

CITY OF WATERVLIET

LOCAL LAW NO. 1 - 2007

A local law entitled "Storm Water Management and Erosion & Sediment Control."

Be it enacted by the City Council of the City of Watervliet as follows:

Chapter 273

Storm Water Management and Erosion & Sediment Control

Article 1. General Provisions

Section 1. Findings of Fact

It is hereby determined that:

- 1.1** Land development activities and the development of real property and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;
- 1.2** This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- 1.3** Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat; Improper disposal and clearing of vegetation and other wastes can lead to unacceptable conditions,
- 1.4** Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing stream bank erosion and sedimentation;
- 1.5** Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- 1.6** Substantial economic losses can result from these adverse impacts on the waters of the municipality;
- 1.7** Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- 1.8** The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety.
- 1.9** Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

Section 2. Purpose

The purpose of this local law is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in Section 1 hereof. This local law seeks to meet those purposes by achieving the following objectives:

- 2.1 Meet the requirements of minimum measures 4 and 5 of the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit no. GP-02-02 or as amended or revised;
- 2.2 Require land development and or work activities on real property to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01 or as amended or revised;
- 2.3 Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;
- 2.4 Minimize or decrease pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- 2.5 Minimize or decrease the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
- 2.6 Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.
- 2.7 Eliminate unstable soil conditions and the production of noxious gases which result from improper storm water practices, improper clearing of vegetation, improper grading practices, and the burial of vegetative or other wastes.

Section 3. Statutory Authority

In accordance with Article 10 of the Municipal Home Rule Law of the State of New York, the City Council of Watervliet has the authority to enact local laws and amend local laws and for the purpose of promoting the health, safety or general welfare of the City of Watervliet and for the protection and enhancement of its physical environment. The City Council of Watervliet may include in any such local law provisions for the appointment of any municipal officer, employees, or independent contractor to effectuate, administer and enforce such local law.

Section 4. Applicability

- 4.1 This local law shall be applicable to all land development activities work or construction on real property as defined in this local law.
- 4.2 The City Council and shall designate a Stormwater Management Officer who shall accept and review all stormwater pollution prevention plans and forward such plans to the applicable municipal board. The Stormwater Management Officer may (1) review the plans, (2) upon approval by the City Council of the City of Watervliet, engage the services of a registered professional engineer to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by said governing board, or (3) accept the certification of a licensed professional that the plans conform to the requirements of this law.
- 4.3 All land development activities subject to subdivision or site plan review shall be reviewed subject to the standards contained in this local law.
- 4.4 All land development activities work or construction on real property not subject to review as stated in section 4.3 shall be required to submit a Stormwater Pollution Prevention Plan (SWPPP) to the Stormwater Management Officer who shall approve the SWPPP if it complies with the requirements of this law.

Section 5. Exemptions

The following activities may be exempt from review under this law.

- 5.1 Agricultural activity as defined in this local law.
- 5.2 Logging activity undertaken pursuant to an approved timber management plan prepared or approved by the County Soil & Water Conservation District or the New York State Department of Environmental Conservation, except that landing areas and log haul roads are subject to this law.
- 5.3 Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.
- 5.4 Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.
- 5.5 Any part of a subdivision if a plat for the subdivision has been approved by the City of Watervliet on or before the effective date of this law
- 5.6 Land development activities for which a building permit has been approved on or before the effective date of this law.
- 5.7 Cemetery graves.
- 5.8 Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- 5.9 Emergency activity immediately necessary to protect life, property or natural resources.
- 5.10 Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for use by that person and his or her family.
- 5.11 Landscaping and horticultural activities in connection with an existing structure.
- 5.12 Creation or restoration of wetlands pursuant to a state or federal wetlands permit.

Article 2. Zoning Law Amendment: Stormwater Control

The Zoning Law is hereby amended to include Article VIII, a new supplemental regulation titled Stormwater Control.

Section 1. Definitions

The terms used in this local law or in documents prepared or reviewed under this local law shall have the meaning as set forth in Schedule A of this Local Law.

Section 2. Stormwater Pollution Prevention Plans

2.1. Stormwater Pollution Prevention Plan Requirement

No application for approval of a land development activity shall be reviewed until a Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with the specifications in this local law has been reviewed and accepted.

