

ORDINANCE NUMBER 18-01

AN ORDINANCE TO AMEND CHAPTER TWENTY TWO OF THE MUNICIPAL CODE OF THE CITY OF WAUPUN ENTITLED "STORMWATER MANAGEMENT ORDINANCE."

THE COMMON COUNCIL OF THE CITY OF WAUPUN, DO ORDAIN:

SECTION 1: Section 22 of the Waupun Municipal Code entitled "STORMWATER MANAGEMENT ORDINANCE" is repealed and recreated to read as follows:

CHAPTER 22 - STORMWATER MANAGEMENT ORDINANCE (Cr. #05-02)

22.01	Authority	22-2
22.02	Findings of Fact	22-2
22.03	Purpose and Intent	22-3
(1)	Purpose	22-3
(2)	Intent	22-3
22.04	Applicability and Jurisdiction	22-5
(1)	Applicability	22-5
(2)	Jurisdiction	22-5
(3)	Exclusions	22-5
22.05	Definitions	22-6
22.06	Technical Standards	22-10
22.07	Performance Standards	22-11
(1)	Responsible Party	22-11
(2)	Plan	22-11
(3)	Maintenance of Effort	22-11
(4)	Applicability of Maximum Extent Practicable (MEP).....	22-11
(5)	Requirements	22-18
(6)	General Considerations for On-Site and Off-Site Stormwater	22-19
(7)	Regional Treatment (Off-site) Option	22-19
(8)	Alternate Requirements	
22.08	Permitting Requirements, Procedures and Fees	22-20
(1)	Permit Required	22-20
(2)	Permit Application and Fees	22-20

(3)	Review and Approval of Permit Application	22-20
(4)	Permit Requirements	22-21
(5)	Permit Conditions	22-22
(6)	Permit Duration	22-22
22.09	Stormwater Management Plan	22-22
(1)	Plan Requirements	22-22
(2)	Alternate Requirements	22-23
22.10	Maintenance Agreement	22-23
(1)	Maintenance Agreement Required	22-23
(2)	Agreement Provisions	22-23
22.11	Financial Guarantee	22-23
(1)	Establishment of the Guarantee	22-23
(2)	Conditions for Release	22-23
22.12	Fee Schedule	22-24
22.13	Enforcement	22-24
22.14	Appeals	22-26
(1)	Board of Appeals or Adjustment	22-26
(2)	Who May Appeal	22-26
22.15	Severability	22-26
22.16	Effective Date	22-26

22.01 - AUTHORITY .

- (1) This ordinance is adopted by the Common Council under the authority granted by §62.234,, Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under §62.23, Wis. Stats., that relate to stormwater management regulations. Except as otherwise specified in §62.234, Wis. Stats., §62.23, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.
- (2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The Common Council hereby designates the Public Works Department to administer and enforce the provisions of this ordinance.
- (4) The requirements of this ordinance do not pre-empt more stringent stormwater management requirements that may be imposed by any of the following:
 - (a) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under §§281.16 and 283.33, Wis. Stats.

- (b) Targeted nonagricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under § NR 151.004, Wis. Adm. Code.
- (c) Rules related to State-approved Total Maximum Daily Load (TMDL) standards applicable to the Upper Rock River watershed (HUC 07090001).

22.02 - FINDINGS OF FACT.

The Common Council finds that uncontrolled, post-construction runoff has a significant impact upon water resources and the health, safety and general welfare of the community and diminishes the public enjoyment and use of natural resources. More specifically, uncontrolled, post-construction runoff can negatively impact the Rock River, Horicon Marsh, and other local water resources. In particular, uncontrolled post-construction runoff can:

- (1) Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.
- (2) Diminish the capacity of streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants.
- (3) Alter wetland communities by changing wetland hydrology and by increasing pollutant loads.
- (4) Reduce the quality of groundwater by increasing pollutant loading.
- (5) Threaten public health, safety, property and general welfare by overtaxing storm sewers, drainage ways, and other minor drainage facilities.
- (6) Threaten public health, safety, property and general welfare by increasing major flood peaks and volumes.
- (7) Undermine floodplain management efforts by increasing the incidence and levels of flooding.

22.03 - PURPOSE AND INTENT .

- (1) **PURPOSE.** The general purpose of this ordinance is to establish long-term, post-construction runoff management requirements that will diminish the threats to public health, safety, welfare and the aquatic environment. Specific purposes are to:
 - (a) Further the maintenance of safe and healthful conditions.
 - (b) Prevent and control the adverse effects of stormwater; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.
 - (c) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger downstream property.
 - (d) Minimize the amount of pollutants discharged from the separate storm sewer to protect the waters of the state.

