

CITY OF AUSTIN
ORDINANCE REGARDING STORMWATER POLLUTION PREVENTION

CHAPTER 20: STORMWATER MANAGEMENT

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20.01 Purpose

The purpose of this ordinance is to control or eliminate stormwater pollution along with soil erosion and sedimentation within the City. It establishes standards and specifications for conservation practices and planning activities that minimize stormwater pollution, soil erosion and sedimentation.

20.02 Statutory Authorization

This ordinance is adopted in compliance with the provisions of the federal Clean Water Act (CWA), as amended, (33 U.S.C. 1251 et seq); 40 CFR Parts 122, 123, and 124, as amended; Minnesota Statutes Chapters 115 and 116, as amended; Minnesota Statute 462.351; and Minnesota Rules Chapter 7001 and 7090.

20.03 Definitions

These definitions apply to this ordinance. Unless specifically defined below, the words or phrases used in this ordinance shall have the same meaning as they have in common usage. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "must" are always mandatory and not merely directive.

Applicant: Any person or group that applies for a building permit, subdivision approval, or a permit to allow land-disturbing activities. "Applicant" also means that person's agents, employees, and others acting under this person's or group's direction. The term "applicant" also refers to the permit holder or holders and the permit holder's agents, employees, and others acting under this person's or group's direction.

Authorized Enforcement Agency: Employees or designees of the director of the municipal agency designated to enforce this ordinance.

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

Buffer: A protective vegetated zone located adjacent to a natural resource, such as a water of the state, that is subject to direct or indirect human alteration. Such a buffer strip is an integral part of protecting an aquatic ecosystem through trapping sheet erosion filtering pollutants, reducing channel erosion and providing adjacent habitat.

Clean Water Act: The Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), as it may be amended from time to time.

Clearing: Any activity that removes the vegetative surface cover.

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

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

Dewatering: The removal of water for construction activity. It can be a discharge of appropriated surface or groundwater to dry and/or solidify a construction site. It may require Minnesota Department of Natural Resources permits to be appropriated and if contaminated may require other MPCA permits to be discharged.

Drainage Way: Any channel that conveys surface runoff throughout the site.

Erosion: The process by which ground surface is worn away by action of wind, water, ice or gravity.

Erosion Control: A measure that prevents erosion.

Erosion Prevention: Measures employed to prevent erosion including but not limited to soil stabilization practices, limited grading, mulch, temporary or permanent cover, and construction phasing.

Final Stabilization means that either:

1. All soil disturbing activities at the site have been completed and a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed;
2. For individual lots in residential construction by either: (a) the homebuilder completing final stabilization as specified above, or (b) the homebuilder establishing temporary stabilization including perimeter controls for an individual lot prior to occupation of the

home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization; or

3. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land) final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters and drainage systems, and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria in (1) or (2) above.

General Contractor: The party who signs the construction contract with the owner to construct the project described in the final plans and specifications. Where the construction project involves more than one contractor, the general contractor will be the party responsible for managing the project on behalf of the owner. In some cases, the owner may be the general contractor. In these cases, the owner may contract an individual as the operator who would become the Co-Permittee.

Grading: Excavation or fill of material, including the resulting conditions thereof.

Green Infrastructure: An array of practices at multiple scales that manage wet weather and that maintains or restores natural hydrology by infiltrating, evapotranspiring, or harvesting and using stormwater. On a local scale, green infrastructure consists of site and neighborhood-specific practices, such as bioretention, trees, green roofs, permeable pavements and cisterns.

Groundwater: Water that collects beneath the surface.

Hazardous Materials: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical or infectious characteristics may cause or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit Connection:

- a. Any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the storm drainage system, including any non-stormwater discharge such as sewage, process wastewater or wash water and any connections from indoor drains and sinks, regardless of whether such connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
- b. Any drain or conveyance connected from a residential, commercial or industrial land use to the storm drainage system that has not been documented in plans, maps, or equivalent records or approved by an authorized enforcement agency.

Illicit Discharge: Any direct or indirect non-stormwater discharge to the storm drainage system, except as exempted in §20.04, Subd. 8.a.(iii).

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

Industrial Activity: Activity subject to NPDES industrial permits as defined in 40 C.F.R. pt. 122.25(b)(14), as it may be amended from time to time.

