

## **Appendix F - Resources**

- F1. Durham, New Hampshire Stormwater Regulations
- F2. Manchester, New Hampshire Stormwater Ordinance
- F3. South Burlington, VT Ordinance Regulating the use of Public and Private Sanitary Sewerage and Stormwater Systems.

## **F1 – Durham, New Hampshire Stormwater Regulations**

This Appendix contains the complete Site Plan Regulations for the town of Durham, NH.

The complete Subdivision Regulations for the town of Durham have similar sections related to stormwater management and can be accessed at:

[http://durham.nh.us/DEPARTMENTS/planning/subdivision\\_regulations/2010/Final%20Subdivision%20Regs.pdf](http://durham.nh.us/DEPARTMENTS/planning/subdivision_regulations/2010/Final%20Subdivision%20Regs.pdf)

# SITE PLAN REVIEW REGULATIONS of DURHAM, NEW HAMPSHIRE

## *SECTION 1: Authority and Purpose*

### *1.01 Authority*

Pursuant to the authority vested in the Durham Planning Board, by the legislative body of the Town of Durham, in accordance with previously adopted subdivision regulations under RSA 674:36, the Durham Planning Board is empowered under RSA 674:43 to review and approve or disapprove site plans. This review authority shall be applied to the development of tracts for non-residential uses and for multi-family dwelling units which are defined as any structure containing more than two (2) dwelling units per structure, whether or not such development includes a subdivision or re-subdivision of a site.

### *1.02 Purpose*

The purpose of the Durham Site Plan Review Regulations, as authorized by RSA 674:44-II, is to:

A. Provide for the safe and attractive development of the site and guard against such conditions as would involve danger or injury to health, safety, or prosperity by reason of:

- 1) Inadequate drainage or conditions conducive to flooding of the property or that of another;
- 2) Inadequate protection for the quality of surface and groundwater;
- 3) Undesirable and preventable elements of pollution such as noise, smoke, soot, particulate or any other discharge into structures or adjacent properties;
- 4) Inadequate provisions for fire safety, prevention and control; and
- 5) Inadequate pedestrian and traffic plans.

B. Provide for the harmonious and aesthetically pleasing development of the municipality and its environs;

C. Provide for open spaces and green spaces of adequate proportions;

D. Require the proper arrangement and coordination of streets within the site in relation to other existing or planned streets or with features of the official map of the municipality;

E. Require suitably located streets to be of sufficient width to accommodate existing and prospective traffic and to afford adequate light, air and access for fire fighting apparatus and equipment to buildings and be coordinated so as to compose a convenient system;

F. Require in proper cases, that plats showing new streets or narrowing or widening of such streets be submitted to the Planning Board for approval;

G. Require that the land indicated on plats submitted to the Planning Board shall be of such character that it can be used for building purposes without danger to health;

H. Include such provisions as will tend to create conditions favorable for health, safety, convenience and prosperity; and

I. Prevent scattered and/or premature development.

## ***SECTION 2: Title***

These regulations shall be known and cited as the SITE PLAN REVIEW REGULATIONS OF DURHAM, NEW HAMPSHIRE, and supercede the Site Plan Regulations, Town of Durham, New Hampshire, Adopted December 12, 1990, as amended prior hereto, and such prior regulations are hereby rescinded.

## ***SECTION 3: Words and Phrases***

### ***3.01 Word Usage***

Words used in the present tense shall include the future; the singular includes the plural and the plural includes the singular; the word "building" shall include the word "structure", the word "shall" is mandatory; the word "may" is permissive. The word "person" includes an individual, partnership, firm, association, corporation, organization, or institution.

### ***3.02 Definitions (Amended July 14, 2010)***

Best Management Practices (BMP): Methods and means that have been determined to be the most effective, practical approaches of preventing or reducing pollution and detrimental impacts from stormwater runoff.

Buffer: A vegetated area or zone separating a development from a sensitive resource or neighboring property in which proposed development is restricted or prohibited.

Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

Disconnected Impervious Cover: The sum of the proposed areas of impervious cover and pavement that receive runoff and, by means of implementing BMPs and LID strategies, is designed to capture and filtrate the precipitation from a 1-inch 24-hour rain event.

Disturbance: Any activity that significantly alters the characteristics of the terrain in such a manner as to impede or alter the hydrology or natural runoff pattern, or creates an unnatural runoff.

Effective Impervious Area (EIA): The total impervious surface areas less the area of disconnected impervious cover.

Hydrologic Soil Group (HSG): A Natural Resource Conservation Service classification system in which soils are categorized into four runoff potential groups. The groups range from "A" soils, with high permeability and little runoff production, to "D" soils, which have low permeability rates and produce much more runoff.

Impervious Surface: A material with low permeability that impedes the natural infiltration of moisture into the ground so that the majority of the precipitation that falls on the surface runs off or is not absorbed into the ground. Common impervious surfaces include, but are not limited to, roofs, concrete or bituminous paving such as sidewalks, patios, driveways, roads, parking spaces or lots, and storage areas, compacted gravel including drives and parking areas, oiled or compacted earthen materials, stone, concrete or composite pavers, wood, and swimming pools.

Low Impact Development (LID): Site planning and design strategies intended to maintain or replicate predevelopment hydrology through the use of source control and relatively small-scale measures integrated throughout the site to disconnect impervious surfaces and enhance filtration, treatment, and management of stormwater runoff as close to its source as possible. Examples of LID strategies are pervious pavement, rain gardens, green roofs, bioretention

basins and swales, filtration trenches, and other functionally similar BMPs located near the runoff source.

Maximum Extent Practicable (MEP): To show that a proposed development has met a standard to the maximum extent practicable, the applicant must demonstrate the following: (1) all reasonable efforts have been made to meet the standard, (2) a complete evaluation of all possible management measures has been performed, and (3) if full compliance cannot be achieved, the highest practicable level of management is being implemented.

Native plants: Plants that are indigenous to the region, adapted to the local soil and rainfall conditions, and require minimal supplemental watering, fertilizer, and pesticide application.

Pavement: Areas of a site that are covered with pervious and/or impervious asphalt and concrete.

Porous Media: Material with open connected pore spaces that allows water to percolate through it such as granular soils, gravel, crushed stone, pervious pavements, and woven and non-woven geosynthetics.

Redevelopment: Any man-made change to previously improved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, and drilling operations.

Riparian: Referring to anything connected or immediately adjacent to the shoreline or bank of a stream, river, pond, lake, bay, estuary or other similar body of water.

Riparian buffer: The naturally vegetated shoreline, floodplain or upland forest adjacent to a surface water body. Riparian buffers provide stormwater control flood storage and habitat values. Wherever possible, riparian buffers should be sized to include the 100-year floodplain as well as steep banks and freshwater wetlands.

Runoff: Stormwater that does not infiltrate into the ground and flows toward a below-ground or surface discharge location.

Site: A lot, tract or parcel of land on which a development is located that includes but is not limited to the proposed area of disturbance and development activities.

Stormwater: Water that originates from precipitation events and accumulates on land.

Stormwater Management Plan: A written plan describing the proposed methods and measures to be implemented to prevent or minimize water quality and quantity impacts from stormwater associated with a development or redevelopment project both during and after construction. It identifies selected BMPs, LID source controls, and treatment practices to address those potential impacts, and contains the engineering design plans, specifications, and calculations of the management and treatment practices, and maintenance requirements for proper performance of the proposed practices.

Water Quality Treatment: the capture of sediment, nutrients, metals and hydrocarbons suspended in stormwater runoff from impervious surfaces before being conveyed to a storm sewer network or to another water quality treatment system. In most cases where no other local water body impairments exist, adequate treatment refers to documenting the treatment systems ability to remove 80% of the total suspended solids (TSS) on an annual basis. Where water quality impairments do exist adequate treatment refers to a system's ability to meet maximum load allocations or not further impair the receiving water.

Water Quality Volume (WQv): The storage volume needed to capture and treat the runoff from the 1-inch 24-hour rainstorm for a specific contributing area. WQv shall be calculated using the following equation:

$WQv = (P)(Rv)(A)$ , where:  $P = 0.083$  ft,  $Rv =$  the unitless runoff coefficient,  $Rv = 0.05 + 0.9(I)$ , where  $I =$  the percent impervious surface draining to the discharge point, in decimal form, and  $A =$  total site area in square feet draining to the discharge point

#### ***SECTION 4: Interpretation***

These Site Plan Review Regulations in no way relieve the developer or his/her agent from compliance with the Zoning Ordinance, Subdivision Regulations or any other ordinance which pertains to the proposed development.

The standards contained in these regulations shall be interpreted as minimum requirements, and compliance with said minimum requirements shall in no instance obligate the Planning Board to approve any particular application solely on that basis. Only after the Planning Board is fully satisfied that a proposed application is in accordance with the Master Plan and Town Ordinances will the application be approved.

## ***SECTION 5: Application Procedures***

***5.01 Preapplication Review Phases (RSA 676:4II) An applicant may elect to forego or engage in preapplication review or either phase thereof.***

### ***A. Preliminary Conceptual Consultation Phase***

- 1). The applicant may request a meeting with the Board to discuss a proposal in conceptual form and in general terms. Such preapplication consultation shall be informal and directed toward:
  - a. reviewing the basic concepts of the proposal,
  - b. reviewing the proposal with regard to the Master Plan and Zoning Ordinance,
  - c. explaining the local regulations that may apply to the proposal, and,
  - d. guiding the applicant relative to state and local requirements.
- 2). Preliminary conceptual consultation shall not bind the applicant or the Board. Such discussion may occur without formal public notice, but must occur only at a posted meeting of the Board.

### ***B. Design Review Phase***

- 1). Prior to submission of a completed application for Planning Board action, an applicant may request to meet with the Board for non-binding discussions beyond the conceptual and general, involving more specific design and engineering details of the potential application.
- 2). The Design Review phase may proceed only after identification of and notice to abutters; holders of conservation, preservation, or agricultural restrictions; and the general public as required by RSA 676:4 I(d).  
(Amended July 15, 1998)
- 3). Persons wishing to engage in preapplication Design Review shall submit a "Request for Preapplication Review" (Attachment 2) and associated fees not less than 20 days before the regularly scheduled meeting of the Board. The request shall include:
  - a. a list of abutters and their addresses from municipal records not more than five days before submission,
  - b. a list of all holders of conservation, preservation, or agricultural preservation restrictions on the subject property, and
  - c. a check or cash to cover mailing and advertising costs.

(Amended July 15, 1998)

4). All discussion in the Design Review Phase shall be informal and non-binding. Statements made by Board members shall not be the basis for disqualifying said members or invalidating any action eventually taken on the application.

5). The Board shall not accept any submissions by the applicant at this time.

### **5.02 Formal Application**

A. A formal application shall consist of the forms and data as shown in Section's 7, 9, and 10 of these regulations. It shall also include all fees required by the Town under the provisions of RSA 676:4, I(g).

B. Upon receipt of a formal application, the Director of Planning and Community Development will review it using the Site Plan Application Checklist. Within five (5) business days of submitting a formal application, the applicant shall meet with the Director of Planning and Community Development to discuss issues related to completeness and acceptance of the application. If this review discloses that all requirements specified on the Site Plan Application Checklist have not been met, the applicant will be notified in writing what specific items are still needed. When all requirements have been met, the application will be scheduled for submission to the Planning Board by placing it on the Board's agenda. (Amended May 8, 2002)

C. A formal application shall only be submitted to the Planning Board at a regular meeting after notification has been given as required by RSA 676:4,I(d). The Planning Board shall consider the application, and act to accept, reject or table it within 30 days of receipt of the completed application by the Board or its designee. Such action shall be by a majority vote of those Board members present. (Amended July 15, 1998)

D. Prior to the next regularly scheduled meeting of the Planning Board, the applicant, at the discretion of the Director of Planning and Community Development, shall meet with the appropriate Department Heads of the Town of Durham to discuss the implications the application will have on the various Departments of the town. (Amended May 8, 2002)

### **5.03 Action on a Formal Application**

A. Once a formal application is accepted, the Planning Board must act on it within 90 days after receipt of the completed application by the Board or its designee. The Board shall consider the application at its regular meetings, or at workshop meetings if required, and a site visit will be scheduled. Additional reports or studies may be required by the Board, including but not limited to, high intensity soil survey, traffic, school, fiscal, and environmental

impact analyses, to allow the Board to make an informed and educated decision concerning the application. (Amended July 15, 1998)

- B. Prior to the approval of a site plan application, a public hearing shall be held as required by RSA 676:4 I(d) with notice given to the applicant; holders of conservation, preservation, or agricultural preservation restrictions; every engineer, architect, land surveyor, or soil scientist whose professional seal appears on the plan submitted to the Board; abutters, and the public.

(Amended July 15, 1998)

- C. The Board may apply to the Town Council for an extension of the 90 day time period, not to exceed an additional 90 days, before acting to approve, conditionally approve, or disapprove an application. An applicant may waive the requirement for Board action within the time period specified in these regulations and consent to such an extension as may be mutually agreeable.

- D. If the Board has not taken action on the formal application within 90 days after receipt of the completed application by the Board or its designee, and the Board has not obtained an extension, the applicant may obtain from the Town Council an order directing the Planning Board to act within 15 days. Failure of the Board to act on the order shall constitute grounds for the applicant to petition the Superior Court as provided in RSA 676:4,I(c).

(Amended July 15, 1998)

- E. The Board shall act to approve, conditionally approve, or disapprove the formal application within 90 days of receipt of the completed application by the Board or its designee. (see Attachment 4a). A conditional approval will be stated in the form of "Findings of Fact and Conditions of Approval" (see definitions). (Amended July 15, 1998)

- F. Approval of the application shall be certified by written endorsement on the plan and signed and dated by the Chair of the Board.

- G. A financial surety, adequate to cover the construction of all infrastructure improvements approved as part of the site plan application, shall be posted with the Town prior to signing the plan. The following financial sureties are acceptable to the Town: cash, passbook savings account in the Town's name, letter of credit, or a bond.

- H. If any application is disapproved, the grounds for such disapproval shall be adequately stated in the records of the Board and in written notice given to the applicant within 72 hours (see Attachment 4b). Applications may be disapproved by the Board without public hearing on the grounds of failure by the applicant to supply information or to pay fees as required by these regulations.

#### **5.04 Notices**

- A. Notice of a Design Review, submission of a formal application, or of a public hearing, shall be given by the Board to the abutters; holders of conservation, preservation, or agricultural preservation restrictions; every engineer, architect, land surveyor, or soil scientist whose professional seal appears on the plan submitted to the Board; and the applicant. The notice shall be provided by certified mail, and mailed at least ten (10) days prior to the meeting (see Attachment 3a). (Amended July 15, 1998)
- B. The public shall be given notice at the same time, by posting in two public places and in a paper of general circulation in the Town.
- C. The notice shall give the date, time, and place of the Planning Board meeting at which the application or other item(s) will be formally submitted to the Board, shall include a general description of the proposal which is to be considered, and shall identify the applicant and the location of the proposal (see Attachment 3b).
- D. If the notice for the public hearing was included in the notice of submission or any prior notice, additional notice of the public hearing is not required. Additional notice is not required of an adjourned session of a public hearing provided that the date, time and place of the adjourned session was made known at the prior public hearing.

#### **SECTION 6: Fees**

**6.01.** A formal application for site plan approval shall be accompanied by an initial filing fee.

**6.02.** Pursuant to RSA 676:4 I(g), it shall be the responsibility of the applicant, if the Board deems it necessary, to pay reasonable fees for special investigative studies, environmental assessments, legal review of documents, administrative expenses, and other matters which may be required to make an informed decision on a particular application.

