

ORDINANCE ENACTING SECTION  
TITLE 10, CHAPTER 7  
"STORMWATER MANAGEMENT"  
OF THE  
CODE OF ORDINANCES  
CITY OF HARRISONBURG, VIRGINIA

**Be it ordained by the Council of the City of Harrisonburg, Virginia:**

**That Title 10, Chapter 7 "Stormwater Management" be added as follows:**

**Sec. 10-7-1. PURPOSE AND AUTHORITY. (Section 9VAC25-870-20, 9VAC25-870-40)**

(a) The purpose of this Ordinance is to ensure the general health, safety, and welfare of the citizens of the City of Harrisonburg, Virginia and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.

(b) This ordinance is adopted pursuant to Article 2.3 (§ 62.1-44.15:27 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

**Sec. 10-7-2. DEFINITIONS. (9VAC25-870-10)**

In addition to the definitions set forth in 9VAC25-870-10 of the Virginia Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in this Ordinance have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

*"Administrator"* means the City Engineer or their designee.

*"Agreement in lieu of a stormwater management plan"* means a contract between the city and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of this Ordinance for the construction of a single-family residence; such contract may be executed by the city in lieu of a stormwater management plan.

*"Applicant"* means any person submitting an application for a permit or requesting issuance of a permit under this Ordinance.

*"Best management practice"* or "BMP" means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

*"Common plan of development or sale"* means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

*"Control measure"* means any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

*"Clean Water Act" or "CWA"* means the federal Clean Water Act (33 U.S.C §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

*"Department"* means the Department of Environmental Quality.

*"Development"* means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silvicultural purposes.

*"General permit"* means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (9VAC25-880-1 et seq.) of the Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

*"Land disturbance" or "land-disturbing activity"* means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in Section 1-3 (c) of this Ordinance.

*"Layout"* means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

*"Minor modification"* means an amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

*"Operator"* means the owner or operator of any facility or activity subject to regulation under this Ordinance.

*"Permit" or "VSMP Authority Permit"* means an approval to conduct a land-disturbing activity issued by the Administrator for the initiation of a land-disturbing activity, in accordance with this Ordinance, and which may only be issued after evidence of general permit coverage has been provided by the Department.

"*Permittee*" means the person to whom the VSMP Authority Permit is issued.

"*Person*" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

"*Regulations*" means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 9VAC25-870, as amended.

"*Site*" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity.

"*State*" means the Commonwealth of Virginia.

"*State Board*" means the Virginia State Water Control Board.

"*State permit*" means an approval to conduct a land-disturbing activity issued by the State Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the State Board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia Stormwater Management Act and the Regulations.

"*State Water Control Law*" means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"*State waters*" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"*Stormwater*" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"*Stormwater management plan*" means a document(s) containing material describing methods for complying with the requirements of Section 1-6 of this Ordinance.

"*Stormwater Pollution Prevention Plan*" or "*SWPPP*" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this Ordinance. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"*Subdivision*" means the same as defined in Section 10-1-1 of the city Subdivision Ordinance.

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Virginia Stormwater Management Act" or "Act" means Article 2.3 (§62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Virginia Stormwater BMP Clearinghouse website" means the website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the State Board after September 13, 2011, that has been established by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program.

**Sec. 10-7-3. STORMWATER PERMIT REQUIREMENT; EXEMPTIONS.**

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a VSMP authority permit has been issued by the Administrator in accordance with the provisions of this Ordinance.
- (b) Notwithstanding any other provisions of this Ordinance, the following activities are exempt, unless otherwise required by federal law:
  - (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
  - (2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in

Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;

- (3) Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;
- (4) Land disturbing activities that disturb less than one acre of land area that are not part of a larger common plan of development or sale that is one acre or greater of disturbance;
- (5) Discharges to a sanitary sewer or a combined sewer system;
- (6) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;
- (7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this Subsection; and
- (8) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of Subsection (a) is required within 30 days of commencing the land-disturbing activity.

