

Chapter 10 - WATER PROTECTION

FOOTNOTE(S):

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Editor's note— Ord. of Sept. 20, 2004, amended Ch. 10, in its entirety, to read as herein set out. Prior to inclusion of said ordinance, Ch. 10 pertained to similar subject matter. Subsequently, Ord. of Dec. 5, 2005, amended the title of Ch. 10 to read as herein set out. Prior to inclusion of said ordinance, Ch. 10 was entitled, "Erosion and Sediment Control." See also the Code Comparative Table.

Cross reference— Buildings and building regulations, Ch. 5; streets and sidewalks, Ch. 28; subdivisions, Ch. 29; zoning, Ch. 34. ([Back](#))

ARTICLE I. - IN GENERAL

FOOTNOTE(S):

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Editor's note— Section 1 of an ordinance of May 5, 2014, effective July 1, 2014 amended Ch. 10, Art. I, §§ 10-1—10-9, to read as herein set out in §§ 10-1—10-10. Prior to inclusion of said ordinance, Art. II pertained to similar subject matter. See also the Code Comparative Table.

Sec. 10-1. - Short title.

This chapter shall be known and may be cited as the city's "Water Protection Ordinance."

(5-5-14, § 1, eff. 7-1-14)

Sec. 10-2. - Authority.

This chapter is adopted pursuant to authority conferred by: (i) the Virginia State Water Control Law, set forth within the Virginia Code, Title 62.1, Chapter 3.1 (§§ 62.1-44.2 through 62.1-44.34:28), including, without limitation, §§ 62.1-44.15:27 and 62.1-44.15:54; (ii) Virginia Code, Title 15.2, Chapters 21 and 22; and (iii) the federal Clean Water Act (33 U.S.C. § 1251 et seq.).

(5-5-14, § 1, eff. 7-1-14)

Sec. 10-3. - Purpose.

The purposes of this chapter are:

- (1) To ensure the general health, safety, and welfare of the citizens of the City of Charlottesville by (i) protecting the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from land-disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced, and (ii) preventing degradation of properties, stream channels, waters and other natural resources of the city, by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff; and
- (2) To provide a framework for the administration, implementation and enforcement of the provisions of the Virginia Stormwater Management Act and the Virginia Erosion and Sediment Control Law, and to delineate the procedures and requirements to be followed in connection with permits issued by the city, acting as a VSMP and VESCP authority, respectively; and
- (3) To establish procedures whereby the requirements of the city's VSMP, VESCP and MS4 programs shall be enforced in conjunction with one another, and to ensure integration of those

program requirements with flood insurance, floodplain management and other programs requiring compliance prior to authorization of construction, in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the city and for those persons responsible for compliance with the programs.

(5-5-14, § 1, eff. 7-1-14)

Sec. 10-4. - Rules of construction.

This chapter protects paramount public interests and shall be liberally construed to effectuate its several purposes. The following rules of construction shall apply in the construction of this chapter, unless such application would be contrary to the purposes of this chapter or the context clearly indicates otherwise:

- (1) All references to any statute, ordinance, regulation, guideline, handbook, manual or standard shall be to such statute, ordinance, regulation, guideline, handbook, manual or standard as it exists on the date of adoption of this chapter and includes any subsequent amendment, reenactment, renumbering, or reissuance in a subsequent edition.
- (2) Any reference to "this article," "Article II," "Article III," or "Article IV" shall include references to all applicable references of Article I.
- (3) All references to "days" shall be to calendar days.
- (4) All references to a "fee schedule" shall mean and refer to a schedule of the fees and charges associated with the various applications, inspections, permits and approvals required by this chapter, as approved and amended by the city council from time to time. All required fees shall be made payable to the city treasurer.

(5-5-14, § 1, eff. 7-1-14)

Sec. 10-5. - Definitions.

In addition to the definitions set forth within the Virginia Administrative Code (VAC) at 9VAC25-840-10, 9VAC25-850-10 and 9VAC25-870-10, which are expressly adopted and incorporated herein by reference, the following words and terms used in this chapter shall have the following meanings unless otherwise specified herein. In the event of a conflict between any definition incorporated by reference and any definition following below, the definition incorporated by reference shall have precedence.

Act means, according to the context of its use, (1) the Stormwater Management Act set forth within Title 62.1, Chapter 3.1, Article 2.3 (§ 62.1-44.15:24 et seq.) of the Virginia Code or (2) the Erosion and Sediment Control Law set forth within Title 62.1, Chapter 3.1, Article 2.4 (§ 62.1-44.15:51 et seq.) of the Virginia Code.

Administrator means, when referring to a person performing duties relative to the city's VSMP or VESCP as set forth within this chapter, the city's department of neighborhood development services. The department of neighborhood development services shall have authority to act by and through the director of neighborhood development services and any city official, employee, contractor or other agent designated by the director of neighborhood development services to perform any responsibilities or functions assigned to the VSMP or VESCP Administrator. Whenever the term "administrator" is used within any of the regulations or other VAC sections incorporated by reference into this chapter, the term shall have the meaning assigned within those regulations or VAC sections.

Agreement in lieu of a plan means (i) a contract between the VESCP administrator and a property owner which specifies conservation measures which must be implemented in the construction of an individual single-family residence, not part of a common plan of development or sale; or (ii) a contract between the VSMP administrator and a property owner which specifies methods that will be implemented to comply with the requirements of Article III of this chapter in the construction of an individual single-family residence, not part of a common plan of development or sale. Such contract may be executed by

the administrator in lieu of a formal erosion and sediment control plan or stormwater management plan, as applicable.

Applicant means any person submitting an application for a permit or requesting the issuance of a permit under any provision of this chapter.

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

Board means the State Water Control Board.

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

Clearing means any activity which removes vegetative ground cover, including, but not limited to, root mat removal or top soil removal.

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

Conservation standards, criteria or specifications means the criteria, guidelines, techniques, and methods for the control of erosion and sedimentation whether promulgated by the program authority or contained in (1) the Virginia Erosion and Sediment Control Handbook and other regulations promulgated by the State Water Control Board, or (2) the Stormwater Management Handbook and other regulations promulgated by the Virginia Department of Environmental Quality.

Control measure means any BMP or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

DEQ and *department* mean the Virginia Department of Environmental Quality.

Development, land development and land development project as used within this chapter each refer to land improved or to be improved as a unit, under single ownership or unified control, such improvement(s) including all of the land disturbance, and the resulting landform, associated with the construction of residential, commercial, industrial, institutional, recreational, transportation, or utility facilities or structures, and or the clearing of land for non-agricultural or non-silvicultural purposes. The term shall include the entire area within a common plan of development or sale.

Director, as used in Article V of this chapter, shall mean and include the city's director of public works and director of neighborhood development services, and the employees and agents authorized by either of them to exercise authority or to take enforcement action under the provisions of Article V. The term director as used within Articles II and III of this chapter, shall mean the director of neighborhood development services. Whenever the term "director" is used within any of the regulations or other VAC sections incorporated by reference into this chapter, the term shall have the meaning assigned within those regulations or VAC sections.

Erosion and sediment control plan means a document containing materials and provisions for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Erosion impact area means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of six thousand (6,000) square feet or less used for residential purposes.

Excavating means any digging, scooping, or other method(s) of removing earth materials.

Filling means any depositing or stockpiling of earth materials.

General permit means the state general permit, defined following below.

Grading means any excavating or filling, and any combination thereof, including the land in its excavated or filled conditions.

Illegal discharge and *illicit discharge* each means and refers to any discharge to the city's municipal storm sewer system ("MS4") that is not composed entirely of stormwater, except: (i) discharges pursuant to a VPDES permit; (ii) discharges resulting from firefighting activities; and (iii) any discharges specifically authorized within Article V of this chapter.

Illicit connection means any connection to the city's municipal storm sewer system ("MS4") made without the express written approval of an authorized city official.

Land disturbance or *land-disturbing activity* means any man-made change to the land surface that (i) actually or potentially changes its runoff characteristics, including, without limitation, clearing, grading, or excavation, or (ii) that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, without limitation, clearing, grading, excavating, transporting and filling. The entire land area within a common plan of development or sale, as a whole, shall be considered to be a single land-disturbing activity.

Layout means a conceptual drawing sufficient to identify and provide for specific stormwater management facilities required at the time of approval.

Licensed professional means an individual who is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

Local erosion and sediment control program or *VESCP* means an outline of the various methods employed by the city to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program, including, without limitation, city ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

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

Mitigation plan means a plan, a component of a stormwater management/BMP plan, an erosion and sediment control plan, or an agreement in lieu of a plan, that describes how encroachments into a stream buffer will be mitigated through runoff treatment, re-vegetation, the addition of extra buffer areas, or other appropriate measures.

MS4 means the city's municipal separate storm sewer system. The terms "municipal separate storm sewer" and "municipal separate storm sewer system" shall have the meanings set forth within 9VAC25-870-10.

Natural channel design concepts means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

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

Owner means the owner(s) of the freehold of land, or a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person in control of a

property. As used herein, "owner" also refers to, in the appropriate context, any person authorized to act as the agent for the owner.

Peak flow rate means the maximum instantaneous flow from a given storm condition at a particular location.

Permit means any building permit, grading permit, or other permit, including the approval of any site plan or subdivision plat, which is required to be issued by any board, commission, officer, employee or agency of the city as a prerequisite to any land-disturbing activity or development. In relation to the provisions of Articles II and III of this chapter the term shall mean an approval issued by the VSMP/VESCP administrator for the initiation of a land-disturbing activity in accordance with this chapter, after evidence of state general permit coverage has been received.

Permittee means the person to whom a permit authorizing a land-disturbing activity is issued, and, in the appropriate context the term may refer to the person who certifies that an approved erosion and sediment control plan will be followed.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

Pollution prevention plan shall mean a plan for implementing pollution prevention measures during construction activities, which meets the requirements of 9VAC25-870-56.

Project shall have the same meaning as set forth above for the term development.

Public waters means and refers to the public waters and waterways of the United States and of the Commonwealth of Virginia.

Redevelopment for purposes of this chapter, means and refers to construction of buildings, structures, fixtures or other improvements to land as replacement(s) for existing improvements.

Regulations means (1) in the context of the provisions of Article II, the Virginia Erosion and Sediment Control Regulations set forth within 9VAC25-840-10 et seq. of the Virginia Administrative Code, or (2) in the context of the provisions of Article III, the Virginia Stormwater Management Regulations set forth within 9VAC25-870-10 et seq. of the Virginia Administrative Code.

Residential development means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control, and which is to contain three (3) or more residential dwelling units.

Responsible land disturber or *RLD* means an individual holding a certificate of competence issued by the department, who is responsible for the operations of carrying out land-disturbing activity in accordance with an approved erosion and sediment control plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor or any other project or development team member; however, the identity of the RLD must be designated on the approved erosion and sediment control plan or permit.

Runoff volume means the volume of water that runs off the land development project from a prescribed storm event.

Site means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. All of the land that is part of a development, or of common plan of development or sale shall be considered as a single site.

State means the Commonwealth of Virginia, inclusive of its departments, boards, agencies and divisions.

State board means the Virginia State Water Control Board.

State general permit means the state permit titled "General Permit for Discharges of Stormwater From Construction Activities" referenced within the Virginia Administrative Code at 9VAC25-880-1 et seq.,

authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

State permit means an approval to conduct a land-disturbing activity issued by the state board. Under a state permit, the state imposes and enforces requirements pursuant to the federal Clean Water Act and related regulations and the Virginia Stormwater Management Act and related regulations.

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

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

Stormwater and stormwater runoff mean precipitation that is discharged across the land surface or through conveyances to one (1) or more waterways. The term may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

Stormwater management plan means any document(s) containing material that describes method(s) for complying with the requirements of Article III of this chapter.

Stormwater pollution prevention plan or SWPPP means a document or set of documents prepared in accordance with good engineering practices, meeting the requirements set forth within 9VAC25-870-54, in which potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from a construction site are described, and control measures are identified.

