

City of Clemson

Draft Stormwater Management Ordinance

March 2015

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Chapter 11 - MUNICIPAL UTILITIES
ARTICLE V. - STORMWATER MANAGEMENT ORDINANCE

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DIVISION 1. - IN GENERAL

Sec. 11-151. – Title; purpose; authority; jurisdiction.

(a) *Title.* This article may be cited as the Stormwater Management Ordinance.

(b) *Purpose.*

- (1) In order to protect the general health, safety and welfare of the people of the City of Clemson, and to protect the natural assets and resources of the city for posterity, this article is enacted to protect the lands and waters from the effects of excessive soil erosion and sedimentation, to reduce siltation of streams and lakes, to prohibit clogging of drainage channels, to reduce excessive flood damage, and to allow for the avoidance of damage to the property of adjacent landowners from flooding.
- (2) It is further the purpose of this chapter to comply with applicable federal and corresponding state stormwater discharge (NPDES) regulations (40 C.F.R. § 122.26, § 122.32, and S.C. Regulation 61-9.122.26, 61-9.122.32) developed pursuant to the Clean Water Act, and to assure the city of the authority to take any action required by it to obtain and comply with its NPDES permit(s) for stormwater discharges. Among other things, these regulations require the city to establish legal authority that authorizes or enables the city to:
 - a. Control the contribution of pollutants into and from the Clemson Small Municipal Separate Storm Sewer System ("SMS4"), including stormwater discharges associated with residential, commercial, industrial and related facilities activity, in order to achieve compliance with all applicable state NPDES permit requirements to the maximum extent practicable (MEP);
 - b. Prohibit and eliminate illicit connections and discharges to the City of Clemson SMS4;
 - c. Allow non-stormwater discharges which that are considered non-significant contributors of pollutants;
 - d. Control the discharge of spills, and prohibit the dumping or disposal of materials other than stormwater to the City of Clemson SMS4, except as authorized by subpart (c) above;
 - e. Require compliance with conditions in ordinances, permits, contracts or orders;
 - f. Require installation, implementation, and maintenance of stormwater control measures for owners/operators of construction sites, new development and redevelopment;

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- g. Require continued implementation, and long-term maintenance of permanent stormwater control measures;
- h. To receive and collect information;
- i. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with this ordinance or permit conditions, including the prohibition on illicit discharges to the City of Clemson SMS4;
- j. To respond to violations and require violators to cease and desist illicit discharges or discharges in violation of any ordinance or standard and/or cleanup and abate such discharges;
- k. Levy monetary penalties for citations and administrative fees, require recovery and remediation costs from responsible parties, and, if necessary, recover the cost of abatement actions performed by the city;
- l. Impose civil or criminal penalties for persistent non-compliance, repeat or escalating violations, or incidents of major environmental harm; and
- m. Control, through intergovernmental agreements, contribution of pollutants from one municipal stormwater system to another;

(3) The application of this article and the provisions expressed herein shall be the minimum stormwater management requirements, and shall not be deemed a limitation or repeal of any other powers granted by statute. In addition, if site characteristics indicate that complying with these minimum requirements will not provide adequate designs or protection for local property or residents, it is the owner and operator's responsibility to exceed management practices, control techniques and systems, design and engineering methods, and implement or install such other programs and/or controls as may be required to meet all applicable construction quality, water quantity, and water quality regulations and requirements.

(4) This article is to be construed to further its purpose of controlling and reducing pollutant discharges to the City of Clemson MS4 and to the waters of the state from the City of Clemson's MS4, to the maximum extent practicable to assure the obligations under its NPDES permit issued by SC DHEC as required by 33 U.S.C. § 1251, et seq. and 40 C.F.R. § 122.26.

(c) *Authority.* This article is adopted under the authority and powers granted by the South Carolina State Constitution and the General Assembly of South Carolina in S.C. Code 1976, § 48-14-10 and 26 S.C. Code, Regulations 72-300 to 72-316, and by other powers granted to local governments by the General Assembly of South Carolina, and in compliance with the requirements imposed upon the city by the National Pollutant Discharge Elimination System ("NPDES"), and all applicable state permits and regulations issued in accordance with the federal Clean Water Act 33 U.S.C. § 1251 et seq., the South Carolina Pollution Control Act § 48-1-10,

and regulations promulgated thereunder.

- (d) *Jurisdiction.* The provisions of this article shall apply to all lands within the jurisdiction of the city.

Sec. 11-152. - Findings.

The City Council of the City of Clemson makes the following findings:

- (a) Uncontrolled stormwater runoff may have significant, adverse impacts on the health, safety and general welfare of the city and the quality of life of its citizens, by transporting pollutants into receiving waters and by causing erosion or flooding.
- (b) The city is required by federal law (33 U.S.C. § 1342(p) and 40 C.F.R. § 122.26, § 122.32) to obtain a National Pollutant Discharge Elimination System permit from the South Carolina Department of Health and Environmental Control (“SC DHEC”) for stormwater discharges from the Clemson Small Municipal Separate Storm Sewer System (SMS4). The NPDES permit requires the city to impose controls to reduce the discharge of pollutants in stormwater to the maximum extent practicable.
- (a) Additionally, certain facilities that discharge stormwater associated with an industrial activity, including land-disturbing activities, are required to obtain NPDES permits. Also, The South Carolina Stormwater Management and Sediment Reduction Act (S.C. Code §§ 48-14-10 et seq.) requires a state permit for certain land-disturbing activities.
- (b) The first phase of the city’s Stormwater Management Utility Study has been conducted, the “NPDES Phase II SMS4 Permit Analysis,” dated August 2012, which was prepared by the Engineering Department for the Mayor and Council, and the same is valid and insightful and relevant to the Stormwater Management Utility created herein, and further the problems, goals, program priorities, funding opportunities, and other findings therein are adopted herein.
- (c) Given the problems, needs, goals, program priorities, and funding opportunities identified in the engineering and financing analysis, it is appropriate to authorize the formation of an organizational and accounting entity dedicated specifically to the management, maintenance, protection, control, regulation, use, and enhancement of stormwater systems in the city in concert with other water resource management programs.
- (d) Every parcel of real property in the city either uses or benefits from the stormwater management system and the improvement of existing facilities and construction of additional facilities in the system will directly or indirectly benefit the owners of all real property. Stormwater management is applicable and needed throughout the corporate limits of the city. While specific service and facility demands may differ from area to area at any given point in time, a stormwater management service area encompassing all lands and water bodies within the corporate limits of the city is consistent with the present and future needs of the community.

