

Article 937

Stormwater Management and Surface Water Discharge Control

Section 1. Definitions.

Unless the context specifically indicates otherwise, the meaning of the terms used herein shall be as follows:

- (a) "303d/TMDL" are waters that are impaired based upon the Clean Water Act, Section 303(d), 33 U.S.C. § 1313(d) or has an approved Total Maximum Daily Load (TMDL) for contaminants.
- (b) "Best Management Practices (BMPs)" are physical, structural and/or managerial practices that, when used singly or in combination, control site run-off, spillage and leaks, waste disposal and drainage from raw material storage and prevent or reduce the discharge of pollutants directly or indirectly to waters of the state. BMPs may include schedules of activities, prohibition of practices, general good-housekeeping practices, maintenance procedures, design standards, educational activities and treatment requirements.
- (c) "Board" is the Vienna Utility Board.
- (d) "City watershed" is that area within the corporate limits of the City of Vienna, and designated areas outside of those limits, over which surface water drains into the City. Designation of areas outside of the corporate limits of the City shall be made by the.
- (e) "Executive Director" is the General Manager of the Vienna Utility Board.
- (f) "Facility" for purposes of this article is a building, structure, installation or construction site in which pollutants are produced and/or generated and/or discharged as a result of a process or processes, conducted within the building, structure or installation.
- (g) "Flat rate charge" is the charge applicable to a single-family dwelling per dwelling unit or other properties if so designated in this ordinance.
- (h) "Footing drain" is a pipe or conduit which is placed around the perimeter of a building foundation or other structures for the purpose of admitting ground water.
- (i) "Illicit connection" means any direct or indirect non-stormwater discharge to a publicly maintained storm drain system which has not been permitted or allowed by the Board from the date of enactment of this ordinance.
- (j) "Illicit discharge" means any discharge, surface or subsurface, to a storm drain or into the stormwater collection system that is not composed entirely of stormwater, except discharges pursuant to a NPDES permit, discharges resulting from firefighting activities, and, other discharges exempted in this article.
- (k) "Impervious area" is land area covered by buildings, pavement, gravel or other material that significantly inhibits stormwater from penetrating the soil.
- (l) "Industrial sites" are those sites that contain industrial activities which require NPDES stormwater permits as set forth in 40 CFR 122.26(a)(6) or (b)(14).

(m) "Multi-unit property" is a residential or commercial property of any size that has located upon the property two or more tenants, at least one of which having no ownership interest in the property.

(n) "Non-stormwater" is all flows to the stormwater system not defined as stormwater by this Article or as determined by the municipality. This includes, but is not limited to, cooling water, process water, ground water from a purge well and swimming pool discharge.

(o) "Pervious area" is all land area that is not impervious.

(p) "Pollutant" means objects including, but not limited to, dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, grease, petroleum products, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, dirt, industrial, municipal and agricultural waste, gasses entrained in water, paints, oil and other automotive fluids, soil rubbish, debris, materials containing fecal coliform, fecal streptococcus, and enterococcus, heavy metals, hazardous wastes, yard waste from commercial landscaping operations, animal waste, materials that result from the process of building, and offensive matter of any kind, which, when discharged to water, cause or contribute to water pollution.

(q) "Pollution" is the degradation of the physical, thermal, chemical, biological or radioactive properties of the waters of the state and/or the discharge of any pollutant to the waters of the state which will or is likely to create a nuisance or to render such waters harmful, detrimental, or injurious to public health, safety or welfare or to the beneficial use of the water and/or the water environment.

(r) "Stormwater" is natural precipitation, surface runoff water, ground water discharge, water from operation of the water distribution system, water used in firefighting, runoff from street sweeping, flows from footing drains and all other discharge sources identified in the City's stormwater NPDES permit, except as may be defined as non-stormwater by this article.

(s) "Stormwater management" is the process of collection, conveyance, storage, treatment and disposal of stormwater to ensure control of the magnitude and frequency of runoff to minimize the impact of the runoff upon the water quality of the receiving stream.

(t) "Stormwater management program" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater works, including, but not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law.

(u) "Stormwater system" is a stormwater system in its entirety or any integral part thereof used to collect and dispose of stormwater and an associated stormwater management program. It includes all facilities, structures, and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet, including, but not limited to, any and all of the following: Inlets, conduits, corals, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, syphons, retention or detention basins, dams, floodwalls, levies, pipes, flood control systems and pumping stations, and associated stormwater management program."

(v) "User" is a person or entity which is the legal owner or occupant of a property that directly or indirectly contributes stormwater or non-stormwater flows to the stormwater system, whether within or outside the corporate limits of the City of Vienna.

Section 2. General.

