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## **CHAPTER 6: PUBLIC WORKS**

### **6.0100 MISCELLANEOUS PUBLIC WORKS PROVISIONS**

#### **6.0101 PUBLIC WORKS CONTRACTS**

Reserved for Future Use.

#### **6.0102 NUMBERING BUILDINGS**

##### **A. Existing Buildings**

The owner of every building in the City used for business, residence, or public purposes shall place and maintain on the front thereof, in a conspicuous place open to public view, the number or numbers belonging to such building according to the maps and plans prepared therefore under the direction of the Mayor and the Council on file in the office of the City Engineer.

##### **B. New Buildings**

The owner of every building, within ten (10) days after its occupation, shall cause the same to be numbered according to the maps and plans and such additions thereto as the Mayor and Council may cause to be prepared and filed in the office of the City Engineer.

##### **C. Size and Style of Numbers**

All numbers placed in accordance with the conditions of this section shall be either conspicuously painted or of raised figures not less than three (3) inches in height and of a color which contrasts with the color of the building. All numbers shall be in Arabic numeral form. Any other number styles, including written, script, and Roman numerals, do not satisfy the requirements of this section.

##### **D. Failure to Act**

If the owner of any building fails to comply with this section, the owner may be subject to the general penalty provisions of MMC 1.0107 (Ordinance 2010-2167 adopted 2-2-2010)

#### **6.0103 POLES**

##### **A. In Streets**

No person shall place poles or supports of any kind for the suspension of wires, tubes, or any other material or device for the conveyance of electrical currents on any business or residence street in the City, except where there is no lane or alley within a distance of one (1) block of the locality to be wired.

B. Supervision

The placing of all poles or supports shall be under the control of the Board of Public Works.

C. Height

All poles for the suspension of wires, tubes, or any other contrivance for the conveyance of electrical currents shall not be less than twenty-five (25) feet in height from the grade of the street to the first crossbar from ground, not less than eight (8) inches in diameter at the top thereof, and shall be smooth and straight and neatly painted or stained to the satisfaction of the Board of Public Works.

D. Disconnection Expense

When any poles are of a height of less than fifty (50) feet between the grade of the street and the first crossbar fastened to the poles, all wires shall be disconnected at the expense of the person owning, or at the time of any such disconnection, exercising the control over, or use of, the wires, to allow the passage of buildings sought to be moved across the line of the wires; but where the poles are of a height of over fifty (50) feet between the grade of street and the first wire or wires attached to the poles, the disconnection shall be made at the expense of the person moving the building.

## **6.0200 STREETS, SIDEWALKS AND ALLEYS**

### **6.0201 REMOVAL OF RUBBISH AND DIRT**

No owner or occupant shall allow the sidewalk abutting on his premises to be littered with rubbish or dirt or animal/bird feces. If such owner or occupant shall refuse or fail to remove any such rubbish or dirt or animal/bird feces when notified to do so by the Code Enforcement Officer, the Code Enforcement Officer may cause the same to be done and report the cost thereof to the City Clerk who shall spread the cost on the tax roll as a special tax against the premises, or such cost may be recovered in an action against the owner or occupant. (Ord. 2014-2291 adopted 8-4-14).

### **6.0202 REPAIRING OR LAYING OF SIDEWALKS**

- A. When the Board of Public Works condemns a section of sidewalk, the property owner shall be charged for 50% of the cost to replace the section.
- B. When the Board of Public Works designates a Sidewalk Improvement District, the property owners shall not be charged for the cost of the installation or replacement of sidewalk in such district.
- C. If the owner elects to have the sidewalk fronting his or her property replaced, and the section of sidewalk has not been condemned and is not part of a Sidewalk Improvement District, the property owner shall pay 50% of the replacement cost. The City's participation in such replacement cost is contingent upon the availability of funds. In the event that funds are not available in a given fiscal year, the property owner may pay the full cost of such replacement, or the property owner may elect to be placed on a waiting list.

State Law Reference: Section 66.615, Wis. Stats.

Cross Reference: Section 3.0224

### **6.0203 CONSTRUCTION OF SIDEWALKS**

- A. Width  
All concrete sidewalks constructed or reconstructed in the City of Marinette shall be constructed according to specifications determined by the City Engineer.
- B. Limits  
All sidewalks constructed or reconstructed in business or industrial districts shall extend from the property line to the curb.
- C. Construction Standards  
All sidewalks constructed or reconstructed shall conform with the standards found in Sections 6.01 and 6.02 of "Standard Specifications for Bridge and Road Construction in Wisconsin" (1983 edition).

D. Non-Conforming Sidewalks

All sidewalks constructed or reconstructed in a manner contrary to the provisions of this section shall be removed and replaced with a sidewalk conforming to these specifications.

- E. Sidewalks shall be installed as part of all street construction and reconstruction projects where technically feasible. The Common Council may, in their discretion, elect to waive the requirements of this subparagraph, in the event they feel it is in the best interest of the City to do so.  
(Ordinance 2007-2088 adopted 4-16-2007)

**6.0204 EXCAVATIONS IN STREETS, ALLEYS, PUBLIC WAYS, AND GROUNDS**

A. Street Opening Defined

A street opening shall be defined as any excavation in or under any street, curb, sidewalk, terrace area, alley, or other public place in the City of Marinette.

B. Permit Required

It shall be unlawful for any person or entity to undertake any street opening without first obtaining a permit under, and complying with, the terms of this section.

C. Applications

1. Applications for such permits shall be made to the Director of Public Works and shall describe the location of the intended street opening, the size, the purpose, the person or entity performing the work, the name of the person or entity for whom or which the work is being performed, and shall contain an agreement that the applicant shall comply with all ordinances and laws relating to the work to be done. The Director of Public Works shall issue street opening permits.
2. Repealed (see MMC Sec. 9.1302 (Schedule A)).
3. Before a street opening permit may be issued, the applicant must sign a statement that the applicant shall: indemnify and save harmless the City of Marinette and its officers from all liability for accidents and damage caused by any of the work covered by the permit; after the work is completed, restore and place in good and safe condition all street openings; repair any damage done to existing improvements during the progress of the street opening in accordance with the ordinances, rules and regulations of the City; and that if the City shall elect to make any repair, the applicant opening the street shall pay all costs of making such repair and of maintaining the same for one (1) year. Any violation of the terms of the signed statement shall also be a violation of this subsection.
4. In the case of an emergency situation as defined below, which occurs outside of normal City Hall business hours and which requires a street

5. opening, the street opening may be performed without a permit. The person or entity performing the emergency street opening shall obtain a street opening permit at the first available opportunity during normal City Hall business hours.
6. The Marinette Police Department shall be notified prior to undertaking any emergency street opening without a permit.

D. Seasonal Limitations

No street opening shall be undertaken during the months of November through March, with the following exceptions:

1. An emergency situation such as a gas leak, water main leak, sewer break, or damaged utility cables.
2. If weather and ground conditions warrant, in which case permission may be granted by the Board of Public Works. The Board of Public Works may impose whatever conditions it feels will ensure site restoration, including holding the performance deposit over the winter.

E. Performance Deposit Requirements

1. Prior to issuance of a permit, the applicant shall deposit with the City Treasurer a sum to be determined by the Director of Public Works or his designee based upon the nature and extent of the proposed street opening to ensure the restoration of the street opening.
2. The deposit shall be used by the City to defray any restoration expense incurred by the City and if any balance shall remain, it shall be refunded to the applicant.
3. No deposit or portion of deposit shall be refunded prior to final inspection by the City.
4. Any person or entity regularly undertaking street openings may post a seasonal deposit of One Thousand Dollars (\$1,000.00) to cover all street openings in lieu of posting a deposit for each opening.
5. The Marinette Water Utility and the Marinette Wastewater Treatment Commission shall be exempt from the performance deposit requirement.

F. Insurance Required

A permit shall be issued only upon condition that the applicant submit to the City Clerk satisfactory written evidence that applicant has in force and shall maintain during the time the permit is in effect public liability insurance of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per one (1) person, Five Hundred Thousand Dollars (\$500,000.00) for one (1) accident, and property damage coverage of not less than One Hundred Thousand Dollars (\$100,000.00).

G. Barricades and Lights

1. Any person or entity making or maintaining any street opening shall keep the same adequately guarded by barricades and lights to protect persons and property from injury and shall hold harmless the City of Marinette and its authorized agents from any claim or suit resulting from the above.
2. Every street opening shall be enclosed with sufficient barriers. Sufficient warning lights shall be kept on from sunrise to sunset. Such lights shall be spaced so as to give adequate warning of the existence of the street opening and of piled excavated materials. No open-flame warning pots shall be used. Except by special permission from the Superintendent of Public Works, no trench shall be excavated more than two hundred fifty (250) feet in advance of pipe or conduit laying or left unfilled more than five hundred (500) feet where pipe or conduit has been laid.
3. All necessary precautions shall be taken to guard the public effectively from accidents or damage to persons or property through the period of the work. Each person or entity making such street opening shall be held liable for all damages, including costs incurred by the City in defending any action brought against it for damages, as well as cost of any appeal, that may result from the neglect by such person or entity, or its employees of any necessary precaution against injury or damage to persons, vehicles, or property of any kind. The manual on Uniform Traffic Control Devices for Streets and Highways, published by the U.S. Department of Transportation Federal Highway Administration, as amended, shall control.

H. Backfilling

As soon as the purpose for a street opening has been accomplished, it shall be the duty of the person or entity having caused the opening, to immediately notify the Director of Public Works or his designee, and the person or entity, upon approval, will then cause such street, alley, or pavement to be repaired by backfilling the opening or trench with slurry or an alternative method approved by the Director of Public Works or his designee. A minimum of eight (8) inches of road gravel shall be used as backfill beneath the base of the road surface. A minimum of eight (8) inches of road gravel shall be used as backfill under completed pavement.

I. Manner of Excavating

1. All bituminous or concrete surfaces shall be machine cut. It shall be unlawful to make any such street opening in any way contrary to or at variance with the terms of the permit. All orders of the State Department of Industry, Labor, and Human Relations governing proper excavating methods are hereby made a part of this code as though set forth herein. Proper bracing shall be maintained to prevent

the collapse of adjoining ground; and in excavations, the excavation shall not have below the surface any portion which extends beyond the opening at the surface.

2. All tunnels or other underground excavation shall be bored.
3. No injury shall be done to any pipes, cables or conduits in the making of such excavations or tunnels; and notice shall be given to the persons maintaining any such pipes, cables or conduits which may be endangered or affected by the making of any such excavation or tunnel before such pipes, cables or conduits shall be disturbed.
4. No damage or injury shall be done to any tree or shrub or the roots thereof.

J. Sidewalks

If any sidewalk is blocked by any such work, a temporary sidewalk shall be constructed or provided which shall be safe for travel and convenient for users. The permittee shall make good any and all damages to sidewalks and driveways resulting from his work.

K. Terrace Areas

1. When an excavation is made in a terrace area, the holder of the permit shall restore the ground at his own expense in the following manner:
  - (a) Backfill the trench and tamp in layers of not more than three (3) feet.
  - (b) The top three (3) inches of backfill shall be made with a good grade of topsoil and seeded.
2. The terrace work shall be completed within two (2) weeks of the completion of work except that the Director of Public Works or his designee may waive the requirement during the months of November through March.

L. Time Limit

All street openings shall be restored not more than five (5) working days after the underground work has been completed. In exceptional circumstances, an extension of time for restoration may be granted by the Director of Public Works or his designee in his or her sole discretion.

M. Supervision

The Director of Public Works shall, from time to time, inspect all street openings to ensure the enforcement of the provisions of this section. Notice shall be given to him at least eight (8) hours before the work of refilling any street opening commences.

N. Resurfacing

Any street resurfacing and reconstruction of sidewalks and curbing shall be performed by the City unless prior arrangements are made with the Director of Public Works or his designee. The permit holder shall be responsible for all such costs.

O. Denial of Application

Any person or entity failing to abide by the terms of this ordinance or any street opening permit may be denied future permits.

P. Exemptions

The Provisions of this section relative to securing permits shall not apply to the Department of Public Works of the City nor to persons or corporations doing work for the City under contract unless otherwise stated in the contract.

Q. Penalty

Any violation of this section shall be governed by the general penalty provisions found in Marinette Municipal Code Section 1.0107, as amended.

**6.0205 RESERVED FOR FUTURE USE**

**6.0206 OBSTRUCTIONS AND ENCROACHMENTS**

A. Obstructions and Encroachments Prohibited

No person shall encroach upon or in any way obstruct or encumber any street, alley, sidewalk, public grounds, or land dedicated to public use, or any part thereof, or permit such encroachment or encumbrance to be placed or remain on any public way adjoining the premises of which he is the owner or occupant, except as provided in subsection (b).

B. Exceptions

The prohibition of subsection (a) shall not apply to the following:

1. Awnings which do not extend below any point seven (7) feet above the sidewalk, street, or alley.
2. Public utility encroachments duly authorized by State Law or by the Common Council.
3. Goods, wares, merchandise, or fixtures being loaded or unloaded which do not extend more than three (3) feet on a sidewalk, provided such goods, wares, etc., do not remain thereon for more than three (3) hours.
4. Building materials for the period authorized by the Common Council which shall not obstruct more than one-half (1/2) of the sidewalk or more than one-third (1/3) of the traveled portion of the street, and which do not interfere with flow in the gutters.

5. Excavations and openings permitted under Section 6.0204 of this Code.

C. Obstructing Gutters

1. Rubbish

No person shall place any garbage, rubbish, sand, stone, or other material in any gutter, street, or alley so as to obstruct the flow of water in the gutter.

2. Driveway

No person shall erect, construct, place, or maintain, a concrete, brick, or macadam driveway, or any driveway regardless of the material used in the construction, that shall extend across the established street line and obstruct the flow of water in any gutter in an alley or street.

3. Removal of Obstruction

An obstruction may be removed by any person authorized by the Council or by the Board of Public Works to remove the same, and the cost of the removal of the obstruction shall be charged against the person responsible for erecting, constructing, placing, or maintaining the obstruction in the gutter.

**6.0207 SNOW AND ICE REMOVAL**

A. Owner's Responsibility

The owner, lessee, occupant, or person in charge of each and every building or structure or unoccupied lot in the City of Marinette fronting or abutting any street shall clean, or cause to be cleaned, the sidewalk in front of or adjoining each such home, building, or unoccupied lot, as the case may be of snow or ice to the width of such sidewalk within twenty-four (24) hours of the cessation of such snowfall and shall cause the same to be kept clear from ice and snow, provided that when the ice has formed on any sidewalk so that it cannot be immediately removed, the persons herein referred to shall keep the same sprinkled with salt, sawdust, or sand, and shall, as soon thereafter as the weather shall permit, thoroughly clean such sidewalk.

B. City's Option to Clear Sidewalks

In the event of failure of the lessee, occupant, person having charge, or owner to remove all snow and ice from the sidewalk within said twenty-four (24) hour period, the Department of Public Works may remove the snow and ice from sidewalks. (See MMC 9.1302 Schedule A for fees) (Ordinance 2007-2085 adopted 3-6-07). This, however, does not remove the responsibility of the lessee, occupant, person having charge, or owner from removing snow and/or ice from the sidewalk and said person or entity shall retain responsibility for any liability accruing because of failure to remove snow and/or ice from the sidewalk and adjacent areas. The charges shall be set forth in a statement to the City Clerk who, in turn, shall mail the same to the owner, occupant, or person having charge of the subject premises. If

said statement is not paid in full within thirty (30) days thereafter, the statement shall be reported to the City Treasurer, who shall enter the charges in the tax roll as a special tax against said lot or parcel of land, and the same shall be collected in all respects like other taxes upon real estate, or as provided under Section 66.615, Wisconsin Statutes, as amended.

C. Penalty

As an alternative to a remedy provided in subsection (b) above, or in addition thereto, the City may impose a penalty for any violation of any provision of this Section, providing that the person who violates any of the provisions of this Section shall forfeit and pay to the City of Marinette an amount as found in Section 1.0107 of this Code of Ordinances, together with the costs of prosecution for each offense. A separate offense shall be deemed committed during each day (24 hours) or part thereof during which a violation occurs or continues.

State Law Reference: Sections 66.60(16) and 66.615(3)(f) and (5), Wis. Stats.

**6.0208 DEPOSIT OF SNOW AND ICE ON STREETS PROHIBITED**

A. Deposit Prohibited

It is unlawful for any person in clearing snow from parking lots, driveways, filling stations, garages, or other areas to pile or distribute snow, or cause snow to be piled or distributed, in a street or alley in any manner that tends to narrow the traveled portion of the street or prevent parking at the curb. Persons having such an accumulation of snow on private property shall be responsible for its handling at their own expense without depositing same in the right-of-ways, ditches, public streets, or alleys.

B. City's Option to Clear

The Department of Public Works may remove any such illegally piled, distributed, or deposited snow at any time. The property owner, from whose premises the snow originated, shall be billed a minimum of Thirty Dollars (\$30.00) on the first occasion that the Department of Public Works removes the snow. For subsequent violations, the Department of Public Works may remove the snow at the same cost multiplied by the number of times the Department of Public Works shall have removed the snow. This, however, does not remove the responsibility of the lessee, occupant, person having charge or owner from removing said snow, and said persons or entities shall retain responsibility for any liability accruing because of failure to remove said snow. The charges shall be set forth in a statement onto the City Clerk who, in turn, shall mail the same to the owner, occupant, or person in charge of the subject premises. If said statement is not paid in thirty (30) days thereafter, the statement shall be reported to the City Treasurer who shall enter the charges in the tax roll as a special tax against said lot or parcel of land, and the same shall be collected in all respects like other taxes upon real estate, or as provided under Wisconsin Statutes Section

66.615(3)(f), as amended.