- (2) **INTENT.** It is the intent of the Common Council that this ordinance regulates post-construction stormwater discharges to waters of the State. This ordinance may be applied on a site-by-site basis. The Common Council recognizes, however, that the preferred method of achieving the stormwater performance standards set forth in this ordinance is through the preparation and implementation of comprehensive, systems-level stormwater management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional stormwater devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the State. Where such plans are in conformance with the location and regional treatment option contained in §22.07(5) of this chapter and have been approved by the Common Council, it is the intent of this ordinance that the approved plan be used to identify post-construction management measures acceptable for the community.

22.04 - APPLICABILITY AND JURISDICTION .

- (1) **APPLICABILITY.**
- (a) Where not otherwise limited by law, this ordinance applies after final stabilization to all sites of land-disturbing construction activity unless the site is otherwise exempt under paragraph (b).
 - (b) A site that meets any of the criteria in this paragraph is exempt from the requirements of this ordinance.
 - 1. A post-construction site with less than ten percent connected imperviousness based on the area of land disturbance, provided the cumulative area of all impervious surfaces is less than one acre. However, the exemption of this paragraph does not include exemption from the protective area standard of this ordinance.
 - 2. Nonpoint discharges from agricultural facilities and practices.
 - 3. Underground utility construction such as water, sewer and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.
 - (c) Notwithstanding the applicability requirements in paragraph (a), the requirements of this ordinance may be waived for non-one-family or 2-family residential land-disturbing construction activity, of less than 1.0 acre, by the Public Works Department, if the Public Works Department determines that negative stormwater impacts will not result from the proposed development.
- (2) **JURISDICTION.** This ordinance applies to post construction sites within the boundaries and jurisdiction of the City of Waupun, as well as all lands located within the extraterritorial plat approval jurisdiction of the City of Waupun, even if plat approval is not involved.
- (3) **EXCLUSIONS.** This ordinance is not applicable to activities conducted by a State agency, as defined under §227.01(1), Wis. Stats., but also including the office of District Attorney, which is subject to the State plan promulgated or a memorandum of understanding entered into under §281.33(2), Wis. Stats.

22.05 - DEFINITIONS .

- (1) PUBLIC WORKS DEPARTMENT means a governmental employee, empowered under §62.234, Wis. Stats., that is designated by the Common Council to administer this ordinance.
- (2) AGRICULTURAL FACILITIES AND PRACTICES has the meaning given in §281.16, Wis. Stats.
- (3) ATLAS 14 means the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.
- (4) AVERAGE ANNUAL RAINFALL means a typical calendar year of precipitation as determined by the Wisconsin Department of Natural Resources for users of models such as WinSLAMM, P8 or equivalent methodology. The average annual rainfall is chosen from a department publication for the location closest to the municipality. In this ordinance, the recorded rainfall at Madison from 3/12/1981 through 12/2/1981 has been selected as the average annual rainfall.
- (5) BEST MANAGEMENT PRACTICE or BMP means structural or nonstructural measures, practices, techniques or devices employed to control peak discharge rates, reduce stormwater pollutant loads, and/or reduce surface discharge of runoff volume to waters of the State.
- (6) BUSINESS DAY means a day the office of the Public Works Department is routinely and customarily open for business.
- (7) CEASE AND DESIST ORDER means a court-issued order to halt land-disturbing construction activity that is being conducted without the required permit.
- (8) COMBINED SEWER SYSTEM means a system for conveying both sanitary sewage and stormwater runoff.
- (9) DESIGN STORM means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.
- (10) DEVELOPMENT means residential, commercial, industrial or institutional land uses and associated roads.
- (11) DIVISION OF LAND means the creation from one parcel of 2 or more parcels or building sites of 2 or fewer acres each in area where such creation occurs at one time or through the successive partition within a 5-year period.
- (12) EFFECTIVE INFILTRATION AREA means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.
- (13) EROSION means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.

- (14) EXCEPTIONAL RESOURCE WATERS means waters listed in § NR 102.11, Wis. Adm. Code.
- (15) EXTRATERRITORIAL means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.
- (16) FINAL STABILIZATION means that all land-disturbing construction activities at the construction site have been completed and that a uniform, perennial, vegetative cover has been established, with a density of at least 70% of the cover, for the unpaved areas and areas not covered by permanent structures, or employment of equivalent permanent stabilization measures.
- (17) FINANCIAL GUARANTEE means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the Public Works Department by the responsible party to assure that requirements of the ordinance are carried out in compliance with the stormwater management plan.
- (18) GOVERNING BODY means the City Council.
- (19) IMPERVIOUS SURFACE means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, parking lots (concrete, asphalt, or gravel) and streets are examples of areas that typically are impervious.
- (20) IN-FILL AREA means an undeveloped area of land located within existing development.
- (21) INFILTRATION means the entry of precipitation or runoff into or through the soil.
- (22) INFILTRATION SYSTEM means a BMP such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.
- (23) KARST FEATURE means an area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.
- (24) LAND-DISTURBING CONSTRUCTION ACTIVITY means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the State. Land-disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.
- (25) MAINTENANCE AGREEMENT means a legal document that provides for long-term maintenance of stormwater management practices.