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- (e) The management of stormwater runoff and sediment is necessary to reduce pollution, siltation, sedimentation, local flooding and stream channel erosion, all of which impact adversely on land and water resources and the health, safety, property and welfare of the residents of the city.
- (f) The city maintains a system of stormwater management facilities, including but not limited to, inlets, conduits, manholes, channels, ditches, drainage easements, infiltration facilities, and other components which have been developed over many years, as well as natural waterways. The future usefulness of the existing stormwater systems owned and operated by the city, and of additions and improvements thereto, rests on the ability of the city to effectively manage, protect, control, regulate, use, and enhance stormwater systems and facilities in the city in concert with the management of other water resources in the city. In order to do so, the city must have adequate and stable funding for its stormwater management program's operating and capital investment needs.
- (g) The stormwater management facilities and components of the city need to be regularly maintained, rehabilitated, upgraded or expanded, and additional stormwater management facilities and measures need to be installed throughout the city.
- (h) There is no comprehensive mapping system or base line data to assist in analysis, design and/or development of comprehensive maintenance and retrofit programs, and there is no long-term comprehensive drainage infrastructure maintenance program/plan in the city.
- (i) There are limited resources (equipment, manpower, funds) in the city to address problems comprehensively and within a defined time frame. These resources must be enhanced to address stormwater management issues across the city.
- (j) In the city, current and anticipated growth will contribute to the need for improvements in, and maintenance of, the municipal separate storm sewer system.
- (k) The city needs to upgrade its capability to maintain existing and future stormwater management facilities and measures, including preventive capital improvements to reduce incidence of localized flooding conditions that may be identified.
- (l) The city council finds, concludes and determines that a utility provides the most practical and appropriate means of properly delivering and funding stormwater management services in the city.
- (m) The city is a community comprised of citizens with a wide range of incomes with varying means to afford government services.
- (n) An equitable approach to funding stormwater management services and facilities can be provided by adopting a schedule of service charges for all properties within the city that is related to costs associated with the stormwater management services within the city. The schedule of service charges can be augmented by other funding sources as may be determined by city council.
- (o) The extent of use of the stormwater management system by each classification of real property is dependent on a variety of factors that influence runoff, such as land use, topography, intensity of development, amount of impervious surface, and location in a particular watershed or basin.

- (p) Property owners and users should finance the stormwater management system to the extent they contribute to the need for the system and to the extent they benefit from the system, and charges therefor should bear a reasonable relationship to the cost of the service, and every effort should be made to fairly and reasonably spread the cost of the system to all property owners and users.
- (q) In general, two methods for determining rates/fees are widely used: impervious area method and intensity of development method. Both rate structures attempt to provide a fair, equitable and cost-effective method of financing the utility. The city has evaluated the two methods for determining rate structures and has decided to use a modified version of the Intensity of Development Method as detailed in this chapter, and believes this decision to be in the best interests of the community and environment.
- (r) It is in the best interests of the citizens of this city and, most specifically, the owners of real property, that a Stormwater Management Utility with fees and classifications thereunder be established by ordinance and implemented as part of the city's utility enterprise system as authorized by S.C. Code §§ 48-14-10 - 48-14-150, § 5-7-30, and other relevant laws and regulations of the state.

Sec. 11-153. - Definitions.

(a) *Rules of language and interpretation.*

(1) The word "shall" is mandatory; the word "may" is permissive.

(2) The particular shall control the general.

(3) Words used in present tense shall include the future, and words used in the singular include the plural, and plural the singular, unless the context clearly indicates the contrary.

(b) For the purpose of this chapter, definitions contained in S.C. Regulation 61-9.122.2 are incorporated herein by reference. Additional terms, phrases and words shall have the meaning given below.

(c) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adverse impact means a significant negative impact to land, water and associated resources resulting from a land disturbing activity. The negative impact includes increased risk of flooding, degradation of water quality, increased sedimentation, reduced groundwater recharge, negative impacts on aquatic organisms, negative impacts on wildlife and other resources, and threatened public health.

Appeals and hearing board means the building board of appeals, as established by chapter 5 of this Code.

Applicant means a person, firm, or governmental agency who executes the necessary forms to obtain approval or a permit for a land disturbing activity.

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Appropriate plan approval agency means the City of Clemson.

As-built plans or record documents means a set of engineering or site drawings that delineate the specific permitted stormwater management facility as actually constructed.

Base Rate means the annual stormwater management fee charged per ERU (equivalent residential unit), which rate shall be set by resolution of the Clemson City Council.

Best management practices (BMPs) means schedules of activities, prohibitions of practices, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Best Management Practices Manual or BMP Manual means the most recent SC DHEC Stormwater BMP Handbook.

Certified construction inspector means a person with the responsibility for conducting inspections during construction and maintenance inspections after the land disturbing activity is completed as certified by the commission.

Certified plan reviewer means a person with the responsibility for reviewing stormwater management and sediment control plans for an appropriate plan approval agency as certified by the commission.

City means Clemson, South Carolina.

City Council means the elected officials of Clemson, South Carolina.

City Stormwater System is defined as being a Municipal Separate Storm Sewer.

Clean Water Act means the Federal Water Pollution Control Act, as amended, codified at 33 U.S.C. §§ 1251 et. seq.

Commercial Property means developed property that is not Single-Family Residential Property or Multi-Family Residential Property, to include but not be limited to Mixed Use Property, Multifamily Property, parking lots and properties used for office, retail, industrial, recreational, institutional, cultural, accommodation and assembly purposes.

Commission means the South Carolina Land Resources Conservation Commission.

Conservation district means any soil and water conservation district created pursuant to S.C. Code 1976, § 48-9-10 et seq.

Construction activity means any land clearing, grading, and excavation.

Designated watershed means a watershed designated by a local government and approved by the commission, Department of Health and Environmental Control and the South Carolina Water Resources Commission and identified as having an existing or potential stormwater, sediment control, or nonpoint source pollution problem.

Design Manual means the City of Clemson Stormwater Design Manual which includes, but is not limited to provisions for reviewing and approving stormwater management plans, design requirements

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for such plans and land-disturbing activities, and operational and maintenance requirements for stormwater management facilities and measures.

Design storm means a Soil Conservation Service Type II, 24-hour-duration storm, with a specified return interval or as otherwise specified by the City Engineer.

Detention structure means a permanent stormwater management structure whose primary purpose is to temporarily store stormwater runoff and release the stored runoff at controlled rates.

Developed Property means real property which has been altered from its natural state by the addition of any improvements such as buildings, structures, or other impervious surface area. For new construction, property shall be considered developed property upon final approval of site improvements by the City Engineer.

Developer means a person undertaking or for whose benefit activities covered by these regulations are commenced and/or carried out.

Development intensity factor (DIF) means the ratio of a developed property's runoff coefficient (C) to the standard residential unit's runoff coefficient (C). A development intensity factor (DIF) shall be determined by calculating an average runoff coefficient (C) from several similar uses within each classification. Dividing the calculated "C" value by the ERU "C" value of 0.36 derives the DIF.

Development or developed land means any of the following actions undertaken by any person, including, without limitation, any public or private individual or entity:

- (a) Division of a lot, tract or parcels, or other divisions by plat or deed;
- (b) The construction, installation or alteration of a structure, impervious surface or drainage facility;
- (c) Clearing, scraping, grubbing or otherwise significantly disturbing the soil, vegetation, mud, sand or rock of a site; or
- (d) Adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging or otherwise disturbing the soil, vegetation, mud, sand or rock of a site.

District means any soil and water conservation district created pursuant to Chapter 9, Title 48, S.C. Code of Laws.

Drainage area means that area contributing runoff to a single point.

Drainage plan means a set of drawings, other documents, and supporting calculations, submitted by a person as a prerequisite to obtaining a permit to undertake a land disturbing activity, which contains all of the information and specifications required by an implementing agency.

Dwelling unit means a unit providing complete, independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Easement means a grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

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Equivalent residential unit (ERU) means an equivalency unit defined to be equal one single-family residence.

Erosion means the wearing away of land surface by the action of wind, water, gravity, ice, or any combination of those forces.