C. Penalty

As an alternative to the remedy provided in subsection (b) above, or in addition thereto, the City may impose a penalty for any violation of any provision of this Section. The person or entity who violates any of the provisions of this Section shall forfeit and pay to the City of Marinette an amount as found in Section 1.0107 of this Code of Ordinances, together with the costs of prosecution for each offense. A separate offense shall be deemed committed during each day (24 hours) or part thereof during which a violation occurs or continues.

**6.0209 TERRACE AREAS**

A. Definition

The definition of "terrace" shall be as defined in Section 6.0402 (G).

B. Noxious Weeds; Paving

All that part of the terrace not covered by a sidewalk shall be kept free and clear of all noxious weeds and shall not be paved, surfaced, or covered with any material which shall prevent the growth of plants, and shall be maintained as a lawn, except in areas specifically approved by the Common Council or its designee. EXCEPTION: Paver bricks shall be allowed in the terrace area along Marinette Avenue from Cleveland Avenue to Hall Avenue, both sides, subject to a street opening permit and approval by the Director of Public Works (Ordinance 2007-2108 adopted 10-2-2007).

C. Responsibility to Maintain

Every owner of land in the City whose land abuts a terrace is required to maintain, or have maintained by his tenant, the terrace directly abutting such land as provided in this Section and elsewhere in this Code. Every owner shall keep mailboxes located on a terrace free and clear of snow.

D. Signs Prohibited

No person shall erect, maintain, or place upon or within the roadway, curb, space, tree lane, or sidewalk, any sign, advertising matter or any other object. This prohibition shall not apply to religious signs.

Gasoline Pumps

1. Gasoline Pumps

No person shall erect or maintain any gasoline pumps within the curb line or sidewalk within the City.

2. Gasoline Hoses

No person shall at any time extend a hose or apparatus across a curb line or sidewalk within the City for the purpose of selling or distributing gasoline or other products.

**6.0210 PLACEMENT OF STRUCTURES ON CITY OWNED RIGHTS-OF-WAY**

- A. No person or entity shall permanently place or plant any material structure, tree, shrub, bush, plant, vegetation, or any other item except grass or vegetation less than twelve (12) inches in height into or on the ground on any City-owned right-of-way without first having obtained permission from the Board of Public Works.
- B. An application for such permission shall be filed with the City Clerk and be accompanied by plans and specifications for the proposed placement. The Board of Public Works may require additional information it deems necessary.
- C. The Board of Public Works shall, within a reasonable time, grant or deny the application. Prior to granting the application, the Board of Public Works shall make findings based upon the evidence that the standards herein prescribed are being complied with.
- D. No application shall be granted unless all of the following conditions have been met:
  - 1. The proposed structure meets or exceeds standards pertaining to breakaway characteristics and vehicle crash standards as set forth in the American Association of State Highway and Transportation Officials (AASHTO) "Standard Specifications For Structural Supports For Highway Signs, Luminaries, and Traffic Signals", as amended.
  - 2. The structure consists of new, natural, nonmetallic material except that mailboxes may be metallic.
  - 3. The structure complying with all other applicable laws, ordinances, rules, and regulations.
  - 4. The structure contains no written signs, symbols, pictures, or other similar markings except that mailboxes may contain a name and address.
  - 5. The structure is not connected to electricity or other utility service.
  - 6. The use of the structure will not be detrimental to, or endanger, the public health, safety, morals, comfort, or general welfare.
  - 7. The uses, values, and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the placement of said structure, and that it is compatible with the use of adjacent land.
- E. Such structures shall only be allowed on rights-of-way between the owner's property line and the street upon which it fronts.
- F. The Board of Public Works may delegate any of its authority under this Section to a City official it deems appropriate.

**6.0211 CLASSES OF PUBLIC CONSTRUCTION WHICH MAY BE DONE BY CITY**

Pursuant to Section 62.15(1), Wis. Stats., as amended, the following classes of public construction may be done directly by the City without submitting the same for bids:

- A. Streets, alleys, sidewalks, including curb, gutter, and driveway approaches, both concrete and bituminous.
- B. Watercourses and storm sewers.
- C. Watermains, sanitary sewers, and appurtenances.
- D. Municipal offstreet parking lots.
- E. Street lights, traffic control devices, and appurtenances.
- F. Office remodeling and construction in public buildings.
- G. Electrical work.

**6.0212 DEADLINE FOR RECEIPT OF PETITIONS FOR ALLEY UPGRADES**

No alley upgrade work, based upon a petition, will be performed in the calendar year in which the petition is received. For any alley upgrade work to be performed in any calendar year, the petition must have been received no later than August 31<sup>st</sup> of the previous calendar year.

**6.0213 PLACEMENT OF IN-GROUND IRRIGATION SYSTEM ON CITY RIGHT OF WAY**

Property owners who wish to install in-ground sprinkler systems in the public right-of-way must first apply for a permit through the Public Works Director's Office, or said installation shall not be permitted. In order for said installation to be permitted, said permit shall clearly state, and the property owners must agree, that the installation of such equipment in the right of way is done at their own risk, as said area may need to be excavated by the City from time to time as necessary for various sidewalk and/or road construction projects. The permit shall further state, and the property owner must agree, that the City of Marinette, Marinette Water and Wastewater Utility, or any other entity excavating in the right-of-way will have no liability and shall be held harmless in the event said in-ground sprinkler system is damaged or destroyed. (Ord. 2007-2104 adopted 9-27-07).

## **6.0300 DRIVEWAYS**

### **6.0301 DRIVEWAYS**

#### **A. Permit Required**

No person, firm, or corporation shall construct a driveway for vehicles across any sidewalk or sidewalk space, or make a street opening for a driveway without first obtaining a permit therefore as hereinafter provided.

#### **B. Exemption from Permit Requirement**

Any driveway altered or created as part of an off-street parking lot, which has been approved under Chapter 13, Article E shall be exempt from the driveway permit requirement under this Section.

#### **C. Classes of Permits**

Permits are divided into two classes, as follows:

##### **1. Class (A)**

For driveway to serve private property devoted to single family or two-family residence use; a maximum of one (1) driveway shall be permitted for each living unit. However, a double driveway in a circular or horseshoe configuration with both driveways entering the same street shall be allowed, provided that the side of the property containing the driveway entrance is contiguous to the street into which the driveway enters for a distance of at least one hundred (100) feet. No driveway shall have a width greater than twenty-four (24) feet, nor less than twelve (12) feet measured at right angles to the center line of the driveway. A Class A driveway shall be constructed in accordance with the Class A Standard Driveway Design as promulgated by the Office of the Director of Public Works. In the case of unusual circumstances, the Director of Public Works may use discretion and grant a variance from the standard design.

##### **2. Class (B)**

For driveway to serve private property located within City limits other than Class (A). No driveway shall have a width greater than 35 feet, nor less than 12 feet measured at right angles to the centerline of the driveway. A Class B driveway shall be constructed in accordance with the Class B Standard Driveway Design as promulgated by the Office of the Director of Public Works. In the case of unusual circumstances, the Director of Public Works may use discretion and grant a variance from the standard design.

#### **D. Spacing**

- 1. A minimum length of twenty (20) feet shall be maintained between driveways serving the same premises. Island areas shall be defined**

by curbs, posts, or other suitable markers, as approved by the City Engineer.

2. No driveway shall be closer than fifteen (15) feet from the right of way of the adjacent street at an intersection. At street intersections a driveway shall not provide direct ingress or egress to or from the street intersection area and shall not occupy areas of the roadway deemed necessary by the City Engineer for effective traffic control or for highway signs or signals.
3. No driveway apron shall extend out into the street further than the facing of the curb and under no circumstances shall such driveway apron extend into any gutter area. All driveway entrances and approaches shall be so constructed as not to interfere with the drainage of streets, side ditches or roadside areas, or with any existing structure on the right-of-way. When required by the Board of Public Works so as to provide for adequate surface water drainage along the abutting street, the property owner shall provide any necessary culvert pipe at such owner's expense.

E. Application for Permit

Application for a Class (A) Driveway Permit shall be filed with the Building Inspector on a form provided for that purpose. Application for a Class (B) Driveway Permit shall be filed with the City Engineer on a form provided for that purpose.

F. Report on Application

Upon application being filed for Class (B) permit, the City Engineer shall prepare a report which will be referred to the Board of Public Works for determination that the driveway:

1. Will not create undue safety hazards in the use of the street, parking, or sidewalk by vehicular or pedestrian traffic;
2. Will not impede the safe and efficient flow of traffic upon the streets and sidewalk adjoining the property to be served by the proposed driveway, and
3. That the existing and proposed use of the property to be served by the proposed driveway is in conformance with existing traffic, zoning and building ordinances of the City.

G. Permit Fee

Repealed (See MMC Sec. 9.1302 Schedule A)

H. Construction

1. Excavation and base course shall be of the same type and style set forth for street improvement, and shall be in place at the location of building construction prior to commencement of any building operations. Traffic to and from the building operation shall use the

driveway base.

2. Where a curb is to be opened, it shall be sawed in such a manner to allow the return radii to be transitioned to the curb so as not to present an unsightly condition.
3. The driveway surface between the sidewalk or proposed sidewalk line and the street edge, shall be of bituminous concrete or Portland cement concrete surface placed in a true workmanlike manner. Where the driveway will be constructed between a sidewalk and concrete curb and gutter, the driveway apron shall be Portland cement concrete.
4. Sidewalk construction for the width of the driveway shall be of air-entrained Portland cement concrete with a minimum thickness of six (6) inches. Existing sidewalk not meeting these requirements shall be removed and replaced at the applicant's expense to conform with the above requirement.
5. Driveway construction shall not impede or obstruct the natural flow of surface water.
6. The owner of the premises shall be responsible to return the area of construction to original condition or better as determined by the City Engineer's office.

I. Drainage

Driveway culverts shall be provided by the property owner where required, and of sufficient size to accommodate surface water flow upstream of the driveway. Culvert size shall be determined by the City Engineer, but in no case shall be less than an equivalent fifteen (15) inches diameter pipe.

J. Repair

It shall be the duty of the property owner maintaining a driveway to keep the same, including the sidewalk, in good repair and free from obstructions and defects.

**6.0302 PERMITTEE LIABLE FOR DAMAGE OR INJURY**

The permittee shall assume responsibility for any injury or damage to persons or property resulting directly or indirectly during construction or repair of driveway approaches or entrances. When curb or gutter is removed, the new construction shall be of equivalent acceptable material and curb returns provided or restored in a neat, workmanlike manner. Driveway surfaces shall connect with the street pavement and sidewalk in a neat, workmanlike manner.

## **6.0400 TREES AND SHRUBS**

### **6.0401 STATEMENT OF POLICY AND APPLICABILITY OF CHAPTER**

#### **A. Intent and Purpose**

It is the policy of the City to regulate and establish policy for the control of planting, removal, maintenance, and protection of trees and shrubs in or upon all public areas and terrace areas of the City to eliminate and guard against dangerous conditions which may result in injury to persons using the streets, alleys, sidewalks, or other public areas; to promote and enhance the beauty and general welfare of the City; to prohibit the undesirable and unsafe planting, removal, treatment, and maintenance of trees and shrubs located in public areas; and to guard all trees and shrubs both public and private within the City against the spread of disease, insects, or pests.

- B. The provisions of this chapter shall apply to trees and shrubs growing or hereafter planted in or upon public areas and terrace areas and also to all trees and shrubs growing or to be planted in or upon any private premises which shall threaten the life, health, safety, or welfare of the public or of any public areas.

### **6.0402 DEFINITIONS**

Whenever the following words or terms are used in this chapter, they shall be construed to have the following meanings:

- A. "Person" shall mean person, firm, association, or corporation.
- B. "City" is the City of Marinette, Wisconsin.
- C. "Public Areas" include all public parks and other lands owned, controlled, or leased by the City except the terrace areas.
- D. "Public Trees and Shrubs" means all trees and shrubs located or to be planted in or upon public areas.
- E. "Public Nuisance" means any tree or shrub or part thereof which by reason of its condition interferes with the use of any public area; infected with a plant disease; infested with injurious insects or pests; injurious to public improvements or endangers the life, health, safety, or welfare of persons or property.
- F. "Dutch Elm Disease", defined as follows:
1. Any living or standing elm tree or part thereof infected with Dutch Elm disease fungus *Ceratocystis ulmi* (Buisman) or which harbors any of the elm bark beetle *Scolytus multistriatus* (Eich.) or *Hurgopinus rufipes* (Marsh.).
  2. Any dead elm or part thereof, including logs, branches, stumps, firewood, or other elm material not buried, burned, or from which the bark has not been removed.

- G. "Terrace Areas" means the land between the normal location of the street curbing and sidewalk. Where there is no sidewalk, the area four (4) feet from the curb line shall be deemed to be a terrace for the purpose of this Chapter.
- H. "Clear-Sight Triangle" means a triangle formed by the curb lines of two intersecting right-of-ways and a third line connecting a full-view zone at corners of streets, alleys, and highways.
- I. "Major Alteration". Trimming a tree beyond necessary trimming to comply with this Chapter.
- J. "Shrub" shall mean any woody vegetation or a woody plant having multiple stems and bearing foliage from the ground up.
- K. "Tree" shall mean any woody plant, normally having one (1) stem or trunk bearing its foliage or crown well above ground level to heights of sixteen (16) feet or more.

**6.0403 AUTHORITY OF CITY FORESTER TO ENTER PRIVATE PREMISES**

- A. The City Forester shall be a City official or employee designated by the Board of Public Works.
- B. The City Forester or his authorized representative may enter upon private premises at all reasonable times for the purpose of examining any tree or shrub located upon or over such premises and carrying out any of the provisions of this Chapter.

**6.0404 INTERFERENCE WITH THE CITY FORESTER PROHIBITED**

No person shall interfere with the City Forester or his authorized representative while they are engaged in carrying out any work or activities authorized by this Chapter.

**6.0405 ABATEMENT OF DUTCH ELM DISEASE NUISANCES**

- A. Whenever the City Forester shall find with reasonable certainty on examination or inspection that any public nuisance as defined herein exists within the City, he shall cause it to be sprayed, removed, burned, or otherwise abated in such manner as to destroy or prevent as fully as possible the spread of Dutch Elm disease fungus or the insect pests or vectors known to carry such disease.
- B. Before abating any nuisance on private premises or in any terrace strip between the lot line and the curb, the City Forester shall proceed as follows:
  - 1. If the City Forester determines that danger to other elm trees within the City is imminent, he shall notify the owner or abutting owner of the property on which such nuisance is found, in writing, if he can be found, otherwise by publication in a newspaper of general circulation in the City, that the nuisance must be abated as directed in the notice

within a specified time, which shall not be less than thirty (30) days from the date of such notice unless the Forester finds that immediate action is necessary to prevent the spread of infection.

2. Subject to Section 6.0415, if the owner fails to comply with the notice within the time limited, the Forester shall cause the abatement thereof.
- C. No damage shall be awarded to the owner for destruction of any elm tree, elm wood, elm material, or any part thereof pursuant to this chapter.

**6.0406 ASSESSMENT OF COSTS OF ABATEMENT**

- A. The entire cost of abating any public nuisance as defined herein shall be charged to, and assessed against, the parcel or lot abutting on the street, alley, boulevard, or parkway upon or in which such tree is located or the parcel or lot upon which such tree stands in accordance with Section 66.60(16) or Section 27.09, Wis. Stats. The cost of abating any such nuisance or part thereof which is located in or upon any park or public grounds shall be borne by the City.
- B. A special tax may be levied against property for the cutting down and removing therefrom any elm tree infected with Dutch Elm disease. The special tax may be paid in yearly installments not exceeding four (4) yearly installments if the property owner requests in writing the privilege of paying the special tax in installments. Interest on the deferred payments shall be at the rate of ten percent (10%) on the unpaid balance.

**6.0407 PERMIT FOR PLANTING, MAINTENANCE, AND REMOVAL OF TREES AND SHRUBS**

- A. Permit Required

No person, except upon order of the City Forester, shall plant or remove, or do major alterations as determined by the Forester on a tree or shrub in the public right-of-way terrace area or any public area or cause such act to be done by others without first obtaining a written permit for such work from the City Clerk as herein provided.

- B. Permit Exemptions

No permit shall be required to cultivate, fertilize or water trees or shrubs. No permit is necessary to plant trees inside the property line.

- C. Permit Requirements and Conditions

If the City Forester determines that the proposed work or planting described in an application for a permit is necessary and in accord with the purposes of this Chapter taking into account the safety, health, and welfare of the public, location of utilities, public sidewalk, driveways and street lights, general character of the area in which the tree or shrub is located or proposed to be located, type of soil, characteristics and physiological need of the genus, species, and variety of tree or shrub, he shall have the Forester issue a permit to the applicant.

D. Permit Form; Expiration, Inspection

Every permit shall be issued by the City Forester on a standard form and shall include a description of the work to be done and shall specify the genus, species, and variety, size, nursery grade, and location of trees or shrubs to be planted, if any. Any work under such permit must be performed in strict accordance with the terms thereof and the provisions of this Chapter. Permits issued under this section shall expire (6) six months after date of issuance. There will be no charge for this permit.

E. Permits to Public Utilities

1. Whenever a permit is issued under this Section to a public utility to remove, trim, prune, cut, disturb, alter, or do surgery on any public tree or shrub, the City Forester shall limit the work to be done to the actual necessities of the utility and may assign an inspector to supervise the work done under the provisions of the permit. The expense of such inspection or supervision shall be charged to the utility at the usual City rate.
2. A public utility may secure an annual working agreement with the City Forester's office which gives the City Forester the authorization to supervise and direct work done associated with trees and shrubs.