Stream buffer means an area of land at or near a tributary streambank and/or nontidal wetland that has an intrinsic water quality value due to the ecological and biological processes it performs or is otherwise sensitive to changes which may result in significant degradation to the quality of state waters.

Subdivision shall have the same meaning as set forth within section 29-3 of the City Code.

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

Transporting means any moving of earth materials from one place to another place, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

VAC means the Virginia Administrative Code. References to specific sections of the Virginia Administrative Code appear in the following format: e.g., 9VAC25-870-10. Whenever reference to a specific VAC section is given, the provisions of that VAC section shall be deemed incorporated into this chapter by reference, as if set forth herein verbatim.

Virginia Erosion and Sediment Control Program or VESCP means a program approved by the state that has been established by the city for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources, and shall include such items, where applicable, as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in Article II of this chapter, and evaluation consistent with the requirements of this chapter and related federal, state and local regulations.

Virginia Erosion and Sediment Control Program Authority or VESCP Authority shall mean the City of Charlottesville, acting pursuant to authority granted by the state to operate a VESCP.

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

Virginia Stormwater Management Act means Article 2.4 (§ 62.1-44.15:24 et seq.) of the State Water Control Law and the related state regulations set forth within 9VAC25-870-10 et seq.

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

VSMP Authority or Virginia Stormwater Management Program Authority means the City of Charlottesville, acting pursuant to authority granted by the state to operate a VSMP.

Water dependent facility refers to land development that cannot exist outside the stream buffer and must be located on a shoreline because of the intrinsic nature of its operation, including, without limitation: intake and outfall structures of water and sewage treatment plants and storm sewers; water-oriented recreation areas; and boat docks and ramps.

(5-5-14, § 1, eff. 7-1-14)

Sec. 10-6. - Program administration.

- (a) The city council hereby designates the department of neighborhood development services as its administrator for the programs referenced in Articles II, III, and IV. Administration and enforcement of Article V shall be as set forth within sections 10-92 and 10-93
- (b) The administrator shall administer and enforce the provisions of this chapter, acting by and through its director. The director may enter into agreements or contracts with the local soil and water conservation district, an adjacent locality, or another public or private entity, to carry out or assist with the responsibilities of this chapter. The director of the department of neighborhood development services shall have authority to assign specific responsibilities or functions of the administrator to authorized agents of such department, such as another city official, employee, or an independent contractor, consistent with requirements of this chapter and applicable state laws and regulations.
- (c) The administrator shall establish reasonable regulations and interpretive guidelines for the administration of this chapter, subject to approval of city council. Such regulations and guidelines shall be consistent with this chapter and all applicable federal and state statutes and regulations.
- (d) The administrator shall assure that the erosion and sediment control program set forth in Article II is administered by a certified program administrator, a certified plan reviewer, and a certified project inspector. Such positions may be filled by the same person. The administrator shall assure that persons reviewing stormwater management plans and conducting related inspections shall hold a certificate of competence issued by the board.
- (e) The administrator shall take appropriate enforcement actions to achieve compliance with this chapter, and shall maintain a record of enforcement actions for all active land-disturbing activities and developments.
- (f) The administrator is authorized to cooperate with any federal or state department, agency, or official in connection with plans for erosion and sediment control or stormwater management. The administrator may also recommend to the city manager any proposed agreement with such agency for such purposes, which agreement shall be executed, if at all, by the city manager on behalf of the city.

(5-5-14, § 1, eff. 7-1-14)

Sec. 10-7. - Saving provision.

The adoption of this chapter shall not abate any pending action, liability, or penalty of any person accruing or about to accrue, nor waive any right of the city under any provision in effect prior to the date of adoption of this chapter, unless expressly provided for in this chapter. As they pertain to land-disturbing activity for development that is the subject of a site plan or subdivision plat approved prior to July 1, 2014, the requirements of this chapter in relation to such development shall be as prescribed within the Regulations, or as otherwise specified by state law.

(5-5-14, § 1, eff. 7-1-14)

Sec. 10-8. - Appeals from decisions under this chapter.

- (a) Any person who is aggrieved by a decision of the administrator pursuant to this chapter shall have the right of review of such action by the city council. Any such appeal shall be filed in writing with the clerk of the city council within thirty (30) days of the date of such decision.
- (b) An appeal received by the city council pursuant to this section shall be referred to the planning commission for review and findings of fact. The planning commission shall review the appeal at its next regular meeting following the date the notice of appeal is received by the clerk of council, and shall report its findings to city council. The city council shall review the appeal within thirty (30) days after the date of the planning commission meeting, at a regular or a special meeting of city council.
- (c) The city council shall consider evidence presented by the owner, the administrator, and any other aggrieved person.
- (d) The council shall render its decision in writing and may affirm, reverse or modify the administrator's decision. The council's decision shall constitute the final decision of the city on the matter(s) which are the subject of the appeal.
- (e) Any person aggrieved by a final decision of the city council pursuant to this section shall have the right of review of such decision by the circuit court of the city. Any such appeal shall be filed by the aggrieved person in writing with the circuit court within thirty (30) days of the city council's final decision.
- (f) For the purposes of this section, "aggrieved person" is limited to the owner, a permittee, owners of adjacent and downstream property and any interested governmental agency or officer thereof.

(5-5-14, § 1, eff. 7-1-14)

Sec. 10-9. - Compliance with chapter required prior to issuance of permits for development involving land-disturbing activities.

- (a) A person shall not commence, conduct or engage in any land-disturbing activity until such person has submitted a permit application to the administrator and has obtained the administrator's approval of a permit authorizing commencement of land-disturbing activity.
 - (1) The applicant shall submit with the application for a permit:
 - a. A proposed erosion and sediment control plan;
 - b. A proposed stormwater management plan, if required;
 - c. A state general permit registration statement, if required;
 - d. For the land that is proposed to be disturbed, (i) a valid, approved preliminary site plan that provides a layout, as defined in 9VAC25-870-10, or a valid approved site plan, (ii) a valid, approved preliminary subdivision plat that provides a layout, as defined in 9VAC25-870-10, or a valid, approved final subdivision plat, or (iii) for land use or construction not subject to the requirement of an approved site plan or subdivision plat, the applicant shall submit a written certification of the purpose of the proposed land-disturbing activity together with a zoning administrator determination stating that the use sought to be established on the land is permitted under applicable zoning district regulations and will comply with applicable requirements of the city's zoning and other local ordinances;
 - e. Any request for exception(s) from applicable technical requirements; and
 - f. Payment of required application fee(s), pursuant to section 10-10

The administrator shall not issue any approval(s) for commencement of any land-disturbing activity until all such required submissions and plans have been received and approved.

- (2) The administrator shall act on each plan included within the application, in accordance with the following:
- a. The administrator, or any duly authorized agent of the administrator, shall promptly review the materials submitted with an application. The administrator or his agent shall determine the completeness of the application within fifteen (15) calendar days of receipt, in accordance with the procedure referenced in 9VAC25-870-108(B).
 - b. The administrator or his agent shall act on a plan within the time period(s) and in accordance with the procedures referenced within 9VAC25-870-108(B). However, when a proposed erosion and sediment control plan is determined to be inadequate, notice of disapproval, stating the specific reasons for disapproval, will be communicated to the applicant within forty-five (45) days.
 - c. Approval or denial of a plan shall be based on compliance with the requirements of this chapter. Any decision shall be communicated in writing to the person responsible for the land-disturbing activity or the person's agent. Where available to the applicant, electronic communication will be deemed communication in writing. If a plan meeting all of the requirements of this chapter is submitted and no action is taken within the required time period, the plan shall be deemed approved. If a plan is not approved, the reasons for not approving the plan shall be provided in writing.
 - d. When all requirements have been satisfied and all required plans have been approved, the administrator shall issue a consolidated stormwater management and erosion and sediment control permit, when all of the following requirements have been satisfied:
 1. Upon the development of an online reporting system by DEQ, but no later than July 1, 2014, the administrator shall not issue a permit to authorize any land-disturbing activity until evidence has been obtained of state general permit coverage, where required; and
 2. The administrator must receive the performance guarantee(s) and other instruments and documentation specified in subparagraphs (3) through (6), following below; and
 3. All fees required by section 10-10 shall be paid by the applicant.
- (3) Prior to issuance of any approval or permit, the administrator shall require (or in the case of an agreement in lieu of a plan, may require) the applicant to submit a reasonable performance bond with surety, a cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the administrator (individually, and collectively, "performance guarantee"), to ensure that measures could be taken by the city at the applicant's expense, upon the applicant's failure, after proper notice, within the time specified, to initiate or maintain appropriate actions which may be required of applicant by the approved plan(s) and permit(s) or permit conditions as a result of applicant's land-disturbing activity. Separate performance guarantees shall be established and required to assure compliance with the approved stormwater management plan and with the erosion and sediment control plan, except as provided in subparagraph (c), below.
- a. Each performance guarantee shall be effective from a date prior to the issuance of any permit or approval until sixty (60) days after completion of the requirements of approved plan(s) and permit(s) or permit conditions. The instrument(s) of security shall provide that the performance guarantee for stormwater requirements shall be and remain in effect until satisfactory completion of all permit conditions has been achieved. Within sixty (60) days of the satisfactory completion of the requirements of the permit conditions, such security, or the unexpended or unobligated portion thereof, if any, shall be refunded to the applicant or terminated.
 - b. If approved by the administrator, the applicant may submit any required performance guarantee as part of, or included in, any other performance guarantee(s) required in connection with a site plan, subdivision plat or other required approval. In cases where any such consolidated performance guarantee is authorized, the administrator shall separately

establish the specific amount(s) attributable to erosion and sediment control requirements, stormwater management requirements, construction of public facilities and improvements, and other activities for which a performance guarantee is to be provided.

- c. The instrument(s) of security shall provide the administrator and its authorized agents with a right of entry, for the purpose of initiating or maintaining appropriate actions that are required by the permit, or permit conditions associated with a land-disturbing activity when the applicant, a permittee, or other person responsible for carrying out the land-disturbing activities or the requirements of a permit and permit conditions, after proper notice, has failed to take acceptable action within the time specified.
 - d. This requirement for performance bonding/ security is in addition to all other provisions and requirements of this article, state law and state regulations, relating to the issuance of permits, and is not intended to otherwise affect the requirements for such permits.
 - e. If the administrator is required to take action upon a failure of the permittee, the administrator may collect from the permittee the difference should the amount of the reasonable cost of such action exceed the amount of the performance guarantee held by the administrator.
 - f. The administrator may require submission of other materials and supporting documentation as the administrator deems necessary in order for the applicant to demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.
- (4) Prior to issuance of any approval or permit for land-disturbing activity involving one (1) or more acres of land, the administrator shall require the applicant to submit a stormwater pollution prevention plan (SWPPP). The SWPPP shall include the content specified by 9VAC25-870-54, 9VAC25-870-55 and 9VAC27-870-56, as well as the requirements and general information specified by 9VAC25-880-70, Section II.
- a. The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.
 - b. The SWPPP must be maintained by the operator at a central location at the site of the development. If no onsite location is available, notice of the SWPPP's location must be posted near the main entrance at the development site. Operators shall make the SWPPP available for public inspection in accordance with 9VAC25-880-70, Section II, either electronically or paper copy.
- (5) Except as provided in section 10-56(d), prior to issuance of any approval or permit for land-disturbing activity associated with development for which permanent stormwater management facilities are required, the administrator shall require the applicant to submit a proposed written instrument, in a form suitable for recordation in the city's land records, specifying long-term responsibility for and maintenance of the stormwater management facilities and other techniques specified within the proposed stormwater management plan for management of the quality and quantity of runoff.
- (b) No site plan shall be granted final approval, and no final subdivision plat shall be signed by any city board, commission, agency, department, official or employee, unless and until such final site plan or final subdivision plat includes improvements, facilities and treatments identified within a stormwater management plan approved by the administrator in accordance with this chapter.
 - (c) No authorization or permit for any construction, land use or development involving any land-disturbing activity, including any grading permit, building permit, foundation permit, demolition permit, or other city-issued development permit, shall be issued by any city board, commission, agency, department, official or employee, unless and until a stormwater management plan has been approved and a permit has been issued by the administrator in accordance with this chapter.