Erosion and sediment control means the control of solid material, both mineral and organic, during a land disturbing activity to prevent its transport out of the disturbed area by means of air, water, gravity, or ice.

Excess stormwater runoff means that portion of stormwater which exceeds the safe storm drainage capacity of storm sewer or natural drainage channel serving a specific watershed.

Exemption means those land disturbing activities that are not subject to the sediment and stormwater requirements contained in these regulations.

Grading means excavating, filling (including hydraulic fill) or stockpiling of earth material, or any combination thereof, including the land in its excavated or filled condition.

Fee means the annual amount charged to a utility customer, owner, or occupant of real property for the services provided by the Stormwater Utility.

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

Hydrologic response means the manner and means whereby stormwater collects, remains, infiltrates, and/or is conveyed from a property. It is dependent on several factors including, but not limited to, the presence of impervious area, the size, shape, topographic, vegetative, and geologic conditions of a property, antecedent moisture conditions, and groundwater conditions on a property.

Impervious surface means those areas which prevent or impede the infiltration of stormwater into the soil as it entered in natural conditions prior to development. Common impervious areas include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel and solid surfaces, awnings and other fabric or plastic coverings, and other surfaces which prevent or impede the natural infiltration of stormwater runoff which existed prior to development.

Illicit Connection means any man-made conveyance connecting an illicit discharge directly to a small municipal separate storm sewer (SMS4).

Illicit discharge means any discharge to the City Stormwater System that is not composed entirely of stormwater, except:

- (a) Discharges pursuant to an NPDES permit (other than the NPDES for the city); and
- (b) Discharges resulting from firefighting activities. .

Imminent and substantial threat means a threat that is entering or has entered the stormwater drainage

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system. The threat must be of such a nature that its presence and quantity would cause chronic health risks and/or pose a safety hazard to human health or the environment, if contact were to be made between the public and the threat. The threat may be comprised of, but not limited to, chemicals, radioactive materials, or materials in such quantity as to create such risk. If the substance is identifiable, the material safety data sheet should be consulted to further determine the level of threat posed.

Impervious surface area means a surface which is compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventional surfaced streets, roofs, sidewalks, parking lots, and other similar structures.

Implementing agency means the City of Clemson.

Improper disposal means any disposals other than through an illicit connection that result in an illicit discharge, including but not limited to, the disposal of used oil and toxic materials resulting from the improper management of such substances.

Infiltration means the passage or movement of water through the soil profile.

Land disturbing activity means any use of the land by any person that results in a change in the natural cover or topography that may cause erosion and contribute to sediment and alter the quality and quantity of stormwater runoff.

Local government means any county, municipality, or any combination of counties or municipalities, acting through a joint program pursuant to the provisions of this article.

Maintenance means any action necessary to preserve stormwater management facilities in proper working condition, in order to serve the intended purposes set forth in this chapter and to prevent structural failure of such facilities.

Maximum Extent Practicable (MEP) means the technologically-based discharge standard for the SMS4 to reduce pollutants in stormwater discharge as established by the CWA § 402(p).

Mixed Use Property means developed property that includes a building or buildings containing both residential and commercial uses.

MS4 or SMS4 means Municipal Separate Storm Sewer System or Small Municipal Separate Storm Sewer System, comprised solely of those portions of the stormwater system that are owned and operated by the city.

Municipal Separate Storm Sewer means the conveyance or system of conveyances (including roads with drainage systems, highways, rights-of-way, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, detention ponds, and other stormwater facilities) that is:

- (a) Owned or operated by the city;
- (b) Designed or used for collecting or conveying stormwater;
- (c) Not a combined sewer system; and
- (d) Not part of a publicly owned treatment works (POTW).

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Multi-family development means a building or group of buildings containing four or more individual dwelling units with separate cooking and toilet facilities for each unit

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Natural waterways means waterways that are part of the natural topography. They usually maintain a continuous or seasonal flow during the year and are characterized as being irregular in cross section with a meandering course. Construction channels, such as drainage ditches, shall not be considered natural waterways.

Nonpoint source pollution means pollution contained in stormwater runoff from ill-defined, diffuse sources.

Non-Stormwater Discharge means any discharge to the storm drain system that is not composed entirely of storm water.

NPDES means National Pollutant Discharge Elimination System. See “Clean Water Act.”

100-year frequency storm means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 100 years. It also may be expressed as an exceedance probability with a one percent chance of being equaled or exceeded in any given year.

Operator means any party associated with a construction project that meets either of the following two criteria:

- (a) The party has operational control over construction plans and specifications. Note: A party has “operational control over construction plans and specifications,” if it has the authority to prepare or modify such plans and specifications; or
- (b) The party has “operational control over day-to-day activities” at a project that are necessary to ensure compliance with a SWPPP for the site or other permit conditions (e.g., it is authorized to direct workers at a site to carry out activities required by the SWPPP or to comply with other permit conditions). This definition is provided to inform permittees of the EPA's interpretation of how the regulatory definitions of “owner” or “operator” and “facility” or “activity” are applied to discharges of stormwater associated with construction activity.

Outfall means the point where the City Stormwater System discharges to waters of the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels, or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

Person means any state or federal agency, individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality or other political subdivision of this state, any interstate body, or any other legal entity.

Person responsible for the land disturbing activity means:

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- (a) The person who has or represents having financial or operational control over the land disturbing activity; and/or
- (b) The landowner or person in possession or control of the land who directly or indirectly allowed the land disturbing activity or has benefitted from it or who has failed to comply with any provision of this article, these regulations, or any order or local ordinance adopted pursuant to this article as imposes a duty upon him.

Pollutant means any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces" within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

Post-development means the conditions which exist following the completion of the land disturbing activity in terms of topography, vegetation, land use and rate, volume or direction of stormwater runoff.

Pre-development means the conditions which existed prior to the initiation of the land disturbing activity in terms of topography, vegetation, land use and rate, volume or direction of stormwater runoff.

Receiving waters means the waters into which the City Stormwater System outfalls flow, and which are located within the jurisdictional boundaries of the city, including, without limitation, the lakes, rivers, streams, ponds, wetlands and groundwater of the city.

Redevelopment means a land disturbing activity that alters the current use of the land, but does not necessarily alter the pre-development runoff characteristics.

Regulation means any regulation, rule, or requirement prepared by the city and adopted by the City Council pursuant to this article.

Responsible personnel means any foreman, superintendent, or similar individual who is the on-site person in charge of land disturbing activities.

Retention structure means a permanent structure whose primary purpose is to permanently store a given volume of stormwater runoff. Release of the given volume is by infiltration and/or evaporation.

Revenues means all fees, assessments or other income received by the Stormwater Utility, including but not limited to, amounts received from the investment or deposit of monies in any fund or account and all amounts received as gifts, donations and the proceeds from the sale of bonds to finance the stormwater management program.

Runoff coefficient (C) means the proportion of rainfall volume that runs off an area, also known as the "C" factor.

Sediment means solid particulate matter, both mineral and organic, that has been or is being

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transported by water, air, ice, or gravity from its site of origin.

Single-Family Residential Property means any property designated as a single parcel on the Pickens county tax maps, that contains only one dwelling unit, including townhouses.

Stabilization means the installation of vegetative or structural measures to establish a soil cover to reduce soil erosion by stormwater runoff, wind, ice and gravity.

