

## **ORDINANCE NO. 2017-35**

### **An Ordinance Repealing and Recreating Title 14 Chapter 2 of the City of Code of Ordinances**

#### **STORMWATER MANAGEMENT**

The Common Council of the City of Cedarburg does hereby ordain as follows:

SECTION 1. Title 14 Chapter 2 of the Municipal Code of the City of Cedarburg is hereby deleted and recreated as follows:

- S. 14-2-01 Authority**
- S. 14-2-02 Purpose and Intent**
  - (1) Purpose
  - (2) Intent
- S. 14-2-03 Applicability and Jurisdiction**
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  - (2) Jurisdiction
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- S. 14-2-04 Definitions**
- S. 14-2-05 Applicability of Maximum Extent Practicable**
- S. 14-2-06 Technical Standards**
- S. 14-2-07 Performance Standards**
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  - (3) Maintenance of Effort
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    - (b) Peak Discharge
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  - (2) Permit Application and Fees
  - (3) Permit Application Review and Approval
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  - (5) Permit Conditions
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  - (1) Storm Water Management Plan Requirements
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- S. 14-2-10 Maintenance Agreement**
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- (2) Agreement Provisions
- S. 14-2-11 Financial Guarantee**
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  - (2) Conditions for Release
- S. 14-2-12 Illicit Discharge Prohibition and Disconnection**
  - (1) Intent
  - (2) Applicability
  - (3) Responsibility for Administration
  - (4) Illicit Discharge Properties
  - (5) Illicit Connection Prohibitions
  - (6) Suspension of MS4 Access
  - (7) Monitoring of Discharges
  - (8) Requirements
  - (9) Watercourse Protection
  - (10) Notification of Spills
  - (11) Enforcement
- S. 14-2-13 Fee Schedule**
- S. 14-2-14 Enforcement**
- S. 14-2-15 Appeals**
  - (1) Department of Public Works and Sewerage Commission
  - (2) Who May Appeal
- S. 14-2-16 Severability**
- S. 14-2-17 Effective Date**

## **POST-CONSTRUCTION STORMWATER MANAGEMENT**

### **S. 14-2-01 AUTHORITY.**

- (1) This ordinance is adopted by the City of Cedarburg under the authority granted by s. 62.234 Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under s. 62.23, Wis. Stats., that relate to storm water management regulations. Except as otherwise specified in s. 62.234 Wis. Stats., s. 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 City of Cedarburg hereby designates the City of Cedarburg Department of Engineering and Public Works to administer and enforce the provisions of this ordinance.
- (4) The requirements of this ordinance do not pre-empt more stringent storm water 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 ss. 281.16 and 283.33, Wis. Stats.
  - (b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

#### **S. 14-2-02      PURPOSE AND INTENT.**

- (1) **PURPOSE.** The purpose of this ordinance is to establish long-term, post-construction runoff management requirements and criteria that will prevent and control water pollution, diminish the threats to public health, safety, welfare and the aquatic environment due to runoff of stormwater from development and redevelopment. Specific purposes are to:
  - (a) Further the maintenance of safe and healthful conditions.
  - (b) Prevent and control the adverse effects of storm water; 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; and control increases in the scouring and transportation of particulate matter.
  - (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 City of Cedarburg that this ordinance regulates post-construction storm water discharges to waters of the state. This ordinance may be applied on a site-by-site basis. The City of Cedarburg recognizes, however, that the preferred method of achieving the storm water performance standards set forth in this ordinance is through the preparation and implementation of comprehensive, systems-level storm water management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional storm water 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 performance standards developed under s. 281.16, Wis. Stats., for regional storm water management measures and have been approved by the City of Cedarburg, it is the intent of this ordinance that the approved storm water management plan be used to identify post-construction management measures acceptable for the community.

#### **S. 14-2-03      APPLICABILITY AND JURISDICTION.**

- (1) **APPLICABILITY.**
  - (a) Except as provided under par. (b), this ordinance applies to a post-construction site whereupon one acre or more of land disturbing construction activity occurs during construction. The ordinance also applies to land development activities that are smaller than the minimum applicability criteria if such activities are part of a larger common plan of development or sale that meets the following applicability criteria, even though multiple separate and distinct land development activities may take place at different times on different schedules.
    1. Residential land development with a gross aggregate area of 1 acre or more;
    2. Residential land development with a gross aggregate area less than 1 acre, if there are at least 0.5 acres of impervious surfaces;
    3. Land development, other than a residential land development, with a gross aggregate area of 0.5 acres or more;