(5-5-14, § 1, eff. 7-1-14)

Sec. 10-10. - Fees for review and approval of plans.

- (a) The city council will, from time to time, approve a schedule of the fees and charges associated with the various applications, actions, inspections, permits and approvals required by this chapter in connection with the review of plans, issuance of VSMP and VESCP Authority permits, issuance of state general permit coverage, and implementation of the VSMP and VESCP related to land-disturbing activities. Prior to the issuance of any permit authorizing commencement of any land-disturbing activity, and prior to conducting any inspection or other action required by this chapter for which a fee is specified, the administrator shall assess, collect and administer the applicable fees and charges set forth within the most recent fee schedule adopted by city council.
- (b) The city council hereby adopts and incorporates by reference the statewide fee schedule(s) enacted by the state board pursuant to Virginia Code § 62.1-44.15:28 and 9VAC25-870-700 et seq., and said fee schedule(s) shall be deemed included within the local fee schedule referenced in paragraph (a), above. Prior to the issuance of any permit authorizing the commencement of any land-disturbing activity, the administrator shall assess, collect and administer the fees as set forth within 9VAC25-870-700-700 et seq., including, without limitation:
 - (1) Fees for the modification or transfer of registration statements from the state general permit issued by the state board; provided, however, that if the state general permit modifications result in changes to stormwater management plans that require additional review by the administrator, then, in addition to the state general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference between the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage. No such modification fee shall be assessed to (i) permittees who request minor modifications to a state general permit, or (ii) permittees whose general permits are modified or amended at the initiative of DEQ (excluding errors in the registration statement identified by the administrator and errors related to the acreage of the site); and
 - (2) Annual fees for maintenance of the state general permit, including fees on expired permits that have been administratively continued. State general permit maintenance fees shall be paid annually to the city, on or before the anniversary date of general permit coverage. State general permit maintenance fees shall apply, and shall continue to be paid, until state general permit coverage is terminated. No permit will be reissued or automatically continued without payment of the required fee for state general permit coverage.
 - (3) Payment of the state's portion of the statewide permit fee shall not be required for coverage under the state general permit, for construction activity involving a single-family detached residential structure, when such activity is exempted from such fee pursuant to regulations established by the state board.

State general permit coverage and maintenance fees may apply to each state general permit holder. Persons whose coverage under the state general permit has been revoked shall apply to DEQ for an individual permit for discharges of stormwater from construction activities. All persons seeking approval of a stormwater management plan, all persons seeking coverage under the state general permit, and all permittees who request modifications to or transfers of their existing registration statement for coverage under a state general permit, shall be subject to the fees referenced within this paragraph, in addition to any separate fees that may apply under paragraph (a) of this section.

- (c) Fees shall be paid when due, by applicants, permittees, and other persons responsible for carrying out conditions of a permit. An incomplete payment will be deemed a nonpayment. Interest shall be charged for non-payments and for late payments, at the rate set forth in Virginia Code § 58.1-15, calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent account that is more than ninety (90) days past due. The city shall be entitled to all remedies available under the Virginia Code in collecting any past due amount.

(5-5-14, § 1, eff. 7-1-14)

Secs. 10-11—10-20. - Reserved.

ARTICLE II. - EROSION AND SEDIMENT CONTROL

FOOTNOTE(S):

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Editor's note— Section 2 of an ordinance of May 5, 2014, effective July 1, 2014 amended Ch. 10, Art. II, in its entirety, to read as herein set out. Prior to inclusion of said ordinance, Art. II pertained to similar subject matter. See also the Code Comparative Table.

DIVISION 1. - IN GENERAL

Sec. 10-21. - Purpose and authority; applicability.

- (a) The purpose of this article is to prevent degradation of properties, stream channels, waters and other natural resources of the city, by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff, and by establishing procedures by which these requirements shall be administered and enforced.
- (b) This chapter is authorized by the Code of Virginia, Title 62.1, Chapter 3.1 (State Water Control Law) article 2.4, § 62.1-44.15:51 et seq. (Erosion and Sediment Control Law).
- (c) This article shall apply to any land-disturbing activity within the city, except that state agency projects shall be subject to the requirements of Virginia Code § 62.1-44.15:56. Each owner of land within the city shall comply with the requirements of this article, as provided herein:
 - (1) Prior to engaging in any land-disturbing activity, or allowing any land-disturbing activity to occur, on such owner's property;
 - (2) At all times during any land-disturbing activity until it is completed, including all times when the land-disturbing activity is performed by a contractor engaged in construction work; and
 - (3) When notified by the administrator that an erosion impact area exists on such owner's land, and the notice requires the owner to submit an erosion and sediment control plan in order to control erosion and sedimentation.
- (d) This article is intended to be interpreted, administered and enforced in conjunction with the definitions and provisions of Article I. References to "this article", and references to "provisions of this article" shall be deemed to include (i) the provisions of Article I of this chapter, and (ii) the provisions, criteria, and requirements of each federal or state statute, regulation, standard and specification adopted or referred to within Articles I and II of this chapter.

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-22. - Determination of land-disturbing activity.

- (a) The determination of whether an activity is a land-disturbing activity for purposes of this article shall be made by the administrator. Except as may otherwise be required by federal or state law or regulations, the term "land-disturbing activity" shall not include:
 - (1) Disturbed land areas of less than six thousand (6,000) square feet;
 - (2) Home gardens, individual home landscaping, repairs or maintenance work;
 - (3) Individual service connections; administrator;
 - (4) Installation, maintenance, or repair of any underground public utility lines, when such activity occurs on an existing hard surfaced road, street or sidewalk, provided the activity is confined to the area of the road, street or sidewalk that is hard surfaced;

- (5) Septic tank lines or drainage fields, unless included in an overall plan for land-disturbing activity relating to construction of a building to be served by the septic tank system;
 - (6) Surface or deep mining operations and projects, or oil and gas operations and projects, conducted in accordance with a permit issued pursuant to Code of Virginia Title 45.1; however, such activities shall not be conducted unless allowed by the city's zoning ordinance;
 - (7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the state Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with Code of Virginia § 10.1-1100 et seq., or is converted to bona fide agricultural or improved pasture use, as described in subsection B of § 10.1-1163. Such activities shall not be conducted unless allowed by the city's zoning ordinance.
 - (8) Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation. Such activities shall not be conducted unless allowed by the city's zoning ordinance.
 - (9) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
 - (10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
 - (11) Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and
 - (12) Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan if there were no emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of this article.
- (b) Upon the determination by the administrator that an activity is a land-disturbing activity the owner shall submit an erosion and sediment control plan to the administrator for review and approval, and shall otherwise take all actions necessary to comply with the requirements of this article.
 - (c) Whenever land-disturbing activity involves activity at a separate location (including but not limited to borrow and disposal areas), the administrator may either:
 - (1) Consider the off-site activity as being part of the proposed land-disturbing activity; or
 - (2) If the off-site activity is already covered by an approved erosion and sediment control plan, the administrator may require the applicant to provide proof of such approval and to certify that the plan will be implemented in accordance with the requirements of this article.
 - (d) An erosion and sediment control plan shall be submitted and approved for a development and the buildings constructed within, regardless of the phasing of construction.

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-23. - Determination of erosion impact area.

- (a) In order to prevent further erosion, the administrator may require submission and approval of an erosion and sediment control plan for any land determined to be an erosion impact area, regardless

of the size of such area. The determination of whether an erosion impact area exists shall be rendered by the administrator.

- (b) The administrator shall determine whether an erosion impact area exists on a property. The administrator shall make this determination after an investigation initiated by the administrator or upon the complaint of any citizen.
- (c) Upon making a determination that an erosion impact area exists, the administrator shall immediately notify the owner of the property, in writing, of the determination. The notice shall be served by certified mail to the address of the owner based on the most recent tax records of the city, or by personal delivery. The written notice shall (i) instruct the owner to submit an erosion and sediment control plan for review and approval as provided in this article, and (ii) state the date by which the plan must be submitted.
- (d) Upon receipt of the notice required by this section the owner shall submit to the administrator for approval an erosion and sediment control plan designed to prevent further erosion, and the owner shall in all other aspects comply with the requirements of the notice and of this article. The owner shall not permit any portion of the land that is the subject of the notice to remain in a condition such that soil erosion and sedimentation causes reasonably avoidable damage or harm to adjacent or downstream property, roads, streams, lakes or ponds.
- (e) For good cause shown, the administrator may grant to an owner an extension of time to comply with the requirements of this section and this article.

(5-5-14, § 2, eff. 7-1-14)

Secs. 10-24—10-30. - Reserved.

DIVISION 2. - EROSION AND SEDIMENT CONTROL PLAN FOR LAND-DISTURBING ACTIVITIES

Sec. 10-31. - Permit required for land-disturbing activities.

No person shall engage in any land-disturbing activity within the city until an erosion and sediment control plan has been approved and a land-disturbing permit has been issued by the administrator in accordance with section 10-9 of the city code. The land-disturbing permit is required in addition to any other approval required by this chapter, by the city's zoning or subdivision ordinances, or from the city's building official (including, without limitation, any building permit, foundation permit, or demolition permit).

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-32. - Responsibilities of owner of land when work to be conducted by contractor.

Whenever a land-disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the required erosion and sediment control plan shall be the responsibility of the owner of the land.

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-33. - Conformity to state handbook and regulations.

Pursuant to Code of Virginia § 62.1-44.15:54 the city hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the state board, and the City's Design and Standards Manual, for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the Virginia Erosion and Sediment Control Regulations set forth within the Virginia Administrative Code at 9VAC25-840-10 et seq. and the Virginia Erosion and Sediment Control

Handbook, including all amendments thereto. The regulations, references, guidelines, standards and specifications referenced within this paragraph shall be used (i) by an applicant when preparing and submitting an erosion and control plan for review and approval of the administrator under the provisions of this article, and (ii) by the administrator, in considering the adequacy of a submitted plan.

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-34. - Fees.

Fees shall be submitted at the time of filing any erosion and sediment control plan, and thereafter, as specified within the most recent fee schedule approved by city council. Each re-submission of a plan following rejection by the administrator shall constitute a new application requiring an additional application fee.

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-35. - Erosion and sediment control plan.

- (a) No person shall engage in any land-disturbing activity until such person has submitted to the administrator for review and approval an erosion and sediment control plan, along with an application for a land-disturbing permit in accordance with Article I.
- (b) The owner shall submit four (4) copies of an erosion and sediment control plan that satisfies the requirements of this section, and a certification stating that all requirements of the approved plan will be complied with.
- (c) The standards contained within the regulations, and within the Virginia Erosion and Sediment Control Handbook, as amended, and the City's Standards and Design Manual, shall be used by the applicant in preparing and submitting an erosion and sediment control plan.
- (d) The administrator may require additional information as may be necessary for its complete review of the plan.
- (e) In lieu of paragraphs (b)—(d), above, where land-disturbing activity will involve land under the jurisdiction of more than one (1) locality's program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the state board or its agent (DEQ) for review and approval, rather than to each locality.
- (f) In lieu of paragraphs (b)—(d), above, any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks, pursuant to a permit issued by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the DEQ for review and approval consistent with guidelines established by the board.
- (g) Pursuant to Virginia Code § 62.1-44.15:55(D), electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies shall, and railroad companies shall, and authorities created pursuant to Code of Virginia § 15.2-5102 may, file general erosion and sediment control specifications annually with the Board for review and approval.

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-36. - Review and approval of erosion and sediment control plan.

Each erosion and sediment control plan submitted pursuant to this article shall be reviewed and approved as provided herein:

- (1) The plan shall be submitted along with the application required by section 10-9 of Article I, and shall be reviewed by the administrator to determine its compliance with the requirements of this article and with applicable state laws and regulations.