Maximum Extent Practicable (MEP): The statutory standard (33 U.S.C. §1342(p)(3)(B)(iii))

that establishes the level of pollutant reductions that an Owner or Operator of Regulated MS4s must achieve. The USEPA has intentionally not provided a precise definition of MEP to allow maximum flexibility to MS4 permitting. The pollutant reductions that represent an MEP may be different for each small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies.

MPCA: Minnesota Pollution Control Agency.

MS4: Municipal Separate Storm Sewer System; a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains a) owned or operated by the City of Austin, b) designed used for collecting or conveying stormwater, c) that is not a combined sewer, and d) that is not part of a publicly-owned treatment works, as defined in 40 CFR §122.2.

National Pollutant Discharge Elimination System (NPDES): The program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Clean Water Act (Sections 301, 318, 402, and 405) and United States Code of Federal Regulations Title 33, Sections 1317, 1328, 1342, and 1345.

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

Non-stormwater Discharge: Any discharge to the storm drainage system that is not composed entirely of stormwater.

Operator: The person (usually the general contractor), designated by the owner, who has day to day operational control and/or the ability to modify project plans and specifications related to the SWPPP. The person must be knowledgeable in those areas of the permit for which the operator is responsible, and must perform those responsibilities in a professional manner.

Owner: The person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease holder, the party or individual identified as the lease holder; or the contracting government agency responsible for the **construction activity**.

Permanent Cover: Final stabilization. Examples include grass, gravel, asphalt, and concrete.

Person: Any individual, firm, corporation, partnership, franchise, association or governmental entity.

Perimeter Control: A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

Phasing. Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

Pollutant: Any substance which, when discharged, has the potential to or does interfere with state-designated water uses; obstructs or causes damage to waters of the state; changes water color, odor, or usability as a drinking water source through causes not attributable to natural stream processes affecting surface water or subsurface processes affecting groundwater; adds an unnatural surface film to the water; adversely changes other chemical, biological, thermal, or physical conditions in any surface water or stream channel; degrades the quality of groundwater; or harms human life, aquatic life, terrestrial plant or wildlife. Pollutants include, but are not limited to, dredged soil, solid waste, incinerator residue, garbage, wastewater, wastewater sludge, chemical waste, biological materials, radioactive materials, rock, sand, dust, industrial waste, sediment, nutrients, toxic substances, pesticides, herbicides, trace metals, automotive fluids, petroleum-based substances and oxygen-

demanding materials.

Pollute: To discharge pollutants into the waters of the state. Pollution means the direct or indirect distribution of pollutants into the waters of the state.

Premises: Any building, lot, parcel of land or portion of land, whether improved or unimproved including adjacent sidewalks and parking strips.

Redevelopment: Any construction activity where, prior to the start of construction, the areas to be disturbed have 15 percent or more impervious surface(s).

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

Sediment Control: Methods employed to prevent sediment from leaving the site. Sediment control practices include silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, and temporary or permanent sedimentation basins.

Site: A parcel of land or a contiguous combination thereof, where grading work is performed as a single, unified operation.

Site Development Permit: A permit issued by the municipality for the construction or alteration of ground improvements and structures for the control of erosion, runoff and grading.

Small Construction Activity: Small construction activity as defined in 40 C.F.R. part 122.26(b)(15) . Small construction activities include clearing, grading and excavating that result in a disturbance of equal to or greater than one acre and less than five (5) acres. Small construction activity includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five (5) acres. A **small construction site** is a site that disturbs less than one acre of land, whether or not it is part of a larger common plan of development.

Stabilization: The use of practices that prevent exposed soil from eroding, such as covering exposed ground surfaces with mulch, staked sod, riprap, wood fiber blanket, or other material that prevents erosion from occurring. Grass seeding is not stabilization.

Start of Construction: The first land-disturbing activity associated with a development, including land preparation such as clearing, grading, and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

Storm Drainage System: A conveyance or system of conveyances that is owned and operated by the City or other entity and designed or used for collecting or conveying stormwater. This includes but is not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs and other drainage structures.

Stormwater: Defined under Minn. R. 7077.0105, subp. 41(b). Includes precipitation runoff, stormwater runoff, snow melt runoff, and any other surface runoff and drainage.

Stormwater Pollution Prevention Plan (SWPPP): A set of plans prepared by or under the direction of a licensed professional engineer indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.