**6.03.** The application submittal fees are adopted by reference as part of these regulations.

## ***SECTION 7: Application Submission Requirements***

**7.01.A** Formal Application shall be filed with the Planning Board or its designated agent at least twenty-one (21) calendar days prior to a regularly scheduled meeting of the Board. (Amended May 8, 2002)

**7.02.** Formal Application Content: A Formal Application shall be submitted using the form available from the Planning Office (Attachment 1), and shall be accompanied by:

- A. a letter of intent detailing the proposal;
- B. a list of the names and addresses of all the abutters, as shown in town records not more than five (5) days before the day of filing; and a listing of all holders of conservation, preservation, or agricultural preservation restrictions on the subject property; (Amended July 15, 1998)
- C. additional documents, as requested by the Planning Office; and
- D. five copies, 24" x 36" and ten additional copies, 8.5" x 11", 8.5" x 14", or 11" x 17", of the plan. However, the Planning Board or its designee may require the ten additional copies to be 24" x 36", as deemed necessary. The plan shall be prepared by a land surveyor, using a scale of 1 inch equals 100 feet or larger (i.e. 1 inch equals 50 feet, 1 inch equals 20 feet, etc) and shall include:  
(Amended July 15, 1998)
  - 1) A Title Block, including:
    - a) Title of plan;
    - b) Owner's name and address, and name of agent, if any
    - c) The date the plan was prepared and date of subsequent revisions;
    - d) Scale of the plan; and
    - e) Name, address and seal of the preparer of the plan.
  - 2) North arrow and bar scale.
  - 3) A location plan at a minimum scale of one (1) inch equals one thousand (1,000) feet, showing:
    - a) Property lines of the parcel being developed in relation to the surrounding area within a radius of two thousand (2,000) feet.
    - b) Names and locations of existing town streets including the nearest intersection of said streets;
    - c) Names and locations of streets within the proposed development;
    - d) Names and location of watercourses and water bodies on and adjacent to the site;
    - e) Area of entire parcel in acres and square feet.

4) The plan of the site itself shall show:

- a) Surveyed property lines of the parcel showing their bearings;
- b) Names of all abutting property owners;
- c) Location and layout of existing and proposed structures and buildings;
- d) Existing and proposed contours at two (2) foot intervals for the entire site. Where a change in grade is proposed, existing contours shall be dotted lines and finished elevations solid;
- e) Area of entire parcel in acres and square feet;
- f) Zoning and special district boundaries;
- g) Deed reference and tax map number;
- h) Location width, curbing and paving of access ways, egress ways and streets within the site;
- i) Location and layout of all on-site parking and loading facilities;
- j) Location and size of all municipal and non-municipal utilities and appurtenances including: water, sewer, electric, telephone, gas lines and fire alarm connections, indicating whether overhead or underground, and the location of wells and septic systems;
- k) Type and location of solid waste disposal facilities;
- l) Location, elevation and layout of catch basin and other surface drainage features;
- m) Location of all physical/natural features including: water bodies, watercourses, wetlands, vegetation/foilage lines, soil types, railroads, rock outcroppings and stone walls;
- n) Dimensions and area of all property to be dedicated for public use of common ownership;
- o) Location of 100 year flood hazard boundaries;
- p) Date and permit numbers of all required state and federal permits.
- q) Location of all buildings, wells and leach fields within one hundred and fifty (150) feet of the parcel;
- r) Dimensions, area and minimum setback requirements on all existing and proposed lots;
- s) Proposed landscaping plan including size and type of plant material;
- t) Pedestrian walks providing circulation through the site;
- u) Location and size of proposed and existing signs, walls and fences;
- v) Location and type of lighting for outdoor activities; and
- w) Location, widths and purposes of any easements or rights-of-way.
- x) Total on-site square footage of impervious surfaces.

- E. Copies of the current deed, purchase and sale agreement, and copies of all easements, deed restrictions, rights-of-ways, or other encumbrances currently affecting the property. (Amended May 8, 2002)

**7.03 *Additional Application Submission Requirements - All Personal Wireless Service Facilities***

**A. General Filing Requirements**

- 1) Written statement signed by the landowner and carrier that the lease between the carrier and the landowner of the subject property contains the following provisions:
  - a) Landowner or carrier can enter into leases with other carriers for co-location.
- 2) A written and signed statement from the landowner and applicant that he/she agrees that the Town may enter the subject property to obtain RFR measurements, to ensure conformance with the FCC Guidelines, and to obtain noise measurements, all at the expense of the applicant, but not necessarily accompanied by, the applicant and/or landowner.

**B. Location Plan Filing Requirements**

- 1) A town-wide map showing the other existing personal wireless service facilities in the Town and outside the Town within one (1) mile of its corporate limits.
- 2) A town-wide map that shows all existing and reasonably foreseen or contemplated personal wireless service facilities operated by the carrier in the Town.
- 3) Proof by the carrier of adequate comprehensive general public liability insurance for the proposed personal wireless service facility that provides coverage for damage or injury to persons or property caused by the carrier or its facility.

**C. Site Plans for All Personal Wireless Service Facilities Shall Indicate:**

- 1) Outlines of all existing buildings, including their purpose (e.g. residential buildings, garages, accessory structures, etc.) on the subject property and within three hundred (300) feet from the subject property boundary on adjacent properties.
- 2) Proposed location of antenna(s), mount(s), and equipment shelter(s).

- 3) Proposed security barrier, indicating type and extent as well as point of controlled entry.
- 4) The proposed lease area for the personal wireless service facility.
- 5) Location and type of electrical and telephone service. Underground service shall be provided, unless waived by the Planning Board.
- 6) Location of all roads, public and private, on the subject property including driveways proposed to serve the personal wireless service facility and the type of surface proposed for the driveway.
- 7) Distances, at grade, from the proposed personal wireless service facility to each building shown on the site plan.
- 8) All proposed changes to the existing property, including but not limited to grading, vegetation removal, and temporary or permanent roads and driveways.
- 9) Representations, dimensioned and to scale, of the proposed mount(s), antennas, equipment shelters, cable runs, parking areas and any other construction or development attendant to the personal wireless service facility. (Amended January 7, 1998)

**7.04 Additional Site Plan Submission Requirements - Ground Mounted Personal Wireless Service Facilities:**

Excluding the reconstruction of existing facilities, the following shall be shown on a site plan for all ground mounted personal wireless service facilities, in addition to those items listed under Sections 7.02 and 7.03 of the Site Plan Review Regulations:

- A. Tree cover by forest type and approximate height on the subject property and within three hundred (300) feet from the subject property boundary on adjacent properties.
- B. Average tree canopy height within a one hundred and fifty (150) foot perimeter of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest.
- C. Any proposed landscape easement that includes the bearings and distances of the easement and general conditions of the easement.

(Amended January 7, 1998)

**7.05 *Application Submission Requirements-Recreational Playing Fields, Outdoor***

A. Policy

It is the policy of the Durham Planning Board to support and encourage outdoor recreation, and to facilitate the safe and reasonable use of private lands for non-commercial outdoor playing fields. It is recognized that this use may raise issues including but not limited to noise, traffic and traffic safety, parking, fertilizer, pesticide and herbicide use. It is also recognized that, unlike many other uses, this use is primarily intended to create a public benefit, and; this use does not require a long-term or irreversible commitment of land or capital.

B. Waiver

The Planning Board may, in order to implement the policy expressed in 7.05 A. above, and exercising reasonable discretion, waive or modify any or all of the provisions of Section 7.02 above, with the exception of 7.02 A.-C.; Section 8; and Section 9.

C. Unique Requirements

Given the intermittent and seasonal nature of this use, and the variability that may characterize impacts on abutters and the community at large, the Planning Board may impose conditions controlling timing (hours of use, frequency of use, start, end and duration of season), intensity (number of participants, noise restrictions, whether practice sessions, organized games, tryouts, tournaments are allowed), in addition to any design standards and required improvements that may be authorized under Section 9 and deemed necessary by the Planning Board. (Amended May 15, 2002)

**SECTION 8: *Construction Guarantee***

**8.01.** The applicant shall post an acceptable financial surety prior to final Site Plan approval by the Planning Board. The financial surety shall be in an amount sufficient to ensure the completion of all roads (public or private), water service, sewage disposal, drainage, landscaping and/or any other improvements required by the Town. The financial surety shall be effective for a period mutually agreed upon by the Planning Board and the applicant. (Amended July 15, 1998)

**8.02.** The financial surety shall be approved by the Town as to the form and type. The Town will accept cash, pass book savings in the Town's name, letter of

credit or a construction surety bond. At its discretion, the Planning Board may require approval of the construction guarantee by the Town Attorney. A sample Construction Guarantee contract is included as attachment 5. (Amended July 15, 1998)

8.03. The construction guarantee shall be released in phases as portions of the secured improvements or installations are final in accordance with the plan approved by the Board.

## *SECTION 9 - Design Standards and Required Improvements*

### *9.01 General Requirements*

- A. Conformance to Applicable Laws, Rules and Regulations - In addition to the requirements established herein, all developments shall comply with the applicable provisions of the Zoning Ordinance, Subdivision Regulations, and all other applicable Town ordinances.
- B. Self Imposed Restrictions - If the owner places restrictions on any of the land contained in the development greater than those required by the Zoning Ordinance or these regulations, such restrictions or reference thereto may be required to be indicated on the site plan, or the Planning Board may require that restrictive covenants be recorded with the Strafford County Registry of Deeds in form to be approved by the Board.
- C. Specification References -
  - 1) Reference to State specifications shall mean Standard Specifications for Road and Bridge Construction of the New Hampshire Department of Transportation, approved and adopted 1992 as amended.
  - 2) Reference to Uniform Traffic Control Devices shall mean the Manual on Uniform Traffic Control Devices for Streets and Highways, published by the U.S. Department of Commerce, Bureau of Public Roads.

### *9.02 Streets and Access*

- A. Roads and/or driveways from development abutting the following main roads shall be spaced not less than 1,200 feet apart: Routes 4, 108, 155-A, Durham Point Road, Mill Road, Bennett Road, and Packers Falls Road. Where such spacing would cause undue hardship, the Board may modify this requirement. (For the purposes of these regulations Durham Point Road shall extend to the Newmarket Town line.)

- B. All other roadway related regulations are contained in: Road Construction Regulations of the Town of Durham, New Hampshire, adopted by the Durham Planning Board

**9.03 Stormwater Drainage** (Amended July 14, 2010)

A. General Requirements - All developments shall provide adequate management of stormwater runoff and prevent the discharge of stormwater runoff from creating or contributing to a water quality impairment. All applications shall be accompanied by a completed Site Plan Review Checklist (provided in Attachment 6 of these regulations) to the Planning Board prior to consideration for review. Developments that disturb 10,000 or more square feet must submit to the Planning Board for review and approval, a Stormwater Management Plan (Plan) describing all proposed stormwater management system elements, practices, and associated designs, including all calculations and analyses of said designs. However, if the applicant submits an approved Alteration of Terrain (AOT) permit, there would be no need for the town requiring a Stormwater Management Plan. The applicant must still provide an operation and maintenance plan as provided for in (C) (5) below. The Planning Board reserves the right to require any development that disturbs less than 10,000 square feet to submit and then implement an approved Stormwater Management Plan (complete as described below or abbreviated) to prevent degradation of local water resources. All elements of the Plan must be designed/prepared by a New Hampshire Registered Professional Engineer in accordance with the Design Standards below. The Plan must contain the following parts and presented in the order listed below:

B. Stormwater Management Plan - Part I

- 1) An Existing Conditions Site Plan showing all pre-development surface water bodies and wetlands, drainage patterns, and watershed boundaries, buffer zones, topographic contours with minimum 2-foot intervals, scale bar, north arrow, title block with project name, applicant's name, and map and parcel number, designer's stamp and wetland scientist's stamp (if applicable), legend, locus plan, benchmarks, and appropriate notes with datum and other plan references, instructions, and detail descriptions. The Existing Conditions Site Plan shall be provided in hard copy (minimum 22-inch by 34-inch) at an appropriate scale in tens of feet per inch (maximum of 100 feet per inch) such that all important site and hydrologic features are easily recognized. Existing buildings, structures, pavement, utilities, and soils information with coding as HSG-A, B, C, or D shall be included on the Existing Conditions Site Plan. High Intensity

Soil Survey (HISS) mapping may be required per request by the Planning Board.

- 2) A Proposed Conditions Site Plan showing all proposed post-development temporary and permanent stormwater management system elements and erosion and sediment control BMPs and all important hydrologic features. The Proposed Conditions Site Plan must be at the same scale as the Existing Conditions Site Plan with consistent title block, plan features, and descriptors including but not limited to the following:
  - a. Existing and proposed topographic contours (2-foot minimum contour interval; 1-foot contour intervals may be required for sites with limited relief and/or where proposed stormwater outfalls are located adjacent to buffer zones)
  - b. Proposed areas of disturbance with total area of disturbance clearly labeled in square feet
  - c. Existing and proposed buildings and structures
  - d. Stormwater discharge locations keyed to drainage analyses
  - e. Wells and sanitary protective radii
  - f. Septic systems
  - g. Plan references and notes (including sequence of soil disturbance)
  - h. Proposed and existing public and private utilities
  - i. Proposed project components to become property of or the responsibility of the Town shall be labeled as such
  - j. Existing and proposed impervious surfaces and pavements with areas used to calculate EIA clearly identified and the square footage of each type identified and labeled.
  
- 3) Details of individual design elements shown on separate plan sheets following the Proposed Conditions Site Plan.

#### C. Stormwater Management Plan - Part II

- 1) Drainage Analysis that includes calculations comparing Pre- and Post-Development stormwater runoff rates (cubic feet per minute) and volumes (cubic feet) based on a 1-inch rainstorm, and the 2-year, 10-year, and 25-year 24-hour frequency storms. Calculations shall include, but not be limited to, the sizing of all structures and BMPs including of sizing of emergency overflow structures based on assessment of the 100-year 24-hour frequency storm discharge rate. Phased applications for the original parcel apply as though the development of the entire parcel were proposed in one application at one time.

- 2) Drainage Analysis Results Summary tabulated for each proposed outfall or catchment outlet point including runoff rates and volumes for each storm event analyzed above.
- 3) An Erosion and Sediment Control Plan for all proposed construction activities in accordance with the most current New Hampshire Stormwater Manual.
- 4) Copies of any additional permits or plans required for compliance with Environmental Protection Agency (EPA) and/or New Hampshire Department of Environmental Services (NHDES).
- 5) A comprehensive Operation and Maintenance Plan for long-term maintenance of all proposed stormwater management elements and BMPs including the proposed schedule of inspections and anticipated maintenance.

### ***9.03.1 Design Standards***

A. The Stormwater Management Plans submitted to the Planning Board shall meet the following minimum requirements:

- 1) Where applicable, the Plan must comply with the EPA Phase II Stormwater Rules and the Town's MS4 Stormwater Discharge Permit, as amended.
- 2) All proposed measures shall be in accordance with the NH Stormwater Management Manual volume (December 2008 or current revision) a copy of which is available from NHDES:  
[des.nh.gov/organization/divisions/water/stormwater/manual.htm](http://des.nh.gov/organization/divisions/water/stormwater/manual.htm)
- 3) Water Quality Protection: All aspects of the application shall be designed to protect the water quality of the Town of Durham's water bodies as follows:
  - a. No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, noxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into surface or groundwaters so as to contaminate, pollute, harm, impair or contribute to an impairment of such waters.

- b. All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials shall meet the standards of the New Hampshire Department of Environmental Services (NHDES).
  - c. All projects under review by the Planning Board of such magnitude as to require a stormwater permit from EPA or NHDES shall comply with the standards of EPA and/or NHDES AOT program, with respect to the export of total suspended solids and other pollutants.
- 4) Stormwater Management For New Development: All proposed stormwater management and treatment systems shall meet the following performance standards:
- a. Existing surface waters, including lakes, ponds, rivers, perennial and intermittent streams (natural or channelized), and wetlands (including vernal pools) shall be protected by the minimum buffer setback distances specified in the Zoning Ordinance. Stormwater and erosion and sediment control BMPs shall be located outside the specified buffer zone unless otherwise approved by the Planning Board. Alternatives to stream and wetland crossings that eliminate or minimize environmental impacts shall be considered whenever possible. When necessary, as determined by the Planning Board or their representative, stream and wetland crossings shall comply with state recommended design standards to minimize impacts to flow and enhance animal passage (see University of New Hampshire Stream Crossing Guidelines May 2009, as amended [http://www.unh.edu/erg/stream\\_restoration/nh\\_stream\\_crossing\\_guidelines\\_unh\\_web\\_rev\\_2.pdf](http://www.unh.edu/erg/stream_restoration/nh_stream_crossing_guidelines_unh_web_rev_2.pdf)).
  - b. LID site planning and design strategies must be used to the MEP in order to reduce the generation of the stormwater runoff volume for both new and redevelopment projects. An applicant must document why LID strategies are not appropriate if not used to manage stormwater.
  - c. All stormwater treatment areas shall be planted with native plantings appropriate for the site conditions: grasses, shrubs and/or other native plants in sufficient numbers and density to prevent soil erosion and to promote proper treatment of the proposed runoff.