- (26) MEP or MAXIMUM EXTENT PRACTICABLE means a level of implementing best management practices in order to achieve a performance standard specified in this ordinance which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.
- (27) NEW DEVELOPMENT means development resulting from the conversion of previously undeveloped land or agricultural land uses.
- (28) NRCS MSE3 DISTRIBUTION means a specific precipitation distribution developed by the United States Department of Agriculture, Natural Resources Conservation Service, using precipitation data from Atlas 14.
- (29) OFF-SITE means located outside the property boundary described in the permit application.
- (30) ON-SITE means located within the property boundary described in the permit application.
- (31) OUTSTANDING RESOURCE WATERS means waters listed in § NR 102.10, Wis. Adm. Code.
- (32) PERFORMANCE STANDARD means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (33) PERMIT means a written authorization made by the Public Works Department to the applicant to conduct land-disturbing construction activity or to discharge post-construction runoff to waters of the State.
- (34) PERMIT ADMINISTRATION FEE means a sum of money paid to the Public Works Department by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.
- (35) PERVIOUS SURFACE means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.
- (36) POLLUTANT has the meaning given in §283.01(13), Wis. Stats.
- (37) POLLUTION has the meaning given in §281.01(10), Wis. Stats.
- (38) POST-CONSTRUCTION SITE means a construction site following the completion of land-disturbing construction activity and final site stabilization.
- (39) PREDEVELOPMENT CONDITION means the extent and distribution of land cover types present before the initiation of land-disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.
- (40) REDEVELOPMENT means areas where development is replacing older development.

- (41) RESPONSIBLE PARTY means any entity holding fee title to the property or other person contracted or obligated by other agreement to implement and maintain post-construction stormwater BMPs.
- (42) RUNOFF means stormwater or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (43) STOP WORK ORDER means an order issued by the Public Works Department which requires that all construction activity on the site be stopped.
- (44) STORMWATER MANAGEMENT PLAN means a comprehensive plan designed to reduce the discharge of pollutants from stormwater after the site has undergone final stabilization following completion of the construction activity.
- (45) STORMWATER MANAGEMENT SYSTEM PLAN is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.
- (46) TOP OF THE CHANNEL means an edge, or point on the landscape, landward from the ordinary high water mark as defined in § NR115.03(6) Wisconsin Administrative Code of a surface water of the State, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet, landward from the ordinary high water mark, the top of the channel is the ordinary high water mark.
- (47) TOTAL MAXIMUM DAILY LOAD (TMDL) means the amount of pollutants specified as a function of one or more water quality parameters, that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.
- (48) TOTAL PHOSPHORUS (TP) is the sum of particulate and dissolved phosphorus and includes the total amount of phosphorus in both organic and inorganic forms.
- (49) TOTAL SUSPENDED SOLIDS (TSS) means all particles suspended in stormwater runoff which will not pass through a filter.
- (50) TR-55 means the United States Department of Agriculture, Natural Resources Conservation Service (previously Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986.
- (51) WATERS OF THE STATE has the meaning given in §281.01(18), Wis. Stats.

22.06 - TECHNICAL STANDARDS .

The following methods shall be used in designing the water quality, peak flow control and infiltration components of stormwater practices needed to meet the stormwater management standards of this ordinance. Application of any specific design guidance within technical standards is subject to the approval of the Director of Public Works.

- (1) Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subch. V of Ch. NR 151, Wis. Adm. Code.

- (2) Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the Public Works Department.

22.07 - PERFORMANCE STANDARDS .

- (1) RESPONSIBLE PARTY. The responsible party shall implement a post-construction stormwater management plan that incorporates the requirements of this section.
- (2) PLAN. A written stormwater management plan in accordance with §22.09 shall be developed and implemented for each post-construction site.
- (3) MAINTENANCE OF EFFORT. For redevelopment sites where the redevelopment will be replacing older development that was subject to post-construction performance standards of NR 151 in effect on or after October 1, 2004, the responsible party shall meet the Total Suspended Solids and Total Phosphorus reductions, peak flow control, infiltration, and protective areas standards applicable to the older development or meet the redevelopment standards of this ordinance, whichever is more stringent.
- (4) APPLICABILITY OF MAXIMUM EXTENT PRACTICABLE (MEP). Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the Director of Public Works' satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.
- (5) REQUIREMENTS. The plan required under sub. (2) shall include the following:
 - (a) Total Suspended Solids and Total Phosphorus. BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows:
 1. For new development, by design, reduce to the maximum extent practicable, the Total Suspended Solids load by 80%, based on the average annual rainfall, as compared to no runoff management controls or to the minimum requirements of the TMDL referenced in Section 22.01(4)(c), whichever is greater.
 2. For redevelopment, by design, reduce to the maximum extent practicable, the Total Suspended Solids load by 40%, based on the average annual rainfall, as compared to no runoff management controls or to the minimum requirements of the TMDL referenced in Section 22.01(4)(c), whichever is greater.
 3. For in-fill development that occurs by design, reduce to the maximum extent practicable, the Total Suspended Solids load by 80%, based on an average annual rainfall, as compared to no runoff management controls or to the minimum requirements of the TMDL referenced in Section 22.01(4)(c), whichever is greater.