Surface Water or Waters means all streams, lakes, ponds, marshes, wetlands, reservoirs, springs, rivers, drainage systems, waterways, watercourses, and irrigation systems whether natural or artificial, public or private.

Temporary Erosion Protection: Methods employed to prevent erosion. Examples of temporary cover include; straw, wood fiber blanket, wood chips, and erosion netting.

Underground Waters: Water contained below the surface of the earth in the saturated zone including, without limitation, all waters whether under confined, unconfined, or perched conditions, in near surface unconsolidated sediment or regolith, or in rock formations deeper underground. The term ground water shall be synonymous with underground water.

USEPA: United States Environmental Protection Agency.

Waste. Any construction and demolition debris, concrete truck washout, chemicals, litter, mixed municipal solid waste, scrap metal, sanitary waste, or any other non-useable debris generated at a construction site that may cause adverse impacts to water quality.

Wastewater: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Watercourse: Any body of water, including, but not limited to, lakes, ponds, rivers, streams, and bodies of water delineated by the City.

Waters of the State: As defined in Minn. Stat. § 115.01, subd. 22, means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

Waterway: A channel that directs surface runoff to a watercourse or to the public storm drain.

Wetland or Wetlands: Defined in Minn. R. 7050.0130, subp. F and includes those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Constructed wetlands designed for wastewater treatment are not waters of the state. Wetlands must have the following attributes:

- a. A predominance of hydric soils;
- b. Inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition; and
- c. Under normal circumstances support a prevalence of such vegetation.

20.04 Illicit Discharges and Connections

Subd. 1. *Purpose and Intent*

This ordinance is established to promote the health, safety and general welfare of the citizens of Austin by regulating non-stormwater discharges to the City’s storm drainage system, known formally as the municipal separate storm drainage system (MS4). The ordinance establishes methods for controlling the introduction of pollutants into the MS4 to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

Subd. 2. *Applicability*

This ordinance shall apply to all water entering the storm drainage system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

Subd. 3. *Definitions*

See §20.03.

Subd. 4. *Severability*

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

Subd. 5. *Administration*

The City engineer and/or other City representatives and staff are authorized to administer, implement and enforce the provisions of this section.

Subd. 6. *Ultimate Responsibility*

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

Subd. 7. *Illegal Disposal and Dumping of Substances and Materials*

- a. No person shall throw, deposit, place, leave, maintain, or keep any substance upon any street, alley, sidewalk, storm drain, inlet, catch basin conduit or drainage structure, business place or upon any public or private plot of land, so that the same might be or become a pollutant or hazardous material, except if secured within a container or bag or contained within a lawfully established waste disposal facility.

- b. No person shall intentionally dispose of grass, leaves, dirt or landscape material into a water resource, buffer, street, road, alley, catch basin, culvert, curb, gutter, inlet, ditch, natural watercourse, flood control channel, canal, storm drain or any fabricated natural conveyance.

Subd. 8. *Illicit Discharges and Connections to the Storm Drainage System*

- a. No person shall cause any illicit discharge to enter the storm drainage system or any surface water unless such discharge:

- i. Consists of non-stormwater that is authorized by an NPDES point source permit obtained from the MPCA;
 - ii. Is associated with fire-fighting activities or other activities necessary to protect public health and safety; or
 - iii. Is one of the following exempt discharges: water line flushing or other potable water sources; landscape irrigation or lawn watering; diverted stream flows; rising groundwater; groundwater infiltration to a storm drain; uncontaminated pumped groundwater; foundation or footing drains (not including active groundwater dewatering systems); crawl space pumping; air conditioning condensation; springs; non-commercial washing of vehicles; natural riparian habitat or wetland flow; emptying of dechlorinated swimming pools; and any other water discharge that does not contain a pollutant.
 - iv. Is associated with measures taken to prevent public health hazards or structural or property damage. Such discharges must be reported to the Duty Officer.
- b. Dye testing is an allowable discharge. Verbal notification to the City at least 48 hours prior to the time of the test is required.
 - c. No person shall use any illicit connection to intentionally convey non-stormwater to the storm drainage system.
 - d. No person shall connect or convey water from floor drains to the storm drainage system.
 - e. The construction, use, maintenance or continued existence of illicit connections to the storm drainage system is prohibited. This prohibition expressly includes, but is not limited to, illicit connections made in the past, regardless of whether the connection had been previously allowed, permitted, or approved by an authorized enforcement agency.
 - f. No person shall connect a line conveying sewage to the storm drainage system, or allow such a connection to continue.