Stop work order means an order directing the person responsible for the land disturbing activity to cease and desist all or any portion of the work which violates the provisions of this article.

Stormwater means any storm water runoff, snow melt runoff and surface runoff and drainage.

Stormwater channel means a natural or manmade open watercourse with definite bed and banks which periodically or continuously contains moving water, or which forms a connecting link between two bodies of water.

Stormwater management means:

- (a) Quantitative control, a system of vegetative or structural measures, or both, that control the increased volume and rate of stormwater runoff caused by manmade changes to the land;
- (b) Qualitative control, a system of vegetative, structural, or other measures that reduce or eliminate pollutants that might otherwise be carried by stormwater runoff.

Stormwater Management Program or SWMP refers to a comprehensive stormwater management program to manage the quality of stormwater discharged from the City Stormwater System.

Stormwater management service charges mean the periodic rate, fee or charge applicable to a parcel of developed land. The charge shall be reflective of the service provided by the city stormwater utility. Service charges are based on measurable parameters that influence the stormwater utility's cost of providing services and facilities, with the most important factor being the amount of impervious area on each parcel. The use of impervious areas as a service charge rate parameter shall not preclude the use of other parameters, or the grouping of properties having similar characteristics through the use of ranges or rounding up or down to a consistent numerical interval, or the use of flat-rate charges for one (1) or more classes of similarly-situated properties whose impact on the stormwater utility's cost of providing stormwater management services and facilities is relatively consistent. Stormwater service charges may also include special charges to the owners of particular properties for services or facilities uniquely related to stormwater management of that property, including, but not limited to, charges for site and development plan review, inspection of development projects and on-site stormwater control systems, stormwater system connections, and enhanced levels of stormwater services above those normally provided by the city.

Stormwater management system means any system that addresses the issues of drainage management (flooding) and environmental quality (pollution, erosion and sedimentation) of receiving rivers, streams, creeks, lakes, ponds, and reservoirs through improvements, maintenance, regulation and funding of plants, works, instrumentalities and properties used or useful in the collection, retention, detention, and treatment of stormwater drainage.

Stormwater runoff means direct response of a watershed to precipitation, and includes the surface and

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subsurface runoff that enters a ditch, stream, storm sewer or other concentrated flow during and following the precipitation.

Stormwater runoff release rate means the rate at which stormwater is released from upstream to downstream land.

Stormwater utility means an administrative organization that has been created for the purposes of planning, designing, constructing, and maintaining stormwater management, sediment control and flood control programs and projects.

Subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, lease or building development and includes all division of land involving a new street or a change in existing streets and includes re-subdivision which would involve the further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved, or recorded according to law; or, the alteration of any streets according to law, and includes combinations of lots of record; however, the following exceptions are included within this definition only for the purpose of requiring that the Planning and Codes Administration Department be informed and a record of the subdivision:

- A. The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the standards of the governing authority;
- B. The division of land into parcels of five acres or more where no new street is involved and plats of these exceptions must be received as public record by the Planning and Codes Administration Department which shall indicate approval on the plats; and
- C. The combination or recombination of entire lots of record where no new street or change in existing streets is involved.

Subdivision exceptions may be treated as subdivisions, if it is determined that a series of subdivision exceptions within an original parcel or group of related parcels are being submitted to avoid review requirements for subdivisions.

Ten-year frequency storm means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in ten years. It may also be expressed as an exceedance probability with a ten percent chance of being equaled or exceeded in any given year.

Twenty-five-year frequency storm means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 25 years. It also may be expressed as an exceedance probability with a four percent chance of being equaled or exceeded in any given year.

Two-year frequency storm means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedance probability with a 50 percent chance of being equaled or exceeded in any given year.

Undeveloped Property means real property which has not been altered from its natural state by the addition of any improvements such as buildings, structures or other impervious surface area, or which has less than 50% of the equivalent residential unit of impervious surface area, to include golf courses and parks.

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Utility Customer means the person or entity who is in possession of and has beneficial use of the property and such person or entity shall receive the billing for the Stormwater Utility. Upon failure of such party to make payments of the fee, the owner of the property shall have the ultimate responsibility for the fee.

Variance means the modification of the minimum sediment and stormwater management requirements for specific circumstances where strict adherence to the requirements would result in unnecessary hardship and not fulfill the intent of these regulations.

Waiver means the relinquishment from sediment and stormwater management requirements by the appropriate plan approval authority for a specific land disturbing activity on a case-by-case review basis.

Water quality means those characteristics of stormwater runoff from a land disturbing activity that relate to the physical, chemical, biological, or radiological integrity of water.

Water quantity means those characteristics of stormwater runoff that relate to the rate and volume of the stormwater runoff to downstream areas resulting from land disturbing activities.

Watershed means the drainage area contributing stormwater runoff to a single point.

Watershed master plan means a plan for a designated watershed that analyzes the impact of existing and future land uses and land disturbing activities in the entire watershed and includes strategies to reduce nonpoint source pollution, to manage stormwater runoff, and control flooding. The plan must be developed for the entire watershed, regardless of political boundaries, and must include appropriate physical, institutional, economic and administrative data needed to justify the plan.

(Ord. No. CC-97-001, 4-7-97)

Cross reference— Definitions generally, § 1-2.

Sec. 11-154. - Regulation of land-disturbing activity.

The Council hereby establishes by ordinance a system regulating land-disturbing activities, including, but not limited to, provisions for reviewing and approving stormwater management plans, creating design requirements for such plans and land-disturbing activities, and providing operational and maintenance requirements for stormwater management facilities and measures.

Sec. 11-155. – Incorporation by reference.

For the purpose of this article and as required by SC DHEC under the MS4 program, the most recent version of the following documents are incorporated by reference:

- (a) SC DHEC NPDES General Permit for Stormwater Discharges from Large and Small Construction Activities, SCR100000;
- (b) SC DHEC Regulation 72-300 et seq., Standards for stormwater management and sediment

reduction.

- (c) S.C. DHEC Stormwater BMP Handbook.

Sec. 11-156. - Other permits.

An applicant shall comply with the requirements set forth in other applicable ordinances with respect to the submission and approval of preliminary and final subdivision plats, improvement plans, building and zoning permits, inspections, appeals and similar, along with those set forth in this article and as may be required by state statutes and the regulations of any department of the State of South Carolina.

Sec. 11-157. - Municipal liability.

It is the intent of this Code to protect the public health, safety and general welfare of all properties and persons in general, but not to create any special duty or relationship with any individual person or to any specified property within or without the boundaries of the city. The city expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages or injunctive relief upon the city, its officers, employees and agents arising out of any alleged failure or breach of duty or relationship as may now exist or hereafter be created. To the extent any permit, plan approval, inspection or similar act is required by the city as a condition precedent to any activity by or upon property not owned by the city, pursuant to this or any other regulatory ordinance, regulation or rule of the city or under federal or state law, the issuance of such permit, plan approval, or inspection shall not be deemed to constitute a warranty, express or implied, nor shall afford the basis for any action, including any action based on failure to permit or negligent issuance of a permit, seeking the imposition of money damages or injunctive relief against the city, its officers, employees or agents.

Nothing in this chapter, and no action or failure to act under this chapter shall or may be construed to:

- (a) Impose any liability on the city, or its departments, agencies, officers or employees for the recovery of damages; or
- (b) Relieve any person engaged in a land-disturbing activity of duties, obligations, responsibilities, or liabilities arising from or incident to operations associated with such activity or imposed by the provisions of this chapter or the laws and regulations pursuant to which it was adopted.

