

Chapter 18 - BUILDINGS AND BUILDING REGULATIONS

Footnotes:

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Cross reference— *Environment, ch. 30; fire prevention and protection, ch. 34; health and sanitation, ch. 38; historic preservation, ch. 42; fair housing, § 46-51 et seq.; planning, ch. 66; shoreland-wetland zoning, ch. 78; signs, ch. 82; solid waste, ch. 86; streets, sidewalks and other public places, ch. 90; house and building numbers, § 90-7; utilities, ch. 98; vegetation, ch. 102; waterways, ch. 106.*

State Law reference— *Enforcement of building codes generally, Wis. Stats. §§ 62.17, 62.23(9).*

ARTICLE I. - IN GENERAL

Secs. 18-1—18-30. - Reserved.

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

Footnotes:

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Cross reference— *Administration, ch. 2.*

DIVISION 1. - GENERALLY

Sec. 18-31. - Penalty.

Any person found guilty of a violation of any provision of this chapter shall be subject to section 1-10; and each day such violation continues shall constitute a separate violation.

(Code 1969, §§ 14.01, 14.05; Ord. No. 787, 2-18-20)

Sec. 18-32. - Citations.

The building inspector is authorized to issue citations for violations of the provisions of this chapter.

(Ord. No. 787, 2-18-20)

Sec. 18-33. - Licensing of electricians, plumbing contractors, building contractors, and heating, venting and air conditioning contractors.

Except as otherwise specifically provided in this article, the provisions in Wis. Stats. Ch. 101 and Chapter SPS 305 State of Wisconsin Administrative Code describing and defining regulations with respect to the licensing of electricians, plumbing contractors, building contractors, and heating, venting and air conditioning contractors to work within the city limits are hereby adopted by reference. Excluded from this adoption is any reference to any statutory penalty provisions contained therein.

(Ord. No. 524, 6-2-98; Ord. No. 787, 2-18-20)

Sec. 18-34. - Intent.

The intent of this section is to adopt the licensing and certification procedures for electricians, plumbing contractors, building contractors, and heating, venting and air conditioning contractors as developed by the State of Wisconsin. Any future amendments to the aforementioned statute and administrative code provisions will also be adopted by virtue of this section.

(Ord. No. 524, 6-2-98; Ord. No. 787, 2-18-20)

Sec. 18-35. - Penalties.

Any person who violates any provision of this article shall, upon conviction, be subject to a penalty as set forth in section 1-10 of the City of Fort Atkinson Code of Ordinances.

(Ord. No. 524, 6-2-98; Ord. No. 787, 2-18-20)

Secs. 18-36—18-55. - Reserved.

DIVISION 2. - RESERVED

Footnotes:

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Editor's note— Ord. No. 604, adopted Apr. 15, 2003, repealed §§ 18-56—18-61, being the substantive sections of div. 2, Building Board, derived from the 1969 Code, § 14.08(A)—(F).

Secs. 18-56—18-80. - Reserved.

DIVISION 3. - PERMITS

Sec. 18-81. - Building permit required; permit and fee.

No person shall build or cause to be built any structure without first obtaining a building permit for such construction. Such building permit shall be issued by the city upon receipt of all required information and proof of licensure. A copy of such permit issued shall be filed with the city building department. The building permit fee shall be per chapter 110.

(Code 1969, § 14.02(B); Ord. No. 787, 2-18-20)

Secs. 18-82—18-115. - Reserved.

ARTICLE III. - COMMERCIAL BUILDING CODE

Sec. 18-116. - Building code adopted pursuant to Wis. Stats. § 101.65.

The building code for the city is in the book permanently on file with the building inspector which is adopted by reference in this section as if fully set forth.

(Code 1969, § 14.01; Ord. No. 787, 2-18-20)

Sec. 18-117. - Amendments.

The following building code chapters are adopted:

- (1) Wis. Admin. Code Ch. SPS 360, 361, 362, 363, 364, 365, 366, 375, 376, 377, 378 and 379, are adopted by reference.
- (2) Reserved.
- (3) The building inspector, as certified by the department of commerce, is hereby authorized and directed to administer and enforce all of the provisions of the Wisconsin Building and Heating, Ventilating and Air Conditioning Code.
- (4) Reserved.
- (5) All plans for commercial, residential and industrial buildings shall include specific UL, or other nationally recognized testing laboratories, design numbers and all pertinent manufacturers specification sheets for each type and size of penetration in all rated wall assemblies. The architect or design professional shall specify on the drawings the location of penetrations of walls and floors and note the assembly being used to restore the penetration to its original rating. The architect shall furnish the required firestopping information to all trades and ensure the use of said systems.

Failure to comply with any provision of this subsection shall result in penalties per section 1-10.

(Code 1969, § 14.01; Ord. No. 557, 1-4-00; Ord. No. 558, 1-4-00; Ord. No. 592, 7-2-02; Ord. No. 672, 3-3-09; Ord. No. 787, 2-18-20)

Secs. 18-118—18-150. - Reserved.

ARTICLE IV. - ELECTRICAL CODE

Footnotes:

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Editor's note— Ord. No. 787, adopted Feb. 18, 2020, amended Art. IV in its entirety to read as herein set out. Former Art. IV, §§ 18-151 and 18-152, pertained to the electrical code and amendments, and derived from: Code 1969, § 14.06; Ord. No. 545, adopted July 20, 1999; and Ord. No. 592, adopted July 2, 2002.

Sec. 18-151. - Electrical code adopted pursuant to Wis. Stats. §§ 101.80—101.88.

Wis. Admin. Code SPS 316 is hereby adopted by reference and made part of this chapter and shall apply to all electrical installed, constructed, altered or repaired in the city. Any future amendments, revisions and modifications of the administrative code are intended to be made a part of this code. A copy of these administrative code provisions and any future amendments thereto shall be kept on file with the Code of Ordinances for the City of Fort Atkinson.

(Ord. No. 787, 2-18-20)

Sec. 18-152. - Access to property.

The electrical inspector and or his authorized designee may, during normal business hours, enter any public building in the discharge of his or her official duties, or for the purpose of making any inspection or tests necessary to ensure compliance with the code.

(Ord. No. 787, 2-18-20)

Sec. 18-153. - Electrical licensing.

Except as provided under Wis. Stats. § 101.862(4), no person as of April 1, 2013 may install, repair, maintain or inspect electrical wiring nor obtain a permit for said wiring unless the person holds a license per SPS 305, or registration issued by the department of safety and professional services or is enrolled by the DSPS as one of the following or is the owner of a single-family home which he/she resides in and is engaged in branch circuit wiring in said home:

- (1) A licensed master electrician.
- (2) A licensed residential master electrician.

- (3) A registered master electrician.
- (4) A licensed journeyman electrician.
- (5) A licensed industrial journeyman electrician.
- (6) A licensed residential journeyman electrician.
- (7) An enrolled registered electrician.
- (8) A registered electrical apprentice.
- (9) A registered industrial electrical apprentice.
- (10) A registered residential electrical apprentice.

(Ord. No. 787, 2-18-20)

Sec. 18-154. - [Electrical wiring in new construction or building alterations or remodels.]

- (a) No electrical wiring in new construction or building alterations or remodels shall be done in the city without obtaining a permit therefor from the city. No permit shall be issued by the city unless satisfactory proof is furnished to the electrical inspector, upon his or her request, that the applicant meets the licensing requirements of section 18-153 of this article. Fees for permits will be determined by a fee schedule adopted by the City of Fort Atkinson. Failure to obtain required permits may result in double permit fees and or penalties per section 1-10 of the city's Code of Ordinances.
- (b) Except as provided under Wis. Stats. § 101.875(2), electrical wiring installations shall be subject to inspection.
- (c) Inspections of electrical wiring installations described under § SPS 316.012(1)(a) shall be conducted by a certified commercial electrical inspector.
- (d)
 - (1) The building owner or their agent shall notify the inspection agency designated by the department to provide electrical inspections when the electrical wiring installation is ready for inspection.
 - (2) Except as provided in subsection (e)(3), to facilitate inspection all of the following shall apply:
 - a. Electrical wiring shall remain accessible and exposed for inspection purposes.
 - b. Electrical wiring may not be energized.
- (e)
 - (1) The concealment or energizing of electrical wiring, other than an electrical service, may proceed if inspection has not been completed within two business days after notification is received or as otherwise agreed between the wiring installer and the designated inspection agency providing the inspection.
 - (2) The notification that an electrical wiring installation is ready for final inspection shall be made to indicate when all electrical fixtures, outlets and face plates are in place and the installation or that portion of the installation is energized.

