

RECOMMENDED BY: THE COMMITTEE OF THE WHOLE

SUBMITTED BY: THE CITY ATTORNEY

AN ORDINANCE TO BE KNOWN AS THE CITY OF BIRMINGHAM POST-CONSTRUCTION STORM WATER ORDINANCE THAT INCLUDES DESIGN STANDARDS FOR DRAINAGE AND FLOOD CONTROL AND DESIGN STANDARDS FOR COMPLIANCE WITH THE CITY'S NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR ITS MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4), NPDES PERMIT NO. ALS000032, PART ILB.5., POST-CONSTRUCTION STORM WATER MANAGEMENT IN NEW DEVELOPMENT AND RE-DEVELOPMENT, REQUIRING THE DEVELOPMENT AND IMPLEMENTATION OF A PROGRAM TO ADDRESS THE DISCHARGE OF POLLUTANTS IN POST-CONSTRUCTION STORM WATER RUNOFF TO THE MS4 FROM QUALIFYING NEW DEVELOPMENT AND RE-DEVELOPMENT.

ORDINANCE NO. _____

WHEREAS, from time to time the City of Birmingham reviews its regulations of public ways and facilities to ensure that they are up to date and that they regulate matters as intended by the city; and,

WHEREAS, the National Pollutant Discharge Elimination System (NPDES), the Alabama Pollution Control Act (APWCA), and the Clean Water Act (CWA), prohibit unauthorized discharge of non-storm water discharges to municipal separate storm sewer systems (as defined in 40 CFR 122.26); and,

WHEREAS, the Phase I Municipal Separate Storm Sewer System (MS4) Permit requires that the City of Birmingham shall develop and implement a program to address the discharge of pollutants in post-construction storm water to the MS4 from new development and re-development; and,

WHEREAS, the Phase I MS4 Permit requires that the City of Birmingham adopt an ordinance or other regulatory mechanism to ensure the applicability and enforceability of post-construction storm water practices at all new development and redevelopment projects; and,

WHEREAS, areas of the City of Birmingham, both private and public, experience storm water discharges onto parking areas, streets, and public rights-of-way, and therefore may be subject to periodic inundation by storm water which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures, both private and public, for drainage and flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare; and,

WHEREAS, Alabama Code, 1975, Section 11-45-1 authorizes the City of Birmingham to adopt ordinances, not inconsistent with the laws of the state, to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the inhabitants of the municipality, and to enforce obedience to such ordinances; and,

WHEREAS, pursuant to authority found in Alabama Code, 1975, Title 11, Chapter 52, providing for zoning and subdivision regulation by Alabama municipalities, and Section 41-9-166, providing for adoption of minimum building standards, the City has adopted regulations for a Floodplain Management Overlay in the Zoning ordinance; and,

WHEREAS, the City of Birmingham is participating in the Federal Emergency Management Agency's National Flood Insurance Program (NFIP) to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas; and,

WHEREAS, the City of Birmingham participates in the Federal Emergency Management Agency's Community Rating System (CRS) to reduce citizen costs for obtaining flood insurance; and,

WHEREAS, Alabama Code 1975, Title 11, Chapter 89C, authorizes the City of Birmingham to adopt and enforce resolutions or ordinances to implement federal and state storm water laws, specifically to regulate and control storm water discharges and eliminate to the maximum extent practicable the discharge of pollutants to the City's MS4; and,

WHEREAS, discharges to the City of Birmingham's MS4 that are not composed entirely of storm water contribute to increased non-point source pollution and degradation of receiving waters; and,

WHEREAS, these impacts can be minimized through regulation of permanent stormwater management over the life of a developed property's use; and,

WHEREAS, the City Council of the City of Birmingham adopted

WHEREAS, the City Council of the City Birmingham adopted Resolution No. _____ at its regularly scheduled meeting on March 5, 2019, which provided for notice of a public hearing to adopt a Post-Construction Storm Water Ordinance as follows:

"RESOLUTION NO. _____

"BE IT RESOLVED by the Council of the City of Birmingham that said Council will hold a public hearing pursuant to Ala. Code, 1975, Section 11-89C-9(a), at its regular meeting to be held in the Council Chamber, Third Floor in the City Hall in Birmingham Alabama on Tuesday, March 26, 2019 at 9:30 a.m., to consider the approval of a proposed Post-Construction Storm Water Ordinance that includes design standards for drainage and flood control and design standards for compliance with the City's National Pollutant Discharge Elimination System (NPDES) permit for its Municipal Separate Storm Sewer System (MS4), NPDES Permit No. ALS000032, Part II.B.5., Post-Construction

Storm Water Management in New Development and Re-Development, requiring the development and implementation of a program to address the discharge of pollutants in post-construction storm water runoff to the MS4 from qualifying new development and re-development.

“Post-Construction Storm Water Management refers to the activities that take place after construction occurs, and includes structural and non-structural controls including low-impact development and green infrastructure practices to obtain permanent storm water management over the life of the property’s use. The proposed ordinance regulates storm water management for pollution prevention under the NPDES permit, as well as the construction and maintenance of structural and non-structural controls for storm water runoff volume control and storm water conveyance practices. Consideration of post construction controls should be made during the initial site development planning phase for a development or redevelopment project. The Post-Construction Storm Water Ordinance adopts a design manual and a maintenance manual to guide planning and sustaining the storm water control measures for a subject property.

“BE IT FURTHER RESOLVED that a copy of the proposed ordinance, design manual and maintenance manual shall be available for public review beginning March 8, 2019 from 8:00 a.m. until 5:00 p.m. on weekdays at the City Clerk's Office, City Hall, 710 North 20th Street, Birmingham, Alabama 35203 and on the City of Birmingham’s website at <https://www.birminghamal.gov/storm-water-management/post-construction/>. Interested parties may contact George Putman, Chief Civil Engineer/Watersheds, at (205) 254-2822 or George.Putman@birminghamal.gov for additional information.

“BE IT FURTHER RESOLVED by the Council of the City of Birmingham that the City Clerk be, and hereby is, directed to cause to be published in a newspaper of general circulation in the City of Birmingham, a notice as follows:

‘NOTICE OF PUBLIC HEARING

‘Notice is hereby given that at its meeting beginning at 9:30 a.m. on Tuesday, March 26, 2019, in the Council Chamber on the Third Floor of Birmingham City Hall, the Council of the City of Birmingham will hold a public hearing pursuant to Ala. Code, 1975, Section 11-89C-9(a), to consider the approval of a proposed Post-Construction Storm Water Ordinance that includes design standards for drainage and flood control and design standards for compliance with the City’s National Pollutant Discharge Elimination System (NPDES) permit for its Municipal Separate Storm Sewer System (MS4), NPDES Permit No. ALS000032, Part II.B.5., Post-Construction Storm Water

Management in New Development and Re-Development, requiring the development and implementation of a program to address the discharge of pollutants in post-construction storm water runoff to the MS4 from qualifying new development and re-development.

‘Post-Construction Storm Water Management refers to the activities that take place after construction occurs, and includes structural and non-structural controls including low-impact development and green infrastructure practices to obtain permanent storm water management over the life of the property’s use. The proposed ordinance regulates storm water management for pollution prevention under the NPDES permit, as well as the construction and maintenance of structural and non-structural controls for storm water runoff volume control and storm water conveyance practices. Consideration of post construction controls should be made during the initial site development planning phase for a development or redevelopment project. The Post-Construction Storm Water Ordinance adopts a design manual and a maintenance manual to guide planning and sustaining the storm water control measures for a subject property.

‘A copy of the proposed ordinance, design manual and maintenance manual shall be available for public review beginning March 8, 2019 from 8:00 a.m. until 5:00 p.m. on weekdays at the City Clerk's Office, City Hall, 710 North 20th Street, Birmingham, Alabama 35203 and on the City of Birmingham’s website at <https://www.birminghamal.gov/storm-water-management/post-construction/>. Interested parties may contact George Putman, Chief Civil Engineer/Watersheds, at (205) 254-2822 or George.Putman@birminghamal.gov for additional information.’”

WHEREAS, the draft ordinance was made available for public review for at least 15 days prior to the public hearing held at the regular meeting of the City Council on March 26, 2019; and,

WHEREAS, the City Council has considered all the facts and circumstances related to the proposed ordinance, including staff recommendations and comments from the public; and,

WHEREAS, the City Council finds it in the best interest of the public health, safety and welfare of the citizens of the City of Birmingham to adopt a Post Construction Storm Water Ordinance to specifically regulate and control the discharge of pollutants in post-construction storm water to the MS4 and to provide for control of increased stormwater runoff from new development and re-development.