(a) This article has been enacted to protect and enhance the water quality of watercourses, water bodies, groundwater and wetlands in and around the City of Vienna in a manner pursuant to and consistent with the Clean Water Act and associated federal and state stormwater regulations.

(b) The intent of this article is:

- (1) To control non-stormwater discharges to storm drain systems.
- (2) To reduce pollutants in stormwater discharges.
- (3) To control stormwater runoff by providing design, construction and maintenance criteria for permanent and temporary stormwater facilities.
- (4) To maintain and improve the stormwater collection system in order to protect and improve water quality in the receiving streams.
- (5) To fully comply with federal and state statutory and regulatory requirements and schedules regarding stormwater management and the water quality of the receiving streams, including prioritization of 303d/TMDL receiving streams.

(c) This article shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted.

(d) The City of Vienna shall administer, implement and enforce the duties imposed by this article. Said duties may further be delegated to other entities acting in compliance with applicable ordinances.

Section 3. Stormwater Service Charge.

(a) Users connected to or draining into the public storm drainage system shall pay an equitable share of the actual cost of the operation, maintenance of, improvements to, and necessary additions to the stormwater system, as well as costs and expenses associated with complying with the City's Stormwater Management Plan in accordance with 40 CFR 122.32 and 47 CSR 10 of the West Virginia Legislative Rules. Therefore, users of the City's stormwater system within the City of Vienna and the designated City watershed shall be charged for the use of the stormwater system based on the amount of stormwater and rate of flow of stormwater which is projected to discharge from the property into the stormwater system.

(b) The City shall, by ordinance, set fees which will recover from users the costs for use of the stormwater system by property within and outside the corporate limits of the City and within the City watershed. Such fees will be for purposes set out in subsection (a) above.

Section 4. Properties Affected by Ordinance.

Except as provided in this article, all real property located within the designated City watershed shall be subject to the stormwater service charges regardless of whether privately or publicly owned.

Section 5. Flat Rate Charges.

The monthly service charge for users occupying a single family residential dwelling shall be four dollars (\$4.00). Council may, from time to time, by ordinance, change these service charges.

Section 6. Land Based Rate Charges.

(a) The monthly service charge for properties other than described in the previous section shall be ten dollars (\$10.00). Council may, from time to time, by ordinance, change these service charges. The monthly service charge for non-residential properties may include a fixed charge, a fee based on impervious area, a fee based on building area, or a combination of the same.

(b) Service charges for a multi-unit property shall be billed to each individual tenant upon the property. Occupants of a residential dwelling (an apartment) who are serviced by individual meters shall be assessed at the same rate as persons occupying single family dwellings. At the discretion of the property owner, or if the individual tenants do not have individual drinking water service meters, service charges for a multi-unit property may be billed to the property owner. A property owner exercising this choice must complete a written agreement as required by the Executive Director.

(c) The Executive Director shall assign discount credits to properties employing volumetric flow reduction and/or rate of flow reduction practices or facilities.

Section 7. Billing.

The billing for stormwater service may be combined with the billing for other utility services provided by the Board.

Section 8. Collection.

Unpaid stormwater service charges shall constitute just cause for disconnection of water service to the non-paying property. The Executive Director shall ensure sufficient notice of disconnection is issued in the same manner as is provided for in its Tariff for sewer service as approved by the West Virginia Public Service Commission. Water service shall be reactivated only upon full payment of the stormwater service charges or other payment arrangements approved by the Executive Director. In the alternative, the Executive Director may take appropriate legal action to collect unpaid charges.

Section 9. Use of Funds.

All funds collected for stormwater service shall be accounted for separately and shall be used solely for the operation of, maintenance of, improvements to, necessary additions to the stormwater system, and all costs and expenses associated with complying with the regulatory requirements and the City's Stormwater Management Plan, in accordance with 40 CFR 122.32 and 47 WV CSR 10, including the purchase of stormwater related equipment and machinery and other capital equipment, the financing of stormwater related projects, and reimbursement of an equitable share of the administrative costs of the stormwater utility.

Section 10. General Requirements and Prohibitions.

(a) The use of the stormwater collection system shall be the collection and transportation of stormwater.

(b) No person shall place or cause to be placed any pollutant into the stormwater system other than stormwater, unless written approval has been granted by the Executive Director. The Executive Director may refuse to grant approval to discharge non-stormwater into the stormwater system for any reason or combination of reasons.

(c) The Board shall administer use of the stormwater system to all users with the designated City watershed, whether located within or outside City limits.