- (3) a. If upon inspection, it is found that the installation is in compliance with SPS 316, the certified inspector shall approve the installation prior to concealment or energizing of the electrical wiring.
- b. If upon inspection, it is found that the installation is incomplete or not in compliance with SPS 316, orders to correct shall be issued. An order may include the condition that the electrical wiring is to remain unconcealed and non-energized until re-inspected
- (f) Penalties: Penalties for non-compliance with this article may result in stop work orders, de-energization orders, and or penalties per section 1-10 of the city Code of Ordinances.

(Ord. No. 787, 2-18-20)

Secs. 18-155—18-185. - Reserved.

ARTICLE V. - EROSION CONTROL

Sec. 18-186. - Performance standards.

- (a) *Generally.* Erosion control procedures shall be placed along downslope areas and along sideslope areas as required to prevent or reduce erosion where erosion during construction will result in a loss of soil to waters of the state, public sewer inlets or off-site. The best management practices as defined in Wis. Adm. Code ch. D. Comm. 20.07(8m), as amended, or alternative measures that provide equivalent protection to these standards may be utilized to satisfy the requirements of this section. When the disturbed area is stabilized, the erosion control procedures may be removed. Sites within subdivisions with approved subdivision erosion control plans are exempt from erosion control procedures specified in this section when the subdivision erosion control plan includes adequate best management practices specified in section 18-188 for erosion control on individual construction sites.
- (b) *Tracking.* Sediment tracked by construction equipment from a site onto a public or private paved roadway or sidewalk shall be minimized by providing a gravel access roadway where possible.
- (c) *Sediment cleanup.* Off-site sediment deposition occurring as a result of a storm event shall be cleaned up by the end of the next workday following occurrence. All other off-site sediment deposition occurring as a result of construction activities shall be cleaned up at the end of the workday.
- (d) *Public sewer inlet protection.* Downslope, on-site public sewer inlets shall be protected with erosion control procedures.
- (e) *Building material waste disposal.* All building material waste shall be properly managed and disposed of to prevent pollutants and debris from being carried off the site by runoff.

(Code 1969, § 14.09(A))

Sec. 18-187. - Best management practices.

Appropriate best management practices, as defined in Wis. Adm. Code ch. D. Comm. 20.07(8m) or specified in ch. 3, Wis. Construction Site Best Management Practices Handbook, published by the department of natural resources, may be selected, installed, maintained and remain in place until the site is stabilized to meet the performance standards specified in section 18-186.

(Code 1969, § 14.09(B))

Sec. 18-188. - Maintenance of erosion control procedures.

During the period of construction at a site, all erosion control procedures necessary to meet the performance standards of this article shall be properly implemented, installed and maintained by the building permit applicant or subsequent landowner. If erosion occurs after building construction activities have ceased, some or all of the erosion control procedures shall be maintained until the site has been stabilized.

(Code 1969, § 14.09(C))

Sec. 18-189. - Construction site erosion.

(a) *Authority.*

- (1) The ordinance from which this section derives is adopted under the authority granted by Wis. Stats. § 62.234, for cities. These provisions supersedes all provisions of an ordinance previously enacted under Wis. Stats. § 62.23, that relate to construction site erosion control. Except as otherwise specified in Wis. Stats. § 62.234, and Wis. Stats. § 62.23, applies to the ordinance from which this section derives and to any amendments to these provisions.
- (2) The provisions of this section are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The city council hereby designates the director of public works to administer and enforce the provisions of the ordinance from which this section derives.
- (4) The requirements of these provisions do not preempt 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 Wis. Stats. §§ 281.16 and 283.33.
 - b. Targeted nonagricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under Wis. Adm. Code NR 151.004.

(b)

Findings of fact. The City of Fort Atkinson finds that uncontrolled runoff from land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state.

(c) *Purpose.* It is the purpose of these provisions 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 Fort Atkinson.

(d) *Applicability and jurisdiction.*

(1) *Applicability.*

- a. This section applies to the following land disturbing construction activities except as provided under subsection (1)b:
 1. A construction site, which has one or more acres of land disturbing construction activity.
- b. This section does not apply to the following:
 1. Land disturbing construction activity that includes the construction of a building and is otherwise regulated by the Wisconsin Department of Commerce under Wis. Adm. Code §§ Comm 21.125 or Comm 50.115.
 2. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under chapter 40, Code of Federal Regulations, part 122, for land disturbing construction activity.
 3. Nonpoint discharges from agricultural facilities and practices.
 4. Nonpoint discharges from silviculture activities.
 5. Routine maintenance for project sites under five acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
- c. Notwithstanding the applicability requirements in subsection (1)a. above, this section applies to construction sites of any size that, in the opinion of the City of Fort Atkinson, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

(2) *Jurisdiction.* This section applies to land disturbing construction activity on construction sites located within the boundaries and jurisdiction of the City of Fort Atkinson.

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

(e) *Definitions.*

Administering authority means a governmental employee, or a regional planning commission empowered under Wis. Stats. § 62.234, that is designated by the City of Fort Atkinson to administer this ordinance.

Agricultural facilities and practices has the meaning in Wis. Stats. § 281.16(1).

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

Best management practice or *BMP* means structural or nonstructural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.

Business day means a day the office of the City of Fort Atkinson is routinely and customarily open for business.

Cease and desist order means a municipal court-issued order to halt land disturbing construction activity that is being conducted without the required permit.

Construction site means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan.

Division of land means the creation from one parcel of one or more parcels or building sites of one or fewer acres each in area where such creation occurs at one time or through the successive partition within a five-year period.

Erosion means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.

Erosion and sediment control plan means a comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.

Extraterritorial means the unincorporated area within three miles of the corporate limits of a first, second or third class city.

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.

Governing body means town board of supervisors, county board of supervisors, city council, village board of trustees or village council.

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

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

MS4 or municipal separate storm sewer system 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:

- (1) Owned or operated by a municipality.
- (2) Designed or used for collecting or conveying stormwater.
- (3) Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.

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

Permit means a written authorization made by the City of Fort Atkinson to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

Pollutant has the meaning given in Wis. Stats. § 283.01(13).

Pollution has the meaning given in Wis. Stats. § 281.01(10).

Responsible party means any entity holding fee title to the property or performing services to meet the performance standards of these provisions through a contract or other agreement.

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

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

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.

Stop-work order means an order issued by the City of Fort Atkinson which requires that all construction activity on the site be stopped.

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

Waters of the state has the meaning given in Wis. Stats. § 281.01(18).

(f) *Technical standards.*

- (1) *Design criteria, standards and specifications.* All BMPs required to comply with these provisions shall meet the design criteria, standards and specifications based on any of the following:
 - a. Applicable design criteria, standards and specifications identified in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222 November 1993 Revision.
 - b. Other design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under Wis. Adm. Code, subchapter V of chapter NR 151.
 - c. For this section, average annual basis is calculated using the appropriate annual rainfall or runoff factor, also referred to as the R factor, or an equivalent design storm using a type II distribution, with consideration given to the geographic location of the site and the period of disturbance.
- (2) *Other standards.* Other technical standards not identified or developed in subsection (f)(1) above, may be used provided that the methods have been approved by the City of Fort Atkinson.

(g) *Performance standards.*

- (1) *Responsible party.* The responsible party shall implement and maintain an erosion and sediment control plan, developed in accordance with subsection (i), that incorporates the requirements of this subsection.
- (2) *Plan.* A written plan shall be developed in accordance with subsection (i) and implemented for each construction site.
- (3)

Erosion and other pollutant control requirements. The plan required under subsection (g)(2) above, shall include the following:

- a. BMPs that, by design, achieve to the maximum extent practicable, a reduction of 80 percent of the sediment load carried in runoff, on an average annual basis, as compared with no sediment or erosion controls until the construction site has undergone final stabilization. No person shall be required to exceed an 80 percent sediment reduction to meet the requirements of this subsection. Erosion and sediment control BMPs may be used alone or in combination to meet the requirements of this subsection. Credit toward meeting the sediment reduction shall be given for limiting the duration or area, or both, of land disturbing construction activity or other appropriate mechanism.
 - b. Notwithstanding subsection (3)a. above, if BMPs cannot be designed and implemented to reduce the sediment load by 80 percent, on an average annual basis, the plan shall include a written and site-specific explanation as to why the 80 percent reduction goal is not attainable and the sediment load shall be reduced to the maximum extent practicable.
 - c. Where appropriate, the plan shall include sediment controls to do all of the following to the maximum extent practicable:
 1. Prevent tracking of sediment from the construction site onto roads and other paved surfaces.
 2. Prevent the discharge of sediment as part of site dewatering.
 3. Protect the separate storm drain inlet structure from receiving sediment.
 - d. The use, storage and disposal of chemicals, cement and other compounds and materials used on the construction site shall be managed during the construction period, to prevent their entrance into waters of the state. 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 subsection.
- (4) *Location.* The BMPs used to comply with this section shall be located prior to runoff entering waters of the state.
- (5) *Alternate requirements.* The City of Fort Atkinson may establish stormwater management requirements more stringent than those set forth in this section if the City of Fort Atkinson determines that an added level of protection is needed for sensitive resources.
- (h) *Permitting requirements, procedures and fees.*
- (1) *Permit required.* No responsible party may commence a land disturbing construction activity subject to these provisions without receiving prior approval of an erosion and sediment control plan for the site and a permit from the City of Fort Atkinson.
 - (2)

Permit application and fees. At least one responsible party desiring to undertake a land disturbing construction activity subject to these provisions shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of subsection (h)(3) below, and shall pay an application fee that is set by resolution and adopted by the city council. A copy of said resolution shall be on file in the office of the city clerk/treasurer.

