

ARTICLE V. STORMWATER SYSTEMS

DIVISION 1. GENERALLY

Sec. 38-426. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized person means the city manager, director of public works, water resources engineer, stormwater superintendent and such other persons as they specifically appoint or authorize to perform duties for the stormwater division.

Best management practices (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to the stormwater system or waters of the state or the United States. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer. The building drain extends five feet beyond the outer face of the building wall.

City manager means the city manager, or their authorized deputy, agent, or representative.

Combined sewer means a sewer receiving both stormwater runoff and sewage.

Construction activity means activities, including, but not limited to, clearing and grubbing, grading, excavating, and demolition.

Credit means an ongoing reduction in the stormwater user fee for certain identified and approved qualifying and ongoing private actions or activities that reduces the potential impact of increased stormwater discharges that result from development of a property.

Department of public works stormwater division means that city division responsible for construction, operation and maintenance of the public stormwater system.

Developed property means any property that is altered from a natural state by construction or installation of more than 500 square feet of impervious surface.

Developer means any individual, corporation, association, or other organization engaged in land development or building construction.

Discharge permit means a permit issued by the state department of environmental conservation pursuant to authority granted in 10 V.S.A. ch. 47, or the U.S. Environmental Protection Agency pursuant to 33 USC 1251 et seq.

Exclusively residential means land development in the city comprised of properties containing solely residential uses and permitted accessory uses, such as single-family, two-family and multi-family dwelling units. Land development with commercial, industrial or other nonresidential uses is excluded.

Garbage means solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

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Hazardous material means 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 discharge means any direct or indirect discharge to the stormwater system that is not expressly authorized by this ordinance.

Impervious surface means those man-made surfaces, including, but not limited to, paved and unpaved roads, parking areas, roofs, driveways, sidewalks, walkways, compacted gravel and soil surfaces, storage areas, and awnings and other permanent fabric or plastic coverings, from which precipitation runs off rather than infiltrates.

Industrial activity means activities subject to NPDES industrial permits as defined in 40 CFR 122.26(b)(14).

Industrial wastes means the liquid wastes from an industrial manufacturing process, trade, or business. The term "industrial wastes" does not include sanitary sewage.

MS4 permit means the state agency of natural resources' general permit 3-9014, as amended or reissued, pursuant to which the city obtained coverage for stormwater discharges from its municipal separate storm sewer system.

National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit means a permit issued by EPA (or by a state under authority delegated pursuant to 33 USC 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Natural outlet means any outlet into a watercourse, pond, ditch, lake, or other body of surface water or groundwater.

Non-single-family residence (NSFR) means all types of developed property in the city except single-family residences.

Non-stormwater discharge means any discharge to the stormwater system that is not composed entirely of stormwater or such other waters or materials as are specifically authorized herein. The term "non-stormwater discharge" includes placing or depositing any hazardous material or pollutant in the stormwater system.

Pollutant means any introduced substance which causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; heat; rock, sand, cellar dirt, dredged spoil; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Public stormwater system means all elements of the stormwater system located in the city that are controlled and operated by the city or that carry water that drains from any public property, including street rights-of-way.

Regulated private system means those stormwater systems located on privately owned property in the city that are subject to or required to obtain a permit for stormwater discharges under federal or state law, which permits routinely require installation and maintenance of stormwater management or treatment improvements.

Sewage means the used water supply of the city, including a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, as well as ground, surface and stormwater as may or may not be mixed with these liquid wastes from the city.

Sewage system commissioners (or commissioners or board) means members of the city council acting as a board of sewage system commissioners under 24 V.S.A. Chapter 101..

Sewer means a pipe, culvert, ditch, swale or other conduit for carrying sewage or stormwater.

Single-family residence (SFR) means detached single-family homes, duplexes, and triplexes.

Storm drain means a sewer intended to carry only stormwater and surface waters.

Stormwater means excess water from rainfall and snow melt that does not evaporate or penetrate into the ground, which flows overland and is collected and transported to waters of the state or the United States by the stormwater system, together with any material that becomes dissolved or suspended in such water during its overland flow before entering the stormwater system.

Stormwater appeal board means the city manager, public works director, and a third person appointed by the city council.

Stormwater discharge means any stormwater that is transported, naturally or otherwise, from a developed property to the public stormwater system or to a watercourse.

Stormwater superintendent means that employee of the city who shall be designated from time to time by the city manager to oversee the stormwater services division.

Stormwater system means natural and man-made drainage structures, conveyances, storm drains, catch basins, and any other appurtenant device or structure where stormwater is collected, transported, pumped, treated, or disposed of.

Stormwater upgrade feasibility analysis (SUFA) means those standards and procedures, as adopted and amended by city council, defining the processes of engineering feasibility analysis for upgrade, repair and maintenance of stormwater systems in the city, which shall be incorporated by reference herein.

Subdivision as defined by the City's Land Development Regulations.

Suspended solids means solids that either float on the surface of, or are in suspension in, water, sewage, or other liquids, and which are removable by laboratory filtering or use of BMPs.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently.

(Ord. of 3-21-2005, art. I, § 1, art. III, § 2; Ord. of 10-17-2016(1), § 1.1; Ord. of 12-5-2022, § 1.1)

Sec. 38-427. Abbreviations.

For the purpose of this article, the following abbreviations shall have the meaning ascribed to them under this section. References to standards of the following organizations shall refer to the latest edition of it.

VSMM means the Vermont Stormwater Management Manual, as amended from time to time by the state agency of natural resources, which shall be incorporated by reference herein.

(Ord. of 3-21-2005, art. I, § 2; Ord. of 10-17-2016(1), § 1.2; Ord. of 12-5-2022, § 1.2)

Sec. 38-428. Purpose.

The purpose of this division is to provide for the health, safety, and general welfare of the citizens of the city through the regulation of stormwater discharges to the stormwater system.

(Ord. of 10-17-2016(1), § 5.1)

Sec. 38-429. Applicability.

Any discharge of stormwater from developed property in the city shall be subject to the provisions of this division.

(Ord. of 3-21-2005, art. V, § 2; Ord. of 10-17-2016(1), § 5.2)

Sec. 38-430. Required approvals.