4. For all developments, by design, reduce to the maximum extent practicable, the Total Phosphorus loads to the minimum requirements of the TMDL referenced in Section 22.01(4)(c).
5. Notwithstanding subds. 1. to 4., if the design cannot achieve the applicable Total Suspended Solids or Total Phosphorus reduction specified, the stormwater management plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the MEP.
6. When designing BMP's runoff draining to the BMP from offsite shall be taken into account in determining the treatment efficiency of the practice. Any impact on the efficiency shall be compensated for by increasing the size of the BMP accordingly.

(b) Peak Discharge.

1. By design, BMPs shall be employed to maintain or reduce the peak runoff discharge rates, to the maximum extent practicable, as compared to predevelopment conditions for the 1-, 2-, 10-year, 24-hour; and 100-year, 24-hour design storms applicable to the post-construction site.
2. Peak discharges shall be calculated using TR-55 runoff curve number methodology, Atlas 14 precipitation depths, and the NRCS MSE3 precipitation distribution. Rainfall depths by recurrence interval for a 24-hour duration are given in Table 1, below. Regardless of the fact that the MSE3 distribution and rainfall data presented in Table 1 are specific to Dodge County, the use of the MSE3 distribution and rainfall data identified in Table 1 shall be used for all sites subject to the applicability of this ordinance.

Table 1 . 24-Hour Rainfall Depths*				
Precipitation Publication	1-Year	2-Year	10-Year	100-Year
Atlas 14 (standard method)	2.38"	2.68"	3.81"	6.24"

3. The runoff curve numbers in Table 2 below shall be used to represent pre-development conditions for land uses listed. For land uses not listed, predevelopment conditions shall assume "good hydrologic conditions" for appropriate land covers as identified in TR-55 or an equivalent methodology. The definitions of "hydrologic soil group" and "runoff curve number" are as given in TR-55.

Table 2. Maximum Pre-Development Runoff Curve Numbers				
	Hydrologic Soil Group			
	A	B	C	D
RCN for Woodland	30	55	70	77
RCN for Grassland	39	61	71	78
RCN for Cropland	55	69	78	83

4. This subsection of the ordinance does not apply to any of the following:
 - a. An in-fill development area less than one acre.
- (c) Infiltration.
1. BMPs shall be designed, installed, and maintained to infiltrate runoff in accordance with the following or to the maximum extent practicable.
 - a. Low imperviousness. For development up to 40 percent connected imperviousness, such as parks, cemeteries, and low density residential development, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90 percent of the predevelopment infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than one percent of the post-construction site is required as an effective infiltration area.
 - b. Moderate imperviousness. For development with more than 40 percent and up to 80 percent connected imperviousness, such as medium and high density residential multi-family development, industrial and institutional development, and office parks, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 75 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than two (2) percent of the post-construction site is required as an effective infiltration area.
 - c. High imperviousness. For development with more than 80 percent connected imperviousness, such as commercial strip malls, shopping centers, and commercial downtowns, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than two (2) percent of the post-construction site is required as an effective infiltration area.
 2. Predevelopment condition shall be the same as in subpar. 22.07(3)(b)(3).
 3. Prohibited Source Areas. Runoff from the following areas may not be infiltrated and may not be credited toward meeting the requirements of this paragraph unless demonstrated to meet the conditions identified in subpar. 22.07(3)(c)(10).
 - a. Runoff from storage, loading, and parking areas associated with Tier 1 industrial facilities identified in Wis. Adm. Code § NR 216.21(2)(a) is prohibited. Runoff from Tier 1 rooftop areas may be infiltrated with the concurrence of the regulatory authority.
 - b. Runoff from storage and loading areas of Tier 2 industrial facilities identified in Wis. Adm. Code § NR 216.21(2)(b) is prohibited. Runoff from Tier 2 employee/guest parking may be infiltrated but may require pretreatment. Runoff from Tier 2 rooftop areas may be infiltrated.
 - c. Runoff from fueling and vehicle maintenance areas is prohibited. Runoff from rooftops within, over or associated with fueling and vehicle maintenance areas may be infiltrated with the concurrence of the regulatory authority.