- (3) *Review and approval of permit application.* The City of Fort Atkinson 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 15 business days of the receipt of a complete permit application, as required by subsection (h)(2) above, the City of Fort Atkinson shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of these provisions.
 - b. If the permit application and plan are approved, the City of Fort Atkinson shall issue the permit.
 - c. If the permit application or plan is disapproved, the City of Fort Atkinson shall state in writing the reasons for disapproval, and include the process for appealing the decision.
 - d. The City of Fort Atkinson may request additional information from the applicant. If additional information is submitted, the City of Fort Atkinson shall have 15 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 City of Fort Atkinson to inform the permit applicant of a decision within 15 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) *Surety bond.* As a condition of approval and issuance of the permit, the City of Fort Atkinson may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion control plan and any permit conditions.
- (5) *Permit requirements.* All permits shall require the responsible party to:
 - a. Notify the City of Fort Atkinson within two business days of commencing any land disturbing construction activity.
 - b. Notify the City of Fort Atkinson of completion of any BMPs, as soon as the installation is complete.
 - c. Obtain permission in writing from the City Fort Atkinson prior to any modification pursuant to subsection (i)(3) of the erosion and sediment control plan.
 - d. Install all BMPs as identified in the approved erosion and sediment control plan prior to beginning land disturbing operations.

- 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 a site erosion control log.
 - g. Inspect the BMPs within 24 hours after each rain of 0.5 inches or more which results in runoff during active construction periods, and at least once each week, make needed repairs and document the findings of the inspections in a site erosion control log with the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site.
 - h. Allow the City of Fort Atkinson and/or its agents 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, and erosion control log at the construction site.
- (6) *Permit conditions.* Permits issued under this section may include conditions established by the City of Fort Atkinson in addition to the requirements set forth in subsection (h)(5) above, where needed to assure compliance with the performance standards in subsection (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 City of Fort Atkinson may extend the period one or more times for up to an additional 180 days. The City of Fort Atkinson may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this section.
- (8) *Maintenance.* The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of these provisions until the site has undergone final stabilization.
- (i) *Erosion and sediment control plan, statement and amendments.*
- (1) *Erosion and sediment control plan.*
- a. An erosion and sediment control plan shall be prepared and submitted to the City of Fort Atkinson.
 - b. The erosion and sediment control plan shall be designed to meet the performance standards in subsection (g) and other requirements of this section.
 - c. The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:
 - 1.

The name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm. The application shall also include start and end dates for construction.

2. Description of the site and the nature of the construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5 Minute Series Topographic Map or local map of the city.
 3. A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures and establishment of permanent vegetation.
 4. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by construction activities.
 5. Estimates, including calculations, if any, of the runoff coefficient of the site before and after construction activities are completed.
 6. Calculations to show the expected percent reduction in the average annual sediment load carried in runoff as compared to no sediment or erosion controls.
 7. Existing data describing the surface soil as well as subsoils.
 8. Depth to groundwater, as indicated by natural resources conservation service soil information where available.
 9. Name of the immediate named receiving water from the United States Geological Service 7.5 Minute Series Topographic Maps.
- d. The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than one inch = 40 feet and at a contour interval not to exceed two feet.
1. Existing topography, vegetative cover, natural and engineered drainage systems, roads and surface waters. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site shall be shown. Any identified 100-year floodplains, flood fringes and floodways shall also be shown.
 2. Boundaries of the construction site.
 3. Drainage patterns and approximate slopes anticipated after major grading activities.
 4. Areas of soil disturbance.
 5. Location of major structural and nonstructural controls identified in the plan.
 6. Location of areas where stabilization practices will be employed.

7. Areas which will be vegetated following construction.
 8. Areal extent of wetland acreage on the site and locations where stormwater is discharged to a surface water or wetland.
 9. Locations of all surface waters and wetlands within one mile of the construction site.
 10. An alphanumeric or equivalent grid overlying the entire construction site map.
- e. Each erosion and sediment control plan shall include a description of appropriate controls and measures that will be performed at the site to prevent pollutants from reaching waters of the state. The plan shall clearly describe the appropriate control measures for each major activity and the timing during the construction process that the measures will be implemented. The description of erosion controls shall include, when appropriate, the following minimum requirements:
1. Description of interim and permanent stabilization practices, including a practice implementation schedule. Site plans shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.
 2. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the City of Fort Atkinson, structural measures shall be installed on upland soils.
 3. Management of overland flow at all sites, unless otherwise controlled by outfall controls.
 4. Trapping of sediment in channelized flow.
 5. Staging construction to limit bare areas subject to erosion.
 6. Protection of downslope drainage inlets where they occur.
 7. Minimization of tracking at all sites.
 8. Clean up of off-site sediment deposits.
 9. Proper disposal of building and waste materials at all sites.
 10. Stabilization of drainage ways.
 11. Control of soil erosion from dirt stockpiles.
 12. Installation of permanent stabilization practices as soon as possible after final grading.
 13. Minimization of dust to the maximum extent practicable.
- f. The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel, as necessary, to provide a nonerosive flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

- (2) *Erosion and sediment control plan statement.* For each construction site identified under subsection (d)(1)c., an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the City of Fort Atkinson. The control plan statement shall briefly describe the site, including a site map. Further, it shall also include the best management practices that will be used to meet the requirements of the ordinance, including the site development schedule.
- (3) *Amendments.* The applicant shall amend the plan if any of the following occur:
- a. There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state 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 City of Fort Atkinson notifies the applicant of changes needed in the plan.
- (j) *Fee schedule.* The fees referred to in other subsections of this section shall be established by the city council of the city 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 at the municipal building, 101 North Main Street, Fort Atkinson.
- (k) *Inspection.* If land disturbing construction activities are being carried out without a permit required by this section, the City of Fort Atkinson and/or its agents may enter the land pursuant to the provisions of Wis. Stats. §§ 66.0119(1), (2) and (3).
- (l) *Enforcement.*
- (1) The City of Fort Atkinson and/or its agents may post a stop-work order, or citation if any of the following occurs:
 - a. Any land disturbing construction activity regulated under this ordinance is being undertaken without a permit.
 - 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.
 - (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 City of Fort Atkinson 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 City of Fort Atkinson, or if a responsible party violates a stop-work order posted under subsection (k)(1) above, the City of Fort Atkinson may request the city attorney to obtain a cease and desist order in any court with jurisdiction.
- (4)

The City of Fort Atkinson may retract the stop-work order issued under subsection (1) or the permit revocation under subsection (k)(2) above.

- (5) After posting a stop-work order under subsection (k)(1) above, the city may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this section. The city may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this subsection by the City of Fort Atkinson, plus penalty authorized by the city, 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 Wis. Stats. ch. 66, subchapter VII.
- (6) Any person violating any section of these provisions shall be subject to a forfeiture of not less than \$500.00, nor more than \$10,000.00 and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense. This shall also include persons responsible for the destruction, removal or alteration of BMP's.
- (7) Compliance with the provisions of this section may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.

(m) *Appeals.*

(1) *The planning commission:*

- a. Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the City of Fort Atkinson in administering these provisions except for cease and desist orders obtained under subsection (l)(3);
- b. Upon appeal, may authorize variances from the provisions of this section which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the 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 planning commission may be taken by any aggrieved person or by any office, department, board, or bureau of the City of Fort Atkinson affected by any decision of the City of Fort Atkinson.

(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.* These provisions shall be in force and effect from and after its adoption and publication. The above and foregoing provisions were duly adopted by the City Council of the City of Fort Atkinson on the 17th day of February, 2009.

Sec. 18-190. - Post-construction stormwater management.

(a) *Authority.*

- (1) The ordinance from which this section derives is adopted by the city council under the authority granted by Wis. Stats § 62.234, for cities. These provisions supersedes all provisions of an ordinance previously enacted under Wis. Stats § 62.23, that relate to stormwater management regulations. Except as otherwise specified in Wis. Stats §§ 62.234 and 62.23, applies to the ordinance from which this section derives and to any amendments to these provisions.
- (2) The provisions of this section are deemed not to limit any other lawful regulatory powers of the same governing body.
- (3) The city council hereby designates the director of public works to administer and enforce the provisions of this section.
- (4) The requirements of these provisions do not preempt more stringent stormwater 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 Wis. Stats §§ 281.16 and 283.33.
 - b. Targeted nonagricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under Wis. Adm. Code § NR 151.004.