2.2 Contents of Stormwater Pollution Prevention Plans

- 2.2.1 All SWPPPs shall provide the following background information and erosion and sediment controls or where a five (5) acre variance request is submitted to DEC may required additional information:
 - a. Background information about the scope of the project, including location, type, photographs, and size of project. (Digital Data Preferred)
 - b. Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show the total site area areas of disturbance and shall be at a scale no smaller than 1"= 100'; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s);
 - c. Description of the soil(s) present at the site;

- d. Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five (5) acres shall be disturbed at any one time unless pursuant to an approved SWPPP.
 - e. Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
 - f. Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response. The proposed method of any on-site processing and reuse of organic materials shall be specified and may require certification and approval of a New York Registered Engineer or Landscape architect;
 - g. Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;
 - h. A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
 - i. Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
 - j. Temporary practices that will be converted to permanent control measures;
 - k. Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
 - l. Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
 - m. Name(s) of the receiving water(s);
 - n. Delineation of SWPPP implementation responsibilities for each part of the site:
 - 1) description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
 - 2) Any existing data that describes the stormwater runoff at the site.
 - 3) slope stability analysis, if requested where grading is proposed on a steep or slippage-prone slope;
 - o. A Stormwater Maintenance Escrow Agreement if the storm water facilities are being conveyed to the City once they are installed and approved or a Storm Water Control Facility Maintenance Agreement if the facilities will be privately owned.
- 2.2.2** Land development activities meeting Condition "A", "B" or "C" below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth in Section 2.2.3 below as applicable:
- a. Condition A - Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a Total Maximum Daily Load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
 - b. Condition B - Stormwater runoff from land development activities disturbing five (5) or more acres.
 - c. Condition C - Stormwater runoff from construction activity disturbing between one (1) and five (5) acres of land during the course of the project, exclusive of the construction of single family residences and construction activities at agricultural properties.

2.2.3 SWPPP Requirements for Condition A, B and C:

- a. All information in Section 2.2 .1 of this local law
- b. Description of each post-construction stormwater management practice;
- c. Site map/construction drawing(s) showing the specific location(s) and size(s) of each post construction stormwater management practice;
- d. Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms
- e. Comparison of post-development stormwater runoff conditions with pre-development conditions
- f. Dimensions, material specifications and installation details for each post-construction stormwater management practice;
- g. Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice.
- h. Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.
- i. Inspection and maintenance agreement binding on all subsequent landowners served by the onsite stormwater management measures in accordance with Article 2, Section 4 of this local law.
- j. If the Activity disturbs more than five (5) acres or runoff discharges a pollutant of concern to either an impaired water or environmentally sensitive watercourse the SWPPP shall be prepared by a landscape architect, Certified Professional in Erosion and Sediment Control, soil scientist, or engineer and must be signed by the professional preparing the plan, who shall certify that the design meets the requirements of this local law.

2.3 Plan Certification

The SWPPP shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in this local law.

2.4 Other Environmental Permits

The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

2.5 Contractor Certification

- 2.5.1** Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."
- 2.5.2** The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
- 2.5.3** The certification statement(s) shall become part of the SWPPP for the land development activity.
- 2.5.4** A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

Section 3. Performance and Design Criteria for Stormwater Management and Erosion and Sediment Control

All land development activities work or construction on real property shall be subject to the following performance and design criteria:

3.1 Technical Standards

For the purpose of this local law, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this law:

- 3.1.1** The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the Design Manual)
- 3.1.2** New York Standards and Specifications for Erosion and Sediment Control, (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the Erosion Control Manual).

Note: - Equivalence to Technical Standards -- Where storm water management practices are not in accordance with technical standards, the applicant must prove equivalence to the technical standards set forth in the Design Manual.