**6.0408 PLANTING OF TREES AND SHRUBS**

A. Planting

1. The size and genus, species and variety of trees and shrubs to be planted in public areas and terrace areas and the manner of planting shall be submitted to the City Forester for approval before commencement of such work as a part of the permit application process required in Section 6.0407.
2. There shall be a minimum distance of sixteen (16) feet and a recommended distance of twenty-five (25) to fifty (50) feet between terrace area trees depending upon the size of tree and other factors. Terrace trees shall be planted equal distance between the sidewalk or proposed sidewalk and back of the curb or proposed back of curb. In terrace areas less than three (3) feet wide planting will not be permitted.
3. Pine or fir trees shall not be planted in a terrace area.
4. It shall be unlawful to plant or maintain shrubbery, ground cover, or other plants within terrace areas whose growth is in excess of (8) eight inches in height above the top of the nearest curb.

B. Certain Trees Prohibited

1. Unlawfully Planted Trees

Trees, plants, or shrubs planted within any terrace or planting easement without the authorization and approval of the Forester may

be removed. The Forester shall notify the abutting owner in writing, listing the unlawfully planted trees, plants, or shrubs, ordering their removal, and establishing a reasonable time within which such removal shall be accomplished. In the event that removal is not to be accomplished within the time specified, the City may remove such trees, plants, or shrubs and assess the costs thereof to the owner.

C. Frames

Any person, adjacent to whose land any shade or ornamental tree or shrub is growing in any street, may, for the purpose of protecting such tree or shrub, surround the same with a suitable box or frame for protection, but all such work shall be performed under the supervision and direction of the Board of Public Works.

**6.0409 TRIMMING**

- A. Trees and shrubs standing in or upon any terrace area, public areas, or upon any private premises adjacent to any public right-of-way or public areas shall be kept trimmed so that the lowest branches projecting over the public street or alley provide a clearance of not less than fourteen (14) feet. The City Forester may waive the provisions of this Section fully or newly planted trees if he determines that they do not interfere with public travel, obstruct the light of any street light, or endanger public safety.
- B. The necessity of the pruning may be determined by the City Forester.
- C. Clearance from sidewalk to lower branches shall not be less than ten (10) feet. All trees standing upon private property in the City, the branches of which extend over the line of the street, shall be trimmed so that no branch shall grow or hang over the line of the sidewalk lower than ten (10) feet above the level of the sidewalk. No tree shall be permitted to grow in such a manner as to obstruct the proper diffusion of light from any public lamp.
- D. All cuts above one-inch (1") diameter shall be treated with a tree wound compound.

**6.0410 TREES AND SHRUBBERY OBSTRUCTING VIEW AT INTERSECTION OR VIEW OF TRAFFIC SIGNS**

- A. Notwithstanding any other provision of this Chapter, no person shall maintain, plant, or permit to remain on any private or public premises situated at the intersection of two (2) or more streets or alleys in the City, any hedge, tree, shrub, or other growth which may obstruct the view of the operator of any motor vehicle or pedestrian approaching such intersection.
- B. It is unlawful for any person to plant, cause to grow, allow to grow, or maintain any trees, bushes, shrubbery, or vegetation of any kind which is an obstruction to the clear and complete vision of any traffic sign in the City. It shall be the duty of every owner of such tree, bush, shrubbery, or vegetation to remove such obstruction.

- C. Any shrub, tree, or other plant which obstructs the view at an intersection or the view of a traffic sign, shall be deemed to be dangerous to public travel and the Forester shall notify the property owner in writing, describing the conditions, stating the steps necessary to correct the conditions, and establishing a reasonable time within which the corrective steps shall be taken. In the event that effective steps are not taken within the time specified, it shall be lawful for the City to abate these conditions to the extent necessary to assure compliance with the foregoing requirements, and the costs thereof shall be assessed to the owner.

**6.0411 REMOVAL OF TREES AND STUMPS**

A. Dangerous, Obstructive, and Infected Trees

Any tree or part thereof, whether alive or dead, which the Board of Public Works shall find to be infected, hazardous, or a nuisance so as to endanger the public or other trees, plants, or shrubs growing within the City, or to be injurious to sewers, sidewalks, or other public improvements whether growing upon public or private premises, shall be removed, trimmed or treated by the owner of the property upon, or adjacent to, which such tree or part thereof is located. The Board of Public Works, subject to Section 6.0414, shall give written notice to said owner to remedy the situation which shall be served personally or posted upon the affected tree. Such notice shall specifically state the period of time within which the action must be taken, which shall be within not less than twenty-four (24) hours nor more than fourteen (14) days as determined by the Board of Public Works on the basis of the seriousness of the condition of the tree or danger to the public. If the owner shall fail to remove, treat, or trim said tree within the time limited, the Public Works Committee shall cause the tree to be removed, treated, or trimmed and shall report the full cost thereof to the City Clerk who shall thereupon enter such cost as a special charge against the property.

- B. In cutting down trees located in public and terrace areas, the tree must be removed with the root stump grubbed out, or ground out to a depth of at least nine (9) inches below grade measured in a straight line; normal grade of sidewalk to top of nine (9) inches below grade measured as a straight line, normal grade of sidewalk to top of curb. All wood and debris must be removed from the street prior to the end of each working day and all holes shall be filled to normal grade level with topsoil as soon as practicable.

**6.0412 COST OF PLANTING, REMOVAL, MAINTENANCE, AND PROTECTION OF TREES AND SHRUBS IN TERRACE AREAS**

The entire cost of planting, removal, Dutch Elm disease treatment of removal, maintenance, and protection of trees and shrubs on all terrace areas in the City shall be borne by the abutting property owner, or as determined by the Board of Public Works.

#### **6.0413 INJURY TO TREES AND SHRUBS PROHIBITED**

- A. No person shall, without the consent of the owner in the case of a private tree or shrub, or without written permits from the City Forester in the case of a terrace area tree, public tree, or shrub do or cause to be done by others any of the following acts:
1. Secure, fasten, or run any rope, wire sign, unprotected electrical installation, or other device or material to, around, or through a tree or shrub.
  2. Break, injure, mutilate, deface, kill, or destroy any tree or shrub or permit any fire to burn where it will injure any tree or shrub.
  3. Permit any toxic chemical, gas, smoke, oil, or other injurious substance to seep, drain, or be emptied upon or about any tree or shrub, or place cement or other solid substance around the base of the same.
  4. Remove any guard, stake, or other device or material intended for the protection of a public tree or shrub, or close or obstruct any open space about the base of a public tree or shrub designed to permit access of air, water, and fertilizer.
  5. Attach any sign, poster, notice, or other object on any tree, or fasten any guy wire, cable, rope, nails, screws, or other device to any tree; except that the City may tie temporary "no parking" signs to trees when necessary in conjunction with street improvement work, tree maintenance work, or parades.
  6. Cause or encourage any fire or burning near or around any tree.
- B. All trees on any parkway or other publicly owned property near any excavation or construction of any building, structure, or street work, shall be sufficiently guarded and protected by those responsible for such work as to prevent any injury to said trees. No person shall excavate any ditches, tunnels, or trenches, or install pavement within a radius of ten (10) feet from any public tree without a permit from the City Forester.

#### **6.0414 APPEAL FROM DETERMINATIONS OR ORDERS**

Any person who receives a determination or order under this Chapter from the City Forester or Board of Public Works and objects to all or any part thereof shall have the right to appeal such determination or order, subject to the provisions of Chapter 68, Wis. Stats., to the Common Council within seven (7) days of receipt of the order and the Common Council shall hear such appeal within thirty (30) days of receipt of written notice of the appeal. After such hearing the Common Council may reverse, affirm, or modify the order or determination appealed from and the grounds for its decision shall be stated in writing. The Common Council shall by letter notify the party appealing the order or determination of its decision within ten (10) days after the hearing has been concluded and file its written decision with the City Clerk.

**6.0415 ADOPTION OF STATE STATUTES**

Sections 27.09 and 86.03, Wis. Stats., are hereby adopted and incorporated herein by reference.

State Law Reference: Sections 27.09 and 86.03, Wis. Stats.

## **6.0500 CEMETERIES**

### **6.0501 PUBLIC BURIAL GROUNDS**

All cemeteries now owned or which may be hereafter acquired by the City of Marinette, wherever situated, and all cemeteries now within the limits of the City, whether owned by the City or not, are declared to be public burial grounds, and no person shall establish or locate any other burying ground within the City.

State Law Reference: Section 157.50, Wis. Stats.

### **6.0502 (deleted by Ordinance 2011-2205 adopted 9-6-11)**

### **6.0503 DELINQUENT ASSESSMENTS**

When uniform care of a City cemetery lot has been given for two (2) consecutive years or more and the cemetery assessments are unpaid, after notice has been given as provided in Section 6.0502, the right to interment is forfeited until the delinquent assessments are paid. When uniform care has been given for five (5) consecutive years or more and the assessments are unpaid, upon like notice, title to all unoccupied part of the lot shall pass to the City of Marinette and the cemetery lot may be sold, and the proceeds placed in a fund for perpetual care of the occupied portion of the lot.

### **6.0504 CEMETERY PERPETUAL CARE FUND**

A fund for the perpetual maintenance of cemetery grave lots shall be established and fifteen percent (15%) of all proceeds received from sale of grave spaces shall be deposited into said fund to provide maintenance and care of cemetery grounds. Cemetery. Perpetual care shall mean the cutting of the grass upon the lot or grave at reasonable intervals, the raking and cleaning of the lot or grave, the pruning of shrubs and trees, and such work as may be necessary to keep the cemetery grounds surrounding the grave in good and neat condition. It does not include maintenance or repair of any gravestones or monumental structures erected upon lots or graves therein nor the planting of flowers or ornamental plants. (Ordinance 2011-2205 adopted 9-6-11)

### **6.0505 MAUSOLEUM PERPETUAL CARE FUND**

The City shall have power to determine the charges to be made for crypts and rooms in the public mausoleums. A fund for the perpetual maintenance of vaults or crypts shall be established and twenty-five percent (25%) of all proceeds received from sale of mausoleum niches or crypts shall be deposited into said fund to provide maintenance and care relating to said mausoleums. Mausoleum perpetual care shall mean mausoleum facility maintenance and such work as may be necessary to keep the facility containing niches and crypts in good and neat condition. It does not include maintenance or repair of any privately owned memorial items within the facility.

**6.0506 PLACE OF INTERMENT**

No interment of the body of any person shall be made in any other place within the City than in a public cemetery devoted to that purpose.

**6.0507 DEPTH OF GRAVES**

The graves in all cemeteries under the control and management of the City shall be dug to such depths as comply with the rules and regulations of the Wisconsin State Board of Health.

**6.0508 (deleted by Ordinance 2011-2205 adopted 9-6-11)**

**6.0509 BURIAL IN CEMETERY LOTS**

Pursuant to Wis. Stat. Chapter 157, no person shall be interred in a lot in any City cemetery except the corpse of one having an interest therein, or a relative, or the husband or wife of such person, or his relative, except by consent of all persons having an interest in the lot. (Ordinance 2011-2205 adopted 9-6-11)

**6.0510 CEMETERY STRUCTURES**

No person shall plant trees or shrubs in a City cemetery nor erect wooden fences or structures or offensive or dangerous structures or monuments nor maintain them if planted or erected in violation of the cemetery regulations. The City may require any person owning or controlling a lot, crypt, niche, or room to do anything reasonably necessary to comply with the cemetery and/or Mausoleum regulations by giving notice in writing if he is a resident of the County; otherwise by publishing at least once a week for three (3) consecutive weeks in a newspaper published in Marinette County. If the person fails to comply within twenty (20) days thereafter, the Civic Affairs, Cemetery, Traffic and Lights Committee may cause the removal of the structure and recover the expense from such person.

**6.0511 FORFEITURES**

Persons violating the provisions of this Chapter shall pay a forfeiture in an amount as is found in Section 1.0107 of this Code of Ordinances. The forfeitures shall be recoverable under the provisions of the Wisconsin Statutes.

**6.0512 SALE OF GRAVES, CRYPTS OR NICHEs**

Individuals wishing to purchase a grave, crypt, or niche, in any City cemetery or mausoleum shall pay to the City Clerk the fee as established in Marinette Municipal Code §9.1302 Schedule A which sum the City Clerk or Administrator shall deposit with the City Treasurer. The City Clerk shall execute to the purchaser a pre-numbered sales contract and deed or other appropriate conveyance document conveying interment, entombment or inurnment rights subject to the rules and regulations of the City. The deed or other document shall be inalienable and upon the death of the owner shall descent to their heirs according to law but any one or more of such heirs may convey to any other heir,

their interest therein. In the case of immediate need, the cemetery or mausoleum space needed must be paid for in full before burial, inurnment or entombment will take place. Graves, niches and crypts must be paid in full prior to placement of any grave marker, niche engraving or crypt lettering. (Ordinance 2011-2205 adopted 9-6-11).

**6.0513 (deleted by Ordinance 2011-2205 adopted 9-6-11)**

**6.0514 CEMETERY CITY CLERK'S REGISTRY**

The City Clerk shall keep a properly indexed register to be provided by the City, of all persons buried in each of the cemeteries giving the name of the deceased, place of birth, residence, age, sex, date of death, date of interment, name of undertaker, nearest surviving relative or friend, and the location of grave by block, lot number, and section. This registry shall be kept in the office of the City Clerk and maintain an appropriate offsite backup copy. No interment of any deceased person shall be made in any cemetery within the City until a burial-transit permit issued by the Board of Health has been furnished to the City Clerk in which the interment is to take place. The transit burial permit shall be permanently retained in the City Clerk's file under the provisions of the Wisconsin State Board of Health. (Ordinance 2011-2205 adopted 9-6-11)

**6.0515 PERPETUAL CARE FUNDS**

All monies received for cemetery and mausoleum perpetual care shall be deposited in a segregated City account and managed and invested at the direction of the City, or its designee, pursuant to Wisconsin Statutes Section 66.04, Chapter 881, any other applicable state statutes as amended from time-to-time, and as prescribed by the auditors for the City of Marinette.

**6.0516 RESERVED FOR FUTURE USE**

**6.0517 LOITERING AT NIGHT**

All municipal cemeteries shall be closed to the public between the hours of 5:30 p.m. to 6:00 a.m. during October 1 to April 30 and between the hours of 8:00 p.m. to 6:00 a.m. during May 1 to September 30.

**6.0518 JEWISH CEMETERY**

- A. The City shall assume jurisdiction and control of the Jewish Cemetery located in the City of Marinette defined as part of the SW 1/4 of the NW 1/4 and part of the NW 1/4 of the SW 1/4 of Section 7, Township 30 North, Range 24 East, as authorized by Resolution No. 68.
- B. The system of management and operation shall be in accordance with this chapter of the Marinette Municipal Code and the provisions of the agreement between Congregation Montefiore Hebrew Cemetery Association and Sons of Jacob Cemetery Association dated July 30, 1975.

**6.0519 MAINTENANCE AND REPAIR OF GRAVESTONES AND MONUMENTS**

- A. The City may, by written order, provide that when monuments, gravestones, or ornamental structures are broken beyond repair, or are in an unsafe condition so as to constitute a hazard to the public, said debris may be removed by City employees or lot owner.
- B. The City, prior to ordering the removal of said debris, shall give six (6) months notice to the general public and proprietors of faulty stones and order the persons interested in said graves to remove the stones or to replace them with a marker of a size or material within cemetery regulations.

**6.0520 DEFACING CEMETERIES PROHIBITED**

- A. Except by authority, no person shall dig up, pull up, break down, or in any manner injure, remove, or deface any shrubbery, flowers, plants, grass plot, or turf growing or being in and upon any part of the grounds of any cemetery, or injure or deface any building, monument, marker, or other structure on a cemetery.
- B. No tree shall be removed, no wooden fence or other wooden structure shall be erected, no trees or shrubbery shall be planted, and no vases, glasses, or other obstructions shall be placed on any lot in a cemetery, and no rubbish shall be deposited anywhere in a cemetery except in such places as designated.

**6.0521 INTERMENT REGULATIONS**

- A. Sunday or Holiday Burial  
There shall be no burial, entombment or inurnment on Sundays or holidays unless ordered by the Public Health Officers, or unless a Sunday burial or committal takes place in the Congregation Montefiore/Sons of Jacob Section.
- B. City Clerk's Records  
No person shall inter, entomb or inurn any body or remains in any lot or part of the Cemetery or Mausoleum without first notifying the City Clerk of such intention and furnishing that office with the necessary information to enable staff to comply with official burial registry requirements. No burial will be made without a proper death certificate or burial permit.
- C. Notice to City Clerk  
Advance scheduling notification to the City Clerk shall take place during normal business hours Monday through Friday and no later than noon on the day prior to any interment, entombment or inurnment within City cemeteries or Mausoleum. Monday burials must be arranged by 12:00 P.M. the previous Friday. During winter months, when ground frost must

be thawed, at least forty-eight (48) working hours (two (2) days) notice must be given, so that heaters may be set. Cemetery interment & Mausoleum entombment and inurnment hours shall be 9:00 AM to 2:00 PM Monday through Friday, excluding legal holidays; and, Saturdays, by special arrangement. .

Any labor charges for Saturday, Sunday or holiday interments shall be at the then prevailing overtime rate.

D. Severe Weather

During severe weather conditions, the City Clerk shall decide, upon consultation with the undertaker responsible for burial, to postpone burial until suitable conditions exist. The undertaker shall provide care and storage for the remains until proper burial can be made.

E. Interment of Multiple Bodies in One Grave

1. The interment of two (2) adult bodies in one (1) grave (that is one above the other) will not be allowed, except in case of an adult and infant child, or two (2) children buried at the same time.
2. The interment of multiple cremated remains may be allowed at the discretion of the City Clerk in one (1) grave. The minimum container requirement for a cremated remains shall be as supplied by a crematorium and existing regulations that allow no more than one grave marker stone shall apply.

F. Orders of Funeral Director

How Construed. Orders for burial given by a Funeral Director having charge of the burial of any person will be construed by the City Clerk as orders from the lot owner. After interment, no changes in the location of graves will be made, except at the expense of the lot owner.