SECTION 1.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Birmingham, that the Post Construction Storm Water Ordinance of the City of Birmingham, providing for the regulation and control of the discharge of pollutants in post-construction storm water to the city's municipal separate storm sewer system is hereby adopted in full as follows:

CHAPTER 1 - GENERAL PROVISIONS

- 100 Title
- 101 Purpose and Intent
- 102 Authority
- 103 Administration
- 104 Referenced Standards
- 105 Applicability
- 106 Exemptions
- 107 Responsibility
- 108 Regulatory Consistency
- 109 General Prohibitions

CHAPTER 2 - DEFINITIONS

- 200 Usage
- 201 Definitions

CHAPTER 3 – PERMITS AND PLANS

- 300 Pre-concept Sketch and Conference Required
- 301 Post Construction Storm Water Permit Required
- 302 Post Construction Storm Water Permit Application Review
- 303 Plans Required
- 304 General Standards for All Plans
- 305 Storm Water Management Plan Standards
- 306 Record Drawing Standards
- 307 Post Construction Storm Water Permit Termination
- 308 Affidavits
- 309 Maintenance of Records

- 310 Conformity to the Approved Plans
- 311 Plan Revisions
- 312 Amended Applications; Transfer of Permits
- 313 Signatory Requirements
- 314 Issuance of Permit: Expiration, Suspension, or Revocation
- 315 Recorded Instruments
- 316 NPDES Permits

CHAPTER 4 – STORM WATER DESIGN

- 400 Storm Water System Requirements
- 401 Performance Standard Waivers
- 402 More Stringent Performance Standards

CHAPTER 5 – BONDS, LETTERS OF CREDIT

- 500 Requirements

CHAPTER 6 – INSPECTION, OPERATION, AND MAINTENANCE

- 600 Responsibilities for Operation and Maintenance
- 601 Prohibited Conditions for Post Construction Storm Water Practices
- 602 Maintenance and Integrity during Construction
- 603 Owner Inspection after Construction
- 604 Maintenance of Records after Construction
- 606 Right of Entry: Inspections by the City
- 607 Search Warrants

CHAPTER 7 – VIOLATIONS, ENFORCEMENT, AND PENALTIES

- 700 Violations
- 701 Warning Notice
- 702 Notice of Violation
- 703 Appeal of Notice of Violation
- 704 Emergency Abatement
- 705 Injunctive Relief and/or Civil Remedies
- 706 Remedies Not Exclusive: Costs Recoverable by the City

CHAPTER 8 - MISCELLANEOUS

800 Notices

801 References

802 Minimum Requirements

SECTION 2. SEVERABILITY

SECTION 3. CAPTIONS

SECTION 4. REPEAL OF CONFLICTING SECTIONS AND ORDINANCES

SECTION 5. EFFECTIVE DATE

CHAPTER 1 – GENERAL PROVISIONS

Section 100 TITLE

These regulations shall hereafter be known, cited and referred to as the Post Construction Storm Water Ordinance of the City of Birmingham, Alabama.

Section 101 PURPOSE AND INTENT

- a) The primary intent of this ordinance is promoting the health, safety, and general welfare of the citizens of the City of Birmingham, Alabama, and to minimize public and private losses due to flood conditions through the regulation of storm water discharges from land developments.
- b) This ordinance establishes methods for controlling the discharge of pollutants from land developments to the city's municipal separate storm water system ("MS4") and local waterways in order to comply with requirements of the national pollutant discharge elimination system ("NPDES") permit, required by the federal Clean Water Act, 33 U.S.C. §1251 et seq. (1972), and supported by the Alabama Water Pollution Control Act, Code of Alabama (1975) §22-22-1.
- c) This ordinance establishes methods for controlling storm water volume and peak discharges from land developments in order to minimize public and private losses due to poor drainage or flood conditions.
- d) The objectives of the Post Construction Storm Water Ordinance are:
 - 1) To minimize or, if possible, eliminate the contribution of pollutants to the MS4 from, or caused by, storm water discharges from new land developments or redevelopments;

- 2) To regulate the volume and peak discharge of storm water discharges from new land developments or redevelopments;
- 3) To provide for adequate long-term operation and maintenance of the structural practices installed to comply with this ordinance and the City of Birmingham's NPDES MS4 Phase 1 Permit.
- 4) To establish legal authority to require the plans and permits, and carry out all inspections, surveillance, monitoring, and enforcement, necessary to ensure compliance with this ordinance and the City of Birmingham's NPDES MS4 Phase 1 Permit.

Section 102 AUTHORITY

This ordinance is adopted pursuant to Alabama Code 1975, Section 11-45-1 , which authorizes the City of Birmingham to adopt ordinances, not inconsistent with the laws of the state, to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the inhabitants of the municipality, and to enforce obedience to such ordinances.

This ordinance is also adopted pursuant to Title 11, Chapter 89C of the Code of Alabama 1975, which authorizes local government units to specifically regulate and control storm water discharges and eliminate the discharge of pollutants to the MS4.

This ordinance is also adopted pursuant to requirements of the City of Birmingham's NPDES MS4 Phase 1 Permit to control post-construction discharges from new development or re-development to the City's MS4.

Section 103 ADMINISTRATION

The director of the department of planning, engineering and permits (the director) or his/her designee, shall administer, implement and enforce the provisions of this ordinance and shall act as the "official" for the provisions of this ordinance. Any powers granted or duties imposed may be delegated by the director to persons or entities acting in the beneficial interest of, or in the employ of the city and certified in the manner established in the design manual and licensed to practice as a professional in the State of Alabama.

Section 104 REFERENCED STANDARDS

- a) The standards referenced in this ordinance shall be considered an integral part of the ordinance without separate adoption. If specific portions of a standard are denoted by ordinance text, only those portions of the standard shall be enforced. Where ordinance provisions conflict with a standard the ordinance provisions shall be enforced. Permissive and advisory provisions in a standard shall not be construed as mandatory.
- b) Within the referenced standards, the Director may allow administrative variations to the requirements in the design manual or maintenance manual provided such variations do not

result in a reduction or elimination of post construction storm water performance standards or the addition of fees. Otherwise, changes to this ordinance or to the referenced standards shall require City Council approval in the same manner as any change to city code.

Section 105 APPLICABILITY

This ordinance applies to all proposed land development (whether new development or redevelopment, whether public or private) that:

- a) will result in a land disturbance of one acre or greater; or,
- b) will result in a land disturbance of less than one acre, but is part of a larger common plan of development or sale that will, or already has, disturbed one acre or greater of land; or,
- c) will result in a land disturbance of less than one acre but is determined by the director to warrant additional engineering analysis and/or storm water management controls, based on one or more of the following circumstances.
 - 1. The proposed land development is located on a property that is considered a brownfield or is otherwise known or believed to have pollutants in the soil or on the ground that, if discharged from the property in storm water or groundwater, may cause harm to the general public or the environment.
 - 2. The proposed land development that will, after development, discharge storm water to a waterbody that is included on the most recent Alabama §303(d) List, or for which a Total Maximum Daily Load (“TMDL”) has been approved by the United States Environmental Protection Agency (“USEPA”).
 - 3. The proposed land development will, after development, discharge storm water to a waterbody that is classified by the Alabama Department of Environmental Management (“ADEM”) for Public Water Supply, as an Outstanding National Resource Water, as an Outstanding Alabama Water, or as a Treasured Alabama Lake, and the director, in consultation with the chief civil engineer - watersheds and city engineer, using sound engineering judgement, has reason to believe that unregulated storm water discharges from the land development may adversely affect the waterbody.
 - 4. The proposed land development is located on, or will, after development, discharge storm water to an area that has been designated by the United States Fish and Wildlife Service (“USFWS”) as critical habitat for one or more threatened or endangered species, or where the USFWS has identified one or more threatened or endangered species are located.
 - 5. A history of flooding or drainage problems is known to exist in, or downstream of, the drainage basin where the premises is located, whether documented or undocumented.
 - 6. An engineering study prepared by a professional engineer licensed in the State of Alabama indicates a need for more stringent regulation of storm water in the

watershed where the proposed land development is located in order to avoid, or alleviate, any flood, drainage, or pollution problems.

7. The director, in consultation with the chief civil engineer - watersheds and city engineer, has reason to believe, using sound judgment, that the proposed land development may further exacerbate existing flood or drainage problems as a result of development or redevelopment on the property.

Section 106 EXEMPTIONS

- a) The exemptions listed in this section shall not be construed as an opportunity to circumvent the letter and spirit of this ordinance.
- b) The following land developments or land-disturbing activities shall be exempt from this ordinance:
 1. Land developments for which a civil construction permit was obtained prior to the date of adoption of this ordinance and for which substantial grading or construction has occurred within (1) year of the date of adoption of this ordinance. (Owners of such land developments must comply with the civil engineering plan approved for the land development.);
 2. Agriculture;
 3. Silviculture;
 4. Home gardens, landscaping on individual residential lots (excluding landscaping performed by, or on behalf of, a developer or builder who builds a house on any such lot that is an applicable land development, as defined in this ordinance), home repairs, home maintenance work, the maintenance or repair of accessory structures and other related activities which result in minor land disturbances;
 5. Individual connections for utility or sewer services for single or two-family residences, minor grading for driveways, yard areas, and sidewalks, excluding any service connection or any grading done by, or on behalf of, a developer or builder who builds a house on any such lot that is an applicable land development, as defined in this ordinance;
 6. Utility installation, maintenance, repair and extension for both above-ground and underground utilities, including sewer lines. (The construction of utility buildings, service stations, junction stations, substations, treatment plants, and other utility related spaces or buildings is not exempt if construction will result in a land disturbance of one acre or greater.);
 7. The construction, repair, or rebuilding of railroads;
 8. Other land disturbing activities which will not result in land development, including, but not limited to, minor subsurface exploratory excavations under the direction of soils engineer or engineering geologists; the opening of individual

burial sites in cemeteries, the digging of water wells or environmental monitoring wells.

Section 107 RESPONSIBILITY

Conformance with this ordinance is a minimum requirement and does not prohibit or relieve the owner of a premises or the owner's representative, such as a lessee, tenant, contractor, facility or equipment operator, co-permittee or any other person or entity residing, working, or operating on the premises, from applying sound judgment and taking measures which go beyond the scope of the requirements of this ordinance where necessary. Nor does this ordinance imply a warranty or the assumption of responsibility on the part of the city for the suitability, fitness or safety of any structure with respect to flooding, water quality, or structural integrity. This ordinance is a regulatory instrument only, and is not to be interpreted as an undertaking by the city to design, construct or operate any structure or practice.