**Sec. 10-7-4. STORMWATER MANAGEMENT PROGRAM ESTABLISHED;  
SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS.**

- (a) Pursuant to § 62.1-44.15:27 of the Code of Virginia, the city hereby establishes a Virginia stormwater management program for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes set out in Section 1-1 of this Ordinance. The city hereby designates the City Engineer as the Administrator of the Virginia stormwater management program.
- (b) No VSMP authority permit shall be issued by the Administrator, until the following items have been submitted to and approved by the Administrator or his/her authorized agent as prescribed herein:
  - (1) A permit application that includes a general permit registration statement;
  - (2) An erosion and sediment control plan approved in accordance with the city Erosion and Sediment Control Ordinance; and

- (3) A Stormwater Management Plan that meets the requirements of Section 1-6 of this Ordinance.
- (4) A Pollution Prevention Plan that meets the requirements of Section 1-6 of this Ordinance.
- (c) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.
- (d) No VSMP authority permit shall be issued until the fees required to be paid pursuant to Section 1-15, are received, all other city permitting prerequisites are met and a reasonable performance bond required pursuant to Section 1-16 of this Ordinance has been submitted.
- (e) No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.
- (f) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the Administrator.
- (g) In general, the requirements of (a) through (f) above shall be waived for individual lot single family home construction, within or outside of a common plan of development, disturbing less than five acres of land. Applicants for such projects shall execute with the city an "Agreement in Lieu of a Stormwater Management Plan", and shall pay the applicable fees prior to receiving a building permit. Applications for a building permit on such projects on lots that contain an established stormwater best management practice shall include a detailed grading plan sufficient to show continued function of such practice(s) per its (their) original design.

**Sec. 10-7-5. STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.**

- (a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Section 9VAC25-870-54 and must also comply with the requirements and general information set forth in Section 9VAC25-870-70, Section II [stormwater pollution prevention plan] of the general permit.
- (b) The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.
- (c) The SWPPP must be maintained by the operator at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.

**Sec. 10-7-6. STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN.**

- (a) The Stormwater Management Plan, required in Section 1-4 of this Ordinance, must apply the stormwater management technical criteria set forth in Section 1-9 of this Ordinance to the entire land-disturbing activity, consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to subsurface runoff. (Individual lots in new residential, commercial or industrial subdivisions shall be not considered separate land disturbing activities.) The Stormwater Management Plan shall include the following information:
- (1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and postdevelopment drainage areas;
  - (2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
  - (3) A narrative that includes a description of current site conditions and final site conditions;
  - (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
  - (5) Information on the proposed stormwater management facilities, including:
    - (i) The type of facilities;
    - (ii) Location, including geographic coordinates;
    - (iii) Acres treated; and
    - (iv) The surface waters or karst features, if present, into which the facility will discharge.
  - (6) Hydrologic and hydraulic computations, including runoff characteristics;
  - (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of Section 1-9 of this Ordinance and the City Design & Construction Standards Manual;
  - (8) A map or maps of the site that depicts the topography of the site and includes:
    - (i) All contributing drainage areas;
    - (ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
    - (iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

- (iv) Current land use including existing structures, roads, and locations of known utilities and easements;
  - (v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
  - (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
  - (vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
  - (viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
- (b) If an operator intends to meet the water quality and/or quantity requirements set forth in Section 1-9 of this Ordinance through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:35 of the Code of Virginia.
- (c) Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
- (d) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

**Sec. 10-7-7. POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.**

- (a) Pollution Prevention Plan, required by 9VAC25-870-56, shall be submitted for review and approval as part of the Stormwater Management Plan. The Pollution Prevention Plan shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
- (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
  - (2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

- (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
- (b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:
  - (1) Wastewater from washout of concrete, unless managed by an appropriate control;
  - (2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
  - (3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
  - (4) Soaps or solvents used in vehicle and equipment washing.
- (c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

**Sec. 10-7-8. REVIEW OF STORMWATER MANAGEMENT PLAN.**

- (a) The Administrator or any duly authorized agent of the Administrator shall review Stormwater Management Plans and accompanying Pollution Prevention Plans and shall approve or disapprove such plans according to the following:
  - (1) The Administrator shall determine the completeness of a plan in accordance with Section 1-6 of this Ordinance, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.
  - (2) The Administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subdivision (1), then plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.
  - (3) The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.
  - (4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this Ordinance.