- (2) During review of the plan the administrator may correspond with the owner from time to time to review and discuss the plan with the owner, and may require additional information from the owner as necessary in order for the plan to be approved.
- (3) The administrator shall review erosion and sediment control plans submitted, and shall either grant written approval or written notice of disapproval in accordance with the time periods and other requirements set forth within Code of Virginia § 62.1-44.15:55 and Article I of this chapter.
- (4) Applicants for land-disturbing permits may be required to provide a performance bond, cash escrow or other financial guarantee, determined in accordance with section 10-9 of this chapter, to ensure that measures could be taken by the administrator at the applicant's expense should the applicant fail, after proper notice, within the time specified, to initiate or maintain appropriate measures required by the approved erosion and sediment control plan as a result of applicant's land-disturbing activity.
- (5) If the owner is required to obtain approval of a site plan or subdivision plat for a development, the administrator shall not approve an erosion and sediment control plan or authorize the commencement of any land-disturbing activity, unless and until the site plan or plat has received final approval as provided by law. Notwithstanding the foregoing, the administrator may approve an erosion and sediment control plan and may authorize commencement of land-disturbing activity, prior to approval of a required final site plan or final subdivision plat only in the following circumstances:
 - a. To correct any existing erosion or other condition conducive to excessive sedimentation which is occasioned by any violation of this chapter or by accident, act of God, or other cause beyond the control of the owner, provided that the activity proposed shall be strictly limited to the correction of such condition;
 - b. To install underground public utility mains, interceptors, transmission lines and trunk lines for which plans have previously been approved by the operating public utility or public service corporation and have previously been approved by the city as being substantially in accord with the comprehensive plan, where required by Code of Virginia § 15.2-2232.

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-36.1. - Variances.

The administrator may waive or modify any of the standards that are deemed inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

- (1) At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the administrator shall be documented in the plan.
- (2) During construction, the person responsible for implementing the approved plan may request a variance in writing from the administrator. The administrator shall respond in writing either approving or disapproving such a request. If the administrator does not approve a variance within ten (10) days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.
- (3) The administrator shall consider variance requests judiciously, keeping in mind both the need of an applicant to maximize cost effectiveness and the public interest and need to protect off-site properties and resources from damage.

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-37. - Agreement in lieu of a plan.

- (a) If land-disturbing activity is for the purpose of establishing or modifying a single-family detached dwelling, then, in lieu of an erosion and sediment control plan, the administrator may enter into a contract with the property owner that specifies conservation measures that must be implemented in the construction of the single-family dwelling.
- (b) In determining whether to allow an agreement in lieu of a plan, the administrator shall consider the potential threat to water quality and to adjacent land resulting from the land-disturbing activity, as well as applicable provisions of state law and regulations. When an agreement in lieu of a plan is authorized and approved by the administrator, the administrator and the owner shall have all of the rights, responsibilities and remedies set forth in this article as though such agreement in lieu of a plan was an erosion and sediment control plan.
- (c) The administrator may waive the requirement for a responsible land disturber holding a certificate of competence, in connection with an agreement in lieu of a plan for construction of a single-family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and shall provide the name of an responsible land disturber holding a certificate of competence, as provided by Code of Virginia § 62.1-44.15:55.

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-38. - Amendment of approved plan.

The administrator may require changes to an approved erosion and sediment control plan, and require an owner to submit an amended plan, in the following circumstances:

- (1) An inspection reveals that the plan is inadequate to satisfy the requirements of this article;
- (2) The person responsible for carrying out the plan finds that, because of changed circumstances, or for other reasons, the approved plan cannot be effectively carried out and proposed amendments to the plan, consistent with the requirements of this article are agreed to by the administrator and the person responsible for carrying out the plan; or
- (3) In the event that land-disturbing activity has not commenced during the one hundred eighty-day period following plan approval, or if land-disturbing activity pursuant to an approved plan has ceased for more than one hundred eighty (180) days, the administrator may evaluate the existing approved erosion and sediment control plan to determine whether the plan still satisfies the requirements of this article and state erosion and sediment control criteria, and to verify that all design factors are still valid. If the administrator finds the previously approved plan to be inadequate, a modified plan shall be submitted for approval by the administrator prior to the commencement or resumption of land-disturbing activity.

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-39. - Duty to comply, maintain and repair.

Upon approval by the administrator of an erosion and sediment control plan, each owner shall:

- (1) Comply with the approved plan when performing, or allowing to be performed, any land-disturbing activities, or activities to correct an erosion impact area;
- (2) Maintain and repair all erosion and sediment control structures and systems to ensure continued performance of their intended function;
- (3) Comply with all requirements of this article, and with applicable state laws and regulations; and
- (4) Provide the name of a responsible land disturber, as defined in Article I of this chapter, who will be in charge of and responsible for carrying out the land-disturbing activity.

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-40. - Inspection and monitoring.

- (a) As a condition of approval of an erosion and sediment control plan, the administrator may require the person responsible for carrying out the plan to monitor the land-disturbing activity as provided herein:
 - (1) Any monitoring conducted shall be for the purpose of ensuring compliance with the erosion and sediment control plan, and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
 - (2) The condition requiring monitoring and reporting shall state: (i) the method and frequency of such monitoring, and (ii) the format of the report and the frequency for submitting reports.
 - (3) The person responsible for carrying out the plan will maintain records of inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.
- (b) The administrator shall periodically inspect the land-disturbing activity in accordance with 9VAC25-840-60, to assure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation as provided herein. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.
 - (1) Monitoring, reports and inspections required by the administrator shall be conducted in accordance with the requirements of Code of Virginia § 62.1-44.15:58 and 62.1-44.15:60, and applicable provisions of state regulations.
 - (2) If the administrator determines that there is a failure to comply with the approved plan, notice shall be served on the permittee or person responsible for carrying out the plan, in accordance with the requirements of Code of Virginia § 62.1-44.15:58. Upon failure to comply within the specified time, the land-disturbing permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article and shall be subject to the penalties provided herein.
 - (3) Upon determination of a violation of this article the administrator may, in conjunction with or subsequent to a notice to comply, issue an order requiring that all or part of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. In cases where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply. Any such order shall be served in the same manner as a notice to comply. A stop-order shall have the effects, shall remain in effect, as set forth within Code of Virginia § 62.1-44.15:58. Upon completion and approval of corrective action, or obtaining an approved plan and any required permits, the order shall be lifted. Upon failure to comply with any such order within the specified time, the land-disturbing permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article and shall be subject to the penalties provided herein.
 - (4) Any person violating or failing, neglecting or refusing to obey an order issued by the administrator may be compelled in a proceeding instituted in the Circuit Court of the City of Charlottesville to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
 - (5) Nothing in this section shall prevent the administrator from taking any other action authorized by this article.

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-41. - Determination of noncompliance with plan; stop work orders.

Upon a determination by the administrator that an owner has failed to comply with an approved erosion and sediment control plan, the administrator shall provide notice to a permittee or person responsible for carrying out the erosion and sediment control plan, and may issue an order requiring that

all or part of the land-disturbing activities be stopped, in accordance with the provisions of Code of Virginia § 62.1-44.15:58 and applicable state regulations

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-42. - Program personnel requirements.

- (a) An erosion and sediment control plan shall not be approved until it is reviewed by a certified plan reviewer.
- (b) Inspections of land-disturbing activities shall be conducted by a certified inspector.
- (c) The city's erosion and sediment control program may be carried out by one (1) or more persons; however, at all times the city's program, at a minimum, shall consist of a certified program administrator, a certified plan reviewer and a certified project inspector, who may be the same person.
- (d) The certifications required by this section shall be those granted by the state board, as set forth within Code of Virginia § 62.1-44.15:53.

(5-5-14, § 2, eff. 7-1-14)

Sec. 10-43. - Penalties, injunctions and other legal actions.

- (a) Any person violating the provisions of this article shall, upon conviction, be guilty of a Class 1 misdemeanor.
- (b) The following may apply to the circuit court for injunctive relief to enjoin a violation or a threatened violation of this article, without the necessity of showing that an adequate remedy at law does not exist:
 - (1) The city; and
 - (2) The owner of property that has sustained damage or that is in imminent danger of being damaged; however, an owner of property shall not apply for injunctive relief unless (i) owner has notified in writing both the administrator and the person who has violated the provisions of this article, that a violation of this article has caused, or creates a probability of causing, damage to owner's property, and (ii) neither the person who has violated this article nor the administrator has taken corrective action within fifteen (15) days to eliminate the conditions which have caused, or create the probability of causing, damage to the owner's property.
- (c) In addition to any criminal penalties provided under this section, any person who violates any provision of this article may be liable to the city in a civil action for damages.
- (d) Any person who violates any provision of this article shall, upon a finding of the Charlottesville General District Court, be issued a civil penalty. The civil penalty for any one (1) violation shall be not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00). The civil penalty for violations listed within the schedule set forth following below shall be as set forth within the schedule. The administrator may issue a summons for collection of any civil penalty.
 - (1) There is hereby established a schedule of civil penalties for certain violations of this article, and any civil penalty assessed by a court to a person who is found to have violated the sections referenced in the schedule shall be in accordance with the schedule.

Schedule of Violations Subject to Prescribed Civil Penalties	Section	Penalty
Additional measures - failure to install additional measures as deemed necessary by	10-38	\$100.00

the administrator or his inspector once work has commenced		
Bond - failure to obtain bond	10-36	\$100.00
E&S plan - failure to submit if required by administrator	10-35	\$1,000.00
E&S plan - failure to comply with approved plan	10-35 10-39	\$500.00
Corrections - failure to comply with mandatory corrections as issued on an E&S inspection notice or report	10-40	\$500.00
Existing conditions - failure to submit plan or provide controls after receipt of notice	10-21 10-23	\$500.00
Inspection - failure to request at the time(s) required by approved plan	10-39 10-24	\$100.00
Land-disturbing permit or approved plan - commencement of land-disturbing activities without an approved permit or plan	10-31	\$1,000.00
Land-disturbing permit or approved plan - failure to comply with provisions	10-39	\$500.00
Live waterway - causing silt or debris to enter when engaged in land-disturbing activity without an approved plan and permit	10-31	\$500.00
Stop work order - failure to cease work after issuance	10-40	\$1,000.00

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- (2) Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of ten thousand dollars (\$10,000.00), except a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site. The assessment of a civil penalty pursuant to this subsection (d) shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor. In any trial for a scheduled violation, it shall be the burden of the city to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose.
- (e) Without limiting the remedies which may be obtained under this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed two

thousand dollars (\$2,000.00) for each violation. A civil action for such violation or failure may be brought by the city against such person.

- (f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the administrator; any condition of a permit; or any provision of this article or associated regulations, the administrator may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed two thousand dollars (\$2,000.00). Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (d) or (e) of this section.
- (g) Any civil penalties assessed by a court pursuant to this section shall be paid into the city treasury. However, where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(5-5-14, § 2, eff. 7-1-14)

Secs. 10-44—10-49. - Reserved.

ARTICLE III. - STORMWATER MANAGEMENT

FOOTNOTE(S):

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Editor's note— Section 3 of an ordinance of May 5, 2014, effective July 1, 2014 repealed Ch. 10, Art. III, §§ 10-50—10-57, to read as herein set out in §§ 10-50—10-59. Prior to inclusion of said ordinance, Art. III pertained to similar subject matter. See also the Code Comparative Table.

Sec. 10-50. - Intent, purpose and authority.

- (a) Pursuant to Virginia Code § 62.1-44.15:27 and 9VAC25-870-20, this article is adopted to establish a Virginia Stormwater Management Program that will integrate stormwater management requirements with the city's erosion and sediment control program, the city's MS4 permit, flood insurance, floodplain management, and related federal and state permits and requirements, into a unified program. This unified program is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner for both the city and those responsible for compliance.
- (b) This article is intended to be interpreted, administered and enforced in conjunction with the definitions and provisions of Article I. References to "this article", and references to "provisions of this article" shall be deemed to include (i) the provisions of Article I of this chapter, and (ii) the provisions, criteria, and requirements of each federal or state statute, regulation, standard and specification adopted or referred to within Articles I and III of this chapter.