Sec. 11-158. - Severability

The provisions of this article shall be deemed separable and the invalidity of any portion of this article shall not affect the validity of the remainder.

Sec. 11-159. - Relationship with other laws, regulations, and ordinances.

Whenever the provisions of this article impose more restrictive standards than are required in or under any other law, regulation, or ordinance, the requirements contained in this article shall prevail. Whenever the provisions of any other law, regulation, or ordinance require more restrictive standards

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than are required in this article, the requirements of such law, regulation, or ordinance shall prevail.

DIVISION 2. – STORMWATER UTILITY

Sec. 11-165. - Establishment of a stormwater utility.

The Council hereby establishes a Stormwater Management Utility (also called “Utility” in this chapter) to carry out the purposes, functions and responsibilities herein set forth. The governing body of the Utility shall be the Mayor and Council. The City Administrator shall administer the Utility under the Engineering Department. The Utility shall have the powers and duties set out in division (b) of this section, which powers are not necessarily exclusive to the Utility.

Sec. 11-166. - Powers and duties

The stormwater utility shall have the following powers and duties, which powers and duties are not necessarily exclusive to the stormwater utility:

- (a) Stormwater management planning and preparation of comprehensive watershed master plans for stormwater management.
- (b) Regular inspections and maintenance of public stormwater management facilities and measures for the construction thereof, as well as regular inspections of private stormwater management facilities.
- (c) Maintenance and improvements of stormwater management facilities that have been accepted by the city for purposes of stormwater management.
- (d) Plan review and inspection of sediment control and stormwater management plans, measures and practices.
- (e) Retrofitting designated watersheds to reduce existing flooding problems or to improve water quality.
- (f) Acquisition of interests in land, including, but not limited to, easements.
- (g) Design and construction of stormwater management facilities and measures and acquisition of equipment.
- (h) Water quantity and water quality management, including monitoring and surveillance.

- (i) Any and all powers and duties delegated or granted as a local government implementing agency under the laws and regulations of the state and the ordinances of the city.

Sec. 11-167. - Scope of responsibility for the city drainage system.

The city drainage system consists of all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage ways, channels, ditches, swales, storm sewers, culverts, inlets, catch basins, pipes, head walls and other structures, natural or man-made, within the political boundaries of the city which control and/or convey stormwater through which the city intentionally diverts surface waters from its public streets and properties. The city owns or has legal access for purposes of operation, maintenance and improvements to those segments of this system which:

- (a) Are located within public streets, rights-of-way, and easements;
- (b) Are subject to easements, rights-of-entry, rights-of-access, rights-of-use, or other permanent provisions for adequate access for operation, maintenance, and/or improvement of systems and facilities; or
- (c) Are located on public lands to which the city has adequate access for operation, maintenance, and/or improvement of systems and facilities.

Operation and maintenance of stormwater systems and facilities which are located on private property or public property not owned by the city and for which there has been no public dedication of such systems and facilities for operation, maintenance, and/or improvement of the systems and facilities shall be and remain the legal responsibility of the property owner, except as that responsibility may be otherwise affected by the laws of the state and the United States of America.

Sec. 11-168. - Establishment of a stormwater management enterprise fund.

A stormwater management enterprise fund shall be established in the city budget and accounting system for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the utility, including but not limited to rentals, rates, charges, fees, and licenses as may be established by the city council. Any revenues and receipts of the stormwater utility shall be placed in the stormwater management enterprise fund and all expenses of the utility shall be paid from the stormwater management enterprise fund, except that other revenues, receipts, and resources not accounted for in the stormwater management enterprise fund may be applied to stormwater management operations and capital investments as deemed appropriate by the city council, upon recommendation of the city administrator.

Sec. 11-169. - General financing policy.

It shall be the policy of the city that funding for the stormwater utility be equitably derived through methods which have a demonstrable relationship to the varied demands and impacts imposed on the stormwater systems and programs and/or the level of service provided as a result of the provision of stormwater services and facilities. Service charges for stormwater management shall be fair and reasonable and shall bear a substantial relationship to the cost of providing services and facilities. The

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cost of stormwater services and facilities may include operating, capital investment, and reserve expenses, and may consider stormwater quality as well as stormwater quantity management requirements. Similarly situated properties shall be charged similar rentals, rates, charges, fees, or licenses. Service charge rates shall be designed to be consistent and coordinated with the use of other funding methods employed for stormwater management by the city, whether within or outside the stormwater utility, including but not limited to plan review and inspection fees, special fees for services, fees in-lieu of regulatory requirements, impact fees, system development charges, and special assessments. To the extent practicable, credits against service charges and/or other methods of funding stormwater management may be provided for on-site stormwater control systems and activities constructed, operated, maintained and performed to the city's standards by private property owners.

Sec. 11-170. - Investment and reinvestment of funds and borrowing.

Funds generated for the Stormwater Management Utility from fees, bond issues, other borrowing, and other sources shall be utilized only for those purposes for which the utility has been established, including but not limited to: planning; acquisition of interests in land including easements; design and construction of facilities; maintenance of the stormwater system; billing and administration; and water quantity and water quality management, including monitoring, surveillance, private maintenance inspection, construction inspection; efforts taken to comply with the NPDES permit issued to the city's MS4, and other activities which are reasonably required. Such funds shall be invested and reinvested pursuant to the same procedures and practices established by the city for investment and reinvestment of funds. The Council may use any form of borrowing authorized by the laws of the state to fund capital acquisitions or expenditures for the Stormwater Management Utility.

Sec. 11-171. - Determination and modification of stormwater management service charges.

In accordance with § 48-14-120 of the Code of Laws of South Carolina, the city council shall determine and modify from time to time the stormwater management service charges. In setting or modifying such rates it shall be the objective of the council to establish rates, fees and charges that are fair and reasonable, reflect the value of stormwater management services and facilities to those properties who benefit therefrom and, which together with any other sources of revenue that may be made available to the stormwater utility, will be sufficient to meet the cost of budgeted programs, services and facilities, including, but not limited to, the payment of principal and interest on revenue bond obligations incurred for construction and improvements to the stormwater system.

The Council shall consider, among other things, the following criteria in establishing fees:

- (a) The fee system must be reasonable and equitable so that property owners and users pay to the extent they contribute to the need for and benefit from the Utility, and the fees must bear a substantial relationship to the cost of the service. The fees shall be apportioned with approximate equality and upon a reasonable basis of equality with due regard for the benefits conferred. .
- (b) Cost analysis, construction, maintenance, and the overall operation of the stormwater system should be borne equally by all classifications of property owners in the city, in that all are served by an improved and well-maintained system.