Exemption from the requirement in this ordinance to obtain a permit or prepare a plan shall not be construed as relieving or prohibiting the owner or the owner's representative of any premises from implementing onsite drainage improvements that may be required in accordance with building and construction codes, nor from providing adequate erosion and sedimentation control measures or storm water management measures to protect adjoining property owners, the MS4, public rights of way and local waterways. Nor does this ordinance relieve the owner or the owner's representative from complying with other ordinances or regulations as they relate to the City of Birmingham.

Section 108 REGULATORY CONSISTENCY

This ordinance shall be construed to assure consistency with the requirements of the Clean Water Act ("CWA"), the Alabama Water Pollution Control Act ("AWPCA") and acts amendatory thereof or supplementary thereto or any other applicable regulations including the city's NPDES MS4 Phase 1 permit.

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.

This ordinance is not intended to repeal, abrogate or impair any existing easements, covenants, deed restrictions, or existing ordinances and regulations. However, where the provisions of this ordinance and other regulations conflict or overlap, that provision which is more restrictive or imposes higher standards or requirements shall prevail. It is required that the director be advised of any such regulatory conflicts upon submittal of any plan required by the ordinance.

Section 109 GENERAL PROHIBITIONS

- a) Person(s) responsible for the design of proposed land development and person(s) responsible for the maintenance of post-construction storm water management practices shall adhere to the following general prohibitions at all times.
- b) The following uses, activities, encroachments, and conditions are prohibited in post construction storm water practices designed and constructed for storm water management.
 - 1. Spraying, filling, and dumping of any material or waste, including the land application of bio-solids or animal waste, unless such activity is a result of an emergency;
 - 2. Storage for commercial or industrial land uses, including but not limited to storage of vehicles, equipment, materials, pesticides, herbicides, fertilizers, or household or commercially-generated wastes;
 - 3. Disposal of sewage, on-site sewage disposal and treatment systems (septic systems), whether underground or raised, or subsurface discharges from a wastewater treatment plant;
 - 4. Use as a waste storage area, whether temporary or permanent, or a landfill of any type, including, but not limited to, demolition, permitted and closed-in place landfills, and household garbage pits;
 - 5. Abandoned, closed or active junkyards or other similar waste fields;
 - 6. The storage of motorized vehicles and equipment is prohibited;
 - 7. Farms, feedlots, confined animal feed operations, animal pastures, concentrated animal lots, dog parks or outdoor animal play/relief areas for animal care facilities, kennels, and commercial/business developments or facilities that provide short-term or long-term care of animals;
 - 8. Gardens installed solely for the cultivation of plants, fruits, or vegetables that do not meet the design requirements for a bioretention area (rain garden), orchards, crops or greenhouses, whether associated with a farm, commercial business or residence;
 - 9. Other land uses or activities deemed by the director to have the potential to generate pollutant loadings that may be harmful to the health of the vegetation or soil in the practice or to the health of the downstream water body(s).

CHAPTER 2 – DEFINITIONS

Section 200 USAGE

- a) For the purposes of this ordinance, certain words, terms, and phrases shall be used, interpreted and defined as set forth in this chapter.

- b) Definitions not expressly prescribed herein are to be construed in accordance with terms defined in the Federal Clean Water Act (33 U.S.C. § 1251, et seq., as amended) and the Alabama Water Pollution Control Act of 1975 (§22-22-1, as amended), the regulations promulgated with respect to those laws, and the city's NPDES-MS4 permit. Terms not otherwise defined shall be construed in accordance with customary usage in municipal planning and engineering practice.

Section 201 DEFINITIONS

Alabama Department of Environmental Management (or “ADEM”) means the state regulatory agency, created under the Code of Alabama (1975) § 22-22A-1, et seq., responsible for administering and enforcing the storm water laws of the United States of America and the state.

Brownfield means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of hazardous substance, pollutant, or contaminant.

CFR means the Code of Federal Regulations.

City means the City of Birmingham, Alabama.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 et.seq.

Design manual means the “City of Birmingham Post-Construction Storm Water Design Manual”.

Director means the Director of the Department of Planning, Engineering and Permits, or his/her designated representative.

Federal Emergency Management Agency (or “FEMA”) means the federal agency established in 1979 by executive order of the President of the United States to coordinate the federal government's role in preparing for, preventing, mitigating the effects of, responding to, and recovering from all domestic disasters, whether natural or man-made, including disasters caused by flooding.

Green infrastructure practice means systems and practices that use or mimic natural processes to infiltrate, evapotranspire (the return of water to the atmosphere either through evaporation or by plants), or reuse of storm water or runoff on the land development where it is generated. Green infrastructure practices identified in the design manual include, but are not limited to, bioretention area, cistern, downspout disconnection, dry water quality swale, enhanced swale, green roof, infiltration trench, permeable pavement, reforestation, sheet flow, and urban bioretention.

Impervious surface means surfaces composed of any material that impedes or prevents the natural infiltration of water into the soil. Impervious surfaces shall include, but are not limited to, roofs, streets, driveways, parking areas, patios, sidewalks, tennis courts, solid decks, other

concrete or asphalt paved areas, and any areas used (or to be used) as a vehicle driveway or travelway or for parking, whether paved, gravel, or other compacted material, unless such material is (or has been) specifically designed, installed, and maintained to allow water to pass beneath the surface. For example, permeable pavers, asphalt, and concrete are not impervious surfaces.

Land disturbance (or “land disturbing activity”) means any change in the land which may result in soil erosion or the movement of sediment by water, wind or other means of transport, including, but not limited to, clearing, grubbing, grading, dredging, compaction, excavation, dumping, discharging, alteration of natural or existing topography, moving, placing or storing fill material, or any other means that causes disturbance of soil.

Maintenance manual means the “City of Birmingham Property Owner’s Guide to BMP Maintenance”.

Municipal separate storm sewer system (or “MS4”) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by the City of Birmingham, Alabama; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined in ADEM Administrative Code 335-6-6-.02(n).

Onsite means within, or inside, the property lines of the land development for which a post construction storm water permit must be, will be, or has been obtained.

Offsite means outside the property lines of a land development for which a post construction storm water permit must be, will be, or has been obtained.

New development means any track, lot, or parcel of land, or combination of contiguous tracts, lots, or parcels of land which are in one ownership, or which are owned by two or more parties, and for which improvements of the land from a natural, entirely unimproved, condition are proposed or planned as a unit, subdivision, or project. New development includes land that has been used previously for livestock or crops, or has been previously grubbed, stripped, graded, and/or revegetated from a natural, entirely unimproved condition, provided that impervious surfaces were not previously placed or demolished thereon.

Performance standard (or “design standard”) means the benchmark against which the design of the land development, the storm water drainage system, or a specific component of the system is measured. A design must meet the performance standard for it to be deemed compliant with the standard. Performance standards are authorized and established by this ordinance and defined in detail in the design manual.

Person means any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as the owner or owner’s agent of a premises or as a lessee of a premises. All persons, natural or artificial, including, but not limited to, any individual, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, other legal entity, business organization, or other governmental entity and any successor, representative, responsible corporate officer, agent, or agency of the foregoing.

Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: sediment, oils and greases, detergents, fertilizers, pesticides, herbicides, metals, hazardous chemicals, materials that cause changes in pH of storm water, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. The term also includes any other effluent characteristics specified in the city's NPDES permit.

Post construction storm water practice means, generally, any activity or practice or drainage system that is designed and constructed to manage post construction storm water quality or provide flood control whether alone or in combination with other post construction storm water practices. Green infrastructure practices are considered post construction stormwater practices.

Pre-concept conference is a meeting between the owner of a proposed (or possibly proposed) land development, the consultants working on his/her behalf to design the land development, and the chief civil engineer - watersheds, to examine the existing (pre-construction condition) hydrology of said land development for the purpose of identifying opportunities or limitations to the use of low impact development practices and green infrastructure practices, and to generally evaluate the practices, permits, and regulations that may be necessary to effectively manage storm water after development of the land.

Pre-concept sketch is a written set of documents, narratives, and maps that provides a detailed characterization of the existing hydrology at the location of a proposed land development subject to this ordinance.

Pre-construction condition is the existing condition of the property at the time the application for a post-construction storm water permit is submitted, prior to any clearing, grubbing, grading, construction, or demolition done in preparation for the proposed new development or redevelopment. For new land developments, the pre-construction condition will be an undeveloped condition. For redevelopments, the pre-construction condition will be a developed condition. In the event that demolition of pavement or structures has already occurred in preparation for the proposed redevelopment when the application for a post-construction storm water permit is received, the pre-construction condition shall be the previously developed condition of the property, as obtained from aerial photography, historical mapping, or other reliable source of land cover information.

Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved including facilities, adjacent sidewalks, and parking strips located thereon for all land uses.

Record drawing is a written, detailed set of documents, narratives, maps, affidavits, and reports that accurately indicate the as-constructed condition of the individual and collective storm water drainage systems and post construction storm water practices on a land development subject to this ordinance. Approval of a record drawing by the director is required to terminate a post construction storm water permit.

Redevelopment means the expansion, renovation, rebuilding, demolition and construction, or other further improvement of any previously improved tract, lot, or parcel of land, or

combination of contiguous tracts, lots, or parcels of land which are in one ownership, or which are owned by two or more parties, are proposed or planned as a unit, subdivision, or project. "Previously improved" includes, but is not limited to, the prior placement, construction, and/or demolition of buildings, roadways, sidewalks, parking areas, and other areas of concrete, asphalt, gravel, packed gravel, or other materials on the subject tract(s), lot(s) or parcel(s).

