



CITY OF WAUWATOSA
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COMMON COUNCIL
Regular Meeting, Tuesday, September 7, 2010

PRESENT: Aids. Meaux, Nikcevich, Organ, Walsh, Wilke, Wilson, Berdan, Birschel, Causier, Donegan, Ewerdt, Hanson, Jay, McBride -14

EXCUSED: Ald. Pantuso

ALSO PRESENT: Mr. Archambo, City Administrator; Ms. Aldana, Asst. City Attorney; Mr. Braier, Finance Director; Mr. Kappel, Public Works Director; Ms. Welch, Community Development Director; Police Chief Weber; Ms. Enders, Economic Development Director; Mr. Wojcehowicz, Water Utility Supt.; Ms. Ledesma, City Clerk; Ms. Van Hoven, Deputy City Clerk

Mayor Didier in the Chair

The Mayor called the meeting to order at 7:52 p.m.

The Mayor and Common Council President Meaux recognized the Kiwanis Club of Wauwatosa for its donation towards the purchase of the scoreboard at Hart Park. Messrs. Andy Barnes, Bob Reinhardt, and Gary Krueger were present on behalf of the Club.

It was moved by Ald. McBride, seconded by Ald. Organ that the reading of the minutes of the last regular meeting be dispensed with and they be approved as printed. -14

PUBLIC HEARING

The first order of business was a public hearing to consider the rezoning of property at 6900 W. State Street from AA Light Manufacturing District to AA Business District.

Proof of publication is in the file.

In a meeting held on July 12, 2010, the City Plan Commission recommended approval of the request.

Jeffrey Metz, the developer, was present in favor of the proposed rezoning.

Kathy Ehley, 7437 Kenwood Avenue, present on behalf of the Village Business Improvement District, expressed support for the proposal, noting that this is an appropriate use for the location.

No one of the public present wished to be heard in opposition to the proposed rezoning.

No one of the public present wished to be heard either for or against the proposed rezoning or had any comments or questions.

The public hearing was declared closed. Ordered re-referred to the next Community Development Committee meeting on September 14, 2010.

PUBLIC HEARING

The second public hearing was to consider the two following proposed ordinances:

ORDINANCE

AN ORDINANCE REPEALING AND RECREATING CHAPTER 24.57 OF THE WAUWATOSA MUNICIPAL CODE PERTAINING TO CONSTRUCTION SITE EROSION CONTROL

The Common Council of the City of Wauwatosa do hereby ordain as follows:

Part I. Chapter 24.57 of the Wauwatosa Municipal Code is hereby repealed in its entirety and recreated to read as follows:

CHAPTER 24.57 CONSTRUCTION SITE EROSION CONTROL

24.57.010 Authority.

A. This section is adopted under the authority granted by s. 62.234, Wis. Stats. for cities. This section supersedes all provisions of a section previously enacted under s. 62.23, Wis. Stats., that relate to construction site erosion control. Except as otherwise specified in the Wisconsin Statutes, s. 62.23, Wis. Stats., applies to this section and to any amendments to this section.

B. The provisions of this section are deemed not to limit any other lawful regulatory powers of the City of Wauwatosa.

C. The engineering services division is authorized and directed to administer all the provision of this section relative to plan examination and the building and safety division is directed to issue permits and enforce all of the provisions of this section.

D. The requirements of this section do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:

1. Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under ss. 281.16 and 283.33, Wis. Stats.
2. Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

24.57.020 Findings and Purpose.

A. Findings.

The City of Wauwatosa finds that runoff from land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state in the City of Wauwatosa.

B. Purpose.

It is the purpose of this chapter to preserve the natural resources; to protect the quality of the water of the state and the city of Wauwatosa; and to protect and promote the health, safety and welfare of the people, to the extent practicable by minimizing the amount of sediment, topsoil and other pollutants carried by runoff or discharged from construction sites to lakes, streams and wetlands.

24.57.030 Applicability and Jurisdiction.

A. Applicability.

1. Except as provided under sub. 2, this chapter is applicable to the following sites of land development or land disturbing activities:

- a. Any land disturbing construction activity of four thousand square feet (4,000 S.F.) or more.
- b. Those requiring a subdivision plat approval or the construction of houses or commercial, industrial or institutional buildings on lots of approved subdivision plats;
- c. Those requiring a certified survey approval or the construction of houses or commercial, industrial or institutional building on lots of approved certified surveys;
- d. Those involving grading, removal of protective ground cover or vegetation, demolition, excavation, land filling or other land disturbing activity affecting a surface area of four thousand square feet or more;
- e. Those involving excavation or filling or a combination of excavation and filling affecting four hundred cubic yards (400 C.Y.) or more of dirt, sand or other excavation or fill material;
- f. Those involving street, highway, road, or bridge construction, enlargement, relocation and reconstruction;
- g. Those involving the laying, repairing, replacing or enlarging of an underground pipe or facility for a continuous distance of three hundred feet (300 FT.) or more; and
- h. Those involving grading, removal of protective groundcover or vegetation, excavation, demolition, landfilling or other land disturbing activity on slopes of twelve percent or more.

2. This chapter does not apply to the following:

- a. Land disturbing construction activity that includes the construction of a building and is otherwise regulated by the Wisconsin Department of Commerce under s. Comm 21.125 or 50.115, Wis. Adm. Code.
- b. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under chapter 40, Code of Federal Regulations, part 122, for land disturbing construction activity.

- c. Nonpoint discharges from agricultural facilities and practices.
- d. Nonpoint discharges from silviculture activities.
- e. Routine maintenance for project sites under 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
- f. Activities conducted by a state agency which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33(2), Wis. Stats.

3. Notwithstanding the applicability requirements in sub. 1, above, this chapter applies to construction sites of any size that, in the opinion of the Department of Public Works, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

24.57.040 Definitions.

- A. “Agricultural facilities and practices” has the meaning in s. 281.16(1), Wis. Stats.
- B. “Agricultural land use” means use of land for planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or yarding of livestock.
- C. “Average annual rainfall” means a calendar year of precipitation, excluding snow, which is considered typical.
- D. “Best management practice” or “BMP” means a practice or combination of practices to control erosion and attendant pollution, as defined in the WDNR Technical Standards.
- E. “Business day” or “Working Day” means a day the Wauwatosa Civic Center is routinely and customarily open for business.
- F. “Cease and desist order” means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit.
- G. “City personnel” or “authorized personnel” means employees or agents of the City of Wauwatosa authorized to implement provisions of this section of the municipal code.
- H. “Construction site” means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger Common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan.
- I. “Division of land” means the creation from one parcel of two or more parcels or building sites of two or fewer acres each in area where such creation occurs at one time or through the successive partition within a 5 year period.
- J. “Erosion” means the process by which the land’s surface is worn away by the action of wind, water, ice or gravity.

- K. “Erosion control plan” or “erosion control plan statement” means a written description of the number, locations, size, and other pertinent information about best management practices designed to meet the requirements of this chapter.
- L. “Erosion and sediment control plan” means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.
- M. “Final stabilization” means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established, with a density of at least 70 percent of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.
- N. “Land development activity” means the construction or demolition of buildings, roads, parking lots, paved storage areas and similar facilities.
- O. “Land disturbing activity” means any manmade change of the land surface including removing vegetation cover, excavating, filling and grading but not including agricultural land uses such as planting, growing, cultivating and harvesting of crops; growing and tending of gardens; and harvesting of trees.
- P. “Land disturbing construction activity” means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.
- Q. “Landowner” means any person holding title to or having an interest in land.
- R. “Land user” means any person operating, leasing, renting or having made other arrangements with the landowner by which the landowner authorizes use of his or her land.
- S. “Maximum extent practicable” or “MEP” means a level of implementing best management practices in order to achieve a performance standard specified in this chapter which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.
- T. “Performance standard” means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
- U. “Permit” means a written authorization made by the City of Wauwatosa to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
- V. “Pollutant” has the meaning given in s. 283.01 (13), Wis. Stats.
- W. “Pollution” has the meaning given in s. 281.01 (10), Wis. Stats.
- X. “Responsible party” means any entity holding fee title to the property or performing services to meet the performance standards of this section through a contract or other agreement.
- Y. “Runoff” means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

Z. "Sediment" means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

AA. "Separate storm sewer" means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:

1. Is designed or used for collecting water or conveying runoff.
2. Is not part of a combined sewer system.
3. Is not draining to a storm water treatment device or system.
4. Discharges directly or indirectly to waters of the state.

BB. "Site" means the entire area included in the legal description of the parcel or other land division on which the land development or land disturbing activity is proposed in the permit application.

CC. "Stabilize" means to make the site steadfast or firm, minimizing soil movement by mulching and seeding, sodding, landscaping, concrete, gravel or other measure.

DD. "Stop work order" means an order issued by the [administering authority] which requires that all construction activity on the site be stopped.

EE. "Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

FF. "Waters of the state" has the meaning given in s. 281.01 (18), Wis. Stats.

24.57.050 Technical Standards.

A. Design Criteria, Standards and Specifications.

All BMPs required to comply with this section shall meet the design criteria, standards and specifications based on any of the following:

1. Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.
2. For this section, average annual basis is calculated using the appropriate annual rainfall or runoff factor, also referred to as the R factor, or an equivalent design storm using a type II distribution, with consideration given to the geographic location of the site and the period of disturbance.

B. Other Standards.

Other technical standards not identified or developed in sub. A, may be used provided that the methods have been approved by the City.