- (a) No owner of developed property in the city shall change or alter, or allow to be changed or altered, the discharge of stormwater from such property occurring on the effective date of the ordinance from which this article is derived without first obtaining any permit or approval required under this article or any other city ordinance, state law, or federal law. As used herein, the term "change or alter" shall mean an act done which will result in a direct or indirect impact on the contribution of stormwater into the public stormwater system.
- (b) No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public storm drain or appurtenance thereof without first obtaining a written permit from the Director of Public Works or their designee. The owner shall indemnify the city for any loss or damage directly or indirectly occasioned by the construction or installation of the private drain or storm sewer system, including damages from backflow from the municipal storm sewer system.

(Ord. of 3-21-2005, art. V, § 3; Ord. of 10-17-2016(1), § 5.3; Ord. of 12-5-2022, § 5.3)

Sec. 38-431. Compliance with existing permits.

It shall be a violation of this division for any owner of developed property that is subject to any local, state, or federal permit requirements regarding the discharge of stormwater to fail to comply with such permit requirements.

(Ord. of 3-21-2005, art. V, § 4; Ord. of 10-17-2016(1), § 5.4)

Sec. 38-432. Use of the public stormwater system.

- (a) The following may be discharged into the public stormwater system, subject to obtaining and complying with any required permit:
 - (1) Stormwater;
 - (2) Water line flushings; landscape irrigation or lawn watering, provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling; diverted stream flows; rising groundwater; uncontaminated groundwater; uncontaminated pumped groundwater; discharges from potable water sources; foundation or footing drains where flows are not contaminated with process materials, and to which there are no floor drain, septic wastewater, or grey water connection; uncontaminated condensate from air conditioners, coolers/chillers, and other compressors and from the outside storage of refrigerated gasses or liquids; uncontaminated water from crawl spaces; irrigation water; spring water; flows from riparian habitats or wetlands; swimming pools (if dechlorinated, typically less than one ppm chlorine); discharges from emergency/unplanned firefighting activities; fire hydrant flushing; pavement and external building wash waters to which no detergents or other chemicals have been added; incidental windblown mists; and any other water source not containing pollutants;
 - (3) Discharges specified in writing by the authorized enforcement agent as being necessary to protect public health and safety;

- (4) Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agent prior to the time of the test;
 - (5) Any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.
- (b) It shall be a violation of this article for any person to cause or allow to occur any illicit discharge to the public stormwater system or allow any illicit discharge existing on the effective date of the ordinance from which this article is derived to continue regardless of whether such existing discharge was permissible under law or practices applicable or prevailing at the time the discharge commenced.
- (Ord. of 3-21-2005, art. V, § 5; Ord. of 10-17-2016(1), § 5.5; Ord. of 12-5-2022, § 5.5)

Sec. 38-433. Best management practices.

- (a) The stormwater superintendent will adopt requirements identifying best management practices for any activity, operation, or facility which may cause or contribute to an illicit discharge to the stormwater system. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from an accidental illicit discharge into the public stormwater system. Further, any person responsible for a property or premises, which is, or may be, the source of an illicit discharge to the public stormwater system, may be required to implement, at said person's expense, additional BMPs to prevent or discontinue the illicit discharge. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section.
- (b) 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, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.
- (c) Notwithstanding other requirements of law, as soon as any person is responsible for a facility or operation, or is 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 an illicit discharge into the stormwater system, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of 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 non-hazardous materials, said person shall notify the stormwater superintendent 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 stormwater superintendent within three business days of the phone notice. If the illicit discharge 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 three years.

(Ord. of 3-21-2005, art. V, § 6; Ord. of 10-17-2016(1), § 5.6)

Sec. 38-434. Protection from damage.

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the public stormwater system.

(Ord. of 3-21-2005, art. V, § 7; Ord. of 10-17-2016(1), § 5.7)

Secs. 38-435—38-464. Reserved.

DIVISION 2. STORMWATER SYSTEM USER FEES

Sec. 38-465. Establishment of stormwater user fees.

- (a) A user fee based on an equivalent residential unit (ERU) shall be imposed on every owner of non-exempt developed property within the city. An ERU shall equal that square footage that represents the average of the area of impervious surface for all single-family residences in the city. The city council shall, by resolution, establish the square footage that constitutes one ERU on a periodic basis.
- (b) The city council shall have the authority to set and modify the user fee rates so that the total revenue generated by said charges, and any secondary sources of revenue, shall be sufficient to fund the city's stormwater program.
- (c) The city council shall establish by resolution the monthly rate for each ERU. The monthly user fee for a specific property is determined by multiplying the rate per ERU times the number of ERUs allocated to the property.

(Ord. of 3-21-2005, art. VI, § 1; Ord. of 10-17-2016(1), § 6.1; Ord. of 12-5-2022, § 6.1)

Sec. 38-466. User fee credits.

- (a) The stormwater superintendent shall prepare for the city council's approval a stormwater user fee credit manual, specifying the design and performance standards of on-site stormwater systems, facilities, activities and services which qualify for application of a user fee credit and the method of calculating credits. The city council shall have the authority to approve, modify and approve, or disapprove the credit manual.
- (b) Following approval of a credit manual, the stormwater superintendent may, at the request of a property owner, reduce the user fee established for any property by awarding a credit based on the policies and conditions set forth in the manual. No credit shall exceed 50 percent of the applicable monthly user fee for a given property. Any property owner may appeal the stormwater superintendent's determination regarding an award of a credit by filing a written notice of appeal with the stormwater appeal board within ten business days of the superintendent's decision. The stormwater appeal board shall review such appeal at a meeting preceded by 15 calendar days written notice of the meeting date to the property owner. Following the meeting, the stormwater appeal board shall issue its decision on the appeal in writing, which decision shall be final.
- (c) Credits shall be applied to user fees on the next billing period after the completed credit application is approved.
- (d) Any award of credit shall be conditioned on continuing compliance with the city's design and performance standards as stated in the stormwater user fee credit manual and/or upon continuing provision of the systems, facilities, services, and activities provided, operated, and maintained by the property owner upon which the credit is based. The stormwater superintendent may revoke or reduce a credit at any time for noncompliance by providing 30 days' written notice of a noncomplying condition and intent to revoke or

reduce the credit to the property owner. If the noncompliance is not cured within the 30-day period, the stormwater superintendent shall eliminate the credit for user fee bills issued to the property owner after such period. A property owner may appeal the stormwater superintendent's determination regarding credit revocation or reduction in the same manner set forth in subsection (b) of this section.