Storm water is defined at 40 CFR Part 122.26(b) (13) and means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm water drainage system means the system of roadside drainage, roadside curbs and gutters, curb inlets, swales, catch basins, manholes, gutters, ditches, pipes, lakes, ponds, sinkholes, channels, creeks, streams, storm drains, post construction storm water practices, and similar conveyances and facilities, both natural and manmade, located within the city which are designated or used for collecting, storing, or conveying storm water, or through which storm water is collected, treated, stored or conveyed, whether owned or operated by the city or other person.

Storm water management plan is a written, detailed set of documents, narratives, and maps containing the proposed design, design calculations, construction specifications, affidavits, and reports of the individual and collective storm water drainage systems and post construction storm water practices on a specific, proposed land development subject to this ordinance. Approval of a storm water management plan by the director is required to obtain a post construction storm water permit.

CHAPTER 3 – PERMITS AND PLANS

Section 300 PRE-CONCEPT SKETCH AND CONFERENCE REQUIRED

Owners proposed land developments or, in the case of land speculation, person(s) who are considering undertaking ownership of a future land development, shall submit to the director a pre-concept sketch and shall schedule and attend a pre-concept conference with the chief civil engineer - watersheds. The sketch shall be prepared, and the conference shall be scheduled, in accordance with the policies established in the design manual.

Section 301 POST CONSTRUCTION STORM WATER PERMIT REQUIRED

It shall be unlawful to commence or continue to conduct, or for the owner to allow the commencement or conduct of, any of the following activities without first having obtained a post construction storm water permit from the director, unless the activity is exempted from obtaining a permit under this ordinance.

1. land disturbing activities as defined in this ordinance;
2. construction/building activities; and,

3. construction or alteration of any natural or manmade storm water system so as to divert, constrict, increase or change in any manner the natural or existing flow of any stream, or natural or existing storm water system of any area.

Section 302 POST CONSTRUCTION STORM WATER PERMIT APPLICATION REVIEW

- a) It shall be the duty of the owner of the proposed land development, or his/her duly authorized agent, to file with the director a complete post construction storm water permit application. The application shall include the application document, a complete storm water management plan, including any applicable forms and certifications, proof of adequate letter of credit or surety bond as required by Section 500 this ordinance. Incomplete applications shall not be deemed to have been filed. Once a complete application has been filed, the director shall approve or reject the application based upon its review for conformance with this ordinance and all other applicable requirements. The application will be approved if it, and the plans and checklists therein, are in conformance with this ordinance. If the application is rejected, the director shall inform the applicant, in writing, of the reasons for its rejection.
- b) The director does not assume to provide complete and comprehensive technical review of the storm water management plan. Rather, the director provides a general review of information and documentation that has been submitted to generally ensure that the onsite storm water drainage system is designed in accordance with this ordinance, and that storm water design calculations have been appropriately documented. To this end, the owner of the proposed land development shall be responsible for the intent, adequacy and compliance of the storm water designs based on actual field conditions and construction techniques.

Section 303 STORM WATER MANAGEMENT PLAN REQUIRED

- a) Each application for a post construction storm water permit shall be accompanied by three (3) sets of storm water management plans as set forth in Section 305, and any other required, supporting forms and certifications prepared and signed by the appropriate professional.
- b) Each request for termination of a post construction storm water permit shall be accompanied by two (2) sets of storm water record drawings, as set forth in Section 307, and any other required supporting forms and certifications prepared and signed by the appropriate professional.
- c) Additional plans or reports may be required by the director to allow adequate assessment of the proposed storm water designs, to better understand potential flood, drainage, or pollutant impacts of a proposed or installed storm water drainage system.

Section 304 GENERAL STANDARDS FOR ALL PLANS

- a) Persons conducting land development shall take all reasonable measures referred to, or provided for, in this ordinance and the design manual to protect all public and private property from damage caused by storm water from such development and to reduce storm water pollution to the maximum extent practicable.
- b) All plans, specifications, and documents established to comply with this ordinance shall be prepared and submitted in accordance with, and as required by, this ordinance, the design manual, and all other rules, regulations and specifications of the City of Birmingham. Required plan elements are established in the design manual.
- c) The director may require submittal of additional information in any plan required by this ordinance as necessary to allow an adequate review of the existing or proposed land development conditions, proposed designs, or constructed storm water drainage system. Omission of any required items for a plan shall render the plan incomplete and withdraw it from review by the director.
- d) All plans and specifications required to be submitted to obtain or terminate a permit should be prepared, to the maximum extent practicable, in keeping with the following general standards:
 - 1. Protect and preserve existing natural drainage channels.
 - 2. Retain off-site natural drainage patterns.
 - 3. Stabilize bare soil and prevent erosion in pervious areas.
 - 4. Assure that waters drained from the land development are free of point and nonpoint sources of pollutants, including eroded soil and sediment, and do not cause flooding or erosion on adjacent or downstream properties to any greater extent that occurs in the absence of development.
 - 5. Assure that waters are drained from the development in such a manner that will not cause erosion to any greater extent than would occur in the absence of development.
 - 6. Provide that all roof and foundation drains shall be discharged to natural drainage, engineered detention ponds, curb face outlets, or to a public or approved private storm drain.

Section 305 STORM WATER MANAGEMENT PLAN STANDARDS

- a) The storm water management plan shall be prepared and stamped by an engineer, landscape architect, or architect competent in civil and land development design and licensed to practice in the State of Alabama. Additional professional license requirements pertaining to preparation of the storm water management plan are as follows:
 - 1. Portions of the plan that require hydraulic and/or hydrologic calculations (excluding the determination of soil infiltration and permeability rates) and design shall be prepared. Plans signed, sealed and dated by a licensed professional engineer, qualified in civil engineering, in good standing with the Alabama State Board of

Licensure for Professional Engineers and Land Surveyors, and licensed to practice in the state of Alabama.

2. Portions of the plan that require soil infiltration tests, soil permeability assessments, and soil media design shall be prepared by a soil scientist, geologist or geotechnical engineer licensed to practice as professional in the State of Alabama.
- b) Professionals responsible for preparation of the storm water management plan shall indicate conforming licensure by affixing their seal as a licensed professional and providing signature and date of signature in the manner required by the Alabama Law Regulating Practice of Engineering and Land Surveying, Code of Alabama 1975, Title 34, Chapter 11.
 - c) Performance standards, technical methods, required calculations, and post construction storm water practice design specifications that are applied to prepare the storm water management plan shall be in accordance with the design manual. Technical methods, calculation approaches, or practices not shown in the design manual shall not be used without prior written permission of the director. This ordinance shall supersede where the regulations of this ordinance and the policies stated in the design manual conflict.
 - d) The storm water management plan shall be subject to any additional requirements as set forth in city subdivision regulation, zoning ordinance, engineering and construction specifications, public work specifications, and all other city regulations.
 - e) It is the responsibility of the owner to be aware of, and to fully address, any regulations or permits that may apply to his/her land development, including state and federal regulations for construction activities that will have an impact on Waters of the State, wetlands, sinkholes, landslide areas, and threatened or endangered species. The director may require proof of land development conformance with, or coverage by, any applicable local, state, or federal regulation or permit in the storm water management plan.

Section 306 STORM WATER RECORD DRAWINGS

- a) The applicant shall prepare and provide a stormwater record drawing within 120 days of completion of the land development project.
- b) The storm water record drawing shall reflect the “as-constructed” condition of the land development and shall demonstrate substantial conformance with the approved storm water management plan for the land development. Significant deviations from the approved storm water management plan shall be considered violations of this ordinance and are grounds for any of the following:
 1. a requirement to submit a new request for termination of the post construction storm water permit, including submittal and obtaining approval on a revised storm water record drawing;
 2. a requirement to submit and obtain approval on a revised storm water management plan prior to performing corrective action(s);

3. the invocation of the injunctions and penalties defined therein;
 4. withholding the release of a bond or termination of the post construction storm water permit pending the completion of corrective action(s)/
- c) The storm water record drawing shall include all of the required and applicable elements as specified in the design manual.
- d) The storm water record drawing shall be prepared and certified in the manner established in the design manual by registered land surveyor or professional engineer licensed to practice in the State of Alabama. Additional professional license requirements pertaining to preparation of the record drawing are as follows:
1. The record drawing shall be reviewed by a professional engineer or landscape architect for conformance with the approved storm water management plan. Portions of the land development that are not in conformance with the approved storm water management plan shall be identified and accompanied by a narrative explanation of the non-conformance. The director may also require engineering analyses and resubmittal of the storm water management plan (entirely or in part) to prove land development conformance with required performance standards. The record drawing and any associated narrative, engineering analyses, and accompanying plan shall be signed, sealed and dated by the professional engineer, landscape architect, or architect competent in civil and land development design and licensed to practice in the State of Alabama, as appropriate.
 2. Portions of the plan that require soil infiltration tests or soil permeability assessments shall be prepared by a soil scientist, geologist or geotechnical engineer licensed to practice as a professional in the State of Alabama.

Section 307 POST CONSTRUCTION STORM WATER PERMIT TERMINATION

- a) It is the responsibility of the permit holder to request termination of a post construction storm water permit. The submittal of the record drawing shall constitute a request for permit termination.
- b) Storm water drainage systems for which a record drawing has been submitted shall be subject to a permit termination inspection by the director. Systems that meet all of the following criteria shall be considered functional and operating as indicated in the approved storm water management plan.
1. The post-construction storm water practice maintenance map provides an accurate depiction and labelling of the post-construction storm water practices on the land development;
 2. The post-construction storm water maintenance agreement is fully executed;
 3. The storm water drainage system shall be free of blockages, sediment, trash, construction related wastes, and other debris.