G. Responsibility of Internment and Entombment Fees

Funeral Directors making arrangements for the disposition of the remains will be held responsible for the opening and closing fees as follows:

1. For convenience, Marinette Funeral Directors will be billed, by the cemetery, on the first of every month, for the previous month's interment and entombment charges, with payment due by the 15th day of the billing month. Each successive monthly billing for any past due amount shall carry a 1.5 percent (1.5%) service charge. If at any time a Marinette Funeral Director's monthly billing becomes past due, no further burials or entombments shall be performed for that particular Funeral Director except pursuant to (g)(2), and the past due bills shall be forwarded to the City Attorney for collection.
2. Funeral Directors outside of the City of Marinette, and individuals or families making their own disposition arrangements with the cemetery, shall deposit with the City Clerk, or his designee, the total

amount due for services, at or before the time of the final disposition of the remains.

3. In the case of individuals on public assistance, the county involved will be billed, if it is determined that the individual is eligible for the burial benefit.

H. Funeral Director's Responsibility

1. It shall be the responsibility of the Funeral Director to provide to the City Clerk all necessary family arrangement information regarding any particular burial procedure.
2. Caskets shall be transported to gravesite by vault cart only.

**6.0522 REMOVAL OF BODIES**

City cemetery employees in compliance with the statues and public authorities of the State of Wisconsin must make disinterments, disentombments and disinurnments (Ordinance 2011-2205 adopted 9-6-11).

**6.0523 DISCLAIMER – RESPONSIBILITY OF CITY LIMITED**

The City of Marinette will take every reasonable precaution to protect all private property or lot and grave owner's property in the cemetery from loss or damage, but it distinctly disclaims all responsibility for loss or damage from causes beyond its reasonable control and especially from the act of thieves, vandals, rioters, and malicious mischief-makers and from all acts of Providence including unusual wind, tornadoes, cyclones, hail, snow, and frost, whether the damage be indirect or proximate.

**6.0524 RESTRICTIONS ON CEMETERY USE**

The following restrictions on cemetery use shall apply within the boundaries of any cemetery or mausoleum owned, operated, or controlled by the City of Marinette.

A. Prohibited Conduct

Walking, driving, or running over lots and graves is prohibited.

B. Animals

Domestic animals are not permitted in the cemeteries, nor are they allowed to be buried there for any reason.

C. Shooting; Destruction; Animals

No person shall be allowed to destroy bird nests, shoot, or throw stones at birds, or catch or kill any wild animal on the cemetery grounds.

D. Firearms; Airguns; Slingshots

All persons are prohibited from carrying or discharging firearms, spring and air guns, or using sling shots, archery equipment, or other weapons in the

City's cemeteries.

E. Planks to be laid

Planks are required to be laid on paths or grass over which heavy material is to be moved, in order to protect same from injury in the cemetery.

F. No motorized vehicles except automobiles or trucks operating on paved roads and designated gravel roads shall be allowed. (Ordinance 2013-2266 adopted 10-1-13)

G. Cross-country skiing shall be prohibited.

H. Vehicles shall be limited to a maximum speed of ten (10) miles per hour.

I. Any person using a cemetery as a walking route shall at all times remain on paved roads and paths.

J. Scattering of Cremated Remains

No person shall scatter or deposit cremated remains of any type within the boundaries of any City of Marinette cemetery. Cremated remains shall be interred or entombed only as prescribed in the City of Marinette Cemeteries Rules and Regulations, as amended from time to time.

## 6.0600 STORM WATER MANAGEMENT

### 6.0601 Illicit Discharge and Connection Ordinance

#### A. Purpose and Intent

The purpose of this ordinance is to provide for the health, safety, environment and general welfare of the citizens of the City of Marinette through the regulation of non-storm water discharges into waters of the state or the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into waters of the state or the MS4 in order to comply with requirements of the Wisconsin Pollutant Discharge Elimination System (WPDES) permit process. The objectives of this ordinance are:

1. To regulate the contribution of pollutants into waters of the state or the MS4 by storm water discharges by any user.
2. To prohibit illicit connections and discharges into waters of the state or the MS4.
3. To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

#### B. Definitions

For the purposes of this ordinance, the following shall mean:

1. Authorized Enforcement Agency. Employees or designees of the Public Works Director of the City of Marinette Public Works Department are designated to enforce this ordinance.
2. Best Management Practices (BMPs). Structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.
3. Construction Activity. Activities subject to City of Marinette construction permits per erosion control and stormwater management ordinance.
4. Contaminated Storm Water. Storm water that comes into contact with material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts or industrial machinery in the source areas listed in NR 216.
5. Department (DNR). The Wisconsin Department of Natural Resources.
6. Discharge. As defined in ch. 283, Wis. Stats., when used without qualification includes a discharge of any pollutant.

7. Discharge of Pollutant or Discharge of Pollutants. As defined in ch. 283, Wis. Stats. means any addition of any pollutant to the waters of this state from any point source.

8. Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

9. Illicit Discharge. Any discharge into waters of the state or a municipal separate storm sewer system that is not composed entirely of storm water. Non-storm water discharges that are not considered illicit discharges include water line flushing, landscape irrigation, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, fire fighting, and discharges authorized under a WPDES permit unless identified by the Public Works Department as a significant source of pollutants to waters of the state.

10. Illicit Connections. An illicit connection is defined as either of the following:

(a) Any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter waters of the state or the MS4 including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter waters of the state or the MS4 and any connections to waters of the state or the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,

(b) Any drain or conveyance connected from a commercial or industrial land use to waters of the state or the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

11. Industrial Activity. Activities subject to WPDES Industrial Permits per NR 216 and ch. 283, Wis. Stats.

12. Maximum Extent Practicable (MEP). A level of implementing management practices in order to achieve a performance standard or other goal 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.

13. Municipality. Any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district or any other public entity created pursuant to law and having authority to collect, treat or dispose of sewage, industrial wastes, storm water or other wastes.

14. Municipal Separate Storm Sewer System (MS4). As defined in Wisconsin Administrative Code NR 216, means a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all the following criteria:

(a) Owned or operated by a municipality.

(b) Designed or used for collecting or conveying storm water.

(c) Which is not a combined sewer conveying both sanitary and storm water.

(d) Which is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.

15. Non-Storm Water Discharge. Any discharge to the MS4 that is not composed entirely of storm water.

16. Owner. Any person holding fee title, an easement or other interest in property.

17. Outfall. The point at which storm water is discharged to waters of the state or to a storm sewer.

18. Person. An individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.

19. Pollutant. As defined in ch. 283, Wis. Stats., means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

20. Pollution. As defined in ch. 283, Wis. Stats., means any man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

21. Pollution prevention. Taking measures to eliminate or reduce pollution.

22. Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

23. Storm Water. Runoff from precipitation including rain, snow, ice melt or similar water that moves on the land surface via sheet or channelized flow.

24. Storm Water Management Plan / Storm Water Pollution Prevention Plan: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to waters of the state or the MS4 to the Maximum Extent Practicable.

25. Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

26. Watercourse. A natural or artificial channel through which water flows. These channels include: all blue and dashed blue lines on the USGS quadrangle maps, all channels shown on the soils maps in the NRCS soils book for Marinette County, all channels identified on the site, and new channels that are created as part of a development. The term watercourse includes waters of the state as herein defined.

27. Waters of the state. As defined in ch. 283, Wis. Stats., means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.

28. Wisconsin Pollutant Discharge Elimination System (WPDES) Storm Water Discharge Permit. A Wisconsin pollutant discharge elimination system permit issued pursuant to Wisconsin Statute 283.

C. Applicability

This ordinance shall apply to all water and discharges entering waters of the state or the MS4 generated on any lands unless explicitly exempted by the Public Works Department.

D. Responsibility for Administration

The Public Works Department shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the Public Works Department may be delegated in writing by the Public Works Director of the Public Works Department to persons or entities acting in the beneficial interest of or in the employ of the agency.

E. Compatibility With Other Regulations

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

F. Severability

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

G. Ultimate Responsibility

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

H. Discharge Prohibitions

1. Prohibition of Illicit Discharges

No person shall throw, dump, spill, drain, or otherwise discharge, cause, or allow others under its control to throw, dump, spill, drain, or otherwise discharge into waters of the state or the MS4 any pollutants or waters containing any pollutants, other than storm water.

2. Allowed Discharges

(a) Water line flushing, landscape irrigation, diverted stream flows, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, and discharges authorized under a WPDES permit unless identified by the Public Works Department as a significant source of pollutants to waters of the state.

(b) Discharges or flow from firefighting, and other discharges specified in writing by the Public Works Department as being necessary to protect public health and safety.

(c) Discharges associated with dye testing, however this activity requires a verbal notification to the Public Works Department and the Department of Natural Resources a minimum of one business day prior to the time of the test.

(d) Any non-storm water discharges permitted under a construction activity permit, industrial activity permit, or WPDES permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Public Works Department prior to allowing discharges to waters of the state or the MS4.

3. Prohibition of Illicit Connections

(a) The construction, use, maintenance or continued existence of illicit connections to waters of the state or the MS4 is prohibited.

(b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(c) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to waters of the state or the MS4, or allows such a connection to continue.

(d) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Public Works Department.

(e) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to waters of the state or the MS4, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Public Works Department requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Public Works Department.

I. Watercourse Protection

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

J. Compliance Monitoring

1. Right of Entry: Inspecting and Sampling

The Public Works Department shall be permitted to enter and inspect properties and facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.

(a) If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the Public Works Department.

(b) Facility owners and operators shall allow the Public Works Department ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records.

(c) The Public Works Department shall have the right to set up on any property or facility such devices as are necessary in the

opinion of the Public Works Department to conduct monitoring and/or sampling of the facility's storm water discharge.

(d) The Public Works Department has the right to require the owner or operator to install monitoring equipment as necessary, and make the monitoring data available to the Public Works Department. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

(e) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the Public Works Department and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.

(f) Unreasonable delays in allowing the Public Works Department access to a facility is a violation of this ordinance. A person who is the operator of a facility commits an offense if the person denies the Public Works Department reasonable access to the facility for the purpose of conducting any activity authorized or required by this ordinance.

## 2. Special Inspection Warrant

If the Public Works Department has been refused access to any part of the premises from which storm water is discharged, and the Public Works Department is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the Public Works Department may seek issuance of a special inspection warrant per s.66.0119, Wis. Stats.

## K. Requirement to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices.

The owner or operator of any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into waters of the state or the MS4 through the use of structural and non-structural BMPs. Further, any person responsible for a property or premise, that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to waters of the state or the MS4. Compliance with all terms and conditions of a valid permit authorizing the discharge of storm water associated with industrial activity or construction activity, to the maximum extent practicable, shall be deemed compliance with the provisions of this section.

#### L. Notification of Spills

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into storm water, the MS4, or waters of the state, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release, so as to minimize the impacts of the discharge.

In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services, and shall also notify the Public Works Department. In the event of a release of non-hazardous materials, said person shall notify the Public Works Department in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Public Works Department within [3] business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least [5] years.

Failure to provide notification of a release as provided above is a violation of this ordinance.

#### M. Violations, Enforcement, and Penalties

##### 1. Violations

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the Public Works Department is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation. The Public Works Department is authorized to seek costs of the abatement as outlined in Section 16.

##### 2. Warning Notice

When the Public Works Department finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the Public Works Department may serve upon that person a verbal or written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations

occurring before or after receipt of the Warning Notice. Nothing in the subsection shall limit the authority of the Public Works Department to take action, including emergency action or any other enforcement action without first issuing a Warning Notice.

### 3. Notice of Violation

Whenever the Public Works Department finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the Public Works Department may order compliance by written notice of violation to the responsible person.

The Notice of Violation shall contain:

- (a) The name and address of the alleged violator;
- (b) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (c) A statement specifying the nature of the violation;
- (d) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
- (e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (f) A statement that the determination of violation may be appealed to the Public Works Department by filing a written notice of appeal within [3] business days of service of notice of violation; and
- (g) A statement specifying that, should the violator fail to restore compliance within the established time schedule, representatives of the Public Works Department may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The Public Works Department may go on the land and commence the work after issuing the notice of intent. The Public Works Department is authorized to seek costs of the abatement as outlined in Chapter 11 Section 11.0606 of the City's Code of Ordinances.

Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;

- (e) Payment of a fine to cover administrative and remediation costs;  
and
- (f) The implementation of BMPs.

4. Suspension of MS4 Access

(a) Emergency Cease and Desist Orders

When the Public Works Department finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the state which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Public Works Department may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

(1) Immediately comply with all ordinance requirements;  
and

(2) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

(3) Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Public Works Department may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the state, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Public Works Department may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Public Works Department that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this ordinance. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Public Works Department within [30] days of receipt of the prerequisite for, taking any other action against the violator.

(b) Suspension Due to Illicit Discharges in Emergency Situations

The Public Works Department may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the state. If the violator fails to comply with a

suspension order issued in an emergency, the Public Works Department may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the state, or to minimize danger to persons.

(c) Suspension Due to the Detection of Illicit Discharge

(1) Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Public Works Department will notify a violator of the proposed termination of its MS4 access.

(2) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the Public Works Department.

5. Prosecution and Penalties

Any person violating any provision of this ordinance shall be subject to a forfeiture of not less than \$25.00 nor more than \$10,000.00 and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.

Compliance with the provisions of this ordinance 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 injunctive proceedings.

N. Appeals

1. Board of Public Works

The Board of Public Works created pursuant to Chapter 2, Section 2.0205 of the City of Marinette ordinance pursuant to 62.14, Wis. Stats.

(a) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Public Works Department in administering this ordinance except for cease and desist orders obtained under Chapter 13.

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

(c) Shall use rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.

2. Who May Appeal

Appeals to the Board of Public Works may be taken by any aggrieved person or by any office, department, board, or bureau of the City of Marinette affected by any decision of the Public Works Department.

O. Enforcement Measures After Appeal

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, the appropriate authority upheld the decision of the Public Works Department, then representatives of the Public Works Department may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The Public Works Department may go on the land and commence the work after issuing the notice of intent. The Public Works Department is authorized to seek costs of abatement as outlined in Section 16. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

P. Cost of Abatement of the Violation

The costs of the work performed by the Public Works Department pursuant to this ordinance, plus interest at the rate authorized by the Public Works Department 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.

Q. Violations Deemed a Public Nuisance

Any condition in violation of any of the provisions of this ordinance and declared and deemed a nuisance, may be summarily abated or restored at the violator's expense.

R. Remedies Not Exclusive

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Public Works Department to seek cumulative remedies.

The Public Works Department may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

**6.0602 Construction Site Erosion Control Ordinance**

A. Authority

1. This ordinance is adopted under the authority granted by s. 62.234, Wis. Stats., for cities. This ordinance supersedes all provisions of an ordinance previously enacted under s. 62.23, Wis. Stats., that relate to construction site erosion control. Except as otherwise specified in s. 62.234 Wis. Stats., s. 62.23, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.
2. The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.

3. The City Council hereby designates the Public Works Department to administer and enforce the provisions of this ordinance.
4. The requirements of this ordinance do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:
  - (a) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under ss. 281.16 and 283.33, Wis. Stats.
  - (b) Targeted performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

B. Finding of Fact

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

C. Purpose

It is the purpose of this ordinance to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth, by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land disturbing construction activity to waters of the state in the City of Marinette.

D. Applicability and Jurisdiction

1. Applicability

- (a) Where not otherwise limited by law, this ordinance applies to all construction sites, unless the site is otherwise exempt under D.1.(b) or (c):
  - (1) A permit is required for a construction site with 4,000 square feet or greater of land disturbing construction activity. The responsible party shall comply with all applicable provisions of this ordinance for a permitted site, including the G.2. performance standards, H. permit requirements, and I. plan requirements.
  - (2) A permit is not required for a construction site with less than 4,000 square feet of land disturbing construction activity. The responsible party shall comply with all applicable provisions of this ordinance for a non-permitted site, including the G.1. performance standards.
  - (3) Notwithstanding the applicability requirements in D.1.(a)(1) and (2), a permit is required for a construction site with less than 4,000 square feet of land disturbing construction activity if the Public Works Department determines that permit coverage is needed in order to improve ordinance compliance, meet targeted

performance standards, or protect waters of the state. If a permit is required, the responsible party shall comply with all applicable provisions of this ordinance for a permitted site, including the G.2. performance standards, H. permit requirements, and I. plan requirements.

(b) This ordinance does not apply to the following:

- (1) Land disturbing construction activity that includes the construction of 1- and 2-family residential dwellings that are not part of a larger common plan of development or sale and that result in less than 1 acre of disturbance. These construction sites are regulated by the Wisconsin Department of Safety and Professional Services under s. SPS 321.125 Wis. Adm. Code.
  - (2) Nonpoint discharges from agricultural activity areas.
  - (3) Nonpoint discharges from silviculture activities.
- (c) A construction site exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under 40 CFR 122, for land disturbing construction activity, shall comply with G.1. performance standards if less than 1 acre of land disturbing construction activity. The G.2. performance standards, H. permit requirements, and I. plan requirements are not applicable.

## 2. Jurisdiction

This ordinance applies to land disturbing construction activities on lands within the boundaries and jurisdiction of the City of Marinette, as well as the extraterritorial division of land subject to an ordinance enacted pursuant to s. 236.45(2) and (3), Wis. Stats.

## 3. Exclusions

This ordinance is not applicable to activities conducted by a state agency, as defined under s. 227.01 (1), Wis. Stats., but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33 (2), Wis. Stats.

## E. Definitions

1. "Administering authority" means a governmental employee or agent that is designated by the City Council to administer this ordinance.
2. "Agricultural activity area" means the part of the farm where there is planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or outside yarding of livestock, including sod farms and silviculture. Practices in this area may include waterways, drainage ditches, diversions, terraces, farm lanes, excavation, filling and similar practices. The agricultural activity area does not include the agricultural production area.