4. Any land development, which in the opinion of the City of Cedarburg Department of Engineering and Public Works, is likely to result in stormwater runoff that exceeds the safe capacity of existing drainage facilities or receiving body of water, that causes undue channel erosion, increases water pollution or which endangers downstream property or public safety.
  - (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. Agricultural facilities and practices.
    3. Underground utility construction, but not including the construction of any above ground structures associated with utility construction.
  - (c) Notwithstanding the applicability requirements in par. (a), this ordinance applies to post-construction sites of any size that, as determined by the City of Cedarburg Department of Engineering and Public Works, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, causes undue channel erosion, or increases water pollution by scouring or the transportation of particulate matter.
- (2) JURISDICTION.  
This ordinance applies to post construction sites within the boundaries and jurisdiction of the City of Cedarburg, as well as all lands located within the extraterritorial plat approval jurisdiction of the City of Cedarburg, even if plat approval is not involved.
- (3) EXCLUSIONS.  
This ordinance is not applicable to activities conducted by a state agency, as defined under s. 227.01 (1), Wis. Stats.

#### **S. 14-2-04 DEFINITIONS.**

- (1) "Adequate sod, or self-sustaining vegetative cover" means maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges and duff layers of fallen leaves and woody debris.
- (2) "Administering authority" means a governmental employee, or a regional planning commission empowered under s. 62.234, Wis. Stats., that is designated by the Common Council to administer this ordinance.
- (3) "Agricultural facilities and practices" has the meaning given in s. 281.16 (1), Wis. Stats.
- (4) "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.
- (5) "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.
- (6) "Best management practice" or "BMP" means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.
  - (7) "Business day" means a day the office of the City of Cedarburg Department of Engineering and Public Works is routinely and customarily open for business.
  - (8) "Cease and desist order" means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit or in violation of a permit issued by the City of Cedarburg Department of Engineering and Public Works.
  - (9) "Combined sewer system" means a system for conveying both sanitary sewage and storm water runoff.
  - (10) "Connected imperviousness" means an impervious surface connected to the waters of the state via a separate storm sewer, an impervious flow path, or a minimally pervious flow path.
  - (11) "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.
  - (12) "Development" means residential, commercial, industrial or institutional land uses and associated roads.
  - (13) "Direct conduits to groundwater" means wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, or depressionnal groundwater recharge areas over shallow fractured bedrock.
  - (14)\* "Division of land" means the creation from one parcel of four or more parcels or building sites of **one and one-half (1.5)** or fewer acres each in area where such creation occurs at one time or through the successive partition within a 5-year period.
  - (15) "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.
  - (16) "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.
  - (17) "Exceptional resource waters" means waters listed in s. NR 102.11, Wis. Adm. Code.
  - (18)\* "Extraterritorial" means the unincorporated area within three miles of the corporate limits of a first, second, or third class city, or within one and a half miles of a fourth class city or village.
  - (19) "Filtering layer" means soil that has at least a 3-foot deep layer with at least 20 percent fines; or at least a 5-foot deep layer with at least 10 percent fines; or an engineered soil with an equivalent level of protection as determined by the regulatory authority for the site.
  - (20) "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 percent of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.
  - (21) "Financial guarantee" means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the City of Cedarburg Department of Engineering and Public Works by the responsible party to assure that

requirements of the ordinance are carried out in compliance with the storm water management plan.

- (22) "Governing body" means the City of Cedarburg Common Council.
- (23) "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, gravel or paved parking lots and streets are examples of areas that typically are impervious.
- (24) "In-fill" means an undeveloped area of land located within an existing urban sewer service area, surrounded by development or development and natural or man-made features where development cannot occur.
- (25) "Infiltration" means the entry of precipitation or runoff into or through the soil.
- (26) "Infiltration system" means a device or practice 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.
- (27) "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.
- (28) "Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative 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.
- (29) "Landowner" means any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of storm water BMPs on the property.
- (30) "Maintenance agreement" means a legal document that provides for long-term maintenance of storm water management practices.
- (31) "Maximum extent practicable" means the highest level of performance that is achievable but is not equivalent to a performance standard identified in this ordinance as determined in accordance with S. 14-2-05 of this ordinance.
- (32) "New development" means development resulting from the conversion of previously undeveloped land or agricultural land uses.
- (33) "NRCS MSE3 or MSE4 distribution" means a specific precipitation distribution developed by the United States Department of Agriculture, Natural Resources Conservation Service, using precipitation data from Atlas 14.
- (34) "Off-site" means located outside the property boundary described in the permit application.
- (35) "On-site" means located within the property boundary described in the permit application.
- (36) "Ordinary high-water mark" has the meaning given in s. NR 115.03 (6), Wis. Adm. Code.
- (37) "Outstanding resource waters" means waters listed in s. NR 102.10, Wis. Adm. Code.