- d. All areas that receive rainfall runoff must be designed to drain within a maximum of 72 hours for vector control.
- e. Salt storage areas shall be covered or located such that no direct untreated discharges to receiving waters are possible from the storage site. Snow storage areas shall be located such that no direct untreated discharges to receiving waters are possible from the storage site. Runoff from snow and salt storage areas shall enter treatment areas as specified above before being discharged to receiving waters or allowed to infiltrate into the groundwater.
- f. Runoff shall be directed into recessed vegetated and landscape areas designed for treatment and/or filtration to the MEP to minimize Effective Impervious Cover (EIC) and reduce the need for irrigation systems.
- g. The Plan shall make provisions to retain stormwater on the site by using the natural flow patterns of the site. Effort shall be made to utilize natural filtration and/or infiltration BMPs (i.e., bioretention areas, subsurface filtration/infiltration systems, ponds, swales, etc). Proof of such effort shall be provided to the Planning Board.
- h. Measures shall be taken to control the post-development peak rate runoff so that it does not exceed pre-development runoff for the 2-year, 10-year and 25-year, 24-hour storm events. Similar measure shall be taken to control the post-development runoff volume to filtrate the WQv according to the following ratios of Hydrologic Soil Group (HSG) type versus infiltration rate multiplier: HSG-A: 1.0; HSG-B: 0.75; HSG-C: 0.4; HSG-D: 0.15. For sites where infiltration is limited or not practicable, the applicant must demonstrate that the project will not create or contribute to water quality impairment. Infiltration structures shall be in locations with the highest permeability on the site. Measures shall be taken to protect against on and off-site peak flow to prevent overloading of existing downstream facilities.
- i. The biological and chemical properties of the receiving waters shall not be degraded by the stormwater runoff from the development site.
- j. The design of the stormwater drainage system shall provide for the disposal of stormwater without flooding or functional impairment

to streets, adjacent properties, downstream properties, soils, or vegetation.

- k. The design of the stormwater management systems shall take into account upstream and upgradient runoff that flows onto, over, or through the site to be developed or re-developed and provide for this contribution of runoff.
  - l. Appropriate erosion and sediment control measures shall be installed prior to any soil disturbance such that the area of disturbance shall be kept to a minimum. Disturbed areas shall be stabilized within thirty (30) days.
  - m. Measures shall be taken to control erosion within the project area. Sediment in runoff water shall be trapped and retained within the project area using approved measures. Wetland areas and surface waters shall be protected from sediment.
  - n. All temporary control measures shall be removed after final site stabilization. Trapped sediment and other disturbed soil areas resulting from the removal of temporary measures shall be permanently stabilized prior to removal of temporary control measures.
  - o. Every effort shall be made to use pervious parking surfaces as an alternative to impervious asphalt or concrete for general and overflow parking areas. Pervious pavement shall be appropriately sited and designed for traffic and vehicle loading conditions.
  - p. Whenever practicable, native site vegetation shall be retained, protected, or supplemented. Any stripping of vegetation shall be done in a manner that minimizes soil erosion.
  - q. Whenever practicable, all subsurface filtration BMPs shall include perforated underdrains positioned a minimum of 8-inches above the bottom of the filter bed to prevent extended periods of saturated conditions.
- 5) Redevelopment Project Requirements: Because redevelopment may present a wide range of constraints and limitations, an evaluation of options may be proposed to work in conjunction with broader state watershed goals and local initiatives. Stormwater requirements for redevelopment vary based upon the surface area of the site that is covered by existing impervious surfaces. In order to determine the stormwater

requirements for redevelopment projects, the percentage of the site covered by existing impervious areas must be calculated.

For sites meeting the definition of a redevelopment project and having less than 40% existing impervious surface coverage, the stormwater management requirements will be the same as other new development projects with the important distinction that the applicant can meet those requirements either on-site or at an approved off-site location, within the same watershed within the Town of Durham, provided the applicant satisfactorily demonstrates that impervious area reduction and LID strategies and BMPs have been implemented on-site to the MEP.

For redevelopment sites with more than 40% existing impervious surface coverage, stormwater shall be managed for water quality in accordance with one or more of the following techniques, listed in order of preference:

- a. Implement measures onsite that result in an EIA of at least 30% of the existing impervious surfaces and pavement areas, and 50% of the additional proposed impervious surfaces and pavement areas through the application of porous media; or
  - b. Implement other LID techniques onsite to the MEP to provide treatment for at least 50% of the redevelopment area; or
  - c. Implement off-site BMPs to provide adequate water quality treatment for an area equal to or greater than 50% of redevelopment areas may be used to meet these requirements provided that the applicant satisfactorily demonstrates that impervious area reduction, LID strategies, and/or onsite BMPs have been implemented to the MEP. An approved off-site location must be identified, the specific management measures identified, and an implementation schedule developed in accordance with local review. The applicant must also demonstrate that there is no downstream drainage or flooding impacts as a result of not providing on-site management for large storm events. To comply with local watershed objectives the mitigation site should be situated in the same subwatershed as the development and impact the same receiving water.
- 6) Responsibility for Installation and Construction: The applicant shall bear final responsibility for the installation, construction, inspection, and disposition of all stormwater management and erosion control measures required by the provisions of these regulations. Site development shall not

begin before the Stormwater Management Plan receives written approval by the Planning Board. Best Management Practices shall be installed as designed and scheduled as a condition of final approval of the plan.

- 7) Plan Approval and Review: The Planning Board shall approve the Stormwater Management Plan if it complies with the requirements of these regulations and other requirements as provided by law. At the discretion of the Planning Board, a technical review by a third party may be required of any stormwater management and erosion control plan prepared under these regulations. The technical review shall be performed by a qualified professional consultant, as determined by the Planning Board, and the expense of which shall be the full responsibility of the applicant.
  
- 8) Maintenance and Inspection:
  - a. After final Planning Board approval and as a condition precedent thereto, the owner of record of the property shall cause notice of the requirements for maintenance pursuant to the stormwater management and erosion and sediment control plans, as approved by the Planning Board, to be recorded at the Registry of Deeds sufficient to provide notice to all persons that may acquire any property subject to the stormwater management and sediment control plans. See RSA 477:3-a. The notice shall comply with the applicable requirements for recording contained in RSA 477 and 478. The notice need not set forth the requirements at length, so long as it is sufficient to provide notice to prospective purchasers of the requirements for maintenance pursuant to the stormwater management and erosion and sediment control plans as approved by the Planning Board. The Planning Board may require routine inspections to insure compliance with the Stormwater Management, Groundwater Protection, Impervious Surfaces, and Erosion and Sedimentation Control sections of these regulations. Such inspections shall be performed by a designated agent with appropriate certifications at reasonable times to the landowner.
  - b. If permission to inspect is denied by the landowner, the designated agent shall secure an administrative inspection warrant from the district or superior court under RSA 595-B.

### **9.03.2 - Reimbursement**

The applicant shall reimburse the Town for the Planning Board's administrative expenses and costs of special investigation and the review of documents and other matters that may be required by particular applications. This includes, but is not limited to, review by consulting engineers or other consultants to assess the environmental impact, hydrological impact, ground water quality impact, traffic impact, or any other study deemed necessary by the Planning Board in order to make an informed decision."

### **9.03.3 Waivers & Exceptions**

For reasons heretofore well demonstrated, the Planning Board may waive one or more of these regulations. The following activities are considered exempt from preparing and submitting stormwater management plans:

1. Agricultural practices located outside the wetland and surface water buffers
2. Road and parking lot resurfacing.

### **9.04 Water Supply**

A. General Requirements - All developments in the state of New Hampshire shall make adequate provision for a water supply of potable water for domestic consumption and for water supply for fire protection purposes. All water supply systems and facilities shall be designed and stamped by a registered engineer.

#### **B. Required Improvements**

- 1) The location of individual private wells shall comply with all standards of the New Hampshire Water Supply and Pollution Control Commission.
- 2) A private central water system, serving two or more lots or users, shall conform with and meet all standards set for community water services as established by the New Hampshire Water Supply and Pollution Control Commission (WSPCC) even though the WSPCC may not invoke jurisdiction in all cases.

### **9.05 Sewerage**

A. General Requirements - All developments shall make adequate provision for sanitary sewage disposal facilities. The facilities shall be designed and stamped

by a registered engineer. Sanitary sewage disposal shall be accomplished through the provision of individual waste disposal systems or a private central sewerage system.

- B. Design Standards - Sanitary waste disposal may be accomplished by either of the following methods:
- 1) Individual disposal systems, the design and location of which shall be approved by the State of New Hampshire Water Supply and Pollution Control Commission. The systems shall be located on private property, no closer than seventy-five (75) horizontal feet to a watercourse, a waterbody, a wetland, or a well that is being used as a source of individual water supply.
  - 2) A private central sewerage system, the design and location of which shall be approved by the State of New Hampshire Water Supply and Pollution Control Commission. Maintenance and operating costs of the system shall be borne by the developer.

#### **9.06 *Non-Municipal Utilities***

- A. General Requirements - The applicant is responsible for all coordination with utility companies to assure that non-municipal utilities are installed in accordance with plans approved by the Board pursuant to these regulations.
- B. Design Standards - All utility facilities, including but not limited to electric power and telephone shall be located underground throughout the development. Whenever existing utility facilities are located above ground, they shall be removed and placed underground. Existing utilities which are located within public rights-of-way are exempted from this provision. The Board shall review and approve the location of all non-municipal utility lines.

#### **9.07 *Signs***

- A. General Requirements - Signs are intended for the identification of the use on the site on which they are located. Signs shall not be a hazard or nuisance by virtue of their location or illumination.
- B. Design Standards - Sign size, type, location, height, and illumination shall conform to the requirements of Durham Zoning and Land Use Ordinance.

## 9.08 *Preservation of Natural Features and Amenities*

### A. General Requirements

- 1) Grading and clearing should be minimized so as to avoid creating undue erosion or interruption of natural drainage ways. Particular attention should be given to natural features suitable as buffer strips between residential subdivisions abutting commercial or industrial areas. Similar natural features that provide buffers between lots, or sections of a development should be preserved to enhance privacy and attractiveness. Provision for clearing may be made for southerly exposure for solar access to dwellings or buildings.
- 2) Developers shall use construction methods which cause the least disturbance to the environment possible. No cut trees, stumps, debris, junk, rubbish, or other waste materials of any kind shall be buried in any land, or left or deposited on any lot or street at the time of issuance of a certificate of occupancy, and removal of same shall be required prior to issuance of any certificate of occupancy. Nor shall any debris be left or deposited in any area of development at the time of expiration of the performance bond or dedications of public improvements, whichever is sooner.

## 9.09 *Special Flood Hazard Areas:*

All site plan proposals governed by these regulations having lands identified as Special Flood Hazard Areas in the "Flood Insurance Study for the Town of Durham, N.H." together with the associated Flood Insurance Rate Maps and Flood boundary and Floodway maps of the Town of Durham shall meet the following requirements:

- A. Site Plan proposals, including their utilities and drainage, shall be located and designed to be consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, electrical and water systems shall be located and constructed to minimize or eliminate flood damage.
- C. Adequate drainage shall be provided to reduce exposure to flood hazards.
  - 1) New and replacement water systems (including on-site systems) shall be located, designed and constructed to minimize infiltration and avoid impairment.

- 2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- D. Within the altered or relocated portion of any watercourse, the applicant shall submit to the Planning Board certification provided by a registered professional engineer assuring that the 100 year flood carrying capacity of the watercourse has been maintained.
  - E. All site plan proposals shall include 100-year flood elevation data.

**9.10 Design Submittal Standards - All Personal Wireless Service Facilities**

- A. Brochures. Equipment brochures for the proposed personal wireless service facility such as manufacturer's specifications or trade journal reprints shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
- B. Materials. Materials of the proposed personal wireless service facility specified by generic type and specific treatment (e.g., anodized aluminum, stained wood, painted fiberglass, etc.). These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
- C. Colors. Colors of the proposed personal wireless service facility represented by a color board showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
- D. Dimensions. Dimensions of the personal wireless service facility specified for all three directions: height, width and breadth. These shall be provided for the antennas, mounts, equipment shelters and security barrier, if any.
- E. Photographs. Appearance shown by at least two (2) photographic superimpositions of the personal wireless service facility within the subject property. The photographic superimpositions shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any, for the total height, width and breadth.
- F. Lighting. If lighting of the site is proposed, the applicant shall submit a manufacturers computer-generated point-to-point printout, indicating the horizontal foot-candle levels at grade, within the property to be developed

and twenty-five (25) feet beyond the property lines. The printout shall indicate the locations and types of luminaries proposed.

- G. Co-location. Carriers shall share personal wireless service facilities and sites where feasible and appropriate, thereby reducing the number of personal wireless service facilities that are stand-alone facilities.
- 1) All applicants for site plan review for a personal wireless service facility shall demonstrate a good faith effort to co-locate with other carriers. Such good faith effort includes contact with all the other carriers for personal wireless services operating in the Town of Durham or in adjoining or nearby jurisdictions.
  - 2) If the applicant intends to co-locate or to permit co-location, drawings and studies which show the appearance and operation of the personal wireless service facility with maximum co-location shall be provided.
  - 3) If the Planning Board approves co-location for a personal wireless service facility site, the site plan shall indicate how many facilities and of what type shall be permitted on that site. Facilities specified in the site plan approval shall require no further zoning approval, but shall require a Building Permit. However, the addition of any facilities not specified in the approved site plan shall require a new site plan.

(Amended January 7, 1998)

#### **9.11 Noise Standards - All Personal Wireless Service Facilities:**

The applicant shall provide a statement listing the existing and maximum future projected measurements of noise from the proposed personal wireless service facilities, measured in decibels Ldn (logarithmic scale, accounting for greater sensitivity at night). Such statement shall be certified and signed by an acoustical engineer, stating that noise measurements are accurate and meet the Noise Ordinance of the Town of Durham and such statements shall include the following:

- A. Existing, or ambient: the measurements of existing noise.
- B. Existing plus the proposed personal wireless service facilities: maximum estimate of noise from the proposed personal wireless service facility plus the existing noise environment.
- C. Existing plus the proposed personal wireless service facilities plus cumulative: maximum estimate of noise from the proposed personal wireless service facility plus the maximum estimate of noise from the total

addition of co-located personal wireless service facilities plus the existing noise environment.

**9.12 Radio Frequency Radiation (RFR) - All Personal Wireless Service Facilities:**

The applicant shall provide a signed and stamped certificate by an RF Engineer stating that the maximum radio frequency radiation of the personal wireless service facility and the cumulative RFR of any existing personal wireless service facilities at the site will not exceed the FCC Guidelines. The FCC Guidelines shall be incorporated as part of this certification. (Amended January 7, 1998)

**9.13 Environmental Filing Requirements - All Personal Wireless Service Facilities**

A. The National Environmental Policy Act (NEPA) applies to all applications for personal wireless service facilities. NEPA is administered by the FCC via procedures adopted as Subpart 1, Section 1.1301 et seq. (47 CFR Ch. I). The FCC requires that an environmental assessment (EA) be filed with the FCC prior to beginning operations for any personal wireless service facility proposed in or involving any of the following:

- 1) Wilderness area.
- 2) Wildlife preserve.
- 3) Threatened or endangered species.
- 4) Historical site.
- 5) Native American religious site.
- 6) Floodplain.
- 7) Wetland.
- 8) High intensity white lights in residential neighborhoods.
- 9) Excessive radio frequency radiation exposure.

B. At the time of application filing, an EA that meets FCC requirements shall be submitted to the Town for each personal wireless service facility site that requires such an EA to be submitted to the FCC. In addition, a letter of concurrence substantiating the finding of the applicant for each of the NEPA checklist items shall be provided with the site plan application.

- C. The applicant shall list the location, type, and amount (including trace elements) of any materials proposed for use within the personal wireless service facility that are considered hazardous by the federal, state, or county government, or by the Town of Durham.

(Amended January 7, 1998)

**9.14 *Structural Report for All Ground Mounted Personal Wireless Service Facilities:*** The applicant shall provide a report prepared by a licensed professional civil engineer describing the facility and specifying the maximum number and types of antennas the facility is designed to accommodate. The report shall bear the seal of the engineer that prepared the report.

(Amended January 7, 1998)

**9.15 *Visibility Standards for Ground Mounted Personal Wireless Service Facilities, Excluding Reconstruction of Existing Facilities***

- A. Sight Lines. Lines representing the sight line showing the viewpoint (point from which view is taken) and visible point (point being viewed) as described below:

- 1) Sight line representation. A sight line representation shall be drawn from any public road within three hundred (300) feet and the closest facade of each residential building (viewpoint) within three hundred (300) feet to the highest point (visible point) of the personal wireless service facility. The three hundred (300) foot measure shall be measured from the subject property boundary. Each sight line shall be depicted in profile, drawn at one inch equals forty (40) feet. The profiles shall show all intervening trees and buildings. In the event there is only one (or more) residential building within three hundred (300) feet, there shall be at least two sight lines from the closest habitable structures or public roads, if any.
- 2) Existing (before condition) photographs. Each sight line shall be illustrated by one (1) four-inch by six-inch or larger color photograph of what can currently be seen from any public road or residential building identified above.
- 3) Proposed (after condition). Each of the existing condition photographs shall have the proposed personal wireless service facility superimposed on it to show what will be seen from public roads and residences if the proposed personal wireless service facility is built.