(Ord. of 3-21-2005, art. VI, § 2; Ord. of 10-5-2015(1), § 3; Ord. of 10-17-2016(1), § 6.2)

Sec. 38-467. Establishment of ERUs.

- (a) Each SFR shall be allocated one ERU.
- (b) The ERUs allocated to NSFR properties, except city-owned roads, shall be determined in the following manner:
 - (1) The amount of impervious surface on each parcel shall be divided by the gross area of the parcel resulting in the percent of imperviousness for the parcel.
 - (2) Based on the percent imperviousness, a tier factor shall be determined, based on the following categories:

<i>Impervious Percentage</i>	<i>Tier Factor</i>
1 to 10.99%	*See below
11 to 20.99%	0.15
21 to 30.99%	0.25
31 to 40.99%	0.35
41 to 50.99%	0.45
51 to 60.99%	0.55
61 to 70.99%	0.65
71 to 80.99%	0.75
81 to 90.99%	0.85
91 to 100%	0.95

*Fee will be based on actual amount of impervious surface, measured in square feet. The gross area of the parcel shall be multiplied by the tier factor, and then divided by the ERU. The resulting value is rounded up to the nearest whole number which is the number of ERUs for the property.

- (c) The ERUs allocated to properties comprised solely of city-owned roadways shall be determined by dividing two-thirds of the total impervious surface for the property by the ERU. The resulting value is then rounded up to the nearest whole number which is the number of ERUs for the property.

(Ord. of 3-21-2005, art. VI, § 3; Ord. of 10-17-2016(1), § 6.3; Ord. of 12-5-2022, § 6.3)

Sec. 38-468. Billing and collection.

- (a) Stormwater user fees will be billed quarterly and shall be reflected on the water and sewer bills for each property owner, where applicable. The bill shall also state the ERUs allocated to each property.
- (b) A property owner may appeal an allocation of ERUs to the stormwater superintendent by submitting a written notice of appeal to the stormwater superintendent within 15 calendar days of the mailing date of the

bill. The stormwater superintendent shall promptly meet with the property owner and issue a decision of the allocation of ERUs. A property owner may appeal the stormwater superintendent's determination regarding credit revocation in the same manner set forth in section 38-466(b). The filing of an appeal shall not relieve a property owner of the obligation to pay the user fee when due.

- (c) In the event any stormwater user fee is not paid within 30 days from the billing date, a late penalty charge will be added to the fee together with interest charges. The amount of the late penalty charge and the interest rate on the overdue accounts shall be the same as those applied to delinquent taxes. If such payment is not made, such stormwater user fee shall be a lien upon such real estate and may be collected in the manner provided in 24 V.S.A. § 3614. Any payment made to the city for utility fees shall first be allocated to delinquent water, then delinquent sewer, then delinquent stormwater fees. The remaining amount of the payment shall first be allocated to current water, then current sewer, then current stormwater fees.

(Ord. of 3-21-2005, art. VI, § 4; Ord. of 10-17-2016(1), § 6.4)

Sec. 38-469. Expenditures.

- (a) The user fees, as well as any secondary sources of revenue, shall be used to fund the city's efforts to manage stormwater. Acceptable expenditures include, but are not limited to, capital construction, maintenance and operations, engineering and planning, regulation and enforcement, water quality programs, special services, administration and management, coverage requirements, reserve funds, staff or labor costs, vehicle and equipment purchases and miscellaneous overhead costs.
- (b) Excess revenues may be placed into a sinking fund, and may be retained and expended in the manner set forth in section 38-470.

(Ord. of 3-21-2005, art. VI, § 5; Ord. of 10-17-2016(1), § 6.5)

Sec. 38-470. Sinking fund/set-asides for major expenditures.

The following provides for and restricts the use of set-aside (sinking) funds to finance future major maintenance/replacement costs and plant expansion costs:

- (1) A separate sinking fund may be utilized for major maintenance/replacement expenditures and for expansion/upgrading expenses associated with the wastewater facilities in the city. Sinking fund establishment for maintenance/replacement expenditures shall be through written policy of the city. Any sinking fund policy shall contain at least the following in writing: major maintenance/replacement identification, estimated expenditures, estimated, year of expenditure, payment amount, type of account used to accumulate sinking fund assets, source of funding and when payments are to stop. All sinking funds shall be established and maintained in accordance with 24 V.S.A. § 3617.
- (2) The city reserves the right to increase, decrease, stop and/or maintain regular deposits to a sinking fund not exceeding 15 percent of the normal total budgeted expenses for maintenance/replacement in that year. The fees charged for expansion cost shall be deposited into a separate account and a record shall be kept to show payment date, person making payment and payment amount. The city council holding office has the authority to withdraw sinking fund amounts only for the purpose of paying for major expenditures/plant expansion for which the fund was established.
- (3) Sinking fund assets are not disbursed fully for major maintenance/replacement expenditures and/or plant expansion; excess money shall remain in the sinking fund for future related expenditures similar in nature. Revenues established for plant expansion dedicated funds may be generated from connection/impact fees paid by prospective users to defray and pay expansion costs. This fund shall not exceed the estimated future expansion cost for the wastewater treatment facility. When the city so votes, the expansion/upgrade sinking fund may be used to finance major maintenance/replacement

expenditures, but under no circumstances shall the major maintenance replacement sinking fund be used to finance wastewater expansion/upgrade expenses.

(Ord. of 3-21-2005, art. IV, § 6; Ord. of 10-17-2016(1), § 4.6)

Secs. 38-471—38-497. Reserved.

DIVISION 3. ACCEPTANCE OR INSPECTION OF REGULATED PRIVATE SYSTEMS

Sec. 38-498. Exclusively residential regulated private systems.