Subd. 9. *Discharge Prevention Requirements*

Any owner or occupant of property within the City shall comply with the following requirements to prevent discharges:

- a. No person shall leave, deposit, discharge, dump, or otherwise expose any chemical or septic waste in an area where discharge to a street or the storm drainage system may occur. . This prohibition shall apply to both actual and potential discharges.
- b. Recreational vehicle sewage shall be disposed of at a proper sanitary waste facility. Waste must not be discharged in an area where drainage to the streets or the storm drainage system may occur.
- c. Mobile washing companies, such as carpet cleaning and mobile vehicle washing services, shall not discharge wastewater to the streets or storm drainage system.

- d. Objects such as motor vehicle parts that contain grease, oil or other hazardous substances and unsealed receptacles containing hazardous materials shall not be stored in areas susceptible to runoff. Any machinery or equipment that is to be repaired or maintained in areas susceptible to runoff shall be placed in a confined area to contain any leaks, spills, or discharges.
- e. Debris and residue shall be removed, as required below:
 - i. All motor vehicle parking lots and paved private streets shall be swept, at a minimum of once a year in the spring to remove debris. Such debris shall be collected and be disposed of properly.

Fuel and chemical residue or other types of potentially harmful material, such as animal waste, garbage or batteries shall be removed as soon as possible and disposed of properly. Household hazardous waste must be disposed of through the county collection program or at any other authorized disposal site.

Subd. 10. *Industrial or Construction Activity Discharges to the Storm Drainage System*

- a. Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City prior to the allowing of discharge to the storm drainage system.
- b. All facilities that have stormwater discharges associated with industrial activity must adhere to the following requirements: Any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the storm drainage system. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

Subd. 11. *Notification of Spills*

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials that are resulting or may result in illegal discharges or pollutants discharging into the storm drainage system, or waters of the state, said person shall take all necessary steps to ensure the discovery, containment and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services, such as by calling 911. In the event of a release of non-hazardous materials, said person shall notify the City no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Austin within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

Subd. 12. *Access to Buildings for Inspection, Sampling, Dye Testing, Monitoring and Examination Related to Stormwater Discharge*

- a. The City shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the City.
- b. Facility operators shall allow the City ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
- c. The City shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of the facility's storm water discharge.
- d. The City has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- e. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- f. Unreasonable delays in allowing the City access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with an NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the City reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- g. If the City has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

Subd. 13. *Suspension of Storm Drainage System Access*

- a. The City may, without prior notice, suspend storm drainage system discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present an imminent and substantial danger to the environment; to the public health or welfare; to the storm drainage system; or to the waters of the state. If the violator fails to comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system or waters of the state, or to minimize danger to the public.

- b. Any person discharging to the storm drainage system in violation of this section may have his or her storm drainage system access terminated if such termination will abate or reduce an illicit discharge. The City will notify a violator of the proposed termination of its drainage system access. The violator may petition the authorized enforcement agency for a reconsideration and hearing. No person shall reinstate the storm drainage system access to premises terminated pursuant to this section without the prior approval of the City.

Subd. 14. *Watercourse Protection*

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

20.05 Construction Site Erosion and Sediment Control

Subd. 1. *Established*

This subchapter shall be known as the "Construction Site Erosion and Sediment Control Ordinance" of the city and may be so cited.

Subd. 2. *Introduction; Purpose*

- a. During the construction process, soil is highly vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches and the dredging of lakes. In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat.
- b. As a result, the purpose of this local regulation is to safeguard persons, protect property, and prevent damage to the environment in the city. This subchapter will also promote the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land in the city.
- c. This subchapter is not to serve as a replacement for the regulations set forth by the Minnesota Pollution Control Agency (MPCA) or US Environmental Protection Agency (EPA) regarding construction activity stormwater permitting. In the event that any regulation contained in this subchapter conflicts with a corresponding MPCA and/or EPA regulation, the more stringent or restrictive regulation will be upheld.

Subd. 3 *Definitions*

See §20.03.