3.2 Permitting Process; Additional Standards

- 3.2.1** Applications shall be made on forms prescribed by the City therefore, which shall be accompanied by the required fee, if any, established by the City Council.
- 3.2.2** The Building Department shall review the application and act to approve, approve with modification, or deny the requested SWPPP.
- 3.2.3** In the event that the submittal is denied, the applicant may have the decision reviewed by the Planning Board.
- 3.2.4** The smallest practical area of land shall be exposed at any one time during the Project.
- 3.2.5** When land is exposed during development, the exposure shall be kept to the shortest practical period of time;
- 3.2.6** To protect areas in excess of one acre exposed for a period over two weeks during development, the following controls shall be applied:
 - a. Temporary vegetation, mulch, geotextiles, and/or emulsion shall be provided as needed to prevent soil erosion. Application of these materials shall be by approved equipment.
 - b. On areas that will be exposed for short periods of time (daily) where weather conditions are conducive to airborne soil particles, a construction fence shall be installed, as directed by the SMO.
 - c. On areas such as temporary roadways, when dry conditions prevail, the contractor shall be required to apply water or take other measures as required to prevent dust during daily construction activities.
- 3.2.7** Sediment basins, debris basins, silting basins, silt fencing, or silt traps shall be installed and maintained to remove sediment from runoff waters on lands undergoing development.
- 3.2.8** Permanent final vegetation and structures shall be installed as soon as practical in the development.
- 3.2.9** The development plan should be fitted to the type of topography and soils so as to create the least erosion potentials.
- 3.2.10** Wherever feasible, natural vegetation should be retained and protected.
- 3.2.11** In areas of proposed fill, all existing vegetation and other organic material, including the root mat, shall be removed prior to placement of fill. The material shall be disposed of in an appropriate off-site facility, or processed for reuse on-site in a manner that will not be conducive to adverse effects of decomposition, such as the production of odors or of concentrations of noxious or explosive gases, or the creation of unstable subsurface conditions. The proposed method of on-site processing and reuse shall be specified in the permit application and may require certification by a licensed professional engineer as a safe and effective means of disposal.
- 3.2.12** No vegetation or other waste materials shall be buried on the site.
- 3.2.13** All fill placed on the site shall be as free of organic material as is practicable.

3.3 Deposit, performance of site work; inspection

- 3.3.1** To ensure that the site work is performed in accordance with the controls of this Local Law, before obtaining approval the applicant shall deposit with the Director of Finance a cash escrow as set forth in the fee schedule adopted by the City Council by separate resolution.
- 3.3.2** Said site work shall be performed and completed in accordance with the approved plan and schedule of vegetation removal and disposal, grading, construction operation and erosion control methods on file with the Building Department at the time of issuance of the approval.
- 3.3.3** Upon completion of the site work set forth in the plan, the applicant will request the Building Department to inspect the work; upon approval of the site work, the Bureau will direct the Director of Finance to release all of the applicant's money deposited pursuant to sub-section (a) above.
- 3.3.4** Upon the failure of the applicant to perform the site work in accordance with the site plan submitted as aforesaid, the City of Watervliet and/or its agents shall be permitted to enter upon the premises and complete the necessary site work and charge the cost of the site work to the funds on deposit with the Director of Finance pursuant to sub-section (a) above, and the Director of Finance shall be authorized to pay any charge or charges approved by the Building Department without further approval of the applicant. If the City should undertake completion of any site work upon the applicant's failure to do so, any sums remaining on deposit with the Director of Finance after completion of said site work shall be returned to the applicant.

3.5 Water Quality Standards

Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

Section 4. Maintenance and Repair of Stormwater Facilities

4.1 Maintenance and Inspection During Construction

- 4.1.1** The applicant or developer of the land development activity shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this local law. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by fifty (50) percent.
- 4.1.2** The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices. Inspection reports shall be completed every 7 days and within 24 hours of any storm event producing 0.5 inches of precipitation or more. The reports shall be delivered to the Stormwater Management Officer and also copied to the site log book.
- 4.1.3** The City or its representatives or designees shall have the right and power to make necessary inspections to insure compliance with this Local Law and the SWPPP. The cost of these inspections shall be borne by the developer and said developer shall provide a sufficient amount as determined by the Building Department to defray such costs. The City shall be authorized to pay from the moneys on deposit for the inspection services and return to the applicant any balance and interest in the account at the time of completion of the permitted site work provided all inspections costs have been paid in full. If the monies on deposit prove to be insufficient for the costs of the required inspections the City shall require the applicant to deposit additional monies sufficient to satisfy the costs of the remaining inspections.