4. The storm water drainage system shall not be damaged or otherwise in need of repair or replacement.
 5. Accumulated sediment from basins, traps, and other areas where sediment was captured during construction, whether intentionally or unintentionally, shall be entirely removed, unless otherwise provided for in the storm water management plan;
 6. All pervious areas draining to the storm water drainage system with permanent vegetation or landscaping as indicated in the approved storm water management plan;
 7. No prohibited conditions as established in Section 600 of this ordinance exist; and,
 8. All temporary erosion protection and sediment control measures are removed.
- c) Corrective actions shall be required of the owner(s) where these inspection criteria are not met. The director may re-inspect the system to confirm satisfactory completion of any required corrective actions and may withhold inspection approval until such actions have been completed and all criteria are satisfied.
- d) The post construction storm water permit for a land development shall not be terminated until the director approves the storm water record drawing and the permit termination inspection.
- e) Permits obtained for an applicable land development that was ultimately not constructed or was partially constructed shall not be terminated and the bond not released until the land development is fully stabilized against soil erosion with permanent vegetation and it is demonstrated that the project meets the requirements of this ordinance for any construction that did occur. In the event that one or both of these conditions are not met, corrective actions shall be imposed on the owner(s) as required to meet these conditions. Corrective actions may include, but are not limited to, the installation and care of permanent vegetation until it is fully established, the preparation, submittal, and approval of a storm water management plan, and/or the design and construction of post-construction storm water practices.

Section 308 AFFIDAVITS

- a) When determined to be necessary, the director may require affidavits on forms furnished by the city and as indicated in the design manual to be executed by the owner and his consultants prior to issuance of a post construction storm water permit.
- b) Upon filing of a request for termination of a post construction storm water permit, affidavits will be furnished for execution by the owner and his consultants affirming that the completed construction conforms to the approved storm water management plan and to the requirements of this ordinance.

Section 309 MAINTENANCE OF RECORDS

Records of compliance with any approved plan or record drawing shall be maintained by the person(s) responsible for development of the property for a period of at least three (3) years from the date of termination of the permit. Said records shall be made available for review by the director upon request.

Section 310 CONFORMITY TO THE APPROVED PLAN

- a) Construction of the land development shall not deviate from the approved storm water management plan without the prior written approval of a plan revision from the director. The owner shall ensure adherence to this requirement by all persons acting on his/her behalf during construction of the land development and until termination of the post construction storm water permit.
- b) Permitted storm water management plans and specifications shall not be changed, modified, or altered without authorization of the director; and all work shall be done in accordance with the permitted plans.

Section 311 PLAN REVISIONS

- a) The issuance of a permit shall not prevent the director from thereafter requiring the correction of errors or changes due to unforeseen problems in permitted plans and specifications. The director may require revision of the approved plan or specification if it is determined after approval that the approved plan or specification is inadequate to meet the requirements of this ordinance, or if significant problems occur which were not considered at the time the permit was issued.
- b) If the conditions of the land development change after approval of the storm water management plan, the owner shall notify the director immediately. The director may require cessation of all, or a portion of, construction, re-application for a post construction storm water permit in accordance with Section 313 of this ordinance, and/or resubmittal and approval of a revised storm water management plan, or appropriate portions thereof. Such proposed conditions include, but are not limited to, the layout or size of proposed buildings, streets, and other impervious surfaces or unexpected pollution, geological or hydrologic conditions encountered during construction.

Section 312 AMENDED APPLICATIONS; TRANSFER OF PERMITS

- a) A post construction storm water permit may be amended upon the filing with the director of an amended or restated permit application, containing all changes from the original application; provided, that the older of the permit shows to the reasonable satisfaction of the director that there are no proposed changes which may affect compliance with the provisions of this ordinance. If an amended or restated application is filed with the director with respect to post construction storm water activities for which a post construction storm water permit has been issued, said existing permit shall continue in effect, and the holder of the permit may continue to operate under it unless and until amended. A new permit is issued in response to the amended or restated application ("Amended Permit") at which

time the original permit shall expire and storm water construction or special pollution abatement activities must be conducted in accordance with the amended permit.

- b) A post construction storm water permit may be transferred upon the filing with the director of an application for transfer; provided, that the holder and proposed transferee of the permit: (1) submit any bonds required by this ordinance; and, (2) show to the reasonable satisfaction of the director that, upon or following the permit transfer, there will be no proposed changes which may affect the construction of the storm water system as indicated in the approved storm water management plan. If there is a request for the transfer of a permit and there are to be one or more changes in post construction storm water, the new owner or operator of such project must apply to the city for a new permit prior to his/her involvement with the operation of such project.

Section 313 SIGNATORY REQUIREMENTS

- a) All applications and correspondence required by this ordinance to be submitted to the director shall be signed as follows:
 - 1. If an application or correspondence is submitted by a corporation, it must be signed by the president of the corporation or by a vice president of the corporation who oversees a principal business function of the corporation, or any other person who has been authorized to sign such applications and/or correspondence by a resolution adopted by the board of directors of the corporation. Proof of the authority of the signatory shall be provided to the director upon his/her request.
 - 2. If an application or correspondence is submitted by a limited liability company, it must be signed by a manager or other person who serves the same or similar function as the president of a corporation.
 - 3. If an application or correspondence is submitted by a partnership, it must be signed by a general partner of the partnership.
 - 4. If an application or correspondence is submitted by a sole proprietorship, it must be signed by the proprietor.
 - 5. If an application or correspondence is submitted by a municipality, county, the state, or the federal government or by any municipal, state, or federal agency, it must be signed by either the chief executive officer or a principal executive officer of any such government or by either the chief executive officer, a principal executive officer, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of any such governmental agency.
- b) Any person signing any application or correspondence required by this ordinance shall make the following certification: "I certify, under penalty of the law, that this document and all attachments were prepared under my direction or supervision and that I have personally examined, and I am familiar with, the information in this document and such attachments. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and

complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and civil penalty.”

Section 314 ISSUANCE OF PERMIT; EXPIRATION, SUSPENSION OR REVOCATION

- a) The purpose of permitting plans and specifications is to assure compliance with this ordinance. The director’s review and permitting of plans and specifications is not intended as approval of the overall layout, structural design, grading procedures, situation control, engineer’s reports, or construction procedures. These responsibilities shall remain with, and be those of, the owner or his consultants.
- b) The permit application, plan, specifications, reports, affidavits, and other required documents shall be filed with the director as required by this ordinance. Such documents may be reviewed by other departments to check compliance with the laws and ordinances under their jurisdiction. If the director is satisfied that the work described in the permit application, the plan, and specifications filed therewith conform to the requirements of this ordinance and other pertinent laws and ordinances, and necessary bonds and other surety obtained, he/she shall issue a permit therefor to the owner. When the director issues the permit, he/she shall endorse in writing or stamp “PERMIT ISSUED” on the original set of plans and specifications.
- c) One (1) set of permitted plans, specifications, and/or other required documents shall be retained by the director for a period of not less than one (1) year from the date of completion of the work covered therein.
- d) Every permit issued by the director under the provisions of this ordinance shall expire by limitation and become null and void, if the work authorized by such permit is not commenced within ninety (90) days from the date of issuance of such permit, provided that consecutive renewal of such permit may be granted, at no additional cost, upon writing request to the director with good cause shown. The work authorized by such permit shall not be suspended or abandoned at any time after the work is commenced and shall be carried to completion or the permit shall be suspended. If work is suspended or abandoned, required bonds may be used to correct or eliminate storm water quality or drainage problems, or hazardous conditions as provided there.
- e) The director may suspend or revoke a permit or waiver issued under provisions of this ordinance by giving notice in writing to the owner whenever the permit or waiver is issued in error, on the basis of incorrect information supplied, or in violation of any ordinance, regulation, or any of the provisions of this ordinance.

Section 315 RECORDED INSTRUMENTS

- a) As an express condition precedent to final approval by the director of any post construction storm water plan which contains post construction storm water practices:

1. Post construction storm water practices that serve multiple owner properties with a subdivision plat shall be provided an unobstructed access easement of not be less than twenty (20) feet in width, encompassing the said practice, and connected to a public street. Storm water access easements shall be accurately recorded on the property's plat, with identification of each practice by name, as established in the design manual. The plat shall also include a statement as follows "*It is the responsibility of the property owner(s) to inspect, operate, and maintain all post construction storm water practices in accordance with the Birmingham Post Construction Storm Water Ordinance.*"
 2. The city and all owners (including contract purchasers), whether persons or entities of the property upon which post construction storm water practices are located (excluding however, (i) any governmental entity owning any interest in lands within said property dedicated to and accepted by the public such as public streets and rights-of-way and (ii) any person or entity holding any interest in such real property solely as security for the performance or satisfaction of any obligation), shall enter into a post construction storm water practice maintenance agreement substantially in the form and substance as set forth in the design manual. The maintenance agreement shall be recorded with the property's plat.
 3. Owners who hold such an interest in such real property solely as security for the performance or satisfaction of any obligation shall execute acknowledged ratification on the face of the property's plat so as to give full force and effect to said post construction storm water practice maintenance agreement; and
 4. The plat shall contain a plat note suitable in form and content to the city attorney or his/her designee which incorporates by reference said post construction storm water practice maintenance agreement.
- b) The mayor of the city is hereby authorized, directed, and empowered to execute said post construction storm water practice maintenance agreement and corresponding plat note on behalf of the city for each such agreement and plat.
 - c) The post construction storm water practice maintenance agreement established in the design manual, which shall constitute a covenant running with the land as to the real property made the subject of such plat, shall be incorporated by reference into each such plat.
 - d) Person(s) seeking such modification or release of a recorded covenant established by execution of the maintenance agreement, that encompasses a storm water practice, shall be required to request such modification or revocation from the director. In the event the director denies the modification or release of the covenant, the person seeking the modification or release of the covenant may appeal the decision of the director to the storm water appeals board, as provided in section 4-8-95 of the General Code of the City of Birmingham, as it may be amended. In the event that the position of director and/or the storm water appeals board are amended or eliminated in the future, application for modification or release shall be made to the person or body succeeding to the powers and

duties of director and/or storm water appeals board or as provided in any amended or succeeding post-construction storm water management ordinance.