- B. Elevations. Siting elevations, or views at-grade from the north, south, east and west for a fifty (50) foot radius around the proposed personal wireless service facility plus from all existing public and private roads that serve

the subject property. Elevations shall be at either one-quarter inch equals one foot or one-eighth inch equals one foot scale and show the following:

- 1) Antennas, mounts and equipment shelter(s), with total elevation dimensions and AGL of the highest point.
  - 2) Security barrier. If the security barrier will block views of the personal wireless service facility, the barrier drawing shall be cut away to show the view behind the barrier.
  - 3) Any and all structures on the subject property.
  - 4) Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations dimensioned.
  - 5) Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two-foot contours above mean sea level.
- C. Balloon Test. Within fourteen (14) days of the acceptance of the site plan application by the Planning Board, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the Town at least ten (10) days prior to the test. (Amended January 7, 1998)

### ***SECTION 10: Independent Studies and Investigations***

**10.01.** The Planning Board reserves the right to require additional studies to determine the potential impact of the proposed site development. Studies may include, but are not limited to, Traffic Impact Analysis, Fiscal Impact Analysis, and Environmental Impact Analysis.

- A. All Traffic Impact Analysis shall be presented in accordance with the "Strafford Regional Planning Commission's Guidelines for Traffic Impact Analysis 1986," incorporated into these regulations by reference. The Planning board reserves the right to retain the services of an outside agency for the purposes of reviewing any traffic impact analysis submitted.
- B. All Fiscal Impact Analysis shall be presented in accordance with the "Strafford Regional Planning Commission's Guidelines for Fiscal Impact Analysis 1988," incorporated into these regulations by reference. The Planning board reserves the right to retain the services of an outside agency for the purposes of reviewing any fiscal impact analysis submitted.

C. The Environmental Impact Statement specifications will be dictated on a case by case basis. (Amended January 7, 1998)

**10.02.** Wherever, in the opinion of the Board, traffic generated by a development will adversely impact existing public streets, the Board may require improvements to be made to such streets and intersections in an effort to mitigate such impacts. (Amended January 7, 1998)

### ***SECTION 11: Post Construction Requirements***

**11.01.** All deeds covering land to be used for public purposes, easements, and right-of-ways over property to remain in private ownership, and rights of drainage across private property shall be submitted in a form satisfactory to the Town Attorney. (Amended January 7, 1998)

**11.02.** As-built construction drawings, plan and profile, of all infrastructure improvements at a scale of 1" to 20', including, but not limited to:

A. Underground Utilities (sewer lines, storm drains, water lines, electrical, phone, cable, natural gas lines, etc.)

B. Drainage ways, ditching, impoundments, swales, etc.

C. Road construction. (Amended January 7, 1998)

**11.03.** Maintenance Guarantee--a financial surety to guarantee that all site work was properly done shall be posted by the applicant with the Town. Such maintenance guarantee shall be in an amount of two percent of the estimated project cost and shall remain in force for two (2) years after site improvements are completed. If such repairs are needed and are not satisfactorily installed by the developer, then such guarantee shall be used to complete and/or install such improvements. (Amended January 7, 1998)

### ***SECTION 12: Administration and Enforcement***

#### ***12.01 Administration***

These regulations shall be administered by the Planning Board. The enforcement of these regulations is vested in the Town Council.

### ***12.02 Waivers***

The requirements of the foregoing regulations may be waived when, in the opinion of the Board, specific circumstances surrounding a site plan application, or a condition of the land of such application, indicate that such waivers will insure that the purpose and intent of the Master Plan and these regulations will be properly carried out.

### ***12.03 Penalties and Fines***

Any violation of these regulations may be subject to a civil fine as provided in RSA 676:16 and 676:17, as amended. The Town Council and the Code Enforcement Officer are designated as the local authorities to institute appropriate action under the provisions of RSA 676:17.

### ***SECTION 13: Conflicting Provisions***

Where these regulations are in conflict with other local, state, or federal ordinances, the more stringent shall apply.

### ***SECTION 14: Validity***

If any section or part of section or paragraph shall be declared invalid or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or sections or part of a section or paragraph of these regulations.

### ***SECTION 15: Amendments***

These regulations may be amended by the Planning Board following a public hearing on the proposed changes. Such changes shall not take effect until a copy of said changes, as approved by a majority of the Board, are filed with the Town Clerk.

The following attachments are incorporated into these regulations:

***Attachment 1: Formal Application for Site Plan Review***

***Attachment 2: Request for Preapplication Review (optional)***

***Attachment 3: Notices***

- a) Design Review
- b) Submission of Formal Application

***Attachment 4: Notice of Decision***

- a) Approval

- b) Disapproval

*Attachment 5: Sample Construction Guarantee Contract.*

***SECTION 16: Modifications to Personal Wireless Service Facilities***

**16.01** A modification of a personal wireless service facility is considered equivalent to an application for a new personal wireless service facility and requires a site plan review when any of the following events apply:

- A. The applicant and/or co-applicant wants to alter the terms of the site plan by changing the personal wireless service facility in one or more of the following ways:
  - 1) Change in the number of facilities permitted on the site; or
  - 2) Change in technology used for the personal wireless service facility that will affect the visible elements of the facility, or that would alter the amount(s) and/or type(s) of hazardous materials used at the facility.
- B. The applicant and/or co-applicant wants to add any exterior visible equipment or additional height not specified in the approved site plan.

(Amended January 7, 1998)

*Attachment 1*

**APPLICATION FOR SITE PLAN REVIEW**

Note: This form and all required information must be filed at least 21 days before the date of the meeting at which it is to be submitted to the Board. Filing is to be done at the Planning Office, Durham Town Office Building or by mail to 15 Newmarket Road, Durham NH 03824.

1. Name, mailing address and telephone number of applicant

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2. Name, mailing address and telephone number of owner of record if other than applicant

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3. Location of Proposed Project \_\_\_\_\_

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Tax Map \_\_\_\_\_ Lot Number \_\_\_\_\_ Zoning District \_\_\_\_\_

4. Name of Proposed Project \_\_\_\_\_

5. Number of units for which approval is sought \_\_\_\_\_

6. Name, mailing address and telephone number of surveyor and/or agent

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7. Abutters: Attach a separate sheet listing the Durham Tax Map number, Lot number, name, and mailing address of all abutters, including those across a street, brook or stream. The list of abutters must also include any holders of conservation, preservation, or agricultural preservation restrictions in accordance with RSA 676:4(I)(d). Names should be those of current owners as recorded in the tax records five (5) days prior to the submission of this application. *Note: Names submitted on the Request for Preapplication Review may not be current. No application shall be heard unless all abutters as described herein have been notified.*

8. Items on the attached Site Plan Review Application Submission Checklist

9. Payment of all applicable fees:	
submittal fees	\$ _____
advertising/posting costs	_____
abutter notification (each)	_____
proposed road (per foot)	_____
administrative and technical review costs	_____
TOTAL	\$ _____

10 The applicant and/or owner or agent\*, certifies that this application is correctly completed with all attachments and requirements, and that any additional costs for engineering or professional services incurred by the Planning Board or the Town of Durham, in the site plan review process of this property, shall be borne by the applicant and/or owner.

11 Within five (5) business days of submitting a formal application, the applicant shall meet with the Director of Planning and Community Development to discuss issues related to completeness and acceptance of the application. If this review discloses that all requirements specified on the Site Plan Application Checklist have not been met, the applicant will be notified in writing what specific items are still needed.

12 Prior to the next regularly scheduled meeting of the Planning Board, the applicant, at the discretion of the Director of Planning and Community Development, shall meet with the appropriate Department Heads of the Town of Durham to discuss the implications the application will have on the various Departments of the town.

13 If this application is determined by the Planning Staff to be complete, it will be placed on the Planning Board agenda on \_\_\_\_\_ for acceptance.

**\*If the applicant is an agent of the owner, a separate signed letter from the owner of record is required which clearly states the authority of the agent or representative for this application. If the agent does not have the power of attorney of the owner, all documents shall be signed by the owner.**

“I hereby authorize the Durham Planning Board and its agents to access my land for the purpose of reviewing the proposed site plan, performing road inspections and any other inspections deemed necessary by the Board or its agents, to ensure conformance of the on-site improvements with the approved plan and all Town of Durham ordinances and regulations.”

Date \_\_\_\_\_ Applicant, Owner, or Agent \_\_\_\_\_

**Attachment 2**

**REQUEST FOR PREAPPLICATION REVIEW (OPTIONAL)**

1. Name, mailing address and telephone number of applicant  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. Name, mailing address and telephone number of owner of record if other than applicant  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Location of Proposed Development \_\_\_\_\_  
\_\_\_\_\_
4. City/Town of \_\_\_\_\_ Tax Map \_\_\_\_\_ Lot Number \_\_\_\_\_
5. Type of development \_\_\_\_\_
6. Is this a request for \_\_\_\_\_ Conceptual Consultation \_\_\_\_\_ Design Review

*Note: If this is a request for Design Review, the applicant and the public must be notified. (See Site Plan Review Regulation, Section 5.04.)*

7. Abutters: Attach a separate sheet listing the Durham Tax Map, Lot number, Name and Mailing Address of all abutters, including those across a street, brook or stream. The list of abutters must also include any holders of conservation, preservation, or agricultural preservation restrictions in accordance with RSA 676:4(I)(d). Names should be those of current owners as recorded in the Tax Records five (5) days prior to the submission of this application.

**Advertising Costs** \_\_\_\_\_

Abutter Notification (each) \_\_\_\_\_

(Including applicant and/or owner)

\_\_\_\_\_  
**Owner/Agent**

\_\_\_\_\_  
**Date**

File # \_\_\_\_\_

**Attachment 3a**

**NOTICE OF DESIGN REVIEW**

Planning Board, Town of Durham

Notice to Applicant: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Notice to Abutter: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Location of Proposal: \_\_\_\_\_

\_\_\_\_\_

Signed: \_\_\_\_\_

Chairman or Secretary  
Durham Planning Board

Date:  
\_\_\_\_\_

*NOTE: The applicant has requested preapplication discussion with the Board concerning the above proposal. The posted agenda will list the proposal when it is to be discussed. No public hearing is required. No material is submitted. No decisions are made. You will be notified when, and/or if, a formal application is submitted for review.*

File # \_\_\_\_\_

**Attachment 3b**

**ABUTTER'S /LEGAL NOTICE  
SUBMISSION OF FORMAL APPLICATION FOR  
SITE PLAN REVIEW**

Planning Board, Town of Durham

Date \_\_\_\_\_

Notice to Applicant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice to Abutter: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Location of Proposed Site: \_\_\_\_\_  
\_\_\_\_\_

Description of Proposed Development: \_\_\_\_\_  
\_\_\_\_\_

Public meeting Date: \_\_\_\_\_

Public Meeting Time and Place: \_\_\_\_\_

This is a meeting to decide acceptance of the application **only**, no public comment will be solicited. If the Planning Board chooses to accept the application, the Board will schedule a site walk of the property and a Public Hearing. A separate notice of the Public Hearing will be sent and public comments will be solicited during the Public Hearing.

Signed: \_\_\_\_\_

Director of Planning, Zoning, and Code Enforcement

Date: \_\_\_\_\_

NOTE: Abutters are invited to attend for their own benefit and information. They are not required by law to attend. Planning Board meetings are scheduled for the first and third Wednesdays of each month.

File # \_\_\_\_\_

**Attachment 4a**

**NOTICE OF DECISION - APPROVAL**

Planning Board, Town of Durham

You are hereby notified that the application of

\_\_\_\_\_

to develop the site located on Tax Map \_\_\_\_\_, Lot # \_\_\_\_\_; with an address of \_\_\_\_\_ in the Town of Durham has been approved by majority vote of the members of the Planning Board on \_\_\_\_\_ with the following conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

Chairman

Date: \_\_\_\_\_

File # \_\_\_\_\_

**Attachment 4b**

**NOTICE OF DECISION - DISAPPROVAL**

Planning Board, Town of Durham

You are hereby notified that the application of \_\_\_\_\_ for a site plan, located on Tax Map \_\_\_\_\_, Lot # \_\_\_\_\_; with an address of \_\_\_\_\_ in the Town of Durham has been disapproved by majority vote of the members of the Planning Board on \_\_\_\_\_ .

As stated in the Planning Board Minutes the motion to disapprove stated that the application was disapproved for the following reasons:

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\_\_\_\_\_  
Chairman

Date:\_\_\_\_\_

File # \_\_\_\_\_

Attachment 5

\*\*\*SAMPLE\*\*\*

CONSTRUCTION GUARANTEE

KNOW ALL MEN BY THESE PRESENT THAT \_\_\_\_\_,  
\_\_\_\_\_ Street, \_\_\_\_\_NH, "Developer" of  
\_\_\_\_\_, is held and firmly bound unto the  
\_\_\_\_\_ Planning Board in the sum of \_\_\_\_\_  
(\$\_\_\_\_\_), for the payment of which Developer binds himself, his heirs,  
executors, and successors in interest and assigns by these present.

The Condition of this obligation is such that, if the Developer, his assigns or successors  
in interest, shall in all things, well and truly and properly perform and complete the  
following improvements and to be constructed on a Site Plan known as  
"\_\_\_\_\_" Tax Map\_\_\_\_\_,  
Lot(s)\_\_\_\_\_, to which conditional approval was granted by the  
Durham Planning Board on \_\_\_\_\_, 199\_\_, then this obligation shall be void;  
otherwise to remain in full force.

<u>Bond</u>	<u>Required Date of</u>	<u>Amount of</u>
<u>Improvements</u>	<u>Final Completion</u>	<u>Bond Required</u>

- 1.
- 2.
- 3.

	Total:	\$ _____
--	--------	----------

Final Completion Date:\_\_\_\_\_

Signature of Developer:\_\_\_\_\_ Date:\_\_\_\_\_<sup>1</sup>

<sup>1</sup> This Construction Guarantee shall not be effective until a financial surety acceptable to the Town has been posted with the Town in the amount set forth above. Additionally, the Construction Guarantee shall not expire and will be available to the Town as security for the proper performance of the Guarantee until sixty (60) days following the final completion date.

## **F2 – Manchester, New Hampshire Stormwater Ordinance**

## **An Ordinance**

“Amending the Code of Ordinances of the City of Manchester by adding a new Chapter 54: Storm Water to Title V: Public Works.”

### **CHAPTER 54: STORM WATER**

#### Section

- 54.01 Purpose
- 54.02 Definitions
- 54.03 Administration
- 54.04 Prohibited discharges
- 54.05 Permit procedures and requirements
- 54.06 General Permit Provisions
- 54.07 Waivers
- 54.08 Industrial activity discharges
- 54.09 Access and inspections of properties and facilities
- 54.10 Notification of accidental discharges and spills
- 54.11 Violations, enforcement and penalties
- 54.12 Eligibility

**§ 54.01 PURPOSE.**

The purpose of this chapter is to:

(A) Protect, maintain, and enhance the environment of the City of Manchester, New Hampshire and the public health, safety and the general welfare of the citizens of the city, by controlling discharges of pollutants to the city's storm water system and to maintain and improve the quality of the receiving waters into which the storm water outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the city.

(B) Enable the City of Manchester to comply with the National Pollution Discharge Elimination System permit (NPDES) and applicable regulations, 40 CFR §122.26 for storm water discharges.

(C) Allow the City of Manchester to exercise the powers granted by the State of New Hampshire through applicable statute to:

- (1) Exercise general regulation over the planning, location, construction, and operation and maintenance of storm water facilities in the City, whether or not owned and operated by the City;
- (2) Adopt any regulations deemed necessary to accomplish the purposes of this ordinance, including the adoption of a system of fees for services and permits;
- (3) Establish standards to regulate the quantity of storm water discharged and to regulate storm water contaminants as may be necessary to protect water quality;
- (4) Review and approve plans for storm water management in proposed subdivisions or commercial developments;
- (5) Issue permits for storm water discharges, or for the construction, alteration, extension, or repair of storm water facilities;
- (6) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, or condition of the permit;
- (7) Regulate and prohibit discharges into storm water facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and

(8) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of storm water contamination, whether public or private.