- (38) "Percent fines" means the percentage of a given sample of soil, which passes through a # 200 sieve.
- (39) "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- (40) "Permit" means a written authorization made by the City of Cedarburg Department of Engineering and Public Works to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
- (41) "Permit administration fee" means a sum of money paid to the City of Cedarburg Department of Engineering and Public Works by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.
- (42) "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.
- (43) "Pollutant" has the meaning given in s. 283.01 (13), Wis. Stats.
- (44) "Pollution" has the meaning given in s. 281.01 (10), Wis. Stats.
- (45) "Post-construction site" means a construction site following the completion of land disturbing construction activity and final site stabilization.
- (46) "Pre-development 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.
- (47) "Preventive action limit" has the meaning given in s. NR 140.05 (17), Wis. Adm. Code.
- (48) "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.
- (49) "Redevelopment" means areas where development is replacing older development.
- (50) "Responsible party" means the landowner or any other entity performing services to meet the requirements of this ordinance through a contract or other agreement. "Runoff" means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.
- (51) "Separate storm sewer" means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:
  - (a) Is designed or used for collecting water or conveying runoff.
  - (b) Is not part of a combined sewer system.
  - (c) Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.
  - (d) Discharges directly or indirectly to waters of the state.
- (52) "Silviculture activity" means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.
- (53) "Site" means the entire area included in the legal description of the land on which the land disturbing construction activity occurred.

- (54) "Stop work order" means an order issued by the City of Cedarburg Department of Engineering and Public Works which requires that all construction activity on the site be stopped.
- (55) "Storm water management plan" means a comprehensive plan designed to reduce the discharge of pollutants from storm water, after the site has undergone final stabilization, following completion of the construction activity.
- (56) "Storm water 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.
- (57) "Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.
- (58) "Top of the channel" means an edge, or point on the landscape landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12 percent continually for at least 50 feet. If the slope of the land is 12 percent 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.
- (59) "Total maximum daily load" or "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.
- (60) "TP-40" means Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.
- (61) "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, which is incorporated by reference for this chapter.
- (62) "Transportation facility" means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements under s. 85.095 (1)(b), Wis. Stats. "Transportation facility" does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Department pursuant to s. 281.33, Wis. Stats.
- (63) "TSS" means total suspended solids.
- (64) "Type II distribution" means a rainfall type curve as established in the "United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published in 1973".
- (65) "Waters of the state" includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

#### **S. 14-2-05      APPLICABILITY OF MAXIMUM EXTENT PRACTICABLE.**

Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the City of Cedarburg Department of Engineering and Public Works's 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, protection of wetlands, and preservation of historic properties.

#### **S. 14-2-06      TECHNICAL STANDARDS.**

The following methods shall be used in designing the water quality, peak discharge, and infiltration components of storm water practices needed to meet the water quality standards of this ordinance:

- (1) Consistent with the technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subchapter V of chapter 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 City of Cedarburg Department of Engineering and Public Works.

#### **S. 14-2-07      PERFORMANCE STANDARDS.**

- (1) RESPONSIBLE PARTY. The responsible party shall comply with this section.
- (2) STORM WATER MANAGEMENT PLAN. A written storm water management plan in accordance with S. 14-2-09 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 reduction, 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) REQUIREMENTS. The storm water management plan required under sub. (2) shall include the following:
  - (a) TOTAL SUSPENDED SOLIDS. BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows:
    1. BMPs shall be designed in accordance with Table 1. or to the maximum extent practicable as provided in subd. 2. The design shall be based on an average annual rainfall, as compared to no runoff management controls.

<b>Table 1. TSS Reduction Standards</b>	
<b>Development Type</b>	<b>TSS Reduction</b>
New Development	80 percent
In-fill development	80 percent
Redevelopment	40 percent of load from parking areas and roads

2. Maximum Extent Practicable. If the design cannot meet a total suspended solids reduction performance standard of Table 1., the storm water management plan shall include a written, site-specific explanation of why the total suspended solids reduction performance standard cannot be met and why the total suspended solids load will be reduced only to the maximum extent practicable.
  3. Off-Site Drainage. When designing BMPs, runoff draining to the BMP from off-site 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:
    - a. For the 1-year, 24-hour; and the 2-year, 24-hour design storms, BMPs shall be designed so that post-construction peak runoff discharge rates are maintained or reduced compared to the 1-year, 24-hour; and the 2-year, 24-hour pre-development peak runoff discharge rates respectively, or to the maximum extent practicable.
    - b. The post-development storm water runoff rate associated with the 100-year, 24-hour design storm, shall not exceed the pre-development 10-year 24-hour design storm runoff rate, for new development sites.

The runoff curve numbers in Table 2. shall be used to represent the actual pre-development conditions. Peak discharges shall be calculated using TR-55 runoff curve number methodology, Atlas 14 precipitation depths, and the appropriate NRCS Wisconsin MSE3 or MSE4 precipitation distribution. On a case-by-case basis, City of Cedarburg Department of Engineering and Public Works may allow the use of TP-40 precipitation depths and the Type II distribution.