3. "Agricultural production area" means the part of the farm where there is concentrated production activity or impervious surfaces. Agricultural production areas include buildings, driveways, parking areas, feed storage structures, manure storage structures, and other impervious surfaces. The agricultural production area does not include the agricultural activity area.
4. "Atlas 14" means the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.
5. "Best management practice" or "BMP" means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.
6. "Business day" means a day the office of the Public Works Department is routinely and customarily open for business.
7. "Cease and desist order" means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit.
8. "Common plan of development or sale" means a 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. A common plan of development or sale includes, but is not limited to, subdivision plats, certified survey maps, and other developments.
9. "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.
10. "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall. The TP-40, Type II, 24-hour design storms for City of Marinette are: 1-year, 2.1 inches; 2-year, 2.4 inches; 5-year, 3.1 inches; 10-year, 3.6 inches; 25-year, 4.1 inches; 50-year, 4.6 inches; and 100-year, 4.9 inches. The Atlas 14, MSE4, 24-hour design storms for the City of Marinette are: 1-year, 2.09 inches; 2-year, 2.38 inches; 5-year, 2.88 inches; 10-year, 3.34 inches; 25-year, 4.03 inches; 50-year, 4.61 inches; and 100-year, 5.22 inches.
11. "Development" means residential, commercial, industrial, institutional, or other land uses and associated roads.
12. "Division of land" means the creation from one or more parcels or building sites of additional parcels or building sites where such creation occurs at one time or through the successive partition within a 5 year period.
13. "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.

14. "Erosion and sediment control plan" or "plan" means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.
15. "Extraterritorial" means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.
16. "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.
17. "Governing body" means town board of supervisors, county board of supervisors, city council, village board of trustees or village council.
18. "Land disturbing construction activity" (or "disturbance") 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 pollutants into the municipal separate storm sewer or waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, and soil stockpiling.
19. "MEP" or "maximum extent practicable" means the highest level of performance that is achievable but is not equivalent to a performance standard identified within this ordinance. Maximum extent practicable applies when the permit applicant demonstrates to the Public Works Department's satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the permit applicant shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.
20. "MSE3 or MSE4 distribution" means a specific precipitation distribution developed by the USDA, NRCS, using precipitation data from Atlas 14.
21. "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
22. "Permit" means a written authorization made by the Public Works Department to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
23. "Pollutant" has the meaning given in s. 283.01 (13), Wis. Stats.

24. "Pollution" has the meaning given in s. 281.01 (10), Wis. Stats.
25. "Protective area" has the meaning given in the City of Marinette Post-Construction Storm Water Management Ordinance.
26. "Responsible party" means any entity holding fee title to the property or performing services to meet the performance standards of this ordinance through a contract or other agreement.
27. "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.
28. "Sediment" means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.
29. "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:
  - (a) Is designed or used for collecting water or conveying runoff.
  - (b) Is not part of a combined sewer system.
  - (c) Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.
  - (d) Discharges directly or indirectly to waters of the state.
30. "Silviculture activities" means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.
31. "Site" means the entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application.
32. "Stop work order" means an order issued by the Public Works Department which requires that all construction activity on the site be stopped.
33. "Targeted performance standard" means a performance standard that will apply in a specific area, where additional practices beyond those contained in this ordinance, are necessary to meet water quality standards. A total maximum daily load is an example of a targeted performance standard.
34. "Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a BMP, material, device or method.
35. "Total maximum daily load" or "TMDL" means the amount of pollutants specified as a function of one or more water quality parameters, that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.

36. "TP-40" means the Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961
37. "TR-55" means the United States department of agriculture, natural resource conservation service (previously soil conservation service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986, which is incorporated by reference for this ordinance.
38. "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", which is incorporated by reference for this ordinance. The Type II curve is applicable to all of Wisconsin and represents the most intense storm pattern.
39. "Waters of the state" has the meaning given in s. 283.01 (20), Wis. Stats.

F. Technical Standards

1. Design Criteria, Standards and Specifications. All BMPs required to comply with this ordinance shall meet the design criteria, standards and specifications based on any of the following:
  - (a) 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.
  - (b) Technical standards and other guidance identified within the City of Marinette Storm Water Reference Guide.
  - (c) Soil loss prediction tools such as the Revised Universal Soil Loss Equation 2 (RUSLE2) that estimate the sediment load leaving the site under varying land and management conditions may be used to show compliance with the sediment performance standards contained in G.2.
  - (d) For this ordinance, 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 MSE4 or Type II distribution, with consideration given to the geographic location of the site and the period of disturbance.
2. Other Standards. Other technical standards not identified in F. may be used provided that the methods have been approved by the Public Works Department.

G. Performance Standards.

1. Non-Permitted Sites.
  - (a)Responsible Party. The landowner of the construction site or other person contracted or obligated by other agreement with the landowner to implement and maintain construction site BMPs is a responsible party and shall comply with this ordinance.
  - (b)Requirements. At each site where land disturbing construction activity is to occur, BMPs shall be used to prevent or reduce all of the following:

- (1)The deposition of soil from being tracked onto streets by vehicles.
  - (2)The discharge of sediment from disturbed areas into storm water inlets.
  - (3)The discharge of sediment from disturbed areas into adjacent waters of the state.
  - (4)The discharge of sediment from drainage ways that flow off the site.
  - (5)The discharge of sediment by dewatering activities.
  - (6)The discharge of sediment eroding from soil stockpiles existing for more than 7 days.
  - (7) The discharge of onsite chemicals, cement and other building compounds and materials into waters of the state or offsite separate storm sewers during the construction period. 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 ordinance.
- (c)Location. BMPs shall be located so that treatment occurs before runoff enters waters of the state and offsite separate storm sewers. However, projects that require BMP placement in waters of the state, such as a turbidity barrier, are not prohibited by this ordinance.
- (d)Implementation. The BMPs used to comply with this section shall be implemented as follows:
- (1)Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.
  - (2)Erosion and sediment control practices shall be maintained until final stabilization.
  - (3)Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
  - (4)Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
  - (5)BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.
- (e)Alternate Requirements. The Public Works Department may establish erosion and sediment control requirements more stringent than those set forth in this ordinance if the Public Works Department determines that an added level of protection is needed to protect resources.

## 2. Permitted Sites.

- (a)Responsible Party. The landowner or other person performing services to meet the performance standards of this ordinance,

through a contract or other agreement with the landowner, is a responsible party and shall comply with this ordinance.

(b)Plan. A written erosion and sediment control plan shall be developed and implemented by the responsible party in accordance with I. The erosion and sediment control plan shall meet all of the applicable requirements contained in this ordinance.

(c)Requirements. The erosion and sediment control plan shall meet all of the following:

(1)The plan shall use BMPs to prevent or reduce all of the following:

- a. The deposition of soil from being tracked onto streets by vehicles.
- b. The discharge of sediment from disturbed areas into storm water inlets.
- c. The discharge of sediment from disturbed areas into adjacent waters of the state.
- d. The discharge of sediment from drainage ways that flow off the site.
- e. The discharge of sediment by dewatering activities.
- f. The discharge of sediment eroding from soil stockpiles existing for more than 7 days.
- g. The discharge of sediment from erosive flows at outlets and in downstream channels.
- h. The discharge of onsite chemicals, cement and other building compounds and materials into waters of the state or offsite separate storm sewers during the construction period. 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 ordinance.
- i. The discharge of untreated wash water from vehicle and wheel washing into waters of the state or offsite separate storm sewers.

(2)For sites with 1 acre or more of land disturbing construction activity, the plan shall meet the following sediment performance standards:

- a. BMP's that, by design, discharge no more than 5 tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization.
- b. Except as provided in G.2.(f), the Public Works Department may not require any person to employ more BMPs than are needed to meet the 5 tons per acre per year sediment performance standard in order to comply with maximum extent practicable. Erosion and sediment control BMPs may be combined to meet the

sediment performance standard. The Public Works Department may give credit toward meeting the sediment performance standard for limiting the duration or area, or both, of land disturbing construction activity, or for other appropriate mechanisms.

- c. Notwithstanding G.2.(c)(2).a. and b., if BMPs cannot be designed and implemented to meet the 5 tons per acre per year sediment performance standard, the plan shall include a written, site-specific explanation of why the sediment performance standard cannot be met and how the sediment load will be reduced to the maximum extent practicable.

(3)The plan shall incorporate all of the following preventative measures:

- a. Maintenance of existing vegetation, especially adjacent to surface waters whenever possible.
- b. Minimization of soil compaction and preservation of topsoil.
- c. Minimization of land disturbing construction activity on slopes of 20% or more.
- d. Development of spill prevention and response procedures.

(d)Location. BMPs shall be located so that treatment occurs before runoff enters waters of the state and offsite separate storm sewers. However, projects that require BMP placement in waters of the state, such as a turbidity barrier, are not prohibited by this ordinance.

(e)Implementation. The BMPs used to comply with this ordinance shall be implemented as follows:

- (1)In accordance with the plan developed pursuant to I., the erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.
- (2)Erosion and sediment control practices shall be maintained until final stabilization.
- (3)Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
- (4)Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
- (5)BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

(f)Targeted Performance Standards. The Public Works Department may establish numeric water quality requirements that are more stringent than those set forth in G.2.(c) in order to meet targeted performance standards, total maximum daily loads, and/or water quality standards for a specific water body or area. The numeric water quality requirements may be applicable to any permitted site, regardless of the size of land disturbing construction activity.

(g)Alternate Requirements. The Public Works Department may establish erosion and sediment control requirements more stringent than those set forth in this section if the Public Works Department determines that an added level of protection is needed to protect resources. Also, the Public Works Department may establish erosion and sediment control requirements less stringent than those set forth in this section if the Public Works Department determines that less protection is needed to protect resources. However, the alternative requirements shall not be less stringent than those requirements promulgated in rules by Wisconsin Department of Natural Resources under NR 151 Wisconsin Administrative Code.

H. Permitting Requirements, Procedures and Fees.

1. Permit Required. When a permit is required, no responsible party may commence a land disturbing construction activity subject to this ordinance without receiving prior approval of an erosion and sediment control plan for the site and a permit from the Public Works Department.
2. Permit Application and Fees. When a permit is required, at least one responsible party desiring to undertake a land disturbing construction activity subject to this ordinance shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of I. and shall pay fees identified in J. to the Public Works Department. By submitting an application, the applicant is authorizing the Public Works Department to enter the site to obtain information required for the review of the erosion and sediment control plan.
3. Review and Approval of Permit Application. The Public Works Department shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:
  - (a)Within 20 business days of the receipt of a complete permit application, as required by H.2., the Public Works Department shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this ordinance.
  - (b)If the permit application and plan are approved, the Public Works Department shall issue the permit.
  - (c)If the permit application or plan is disapproved, the Public Works Department shall state in writing the reasons for disapproval.
  - (d)The Public Works Department may request additional information from the applicant. If additional information is submitted, the Public Works Department shall have 20 business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.
  - (e)Failure by the Public Works Department to inform the permit applicant of a decision within 20 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.

4. Financial Guarantee. As a condition of approval and issuance of the permit, the Public Works Department may require the applicant to deposit a surety bond, cash escrow, or irrevocable letter of credit to guarantee a good faith execution of the approved erosion and sediment control plan and any permit conditions.
5. 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 Public Works Department may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Public Works Department to suspend or revoke this permit may be appealed in accordance with M.
  - (a) Notify the Public Works Department within 48 hours of commencing any land disturbing construction activity.
  - (b) Notify the Public Works Department of completion of any BMPs within 10 business days after their installation.
  - (c) Obtain permission in writing from the Public Works Department prior to any modification pursuant to I.2. of the erosion and sediment control plan.
  - (d) Install all BMPs as identified in the approved erosion and sediment control plan.
  - (e) Maintain all road drainage systems, stormwater drainage systems, BMPs and other facilities identified in the erosion and sediment control plan.
  - (f) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in weekly inspection reports.
  - (g) Conduct construction site inspections at least once per week and within 24 hours after a precipitation event of 0.5 inches or greater. Repair or replace erosion and sediment control BMPs as necessary within 24 hours of an inspection or notification that repair or replacement is needed. Maintain, at the construction site, weekly written reports of all inspections. Weekly inspection reports shall include all of the following: date, time and location of the construction site inspection; the name of individual who performed the inspection; an assessment of the condition of erosion and sediment controls; a description of any erosion and sediment control BMP implementation and maintenance performed; and a description of the present phase of land disturbing construction activity at the construction site.
  - (h) Allow the Public Works Department to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the control plan. Keep a copy of the erosion and sediment control plan, storm water management plan, amendments, weekly inspection reports, and permit at the construction site until permit coverage is terminated.

(i)The permit applicant shall post the "Certificate of Permit Coverage" in a conspicuous location at the construction site.

6. Permit Conditions. Permits issued under this section may include conditions established by Public Works Department in addition to the requirements set forth in H.5., where needed to assure compliance with the performance standards in G.
7. Permit Duration. Permits issued under this section shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The Public Works Department may extend the period one or more times for up to an additional 180 days. The Public Works Department may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this ordinance.
8. Maintenance. The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this ordinance until the site has undergone final stabilization.
9. Alternate Requirements. The Public Works Department may prescribe requirements less stringent for applicants seeking a permit for a construction site with less than 1 acre of land disturbing construction activity.

I. Erosion and Sediment Control Plan.

1. Plan Requirements. The erosion and sediment control plan required under G.2. shall comply with the City of Marinette Storm Water Reference Guide and contain at a minimum the following information:
  - (a)Name, address, and telephone number of the landowner and responsible parties.
  - (b)A legal description of the property proposed to be developed.
  - (c)A site map with property lines, disturbed limits, and drainage patterns.
  - (d)Total area of the site and total area of the construction site that is expected to be disturbed by construction activities.
  - (e)Performance standards applicable to site.
  - (f)Proposed best management practices.
  - (g)Erosion and sediment control plan narrative.
  - (h)Construction sequence and construction schedule.
2. Amendments. The applicant shall amend the plan if any of the following occur:
  - (a) There is a change in design, construction, operation, maintenance or schedule at the site which has the reasonable potential for the discharge of pollutants to waters of the state or separate storm sewers, and which has not otherwise been addressed in the plan.

(b) The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff.

(c) The Public Works Department notifies the applicant of changes needed in the plan.

3. Alternate Requirements. The Public Works Department may prescribe requirements less stringent for applicants seeking a permit for a construction site with less than 1 acre of disturbance.

J. Fee Schedule.

The fees referred to in other sections of this ordinance shall be established by the City Council and may from time to time be modified by resolution. A schedule of the fees established by the City Council shall be available for review in the Public Works Department.

K. Inspection.

Whenever land disturbing construction activities are being carried out, the Public Works Department may enter the land pursuant to the provisions of ss. 66.0119(1), (2), and (3), Wis. Stats.

L. Enforcement.

1. The Public Works Department may post a stop-work order if any of the following occurs:

(a) Any land disturbing construction activity is being undertaken without a permit and, pursuant to D.1. of this ordinance, a permit is required for the construction site.

(b) The erosion and sediment control plan is not being implemented in a good faith manner.

(c) The conditions of the permit are not being met.

(d) Any land disturbing construction activity is in violation of the ordinance.

2. 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 Public Works Department may revoke the permit.

3. If the responsible party, where no permit has been issued, does not cease the activity after being notified by the Public Works Department, or if a responsible party violates a stop-work order posted under L.1., the Public Works Department may request the City Attorney to obtain a cease and desist order in any court with jurisdiction.

4. The Public Works Department may retract the stop-work order issued under L.1. or the permit revocation under L.2.

5. After posting a stop-work order under L.1., the Public Works Department may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The Public Works Department may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this ordinance by the Public Works Department, plus interest at the rate authorized by

the City Council shall be billed to the responsible party or recovered from the surety bond, cash escrow, or irrevocable letter of credit. 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.

6. Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$25.00 nor more than \$10,000.00 and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.
7. Compliance with the provisions of this ordinance 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 injunctive proceedings.

M. Appeals.

1. Board of Public Works. The Board of Public Works created pursuant to Section 2.0205 of the City's Code of Ordinances and pursuant to 62.14, Wis. Stats.:

(a) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Public Works Department in administering this ordinance except for cease and desist orders obtained under L.3.

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

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

2. Who May Appeal. Appeals to the Board of Public Works may be taken by any aggrieved person or by any office, department, board, or bureau of the City of Marinette affected by any decision of the Public Works Department.

N. Severability.

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

O. Effective Date.

This ordinance shall be in force and effect from and after its adoption and publication. The above and foregoing ordinance was duly adopted by the City Council of the City of Marinette on the 3rd day of May, 2016.

## **6.0603 Post-Construction Storm Water Management**

### **A. Authority**

1. This ordinance is adopted by the City Council under the authority granted by s. 62.234, for cities, Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under s. 62.23, Wis. Stats., that relate to storm water management regulations. Except as otherwise specified in s. 62.234, Wis. Stats., s. 62.23, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.
2. The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.
3. The City Council hereby designates the Public Works Department to administer and enforce the provisions of this ordinance.
4. The requirements of this ordinance do not pre-empt more stringent storm water management requirements that may be imposed by any of the following:
  - (a) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under ss. 281.16 and 283.33, Wis. Stats.
  - (b) Targeted performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

### **B. Findings of Fact**

The City Council finds that uncontrolled, post-construction 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. Specifically, uncontrolled post-construction runoff can:

1. Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.
2. 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.
3. Alter wetland communities by changing wetland hydrology and by increasing pollutant loads.
4. Reduce the quality of groundwater by increasing pollutant loading.
5. Threaten public health, safety, property and general welfare by overtaxing storm sewers, drainage ways, and other minor drainage facilities.
6. Threaten public health, safety, property and general welfare by increasing major flood peaks and volumes.

