

Date August 20, 2007

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, and amended by Ordinance No. 13,881 passed November 6, 2000, and Ordinance No. 14,029 passed December 17, 2001, and Ordinance 14, 276 passed September 22, 2003, and Ordinance No. 14,326 passed March 22, 2004, and Ordinance No. 14,484 passed September 12, 2005, by amending Sections 42-86, 42-87, 42-121, 82-213, 106-2 and 106-136 and adding and enacting a new Section 206-201 thereof, enacting new regulations, prohibitions and enforcement provisions required by the USEPA and the IDNR relating to stormwater runoff control plans and relating to the maintenance of stormwater management facilities",

presented. (Council Communication No. 07-500)

Moved by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Ann DiDonato
 Ann DiDonato
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

 City Clerk

MOTION CARRIED APPROVED

.....
 Mayor

ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, and amended by Ordinance No. 13,881 passed November 6, 2000, and Ordinance No. 14,029 passed December 17, 2001, and Ordinance 14, 276 passed September 22, 2003, and Ordinance No. 14,326 passed March 22, 2004, and Ordinance No. 14,484 passed September 12, 2005, by amending Sections 42-86, 42-87, 42-121, 82-213, 106-2 and 106-136 and adding and enacting a new Section 206-201 thereof, enacting new regulations, prohibitions and enforcement provisions required by the USEPA and the IDNR relating to stormwater runoff control plans and relating to the maintenance of stormwater management facilities.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, and amended by Ordinance No. 13,881 passed November 6, 2000, and Ordinance No. 14,029 passed December 17, 2001, and Ordinance 14, 276 passed September 22, 2003, and Ordinance No. 14,326 passed March 22, 2004, and Ordinance No. 14,484 passed September 12, 2005 is hereby amended by amending Sections 42-86, 42-87, 42-121, 82-213, 106-2 and 106-136 and adding and enacting a new Section 206-201 thereof, enacting new regulations, prohibitions and enforcement provisions required by the USEPA and the IDNR relating to stormwater runoff control plans and relating to the maintenance of stormwater management facilities, as follows:

Sec. 42-86. Permits required.

- (a) No person shall grade, strip, excavate, fill, stockpile or cause any non-agricultural earth change on any site without a grading permit issued by the city engineer for any of the following purposes:

- (1) Platting of land pursuant to chapter 106, pertaining to subdivisions, of this Code.
 - (2) Development of land for which a site plan is required, pursuant to article V of chapter 82 of this Code.
 - (3) Installation of utility improvements in trenches that are greater than one foot in width or underground appurtenances with an excavated surface area greater than 400 square feet by a public or private utility company.
 - (4) Excavation or the creation of any disturbed surface of 500 square feet or more of cumulative area within 100 feet of a lake, pond, river, stream, recognized drainageway or within the defined flood fringe of a river or stream.
 - (5) Any excavation or cause of earth change more than an average of two feet in depth across 2,500 square feet or more of area, or creation of a disturbed area more than 20,000 square feet in area, excluding basement excavations and backfill, utility service connections for one- or two-family residential dwellings, and utility trenches no greater than one foot in width. This exception does not apply to construction activity which is part of a larger common plan of development that requires a NPDES General Permit No. 2.
 - (6) Any fill of dirt, stone, brick, concrete, soil or similar material covering a cumulative area larger than 2,500 square feet.
 - (7) Stockpiling of any granular construction material in excess of 5,000 cubic yards on any site.
- (b) A grading permit will not be necessary for any of the activities identified in subsection (a) of this section where, prior to formal application, the applicant receives from the city engineer a written statement that the planned work or final structures or topographical changes, as presented by the applicant to the city engineer prior to formal application, will not result in or contribute to accelerated soil erosion or sedimentation and will not significantly interfere with any existing drainage course. A grading permit will also not be required for work performed by city crews or for city construction projects under direct control of the city engineer.
- (c) Persons exempt from permitting requirements are nonetheless subject to illicit discharge regulations found in article IX of this chapter.

Sec. 42-87. Application data required.