- e) Modification or release of a recorded covenant established by execution of the maintenance agreement that encompasses a storm water practice may be allowed if the storm water practice(s) encompassed by the covenant:
 - 1. will be, or have been, significantly altered or relocated such that the maintenance agreement and its storm water practices map are incorrect and will, or do, not reflect the actual type or location of practice(s) located on the property;
 - 2. will be, or are, no longer needed due to construction of other storm water practices, either on or off the property, that will, or do, manage the storm water handled by the practice(s) encompassed under the covenant; or,
 - 3. will be, or have been, removed or relocated due to planned redevelopment of a portion, or all, of the property.
 - 4. Significant alteration or relocation of a storm water practice is prohibited without prior approval by the director and may require a new storm water permit and maintenance agreement.

Section 316 NPDES PERMITS

Persons or entities who hold NPDES general, individual, or multi-sector permits shall provide either a copy of such permit or the permit number assigned to them by ADEM no later than 60 calendar days after termination of the post construction storm water permit.

CHAPTER 4 – STORM WATER DESIGN

Section 400 STORM WATER SYSTEM REQUIREMENTS

- a) The performance standards provided in the design manual establish the minimum storm water management requirements for the design and construction of individual and collective storm water drainage systems and post construction storm water practices on land developments not exempted by this ordinance, whether such systems and practices are located on public or private lands.
- b) Individual and collective storm water drainage systems and post construction storm water practices on **new developments** not exempted by this ordinance, whether such systems and practices are located on public or private lands, shall meet or exceed the following storm water performance standards established in the design manual: storm water quality protection; flood protection; downstream analysis; and, drainage system design.

Adherence to these performance standards for a new development shall be calculated for the entire area of the land development, inclusive of all pervious and impervious surfaces located inside the legal boundaries of the land development.

- c) Individual and collective storm water drainage systems and post construction storm water practices on **redevelopments** not exempted by this ordinance, whether such systems and practices are located on public or private lands, that will result in a net increase in impervious surface area from the previously developed condition shall be subject to the following performance standards: storm water quality protection; downstream analysis; and drainage system design. If the downstream analysis indicates an increase in peak discharges in the post-construction condition as compared to the pre-construction condition, the flood protection performance standards shall also apply.

Adherence to applicable performance standards for a redevelopment shall be calculated for the increase in impervious surface area that will result from the redevelopment.

- d) In the evaluation of, and adherence to, flood protection and downstream analysis performance standards, the pre-construction condition shall be the existing condition of the land at the time of application for a post construction storm water permit for the land development. In the event that demolition of pavement or structures has already occurred at the time of application for a post construction storm water permit on a property proposed for redevelopment, the pre-construction condition shall be the previously developed condition of the property, as obtained from aerial photography, historical mapping, or other reliable source of impervious cover information. It shall be the responsibility of the owner to provide proof of the pre-construction condition with the storm water management plan.
- e) Individual and collective storm water drainage systems and post construction storm water practices shall be designed and constructed in strict accordance with the policies, design criteria, calculation and technical specifications, and guidance established in the design manual and in the Standard Specifications for the Construction of Public Works Projects, where applicable, unless otherwise established by this ordinance or by the director. Adherence to this requirement shall be established in the storm water management plan. Other technical methods, calculation approaches, and practices shall not be used without the approval of the director. In the event that an alternative method, approach, or practice is allowed, the director may request the owner to provide additional hydrologic and hydraulic calculations, or other technical information to confirm that the alternative method, approach, or practice will meet the performance standard(s).
- f) The Federal Emergency Management Agency (“FEMA”) or the city’s Floodplain Zone Overlay (City of Birmingham Zoning Ordinance Chapter 8, Article II) may have more stringent requirements for storm water drainage systems and post construction storm water practices for detention/retention that are located within a flood hazard zone. It is the engineer of record’s responsibility to determine if a storm water drainage system will be within a flood hazard zone and to design it in accordance with FEMA requirements, or the city’s requirements if more stringent. Such requirements and designs shall be provided in the storm water management plan.

- g) Land development shall not, under any circumstances, be designed or constructed to allow impervious surfaces to discharge directly to a natural water body, even if one or more of the storm water performance standards has been waived. In such cases, storm water from these surfaces shall discharge from the land development through an appropriately designed drainage pipe, ditch, or swale, or overland through level spreader and into a vegetated buffer that have been designed, constructed, and suitably vegetated to withstand the expected storm water discharges without damage or erosion. In any case, permanent protection from soil erosion shall be provided, at the inlet and outlets of the discharge, and through the buffer if used. Vegetated stabilization alternatives are preferred when technologically feasible.
- h) Banks of all streams, channels, ditches and other earthen stormwater conveyances shall be left in a stabilized condition upon completion of the project. No actively eroding, bare or unstable banks shall remain. Placement of riprap and other hard armor as the sole bank protection method on blue line streams is only allowed when vegetative bank stabilization alternatives are not technologically feasible.
- i) Post construction storm water practices for post construction storm water management on private land development shall be selected with consideration of the practicality of practice maintenance and operation by the type of future land owner(s) intended for the development. Practices that are considered, in the opinion of the director, to be impractical for land owner operation and maintenance will not be approved.
- j) Post construction storm water practices shall not be located in public rights-of-way or on public property without prior approval by the director.
- k) Green infrastructure practices designed to infiltrate storm water runoff shall not be located in wellhead protection areas or in other areas where infiltration is prohibited or where groundwater is protected by a local, State, or Federal plan, permit, regulation, or agreement.

Section 401 PERFORMANCE STANDARD WAIVERS

- a) Land developments conducted by entities under the jurisdiction and supervision of the Alabama Public Service Commission are waived from complying with the storm water quality performance standard established in the design manual, only insofar as these land developments are exempted from local government water quality regulation by Title 11, Chapter 89C of the Code of Alabama 1975.
- b) A waiver of one or more of the storm water performance standards established in the design manual may be granted by the Director under one or more of the circumstances defined below. Waiver of one or more of the performance standards shall not be construed as an exemption of the proposed land development from all other requirements of this ordinance.
 - 1. One or more performance standards may be waived for redevelopments that will result in zero net increase in impervious surface area from the pre-construction condition.

2. The small storm extended detention performance standard may be waived for new developments and redevelopments: where the post-construction condition peak discharge at the outlet(s) of the development is less than 2.0 cfs at each offsite discharge location; or, that discharge directly into open conveyances such as larger streams, rivers, wetlands, or lakes provided the discharge will not have an impact on stream bank or channel integrity.
3. Flood protection performance standards may be waived for redevelopments that do not increase peak discharges. Demonstration of this condition shall be provided by the applicant(s) through preparation of a downstream analysis comparing the post-construction discharges without the influence of any additional flood protection storage practices to pre-construction discharges. The analysis shall be prepared by a professional engineer licensed in the State of Alabama.
4. The director may waive one or more flood protection standards and/or the downstream analysis requirement if engineering data, whether provided by the owner or the director, demonstrates that implementation of flood protection performance standards is unnecessary or may cause adverse flooding or erosion impacts on the subject property, on adjacent, nearby or downstream properties, whether publicly or privately held, or on receiving water(s)..
5. The director may waive one or more of any of the performance standards as an onsite design requirement if the land development will discharge, after construction, to an existing downstream or shared offsite post construction storm water practice or system of practices that was previously designed and constructed to receive storm water discharges from the proposed development, provided the practice or system of practices that will provide the required storm water quality protection and/or flood protection with inclusion of storm water discharges from the proposed land development.
 - a. The owner shall evaluate the adequacy of the offsite or shared storm water practice(s) to receive a waiver if such information is not already in the director's possession. This evaluation shall be prepared by a professional engineer licensed in the State of Alabama and provided in the storm water management plan.
 - b. The owner shall prepare a storm water management plan and/or record drawing for the offsite or shared storm water practice(s) if such information is not already in the director's possession.
6. The director may waive one or more of the performance standards if the land development is determined to be eligible for payment of a fee-in-lieu of construction of onsite post construction storm water practices or eligible for participation in an offsite storm water control program when one or both of such programs are made available by the city and provided that the land development adheres to program policies. Each program shall be available when program policies are approved by City Council and published by the City.

