storm water management measures into conformance with the approved storm

water management plan. The responsible party consents to a special charge against the property by the City pursuant to Wis. Stats. §66.0627, or to the City charging such costs against the financial guarantee posted under section 26.10(6) of this ordinance.

- (j) If so directed by the City Engineer, the applicant shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by storm water runoff, where such damage is caused by activities that are not in compliance with the approved storm water management plan.

### **(8) Implementation of Storm Water Management Plan**

The storm water management plan shall be implemented at the start of any land disturbing activity, and shall be maintained throughout the entire term of such activity. The applicant is responsible for successful completion of the storm water management plan as approved. Upon issuance of the permit, the permittee shall be liable for any and all costs incurred resulting from noncompliance with the permittee's approved storm water management plan.

### **(9) Transfer of Ownership**

- (a) When a permittee transfers ownership, possession or control of property subject to a storm water management plan prior to completion of the steps necessary to attain soil stabilization:
  1. The permittee must secure approval from the City to transfer any portion of the permittee's responsibility for implementing the approved storm water management plan to another party.
  2. The permittee shall notify the party taking possession (transferee) as to the current status of compliance with the approved storm water management plan, also providing a copy of said notice to the City Engineer, and shall provide a copy of the approved storm water management plan to the transferee.
  3. The transferee of interest to any portion of said property shall bear responsibility to implement the SWMP on that portion of the property under the transferee's ownership, possession or control, and shall comply with the standards provided in this ordinance.
- (b) Transfers of interest in real estate subject to an approved, uncompleted storm water management plan may be completed consistent with this ordinance under any of the following circumstances:
  1. The transferee shall file and obtain approval of a new storm water management plan.
  2. The transferee shall obtain from the City Engineer approval of assignment as sub-permittee to complete that portion of the approved storm water management plan for the transferred property.
  3. The permittee shall provide the city with a financial guarantee, if such has not previously been provided, in an amount sufficient to complete the work proposed in the approved storm water management plan. At the time of transfer, the permittee may seek to reduce any prior financial guarantee to the amount necessary to complete the remaining work. If the permittee enters into escrow agreements with the transferee to complete an approved storm water mgt. plan, such amounts in escrow shall be available to the City Engineer to attain storm water management plan compliance. When an approved storm water management plan is not completed as proposed, the City Engineer may collect upon the financial guarantee to complete remaining work to achieve storm water management plan compliance.

## **26.11 ENFORCEMENT**

### **(1) Inspections**

As part of the storm water management plan approval process, the City Engineer shall establish a minimum number of inspections to be conducted consistent with the storm water management plan proposed to be undertaken. The number of inspection shall be no less than once every thirty calendar days during project construction.

### **(2) Verification**

- (a) The permittee shall notify the City Engineer to arrange an inspection to verify storm water management plan compliance within ten calendar days after completion of installation of all required storm water management plan measures in an approved plan.
- (b) The City Engineer shall inspect the property to verify compliance with the ordinance within ten calendar days of notification from the permittee.
- (c) These inspections shall not relieve the permittee from the responsibility to maintain erosion control measures as set forth in section 28.06 and 28.07 of this Code of Ordinances.

### **(3) Noncompliance**

- (a) If an inspection reveals any noncompliance with an approved storm water management plan, the City Engineer shall notify the permittee in writing of all specific instances of noncompliance. The notice shall describe the nature of the noncompliance, remedial action needed, a schedule of remedial action and additional enforcement action that may be taken.
- (b) Upon receipt of written notification from the City Engineer, the permittee shall bring the work into compliance with the storm water runoff control plan as necessary to meet the specifications and schedule set forth by the City Engineer in the notification. The permittee shall initiate corrective action within 24 hours of notification by the City Engineer.

### **(4) Stop Work Orders**

- (a) The City Engineer shall issue and post a stop work order under any of the following circumstances:
  - 1. Any land disturbing or land development activity regulated under this ordinance and undertaken without a storm water permit.
  - 2. Any noncompliance with an approved storm water management plan for which the permittee has failed to initiate corrective action within 24 hours or to follow the specifications and schedule set forth by the City Engineer under section 26.11(3)(a).
- (b) Upon issuance of a stop work order, the only permissible activity on the project shall be actions to bring the project into compliance with the approved storm water management plan following the specifications and schedule set forth by the City Engineer.