Plans and specifications shall accompany each grading permit application and shall contain the following data unless otherwise included in the information required to be set forth in a preliminary plat or site plan;

- (1) A vicinity sketch at a scale of one inch to 400 feet or larger indicating the site location as well as the adjacent properties within 500 feet of the site boundaries.
- (2) A boundary line survey of the property on which the work is to be performed, unless waived by the city engineer.
- (3) A plan of the site at a scale of one inch to 100 feet or larger, on 24-inch by 36-inch reproducible sepia, vellum or Mylar showing the following:
 - a. The names, addresses, and telephone numbers of the landowner, developer, and petitioner.
 - b. A time schedule indicating the anticipated starting and completion dates of the development's construction sequence and the time of exposure of each area prior to the completion of effective erosion and sediment control measures.
 - c. A SWPPP for sites of one acre or more.
 - d. Existing topography with contour intervals at least every two feet of elevation change with a minimum of two contour lines for each site.
 - e. Proposed topography with contour intervals at least every two feet of elevation change with a minimum of two contour lines for each site.
 - f. Location of any structure or natural feature, including existing trees six inches or larger in diameter or tree groups, rock outcrops, landslide area, springs and streams and other water bodies and any areas subject to flooding on the site or within 50 feet of the site boundary line.
 - g. Location of any proposed structures or development on the site.
 - h. Elevations, dimensions, location, extent, and the slope of all proposed grading.
 - i. The estimated total cost of the required temporary and permanent soil erosion control measures if such application for the grading permit is made pursuant to chapter 106, pertaining to subdivisions, of this Code.
 - j. Plans of all drainage provisions, retaining walls, cribbing, planting, erosion control measures, or other temporary or permanent soil erosion control measures to be constructed in connection with or as part of the proposed work.
 - k. A map or other document sufficient to show the drainage area of land tributary to the site and estimated runoff of the area served by any drains.
 - l. A soils report for the plat by a licensed professional engineer experienced in soils investigation. The content of such report shall be at the discretion of the licensed engineer, shall

show general soil conditions, and shall include recommendations as to the adaptability of such soils for the proposed development. The city engineer may, in his or her discretion, waive this requirement.

- m. The location of all soil borrow or spoil sites and the proposed routes from the borrow or spoil sites to the job site.
- n. Certification by a licensed engineer, architect or landscape architect.
- o. A Stormwater Runoff Control Plan in compliance with section 106-136 of the municipal code.

Small fill projects located on residential lots that exceed the area limits of section 42-86(a)(6), but are less than one acre, may be exempt from submitting a plan if, in the opinion of the city engineer, it has been demonstrated that adequate preventative measures will be taken to prevent any accelerated soil erosion or sedimentation or interference with any natural drainageway or storm sewer or constructed channel.

Sec. 42-121. Grading operations.

The applicant or the owner of the property or any part thereof shall be responsible for the following:

- (1) The prevention of damage to any public utilities or services within the limits of grading and along any routes of travel of the equipment.
- (2) The prevention of damage of adjacent property.
- (3) Carrying out the proposed work so as not to grade on land so close to the property line as to endanger any adjoining public street, sidewalk, alley, or any other public or private property without supporting and protecting such property from settling, cracking, or other damage which might result.
- (4) Carrying out the proposed work in compliance with the approved plans, the requirements of this article, the NPDES General Permit No. 2 covering the property, the SWPPP covering the property, and all applicable state and federal laws and regulations, and in compliance with section 106-136 of the municipal code.
- (5) The prompt removal of excessive soil, miscellaneous debris, or other materials applied, dumped, or otherwise deposited on public streets, highways, sidewalks, or other public thoroughfares during transit to and from the construction site so as to prevent a violation of section 42-349 of this chapter.
- (6) Completing the grading operation and the erosion control measures within the approved time schedule.
- (7) Conducting any earth changes in such a manner as to effectively reduce accelerated soil erosion and resulting

- sedimentation.
- (8) Designing, implementing and maintaining acceptable soil erosion and sedimentation control measures, in conformance with the Soil Conservation Districts Law, I.C. § 161A.1 et seq., and the adopted rules of the Polk Soil Conservation District as they pertain to erosion control and which effectively reduce accelerated soil erosion.
 - (9) Designing, constructing and completing all earth changes in such manner that the exposed area of any disturbed land shall remain exposed for the shortest possible period of time so as to prevent a violation of section 42-349.
 - (10) Updating, amending, implementing and maintaining the SWPPP, making required inspections and keeping inspection reports, and retaining all plans and reports, in accordance with the applicant's NPDES General Permit No. 2 requirements.