24.57.060 Performance Standards.

A. Responsible Party.

The responsible party shall implement an erosion and sediment control plan, developed in accordance with s. 24.57.070 which incorporates the requirements of this section.

B. Plan.

A written plan shall be developed in accordance with s. 24.57.070 and implemented for each construction site.

C. Erosion and Other Pollutant Control Requirements.

The plan required under sub. B, above, shall include the following:

1. BMPs that, by design, achieve to the maximum extent practicable, a reduction of 80% of the sediment load carried in runoff, on an average annual basis, as compared with no sediment or erosion controls until the construction site has undergone final stabilization. No person shall be required to exceed an 80% sediment reduction to meet the requirements of this paragraph. Erosion and sediment control BMPs may be used alone or in combination to meet the requirements of this paragraph. Credit toward meeting the sediment reduction shall be given for limiting the duration or area, or both, of land disturbing construction activity, or other appropriate mechanism.

2. Notwithstanding par. 1, if BMPs cannot be designed and implemented to reduce the sediment load by 80%, on an average annual basis, the plan shall include a written and site-specific explanation as to why the 80% reduction goal is not attainable and the sediment load shall be reduced to the maximum extent practicable.

3. Where appropriate, the plan shall include sediment controls to do all of the following to the maximum extent practicable:

a. Tracking.

Prevent tracking of sediment from the construction site onto roads and other paved surfaces. Each site shall have graveled roads, access drives and parking areas of sufficient width and length to prevent sediment from being tracked onto public or private roadways. Any sediment reaching a public or private road shall be removed by street cleaning, to the satisfaction of the city, before the end of each workday. Flushing may not be used unless sediment will be controlled by a sediment basin or other appropriate best management practice specified in the WDNR Technical Standards.

b. Site Dewatering.

Prevent the discharge of sediment as part of site dewatering. Water pumped from the site shall be treated by sediment basins or other appropriate best management practices specified in the WDNR Technical Standards. Water may not be discharged in a manner that causes erosion of the site, adjacent sites, or receiving channels.

c. Storm Sewer and Inlet Protection.

Protect all separate storm sewers and storm water inlet structures from receiving sediment. All storm water inlets shall be protected with a straw bale, filter fabric, or equivalent barrier as specified in the WDNR Technical Standards.

d. Waste and Material Disposal.

The use, storage and disposal of chemicals, cement and other compounds and materials used on the construction site shall be managed during the construction period, to prevent their entrance into waters of the state. All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, toxic materials, or hazardous materials) shall be properly disposed and not allowed to be carried off-site by runoff or wind. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this paragraph.

e. Sediment Cleanup.

All off-site sediment deposits occurring as a result of a storm event shall be cleaned up by the end of the next work day. All other off-site sediment deposits occurring as a result of construction activities shall be cleaned up by the end of the work day.

f. Site Erosion Control.

The following criteria (paragraphs (i) through (vi) of this subdivision) apply only to the land development or land disturbing activities that result in runoff leaving the site.

i. Channelized runoff from adjacent areas passing through the site shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected as described in sub. iii(d), below. Sheet flow runoff from adjacent areas greater than ten thousand square feet in areas shall also be diverted around disturbed areas unless shown to have resultant runoff velocities of less than 0.5 ft/sec across the disturbed area for the ten year, twenty-four hour storm as defined in the WDNR Technical Standards. Diverted runoff shall be conveyed in a manner that will not erode the conveyance and receiving channels. For allowable velocities in different types of channels, Soil Conservation Service guidelines shall be followed.

ii. All activities on the site shall be conducted in a logical sequence to minimize the area of bare soil exposed at any one time.

iii. Runoff from the entire disturbed area on the site shall be controlled by meeting sub. (a) and either of subs. (b) or (c), below.

(a) All disturbed ground left inactive for seven or more days shall be stabilized by temporary or permanent seeding, temporary or permanent seeding and mulching, sodding, covering with tarps, or equivalent best management practices. If temporary seeding is used, a permanent cover shall also be required as part of the final site stabilization. Seeding or sodding shall be required as part of the final site stabilization. Seeding or sodding shall be conducted as specified in the WDNR Technical Standards or by the board of public works. Variances from the requirements of this subparagraph may be granted by the building regulations department upon application, but only if the failure to comply is due to extended periods of rain or other construction delays beyond the control of the responsible party.

(b) For sites with ten or more acres disturbed at one time, or if a channel originates in the disturbed area, one or more sediment basins shall be constructed. Each sediment basin shall be designed and constructed as specified in the WDNR Technical Standards.

(c) For sites with less than ten acres disturbed at one time, filter fences, straw bales, or equivalent best management practices shall be placed along all sideslope and downslope sides of the site. If a channel or area of concentrated runoff passes through the site, filter fences shall be placed along the channel edges to reduce sediment reaching the channel.

iv. Sites with slopes of twelve percent or more may require additional or different controls than listed in sub. iii, above. Requirements for such slopes shall be as specified by the board of public works.

v. Wherever possible, soil or dirt storage piles shall be located a minimum of twenty-five feet from any downslope road, lake, stream, wetland, or drainage channel. Straw bale or filter fabric fences shall be placed on the downslope side of the piles. If remaining for more than thirty days, piles shall be stabilized by mulching, vegetative cover, tarps or other means. The board of public works may require additional or different best management practices for piles located closer than twenty-five feet to a road, lake, stream, wetland or drainage channel.

vi. When the disturbed area has been stabilized by permanent vegetation or other means, temporary best management practices such as filter fabric fences, straw bales, sediment and sediment traps shall be removed.

D. Location.

The BMPs used to comply with this section shall be located prior to runoff entering waters of the state.

E. Alternate Requirements.

The City of Wauwatosa may establish storm water management requirements more stringent than those set forth in this section if the City of Wauwatosa determines that an added level of protection is needed for sensitive resources.

24.57.070 Permit Application, Erosion Control Plan, and Permit Issuance.

No landowner or land user may commence a land development or land disturbing activity subject to this chapter without receiving prior approval of an erosion control plan for the site from the Engineering Services Division and a permit from the Building and Safety Division. At least one landowner or land user controlling or using the site and desiring to undertake a land development or land disturbing activity subject to this chapter shall submit an application for an erosion control permit and a control plan and pay a fee, as outlined in the City Consolidated Fee Schedule. By submitting an application, the applicant is authorizing the city or other agent authorized by the city to enter the site to obtain information required for the review of the erosion control plan.

A. Content of the Erosion Control Plan for Land Development and Land Disturbing Activities Covering One or More Acres.

1. Existing Site Map. A map of existing site conditions on a scale of at least one inch equals one hundred feet showing the site and immediately adjacent areas extending at least two hundred feet in each direction:

a. Site boundaries and adjacent lands which accurately identify site location;

- b. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site;
- c. 100-year floodplains, flood fringes and floodways;
- d. Location of the predominant soil types;
- e. Vegetative cover;
- f. Location and dimensions of stormwater drainage systems and natural drainage patterns on and immediately adjacent to the site and the size, slope and land cover of upslope drainage areas, peak discharge, velocities, direction and destination of flows;
- g. Locations and dimensions of utilities, structures, roads, highways and paving;
- h. Site topography at a contour interval not to exceed five feet; and
- i. Name, address and daytime telephone number of the applicant and the person responsible for maintenance of best management practices.

2. Plan of Final Site Conditions.

A plan of final site conditions on the same scale as the existing site map showing the site changes.

3. Site Construction Plan.

A site construction plan including:

- a. Locations and dimensions of all proposed land development and land disturbing activities;
- b. Locations and dimensions of all temporary soil or dirt stockpiles;
- c. Locations and dimensions of all best management practices necessary to meet the requirements of this chapter;
- d. Schedule of anticipated starting and completion dates of each land development or land disturbing activity including the installation of best management practices needed to meet the requirements of this chapter;
- e. Provisions for maintenance of best management practices during construction; and
- f. Description of vegetation and other materials to be used to stabilize the site including a schedule for installation and maintenance.

B. Content of Erosion Control Plan Statement for Land Development and Land Disturbing Activities Covering Less than One Acre.

An erosion control plan statement (with simple map) shall be submitted to briefly describe:

- 1. Property boundaries and area to be disturbed;
- 2. Direction of slopes before and after development;

3. Existing and proposed buildings and other improvements;
4. Size of upslope drainage areas;
5. Development schedule;
6. Best management practices necessary to meet the requirements of this chapter;
7. Description of vegetation and other materials to be used to stabilize the site including a schedule for installation and maintenance; and
8. Name, address and daytime telephone number of the applicant and the person responsible for maintenance of best management practices.

C. Review of Erosion Control Plans.

1. Erosion Control Plans for Sites of One or More Acres of Land Development or Land Disturbing Activity.

Within thirty working days of receipt of the application, control plan, and fee, the board of public works shall review the application and control plan to determine if the requirements of this chapter are met. The board of public works may request comments from other agencies. If the requirements of this chapter are met, the board of public works shall approve the plan, inform the applicant and approve the issuance of a permit. If the conditions are not met, the board of public works shall inform the applicants in writing and may either require needed information or disapprove the plan. Within thirty working days of receipt of needed information, the board of public works shall again determine if the plan meets the requirements of this chapter. If the plan is disapproved, the board of public works shall inform the applicant in writing of the reasons for disapproval.