(5-5-14, § 3, eff. 7-1-4)

Sec. 10-51. - Land-disturbing permit required; exemptions.

- (a) No person shall engage in any land-disturbing activity until a stormwater management plan has been approved and a land-disturbing permit has been issued by the administrator in accordance with section 10-9 of the City Code.
- (b) Except as may otherwise be required by federal law, the following activities are exempt from the provisions of paragraph (a), above:
 - (1) Where such uses are permitted by the city's zoning regulations: permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;

- (2) Where such uses are permitted by the city's zoning regulations: the clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;
- (3) Where such use is permitted by the city's zoning regulations: single-family residences separately built and disturbing less than one (1) acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;
- (4) Land-disturbing activities that disturb less than six thousand (6,000) square feet of land area, but only if the land area to be disturbed is not part of a common plan of development or sale;
- (5) Discharges to a sanitary sewer or a combined sewer system;
- (6) Activities under a state or federal reclamation program to return an abandoned property to an open land use, or to an agricultural use where permitted by the city's zoning ordinance;
- (7) Routine maintenance performed to maintain the original line and grade, hydraulic capacity, or original construction of a project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subparagraph; and
- (8) Land-disturbing activities conducted in response to a public emergency, where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the administrator shall be advised of the disturbance within seven (7) days of the commencement of the land-disturbing activity and compliance with the administrative requirements of this chapter is required within thirty (30) days of commencing the land-disturbing activity.

(5-5-14, § 3, eff. 7-1-4)

Sec. 10-52. - Stormwater management program established.

Pursuant to Virginia Code §§ 62.1-44.15:27 and 62.1-44.15:49, the city hereby establishes a Virginia Stormwater Management Program (VSMP) for land-disturbing activities and adopts the regulations promulgated by the board, specifying standards and specifications for such programs. No grading, building, or other city permit, shall be issued for a property unless a permit has been issued by the administrator pursuant to section 10-9 of this chapter.

(5-5-14, § 3, eff. 7-1-4)

Sec. 10-53. - Stormwater management plan required; contents.

- (a) A person shall not commence, conduct, or engage in any land-disturbing activity until such person has submitted a stormwater management plan to the administrator as part of the application required by section 10-9 and has obtained approval of the plan and a permit from the administrator authorizing the commencement of land-disturbing activity.
- (b) Every stormwater management plan shall apply the stormwater management technical criteria set forth in section 10-54 to the entire land-disturbing activity. Individual lots within new residential, commercial or industrial subdivisions and developments shall not be considered separate land-disturbing activities, and the stormwater management plan for the entire subdivision or development

shall govern the development of the individual parcels, including parcels developed under any subsequent owner(s).

- (c) Every stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to subsurface runoff; and shall include the following:
- (1) A general description of the proposed stormwater management facilities and the mechanism through which the permanent facilities will be operated and maintained after construction is complete;
 - (2) Contact information, including the name, address, and telephone number of the owner and the city tax map reference(s) and parcel number(s) of the property on which the land-disturbing activity is to be conducted;
 - (3) A narrative that includes (i) a description of current site conditions and (ii) a description of final site conditions upon completion of development;
 - (4) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the pre-development and post-development drainage areas;
 - (5) Information on the proposed stormwater management facilities, including:
 - a. The type of facilities;
 - b. Location, including the address, latitude and longitude, and the sixth order hydrologic unit code in which the facilities are located;
 - c. Total area (expressed as acreage) treated;
 - d. Impervious area (expressed as acreage) treated;
 - e. Amount of pollutants removed (expressed as a number of pounds of phosphorous per year); and
 - f. The surface waters or karst features, if present, into which the facility will discharge.
 - (6) Hydrologic and hydraulic computations, including runoff characteristics;
 - (7) Documentation and calculations verifying compliance with applicable water quality and quantity requirements. All stormwater runoff controls shall be designed and installed in accordance with the water quality and water quantity design criteria specified in section 10-54, and any additional standards or criteria set forth within the City's Standards and Design Manual;
 - (8) A map or maps of the site that depicts the topography and other characteristics of the entire area of the land-disturbing activity and proposed development, including:
 - a. All contributing drainage areas;
 - b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
 - d. Current land use, including existing structures, roads, and locations of known utilities and easements;
 - e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the development site on such adjacent parcels;
 - f. The limits of clearing and grading, and the proposed drainage patterns on the site;
 - g. Proposed buildings, roads, parking areas, paved surfaces, utilities, and stormwater management facilities;

- h. Proposed land use(s), with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, streets, paved areas, and public and private easements; and
- i. A description of the proposed timing and/or phasing of land-disturbing activities and development.

The land area depicted in the map shall include all land within the limits of a valid, approved preliminary or final site plan, or a valid, approved preliminary or final subdivision plat, for the proposed development, and the proposed land use(s) and improvements shown on such site plan or subdivision plat shall be the same as those depicted within the map.

- (9) Any other information, materials, requirements or provisions required by state regulations, including, without limitation, 9VAC25-870-55 and the City's Standards and Design Manual.
- (10) If an operator intends to meet water quality and/or quantity requirements through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included and the requirements of Virginia Code § 62.1-44.15:35 must be satisfied. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity, except as otherwise allowed by Virginia Code § 62.1-44.15:35.
- (11) Signature and seal by a professional, if any elements of the stormwater management plan includes activities within the scope of the practice of architecture, land surveying, landscape architecture, or engineering, or other activities regulated under Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Virginia Code.
- (d) If land-disturbing activity is for the purpose of establishing or modifying an individual single-family detached dwelling, then, in accordance with applicable state regulations, the administrator may enter into an agreement in lieu of a plan with a property owner. Any such agreement in lieu of a stormwater management plan shall refer to specific measures that shall be implemented by the property owner to comply with the requirements of this article for the construction of the dwelling.

(5-5-14, § 3, eff. 7-1-4)

Sec. 10-54. - Technical criteria for regulated land-disturbing activities.

- (a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the city hereby adopts the following technical criteria:
 - (1) The technical criteria set forth in Part II B of the Regulations, as amended, §§ 9VAC25-870-62 et seq. ("Part II B Technical Criteria"); and
 - (2) The technical criteria set forth in Part II C of the Regulations, as amended, §§ 9VAC25-870-93 et seq. ("Part II C Technical Criteria").
- (b) The Part II B Technical Criteria shall apply to all regulated land-disturbing activities, except as expressly set forth in subparagraphs (c) through (h), following below.
- (c) Land-disturbing activity shall be subject to the Part II C Technical Criteria, if coverage under the state general permit was obtained, or land disturbance was otherwise lawfully commenced, prior to July 1, 2014.
- (d) Land-disturbing activity shall be considered grandfathered, and therefore subject to the Part II C Technical Criteria, as set forth within the provisions of 9VAC25-870-48.
- (e) The administrator may grant exceptions to the Part II B Technical Criteria or Part II C Technical Criteria, provided that (i) the exception is the minimum necessary to afford relief; (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the regulations, and this article are preserved; (iii) granting the exception will not confer any special privileges, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

Economic hardship alone is not sufficient reason or justification for granting an exception. Notwithstanding the foregoing, the administrator shall not have authority to approve the following:

- (1) Waiver of the requirement of a permit for any land-disturbing activity;
 - (2) Permission to use any BMP not found on the Virginia Stormwater BMP Clearinghouse Website; or a waiver or exception to the requirement for any control measure specifically approved by the director of DEQ or the board, except in accordance with Virginia Code § 62.1-44.15:33(C). Notwithstanding the foregoing, the administrator may approve the use of BMPs not found on the Virginia Stormwater BMP Clearinghouse Website for projects less than one (1) acre in size; or
 - (3) Exceptions to, or waiver of, post-development nonpoint nutrient runoff compliance requirements, unless the administrator determines that offsite options permitted pursuant to 9VAC25-870-69 have been considered and found not available.
- (f) Nothing in this section shall preclude construction of a stormwater management facility or BMP, or implementation of any technique or practice, to a more stringent standard at the developer's option.

(5-5-14, § 3, eff. 7-1-4)

Sec. 10-55. - Permit conditions.

- (a) Every land-disturbing permit approved by the administrator for activities regulated by this article shall be subject to the following conditions, which shall be deemed incorporated into such permit, as if set forth therein verbatim:
- (1) The permittee shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment;
 - (2) The permittee shall at all times conduct land-disturbing activities in accordance with the approved stormwater management plan and, when required, the SWPPP and all of its component parts and requirements;
 - (3) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and all related appurtenances, that are constructed, installed or used to achieve compliance with the requirements of this article and the approved stormwater management plan. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures;
 - (4) The permittee shall promptly furnish to the administrator any information that the administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit, or to determine the effect of a discharge on the quality of state waters, or such other information as the administrator deems necessary to accomplish the purposes of this article;
 - (5) The permittee shall allow the administrator, or an authorized representative, to:
 - a. Enter upon the site where regulated land-disturbing activity or stormwater management facility is located, or where records are required to be kept;
 - b. Have access to and copy, at reasonable times, any records kept by the permittee in relation to the conduct and operations of any land-disturbing activity and the design, specifications, installation, construction, and operation of stormwater management facility;
 - c. Sample or monitor, at reasonable times, for the purposes of determining compliance with requirements of this article, any substances or parameters at any location within the site;
 - (6) Samples and measurements taken by the permittee for the purpose of monitoring shall be representative of the monitored activity. Monitoring results must be conducted according to test procedures and methods accepted by the state; analysis or analyses required to be performed by a laboratory shall be performed by an environmental laboratory certified under regulations adopted by the state's department of general services. Monitoring results shall be reported to the administrator on a discharge monitoring report (DMR) form provided by the administrator. If

the permittee monitors any pollutant more frequently than required, using test procedures accepted by the state, the results of such monitoring shall be included in the calculation and reporting of data submitted within a required discharge monitoring report;

- (7) The permittee shall retain records of all monitoring, including all monitoring information, calibration and maintenance records, and original strip chart recordings for continuous monitoring instrumentation, copies of monitoring reports, and records of all data used to complete any submission required by this article. In addition to the foregoing, records of monitoring shall include:
 - a. Date, exact place, and time of sampling or measurements;
 - b. Identity of the individual(s) who performed the sampling or measurements;
 - c. The date(s) on which analyses were performed;
 - d. The analytical technique(s) or method(s) used;
 - e. Results of analysis/ analyses; and
 - f. Copies of discharge monitoring reports.
- (8) The permittee shall give advance notice to the administrator:
 - a. Of any planned physical alteration(s) or addition(s) to the site or to the stormwater management facilities described within the permit, when such alteration(s) or addition(s) may meet state criteria for determining whether a facility is a new source, or when such alteration(s) or addition(s) could significantly change the nature of, or increase the quantity of, pollutants discharged.
 - b. Of any planned changes to the stormwater management facilities described within the permit, and
 - c. Of any activity that may result in noncompliance with the requirements of this article or with any of the conditions set forth within this section;
- (9) The permit issued by the administrator is not transferable to any other person, unless the permittee provides evidence to the administrator that the requirements of 9VAC25-870-620 have been satisfied in relation to a transfer of any required state general permit;
- (10) Reports of compliance or noncompliance with, or any progress reports in regard to, any compliance schedule established by the administrator shall be submitted no later than fourteen (14) days following each schedule date;
- (11) The permittee shall immediately report any noncompliance which may endanger health or the environment. Information regarding any such noncompliance shall be provided orally within twenty-four (24) hours after the permittee becomes aware of the circumstances. The oral report shall be followed by a written report, which must be received by the administrator no later than five (5) days after the permittee became aware of the circumstances. The written report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. Examples of noncompliance that require reports pursuant to this condition include, without limitation: any unanticipated bypass that exceeds an applicable effluent limitation; any upset that exceeds an applicable effluent limitation; and violation of a maximum daily discharge limitation for any pollutants required by the state to be reported within twenty-four (24) hours.
- (12) Any noncompliance not reported under conditions (9) or (10), above, shall be reported by the permittee to the administrator in writing at the time the next monitoring report is submitted to the administrator. The report of noncompliance shall contain the same information required for reports made pursuant to condition (10), above;