(b) *Findings of fact.* The City of Fort Atkinson 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 section 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 stormwater; 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 of Fort Atkinson that this section regulates post-construction stormwater discharges to waters of the state. These provisions may be applied on a site-by-site basis. The City of Fort Atkinson recognizes, however, that the preferred method of achieving the stormwater performance standards set forth in this section is through the preparation and implementation of comprehensive, systems-level stormwater management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional stormwater 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 Wis. Stats. § 281.16, for regional stormwater management measures and have been approved by the city council, it is the intent of these provisions 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 section applies after final stabilization to a site of land disturbing construction activity meeting any of the criteria in this subsection, unless the site is otherwise exempt under subsection (d)b., below.
 1. A post construction site that had one or more acres of land disturbing construction activity.
- b. A site that meets any of the criteria in this subsection is exempt from the requirements of

these provisions.

1. A redevelopment post-construction site with no increase in exposed parking lots or roads.
 2. A post-construction site with less than ten percent connected imperviousness based on complete development of the post-construction site, provided the cumulative area of all parking lots and rooftops is less than one acre.
 3. Nonpoint discharges from agricultural facilities and practices.
 4. Nonpoint discharges from silviculture activities.
 5. Routine maintenance for project sites under five acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.
 6. Underground utility construction such as water, sewer and fiberoptic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.
- c. Notwithstanding the applicability requirements in subsection a. of this section applies to post-construction sites of any size that, in the opinion of the City of Fort Atkinson, 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 section applies to post-construction sites within the boundaries and jurisdiction of the City of Fort Atkinson.

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

(e) *Definitions.*

Administering authority means a governmental employee, or a regional planning commission empowered under Wis. Stats. § 62.234, that is designated by the City Council to administer these provisions.

Agricultural facilities and practices has the meaning given in Wis. Stats. § 281.16.

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

Best management practice or *BMP* means structural or nonstructural measures, practices, techniques or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.

Business day means a day the office of the City of Fort Atkinson is routinely and customarily open for business.

Cease and desist order means a municipal court-issued order to halt land disturbing construction activity that is being conducted without the required permit.

Combined sewer system means a system for conveying both sanitary sewage and stormwater runoff.

Connected imperviousness means an impervious surface that is directly connected to a separate storm sewer or water of the state via an impervious flow path.

Design storm means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall.

Development means residential, commercial, industrial or institutional land uses and associated roads.

Division of land means the creation from one parcel of one or more parcels or building sites of one or fewer acres each in area where such creation occurs at one time or through the successive partition within a five-year period.

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.

Erosion means the process by which the land's surface is worn away by the action of wind, water, ice or gravity.

Exceptional resource waters means waters listed in Wis. Adm. Code § NR 102.11.

Extraterritorial means the unincorporated area within three 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.

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 employment of equivalent permanent stabilization measures.

Financial guarantee means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the [administering authority] by the responsible party to assure that requirements of the ordinance are carried out in compliance with the stormwater management plan.

Governing body means town board of supervisors, county board of supervisors, city council, village board of trustees or village council.

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 areas that typically are impervious.

Infill area means an undeveloped area of land located within existing development.

Infiltration means the entry of precipitation or runoff into or through the soil.

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.

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

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

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

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

MS4 or municipal separate storm sewer system 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:

- (1) Owned or operated by a municipality.
- (2) Designed or used for collecting or conveying stormwater.
- (3) Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.

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

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

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

Ordinary high water mark has the meaning given in Wis. Adm. Code § NR 115.03(6).

Outstanding resource waters means waters listed in Wis. Adm. Code § NR 102.10.

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

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

Permit means a written authorization made by the City of Fort Atkinson to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

Permit administration fee means a sum of money paid to the City of Fort Atkinson by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.

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.

Pollutant has the meaning given in Wis. Stats. § 283.01(13).

Pollution has the meaning given in Wis. Stats. § 281.01(10).

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

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

Preventive action limit has the meaning given in Wis. Adm. Code § NR 140.05(17).

Redevelopment means areas where development is replacing older development.

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

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

Site means the entire area included in the legal description of the land on which the land disturbing construction activity occurred.

Stop-work order means an order issued by the City of Fort Atkinson which requires that all construction activity on the site be stopped.

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

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

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

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 percent continually for at least 50 feet. If the slope of the land is 12 percent 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.

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.

Type II distribution means a rainfall type curve as established in the "United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published 1973". The Type II curve is applicable to all of Wisconsin and represents the most intense storm pattern.

Waters of the state has the meaning given in Wis. Stats. § 281.01(18).

(f) *Technical standards.* The following methods shall be used in designing the water quality, peak flow shaving and infiltration components of stormwater practices needed to meet the water quality standards of this section:

- (1) Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under Wis. Adm. Code chapter NR 151, subchapter V.
- (2) Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, or where a unique site condition prohibits the strict use of a Wisconsin Department of Natural Resources technical standard, other technical standards may be used provided that the methods have been approved by the City of Fort Atkinson.
- (3) In these provisions, the following year and location has been selected as average annual

rainfall(s): Madison, 1981 (Mar. 12—Dec. 2).

(g) *Performance standards.*

- (1) *Responsible party.* The responsible party shall implement a post-construction stormwater management plan that incorporates the requirements of this section.
- (2) *Plan.* A written stormwater management plan in accordance with subsection (i) shall be developed and implemented for each post-construction site.
- (3) *Requirements.* The plan required under subsection (2) above, shall include the following:
 - a. *Total suspended solids.* BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows:
 1. For new development, by design, reduce to the maximum extent practicable, the total suspended solids load by 80 percent, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80 percent total suspended solids reduction to meet the requirements of this section.
 2. For redevelopment, by design, reduce to the maximum extent practicable, the total suspended solids load by 40 percent, based on the average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40 percent total suspended solids reduction to meet the requirements of this section.
 3. For infill development under five acres that occurs within ten years after the effective date of this rule [revisor insert date], by design, reduce to the maximum extent practicable, the total suspended solids load by 40 percent, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed a 40 percent total suspended solids reduction to meet the requirements of this section.
 4. For infill development that occurs ten or more years after the effective date of this rule, February 17, 2009, by design, reduce to the maximum extent practicable, the total suspended solids load by 80 percent, based on an average annual rainfall, as compared to no runoff management controls. No person shall be required to exceed an 80 percent total suspended solids reduction to meet the requirements of this section.
 5. Notwithstanding subsections 1.—4. above, if the design cannot achieve the applicable total suspended solids reduction specified, the stormwater management plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable.

b. *Peak discharge.*

1. By design, BMPs shall be employed to maintain or reduce the peak runoff discharge rates, to the maximum extent practicable, as compared to predevelopment conditions for the 2-year, 24-hour design storm applicable to the post-construction site. Predevelopment conditions shall assume "good hydrologic conditions" for appropriate land covers as identified in TR-55 or an equivalent methodology. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. However, when predevelopment land cover is cropland, rather than using TR-55 values for cropland, the runoff curve numbers in Table 1 shall be used. The post-development peak flow rates for the 10-year and 100-year, 24-hour storm events shall be controlled either at or below predevelopment discharge rates.

Table 1: Maximum Predevelopment Runoff Curve Numbers for Cropland Areas				
Hydrologic Soil Group	A	B	C	D
Runoff Curve Number	56	70	79	83

2. This subsection of this section does not apply to any of the following:
 - i. A post-construction site where the change in hydrology due to development does not increase the existing surface water elevation at any point within the downstream receiving water by more than 0.01 of a foot for the 2-year, 24-hour storm event.
 - ii. A redevelopment post-construction site.
 - iii. An infill development area less than five acres.
- c. *Infiltration.* BMPs shall be designed, installed and maintained to infiltrate runoff to the maximum extent practicable in accordance with the following, except as provided in subsections (g)(3)c.5. through (g)(3)c.8. below:
 1. For residential developments one of the following shall be met:
 - i. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90 percent of the predevelopment 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 project site is required as an effective infiltration area.

- ii. Infiltrate 25 percent of the post-development runoff from the 2-year, 24-hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than one percent of the project site is required as an effective infiltration area.
2. For nonresidential development, including commercial, industrial and institutional development, one of the following shall be met:
 - i. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60 percent of the predevelopment infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than two percent of the project site is required as an effective infiltration area.
 - ii. Infiltrate ten percent of the runoff from the 2-year 24-hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes, and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than two percent of the project site is required as an effective infiltration area.
3. Predevelopment condition shall be the same as in subsection b. above.
4. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subsection (g)(3)c.8. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.
5. Exclusions. The runoff from the following areas is prohibited from meeting the requirements of this subsection:
 - i. Areas associated with Tier 1 industrial facilities identified in Wis. Adm. Code § NR 216.21(2)(a), including storage, loading, rooftop and parking.
 - ii. Storage and loading areas of Tier 2 industrial facilities identified in Wis. Adm. Code § NR 216.21(2)(b).
 - iii. Fueling and vehicle maintenance areas.