Sec. 82-213. Design regulations.

The design regulations provided in this section are necessary to ensure the orderly and harmonious development of property in such manner as will safeguard the public's health, safety and general welfare and to ensure that the future development of property in the city will not be foreclosed by such development. The decision to approve, approve subject to conditions or disapprove a proposed site plan shall be based upon the conformance of the site plan with the following design regulations:

- (1) The design of the proposed development shall make adequate provisions for surface and subsurface drainage, including submittal of a Stormwater Runoff Control Plan in compliance with section 106-136 of the municipal code, for connections to water and sanitary sewer lines, each so designed as to neither overload nor to substantially decrease the capacity of existing public utility lines in a fashion that will serve to inhibit or preclude the planned future development of other property within the city and so as not to increase the danger of erosion, flooding, landslide, or other endangerment of adjoining or surrounding property. The city's comprehensive plan shall be the principal guide in determining the prospective use and population density of other properties. However, the factors to be considered in arriving at conclusions on standards of design shall include those set forth in subsection 82-206(b)(2) of this article.
- (2) The proposed development shall be designed and located within the property in such manner as not to unduly diminish or impair the use and enjoyment of adjoining property and to this end shall minimize the adverse effects on such adjoining properties from automobile headlights, illumination of

required perimeter yards, refuse containers, and impairment of light and air. For purposes of this subsection, the term "use and enjoyment of adjoining property" shall mean the use and enjoyment presently being made of such adjoining property, unless such property is vacant. If vacant, the term "use and enjoyment of adjoining property" shall mean those uses permitted under the zoning district in which such adjoining property is located.

- (3) The proposed development shall have such entrances and exits upon adjacent streets and such internal traffic circulation patterns as will not unduly increase congestion on adjacent or surrounding public streets and in a manner which will conform to the proposed future circulation of traffic throughout the city and provide for adequate fire protection access.
- (4) To such end as may be necessary and proper to accomplish the standards in subsections (1), (2), and (3) of this section, the proposed development shall provide water, sewer, stormwater, street, erosion control or other improvements.
- (5) All electrical, telephone, and cable television transmission systems shall be placed underground whenever reasonably practicable.
- (6) The proposed development shall conform to all applicable provisions of state law and all applicable sections of this Code.
- (7) If the private property is connected to the existing skywalk system, as shown on the official skywalk map, or the applicant intends to connect to the planned skywalk system, as shown on the skywalk system plan map, the proposed development shall have such connections to the existing and planned skywalk system and such internal skywalk system pattern as will best permit the optimal expansion of the skywalk system to serve the greatest number of properties possible and best provide for the expected skywalk system traffic through the property. If the private property is not connected to the existing skywalk system, as shown on the official skywalk map, and the applicant does not intend to connect to the planned skywalk system, as shown on the skywalk system plan map, this design standard shall not apply to the proposed site plan.
- (8) The proposed development shall provide landscaping, including plantings fences and screening in accordance with the landscape standards in the adopted site plan policies.
- (9) The stormwater runoff control facilities installed in compliance with the Stormwater Runoff Control Plan shall be maintained in compliance with section 106-136 of the municipal code.

Sec. 106-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section,

except where the context clearly indicates a different meaning:

Alley means a public or private right-of-way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on some other street.

Applicant means a proprietor or subdivider of land proposed to be subdivided or his or her representative.

Auditor's plat means a subdivision plat required by either the county auditor or the county assessor and prepared by a registered land surveyor under the direction of the county auditor.