- (13) Where the land-disturbing activity is also subject to coverage under the state general permit, or other state permit, the permittee shall comply with all conditions and requirements of such state permit(s), including, without limitation, those conditions set forth within 9VAC25-870-430. The permittee shall provide to the administrator copies of submissions, reports, and information required to be given to the state, simultaneously with transmittal to the state. In addition to any remedies under state law and the regulations, state permit noncompliance shall be grounds for enforcement action under this article, and for termination, revocation, reissuance or modification of the permit issued by the administrator pursuant to section 10-9 of Article I;
 - (14) All applications, reports and information submitted to the administrator shall be signed and certified in the manner, and by such person(s) prescribed within 9VAC25-870-370;
 - (15) In the event the permittee becomes aware that it failed to submit any relevant facts in any application to the administrator for a permit, or that it submitted incorrect information to the administrator in any application, or any other submission, report, or document required by this article, the permittee shall promptly submit the relevant facts or correct information to the administrator;
 - (16) All stormwater management control devices and facilities, and other techniques for management of the quality and/or quantity of stormwater runoff, shall be designed, installed, implemented, constructed and maintained in accordance with the approved stormwater management plan approved for the development and all other applicable requirements of this article; and
 - (17) The permit issued by the administrator may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a modification, revocation and reissuance or termination, or a notification of planned changes or anticipated noncompliance, shall not operate as a stay of the permittee's obligation to perform the requirements of any condition referenced in this section.
- (b) Within sixty (60) days of the completion of the requirements of all of the permit conditions, the performance guarantee required by section 10-9(3), or the unexpended or unobligated portion thereof, will be refunded or terminated.

(5-5-14, § 3, eff. 7-1-4)

Sec. 10-56. - Long-term maintenance of permanent stormwater facilities.

- (a) The administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of stormwater. Such requirements shall be set forth in an instrument recorded in the local land records prior to permit issuance. Every such instrument shall:
 - (1) Be submitted to the administrator for review and approval prior to the approval of the stormwater management plan;
 - (2) Include an express statement that the maintenance responsibility shall run with the land;
 - (3) Provide a right of ingress and egress to and from stormwater management facilities and other techniques, sufficient to provide all necessary access to the property for purposes of maintenance and regulatory inspections;
 - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the administrator; and
 - (5) Clearly recognize a right of enforcement by all appropriate public bodies, including state and local authorities.
- (b) Except as provided below, the city shall have no responsibility for maintenance or repair of stormwater management facility, BMP or other technique (individually and collectively, a "facility") designed and implemented to manage the quality and quantity of stormwater. Acceptance or approval of an easement, subdivision plat, site plan or other plan of development shall not constitute

acceptance by the city or the administrator of responsibility for the maintenance, repair or replacement of any such facility. As used in this paragraph, "maintenance, repair or replacement" shall include, without limitation, cleaning of the facility, maintenance of property adjacent to the facility, installation, repair or replacement of fencing surrounding a facility, and posting of signs indicating the name of the entity responsible for maintenance of the facility.

- (1) In the event that any common interest community, as defined in Virginia Code § 55-528, desires to cede or transfer responsibility for maintenance, repair and replacement of a stormwater management facility, or other technique for management of the quality and quantity of stormwater, to the city, (i) the common interest community and city council must enter into a written contract, or other instrument, executed by both parties, and (ii) prior to execution of any contract or instrument, the city council shall have accepted the responsibility ceded or transferred by the common interest community by resolution.
- (2) In the event that any person, including any entity other than a common interest community, desires to cede or transfer responsibility for maintenance, repair and replacement of a facility to the city, the process for the city's approval and acceptance of such responsibility shall be the same as specified in subparagraph (b)(1), preceding above.
- (c) No facility shall be identified on any subdivision plat, site plan or other plan of development, as being dedicated for public use, unless such facility is to be constructed as part of the city-owned and -operated public storm sewer system, and is subject to a performance guarantee requiring the facility to be designed and constructed in accordance with city standards.
- (d) If the administrator (i) has developed a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which such facilities are located, and (ii) is satisfied that there an enforceable mechanism exists by which future maintenance of such facilities will be addressed, then the recorded instrument referenced in paragraph (a), above, need not be required for stormwater management facilities designed for and implemented to treat stormwater runoff from such individual residential lot.

(5-5-14, § 3, eff. 7-1-4)

Sec. 10-57. - Monitoring and inspections; information.

- (a) The administrator, or any authorized agent of the administrator, shall inspect land-disturbing activity during construction for:
 - (1) Compliance with the approved erosion and sediment control plan;
 - (2) Compliance with the approved stormwater management plan and applicable permit conditions;
 - (3) Development, modification, updating, and implementation of a SWPPP, including, without limitation, any component pollution prevention plan, when required; and
 - (4) Development, modification, updating, and implementation of any additional control measures necessary to address a TMDL.
- (b) Following completion of the installation or construction of stormwater management facilities, the administrator shall conduct periodic inspections, to determine whether measures are being maintained as provided in the approved plan, or to investigate a complaint pertaining to the plan. Such post-construction inspections shall be conducted by the administrator at least once every five (5) years.
- (c) A construction record drawing shall be submitted to the administrator upon completion of the installation or construction of any permanent stormwater management facility or facilities, including, without limitation, permanent BMPs. The construction record drawing shall be signed and sealed by a licensed professional, as defined in section 10-5, and shall contain a certification of such professional that the stormwater management facility or facilities have been constructed in accordance with the approved stormwater management plan.

- (d) Consistent with the authority conferred within Virginia Code § 62.1-44.15:39, the administrator, or an authorized agent of the administrator, may, at reasonable times and under reasonable circumstances, enter any site or property, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article.
- (e) The administrator may also enter any establishment or upon any property, public or private, at reasonable times and under reasonable circumstances, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity, when a permittee, after proper notice, has failed to take acceptable action within the time specified.
- (f) Pursuant to Virginia Code § 62.1-44.15:40, the administrator may require every permit applicant or permittee, any operator, or any other person subject to permit requirements, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article.

(5-5-14, § 3, eff. 7-1-4)

Sec. 10-58. - Modification of approved stormwater management plans.

- (a) The administrator may require that an approved stormwater management plan be amended, within a time prescribed by the administrator, to address any deficiencies noted during any inspection.
- (b) Any modification(s) of an approved stormwater management plan shall be allowed only after review and written approval of the administrator. Following receipt of a complete request, supported by such information deemed necessary by the administrator to determine compliance with the requirements of this article and Article I, the administrator shall have sixty (60) days to act on the request, either by approval or by disapproval set forth in writing. The administrator's review and decision shall be based on the requirements set forth within the regulations, and those set forth within this article and within Article I.

(5-5-14, § 3, eff. 7-1-4)

Sec. 10-59. - Enforcement.

- (a) If the administrator determines that there is a failure to comply with a permit or any permit conditions, or if the administrator determines there is an unauthorized discharge, the administrator shall serve notice upon the permittee or other person responsible for carrying out the permit conditions, by any of the following: verbal warnings, written inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served by mailing with confirmation of delivery to the address specified in the permit application, or by delivery at the site of the land-disturbing activities, to the agent or employee supervising such activities.
 - (1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued, or the permit may be revoked by either the administrator or the board.
 - (2) If a permittee fails to comply with a notice issued in accordance with this section within the time specified, the administrator may issue an order ("stop work order") requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit, to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed. A stop work order shall be in writing, and shall become effective upon service on the person (i) by mailing, with confirmation of delivery, sent to the person's address specified in the land records of the city, or (ii) by personal delivery by an agent of the administrator. However, if the administrator finds that any violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the

watersheds of the Commonwealth, or is otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency stop work order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued a stop work order is not complying with the terms thereof, the administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with this section.

- (b) Any person violating or failing, neglecting, or refusing to obey any provision of this article, any order issued hereunder, or any permit condition, may be compelled in a proceeding instituted in the circuit court for the City of Charlottesville to obey same and to comply therewith by injunction, mandamus or other appropriate remedy, as set forth within Virginia Code §§ 62.1-44.15:42 and 62.1-44.15:48(D). If the administrator applies to a court to enjoin a violation or a threatened violation of the provisions of this article, the administrator shall not be required to show that an adequate remedy at law exists.
- (c) A person who violates this article may be subject to criminal prosecution and criminal penalties, as follows:
 - (1) Any person who willfully or negligently violates any provision of this article, any regulation or order of the board, any order of the administrator, any order of DEQ, any permit condition, or any order of a court, shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve (12) months and a fine of not less than two thousand five hundred dollars (\$2,500.00) nor more than thirty-two thousand five hundred (\$32,500.00), either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection be sentenced to pay a fine of not less than ten thousand dollars (\$10,000.00).
 - (2) Any person who knowingly violates any provision of this article, any regulation or order of the board, any order of the administrator or of DEQ, or any permit condition, or any order of a court issued as herein provided, or who knowingly makes any false statement in any application, form or submission required by this article, or who knowingly renders inaccurate any monitoring device or method required to be maintained, shall be guilty of a felony punishable by a term of imprisonment of not less than one (1) year nor more than three (3) years, or in the discretion of the jury, or the court trying the case without a jury, confinement in jail for not more than twelve (12) months and a fine of not less than five thousand dollars (\$5,000.00) or more than fifty thousand dollars (\$50,000.00) for each violation. A defendant that is not an individual shall, upon conviction of a violation under this subsection be sentenced to pay a fine of not less than ten thousand dollars (\$10,000.00)
 - (3) Any person who knowingly violates any provision of this article, and who knows at that time that he or she thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two (2) years or more than fifteen (15) years and a fine of not more than two hundred fifty dollars (\$250,000), either or both. A defendant that is not an individual shall, upon conviction of a violation under this provision, be sentenced to pay a fine not exceeding the greater of one million dollars (\$1,000,000.00) or an amount that is three (3) times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment, for any subsequent conviction of the same person under this provision.
- (d) Any person who violates any provision of this article, any order issued hereunder, or any permit condition, shall be subject to a civil penalty imposed by the administrator, not to exceed thirty-two thousand five hundred dollars (\$32,500.00) per day for each violation. Each day a violation continues shall constitute a separate offense. The administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
 - (1) Violations for which a penalty may be imposed under this paragraph (e) shall be as follows:
 - a. No state permit registration;
 - b. No approved stormwater management plan;

- c. No SWPPP; an incomplete SWPPP; SWPPP not available for review at the site;
 - d. No approved erosion and sediment control plan;
 - e. Failure to install stormwater BMPs or erosion and sediment controls;
 - f. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
 - g. Failure to conduct land-disturbing activity in accordance with operational requirements established by regulations or by this chapter;
 - h. Failure to conduct required inspections;
 - i. Incomplete, improper, or missed inspections; and
 - j. Discharges not in compliance with the requirements of Section 9VAC50-60-1170 of the state general permit.
- (2) Any civil penalties assessed by a court as a result of a civil summons issued by the administrator shall be paid into the treasury of the city, to be used as specified within Virginia Code § 62.1-44.15:48(A).

(e) With the consent of any person who has violated or failed, neglected or refused to obey any provision or requirement of this article or any regulation, statute, ordinance, standard or specification referenced herein, or any permit, or any permit condition, the administrator may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in paragraph (d), above. Any such civil charges shall be instead of any civil penalty that could be imposed under this section. Any civil charges collected shall be paid into the treasury of the city, to be used as specified within Virginia Code § 62.1-44.15:48(A).

(5-5-14, § 3, eff. 7-1-4)

Secs. 10-60—10-70. - Reserved.