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- (c) Any fee established should be in an amount that is reasonable and equitable.
- (d) The components of the calculations used to establish fees may include, but shall not be limited to, the following cost factors:
 - (1) Stormwater management planning and preparation of comprehensive watershed master plans for stormwater management;
 - (2) Regular inspections of public and private stormwater management facilities and measures and the construction thereof;
 - (3) Maintenance and improvement of stormwater management facilities that have been accepted by the city for that purpose;
 - (4) Plan review and inspection of stormwater management plans, measures, and practices;
 - (5) Retrofitting designated watersheds to reduce existing flooding problems or to improve water quality;
 - (6) Acquisition of interests in land, including easements;
 - (7) Design and construction of stormwater management facilities and measures and acquisition of equipment;
 - (8) Administration of enforcement;
 - (9) Water quantity and water quality management, including monitoring and surveillance;
 - (10) Debt service and financing costs; And
 - (11) Efforts taken to comply with the city's NPDES MS4 permit.
- (e) The practical difficulties and limitations related to establishing, calculating, and administering such fees.
- (f) The components of the calculations used to establish fees shall be based on an equivalent residential unit (ERU), to be determined by Council with reasonable general adjustments being made for, but not limited to, the following factors:
 - (1) Commercial and land uses other than single-family residential;
 - (2) Undeveloped property;
 - (3) Imperviousness of land as it relates to the intensity of development as derived from use classifications hereof; and
 - (4) Other generally accepted factors relevant to such calculations based upon the provisions

of this chapter.

Sec. 11-172. - Stormwater management service charges.

- (a) Classification. For purposes of determining the fee, all properties in the city are classified as follows:
- (b) *Single-family residential properties*, includes properties zoned R-12 and R-20 and any other properties which contain only a single residence.
 - (1) *Multi-family residential properties*, includes properties zoned RM-1, RM-2, RM-3, and RM-4 or other residential properties containing two or more residences on a single parcel.
 - (2) *Nonresidential developed properties*, including but not limited to the following classifications: General Commercial; Office Commercial; Neighborhood Business; Community Business; Research, Institutional, Light-Industrial; and Residential, Light Commercial.
 - (3) *Mixed Use Property*, properties which contain both residential dwelling units and non-residential developments within a single structure on a single parcel of land.
 - (4) *Recreation facilities, parks, golf courses and appurtenances thereto.*
 - (5) *Undeveloped Property.*
- (c) *Stormwater management service charge rate.* The stormwater management service charge per equivalent residential unit (ERU) shall be established by approval of a resolution of Clemson City Council, which may be amended in the City's annual budget ordinance.
- (d) *ERU.* One commonly accepted rate unit for stormwater utilities is the equivalent residential unit (ERU). The ERU is used to relate a rate charged for a typical residential property, and this becomes the common denominator by which all other classifications of properties are evaluated. Pursuant to this chapter, an ERU is considered to be the impervious surface on an average single-family lot, or XXX square feet.
- (e) *Single-family residential properties.* Single-family residential properties shall be charged the rate applicable to one (1) equivalent residential unit (ERU) for each dwelling unit regardless of the size of the parcel or the improvements.
- (f) *Multi-family residential properties.* Multi-family residential properties shall be charged the rate applicable to one (1.00) equivalent residential unit (ERU) for each dwelling unit.
- (g) *Nonresidential developed properties.* All developed lands not classified as single-family or multi-family residential use properties shall be classified as nonresidential developed. Nonresidential developed properties shall be charged the rate applicable to three (3.00) equivalent residential

units (ERU) for each property.

(i) *Mixed use properties.*

Nonresidential tenants within a mixed use structure should be placed into the appropriate non-residential category based on the properties zoning classification. The number of ERU's used in determining a tenant's individual stormwater management service charge should be determined as follows:

Step 1 – The number of ERU's for the entire mixed use structure should be calculated in accordance with § 11-172(f) and (g).

Step 2 – Each tenant will be charged no less than three (3) ERU's.

Step 3 - Each residential tenant is assigned a fee applicable to one (1.00) ERU per dwelling unit in accordance with § 11-172(e).

(j) *Recreation facilities, parks, golf courses, and appurtenances thereto.* Recreation facilities, parks, and golf courses shall be exempt from storm water fees.

(k) *Undeveloped properties.* Undeveloped properties shall not be charged a stormwater management service charge.

Sec. 11-173. - Exemptions and credits applicable to stormwater management service charges.

- (a) Except as provided in section 11-172(j), no public or private property shall be exempt from stormwater management service charges or receive a credit or offset against such service charges.
- (b) Undeveloped properties as defined in this chapter shall be exempt from stormwater management service charges.
- (c) Railroad rights-of-way (tracks) shall be exempt from stormwater management service charges. However, railroad stations, maintenance buildings, or other developed land used for railroad purposes shall not be exempt from stormwater management service charges.

Sec. 11-174. - Billing of stormwater management utility service charges.

The stormwater management utility service charge may be billed on a common billing statement and collected along with other city utility fees. Nonpayment may result in termination of all utility services, consisting of water, sewer, sanitation services, stormwater management, in accordance with § 11-2 and §11-15 of this Code.

DIVISION 3. - ORGANIZATION AND COORDINATION

Sec. 11-181. – Administration of regulations.

- (a) The City Council may, at its discretion, amend or change this chapter or adopt additional regulations or resolutions to implement this chapter, comply with the NPDES permit, implement the Stormwater Management Program (“SWMP”), or to otherwise further the goal of reducing the discharge of pollutants from the City of Clemson’s SMS4 to the maximum extent practicable (MEP).

- (b) The SWMP developed by the City of Clemson to implement the purposes of this Ordinance shall serve as the basis for directing the City’s efforts to control stormwater. The SWMP shall be developed one year from the effective date of the City’s written certificate of coverage for SCR030000 from SCDHEC. The SWM, once developed, shall be adopted for the life of the City’s Stormwater NPDES permit as the official operational plan. The SWMP plan shall be viewed as an extension of this Ordinance and is hereby given identical authority to see that its requirements are both complied with and enforced.

- (c) The City Engineer, or his designee, shall be responsible for day-to-day coordination, implementation and enforcement of this chapter and the SWMP. This includes, but is not limited to: the SWMP’s monitoring program and the SWMP’s stormwater management programs for commercial and residential activities, construction site runoff, post-construction run-off control, and illicit discharges and improper disposal. The City Engineer shall be primarily responsible for activities related to design and construction, and his designee shall be primarily responsible for activities related to monitoring and inspection. Without limitation of the foregoing, the City Engineer and his designee have the following specific powers and duties:
 - (1) To issue any permit, certification or license that may be required by the SWMP;
 - (2) To deny a facility connection to the SMS4, if state, federal, or stormwater ordinances and regulations are not met.
 - (3) To approve BMP plans, and to require as a condition of such approvals, structural or nonstructural controls, practices, devices or operating procedures required under the SWMP.
 - (4) To require performance bonds of any person to secure that person’s compliance with any BMP plan, permit, certificate, license or authorization issued or approved by the City Engineer or Stormwater Program Manager pursuant to the SWMP.
 - (5) To take actions necessary to comply with all federal and state regulatory requirements, promulgated or imposed pursuant to the Clean Water Act and the South Carolina

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Stormwater Management and Sediment Reduction Act, applicable to the management of stormwater discharges to or from the City of Clemson SMS4.

- (6) To conduct all activities necessary to carry out the stormwater management program and other requirements included in the city NPDES permit, the SWMP and this chapter and to pursue the necessary means and resources required to properly fulfill this responsibility.
- (7) In compliance with the Clemson Code of Ordinances and procurement policies, to enter into agreements with other governmental entities or private persons or entities to provide or procure services to conduct and carry out stormwater management activities, provided proper administrative and Council approval processes are followed.
- (8) To maintain the stormwater system consistent with the provisions of the city's NPDES permit, the SWMP and this chapter.
- (9) To direct, review and recommend for approval by City Council, the stormwater management operating budget.
- (10) To direct, review and recommend for approval by City Council necessary changes to the existing Stormwater Management Program.
- (11) To issue stop work and other orders necessary to insure compliance with this article.