(d) No person shall cause or permit the introduction of any pollutant into the stormwater system, whether solid, liquid or gaseous, that will cause:

- (1) Chemical reaction, either directly or indirectly with the materials of construction used in the stormwater system or that will impair the strength or durability of sewers or structures;
- (2) Mechanical action that will destroy or damage sewers or structures;
- (3) Restriction of the normal maintenance and inspection of sewers;
- (4) Danger to public health and safety or to the environment;
- (5) Conditions that create a public nuisance;
- (6) An oil sheen or unusual color;
- (7) Abnormal demand on the stormwater system capacity; or,
- (8) The stormwater system to violate its NPDES permit or applicable receiving water standards and all other Federal, State, and local regulations.

(e) Any person or entity engaged in activities which will or may result in pollutants entering the storm drain system shall undertake best management practices to reduce such pollutants. Examples of such activities include, but are not limited to, ownership and/or operation of facilities that may be a source of pollutants, such as paved parking lots, gasoline stations, industrial facilities and private roads/streets.

(f) No person shall throw, deposit, leave, maintain or cause to be thrown, deposited, left or maintained any refuse, rubbish, garbage, grease, petroleum products, or other discarded or abandoned objects, articles and accumulations in or upon any street, alley, sidewalk, storm drain inlet, catch basin, conduit or other drainage structures, parking area, or upon any private or public plot of land so that the same might become a pollutant, except where the pollutant is being temporarily stored in properly contained waste receptacles or is part of a well-defined compost system.

(g) No person shall cause or permit any dumpster, solid waste bin or similar container to leak such that any pollutant is discharged into any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private plot of land in the urban watershed.

(h) No person shall discharge the following categories of non-stormwater discharges unless the discharges are dechlorinated to 0.2 ppm or less, pH adjusted, solids removed, and discharged in a manner that does not cause erosion or sediment to be discharged into the MS4 or receiving water:

- (1) Discharges from potable or non-potable water sources,

- (2) Hyper-chlorinated water line flushing,
- (3) Pipeline hydrostatic test water,
- (4) Chlorinated discharges not associated with drinking water shall be dechlorinated to 0.1 ppm.

(i) No person shall use the stormwater system for discharge from any environmental cleanup that is regulated under federal or state law unless approved by the Executive Director. Approval by the Executive Director must be conditioned upon the discharge meeting all criteria for discharge under this chapter. Approval conditions may provide for measures appropriate to prevent harm due to possible exfiltration into the ground adjacent to the system or failure of any pretreatment system for the discharge.

Section 11. Illicit Connections.

It is prohibited to establish, use, maintain or continue illicit connections to the municipal stormwater system, or to commence or continue any illicit discharges to the municipal stormwater system.

Section 12. Outdoor Storage Areas.

In outdoor areas, no person shall store grease, oil, or other hazardous substances in a manner that will or may result in such substances entering the stormwater system. In outdoor areas, no person shall store motor vehicles, machine parts, or other objects in a manner that may leak grease, oil, or other hazardous substances to the stormwater system. To prevent the discharge of hazardous substances to the stormwater system, the Executive Director may require the installation of a spill containment system. Spill containment systems may consist of a system of dikes, walls, barriers, berms, or other devices as required. No person shall operate a spill containment system such that it allows incompatible liquids to mix and thereby create a hazardous condition.

Section 13. Construction Sites.

Any person performing construction work disturbing greater than or equal to 1.0 acre of ground located in the watershed of the City shall comply with the provisions of this Article and shall provide erosion and sediment controls that effectively prevent discharges of pollutants to a storm drain system. Compliance with the West Virginia Department of Environmental Protection publication, "West Virginia Erosion and Sediment Control Best Management Practice Manual 2006" is the minimum standard to be met at construction sites. The Executive Director may establish and enforce standards and guidelines implementing BMPs designed to provide erosion and sediment control from construction sites. These standards and guidelines shall include, at a minimum:

- (a) Erosion controls through the protection and preservation of the soil at an active construction site to prevent off-site sedimentation.
- (b) Sediment controls to remove sediment from runoff before runoff is discharged from an active construction site.
- (c) Stabilization and structural practices to prevent sedimentation and erosion.

(d) Stormwater management measures to be installed before, coincident with and upon completion of construction activities. These measures shall be designed to reduce or eliminate pollutants discharged from the site and to promote flood control objectives designated by the Executive Director.

(e) Construction site housekeeping best management practices, including, but not limited to, equipment maintenance, repair and cleaning, waste management and collection, storage of materials and chemicals, and sanitary facilities.

Section 14. Discharge of Pollutants.

Discharges from the following activities will not be considered a source of pollutants to waters of the state when properly managed: water line flushing and other discharges from potable water sources, landscape irrigation and lawn watering, irrigation water, diverted stream flows, rising ground waters, groundwater infiltration to separate storm drains, uncontaminated pumped ground water, foundation and footing drains, roof drains, water from crawl space pumps, residential air conditioning condensation, springs, individual residential and non-profit group car washes, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges or flows from firefighting activities and training.