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

2. This subsection of the ordinance does not apply to any of the following:
    - a. Except as provided under S. 14-2-07 (3), a redevelopment post-construction site.
    - b. An in-fill development area less than 5 acres.
    - c. Sites that directly discharge to the Cedar Creek without flowing over or through a municipally owned separate storm sewer as approved by the City Inspector.
  3. All stormwater conveyance systems within the proposed development, and receiving surface runoff from the proposed development, shall be designed to completely contain the following peak storm flows:
    - a. For open channel conveyance systems, the peak flow from the 100-year, 24-hour storm shall be completely contained within the channel bottom and banks.
    - b. For storm sewer pipes the peak flow from the 10-year, 24-hour storm shall be completely contained within the pipes with no surcharging or pressurized flow.
- (c) INFILTRATION.
1. Best Management Practices. 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 pre-development 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 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 2 percent of the post-construction site is required as an effective infiltration area.
- 2 Pre-development. The pre-development condition shall be the same as specified in Table 2 of the Peak Discharge section of this ordinance.
  - 3. Source Areas.
    - a. *Prohibitions* Runoff from the following areas may not be infiltrated and may not qualify as contributing to meeting the requirements of this section unless demonstrated to meet the conditions identified in S. 14-2-07 (4)(c)6.:
      - i. Areas associated with a tier 1 industrial facility identified in s. NR 216.21 (2)(a), including storage, loading and parking. Rooftops may be infiltrated with the concurrence of the regulatory authority.
      - ii. Storage and loading areas of a tier 2 industrial facility identified in s. NR 216.21 (2)(b).
      - iii. Fueling and vehicle maintenance areas. Runoff from rooftops of fueling and vehicle maintenance areas may be infiltrated with the concurrence of the regulatory authority.
    - b. *Exemptions.* 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:
      - i. Parking areas and access roads less than 5,000 square feet for commercial development.
      - ii. Parking areas and access roads less than 5,000 square feet for industrial development not subject to the Prohibitions under par a.
      - iii. Except as provided under S. 14-2-07 (3), redevelopment post-construction sites.
      - iv. In-fill development areas less than 5 acres.
      - v. Roads on commercial, industrial and institutional land uses, and arterial residential roads.
  - 4. Location of Practices.
    - a. *Prohibitions.* Infiltration practices may not be located in the following areas:
      - i. Areas within 1000 feet upgradient or within 100 feet downgradient of karst features.

- ii. Areas within 400 feet of a community water system well as specified in s. NR 811.16 (4) or within the separation distances listed in s. 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.
- iii. Areas where contaminants of concern, as defined in s. NR 720.03 (2), are present in the soil through which infiltration will occur.
- b. *Separation distances*
  - i. 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:

<b>Table 3. Separation Distances and Soil Characteristics</b>		
<b>Source Area</b>	<b>Separation Distance</b>	<b>Soil Characteristics</b>
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 Practices	1 foot or more	Native or Engineered Soil with Particles Finer than Coarse Sand
Roofs Draining to Surface Infiltration Practices	Not Applicable	Not Applicable
All Other Impervious Source Areas	3 feet or more	Filtering Layer

- ii. Notwithstanding par. b., applicable requirements for injection wells classified under ch. NR 815 shall be followed.
- c. *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:
  - i. 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.
  - ii. Where the least permeable soil horizon to 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.

5. Alternate Use. Where alternate uses of runoff are employed, such as for toilet flushing, laundry, or irrigation or storage on green roofs where an equivalent portion of the runoff is captured permanently by rooftop vegetation, such alternate use shall be given equal credit toward the infiltration volume required by this section.
6. Groundwater Standards.
  - a. Infiltration systems designed in accordance with this section 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 Ch. 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 par. a., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.
7. 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 scheduled maintenance and to protect groundwater quality in accordance with subd. 6. Pretreatment options may include, but are not limited to, oil and grease separation, sedimentation, biofiltration, filtration, swales or filter strips.
8. Maximum Extent Practicable. Where the conditions of subd. 3. and 4. limit or restrict the use of infiltration practices, the performance standard of S. 14-2-07 (4)(c) shall be met to the maximum extent practicable.

(d) PROTECTIVE AREAS.