Benefited property means the property identified in the Stormwater Runoff Control Plan and the Stormwater Facility Maintenance Covenant and Permanent Easement Agreement as being served by the stormwater maintenance facility to control and address storm water runoff from the property.

Bond means cash deposits, surety bonds or instruments of credit in an amount and form satisfactory to the city attorney and finance director or their authorized representatives.

Building means any structure, excluding signs and billboards, designed or intended for the support, enclosure, shelter or protection of persons, animals or property.

Building line means a line on a plat between which line and public right-of-way line no buildings or other structures may be erected.

City engineer means the chief civil engineer of the city or his or her designated representative.

Cluster subdivision means an alternative to conventional subdivision development wherein variable lot sizes are permitted in conjunction with a minimum lot size standard and which retains the same types and density of uses established by the applicable regulations and restrictions of chapter 134 of this Code.

Commission means the city plan and zoning commission.

Comprehensive plan means the current comprehensive plan for the general development of the city adopted by the city council pursuant to section 82-77 of this Code, including any part of such plan and any amendment to such plan separately adopted.

Construction plan means the maps or drawings prepared by a registered professional engineer accompanying a plat and showing the specific location and design of improvements to be installed in the subdivision in accordance with the requirements of the city engineer and the plan and zoning commission.

Design standards means the design standards policy manual for construction of public improvements approved by the commission and adopted by the city council.

Drainageway, improved means an improved ditch with invert protection, graded slopes and controlled velocities.

Drainageway, natural means an existing ditch in as natural a condition as possible and which can be maintained as such in the opinion of the city engineer.

Escrow means a deposit of cash with the city in lieu of an amount required and still in force under the surety bond and placed

in an identified separate account by the city treasurer.

Flood fringe means the portion of a floodplain between a floodway and the outer limits of a 100-year flood.

Floodway means the channel of a stream or other watercourse and the adjacent land areas required to carry and discharge a 100-year flood.

Grade means the slope of a road, street or other public way, specified in percent of vertical to horizontal measurements.

Improvement means any drainage ditch, roadway, parkway, storm sewer, sanitary sewer, water main, sidewalk, pedestrian way, or other facility for which the city may ultimately assume the responsibility for maintenance and operation or which may affect an improvement for which city responsibility is established.

Lot means a tract of land in a subdivision intended as a unit for the purpose, whether immediate or future, of transfer of ownership or for building development and represented and identified by a letter or number designation on a plat.

Model building means a building used initially for display purposes which typifies the type of units that will be constructed in the subdivision.

Official plat means either a subdivision plat or an auditor's plat that meets the requirements of I.C. § 354.1 et seq., and this chapter and that has been filed for record in the offices of the county recorder, auditor and assessor.

Parcel means a part of a tract of land.

Permit and development center coordinator means the individual assigned to manage the city permit and development center.

Planning director means the planning director of the city or his or her designated representative.

Plans of record means plans prepared by a registered professional engineer showing his or her signature and certifying that the public improvements have been constructed as shown.

Plat means a graphical representation of the subdivision of land, prepared by a registered land surveyor, having a number or letter designation for each lot and a succinct name or title that is unique.

Plat, major means any subdivision plat which incorporates a new street.

Plat, minor means any subdivision plat which does not include a new street.

Plat of survey means the graphical representation of a survey of one or more parcels of land, including a complete and accurate description of each parcel within the plat, prepared by a registered land surveyor.

Proprietor means any person who has a recorded interest in land sought to be subdivided under this chapter, including a person selling or buying the land pursuant to a contract, but excluding persons holding a mortgage, easement or lien interest.

Registered land surveyor means a land surveyor properly

licensed and registered in the state who engages in the practice of land surveying pursuant to I.C. ch. 542B.

Registered professional engineer means an engineer properly licensed and registered in the state who engages in the practice of engineering pursuant to I.C. ch. 542B.

Responsible party means the applicant and owner, and all benefited property owners responsible for maintenance of the storm water management facility. The city shall only authorize a transfer of such responsibility from the applicant or owner to owners of the benefited property.