Section 15. Discharge in Violation of Permit.

Any discharge that would cause a violation of a Municipal NPDES Permit and any amendments, revisions or reissuance thereof, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge, including, but not limited to, the cost of remedial activity, shall be the responsibility of the person(s) causing or responsible for the discharge, and the City shall seek to have such persons defend, indemnify and hold harmless the City in any administrative or judicial enforcement action against the City and/or the Board relating to such discharge as provided by applicable rules of law.

Section 16. Notification of Spills.

All persons in charge of a facility or responsible for emergency response for a facility are responsible to train facility personnel, maintain records of such training, and maintain notification procedures to assure that immediate notification is provided to the Executive Director upon becoming aware of any suspected, confirmed or unconfirmed release of material, pollutants or waste creating a risk of discharge into the municipal stormwater system or into a receiving stream. Notifying the Executive Director does not relieve the responsible persons from notifying applicable agencies per federal, state and local laws.

Section 17. Construction.

(a) Only designated City employees, or parties authorized by the Executive Director may perform construction upon the public facilities of the stormwater system. Public facilities of the system shall include:

- (1) Those facilities that serve two or more properties, including, but not limited to, main pipelines that collect and transmit stormwater from and/or across two or more properties; and,
- (2) All taps or other connections from a private lateral to a public facility of the system.

(b) All public costs and expenses of and incidental to the installation of private stormwater facilities, connections to public facilities, and installation of public facilities to facilitate and convey flows from a specific private facility shall be borne by the owner(s) of the private facility. Payment terms for these costs and expenses shall be designated by the Executive Director.

(c) Parties authorized by the Executive Director to perform construction of or upon the public facilities of the stormwater system shall comply with the design and construction standards promulgated by the Executive Director. These parties shall allow for inspection of the construction by the Executive Director at all times, and construction shall only occur during normal City working hours. No facility constructed by an authorized party may be covered or connected to a public facility without specific authorization of the Executive Director. This authority shall be granted by the Executive Director upon satisfaction of the announced design and construction standards.

(d) All public facilities shall, upon authorized completion, be property of the City of Vienna.

(e) A party authorized by the Executive Director to perform construction upon the public facilities of the stormwater system shall meet the following requirements prior to and throughout construction:

- (1) Compliance with all relevant Federal and State labor, employment and environmental laws; and,
- (2) Compliance with all relevant and applicable state laws regarding government construction contracts, including, but not limited to, WV Code §§5-22-1, et seq., and 21-5A-1, et seq.; and
- (3) Full and active policy coverage as certified by the West Virginia Bureau of Employment Programs, Workers' Compensation Division; and,
- (4) Certification of full compliance with all relevant state and local permitting and tax rules and regulations, including securing of a City Business License and completion of the online stormwater training course; certification of appropriate property rights to perform the construction; and conveyance to the City of appropriate property rights for the completed public facilities.
- (5) Contractor's liability insurance, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Executive Director, which may include commercial general, automobile, umbrella and builders risk policies, naming the City of Vienna and the Vienna Utility Board as additional insureds. Policies and coverage limits and terms required shall be appropriate to the subject construction and shall be designated by the Executive Director; and,
- (6) A construction bond, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Executive Director, equal to the estimated cost of the construction and for a term equal to the duration of the construction project. At the discretion of the Executive Director, a bonded party may provide a cumulative general construction bond in satisfaction of this requirement; and,

- (7) A repair bond, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Executive Director, in an amount no more than the reasonable estimate of repair costs, as determined by the Executive Director, and for a term of no longer than five years, beginning on the date of substantial project completion. At the discretion of the Executive Director, a bonded party may provide a cumulative general construction bond in satisfaction of this requirement.

Section 18. Stormwater Taps.

(a) The Executive Director or a party authorized by the Executive Director will furnish and install stormwater system taps of the size and at the location requested in writing by an applicant upon a form to be provided by the Executive Director for properties adjacent to new storm sewers. The Executive Director may deny a tap application when the requested tap is proposed to an inadequate public facility.

(b) The Board may recover from an applicant the actual cost of planning, engineering, or any other direct cost associated with the request for service.

Section 19. Enforcement.

(a) No person shall construct or maintain any property, residence or business not in compliance with the standards of this article.

(b) The Executive Director and other authorized employees of the City bearing proper credentials and identification shall be permitted, after reasonable notice, to enter upon all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this article.

(c) No person or firm shall fail to provide any report or other information or perform any duty required by this article.

(d) The Executive Director is authorized to take appropriate legal action to require compliance with this article.

(e) The Executive Director is authorized to enforce and collect upon the terms of a construction and/or repair bond in the event of default of the conditions described therein.