1. Definition. In this section, “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 section, “protective area” does not include any area of land adjacent to any stream enclosed within a pipe or culvert, so 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 U.S. 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 par. 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, 25 feet. Less susceptible wetlands include: degraded wetland 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 pars. d. to 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 s. NR 103.03.
  - h. Wetland boundary delineation shall be made in accordance with s. NR 103.08 (1m). This paragraph does not apply to wetlands that have been completely filled in compliance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in compliance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after a 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, 25 feet.
  - j. Notwithstanding pars. a. to i., the greatest protective area width shall apply where rivers, streams, lakes and wetlands are contiguous.
2. Applicability. This section applies to post-construction sites located within a protective area, except those areas exempted pursuant to subd. 4.
3. Requirements. 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 storm water management plan shall contain a written, site-specific explanation.
  - b. Where land disturbing construction activity occurs within a protective area, adequate sod or self-sustaining vegetative cover of 70 percent 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. Non-vegetative 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. BMPs such as filter strips, swales, or wet detention ponds, that are designed to control pollutants from non-point sources, may be located in the protective area.
  - 4. Exemptions. This section does not apply to any of the following:
    - a. Except as provided under S. 14-2-07 (3), redevelopment post-construction sites.
    - b. In-fill development areas less than 5 acres.
    - c. Structures that cross or access surface water such as boat landings, bridges, and culverts.
    - d. Structures constructed in accordance with s. 59.692 (1v), Stats.
    - e. Areas of post-construction sites from which the runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the local ordinance requirements for total suspended solids and peak flow reduction, except to the extent that vegetative ground cover is necessary to maintain bank stability.
  - (e) FUELING AND 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.
- (5) GENERAL CONSIDERATIONS FOR STORM WATER MANAGEMENT MEASURES. The following considerations shall be observed in on-site and off-site runoff management:
  - (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 storm water facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.
- (6) BMP LOCATION.
  - (a) To comply with the performance standards required under S. 14-2-07 of this ordinance, BMPs may be located on-site or off-site as part of a regional storm water device, practice or system, but shall be installed in accordance with s. NR 151.003, Wis. Adm. Code.
  - (b) The City of Cedarburg Department of Engineering and Public Works may approve off-site management measures provided that all of the following conditions are met:
    - 1. The City of Cedarburg Department of Engineering and Public Works determines that the post-construction runoff is covered by a storm water management system plan that is approved by the City of Cedarburg 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 storm water 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 City of Cedarburg Department of Engineering and Public Works exempts the applicant from all or part of the minimum on-site storm water management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the City of Cedarburg Department of Engineering and Public Works. In determining the fee for post-construction runoff, the City of Cedarburg Department of Engineering and Public Works shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option. Fee in Lieu of Costs in effect at the time of publishing this ordinance are as shown in the following table and subject to modification pursuant to section 14-2-13 herein.

<b>Fee in Lieu of Costs – City of Cedarburg Stormwater Ordinance</b>	
<b>Land Use</b>	<b>Fee/Acre of Land Developed</b>
Residential (1&2 Family)	\$4,000
Commercial, Industrial and Multi-Family	\$10,000

- (7) **ADDITIONAL REQUIREMENTS.** The City of Cedarburg Department of Engineering and Public Works may establish storm water management requirements more stringent than those set forth in this ordinance if the City of Cedarburg Department of Engineering and Public Works determines that the requirements are needed to control storm water quantity or control flooding, comply with federally approved total maximum daily load requirements, or control pollutants associated with existing development or redevelopment.

**S. 14-2-08 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 City of Cedarburg Department of Engineering and Public Works 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 City of Cedarburg Department of Engineering and Public Works a permit application on a form provided by the City of Cedarburg Department of Engineering and Public Works for that purpose.