4. **Exempt Source Areas.** Runoff from the following areas may be credited toward meeting the requirement when infiltrated, but the decision to infiltrate runoff from these source areas is optional:
 - a. Parking areas and access roads less than 5,000 square feet for commercial development. Areas where the infiltration rate of the soil is less than 0.6 inches/hour measured at the site.
 - b. Parking areas and access roads less than 5,000 square feet for industrial development, not subject to the prohibitions in subpar. 3 above.
 - c. Except as provided in sub. 22.07(3), a redevelopment post-construction site.
 - d. In-fill development areas less than five acres.
 - e. Roads in commercial, industrial and institutional land uses, and arterial residential roads.
5. **Prohibited Location of Practices.** Infiltration practices may not be located in the following areas:
 - a. Areas within 1,000 feet upgradient or within 100 feet downgradient of direct conduits to groundwater.
 - b. Areas within 400 feet of a community water system well as specified in Wis. Adm. Code § NR 811.16(4), or within the separation distances of a private well as specified in Wis. Adm. Code § NR 812.08 for any private well or non-community well for runoff infiltrated from commercial, including multi-family residential, industrial and institutional land uses or regional devices for one- and two-family residential development.
 - c. Areas where contaminants of concern, as defined in Wis. Adm. Code § NR 720.03(2) are present in the soil through which infiltration will occur.
6. **Separation Distance to Infiltration Practices.** Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of seasonal high groundwater or the top of bedrock are in accordance with Table 3, below.

Table 3. Separation Distances and Soil Characteristics.

Source Area	Separation Distance	Soil Characteristics
Industrial, Commercial, Institutional Parking Lots and Roads	5 feet or more	Filtering Layer
Residential Arterial Roads	5 feet or more	Filtering Layer
Roofs Draining to Subsurface Infiltration	1 foot or more	Native or Engineered Soil with Particles Finer than Coarse Sand
Roofs Draining to Surface Infiltration	Not Applicable	Not Applicable

All Other Impervious Source Areas	3 feet or more	Filtering Layer
-----------------------------------	----------------	-----------------

7. Injection wells. Notwithstanding subpar. 6, above, applicable requirements for injection wells classified under Wis. Adm. Code § NR 815 shall be followed.
8. Infiltration Rate Exemptions. Infiltration practices located in the following areas may be credited toward meeting the requirements under the following conditions, but the decision to infiltrate under these conditions is optional.
 - a. Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than 0.6 inches per hour using a scientifically credible field test method.
 - b. Where the least permeable soil horizon to five (5) feet below the proposed bottom of the infiltration system using the U.S. Department of Agriculture method of soils analysis is one of the following: sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, or clay.
9. Alternate Uses. Where alternate uses of runoff are employed, such as for toilet flushing, laundry, irrigation, or storage on green roofs where an equivalent portion of the runoff is captured permanently by rooftop vegetation, such as alternate use shall be given equal credit toward the infiltration volume required by subpar. 22.07(3)(c)1.
10. Groundwater Standards.
 - a. Infiltration systems designed in accordance with this paragraph shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with Wis. Adm. Code § NR 140. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.
 - b. Notwithstanding sub-subpar a. above, the discharge from BMPs shall remain below the enforcement standard at the point of standards application.
11. Pretreatment. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to the scheduled maintenance and to protect groundwater quality in accordance with subpar. 10. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.
12. Maximum Extent Practicable. Where the conditions of subpars. 3. through 8. limit or restrict the use of infiltration practices, the performance standard of paragraph 22.07 (3) shall be met to the maximum extent practicable.

(d) Protective Areas.

1. "Protective area" means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the

closest impervious surface. However, in this paragraph, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.

- a. For outstanding resource waters and exceptional resource waters, 75 feet.
 - b. For perennial and intermittent streams identified on a United States geological survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.
 - c. For lakes, 50 feet.
 - d. For wetlands not subject to subd. 1 e. or f., 50 feet
 - e. For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps, and ephemeral ponds.
 - f. For less susceptible wetlands, 10% of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass; cultivated hydric soils; and any gravel pits, or dredged material or fill material disposal sites that take on the attributes of a wetland.
 - g. In subd. 1.d., e., and f., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in § NR 103.03, Wis. Adm. Code.
 - h. Wetland boundary delineations shall be made in accordance with Wis. Adm. Code § NR 103.08 (1m). This paragraph does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.
 - i. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.
 - j. Notwithstanding sub-subpars. a. through i., the greatest protective area width shall apply where rivers, streams, lakes and wetlands are contiguous.
2. Applicability. This paragraph applies to post-construction sites located within a protective area, except those areas exempted pursuant to subd. 4.
 3. The following requirements shall be met:
 - a. Impervious surfaces shall be kept out of the protective area entirely or to the maximum extent practicable. If there is no practical alternative to locating an impervious surface in the protective area, the stormwater management plan shall contain a written site-specific explanation.
 - b. Where land-disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining vegetative cover of 70% or greater shall be established and maintained where no impervious surface is present. The adequate sod

or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Nonvegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur.

