

Key for changes in draft ordinance:

Text changes and comments from the November 29, 2011 meeting

[Inserted Text](#)

Text changes and comments from the December 6, 2011 meeting

[Inserted Text](#)

# **Proposed Language for Chapter 21, Article II, Storm Water Quantity and Quality Control**

## **ARTICLE IV. Storm Water Quantity and Quality Control**

- Division 1 Generally
  - Sec. 21-31. Findings and Purpose
  - 21-32. Authority and Applicability
  - 21-33. Definitions
  - 21-34. Severability
  - 21-35. Conflicting Provisions
  
- Division 2 Organization and Administration
  - Sec. 21-36. Regulations
  - 21-37. Coordination with Other Agencies
  - 21-38. Cooperation with Other Governments
  - 21-39. Storm Water Division
  
- Division 3 Storm Water Quality Control
  - Sec. 21-40. Permitting Requirements and Exemptions
  - 21-41. Storm Water Management Program
  - 21-42. Design/Engineering Standards; Storm Water BMP Design Manual
  - 21-43. Land Disturbance Permit Application Process
  - 21-44. Maintenance, Construction, Inspection, and Notice of Termination (NOT)
  - 21-45. Ownership and City Participation
  - 21-46. Watercourse Protection
  - 21-47. Notification of Spills
  
- Division 4 Detection and Removal of Illicit Discharges and Improper Disposal
  - Sec. 21-48. Illicit Connections, Illicit Discharges and Improper Disposal
  - 21-49. Detection of Illicit Connections and Improper Disposal
  - 21-50. Waste Disposal Prohibition
  - 21-51. Industrial or Construction Discharges
  - 21-52. Monitoring of Discharges and Inspections
  
- Division 5 Enforcement, Penalties and Abatement
  - Sec. 21-53. Violations
  - 21-54. Civil Penalties
  - 21-56. Corrective Action
  - 21-64. removed
  - 21-57. Stop Work
  - 21-58. Permit Suspension and Revocation
  - 21-59. Criminal Penalties
  - 21-60. Variances and Appeals
  
- Division 6 Charges and Fees
  - Sec. 21-61. Field Inspection and Plan Review

## ARTICLE IV. STORM WATER QUANTITY AND QUALITY CONTROL

### DIVISION 1 – GENERALLY

#### Sec. 21-31. Findings and Purpose.

The City Council of the City of Columbia finds that:

(a) Uncontrolled storm water runoff may have a significant, adverse impact on the health, safety and general welfare of the City of Columbia and the quality of life of its citizens by transporting pollutants into receiving waters and by causing erosion or contributing to conditions which may increase the incidence and severity of flooding.

(b) Proper management of storm water runoff will minimize damage to public and private property, promote a functional drainage system, reduce the effects of development on land and stream channel erosion, attain and maintain water quality standards, enhance the local environment associated with the drainage system, reduce local flooding, reduce pollutant loading to the maximum extent practicable and maintain to the extent practicable the pre-development runoff characteristics of the area, and facilitate economic development while mitigating associated pollutant, flooding and drainage impacts.

(c) Non-storm water discharges to a Municipal Separate Storm Sewer System (“MS4”) can contribute to the pollution of the waters of the State.

(d) The City of Columbia is required by federal and state law [33 U.S.C 1342, 40 CFR 122.26, S.C. Code Ann. §§ 48-1-10 *et seq.*, and S.C. Regulation 61-9.122.26] to obtain a National Pollutant Discharge Elimination System (“NPDES”) permit from the South Carolina Department of Health and Environmental Control (“DHEC”) for storm water discharges to the waters of the State from the City of Columbia Municipal Separate Storm Sewer System (“City of Columbia MS4”). The NPDES MS4 Permit requires the City to develop and implement a comprehensive Storm Water Management Program to effectively prohibit the discharge of non-storm water into the MS4 and to reduce the discharge of pollutants from the MS4 to the Maximum Extent Practicable.

(e) Certain facilities that discharge storm water associated with an industrial activity, including land disturbing activities, are required to obtain NPDES permits. Also, the South Carolina Storm Water Management and Sediment Reduction Act [S.C. Code Ann. §§ 48-14-10 *et seq.*] requires a state permit for certain land disturbing activities.

It is the purpose of this Article to protect, maintain, and enhance the environment of the City of Columbia and the short-term and long-term public health, safety, and general welfare of the citizens of the City of Columbia by establishing requirements and procedures designed to:

(a) control the potential adverse effects of increased storm water runoff associated with both future development and existing development;

(b) reduce the discharge of pollutants to the City of Columbia MS4 and its receiving waters to the maximum extent practicable using management practices, control techniques and system, design and engineering methods and such other programs and controls as are required by the NPDES MS4 Permit.

(c) control and reduce the contribution of pollutants to the NPDES MS4 Permit and receiving waters of the State by storm water discharges associated with residential, commercial, industrial and related facilities activity; and

(d) assure compliance with federal and state NPDES regulations and the NPDES MS4 Permit.

**Sec. 21-32. Authority and Applicability.**

This Article is adopted pursuant to S.C. Code Ann. §§ 48-14-10 *et seq.*, S.C. Code Ann. §5-7-30, S.C. Regulation 61-9.122.26, and S.C. Regulation 72-300 *et seq.*

This Article applies to all areas within the City of Columbia corporate boundaries and within any municipality or other governmental entity that chooses to participate as a co-permittee with the City in the NPDES MS4 Permit.

The application of this Article, the provisions expressed herein, and the Federal and State storm water regulations shall be minimum storm water management requirements and shall not be deemed a limitation or repeal of any other ordinances of City of Columbia or powers granted to City of Columbia by the State of South Carolina statutes, including, without limitation, the power to require additional or more stringent storm water management requirements as necessary to meet the requirements of the NPDES MS4 Permit.

The Storm Water Division shall be primarily responsible for the coordination and enforcement of the provisions of this Article, the City of Columbia Storm Water Management Program, and the NPDES MS4 Permit.

**Sec. 21-33. Definitions.**

Definitions contained in South Carolina regulations 61-9.122.2 and 72-301 are incorporated herein by reference unless a term is given a different meaning by the definition of that term in this Section. Where the same words are defined in both the aforementioned regulations, but are not the same, the definitions contained in S.C. Regulation 61-9.122.2 shall be used for the purposes of this Article. Additional terms, phrases and words shall have the meaning given in this article, except where the context clearly indicates a different meaning. All other words shall have their customary meanings. Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive.

**Accidental discharge** means a discharge prohibited by this Article into the City of Columbia MS4 or a community water, which occurs by chance and without planning or consideration prior to occurrence.

**Best Management Practices** means a wide range of management procedures, schedules of activities, prohibitions on practices and other management practices which have been demonstrated to effectively control the quality and/or quantity of stormwater runoff and which are compatible with the planned land use (S.C. Regulation 72-301(5)).