Subd. 4 *Permits*

- a. No person shall be granted a site development permit for land-disturbing activity that would require the uncovering of 43,560 or more square feet, or less than that area but that are part a larger common plan of development or sale, without the approval of a Stormwater Pollution Prevention Plan (SWPPP) by the Engineering or Building Department.
- b. No site development permit is required for the following activities:
 - i. Any emergency activity that is immediately necessary for the protection of life, property, or natural resources;
 - ii. Existing nursery and agricultural operations conducted as a permitted main or accessory use; and/or
 - iii. Subdivision, road, or utility construction that will be inspected by the Engineering Department.
- c. Each application shall bear the 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 and shall be accompanied by a fee as established by the city.
- d. Each application shall include all MPCA construction activity stormwater permit application documents, including a completed Stormwater Pollution Prevention Plan.
- e. Each application shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the SWPPP and that a certified contractor shall be on site on all days when construction or grading activity takes place.

Subd. 5. *Review and Approval*

- a. The city will review each application for a site development permit to determine its conformance with the provisions of this regulation. Within 15 days after receiving an application, the city shall respond to the applicant if:
 - i. The application is not approved;
 - ii. The application is approved, pending conditions.
- b. No response by the city on an original or revised application within 15 days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the city. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the city.

Subd. 6. *Stormwater Pollution Prevention Plan (SWPPP)*

- a. The Stormwater Pollution Prevention Plan shall include the following:
 - i. A natural resources map identifying soils, forest cover, and water resources located on or near the site;
 - ii. A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructures, 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;
- iii. All erosion and sediment control measures necessary to meet the objectives of this local regulation throughout all phases of construction and after completion of development of the site. Depending upon the complexity of the project, the drafting of intermediate plans may be required at the close of each season;
- iv. Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures;
- v. Waste controls for any type of waste which may be generated on the site. Waste controls must provide for appropriate waste storage on-site and property disposal;
- vi. Provisions for maintenance of control of facilities, including easements and estimates of the cost of maintenance;
- vii. A statement indicating the party responsible for the long-term stormwater management for the development and the party responsible for any permanent stormwater management systems on site; and
- viii. Modifications to the plan shall be processed and approved or disapproved in the same manner as Subd. 5 of this regulation, may be authorized by the city by written authorization to the permittee, and shall include:
 - A. Major amendments of the SWPPP submitted to Inspection Department;
 - B. Field modifications of a minor nature.

Subd. 7. *Design Requirements*

- a. Grading, erosion control practices, sediment control practices, and waterway crossings shall be at least as stringent as the MPCA's General Permit to Discharge Stormwater Associated with Construction Activity No. MNR100001 (Part IV: Construction Activity Requirements) and shall be adequate to prevent transportation of sediment from the site to the satisfaction of the city. Recommended Best Management Practices (BMPs) are those in the latest version of the Minnesota Stormwater Manual.
- b. Clearing and grading of natural resources, such as forests and wetlands, shall not be permitted, except when in compliance with all other requirements and all applicable state and federal laws. Clearing techniques that retain natural vegetation and drainage patterns, as described in the Minnesota Storm Water Manual, shall be used to the satisfaction of the city.
- c. Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.
- d. Erosion control requirements shall include the following:
 - i. Soil stabilization shall be completed within five days of clearing or inactivity in construction;
 - ii. If seeding or another vegetative erosion control method is used, it shall become established within two weeks or the city may require the site to be reseeded or a non-vegetative option employed;
 - iii. Special techniques that meet the design criteria outlined in the Minnesota Storm Water Manual on steep slopes or in drainage ways shall be used to ensure stabilization;
 - iv. Soil stockpiles must be stabilized or covered at the end of each workday. The entire site must be stabilized, using a heavy mulch layer or another method that does not require germination to control erosion, at the close of the construction season;
 - v. Techniques shall be employed to prevent the blowing of dust or sediment from the site;
 - vi. Techniques that divert upland runoff past disturbed slopes shall be employed.

- e. Sediment control requirements shall include:
 - i. Settling basins, sediment traps, or tanks and perimeter controls;
 - ii. Settling basins that are designed in a manner that allows adaptation to provide long-term stormwater management, if required by the city;
 - iii. Protection for adjacent properties by the use of a vegetated buffer strip in combination with perimeter controls.
- f. Waterway and watercourse protection requirements shall include:
 - i. Stabilization of the watercourse channel before, during, and after any in-channel work;
 - ii. On-site stormwater conveyance channels designed according to the criteria outlined in the Minnesota Water Manual; and
 - iii. Stabilization adequate to prevent erosion located at the outlets of all pipes and paved channels.
- g. Construction site access requirements shall include:
 - i. A temporary rock construction entrance provided at all sites. Rock shall be crushed 1-1/2 inch diameter, minimum. The dimensions shall be 20 feet by 50 feet with a depth of at least nine inches;
 - ii. Other measures required by the city in order to ensure that sediment is not tracked onto public streets by construction vehicles or washed into storm drains.
- h. Post-construction stormwater management BMPs in accordance with §20.06.