Section 402 MORE STRINGENT PERFORMANCE STANDARDS

Constructed onsite storm water systems that are designed and based on requirements that are more stringent than or differ from the minimum requirements established in the design manual may be necessary in order to effectively control and manage post construction storm water. The director may require the land development to meet one or alternate or more stringent performance standards or design criteria than those established in the design manual under the following circumstances:

- a) The proposed land development is located on a property that is considered a brownfield or is otherwise known or believed to have pollutants in the soil or on the ground that, if discharged from the property in storm water or groundwater, may cause harm to the general public or the environment.
- b) The proposed land development will, after development, discharge storm water to a waterbody that is included on the most recent Alabama §303(d) List, or for which a TMDL has been approved by the USEPA.
- c) The proposed land development will, after development, discharge storm water to a waterbody that is classified by ADEM for Public Water Supply, as an Outstanding National Resource Water, as an Outstanding Alabama Water, or as a Treasured Alabama Lake, and the director, through sound engineering judgement, has reason to believe that unregulated storm water discharges from the land development may adversely affect the waterbody.
- d) The proposed land development is located on, or will, after development, discharge storm water to an area that has been designated by the USFWS as critical habitat for one or more threatened or endangered species, or where the USFWS has identified one or more threatened or endangered species are located. In such cases, the owner may be required to consult with USFWS regarding the land development and to provide with the storm water management plan any requirements of USFWS for the land development or outcomes of said consultation.
- e) The director has determined, through watershed management plans, storm water master plans, engineering studies, or engineering judgement based on a history of existing pollutant, erosion, drainage or flooding problems, whether documented or undocumented, whether on the land development or on adjacent or downstream locations, that additional restrictions are needed to limit adverse impacts of the proposed land development that may result from storm water discharges.

CHAPTER 5 – BONDS, LETTERS OF CREDIT.

Section 500 REQUIREMENTS

Each storm water management plan must be accompanied by letter of credit, or surety bond with the City having the right to approve the security which shall be furnished. Letter of credit, or surety bond (collectively referred to as “Security”) shall be furnished to the City in accordance with the following provisions.

- a) The Director shall require a Security in such amount as specified herein to assure the work, if not completed or if not in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions, erosion, potential pollutant discharges, and/or drainage problems.
- b) The Security shall contain, or have attached to it as an exhibit, a legal description of the proposed development. The Security shall remain in effect until it has been released in writing by the Director as provided in Section 501. A bond with a specific expiration date shall not be acceptable.
- c) The Security for construction of the storm water drainage system shall be in the amount of \$5,000 per acre for each acre, or fraction of an acre, disturbed or affected by the proposed project.
- d) The letter of credit must be issued by a bank which has a principal office in Alabama.
- e) The letter of credit must be issued by a bank which is satisfactory to the City and each surety bond must be issued by a surety company which is qualified to do business in Alabama and which is otherwise satisfactory to the City.
- f) The Security for construction operations for the storm water drainage system shall be released upon termination of the post construction storm water permit.

CHAPTER 6 – INSPECTION, OPERATION, AND MAINTENANCE

Section 600 PROHIBITED CONDITIONS

In addition to the prohibited conditions established in Chapter 1, Subsection 109, the following uses, activities, encroachments or conditions are prohibited in post construction storm water practices designed and constructed for storm water management.

- a) Installation of impervious surfaces, except when included in an approved practice design, stream crossing, or other approved use;
- b) Damage to, or removal of, existing vegetation, unless such activities are necessary for the maintenance of the practice;
- c) Installation of non-native, invasive, or noxious plant species in a vegetated buffer or reforestation practice. Non-native, non-invasive plant species are permitted in all other storm water management practices.

Section 601 MAINTENANCE AND INTEGRITY DURING CONSTRUCTION

- a) The following requirements apply during clearing, grading, and construction to green infrastructure practices that will operate, after their construction, by infiltration and evapotranspiration:

1. To avoid soil compaction and pollution, areas where green infrastructure practices will be, or are, located shall be protected from encroachment by heavy equipment, vehicles, and construction materials storage at all times.
 - i. Said areas shall be cordoned-off with a highly visible barrier, such as orange construction fencing, and shall not be encroached upon or otherwise disturbed unless they are being established, constructed, restored, or enhanced as provided for in an approved storm water management plan. Protection measures shall be installed prior to, or if more practical, during clearing and grubbing of the land development.
 - ii. Said areas shall be clearly identified on the storm water management plan, on the erosion and sediment control plan, and on all construction drawings, and marked with the statement “Green Infrastructure Practice. Do not disturb.” Temporary protection measures to be used during construction shall be shown on the storm water management plan.
 2. The use of green infrastructure practices as sediment traps or for any other erosion prevention and sediment control measure is expressly prohibited. Nor shall sediment from any area of the land development be allowed to discharge into, or through, areas where green infrastructure practices will be located.
 3. Erosion prevention and sediment control measures to be used during construction shall be shown on the storm water management plan. Said measures shall not be removed until construction in the area that discharges storm water to the practice is fully completed, and after 100% of the pervious surfaces in said area are fully vegetated or otherwise permanently stabilized to prevent soil erosion.
 4. Where encroachment, sedimentation, pollution, or other adverse condition is known or suspected as a result of clearing, grading, or construction, the director may require soil infiltration testing, soil amendment, or other corrective action(s) to confirm or restore infiltration rates to design requirements.
- b) Owner(s) of individual and collective storm water drainage systems and post construction storm water practices shall, at the completion of construction, inspect said systems and practices for sediment, trash, debris, or damage. Issues noted shall be corrected prior to submittal of the record drawing. Sediment, trash, and debris discharged during construction to individual and collective storm water drainage systems shall be entirely removed, such that the system is free of blockage and operating at its fully functional design capacity, as indicated in the approved storm water management plan.
- c) Post construction storm water practices, excluding green infrastructure practices, may be used as sediment traps or other soil erosion and sediment control measures, if such use is approved in the soil erosion and sediment control plan. When such use is approved:
1. sediment discharged to a post construction storm water practice during construction shall be removed after construction in the area that discharges storm water to the

practice is fully completed, and after 100% of the pervious surfaces in said area are fully vegetated or otherwise permanently stabilized to prevent soil erosion;

2. the use shall be clearly noted in the storm water management plan, and the storm water management plan shall indicate the sequence and method which will be used to ensure that the post construction storm water practice functions as indicated by the approved design.
- d) Individual and collective storm water drainage systems and post construction storm water practices shall not, at any time, be used for storage of construction or demolition-related chemicals or waste, either temporarily or permanently.
 - e) The director may, alone or in addition to other enforcement actions authorized by this ordinance, withhold termination of a storm water management plan pending satisfactory completion of corrective action(s) for failure to comply with any of the provisions of this section.

Section 602 POST CONSTRUCTION MAINTENANCE AND INTEGRITY

- a) It shall be the responsibility of the owner(s) of land developments to:
 1. at all times operate and maintain the individual and collective storm water drainage systems and post construction storm water practices located on their property, whether or not such systems and practices are identified on the property's plat, in proper, functional condition as defined by the approved storm water management plan and the maintenance manual;
 2. inspect and maintain all post-construction storm water practices located on their property in accordance with the maintenance manual;
 3. at all times protect said systems and practices from alteration that adversely impacts their function as indicated by the approved storm water management plan;
 4. perform corrective actions when conditions occur that can or do adversely impact the function of the said systems and practices, whether said actions are undertaken voluntarily by the owner or required by the director; and,
 5. keep records of inspection and maintenance activities for a period of at least three (3) years and make them available to the director upon request.
- b) Removal of said systems and practices, or their alteration in any way that adversely impacts their approved function and performance standard, without the prior approval of the director is expressly prohibited.
- c) The responsibilities stated herein shall continue for the owner(s) of land developments until such time that ownership of the property is transferred, upon which these responsibilities are immediately transferred to the subsequent owner.

Section 603 ANNUAL POST CONSTRUCTION OWNER INSPECTION

Owner(s) of post construction storm water practices shall, at a minimum, inspect and document said practices annually to ensure the practices are properly functioning and compliant with this ordinance. More frequent inspections may be required to ensure proper function, as established by the maintenance manual based on the maintenance needs of specific types of practices or by director as he/she deems necessary to ensure the maintenance needs of a particular practice are being addressed. Inspections shall be conducted by a person familiar with the operation of said practices on the property and be documented and submitted to the director in the manner established in the maintenance manual.

Section 604 MAINTENANCE OF RECORDS AFTER CONSTRUCTION

Records of compliance with the requirements set forth in Sections 602 and 603, and records of compliance with any warning, notice of violation, or order for corrective action by the director shall be maintained by the owner, and retained for at least six (6) years, and shall be made available for inspection by the director.

Section 605 RIGHT OF ENTRY

- a) The director may enter upon private property upon reasonable notice to the owner and the person in possession thereof and during normal business hours and upon the presentation of appropriate credentials for the purpose of performing investigations to: verify owner compliance with this ordinance; determine whether corrective actions are needed; verify satisfactory compliance with any requested corrective actions; and, investigate any suspected violation(s) of this ordinance. Proof of a violation of this ordinance is not required for entry onto a premises. Any officer, employee, or other authorized agent who performs the duties of the director authorized by this ordinance in accordance with provisions hereof shall be immune from arrest and prosecution for trespass while performing any legal duty pursuant to this ordinance by presenting identification issued by the City of Birmingham. Identification issued by the city shall be presented by the city official at the time of entry.
- b) If security measures are in force on a premises, then the premises owner shall make the necessary arrangements to allow access to representatives of the official for the purposes of this ordinance.
- c) Owners and/or operators of a premises shall allow the director or his her duly authorized representative reasonable access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, testing, documenting, and examination; for the copying of records that must be kept under the conditions of this ordinance, a post construction storm water permit, or an NPDES permit to discharge storm water; and for the performance of any additional duties as required by state and federal law.
- d) The director shall have the right as may be necessary to conduct visual inspections of the individual and collective storm water drainage systems, post construction storm water practices, and pervious land cover areas of the premises, and to determine flow connection or blockages using test dyes or other appropriate methods.