DIVISION 4. – ILLICIT DISCHARGES

Sec. 11-191. – Illicit connections and illicit discharges.

No person shall connect any pipe, open channel, or any other conveyance system that discharges anything, except stormwater or unpolluted water which is approved by the City Engineer, into the SMS4.

No person shall continue the operation of any such illicit connection regardless of whether the connection was permissible when constructed. Improper connections in violation of this Ordinance must be disconnected and redirected, if necessary, to the satisfaction of the City Engineer or his designee and any other federal, state, or local agencies or departments regulating the discharge.

No person shall throw, drain, or otherwise discharge to the City's SMS4 or to cause, permit, or allow a discharge that is composed of anything except stormwater or unpolluted water which is approved by the City Engineer.

The following activities are exempt from the provision of this section and are not considered an illicit discharge:

- (a) Unpolluted industrial cooling water, but only under the authorization and direction of the Engineer or his designee and appropriate NPDES permit.
- (b) Water line flushing performed or required by a government agency, diverted stream flows, rising ground waters, and unpolluted pumped ground waters, and unpolluted ground water infiltration.
- (c) Discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, non-commercial car washing, dechlorinated (less than 0.01 parts per million chlorine) swimming pool discharges, flows from riparian habitats and wetlands, and street wash water.
- (d) Discharges or flows from firefighting activities.
- (e) Other similar occasional incidental non-stormwater discharges.

The City Engineer or designated representative may require controls for, or exempt from, the prohibitions for occasional incidental non-stormwater discharges provided that they are not a significant source of pollution.

Sec. 11-192. - Detection of illicit connections and improper disposal.

The City Engineer shall develop procedures for detecting, tracking, and eliminating illicit discharges and improper disposals to the City of Clemson SMS4, including the adoption of a program to screen illicit discharges, identify their source or sources, perform inspections, issue corrective actions to abate and eliminate illicit discharges and levy fines if not removed.

The City Engineer shall take appropriate steps to detect and eliminate improper disposal. These steps may include programs to screen for disposal, programs to provide for public education and public information, inspection, levy fines, and other appropriate activities to facilitate the proper management and disposal of used oil, toxic materials, and household hazardous waste.

Sec. 11-193. Waste disposal prohibitions.

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, or component of the SMS4 any refuse, rubbish, garbage, litter, pet fecal matter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Yard debris, including natural foliage, may be deposited in the public right of way but not in or on any stormwater conveyance structures, including inlets and gutters, but only if a collection service is available. Wastes in proper waste receptacles may be placed in the street for collection, but again only if collection by or through the City is in place. No waste or yard debris shall be placed in the street without such a collection service.

Sec. 11-194. Notification of spills.

Spills or leaks of materials which are resulting in, or may result in illegal discharges or pollutants discharging into the SMS4, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their pre-existing condition. The owner, operator, or other designated responsible party shall also take immediate steps to ensure no recurrence of the discharge. The owner, operator, or other designated responsible party will bear all costs of cleaning up any spills. In the event that the City of Clemson cleans up a spill, the owner, operator, or designated responsible party will be required to reimburse the City for funds used in the clean-up.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the City Engineer in person, by phone or by e-mail no later than the next business day of the release or discharge, as well as making any required notifications under state and federal law. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City Engineer within three business days of the original notice. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by state or other law.

If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

For facilities that operate under existing NPDES permits for Stormwater discharge, spill reporting shall

be made to the permitting authority in accordance with the permit. The Engineering Division shall be provided with copies of any written notification required by the NPDES permitting authority.

Sec. 11-195. Enforcement.

Whenever the City Engineer finds that a person has violated a prohibition or failed to meet a requirement of this division, the City Engineer may order compliance by written notice violation to the responsible person. Such notice may require without limitation:

- (a) The elimination of Illicit Connections or discharges in a timeframe consistent with the procedures outlined in the SWMP;
- (b) That violating discharges, practices or operations shall cease and desist;
- (c) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
- (d) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the City Engineer or a contractor will do the work and the expense thereof shall be charged to the violator.

**DIVISION 5 - STORMWATER MANAGEMENT AND SEDIMENT CONTROL DESIGN PLAN
REQUIREMENTS**

Sec. 11-201. – Implementation

The City of Clemson shall implement this division in the entire regulated SMS4 area with eighteen months from the effective date of the City’s written certificate of coverage for SCR030000 from SCDHEC

Sec. 11-202. – Permits and stormwater management and sediment control plans

Unless otherwise exempt, new development and redevelopment activities disturbing one or more acres of land, including sites smaller than one acre that are part of a Larger Common Plan of Development (LCP) that disturbs or ultimately disturbs one or more acres, are required to obtain permit coverage for their stormwater discharges by submitting a Stormwater Management and Sediment Control Plan.

Sec. 11-203. – Stormwater management and sediment control design plan requirements.

All soil erosion and sedimentation control and post construction stormwater management for new development and redevelopment design requirements shall be included in the City of Clemson Stormwater Management Design Manual. The Stormwater Management Design Manual shall include, but not be limited to:

- (a) Provisions for submitting stormwater management plans,
- (b) Applicable fees for stormwater management plan submittals,
- (c) Provisions for reviewing and approving stormwater management plans,
- (d) Design requirements for such plans and land disturbing activities,
- (e) Operational and maintenance requirements for stormwater management facilities and measures, and
- (f) Inspection requirements.

The City of Clemson Stormwater Management Design Manual will be updated as needed to ensure compliance with regulatory requirements.

The City Engineer shall require that plans and design reports be sealed by a qualified design professional and certified that the plans have been designed in accordance with this article and all other relevant and applicable sediment and stormwater laws and regulations.

The person responsible for the new development and redevelopment activity shall submit as-built or record document plans for all plans that include any structural BMPs. In addition, the person responsible for the new development and redevelopment activity is required to submit written certification from the professional engineer, landscape architect or tier B land surveyor responsible for

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the field supervision of the new development and redevelopment activity that the activity was accomplished in substantial accordance with the approved Stormwater Management Design Plan.

Additional information necessary for a complete project review may be required by the City Engineer as deemed appropriate. This additional information may include items such as location of public sewers, water lines, septic fields, wells, etc.

The City of Clemson Stormwater Design Manual and SCDHEC Stormwater BMP Handbook include a list of acceptable BMPs, including their specific design performance criteria and operation and maintenance requirements for each Stormwater practice. Copies of these documents can be obtained through the City Engineer, or SCDHEC.

**DIVISION 6 – OPERATION AND MAINTENANCE OF STORMWATER MANAGEMENT SYSTEMS
AND WATER QUALITY DEVICES**

Sec. 11-211. – Implementation

The City of Clemson shall implement this division in the entire regulated SMS4 area with eighteen months from the effective date of the City's written certificate of coverage for SCR030000 from SCDHEC

Sec. 11-212. – Operations Maintenance Agreements.

All permanent stormwater management facilities shall be privately owned, operated, and maintained unless the City of Clemson accepts the facility for shared City maintenance.