**§54.02 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***BEST MANAGEMENT PRACTICES.*** Physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, that have been approved by the City of Manchester, and that have been incorporated by reference into the Storm Water Regulations as if fully set out therein. (See Section 6A of the Storm Water Regulations for recommended Best Management Practices manuals.)

***COMBINED SEWER DRAINAGE SYSTEM.*** A single pipe conveyance system intended to receive both sewage and storm or surface water.

***CONTAMINANT.*** Any physical, chemical, biological, or radiological substance or matter in water.

***DEPARTMENT OF HIGHWAYS.*** The Highway Division of the City of Manchester.

***DIRECTOR OF PUBLIC WORKS.*** The Chief Administrator of the Department of Highways who is authorized to assign Highway staff to oversee the implementation and enforcement of the Storm Water Regulations and the City of Manchester's Storm Water Ordinance.

***DISCHARGE.*** Dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked or placed by any means including any direct or indirect entry of any solid or liquid matter into the Municipal Separate Storm Sewer System.

***ILLICIT CONNECTIONS.*** Illegal and/or unauthorized connections to the municipal separate storm water system whether or not such connections result in discharges into that system. "Illegal Connection" means either of the following:

(1) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or

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(2) Any pipe, open channel, drain or conveyance connected to the municipal separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

***ILLICIT DISCHARGE.*** Any discharge to the Municipal Separate Storm Sewer System that is not composed entirely of storm water and not specifically exempted under Section 2(J) of the Storm Water Regulations.

***LAND DISTURBING ACTIVITY.*** Any activity on property that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land-disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling and excavation.

***MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4).*** The conveyances owned or operated by the municipality for the collection and transportation of storm water, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.

***NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT.*** A permit issued pursuant to 33 USC Section 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

***PERSON.*** Any and all persons, including any individual, firm or association and any city or private corporation organized or existing under the laws of this or any other state or country.

***POLLUTANT.*** Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; sediment; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

***POLLUTION.*** The contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic,

commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

**PREMISES.** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**STATE WATERS.** Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of New Hampshire which are not entirely confined and retained completely upon the property of a single person.

**STORM WATER.** Storm water runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration and drainage.

**STORM WATER APPEALS COMMITTEE.** A three-member committee consisting of a Highway Commissioner, an engineer from a private engineering firm and an engineer from the Department of Highways.

**STORM WATER MANAGEMENT.** The programs to maintain quality and quantity of storm water runoff to pre-development levels.

**STORM WATER MANAGEMENT FACILITIES.** The drainage structures, conduits, ditches, combined sewers, sewers, and all device appurtenances by means of which storm water is collected, transported, pumped, treated or disposed of.

**STORM WATER MANAGEMENT PLAN.** The set of drawings and other documents that comprise all the information and specifications for the programs, drainage systems, structures, Best Management Practices, concepts and techniques intended to maintain or restore quality and quantity of storm water runoff to pre-development levels.

**STORM WATER POLLUTION PREVENTION PLAN (SWPPP).** A plan that clearly describes appropriate control measures that include a description of all pollution control measures (i.e., Best Management Practices) that will be implemented as part of the construction activity to control pollutants in storm water discharges and describes the interim and permanent stabilization practices for the site.

**STORM WATER REGULATIONS.** A supplement to the Storm Water Ordinance that includes additional conditions and requirements. Copies are available at the Department of Highways and the Office of the City Clerk.

**STORM WATER RUNOFF.** Flow on the surface of the ground, resulting from precipitation and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

***STORM WATER UTILITY.*** The Department of Highways and its duly authorized agents created by ordinance of the City to administer the Storm Water Management Ordinance, and other Storm Water Regulations adopted by the City.

***STRUCTURAL BEST MANAGEMENT PRACTICES.*** Devices that are constructed to provide control of storm water runoff.

***STRUCTURAL STORM WATER CONTROL.*** A structural storm water management facility or device that controls storm water runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

**§ 54.03 ADMINISTRATION.**

The Director of the Department of Highways or his designee shall administer the provisions of this ordinance and is hereby authorized to promulgate and amend such regulations as may be necessary and convenient to effectuate the purposes and enforce the requirements of this ordinance.

**§ 54.04 PROHIBITED DISCHARGES.**

The specific prohibited discharges outlined in the Storm Water Regulations are not inclusive of all discharges prohibited by this ordinance and the Storm Water Regulations.

**§ 54.05 PERMIT PROCEDURES AND REQUIREMENTS.**

(A) *Permit Required* - No land owner or land operator shall begin any site work on any building(s), grading or other land development or any land disturbance activities (as outlined in §54.06) without first submitting a Notice of Intent (NOI) to EPA Washington. Owner must also have received acknowledgement, have a Department of Highways approved Storm Water Pollution Prevention Plan and meet the requirements of this ordinance.

(B) *General Waiver Requirement.* - Every applicant shall provide for storm water management as required by this ordinance and the Department of Highways Storm Water Regulations unless a written request is filed to waive this requirement. Requests to waive the Storm Water Management Program requirements shall be submitted to the Department of Highways for approval.

(C) *Application Requirements* - Unless specifically excluded by this ordinance, any landowner or operator desiring a permit for a land disturbance activity (as described in Section 4 of the Storm Water Regulations) shall secure required approvals through the City of Manchester's Planning Board and shall submit to the Department of Highways proof of NOI submission and a copy of the Storm Water Pollution Prevention

Plan, as approved by the Department of Highways, for related project before beginning any site clearing or construction.

**§ 54.06 GENERAL PERMIT PROVISIONS.**

(A) *Land Disturbance permits when required* - Every owner/operator will be required to obtain an EPA General Permit from the EPA through a Notice of Intent in the following cases:

- (1) Land disturbing activity disturbs one (1) or more acres of land;
- (2) Land disturbing activity of less than one (1) acre of land if such activity is part of a larger common plan of development that affects one (1) or more acres of land;
- (3) Land disturbing activity of less than one (1) acre of land, if in the discretion of City of Manchester such activity poses a unique threat to water, or public health or safety;
- (4) The creation and use of borrow pits (the excavation of soils from one area to be used in another area that would meet any of the criteria of 1, 2, or 3 above).

**§ 54.07 WAIVERS.**

Every applicant shall provide for Storm Water Management as required by the Storm Water Regulations, unless a written request is filed to waive this requirement. Requests to waive the Storm Water Management Program requirements shall be submitted to the Director of Public Works for approval and must meet the requirements of 40 CFR §122.26(g).

**§ 54.08 INDUSTRIAL ACTIVITY DISCHARGES.**

All operators of landfills, hazardous waste treatment, disposal, and recovery facilities and industrial facilities are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, USC § 11023, and industrial facilities that the City determines are contributing a pollutant load to the Municipal Separate Storm Sewer System, which are sources of storm water discharges associated with industrial activity shall comply with the requirements outlined in the City's Storm Water Regulations.

**§ 54.09 ACCESS AND INSPECTION OF PROPERTIES AND FACILITIES.**

- (A) The representative of the Department of Highways shall be permitted to

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enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance.

(B) If a property or facility has security measures in force, which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the Department of Highways.

(C) The owner or operator shall allow the representative of the Department of Highways ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of a National Pollutant Discharge Elimination System Permit to discharge storm water.

(D) The Department of Highways shall have the right to set up on any property or facility such devices as are necessary in the opinion of the Department of Highways to conduct monitoring and/or sampling of flow discharges.

(E) The Department of Highways may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the Department of Highways. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

(F) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the Department of Highways and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.

(G) Unreasonable delays in allowing the Department of Highways access to a facility shall be a violation of this ordinance.

(H) If the Department of Highways has been refused access to any part of the premises from which storm water is discharged, and the Department of Highways is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is an need to inspect and/or sample as part of a routine inspection and sampling program designated to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the Department of Highways may seek issuance of a search warrant from any court of competent jurisdiction.

**§ 54.10 NOTIFICATION OF ACCIDENTAL DISCHARGES AND SPILLS.**

Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-storm water discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into storm water, the City of Manchester's separate storm sewer system, State Waters, or Waters of the U.S., said person shall immediately notify the Department of Highways and take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

**§ 54.11 VIOLATIONS, ENFORCEMENT AND PENALTIES.**

(A) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of the City's Storm Water Ordinance or the Storm Water Regulations. Any person who has violated or continues to violate these provisions may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law. In the event the violation constitutes an immediate danger to public health or public safety, the Department of Highways is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The Department of Highways is authorized to seek costs of the abatement as outlined in §54.11(F).

(B) Whenever the Department of Highways finds that a violation of this ordinance or the Regulations has occurred, the Public Works Director or designee may order compliance by written Notice of Violation. The Notice of Violation shall contain:

- (1) The name and address of the alleged violator;
- (2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and,
- (6) A statement that the determination of violation may be appealed to the Department of Highways Storm Water Appeals Committee by filing a written notice of appeal within five (5) days of service of notice of violation.

- (C) Such notice may require without limitation:
- (1) The performance of monitoring, analyses, and reporting;
  - (2) The elimination of illicit discharges and illegal connections;
  - (3) That violating discharges, practices, or operations shall cease and desist;
  - (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
  - (5) Payment of costs to cover administrative and abatement costs; and,
  - (6) The implementation of pollution prevention practices.

(D) *Appeal of Notice of Violation* - Any person receiving a Notice of Violation may appeal the determination of the Department of Highways. The appeal must be received within five (5) days from the date of the Notice of Violation. Filing of an appeal does not relieve the owner from full compliance with the remedial actions outlined in the Notice of Violation. Hearing on the appeal before the Department of Highways, Storm Water Appeals Committee shall take place within thirty (30) days from the date of receipt of the appeal. The decision of the Storm Water Appeals Committee shall be final.

(E) *Enforcement Measures After Appeal* - If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, then representatives of the Department of Highways may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

(F) *Costs of Abatement of the Violation* - Within ten (10) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the assessment or to the amount of the assessment within fifteen (15) days of such notice. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within five (5) days after a decision on said appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the City of Manchester by reason of such violation.

(G) *Civil Penalties* - In the event the alleged violator fails to take the remedial

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measures set forth in the notice of violation or otherwise fails to cure the violations described therein within two (2) days, or such greater period as the Department of Highways shall deem appropriate, after the Director of Public Works or designee has taken one or more of the actions described above, the Public Works Director may impose a penalty not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

(H) *Criminal Penalties* - For violations of the Storm Water Ordinance or the Rules & Regulations, the Director of Public Works may issue a citation to the alleged violator requiring such person to appear in court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 for each day the violation has occurred, or imprisonment for up to sixty (60) days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

(I) *Violations Deemed a Public Nuisance* – In addition to the enforcement process and penalties provided in this ordinance any threat to public health, safety, welfare and environment and is declared and deemed a nuisance, may be abated by injunctive or other equitable relief as provided by law.

(J) *Remedies Not Exclusive* - The remedies listed in this ordinance and the Regulations are not exclusive of any other remedies available under any applicable Federal, State or local law and the City of Manchester may seek cumulative remedies. The City of Manchester may recover attorney’s fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

**§ 54. 12 ELIGIBILITY.**

(A) *Permit Eligibility* - Permit eligibility is limited to discharges from “large” and “small” construction activity or as otherwise designated by the EPA. This general permit contains eligibility restrictions, as well a permit conditions and requirements. Permittee may have to take certain actions to be eligible for coverage under this permit. In such cases, permittee must continue to satisfy those eligibility provisions to maintain permit authorization. If permittee does not meet the requirements that are pre-condition to eligibility, then the resulting discharges constitute unpermitted discharges. By contrast, if permittee does not comply with the requirements of the general permit, permittee may be in violation of the general permit for their otherwise eligible discharges.

(B) *Combined Sewer Drainage Systems Discharges from “large” and “small” construction activity or as otherwise designated by the EPA that flow into a combined sewer system are not covered by the EPA’s Phase II Storm Water Program. A Notice of Intent does not need to be submitted to the EPA nor does the owner/operator have to receive acknowledgement from the EPA prior to the start of construction activity.*

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The City of Manchester is requiring in these instances that all other conditions as outlined in this ordinance or the Regulations shall apply to all construction activity as defined in §54.06 with the exception of submitting the Notice of Intent to EPA Washington. The requirements for determination of no impact status as outlined in the Endangered Species Act and Historic Preservation Act along with the completion of a Storm Water Pollution Prevention Plan as outlined in the Notice of Intent submission is still a mandatory submission to the City of Manchester and must follow the conditions as outlined in the EPA's Notice of Intent.

**F3 – South Burlington, VT Ordinance Regulating the Use of Public and  
Private Sanitary Sewerage and Stormwater Systems**

**City of South Burlington**

**Ordinance Regulating the Use of  
Public and Private Sanitary Sewerage and  
Stormwater Systems**

**As Amended March 21, 2005**

City of South Burlington  
Ordinance Regulating the Use of  
Public and Private Sanitary Sewerage and Stormwater Systems

The South Burlington City Council hereby ordains:

The South Burlington Ordinance Regulating the Use of  
Public and Private Sanitary Sewerage Systems is amended as follows:

ARTICLE I - GENERAL

SECTION 1. Definitions

Unless the context specifically indicates otherwise, the meaning of terms and abbreviations used in this ordinance shall be as follows:

“Authorized Person” shall mean the City Manager, Stormwater Superintendent, Wastewater Superintendent and such other persons as they specifically appoint or authorize to perform duties for the Stormwater Services Department or Water Pollution Control Department.

“Best Management Practices (BMPs)” shall mean schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to the stormwater system or waters of the State of Vermont or the United States. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

"BOD" (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20oC expressed in milligrams per liter.

"Building Drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer. The building drain extends five feet beyond the outer face of the building wall.

"Building Sewer" shall mean that part of the sewage system which receives the sewage from the building drain and conveys it to the nearest end of the house connection unless a house connection is not available, whereby the building sewer shall be extended to the nearest available "Y" branch on the main sanitary sewer.

“Change or Alter” shall mean an act done which will result in a direct or indirect

impact on the contribution of stormwater into the public stormwater system.

"City Manager" shall mean the City Manager of the City of South Burlington, or his authorized deputy, agent, or representative.

"Clean Water Act" shall mean the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

"Clerk" shall mean the City Clerk of the City of South Burlington.

"Combined Sewer" shall mean a sewer receiving both stormwater runoff and sewage.

"Construction Activity" shall mean activities including, but not limited to clearing and grubbing, grading, excavating, and demolition.

"Connection Fee" shall mean a fee imposed on applicants for the municipality's cost of performing, supplying materials, supervising, inspecting and administering a connection to the sewage system including any necessary sewer service extension, upgrading sewers or for any portion of these activities.

"Credit" shall mean an ongoing reduction in the stormwater user fee for certain identified and approved qualifying and ongoing private actions or activities that either reduce the potential impact of increased stormwater discharges that result from development of a property.

"Department" shall mean the Vermont Department of Environmental Conservation.

"Developed Property" shall mean any property that is altered from a natural state by construction or installation of more than five hundred (500) square feet of impervious surface.

"Developer" shall mean individual, corporation, association, or other organization engaged in land development or building construction.

"Development" shall mean the construction of improvements on a tract of land for any purpose, including, but not limited to, residential, commercial, industrial, manufacturing, farming, educational, medical, charitable, civic, recreational, and religious uses.

"Director" shall mean the Director of Planning and Zoning for the City.

"Discharge Permit" shall mean a permit issued by the Department pursuant to

authority granted in 10 V.S.A., Chapter 47.

"Garbage" shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

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

"Health Officer" shall mean the legally designated Health Officer or Deputy Health Officer of the City of South Burlington, Vermont.

"House Connection" shall mean that part of the sewage system that runs from the main sanitary sewer to the property line and includes all necessary fittings.

"Impervious Surface" shall mean those manmade surfaces, including, but not limited to, paved and unpaved roads, parking areas, roofs, driveways, sidewalks, walkways, compacted gravel and soil surfaces, and awnings and other permanent fabric or plastic coverings, from which precipitation runs off rather than infiltrates.

"Illicit Discharge" shall mean any direct or indirect non-stormwater discharge to the stormwater system.

"Industrial Activity" shall mean activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

"Industrial Wastes" shall mean the liquid wastes from an industrial manufacturing process, trade, or business. Industrial wastes do not include sanitary sewage.

"Main Sanitary Sewer" shall mean the sewers laid longitudinally along the center line or other part of the streets or other rights-of-way and which all owners or abutting properties have equal rights and which is controlled by public authority.

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

"Natural Outlet" shall mean any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

"Non Single Family Residence" (NSFR) shall mean all types of developed property in the City except single family residences.