(5) If a plan meeting all requirements of this Ordinance is submitted and no action is taken within the time provided above in subdivision (2) for review, the plan shall be deemed approved.

(b) Approved stormwater plans may be modified as follows:

(1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.

(2) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.

(c) The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to Section 1-10 (b).

**Sec. 10-7-9. TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES.**

(a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the city hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations, as amended, expressly to include 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [offsite compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; and, 9VAC25-870-85 [stormwater management impoundment structures or facilities]; which shall apply to all land-disturbing activities regulated pursuant to this Ordinance, except as expressly set forth in Subsection (b) of this Section.

(b) Until June 30, 2019, any land-disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, was approved by the city prior to July 1, 2012, and for which no coverage under the general permit has been issued nor land disturbance begun prior to July 1, 2014, shall be considered grandfathered by the Administrator and shall not be subject to the technical criteria of Part II B of the Regulations, but shall be subject to the technical criteria of Part II C of the Regulations [9VAC25-870-93 through 9VAC25-870-99] for those areas that were included in the approval, provided that the Administrator finds that such proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto (i) provides for a layout and (ii) the resulting land-disturbing activity will be compliant with the requirements of Part II C. Verification of such compliance must have occurred at the time of City approval of such

plat or plan, and have been based upon a plat or plan that (i) identified specific stormwater practices needed to ensure compliance and (ii) included calculations confirming such practices will provide adequate pollutant removal to ensure compliance. In the event that the city-approved document is subsequently modified or amended in a manner such that there is no increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.

- (1) Until June 30, 2019, for local, state, and federal projects for which there has been an obligation of local, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which the Administrator has approved a stormwater management plan prior to July 1, 2012, such projects shall be considered grandfathered by the city and shall not be subject to the technical requirements of Part II B of the Regulations, but shall be subject to the technical requirements of Part II C of the Regulations for those areas that were included in the approval.
  - (2) For land-disturbing activities grandfathered under this Subsection, construction must be completed by June 30, 2019, or portions of the project not under construction shall become subject to the technical requirements of Subsection (a) above.
- (c) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical requirements Part IIC of the Regulations, as adopted by the city in Subsection (b) of this Section.
- (d) The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.
- (1) Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the Director.
  - (2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.
- (e) Nothing in this Section shall preclude an operator from constructing to a more stringent standard at their discretion.

#### **Sec. 10-7-10. LONG-TERM MAINTENANCE OF PERMANENT STORMWATER**

## FACILITIES – BMP MAINTENANCE AGREEMENT

- (a) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in a BMP Maintenance Agreement recorded in the local land records prior to general permit termination or earlier as required by the Administrator and shall at a minimum:
- (1) Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;
  - (2) Be stated to run with the land;
  - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
  - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and
  - (5) Be enforceable by all appropriate governmental parties.

### Sec. 10-7-11. MONITORING AND INSPECTIONS.

- (a) The Administrator or any duly authorized agent of the Administrator shall inspect the land-disturbing activity during construction for:
- (1) Compliance with the approved erosion and sediment control plan;
  - (2) Compliance with the approved stormwater management plan;
  - (3) Development, updating, and implementation of a pollution prevention plan; and
  - (4) Development and implementation of any additional control measures necessary to address a TMDL.
- (b) The Administrator or any duly authorized agent of the Administrator may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Ordinance.
- (c) In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

- (d) Pursuant to § 62.1-44.15:40 of the Code of Virginia, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this Ordinance, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance.
- (e) Post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted by the Administrator or any duly authorized agent of the Administrator pursuant to the Locality's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five (5) years except as may otherwise be provided for in Section 1-10. Additional owner-performed inspections may be required in accordance with the BMP Maintenance Agreement.

#### **Sec. 10-7-12. HEARINGS**

- (a) The hearing before the city council provided for in section 10-7-13 shall be held at a regular or special meeting of the city council, subject to the following:
- (1) A verbatim record of the hearing shall be taken and filed with the State Water Control Board.
  - (2) Depositions may be taken and read as in actions at law.
  - (3) The city council has the power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the city council in the manner prescribed in Virginia Code Section 2.2-4022. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions.