**City** means the City of Columbia, South Carolina.

**City Council** means the city council of the City of Columbia, South Carolina.

**City of Columbia MS4** is the Municipal Separate Storm Sewer System, as defined by S.C. Regulation 61-9.122.26(b), which is owned and operated by the City.

**Clean Water Act** means the Federal Water Pollution Control Act, as amended, codified at 33 U.S.C §1251 *et seq.*

**Develop Land** means to change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial, or institutional construction or alteration (S.C. Regulation 72-301(12)).

**Development** means any of the following actions undertaken by any person, including, without limitation, any public or private individual or entity:

- (a) the construction, installation, or alteration of a structure, impervious surface or drainage facility;
- (b) clearing, scraping, grubbing or otherwise significantly disturbing the soil, vegetation, mud, sand or rock of a site; or
- (c) adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging, or otherwise disturbing the soil, vegetation, mud, sand or rock of a site.

**Director** means the City of Columbia Director of Utilities and Engineering or any duly authorized representative of the Director.

**Discharge** means any discharge or discharge of any sewage, industrial wastes or other wastes into any of the waters of the State, whether treated or not (S.C. Regulation 61-9.122.2).

**Entitled Property** means any property ~~that, from January 1, 2006~~ to the adoption of this Article, has been subject to either Permitted Development Activity or a Valid Governmental Approval. If a Permitted Development Activity or Valid Governmental Approval has occurred with respect to any tract and such tract was subsequently subdivided, or in the future is subdivided, by an approved subdivision plat, than all subdivided parcels that were part of the original tract shall be considered entitled property.

**Comment [tem1]:** Meeting 11/29/11: Definition for Entitled Property was too broad. Asked to include a time frame which all parties can live with.  
**Deleted:** prior

**Illicit connection** means any man-made conveyance connecting a non-storm water discharge directly to the City of Columbia MS4 which results in a discharge that is not composed entirely of storm water runoff except discharges to the City of Columbia MS4 pursuant to an NPDES permit (other than the NPDES permit for the City of Columbia MS4).

**Illicit discharge** means any discharge to the City of Columbia MS4 or receiving waters that is not composed entirely of storm water except (a) discharges pursuant to an NPDES permit (other than the NPDES for the City of Columbia) and (b) other discharges listed Sec. 21-48(d) of this Article.

**Improper disposal** means any discharge other than through an illicit connection that results in an illicit discharge, including, but not limited to, the disposal of used oil and toxic materials or other hazardous liquids or substances resulting from the improper management of these materials.

**Industrial Activity** means activity associated with an industrial facility subject to an NPDES permitting requirements for storm water discharge associated with industrial activity as defined in S.C. Regulation 61-9.122.26(b)(14) or any other industrial facility which the Storm Water Division determines has a potential to contribute substantial pollutant loadings to the City of Columbia MS4.

**Land Disturbance Permit** means written approval issued by the City pursuant to Section 21-43 of this Article, authorizing land-disturbing activities in accordance with a SWPPP approved by the Director.

**Land disturbing activities** means any use of the land by any person that results in a change in the natural cover or topography that may cause erosion and contribute to sediment and alter the quality and quantity of storm water runoff. (S.C. CODE ANN. § 48-14-20(8)).

**Maintenance** means any action necessary to preserve storm water controls in proper working condition, in order to serve the intended purposes set forth in this Article and to prevent structural failure of such structures or controls.

**NPDES Program** means the National Pollutant Discharge Elimination System program as defined in S.C. Regulation 61-9.122.2.

**NPDES MS4 Permit** means the NPDES permit for storm water discharges issued to the City of Columbia pursuant to the Clean Water Act and the state storm water discharge regulations (S.C. Regulation 61-9.122.26).

**Permitted Development Activity** means the property owner has commenced construction of a building or of any portion of a potable water distribution or transportation system, a sanitary sewer distribution or transportation system, a storm drainage system or a public road; or the property owner has commenced grading or other land disturbance activities in conformance with valid permits issued by the City of Columbia.

**Person** means any individual, public or private corporation, political subdivision, association, partnership, corporation, municipality, State or Federal agency, industry, co-partnership, firm, trust, estate, any other legal entity whatsoever, or an agent or employee thereof. (S.C. Regulation 61-9.122.2).

**Pollutant** means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. Pollutant does not mean: (i) Sewage from vessels; or (ii) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal

purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources. (S.C. Regulation 61-9.122.2).

**Receiving waters** means the waters into which the City of Columbia MS4 discharges and which are located within the jurisdictional boundaries of the City of Columbia and include, without limitation, the lakes, rivers, streams, ponds, wetlands, and groundwater of the City of Columbia.

**Runoff** means direct response of a watershed to precipitation and includes the surface and subsurface runoff that enters a ditch, stream, storm sewer, or other concentrated flow during and following the precipitation. (S.C. CODE ANN. § 48-14-20(13)).

**Storm Water Division** means the City of Columbia Stormwater Management staff.

**Storm water** means storm water runoff, snow melt runoff and surface runoff and drainage (S.C. Regulation 61-9.122.26(b)(13)).

**Storm water management** means for: (a) quantitative control, a system of vegetative or structural measures, or both, that control the increased volume and rate of storm water runoff caused by manmade changes to the land; (b) qualitative control, a system of vegetative, structural, or other measures that reduce or eliminate pollutants that might otherwise be carried by storm water runoff (S.C. CODE ANN. § 58-14-30(11)).

**Storm water management systems and facilities** means those natural and man-made channels, swales, ditches, swamps, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, head walls, storm sewers, lakes, and other physical works, properties, and improvements which transfer, control, convey or otherwise influence the movement of storm water runoff.

**Storm Water Best Management Practices (BMP) Design Manual** means the most recent compilation of design, performance and review criteria for storm water management practices developed by the Director pursuant to Section 21-42 of this Article.

**SWMP** means the storm water management program as required pursuant to the NPDES MS4 Permit.

**Storm Water Pollution Prevention Plan or SWPPP** means a set of drawings and other documents which describe the Best Management Practices and activities to be implemented by a person or business to eliminate or reduce storm water discharges to the maximum extent possible. The SWPPP shall include all of the information and specifications required by S.C. Regulation 72-300 *et seq.*, the current Storm Water BMP Design Manual developed pursuant to Section 21-42 of this Article, and any applicable State general permit.

**Surface water** means all water, which is open to the atmosphere and subject to surface runoff which includes lakes, streams, ponds, and reservoirs. (S.C. CODE ANN. § 49-4-20(10)).

**Unavoidable discharge** means an emergency discharge required to prevent imminent threat to human health or prevent severe property damage for which reasonable and prudent measures are taken to minimize the impact of the discharge.