Right-of-way means a strip of land to be dedicated as a roadway, walkway, or another special use established and shown on a final plat as separate and distinct from the adjoining lots and not included within the dimensions of such lots.

Standard specifications means the standard specifications for construction of public improvements adopted by the city council.

Stormwater Facility Maintenance Covenant and Permanent Easement Agreement or Stormwater Facility Maintenance Agreement means that covenant and easement agreement that has been approved in writing by the city engineer which is binding on all subsequent owners of land and benefited property served by the stormwater management facilities and is recorded in the applicable county recorder's office. The Stormwater Facility Maintenance Agreement shall provide for the access to the stormwater management facilities and the land it serves at reasonable time for inspection by the responsible party and the city and for regular or special assessments of property owners to ensure that the stormwater management facilities are maintained in proper working condition.

Stormwater Management Facility means those structures and plantings designed and installed pursuant to an approved stormwater runoff control plan pursuant to section 106-136.

Street classifications means an assignment of functional character and carrying capacity to streets and highways officially given in the urban transportation plan.

Street, dead-end means a street permanently or temporarily closed to through traffic.

Street, major means a street that provides for traffic movement between collector or arterial streets and local streets and direct access to abutting property.

Street, minor means a local service street used primarily for access to abutting property.

Street tree means a tree in a public place, street, special easement, or right-of-way adjoining a street.

Structure means anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground.

Subdivider means any person who:

- (1) Having an interest in the land, causes it, directly or indirectly, to be divided into a subdivision or to be included in a proposed subdivision;

- (2) Directly or indirectly, sells, leases, or develops or offers to sell, lease, or develop or advertise for sale, lease, or development any interest, lot, parcel, site, unit, or plat in a proposed subdivision; or
- (3) Engages, directly or through an agent, in the business of selling, leasing, developing or offering for sale, lease, or development a subdivision or any interest, lot, parcel, site, unit, or plat in a proposed subdivision.

Subdivision means a tract of land divided or proposed to be divided into three or more parcels, whether by subdivision plat, plat of survey, or otherwise; the act of creating a subdivision.

Tract means an aliquot part of a section within the United States public land survey system, a lot within an official plat, or a government lot.

Urban transportation plan means a part of the comprehensive plan providing for the development of traffic circulation throughout the city in a manner that will safely accommodate increased traffic volume at optimal speeds.

Zoning ordinance means the official zoning ordinance of the city, together with any and all amendments thereto, set forth in article X of chapter 22 and in chapter 134 of this Code.

Sec. 106-136. Detention of stormwater runoff

~~(a) When the proposed subdivision may have a detrimental effect by increasing the intensity of stormwater runoff into the city stormwater drainage system or onto adjoining properties, detention methods may be required by the city engineer to ensure the on-site control of such runoff.~~

The following stormwater runoff control and reduction requirements shall apply to all subdivisions, as well as new developments permitted by site plans and grading permits for land one acre or larger or less than one acre but which is part of a larger common plan of development that is one acre or larger, and no subdivision approval, site plan approval, or grading permit may be issued until the applicant has complied with the requirements of this section 106-136:

(a) A Stormwater Runoff Control Plan, prepared and certified by a Professional Engineer, Architect or Landscape Architect licensed in the State of Iowa and familiar with retention and detention calculations and stormwater runoff control methods and techniques, must be submitted by the applicant for approval by the city engineer. Such Plan shall include all reports, tests and calculations and all other information required by the city engineer to determine the viability of the such Plan

(b) A Stormwater Runoff Control Plan shall reduce projected runoff for a project by controlling rain events that total 1.25" or less in a 24 hour period, with the resulting volume being

released at a rate that allows for a detention time of 24 hours through incorporation of stormwater management facilities. The stormwater management facilities may, but are not required to, include those provided in such Stormwater Control Policies adopted by the City Council by resolution.