Prior to the issuance of permit coverage for stormwater discharges, the property owner or lessee shall execute a legal document entitled "Stormwater Management Facility Ownership, Operations and Maintenance Agreement" ("The Covenants"). The property owner or the lessee, shall record The Covenants in the appropriate Office of the Register of Deeds. The location of the facility, the recorded location of The Covenants document, and a document stating the property owner's or lessee's responsibility shall be shown on a plat, or in the case of a lessee, as an exhibit attached to the lessee's Covenants, that is also recorded in the appropriate Office of the Register of Deeds. In the case of a lessee, the property owner shall be named on any Covenant and be required to conduct maintenance activities upon the termination of a lease agreement.

The City Engineer must be notified in writing of any changes in maintenance responsibility for the stormwater management facilities at the site. This requirement shall be included in the maintenance agreement.

Stormwater quantity and quality control facilities shall be located so that required easements can be effectively used and ownership and maintenance responsibility can be clearly defined in deeds and plats.

The Covenants shall specify minimum maintenance requirements to be performed at necessary intervals by the property owner or lessee, as the case may be.

If a facility or any portion of the stormwater system is not being maintained as required, the City Engineer or designee will notify the property owner or Lessee, as the case may be, in writing. If property owner or Lessee, as the case may be, fails to repair or maintain the facility within the allotted time, the City Engineer may authorize the work to be performed by the City or others. In such cases, the property owner or Lessee, as the case may be, shall reimburse the City for its direct and related expenses. If the property owner or Lessee, as the case may be, fails to reimburse the City, the City is authorized to file a lien for said costs against the property or the Lessee's leasehold interest, as the case may be, and to enforce the lien by judicial foreclosure proceedings.

A property owner or lessee may hire or contract others to perform necessary maintenance actions, but the City of Clemson will hold the person named in the Covenants as the responsible party should legal actions be necessary.

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When the City Engineer or his designee determines that additional storage capacity or pollution reduction beyond that required by the applicant for on-site stormwater management is necessary in order to enhance or provide for the public health, safety and general welfare, to correct unacceptable or undesirable existing conditions or to provide protection in a more desirable fashion for future development, the City of Clemson may require additional stormwater controls required to prevent degradation of water quality or increase downstream flooding.

DIVISION 7 – INSPECTION

Sec. 11-231. – Implementation

The City of Clemson shall implement this division in the entire regulated SMS4 area with eighteen months from the effective date of the City’s written certificate of coverage for SCR030000 from SCDHEC

Sec. 11-232. – Stormwater management inspection

The City of Clemson shall establish and enforce inspection frequencies in compliance with the most current SCDHEC Construction General Permit SCR010000 and NPDES SMS4 General Permit, SCR030000. These inspection frequencies shall be contained in the Stormwater Management Design Manual.

Sec. 11-233. – Access

Representatives of the city and of any federal and state unit of government are authorized to enter upon any private property to inspect development activity, to verify the existing conditions of a development site that is currently under permit review, and to verify compliance with the provisions of this article whenever the city deems necessary.

Sec. 11-234. – Post construction inspections

In order to comply with the terms and conditions of the NPDES SMS4 General Permit SCR030000, the city, through its duly designated employees and officials, may enter private property to perform periodic post construction inspections:

- (a) Inspections ensure that all post construction stormwater BMPs are operating correctly and are being maintained as required consistent with the applicable Stormwater Management Facility Ownership, Operations and Maintenance Agreement,
- (b) Document inspection findings in an inspection report, maintain records of inspection findings and enforcement actions, and make them available for review.

DIVISION 8 – ENFORCEMENT, WAIVERS, VARIANCES, APPEALS, PENALTIES, AND FEES

Sec. 11-241. – Establishment

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. Any person who has violated or continues to violate the provisions of this article, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

Sec. 11-242 – Enforcement

In the event a violation constitutes an immediate danger to public health or public safety, city personnel are authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The city shall be entitled to compensation for any expenses involved in abating the violation and/or restoring the property. The city shall have to option of performing the work and placing a lien on the property for recovery of such documented expenses.

Whenever city personnel finds that a person has violated a prohibition or failed to meet a requirement of this article, the City Engineer may order compliance by written notice of violation to the responsible person.

The City shall develop an Enforcement Response Plan (ERP) within one year from the effective date of the City's written certificate of coverage for SCR030000 from SCDHEC.. The ERP shall define the City's response to violations and address repeat and continuing violations through progressively stricter responses as needed to achieve compliance.

Sec. 11-243 – Waivers

Waivers may be granted from the requirements of this article for individual land disturbing activities provided that a written request is submitted by the applicant to the City Engineer containing descriptions, drawings and any other information that is necessary to evaluate the proposed activity. A separate written Waiver request shall be required if there are subsequent additions, extensions or modifications which would alter the approved stormwater management characteristics to the activity receiving a Waiver.

A project may be eligible for a Waiver from stormwater management requirements for both quantitative and qualitative control if the applicant can demonstrate that the proposed project will return the disturbed area to a pre development runoff condition and the pre development land use is unchanged at the conclusion of the project.

A project may be eligible for a Waiver of stormwater management requirements if the applicant can demonstrate that:

- (a) The proposed project will have no significant adverse impact on any receiving natural waterway or downstream properties: or

(b) The imposition of peak control requirements for rates of stormwater runoff would aggravate downstream flooding.

Sec. 11-244 – Variances

The City Engineer may grant a written Variance from any requirement of this article if there are exceptional circumstances applicable to the site such that strict adherence to the provisions of this article will result in unnecessary hardship and not fulfill the intent of this article. A written request for a Variance shall be provided to the City Engineer and shall state the specific Variances sought and the reasons with supporting data for their granting. The City Engineer shall not grant a Variance unless and until sufficient specific reasons justifying the Variance are provided by the applicant.

Sec. 11-245 – Appeals

Appeals to the decision of the City Engineer or designee shall be made to the City Administrator. A person having a substantial interest affected by a decision of the City Administrator may appeal the decision to the circuit court of Pickens County by filing with the clerk of the court a petition setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal shall be filed within 30 days after the written decision of the administrator is issued.

Sec. 11-246 – Penalties

Any person found to be in violation of this ordinance that fails to comply with a compliance directive issued by the City Engineer shall be punishable as provided in the City of Clemson Enforcement Response Plan. Each day in violation of the provisions of this section shall constitute a separate and distinct offense. In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within receipt of an oral or written notice, as the City shall deem appropriate, after the City has taken one or more of the actions described above, the City may impose a penalty not to exceed \$500 (depending on the severity of the violation) for each day the violation remains un-remedied.

Sec. 11-247 – Fees

The City Engineer shall have the right to establish a schedule of appropriate fees for any person or property owner establishing a new discharge to the City of Clemson SMS4. Such fee shall be payable as part of any permit application or submission, regulating the discharge of stormwater runoff (i.e. plan review fees). Permit fees shall be established on the basis of facility classes relating to the quantity and quality of permitted discharge.

Costs associated with field inspection of land development or construction activities other than those routinely performed by the City Engineer or designee as part of compliance monitoring shall be assessed a fee representing the cost in labor, equipment, and materials expended in the conduct of the inspection.

A fee associated with the plan review of land development construction documents shall be assessed.

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All fees shall be listed in the City of Clemson Stormwater Management Design Manual. The establishment and revision of these fees shall be approved by the City of Clemson Council.