Subd. 8. *Inspection*

- a. The City shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the SWPPP as approved. Plans for grading, stripping, excavating, and filling work shall be maintained at the site during the progress of the work. The permittee shall notify the city at least two working days before the following:
 - i. Start of construction;
 - ii. Completion of site clearing;
 - iii. Completion of final grading; and
 - iv. Completion of final landscaping.
- b. The permittee shall make regular inspections per the requirements of the MPCA construction activity stormwater permit.
- c. The city or its designated agent shall enter the property of the applicant as deemed necessary to make regular inspections.

Subd. 9. *Small Construction Sites*

- a. All construction activities which disturb less than one acre of land, and that are not part of a larger plan of development or sale, are considered “small construction sites” and are required to have the following erosion and sediment control BMPs in place:
 - i. Perimeter control. Down gradient silt fence or other approved method as listed in the Minnesota Storm Water Manual.

- ii. Vehicle tracking control. Rock or wood mulch construction entrance measuring at least 8 feet wide and 20 feet long. All construction access and egress shall be through this entrance.
 - iii. Stockpile control. All soil stockpiles not being actively used shall be either covered with an impermeable sheet or protected by silt fence, no further than three feet from the base of the stockpile.
 - iv. Turf establishment. Upon completion of final topsoil grading and seeding, the soil shall be covered with straw mulch (disked in), liquid tackifier, or erosion control blanket. Perimeter controls shall remain in place until this is completed.
 - v. Good housekeeping. Any sediment that is transported off-site shall be cleaned up and replaced on the site within 24 hours of discovery. This includes any sediment in the roadway or gutter.
- b. A plan shall be submitted to the city which addresses the details and locations of the items listed in Part a (i – v) above.
 - c. Erosion and sediment control on small construction sites is the responsibility of the general contractor for the site. In the event that there is no general contractor for the site, the landowner becomes responsible.
 - d. Exemptions. Activities disturbing less than 2,500 square feet of soil are exempt from the requirements set forth in this section.

20.06 Post-construction Stormwater Management

Subd. 1. Purpose

This ordinance is intended to prevent or reduce water pollution after construction activity is completed, related to new development or redevelopment projects with land disturbance of greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, with the City of Austin and that discharge to the City's MS4.

Subd. 2. Definitions

See §20.03.

Subd. 3. Conditions for Post-Construction Stormwater Management

Plans for drainage design and stormwater management must meet the regulations of the Cedar River Watershed District, the Department of Natural Resources, and the Army Corps of Engineers. Site plans for new development or redevelopment shall also include any combination of Best Management Practices, with the highest preference given to Green Infrastructure techniques and practices, necessary to meet the following conditions on the site of a construction activity to the Maximum Extent Practicable:

- a. For new development projects - no net increase from pre-project conditions (on an annual average basis) of:
 - i. Stormwater discharge Volume, unless precluded by the stormwater management limitations in Subd. 4.
 - ii. Stormwater discharges of Total Suspended Solids (TSS)
 - iii. Stormwater discharges of Total Phosphorus (TP)

- b. For redevelopment projects – a net reduction from pre-project conditions (on an annual average basis) of:
 - i. Stormwater discharge Volume, unless precluded by the stormwater management limitations in Subd. 4.
 - ii. Stormwater discharges of TSS
 - iii. Stormwater discharges of TP