7. Undermine floodplain management efforts by increasing the incidence and levels of flooding.

C. Purpose and Intent

1. Purpose. The general purpose of this ordinance is to establish long-term, post-construction runoff management requirements that will diminish the threats to public health, safety, welfare and the aquatic environment. Specific purposes are to:
  - (a) Further the maintenance of safe and healthful conditions.
  - (b) Prevent and control the adverse effects of storm water; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.
  - (c) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger downstream property.
2. Intent. It is the intent of the City Council that this ordinance regulates post-construction storm water discharges to waters of the state. This ordinance may be applied on a site-by-site basis. The City Council recognizes, however, that the preferred method of achieving the storm water performance standards set forth in this ordinance is through the preparation and implementation of comprehensive, systems-level storm water management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional storm water devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state. Where such plans are in conformance with the performance standards developed under s. 281.16, Wis. Stats., for regional storm water management measures and have been approved by the City Council, it is the intent of this ordinance that the approved plan be used to identify post-construction management measures acceptable for the community.

D. Applicability and Jurisdiction.

1. Applicability.

- (a) Where not otherwise limited by law, this ordinance applies to all post-construction sites, unless the site is otherwise exempt under D.1.(b).
- (b) A post-construction site that meets any of the following criteria is exempt from the requirements of this ordinance.
  - (1) 1- and 2-family residential dwellings that are not part of a larger common plan of development or sale and that result in less than 1 acre of disturbance.
  - (2) Non-point discharges from agricultural activity areas.

(3) Non-point discharges from silviculture activities.

(4) Mill and crush operations.

(c) Notwithstanding the applicability requirements in D.1.(a), this ordinance applies to post-construction sites of any size that, in the opinion of the Public Works Department, is 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.

## 2. Jurisdiction.

This ordinance applies to post-construction sites within the boundaries and jurisdiction of the City of Marinette, as well as the extraterritorial division of land subject to an ordinance enacted pursuant to s. 236.45(2) and (3) Wis. Stats.

## 3. Exclusions.

This ordinance is not applicable to activities conducted by a state agency, as defined under s. 227.01 (1), Wis. Stats., but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under s. 281.33 (2), Wis. Stats.

## E. Definitions.

1. "Adequate sod, or self-sustaining vegetative cover" means maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self-sustaining vegetative cover includes grasses, forbs, sedges and duff layers of fallen leaves and woody debris.
2. "Administering authority" means a governmental employee or agent that is designated by the City Council to administer this ordinance.
3. "Agricultural activity area" means the part of the farm where there is planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or outside yarding of livestock, including sod farms and silviculture. Practices in this area may include waterways, drainage ditches, diversions, terraces, farm lanes, excavation, filling and similar practices. The agricultural activity area does not include the agricultural production area.
4. "Agricultural production area" means the part of the farm where there is concentrated production activity or impervious surfaces. Agricultural production areas include buildings, driveways, parking areas, feed storage structures, manure storage structures, and other impervious surfaces. The agricultural production area does not include the agricultural activity area.
5. "Atlas 14" means the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.

6. "Average annual rainfall" means a typical calendar year of precipitation as determined by the Wisconsin DNR for users of models such as SLAMM, P8, or equivalent methodology. The average annual rainfall is chosen from a Wisconsin DNR publication for the location closest to the municipality.
7. "Best management practice" or "BMP" means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.
8. "Business day" means a day the office of the Public Works Department is routinely and customarily open for business.
9. "Cease and desist order" means a court-issued order to halt land disturbing construction activity that is being conducted without the required permit.
10. "Combined sewer system" means a system for conveying both sanitary sewage and storm water runoff.
11. "Common plan of development or sale" means a 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. A common plan of development or sale includes, but is not limited to, subdivision plats, certified survey maps, and other developments.
12. "Connected imperviousness" means an impervious surface connected to the waters of the state via a separate storm sewer, an impervious flow path, or a minimally pervious flow path.
13. "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.
14. "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall. The TP-40, Type II, 24-hour design storms for the City of Marinette are: 1-year, 2.1 inches; 2-year, 2.4 inches; 5-year, 3.1 inches; 10-year, 3.6 inches; 25-year, 4.1 inches; 50-year, 4.6 inches; and 100-year, 4.9 inches. The Atlas 14, MSE4, 24-hour design storms for the City of Marinette are: 1-year, 2.09 inches; 2-year, 2.38 inches; 5-year, 2.88 inches; 10-year, 3.34 inches; 25-year, 4.03 inches; 50-year, 4.61 inches; and 100-year, 5.22 inches.
15. "Development" means residential, commercial, industrial, institutional, or other land uses and associated roads.
16. "Direct conduits to groundwater" means wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, nonmetallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow fractured bedrock.
17. "Division of land" means the creation from one or more parcels or building sites of additional parcels or building sites where such

creation occurs at one time or through the successive partition within a 5 year period.

18. "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.
19. "Erosion" means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.
20. "Exceptional resource waters" means waters listed in s. NR 102.11, Wis. Adm. Code.
21. "Existing development" means development in existence on October 1, 2004 or development for which a storm water permit in accordance with subch. III of Ch. NR 216, Wis. Adm. Code, was received on or before October 1, 2004.
22. "Extraterritorial" means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.
23. "Filtering layer" means soil that has at least a 3-foot deep layer with at least 20 percent fines; or at least a 5-foot deep layer with at least 10 percent fines; or an engineered soil with an equivalent level of protection as determined by the Public Works Department for the site.
24. "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 that employ equivalent permanent stabilization measures.
25. "Financial guarantee" means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the Public Works Department by the responsible party to assure that requirements of the ordinance are carried out in compliance with the storm water management plan.
26. "Governing body" means town board of supervisors, county board of supervisors, city council, village board of trustees or village council.
27. "Highway" has the meaning given in s. 340.01 (22), Wis. Stats.
28. "Highway reconditioning" has the meaning given in s. 84.013 (1)(b), Wis. Stats.
29. "Highway reconstruction" has the meaning given in s. 84.013(1)(c), Wis. Stats.
30. "Highway resurfacing" has the meaning given in s. 84.013(1)(d), Wis. Stats.
31. "Impervious surface" means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, parking lots and streets

are examples of surfaces that typically are impervious. Gravel surfaces are considered impervious, unless specifically designed to encourage infiltration.

32. "In-fill" means an undeveloped area of land or new development area located within an existing urban sewer service area, surrounded by development or development and natural or man-made features where development cannot occur. "In-fill" does not include any undeveloped area that was part of a larger new development for which a storm water permit in accordance with subch. III of ch. NR 216, Wis. Adm. Code, was required to be submitted after October 1, 2004 to the Wisconsin Department of Natural Resources or Wisconsin Department of Safety and Professional Services (formerly Department of Commerce).
33. "Infiltration" means the entry and movement of precipitation or runoff into or through soil.
34. "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.
35. "Land disturbing construction activity" (or "disturbance") 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 pollutants into the municipal separate storm sewer or waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, and soil stockpiling.
36. "Maintenance agreement" means a legal document that provides for long-term maintenance of storm water management and best management practices.
37. "MEP" or "maximum extent practicable" means the highest level of performance that is achievable but is not equivalent to a performance standard identified within this ordinance. Maximum extent practicable applies when the permit applicant demonstrates to the Public Works Department's satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the permit applicant shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.
38. "Minor reconstruction of a highway" means reconstruction of a highway that is limited to 1.5 miles in continuous or aggregate total length of realignment and that does not exceed 100 feet in width of roadbed widening, and that does not include replacement of a vegetated

drainage system with a non-vegetated drainage system except where necessary to convey runoff under a highway or private road or driveway.

39. "MSE3 or MSE4 distribution" means a specific precipitation distribution developed by the USDA, NRCS, using precipitation data from Atlas 14.
40. "Navigable waters" and "navigable waterway" has the meaning given in s. 30.01(4m), Wis. Stats.
41. "New development" means that portion of a post-construction site where impervious surfaces are being created or expanded. Any disturbance where the amount of impervious area for the post-development condition is greater than the pre-development condition is classified as new development. For purposes of this ordinance, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.
42. "Off-site" means located outside the property boundary described in the permit application.
43. "On-site" means located within the property boundary described in the permit application.
44. "Ordinary high-water mark" has the meaning given in s. NR 115.03(6), Wis. Adm. Code.
45. "Outstanding resource waters" means waters listed in s. NR 102.10, Wis. Adm. Code.
46. "Percent fines" means the percentage of a given sample of soil, which passes through a # 200 sieve.
47. "Performance standard" means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.
48. "Permit" means a written authorization made by the Public Works Department to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.
49. "Permit administration fee" means a sum of money paid to the Public Works Department by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.
50. "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.
51. "Pollutant" has the meaning given in s. 283.01(13), Wis. Stats.
52. "Pollution" has the meaning given in s. 281.01(10), Wis. Stats.
53. "Post-construction site" means a construction site following the completion of land disturbing construction activity and final site stabilization.

54. "Post-development" means the extent and distribution of land cover types present after the completion of land disturbing construction activity and final site stabilization.
55. "Pre-development" 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.
56. "Preventive action limit" has the meaning given in s. NR 140.05(17), Wis. Adm. Code.
57. "Redevelopment " means that portion of a post-construction site where impervious surfaces are being reconstructed, replaced, or reconfigured. Any disturbance where the amount of impervious area for the post-development condition is equal to or less than the pre-development condition is classified as redevelopment. For purposes of this ordinance, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.
58. "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 storm water BMPs.
59. "Routine maintenance" means that portion of a post-construction site where pre-development impervious surfaces are being maintained to preserve the original line and grade, hydraulic capacity, drainage pattern, configuration, or purpose of the facility. Remodeling of buildings and resurfacing of parking lots, streets, driveways, and sidewalks are examples of routine maintenance, provided the lower ½ of the impervious surface's granular base is not disturbed. The disturbance shall be classified as redevelopment if the lower ½ of the granular base associated with the pre-development impervious surface is disturbed or if the soil located beneath the impervious surface is exposed. For purposes of this ordinance, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.
60. "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.
61. "Sediment" means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.
62. "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:
- (a) Is designed or used for collecting water or conveying runoff.
  - (b) Is not part of a combined sewer system.

- (c) Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.
- (d) Discharges directly or indirectly to waters of the state.
63. "Silviculture activities" means activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.
64. "Site" means the entire area included in the legal description of the land on which the land disturbing construction activity occurred.
65. "Stop work order" means an order issued by the Public Works Department which requires that all construction activity on the site be stopped.
66. "Storm water management plan" means a comprehensive plan designed to reduce the discharge of pollutants from storm water after the site has undergone final stabilization following completion of the construction activity.
67. "Storm water 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.
68. "Targeted performance standard" means a performance standard that will apply in a specific area, where additional practices beyond those contained in this ordinance, are necessary to meet water quality standards. A total maximum daily load is an example of a targeted performance standard.
69. "Technical standard" means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.
70. "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.
71. "Total maximum daily load" or "TMDL" means the amount of pollutants specified as a function of one or more water quality parameters, that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.
72. "TP-40" means the Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.
73. "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, which is incorporated by reference for this ordinance.

74. "Transportation facility" means a public street, a public road, a public highway, a railroad, a public mass transit facility, a public-use airport, a public trail, or any other public work for transportation purposes such as harbor improvements under s. 85.095(1)(b), Wis. Stats. "Transportation facility" does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Wisconsin Department of Natural Resources pursuant to s. 281.33, Wis. Stats.
75. "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", which is incorporated by reference for this ordinance. The Type II curve is applicable to all of Wisconsin and represents the most intense storm pattern.
76. "Waters of the state" has the meaning given in s. 283.01 (20), Wis. Stats.

F. Technical Standards.

The following methods shall be used in designing and maintaining the water quality, peak discharge, infiltration, protective area, fueling / vehicle maintenance, and swale treatment components of storm water practices needed to meet the water quality standards of this ordinance:

1. Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.
2. Technical standards and guidance identified within the City of Marinette Storm Water Reference Guide.
3. 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 Public Works Department.
4. In this ordinance, the following year and location has been selected as average annual rainfall: Green Bay, 1969 (Mar. 29-Nov. 25).

G. Performance Standards.

1. Responsible Party. The responsible party shall develop and implement a post-construction storm water management plan that incorporates the requirements of this section.
2. Plan. A written storm water management plan shall be developed and implemented by the responsible party in accordance with I. The storm water management plan shall meet all of the applicable requirements contained in this ordinance.
3. Requirements. The storm water management plan shall meet the following minimum requirements to the maximum extent practicable:
  - (a) Water Quality. BMPs shall be designed, installed and maintained to control pollutants carried in runoff from the post-construction site. The design shall be based on the average annual rainfall, as compared to no runoff management controls.

(1) For post-construction sites with 20,000 square feet or more of impervious surface disturbance and post-construction sites with 1 acre or more of land disturbance, the following is required:

a. Except as provided in G.3.(a)(1)b., a pollutant reduction is required as follows:

Total Suspended Solids (TSS) Reduction		
New Development	Redevelopment	Routine Maintenance
80%	40%	40%

b. A pollutant reduction is not required for routine maintenance areas that are part of a post-construction site with less than 5 acres of disturbance.

(2) For post-construction sites with less than 20,000 square feet of impervious surface disturbance, reduce the pollutant load using BMPs from the City of Marinette Storm Water Reference Guide. These sites are not required to satisfy a numeric performance standard.

(3) Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after December 2, 2008 are required to satisfy the performance standards within G.3.(a)(1)a. and b.

(4) The amount of pollutant control previously required for the site shall not be reduced as a result of the proposed development or disturbance.

(5) When designing BMPs, runoff draining to the BMP from offsite areas shall be taken into account in determining the treatment efficiency of the practice. Any impact on the BMP efficiency shall be compensated for by increasing the size of the BMP accordingly. The pollutant load reduction provided by the BMP for an offsite area shall not be used to satisfy the required onsite pollutant load reduction, unless otherwise approved by the Public Works Department in accordance with G.5.

(6) If the design cannot meet the water quality performance standards of G.3.(a)(1) through (5), the storm water management plan shall include a written, site specific explanation of why the water quality performance standard cannot be met and why the pollutant load will be reduced only to the maximum extent practicable. Except as provided in G.6., the Public Works Department may not require any person to exceed the applicable water quality performance standard to meet the requirements of maximum extent practicable.

(b) Peak Discharge. BMPs shall be designed, installed and maintained to control peak discharges from the post-construction site.

(1) For post-construction sites with 20,000 square feet or more of impervious surface disturbance and post-construction sites with 1 acre or more of land disturbance, the following is required:

- a. The peak post-development discharge rate shall not exceed the peak pre-development discharge rate for the 1-year, 2-year, 10-year, and 100-year, 24-hour design storms. These peak discharge requirements apply to new development and redevelopment areas. No peak discharge control is required for routine maintenance areas, unless runoff from the routine maintenance area discharges into a proposed peak flow control facility.
- b. TR-55 methodology, Atlas 14 precipitation depths, and the MSE4 distribution shall be used for peak discharge calculations, unless the administering authority approves the TP-40 precipitation depths and Type II distribution. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. Unless the site is currently woodland, peak pre-development discharge rates shall be determined using the following runoff curve numbers for a "meadow" vegetative cover:

Maximum Pre-Development Runoff Curve Numbers				
Vegetative Cover	Hydrologic Soil Group			
	A	B	C	D
Meadow	30	58	71	78
Woodland	30	55	70	77

- (2) For post-construction sites with less than 20,000 square feet of impervious surface disturbance, reduce peak post-development discharge rates using BMPs from the City of Marinette Storm Water Reference Guide. These sites are not required to satisfy a numeric performance standard.
- (3) Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after December 2, 2008 are required to satisfy the performance standards within G.3.(b)(1)a. and b.
- (4) The amount of peak discharge control previously required for the site shall not be reduced as a result of the proposed development or disturbance.
- (5) When designing BMPs, runoff draining to the BMP from offsite areas shall be taken into account in determining the performance of the practice. Any impact on the BMP performance shall be compensated for by increasing the size of the BMP accordingly. The peak discharge reduction provided by the BMP for an offsite area shall not be used to satisfy the required onsite peak

discharge reduction, unless otherwise approved by the Public Works Department in accordance with G.5.

(6) An adequate outfall shall be provided for each point of concentrated discharge from the post-construction site. An adequate outfall consists of non-erosive discharge velocities and reasonable downstream conveyance.

(7) *Exemptions.* The peak discharge performance standards do not apply to the following:

- a. A transportation facility where the discharge is directly into a lake over 5,000 acres or a stream or river segment draining more than 500 square miles.
- b. Except as provided under G.3.(b)(4) to (6), a highway reconstruction site.
- c. Except as provided under G.3.(b)(4) to (6), a transportation facility that is part of a redevelopment project.

(c) *Infiltration.* BMPs shall be designed, installed, and maintained to infiltrate runoff from the post-construction site, except as provided in G.3.(c)(8) through (12).

(1) For post-construction sites with 1 acre or more of land disturbance, the following is required:

- a. *Low Imperviousness.* For development up to 40 percent connected imperviousness, such as parks, cemeteries, and low density residential development, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90 percent 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 one percent of the post-construction site is required as an effective infiltration area.
- b. *Moderate imperviousness.* For development with more than 40 percent and up to 80 percent connected imperviousness, such as medium and high density residential, multi-family development, industrial and institutional development, and office parks, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 75 percent 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 percent of the post-construction site is required as an effective infiltration area.
- c. *High imperviousness.* For development with more than 80 percent connected imperviousness, such as commercial strip malls, shopping centers, and commercial downtowns, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60 percent 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 percent of the post-construction site is required as an effective infiltration area.