- iv. Areas within 1,000 feet upgradient or within 100 feet downgradient of karst features.
 - v. Areas with less than three feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock, except this subsection 5.v., does not prohibit infiltration of roof runoff.
 - vi. Areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than five feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.
 - vii. Areas within 400 feet of a community water system well as specified in Wis. Adm. Code § NR 811.16(4), or within 100 feet of a private well as specified in Wis. Adm. Code § NR 812.08(4), for runoff infiltrated from commercial, industrial and institutional land uses or regional devices for residential development.
 - viii. Areas where contaminants of concern, as defined in Wis. Adm. Code § NR 720.03(2), are present in the soil through which infiltration will occur.
 - ix. Any area where the soil does not exhibit one of the following soil characteristics between the bottom of the infiltration system and the seasonal high groundwater and top of bedrock: At least a three-foot soil layer with 20 percent fines or greater; or at least a five-foot soil layer with ten percent fines or greater. This does not apply where the soil medium within the infiltration system provides an equivalent level of protection. This subsection 5.ix., does not prohibit infiltration of roof runoff.
6. Exemptions. The following are not required to meet the requirements of this subsection:
- i. Areas where the infiltration rate of the soil is less than 0.6 inches/hour measured at the site.
 - ii. Parking areas and access roads less than 5,000 square feet for commercial and industrial development.
 - iii. Redevelopment post-construction sites.
 - iv. Infill development areas less than five acres.
 - v. Infiltration areas during periods when the soil on the site is frozen.
 - vi. Roads in commercial, industrial and institutional land uses and arterial residential roads.

7.

Where alternate uses of runoff are employed, such as for toilet flushing, laundry or irrigation, such alternate use shall be given equal credit toward the infiltration volume required by this subsection.

8. i. Infiltration systems designed in accordance with this subsection 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 Wis. Adm. Code § NR 140. 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.
- ii. Notwithstanding subsection 8.i. above, the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

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 this subsection, "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.
 - i. For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in Wis. Adm. Code § NR 103.04: 75 feet.
 - ii. 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.
 - iii. For lakes: 50 feet.
 - iv. For highly susceptible wetlands: 50 feet. Highly susceptible wetlands include the following types: Fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins. Wetland boundary delineations shall be made in accordance with Wis. Adm. Code § NR 103.08(1m). This subsection does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed.

- v. For less susceptible wetlands: Ten percent of the average wetland width, but no less than ten feet, nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass.
 - vi. In subsections (g)(3)d.1. i, iv and v, 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 Wis. Adm. Code § NR 103.03.
 - vii. For concentrated flow channels with drainage areas greater than 130 acres: Ten feet.
2. This subsection applies to post-construction sites located within a protective area, except those areas exempted pursuant to subsection (g)(3)d.4. below.
 3. The following requirements shall be met:
 - i. Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. The stormwater management plan shall contain a written site-specific explanation for any parts of the protective area that are disturbed during construction.
 - ii. Where land disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope, overland flow areas under sheet flow conditions. Nonvegetative 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.
 - iii. Best management practices such as filter strips, swales or wet detention basins that are designed to control pollutants from nonpoint sources may be located in the protective area.
 4. This subsection does not apply to:
 - i. Redevelopment post-construction sites.
 - ii. Infill development areas less than five acres.
 - iii. Structures that cross or access surface waters such as boat landings, bridges and culverts.
 - iv. Structures constructed in accordance with Wis. Stats. § 59.692(1v).
 - v. Post-construction sites from which runoff does not enter the surface water, except to the extent that vegetative ground cover is necessary to maintain bank stability.

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

f. *Swale treatment for transportation facilities.*

1. *Applicability.* Except as provided in subsection f.2. below, transportation facilities that use swales for runoff conveyance and pollutant removal meet all of the requirements of this section, if the swales are designed to the maximum extent practicable to do all of the following:

- i. Be vegetated. However, where appropriate, nonvegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.
- ii. Carry runoff through a swale for 200 feet or more in length that is designed with a flow velocity no greater than 1.5 feet per second for the peak flow generated using either a 2-year, 24-hour design storm or a 2-year storm with a duration equal to the time of concentration as appropriate. If a swale of 200 feet in length cannot be designed with a flow velocity of 1.5 feet per second or less, then the flow velocity shall be reduced to the maximum extent practicable.

2. *Exemptions.* The City of Fort Atkinson may, consistent with water quality standards, require other provisions of this section be met on a transportation facility with an average daily travel of vehicles greater than 2,500 and where the initial surface water of the state that the runoff directly enters is any of the following:

- i. An outstanding resource water.
- ii. An exceptional resource water.
- iii. 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.
- iv. Waters where targeted performance standards are developed under Wis. Adm. Code § NR 151.004, to meet water quality standards.

(4) *General considerations for on-site and off-site stormwater 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 stormwater facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment

of downstream property or public safety.

(5) *Location and regional treatment option.*

- a. The BMPs may be located on-site or off-site as part of a regional stormwater device, practice or system.
- b. Post-construction runoff within a nonnavigable surface water that flows into a BMP, such as a wet detention pond, is not required to meet the performance standards of these provisions. Post-construction BMPs may be located in nonnavigable surface waters.
- c. Except as allowed under subsection (5)d. below, post-construction runoff from new development shall meet the post-construction performance standards prior to entering a navigable surface water.
- d. Post-construction runoff from any development within a navigable surface water that flows into a BMP is not required to meet the performance standards of this section if:
 1. The BMP was constructed prior to the effective date of this section and the BMP either received a permit issued under Wis. Stats. ch. 30, or the BMP did not require a Wis. Stats. ch. 30, permit; and
 2. The BMP is designed to provide runoff treatment from future upland development.
- e. Runoff from existing development, redevelopment and infill areas shall meet the post-construction performance standards in accordance with this subsection.
 1. To the maximum extent practicable, BMPs shall be located to treat runoff prior to discharge to navigable surface waters.
 2. Post-construction BMPs for such runoff may be located in a navigable surface water if allowable under all other applicable federal, state and local regulations such as Wis. Adm. Code ch. NR 103 and Wis. Stats. ch. 30.
- f. The discharge of runoff from a BMP, such as a wet detention pond, or after a series of such BMPs is subject to this section.
- g. The City of Fort Atkinson may approve off-site management measures provided that all of the following conditions are met:
 1. The City of Fort Atkinson determines that the post-construction runoff is covered by a stormwater management system plan that is approved by the city and that contains management requirements consistent with the purpose and intent of these provisions.
 2. The off-site facility meets all of the following conditions:
 - i. The facility is in place.
 - ii.

The facility is designed and adequately sized to provide a level of stormwater control equal to, or greater than, that which would be afforded by on-site practices meeting the performance standards of these provisions.

- iii. The facility has a legally obligated entity responsible for its long-term operation and maintenance.
 - h. Where a regional treatment option exists such that the City of Fort Atkinson exempts the applicant from all or part of the minimum on-site stormwater management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the City of Fort Atkinson. In determining the fee for post-construction runoff, the City of Fort Atkinson shall consider an equitable distribution of the cost for land, engineering design, construction and maintenance of the regional treatment option.
- (6) *Alternate requirements.* The City of Fort Atkinson may establish stormwater management requirements more stringent than those set forth in this section if the city determines that an added level of protection is needed to protect sensitive resources.
- (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 City of Fort Atkinson prior to commencing the proposed activity.
 - (2) *Permit application and fees.* Unless specifically excluded by this section, any responsible party desiring a permit shall submit to the City of Fort Atkinson a permit application made on a form provided by the city for that purpose.
 - a. Unless otherwise excepted by this section, a permit application must be accompanied by a stormwater management plan, a maintenance agreement and a nonrefundable permit administration fee.
 - b. The stormwater management plan shall be prepared to meet the requirements of subsections (g) and (i), the maintenance agreement shall be prepared to meet the requirements of subsection (j), the financial guarantee shall meet the requirements of subsection (k), and fees shall be those established by the city council as set forth in subsection (l).
 - (3) *Review and approval of permit application.* The City of Fort Atkinson shall review any permit application that is submitted with a stormwater management plan, maintenance agreement and the required fee. The following approval procedure shall be used:
 - a. Within 15 business days of the receipt of a complete permit application, including all items as required by subsection (h)(2) above, the City of Fort Atkinson shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this section.