- e) The director shall have the right to require the owner and/or operator of a BMP to demonstrate that the BMP is properly installed and functioning to meet the requirements of this ordinance by operating the BMP in the presence of the director or by certification by an appropriate third party or other appropriate methods.
- f) Any temporary or permanent obstruction to safe and easy access to the premises to be inspected by the director shall be promptly removed by the owner of the premises at the written or oral request of the director. The costs of clearing such access shall be borne by the owner and/or occupier of the premises.
- g) Unreasonable delay in allowing the director access to a premises is a violation of this ordinance. It shall be understood that for any person who is the owner and/or occupier of a land development upon which individual and collective storm water drainage systems, and post construction storm water practices are located and denies the director reasonable access to the premises for the purpose of conducting any activity authorized or required by this ordinance shall be considered an offense, punishable by Chapter 7 of this ordinance.

Section 606 SEARCH WARRANTS

If the director has been refused access to all or any part of a land development upon which individual and collective storm water drainage systems and post construction storm water practices are located and is able to demonstrate probable cause that there may be a violation of this ordinance, or that there is a need to inspect as part of a routine inspection program designed to verify compliance with this ordinance or any order for corrective action issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the director may seek issuance of a search warrant from any court of competent jurisdiction.

CHAPTER 7 – VIOLATIONS, ENFORCEMENT, AND PENALTIES

Section 700 VIOLATIONS

It shall be unlawful for any person to violate any provision of, or fail to comply with, any requirement of this ordinance. Any person that has violated, or continues to violate, this ordinance shall be subject to one or more of the following enforcement actions:

- a) Upon conviction, the violator shall subject to a penalty of not greater than five hundred dollars (\$500.00) and/or imprisonment for a period of time not to exceed six (6) months for each violation. Each act of violation and/or each day upon which any violation shall occur or continue to occur shall constitute a separate offense.
- b) Permit holders shall be required to perform corrective actions at their own expense if the director determines that the storm water drainage system is not constructed in accordance with the approved storm water construction plan, does not conform to the record drawing, or is not functioning, or will not function, in proper operating condition during a precipitation event.

- c) Failure to terminate a post construction storm water permit may result in the withholding of a certificate of occupancy.
- d) Construction begun prior to issuance of the post-construction storm water permit or failure to perform corrective actions required by the Directory may result in the withholding of a certificate of occupancy for the applicable land development, or the withholding of any permit approvals or terminations on the applicable development and/or other land developments permitted in the permit holder's name until said permit issuance or corrective action(s) is resolved. Withholding of any approvals under this subsection does not preclude any other enforcement remedies available to the City.

Section 701 WARNING NOTICE

- a) When the director determines that any person has violated or continues to violate any provision of this ordinance or any order issued hereunder, the director may serve upon that person a written warning notice specifying the particular violation believe to have occurred and requesting that the person immediately investigate the matter and seek a resolution whereby any offending condition will cease. The director may also include a description of the corrective action(s) he/she deems necessary to resolve the offending condition.
- b) The notice shall set forth a deadline of (30 days) by which a written response to the warning notice must be received indicating the person's plan for corrective action, whether said actions are designated by the director or determined by the person, and the time by which such plan will be completed.
- c) Investigation, corrective actions, and/or other resolution of the offending condition in response to the warning notice does not relieve the violator of liability for any violations occurring before or after receipt of the warning notice.
- d) Nothing in this subsection shall limit the authority of the director to take any action, including notice of violation, emergency action, or any other enforcement action, without first issuing a warning notice.

Section 702 NOTICE OF VIOLATION

- a) Whenever the director finds a violation of a prohibition or a failure to meet a requirement of this ordinance or a failure to comply with a warning notice, the director may order compliance by written notice of violation.
- b) This notice of violation shall contain:
 - 1. The name and address of the alleged violator, property owner, and/or operator;
 - 2. The address of the premises (when available) or a description of the building, structure, land, individual and collective storm water drainage system and/or post construction storm water practice upon which the violation is occurring or has occurred;
 - 3. A statement specifying the nature of the violation;

4. A description of the corrective action(s) necessary to restore compliance with this ordinance and a deadline for the completion of said action(s);
 5. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
 6. A statement that the determination of violation may be appealed to the storm water appeals board, by filing a written notice of appeal with the director within ten (10) business days of service of a notice of violation; and,
 7. A statement specifying that, should the violator fail to restore compliance with this ordinance within the established time schedule, the work will be done by a designated governmental agency or a contractor and twice the expense thereof shall be charged to the violator as allowed hereunder and collected as allowed by law.
- c) Such notice may require without limitation:
1. The performance of monitoring, analyses, and reporting;
 2. Application for permits and/or the preparation of design plans;
 3. Vegetative restoration, structure restoration, repair or other remediation of individual and collective storm water drainage systems and post construction storm water practices;
 4. Vegetative stabilization, restoration, repair, enhancement, or other improvement of areas that drain to individual and collective storm water drainage systems and post construction storm water practices that are, or may be in the future, adversely impacted by the offending condition;
 5. The abatement or remediation of storm water pollution or contamination hazards and restoration of any affected system, practice, or affected property;
 6. The design and installation of new individual and collective storm water drainage systems and post construction storm water practices;
 7. That violating discharges, practices, or alterations shall cease and desist;
 8. The implementation of, or repair of, systems or practices to correct the violation;
 9. Payment of an amount equal to twice any administrative and remediation costs borne by the City of Birmingham, including costs to administer and execute remedial actions and repair damages that have occurred on public property or in local waterways as a result of said violation(s).
- d) The failure of a person to comply with any lawful notice to implement corrective actions issued by the official, which has not been appealed within the time allowed herein, shall be deemed a violation of this ordinance.

Section 703 APPEAL OF NOTICE OF VIOLATION

- a) Notwithstanding the provisions of this ordinance, a person receiving a notice of violation may appeal the determination of the director to the storm water appeals board.
- b) The notice of appeal must be received within ten (10) days following the date of the notice of violation.
- c) A hearing on the appeal before the storm water appeals board, established and authorized in the General Code of the City of Birmingham, Title 4, Chapter 8, Article J, and shall take place in accordance with the procedures set out therein.

Section 704 EMERGENCY ABATEMENT

- a) The director is authorized to require immediate abatement of any violation of this ordinance that is reasonably believed to be an immediate threat to the health, safety, or well-being of the public.
- b) When the director finds that any person has violated, or continues to violate, any provision of this ordinance, and that the person's violation(s) has (have) cause or contributed to an actual or threatened discharge of storm water, which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the director may issue an order to the violator directing it to immediately to cease and desist all such violations and to:
 - i. Immediately comply with all ordinance requirements; and,
 - ii. Take such appropriate corrective actions as may be needed to properly address a continuing or threatened violation.
- c) Any person notified of an emergency order directed to it under this subsection shall immediately take steps to comply and implement corrective actions.

Section 705 INJUNCTIVE RELIEF AND/OR CIVIL REMEDIES

- a) If a person has violated or continues to violate the provisions of this ordinance, the city may petition the appropriate court for a preliminary and/or permanent injunction restraining the person from activities which would create violations of this ordinance or compelling the person to perform corrective action and/or remediation of any violation.
- b) The city may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to the public storm water drainage system or other public properties by any person, including costs incurred for corrective action and remediation, and may seek other equitable relief to enforce compliance with the provisions of this ordinance or to force compliance with any lawful orders of the director.
- c) Damages sought by the city shall include any and all costs of such action, including attorneys' fees, trial expenses, court costs, and damages to the public storm water drainage system or other public properties.

Section 706 REMEDIES NOT EXCLUSIVE: COSTS RECOVERABLE BY THE CITY

- a) The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the city to seek cumulative remedies.
- b) The city may seek to recover in a civil suit for damages all attorneys' fees, trial expenses, court costs, and any and all other costs and losses resulting directly or indirectly from a violation of this ordinance or any rule, regulation, order, or other provision authorized by state law. These costs or losses may include, but are not limited to, sampling and monitoring expenses, ADEM fines, EPA fines, costs associated with lawsuits of the city by third party(s), and any other costs associated with the enforcement of this ordinance or the corrective actions or remediation stemming from violations of this ordinance.

CHAPTER 8 – MISCELLANEOUS

Section 800 NOTICES

Whenever the city is required or permitted to:

- a) Give a notice to any party, such notice shall be in writing; or,
- b) Deliver a document to any party; such notice or document may be delivered by personal deliver, certified mail (return receipt requested), registered mail (return receipt requested), or a general recognized overnight carrier, to the address of such party which is in the record of the city or is otherwise known to the city.

Section 801 REFERENCES

Whenever a chapter or section is referred to in this ordinance, unless the context clearly indicates the contrary, such reference shall be to a section of this ordinance.

Section 802 MINIMUM REQUIREMENTS

- a) In interpreting and applying the provisions of this ordinance, they shall be held to be the minimum requirements for the promotion of public health, safety, convenience, comfort, and the general welfare.
- b) Where this ordinance imposes greater restrictions than are imposed or required by other ordinances, rules, regulations, or permits, or by easements, covenants, or agreements, the provisions of this ordinance shall apply.
- c) Where any other laws, ordinances, rules, regulations, permits, or restrictive conditions of other governmental or city agencies charged with land or clean water regulation impose such greater restrictions than are required under the regulations of this ordinance, such provisions shall govern.

SECTION 2. SEVERABILITY

The provisions of this ordinance are severable. If any part of this ordinance is determined by a court of competent jurisdiction to be invalid, unenforceable, or unconstitutional, such determination shall not affect any other part of this ordinance.

SECTION 3. CAPTIONS

The captions of ordinances and sections are for the purpose of reference only, and such captions shall not affect the meaning of any provision of this ordinance.

SECTION 4. EFFECTIVE DATE

The ordinance shall be effective on May 1, 2019 and when published as required by state law.