ARTICLE IV. - STREAM BUFFERS

Sec. 10-71. - Duty to retain or establish stream buffer.

- (a) Except as otherwise provided in this article, any land adjacent to the following listed waters, shall provide buffers for the purposes of retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff:
 - (1) Rivanna River;
 - (2) Moore's Creek;
 - (3) Meadow Creek.
- (b) A required stream buffer shall be no less than one hundred (100) feet wide on each side of the stream, which buffer shall be measured horizontally from the top of the stream bank.
- (c) Existing stream buffers shall be retained, except as allowed in section 10-74(d).
- (d) Each required stream buffer shall be maintained and incorporated into the design of the land development to the fullest extent possible.
- (e) Within a required stream buffer, no indigenous vegetation shall be disturbed or removed, except as follows:
 - (1) Activities pertaining to the management of the stream buffer, identified in section 10-72 of this article;
 - (2) Development activities authorized in a stream buffer, identified in section 10-74

- (3) Activities authorized in section 10-73
- (4) Tilling, planting or harvesting of agricultural or horticultural crops in home gardens.
- (f) With respect to developments that are required to have an approved site plan, and involving land containing existing and/or required stream buffers, contour lines shall be shown at two-foot intervals. In any case where any proposed development requires an approved plan other than a site plan, the location of existing and required stream buffers shall be shown on such plan.

(9-20-04, § 1)

Sec. 10-72. - Management of a stream buffer.

Each stream buffer required to be established or maintained pursuant to this article shall be managed as provided herein:

- (1) The target vegetative cover in a stream buffer area shall be an indigenous riparian forest with ground cover, shrub and tree canopy layers.
- (2) Within twenty-five (25) feet of the top of the stream bank:
 - a. Indigenous riparian vegetation shall be preserved, or, where it does not exist, it shall be restored or allowed to evolve by natural succession;
 - b. Dead, diseased, and dying trees may be removed;
 - c. Fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where stream bank erosion is a current or potential problem that outweighs any positive effects the fallen tree or trees may have on the stream ecosystem;
 - d. Removal or pruning of invasive shrub and vine species is allowed, provided that such removal or pruning is done in a manner that prevents erosion;
 - e. Unpaved pathways and trails may be constructed and maintained in a manner that will effectively control erosion and to minimize adverse impacts to the buffer, subject to applicable provisions of section 10-74, below; and
 - f. Stormwater channels may be constructed and maintained in a manner that will prevent erosion and minimize adverse impacts to the buffer.
- (3) Beyond twenty-five (25) feet from the top of the stream bank to the limits of the required buffer:
 - a. Dead, diseased and dying trees may be removed;
 - b. Trees six (6) inches in diameter or greater, measured forty-eight (48) inches from the ground, shall be preserved;
 - c. Removal or pruning of invasive shrub and vine species shall be allowed, provided that such removal or pruning is done in a manner that prevents erosion; and
 - d. Unpaved pathways and trails may be constructed and maintained in a manner that will effectively control erosion and minimize adverse impacts to the buffer, subject to applicable provisions of section 10-74, below.
 - e. Stormwater channels may be constructed and maintained in a manner that will prevent erosion and minimize adverse impacts to the buffer.

(9-20-04, § 1)

Sec. 10-73. - Development exempt from stream buffer requirements.

The following types of development shall not be required to retain, establish or manage a stream buffer, provided that the requirements of this section are satisfied:

- (1) The construction, installation, operation and maintenance of electric, gas and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, which are accomplished in compliance with the Erosion and Sediment Control Law (Virginia Code § 10.1-560 et seq.) or an erosion and sediment control plan approved by the Virginia Soil and Water Conservation Board.
- (2) The construction, installation and maintenance by public agencies of water, sewer, electric and gas lines, including lines constructed by private entities for dedication to public agencies, provided that:
 - a. To the extent practical, the location of such lines shall be outside required stream buffer areas;
 - b. No more land shall be disturbed than is necessary to construct, install and maintain the water or sewer lines; and
 - c. Construction, installation and maintenance of such lines shall comply with applicable federal, state and local requirements and permits and be conducted in a manner that protects water quality.

(9-20-04, § 1)

Sec. 10-74. - Development authorized in a stream buffer.

If otherwise authorized by applicable regulations of the city's zoning ordinance, the following land development activities shall be allowed in a stream buffer area, provided that the requirements of this section are satisfied and performance standards established by the program authority are met:

- (1) A building or structure which existed on the date of adoption of this chapter may continue at such location. However, nothing in this section authorizes the continuance, repair, replacement, expansion or enlargement of such building or structure except as authorized by the city's zoning ordinance.
- (2) On-site or regional stormwater management facilities, and temporary erosion and sediment control measures, provided that:
 - a. To the extent practical the location of such facilities shall be outside the stream buffer;
 - b. No more land shall be disturbed than is necessary to provide for construction and maintenance of the facility;
 - c. The facilities are designed and constructed so as to minimize impacts to the functional value of the stream buffer and to protect water quality; and
 - d. Facilities located within a floodplain adhere to floodplain regulations and are designed and located, to the extent practical, to maintain their water quantity and/or water quality control value during flood conditions.
- (3) Water dependent facilities, passive recreation access (such as unpaved pathways and trails), historic preservation, and archaeological activities, provided that all applicable federal, state, and local permits are obtained.
- (4) Development in a stream buffer, where authorized by the program authority in the circumstances described below, may be allowed if a mitigation plan is submitted to and approved by the program authority pursuant to section 10-75
 - a. On a lot which was of record prior to the date of adoption of this chapter, if (i) establishment or preservation of the stream buffer would result in the loss of a building site, and there are no other available building sites outside the stream buffer on the lot, or (ii) the proposed development consists of redevelopment not exceeding the current level of encroachment resulting from existing improvements, or (iii) the proposed development is for construction of an accessory building or structure (including, without limitation, an accessory apartment) permitted by the city's zoning ordinance, provided that such

accessory building or structure must be located within the first fifty (50) landward feet of the buffer and provided further that the footprint of any such accessory building or structure shall not exceed four hundred (400) square feet.

- b. On a lot on which development within the stream buffer will consist of an ecological/wetland restoration project;
- c. On a lot on which the development in the stream buffer will consist of the construction and maintenance of a driveway or roadway, and the program authority determines that the stream buffer would prohibit reasonable access to a portion of the lot which is necessary for the owner to have a reasonable use of the lot;
- d. On a lot on which the development in the stream buffer will consist of the construction and maintenance of a paved pathway or trail exceeding three (3) feet in width;
- e. On a lot which was of record prior to the date of adoption of this chapter, on which development within the stream buffer will consist of the construction, installation and maintenance of water and sewer facilities or sewage disposal systems, and the program authority determines that the stream buffer would prohibit the practicable development of such facilities or systems.

(9-20-04, § 1)

Sec. 10-75. - Mitigation plan required.

Each owner who seeks to develop in a stream buffer pursuant to section 10-74(d) shall submit to the program authority for review and approval a mitigation plan as provided herein:

- (1) The owner shall submit a mitigation plan that satisfies the applicable requirements of this section; the required fee, as set forth within the most recent fee schedule approved by city council; and a certification stating that all requirements of the approved plan will be complied with.
- (2) The mitigation plan shall be reviewed by the program authority to determine whether it complies with the requirements of this section and all other requirements of this article. The program authority shall approve or disapprove a mitigation plan within thirty (30) days of the date that a complete plan was accepted for review. The decision shall be in writing and shall be communicated to the owner. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.
- (3) Each mitigation plan shall:
 - a. Identify the impacts of proposed development on water quality and lands within the stream buffer;
 - b. Identify the alternatives to development in the stream buffer that have been explored by the applicant;
 - c. Ensure that, where development does take place within a stream buffer, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of the stream buffer;
 - d. Demonstrate and assure that development will be conducted using best management practices;
 - e. Specify mitigation which will address water quality and stream buffer impacts; and
 - f. Contain other information requested by the program authority.
- (4) Each mitigation plan shall be evaluated by the program authority based on the following criteria:
 - a. Whether all reasonable alternatives to development in the stream buffer have been explored and exhausted;

- b. Whether the development in the stream buffer is the minimum necessary and is to be conducted in a manner that will be least disruptive to the natural function of the stream buffer; and
- c. Whether best management practices will effectively mitigate adverse impacts from the encroachment on the stream buffer and its natural functions.

(9-20-04, § 1)

Sec. 10-76. - Penalties and remedies.

- (a) Any person who violates any provision of this article shall be guilty of a misdemeanor and shall be subject to a fine not exceeding one thousand dollars (\$1,000.00) or up to thirty (30) days imprisonment, or both, for each violation.
- (b) The city may apply to the circuit court for the City of Charlottesville, to enjoin a violation or a threatened violation of the provisions of this article, without the necessity of showing that an adequate remedy at law exists.
- (c) Without limiting the remedies that may be obtained pursuant to this section, the city may bring a civil action against any person for violation of this article. The action may seek the imposition of a civil penalty of not more than two thousand dollars (\$2,000.00) against the person for each violation.
- (d) With the consent of any person who has violated or failed, neglected or refused to obey any provision of this article, the program authority may provide, in an order issued by the program authority against such person, for the payment of a civil charge for any violation, in a specific sum, not to exceed two thousand dollars (\$2,000.00) per violation. Such civil charge shall be in lieu of any civil penalty which could be imposed under paragraph (c).

(12-5-05(1))

Secs. 10-77—10-89. - Reserved.

ARTICLE V. - STORM SEWER DISCHARGES

Sec. 10-90. - Findings and determinations.

- (a) Pollutants in stormwater from many sources are largely uncontrolled and have an adverse impact upon the quality of receiving waters. Major sources of stormwater that cause water quality impacts include construction sites, illicit connections, illegal discharges and industrial activities.
- (b) Amendments to the federal Clean Water Act (CWA) in 1987 required the United States Environmental Protection Agency to establish National Pollutant Discharge Elimination System (NPDES) requirements for municipal separate storm sewer (MS4) systems. NPDES regulations require the city to control through ordinance, permit, contract or other available means (collectively, the city's "stormwater management program") the contribution of pollutants into waters of the United States.
- (c) This article is adopted as an integral part of the city's stormwater management program.

(9-20-04, § 1)

Sec. 10-91. - Discharges to the city's storm sewer system.

- (a) It shall be unlawful and a violation of this article to:
 - (1) Cause or allow any illicit discharge to the city's storm sewer system;

- (2) Connect, or cause or allow to be connected, any sanitary sewer to the storm sewer system, except any such connections owned or authorized by the city prior to September 20, 2004;
 - (3) Cause or allow any illicit connection to the city's storm sewer system; or
 - (4) Violate any condition or provision of this article, or any permit or approval granted to allow any stormwater discharges to the city's storm sewer system.
- (b) Subject to the provisions of subsection (c) of this section, the following activities shall not be considered illicit discharges:
- (1) Water line flushing;
 - (2) Landscape irrigation;
 - (3) Diverting stream flows or rising groundwater, or infiltration of uncontaminated groundwater;
 - (4) Public safety activities, including, but not limited to, law enforcement and fire suppression;
 - (5) Pumping of uncontaminated groundwater from potable water sources, foundation drains, irrigation waters, springs, or water from crawl spaces or footing drains;
 - (6) Lawn watering;
 - (7) Individual car washing on residential properties;
 - (8) De-chlorinated swimming pool discharges (less than 1 PPM chlorine);
 - (9) Street washing;
 - (10) Any activity authorized by a valid National Pollutant Discharge Elimination System (NPDES) permit, waiver or discharge order, a Virginia Pollutant Discharge Elimination System (VPDES) permit, waiver or discharge order, or a Virginia Pollution Abatement (VPA) permit;
 - (11) Any activity by a governmental entity in accordance with federal, state, and local regulations and standards for the maintenance or repair of drinking water reservoirs or drinking water treatment or distribution systems; and
 - (12) Any activity by the city, its employees and agents, in accordance with federal, state and local regulations and standards, for the maintenance of any component of its stormwater management system.
 - (13) Discharges specified in writing by the director as being necessary to protect public health and safety.
 - (14) Dye testing, following notification to the city's environmental administrator.
- (c) If any of the activities listed in subsection (b), above, of this section are found to be sources of pollutants to public waters, the director (as defined in section 10-5 of this chapter) shall so notify the person performing such activities and shall order that such activities be stopped or conducted in such manner as to avoid the discharge of pollutants into such waters. The failure to comply with any such order shall be unlawful and a violation of this article.