**Valid Government Approval** means the issuance of a permit by City of Columbia to commence a Permitted Development Activity; or approval by the City of Columbia of subdivision of the property, of planned development district zoning for the property, or of a sketch plan for development of the property.

**Variance** means the modification of the minimum storm water management requirements contained in this Article or the SWMP for specific circumstances where strict adherence of the requirements would result in unnecessary hardship and would not fulfill the intent of this Article. [this taken from SW Regulation Definition]

**Watercourse** means a stream or other body of water, either natural or man-made, with a permanent or intermittent flow.

**Water quality** means those characteristics of storm water runoff that relate to the physical, chemical, biological or radiological integrity of water.

**Water quantity** means those characteristics of storm water runoff that relate to the rate and volume of the storm water runoff.

**Water Quality Buffer** means an area of original or re-established vegetation that borders streams, rivers, ponds, lakes, wetlands and seeps in which no vegetation shall be disturbed, removed, or replanted unless a buffer restoration plan has been approved by the Storm Water Division.

**Waters of the State** means lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction. (S.C. Regulation 61-9.122.2).

**Waters of the United States** means “Waters of the United States” or “waters of the U.S.” as defined at S.C. Regulation 61-9.122.2.

**Sec. 21-34. Severability.**

Should any word, phrase, clause or provision of this article be declared invalid or unconstitutional by a court of competent jurisdiction, such declaration shall not affect this article as a whole or any part hereof except that specific provision declared by such court to be invalid or unconstitutional.

**Sec. 21-35 Conflicting provisions.**

All ordinances or parts of ordinances in conflict with the provisions of this Article are hereby repealed. This Article shall prevail in any and all conflicts with guidelines, manuals or other publications within the City as it pertains to storm water management.

**Comment [tem2]: ARTICLE 11. VESTED RIGHTS**

**SECTION 6-29-1510.** Citation of article. [SC ST SEC 6-29-1510]

This article may be cited as the "**Vested Rights Act**".

**SECTION 6-29-1520.** Definitions. [SC ST SEC 6-29-1520]

(10) "Vested right" means the right to undertake and complete the development of property under the terms and conditions of a site specific development plan or a phased development plan as provided in this article and in the local land development ordinances or regulations adopted pursuant to this chapter.

Per 12/6 meeting about removing sketch plan for language of Valid Governmental Approval – but it is allowed under stated state regulations of vested rights

**Comment [tem3]:** Added to provide clarity as to the definition and provide a reference for areas where water quality buffers are mentioned throughout the body of the document. – suggested for the 12/6 meeting



## DIVISION 2 – ORGANIZATION AND ADMINISTRATION

### **Sec. 21-36. Regulations.**

Federal regulations governing storm water management, as specified in 40 C.F.R. 122.26, and State regulations, as specified in S.C. Regulation 61-9.122.26 adopted pursuant thereto, and S.C. Regulation 72.300 *et seq.* are adopted as the minimum requirements for all measures established in any regulations adopted by the City to implement and enforce this Article.

Pursuant to Section 2-151 of this Code, the City may, in its discretion, adopt regulations to implement this Article, comply with the NPDES MS4 Permit, implement the SWMP or to otherwise further the goal of protecting the quality of the waters into which the City of Columbia MS4 discharges.

### **Sec. 21-37. Coordination with Other Agencies.**

The Director shall coordinate the City's activities with other federal, state and local agencies, which manage and perform functions relating to the protection of receiving waters. Authority not expressly reserved for other agencies or restricted by statute is placed with the Director for the protection and preservation of receiving waters. The Director shall coordinate with state and federal agencies having jurisdiction.

The Director will consult with agencies with responsibility for the construction, operation and maintenance of roads within the City of Columbia MS4 and shall advise said agencies of its recommendations for the conduct of such activities with respect to storm water management.

### **Sec. 21-38. Cooperation with Other Governments.**

The City may enter into agreements with other governmental and private entities to carry out the purposes of this Article. These agreements may include, but are not limited to, enforcement, resolution of disputes, cooperative monitoring and cooperative management of MS4s and cooperative implementation of storm water management programs.

Nothing in this Article or in this Section shall be construed as limitation or repeal of any ordinances of these local governments or of the powers granted to these local governments by the South Carolina Constitution or South Carolina statutes including, without limitation, the power to require additional or more stringent storm water management requirements within their jurisdictional boundaries.

### **Sec. 21-39. Storm Water Division.**

The Storm Water Division shall be responsible for day-to-day coordination, implementation and enforcement of this Article and the SWMP. This includes responsibility for, but is not limited to, the SWMP's monitoring program and the SWMP's storm water management programs for commercial and residential activities, construction site runoff, industrial runoff control program, and control of contribution of pollutants from illicit discharges and improper disposal. Without limitation of the foregoing, the Storm Water Division shall have the following specific powers and duties:

- (1) To issue any permit, certification or license that may be required by the SWMP or this Article.
- (2) To deny a facility connection to the City of Columbia MS4 or discharge to Waters of the State if the requirements of State and Federal Storm Water Regulations and this Article are not met.
- (3) To approve SWPPPs and to require as a condition of such approvals structural or non-structural controls, practices, devices or operating procedures required under the SWMP.
- (4) To require performance bonds of any person to secure that person's compliance with any SWPPP, permit, certificate, license or authorization issued or approved by the Storm Water Division pursuant to the SWMP.
- (5) To enforce all Federal and State regulatory requirements promulgated or imposed pursuant to the Clean Water Act and the South Carolina Stormwater Management and Sediment Reduction Act, applicable to the management of storm water discharges to or from the City of Columbia MS4.
- (6) To conduct all activities necessary to carry out the SWMP and other requirements included in the NPDES MS4 Permit and this Article and to pursue the necessary means and resources required to properly fulfill this responsibility.
- (7) To enter into agreements with other governmental entities or private persons or entities to provide or procure services to conduct and carry out storm water management activities.
- (8) To direct, review and recommend for approval by the City Council the storm water management operating budget.
- (9) To take any and all actions necessary to enforce this Article or collect any fee or penalty as provided for herein.
- (10) To develop and conduct training programs required under the NPDES MS4 Permit.
- (11) To develop design standards and Best Management Practices.

### **DIVISION 3 – STORM WATER QUALITY CONTROL**

#### **Sec. 21-40. Permitting Requirements and Exemptions.**

- (a) No person shall (1) develop land, (2) engage in any industry or enterprise, (3) construct, operate or maintain any landfill, hazardous waste treatment, disposal or recovery facility, or any other industrial or related facility without a permit as required by this Article.
- (b) The following development activities are exempt from the provisions of this Article:

(1) Land disturbing activities undertaken on forestland for the production and harvesting of timber and timber products.