- (c) The city engineer shall review the Stormwater Runoff Control Plan for conformance with with the objectives set forth in section 106-136(b) Each Plan will be evaluated on its own merits according to the particular characteristics of the project and the site to be developed.
- (d) The city engineer shall approve or disapprove a complete Stormwater Runoff Control Plan within fifteen working days after receipt of submittal. If the Plan is disapproved, the reasons for disapproval shall be given in writing to the applicant. Any Plan disapproved by the city engineer must be revised by the applicant and resubmitted for approval. A resubmitted Plan will be approved or disapproved within fifteen working days of submittal.
- (e) An applicant desiring a full or partial waiver of compliance with this section may make a written application on forms supplied by the city engineer. Waiver applicants must show that incorporation of storm water management facilities set forth in the Subdivision Stormwater Runoff Control Policies are not possible to install due to exceptional physical limitations of the site. If a waiver is granted, the applicant must develop and incorporate other measures which the applicant can demonstrate to the satisfaction of the city engineer comply with the requirements of section 106-136(b) to the extent reasonably possible. Requests for waivers shall be granted or denied, in writing by the city engineer. Applicants may appeal such decision of the date of issuance by making appeal to the Plan and Zoning Commission in accordance with section 106-199.
- (f) Prior to approval of the subdivision plan, site plan, grading permit or Stormwater Runoff Control Plan, or the issuance of any permit that has a Stormwater Runoff Control Plan requirement, the owner of the property must execute a Stormwater Facility Maintenance Agreement that shall be binding on all Benefited Property. The Stormwater Facility Maintenance Agreement shall provide for access to the facility for the responsible party for inspection and maintenance purposes and for the city for inspection and maintenance purposes, at the city's discretion. The Stormwater Facility Maintenance Agreement shall be recorded by the city at the expense of the applicant or property owner.
- (g) The applicant and owner shall be responsible for the maintenance of the stormwater management facilities to their design capacity unless or until the city engineer agrees in writing to a transfer of such responsibility to another responsible party.

(h) Stormwater management facilities must be maintained by the responsible party in conformance with the following requirements:

- (1) Stormwater runoff control facilities, including pipes, inlets and outlets, shall be periodically inspected.
- (2) Litter, sediment and debris shall be promptly removed from such facilities.
- (3) The vegetation shall not be removed or changed without the prior written consent of the city engineer or public works director except for stormwater runoff control facilities that must be moved in accordance with the Stormwater Runoff Control Plan.
- (4) No yard debris as defined in Chapter 98, soil or rocks or concrete, or similar materials, shall be placed within a swale, or retention or detention pond without the prior written consent of the city engineer or public works director.
- (5) The area of the Stormwater runoff control facilities shall not re-graded without the prior written consent of the city engineer or public works director.
- (6) Records of inspection, maintenance and repair must be maintained and kept for at least five years and made available upon request to the city engineer.
- (7) Any action that will render a stormwater management facility inoperable or will significantly decrease its functioning is prohibited.

(bi) Where dams are proposed in any subdivision, they shall be designed by a registered professional engineer. A preliminary engineering report including soil investigations and design procedures shall be submitted to the city engineer for review. When such dam is constructed, the subdivider's engineer shall certify to the city engineer that the dam is constructed in accordance with the approved plans and specifications.

Sec. 106-201. Stormwater management facilities enforcement.

(a) The department of public works or city engineer may enter at all reasonable times and as often as necessary in or upon any private property for the purpose of investigating stormwater management facilities which may be maintained in violation of this section and to determine compliance with section 106-136; including the right to take samples and examine and copy records and the performance of additional duties defined by state and federal laws. The requirements of this section shall be enforced by the department of public works or the city engineer. The director of public works or city engineer shall have full authority to declare a violation and issue notices provided for in this division and to take action as required and permitted by this division. The director of public works or city engineer shall have all powers and

authority necessary to cause the abatement of violations under this article. The director shall have the authority to terminate access to the municipal storm water system of a person violating this division if such termination would abate a violation pursuant to 106-201 (d).

(b) The city engineer or public works director or his designee is authorized to issue a notice of violation imposing an administrative penalty upon any person or responsible party who fails to perform an act required by section 106-136.