2. Erosion Control Plans for Sites of Less Than One Acre of Land Development or Land Disturbing Activity.

Within ten working days of receipt of the application, control plan, and fee, the building regulations department shall review the application and control plan statement to determine if requirements of this chapter are met. The building regulations department may request comments from other staff or agencies. If the requirements of this chapter are met, the building regulations department shall approve the plan, inform the applicant and issue a permit. If the conditions are not met, the building regulations department shall inform the applicant in writing and may either require needed information or disapprove the plan. Within ten working days of receipt of needed information, the building regulations department shall again determine if the plan meets the requirements of this chapter. If the plan is disapproved, the building regulations department shall inform the applicant in writing of the reasons for disapproval.

3. No building permit or footing and foundation permit shall be issued for a site subject to this section without an erosion control permit.

D. Erosion Control Permits.

1. Duration.

Erosion control permits shall be valid for a period of one hundred eighty days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance.

The building regulations department may extend the period one or more times for up to an additional one hundred eighty days. The building regulations department may require additional best management practices as a condition of the extension if they are necessary to meet the requirements of this chapter.

2. Surety Bond.

As a condition of approval and issuance of the permit, the city shall require the applicant to deposit a surety bond, irrevocable letter of credit, or cash escrow to guarantee a good faith execution of the approved erosion control plan and any permit conditions.

3. Permit Conditions.

All erosion control permits shall require the permittee to:

- a. Notify the city within two working days of commencing any land development and land disturbing activity;
- b. Notify the city of completion of any best management practices within the next working day after their installation;
- c. Obtain permission in writing from the building regulations department prior to modifying the erosion control plan;
- d. Install all best management practices as identified in the approved erosion control plan;
- e. Maintain all road drainage systems, stormwater drainage systems, best management practices and other facilities identified in the erosion control plan;
- f. Repair any siltation or erosion damage to adjoining surfaces and drainageways resulting from land development or land disturbing activities;
- g. Inspect the BMPs within 24 hours after each rain of 0.5 inches or more which results in runoff during active construction periods, and at least once each week make needed repairs and document the findings of the inspections in a site erosion control log with the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site;
- h. Allow city personnel or other agents authorized by the city to enter the site for the purpose of inspecting compliance with the erosion control plan or for performing any work necessary to bring the site into compliance with the erosion control plan; and
- i. Keep a copy of the erosion control plan on the site.

24.57.080 Fee Schedule.

The fees referred to in this section shall be as established by the City of Wauwatosa and outlined in the City Consolidated Fee Schedule.

24.57.090 Inspection.

If land disturbing construction activities are being carried out without a permit required by this section, an inspector of the City of Wauwatosa may enter the land pursuant to an inspection warrant as provided for in WI. Statutes, ss. 66.0119(1), (2), and (3).

24.57.100 Enforcement.

A. The Building and Safety Division may post a stop-work order if any of the following occurs:

1. Any land disturbing construction activity regulated under this section is being undertaken without a permit.
2. The erosion and sediment control plan is not being implemented in a good faith manner.
3. The conditions of the permit are not being met.

B. If the responsible party does not cease activity as required in a stop-work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the Building and Safety Division may revoke the permit.

C. If the responsible party, where no permit has been issued, does not cease the activity after being notified by the City's Building and Safety Division, or if a responsible party violates a stop-work order posted under sub. A, the Building and Safety Division may request the city attorney to obtain a cease and desist order in any court with jurisdiction.

D. The Building and Safety Division may retract the stop-work order issued under sub. A or the permit revocation under sub. B.

E. After posting a stop-work order under sub. A, the Building and Safety Division may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this section. The Building and Safety Division may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this subsection by the City of Wauwatosa, plus interest at the rate authorized by the City of Wauwatosa shall be billed to the responsible party. In the event a responsible party fails to pay the amount due, the clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to subch. VII of ch. 66, Wis. Stats.

F. Any person violating any of the provisions of this section shall be subject to a forfeiture of not less than \$100.00 nor more than \$1,000.00 and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.

G. Compliance with the provisions of this section may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunction proceedings.

24.57.110 Appeals.

A. Board of Public Works.

The Board of Public Works created pursuant to Wis. Stats, s. 62.14:

1. Shall hear and decide appeals where it is alleged that there is error in any orders, requirements, decisions or interpretations made by the Engineering Services Division or the Building and Safety

Division in administering this section except for cease and desist orders obtained under 24.57.100 C.

2. Upon appeal, may authorize variances from the provisions of this section which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the section will result in unnecessary hardship; and

3. Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.

B. Who May Appeal.

Any person aggrieved by orders, requirements, decisions or interpretations made by the Engineering Services Division or the Building and Safety Division may, within fifteen days from the date of said orders, requirements, decisions or interpretations serve written notice upon the chief building official and file an application of appeal to the Board of Public Works.

24.57.120 Severability.

If a court of competent jurisdiction judges any section, clause, provision or portion of this section unconstitutional or invalid, the remainder of the section shall remain in force and not be affected by such judgment.

Part II. This ordinance shall take effect on and after its date of publication.

ORDINANCE

AN ORDINANCE REPEALING AND RECREATING CHAPTER 24.59 OF THE WAUWATOSA MUNICIPAL CODE PERTAINING TO STORMWATER MANAGEMENT AND ILLICIT DISCHARGES AND CONNECTIONS

The Common Council of the City of Wauwatosa do hereby ordain as follows:

Part I. Chapter 24.59 of the Wauwatosa Municipal Code is hereby repealed in its entirety and recreated to read as follows:

CHAPTER 24.59 STORMWATER MANAGEMENT

24.59.010 Authority.

This ordinance is adopted by the Common Council under the authority granted by Sec. 62.234, Wis. Stats. This ordinance supersedes any ordinance previously enacted relating to stormwater management regulations.

24.59.020 Findings of Fact.

The Common Council finds that uncontrolled runoff has a significant impact upon water resources and the health, safety and general welfare of the community and diminishes the public enjoyment and use of natural resources. Due to capacity limitations of the stormwater and combined sewer systems in the City of

Wauwatosa, reduction of stormwater runoff quantity must be of the highest high priority in the policies of the City of Wauwatosa. Specifically, uncontrolled runoff can:

- A. Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature;
- B. Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants;
- C. Alter wetland communities by changing wetland hydrology and by increasing pollutant loads;
- D. Reduce the quality of groundwater by increasing pollutant loading;
- E. Threaten public health, safety, property and general welfare by overtaxing storm sewers, drainage ways, and other minor drainage facilities;
- F. Threaten public health, safety, property and general welfare by increasing major flood peaks and volumes;
- G. Undermine floodplain management efforts by increasing the incidence and levels of flooding; and
- H. Aggravate excessive infiltration and inflow of water into sanitary sewer connections during peak storm events causing the conveyance system to surcharge, overflow or backup into basements.

24.59.030 Purpose.

This chapter integrates federal and state construction post-construction site stormwater quality standards with duties to reasonably manage the quantity of water run-off for regional flood abatement. This chapter implements the Milwaukee Metropolitan Sewerage District rules on release rates for development creating more than a *de minimis* amount of new impervious surface, to reduce the probability of increased regional floods as the metropolitan area approaches full build-out forecast for 2050.

24.59.040 Applicability.

- A. The water quality management requirements of this Chapter apply to property development disturbing one or more acres.
- B. The water quantity management requirements of this Chapter apply to development that increases impervious surface by one-half (1/2) or more acres.
- C. A site meeting any one of the following criteria is exempt from Stormwater quality requirements.
 - 1. A redevelopment post-construction site with no increase in exposed parking lots or roads.
 - 2. A post-construction site with less than 10% directly connected impervious area (DCIA) based on complete development of the post-construction site, provided the cumulative area of all parking lots and rooftops is less than one acre.
 - 3. Nonpoint discharges from agricultural facilities and practices.

4. Nonpoint discharges from silviculture activities.
5. Routine maintenance for project sites under 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
6. Underground utility construction such as water, sewer and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.

D. Water quantity management requirements do not apply if:

1. The development is exclusively residential, the net increase in the area of impervious surface is less than 20% of the area of the site; and each boundary of the site is contiguous to: sites that contain earlier development served by sanitary sewers, streets, or public water supply at the time the City receives the plans for the new development or parkland; or other public land, a utility right-of-way, or a watercourse; or,
2. Sites where the area of post-construction impervious surface will be 5% or less of the total area of the site;
3. Recreational trails if the trail is less than or equal to 10 feet in width and has a continuous pervious buffer at least 5 feet wide on each side, disregarding interruption by streets, driveways, or other impervious surfaces crossing the trail.
4. Notwithstanding the applicability requirements in paragraph (a), this ordinance applies to a post-construction site of any size that, in the opinion of the Director of Public Works, is likely to result in runoff that exceeds the capacity of the existing drainage facilities or the level of flooding protection in a watercourse that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

E. Comity. State and Federal agencies undertaking projects within the City of Wauwatosa, in the event that such project is not otherwise subject to the provisions of this chapter, should design and incorporate best management practices for surface water quality and stormwater quantity management for new impervious surfaces. The runoff management techniques should be the same as flood abatement plans and techniques utilized elsewhere in the watershed. The lead agency preparing an environmental assessment for a federal or state project shall identify and inform the City of the mitigating runoff management techniques to prevent increases in peak flood flows from new impervious areas.