"Non-Stormwater Discharge" shall mean any discharge to the stormwater system that is not composed entirely of stormwater or such other waters or materials as are specifically authorized herein. It shall also include placing or depositing any hazardous material or pollutant in the stormwater system.

"On-Site Sewage Treatment and Disposal System" means a septic tank and leaching field system utilizing natural soil to treat and disperse sewage in such a manner as to protect public health, and both groundwater and surface water from contamination.

"Owner" shall mean any person, who owns or possess any property connected to or served by the public sanitary or stormwater system or proposes to connect to the public sanitary or stormwater system.

"Person" shall means any individual, firm, company, association, society, corporation, institution, partnership, governmental entity, group or other entity.

"pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

"Private Sewage System or Facilities" shall mean all facilities for collecting, pumping, treating, and disposing of sewage that is not under the control of nor operated by the City of South Burlington.

"Properly Shredded Garbage" shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch (1.27 centimeters) in any dimension.

"Public Sewage System or Facilities" shall mean all facilities for collecting, pumping, treating and disposing of sewage and is controlled and operated by the City of South Burlington.

"Public Stormwater System" shall mean all elements of the stormwater system located in the City of South Burlington that are controlled and operated by the City of South Burlington or that carry water that drains from any public property, including

street rights-of-way.

“Pollutant” shall mean any introduced substance which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

"Sanitary Sewer" shall mean a sewer which carries sewage and to which storm, surface, and groundwater are not intentionally admitted.

"Secretary" shall mean the Secretary of the Agency of Natural Resources, State of Vermont or his/her representatives.

"Sewage" (or “Wastewater”) shall mean a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and stormwater as may be present.

"Sewage and Stormwater Commissioners (or “Commissioners”, or “BOARD”) shall mean members of the City Council acting as a Board of Sewage and Stormwater Commissioners under 24 V.S.A., Section 3614.

"Sewage Treatment Plant" shall mean any arrangement of devices and structures used for treating sewage.

"Sewer" shall mean a pipe, culvert, ditch, swale or other conduit for carrying sewage or stormwater.

"Shall" is mandatory; "may" is permissive.

“Single Family Residence” (SFR) shall mean detached single family homes, duplexes, and triplexes.

"Slug" shall mean any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation.

"Storm Drain" (sometimes termed "storm sewer") shall mean a sewer intended to carry only stormwater and surface waters.

“Stormwater” shall mean excess water from rainfall and snow melt that does not evaporate or penetrate into the ground, which flows overland and is collected and transported to waters of the State of Vermont or the United States by the stormwater system, together with any material that becomes dissolved or suspended in such water during its overland flow before entering the stormwater system.

“Stormwater Appeal Board” shall be made up of the City Manager, Public Works Director, and a third person appointed by the City Council.

“Stormwater Discharge” shall mean any stormwater that is transported, naturally or otherwise, from a developed property to the public stormwater system.

“Stormwater Pollution Prevention Plan” shall mean a document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater systems, and/or waters of the State of Vermont or the United States.

“Stormwater Services Division” shall mean that City department responsible for construction, operation and maintenance of the public stormwater system.

“Stormwater System” shall include natural and man-made drainage structures, conveyances, storm drains, catch basins, and any other appurtenant device or structure where stormwater is collected, transported, pumped, treated, or disposed of.

"Stormwater Superintendent" shall mean that employee of the City of South Burlington who shall be designated from time to time by the City Manager to oversee the Stormwater Services Division.

"Subdivision" shall mean a tract of land, owned or controlled by a person as defined herein, which has been partitioned or is intended to be divided for the purpose of sale or lease into two (2) or more lots. The dividing of a parcel of land by sale, gift, lease, mortgage foreclosure, court ordered partition or filing of a plot plan on the town records where the act of division creates one or more parcels of land of less than 10 acres in area, but excluding leases subject to the provisions of Chapter 153 of Title 10 relating to mobile homes. Subdivision shall be deemed to have occurred on the conveyance of the first lot or the filing of a plot plan on the town records, whichever shall first occur; or the commencement of building development with intent to subdivide, as defined in subsection (1) of this section, such that the building development will be located upon a parcel of land less than 10 acres in size.

"Subsurface Sewage Disposal System" shall mean any sewage treatment system whereby the tank or plant effluent is leached into the ground by subsurface disposal.

"Suspended Solids" shall mean solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering or use of BMPs.

"Undeveloped Property" shall mean any property that exists in a natural state with no more than five hundred (500) square feet of impervious surface.

"Wastewater Superintendent" shall mean that employee of the City of South Burlington who shall be designated from time to time by the City Manager to oversee the Water Pollution Control Department.

"Watercourse" shall mean a channel in which a flow of water occurs, either continuously or intermittently.

"Water Pollution Control Department" shall mean that City department responsible for construction, operation and maintenance of the sewage works.

SECTION 2. Abbreviations:

ANSI shall mean American National Standards Institute.

ASME shall mean American Society of Mechanical Engineers.

ASTM shall mean American Society for Testing and Materials.

AWWA shall mean American Water Works Association.

NPC shall mean National Plumbing Code.

CS shall mean Commercial Standards.

WPCF shall mean Water Pollution Control Federation.

WEF shall mean Water Environment Federation.

ppm shall mean parts per million.

mg/l shall mean milligrams per liter.

Degrees F shall mean degrees Fahrenheit.

Degrees C shall mean degrees Centigrade.

cm. shall mean centimeter.

m. shall mean meter.

sq.m. shall mean square meters.

l. shall mean liters.

kg. shall mean kilograms.

## ARTICLE II - SANITARY SEWER SYSTEM

### SECTION 1. Use of Public Sanitary Sewer System Required

(a) It shall be unlawful for any person to place, deposit, or permit to be deposited on public or private property within the City of South Burlington, or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.

(b) It shall be unlawful to discharge to any natural outlet within the City of South Burlington, or in any area under the jurisdiction of said City, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with provisions of this Ordinance.

(c) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, leach field or other facility intended or used for the disposal of sewage.

(d) The owners of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the City and abutting on any street, alley, or right-of-way in which there is located a public sanitary or combined sewer of the City, is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Ordinance, within one hundred and eighty (180) days after date of official notice to do so, unless specifically exempted from this provision by the City Council.

### SECTION 2. Private Sewage Disposal

(a) Where a public sanitary or combined sewer is not available under the provisions of Section 1, paragraph (d), the building sewer shall be connected to a private

sewage disposal system complying with the provisions of this Section 2.

(b) Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the City Manager. The application for such permit shall be made on a form furnished by the City, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the City Manager. A permit and inspection fee of \$25.00 shall be paid to the City at the time the application is filed.

(c) A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the City Manager. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the City Manager when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within 24 hours of the receipt of notice by the City Manager, excluding Saturday, Sunday, and holidays.

(d) The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the Vermont Health Regulations, Chapter 5, Sanitary Engineering, Sub Chapter 10 Wastewater Treatment and Disposal, Individual on-site systems. No septic tank or cesspool shall be permitted to discharge to any natural outlet. Amended 5/5/92.

(e) At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in Section 2, paragraph (d), a direct connection shall be made to the public sewer in compliance with this Ordinance, and any septic tanks, cesspools, and similar private sewage thoroughly and properly cleaned, disinfected, and filled in or removed according to good sanitation practice and under the inspection and direction of the City Manager or his representative.

(f) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City.

(g) No statement contained in this Section 2 shall be construed to interfere with any additional requirements that may be imposed by the Health Officer.

### SECTION 3. Building Sewers and Connections

(a) No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Wastewater Superintendent. Any person proposing a new discharge into the system or a substantial change in the volume or character of pollutants that are being discharged into the system, shall notify the

Wastewater Superintendent at least 45 days prior to the proposed change or connection. No such change or connection shall be made without written approval from the Wastewater Superintendent, issued in accordance with Article III of this Ordinance.

(b) There shall be three (3) classes of building sewer permits: (i) for residential, (ii) for commercial service, and (iii) for service to establishments producing industrial wastes. In each case, the owner or the owner's agent shall make application on a form furnished by the City. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Wastewater Superintendent. The City Council may establish fees for review and issuance of permits and approvals, inspections and connections.

(c) All costs and expense incident to the installation, connection, maintenance and repair of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation, connection, maintenance, and repair of the building sewer.

(d) A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another or on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, in which case the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. Use of private sewers which accept and convey flow from more than one building may not be used except when found, on examination and test by the City, to be in satisfactory condition and meeting all requirements of this Ordinance. The burden of proof and all expenses incurred by the City to determine the condition and adequacy of the private sewer shall be borne by the Owner of said private sewer.

(e) The City may require the Owner of a project or developer to install a water meter so recorded flow can be used to determine the yearly wastewater charge. Water saving fixtures or equalization tanks may be required by the City for projects/buildings and developments connecting to the sewer system.

(f) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Wastewater Superintendent, to meet all requirements of this Ordinance.

(g) The size, slope, location, alignment, materials of construction, of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City and shall also conform to the rules and requirements of the City Water Pollution Control Department and the State of Vermont. In the absence of code provisions or in amplification thereof,

the materials and procedures set forth in appropriate specifications of the ASTM and the latest edition of the WPCF Manual of Practice No. 9 shall apply.

(h) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. No building sewer shall be laid parallel to or within three (3) feet (91.4 cm) of any bearing wall which might thereby be weakened. The depth shall be sufficient to afford protection from frost. The building sewer shall be laid at uniform grade in the direction from the main sewer to the building and in a straight alignment insofar as possible. Change in direction shall be made only with properly curved pipe and fittings with suitable clean-outs or flush holes as described in sub-section (r) of this Article. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage to be carried by such sewer shall be lifted by an approved artificial means and discharged to the building sewer. Such lifting devices shall be located outside the building foundation and have no access or ventilation through the building.

(i) No person shall make connection of roof downspouts, exterior and interior foundation drains, areaway drains, basement sumps or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer. All such connections which exist shall be disconnected by the Owner, at his expense within thirty (30) days upon receipt of notification by the City.

(j) The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the City and the State of Vermont, and shall also conform to the rules and requirements of the Water Pollution Control Department, or the procedures set forth in appropriate specifications of the ASTM and the latest edition of the WPCF Manual of Practice No. 9. All such connections shall be made gas tight and water tight. Any deviation from the prescribed procedures and materials must be approved by the Wastewater Superintendent before installation.

(k) Prior to any connection to the house connection "Y" or to the main sewer, the City shall be given two working days notice in order that they may supervise such work. If the City has not been properly notified, they may require the completed work to be uncovered for examination, at the Owner's expense.

(l) The diameter of the building sewer shall not be less than four (4) inches (10.2 cm). The building sewer shall be laid on a uniform grade, wherever practicable, in a straight alignment, of at least one-fourth (1/4) of an inch per foot (2%). Where, in special cases, a minimum grade of one-fourth (1/4) inch per foot cannot be maintained, a grade of one-eighth (1/8) inch per foot (1%) may be permitted, but only after the City gives their written approval for the specific connection.

(m) When installing the building sewer, the trenches shall be dug in a careful manner and properly sheathed where required. The excavated materials shall be placed in a separate pile from road materials and shall be piled in a compact heap so placed as to cause the least possible inconvenience to the public. Proper barricades and lights must be maintained around the trench to guard against accidents.

(n) In backfilling, the material under, around and for two (2) feet (61 cm) immediately over the pipe shall be selected so it contains no stones capable of damaging the installation. This must be carefully tamped, the balance of the trench to be backfilled in a workmanlike manner, tamping and filling in eight (8) inch (20.3 cm) layers so as to avoid excessive settlement. When the trench has been filled to the proper height, the road material is to be replaced and heavily tamped or rolled.

(o) Where the trench is excavated in rock, the rock must be carefully excavated to a depth of six (6) inches (15.2 cm) below the bottom of the sewer and the trench brought to the proper elevation with gravel or other material satisfactory to the City. The remainder of the trench must be backfilled with suitable material as described in subsection (n) of this Article.

(p) Where subsurface-soil conditions warrant, special precautions must be taken as may be directed by the City. In quicksand, all pipes must be laid out on pressure treated planking two (2) inches (5.1 cm) thick by at least six (6) inches (15.2 cm) wide.

(q) The connection of the building sewer to the main sewer shall be made at the house connection at the property line or, if no house connection exists, connection shall be made at the nearest available "Y" connection on the main sewer. The City will designate the position of the end of the house connection at the property line or the "Y" connection on the main sewer, whichever is appropriate. If it becomes necessary to cut into the main sewer, when no other source of connection is available, then such connection shall be made as directed by and under the supervision of the City. The dead-ends of all pipes not immediately connected with the house plumbing system must be securely closed by a water-tight cover of imperishable material and properly marked and located.

(r) The use of clean-outs on the building sewer shall be made by installing a "Y" and one-eighth (1/8) bends. The clean-outs shall ordinarily be installed at the point of connection between the building sewer and the outside part of the house plumbing system, at all curves on the building sewer and on the straight part of the house sewer to the main sewer. The clean-out shall be brought up from the building sewer to four (4) inches (10.2 cm) below ground level and properly capped. Locations of all clean-outs shall be recorded and turned over to the City. Where the distance from the building to

the point of connection at the main sewer is less than fifty (50) feet (15.2 m), at least one (1) clean-out twenty (20) feet (6.1 m) from the house shall be provided. Clean-outs shall be of the same diameter as the building sewer.

(s) Before any portion of an existing building sewer or the house plumbing system outside of the building is connected to the main sewer, the Owner shall prove, to the satisfaction of the City, that it is clean and conforms in every respect to this Ordinance and all joints are gas tight and water tight.

(t) Where pipe is installed for building sewers, such work shall be performed by a licensed plumber.

(u) The City shall apply appropriate tests to the pipes. The plumber and contractor, at their own expense, shall furnish all necessary tools, labor, materials and assistance for such tests and shall remove or repair any defective materials when so ordered by the City.

(v) Any person performing work on public property for the purpose of installing a building sewer shall file with the City evidence of adequate insurance coverage for liability and property damage. Minimum amounts of coverage will be established by the City and posted in the Clerk's Office.

(w) All work shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, curbs, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City and other authorities having jurisdiction.

(x) The Contractor shall not block any driveway, street or road at any time without permission of the City and other controlling agencies. Every effort shall be made to permit the movement of vehicular traffic at all times. Whenever it becomes necessary to cross or interfere with roads, walks or drives, whether public or private, the Contractor shall maintain, at his own expense and subject to the approval of the City, safe bridges or other means of egress.

(y) Maintenance of all private sewage facilities including, but not limited to, (1) house plumbing systems, (2) building sewers to the main sewer, (3) house connections, (4) sewers and (5) appurtenances shall be the responsibility of the Owner, at his or her expense. The Owner shall be solely responsible for continually maintaining such facilities in satisfactory operating condition. Maintenance shall include, but not be limited to, (1) maintaining flow, (2) clearing obstructions, (3) maintaining all joints gas and water-tight, (4) repair or replace collapsed, deteriorated or defective materials, and (5) all other work which is necessary and essential to maintaining proper operation and preserving the structural integrity and water-tightness of the system.

(z) The Owner is obligated by sewer and any other permits to construct the project/building/development to meet all specifications for which the permits/approvals were issued. The building inspector or some authorized person will inspect existing buildings and construction sites from time to time during each construction phase to assure permit specifications are being met. A final inspection shall be made prior to the connection from the building to the main sewer line by the City.

#### SECTION 4. Prohibited Discharges into the Public Sanitary Sewer System

(a) No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

(b) No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sanitary sewers:

(1) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas.

(2) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant.

(3) Any waters or wastes having a pH lower than 5.5, or higher than 9.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the public sewage facilities.

(4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the public sewage facilities such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc. either whole or ground by garbage grinders.

(d) No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Wastewater Superintendent that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his

opinion as to the acceptability of these wastes, the Wastewater Superintendent will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances prohibited are:

(1) Any liquid or vapor having a temperature higher than one hundred fifty (150)°F (65°C).

(2) Any water or wastes containing fats, wax grease, or oils, whether emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150)°F and (0 and 65°C).

(3) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths (3/4) horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Wastewater Superintendent.

(4) Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not.

(5) Any waters or wastes containing settleable solids, iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine demand, exerting an unusual chemical oxygen demand or containing any other material or constituent in concentrations which exceed the limits established by the Wastewater Superintendent for such materials.

(6) Any waters or wastes containing phenols or other taste-or-odor-producing substances, in such concentrations exceeding limits which may be established by the Wastewater Superintendent as necessary, after treatment of the composite sewage, to meet the requirements of the State, Federal, and other public agencies of jurisdiction for such discharge to the receiving waters.