4.2 Maintenance Easement(s)

Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the City of Watervliet to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this local law. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the Corporation Counsel for the City of Watervliet.

4.3 Maintenance after Construction

The owner or operator of permanent stormwater management practices installed in accordance with this law shall be operated and maintained to achieve the goals of this law. Proper operation and maintenance also includes as a minimum, the following:

- 4.3.1 A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this law.
- 4.3.2 Written procedures for operation and maintenance and training new maintenance personnel.
- 4.3.3 Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with Article 2, section 3.2.

4.4 Maintenance Agreements

The City of Watervliet shall approve any and all maintenance agreements for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Schedule B of this local law entitled Sample Stormwater Control Facility Maintenance Agreement. The City of Watervliet, in lieu of a maintenance agreement, at its sole discretion may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this local law and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

Article 3. Subdivision Regulation Amendment

Section 57-9 of the Subdivision Regulations of the City of Watervliet is hereby amended by adding the following to the information requirements:

- A. For Preliminary Subdivision Plat add: Stormwater Pollution Prevention Plan: A Stormwater Pollution Prevention Plan (SWPPP) consistent with the requirements of Article 1 and 2 of this local law shall be required for Preliminary Subdivision Plat approval. The SWPPP shall meet the performance and design Public Review Draft - Stormwater Management Guidance Manual for Local Officials Appendix 1, Page 10 criteria and standards in Article 2 of this local law. The approved Preliminary Subdivision Plat shall be consistent with the provisions of this local law.
- B. For Final Subdivision Plat approval add: Stormwater Pollution Prevention Plan: A Stormwater Pollution Prevention Plan consistent with the requirements of Article 1 and 2 of this local law and with the terms of preliminary plan approval shall be required for Final Subdivision Plat approval. The SWPPP shall meet the performance and design criteria and standards in Article 2 of this local law. The approved Final Subdivision Plan shall be consistent with the provisions of this local law.

Article 4. Site Plan Review Regulation Amendment

Section 57-9 of the Site Plan Review regulations of the City of Watervliet is hereby amended by adding the following to the information requirements:

A Stormwater Pollution Prevention Plan consistent with the requirements of Article 1 and 2 of this local law shall be required for Site Plan Approval. The SWPPP shall meet the performance and design criteria and standards in Article 2 of this local law. The approved Site Plan shall be consistent with the provisions of this local law.

Article 5. Erosion & Sediment Control Law Amendment

A Stormwater Pollution Prevention Plan consistent with the requirements of Article 1,2 and 3 of this local law shall be required. The SWPPP shall meet the performance and design criteria and standards in Article 2 of this local law. The approved erosion control permit shall be consistent with the provisions of this local law.

Article 6. Administration and Enforcement

Section 1. Construction Inspection

1.1 Erosion and Sediment Control Inspection

The City of Watervliet Stormwater Management Officer may require such inspections as necessary to determine compliance with this law and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this law and the stormwater pollution prevention plan (SWPPP) as approved. These are in addition to the required DEC inspections. To obtain inspections, the applicant shall notify the City of Watervliet enforcement official at least 48 hours before any of the following as required by the Stormwater Management Officer:

- 1.1.1** Start of construction
- 1.1.2** Installation of sediment and erosion control measures
- 1.1.3** Completion of site clearing
- 1.1.4** Completion of rough grading
- 1.1.5** Completion of final grading
- 1.1.6** Close of the construction season
- 1.1.7** Completion of final landscaping
- 1.1.8** Successful establishment of landscaping in public areas.

If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.

1.2 Stormwater Management Practice Inspections

The City of Watervliet Stormwater Management Officer or designee, is responsible for conducting inspections of stormwater management practices (SMPs). All applicants are required to submit "as built" plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.

1.3 Inspection of Stormwater Facilities After Project Completion

Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws.

Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.

1.4 Submission of Reports

The City of Watervliet Stormwater Management Officer may require monitoring and reporting from entities subject to this law as are necessary to determine compliance with this law in addition to the required record keeping and reports set forth in this Local Law and established by DEC.