(9-20-04, § 1; 12-5-05(1))

Sec. 10-92. - Inspections and monitoring.

- (a) The director, as defined in section 10-5 of this chapter, shall have authority to carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with the provisions of this article, including the prohibition of illicit discharges to the storm sewer system. The director may monitor stormwater outfalls or other components of the municipal storm sewer system as may be appropriate in the administration and enforcement of this article.
- (b) The director shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of a VPDES permit.

(9-20-04, § 1; 12-5-05(1))

Sec. 10-93. - Enforcement, penalties, remedies.

- (a) A willful violation of the provisions of this article shall constitute a Class 1 misdemeanor. Each day that a continuing violation of this article is maintained or permitted to remain shall constitute a separate offense.
- (b) Any person who commits any act prohibited by this article shall be liable to the city for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the storm sewer system.
- (c) Any person who commits any act prohibited by this article shall be subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000.00) for each day that a violation continues. The court assessing such penalty may, at its discretion, order that the penalty be paid into the treasury of the city for the purpose of abating, preventing or mitigating environmental pollution.
- (d) The city, acting by and through the director, may bring legal action to enjoin the continuing violation of this article. The existence of any other remedy at law or in equity, shall be no defense to any such action.
- (e) The director shall have authority to order that any activity found to be in violation of this article be stopped or conducted in such a manner as to avoid the discharge of sewage, industrial wastes or other wastes into the storm sewer system.
- (f) Any discharge caused or permitted to exist in violation of any provisions of this article constitutes a threat to the public health, safety and welfare, and is hereby declared and deemed a public nuisance. Following receipt of written notice of such nuisance from the director, if the responsible person fails to abate or obviate such nuisance, then the city may do so and charge and collect the cost thereof from the responsible person, in any manner provided by law (including, without limitation, any manner provided by law for the collection of state or local taxes).
- (g) The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted.

(9-20-04, § 1; 12-5-05(1))

Secs. 10-94—10-99. - Reserved.

ARTICLE VI. - STORMWATER UTILITY

FOOTNOTE(S):

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Editor's note— An ordinance adopted February 19, 2013, § 1, added the Code by adding provisions designated as a new Art. VI, §§ 10-100—10-108. It should be noted that section 2 of said ordinance provides, "This ordinance shall take effect on January 1, 2014 with first billing in April/May 2014. The first billing will cover the six-month period from January 1, 2014 to June 30, 2014."

Sec. 10-100. - Authority.

The city is authorized by Virginia Code § 15.2-2114 et seq. to establish a utility and to enact a system of service charges to support a local stormwater management program consistent with the Virginia Stormwater Management Act (Virginia Code § 10.1-603.1 et seq.) or any other state or federal regulation governing stormwater management.

(2-19-13, eff. 1-1-14)

Sec. 10-101. - Purpose.

The city council finds that an adequate, sustainable source of revenue for stormwater management activities is necessary to protect the general health, safety, and welfare of the residents of the city. Further, the city council finds that property with higher amounts of impervious area contributes greater amounts of stormwater and pollutants to the stormwater management system and waters of the commonwealth and should carry a proportionate burden of the cost. Therefore, the city council determines that it is in the best interest of the public to enact a stormwater utility fee that allocates program costs to all property owners based on impervious area.

(2-19-13, eff. 1-1-14)

Sec. 10-102. - Definitions.

The following definitions shall apply to this article unless the context clearly indicates otherwise:

Billing unit means five hundred (500) square feet of impervious area.

Director means the director of public works or the director's authorized representative.

Impervious area means area covered by hard surfaces such as structures, paving, compacted gravel, concrete, or other man-made features that prevent, restrict, or impede the downward passage of stormwater into the underlying soil.

Unimproved parcel means any parcel regardless of zone or land use that has less than three hundred (300) square feet of impervious area.

(2-19-13, eff. 1-1-14)

Sec. 10-103. - Stormwater utility fee.

- (a) A stormwater utility fee is hereby imposed on every parcel of improved real property in the city that appears on the real property assessment rolls as of December 31 of each year. All stormwater utility fees and other income from the fees shall be deposited into the water resources protection fund.
- (b) The rate per billing unit to be used for calculating the stormwater utility fee shall be one dollar and twenty cents (\$1.20) per month.
- (c) Except as otherwise provided in this article, the impervious area for a property shall be determined by the city using aerial photography, as-built drawings, final approved site plans, field surveys or other appropriate engineering and mapping analysis tools.
- (d) Notwithstanding subsection (a) above, and consistent with Virginia Code § 15.2-2114, the stormwater utility fee shall be waived in its entirety for the following:
 - (1) A federal, state, or local government, or public entity, that holds a permit to discharge stormwater from a municipal separate storm sewer system; except that the waiver of charges shall apply only to property covered by any such permit;
 - (2) Public roads and street rights-of-way that are owned and maintained by state or local agencies including property rights-of-way acquired through the acquisitions process; and,
 - (3) Unimproved parcels.

(2-19-13, eff. 1-1-14)

Sec. 10-104. - Stormwater utility fee calculation.

- (a) It is the intent of city council to set the stormwater utility fee at an amount that will be sufficient to provide for a balanced operating and capital improvement budget for the stormwater utility. Income derived from the utility charges shall be dedicated special revenue and may not exceed the actual costs incurred to operate and maintain the city's stormwater management system.

- (b) Unless otherwise specified in this article, the monthly stormwater utility fee for all property in the city shall be calculated in the following manner:
 - (1) Determine the impervious area of each parcel of real property in square feet;
 - (2) Divide the property's impervious area by the billing unit;
 - (3) Round the resulting calculation to the next highest whole number to determine the number of billing units and multiply by the rate established in section 10-103(b) to obtain the monthly stormwater utility fee for the property.
- (c) The stormwater utility fee applicable to property held by a common interest community association, as defined in Virginia Code § 55-528, shall be charged directly to the association based on the methodology established in subsection (a) above, except that the director may develop alternative methodologies for billing fees associated with property held by a common interest community association, including but not limited to dividing the fee among the lots other than the common area that constitute the common interest community.

(2-19-13, eff. 1-1-14)

Sec. 10-105. - Stormwater utility fee credits.

- (a) The city council shall adopt by resolution a system of credits in accordance with Virginia Code § 15.2-2114.D that provide for full or partial waivers of charges to any person who installs, operates, and maintains a stormwater management facility that achieves a permanent reduction in stormwater flow or pollutant loadings. The amount of the waiver shall be based in part on the percentage reduction in stormwater flow or pollutant loadings, or both, from pre-installation to post-installation of the facility. The credit policy may also, in accordance with Virginia Code § 15.2-2114.E, provide for full or partial waivers of charges to public or private entities that implement or participate in strategies, techniques, or programs that reduce stormwater flow or pollutant loadings, or decrease the cost of maintaining or operating the public stormwater management system.
- (b) The department of public works will develop written policies to implement the system of credits. No credit will be authorized until the city council approves written policies to implement the system of credits; a copy of the approved policies shall be on file with the department of public works. Nothing shall prevent the city council from modifying the adopted system of credits, and such modifications may apply to holders of existing credits.

(2-19-13, eff. 1-1-14)

Sec. 10-106. - Water resources protection fund.

- (a) The water resources protection fund is hereby established as a dedicated enterprise fund. The fund shall consist of revenue generated by the stormwater utility fee as well as any other deposits that may be made from time to time by the city council.
- (b) The water resources protection fund shall be dedicated special revenue used only to pay for or recover costs for the following:
 - (1) The acquisition, as permitted in Virginia Code § 15.2-1800, of real and personal property, and interest therein, necessary to construct, operate, and maintain stormwater control facilities;
 - (2) The cost of administration of the water resources protection program;
 - (3) Planning, design, engineering, construction, and debt retirement for new facilities and enlargement or improvement of existing facilities, whether publicly or privately owned, that serve to control stormwater;
 - (4) Facility operation and maintenance;
 - (5) Monitoring of stormwater control devices and ambient water quality; and

- (6) Other activities consistent with the state or federal regulations or permits governing stormwater management, including, but not limited to, public education, watershed planning, inspection and enforcement activities, and pollution prevention planning and implementation.

(2-19-13, eff. 1-1-14)

Sec. 10-107. - Billing, enforcement, and interest.

- (a) The stormwater utility fee shall be billed twice annually to the record owner of each parcel subject to the fee. All such bills shall be mailed not later than fourteen (14) days prior to the due dates of June fifth and December fifth, as the case may be, unless a petition for adjustment has been made in accordance with City Code section 10-108 below. Any fee not paid in full by the respective due date shall be considered delinquent. The billing for the stormwater utility fee may be combined with other billings and, when combined, the order in which payments will be applied will be as follows:
 - (1) Stormwater utility fee;
 - (2) All other taxes and fees.
- (b) A delinquent stormwater utility fee, in accordance with Virginia Code § 15.2-2114.G, shall be subject to the legal rate of interest provided in Virginia Code § 6.2-301(A). Such interest shall be applied to late payments overdue for more than thirty (30) days, and shall be calculated for the period commencing on the first day following the day such fee is first due, until the date the fee is paid in full.
- (c) A delinquent stormwater utility fee, along with cumulative interest, shall constitute a lien on the property ranking on a parity with liens for unpaid taxes and shall be collected in the same manner as provided for the collection of unpaid taxes.

(2-19-13, eff. 1-1-14)

Sec. 10-108. - Petitions for adjustments.

- (a) Any property owner may request an adjustment of the stormwater utility fee by submitting a request in writing to the director within thirty (30) days after the date the bill is mailed or issued to the property owner. Grounds for adjustment of the stormwater utility fee are limited to the following:
 - (1) An error was made regarding the square footage of the impervious area of the property;
 - (2) The property is exempt under the provisions of section 10-103(d) above;
 - (3) There is a mathematical error in calculating the stormwater utility fee;
 - (4) The identification of the property owner invoiced is in error; or,
 - (5) An approved credit was incorrectly applied.
- (b) The property owner shall complete a stormwater utility fee adjustment application form available on the city's website or supplied by the director.
- (c) If the application alleges an error in the amount of the impervious area, a plan view of the property's impervious area will be provided by the city with labeled dimensions of all impervious areas within the property boundaries, including buildings, patios, driveways, walkways, parking areas, compacted gravel areas, and any other separate impervious structures identified in the city's impervious area database.
- (d) If the applicant is not satisfied with this assessment, the applicant may:
 - (1) Request a meeting with the director; and/or,
 - (2) Submit an appeal with a revised plan signed and sealed by a professional engineer or professional land surveyor licensed in the Commonwealth of Virginia attesting to the accuracy of the impervious area measurements.

- (e) The requirement for a plan view of the property's impervious area required in subsection (c) above may be waived by the director, if at the sole discretion of the director the error is obvious and is the result of a technical error or oversight by the city. In such case, the city shall be responsible for recalculating the impervious area of the property.
- (f) The director shall make a determination within forty-five (45) days of receipt of a complete submittal for the request for adjustment. In the event that the director finds that the appeal is deficient or incomplete, the director shall offer the owner sixty (60) days to supply the missing information. The forty-five-day time for a decision will begin at such time as the requested information is provided. If the information requested is not provided to the director within sixty (60) days of the original request, the petition will be deemed withdrawn.
- (g) The director's decision on a stormwater utility fee adjustment petition is a final decision from which an aggrieved party may appeal to the Circuit Court for the City of Charlottesville.

(2-19-13, eff. 1-1-14)