- c. Best management practices such as filter strips, swales, or wet detention basins that are designed to control pollutants from nonpoint sources may be located in the protective area.

Note to Users: Other regulations, such as Ch. 30, Wis. Stats., and Chs. NR 103, 115, 116 and 117, Wis. Adm. Code, and their associated review and approval process may apply in the protective area.

4. This paragraph does not apply to:

- a. Except as provided in sub. 22.07(3), redevelopment post-construction sites.
- b. In-fill development areas less than 5 acres.
- c. Structures that cross or access surface waters such as boat landings, bridges and culverts.
- d. Structures constructed in accordance with §59.692(1v), Wis. Stats.
- e. Areas of post-construction sites from which runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the requirements of this ordinance for Total Suspended Solids, Total Phosphorus, and peak flow reduction, except to the extent that vegetative ground cover is necessary to maintain bank stability.

- (e) Fueling and Vehicle Maintenance Areas. Fueling and vehicle maintenance areas shall have BMPs designed, installed and maintained to reduce petroleum within runoff, so that the runoff that enters waters of the State contains no visible petroleum sheen, or to the maximum extent practicable.

Note to Users: A combination of the following BMPs may be used: oil and grease separators, canopies, petroleum spill cleanup materials, or any other structural or nonstructural method of preventing or treating petroleum in runoff.

(6) **GENERAL CONSIDERATIONS FOR ON-SITE AND OFF-SITE STORMWATER MANAGEMENT MEASURES.** The following considerations shall be observed in managing runoff:

- (a) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.
- (b) Emergency overland flow for all stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.

(7) **REGIONAL TREATMENT (OFF-SITE) OPTION.**

- (a) To comply with the performance standards required under Section 22.07 of this ordinance, the BMPs may be located on-site or off-site as part of a regional stormwater device, practice or system, but shall be installed in accordance with S. NR 151.003, Wis. Adm. Code.

- (b) The Public Works Department may approve off-site management measures provided that all of the following conditions are met:
 - 1. The Public Works Department determines that the post-construction runoff is covered by a stormwater management system plan that is approved by the City of Waupun and that contains management requirements consistent with the purpose and intent of this ordinance.
 - 2. The off-site facility meets all of the following conditions:
 - a. The facility is in place.
 - b. The facility is designed and adequately sized to provide a level of stormwater control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this ordinance.
 - c. The facility has a legally obligated entity responsible for its long-term operation and maintenance.
 - (c) Where a regional treatment option exists such that the Public Works Department exempts the applicant from all or part of the minimum on-site stormwater management requirements, the applicant shall be required to pay a fee in an amount determined by the Public Works Department. In determining the fee for post-construction runoff, the Public Works Department shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.
- (8) **ALTERNATE REQUIREMENTS.** The Public Works Department may establish stormwater management requirements more stringent than those set forth in this section if the Public Works Department determines that an added level of protection is needed to protect sensitive resources, or to avoid property damage, or nuisance conditions.

22.08 - PERMITTING REQUIREMENTS, PROCEDURES AND FEES .

- (1) **PERMIT REQUIRED.** No responsible party may undertake a land-disturbing construction activity without receiving a post-construction runoff permit from the Public Works Department prior to commencing the proposed activity.
- (2) **PERMIT APPLICATION AND FEES.** Unless specifically excluded by this ordinance, any responsible party desiring a permit shall submit to the Public Works Department a permit application made on a form provided by the Public Works Department for that purpose.
 - (a) Unless otherwise excepted by this ordinance, a permit application must be accompanied by a stormwater management plan, a maintenance agreement and a nonrefundable permit administration fee.
 - (b) The stormwater management plan shall be prepared to meet the requirements of §§22.07 and 22.09, the maintenance agreement shall be prepared to meet the requirements of §22.10, the financial guarantee shall meet the requirements of §22.11, and fees shall be those established by the Common Council as set forth §in 22.12.
- (3) **REVIEW AND APPROVAL OF PERMIT APPLICATION.** The Public Works Department shall review any permit application that is submitted with a stormwater management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:
 - (a) Within 15 business days of the receipt of a complete permit application, including all items as required by sub. (2), the Public Works Department shall inform the

applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.