- (a) Subject to the terms and conditions of this article, the city may accept conveyance of and assume responsibility for regulated private systems that serve exclusively residential development in the city, provided the owner of such regulated private system meets the following conditions:
 - (1) The regulated private system shall comply with the VSMM and division V of this article.
 - (2) Regulated private systems shall satisfy the goals outlined in any agency of natural resources-approved plan for the city to meet MS4 permit requirements (e.g., flow restoration plan, phosphorus control plan, etc).
 - (3) The superintendent determines that allowing the regulated private system to obtain coverage under the city's MS4 permit would not place an undue burden on the city.
- (b) The owner of any regulated private system listed in subsection (a) of this section may offer to convey such system to the city by:
 - (1) Applying to the stormwater superintendent, using forms developed by the stormwater superintendent;
 - (2) Paying the applicable fee as determined from time to time by the city council; and
 - (3) Agreeing to reimburse the city for any reasonable costs, fees, expenses and other charges the city incurs in evaluating the regulated private system's design and inspecting the regulated private system's stormwater management and treatment improvements prior to acceptance of such regulated private system.
- (c) Upon receipt of a complete application described in subsection (b) of this section, the stormwater superintendent shall determine whether the regulated private system meets the applicable standards, which determination shall be final.
- (d) Upon a determination that a regulated private system meets applicable standards, the stormwater superintendent, working with the city attorney, or the city attorney's designee, shall direct the owner of the regulated private system to prepare all documents, using forms developed by the stormwater superintendent, the city attorney, or the city attorney's designee, necessary to convey the regulated private system, free and clear of all encumbrances, to the city and transfer any applicable permit to the city. The stormwater superintendent, city attorney, or the city attorney's designee shall review such documents to determine their accuracy and completeness.
- (e) Upon an owner of the regulated private system's satisfactory completion of the work required under subsections (a) through (d) of this section, and payment of any sums due under subsection (b) of this section, the stormwater superintendent shall submit to the city council the owner's offer to convey the regulated

private system to the city. The city council may accept such offer if it determines that such acceptance is in the best interests of the city.

- (f) Upon acceptance of a regulated private system pursuant to subsection (e) of this section, the city shall be responsible for operating, maintaining, and repairing the regulated private system to comply with any applicable permit and for renewing or obtaining any permit required for operation and maintenance of the regulated private system, except that the former owner of the regulated private system shall be responsible for all costs, fees, charges and expenses for:
 - (1) Remedying damage caused by the former owner of the regulated private system; or
 - (2) In the event that an extreme unforeseen circumstance requires extraordinary repair and reconstruction measures unique to the regulated private system. As used herein, the term "extreme unforeseen circumstance" means an act, event, cause or condition that is beyond the city's reasonable control such as a fire, storm, earthquake, flood, lightning, landslide, hurricane, tornado, war, strike, terrorism, riot or insurrection.
- (g) For a period of 20 years from the date the city accepts a regulated private system and other than the user fee, the city shall not impose an assessment or surcharge that is unique to the former owner of such accepted regulated private system to cover all or a portion of the cost of performing the city's duties outlined in subsection (f) of this section, unless the city imposes a similar assessment or surcharge on other former owners of other similar regulated private systems, or in the event of a need to remedy damage described in subsection (f) of this section.
- (h) For purposes of this subdivision, the term "former owner" means and includes the successors in interest of owners of regulated private systems that have been accepted by the city pursuant to the procedures outlined in subsections (b) through (g) of this section. If a former owner is a membership organization, company, corporation or other entity, whether for profit or nonprofit, the term "former owner" also includes its officers, members, directors and their respective successors in interest.

(Ord. of 10-17-2016(1), § 7.1; Ord. of 12-5-2022, § 7.1)

Sec. 38-499. Regulated private systems that are not exclusively residential.

- (a) Subject to the terms and conditions of this article, the city may, at the discretion of the superintendent, allow regulated private systems that serve properties with nonresidential uses to obtain permit coverage under the city's MS4 permit provided the owner of such regulated private system meets all of the following conditions:
 - (1) The regulated private system shall comply with the VSMM or the stormwater upgrade feasibility analysis (SUFA).
 - (2) Regulated private systems shall satisfy the goals outlined in any agency of natural resources-approved plan for the city to meet MS4 permit requirements (e.g., flow restoration plan, phosphorus control plan, etc.).
 - (3) The owner of a regulated private system enters into an agreement with the city obligating the owner of the regulated private system to maintain the regulated private system in accordance with the MS4 permit, the VSMM and the SUFA, as applicable to that regulated private system, and grants the city access by license:
 - a. To monitor and inspect the regulated private system at regular intervals to confirm compliance with the MS4 permit, the VSMM and the SUFA, as applicable to that regulated private system; or

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- b. To maintain the regulated private system only in the event the superintendent determines that the owner of the regulated private system has failed to perform maintenance of the regulated private system in accordance with the VSMM or the SUFA, as applicable to that regulated private system and that public good requires that the city to perform such maintenance on the regulated private system. The city's performance of maintenance on a regulated private system shall be performed at its sole discretion and shall not relieve the owner from complying with the MS4 permit, the VSMM and the SUFA, as applicable. If the city chooses to perform such maintenance after the owner's failure or refusal to do so, the owner shall reimburse the city for its costs, fees, expenses and other charges it incurs as a result of the owner's failure or refusal to perform such maintenance. If the owner refuses to reimburse the city within 30 days of the city's mailing of a bill for such charges, such charges shall be a lien on the owner's property in accordance with 24 V.S.A. Chapter 101.
- (4) The superintendent determines that allowing the regulated private system to obtain coverage under the city's MS4 permit would not place an undue burden on the city.
- (b) The owner of a regulated private system meeting the requirements of subsection (a) of this section may request coverage under the city's MS4 permit by:
- (1) Applying to the superintendent, using forms developed by the stormwater superintendent;
- (2) Paying the applicable fee as determined from time to time by the city council;
- (3) Submitting a plan for maintenance and repair of the regulated private system to ensure compliance with the MS4 permit, the VSMM and the SUFA, as applicable to that regulated private system; and
- (4) Agreeing to reimburse the city for any reasonable costs, fees, expenses and other charges the city incurs in evaluating the regulated private system's design and inspecting the regulated private system's stormwater management and treatment improvements prior to the city accepting coverage of such regulated private system under its MS4 permit.
- (c) Upon receipt of a complete application as described in subsection (b) of this section, the superintendent shall determine whether the regulated private system meets the VSMM and the SUFA, as applicable to that regulated private system. The superintendent's determination shall be final.
- (d) Upon determination that a regulated private system satisfies the VSMM and the SUFA, as applicable to that regulated private system, the stormwater superintendent, working with the city attorney, or the city attorney's designee, shall direct the owner of the regulated private system to prepare all documents, using forms developed by the stormwater superintendent, the city attorney, or the city attorney's designee, necessary for the regulated private system to obtain coverage under the city's MS4 permit. The stormwater superintendent, city attorney or the city attorney's designee shall review such documents to determine their accuracy and completeness.
- (e) Upon an owner of the regulated private system's satisfactory completion of the work required by subsections (a) through (d) of this section, and payment of any sums due under subsection (b) of this section, the stormwater superintendent shall submit to the city council the regulated private system owner's request to obtain coverage under the city's MS4 permit. The city council may approve such request if it determines that such approval is in the best interests of the city.
- (f) Upon allowing a regulated private system to obtain coverage under the city's MS4 permit, pursuant to subsection (e) of this section, the city shall periodically monitor, inspect and report on the regulated private system per the city's MS4 permit requirements. Notwithstanding such coverage, the owner of the regulated private system remains responsible for all costs, fees, charges and expenses for:

- (1) Operation, maintenance, repair, improvement or replacement of the regulated private system to ensure compliance with the MS4 permit and with the VSMM and the SUFA, as applicable to that regulated private system;
 - (2) Remedying damage caused by the owner of the regulated private system; and
 - (3) In the event that an extreme unforeseen circumstance requires extraordinary repair and reconstruction measures unique to the regulated private system. As used herein, the term "extreme unforeseen circumstance" means an act, event, cause or condition that is beyond the city's reasonable control such as a fire, storm, earthquake, flood, lightning, landslide, hurricane, tornado, war, strike, terrorism, riot or insurrection.
- (g) For a period of 20 years from the date the city allows a regulated private system to obtain coverage under the city's MS4 permit and other than the user fee described in subdivision II of this division, the city shall not impose an assessment or surcharge that is unique to the owner of such regulated private system to cover all or a portion of the cost of performing the city's duties outlined in subsection (f) of this section, unless either:
- (1) The city imposes a similar assessment or surcharge on owners of other similar regulated private systems;
 - (2) In the event of a need to remedy damage caused by negligence or malfeasance on the part of the owner;
 - (3) In the event that an extreme unforeseen circumstance requires extraordinary repair and reconstruction measures unique to the regulated private system; or
 - (4) If the city deems in the reasonable exercise of its discretion that the owner has failed to maintain, repair or improve the regulated private system to comply with the city's MS4 permit and such maintenance, repair or improvement is necessary, as determined by the stormwater superintendent's sole discretion, to ensure compliance with the city's MS4 permit.
- (h) For purposes of this section, the term "owner" means and includes the successors in interest of owners of regulated private systems that have obtained coverage under the city's MS4 permit. If an owner is a membership organization, company, corporation or other entity, whether for profit or nonprofit, the term "owner" also includes its officers, members, directors and their respective successors in interest.
- (i) In addition to the rights and remedies for noncompliance with this article provided in subdivision IV of this division, if the owner of the regulated private system fails to operate, improve, inspect, maintain, repair and replace its regulated private system in accordance with the city's MS4 permit, the VSMM or the SUFA, as applicable to that regulated private system, then the superintendent, in his sole discretion and at any time, may terminate the agreement described in subsection (a)(3) of this section, provided the superintendent has mailed a notice of termination to the owner 30 days in advance of such termination.

(Ord. of 10-17-2016(1), § 7.2)

Secs. 38-500—38-521. Reserved.

DIVISION 4. MUNICIPAL COST SHARING

Sec. 38-522. Purpose.

The purpose of this division is to establish a city policy regarding cost sharing of upgrading or improving stormwater treatment practices that are required by the MS4 permit, flow restoration plans (FRPs), phosphorus control plans (PCPs) or any other future MS4 permit requirement.

(Ord. of 12-5-2022, § 8.1)

Sec. 38-523. Applicability.

This division shall apply to stormwater system upgrades or improvements as required by division III of this article.

(Ord. of 12-5-2022, § 8.2)

Sec. 38-524. Municipal share of stormwater project costs.

The city shall share in the cost of upgrading or improving stormwater treatment practices (STPs) that are required by the MS4 permit, flow restoration plans (FRPs), and/or phosphorus control plans (PCPs) as follows:

- (1) a. The city shall contribute funds from the stormwater utility budget for the construction of upgrades or improvements to STPs on a pro rata basis. Cost sharing shall be determined by the percentage of impervious surface area that is publicly owned and covered by the existing stormwater permit as compared to the total impervious surface area covered by the existing stormwater permit;
 - b. Areas outside of the existing stormwater permit that drain to the STP will not be included in this calculation unless the additional off-site area is routed to the STP as part of the upgrade or improvement. If offsite areas are being redirected to the STP as part of the upgrade or improvement, then these areas will be included as part of the city's impervious surface area in the cost sharing calculation.
- (2) The city's share of funding for upgrades or improvement of any particular STP will be determined on a schedule established by and at the discretion of the city. The city will update this schedule on an annual basis, as needed, to ensure that expenditures are budgeted in a way that is sustainable for the stormwater utility sinking fund, stormwater utility rate payers and permit required objectives.
- (3) The city will cost share in the upgrade or improvement of an STP to the minimum design requirements that achieve the stormwater treatment necessary to satisfy FRPs, PCPs and Vermont Stormwater Management Manual (VSMM). Work included as part of any upgrade or improvement that is beyond the minimum necessary to meet the minimum design requirements will be the responsibility of the owner of the regulated private system. The city will not share in the cost of any work undertaken that is not directly related to the STP.
- (4) The city shall review and will share in the costs of any change orders during construction until the total of the change order requests exceeds ten percent of the estimated total project cost. Change order requests seeking cost increases beyond ten percent of the estimated total project cost will be borne by the owner of the regulated private system, unless otherwise agreed to by the city and is in the stormwater superintendent's sole and complete discretion.
- (5) The city shall not contribute funds for engineering or design services incurred as part of upgrades or improvements to STPs unless:
 - a. The city obtains grant or other outside funding for the engineering or design project and a signed stormwater system improvement agreement with the owner of the regulated private system that addresses engineering or design cost sharing is in place;
 - b. The city will not be responsible for engineering or design costs that were incurred prior to the effective date of a stormwater system improvement agreement for the upgrade or improvement to the STP.