- b. If the stormwater permit application, plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of stormwater management practices is made, the City of Fort Atkinson shall issue the permit.
- c. If the stormwater permit application, plan or maintenance agreement is disapproved, the City of Fort Atkinson shall detail in writing the reasons for disapproval.
- d. The City of Fort Atkinson may request additional information from the applicant. If additional information is submitted, the city shall have 15 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 City of Fort Atkinson to inform the permit applicant of a decision within 15 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 section shall be subject to the following conditions, and holders of permits issued under this section shall be deemed to have accepted these conditions. The City of Fort Atkinson may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the City of Fort Atkinson to suspend or revoke this permit may be appealed in accordance with subsection (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 nonstructural stormwater management measures in accordance with the approved stormwater management plan and this permit.
- c. The responsible party shall notify the City of Fort Atkinson at least two business days before commencing any work in conjunction with the stormwater management plan, and upon completion of the stormwater management practices. If required as a special condition under subsection (h)(5) below, the responsible party shall make additional notification according to a schedule set forth by the city so that practice installations can be inspected during construction.
- d. Practice installations required as part of this section shall be certified "as built" by a licensed professional engineer. Completed stormwater management practices must pass a final inspection by the City of Fort Atkinson or its designee to determine if they are in accordance with the approved stormwater management plan and ordinance. The city 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 City of Fort Atkinson of any significant modifications it intends to make to an approved stormwater management plan. The city may require that the proposed modifications be submitted to it for approval prior to incorporation into the stormwater management plan and execution by the responsible party.

- f. The responsible party shall maintain all stormwater management practices in accordance with the stormwater management plan until the practices either become the responsibility of the City of Fort Atkinson, or are transferred to subsequent private owners as specified in the approved maintenance agreement.
 - g. The responsible party authorizes the City of Fort Atkinson to perform any work or operations necessary to bring stormwater management measures into conformance with the approved stormwater management plan, and consents to a special assessment or charge against the property as authorized under Wis. Stats. ch. 66, subch. VII, or to charging such costs against the financial guarantee posted under subsection (k).
 - h. If so directed by the City of Fort Atkinson, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved stormwater management plan.
 - i. The responsible party shall permit property access to the City of Fort Atkinson or its designee for the purpose of inspecting the property for compliance with the approved stormwater 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 City of Fort Atkinson 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 subsection (m), if the responsible party fails to comply with the terms of this permit.
- (5) *Permit conditions.* Permits issued under this section may include conditions established by City of Fort Atkinson in addition to the requirements needed to meet the performance standards in subsection (g) or a financial guarantee as provided for in subsection(k).
- (6) *Permit duration.* Permits issued under this section shall be valid from the date of issuance through the date the City of Fort Atkinson notifies the responsible party that all stormwater management practices have passed the final inspection required under subsection (h)(4)d.
- (i) *Stormwater management plan.*
- (1) *Plan requirements.* The stormwater management plan required under subsection (h)(2) shall contain at a minimum the following information:
- a.

Name, address and telephone number for the following or their designees: Landowner; developer; project engineer for practice design and certification; person(s) responsible for installation of stormwater management practices; and person(s) responsible for maintenance of stormwater management practices prior to the transfer, if any, of maintenance responsibility to another party.

- b. A proper legal description of the property proposed to be developed, referenced to the United States Public Land Survey System or to block and lot numbers within a recorded land subdivision plat.
- c. Predevelopment site conditions, including:
 1. One or more site maps at a scale of not less than one inch equals 40 feet. The site maps shall show the following: Site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed two feet; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all stormwater conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site; limits of the 100-year floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to Wis. Adm. Code § NR 811.16.
 2. Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
- d. Post-development site conditions, including:
 1. Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.
 2. Explanation of any restrictions on stormwater management measures in the development area imposed by wellhead protection plans and ordinances.
 3. One or more site maps at a scale of not less than one inch equals 40 feet showing the following: Post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; post-construction topographic contours of the site at a scale not to exceed two feet; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of

drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all stormwater conveyance sections; location and type of all stormwater management conveyance and treatment practices, including the on-site and off-site tributary drainage area; location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainage way; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site.

4. Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).
 5. Results of investigations of soils and groundwater required for the placement and design of stormwater management measures. Detailed drawings including cross-sections and profiles of all permanent stormwater conveyance and treatment practices.
- e. A description and installation schedule for the stormwater management practices needed to meet the performance standards in subsection (g).
 - f. A maintenance plan developed for the life of each stormwater management practice including the required maintenance activities and maintenance activity schedule.
 - g. Cost estimates for the construction, operation and maintenance of each stormwater management practice.
 - h. Other information requested in writing by the City of Fort Atkinson to determine compliance of the proposed stormwater management measures with the provisions of this section.
 - i. All site investigations, plans, designs, computations and drawings shall be certified by a licensed professional engineer to be prepared in accordance with accepted engineering practice and requirements of this section.
- (2) *Alternate requirements.* The City of Fort Atkinson may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under subsection (g)(5).
- (j) *Maintenance agreement.*
- (1) *Maintenance agreement required.* The maintenance agreement required under subsection (h) (2) for stormwater management practices shall be an agreement between the City of Fort Atkinson and the responsible party to provide for maintenance of stormwater practices

beyond the duration period of this permit. The maintenance agreement may 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 stormwater management practices.

(2) *Agreement provisions.* The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by subsection (i)(1)f:

- a. Identification of the stormwater facilities and designation of the drainage area served by the facilities.
- b. A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under subsection (h)(2).
- c. Identification of the responsible party(s), organization or city, county, town or village responsible for long-term maintenance of the stormwater management practices identified in the stormwater management plan required under subsection (h)(2).
- d. Requirement that the responsible party(s), organization, or city, county, town or village shall maintain stormwater management practices in accordance with the schedule included in subsection (2)b. above.
- e. Authorization for the City of Fort Atkinson to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
- f. A requirement on the City of Fort Atkinson 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 stormwater management practice into proper working condition.
- g. Agreement that the party designated under subsection (2)c. above, as responsible for long-term maintenance of the stormwater management practices, shall be notified by the City of Fort Atkinson of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the City of Fort Atkinson.
- h. Authorization of the City of Fort Atkinson to perform the corrected actions identified in the inspection report if the responsible party designated under subsection (2)c. above, does not make the required corrections in the specified time period. The City of Fort Atkinson shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Wis. Stats. ch. 66, subch. VII.

(k) *Financial guarantee.*

(1)

Establishment of the guarantee. The City of Fort Atkinson may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the city. The financial guarantee shall be in an amount determined by the City of Fort Atkinson to be the estimated cost of construction and the estimated cost of maintenance of the stormwater management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the city the authorization to use the funds to complete the stormwater management practices if the responsible party defaults or does not properly implement the approved stormwater management plan, upon written notice to the responsible party by the administering authority that the requirements of these provisions have not been met.

(2) *Conditions for release.* Conditions for the release of the financial guarantee are as follows:

- a. The City of Fort Atkinson shall release the portion of the financial guarantee established under this section, less any costs incurred by the city to complete installation of practices, upon submission of "as built plans" by a licensed professional engineer. The city may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.
- b. The City of Fort Atkinson shall release the portion of the financial guarantee established under this section to assure maintenance of stormwater practices, less any costs incurred by the city, at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

(l) *Fee schedule.* The fees referred to in other subsections of this section shall be established by the City of Fort Atkinson and may from time to time be modified by resolution. A schedule of the fees established by the city shall be available for review at the municipal building, 101 North Main Street, Fort Atkinson, WI.

(m) *Enforcement.*

- (1) Any land disturbing construction activity or post-construction runoff initiated after the effective date of the ordinance from which this section derives, by any person, firm, association or corporation subject to these provisions shall be deemed a violation unless conducted in accordance with the requirements of these provisions.
- (2) The City of Fort Atkinson shall notify the responsible party by certified mail of any noncomplying 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 City of Fort Atkinson under subsection (2) above, the responsible party shall correct work that does not comply with the stormwater 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 City of Fort Atkinson in the notice.

- (4) If the violations to a permit issued pursuant to this section are likely to result in damage to properties, public facilities, or waters of the state, the City of Fort Atkinson may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the city, plus interest and legal costs shall be billed to the responsible party.
- (5) The City of Fort Atkinson is authorized to post a stop-work order on all land disturbing construction activity that is in violation of these provisions, or to request the city attorney to obtain a cease and desist order in any court with jurisdiction.
- (6) The City of Fort Atkinson may revoke a permit issued under this section for noncompliance with ordinance provisions.
- (7) Any permit revocation, stop-work order, or cease and desist order shall remain in effect unless retracted by the City of Fort Atkinson or by a court with jurisdiction.
- (8) The City of Fort Atkinson is authorized to refer any violation of this section, or of a stop-work order or cease and desist order issued pursuant to this section, 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 section shall be subject to a forfeiture of not less than \$500.00 or more than \$10,000.00 per offense, together with the costs of prosecution. Each day that the violation exists shall constitute a separate offense. This shall also apply to any person, firm, association or corporation that is responsible for the destruction, removal or alteration of any elements of a stormwater management plan as required by this section.
- (10) Compliance with the provisions of this section may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.
- (11) When the City of Fort Atkinson determines that the holder of a permit issued pursuant to this section has failed to follow practices set forth in the stormwater management plan, or has failed to comply with schedules set forth in said stormwater management plan, the city or a party designated by the City of Fort Atkinson 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 city shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses, including penalties, shall be deducted from any financial security posted pursuant to subsection (k) of this section. 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 for the year in which the work is completed.