Subd. 4. *Stormwater management limitations and exceptions*

a. Limitations

- i. The use of infiltration techniques to achieve the conditions for post-construction stormwater management in Subd. 3 is prohibited when the infiltration structural stormwater BMP will receive discharges from, or be constructed in areas:
 - A. Where industrial facilities are not authorized to infiltrate industrial stormwater under an NPDES/SDS Industrial Stormwater Permit issued by the MPCA
 - B. Where vehicle fueling and maintenance occur
 - C. With less than three (3) feet of separation distance from the bottom of the infiltration system to the elevation of the seasonally saturated soils or the top of bedrock
 - D. Where high levels of contaminants in soil or groundwater will be mobilized by the infiltrating stormwater
- ii. The use of infiltration techniques to achieve the conditions for post-construction stormwater management, without higher engineering review, is restricted to those techniques that are sufficient to provide a functioning treatment system and prevent adverse impacts to groundwater, when the infiltration device will be constructed in areas:
 - A. With predominantly Hydrologic Soil Group D (clay) soils
 - B. Within 1,000 feet up-gradient, or 100 feet down-gradient of active karst features
 - C. Within a Drinking Water Supply Management Area (DWSMA) as defined in Minn. R. 4720.5100, subp. 13
 - D. Where soil infiltration rates are more than 8.3 inches per hour
- iii. A reasonable attempt shall be made to obtain right-of-way during the project planning process. For linear projects where the lack of right-of-way precludes the installation of volume control practices that meet the conditions for post-construction stormwater management in Subd. 4, the City may allow exceptions as described in Part Subd. 4.b. below.

b. Exceptions for stormwater discharge volume

Lesser volume control on the site of the original construction activity than that in Subd. 3 is allowed only under the following circumstances:

- i. The owner and/or operator of a construction activity is precluded from infiltrating stormwater through a designed system due to any of the infiltration related limitations described above, and
- ii. The owner and/or operator of the construction activity implements, to the MEP, volume reduction techniques, other than infiltration, (e.g., evapotranspiration, reuse/harvesting, conservation design, green roofs, etc.) on the site of the original

construction activity that reduces stormwater discharge volume, but may not meet the conditions for post-construction stormwater management in Subd. 3.

Subd. 5. *Mitigation provisions*

In circumstances where the City or other owners and operators of a construction activity cannot cost effectively meet the conditions for post-construction stormwater management for TSS and/or TP in Subd. 3 on the site of the original construction activity, the City shall identify, or may require owners or operators of a construction activity to identify, locations where mitigation projects can be completed. Any stormwater discharges of TSS and/or TP not addressed on the site of the original construction activity shall be addressed through mitigation and, at a minimum, shall ensure the following requirements are met:

- a. Mitigation project areas are selected in the following order of preference:
 - i. Locations that yield benefits to the same receiving water that receives runoff from the original construction activity
 - ii. Locations within the same Department of Natural Resource (DNR) catchment area as the original construction activity
 - iii. Locations in the next adjacent DNR catchment area up-stream
 - iv. Locations anywhere within the permittee's jurisdiction
- b. Mitigation projects must involve the creation of new structural stormwater BMPs or the retrofit of existing structural stormwater BMPs, or the use of a properly designed regional structural stormwater BMP.
- c. Routine maintenance of structural stormwater BMPs already required by this permit cannot be used to meet mitigation requirements of this Part.
- d. Mitigation projects shall be completed within 24 months after the start of the original construction activity.
- e. The City shall determine, and document, who is responsible for long-term maintenance on all mitigation projects of this Part.
- f. If the City receives payment from the owner and/or operator of a construction activity for mitigation purposes in lieu of the owner or operator of that construction activity meeting the conditions for post-construction stormwater management in Subd. 3, the City shall apply any such payment received to a public stormwater project, and all projects must be in compliance with requirements in Subd. 4 (a-e) above.

Subd. 6. *Long-term maintenance of structural stormwater BMPs*

Legal mechanism(s) shall be established between the City and owners or operators responsible for the long-term maintenance of structural stormwater BMPs not owned or operated by the City, that have been implemented to meet the conditions for post-construction stormwater management in Subd. 3. This includes only structural stormwater BMPs constructed after this ordinance is passed, that are directly connected to the City's MS4, and that are in the City's jurisdiction. The legal mechanism shall include provisions that, at a minimum:

- a. Allow the City to conduct inspections of structural stormwater BMPs not owned or operated by the City, perform necessary maintenance, and assess costs for those structural stormwater

BMPs when the City determines that the owner and/or operator of that structural stormwater BMP has not conducted maintenance.

- b. Include conditions that are designed to preserve the City's right to ensure maintenance responsibility, for structural stormwater BMPs not owned or operated by the City, when those responsibilities are legally transferred to another party.
- c. Include conditions that are designed to protect/preserve structural stormwater BMPs and site features that are implemented to comply with Subd. 3. If site configurations or structural stormwater BMPs change, causing decreased structural stormwater BMP effectiveness, new or improved structural stormwater BMPs must be implemented to ensure the conditions for post-construction stormwater management in Subd. 3 continue to be met.