- (6) The city will provide its pro rata share of STP upgrade or improvement costs only after the stormwater superintendent or the stormwater superintendent's designee has inspected the stormwater treatment system and the STP upgrade or improvement and certified that it has been constructed in accordance with the previously approved project plans.
- (7) The city is not required to obtain grants or other outside funding for any individual project. Grants will be obtained at the discretion of the stormwater superintendent based on staff availability and other factors.
- (8) If a grant or outside funding is obtained by the city for an STP upgrade or improvement project, such grant or outside funding will first be applied to offset the city's pro rata share of the STP upgrade or improvement costs. Any amount in exceedance of the city's pro rata share may be applied to the regulated private system owner's pro rata share of the STP upgrade or improvement project costs at the discretion of the stormwater superintendent.
- (9) STP upgrade or improvement projects that are eligible for city cost sharing must follow the process outlined for inclusion of the stormwater treatment system under the city's MS4 permit as established in division III of this article.
 - a. If a regulated private system owner performs an upgrade or improvement to an STP, but does not intend to obtain coverage under the city's MS4 permit and instead obtains permit coverage directly from the state, they may still obtain cost sharing from the city pursuant the requirements of this subdivision. In order to be eligible, the system owner must:
 1. Submit engineering and design plans for STP upgrade or improvement to the stormwater superintendent and obtain written approval of these plans prior to incurring any costs that would be eligible for cost sharing;
 2. Sign a stormwater system improvement agreement with the city that establishes pro rata cost sharing for all parties involved; and
 3. Obtain the stormwater superintendent's written confirmation that the STP upgrade or improvement was constructed in conformance with the approved plans once construction is complete.

(Ord. of 12-5-2022, § 8.3)

Secs. 38-525—38-545. Reserved.

DIVISION 5. STORMWATER UPGRADE FEASIBILITY ANALYSIS (SUFA)

Sec. 38-546. Background and introduction.

- (a) The city is subject to multiple stormwater total maximum daily load (TMDL) requirements established by the state agency of natural resources (ANR). Compliance with these TMDLs is required by the city's municipal separate storm sewer system (MS4) permit, which is also promulgated by ANR. The MS4 permit requires that the city develop a flow restoration plan (FRP) for each of the five stormwater impaired watersheds located in the city. In addition, the city's MS4 permit requires that the city develop a plan to deal with properties covered by expired state stormwater permits. Additionally, all of the city ultimately drains to Lake Champlain. ANR and the United States Environmental Protection Agency (EPA) has developed a phosphorus TMDL for Lake Champlain. In accordance with the MS4 permit, the city has developed a phosphorus control plan (PCP) to reduce phosphorus loading to the lake from stormwater discharges.

- (b) In order to meet the requirements of these state and federal regulations, it is necessary for the city, and the properties located within its boundaries, to install stormwater treatment practices (STPs) capable of addressing the uncontrolled stormwater runoff that contributes to these water quality impairments. The city's regulations concerning the use of public and private sanitary stormwater systems, as set forth in this article, provides the opportunity for properties with existing or expired state stormwater permits, or properties subject to the three-acre requirement included in section 1.3D of the ANR General Permit 3-9050, to obtain valid state stormwater permit coverage under the city's MS4 permit. The ability for the city to provide this permit coverage was clarified by the state department of environmental conservation when the MS4 permit was reissued in 2018.
- (c) In order for a property to obtain coverage under the city's MS4 permit, it must provide a level of stormwater treatment that will facilitate compliance with the state and federal regulatory requirements (MS4 permit and TMDLs) to which the city is subject to. The goal of this document is to establish a procedure by which an existing site can be evaluated for best practicable on-site treatment of stormwater runoff. The standard is intended to be met through installation of on-site STPs. Alternatively, a site may elect to pay a stormwater mitigation fee in lieu of installing STPs on their site. These funds will be utilized by the South Burlington Stormwater Utility (SBSU) to construct the STPs necessary for the city to implement the FRPs required by its MS4 permit. These funds may also be used to gain access to the land necessary for the construction of large scale or regional STPs.

(Ord. of 10-5-2015(2), § 1; Ord. of 10-17-2016(2), § 1; Ord. of 7-6-2021, § 1)

Sec. 38-547. Installation of stormwater treatment practices.

- (a) The goal of the stormwater upgrade feasibility analysis (SUFA) is:
 - (1) To reduce the volume of stormwater runoff and associated pollutants leaving the site via pipe or overland flow; and
 - (2) To ensure that a site complies with any water quality plan (e.g. FRP, PCP, etc.) developed for the watershed in which it is located.
- (b) At a minimum, the site must install STPs capable of infiltrating the volume of stormwater runoff generated on site during the water quality volume (WQv) rain event as described in the Vermont Stormwater Management Manual (VSMM), as amended from time to time by the agency of natural resources, which shall be incorporated by reference herein. This volume of water must be infiltrated or reused on site using Tier 1 practices as defined in the VSMM.
- (c) It is understood that some sites may contain constraints that make the site unsuitable for infiltration of stormwater runoff. A list of acceptable site constraints includes:
 - (1) Seasonally high or shallow groundwater (as defined in the VSMM).
 - (2) Shallow bedrock (as defined in the VSMM).
 - (3) Soil infiltration rates of less than 0.2 inches per hour (as demonstrated by infiltration testing conducted in accordance with the procedure in section 38-551).
 - (4) Contaminated soils subject to review and approval of the stormwater superintendent.
 - (5) The presence of a stormwater hotspot (as defined in the VSMM).
 - (6) Other site constraints subject to the review and approval of the stormwater superintendent.

- (d) If it is not possible to infiltrate the volume of stormwater runoff generated by the site during WQv storm event due to one or more of the constraints listed in subsection (c) of this section, then this volume of water can be detained on site using Tier 2 practices as described in the VSMM.
- (e) A site with existing retention/detention based STPs is allowed to evaluate retrofitting/expanding these facilities in order to meet the detention requirement indicated above. Retrofit/expansion of these facilities may be considered prior to evaluation of Tier 1 practices. Existing Tier 3 practices shall be upgraded to Tier 2 practices, if used for water quality treatment.
- (f) FRPs and PCPs for impaired watersheds in the city contain a preliminary assessment of the stormwater treatment potential of some sites. If an FRP or PCP identifies an STP on a site, then the site must install either the specified STP or an STP that provides equivalent or greater treatment. Properties that choose to construct STPs must do so prior to the deadline established by the state's agency of natural resources, within five years of signing a stormwater improvement agreement with the city, but no later than November 1, 2028, whichever is sooner.
- (g) All proposed STPs must be submitted to the stormwater superintendent for review. Standards for these submissions are included in section 38-550.