- (a) Unless otherwise excluded by this ordinance, a permit application must be accompanied by a storm water management plan, a maintenance agreement and a non-refundable permit administration fee.
  - (b) The storm water management plan shall be prepared to meet the requirements of S. 14-2-07 and S. 14-2-09, the maintenance agreement shall be prepared to meet the requirements of S. 14-2-10, the financial guarantee shall meet the requirements of S. 14-2-11, and fees shall be those established by the City of Cedarburg as set forth in S. 14-2-13.
- (3) PERMIT APPLICATION REVIEW AND APPROVAL. The City of Cedarburg Department of Engineering and Public Works shall review any permit application that is submitted with a storm water management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:
  - (a) Within 30 business days of the receipt of a complete permit application, including all items as required by sub. (2), the City of Cedarburg Department of Engineering and Public Works shall inform the applicant whether the application, storm water management plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.
  - (b) If the storm water permit application, storm water management plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of storm water management practices is made, the City of Cedarburg Department of Engineering and Public Works shall issue the permit.
  - (c) If the storm water permit application, storm water management plan or maintenance agreement is disapproved, the City of Cedarburg Department of Engineering and Public Works shall detail in writing the reasons for disapproval.
  - (d) The City of Cedarburg Department of Engineering and Public Works may request additional information from the applicant. If additional information is submitted, the City of Cedarburg Department of Engineering and Public Works shall have 30 business days from the date the additional information is received to inform the applicant that the storm water management plan and maintenance agreement are either approved or disapproved.
  - (e) Failure by the City of Cedarburg Department of Engineering and Public Works to inform the permit applicant of a decision within 30 business days of a required submittal shall be deemed an approval of the submittal and the applicant may proceed as if a permit had been issued.
- (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 City of Cedarburg Department of Engineering and Public Works may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the City of Cedarburg Department of Engineering and Public Works to suspend or revoke this permit may be appealed in accordance with S. 14-2-15.
  - (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 non-structural storm water management measures in accordance with the approved storm water management plan and this permit.
- (c) The responsible party shall notify the City of Cedarburg Department of Engineering and Public Works at least 10 business days before commencing any work in conjunction with the storm water management plan, and within 10 business days upon completion of the storm water 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 City of Cedarburg Department of Engineering and Public Works so that practice installations can be inspected during construction.
- (d) Practice installations required as part of this ordinance shall be certified "as built" or "record" drawings by a licensed professional engineer. Completed storm water management practices must pass a final inspection by the City of Cedarburg Department of Engineering and Public Works or its designee to determine if they are in accordance with the approved storm water management plan and ordinance. The City of Cedarburg Department of Engineering and Public Works 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 City of Cedarburg Department of Engineering and Public Works of any significant modifications it intends to make to an approved storm water management plan. The City of Cedarburg Department of Engineering and Public Works may require that the proposed modifications be submitted to it for approval prior to incorporation into the storm water management plan and execution by the responsible party.
- (f) The responsible party shall maintain all storm water management practices in accordance with the storm water management plan until the practices either become the responsibility of the City of Cedarburg, or are transferred to subsequent private owners as specified in the approved maintenance agreement.
- (g) The responsible party authorizes the City of Cedarburg Department of Engineering and Public Works, or its designee, to perform any work or operations necessary to bring storm water management measures into conformance with the approved storm water 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 S. 14-2-11.
- (h) If so directed by the City of Cedarburg Department of Engineering and Public Works, 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 storm water management plan.
- (i) The responsible party shall permit property access to the City of Cedarburg Department of Engineering and Public Works or its designee for the purpose of inspecting the property for compliance with the approved storm water management plan and this permit or for work performed pursuant to subsection 14-2-08(4)(g) above.

- (j) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the City of Cedarburg Department of Engineering and Public Works 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 S. 14-2-14, 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 City of Cedarburg Department of Engineering and Public Works in addition to the requirements needed to meet the performance standards in S. 14-2-07 or a financial guarantee as provided for in S. 14-2-11.
- (6) PERMIT DURATION. Permits issued under this section shall be valid from the date of issuance through the date the City of Cedarburg Department of Engineering and Public Works notifies the responsible party that all storm water management practices have passed the final inspection required under sub. (4)(d).

**S. 14-2-09 STORM WATER MANAGEMENT PLAN.**

- (1) STORM WATER MANAGEMENT PLAN REQUIREMENTS. The storm water management plan required under S. 14-2-07 (2) shall contain at a minimum the following information:
  - (a) Name, address, and telephone number for the following or their designees: landowner; developer; project engineer for practice design and certification; person(s) responsible for installation of storm water management practices; and person(s) responsible for maintenance of storm water management practices prior to the transfer, if any, of maintenance responsibility to another party.
  - (b) A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.
  - (c) Pre-development site conditions, including:
    - 1. One or more site maps at a scale of not less than 1 inch equals 50 feet. The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed 1 foot; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all storm water conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the 100 year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to s. NR 811.16, Wis. Adm. Code.

2. Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
- (d) Post-development site conditions, including:
1. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.
  2. Explanation of any restrictions on storm water management measures in the development area imposed by wellhead protection plans and ordinances.
  3. One or more site maps at a scale of not less than 1 inch equals 50 feet showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; post-construction topographic contours of the site at a scale not to exceed 1 foot; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all storm water conveyance sections; location and type of all storm water management conveyance and treatment practices, including the on-site and off-site tributary drainage area; location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainage way; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.
  4. Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
  5. Results of investigations of soils and groundwater required for the placement and design of storm water management measures. Detailed drawings including cross-sections and profiles of all permanent storm water conveyance and treatment practices.
- (e) A description and installation schedule for the storm water management practices needed to meet the performance standards in S. 14-2-07.
- (f) A maintenance plan developed for the life of each storm water management practice including the required maintenance activities and maintenance activity schedule.
- (g) Cost estimates for the construction, operation, and maintenance of each storm water management practice.

- (h) Other information requested in writing by the [administering authority] to determine compliance of the proposed storm water management measures with the provisions of this ordinance.
  - (i) All site investigations, plans, designs, computations, and drawings shall be certified by a [licensed professional engineer] to be prepared in accordance with accepted engineering practice and requirements of this ordinance.
- (2) **ALTERNATE REQUIREMENTS.** The City of Cedarburg Department of Engineering and Public Works may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under S. 14-2-07 (5).