(2) Land disturbing activities on agricultural land for production of plants and animals including, but not limited to, forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of these animals; bees, fur animals and aquaculture. The construction of an agricultural structure that requires the disturbance of one acre or more of land, such as, but not limited to, broiler houses, machine sheds, repair shops, coops, barns and other major buildings shall require the submittal and approval of a Land Disturbance permit prior to the start of the land disturbing activity.

(3) Activities undertaken by persons who are otherwise regulated by the provisions of Chapter 20 of Title 48, the South Carolina Mining Act.

(4) Construction or improvement of single family residences or their accessory buildings which are separately built and not part of multiple construction in a subdivision development.

(5) Any of the following land disturbing activities undertaken by any person who provides gas, electrification, or communications services, subject to the jurisdiction of the South Carolina Public Service Commission, or corporations organized and operating pursuant to Section 33-49-10 et seq.:

- (a) land disturbing activities conducted pursuant to a certificate of environmental compatibility and public convenience and necessity issued pursuant to Title 58, Chapter 33, of the South Carolina Code, or land disturbing activities conducted pursuant to any other certification or authorization issued by the Public Service Commission;
- (b) land disturbing activities conducted pursuant to a federal environmental permit, including Section 404 of the Federal Clean Water Act, and including permits issued by the Federal Energy Regulatory Commission;
- (c) land disturbing activities associated with emergency maintenance or construction of electric, gas, or communications facilities, when necessary to restore service or when the Governor declares the area to have sustained a disaster and the actions are undertaken to protect the public from a threat to health or safety;
- (d) land disturbing activities associated with routine maintenance and/or repair of electric, gas, or communications lines;
- (e) land disturbing activities associated with the placement of underground lines for distribution or transmission of electric energy or of gas or communications services; or
- (f) land disturbing activities conducted by a person filing environmental reports, assessments or impact statements with the United States Department of Agriculture, Rural Electrification Administration in regard to a project.

(6) Entitled Property. All entitled property shall comply with the Stormwater regulations that were in effect prior to the adoption of this Article.

**Sec. 21-41. Storm Water Management Program.**

The Storm Water Division shall develop a SWMP to meet the requirements of Part II of the NPDES MS4 Permit and shall submit the SWMP to DHEC for approval. The Storm Water Division shall implement the

SWMP in accordance with the deadlines established in Part III of the NPDES MS4 Permit. During the life of the NPDES MS4 Permit, all modifications of the SWMP will conform to the procedures set forth in Part II.H.2 of the NPDES MS4 Permit.

**Sec. 21-42. Design/Engineering Standards; Storm Water BMP Design Manual.**

Minimum requirements and guidance shall be established for processes regarding the evaluation and implementation of land disturbing or pollutant discharging activities and the design of storm water management systems and facilities within the City. The Storm Water Division is authorized to develop and adopt additional policies, criteria, processes, specifications and standards for the proper implementation of the requirements of this Article, Federal and State laws and the SWMP in the Storm Water BMP Design Manual. The Manual shall include design standards, procedures and criteria for conducting hydrologic, hydraulic and pollutant load evaluations, and downstream impact for all components of the storm water management system. Although the intention of the Manual is to establish uniform design practices, it neither replaces the need for engineering judgment nor precludes the use of information not presented. Other accepted engineering procedures may be used to conduct hydrologic, hydraulic and pollutant load studies if approved by the Storm Water Division.

The Manual will be evaluated and updated every five (5) years and/or with each permit term renewal. Public input and involvement will be an integral part of the process and shall influence proposed revisions by the Storm Water Division to reflect the advances in technology and engineering, improved knowledge of local conditions, including monitoring and experience gathered with time. Prior to amendments becoming effective, changes shall be generally publicized, made available for review and an opportunity for public comment shall be provided.

These design and engineering standards for land disturbing activities shall be set forth in the Storm Water BMP Design Manual. These design and engineering standards establish the required level of quality and performance for storm water management systems on all land disturbance projects and the technical basis for the achieving storm water management, including water quantity and quality objectives. The design and engineering standards set forth in the Storm Water BMP Design Manual establish the minimum technical requirements for compliance with this Article, federal and state law, and the SWMP. Therefore, an applicant for a land disturbance permit must meet the standards set forth in the version of the Manual in effect at the time a complete land disturbance permit application is submitted to the Storm Water Division.

The Storm Water BMP Design Manual shall establish two categories of design and engineering standards for land disturbing activities:

Land disturbing activities with a disturbed area which is:

- (i) equal to or greater than 5,000 square feet; or
- (ii) less than 5,000 square feet and part of a larger common plan of development or sale with a planned disturbance of equal to or greater than 5,000 square feet.

**Comment [tem4]:** Meeting 11/29/11: Wanted to ensure that the Manual would go through a similar process as the Ordinance if the buffer language was not to go in the Ordinance.

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**Comment [tem5]:** Added per discussion from the 12/6 meeting. Manual revisions needed to be more specifically outlined with respect to protocol and public involvement. Especially, if the buffer language was not going into the ordinance.

**Comment [tem6]:** Suggested during the 12/6 meeting that language should be added that made it clear the BMP Manual should be followed and required for land disturbance.

**Deleted:** (a) land disturbing activities with a disturbed area equal to or greater than 5,000 square feet but less than one (1) acre which are not part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one (1) acre; and ¶  
 ¶  
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 ¶  
 ¶  
 (b)

**Deleted:** one (1) acre

**Deleted:** one (1) acre

**Comment [tem7]:** 11/29/11 Meeting: This was adjusted to reflect the changes throughout the permitting process. The State requires a one (1) acre minimum but that is not reasonable given the City's typical lot sizes.

**Deleted:** one (1) acre.

An applicant for a Land Disturbance Permit must meet the standards set forth in the version of the Storm Water BMP Design Manual in effect at the time a complete Land Disturbance Permit Application is submitted to the Storm Water Division.

**Sec. 21-43. Land Disturbance Permit Application Process.**

Unless exempted under Section 21-40(b) of the Article, all construction activities that result in land disturbing activities with a disturbed area equal to or greater than 5,000 square feet or part of a larger common plan of development or sale with any proposed disturbance cumulatively equal to or greater than 5,000 sq.ft. shall require a Land Disturbance Permit issued by the Director. An applicant for a Land Disturbance Permit shall submit a Land Disturbance Permit Application, Notice of Intent, SWPPP, and checklist for review by the Storm Water Division. If the City feels it necessary, a jurisdictional determination issued by the US Army Corps of Engineers and approved mitigation plan may be required for project approval. The SWPPP must meet the requirements of S.C. Regulation 72-300 *et seq.* and standards specified in the Storm Water BMP Design Manual.