- (2) Pre-development condition shall assume "good hydrologic conditions" for appropriate land covers as identified in TR-55 or an equivalent methodology approved by the administering authority. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. The actual pre-development vegetative cover and the following pre-development runoff curve numbers shall be used:

Maximum Pre-Development Runoff Curve Numbers				
Vegetative Cover	Hydrologic Soil Group			
	A	B	C	D
Woodland	30	55	70	77
Grassland	39	61	71	78
Cropland	55	69	78	83

- (3) For post-construction sites with less than 1 acre of land disturbance, infiltrate runoff volume using BMPs from the City of Marinette Storm Water Reference Guide. These sites are not required to satisfy a numeric performance standard.
- (4) Sites with a cumulative addition of 1 acre or more of new development after December 2, 2008 are required to satisfy the performance standards within G.3.(c)(1) and (2).
- (5) The amount of infiltration previously required for the site shall not be reduced as a result of the proposed development or disturbance.
- (6) When designing BMPs, runoff draining to the BMP from offsite areas shall be taken into account in determining the performance of the practice. Any impact on the BMP performance shall be compensated for by increasing the size of the BMP accordingly. The runoff volume reduction provided by the BMP for an offsite area shall not be used to satisfy the required onsite runoff volume reduction, unless otherwise approved by the Public Works Department in accordance with G.5.
- (7) *Pretreatment.* Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from 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 G.3.(c)(14). Pretreatment options may include,

but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

- (8) *Source area prohibitions.* Runoff from the following areas may not be infiltrated and may not qualify as contributing to meeting the requirements of G.3.(c) unless demonstrated to meet the conditions of G.3.(c)(14).
- a. Areas associated with a tier 1 industrial facility identified in s. NR 216.21(2)(a), Wis. Adm. Code, including storage, loading, and parking. Rooftops may be infiltrated with the concurrence of the Public Works Department.
  - b. Storage and loading areas of a tier 2 industrial facility identified in s. NR 216.21(2)(b), Wis. Adm. Code.
  - c. Fueling and vehicle maintenance areas. Rooftops of fueling and vehicle maintenance areas may be infiltrated with the concurrence of the Public Works Department.
- (9) *Source area exemptions.* Runoff from the following areas may be credited toward meeting the requirement when infiltrated, but the decision to infiltrate runoff from these sources is optional:
- a. Parking areas and access roads less than 5,000 square feet for commercial development.
  - b. Parking areas and access roads less than 5,000 square feet for industrial development not subject to the prohibitions under G.3.(c)(8).
  - c. Except as provided under G.3.(c)(5), redevelopment and routine maintenance areas.
  - d. In-fill development areas less than 5 acres.
  - e. Roads in commercial, industrial and institutional land uses, and arterial residential roads.
  - f. Except as provided under G.3.(c)(5), transportation facility highway reconstruction and new highways.
- (10) *Prohibitions.* Infiltration practices may not be located in the following areas:
- a. Areas within 1,000 feet upgradient or within 100 feet downgradient of direct conduits to groundwater.
  - b. Areas within 400 feet of a community water system well as specified in s. NR 811.16(4), Wis. Adm. Code, or within the separation distances listed in s. NR 812.08, Wis. Adm. Code, for any private well or non-community well for runoff infiltrated from commercial, including multi-family residential, industrial, and institutional land uses or regional devices for one- and two-family residential development.

c. Areas where contaminants of concern, as defined in s. NR 720.03(2), Wis. Adm. Code, are present in the soil through which infiltration will occur.

(11) *Separation distances.* Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of seasonal high groundwater or the top of bedrock are in accordance with the following:

Separation Distances and Soil Characteristics		
Source Area	Separation Distance	Soil Characteristics
Industrial, Commercial, Institutional Parking Lots and Roads	5 feet or more	Filtering Layer
Residential Arterial Roads	5 feet or more	Filtering Layer
Roofs Draining to Subsurface Infiltration Practices	1 foot or more	Native or Engineered Soil with Particles Finer than Coarse Sand
Roofs Draining to Surface Infiltration Practices	Not Applicable	
All Other Impervious Source Areas	3 feet or more	Filtering Layer

Notwithstanding G.3.(c)(11), applicable requirements for injection wells classified under ch. NR 815, Wis. Adm. Code, shall be followed.

(12) *Infiltration rate exemptions.* Infiltration practices located in the following areas may be credited toward meeting the requirement under the following conditions, but the decision to infiltrate under these conditions is optional:

- a. Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than 0.6 inches per hour using a scientifically credible field test method.
- b. Where the least permeable soil horizon to 5 feet below the proposed bottom of the infiltration system using the U.S. Department of Agriculture method of soils analysis is one of the following: sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, or clay.

(13) *Alternate uses.* Where alternate uses of runoff are employed, such as for toilet flushing, laundry or irrigation or storage on green roofs where an equivalent portion of the runoff is captured permanently by rooftop vegetation, such alternate use shall be given equal credit toward the infiltration volume required by G.3.(c).

(14) *Groundwater standards.*

- a. Infiltration systems designed in accordance with this G.3.(c) 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.
- b. Notwithstanding G.3.(c)(14)a., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

(15) Where the conditions of G.3.(c)(8) through (12) limit or restrict the use of infiltration practices, the performance standard of G.3.(c) shall be met to the maximum extent practicable.

(d) *Protective Areas.*

- (1) "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 G.3.(d), "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. For post-construction sites with 1 acre or more of land disturbance, the following is required:
  - a. For outstanding resource waters and exceptional resource waters, 75 feet.
  - b. 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.
  - c. For lakes, 50 feet.
  - d. For wetlands not subject to G.3.(d)(1)e. or f., 50 feet.
  - e. For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps, and ephemeral ponds.
  - f. 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; cultivated hydric soils; and any gravel pits, or dredged material or fill

material disposal sites that take on the attributes of a wetland.

- g. In G.3.(d)(1)d. to f., 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 s. NR 103.03, Wis. Adm. Code.
  - h. Wetlands shall be delineated. Wetland boundary delineations shall be made in accordance with s. NR 103.08(1m), Wis. Adm. Code. G.3.(d) does not apply to wetlands that have been completely filled in compliance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in compliance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.
  - i. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.
  - j. Notwithstanding G.3.(d)(1)a. to i., the greatest protective area width shall apply where rivers, streams, lakes, and wetlands are contiguous.
- (2)G.3.(d) applies to all post-construction sites located within a protective area, except those areas exempted pursuant to G.3.(d)(5).
- (3) The following requirements shall be met:
- a. Impervious surfaces shall be kept out of the protective area entirely or to the maximum extent practicable. If there is no practical alternative to locating an impervious surface in the protective area, the storm water management plan shall contain a written, site-specific explanation.
  - b. Where land disturbing construction activity occurs within a protective area, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained where no impervious surface is present. 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.
  - c. Best management practices such as filter strips, swales, or wet detention ponds, that are designed to control pollutants from non-point sources, may be located in the protective area.

- (4) A protective area established or created after December 2, 2008 shall not be eliminated or reduced, except as allowed in G.3.(d)(5)b., c., or d.
- (5) *Exemptions.* The following areas are not required to meet the protective area requirements of G.3.(d):
- a. Redevelopment and routine maintenance areas provided the minimum requirements within G.3.(d)(4) are satisfied.
  - b. Structures that cross or access surface waters such as boat landings, bridges and culverts.
  - c. Structures constructed in accordance with s. 59.692(1v), Wis. Stats.
  - d. Areas of post-construction sites from which the runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the requirements of G.3.(a) and (b), except to the extent that vegetative ground cover is necessary to maintain bank stability.
- (e) *Fueling and Vehicle Maintenance Areas.* Fueling and vehicle maintenance areas shall have BMPs designed, installed and maintained to reduce petroleum within runoff, so that the runoff that enters waters of the state contains no visible petroleum sheen, or to the maximum extent practicable.
- (f) *Swale Treatment for Transportation Facilities.* This G.3.(f) is not applicable to transportation facilities that are part of a larger common plan of development or sale.
- (1) *Requirement.* Except as provided in G.3.(f)(2), transportation facilities that use swales for runoff conveyance and pollutant removal are exempt from the requirements of G.3.(a), (b), and (c), if the swales are designed to do all of the following or to the maximum extent practicable:
- a. Swales shall 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.
  - b. Swales shall comply with the Wisconsin Department of Natural Resources Technical Standard 1005, "Vegetated Infiltration Swale", except as otherwise authorized in writing by the Wisconsin Department of Natural Resources.
- (2) *Other Requirements.* Notwithstanding G.3.(f)(1), the Public Works Department may, consistent with water quality standards, require that other requirements, in addition to swale treatment, be met on a transportation facility with an average daily traffic rate greater than 2,500 and where the initial surface water of the state that the runoff directly enters is any of the following:
- a. An outstanding resource water.

- b. An exceptional resource water.
  - c. Waters listed in section 303(d) of the federal clean water act that are identified as impaired in whole or in part, due to nonpoint source impacts.
  - d. Waters where targeted performance standards are developed pursuant to s. NR 151.004, Wis. Adm. Code.
- (g) Exemptions. The following areas are not required to meet the performance standards within G.3.:
- (1) Agricultural production areas with less than 100,000 square feet of impervious surface disturbance.
  - (2) Underground utility construction such as water, sewer, gas, electric, telephone, cable television, and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.
  - (3) The following transportation facilities are exempt, provided the transportation facility is not part of a larger common plan of development or sale.
    - a. A transportation facility post-construction site with less than 10 percent connected imperviousness, based on the area of land disturbance, provided the cumulative area of all impervious surfaces is less than one acre. Notwithstanding this exemption, the protective area requirements of G.3.(d) still apply.
    - b. Reconditioning or resurfacing of a highway.
    - c. Minor reconstruction of a highway. Notwithstanding this exemption, the protective area requirements of G.3.(d) apply to minor reconstruction of a highway.
    - d. Routine maintenance for transportation facilities that have less than 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
    - e. Routine maintenance if performed for storm water conveyance system cleaning.
4. General Considerations for On-Site and Off-Site Storm Water Management Measures. The following considerations shall be observed in managing runoff:
- (a) 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.
  - (b) Emergency overland flow for all storm water facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.

5. BMP Location and Credit.

(a) General. To comply with G.3. performance standards, the BMPs may be located on-site or off-site as part of a regional storm water device, practice or system.

(b) Offsite or Regional Map.

(1)The amount of credit that the Public Works Department may give an offsite or regional BMP for purposes of determining compliance with the performance standards of G.3. is limited to the treatment capability or performance of the BMP.

(2)The Public Works Department may authorize credit for an off-site or regional BMP provided all of the following conditions are satisfied:

a. The BMP received all applicable permits.

b. The BMP shall be installed and operational before the construction site has undergone final stabilization.

c. The BMP shall be designed and adequately sized to provide a level of storm water control equal to or greater than that which would be afforded by on-site BMPs meeting the G.3. performance standards.

d. The owner of the BMP has entered into a J. maintenance agreement with the City of Marinette, or another municipal entity, such that the BMP has a legally obligated entity responsible for its long-term operation and maintenance. Legal authority exists if a municipality owns, operates and maintains the BMP.

e. The owner of the BMP has provided written authorization which indicates the permit applicant may use the BMP for G.3. performance standard compliance.

f. Where an off-site or regional BMP option exists such that the Public Works Department exempts the applicant from all or part of the minimum on-site storm water management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the Public Works Department. In determining the fee for post-construction runoff, the Public Works Department shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the off-site or regional BMP.

(c)BMP in Non-Navigable Waters. For purposes of determining compliance with the performance standards of G.3., the Public Works Department may give credit for BMPs that function to provide treatment for runoff from existing development and post-construction runoff from new development, redevelopment, and routine maintenance areas and that are located within non-navigable waters.

(d)BMP in Navigable Waters.

(1)*New Development Runoff.* Except as allowed under G.5.(d)(2), BMPs

designed to treat post-construction runoff from new development areas may not be located in navigable waters and, for purposes of determining compliance with the performance standards of G.3., the Public Works Department may not give credit for such BMPs.

(2)*New Development Runoff Exemption.* BMPs to treat post-construction runoff from new development areas may be located within navigable waters and may be creditable by the Public Works Department under G.3., if all the following are met:

- a. The BMP was constructed prior to October 1, 2002 and received all applicable permits.
- b. The BMP functions or will function to provide runoff treatment for the new development area.

(3)*Existing Development & Post-Construction Runoff From Redevelopment, Routine Maintenance, & Infill Development Areas.* Except as provided in G.5.(d)(4), BMPs designed to treat post-construction runoff for existing development and post-construction runoff from redevelopment, routine maintenance and infill development areas may not be located in navigable waters and, for purposes of determining compliance with the performance standards of G.3., the Public Works Department may not give credit for such BMPs.

(4)*Existing Development & Post-Construction Runoff From Redevelopment, Routine Maintenance, & Infill Development Areas Exemption.* BMPs that function to provide treatment of runoff from existing development and post-construction runoff from redevelopment, routine maintenance and infill development areas may be located within navigable waters and, for purposes of determining compliance with the performance standards of G.3., the Public Works Department may give credit for such BMPs, if any of the following are met:

- a. The BMP was constructed, contracts were signed or bids advertised and all applicable permits were received prior to January 1, 2011.
- b. The BMP is on an intermittent waterway and all applicable permits are received.

(e)*Water Quality Trading.* To comply with G.3.(a) performance standards, the Public Works Department may authorize credit for water quality trading provided all of the following conditions are satisfied:

- (1)The treatment practices associated with a water quality trade shall be in place, effective and operational before credit can be authorized.
- (2)The water quality trade shall comply with applicable trading ratios established by the Wisconsin Department of Natural Resources or the City of Marinette.
- (3)The water quality trade shall comply with applicable regulations,

standards, and guidance developed by the Wisconsin Department of Natural Resources or the City of Marinette.

(4)The responsible party shall furnish a copy of executed water quality trading agreements or other related information deemed necessary by the Public Works Department in order to authorize credit.

6. Targeted Performance Standards. The Public Works Department may establish numeric water quality requirements that are more stringent than those set forth in G.3. in order to meet targeted performance standards, total maximum daily loads, and/or water quality standards for a specific water body or area. The numeric water quality requirements may be applicable to any permitted site, regardless of the size of land disturbing construction activity.
7. Alternate Requirements. The Public Works Department may establish storm water management requirements more stringent than those set forth in this section if the Public Works Department determines that an added level of protection is needed to protect sensitive resources. Also, the Public Works Department may establish storm water management requirements less stringent than those set forth in this section if the Public Works Department determines that less protection is needed to protect sensitive resources and provide reasonable flood protection. However, the alternative requirements shall not be less stringent than those requirements promulgated in rules by Wisconsin Department of Natural Resources under NR 151 Wisconsin Administrative Code.

#### H. Permitting Requirements, Procedures and Fees.

1. Permit Required. No responsible party may undertake a land disturbing construction activity without receiving a post-construction runoff permit from the Public Works Department prior to commencing the proposed activity.
2. Permit Application and Fees. Unless specifically excluded by this ordinance, any responsible party desiring a permit shall submit to the Public Works Department a permit application made on a form provided by the Public Works Department for that purpose.
  - (a) Unless otherwise excepted by this ordinance, a permit application must be accompanied by a storm water management plan, a maintenance agreement and a non-refundable permit administration fee.
  - (b) The storm water management plan shall be prepared to meet the requirements of G. and I., the maintenance agreement shall be prepared to meet the requirements of J., the financial guarantee shall meet the requirements of K., and fees shall be those established by the City Council as set forth in L.
3. Review and Approval of Permit Application. The Public Works Department shall review any permit application that is submitted with a storm water management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:
  - (a)Within 20 business days of the receipt of a complete permit application, including all items as required by H.2., the Public

Works Department shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.

- (b) If the storm water permit application, plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of storm water management practices is made pursuant to G.5., the Public Works Department shall issue the permit.
- (c) If the storm water permit application, plan or maintenance agreement is disapproved, the Public Works Department shall detail in writing the reasons for disapproval.
- (d) The Public Works Department may request additional information from the applicant. If additional information is submitted, the Public Works Department shall have 20 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.
- (e) Failure by the Public Works Department to inform the permit applicant of a decision within 20 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.

4. 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 Public Works Department may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Public Works Department to suspend or revoke this permit may be appealed in accordance with N.

- (a) 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.
- (b) The responsible party shall design and install all structural and non-structural storm water management measures in accordance with the approved storm water management plan and this permit.
- (c) The responsible party shall notify the Public Works Department at least 10 business days before commencing any work in conjunction with the storm water management plan, and within 10 business days upon completion of the storm water management practices. If required as a special condition under H.5., the responsible party shall make additional notification according to a schedule set forth by the Public Works Department so that practice installations can be inspected during construction.
- (d) Practice installations required as part of this ordinance shall be certified "as built" by a licensed professional engineer. Completed storm water management practices must pass a final inspection by the Public Works Department or its designee to determine if they are in accordance with the approved storm water management plan and ordinance. The Public Works Department 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.

- (e) The responsible party shall notify the Public Works Department of any significant modifications it intends to make to an approved storm water management plan. The Public Works Department may require that the proposed modifications be submitted to it for approval prior to incorporation into the storm water management plan and execution by the responsible party.
  - (f) The responsible party shall maintain all storm water management practices in accordance with the storm water management plan until the practices either become the responsibility of the City of Marinette, or are transferred to subsequent private owners as specified in the approved maintenance agreement.
  - (g) The responsible party authorizes the Public Works Department to perform any work or operations necessary to bring storm water management measures into conformance with the approved storm water 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 K.
  - (h) If so directed by the Public Works Department, 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 storm water management plan.
  - (i) The responsible party shall permit property access to the Public Works Department or its designee for the purpose of inspecting the property for compliance with the approved storm water management plan and this permit.
  - (j) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the Public Works Department may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.
  - (k) The responsible party is subject to the enforcement actions and penalties detailed in M., if the responsible party fails to comply with the terms of this permit.
  - (l) The permit applicant shall post the "Certificate of Permit Coverage" in a conspicuous location at the construction site.
5. Permit Conditions. Permits issued under this subsection may include conditions established by Public Works Department in addition to the requirements needed to meet the performance standards in G. or a financial guarantee as provided for in K.
6. Permit Duration. Permits issued under this section shall be valid from the date of issuance through the date the Public Works Department

notifies the responsible party that all storm water management practices have passed the final inspection required under H.4.(d).