**S. 14-2-10 MAINTENANCE AGREEMENT.**

- (1) **MAINTENANCE AGREEMENT REQUIRED.** The maintenance agreement required under S. 14-2-08 (2) for storm water management practices shall be an agreement between the City of Cedarburg Department of Engineering and Public Works and the responsible party to provide for maintenance of storm water practices beyond the duration period of this permit. The maintenance agreement shall be recorded with the County Register of Deeds as a property deed restriction and shall be binding upon all subsequent owners of the land served by the storm water management practices.
- (2) **AGREEMENT PROVISIONS.** The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by S. 14-2-09 (1)(f):
  - (a) Identification of the storm water facilities and designation of the drainage area served by the facilities.
  - (b) A schedule for regular maintenance of each aspect of the storm water management system consistent with the storm water management plan required under S. 14-2-08 (2).
  - (c) Identification of the responsible party(s), organization or city, county, town or village responsible for long term maintenance of the storm water management practices identified in the storm water management plan required under S. 14-2-08 (2).
  - (d) Requirement that the responsible party(s), organization, or city, county, town or village shall maintain storm water management practices in accordance with the schedule included in par. (b).
  - (e) Authorization for the City of Cedarburg Department of Engineering and Public Works to access the property to conduct inspections of storm water management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement and perform corrective actions pursuant to subsection 14-2-10(2)(h), below.
  - (f) A requirement of the City of Cedarburg Department of Engineering and Public Works to maintain public records of the results of the site inspections for the period specified in the Maintenance Agreement, but in no event longer than 7 years, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the storm water management practice into proper working condition.

- (g) Agreement that the party designated under par. (c), as responsible for long term maintenance of the storm water management practices, shall be notified by the City of Cedarburg Department of Engineering and Public Works of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the City of Cedarburg Department of Engineering and Public Works.
- (h) Authorization of the City of Cedarburg Department of Engineering and Public Works to perform the corrected actions identified in the inspection report if the responsible party designated under par. (c) does not make the required corrections in the specified time period. If the costs of the corrective actions are not timely paid, the City of Cedarburg shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to subch. VII of Ch. 66, Wis. Stats.
- (i) The maintenance agreement shall be terminated at such time that responsibility for maintenance of the stormwater management practice is legally transferred to the City of Cedarburg Department of Engineering and Public Works or agency acceptable to the City of Cedarburg Department of Engineering and Public Works, through a written, binding agreement. The termination date of the maintenance agreement required under Sec. 8(a) shall be the date upon which the legal transfer of maintenance responsibility to the City of Cedarburg Department of Engineering and Public Works or agency is made effective.

#### **S. 14-2-11 FINANCIAL GUARANTEE.**

- (1) ESTABLISHMENT OF THE GUARANTEE. The City of Cedarburg Department of Engineering and Public Works may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the City of Cedarburg Department of Engineering and Public Works. The financial guarantee shall be in an amount determined by the City of Cedarburg Department of Engineering and Public Works to be the estimated cost of construction and the estimated cost of maintenance of the storm water management practices during the period which the designated party in the maintenance agreement has maintenance responsibility, but not to exceed the estimated construction cost plus 25%. The financial guarantee shall give the City of Cedarburg Department of Engineering and Public Works the authorization to use the funds to complete the storm water management practices if the responsible party defaults or does not properly implement the approved storm water management plan, upon written notice to the responsible party by the City of Cedarburg Department of Engineering and Public Works 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 Cedarburg Department of Engineering and Public Works shall release the portion of the financial guarantee established under this section to assure installation of the storm water management practices, less any costs incurred by the City of Cedarburg Department of Engineering and Public Works to complete installation of practices, upon submission of "as built plans" or "record" drawings by a licensed professional engineer and confirmation that the practices comply

fully with the Permit. The City of Cedarburg Department of Engineering and Public Works 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 Cedarburg Department of Engineering and Public Works shall release the portion of the financial guarantee established under this section to assure maintenance of storm water practices, less any costs incurred by the City of Cedarburg Department of Engineering and Public Works, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

#### **S. 14-2-12 ILLICIT DISCHARGE PROHIBITION AND DISCONNECTION.**

- (1) **INTENT.** This section establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.
- (2) **APPLICABILITY.** This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.
- (3) **RESPONSIBILITY FOR ADMINISTRATION.** The City of Cedarburg Department of Engineering and Public Works shall be deemed the authorized enforcement agency, as that term is used herein, for purposes of administering, implementing, and enforcing the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated by that agency to persons or entities acting in the beneficial interest of or in the employ of the City.
- (4) **ILLICIT DISCHARGE PROHIBITIONS**
  - (a) No person shall discharge or cause to be discharged into the municipal storm sewer system or watercourses any materials, including but not limited, to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.
  - (b) **Exemptions.** The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:
    - 1. The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), firefighting activities, and any other water source not containing Pollutants.
    - 2. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
    - 3. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.