### **(5) Revocation**

If the permittee fails to comply with the stop work order, the City Engineer may revoke the land disturbing permit for noncompliance with the provisions of this ordinance.

## **(6) Remedial Action**

- (a) If the permittee fails to comply with the stop work order, the City Engineer may issue to the permittee or land owner a notice of intent by the City to perform any work, or commence any operations necessary, to correct conditions on the property. Agents of the City may enter the land and commence the work three calendar days after issuance of the notice of intent to the permittee or landowner.
- (b) If the violations of this ordinance are likely to result in damage to properties, public facilities or waters of the State, the City Engineer may enter the land and take emergency actions necessary to prevent such damage. The City Engineer may take such emergency actions immediately without providing notification of noncompliance, issuing a stop work order or waiting for three days.
- (c) The cost incurred by the City for actions taken under par. (a) or (b), plus interest and legal costs, shall be billed to the permittee or owner of record title of the property and, if not paid, shall be entered on the tax rolls and collected as a special charge pursuant to Wis. Stats. §66.0627.

## **(7) Further Legal Action**

The City Engineer is authorized to refer any violation of this ordinance, or of a stop work order issued pursuant to this ordinance, to the City Attorney for the commencement of further legal proceedings.

## **(8) Forfeitures**

Any person violating any of the provisions of this ordinance shall also be subject to forfeiture, with penalties as provided in section 30.04 of this Code of Ordinances.

## **(9) Injunctions**

Every violation of this ordinance is a public nuisance. Compliance with this ordinance may be enforced by an action for an injunction at the suit of the City Pursuant to Wis. Stats. §62.23(8). It shall not be necessary to prosecute for forfeiture pursuant to section 26.11(8) of this ordinance before pursuing injunctive relief.

## **26.12 VARIANCES AND APPEALS**

### **(1) Variances**

- (a) An applicant may include in the application a request for a variance from the requirements of section 26.06. No variance shall be granted unless applicant demonstrates and the City Engineer finds that all of the following conditions are present:
  - 1. Enforcement of the standards set forth in this ordinance will result in unnecessary hardship to the landowner.
  - 2. The hardship is due to exceptional physical conditions unique to the property and not of the owner's or applicant's doing.
  - 3. Granting the variance will not adversely affect the public health, safety or welfare, nor be contrary to the spirit, purpose and intent of this ordinance.
  - 4. The project will have no impact upon any of the stated purposes of this ordinance as set forth in section 26.03.



5. The applicant has proposed an alternative to the requirement from which the variance is sought that will provide equivalent protection of the public health, safety and welfare, the environment and public and private property.
  6. The net cumulative effect of the variance will not adversely affect downstream conditions.
  7. Existing regional facilities are shown to meet the performance standards of this ordinance.
  8. The applicant will be denied all reasonable and beneficial use of the property if the variance is denied.
- (b) If all of the conditions set forth in section 26.12(1)(a) are met, a variance may only be granted to the minimum extent necessary to afford relief from the unnecessary hardship, with primary consideration to water quality.

## **(2) Appeals**

- (a) Any person aggrieved by any decision of the City Engineer pursuant to this ordinance may appeal to the WRMC. Such appeal shall be taken within 30 calendar days after the challenged decision. Notice of Appeal setting forth the specific grounds for the appeal shall be filed with the City Engineer who shall forthwith transmit to the committee the record upon which the action appealed from is taken.
- (b) The WRMC shall fix a reasonable time for the hearing of the appeal and publish a class 2 notice thereof under Wis. Stats. Chap. 985, as well as give written notice to the appellant by regular mail, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or attorney.
- (c) The WRMC may, in conformity with the provisions of this ordinance, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made.
- (d) The concurring vote of a majority of the WRMC shall be necessary to reverse the decision of the City Engineer.

## **26.13 ABROGATION AND GREATER RESTRICTIONS**

It is not intended by this ordinance to repeal, abrogate, annul, impair or interfere with any existing covenants, deed restrictions, agreements, rules, regulations, ordinances or permits previously adopted or issued pursuant to law. However, whenever this ordinance imposes greater restrictions, the provisions of this ordinance shall govern.

## **26.14 INTERPRETATION**

The provisions of this ordinance shall be considered minimum requirements and shall be liberally construed to further the purposes of this chapter and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes.

## **26.15 SEVERABILITY OF ORDINANCE PROVISIONS**

If any section, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court, the remainder of this ordinance shall not be affected thereby.