(f) If, after reasonable notice, a person fails to comply with this article, the Executive Director may cause the work to be done to obtain compliance and shall charge the cost of that work to the person responsible. The responsible person shall pay in full the charged amount within thirty (30) days of the invoice date, or otherwise make arrangements, acceptable to the Executive Director, for full payment of the invoiced amount.

(g) The Executive Director is authorized to take all steps necessary to immediately halt any discharge of pollutants which reasonably appear to present an imminent danger to the health or welfare of persons or to the environment.

(h) Persons aggrieved by any determination of the Executive Director in enforcing this article may appeal that determination to the Board pursuant to Section 937.32. Persons aggrieved by any determination of the Board may appeal that determination to the City Council. Prosecution shall be stayed pending such an appeal.

Section 20. Stormwater Management and Comprehensive Drainage Plans.

(a) The requirements and standards of this section shall apply to all new developments and redevelopment projects. The intent of these regulations is to minimize the discharge and transport of pollutants to storm drain systems and prevent the deterioration of water quality.

(b) All new developments and redevelopment projects greater than or equal to 1.0 acres including projects less than 1.0 acres that are part of a larger common plan of development or sale within the City watershed shall include stormwater management plans and comprehensive drainage plans as described in this section. These plans shall be subject to the review and approval of the Executive Director.

(c) Agricultural land management activities shall be exempt from the requirements of this section. It shall also be noted that no activity shall be exempt from the management of the discharge of sediment or any other form of water pollution that may leave any parcel or site.

(d) All new development and redevelopment subject to the provisions of this article shall be required to obtain a stormwater permit unless exempted under the provisions of this article. The Executive Director shall issue a stormwater management permit for plans that meet the requirements of this section and any other requirements of this article. No City building permit shall be issued without the submission of a stormwater permit issued under the provisions of this article.

(e) Technical, administrative or procedural matters may be modified by the Executive Director as needed to meet the objectives and policies defined in this article, so long as such modifications are not contrary to or beyond the intent of the objectives and policies included in this article.

(f) Uniform requirements shall be applied to each regulated project site. These requirements shall be based upon the criterion that post development stormwater peak runoff rates of flow must not exceed the pre-development peak runoff rates of flow. In redevelopment projects, a peak runoff rate of flow reduction of ten percent (10%) from the preexisting peak runoff rate of flow must be achieved. However, no reduction shall be required beyond the peak runoff rate of flow that would occur from the parcel in its natural, undeveloped state.

(g) Site design for all new and redeveloped properties shall include management measures that keep and manage on site the first one inch of rainfall from a 24-hour storm preceded by 48 hours of no measurable precipitation. This first inch shall be 100% managed on site with no discharge to surface waters except when an alternative approach is approved by the Executive Director, which includes:

- (1) Stormwater is treated before release to surface waters via extended or engineered infiltration. Extended filtration practices that are designed to capture and manage up to one inch of rainfall may discharge through an underdrain system.
- (2) Provide payment in lieu of onsite retention with funds collected used for stormwater projects only.

(h) Incentives exist for certain types of development can either reduce existing impervious surfaces or at least create less “accessory” impervious surfaces. As such, a reduction of 0.2 inches from the one inch runoff reduction standard shall be applied to any of the following type of development:

- (1) Redevelopment
- (2) Brownfield redevelopment
- (3) High density (>7 units per acre)
- (4) Vertical density (Floor to Area Ratio (FAR) of 2 or >18 units per acre)
- (5) Mixed use and transit oriented development (within ½ mile of transit)

Reductions are additive up to a maximum of 0.75 inches for a project that meets four or more criteria. In no case shall the reduction be greater than 0.75 inches.

(i) For projects requiring a stormwater permit, plans submitted to the Executive Director shall include the following information:

(1) Descriptive information:

A. Title sheet.

1. Project name.
2. Owner.
3. Design firm.
4. Legend.
5. West Virginia registered professional engineer stamp, signature and date.
6. Vicinity map with North arrow.
7. Scale.
8. Sheet numbers.
9. Date

B. Topographical features:

1. Original contours at intervals no greater than two vertical feet.
2. Existing drainage components, i.e., streams, ponds, pipes, etc.
3. Property boundary lines.

4. Existing streets, buildings, and utilities.
5. 100 year flood plain.
6. Off-site drainage entering site
7. Original drawing either 22 inch x 34 inch or 11 inch x 17 inch and at a scale from 1 inch equals 10 feet to 1 inch equals 50 feet.