1.5 Right-of-Entry for Inspection

When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public storm water system, the landowner shall grant to the City of Watervliet the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in paragraph 1.3.

Section 2. Performance Guarantee

2.1 Construction Completion Guarantee

In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the City of Watervliet in its approval of the Stormwater Pollution Prevention Plan, the City of Watervliet may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the City of Watervliet as the beneficiary. The security shall be in an amount to be determined by the City of Watervliet based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the City of Watervliet, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one year inspection has been conducted and the facilities have been found to be acceptable to the City of Watervliet. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

2.2 Maintenance Guarantee

Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the City of Watervliet with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the City of Watervliet may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

2.3 Recordkeeping

The City of Watervliet may require entities subject to this law to maintain records demonstrating compliance with this portion of the local law.

Section 3 Enforcement and Penalties

3.1 Notice of Violation.

When the City of Watervliet determines that a land development activity is not being carried out in accordance with the requirements of this local law, it may issue a written notice of violation to the landowner. The notice of violation shall contain:

- 3.1.1** the name and address of the landowner, developer or applicant;
- 3.1.2** the address when available or a description of the building, structure or land upon which the violation is occurring;
- 3.1.3** a statement specifying the nature of the violation;
- 3.1.4** a description of the remedial measures necessary to bring the land development activity into compliance with this local law and a time schedule for the completion of such remedial action;
- 3.1.5** a statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- 3.1.6** a statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within fifteen (15) days of service of notice of violation.

3.2 Violations

Any Land Development Activity that is commenced or is conducted contrary to this Article, may be restrained by injunction or otherwise abated in a manner provided by law.

3.3 Penalties

In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Article law shall be guilty of a violation punishable by a fine not exceeding five thousand dollars (\$5000) or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than five hundred fifty dollars (\$550) nor more than ten thousand dollars (\$10,000) or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars (\$700) nor more than fifteen thousand dollars (\$15,000) or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this Article shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

3.4 Stop Work Orders

The City of Watervliet may issue a stop work order for violations of this law. Persons receiving a stop work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop work order. The stop work order shall be in effect until the City of Watervliet confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this local law.

3.5 Violations

Any land development activity work or construction on real property that is commenced or is conducted contrary to this local law, may be restrained by injunction or otherwise abated in a manner provided by law.

3.6 Withholding of Certificate of Occupancy

If any building or land development activity is installed or conducted in violation of this local law the Stormwater Management Officer may prevent the occupancy of said building or land.

3.7 Restoration of lands

Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the City of Watervliet may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

Section 4. Fees for Services

The City of Watervliet may require any person undertaking land development activities regulated by this law to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the City of Watervliet or performed by a third party for the City of Watervliet.

Section 5. Severability and Effective Date

5.1 Severability

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this local law shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this local law.

5.2 Effective Date

This Local Law shall be effective upon filing with the office of the Secretary of State.

Section 6.

This Local Law shall be effective on the 6th day of September, 2007

Approved as to form this 6th day of September, 2007

Yorden C. Huban, Esq.
Corporation Counsel

Introduced by: **COUNCILMAN DIAMOND**
Moved by: **COUNCILMAN DIAMOND**
Seconded by: **COUNCILMAN MANNING**

Adopted by the following vote:

Ayes: **3**
Nays: **0**

August 16, 2007 – **FIRST READING**
September 6, 2007 – **SECOND READING**

Schedule A – Definitions

Agricultural Activity - the activity of an active farm including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

Applicant - a property owner or agent of a property owner who has filed an application for a land development activity.

Building - any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

Channel - a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

Clearing - any activity that removes the vegetative surface cover.

Dedication - the deliberate appropriation of property by its owner for general public use.

Department - the New York State Department of Environmental Conservation

Design Manual - the New York State Stormwater Design Manual, most recent version including applicable updates, that serves as the official guide for stormwater management principles, methods and practices.

Developer (DEC)- a person who undertakes land development activities.

Erosion Control Manual - the most recent version of the "New York Standards and Specifications for Erosion and Sediment Control" manual as amended, commonly known as the "Blue Book".

Grading - excavation or fill of material, including the resulting conditions thereof.

Impervious Cover - those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snow melt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc).