(Ord. of 10-5-2015(2), § 2; Ord. of 10-17-2016(2), § 2; Ord. of 7-6-2021, § 2)

Sec. 38-548. Payment of stormwater mitigation fee.

- (a) In lieu of installation of STPs as described above, the property owner may elect to pay a stormwater mitigation fee. The mitigation fee for a property can be determined utilizing the following equation (where IA is the impervious area on the site in acres) and WQvT is the percent of the water quality volume treated on site:

$$\text{Stormwater mitigation fee} = \text{IA} \times (1 - \text{WQvT})^3 \times \$70,000$$

- (b) Impervious area (IA) is calculated by measuring the impervious surfaces located on the property at the time of application. Applicants shall not include any publicly owned impervious area (e.g., public roads within a city-owned right-of-way) in their calculation of IA.
- (c) Payment of a stormwater mitigation fee does not prevent or exclude a site from being used for stormwater treatment. If the site contains a project identified in an FRP as a regional stormwater treatment facility, then the city will require an irrevocable offer of dedication to use the land for stormwater treatment, if deemed feasible.
- (d) Stormwater mitigation fees must be paid in full upon signing an MS4 permit coverage agreement with the city. Alternatively, the property owner can elect to pay the fee over a five- or ten-year term. If a five-year term is selected, the total value will be assessed at 3½ percent interest over that period. If a ten-year term is selected, the total value will be assessed at 5½ percent interest over that period. Fees paid over a five- or ten-year term will be included in the property's stormwater fee for developed properties as established in this article.

(Ord. of 10-5-2015(2), § 3; Ord. of 10-17-2016(2), § 3; Ord. of 7-6-2021, § 3)

Sec. 38-549. Combination STP/fee method.

Some sites may install STPs for a portion of the site and pay a stormwater mitigation fee for the remaining portion of the site. When this method is used, the percent of the water quality volume treated on site (WQvT) will be factored into the equation. Property owners are encouraged to maximize treatment on site to the greatest extent possible, as the greater the level of treatment provided on site, the lower the cost per impervious acre for the portion of the water quality volume not achieved.

(Ord. of 10-5-2015(2), § 4; Ord. of 10-17-2016(2), § 4; Ord. of 7-6-2021, § 4)

Sec. 38-550. Submission standards for MS4 permit coverage application.

The following information must be included with a submission:

- (1) Complete application form.
- (2) A brief written narrative describing the proposed stormwater treatment practice (STP) and how it meets the SUFA standard. This includes a description of how the proposed STP matches or differs from what is indicated in any approved flow restoration plan (FRP).
- (3) A written description of the ongoing maintenance needs for the drainage system and proposed STP.
- (4) A map delineating the drainage area flowing to each STP. This must include any off-site areas flowing to the STP.
- (5) Site plan and construction details for all proposed STPs. The site plan must include:
 - a. Location, type, and size of all impervious surfaces.
 - b. Location, type, size, elevations, and specifications for all proposed STPs.
 - c. Stormwater collection and conveyance systems including swales, culverts, and piping.
 - d. Length, diameter, and material for all piping and culverts.
 - e. Topographic survey and natural resource delineations.
 - f. Soil type and/or hydrologic soil group.
 - g. The location and results of any infiltration testing conducted.
 - h. Tree canopy and changes to landscaping.
- (6) Modeling results that show the existing and post-development hydrographs for the storm events indicated below. Any TR-55 based model shall be suitable for this purpose. Modeling methods utilized shall be in accordance with the best practices utilized by the state stormwater management section and described in the VSMM.
 - a. The water quality volume (WQv) storm event as described in the VSMM.
 - b. The one year, 24-hour rainfall event as described in the VSMM.
 - c. The 25-year, 24-hour rainfall event (currently 4.0 inches) as described in the most recent version of the city's land development regulations.
- (7) Applications submitted under the combined method must include a stormwater mitigation fee calculation. The site plan, listed under subsection (5) of this section, must indicate the portion of impervious area (IA) being utilized in the stormwater mitigation fee calculation.

(Ord. of 10-5-2015(2), app. B; Ord. of 10-17-2016(2), app. B; Ord. of 7-6-2021, app. B)

Sec. 38-551. Method for infiltration testing.

The following requirements apply to any required infiltration testing:

- (1) Testing must be performed under the supervision of a qualified professional (i.e., registered engineer, site designer licensed in the state, a qualified soil scientist, a qualified geologist, a qualified hydrogeologist, or other person approved in advance by the stormwater superintendent).

- (2) Infiltration test methods must assess the saturated hydraulic conductivity under "field-saturated" conditions (see ASTM D5126-90 Standard Guide for Comparison of Field Methods for Determining Hydraulic Conductivity in the Vadose Zone).
 - (3) Infiltration test locations shall correspond to the proposed stormwater treatment practice (STP) locations, and infiltration tests must be conducted at a minimum depth of the bottom of the proposed STP.
 - (4) Design infiltration rates shall be determined by using a factor of safety of 2 from the field-derived value.
 - (5) Percolation tests are not acceptable in place of testing for saturated hydraulic conductivity, as they overestimate saturated hydraulic conductivity values. Acceptable tests include:
 - a. Guelph permeameter - ASTM D5126-90 Method.
 - b. Falling head permeameter - ASTM D5126-90 Method.
 - c. Double ring permeameter or infiltrometer - ASTM D3385-09, D5093-152, D5126-90 Methods.
 - d. Amoozemeter or Amoozegar permeameter - Amoozegar 1992.
 - (6) The following information must be documented for any infiltration testing:
 - a. Date and time of testing.
 - b. Name and qualifications of the person conducting the testing.
 - c. Location of infiltration testing.
 - d. Method utilized during testing.
 - e. Results of infiltration testing in inches/hour.
 - (7) A qualified professional may establish seasonal high groundwater depth in test pits based on redoximorphic features.
 - (8) Verify depth to bedrock (if within four feet of proposed STP bottom) via test pits or solid auger probes.
- (Ord. of 10-5-2015(2), app. A; Ord. of 10-17-2016(2), app. A)

Secs. 38-552—38-570. Reserved.