It shall be the responsibility of the applicant (property owner, lessee or person responsible for land disturbing activities) to provide a complete Land Disturbance Application Package that meets all the requirements of this Article, the SWMP, the Storm water BMP Design Manual, and State and Federal regulations. The Land Disturbance Application Package shall include proof of any required training or certification. The Land Disturbance Permit Application Package and review requirements can be found on the City's storm water website. A Land Disturbance Permit must be issued prior to any grading, construction, or land disturbing activities. The City may require bonds or performance securities, at their discretion, for all applications of land disturbance. No Land Disturbance Permit will be issued until DHEC grants coverage under the NPDES General Permit for Large and Small Construction Activities, if applicable.

**Sec. 21-44. Maintenance, Construction, Inspection, and Notice of Termination (NOT) for Activities Authorized under a Land Disturbance Permit**

Proposed installation and long-term maintenance of a storm water management system is critical for the achievement of its purpose of controlling storm water runoff quantity and quality and the short-term and long-term public health, safety and general welfare of the citizens of the City.

- (a) A permanent maintenance agreement and plan for the storm water management system shall be included in the SWPPP. As part of the maintenance plan, the property owner or lessee of such structure or control shall specifically agree to be responsible for permanent maintenance. In order to transfer maintenance responsibility, a letter of acceptance by the new owner(s) accepting permanent maintenance responsibility shall be filed, along with any proof of required training or certification, with the Storm Water Division.
- (b) As part of the Land Disturbance Permit Application, the applicant shall submit construction and BMP maintenance and inspection schedules. Required and recommended schedules for BMP maintenance and inspection shall be provided in the Storm Water BMP Design Manual.

- (c) If the construction is to be phased, no construction stage work of a phase which includes the installation of storm water management structures or controls shall commence until the preceding phase of work is completed in accordance with the approved Land Disturbance Permit and SWPPP.
- (d) The permittee shall notify the Director before commencing any work to implement the approved Land Disturbance Permit and SWPPP and upon completion of any phase or designated component of the site. The contractor and/or owner shall hold a pre-construction conference with Storm Water Division staff a minimum of 48-hrs prior to the commencement of work as outlined in permit approval. All self-inspections, maintenance actions, BMP replacements, co-permittee agreements and changes to the approved Land Disturbance Permit and SWPPP shall be documented and maintained on-site from the commencement of any work until such time as the NOT is processed.
- (e) The permittee shall notify the Storm Water Division when the site or portion of the site is sufficiently stabilized to begin the NOT process. If portions of the site are to be completed prior to others (e.g., phased construction), a proposed schedule shall be included in the approved Land Disturbance Permit. The NOT process shall at a minimum require:
  - (1) a final plat showing the location of all storm water easements and responsible party for the maintenance of the system. The plat shall also show conflicts with other new or existing easements and tracking of GPS coordinates for all storm water structures. References shall be made to any and all owners and lessees. Any covenants established to ensure the maintenance and long-term functioning of the storm water system must be recorded with the Register of Deeds for Richland County;
  - (2) documentation of project completion from the owner of the approved Land Disturbance Permit, including any revisions and as-built construction drawings, inspection reports and storm water system ownership transfers;
  - (3) verification that all components of the storm water management system meet the approved Land Disturbance Permit and SWPPP specifications or achieve the function for which they were designed. In addition, the site shall be cleared of all construction trash and debris from the storm water system and the site as a whole;
  - (4) a maintenance plan and maintenance agreement accepting responsibility for permanent maintenance of post-construction storm water control measures, if different from the agreement submitted during the review process;
  - (5) the permittee to pay in full all outstanding fees, penalties, fines, judgments, awards, and/or costs, if incurred pursuant to this Article; and
  - (6) a final inspection conducted by the Storm Water Division.
- (f) Permit Notice of Termination (NOT) procedures shall be developed by the Storm Water Division and shall include inspection procedures to assure that the work has been carried out in accordance with the permit and this Article. The project NOT process may include phasing so that portions of a project can be closed out at various time periods, provided that the

necessary documentation is submitted for approval. This process and required documentation are detailed in the storm water website.

- (g) The NOT process must be finalized by the Storm Water Division prior to:
  - (1) the use or occupancy of any newly constructed components of the site.
  - (2) final acceptance of any road for maintenance or designation of road owner and associated storm water management system.
  - (3) release of any bond held by the City in connection with the Development or any construction on the site.
  - (4) approval and/or acceptance for recording of a final plat for a subdivision of property pursuant to Section 17-492 of the City Code.

**Sec. 21-45. Ownership and City Participation.**

- (a) Unless City ownership is established prior to the amendment of this Article, all storm water management systems and facilities located on any property within the City's jurisdiction shall be privately owned and maintained unless the Director accepts the controls or structures for City ownership and maintenance. The City of Columbia owns or has legal access for purposes of operation, maintenance, and improvement of those systems and facilities which:
  - (1) Are located within public streets, rights-of-way, and easements;
  - (2) Are subject to easements, rights-of-entry, rights-of-access, rights-of-use, or other permanent provisions for adequate access for operation, maintenance, and/or improvement of systems and facilities; or
  - (3) Are located on public lands to which the city has adequate access for operation, maintenance, and/or improvement of systems and facilities.
- (b) The City reserves the right to accept or refuse ownership and maintenance of all or part of a storm water system on any property not owned by the City.
- (c) Privately-owned storm water management systems and facilities shall be maintained in accordance with the design and procedures set forth in the approved land disturbance plans.
- (d) A property owner or lessee may hire or contract others to perform necessary maintenance actions, but the City will hold the property owner or lessee as the responsible party should legal actions be necessary. The person(s) performing said work must be able to produce proof of any required trainings meeting NPDES MS4 Permit conditions.
- (e) The City shall have the right, pursuant to the authority of this Article, for its designated officers and employees to enter upon private property and public property owned by other than the City, upon reasonable notice to the owner thereof, to inspect the property and conduct surveys and engineering tests thereon in order to assure compliance with this Article.

- (f) When the Storm Water Division determines that additional storage capacity or pollution reduction for on-site storm water management is necessary in order to meet NPDES MS4 Permit conditions, to enhance or provide for the public health, safety and general welfare, to correct existing water quantity and quality problems or to provide protection for future development, the City may require additional storm water controls that may include additional storage or treatment capacity.
- (g) It is the express intent of this Article to protect the public health, safety, and welfare of all properties and persons in general, but not to create any special duty or relationship with any individual person or to any specific property within or outside the boundaries of the City. The City expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon the City, its officers, employees and agents arising out of any alleged failure or breach of duty or relationship as may now exist or hereafter be created.
- (h) To the extent any permit, plan approval, inspection or similar act is required by the City as a condition precedent to any activity or change upon property not owned by the City, pursuant to this or any other regulatory ordinance, regulation, or rule of the City or under federal or state law, the issuance of such permit, plan approval, or inspection shall not be deemed to constitute a warranty, express or implied, nor shall it afford the basis for any action, including any action based on failure to permit or negligent issuance of a permit, seeking the imposition of money damages against the City, its officers, employees, or agents.