- (b) If the stormwater permit application, plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of stormwater management practices is made, the Public Works Department shall issue the permit.
 - (c) If the stormwater permit application, plan or maintenance agreement is disapproved, the Public Works Department shall detail in writing the reasons for disapproval.
 - (d) The Public Works Department may request additional information from the applicant. If additional information is submitted, the Public Works Department shall have 15 business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.
- (4) **PERMIT REQUIREMENTS.** All permits issued under this ordinance shall be subject to the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. The Public Works Department may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Public Works Department to suspend or revoke this permit may be appealed in accordance with §22.14.
- (a) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable Federal, State, and local laws and regulations.
 - (b) The responsible party shall design and install all structural and nonstructural stormwater management measures in accordance with the approved stormwater management plan and this permit.
 - (c) The responsible party shall notify the Public Works Department at least 5 business days before commencing any work in conjunction with the stormwater management plan, and within 5 business days upon completion of the stormwater management practices. If required as a special condition under sub. (5), the responsible party shall make additional notification according to a schedule set forth by the Public Works Department so that practice installations can be inspected during construction.
 - (d) Practice installations required as part of this ordinance shall be certified "as built" by a licensed professional engineer. Completed stormwater management practices must pass a final inspection by the Public Works Department or its designee to determine if they are in accordance with the approved stormwater management plan and ordinance. The Public Works Department or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.
 - (e) The responsible party shall notify the Public Works Department of any significant modifications it intends to make to an approved stormwater management plan. The Public Works Department may require that the proposed modifications be submitted to it for approval prior to incorporation into the stormwater management plan and execution by the responsible party.
 - (f) The responsible party shall maintain all stormwater management practices in accordance with the stormwater management plan until the practices either become the responsibility of the City, or are transferred to subsequent private owners as specified in the approved maintenance agreement.
 - (g) The responsible party authorizes the Public Works Department to perform any work or operations necessary to bring stormwater management measures into

conformance with the approved stormwater management plan, and consents to a special assessment or charge against the property as authorized under subch. VII of Ch. 66, Wis. Stats., or to charging such costs against the financial guarantee posted under §22.11.

- (h) If so directed by the Public Works Department, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved stormwater management plan.
 - (i) The responsible party shall permit property access to the Public Works Department or its designee for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.
 - (j) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the Public Works Department may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.
 - (k) The responsible party is subject to the enforcement actions and penalties detailed in §22.13, if the responsible party fails to comply with the terms of this permit.
- (5) **PERMIT CONDITIONS.** Permits issued under this subsection may include conditions established by Public Works Department in addition to the requirements needed to meet the performance standards in §22.07 or a financial guarantee as provided for in §22.11.
- (6) **PERMIT DURATION.** Permits issued under this section shall be valid from the date of issuance through the date the Public Works Department notifies the responsible party that all stormwater management practices have passed the final inspection required under sub. (4)(d).

22.09 - STORMWATER MANAGEMENT PLAN.

- (1) **PLAN REQUIREMENTS.** The stormwater management plan required under §22.08(2) shall contain at a minimum the information required on the City of Waupun Stormwater Management Submittal Form for Compliance with City Ordinance 05-02. This form will be provided by the City upon request.
- (2) **ALTERNATE REQUIREMENTS.** The Public Works Department may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under §22.07(5).

22.10 - MAINTENANCE AGREEMENT .

- (1) **MAINTENANCE AGREEMENT REQUIRED.** The maintenance agreement required under §22.08(2) for stormwater management practices shall be an agreement between the Public Works Department and the responsible party to provide for maintenance of stormwater practices beyond the duration period of this permit. The maintenance agreement shall be filed with the County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the stormwater management practices.

- (2) **AGREEMENT PROVISIONS.** (Am. #10-14) The City shall provide the maintenance agreement form. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by Section 22.09:
- (a) Identification of the stormwater facilities and designation of the drainage area served by the facilities.
 - (b) A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under Section 22.08(2)(b).
 - (c) Identification of the responsible party(s), which must specifically name an entity such as the property owner, a homeowner's association, a condominium association, the City, etc., responsible for long-term maintenance of the stormwater management practices identified in the stormwater management plan required under Section 22.08(2)(b).
 - (d) Requirement that the responsible party(s) shall maintain stormwater management practices in accordance with the schedule included in paragraph (b).
 - (e) Authorization for the Director of Public Works to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
 - (f) A requirement of the Director of Public Works to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition.
 - (g) Agreement that the party designated under paragraph(c), as responsible for long term maintenance of the stormwater management practices, shall be notified by the Director of Public Works of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Director of Public Works.
 - (h) Authorization of the Director of Public Works to perform the corrected actions identified in the inspection report if the responsible party designated under paragraph (c) does not make the required corrections in the specified time period. The Director of Public Works shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Wis. Stats. Subch., VII of Ch. 66.

22.11 - FINANCIAL GUARANTEE .