(n) *Appeals.*

(1) *Board of appeals.* The planning commission, shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the City of Fort Atkinson in administering these provisions. The commission shall also use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals. Upon appeal, the commission may authorize variances from the provisions of this section 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 planning commission may be taken by any aggrieved person or by an officer, department, board or bureau of the City of Fort Atkinson affected by any decision of the city.

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

All ordinances or parts of ordinance in conflict herewith are hereby repealed.

(p) *Effective date.* The ordinance from which this section derives, shall be in force and effect from and after its adoption and publication. The above and foregoing ordinance provisions was duly adopted by the City Council of the City of Fort Atkinson on the 17th day of February, 2009.

(Ord. No. 669, 2-17-09)

Sec. 18-191. - Illicit discharge and connection.

(a) *Purpose/intent.* The purpose of this section is to provide for the health, safety and general welfare of the citizens of the City of Fort Atkinson, through the regulation of nonstormwater discharges to the MS4 to the maximum extent practicable as required by federal and state law. This section establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the Wisconsin Pollutant Discharge Elimination System (WPDES) permit process. The objectives of these provisions are:

- (1) To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user.
- (2) To prohibit illicit connections and discharges to the MS4.
- (3) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with these provisions.

(b) *Definitions.* For the purposes of this section, the following shall mean:

Authorized enforcement agency. Employees or designees of the director of the municipal agency designated to enforce these provisions.

Best management practices (BMPs). Structural or nonstructural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.

Contaminated stormwater. Stormwater 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 Wis. Adm. Code § NR 216 (effective August 1, 2004).

Department (DNR). The Wisconsin Department of Natural Resources.

Discharge. As defined in Wis. Stats. ch. 283 (November 1, 2005), when used without qualification includes a discharge of any pollutant.

Discharge of pollutant or discharge of pollutants. As defined in Wis. Stats. ch. 283 (November 1, 2005), means any addition of any pollutant to the waters of this state from any point source.

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.

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

- (1) Any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter the MS4 including, but not limited to, any conveyances that allow any nonstormwater discharge including sewage, process wastewater, and washwater to enter the MS4 and any connections to 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
- (2) Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps or equivalent records and approved by an authorized enforcement agency.

Illicit discharge. Any discharge to a municipal separate storm sewer system that is not composed entirely of stormwater except discharges authorized by a WPDES permit or other discharge not requiring a WPDES permit such as landscape irrigation, individual residential car washing, fire fighting, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, flows from riparian habitats and wetlands and similar discharges.

Industrial activity. Activities subject to WPDES Industrial Permits per Wis. Adm. Code § NR 216 (effective August 1, 2004) and Wis. Stats. ch. 283 (November 1, 2005).

Municipal separate storm sewer system (MS4). As defined in Wis. Adm. Code § NR 216 (effective August 1, 2004), 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:

- (1) Owned or operated by a municipality.
- (2) Designed or used for collecting or conveying stormwater.
- (3) Which is not a combined sewer conveying both sanitary and stormwater
- (4) Which is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.

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, stormwater or other wastes.

Nonstormwater discharge. Any discharge to the MS4 that is not composed entirely of stormwater.

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

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

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

Pollutant. As defined in Wis. Stats. ch. 283 (November 1, 2005), 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.

Pollution. As defined in Wis. Stats. ch. 283 (November 1, 2005), means any manmade or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

Pollution prevention. Taking measures to eliminate or reduce pollution.

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

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

Stormwater management plan/stormwater 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 stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

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

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 Jefferson 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.

Waters of the state. As defined in Wis. Stats. ch. 283 (November 1, 2005), 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.

Wisconsin Pollutant Discharge Elimination System (WPDES) Stormwater Discharge Permit. A Wisconsin pollutant discharge elimination system permit issued pursuant to Wis. Stats. ch. 283 (November 1, 2005).

- (c) *Applicability.* This section shall apply to all water entering the MS4 generated on any lands unless explicitly exempted by an authorized enforcement agency.
- (d) *Responsibility for administration.* The City of Fort Atkinson and/or its agents shall administer, implement and enforce the provisions of the ordinance from which this section derives. Any powers granted or duties imposed upon the City of Fort Atkinson may be delegated in writing by the director of the public works to persons or entities acting in the beneficial interest of or in the employ of the agency.
- (e) *Compatibility with other regulations.* This section is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of the ordinance from which this section derives are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of the ordinance from which this section derives 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 section are hereby declared to be severable. If any provision, clause, sentence, or paragraph of the ordinance from which this section derives 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 section.

(g) *Ultimate responsibility.* The standards set forth herein and promulgated pursuant to this section are minimum standards; therefore this section 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, drain or otherwise discharge, cause or allow others under its control to throw, drain or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater.

(2) *Allowed discharges.*

- a. Water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges and street washwater.
- b. Discharges or flow from firefighting and training and other discharges specified in writing by the City of Fort Atkinson as being necessary to protect public health and safety.
- c. Discharges associated with dye testing, however this activity requires a verbal notification to the City of Fort Atkinson and the department of natural resources a minimum of one day prior to the time of the test.
- d. Any nonstormwater discharge permitted under a WPDES permit, waiver or waste discharge order issued to the discharger and administered under the authority of the Wisconsin Department of Natural Resources. Any person subject to such a WPDES stormwater discharge permit shall comply with all provisions of such permit.

(3) *Prohibition of illicit connections.*

- a. The construction, use, maintenance or continued existence of illicit connections to 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 these provisions if the person connects a line

conveying sewage to the MS4, or allows such a connection to continue.

- d. Improper connections in violation of this section must be disconnected and redirected, if necessary, to an approved on-site wastewater management system or the sanitary sewer system in compliance with the state plumbing code and upon approval of the City of Fort Atkinson.
 - e. Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the City of Fort Atkinson 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 city.
- (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 trash, debris, excessive vegetation and other obstacles that would pollute, contaminate or significantly retard the flow of water through the watercourse. This shall also apply to watercourses on public property that shall not have trash, debris and lawn waste deposited in them. 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 City of Fort Atkinson and/or its agents shall be permitted to enter and inspect facilities subject to regulations under this section as often as may be necessary to determine compliance with the ordinance from which this section derives.
 - a. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the City of Fort Atkinson.
 - b. Facility operators shall allow the City of Fort Atkinson, and/or its agents ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records.
 - c. The City of Fort Atkinson and/or its agents shall have the right to set up on any facility such devices as are necessary in the opinion of the city to conduct monitoring and/or sampling of the facility's stormwater discharge.

- d. The City of Fort Atkinson has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
 - e. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City of Fort Atkinson and/or its agents and shall not be replaced. The costs of clearing such access shall be borne by the operator.
 - f. Unreasonable delays in allowing the City of Fort Atkinson and/or its agents access to a facility is a violation. A person who is the operator of a facility commits an offense if the person denies the city and/or its agents reasonable access to the facility for the purpose of conducting any activity authorized or required by this section.
- (2) *Special inspection warrant.* If the City of Fort Atkinson and/or its agents have been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of these provisions, 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 section or any order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the city may seek issuance of a special inspection warrant per Wis. Stats. § 66.0119.
- (k) *Requirement to prevent, control and reduce stormwater 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 stormwater, the MS4, or waters of the state shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal MS4 or watercourses through the use of these structural and nonstructural 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 nonstructural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid WPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater management plan (SWMP)/stormwater pollution prevention plan (SWPPP) as necessary for compliance.
- (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 stormwater, the MS4, or waters of the

state, said person shall take all necessary steps to ensure the discovery, containment and cleanup of such release. 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. In the event of a release of nonhazardous materials, said person shall notify the City of Fort Atkinson 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 City of Fort Atkinson within five 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 ten years.

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

(m) *Violations, enforcement and penalties.*

(1) *Violations.*

- a. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this section. Any person who has violated or continues to violate the provisions of this section, may be subject to the enforcement actions outlined in this subsection or may be restrained by injunction or otherwise abated in a manner provided by law.
- b. In the event the violation constitutes an immediate danger to public health or public safety, the City of Fort Atkinson 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 City of Fort Atkinson is authorized to seek costs of the abatement, including penalty, as outlined in subsection (p).