**Sec. 21-46. Watercourse Protection**

Every person owning property through which a watercourse passes, or such person's lessee(s), shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation (other than that which is required by water quality buffers), and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner(s) or lessee(s) shall maintain existing privately owned structures within or directly adjacent to a watercourse, so that such structures will not become a hazard to the use, function or physical integrity of the watercourse.

Impaired waters are those waters not meeting State water quality standards as defined by Section 303(d) of the Federal Clean Water Act. Every two years, states are required to submit a list of impaired waters to the United States Environmental Protection Agency (U.S. EPA) for approval. These waters are then added to the 303(d) List of Impaired Waters. For sites that have Stormwater discharges to a receiving water that is listed as impaired on South Carolina's 303(d) List of Impaired Waters, it shall be determined if your discharge will contain the pollutant(s) of concern and if so, carefully evaluate the selected BMP's and their performance to ensure that Stormwater discharges will not contribute to or cause a violation of water quality standards. If the project disturbs 25 acres or more, the SWPPP must have written quantitative and qualitative assessment that the BMP's selected will control the Stormwater discharges so that they will not contribute to or cause a violation in water quality standards.



To assist in the compliance with State and Federal laws and regulations, the Storm Water Division may develop special protection areas which require additional control of storm water quality and quantity than provided by minimum design standards. Such areas may consist of watersheds corresponding to adopted TMDLs, known flooding problems and pollution impairments, or other areas necessary to protect, maintain, and enhance water quality and the environment of the City and the public health, safety, and general welfare of the citizens of the City. These areas can be expected to change with time as development continues and federal and state law demands.

The City Storm Water Division shall be responsible for the identification and preparation of studies that outline potential problems areas. These studies may result in the implementation of additional requirements to meet or exceed the dynamic needs of the area with respect to water quality. The City shall allow individuals and/or groups to submit a request for consideration of a study for a special protection area. These requests will be weighed against other requests and existing City priorities (watershed requirements, emergency mitigation, priority areas, etc.). As protection areas are identified for study, public input will be included in the process. Once the area has been studied, problems identified, and solutions determined, special provisions may be adopted through the Storm Water Management Design Manual and other means.

New storm water systems created as the result of any new and significant re-development project shall be connected to the existing drainage system in a manner so as not degrade the integrity of the existing system, whether natural or manmade, and shall have demonstrated this to the Storm Water Division prior to issuance of the NOT. Discharge points shall be confined to connections with an existing natural or man-made drainage system. When storm water discharges are to flow into collection systems not owned and maintained by the City, the owners of all such systems, private or public, shall be notified and provided the opportunity to review such plans. The owners of these systems shall maintain the right to disapprove connections to their system. Private systems shall include all those on private property, including private ponds. Ponds built inline with waters of the State are not included as private systems, but instead protected by this Article as any other water of the State.

Additionally, water quality buffers are required along all jurisdictional waters and non-jurisdictional wetlands as identified by the US Army Corps of Engineers (USACE). Buffers are most effective when Stormwater runoff is flowing into and through the buffer zone as shallow sheet flow, rather than concentrated flow such as channels, gullies or wet weather conveyances. Buffers shall be considered a “no disturb zone” along waters and wetlands identified by the USACE.. Vegetation cannot be disturbed, removed or replanted unless a buffer restoration plan has been approved by the Storm Water Division. The function of the buffer is to protect the physical and ecological integrity of the water, to reduce flooding potential and to filter runoff from all development. Variances and appeals may be granted under the provisions set forth in Section 21-60 of this Article. The BMP Manual shall be the reference for all design requirements related to water quality buffers.

**Comment [tem8]:** Per 12/6 meeting comments: Buffer language needed to be beefed up within the body of the ordinance for individuals to feel comfortable with the City's enforcement of the design requirements and regulations.

**Sec. 21-47. Notification of Spills**

Notwithstanding other requirements of law, as soon as any person responsible for a property, facility or its operation and maintenance, or responsible for emergency response for a property, facility or operation has information of any known or suspected release of non-storm water materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm

drain system or Waters of the State, said person shall take all necessary steps to ensure the discovery, containment and cleanup of such release. The person shall also take immediate steps to ensure no recurrence of the discharge. In the event of such a release of materials containing or comprised of pollutants, including but not limited to oils, greases, engine fluids and fuels, chemicals, herbicides and pesticides, and fertilizers, said person shall immediately notify all necessary agencies. This shall include the Columbia Fire Department and Stormwater Hotline. Notifications shall be confirmed by written notice addressed and mailed to the Storm Water Division within five (5) business days of the spill event. In the event of a release of materials regardless of pollutant content, said person shall record an on-site written record of the spill. The owner or operator of such establishment shall retain an onsite written record of any and all spills that will include information on cleanup measures taken and the actions to prevent its recurrence. Such records shall be retained for at least five (5) years. Failure to provide notification of a release as provided above is a violation of this Article.

The owner, operator or other designated responsible party will bear all costs of cleaning up any spills. In the event that the City cleans up a spill, the owner, operator or designated responsible party will be required to reimburse the City for funds used in the clean-up.

Notification under this Section is in addition to any notification required under state or federal law, including, but not limited to, Section 304 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001 *et seq.*, and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*

#### **DIVISION 4 – DETECTION AND REMOVAL OF ILLICIT CONNECTIONS AND DISCHARGES AND IMPROPER DISPOSAL**

##### **Sec. 21-48. Illicit Connections, Illicit Discharges and Improper Disposal**

(a) It shall be unlawful for any person to connect any pipe, open channel or any other conveyance system that discharges anything except storm water or unpolluted water, which is approved by the Storm Water Division, into receiving waters.

(b) It shall be unlawful for any person to continue the operation of any such illicit connection regardless of whether the connection was permissible when constructed. Improper connections in violation of this Ordinance must be disconnected and redirected, if necessary, to the satisfaction of the Storm Water Division and any other federal, state or local agencies or departments regulating the discharge.

(c) It shall be unlawful for any person to throw, drain, run or otherwise discharge to any component of the City of Columbia MS4 or to the Waters of the State or to cause, permit or allow to be thrown, drained, run or allow to seep or otherwise discharge into such system or receiving water all matter of any nature excepting only such storm or surface water as herein authorized.

(d) The following discharges are exempt from the provisions in (a), (b) and (c) above unless the Storm Water Division determines such discharge to be a significant source of pollution:

- (1) Unpolluted industrial cooling water, but only under the authorization and direction of the Storm Water Division and appropriate NPDES permit.
- (2) Water line flushing performed or required by a government agency, diverted stream flows, rising ground waters, unpolluted pumped ground waters, and unpolluted ground water infiltration.
- (3) Discharges from portable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual car washing, residential pool backwashing, flows from riparian habitats and wetlands, and street wash water.
- (4) Discharges or flows from fire fighting.
- (5) Other unpolluted water.