20.07 Enforcement

Subd. 01. *Illicit Discharges and Connections*

- a. Notice of Violation. Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of Section 20.04, the City may order compliance by sending written notice of the violation to the responsible person. Such notice may require without limitation:
 - ii. The performance of monitoring, analyses and reporting;
 - iii. The elimination of illicit connections or discharges;
 - iv. Discharges, practices, or operations in violation of this section to cease and desist;
 - v. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
 - vi. The implementation of source control or treatment BMPs.
- b. The offending party may appeal the City's notice to the City Council. An appeal must be brought in writing no later than 10 days from the date of the notice.
- c. If abatement of a violation or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the offending party fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof will be charged to the offending party.
- d. In the event that the abatement or restoration work is performed by the City, the City may charge the violator for its costs and expenses associated with the work. If the bill received for abatement or restoration is not paid within 30 days, the City may draw the amount of the bill from any financial guarantees that the City may be holding or may certify the amount to the county for collection with the property taxes.
- e. Enforcement Measures after Appeal
If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 10 days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

f. Injunctive Relief

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. If a person has violated or continues to violate the provisions of this ordinance, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.

g. Violations Deemed a Public Nuisance

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Subd. 02. *Construction Site Erosion and Sediment Control*

Stop-work order; revocation of permit.

In the event that any person holding a site development permit pursuant to Section 20.05 violates the terms of the permit or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the city may suspend or revoke the site development permit. In addition, the city may, following the revocation of the site development permit, enter the premises to perform correction work. The cost of said correction work shall be an assessment on the underlying property.

Subd. 03. *Post-construction stormwater management*

a. Violations

Any development activity that is commenced or is conducted contrary to Section 20.06 may be restrained by injunction or otherwise abated in a manner provided by law.

b. Notice of Violation

When the City of Austin determines that an activity is not being carried out in accordance with the requirements of Section 20.06, it shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:

- i. the name and address of the owner or applicant;
- ii. the address when available or a description of the building, structure or land upon which the violation is occurring;
- iii. a statement specifying the nature of the violation;
- iv. a description of the remedial measures necessary to bring the development activity into compliance with this Ordinance and a time schedule for the completion of such remedial action;
- v. a statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- vi. a statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within fifteen (15) days of service of notice of violation.

c. Stop Work Orders

Persons receiving a notice of violation will be required to halt all construction activities. This

“stop work order” will be in effect until the City of Austin confirms that the development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation in a timely manner can result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this ordinance.

20.08 Penalty

Subd. 01. *Illicit Discharges and Connections*

Any person who violates any provision of Section 20.04 shall be guilty of a misdemeanor and shall be subject to a maximum fine or maximum period of imprisonment, or both, as specified by Minnesota Statutes Section 609.03. Each additional day that the property remains in violation of this section shall constitute a separate violation of this section and may be prosecuted accordingly. Nothing contained herein shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation of this section, including, but not limited to, seeking a civil injunction or a restraining order.

Subd. 02. *Construction Site Erosion and Sediment Control*

- a. Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to Section 1.99, General Penalty.
- b. No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of §§ 4.80 through 4.89. Any person violating any of the provisions of §§ 4.80 through 4.89 shall be deemed guilty of a misdemeanor and each day during which any violation of any of the provisions of §§ 4.80 through 4.89 is committed, continued, or permitted, shall constitute a separate offense. Upon conviction of any such violation, such person, partnership, or corporation shall be punished by a fine or not more than \$1,000 for each offense. In addition to any other penalty authorized by this section, any person, partnership, or corporation convicted of violating any of the provisions of §§ 4.80 through 4.89 shall be required to bear the expense of such restoration.

Subd. 03. *Post-Construction Stormwater Management*

- a. **Civil and Criminal Penalties**
In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of Section 20.06 shall be punished by a fine of not more than \$1,000 or by imprisonment for a period not to exceed 90 days, or both such fine and imprisonment. Such person shall be guilty of a separate offense for each day during which the violation occurs or continues.
- b. **Restoration of lands**
Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the (jurisdictional stormwater authority) may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
- c. **Holds on Occupation Permits**
Occupation permits will not be granted until corrections to all stormwater practices have been made and accepted by the (jurisdictional stormwater authority.)