Industrial Stormwater Permit - a State Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

Infiltration - the process of percolating stormwater into the subsoil.

Jurisdictional Wetland - an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

Land Development Activity - an activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

Landowner - the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

Maintenance Agreement - a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

Nonpoint Source Pollution - pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

Phasing - clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

Schedule A – Definitions, Page 2

Pollutant of Concern - sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

Project - land development activity or work or construction on real property

Recharge - the replenishment of underground water reserves.

Sediment Control - measures that prevent eroded sediment from leaving the site.

Sensitive Areas - cold water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

SMP – See Storm Water Management Practice

SPDES General Permit for Construction Activities GP-02-01 - A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems GP-02-02 - A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards

Stabilization - the use of practices that prevent exposed soil from eroding.

Stop Work Order - an order issued which requires that all construction activity on a site be stopped.

Stormwater - rainwater, surface runoff, snowmelt and drainage

Stormwater Hotspot - a land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

Stormwater Management - the use of structural or non-structural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

Stormwater Management Facility - one or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

Stormwater Management Officer - an employee or officer designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board, inspect stormwater management practices and enforce this Local Law.

Stormwater Management Practices (SMPs) - measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

Stormwater Pollution Prevention Plan (SWPPP) - a plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

Stormwater Runoff - flow on the surface of the ground, resulting from precipitation

Surface Waters of the State of New York - lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

Schedule A – Definitions, Page 3

Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition are not waters of the state. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

Watercourse - a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

Waterway - a channel that directs surface runoff to a watercourse or to the public storm drain.

Schedule B

**SAMPLE STORM WATER CONTROL FACILITY
MAINTENANCE AGREEMENT
(For Facility To Be Privately Owned)**

Whereas, the City of Watervliet ("City") and the _____
("Facility Owner") desire to enter into an agreement to provide for the long term
maintenance and continuation of storm water control measures approved by the City
for the project named _____, and

Whereas, the City and the Facility Owner desire that the storm water control measures
be built in accordance with the approved project plans and thereafter be maintained,
cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum
performance of the components. Therefore, the City and the facility owner agree as
follows:

- 1 This agreement binds the City and the Facility Owner, its successors and assigns, to the maintenance provisions depicted in the approved project plans which are attached as Exhibit A of this agreement.**
- 2 The Facility Owner shall maintain, clean, repair, replace and continue the storm water control measures depicted in Exhibit A as necessary to ensure optimum performance of the measures to design specifications. The storm water control measures shall include, but shall not be limited to, the following: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes, culverts, soil absorption devices and retention ponds.**
- 3 The Facility Owner shall be responsible for all expenses related to the maintenance of the storm water control measures and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities.**
- 4 The Facility Owner shall provide for the periodic inspection of the storm water control measures, not less than once in every five year period, to determine the condition and integrity of the measures. Such inspection shall be performed by a Professional Engineer licensed by the State of New York. The inspecting engineer shall prepare and submit to the City within 30 days of the inspection, a written report of the findings including recommendations for those actions necessary for the continuation of the storm water control measures.**
- 5 The Facility Owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the storm water control measures except in accordance with written approval of the City.**
- 6 The Facility Owner shall undertake necessary repairs and replacement of the storm water control measures at the direction of the City or in accordance with the recommendations of the inspecting engineer.**
- 7 The Facility Owner shall provide to the City within 30 days of the date of this agreement, a security for the maintenance and continuation of the storm water control measures in the form of (a Bond, letter of credit or escrow account).**

Schedule B – Agreement, Page 2

8 This agreement shall be recorded by the Facility Owner in the Office of the County Clerk, County of Albany together with the deed for the common property and shall be included in the offering plan and/or prospectus approved pursuant to _____ proof of the same shall be provided to the City.

9 If ever the City determines that the Facility Owner has failed to construct or maintain the storm water control measures in accordance with the project plan or has failed to undertake corrective action specified by the City or by the inspecting engineer, the City is authorized to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the storm water control measures and to affix the expenses thereof as a lien against the property.

10 This agreement is effective _____

**By _____
Facility Owner Date**

**By _____
City of Watervliet Date**