(1) The administrative penalty for such violations shall be as provided in the schedule of administrative penalties adopted by the city council by resolution.

(2) Notice of violation, with the applicable penalty for such violation noted thereon, shall be issued to the violator by the director. Service of the notice may be by regular mail or delivery in person. Penalties shall be paid in full within thirty (30) days of the issuance of the notice.

(3) The administrative penalties set out in the schedule of administrative penalties shall be charged in lieu of the fines and penalties provided for in subsection 106-201, unless the violator refuses to correct the violation and pay the scheduled administrative penalty, or the director determines that immediate prosecution pursuant to misdemeanor or municipal infraction prosecution pursuant to section 1-15 is, in view of the particular circumstances of the case, necessary to achieve compliance with the requirements of this division.

(c) Failure to maintain stormwater management facilities in violation of section 106-136 or the Stormwater Facility Maintenance Agreement are deemed to constitute a public nuisance.

(d) If the public works director determines that a violation of section 106-136 or the covenant and easement agreement has occurred or is occurring, the director shall give notice of the existence of the nuisance pursuant to section 106-201 (d)

(5) and order abatement of such nuisance. The city may correct a violation by performing all necessary work to place the stormwater management facilities in proper working condition after providing the responsible party with notice of the need to abate such nuisance, that if not abated the city will cause such abatement, the costs of abatement and that the city will assess the costs for such abatement. Service of the abatement notice shall be by certified mail, addressed to the responsible party and/or owner of the benefited property, or by posting on the property if the address of the owner is unknown. The notice shall provide at least a twenty-four (24) hour period for abatement of the nuisance prior to the city's abatement action and notice of the right to a hearing on the finding of a public nuisance and the costs of abatement

pursuant to subsection (5) below.

- (1) Provided, however, that the city may cause such abatement without prior notice in the event that such failure to repair presents an imminent risk of harm to person or property, and the director declares an emergency on account thereof.
- (2) When the city abates a nuisance pursuant to section 106-201 (d), the city may assess the actual costs of abatement to the Benefitted Property owner(s) or the or the property owners or parties responsible for the maintenance in accordance with the Stormwater Facility Maintenance Agreement for the cost of repair work, in addition to taking any other action provided for in this division.
- (3) Upon adoption by the city council, the schedule of assessments for the abatement and the resolution approving such shall be certified by the city clerk to the county auditor for collection in the manner provided by law.
- (4) The cost of abating a violation under this chapter shall be paid from the proper fund and when collected shall be credited to that fund.
- (5) When the city makes a finding of a public nuisance pursuant to section 106-201(d), notice shall be given to the owner of the property subject to assessment of the right to an administrative hearing regarding the existence of and responsibility for the public nuisance, and regarding the costs of the abatement. The notice shall contain the following information:
 - a. A description, to the extent possible, of the public nuisance;
 - b. A description of the location where the nuisance was abated;
 - c. An indication of the date and time that the city caused the abatement, and that the costs of the abatement have been or will be assessed against the real estate from which the abatement occurred;
 - d. An itemization of the costs incurred by the city in the abatement of the nuisance;
 - e. That the person notified, or the person's duly authorized agent, may file a written request for hearing as set forth in this section; and
 - f. That failure to make a written request for a hearing to the city clerk within ten days the date of the notice shall be considered a waiver of the right to a hearing and it will be thereafter conclusively presumed that the nuisance and abatement occurred and costs will be assessed against the real estate without further notice.
 - g. Service of the notice provided for in subsection