F. **PERSONS EXEMPTED FROM THE PROVISION OF THIS CHAPTER SHALL, UPON REQUEST, PROVIDE SUCH REASONS IN WRITING TO THE ENGINEERING SERVICES DIVISION. IN SUCH SUBMISSIONS OR EXEMPTION REQUESTS, MAPS AND CALCULATIONS OF CHANGES IN IMPERVIOUS SURFACE AREA OVER THE ENTIRE SITE SHALL BE INCLUDED.**

24.59.050 Definitions.

A. "Average annual rainfall" means a calendar year of precipitation, excluding snow, which is considered typical.

- B. “Best management practice” or “BMP” means structural or non-structural measures, practices, techniques or devices employed to:
1. Avoid or minimize sediment or pollutants carried in runoff to waters of the state or
 2. Manage the rate or volume of runoff.
- C. “Connected imperviousness” means an impervious surface that is not draining to a stormwater treatment device or system and discharges directly or indirectly to a water of the state via an impervious flow path.
- D. “Critical time” means the period starting at the time of peak rainfall intensity with duration equal to the time of concentration of the watershed.
- E. “Design storm” means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.
- F. “Development” means construction of residential, commercial, industrial or institutional land uses and associated roads, including re-development.
- G. “Director of Public Works” means the Director of Public Works for the City of Wauwatosa or a designee of the Director of Public Works.
- H. “Effective infiltration area” means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.
- I. “Erosion” means the process by which the land’s surface is worn away by the action of wind, water, ice or gravity.
- J. “Exceptional resource waters” means waters listed in Sec. NR 102.11, Wis. Adm. Code.
- K. “Final stabilization” means that all land disturbing construction activities at the construction site have been completed and that a uniform, perennial, vegetative cover has been established, with a density of at least 70% of the cover, for the unpaved areas and areas not covered by permanent structures, or employment of equivalent permanent stabilization measures.
- L. “Impervious surface” means any pavement or structural element that prevents rain, surface water runoff, or melting snow from infiltrating into the ground below, including, but not limited to, roofs and paved roads, driveways, and parking lots.
- M. “In-fill area” means an undeveloped area of land located within existing development.
- N. “Infiltration” means the entry of precipitation or runoff into or through the soil.
- O. “Infiltration system” means a device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.

P. “Karst feature” means an area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.

Q. “Land disturbing construction activity” means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non- vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

R. “Maintenance agreement” means a legal document that provides for long-term maintenance of stormwater management practices.

S. “MEP” or “maximum extent practicable” means a level of implementing best management practices in order to achieve a performance standard specified in this ordinance which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.

T. “New development” means development resulting from the conversion of previously undeveloped or agricultural land uses.

U. “Off-site” means located outside the property boundary described in the permit application.

V. “On-site” means located within the property boundary described in the permit application.

W. “Ordinary high-water mark” has the meaning given in Sec. NR 115.03(6), Wis. Adm. Code.

X. “Outstanding resource waters” means waters listed in Sec. NR 102.10, Wis. Adm. Code.

Y. “Percent fines” means the percentage of a given sample of soil, which passes through a # 200 sieve.

Z. “Performance standard” means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

AA. “Permit” means a written authorization made by the Director of Public Works to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

BB. “Pervious surface” means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.

CC. “Pollutant” has the meaning given in Sec. 283.01(13), Wis. Stats.

DD. “Pollution” has the meaning given in Sec. 281.01(10), Wis. Stats.

EE. “Post-construction site” means a construction site following the completion of land disturbing construction activity and final site stabilization.

FF. “Pre-development condition” means the extent and distribution of land cover types present before the initiation of land disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.

GG. “Preventive action limit” has the meaning given in Sec. NR 140.05(17), Wis. Adm. Code.

HH. “Recreational trail” means a path that is:

1. distinctly set apart from a roadway, street, or sidewalk;
2. designed for activities such as jogging, walking, hiking, bird-watching, bicycle riding, roller skating, or similar recreational activities not involving the use of motorized vehicles; and
3. not a sidewalk according to sec. 340.01(58), Wis. Stats.

II. “Regional flood” means the peak flow and peak elevation of water with a one percent (1%) probability of occurring during any one year, considering rainfall time and intensity patterns, rainfall duration, area distribution, antecedent moisture, and snow melt.

JJ. “Redevelopment” means new construction, modification or replacement of older development.

KK. “Responsible party” means any entity holding fee title to the property or other person contracted or obligated by other agreement to implement and maintain post-construction stormwater BMPs.

LL. “Runoff” means stormwater or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

MM. “Site” means the entire parcel included in the legal description of the land on which the land disturbing construction activity occurred.

NN. “Stormwater management plan” means a comprehensive plan designed to reduce the discharge of pollutants from stormwater after the site has undergone final stabilization following completion of the construction activity.

OO. “Stormwater management system plan” is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.

PP. “Technical standard” means a document that specifies design, predicted performance and operation and specifications for a material, device or method.

QQ. “Time of concentration” means the time period for the furthest runoff from the outlet of a watershed to contribute to flow at the watershed outlet.

RR. “Top of the channel” means an edge, or point on the landscape, landward from the ordinary high water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet, landward from the ordinary high water mark, the top of the channel is the ordinary high water mark.

SS. “TR-55” means the United States Department of Agriculture, Natural Resources Conservation Service (previously Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986.

TT. “Type II distribution” means a rainfall type curve as established in the “United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published 1973”. The Type II curve is applicable.

UU. “Water quality management” means the stormwater standards and duties established under the Clean Water Act, 33 U.S.C. 1251 et. seq., parallel Wisconsin laws regulating the discharge of pollutants, and implementing regulations.

VV. “Water quantity management” means stormwater duties and practices to abate peaks flood flows during regional storm events pursuant to Chapter 13 of the Milwaukee Metropolitan Sewerage District rules as implemented and enforced by this municipality.

24.59.060 Technical Standards.

The following methods shall be used in designing the water quality, peak flow shaving and infiltration components of stormwater practices needed to meet the requirements of this ordinance:

- A. Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.
- B. Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the Director of Public Works.
- C. The most recent rainfall data available from the Southeastern Wisconsin Regional Planning Commission or more protective data shall be the basis for the analyses required by this ordinance.

24.59.070 Performance Standards.

- A. **RESPONSIBLE PARTY.** The responsible party shall implement a post-construction stormwater management plan that incorporates the requirements of this section.
- B. **PLAN.** A written stormwater quality and quantity management plan in accordance with Sec. 24.59.090 shall be developed and implemented for each post-construction site.
- C. **REQUIREMENTS.** The water quality plan required under sub. (2) shall include the following:
 - 1. **TOTAL SUSPENDED SOLIDS.** BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows:
 - a. For new development, by design, reduce to the maximum extent practicable, the total suspended solids load by 80%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this subdivision.
 - b. For redevelopment, by design, reduce to the maximum extent practicable, the total suspended solids load by 40%, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this subdivision.

c. For in-fill development subject to the provisions of this chapter that occurs prior to October 1, 2012, by design, reduce to the maximum extent practicable, the total suspended solids load by 40%, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40% total suspended solids reduction to meet the requirements of this subsection.

d. For in-fill development that occurs after October 1, 2012, by design, reduce to the maximum extent practicable, the total suspended solids load by 80%, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80% total suspended solids reduction to meet the requirements of this subsection.

e. Notwithstanding subs. 1. to 4., if the design cannot achieve the applicable total suspended solids reduction specified, the stormwater management plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable.

2. WATER QUANTITY AND MANAGEMENT OF PEAK RUNOFF.

- a. BMPs shall be utilized to manage the volume, timing, and peak flow rate of runoff to prevent increases in the regional flood and stream bank erosion rates.
- b. These BMPs shall be implemented on an individual site basis.
- c. For the 50%/2-year, 24-hour design storm, BMPs shall be designed to either: maintain or reduce the peak runoff discharge rates, to the maximum extent practicable, as compared to pre-development conditions or achieve a maximum runoff release rate of 0.15 cubic feet per second per acre, whichever is more stringent.
- d. Pre-development conditions shall assume “good hydrologic conditions” for appropriate land covers as identified in TR-55 or an equivalent methodology. The meaning of “hydrologic soil group” and “runoff curve number” are as determined in TR-55. However, when pre-development land cover is cropland, rather than using TR-55 values for cropland, the runoff curve numbers in Table 1 shall be used.

Table 1 B Maximum Pre-Development Runoff Curve Numbers for Cropland Areas

Hydrologic Soil Group	A	B	C	D
Runoff Curve Number	56	70	79	83

- e. For the 1%/100-year, 24-hour design storm, BMPs shall be designed to achieve a runoff release rate that is less than or equal to either:
 - (1) 0.5 cubic feet per second per acre or

- (2) A rate determined for the individual site that distributes runoff over the critical time sufficient to comply with subd. 1.
3. INFILTRATION. BMPs shall be designed, installed, and maintained to infiltrate runoff to the maximum extent practicable in accordance with the following, except as provided in subs. 5 through 8.
 - a. For residential developments one of the following shall be met:
 - (1) Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.
 - (2) Infiltrate 25% of the post-development runoff from the 2 year – 24 hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.
 - b. For non-residential development, including commercial, industrial and institutional development, one of the following shall be met:
 - (1) Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.
 - (2) Infiltrate 10% of the runoff from the 2 year - 24 hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes, and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.
 - c. Pre-development condition shall be the same as in par. (b).
 - d. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subd. 8. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.
 - e. Infiltration Exclusions. The following areas must meet more stringent standards otherwise applicable under federal or state law:

- (1) Areas associated with tier 1 industrial facilities identified in Sec. NR 216.21(2)(a), Wis. Adm. Code, including storage, loading, rooftop and parking.
 - (2) Storage and loading areas of tier 2 industrial facilities identified in Sec. NR 216.21(2)(b), Wis. Adm. Code.
 - (3) Fueling and vehicle maintenance areas.
 - (4) Areas within 1000 feet upgradient or within 100 feet downgradient of karst features.
 - (5) Areas with less than 3 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock, except this subd. 5.e. does not prohibit infiltration of roof runoff.
 - (6) Areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than 5 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.
 - (7) Areas within 400 feet of a community water system well as specified in NR 811.16(4), Wis. Adm. Code, or within 100 feet of a private well as specified in Sec. NR 812.08(4), Wis. Adm. Code, for runoff infiltrated from commercial, industrial and institutional land uses or regional devices for residential development.
 - (8) Areas where contaminants of concern, as defined in Sec. NR 720.03(2), Wis. Adm. Code are present in the soil through which infiltration will occur.
 - (9) Any area where the soil does not exhibit one of the following soil characteristics between the bottom of the infiltration system and the seasonal high groundwater and top of bedrock: at least a 3-foot soil layer with 20% fines or greater; or at least a 5-foot soil layer with 10 percent fines or greater. This does not apply where the soil medium within the infiltration system provides an equivalent level of protection. This subd. e.(9) does not prohibit infiltration of roof runoff.
- f. Infiltration Exemptions. The following are not required to meet the requirements of this paragraph:
- (1). Areas where the infiltration rate of the soil is less than 0.6 inches/hour measured at the site.
 - (2) Parking areas and access roads less than 5,000 square feet for commercial and industrial development.
 - (3) Redevelopment post-construction sites.
 - (4) Infiltration areas during periods when the soil on the site is frozen.

- (5) Roads in commercial, industrial and institutional land uses, and arterial residential roads.
- g.
- (1) Infiltration systems designed in accordance with this paragraph shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with ch. NR 140, Wis. Adm. Code. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.
 - (2) Notwithstanding par. a., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

4. PROTECTIVE AREAS

- a. “Protective area” means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this paragraph, “protective area” does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.
- (1) For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in Sec. NR 103.04, 75 feet.
 - (2) For perennial and intermittent streams identified on a United States geological survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.
 - (3) For lakes, 50 feet.
 - (4) For highly susceptible wetlands, 50 feet. Highly susceptible wetlands include the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins. Wetland boundary delineations shall be made in accordance with Sec. NR 103.08(1m). This paragraph does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed.
 - (5) For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass.

- (6) In subd. 1.a., d. and e., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in Sec. NR 103.03.
 - (7) For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.
- b. This paragraph applies to post-construction sites located within a protective area, except those areas exempted pursuant to subd. 4.
- c. The following requirements shall be met:
- (1) Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. The stormwater management plan shall contain a written site-specific explanation for any parts of the protective area that are disturbed during construction.
 - (2) Where land disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining vegetative cover of 70% or greater shall be established and maintained. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur.
 - (3) Best management practices such as filter strips, swales, or wet detention basins, designed to control pollutants from non-point sources may be located in the protective area.
- d. This paragraph does not apply to:
- (1) Redevelopment post-construction sites.
 - (2) Structures that cross or access surface waters such as boat landings, bridges and culverts.
 - (3) Structures constructed in accordance with Sec. 59.692(1v), Wis. Stats.
 - (4) Post-construction sites from which runoff does not enter the surface water, except to the extent that vegetative ground cover is necessary to maintain bank stability.

5. **FUELING AND VEHICLE MAINTENANCE AREAS.** Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed and maintained to reduce petroleum within runoff, such that the runoff that enters waters of the state contains no visible petroleum sheen.

6. **SWALE TREATMENT FOR TRANSPORTATION FACILITIES**

- a. Applicability. Except as provided in subd. 2., transportation facilities that use swales for runoff conveyance and pollutant removal meet all of the requirements of this section, if the swales are designed to the maximum extent practicable to do all of the following:
 - (1) Be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.
 - (2) Carry runoff through a swale for 200 feet or more in length that is designed with a flow velocity no greater than 1.5 feet per second based on a 2-year, 24-hour design storm. If a swale of 200 feet in length cannot be designed with a flow velocity of 1.5 feet per second or less, then the flow velocity shall be reduced to the maximum extent practicable.

- b. Exemptions. The Director of Public Works may, consistent with water quality standards, require other provisions of this section be met on a transportation facility with an average daily travel of more than 2500 vehicles and where the initial surface water of the state that the runoff directly enters is any of the following:
 - (1) An outstanding resource water.
 - (2) An exceptional resource water.
 - (3) Waters listed in Sec. 303(d) of the federal clean water act that are identified as impaired in whole or in part, due to nonpoint source impacts.
 - (4) Waters where targeted performance standards are developed under Sec. NR 151.004, Wis. Adm. Code, to meet water quality standards.

D. GENERAL CONSIDERATIONS FOR ON-SITE AND OFF-SITE STORMWATER MANAGEMENT MEASURES. The following considerations shall be observed in managing runoff:

- 1. Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.
- 2. Emergency overland flow for all stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.
- 3. BMPs for water quantity management shall utilize the following techniques, in order of preference:
 - a. Preservation of the natural features of development sites, including natural storage and infiltration characteristics;
 - b. Preservation of existing natural streams, channels, and drainage ways;

- c. Minimization of new impervious surfaces;
- d. Conveyance of stormwater in open vegetated channels;
- e. Construction of structures that provide both quantity and quality control, with structures serving multiple sites being preferable to structures serving individual sites; and
- f. Construction of structures that provide only quantity control, with structures serving multiple sites being preferable to structures serving individual sites.

E. LOCATION AND REGIONAL TREATMENT OPTION

- 1. The BMPs may be located on-site or off-site as part of a regional stormwater device, practice or system within the same watershed.
- 2. Runoff within a non-navigable drainage way that flows into a BMP, such as a wet pond, is not required to meet water quality performance standards unless designed to provide treatment.
- 3. The discharge of runoff from a BMP, such as a wet pond, or after a series of such BMPs, is subject to this chapter.
- 4. The Director of Public Works may approve off-site management measures provided that all of the following conditions are met:
 - a. The Director of Public Works determines that the post-construction runoff is covered by a stormwater management system plan that is approved by the City of Wauwatosa and that contains management requirements consistent with the purpose and intent of this ordinance.
 - b. The off-site facility meets all of the following conditions:
 - (1) The facility is in place.
 - (2) The facility is designed and adequately sized to provide a level of stormwater control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this ordinance.
 - (3) The facility has a legally obligated entity responsible for its long-term operation and maintenance.
- 5. Where a regional treatment option exists such that the Director of Public Works exempts the applicant from all or part of the minimum on-site stormwater management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the Director of Public Works. In determining the fee for post-construction runoff, the Director of Public Works shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.

F. **ALTERNATE REQUIREMENTS.** The Director of Public Works may establish stormwater management requirements more stringent than those set forth in this section if the Director of Public Works determines that an added level of protection is needed to protect sensitive resources.

G. **CREDIT FOR REMOVAL OF IMPERVIOUS SURFACES.**

1. **Same Site Credit.** The Director of Public Works may use the removal of pavement, covered structures or other impervious surfaces at the same property to calculate the net post construction impervious acreage and corresponding water quantity management duties. Credit may equal, but not be larger than the acreage of impervious surfaces removed when runoff release rates and detention are the best management practices utilized at the site. When best management practices with a higher order of preference are utilized in lieu of detention, equivalent credit may be granted as determined by the Director of Public Works with the concurrence of the MMSD. Credit for reducing impervious surfaces at a site, not utilized by the development on the site, belongs to the Director of Public Works and may be banked for allocation to other development within the watershed under subsection (b).
2. **Dispersed Site in Same Watershed Credit.** The Director of Public Works may bank the removal of impervious surfaces, which individually must be one half acre or more, within the same watershed, where the volume, timing and peak flow of runoff will be distributed over the critical time sufficient to assure the level of protection provided by MMSD flood abatement projects will not be reduced. The Director of Public Works may allocate banked credit to promote a policy of smart growth. The total acreage banked or allocated, or both, shall be reported, by watershed or sub-watershed, annually to the MMSD for concurrence.

24.59.080 **Permitting Requirements, Procedures and Fees.**

- A. **PERMIT REQUIRED.** No responsible party may undertake a land disturbing construction activity without receiving a post-construction runoff permit from the Director of Public Works prior to commencing the proposed activity.
- B. **PERMIT APPLICATION AND FEES.** Any responsible party desiring a permit shall submit to the Director of Public Works a permit application made on a form provided by the Director of Public Works for that purpose.
1. Unless specifically excepted, a permit application must be accompanied by a stormwater management plan, a maintenance agreement and a non-refundable permit fee.
 2. The stormwater management plan shall be prepared to meet the requirements of Secs. 24.59.070 and 24.59.090, the maintenance agreement shall be prepared to meet the requirements of Sec. 24.59.100, the financial guarantee shall meet the requirements of Sec. 24.59.110, and fees shall be set forth in the consolidated fee schedule adopted annually by the Common Council.
- C. **REVIEW AND APPROVAL OF PERMIT APPLICATION.** In addition to the review and approval required by other governmental bodies which may have jurisdiction over this activity, the Director of Public Works shall review any permit application that is submitted with a stormwater management plan, maintenance agreement, and the required fee, as follows:

1. Within fifteen (15) business days of the receipt of a complete permit application, including all items as required by sub. (2), the Director of Public Works shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.
2. If the stormwater permit application, plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of stormwater management practices is made, the Director of Public Works shall issue the permit.
3. If the stormwater permit application, plan or maintenance agreement is disapproved, the Director of Public Works shall detail in writing the reasons for disapproval.
4. The Director of Public Works may request additional information from the applicant. If additional information is submitted, the Director of Public Works shall have fifteen (15) additional business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.