(7) Any radioactive wastes or isotopes of such half-life, or concentration as may exceed limits established by the Wastewater Superintendent in compliance with applicable State or Federal regulations.

(8) Any chemicals or chemical compounds of the following nature or characteristics or having similarly objectionable characteristics: alcohols, arsenic and arsenicals, phenols or cresols, formaldehydes, iodine, manganese, cyanide, heavy metals and other metal finishing or plant wastes, acid pickling waste, mercury and mercurials,

silver and silver compounds, sulfonamides, toxic dyes (organic or mineral), zinc, all strong oxidizing agents such as chromates, dichromates, permanganates, peroxide and the like, compounds producing hydrogen sulfide, or any other toxic, inflammable or explosive gases, either upon acidification, alkalization, oxidation or reduction, strong reducing agents such as nitrites, sulphides, sulphites, and the like, radioactive materials or isotopes, whether neutralized or not.

(9) Materials which exert or cause:

(aa) Unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of the dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).

(bb) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

(cc) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works which may cause the effluent limitations of the discharge permit to be exceeded.

(dd) Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.

(10) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of its discharge permits or of other agencies having jurisdiction over discharge to the receiving waters.

(11) Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the wastewater treatment plant.

(12) Any noxious or malodorous gas or substance capable of creating a public nuisance.

(13) Any waters or wastes if it appears likely, in the opinion of the Wastewater Superintendent, that such waste can harm either the sewers, treatment plant process or equipment, would have an adverse effect on waters of the State of Vermont or the United States, or could otherwise endanger human or animal life, limb, public property or constitute a nuisance.

(e) The admission into the public sanitary sewers of any waters or wastes having (a) a five (5) day BOD greater than 400 mg/l or (b) containing more than 400 mg/l of suspended solids or (c) containing any quantity of substances having the characteristics described in sub-section (c) and (d) above, having an average daily flow greater than two percent (2%) of the average daily sewage flow received at the sewage treatment plant shall be subject to the review and approval of the Wastewater Superintendent. The Wastewater Superintendent may:

- (1) Reject the wastes, or,
- (2) Require control over the quantities and rates of discharge, and/or
- (3) Require payment to the City to cover the added cost of handling, treating and disposing of the wastes not covered by sewer charges established under the provisions of Article IV of this Ordinance, or
- (4) Require pretreatment to an acceptable condition for discharge to the public sewers, or
- (5) Require any combination of the foregoing.

If the City Manager permits the pretreatment or equalization of waste flows, the design, plans, specifications and any other pertinent information relating to proposed equipment and facilities; shall be submitted for the approval of the City Manager and the Agency of Natural Resources and no construction of such facilities shall be commenced until said approvals are obtained in writing. Further, such pretreatment facilities must be consistent with the requirements of any state pretreatment permit issued to the industry.

(f) Grease, oil, and sand interceptors shall be provided when, in the opinion of the Wastewater Superintendent, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, and or other harmful ingredients. Such interceptors shall not be required for private living quarters. All interceptors shall be of a type and capacity approved by the Wastewater Superintendent, and shall be located as to be readily and easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned and repaired regularly, as needed, by the user at their expense.

(g) The user shall maintain records (which are subject to review by the Wastewater Superintendent) of the dates and means of disposal of accumulated interceptor wastes. Any removal and hauling of the collected materials not performed by the user's personnel must be performed by currently licensed waste disposal firms

(h) To facilitate compliance with this section, the user shall apply for a permit and furnish as part of the permit application a plan and description of the device. Where grease, oil or sand interceptors or similar appurtenances are involved, approval must be granted from both the Wastewater Superintendent and the Public Works Director.

(i) Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction and equipped with easily removable covers which, when bolted in place, shall be gas-tight and water-tight.

(j) Where installed, all grease, oil, hair, and sand interceptors shall be maintained by the owner, at his/her expense, in continuously efficient operation at all time. Materials collected shall not be introduced into the public sewage system.

(k) Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his/her expense.

(l) All industries discharging into a public sewer shall perform such monitoring of their discharges as the Wastewater Superintendent may reasonably require, including installation, use, and maintenance of monitoring equipment, keeping records and reporting the results of such monitoring to the Wastewater Superintendent. Where industrial pretreatment permits are issued by the State of Vermont, monitoring records must also be submitted to the appropriate agency in accord with such permit. Such records shall be made available upon request by the Wastewater Superintendent to the State agency or to other agencies having jurisdiction over discharges to the receiving waters. Records of any monitoring will be supplied by the Wastewater Superintendent to the Secretary on request.

(m) All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this Ordinance shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. The particular analyses involved will determine whether a twenty-four (24) hour flow composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are

obtained from 24-hr proportioned composites of all outfalls whereas pH's are determined from periodic grab samples.

(n) Any industry held in violation of the provisions of this Ordinance may have its disposal authorization terminated.

(o) When required by the Wastewater Superintendent, the Owner of any property served by a building sewer carrying industrial wastes shall install a suitably controlled manhole in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the Wastewater Superintendent. The manhole shall be installed by the Owner, at his/her expense, and shall be maintained by the owner so as to be safe and accessible at all times.

(p) Scavenger waste consists of septage, sludge or other forms of waste brought to the wastewater facility for treatment and disposal. The waste must meet all article II requirements.

(1) The discharge of scavenger wastes at designated septage receiving areas at the City's wastewater treatment facilities may be permitted. The discharge of scavenger wastes from sources outside of the City may be permitted with approval of the Wastewater Superintendent of Water Pollution Control.

(2) There will be a fee charged each time a load of scavenger waste is discharged at the City's wastewater treatment facilities. Such fee will be determined by the City Council and will be based upon the quantity and quality of the discharged waste.

(q) No statement in this Ordinance shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefore, by the industrial concern, provided that such agreements do not contravene any requirements of existing Federal laws and are compatible with any user charge and industrial cost recovery system in effect.

#### SECTION 5. Protection from Damage

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the public sanitary sewage system. Any person violating this provision shall be subject to immediate arrest under the charge of unlawful mischief as set forth in Title 13, Section 3701 of the Vermont Statutes Annotated.

## ARTICLE III - CAPACITY ALLOCATION

### SECTION 1 - Ownership of Capacity

(a). The City of South Burlington owns and operates sewage treatment and disposal plants (PLANTS) and a sewage collection and transmission system (SEWERS) as defined in 24 V.S.A., Section 3501(6) and 3601. The PLANTS have a permitted capacity, and are operated in accord with discharge permits issued by the Vermont Department of Environmental Conservation (DEPARTMENT) under authority granted in 10 V.S.A., Chapter 47. The City is obligated by law to comply with conditions of those permits, and to operate and manage the PLANTS and SEWERS as governmental functions under and pursuant to 24 V.S.A., Chapters 97 and 101.

(b). The permitted capacity of the PLANTS and SEWERS is the property of the City of South Burlington.

### SECTION 2 - Definitions

The following words will have the meanings below when used in this Article.

"Plant Wastewater Flow" is the wastewater passing through the treatment plant in gallons per day on an annual average basis (365 day average) except where flows vary significantly from seasonal development. In the latter case, plant wastewater flow is determined as the average throughout the high seasonal use period, as determined by the BOARD.

"Permitted Wastewater Flow" is the maximum plant wastewater flow authorized in the Discharge Permit on an annual average (365 day average) basis, or on the high seasonal use period as defined in the discharge permit.

"Development Wastewater Flow" is the flow resulting from full use of the development at its peak capacity, which flow shall be calculated using flow quantities, adopted as rules by the DEPARTMENT, as promulgated at the time a connection permit application is made.

"Reserve Capacity" is the permitted wastewater flow minus the actual plant wastewater flow during the preceding 12 months.

"Uncommitted Reserve Capacity" is that portion of the reserve capacity remaining after subtracting the development wastewater flow of all projects for which a final allocation has been granted but are not yet discharging to the SEWER and any capacity reserved by the City Council for allocation to development in the City Center

Sewer Service Area.

“City Center Uncommitted Reserve Capacity” shall be established as 50,000 gallons per day upon the adoption of this amendment, which amount shall be reduced from time to time upon the granting of final allocations for development within the City Center Sewer Service Area.

“Committed Reserve Capacity” is the total amount of development wastewater flow (gallons per day) from all projects/buildings for which final allocations have been granted but are not yet discharging to the SEWER .

“Sanitary Wastewater” is wastewater of the same character and range of strength as expected from homes.

“Sewer Service Area” is that area of the City that is within 200 feet horizontally from existing municipal collection lines and manholes, excluding the City Center Sewer Service Area, as shown on the Sewer Service Area Map, dated January 3, 2001, located in Map 5, Public Utilities #2, of the South Burlington Comprehensive Plan. The Sewer Service Area may be altered by adoption of an amendment to this Ordinance. If there is any conflict between the Sewer Service Area shown on the above-referenced map and the City Center Sewer Service Area, as defined herein, the area included within the City Center Sewer Service Area shall control.

“City Center Sewer Service Area” is that area of the City located in the Central District 1 zoning district, as designated by the South Burlington Zoning Regulations presently in effect or hereafter amended.

“PLANTS” - The municipal sewage treatment plants owned by the City of South Burlington.

“SEWERS” - The sewage collection and transmission system owned by the City of South Burlington.

“Development” - The construction of improvements on a tract of land for any purpose, including, but not limited to, residential, commercial, industrial activity, subdivisions and the intent to subdivide.

“Affordable Housing” shall mean either of the following:

(A) Housing that is owned by its inhabitants, whose gross annual household income does not exceed eighty percent (80%) of the county median income, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes and insurance, is not

more than thirty percent (30%) of the household's gross annual income.

(B) Housing that is rented by its inhabitants whose gross annual household income does not exceed sixty-five percent (65%) of the county median income, as defined by the United States Department of housing and Urban Development, and the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than thirty percent (30%) of the household's gross annual income.

### SECTION 3 - Reserve Capacity Allocation

#### (a) Determination of Amount of Allocation

All allocations to projects shall be based on the development wastewater flow. Any differential between actual flows and development wastewater flows that occurs is not available to the development owner for reallocation to another project or a project expansion.

#### (b) Application Process

Persons seeking an allocation of uncommitted reserve capacity or City Center Uncommitted Reserve Capacity of the PLANTS and SEWERS, shall apply to the Director for a preliminary allocation on a form prescribed by the Department of Planning & Zoning. Such application shall:

- (1). Be accompanied by a calculation of the development wastewater flow to be generated by the project/development;
- 2). Include calculations for the volume, flow rate, strength and any other characteristics determined appropriate by the Wastewater Superintendent;
- 3). Unless waived by the Wastewater Superintendent all calculations required in (A) and (B) above for developments generating over 1000 gpd shall be certified by a Vermont registered engineer.

### SECTION 4 - Preliminary Allocation Determination

(a) Upon receipt of the application for capacity allocation and supportive documents, the Director shall, based on information and comments provided by the Water Pollution Control Department following its review of the application, make a preliminary determination regarding allocation of uncommitted reserve capacity or City Center Uncommitted Reserve Capacity. The Director shall award a preliminary allocation upon making affirmative findings that:

(1). The proposed wastewater is of domestic, sanitary origin or, the proposed wastewater is not of domestic sanitary origin and that sufficient evidence has been presented by the applicant to demonstrate that the flow and character of the wastewater is compatible with the proper operation of the PLANTS and SEWERS and that the proposed wastewater will not alone or in combination with other wastes cause a violation of the discharge permit, pass through the PLANTS without treatment, interfere with or otherwise disrupt the proper quality and disposal of PLANT sludge or be injurious in any other manner to the PLANT or SEWERS and that there is sufficient uncommitted reserve capacity to accommodate the strength and volume of the proposed development;

2). There is sufficient uncommitted reserve capacity or City Center Uncommitted Reserve Capacity as of the date of the application to accommodate the development wastewater flow of the proposed development.

b) A preliminary determination by the Director allocating capacity shall not constitute a binding commitment of capacity to the applicant and may be revoked by the Director before a final allocation of capacity is granted if uncommitted reserve capacity ceases to be available. A preliminary determination may be used by an applicant as evidence that a proposed development has sufficient sewer capacity available.

SECTION 5 - Final Capacity Allocation:

(a) An applicant who holds a preliminary allocation of capacity granted pursuant to Section 4 above, may apply for a final allocation upon occurrence of the following:

(1). Obtained site plan, conditional use and/or variance approval(s), if such approvals are the only approvals, except a zoning permit, required for the proposed development under City zoning and subdivision regulations then in effect; or

2). Obtained final approval for a subdivision, PUD or PRD if such approvals are the only approvals, except a zoning permit, required for the proposed development under City zoning and subdivision regulations then in effect; or

(3). Obtained all approvals required under sub-section 1 and 2 above, if such approvals are required for the proposed development under City zoning and subdivision regulations then in effect; or

(4). Obtained a zoning permit if that is the only approval required under City zoning and subdivision regulations then in effect; or

(5). Does not require any approvals under City zoning and subdivision

regulations then in effect.

(b) Upon receipt of an application for final allocation, the Director shall grant a final allocation upon determination that the applicant has a preliminary allocation which has not been revoked and that sufficient uncommitted reserve capacity is available for the development.

(c) A grant of final allocation shall constitute a binding commitment of sewer capacity to the applicant subject to applicant's compliance with all conditions imposed on such allocation.

#### SECTION 6 - Final Allocation Conditions

(a) A final allocation shall specify the allowed volume, flow rate, strength frequency and any other characteristics of the proposed discharge determined appropriate by the Director.

(b) The capacity allocation is not transferable to any other person or development, except a successor in interest of the development for which the allocation has been granted.

(c) The construction of the connection and, if necessary, the municipal SEWER extension, must be overseen to assure compliance with the plans and specifications and good construction practice in a manner acceptable to the City.

(d) A final capacity allocation shall expire on the first to occur of the following events unless prior to such date the development for which the allocation has been granted has commenced discharging into the SEWER:

(1). the date that any approval required for grant of the final allocation, as identified in Section 5 above, expires, unless prior to such date the applicant has applied for any required zoning permit(s) to construct the development;

(2). the date that any zoning permit authorizing construction of improvements for which the allocation has been granted expires;

(3). ten (10) years from the date the final allocation is granted, for any development that requires any approval under the City zoning or subdivision regulations, or two (2) years from the date the final allocation is granted, for any development that does not require approval under the City zoning or subdivision regulations.

(e) An Applicant for development involving a single use or unit shall pay one

hundred percent(100%) of all connection fees prior to grant of a final allocation. If the development involves multiple uses and/or units that will connect to the SEWER, the applicant shall pay fifty percent (50%) of all connection fees prior to grant of final allocation and the remaining fifty percent (50%) will be prorated based on the development flow for each use or unit. The prorated payment for a use or unit shall be payable upon issuance of a zoning permit for construction of improvements for the use or unit. If the development is an Affordable Housing project, one hundred percent (100%) of all connection fees will be prorated based on the number of uses and/or units. The prorated portion for a use or unit shall be payable upon issuance of a zoning permit for construction of improvements for the use or unit. If the development does not require issuance of a zoning permit, applicant shall pay one hundred percent (100%) of all connection fees prior to grant of a final allocation.

ARTICLE IV - SEWAGE DISPOSAL CHARGES, TIME OF  
PAYMENT THEREOF, AND PENALTIES FOR NON-PAYMENT

SECTION 1. Operation and Maintenance: An annual charge, which shall be determined by the City Council, is hereby imposed upon every person having a building or structure on their premises and who are served by the municipal public sewage system where sewage may be collected for the use of the premises by the Owners, or other users of real property within the City of South Burlington. The annual charge shall be for the purpose of the payment associated with the costs of operating, maintaining and repairing said system. The City Council may establish annual charges separately for bond payments, for fixed operating and maintenance costs not dependent on actual or estimated use and for variable operations and maintenance costs dependent on actual or estimated use.

SECTION 2 - The sewer use rates established in SECTION 1 of this ARTICLE and defined hereinafter shall be charged whether or not the property is occupied, when the property is connected to the public sewage system by the necessary building sewer as required under the terms of this ORDINANCE. The rate structure shall incorporate the requirements of 40 CFR, §35.935-13 or §35.2140, as applicable.

SECTION 3 - The annual charges stipulated in SECTION 1 of this ARTICLE shall be based upon a water meter measurement. The City Council will determine the actual charge from measurements of each user so as to yield charges which are approximately in proportion to the strength and quantity of waste discharged. If the City Council establishes annual charges separately for bond repayment and fixed operations and maintenance costs, no user will be billed less than the average single family charge for the fixed charges, plus flow related charges.