C. Site Plan.

1. Existing and proposed structures, roads, buildings, paved areas.
2. Existing and proposed stormwater management system and components including sizes, lengths, pertinent elevations, etc.
3. Where and how proposed stormwater management system will be connected to existing systems.
4. Location and grade of all swales including a typical cross section.
5. Location and design of all other Best Management Structures/Implementations.
6. Sediment and Erosion Control measures are required. Refer to the most current edition of the West Virginia Department of Environmental Protection Sediment and Erosion Control manual for acceptable means and methods.
7. Existing and proposed ground cover.
8. Total impervious area
9. Control release facilities showing cross-sections and profiles

D. Final as-built drawings:

1. Show location, length, sizes, and pertinent elevations of the stormwater management system.
2. Failure to provide final as-built drawings within three months of substantial project completion will cause the utility to prepare these drawings. The responsible party shall be charged for this service. The Executive Director may extend this time as deemed necessary.

(2) Design standards.

- A. Flow rates shall be calculated by use of the Rational Method unless sufficient justification for use of another method is approved by the Executive Director.
- B. The minimum "time of concentration" to be used in the calculations shall be six (6) minutes.
- C. Detention volumes shall be calculated using modeling software or an approvable calculation similar to the Abt and Grigg Method. Detention structures shall be designed in such a manner that the post-construction peak runoff rate of flow shall be equal to or less than the pre-construction peak runoff rate of flow for 2-year/24-hour and 50 year/24-hour storms. In redevelopment projects, a peak runoff rate of flow reduction of 10% from the pre-existing peak runoff rate of flow must be achieved. However, no reduction shall be required beyond the peak runoff rate of flow that would occur from the parcel in its natural, undeveloped state.

(3) Design backup. Provide information on the following for review by the Executive Director:

- A. Calculations of volumetric runoff and peak runoff rate of flow for both pre-development and post-development.
- B. Calculations for stormwater detention/retention facility and other system elements.
- C. Operation and Maintenance information for private stormwater control facilities.

(4) Sedimentation and erosion control measures are required. Refer to the most current edition of The West Virginia Department of Environmental Protection Sedimentation and Erosion Control Manual for acceptable means and methods.

(j) All development and/or redevelopment projects shall minimize the impact to the water environment by applying structural and/or non-structural management practices selected to address site-specific conditions. The minimum requirement for runoff water quality treatment shall be a reduction of 80% of the average post-development total suspended solids and a reduction of 40% of the average post-development phosphorus load.

(k) No construction shall be performed in a manner that will negatively impact the water environment in the vicinity of construction or in other areas, regardless of whether this impact is manifested by flow restrictions, increased runoff, diminishing channel or floodplain storage capacity, harm to aquatic life or any other manifestation of negative impact.

(l) New construction or reconstruction shall be permitted only after temporary or permanent erosion and sediment control management practices have been placed and are operational to the satisfaction of the Executive Director. The Executive Director may halt construction, void a permit, or

take other enforcement actions consistent with this section upon a finding of inadequate erosion and sediment control management practices upon a site or property subject to the provisions of this section.

(m) All active construction sites shall be inspected by the owner no less than weekly and within 24 hours after a 0.25 inch rain event to ensure and verify effective erosion and sediment control. The owner shall maintain records of these inspections. The Executive Director may halt construction on properties that do not provide satisfactory proof of compliance with this requirement.

(n) The owner of a completed new development and/or redevelopment construction shall submit to the Executive Director within thirty (30) days of substantial project completion an "as-built" plan of the stormwater management facilities located upon the property/site.

(o) For redevelopment projects for existing public streets or parking lots with construction beginning after October 31, 2016 that are greater than 5,000 square feet, runoff reduction practices shall be employed.

(p) **Fee in Lieu of Stormwater Management Practices.** Where approved by the Executive Director, the applicant shall be required to pay a fee in lieu of stormwater management practices, in an amount as determined by the Executive Director. This amount shall be approximately equal to the cost of stormwater management and based on the cubic feet of storage required for stormwater management of the development in question. All of the monetary contributions shall be credited to an appropriate stormwater capital improvements program project, and shall be made by the applicant prior to the issuance of any stormwater permit for the development.

Section 21. Drainage System Standards.

Drainage systems shall comply with the standards established by ordinance.

Section 22. Plan Submission and Review Process.

(a) Stormwater management plans and comprehensive drainage plans for any new construction or reconstruction within the city watershed shall be submitted to the Executive Director. The plans shall be reviewed by the Executive Director for compliance with the applicable rules and standards. Plans developed to meet federal or state requirements may be submitted, and will be approved if they conform to the requirements of this article.

(b) The plan submission and review process shall be coordinated with and integrated into the City planning and permitting process. No building permit shall be issued without an approved stormwater management plan if required under this article.

(c) To ensure that new development and redevelopment projects greater than or equal to 1.0 acres including projects less than 1.0 acres that are part of a larger common plan of development or sale conform to the long-term stormwater control standards, the City will implement project review, approval and enforcement procedures.