D. **PERMIT REQUIREMENTS.** All permits issued under this ordinance shall be subject to the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. The Director of Public Works may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Director of Public Works to suspend or revoke this permit may be appealed in accordance with Sec. 24.59.140.

1. Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.
2. The responsible party shall design and install all structural or identify non-structural stormwater management measures, or both, in accordance with the approved stormwater management plan and this permit.
3. The responsible party shall notify the Director of Public Works at least five business days before commencing any work in conjunction with the five days upon completion of the stormwater management practices. If required as a special condition under sub. (5), the responsible party shall make additional notification according to a schedule set forth by the Director of Public Works so that practice installations can be inspected during construction.
4. Practice installations required as part of this ordinance shall be certified "as built". Completed stormwater management practices must pass a final inspection by the Director of Public Works or its designee to determine if they are in accordance with the approved stormwater management plan and ordinance. The Director of Public Works or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.
5. The responsible party shall maintain all stormwater management practices until the responsibility is transferred to any subsequent owners as specified in the approved maintenance agreement.
6. The responsible party authorizes the Director of Public Works to perform any work or operations necessary to bring stormwater management measures into conformance with the approved stormwater management plan, and consents to a special assessment or charge

against the property as authorized under subch. VII of ch. 66, Wis. Stats., or to charging such costs against the financial guarantee posted under Sec. 24.59.110.

7. If so directed by the Director of Public Works, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved stormwater management plan.
8. The responsible party shall permit property access to the Director of Public Works for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.
9. Where site development or redevelopment involves changes in direction, increases in the peak rate or the total volume of runoff, the Director of Public Works may require the responsible party to make appropriate legal guarantees concerning the prevention of endangerment to property or public safety.

E. **PERMIT CONDITIONS.** Permits issued under this subsection may include reasonable and necessary conditions established by Director of Public Works in addition to the requirements needed to meet the performance standards in Sec. 24.59.070 or a financial guarantee as provided for in Sec. 24.59.110.

F. **PERMIT DURATION.** Permits issued under this section shall be valid from the date of issuance through the date the Director of Public Works notifies the responsible party that all stormwater management practices have passed the final inspection required under sub. (4)(c).

24.59.090 Stormwater Management Plan

A. **PLAN REQUIREMENTS.** The stormwater management plan required under Sec. 24.59.080(2) shall contain at a minimum the following information:

1. Name, address, and telephone number for the following or their designees: landowner; developer; project engineer for practice design and certification; person(s) responsible for installation of stormwater management practices; and person(s) responsible for maintenance of stormwater management practices prior to the transfer, if any, of maintenance responsibility to another party.
2. A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.
3. Pre-development site conditions, including:
 - a. One or more site maps at a scale of not less than 1 inch equals 200 feet. The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed two feet; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all stormwater conveyance sections; watershed boundaries used in hydrology determinations to

show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the regional flood (the 1% probability storm event) floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to Sec. NR 811.16, Wis. Adm. Code.

- b. Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).

4. Post-development site conditions, including:

- a. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.
- b. Explanation of any restrictions on stormwater management measures in the development area imposed by wellhead protection plans and ordinances.
- c. One or more site maps at a scale of not less than 1 inch equals [number] feet showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; post-construction topographic contours of the site at a scale not to exceed [number] feet; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all stormwater conveyance sections; location and type of all stormwater management conveyance and treatment practices, including the on-site and off-site tributary drainage area; location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainage way; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.
- d. Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
- e. Results of investigations of soils and groundwater required for the placement and design of stormwater management measures. Detailed drawings including cross-sections and profiles of all permanent stormwater conveyance and treatment practices.

- 5. A description and installation schedule for the stormwater management practices needed to meet the performance standards in Sec. 24.59.070.

6. A maintenance plan developed for the life of each stormwater management practice including the required maintenance activities and maintenance activity schedule, which plan shall be acknowledged in writing by the owner of the property which is the subject of such plan.
 7. Cost estimates for the construction, operation, and maintenance of each stormwater management practice.
 8. Other information requested in writing by the Director of Public Works to determine compliance of the proposed stormwater management measures with the provisions of this ordinance.
 9. All site investigations, plans, designs, computations, and drawings shall be certified by a licensed professional engineer to be prepared in accordance with accepted engineering practice and requirements of this ordinance.
- B. **ALTERNATE REQUIREMENTS.** The Director of Public Works may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under 24.59.070(5).

24.59.100 Maintenance Agreement.

- A. **MAINTENANCE AGREEMENT REQUIRED.** The maintenance agreement required under 24.59.080(2) for stormwater management practices shall be an agreement between the Director of Public Works and the responsible party to provide for maintenance of stormwater practices beyond the duration period of this permit. The maintenance agreement or a memorandum thereof shall be filed with the Milwaukee County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the stormwater management practices.
- B. **AGREEMENT PROVISIONS.** The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by Sec. 24.59.090(1)(f):
1. Identification of the stormwater facilities and designation of the drainage area served by the facilities.
 2. A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under 24.59.080 (2).
 3. Identification of the party(s) responsible for long term maintenance of the stormwater management practices identified in the stormwater management plan required under Sec. 24.59.08 (2).
 4. Requirement that the responsible party(s) shall maintain stormwater management practices in accordance with the schedule included in par. (b).
 5. Authorization for the Director of Public Works, its designee and the Milwaukee Metropolitan Sewerage District to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.

6. Agreement that the party designated under par. (c), as responsible for long- term maintenance of the stormwater management practices, shall be notified by the Director of Public Works of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Director of Public Works.
7. Authorization of the Director of Public Works to perform the corrected actions identified in the inspection report if the responsible party designated under par. (c) does not make the required corrections in the specified time period. The Director of Public Works shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to subch. VII of ch. 66, Wis. Stats.

24.59.110 Financial Guarantee.

- A. ESTABLISHMENT OF THE GUARANTEE. The Director of Public Works may require the submittal of a financial guarantee, in the form of a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantee acceptable to the Director of Public Works and approved by the City Attorney. The financial guarantee shall be in an amount determined by the Director of Public Works to be the estimated cost of construction and the estimated cost of maintenance of the stormwater management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the Director of Public Works the authorization to use the funds to complete the stormwater management practices if the responsible party defaults or does not properly implement the approved stormwater management plan, upon written notice to the responsible party by the Director of Public Works that the requirements of this ordinance have not been met.
- B. CONDITIONS FOR RELEASE. Conditions for the release of the financial guarantee are as follows:
 1. The Director of Public Works shall release the portion of the financial guarantee established under this section, less any costs incurred by the Director of Public Works to complete installation of practices, upon submission of "as built plans" by a licensed professional engineer. The Director of Public Works may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.
 2. The Director of Public Works shall release the portion of the financial guarantee established under this section to assure maintenance of stormwater practices, less any costs incurred by the Director of Public Works, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

24.59.120 Fee Schedule.

The fees referred to in other sections of this ordinance shall be set forth in the consolidated fee schedule adopted annually by the Common Council.

24.59.130 Enforcement.

- A. Any land disturbing construction activity or post-construction runoff initiated after the effective date of this ordinance by any person subject to the ordinance provisions shall be deemed a violation unless conducted in accordance with the requirements of this ordinance.

- B. The Director of Public Works shall notify the responsible party of any non-complying land disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, or additional enforcement action which may be taken. Any technique that effectively provides actual and verifiable notice may be used.
- C. If the violations are likely to result in damage to properties, public facilities, or waters of the state, the Director of Public Works may enter the land and take corrective actions necessary to prevent such damage. The costs incurred by the Director of Public Works plus interest and legal costs shall be paid by the responsible party.
- D. If the Director of Public Works determines that any person is in violation of this ordinance or a stormwater permit, the Director may issue a notice of violation, a stop work order, a cease and desist order, or revoke the permit, or refer the noncompliance to the city attorney for civil enforcement, penalties, injunctive orders or other appropriate relief.
- E. Every violation of this ordinance is a public nuisance. Any person who violates this ordinance shall be subject to a forfeiture of not less than \$10.00 dollars or more than \$2,000 dollars per offense, together with the costs of prosecution. Each day each violation continues shall constitute a separate offense.
- F. When the Director of Public Works determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices, or has failed to comply with schedules in a stormwater management plan, the Director of Public Works or a party designated by the Director of Public Works may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan. The Director of Public Works shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to 24.59.110 of this ordinance. Where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.

24.59.140 Appeals.

The Wauwatosa Common Council hereby elects that provisions of this chapter are not governed by the procedures of Chapter 68 of the Wisconsin Statutes, and provides for appeals as follows:

- A. **BOARD OF ZONING APPEALS.** The Board of Zoning Appeals, established pursuant to ch. 24.52 of the Wauwatosa Municipal Code, shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Director of Public Works in administering stormwater quality or quantity duties. The Board may authorize variances that are not contrary to the public interest, and where owing to special conditions unique to the property, a literal enforcement would be an unnecessary hardship.
- B. **WHO MAY APPEAL.** Appeals to the Board of Zoning Appeals may be taken by any aggrieved person or by an officer, department, board, or bureau of the City of Wauwatosa affected by any decision of the Director of Public Works.