- (a) hereof shall be by certified mail, addressed to the Benefitted Property owner(s) or the property owners or parties responsible for the maintenance in accordance with the stormwater Facility Maintenance agreement for the cost of repair work, or shall be by posting upon such property on which the Stormwater runoff control facilities are located if the address of any of the above are unknown.
- h. Any person in receipt of such notice may have, upon written request made in writing and filed with the city clerk within ten (10) days of the date of issuance of the notice, an administrative hearing before the city manager, or before a hearing officer appointed by the city manager, to determine if a public nuisance has occurred, to determine if the amount to be assessed is reasonable and if the assessment shall be placed against the subject property.
- i. A request for hearing shall: (1) contain the address of the person requesting the hearing and to which all further notices shall be mailed or served; and (2) shall state the basis for the appeal.
- j. The hearing shall be scheduled to be held as soon as practicable and no later than 14 days after the request for hearing was filed with the city clerk. The person requesting the hearing shall be notified in writing or by telephone of the date and place of such hearing at least three days in advance thereof.
- k. At such hearing the department and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence as necessary.
- l. The city manager or hearing officer may determine whether or not a public nuisance occurred, who is responsible for the nuisance, whether the city caused the abatement of the nuisance in accordance with this chapter, and whether the assessment for costs of abatement is reasonable or should be reduced or waived, as appropriate.
- m. The determination of the hearing officer is a final administrative decision.
- n. Failure to request a hearing within ten days of the date of issuance of the notice shall be considered a waiver of the right to a hearing and it will be thereafter conclusively presumed that the property owner is responsible for the public nuisance.
- (e) Any person who fails to perform an act required by this chapter or who commits an act prohibited by section 106-136 or

who resists the enforcement of any section of this division shall be guilty of a misdemeanor punishable by a fine or imprisonment as provided in section 1-15 of this code. The director or any police officer is authorized to issue a criminal citation to anyone violating this division.

(f) Any person who fails to perform an act required by this division or who commits an act prohibited by this division or who resists the enforcement of any section of this division shall be deemed to have committed a municipal infraction. The first violation of this chapter within a calendar year shall be deemed the first offense, punishable by a civil penalty not to exceed \$500.00. The second and subsequent violation within a calendar year shall be a repeat offense, punishable by a civil penalty not to exceed \$750.00 punishable by a civil penalty of \$750.00. The director or any police officer is authorized to issue a civil citation for a municipal infraction pursuant to I.C. § 364.22(4) to anyone violating this division indicating such person is in violation of this chapter.

(g) The city engineer may enter at all reasonable times in or upon any or public private property to inspect and investigate work being done which is not in compliance with the requirements of this section and to inspect and investigate conditions and practices which may be a violation of this section. The city engineer shall have the authority to issue an order in writing to the owner of the property and/or any person engaged in such activities on the property, ordering such person or persons to cease and desist from construction activities due to failure to implement or maintain the Stormwater Runoff Control Plan or to maintain any stormwater runoff control facilities therein identified. The order shall be delivered by personal service unless any of the above cannot be found within the city, in which event notice shall be by ordinary mail addressed to the person's last known address and by posting a copy of the notice in a conspicuous place at the construction site.

(1) Construction activities shall cease on the date stated in the city engineer's order and shall not recommence without the prior written approval of the city engineer.

(2) The person to whom the notice is directed may make a written request to the city engineer for a reconsideration and hearing on the cease and desist order and/or abatement order within ten (10) days from the issuance of the order, provided, however, that work on such property shall cease pending the outcome of the hearing.

(3) The request for hearing shall (1) contain the address of the person requesting the hearing and to which all further notices shall be mailed or served, and (2) shall state the basis for the appeal.

- (4) The hearing shall be scheduled to be held as soon as practicable and no later than fourteen (14) days after the request for hearing was filed with the city engineer. The person requesting the hearing shall be notified in writing or by telephone of the date and place of such hearing at least three (3) days in advance thereof. At such hearing the city engineer and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence as necessary.
- (5) If the city engineer determines that the violation has created a public nuisance, the city engineer may order abatement of the nuisance by whatever means the city engineer may determine appropriate.
- (6) The determination of the city engineer shall be a final administrative decision.
- (7) In the event that the abatement as ordered by the city engineer is not performed, the city engineer may cause the abatement of the nuisance and assess the costs of abatement to the property.
- (h) The city is not precluded from seeking alternative relief from the court, including an order for abatement or injunctive relief, in the event that the city files a misdemeanor citation, notice of administrative penalty, and/or files a municipal infraction for the same violation of this chapter.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Ann DiDonato
Assistant City Attorney