(e) In the event of an accidental discharge or an unavoidable discharge to the City of Columbia MS4 of any pollutant, the person who caused the unanticipated discharge or the owner of the property on which the discharge originated shall inform the Storm Water Division as soon as possible, but not to exceed 24 hours, of the nature, quantity and time of occurrence of the discharge. The person who caused the accidental discharge and the owner of the property on which the discharge originated shall take immediate steps to contain the discharge, properly dispose of the contained material, and take such other actions as necessary to minimize the effects of the discharge on the MS4 and receiving waters. The person who caused the accidental discharge and the owner of the property on which the discharge originated shall also take immediate steps to prevent a recurrence of the discharge.

**Sec. 21-49. Detection of Illicit Connections and Improper Disposal.**

- (a) The Storm Water Division shall take appropriate steps to detect and eliminate illicit connections to the City of Columbia MS4, including the adoption of a program to screen illicit discharges and identify their source or sources, perform inspections, and levy fines if not removed.
- (b) The Storm Water Division shall take appropriate steps to detect and eliminate illicit discharges and improper disposal into the City of Columbia MS4. These steps may include programs to screen for illicit discharges and programs to provide for public education, public information, and other appropriate activities to facilitate the proper management and disposal of used oil, toxic materials and household hazardous waste.

**Sec. 21-50. Waste Disposal Prohibitions.**

Waste collection / disposal shall be performed in accordance with city ordinance Chapters 8 and 19. No material shall be deposited in or on a storm drainage conveyance structure, including inlets, ditches, and waters of the US or State.

**Comment [tem9]:** 11/29/11 Meeting: This was re-evaluated and changed to meet the current solid waste requirements as the proposed language was misleading/confusing.

**Deleted:** No person shall throw, deposit, leave, maintain, keep or permit to be thrown, deposited, left or maintained in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system, or water of the U.S., any refuse, rubbish, garbage, litter, yard debris, pet fecal matter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Yard debris, including natural foliage, may be deposited in the public right of way but not in or on any storm water conveyance structures, including inlets and gutters, but only if a collection service is available. Wastes in proper waste receptacles may be placed in the street for collection, but again only if collection by or through the City is in place.

**Sec. 21-51. Industrial or Construction Activity Discharges.**

Any person subject to an industrial or construction activity NPDES storm water discharge permit or Land Disturbance Permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Storm Water Division prior to issuance of a building permit and/or allowing discharges to the City of Columbia MS4.

**Sec. 21-52. Monitoring of Discharges and Inspections.**

(a) This section applies to all facilities that have storm water discharges associated with industrial activity, including any construction site subject to an NPDES or Land Disturbance Permit.

(b) The Storm Water Division shall have the right to enter and inspect facilities subject to regulation under this Article as often as may be necessary to determine compliance with this Article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Storm Water Division.

(c) Facility operators shall allow the Storm Water Division ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit or Land Disturbance Permit, including those for controlling the contributions of pollutants from industrial facilities and for prohibiting illicit discharges and to verify that industries that are discharging storm water to the City of Columbia MS4 are in compliance with their general or individual NPDES storm water permit at or above standard design criteria requirements.

(d) The Storm Water Division shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

(e) The Storm Water Division has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

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

(g) Unreasonable delays in allowing the Storm Water Division access to a permitted facility is a violation of a storm water discharge permit and of this Article. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the Storm Water Division reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Article.

(h) Upon refusal by any property owner to permit an inspector to enter or continue an inspection, the inspector shall terminate the inspection or confine the inspection to areas concerning which no objection is raised. The inspector shall immediately report the refusal and the grounds to the Director.

(i) If the Storm Water Division has been refused access to any part of the premises from which storm water is discharged and is able to demonstrate probable cause to believe that there may be a violation of this Article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Article or any permit issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Storm Water Division may seek issuance of a search warrant from a court of competent jurisdiction. In the event that the Storm Water Division reasonably believes that discharges from the premises into the City of Columbia MS4 may cause an imminent and substantial threat to human health or the environment, the inspection may take place at any time and without notice to the owner of the property or a representative on site. The inspector shall present proper credentials upon reasonable request by the owner or representative.

(j) At any time during the conducting of an inspection or at such other times as the Storm Water Division may request information from an owner or representative, the owner or representative may identify areas of its facility or establishment, material or processes which contains or which might reveal a trade secret. If the Storm Water Division has no clear and convincing reason to question such identification, all material, processes and all information obtained within such areas shall be conspicuously labeled "CONFIDENTIAL – TRADE SECRET." The trade secret designation shall be freely granted to any material claimed to be such by the owner or representative so long as there is clear and convincing evidence for such a designation. In the event the Storm Water Division does not agree with the trade secret designation, the material shall be temporarily designated a trade secret and the owner or representative may request an appeal of the Storm Water Division's decision in the manner in which all such appeals are handled in this Article. Designation as trade secret shall not be grounds for denying inspection, but all information gathered during such an inspection will be treated as per Sec. 21-52(k).

(k) All trade secret material which are prepared or obtained by or for the Storm Water Division shall be marked as such and filed in a secure place separate from regular files and documents. Reports from samples prepared or obtained by or for the Storm Water Division or submitted for laboratory analysis shall be marked as such and treated in the same manner as other trade secret material. Trade secret material shall not be divulged by the Storm Water Division to anyone other than (1) other employees of the City or employees of the State or Federal governments engaged in an inspection or enforcement proceeding involving the designated material and (2) to administrative or judicial courts upon order to so divulge the material to the court.

## **DIVISION 5 – ENFORCEMENT, PENALTIES, AND ABATEMENT**

### **Sec. 21-53. Violations.**

(g) Upon determination that a violation of any of the provisions of this Article has occurred, the Storm Water Division may give written notice to the violator within five (5) business days. This notice shall specify: the nature of the violation, the findings of fact, and the deadline within which to correct deficiencies and/or restore the affected property, if appropriate. It shall be sufficient notification to deliver the notice to the property owner and/or operator via the United States Mail, properly stamped, certified and addressed to the address used for notice of taxes on the subject property by the Richland County Auditor or Lexington County Auditor.

(b) Pursuant to the authority conferred upon the City by the South Carolina Constitution, the South Carolina General Assembly and in compliance with the requirements of the NPDES MS4 Permit, the Storm Water Division is authorized to develop and adopt additional policies, criteria, and processes for enforcement procedures as outlined in the Storm Water Enforcement Manual. The Manual may be updated periodically by the Storm Water Division. The most current version shall be used by the City of Columbia for enforcement procedures.