24.59.150 Illicit Connections and Discharges – Definitions.

The following definitions shall be applicable in Sections 24.59.150 and 24.59.160:

- A. “Illicit Connection.” Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been allowed, permitted, or approved by a government agency, prior to the adoption of this ordinance.
- B. “Person.” Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner’s agent.
- C. “Storm Drain System.” Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

24.59.160 Illicit Connections and Discharges Prohibited.

No person shall discharge, spill or dump substances or materials which are not entirely composed storm water into receiving bodies of water or onto driveways, sidewalks, parking lots or other areas that drain into the storm drainage system.

- A. **CONNECTIONS PROHIBITED.** The construction, use, maintenance or continued existence of illicit connections to the storm drainage system is prohibited. This prohibition expressly includes, without limitation, illicit connections made prior to the adoption of this ordinance, regardless of whether the connections was permissible under law or practice applicable or prevailing at the time of connection.
- B. **EXEMPTIONS.** The following activities are exempt from the provisions of this section unless found to have an adverse impact on the storm water:
 - 1. Discharges authorized by a permit issued by the Wisconsin Department of Natural Resources.
 - 2. Discharges resulting from fire fighting activities.
 - 3. Discharges from uncontaminated ground water, potable water source, roof drains, foundation drain and sump pump, air conditioning condensation, springs, lawn watering, individual residential car washing, water main and hydrant flushing and swimming pools if the water has been dechlorinated.
- C. **ENFORCEMENT.** Whenever the City of Wauwatosa finds a person has violated a prohibition or failed to meet a requirement of this section, the City of Wauwatosa may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
 - 1. The elimination of illicit connections or discharges;
 - 2. That violating discharges, practices, or operations shall cease and desist;
 - 3. The abatement or remediation of storm water pollution or contaminated hazards and the restoration of any affected property;

4. In the event the person fails to eliminate the illicit connects or discharge, fails to cease and desist in discharge, practices or operations in violation of this Section or fails to abate or remediate the storm water pollution or contamination hazards, that person may be subject to a forfeiture of not less than \$50.00 nor more than \$500.00 for each offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.

Part II: This ordinance shall take effect on and after its date of publication.

Proof of publication is in the file.

In a meeting held on July 12, 2010, the City Plan Commission recommended approval of the proposed ordinances.

No one of the public present wished to be heard in favor of the proposed ordinances.

No one of the public present wished to be heard in opposition to the proposed ordinances.

No one of the public present wished to be heard either for or against the proposed ordinances or had any comments or questions.

The public hearing was declared closed. Ordered re-referred to the next Community Development Committee meeting on September 14, 2010.

APPOINTMENTS BY THE MAYOR

Visit Milwaukee Board

Paulette Enders, Economic Development Department Director

Economic Development Advisory Committee

Dan Druml, 2450 Swan Boulevard

(Term ends 8/31/11)

It was moved by Ald. Meaux, seconded by Ald. McBride to concur with the foregoing appointments. -14

Energy Committee

Nancy Alberte, 8276 Richmond Court

(Term ends 9/1/12)

Foregoing appointment ordered held as this was the first reading.

APPLICATIONS, COMMUNICATIONS, ETC.

1. Letter from Bob Simi, Economic Development Advisory Committee Chair, with a committee recommendation for approval of the creation of a TIF District for UWM Innovation Park
Committee of the Whole

2. Summons and Complaint: Macy's Inc., 7 W. Seventh Street, Cincinnati, OH
City Attorney
3. Notice of Claim: Kevin James Galezewski, 8613 Glencoe Circle, Wauwatosa; Michael and Maureen Klein, 1816 Alta Vista Avenue, Wauwatosa; Rozalyn Brown, 2625 N. 51st Street, Milwaukee; William, Michael and Bonita Ostrenga, 9812 W. Palmetto, Wauwatosa; John J. Cronin, 840 Dona Vista Drive, Waukesha; Ellen J. Bednarek, 2468 N. 84th Street, Wauwatosa; Rev. John Philip Talmage, 1840 N. Prospect Avenue, Milwaukee
City Attorney
4. Conditional Use application in the AA Business District for a martial arts school at 11757 W. North Avenue, Marlon S. Patawaran, Kicks N' Sticks Dojo and David Carter, Cedarbrook Investments, LP, applicants
Plan Commission, Community Development Committee
5. Conditional Use application in the Business Planned Development for a hair salon and spa with massage at 2751 N. Mayfair Road, Cary Bilicki, Briohn Building Corp., and Ned Brickman, Midland 3521, LLC, applicants
Plan Commission, Community Development Committee
6. Request for a Land Division by Certified Survey map for the property at 2350-2366 N. 80th Street, Kevin Sjostrom, Brusky, Sjostrom and Alberts, and Wauwatosa Presbyterian Church, applicants
Plan Commission, Community Development Committee
7. Conditional Use application in the Medical Center and Institutions District for a water tower at 9455 W. Watertown Plank Road, Daniel Knapp, P.E., GRAEF, and Jack Takerian Milwaukee County, applicants
Plan Commission, Community Development Committee
8. Request by William Poull, The Club Tap, 8828 W. North Avenue for a liquor license extension to the rear parking lot from 5:00 p.m. to 10:00 p.m. on Friday, September 10th for a bean bag tournament
Board of Public Works, Legislation, Licensing & Communications Committee
9. Letter from Richard Bachman, 2229 N. 115th Street proposing the creation of a program collecting donations to obtain ten defibrillators for Wauwatosa police cars
Mayor, Finance Director
10. Wauwatosa Water Utility Statement of Receipts and Disbursements for the period ending July 31, 2010
Place on file
11. Financial statements for the period ending July 31, 2010
Place on file
12. E-mail from David Wolz, 2242 N. 64th Street; Sue Puerner, 2019 N. 69th Street; and Charles Mitchell, 7525 Oakhill Avenue, in support of a high speed rail station in Wauwatosa
Place on file
13. Letter from Mayor Didier appointing the members of the Aldermanic Selection Committee: Aids. Meaux, Ewerdt, Jay, Wilke, and Donegan
Place on file
14. Letter from S. Howard Young 2828 N. 117th Street, in support of the city performing a detailed comparative analysis of the costs between refuse collection by city personnel or by private contractor
Director of Public Works
15. Letter from Andy Zietlow, Wauwatosa West High School, requesting a fireworks usage permit for the homecoming celebrations to be held on October 15, 2010
Committee on Legislation, Licensing & Communications
16. Email from Nancy Benninghouse, Firefly Garden Design, LLC, 2429 N. 114th Street, asking that more time be given to consideration of creating TIF #6 for the UWM Innovation Park project
Plan Commission, Community Development Committee
17. Emails from Don Jamnik, 7230 W. Blue Mound Road; Thomas and Susan Salamone (no address given) in support of a high speed rail station
Place on file
18. Email from Kathy Ehley, Executive Director, Village BID, 7603A W. State Street in support of the

proposed PNC Bank and the building's design

Place in existing file

19. Email from Cheryl Nenn, Milwaukee Riverkeepers, 1845 N. Farwell Avenue, Milwaukee requesting further consideration before making changes to Chapters 24.57 and 24.59 regarding water quality

Place in existing file

FROM THE COMMITTEE ON TRAFFIC & SAFETY FOR INTRODUCTION

1. Ordinance amending Chapter 11.32 of the city code to add a no parking any time area to the southeast corner of Milwaukee Avenue and N. 70th Street

Re-refer to originating committee

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-10-147

WHEREAS, Modesto A. Melendez, 19280 Emerald Dr., Brookfield, WI, applied for an operator's license in conjunction with his employment at Habanero's Restaurant in Wauwatosa, WI; and

WHEREAS, a background investigation revealed the applicant had prior violations that he failed to disclose; and

WHEREAS, the Committee on Legislation, Licensing & Communications requested that Mr. Melendez appear before the Committee to discuss his record but applicant did not appear, which indicates a lack of responsibility necessary to be licensed;

NOW, THEREFORE, BE IT RESOLVED THAT the operator's license application of Modesto A. Melendez is hereby denied;

BE IT FURTHER RESOLVED THAT the Clerk shall notify Mr. Melendez in writing of this decision and the reasons for the denial.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-10-148

WHEREAS, Robert Messinger, of Hector's – A Mexican Restaurant, 7118 W. State Street, has requested a temporary extension of the licensed premises to include the parking lot of his business on September 18, 2010, from 3:00 pm to 10:00 pm for HectorFest 21;

NOW, THEREFORE, BE IT RESOLVED THAT the licensed premises of Hector's – A Mexican Restaurant be extended to include the parking lot on September 18, 2010, from 3:00 pm to 10:00 pm for HectorFest21, provided owner submits a phone number where he can be reached to the City Clerk's office.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-10-151

WHEREAS, William Poull of the Club Tap, 8828 W. North Avenue, has requested a temporary extension of the licensed premises to include the rear parking lot on September 10, 2010;

NOW, THEREFORE, BE IT RESOLVED THAT the licensed premises of the Club Tap be extended to include the rear parking lot on September 10, 2010, between the hours of 5:00 PM and 10:00 PM.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-10-155

WHEREAS, Dennis W. Kramer of Vino 100, 1442 Underwood Avenue, Wauwatosa, WI, has requested a temporary extension of the licensed premises to include the parking lot on September 10 and 11, 2010;

NOW, THEREFORE, BE IT RESOLVED THAT the licensed premises of Vino 100 be extended to include the parking lot of the building on September 10 and 11, 2010, until 11:30 PM each night;

BE IT FURTHER RESOLVED THAT the proprietors of Vino 100 shall perform garbage cleanup on neighboring properties resulting from the outdoor event and will cooperate with any requested noise abatement.