(d) The review, approval and enforcement procedures shall apply to all new development and redevelopment disturbing greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, and shall include the following steps:

- (1) Submit for review and approval a pre-application concept plan that describes how the performance standards will be met.

- (2) Next a pre-application meeting shall be attended by the project land owner or developer, the project design engineer, and municipal planning staff to discuss conceptual designs.
- (3) Dependent upon the scope of the development, plans will be distributed and presented by the planning staff to the Planning Commission, Utility Board, and City Council for comments. Any comments received must be addressed by the land owner or developer prior to approval of the plan.
- (4) Once constructed, 'as-built' certifications shall be submitted by the land owner or developer within 90 days of completion of a project.
- (5) Within 30 days of the receipt of the as-built certification, a post-construction verification process will be performed by the City to ensure that stormwater standards are being met. Non-compliance shall be addressed by the methods discussed in Section 26 of this Ordinance.
- (6) Operations and Maintenance data supplied for the project will be used to educate both internal staff and external project proponents of the requirements of long-term stormwater controls.

Section 23. Maintenance of Stormwater Facilities.

(a) Private stormwater facilities located in private property and within the City watershed shall be maintained by the owner or other responsible party and shall be repaired and/or replaced by such person when such facilities are no longer functioning as designed.

(b) Disposal of waste from maintenance of private facilities shall be conducted in accordance with applicable federal, state and local laws and regulations.

(c) Records of installation and maintenance and repair shall be retained by the owner or other responsible party for a period of five (5) years and shall be made available to the Executive Director upon request.

(d) The Executive Director may perform corrective or maintenance work, which shall be at the owner's expense, upon any failure to maintain facilities or correct problems with facilities after receiving due reasonable notice from the Executive Director.

(e) Routine maintenance of detention/retention facilities shall be conducted by the owner of the facility in accordance with this article and guidance of the Executive Director.

Section 24. Inspection.

(a) Stormwater systems within the City watershed shall be inspected by the Executive Director during and after construction to assure consistency with the approved stormwater management plan.

(b) All stormwater systems within the City watershed shall be subject to the authority of the Executive Director to ensure compliance with this Article and may be inspected when deemed necessary.

(c) The owner of a private stormwater system, or other responsible party designated by the owner, shall make annual inspections of the facilities, including any detention/retention facility, and maintain records of such inspections for a period of five (5) years.

(d) Whenever necessary to make an inspection to enforce any of the provisions of this article, or whenever the Executive Director has reasonable cause to believe that there exists in any building or upon any premises any condition which may constitute a violation of the provisions of this article, the Executive Director may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed by this article; provided that:

- (1) If such building or premises is occupied, he or she first shall present proper credentials and request entry; and
- (2) If such building or premises is unoccupied, he or she first shall make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

(e) The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the Executive Director is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.

(f) Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this article, including but not limited to, random sampling and/or sampling in areas with evidence of stormwater pollution, illicit discharges or similar factors.

Section 25. Sampling.

With the consent of the owner or occupant or with Court order, the Executive Director may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Executive Director may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities, provided that owners or occupants shall be entitled to split samples.

Section 26. Testing and Monitoring.

(a) Whenever the Executive Director determines that any person engaged in any activity and/or owning or operating any facility may cause or contribute to stormwater pollution or illicit discharges to the stormwater system, the Executive Director may, by written notice, order that such person undertake such monitoring activities and/or analyses and furnish such reports as the Executive Director may require. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator, including costs of these activities, analyses and reports, shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the Order.

(b) Within twenty (20) days of the date of receipt of the order, the recipient shall respond personally or in writing advising the Executive Director of the recipient's position with respect to the Order's requirements. Thereafter, the recipient shall be given the opportunity to meet with the Executive Director to review the Order's requirements and revise the Order as the Executive Director may deem necessary. Within ten (10) days of such meeting, the Executive Director shall issue a final written order. Final Orders issued pursuant to this Section may be appealed to the Board by the filing of a written appeal with the Chair of the Board within ten (10) days of receipt of the final Order. The appeal notice shall set for hearing the particular Order requirements or issues being appealed. The Board shall hear the appeal at its earliest practical date and may either affirm, revoke or modify the Order. Final Orders issued by the Board may be appealed to the Vienna City Council by the filing of a written appeal with the Mayor of the City of Vienna within ten (10) days of receipt of the final Order of the Board. The appeal notice shall set for hearing the particular Order requirements or issues being appealed. The City Council shall hear the appeal at its earliest practical date and may either affirm, revoke or modify the Order. The decision of the Council shall be final, but may be subject to review by a Court of competent jurisdiction.

(c) In the event the owner or operator of a facility or property fails to conduct the monitoring and/or analyses and furnish the reports required by the Order in the time frames set forth therein the Executive Director may cause such monitoring and/or analyses to occur. If a violation is found, the Executive Director may assess all costs incurred, including reasonable administrative costs and attorney's fees, to the owner or operator. The Executive Director may pursue judicial action to enforce the Order and recover all costs incurred.