SECTION 4. Capital Costs: The design, construction and development costs of all public sewage system expansions and extensions which have been approved by the Development Review Board shall be borne by the developers and property owners

requiring, requesting or directly benefiting from such extensions and/or expansions, unless alternative funding method is approved by the City Council.

SECTION 5. Collection: Collection of the delinquent sewer use rates may be enforced by the City pursuant to 24 V.S.A., Chapter 129 water and sewer disconnection; 24V.S.A., Section 3612 charges; lien; and 24 V.S.A., Section 3615, rents; rates. In the event any sewer rent is not paid within thirty (30) days from the billing date, a late penalty charge will be added to the sewer rent together with interest charges. The amount of the late penalty charge and the interest rate on the overdue accounts shall be the same as those applied to delinquent taxes. If such payment is not made, such sewer rent shall be a lien upon such real estate and shall be collected according to the procedures allowed for in 24 V.S.A. §§ 3504 and 3612. Any payment made to the City for utility fees shall first be allocated to delinquent water, then delinquent sewer, then delinquent stormwater fees. The remaining amount of the payment shall first be allocated to current water, then current sewer, then current stormwater fees.

SECTION 6. Sinking Fund/Set-Asides for Major Expenditures: The following provides for and restricts the use of set-aside (sinking) funds to finance future major maintenance/replacement costs and plant expansion costs.

(a) A separate sinking fund may be utilized for major maintenance/replacement expenditures and for expansion/upgrading expenses associated with the wastewater facility in the City of South Burlington. Sinking fund establishment for maintenance/replacement expenditures shall be through written policy of the City. Any sinking fund policy shall contain at least the following in writing: major maintenance/replacement identification, estimated expenditures, estimated year of expenditure, payment amount, type of account used to accumulate sinking fund assets, source of funding and when payments are to stop. All sinking funds shall be established and maintained in accord with 24 V.S.A., Section 3616.

(b) The City reserves the right to increase, decrease, stop and/or maintain regular deposits to a sinking fund not exceeding 15% of the normal total budgeted expenses for maintenance/ replacement in that year. The fees charged for expansion cost shall be deposited into a separate account and a record shall be kept to show payment date, person making payment and payment amount. The City Council holding office have the authority to withdraw sinking fund amounts only for the purpose of paying for major expenditures/plant expansion for which the fund was established.

(c) When sinking fund assets are not disbursed fully for major maintenance/replacement expenditures and/or plant expansion, excess money shall remain in the sinking fund for future related expenditures similar in nature. Revenues established for plant expansion dedicated funds may be generated from connection/impact fees paid by prospective users to defray and pay expansion costs.

This fund shall not exceed the estimated future expansion cost for the wastewater treatment facility. When the City so votes, the expansion/upgrade sinking fund may be used to finance major maintenance/replacement expenditures, but under no circumstances shall the major maintenance replacement sinking fund be used to finance wastewater expansion/upgrade expenses.

## ARTICLE V - STORMWATER SYSTEM

### SECTION 1. Purpose

The purpose of this Article is to provide for the health, safety, and general welfare of the citizens of South Burlington through the regulation of stormwater discharges to the stormwater system.

### SECTION 2. Applicability

Any discharge of stormwater from developed property in the City shall be subject to the provisions of this Article.

### SECTION 3. Required Approvals

(a) No owner of developed property in the City shall change or alter, or allow to be changed or altered, the discharge of stormwater from such property occurring on the effective date of this Article without first obtaining any permit or approval required under this or any other City Ordinance, state law, or federal law.

(b) No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public storm drain or appurtenance thereof without first obtaining a written permit from the Stormwater Superintendent.

### SECTION 4. Compliance with Existing Permits

It shall be a violation of this Article for any owner of developed property that is subject to any local, state, or federal permit requirements regarding the discharge of stormwater to fail to comply with such permit requirements.

### SECTION 5. Use of the Public Stormwater System:

(a) The following may be discharged into the public stormwater system, subject to obtaining and complying with any required permit:

- (1) Stormwater;

(2) Landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, 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), fire fighting activities, and any other water source not containing pollutants;

(3) Discharges specified in writing by the authorized enforcement agent as being necessary to protect public health and safety;

(4) Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agent prior to the time of the test;

(5) Any non-storm water 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.

(b) It shall be a violation of this Ordinance for any person to cause or allow to occur any illicit discharge to the public stormwater system or allow any illicit discharge existing on the date this Article becomes effective to continue regardless of whether such existing discharge was permissible under law or practices applicable or prevailing at the time the discharge commenced.

#### Section 6. Best Management Practices

(a) The Stormwater Superintendent will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to an illicit discharge to the stormwater system. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from an accidental illicit discharge into the public stormwater system BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge to the public stormwater system, may be required to implement, at said person's expense, additional BMPs to prevent or discontinue the illicit discharge. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

(b) 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.

(c) 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 an illicit discharge into the stormwater system, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of 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 Stormwater Superintendent 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 Stormwater Superintendent within three business days of the phone notice. If the illicit discharge 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.

#### SECTION 7. Protection from Damage

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the public stormwater system. Any person violating this provision shall be subject to immediate arrest under the charge of unlawful mischief as set forth in Title 13, Section 3701 of the Vermont Statutes Annotated.

### ARTICLE VI - STORMWATER SYSTEM USER FEES

#### SECTION 1. Establishment of Stormwater User Fees

(a) A user fee based on an Equivalent Residential Unit (ERU) shall be imposed on every owner of non-exempt developed property within the City. An ERU shall equal that square footage that represents the median of the area of impervious surface for all single family residences in the City. The City Council shall, by resolution, establish the square footage that constitutes one ERU on a periodic basis.

(b) The City Council shall have the authority to set and modify the user fee rates so that the total revenue generated by said charges, and any secondary sources of revenue, shall be sufficient to fund the City's stormwater program.

(c) The City council shall establish by resolution the monthly rate for each ERU. The monthly user fee for a specific property is determined by multiplying the rate per ERU times the number of ERUs allocated to the property.

(d) The only exempt property under this Article is that included within the limits of a railroad track right-of-way. Property on which railroad stations, maintenance buildings, or other developed land used for railroad purposes is located shall not be exempt.

SECTION 2. User Fee Credits:

(a) The Stormwater Superintendent shall prepare for the City Council's approval, a "Stormwater User Fee Credit Manual" specifying the design and performance standards of on-site stormwater systems, facilities, activities and services which qualify for application of a user fee credit and the method of calculating credits. The City Council shall have the authority to approve, modify and approve or disapprove the Credit Manual.

(b) Following approval of a Credit Manual, the Stormwater Superintendent may, at the request of a property owner, reduce the user fee established for any property by awarding a credit based on the policies and conditions set forth in the Manual. No credit shall exceed fifty percent (50%) of the applicable monthly user fee for a given property. Any property owner may appeal the Stormwater Superintendent's determination regarding an award of a credit by filing a written notice of appeal with the Stormwater Appeals Board within ten (10) business days of the Superintendent's decision. The Stormwater Appeals Board shall review such appeal at a meeting preceded by fifteen (15) calendar days written notice of the meeting date to the property owner. Following the meeting, the Stormwater Appeals Board shall issue its decision on the appeal in writing, which decision shall be final.

(c) Credits may be awarded retroactively for one (1) year from the date of initiation of the stormwater user fee. Thereafter, credits shall be applied to user fees on the next billing period after the completed credit application is approved.

(d) Any award of credit shall be conditioned on continuing compliance with the City's design and performance standards as stated in the "Stormwater User Fee Credit Manual" and/or upon continuing provision of the systems, facilities, services, and activities provided, operated, and maintained by the property owner or owners upon which the credit is based. The City Manager may revoke a credit at any time for non-compliance by providing thirty (30) days written notice of a non-complying condition and intent to revoke the credit to the property owner. If the non-compliance is not cured within the thirty (30) day period, the Manager shall eliminate the credit for user

fee bills issued to the property owner after such period. A property owner may appeal the City Manger’s determination regarding credit revocation in the same manner set forth in sub-section (b), above.

SECTION 3. Establishment of ERUs:

(a) Each SFR shall be allocated one (1) ERU.

(b) The ERUs allocated NSFR properties, except City or State highways, shall be determined in the following manner:

(1) The amount of impervious surface on each parcel shall be divided by the gross area of the parcel resulting in the percent of imperviousness for the parcel.

(2) Based on the percent imperviousness, a “tier factor” shall be determined, based on the following categories:

IMPERVIOUS PERCENTAGE	TIER FACTOR
1 to 10%	* See Below
11 to 20%	0.15
21 to 30%	0.25
31 to 40%	0.35
41 to 50%	0.45
51 to 60%	0.55
61 to 70%	0.65
71 to 80%	0.75
81 to 90%	0.85
91 to 100%	0.95

\*Fee will be based on actual amount of impervious surface, measured in square feet.

(3) The gross area of the parcel shall be multiplied by the tier factor, and then divided by the ERU. The resulting value is rounded up to the nearest whole

number which is be the number of ERUs for the property.

(c) The ERUs allocated properties comprised solely of public roadways shall be determined by dividing two-thirds of the total impervious surface for the property by the ERU. The resulting value is rounded up to the nearest whole number which is be the number of ERUs for the property.

#### SECTION 4. Billing and Collection

(a) Stormwater user fees will be billed quarterly and shall be reflected on the water and sewer bills for each property owner, where applicable. The bill shall also state the ERUs allocated to each property.

(b) A property owner may appeal an allocation of ERUs to the Stormwater Superintendent by submitting a written notice of appeal to the Stormwater Superintendent within fifteen (15) calendar days of the mailing date of the bill. The Stormwater Superintendent shall promptly meet with the property owner and issue a decision of the allocation of ERUs. A property owner may appeal the Stormwater Superintendent's determination regarding credit revocation in the same manner set forth in Section 2(b), above. The filing of an appeal shall not relieve a property owner of the obligation to pay the user fee when due.

(c) In the event any stormwater user fee is not paid within thirty (30) days from the billing date, a late penalty charge will be added to the fee together with interest charges. The amount of the late penalty charge and the interest rate on the overdue accounts shall be the same as those applied to delinquent taxes. If such payment is not made, such stormwater user fee shall be a lien upon such real estate and may be collected in the manner provided in 24 V.S.A., §§ 3504 and 3612. Any payment made to the City for utility fees shall first be allocated to delinquent water, then delinquent sewer, then delinquent stormwater fees. The remaining amount of the payment shall first be allocated to current water, then current sewer, then current stormwater fees.

#### SECTION 5. Expenditures.

(a) The user fees, as well as any secondary sources of revenue, shall be used to fund the City's efforts to manage stormwater. Acceptable expenditures include, but are not limited to, capital construction, maintenance and operations, engineering and planning, regulation and enforcement, water quality programs, special services, administration and management, coverage requirements, reserve funds, and miscellaneous overhead costs.

(b) Excess revenues may be placed into a sinking fund, and may be retained and expended in the manner set forth in Article IV, Section 6 of this Ordinance.

ARTICLE VII - INSPECTION AND ENFORCEMENT

SECTION 1. Power and Authority of Inspectors

(a) Any authorized person bearing proper credentials and identification shall be permitted to enter all properties subject to regulation under this Ordinance for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this Ordinance. Authorized persons shall have the right to set up such devices as are necessary to conduct monitoring and/or sampling of any regulated discharge from the property. Authorized persons may also examine and copy records required to be kept under any permit subject to this ordinance. Authorized persons shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the public sanitary and stormwater systems.

(b) Any authorized person bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds an easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance or any portion of the public sewage or stormwater system lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the easement pertaining to the private property involved.

(c) If a property owner has security measures in force which require proper identification and clearance before entry into onto the property, the owner shall make the necessary arrangements to allow access to any authorized person.

(d) Any temporary or permanent obstruction to safe and easy access to any property to be inspected and/or sampled shall be promptly removed by the property owner at the written or oral request of any authorized person and shall not be replaced. The costs of clearing such access shall be borne by the property owner.

(e) Causing an unreasonable delay in allowing an authorized person access to a property subject to regulation under this Ordinance is a violation of this Ordinance.

(f) If an authorized person is refused access to any part of the property containing facilities, records or discharges subject to regulation under this Ordinance, and if the authorized person 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 person may seek issuance of a search warrant from any court of competent jurisdiction.

(g) While performing the necessary work on private properties referred to in this Section, authorized persons shall observe all safety rules applicable to the premises established by the property owner and the property owner shall be held harmless for injury or death to the City employees and the City shall indemnify the property owner against loss or damage to its property for personal injury or property damage asserted against the property owner and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the property owner to maintain safe conditions as required by law.

SECTION 2 - Administrative Enforcement

(a) Any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

(b) Any person found to be violating any provision of this of this ordinance shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. Such notice may require without limitation.

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit discharges;
- (3) The cessation of improper practices and operations and implementation of proper practices and operations;
- (4) The abatement or remediation of any contamination of the public sewage or stormwater system and waters of the State of Vermont or the United States and restoration of any property impacted by such contamination;
- (5) Establishment of time limits for the completion of all required work;
- (6) Payment of a fine; and
- (7) State that the Notice may be appealed in the manner set forth in subsection (f), below.

(c) The City has the right to require a property owner found to be in violation of this Ordinance to install monitoring equipment and maintain such equipment in proper operating condition, including proper calibration, all at the property owner's expense.

(d) If a violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, the City or persons retained by the City may enter upon the subject property to take any and all measures necessary to abate the violation and/or

restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the City or designated persons to enter upon the premises for the purposes set forth above.

(e) Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within fifteen (15) days. If the amount due is not paid within a timely manner as determined by the decision of the City Manager or by the expiration of the time in which to file an appeal, the charges shall constitute a lien on the property for the amount of the assessment and shall bear interest at the rate of one percent (1%) per month, or portion thereof.

(f) The City Manager may, without prior notice, suspend stormwater or sewer system 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 stormwater system, sewer system or waters of the State of Vermont or the United States. If the violator fails to comply with a suspension order issued in an emergency, the City manager may take such steps as deemed necessary to prevent or minimize damage to the stormwater system, sewer system or waters of the State of Vermont or United States, or to minimize danger to persons.

(g) Any person discharging to the stormwater or sewer system in violation of this ordinance may have their stormwater system or sewer system access terminated if such termination would abate or reduce an illicit discharge. The City Manager will notify a violator of the proposed termination of its stormwater system or sewer system access. The violator may appeal the City Manager's determination to the City Council by filing a written notice of appeal with the City Manager within ten (10) business days of the Manager's decision. The City Council shall review such appeal at a meeting of the Council preceded by fifteen (15) calendar days written notice of the meeting date to the Violator. Following the meeting, the Council shall issue its decision on the appeal in writing, which decision shall be final.

(h) A person commits an offense if the person reinstates stormwater system or sewer system access to premises terminated pursuant to sub-section (f), above, without the prior approval of the City Manager.

SECTION 3. Judicial Enforcement:

(a) This ordinance shall constitute a civil ordinance within the meaning of 24 V.S.A. Chapter 59.

(b) Any law enforcement officer or other individual designated by the City Council to enforce this ordinance may act as an issuing Municipal Official and issue and pursue before the Judicial Bureau a municipal complaint for any violation of any provision of this Ordinance.

(c) In addition to the enforcement procedures available before the Judicial Bureau, the City is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law.

SECTION 4. Penalties:

(a) Waiver Fee For Municipal Complaint: An Issuing Municipal Official is authorized to recover civil penalties in the following amounts for each violation of this ordinance:

First offense - \$25.00  
Second offense - \$50.00  
Third offense - \$75.00  
Fourth offense - \$150.00  
Fifth and subsequent offenses - \$200.00  
Offenses shall be counted on a calendar year basis.

(b) Civil Penalty for Municipal Complaint: An Issuing Municipal Official is authorized to recover civil penalties in the following amounts for each violation of this ordinance:

First offense - \$50.00  
Second offense - \$100.00  
Third offense - \$150.00  
Fourth offense - \$300.00  
Fifth and subsequent offenses - \$400.00  
Offenses shall be counted on a calendar year basis.

(c) Civil penalty for enforcement courts other than the Judicial Bureau: In addition to any other remedy provided for in this Ordinance, any person who violates any provision of this Ordinance, shall be subject to a civil penalty of up to \$500.00 per day for each day that such violation continues.

This amendment shall take effect on passage.

Adopted by the City Council this \_\_\_ day of \_\_\_\_\_, 2005

South Burlington City Council

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James C. Condos

Terence Sheahan

Chris Smith

Steve Magowan

Daniel O'Rourke

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