FROM THE COMM. ON LEGISLATION, LICENSING AND COMMUNICATIONS

RESOLUTION R-10-156

WHEREAS, Lindsay Lonergan, 7456 Brunn Drive, Franklin, WI, has applied for renewal of her operator's license for the period ending June 30, 2011;

NOW, THEREFORE, BE IT RESOLVED THAT Lindsay Lonergan is hereby issued an operator's license for the period ending June 30, 2011.

It was moved by Ald. Birschel, seconded by Ald. Causier to approve the five foregoing resolutions. -14

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

RESOLUTION R-10-149

WHEREAS, Rosemary Krause and Janey Brandt, Wauwatosa Day Care & Learning Centers, and Father George Gajdos, Christ King Congregation, have applied for a Conditional Use in the AA Single Family Residence District at 2646 Swan Boulevard to operate a child care center, and;

WHEREAS, this request was reviewed and recommended by the City Plan Commission and the Committee on Community Development and determined to be necessary for the public convenience at that

location; located and proposed to be operated in such manner which will protect the public health, safety, and welfare; and was found to be compatible with surrounding uses;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin hereby grants a Conditional Use to Rosemary Krause and Janey Brandt, Wauwatosa Day Care & Learning Centers, and Father George Gajdos, Christ King Congregation, to operate a child care center in the AA Single Family Residence District at 2646 Swan Boulevard subject to the following conditions:

- 1) hours of operation 6:30 a.m. to 6:00 p.m. Monday through Friday year round, and
- 2) obtaining all necessary licenses and permits.

FROM THE COMMITTEE ON COMMUNITY DEVELOPMENT

RESOLUTION R-10-150

WHEREAS, Meredith Brown and Dan Hlavachek have applied for a Conditional Use in the AA Business District at 11623 W. Blue Mound Road to operate a massage therapy establishment, and;

WHEREAS, this request was reviewed and recommended by the City Plan Commission and the Committee on Community Development and determined to be necessary for the public convenience at that location; located and proposed to be operated in such manner which will protect the public health, safety, and welfare; and was found to be compatible with surrounding uses;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Wauwatosa, Wisconsin hereby grants a Conditional Use to Meredith Brown and Dan Hlavachek to operate a massage therapy establishment in the AA Business District at 11623 W. Blue Mound Road subject to the following conditions:

- 1) hours of operation 9:00 a.m. to 9:00 p.m. Monday through Saturday and 9:00 a.m. to 5:00 p.m. on Sunday, and
- 2) obtaining all necessary licenses and permits.

It was moved by Ald. Organ, seconded by Ald. Jay to approve the two foregoing resolutions. -14

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-10-154

BE IT RESOLVED, by the Common Council of the City of Wauwatosa, THAT approval of the Master Plan Study prepared by Engberg Anderson, Inc. of Milwaukee, WI, be and hereby is approved.

It was moved by Ald. Ewerdt, seconded by Ald. Wilson to approve the foregoing resolution. -14

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-10-157

BE IT RESOLVED, by the Common Council of the City of Wauwatosa, THAT the Purchasing Manager is hereby authorized to purchase seven (7) replacement new 2011 Ford squad cars to take advantage of the incentive offered by Ewald Automotive Group.

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-10-152

WHEREAS, the Kiwanis Club of Wauwatosa donated the existing scoreboard at the athletic field at Hart Park in the City of Wauwatosa; and

WHEREAS, the Kiwanis Club of Wauwatosa has offered to donate \$16,109.00 to the City of Wauwatosa for purposes of upgrading the current scoreboard at Hart Park; and

WHEREAS, the balance of funds necessary to install the donated scoreboard are available from the Hart Park Reserve Account; and

WHEREAS, placement of the Kiwanis logo on the scoreboard is exempt from the initial naming provision of Chapter 1.34 of the Wauwatosa Municipal Code, as the scoreboard has already had this logo and name for many years prior to the existence of said ordinance;

NOW, THEREFORE, BE IT RESOLVED THAT the City of Wauwatosa hereby accepts the donation of \$16,109.00 from the Kiwanis Club of Wauwatosa for purposes of purchasing a scoreboard to be installed with funds from the Hart Park Reserve Account, which scoreboard shall be consistent with the design presented to the Committee on Budget & Finance at its meeting of July 27, 2010, and the appropriate City officials are hereby authorized to purchase the scoreboard from the Nevco Company of Greenville, IL.

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-10-153

WHEREAS, previous success of sanitary sewer dye testing has indicated the advantage of this technique for determining sanitary sewer problem areas during rain events; and

WHEREAS, the area within the City of Wauwatosa between 60th and 66th Streets and North Avenue and Center Street, has sanitary sewer flows exceeding the Metropolitan Milwaukee Sewerage Districts peak weather flow standards and have experienced numerous basement backups; and

WHEREAS, the proposed testing area is eligible for funding in part by American Reinvestment and Recovery Act of 2009 (ARRA), Community Development Block Grant Recovery funds (CDBG-R); and

WHEREAS, the City of Wauwatosa Purchasing Department received proposals for sanitary sewer dye testing in this area of Wauwatosa on July 15, 2010, the most advantageous of which was submitted by R. A. Smith National of Brookfield, WI, in an amount of \$62,350.00;

NOW, THEREFORE, BE IT RESOLVED THAT the appropriate City officials are hereby authorized to enter into a contract for phase III of sanitary sewer dye testing with R. A. Smith National of Brookfield, WI, in the amount of \$62,350.00, of which \$57,290.00 are to be funded through ARRA, CDBG-R funds, with the balance to be paid from the Sanitary Sewer Reserve.

FROM THE COMMITTEE ON BUDGET AND FINANCE

RESOLUTION R-10-158

BE IT RESOLVED, by the Common Council of the City of Wauwatosa, THAT approval is hereby given for the surplus funding for water main design services and contract administration in preparation for the 2011 construction season in an amount not to exceed \$77,000.00.

It was moved by Ald. Ewerdt, seconded by Ald. Wilson to approve the four foregoing resolutions. -14

FROM THE COMMITTEE ON BUDGET AND FINANCE

BILLS AND CLAIMS FOR THE PERIOD 7/21/10 – 8/3/10 --

The Committee on Budget and Finance hereby reports to the Common Council that it has examined the accounts of bills and claims and hereby certifies the same as correct and recommends that each of said accounts be allowed and paid.

Total bills and claims for 07/21/10 – 08/03/10: \$1,953,398.16

It was moved by Ald. Meaux, seconded by Ald. Causier that each and every account of bills and claims be allowed and ordered paid. Roll call vote, Ayes 14

FROM THE BOARD OF PUBLIC WORKS

RESOLUTION R-10-159

WHEREAS, the Board of Public Works has accepted the work of Sanitary Sewer and Storm Sewer Relay, Repair, Extension and Relining and work incidental thereto in the City of Wauwatosa under Contract 07-01 and the same is ready for final payment.

NOW, THEREFORE, BE IT RESOLVED by the Board of Public Works of the City of Wauwatosa, Wisconsin as follows:

Section 1. That the work of Sanitary Sewer and Storm Sewer Relay, Repair, Extension and Relining under Contract 07-01 is hereby accepted.

Section 2. That the proper City officers be and they are hereby authorized and directed to draw and sign a City order in the sum of fifteen thousand four hundred ninety-one dollars and eighty-two cents (\$15,491.12) in favor of American Sewer Services, Inc. as the final payment under said contract, upon

receipt of waivers of lien and for labor and materials furnished under said contract, and upon receipt of an affidavit stipulating compliance with wage rate requirements.

FROM THE BOARD OF PUBLIC WORKS

RESOLUTION R-10-160

WHEREAS, the Board of Public Works has accepted the work of Sanitary Sewer, Storm Sewer and Water Main Relay, Repair and Extension and work incidental thereto in the City of Wauwatosa under Contract 04-02A and the same is ready for final payment.

NOW, THEREFORE, BE IT RESOLVED by the Board of Public Works of the City of Wauwatosa, Wisconsin as follows:

Section 1. That the work of Sanitary Sewer, Storm Sewer and Water Main Relay, Repair and Extension under Contract 04-02A is hereby accepted.

Section 2. That the proper City officers be and they are hereby authorized and directed to draw and sign a City order in the sum of thirty-one thousand, eight hundred seventy-three dollars and twenty five cents (\$31,873.25) in favor of American Sewer Services, Inc. as the final payment under said contract, upon receipt of waivers of lien and for labor and materials furnished under said contract, and upon receipt of an affidavit stipulating compliance with wage rate requirements.

FROM THE BOARD OF PUBLIC WORKS

RESOLUTION R-10-161

BE IT RESOLVED by the Common Council of the City of Wauwatosa that the proper city officials be and they are hereby authorized and directed to enter into a contract with Payne & Dolan, Inc., for the work of asphalt resurfacing and work incidental thereto under Contract 10-06 at and for their bid price of \$194,564.30, this being the only and best bid.

FROM THE BOARD OF PUBLIC WORKS

RESOLUTION R-10-162

BE IT RESOLVED, by the Common Council of the City of Wauwatosa, that approval is hereby given for Change Order #4 in the amount of \$19,720 pertaining to Contract 09-02, 68th and State Street intersection modifications for protection of the natural gas main under the Harwood Pedestrian Bridge.

It was moved by Ald. Meaux, seconded by Ald. Birschel to approve the four foregoing resolutions. -14

There being no further business, the meeting adjourned at 8:15 p.m.

cal

Carla A. Ledesma, CMC, City Clerk