Section 27. Concealment.

Causing, permitting, aiding, abetting or concealing a violation of any provision of this article shall constitute a violation of such provision.

Section 28. Acts Resulting in Violation of Federal Clean Water Act.

Any person who violates any provision of this article, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the federal Clean Water Act and may be subject to the sanctions of that Act including civil and criminal penalties.

Section 29. Violations.

(a) When the Executive Director finds that a discharge has taken place or is likely to take place in violation of this article, the Executive Director will first provide a verbal warning to the person creating the situation once observed. If unable to provide a verbal warning or if this issue is not addressed in a timely manner, the Executive Director may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall comply with the requirement and comply with a time schedule for compliance. The Executive Director shall provide notice to one in violation of this article by personal notice or certified mail, return receipt requested. Said notice shall state the nature of the violation, the potential penalty, the action required to correct the violation, and the time period within which the corrective action must be taken.

(b) If, after receipt of proper notice, a violator fails to timely make the required corrections, the Executive Director may enter upon the subject property and make said corrections. The costs of correction may be recovered in a civil action brought against the violator on behalf of the City.

(c) In the alternative, and at the discretion of the Utility Board and/or the Executive Director, a violator may be assessed a monetary fine, payable to the operating fund of the stormwater utility, in accordance with the following schedule:

- (1) First violation: \$250.00 and notice to correct.
- (2) Second violation and/or failure to correct: \$500.00
- (3) Third violation and/or continued failure to correct: \$1,000.

The Executive Director shall ensure that there is a reasonable time between a notice to correct and a subsequent sanction for failure to correct.

(d) These sanctions may be assessed against any user of the municipal separate storm sewer system within the City watershed. The Municipal Court of the City of Vienna shall be the venue for violations occurring within the City political boundaries. The Wood County Magistrate Court shall be the venue for violations occurring within the City watershed and outside the political boundaries of the City.

Section 30. Administrative Enforcement Powers.

(a) In addition to the other enforcement powers and remedies established by this article, the Executive Director has the authority to utilize the following administrative remedies.

- (1) Notice to Clean. Whenever the Executive Director finds any oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds or in close proximity to any open drain or ditch channel, which may result in an increase in pollutants entering the storm drain system or a non-stormwater discharge to the storm drain system, he or she may give notice to the property owner to remove and lawfully dispose of such material in any manner that he or she reasonably may provide. The recipient of such notice shall undertake the activities as described in the notice within the time frames set forth therein.
- (2) In the event the owner or operator of a facility fails to conduct the activities as described in the notice, the Executive Director may cause such required activities as described in the notice to be performed, and the cost thereof shall be assessed and invoiced to the owner of the property. If the invoice is not paid within sixty (60) days, a lien shall be placed upon and against the property

Section 31. Nonexclusivity Remedies.

Remedies under this article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

Section 32. Appeal.

Any person, firm, corporation or organization notified of non-compliance with this article or required to perform monitoring, analyses, reporting and/or corrective activities who is aggrieved by the decision of the Executive Director may appeal such decision in writing within twenty (20) days of the date of receipt of the order to the Board by the filing of a written appeal with the Chair of the Board. The appeal notice shall set for hearing the particular Order requirements or issues being appealed. The Board shall hear the appeal at its earliest practical date and may either affirm, revoke or modify the Order. Final Orders issued by the Board may be appealed to the Vienna City Council by the filing of a written appeal with the Mayor of the City of Vienna within ten (10) days of receipt of the final Order of the Board. The appeal notice shall set for hearing the particular Order requirements or issues being appealed. The City Council shall hear the appeal at its earliest practical date and may either affirm, revoke or modify the Order. The decision of the Council shall be final, but may be subject to review by a Court of competent jurisdiction.

Section 33. Disclaimer of Liability.

The degree of protection required by this article is considered reasonable for regulatory purposes. The standards set forth herein are minimum standards and this article does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the State. This article shall not create liability on the part of the City, any agent or employee thereof for any damages that result from reliance on this article or any administrative decision lawfully made thereunder.

Section 34. Severability.

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

Section 35. Industrial or Construction Activity Discharges.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with this permit may be required in a form acceptable to the City prior to allowing discharges to the stormwater system

Section 36. 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 any information of any known or suspected release of materials which are or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or waters of the state of West Virginia, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of release. In the case of a release of hazardous material said person shall immediately notify emergency response agencies of the spill.

Section 37. Adoption of Article.

This article shall be in full force and effect beginning February 1, 2017. All prior ordinances and parts of ordinances in conflict with this article are hereby repealed.