DIVISION 6. INSPECTION AND ENFORCEMENT

Sec. 38-571. Power and authority of inspectors.

- (a) Any authorized person bearing proper credentials and identification shall be permitted to enter all properties subject to regulation under this article for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this article. Authorized persons shall have the right to set up such devices as are necessary to conduct monitoring and/or sampling of any regulated discharge from the property. Authorized persons may also examine and copy records required to be kept under any permit subject to this article. Authorized persons shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the public stormwater system.

- (b) Any authorized person bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds an easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance or any portion of the public stormwater system lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the easement pertaining to the private property involved.
- (c) If a property owner has security measures in force which require proper identification and clearance before entry onto the property, the owner shall make the necessary arrangements to allow access to any authorized person.
- (d) Any temporary or permanent obstruction to safe and easy access to any property to be inspected and/or sampled shall be promptly removed by the property owner at the written or oral request of any authorized person and shall not be replaced. The costs of clearing such access shall be borne by the property owner.
- (e) Causing an unreasonable delay in allowing an authorized person access to a property subject to regulation under this article is a violation of this article.
- (f) If an authorized person is refused access to any part of the property containing facilities, records or discharges subject to regulation under this article, and if the authorized person is able to demonstrate probable cause to believe that there may be a violation of this article, 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 article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized person may seek issuance of a search warrant from any court of competent jurisdiction.
- (g) While performing the necessary work on private properties referred to in this section, authorized persons shall observe all safety rules applicable to the premises established by the property owner and the property owner shall be held harmless for injury or death to the city employees and the city shall indemnify the property owner against loss or damage to its property for personal injury or property damage asserted against the property owner and growing out of the gauging and sampling operation, except as may be caused by negligence or failure of the property owner to maintain safe conditions as required by law.

(Ord. of 3-21-2005, art. VII, § 1; Ord. of 10-17-2016(1), § 8.1; Ord. of 12-5-2022, § 9.1)

Sec. 38-572. Administrative enforcement.

- (a) Any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.
- (b) Any person found to be violating any provision of this article shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. Such notice may require, without limitation:
 - (1) The performance of monitoring, analyses, and reporting;
 - (2) The elimination of illicit discharges;
 - (3) The cessation of improper practices and operations and implementation of proper practices and operations;
 - (4) The abatement or remediation of any contamination of the public stormwater system and waters of the state or the United States and restoration of any property impacted by such contamination;
 - (5) Establishment of time limits for the completion of all required work;

- (6) Payment of a fine; and
- (7) State that the notice may be appealed in the manner set forth in subsection (g) of this section.
- (c) The city has the right to require a property owner found to be in violation of this article to install monitoring equipment and maintain such equipment in proper operating condition, including proper calibration, all at the property owner's expense.
- (d) If a violation has not been corrected pursuant to the requirements set forth in the notice of violation, the city or persons retained by the city may enter upon the subject property to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the city or designated persons to enter upon the premises for the purposes set forth above.
- (e) Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 15 days. If the amount due is not paid within a timely manner as determined by the decision of the city manager or the city manager's designee, or by the expiration of the time in which to file an appeal, the charges shall constitute a lien on the property for the amount of the assessment and shall bear interest at the rate of one percent per month, or portion thereof.
- (f) The city manager may, without prior notice, suspend stormwater system 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 stormwater system or waters of the state or the United States. If the violator fails to comply with a suspension order issued in an emergency, the city manager may take such steps as deemed necessary to prevent or minimize damage to the stormwater system or waters of the state or United States, or to minimize danger to persons.
- (g) Any person discharging to the stormwater system in violation of this article may have their stormwater system access terminated if such termination would abate or reduce an illicit discharge. The city manager will notify a violator of the proposed termination of its stormwater system access. The violator may appeal the city manager's determination to the city council by filing a written notice of appeal with the city manager within ten business days of the city manager's decision. The city council shall review such appeal at a meeting of the council preceded by 15 calendar days' written notice of the meeting date to the violator. Following the meeting, the council shall issue its decision on the appeal in writing, which decision shall be final.
- (h) A person commits an offense if the person reinstates stormwater system access to premises terminated pursuant to subsection (g) of this section, without the prior approval of the city manager.

(Ord. of 3-21-2005, art. VII, § 2; Ord. of 10-17-2016(1), § 8.2; Ord. of 12-5-2022, § 9.2)

Sec. 38-573. Judicial enforcement.

- (a) The ordinance from which this article is derived shall constitute a civil ordinance within the meaning of 24 V.S.A. ch. 59.
- (b) Any person who violates a provision of this article or who violates any condition of a permit issued hereunder, including, but not limited to, failure to install an STP prior to the deadline established by the state's agency of natural resources, or to pay the stormwater mitigation fee when due, shall be subject to a violation which shall be punishable as a civil violation pursuant to section 1-14. Each day the violation continues shall constitute a separate violation.

PART II - CODE OF ORDINANCES
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- (c) Any law enforcement officer or the director of public works, water resources engineer, deputy director of public works, or stormwater superintendent may act as an issuing municipal official and issue and pursue before the judicial bureau a municipal complaint for any violation of any provision of this article.
- (d) In addition to the enforcement procedures available before the judicial bureau, the city manager is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law. Nothing herein shall be construed to limit other rights, remedies or penalties available by law.

(Ord. of 3-21-2005, art. VII, § 3; Ord. of 10-17-2016(1), § 8.3; Ord. of 12-5-2022, § 9.3)

State law reference(s)—Judicial bureau, 4 V.S.A. § 1102 et seq.; complaint signed by the issuing municipal official for civil ordinance violation, 24 V.S.A. § 1977.

Sec. 38-574. Waiver fee.

An issuing municipal official is authorized to recover a waiver fee, in lieu of a civil penalty, in the following amounts, for any person who declines to contest a municipal complaint and pays the waiver fee:

<i>Waiver Fees - Stormwater System Inspection and Enforcement</i>	
First offense	\$100.00
Second offense	\$250.00
Third offense	\$400.00
Fourth offenses	\$550.00
Fifth and subsequent offenses	\$700.00

(Ord. of 3-21-2005, art. VII, § 4; Ord. of 10-17-2016(1), § 8.4; Ord. of 12-5-2022, § 9.4)

Secs. 38-575—38-596. Reserved.