#### **Sec. 10-7-13. APPEALS.**

- (a) Any applicant under the provision of this ordinance who is aggrieved by any action of the city or its agent in disapproving plans submitted pursuant to this chapter shall have the right to apply for and receive a review of such action by the city council provided an appeal is filed within thirty (30) days from the date of the action. Any applicant who seeks an appeal hearing before the city council shall be heard at the next regularly scheduled city council public hearing provided that the city council and other involved parties have at least thirty (30) days prior notice. In reviewing the agent's actions, the city council shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the city council may affirm, reverse or modify the action. The city council shall make a final decision within forty five (45) days after the hearing is concluded. The city council's decision shall be in writing and state the date of the decision and the reasons for the decision. Notice of the city council's decision shall be provided to the owner and to any downstream owner who is aggrieved.

The city council's decision shall be final, subject only to review by the Circuit Court of Rockingham County, Virginia.

- (b) Final decisions by the city under this chapter shall be subject to review by the Circuit Court of Rockingham County, Virginia, provided an appeal is filed within thirty (30) days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land-disturbing activities.

#### **Sec. 10-7-14. ENFORCEMENT**

- (a) If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.

- (1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (b) or the permit may be revoked by the Administrator.
- (2) If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall be issued in accordance with City procedures. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with this ordinance.

- (b) In addition to any other remedy provided by this Ordinance, if the Administrator or his designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with city policies.
- (c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in the Circuit Court of Rockingham County, Virginia by the Locality to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- (d) Any person who violates any provision of this Ordinance or who fails, neglects, or refuses to comply with any order of the Administrator, shall be subject to a civil penalty in accordance with the schedule below, for each violation, within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
- (1) Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:
- (i) No state permit registration;
  - (ii) No SWPPP;
  - (iii) Incomplete SWPPP;
  - (iv) SWPPP not available for review;
  - (v) No approved erosion and sediment control plan;
  - (vi) Failure to install stormwater BMPs or erosion and sediment controls;
  - (vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
  - (viii) Operational deficiencies;
  - (ix) Failure to conduct required inspections;
  - (x) Incomplete, improper, or missed inspections; and
  - (xi) Discharges not in compliance with the requirements of Section 9VAC 25-880-70 of the general permit.

(2) Civil penalties shall be as set forth in the schedule below:

	Land-Disturbance >1ac. Without a Permit	Standard Violations
1st Inspection	Warning issued	Warning issued
2nd Inspection	\$1,000/day	\$100/day/violation
3rd Inspection	\$3,000/day	\$300/day/violation
4th Inspection	\$5,000/day	\$1,000/day/violation
5th Inspection	\$10,000/day	Revoke Permit/Referral for bond collection

- (3) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
  - (4) In imposing a civil penalty pursuant to this Subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.
  - (5) Any civil penalties assessed by a court as a result of a summons issued by the Locality shall be paid into the treasury of the city to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.
- (e) Notwithstanding any other civil or equitable remedy provided by this Section or by law, any person who willfully or negligently violates any provision of this Ordinance, any order of the Administrator, any condition of a permit, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

**Sec. 10-7-15. FEES**

Fees to cover costs associated with implementation of a VSMP related to land disturbing activities and issuance of general permit coverage and VSMP authority permits shall be imposed in accordance with the city's separate fee schedule, entitled "Stormwater Management Plan and Permit Fees".

**Sec. 10-7-16. PERFORMANCE BOND (9VAC25-870-104 and Code § 62.1-44.15:34)**

Prior to issuance of any permit, the Applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the [local government attorney], to ensure that measures could be taken by the city at the Applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the city takes such action upon such failure by the Applicant, the city may collect from the Applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the Applicant or terminated.

This ordinance shall be effective from the 1 day of July, 2014. Adopted and approved this 13 day of May, 2014.

Ped Byrd  
MAYOR

ATTESTE:  
Eva S. Kern  
CITY CLERK