- (1) **ESTABLISHMENT OF THE GUARANTEE.** The City of Waupun may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the City of Waupun. The financial guarantee shall be in an amount determined by the Public Works Department to be the estimated cost of construction and the estimated cost of maintenance of the stormwater management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the City of Waupun the authorization to use the funds to complete the stormwater management practices if the responsible party defaults or does not properly implement the approved stormwater management plan, upon written notice to the responsible party by the Public Works Department that the requirements of this ordinance have not been met.
- (2) **CONDITIONS FOR RELEASE.** Conditions for the release of the financial guarantee are as follows:

- (a) The City of Waupun shall release the portion of the financial guarantee established under this section, less any costs incurred by the City of Waupun to complete installation of practices, upon submission of "as built plans" by a licensed professional engineer. The City of Waupun may make provisions for a partial pro rata release of the financial guarantee based on the completion of various development stages.
- (b) The City of Waupun shall release the portion of the financial guarantee established under this section to assure maintenance of stormwater practices, less any costs incurred by the City of Waupun, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

22.12 - FEE SCHEDULE .

The fees referred to in other sections of this ordinance shall be established by the Public Works Department and may from time to time be modified by resolution. A schedule of the fees established by the Public Works Department shall be available for review in the City of Waupun's City Clerk's office.

22.13 - ENFORCEMENT .

- (1) Any land-disturbing construction activity or post-construction runoff initiated after the effective date of this ordinance by any person, firm, association, or corporation subject to the ordinance provisions shall be deemed a violation unless conducted in accordance with the requirements of this ordinance.
- (2) The Director of Public Works or designee shall notify the responsible party by certified mail, signed receipt required, of any noncomplying land-disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action which may be taken.
- (3) Upon receipt of written notification from the Director of Public Works or designee under sub. (2), the responsible party shall correct work that does not comply with the stormwater management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth in the notice.
- (4) If the violations to a permit issued pursuant to this ordinance are likely to result in damage to properties, public facilities, or waters of the State, the Director of Public Works or designee may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the City of Waupun plus interest and legal costs shall be billed to the permit holder. Cost may also be recouped using the approach described in §22.13(11).
- (5) The Director of Public Works or designee is authorized to post a stop work order on all land-disturbing construction activity that is in violation of this ordinance, or to request the municipal attorney to obtain a cease and desist order in any court with jurisdiction.
- (6) The Director of Public Works or designee may revoke a permit issued under this ordinance for noncompliance with ordinance provisions.

- (7) Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the Director of Public Works or designee or by a court with jurisdiction.
- (8) The Director of Public Works or designee is authorized to refer any violation of this ordinance, or of a stop work order, or cease and desist order issued pursuant to this ordinance, to the municipal attorney, corporation counsel for the commencement of further legal proceedings in any court with jurisdiction.
- (9) Any person, firm, association, or corporation who does not comply with the provisions of this ordinance shall be subject to a forfeiture of not less than \$100.00 or more than \$1,000.00 per offense, plus the costs of prosecution. Each day that the violation exists shall constitute a separate offense.
- (10) Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.

Note to Users: Injunctive orders are authorized pursuant to §59.69(11), 61.35, or 62.23(8), Wis. Stats., for counties, villages and towns with village powers, and cities respectively.

- (11) When the Director of Public Works or designee determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices set forth in the stormwater management plan, or has failed to comply with schedules set forth in said stormwater management plan, the Director of Public Works or designee may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan. The Director of Public Works or designee shall keep a detailed accounting of the costs and expenses of performing this work. If costs are not paid directly by the permit holder, the costs and expenses shall be deducted from any financial security posted pursuant to §22.11 of this ordinance. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.

22.14 - APPEALS .

- (1) BOARD OF APPEALS. The board of appeals created pursuant to §16.16 of the City of Waupun Zoning Code pursuant to §62.23(7)(e), Wis. Stats.:
 - (a) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Public Works Department in administering this ordinance except for cease and desist orders obtained under §22.12(3).
 - (b) Upon appeal, may authorize variances from the provisions of this ordinance which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship; and
 - (c) Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.

- (2) WHO MAY APPEAL. Appeals to the board of appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the City of Waupun affected by any decision of the Director of Public Works or designee.

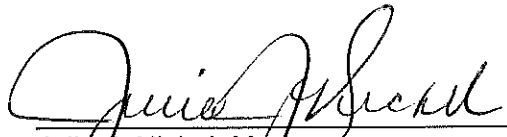
22.15 - SEVERABILITY .

If any section, clause, provision or portion of this ordinance is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the ordinance shall remain in force and not be affected by such judgment.

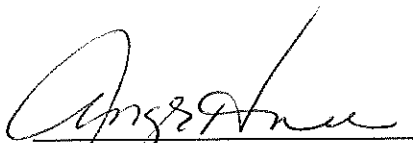
22.16 - EFFECTIVE DATE .

This ordinance shall be in force and effect from and after its adoption and publication.

Enacted this 8th day of May, 2018


Julie J. Nickel, Mayor

ATTEST:


Angela J. Hull, City Clerk