7. Alternate Requirements. The Public Works Department may prescribe alternative requirements for applicants seeking an exemption to on-site storm water management performance standards under G.5. or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

I. Storm Water Management Plan.

1. Plan Requirements. The storm water management plan required under G.2. and H.2. shall comply with the City of Marinette Storm Water Reference Guide and contain at a minimum the following information:

- (a) Name, address, and telephone number of the landowner and responsible parties.
- (b) A legal description of the property proposed to be developed.
- (c) Pre-development site map with property lines, disturbed limits, and drainage patterns.
- (d) Post-development site map with property lines, disturbed limits, and drainage patterns.
  - (1) Total area of disturbed impervious surfaces within the site.
  - (2) Total area of new impervious surfaces within the site.
  - (3) Performance standards applicable to site.
  - (4) Proposed best management practices.
  - (5) Groundwater, bedrock, and soil limitations.
  - (6) Separation distances. Storm water management practices shall be adequately separated from wells to prevent contamination of drinking water.

2. Alternate Requirements. The Public Works Department may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under G.5. or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

J. Maintenance Agreement.

1. Maintenance Agreement Required. The maintenance agreement required under H.2. for storm water management practices shall be an agreement between the City of Marinette and the responsible party to provide for maintenance of storm water practices beyond the duration period of this permit. The maintenance agreement shall be filed with the County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the storm water management practices.

2. Agreement Provisions. The maintenance agreement shall contain the following information and provisions and be consistent with the plan required by H.2.:
  - (a) Identification of the storm water facilities and designation of the drainage area served by the facilities.
  - (b) A schedule for regular maintenance of each aspect of the storm water management system consistent with the storm water management plan required under H.2.
  - (c) Identification of the responsible party(s), organization or city, county, town or village responsible for long term maintenance of the storm water management practices identified in the storm water management plan required under H.2.
  - (d) Requirement that the responsible party(s), organization, or city, county, town or village shall maintain storm water management practices in accordance with the schedule included in J.2.(b).
  - (e) Authorization for the Public Works Department to access the property to conduct inspections of storm water management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
  - (f) A requirement on the Public Works Department to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the storm water management practice into proper working condition.
  - (g) Agreement that the party designated under J.2.(c), as responsible for long term maintenance of the storm water management practices, shall be notified by the Public Works Department of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Public Works Department.
  - (h) Authorization of the Public Works Department to perform the corrected actions identified in the inspection report if the responsible party designated under J.2.(c) does not make the required corrections in the specified time period. The Public Works Department 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.
3. Alternate Requirements. The Public Works Department may prescribe alternative requirements for applicants seeking an exemption to on-site storm water management performance standards under G.5. or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

K. Financial Guarantee.

1. Establishment of the Guarantee. The Public Works Department may require the submittal of a financial guarantee, the form and type of

which shall be acceptable to the Public Works Department. The financial guarantee shall be in an amount determined by the Public Works Department to be the estimated cost of construction and the estimated cost of maintenance of the storm water management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the Public Works Department the authorization to use the funds to complete the storm water management practices if the responsible party defaults or does not properly implement the approved storm water management plan, upon written notice to the responsible party by the Public Works Department that the requirements of this ordinance have not been met.

2. Conditions for Release. Conditions for the release of the financial guarantee are as follows:

(a) The Public Works Department shall release the portion of the financial guarantee established under this section, less any costs incurred by the Public Works Department to complete installation of practices, upon submission of "as built plans" by a licensed professional engineer. The Public Works Department may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.

(b) The Public Works Department shall release the portion of the financial guarantee established under this section to assure maintenance of storm water practices, less any costs incurred by the Public Works Department, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

3. Alternate Requirements. The Public Works Department may prescribe alternative requirements for applicants seeking an exemption to on-site storm water management performance standards under G.5. or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

L. Fee Schedule.

The fees referred to in other sections of this ordinance shall be established by the City Council and may from time to time be modified by resolution. A schedule of the fees established by the City Council shall be available for review in the Public Works Department.

M. Enforcement.

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

2. The Public Works Department shall notify the responsible party by certified mail 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, and additional enforcement action which may be taken.

3. Upon receipt of written notification from the Public Works Department under sub. 2., the responsible party shall correct work that does not comply with the storm water management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the Public Works Department in the notice.
4. If the violations to a permit issued pursuant to this ordinance are likely to result in damage to properties, public facilities, or waters of the state, the Public Works Department may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the Public Works Department plus interest and legal costs shall be billed to the responsible party.
5. The Public Works Department is authorized to post a stop work order on all land disturbing construction activity that is in violation of this ordinance, or to request the City Attorney to obtain a cease and desist order in any court with jurisdiction.
6. The Public Works Department may revoke a permit issued under this ordinance for non-compliance with ordinance provisions.
7. Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the Public Works Department or by a court with jurisdiction.
8. The Public Works Department is authorized to refer any violation of this ordinance, or of a stop work order or cease and desist order issued pursuant to this ordinance, to the City Attorney for the commencement of further legal proceedings in any court with jurisdiction.
9. Any person, firm, association, or corporation who does not comply with the provisions of this ordinance shall be subject to a forfeiture of not less than \$25.00 dollars or more than \$10,000.00 dollars per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense.
10. Compliance with the provisions of this ordinance 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 injunctive proceedings.
11. When the Public Works Department determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices set forth in the storm water management plan, or has failed to comply with schedules set forth in said storm water management plan, the Public Works Department or a party designated by the Public Works Department 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 Public Works Department 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 K. of this ordinance. Where such a security has not been established, or 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.

N. Appeals.

1. Board of Public Works.

The Board of Public Works, created pursuant to Section 2.0205 of the City of Marinette Code of Ordinances and pursuant to s. 62.23(7)(e), Wis. Stats, shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Public Works Department in administering this ordinance. The board shall also use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals. Upon appeal, the board may authorize variances from the provisions of this ordinance that are not contrary to the public interest, and where owing to special conditions a literal enforcement of the ordinance will result in unnecessary hardship.

2. Who May Appeal. Appeals to the Board of Public Works may be taken by any aggrieved person or by an officer, department, board, or bureau of the City of Marinette affected by any decision of the Public Works Department.

O. Severability.

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

P. Effective Date.

This ordinance shall be in force and effect from and after its adoption and publication. The above and foregoing ordinance was duly adopted by the City Council of the City of Marinette on the 3rd day of May, 2016.

**6.0604 Storm Water Utility**

A. Establishment

The City of Marinette finds that the management of storm water and other surface water discharge within and beyond the Menominee River and Green Bay is a matter that affects the health, safety and welfare of the City, its citizens and businesses, and others in the surrounding area. Specific requirements have been placed on the City through the Wisconsin Department of Natural Resources (DNR)'s Regulation 216 requiring the City improve the quality of storm water discharged to the waters of the State. The City shall be permitted by the DNR and shall be required to remain in compliance with their permit. This permit includes compliance with the City's Storm Water Management Plan. Failure to

effectively manage storm water affects the sanitary sewer utility operations of the City by, among other things, increasing the likelihood of infiltration and inflow in the sanitary sewer. In addition, surface water runoff may create erosion of lands, threaten businesses and residences with water damage, and create sedimentation and other environmental damage in the Menominee River and Green Bay. Those elements of the system that provide for the collection of and dispose of storm water and regulation of groundwater are of benefit, and provide services to all properties within the City of Marinette, including property not presently served by the storm elements of the system. The cost of operating and maintaining the City storm water management system and financing necessary repairs, replacements, improvements and extensions thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom.

B. Establishment

There is hereby established a City of Marinette Storm Water Utility. The operation of the Storm Water Utility shall be under the supervision of the Board of Public Works. The Director of Public Works/Engineer shall be in charge of the Storm Water Utility.

C. Authority

The City, through the Storm Water Utility, may acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage and finance such real estate and facilities as are deemed by the City to be proper and reasonably necessary for a system of storm and surface water management. These facilities may include, without limitation by enumeration, surface and underground drainage facilities, sewers, water courses, retaining walls and ponds, detention basins, and such other facilities as will support a storm water management system.

D. Definitions

For the purpose of this Ordinance, the following definitions shall apply:

Words used in the singular shall include the plural, and the plural, the singular; words used in the present tense shall include the future tense; the word "shall" is mandatory and not discretionary; the word "may" is permissive. Terms not specifically defined herein shall have the meaning defined in NR 216.002, Wisconsin Administrative Code, and as the same may be amended from time to time, if defined therein; or if not therein defined, shall be construed to have the meaning given by common and ordinary use, as defined in the latest edition of Webster's Dictionary.

1. DIRECTOR The term "Director" means the Director of Public Works, or his/her designee.

2. DEVELOPED PROPERTY. The term "developed property" means the real property that has been altered from its natural state by the addition of any improvements that may include a building, structure, impervious surface, and change in grade or landscaping.
3. EQUIVALENT RUNOFF UNIT (ERU). The term "ERU" means the statistical average horizontal impervious area of "single family homes" within the City of Marinette on the date of adoption of this Ordinance. The horizontal impervious area includes, but it not limited to, all areas covered by structures, roof extensions, patios, porches, driveways and sidewalks.
4. IMPERVIOUS AREA OR IMPERVIOUS SURFACE. The term "impervious area or impervious surface" means areas that have been paved, covered or compacted to inhibit the natural infiltration of water into the soil or cause water to run off the area in greater quantities or at an increased rate of flow from the present under natural conditions as undeveloped property. Such areas may include, but are not limited to, roofs, roof extensions, patios, porches, driveways, sidewalks, pavement, gravel, athletic courts and compacted surfaces. Excluded from this definition are undisturbed land, lawn and fields.
5. DUPLEX UNIT. The term "duplex unit" means any residential space identified for habitation by members of the same household attached to only one other residential space or as classified by the City Building Code.
6. DWELLING UNIT. The term "dwelling unit" means any residential space identified for habitation by members of the same household or as classified by the City Building Code. A dwelling unit includes, but is not limited to, all duplexes, apartments, residential condominiums and townhouse living units.
7. RESIDENTIAL PROPERTY. The term "residential property" means any lot or parcel developed exclusively for residential purposes including, but not limited to, single-family homes, manufactured homes, multi-family apartment buildings and condominiums.
8. NON-RESIDENTIAL PROPERTY. The term "non-residential property" means any developed lot or parcel not exclusively residential, as defined herein, but not limited to, transient rentals (such as hotels and motels), mobile home park, commercial, industrial, institutional, governmental property and parking lots.
9. RUNOFF. The term "runoff" means the surface water, including rain and snow melt, which is inhibited by impervious surfaces from naturally infiltrating into soil.
10. STORM WATER FACILITIES. The term "storm water facilities" means all constructed facilities or natural features used for collecting, storing and conducting storm water to, through and from drainage areas to the point of final outlet. Storm water facilities collectively constitute a storm water system.
11. UNDEVELOPED PROPERTY. The term "undeveloped property" means that which has not been altered from its natural state by the

addition of any improvements, such as a building, structure, impervious surface, change or grade or landscaping. For new construction, a property shall be considered developed pursuant to this Ordinance at the time of water meter installation or upon review of the actual impervious area by January 1st.

E. Rate Charges

By this Ordinance, the Board of Public Works is establishing the rate charge upon each lot and parcel within the City of Marinette for services and facilities provided by the Storm Water Utility. The actual charges to be imposed, the establishment of formulas for calculations of the charges, the establishment of specific customer classifications and any future changes in those rates, formulas, rate charges and customer classifications, may be made by resolution. All rates established pursuant to this Ordinance will be fair and reasonable in accordance with the decision and judgment of the Board of Public Works. The current rates will be on file with the City Clerk/Treasurer.

1. Rate charges shall be used to share the costs of the Storm Water Utility. These rate charges may include:

- (a) BASE CHARGE (BC). The Base Charge may be imposed on all property in the City, EXCEPT UNDEVELOPED PROPERTY. (Ordinance 2012-2221 adopted 4-4-2012). The Base Charge will be designed to reflect the fact that all properties benefit from the storm water management activities of the City and that all property contribute in some way to the storm water discharge that must be managed by the City. The BC will be designed to collect the administrative costs of the storm sewer utility and the portion of the capital costs not covered by special assessment. The BC is equal to 0.7 ERU. The BC may be based upon the size of a parcel of property.(Ordinance 2012-2221 adopted 4-4-2012)

- (b) EQUIVALENT RUNOFF UNIT CHARGE (ERU). This charge shall be imposed on all property that has any developed impervious area. The ERU will be designed on the basis of a typical residential unit of property. Other units of property will be charged multiples of the ERU, based upon the impervious area contributing to surface water runoff.

- (c) SPECIAL CHARGE (SC). This charge may be imposed on property that is in an area specially benefited by a particular storm water management facility. The SC will be developed to reflect the benefits/services in a particular area that may not be appropriate to spread to property throughout the City. The SC will be calculated on an ERU basis.

F. Collection Agency

The City of Marinette is hereby appointed as the collection agency for the City Storm Water Utility. Bills shall be prepared by the City or its agent and sent to the Owner of each premise served. The City shall allocate the actual cost of billing and collecting.

1. The bills for Storm Water Utility charges shall be mailed to the Owner of the property.

2. Storm Water Utility charges shall not be payable in installments. If Storm Water Utility charges remain unpaid after a period of 20-days from the date of the utility bill, such bill shall become delinquent.
3. Unpaid and/or delinquent charges shall be assessed the same as the water utility bills.

G. Customer Classification

For purposes of imposing the storm water charges, all lots and parcels within the City are classified into the following six (6) customer classes:

1. Residential - Single-Family.
2. Residential - Duplex.
3. Residential - Multi-Family and Condominium.
4. Non-Residential
5. Undeveloped.
6. City Owned.

H. The Director of Public Works shall prepare a list of lots and parcels within the City of Marinette, and assign a classification of residential, nonresidential or undeveloped to each lot or parcel.

1. The average square footage of impervious area of the ERU is established to be equivalent to 3,105-square feet.
2. The charges imposed for single-family residential properties shall be the rate for one ERU.
3. The charges imposed for duplex residential properties shall be the rate for one ERU.
4. The charges imposed for multi-family and condominium residential properties shall be the same as non-residential properties (refer to Section 508).

I. No charges shall be imposed for City-owned property. No charges shall be imposed for undeveloped property. (Ordinance 2012-2221 adopted 4-4-2012)

J. The charges imposed for non-residential properties, as defined herein, shall be the rate for one (1) ERU, multiplied by the numerical factor obtained by dividing the total impervious area of a non-residential property by the square footage of one (1) ERU. The factor shall be rounded down to the nearest 1/10th, i.e.:

$$\frac{(\text{ERU Rate}) (\text{Impervious Area in Square Feet})}{3,105 \text{ square feet}}$$

e.g.  $\frac{10,000 \text{ square feet}}{3,105 \text{ square feet}} = 3.2 \text{ ERU's}$

K. Impervious Surface Determination

The Director of Public Works shall be responsible for determining the impervious area, based upon the best available information, including, but not limited to, data supplied by the Building Inspector, aerial photography, the Property Owner, Tenant or Developer. The Director of Public Works may require additional information, as necessary, to make the determination. The billing amount shall be updated by the Director of Public Works on any additions to the impervious area. Upon Property Owner's written notification and request, the Director of Public Works shall review impervious area for possible reductions.

L. The minimum charges for any developed parcel shall be equal to the BC rate.

M. New Construction

The Owner shall also be liable for storm water charges under this Ordinance for the improvement from the date of water meter installation or upon review of the actual impervious area by January 1st.

N. Method of Appeal

The Storm Water Utility charge may be appealed, as follows:

1. A written challenge to the storm water charge must be filed with the Director of Public Works on behalf of the customer, specifying all basis for the challenge and the amount of the storm water charge the customer asserts is appropriate. Failure to file a challenge within 30 days of payment waives all right to later challenge the charge.
2. A property owner not satisfied with the Director of Public Works' decision can appeal to the Board of Public Works for their review and action.
3. Following review by the Director of Public Works, the Board of Public Works will determine whether the storm water charge is fair and reasonable, or whether a refund is due the customer. The Board of Public Works may act with or without a hearing, and will inform the customer in writing of its decision.
4. If the Board of Public Works determines that a refund is due the customer, the refund will be applied as a credit on the customer's next storm water billing, if the refund will not exceed the customer's next storm water billing or will be refunded at the discretion of the Board of Public Works without interest.

O. Special Assessment Authority

In addition to any other method for collection of the charges established pursuant to this Ordinance for storm water utility costs, the Common Council finds that these charges may be levied

on property as a special charge pursuant to s. 66.0627, Wis. Stats. The charges established hereunder reasonably reflect the benefits conferred on property and may be assessed as special charges. The billing for such charges to the owner will serve as notice to the owner that failure to pay the charges when due may result in them being charged pursuant to the authority of s. 66.0627, Wis. Stats. In addition, the City may provide notice each October of any unpaid charges to the Storm Water Utility, which charges, if not paid by November 15, may be placed on the tax roll under s. 66.0627, Wis. Stats.

P. Budget Excess Revenues

The Storm Water Utility finances shall be accounted for in a separate Storm Water Management Fund by the City. The Utility shall prepare an annual budget, which is to include all operation and maintenance costs, administrative costs, depreciation costs, debt service and other costs related to the operation of the Storm Water utility. The budget is subject to approval by the Board of Public Works. The costs shall be spread over the rate classifications as determined by the Board of Public Works. Any excess of revenues over expenditures in a year will be retained by the Storm Water Management Fund for subsequent years' needs.

Q. Effective Date

This ordinance shall take effect January 1, 2010.