**Sec. 21-54. Civil Penalties.**

Any person violating any of the provisions of this Article, or any rule or regulation, permit or condition, final determination or order of the Storm Water Division, shall be subject to a civil penalty not more than one thousand dollars (\$1,000) for each violation. Each separate day of a violation constitutes a new and separate violation. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, a civil action may be filed on behalf of the city in the circuit court to recover the full amount of the penalty.

**Sec. 21-56. Corrective Action.**

(a) In the event that a violation of this Article has not been corrected within the applicable time period for correction, the City, or its contractor, may enter upon the lot or parcel of land and correct the violation, and the costs incurred as a result of such action (including inspection, administration, labor and equipment costs) shall be collected either from the performance security, if in place and sufficient to cover such costs, from the property owner, or shall become a lien upon the property and shall be collected in the same manner as City taxes are collected.

(b) The Storm Water Division is authorized to develop and adopt additional policies, criteria, and processes for alternative enforcement procedures as outlined in the Storm Water Enforcement Manual.

**Sec. 21-57. Stop Work.**

(a) Any person who shall proceed with any work which requires a Land Disturbance Permit hereunder without first submitting a SWPPP and obtaining a Permit or who is operating under an expired Permit, where applicable, shall have automatically placed on the subject property a stop work order, pay to City double the normal amount of applicable performance securities and fees, and payment of any other applicable penalties, prior to lifting of the stop work order.

(b) Any person found in violation of the terms of this Article shall also be subject to a stop work order as deemed necessary by the Storm Water Division. In addition to any requirements from Sec. 21-57(a), such persons shall be required to correct such violations as required by Sec. 21-57(c).

(c) The stop work order may allow or require work necessary for the correction of violations, but no other activities related to the project. Any person in violation of a stop work order is subject to impoundment of any and all equipment on the property, and payment of all fees, performance securities, penalties and payment of impoundment charges prior to retrieving such equipment.

**Sec. 21-58. Permit Suspension and Revocation.**

A Land Disturbance Permit may be suspended or revoked if one or more of the following violations have been committed:

- (1) violations of the conditions of any site development plan approval issued by the City;
- (2) land-disturbing activities not in accordance with the approved SWPPP;
- (3) non-compliance with the potential for notice(s) of violation or stop work order(s); or
- (4) non-compliance resulting in an immediate danger in a downstream area in the judgment of the Storm Water Division.

**Sec. 21-59. Criminal Penalties.**

In addition to any applicable civil penalties, any person who negligently, willfully or intentionally violates any provision of this Article or who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document or files required to be maintained pursuant to this Article or any permit issued pursuant to this Article shall be deemed guilty of a misdemeanor, punishable, upon conviction, in accordance with section 1-5. Each day of a violation shall constitute a new and separate offense.

**Sec. 21-60. Variances and Appeals**

(a) The Storm Water Division shall have the authority to grant variances and exceptions to any of the provisions of this division in response to an application showing undue hardship. These variances shall not be contrary to public interest, where a literal enforcement of the provisions of this Article will, in an individual case, result in undue hardship, so that the spirit of this Article shall be observed, public safety and welfare secured, and substantial justice done.

In granting any variance, the Storm Water Division may prescribe conditions and safeguards in conformity of this Article. A written application for variance shall be submitted demonstrating that:

(i) There are extraordinary and exceptional conditions pertaining to the piece of property;

(ii) These conditions do not generally apply to other property in the vicinity;

(iii) Because of these conditions, the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;

(iv) The fact that property may be utilized more profitably should a variance be granted, may not be considered grounds for a variance;

(v) The Storm Water Division shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is a minimum variance that will make possible the reasonable use of the land, building or structure.

**Comment [tem10]:** Per 12/6 meeting: Concerns about individuals unfairly claiming undue hardship for variances wanted a stronger definition of what constituted an undue hardship. The revised language came from the zoning language already adopted in City Code.

**Deleted:** Such variance or exception must be in harmony with the general purpose and intent of this division.

(vi) The Storm Water Division shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare;

(vii) The Storm Water Division may prescribe a time limit within which the action for which the variance is requested shall be begun or completed, or both.

(b) Violations of conditions and safeguards prescribed in conformity with this Article, when part of the terms under which the variance is granted, shall be deemed a violation of this Article, punishable under penalties established in this Article. Failure to begin or complete, or begin and complete, an action for which a variance is granted, within the time limit specified, when such time limit is made a part of the terms under which the variance is granted, shall void the variance.

**Comment [tem11]:** This language was taken directly from 17-112, 113 with respect to Zoning variances. This was requested specifically at the 12/6/11 meeting.

(c) Any person aggrieved by any decision of the Storm Water Division under this Article may appeal to the City Engineer. An appeal under the provision must be filed in writing with the City Engineer within 30 days of the decision being mailed or delivered to the person aggrieved and must state the reasons for the appeal.

**Deleted:** b

(d) Using information provided by the appellant, the City Engineer (or his or her designee) shall conduct a technical review of the decision and respond to the appeal in writing within 30 days.

**Deleted:** c

(e) A decision of the City Engineer that is adverse to an appellant may be further appealed to the City Manager or his or her designee within 30 days of the adverse decision. Notice of the appeal shall be delivered to the City Manager or his or her designee by the appellant, stating the grounds for further appeal. The City Manager or his or her designee shall issue a written decision on the appeal within 30 days. All decisions by the City Manager or his or her designee shall be served on the appellant personally or by registered or certified mail.

**Deleted:** d

**DIVISION 6 – CHARGES AND FEES**

**Sec. 21-61. Field Inspection and Plan Review.**

Fees associated with the plan review of land development construction documents and inspections will be assessed via the schedule below. The revision of such fees shall be approved by the City Council.

Area of Land Disturbance	Fee
5,000 square feet – 1 acre	\$150 flat fee + \$50/month inspection fee <sup>1</sup>
1 – 10 acre(s)	\$300 flat fee + \$50/month inspection fee <sup>1</sup>
10+ acres	\$500 flat fee + \$50/month inspection fee <sup>1</sup>
Linear	\$150 flat fee + \$50/month inspection fee <sup>1</sup>
Project Modifications <sup>2</sup>	\$100 flat fee per modification submittal



<sup>1</sup> \$50 every month beginning the second month of land disturbance activities and ending on the date a Notice of Termination (NOT) is approved in accordance with Sec. 21-44. One invoice shall be sent to the permittee for all monthly fees, following NOT approval. For the purpose of invoicing, one month shall equal 30 days, and any remainder less than 30 days shall not be invoiced.

<sup>2</sup> For Major Project Modifications that will affect hydrology calculations, a change or addition in point discharge location, and/or the addition of impervious or disturbed area.