4. The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.
- (5) **ILLICIT CONNECTION PROHIBITIONS.** The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (6) **SUSPENSION OF MS4 ACCESS**
  - (a) **Suspension due to Illicit Discharges in Emergency Situations.** The authorized enforcement agency may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.
  - (b) **Suspension due to the Detection of Illicit Discharge.** Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.
- (7) **MONITORING OF DISCHARGES**
  - (a) The authorized enforcement agency shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.
  - (b) Facility operators shall allow the authorized enforcement agency ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
  - (c) Unreasonable delays in allowing the authorized enforcement agency access to a permitted facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
  - (d) If the authorized enforcement agency has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate

probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant or special inspection warrant from any court of competent jurisdiction.

- (8) **REQUIREMENTS. Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices.** The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system.
- (9) **WATERCOURSE PROTECTION.** Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use function, or physical integrity of the watercourse.
- (10) **NOTIFICATION OF SPILLS.** Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the U.S. said person, shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the authorized enforcement agency within three business days of the phone notice. 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.

#### **S. 14-2-13 FEE SCHEDULE.**

The fees referred to in other sections of this ordinance shall be established by the City of Cedarburg Department of Engineering and Public Works and may from time to time be modified by resolution of the Common Council of the City of Cedarburg. A schedule of the fees established by the City of Cedarburg Department of Engineering and Public Works shall be available for review in City Hall.

**S. 14-2-14      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 City of Cedarburg Department of Engineering and Public Works shall notify the responsible party by certified mail of any non-complying 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 City of Cedarburg Department of Engineering and Public Works under sub. (2), the responsible party shall correct work that does not comply with the storm water management plan or other provisions of this permit within 30 days. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the City of Cedarburg Department of Engineering and Public Works 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 City of Cedarburg Department of Engineering and Public Works may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the City of Cedarburg Department of Engineering and Public Works plus interest and legal costs shall be billed to the responsible party.
- (5) The City of Cedarburg Department of Engineering and Public Works 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 City of Cedarburg Attorney to obtain a cease and desist order in any court with jurisdiction.
- (6) The City of Cedarburg Department of Engineering and Public Works may revoke a permit issued under this ordinance for non-compliance with ordinance provisions.
- (7) Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the City of Cedarburg Department of Engineering and Public Works or by a court with jurisdiction.
- (8) The City of Cedarburg Department of Engineering and Public Works is authorized to refer any violation of this ordinance, or a stop work order or cease and desist order issued pursuant to this ordinance, to the City of Cedarburg Attorney 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 dollars or more than 500 dollars per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.
- (10) Every violation of this ordinance is a public nuisance. 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.
- (11) When the City of Cedarburg Department of Engineering and Public Works determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices

set forth in the storm water management plan, or has failed to comply with any other terms of said storm water management plan, the City of Cedarburg Department of Engineering and Public Works or a party designated by the City of Cedarburg Department of Engineering and Public Works 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 storm water management plan. The City of Cedarburg Department of Engineering and Public Works shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to S. 14-2-11 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.

#### **S. 14-2-15 APPEALS.**

- (1) PUBLIC WORKS AND SEWERAGE COMMISSION. The Public Works and Sewerage Commission, created pursuant to section 2-4-2 of the City of Cedarburg zoning ordinances pursuant to s. 62.23 (7)(e), Wis. Stats., shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the City of Cedarburg Department of Engineering and Public Works in administering this ordinance. The Public Works and Sewerage Commission shall also use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals. Upon appeal, the Public Works and Sewerage Commission may authorize variances from the provisions of this ordinance that are not contrary to the public interest, and where owing to special conditions a literal enforcement of the ordinance will result in unnecessary hardship.
- (2) WHO MAY APPEAL. Appeals to the Public Works and Sewerage Commission may be taken by any aggrieved person or by an officer, department, board, or bureau of the City of Cedarburg affected by any decision of the City of Cedarburg Department of Engineering and Public Works.

#### **S. 14-2-16 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.

#### **S. 14-2-17 EFFECTIVE DATE.**

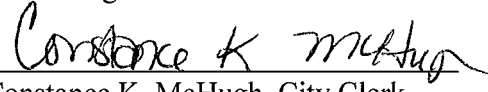
This ordinance shall be in force and effect from and after its adoption and publication.

SECTION 2. This ordinance shall take effect upon its passage and publication as provided by law.

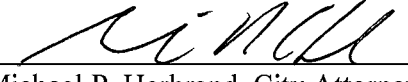
Passed and adopted this 11<sup>th</sup> day of December, 2017.

  
Kip Kinzel, Mayor

Countersigned:

  
Constance K. McHugh, City Clerk

Approved as to form:

  
Michael P. Herbrand, City Attorney