

Sec. 17-10. - Maintenance and repair of stormwater facilities—Post-construction stormwater management in new development and redevelopment.

- (a) *Maintenance easement—Tier 1 developments.* Prior to the issuance of a tier 1 permit, the owner of the site must agree to a maintenance easement that runs with the land and provides the city all authority required to monitor and enforce BMPs. If the land is to be subdivided, the maintenance easement shall be identified on the subdivision plat recorded in the records of the probate judge for the county. The easement shall provide for access to the property at reasonable times for periodic inspection by the city, and for regular or special assessments of property owners to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this division. Any stormwater easement agreement that does not appear on a subdivision plat shall be recorded in the records of the probate judge for the county.
- (b) *Maintenance covenants—Tier 1 developments.* Maintenance of all stormwater management BMPs shall be ensured through the creation of a formal maintenance covenant that must be approved by the city and recorded in the records of the probate judge for the county, prior to final plan approval. The covenant shall include a schedule for routine maintenance checks, and periodic inspections in a frequency sufficient to assure the proper performance of the BMPs. Maintenance and inspection shall be the responsibility of the property owner.

In the event the stormwater BMPs fail to perform effectively, the parties may amend the maintenance covenants by written amendment recorded in the records of the probate judge for the county.

- (c) *Records of installation and maintenance activities.* Parties responsible for the operation and maintenance of a stormwater management BMPs shall make records of the installation and of all maintenance and repairs and shall retain the records for at least five (5) years. Inspections shall be completed by a QCI or QCP. These records shall be submitted to the city engineer annually on January 1 or such other date designated by the city engineer. In the event the responsible party fails to provide the annual records, city officials may conduct an inspection of the property. The fee for said inspection shall be five hundred dollars (\$500.00) or the actual cost of inspection, whichever is greater.
- (d) *Failure to maintain practices.* If a responsible party fails or refuses to meet the requirements of the maintenance covenant, the city, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to restore or repair the BMPs. In the event that the stormwater run-off becomes a danger to public safety or public health, the city shall notify the party responsible for maintenance of the BMPs in writing. Upon receipt of that notice, the responsible person shall have fifteen (15) days to correct the deficiency in an approved manner depending upon the severity and nature of the violation. After proper notice, the city may assess the owner(s) of the facility for the cost of repair work and any penalties; and the cost of the

work shall be a lien on the property, or prorated against the beneficial users of the property, and may be collected as a municipal lien in accordance with the procedures applicable to the abatement of public nuisances.

(e) *Unauthorized discharge prohibited and declared a public nuisance.*

- (1) *Unauthorized discharges prohibited.* Any discharge of stormwater made in violation of this division or of any condition of a tier 1 land disturbance permit issued or maintenance covenant, see section 17-10(b), entered pursuant to this division is prohibited and is hereby declared a public nuisance subject to correction and/or abatement in accordance with applicable law.
- (2) *Exceptions.* Discharges from the following activities will not be considered a source of pollutants to the MS4 and to waters of the United States and waters of the state when properly managed to ensure that no potential pollutants are present:
 - a. Discharge from emergency fire-fighting activities;
 - b. Water used to control dust, as long as no runoff is generated;
 - c. Potable water including uncontaminated water line flushing not associated with hydrostatic testing;
 - d. Routine external building wash down associated with construction that does not use detergents;
 - e. Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spill material has been removed) and where detergents are not used;
 - f. Uncontaminated air conditioning or compressor condensate associated with temporary office trailers and other similar buildings;
 - g. Uncontaminated ground water or spring water;
 - h. Foundation or footing drains where flows are not contaminated with process materials such as solvents.
- (4) Except for emergency discharges noted above, allowable discharges shall not allow sediment to wash off-site and into the MS4 and waters of the United States.
- (5) The prohibition shall not apply to any stormwater discharge permitted under an NPDES permit, waiver or order issued to the discharger and administered under the authority of the ADEM or EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations.

(f) *Accidental discharges.*

- (1) Release of hazardous materials. In the event of any discharge of a hazardous substance or a significant spill of a hazardous substance to the MS4 which could constitute a threat to human health or the environment, the premises owner or operator of the premises shall immediately notify emergency response agencies of the occurrence via emergency dispatch services (911)

and shall also notify the city 311 operator by phone or e-mail as soon as possible but not later than twenty-four (24) hours from the date and time of the release as to the occurrence of and the quantity of the release.

- (2) Release of non-hazardous materials. In the event of a release of non-hazardous materials to the MS4, said person shall notify the fire department and the city 311 operator by phone or e-mail as soon as possible but no later than twenty-four (24) hours from the date and time of the release as to the occurrence of and the quantity of the release.
- (3) The owner or operator of property on which a release identified in paragraph (1) or (2) above occurs, shall take all necessary steps to ensure the discovery, containment and cleanup of such spill so as to minimize any adverse impact to the waters of the state and waters of the United States caused by discharges to the MS4, including such improved or additional monitoring as may be necessary to determine the nature and impact of the discharge. Absent a compelling public interest to the contrary, it shall not be a defense for the owner or operator in an enforcement action that it would have necessary to halt or reduce the business or activity of the site, or any project or facility thereon, to maintain water quality and minimize any adverse impact that the discharge may cause.

Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the city engineer within three (3) business days of date of the phone or in person notice.

- (4) Failure to provide notification of a release as provided above is a violation of this division.
- (g) *Immediate threats to public health, welfare or the environment.* Notwithstanding any other provision in this division to the contrary, in the event of an immediate threat to the public health or welfare, the city may take all appropriate measures to remove or alleviate such threat.

(Ord. No. 17-013-2020, 5-19-20)