(2) *Warning notice.* When the City of Fort Atkinson finds that any person has violated, or continues to violate, any provision of this section, or any order issued hereunder, the city shall notify that person by 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 City of Fort Atkinson to take action, including emergency action or any other enforcement action without first issuing a warning notice.

(3) *Notice of violation.*

- a. Whenever the City of Fort Atkinson finds that a person has violated a prohibition or failed to meet a requirement of these provisions, the city may order compliance by written notice of violation to the responsible person. The notice of violation shall contain:

1. The name and address of the alleged violator;
 2. The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
 3. A statement specifying the nature of the violation;
 4. A description of the remedial measures necessary to restore compliance with this section and a time schedule for the completion of such remedial action;
 5. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
 6. A statement that the determination of violation may be appealed to the City of Fort Atkinson by filing a written notice of appeal within three days of service of notice of violation; and
 7. A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or contractor and the expense thereof shall be charged to the violator.
- b. Such notice may require without limitation:
1. The performance of monitoring, analyses and reporting;
 2. The elimination of illicit connections or discharges;
 3. That violating discharges, practices or operations shall cease and desist;
 4. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 5. Payment of a fine to cover administrative and remediation costs; and
 6. The implementation of BMPs.

(4) *Suspension of MS4 access.*

- a. *Emergency cease and desist orders.* When the City of Fort Atkinson finds that any person has violated, or continues to violate, any provision of this section, 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 United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the city 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.

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 City of Fort Atkinson may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, 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 City of Fort Atkinson may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the city 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 city within five days of receipt of the prerequisite for, taking any other action against the violator.

b. *Suspension due to illicit discharges in emergency situations.* The City of Fort Atkinson 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 city may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, 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 these provisions may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City of Fort Atkinson will notify a violator of the proposed termination of its MS4 access. The violator may petition the city for a reconsideration and hearing.
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 City of Fort Atkinson.

(5) *Prosecution and penalties.* Any person that has violated or continues to violate the ordinance from which this section derives shall be liable to prosecution to the fullest extent of the law. In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein, within the set time period specified by the City of Fort Atkinson, after the city has taken one or more of the actions

described above, the city may impose a penalty not less than \$500.00 or more than \$10,000.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

- (n) *Appeal of notice of violation.* Any person receiving a notice of violation may appeal the determination of the City of Fort Atkinson. The notice of appeal must be filed with the city within three days from the date of the notice of violation. Hearing on the appeal before the public works committee shall take place within 30 days from the date of receipt of the notice of appeal.
- (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 municipal authority upheld the decision of the public works committee, then representatives of the City of Fort Atkinson are authorized to enter upon the subject private property and authorized to take any and all measures necessary to abate the violation. 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.* Within ten days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. If the amount due is not paid by the date determined by the municipal authority, the charges shall become a special charge against the property and shall constitute a lien on the property.
- (q) *Violations deemed a public nuisance.* Any condition in violation of any of the provisions of the ordinance from which this section derives and declared and deemed a nuisance, may be summarily abated or restored at the violator's expense.
- (r) *Remedies not exclusive.*
 - (1) The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City of Fort Atkinson to seek cumulative remedies.
 - (2) The City of Fort Atkinson may recover all attorney's fees court costs and other expenses associated with enforcement of these provisions, including sampling and monitoring expenses.
- (s) *Adoption of ordinance.* The ordinance from which this section derives shall be in full force and effect after its final adoption and publishing in the official newspaper. All prior ordinances and parts of ordinances in conflict with these provisions are hereby repealed.

(Ord. No. 670, §§ 1—19, 2-17-09)

Secs. 18-192—18-220. - Reserved.

ARTICLE VI. - HOUSING CODE

Footnotes:

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Cross reference— *Fair housing, § 46-51 et seq.*

Sec. 18-221. - Adopted.

The housing code of the city, sections 1—12 is adopted. The code is permanently on file with the building inspector.

(Code 1969, § 25.01(A); Ord. No. 787, 2-18-20)

Sec. 18-222. - Penalties.

- (a) Any person violating any order of the department of building inspection based on the provisions of this article shall upon conviction thereof be subject, in addition to any other penalty provided by law, to section 1-10, together with the costs and disbursements of prosecution, and in default of payment thereof, shall be imprisoned in the county jail until such forfeiture, costs and disbursements are paid, such imprisonment not to exceed 30 days.
- (b) After conviction and forfeiture for violation of such orders of the department of building inspection based upon the provisions of this article, if such person shall continue in violation of such order, such person shall be liable for further prosecution, conviction and punishment upon the same order, without any necessity of the department of building inspection's issuing a new order until such order has been complied with.
- (c) Each day's continuing violation shall constitute a separate cause of action.

(Code 1969, § 25.01(B); Ord. No. 787, 2-18-20)

Secs. 18-223—18-255. - Reserved.

ARTICLE VII. - ONE- AND TWO-FAMILY DWELLINGS AND ACCESSORY STRUCTURES

Footnotes:

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Editor's note— *Ord. No. 787, § X, adopted Feb. 18, 2020, amended Art. VII in its entirety to read as herein set out. Former Art. VII, §§ 18-256—18-296 was entitled "One- and Two-Family Dwellings," which included provisions for the one- and two-family dwelling code, the energy conservation code and the rental unit energy efficiency standards code, and derived from: Code 1969, §§ 14.02(A)—14.02(B)(1.5), 14.07(1); Ord. No. 557, 1-4-00; and Ord. No. 664, 5-6-08.*

State Law reference— *One- and Two-Family Dwelling Code generally, Wis. Stats. § 101.60 et seq.*

DIVISION 1. - GENERALLY

Sec. 18-256. - Adoption of Uniform Dwelling Code.

(a) Pursuant to Wis. Stats. §§ 101.65, and 101.66, the council ordains a building code for new one- and two-family dwellings, accessory structures and the remodeling of, or addition to existing structures, by adoption of Wis. Admin. Code chapters:

SPS. 320 Administration and Enforcement;

SPS. 321 Construction Standards;

SPS. 322 Energy Conservation;

SPS. 323 Heating, Ventilating and Air Conditioning;

SPS. 324 Electrical Standards;

SPS. 325 Plumbing and Potable Water Standards.

(b) The building inspector, or his/her designee, as certified by the department of safety and professional services, is authorized and directed to administer and enforce all of the provisions of the code adopted in subsection (a) of this section.

(Ord. No. 787, 2-18-20)

Secs. 18-257—18-325. - Reserved.

ARTICLE VIII. - PLUMBING CODE

Sec. 18-326. - Plumbing code adopted.

Pursuant to Wis. Stats. ch. 101, the council ordains a plumbing code for all plumbing installed within the City of Fort Atkinson by adoption of Wis. Admin. Code chapters:

SPS 381;

SPS 382;

SPS 384.

(Code 1969, § 14.02; Ord. No. 787, 2-18-20)

Sec. 18-327. - Connection to public water supply.

Every building or residence shall have an independent connection to a public water supply when available. No person shall establish or permit to be established, maintain or permit to be maintained any cross connection whereby water from a private well, auxiliary or emergency water supply other than the regular municipal public water supply of the city will be permitted to enter the supply or distribution system of any property or building except as approved by the department of health and social services in accordance with the Wis. Admin. Code Ch. H-62. Cross connection, as defined in Wis. Admin. Code Ch. H-62 is any physical connection or arrangement between two otherwise separate supply and piping systems, one of which contains potable municipal public water and the other water of unknown or questionable safety, or steam, gas or chemical, whereby there may be a flow from one supply system to the other, the direction of flow depending on the pressure differential between the two supply systems.

(Code 1969, § 14.02(GG); Ord. No. 787, 2-18-20)

Sec. 18-328. - Backwater valve.

All new building drains or existing building drains subject to backflow or backwater shall be protected with a backwater valve which meet the following requirements:

- (1) Backwater valves, when fully open, shall have a capacity not less than that of the pipes in which installed.
- (2) Backwater valves shall be so located as to be readily accessible for cleaning.
- (3) Backwater valves must be approved per the department of safety and professional services.

(Ord. No. 787, 2-18-20)

Editor's note— Ord. No. 787 deleted former § 18-328 entitled "Inspections," which derived from Code 1969, § 14.02(GG)8), and added new provisions as herein set out above.

Sec. 18-329. - Elimination of clear water connections to sanitary sewers.

Where practicable, all clear water connections to sanitary sewers (sump pumps) shall be eliminated upon written order from the plumbing inspector, who shall have final jurisdiction as to the feasibility of such elimination.

(Code 1969, § 14.03(B); Ord. No. 787, 2-18-20)

Sec. 18-330. - Plumbing permit fees.

See [chapter 110](#) for current plumbing permit fees.

(Code 1969, § 14.02(F); Ord. No. 787, 2-18-20)

Secs. 18-331—18-355. - Reserved.