

Codes and Ordinances Committee

Councilor Peter Lachapelle, Chair
Councilor Elaine Lauterborn, Vice Chair
Councilor Tom Abbott
Councilor Chris Rice
Councilor Laura Hainey



Others Present

Terence O'Rourke, City Attorney
Jim Grant, Director BLS
Peter Nourse, Director of City Services
Renee Bourdeau, Geosyntec Consultants

CODES AND ORDINANCES COMMITTEE

Of the Rochester City Council

Thursday, May 6, 2021

31 Wakefield Street, Rochester, NH

Meeting conducted remotely

6:00 PM

Minutes

1. Call to Order

Chair Lachapelle called the Codes & Ordinances meeting to order at 6:00 PM and read the following preamble:

Good Evening, as Chairperson of the Codes & Ordinances Committee, I am declaring that an emergency exists and I am invoking the provisions of RSA 91-A:2, III (b). Federal, state, and local officials have determined that gatherings of 10 or more people pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19. In concurring with their determination, I also find that this meeting is imperative to the continued operation of City government and services, which are vital to public safety and confidence during this emergency. As such, this meeting will be conducted without a quorum of this body physically present in the same location.

a.) **Public Input:** Due to the ongoing situation with COVID-19, the City of Rochester will be taking extra steps to allow for public input, while still ensuring participant safety and social distancing. In lieu of attending the meeting, those wishing to share comments, when permitted, with the City Council (Public Hearing and/or Workshop settings) are encouraged to do so by the following methods:

- **Mail:** City Clerk/Public Input, 31 Wakefield Street, Rochester, NH 03867 (*must be received at least three full days prior to the anticipated meeting date*)
- **email** PublicInput@rochesternh.net (*must be received no later than 4:00 pm of meeting date*)

- **Voicemail** 603-330-7107 (*must be received no later than 12:00 pm on said meeting date in order to be transcribed*)

Please include with your correspondence the intended meeting date for which you are submitting. *All correspondence will be included with the corresponding meeting packet (Addendum).*

In addition to the above listed methods, the Committee will be allowing the public to enter City Hall and speak via video conferencing software for the Public Input portion of the agenda. Please approach the laptop on the podium in Council Chambers if you wish to speak

At this time, I also welcome members of the public accessing this meeting by phone. The public can call-in to the below number using the conference code. This meeting will be set to allow the public to “listen-in” only, and there will be no public comment taken via conference line during the meeting.

Phone number: 857-444-0744 Conference code: 843095

b.) **Roll Call:** Please note that all votes that are taken during this meeting shall be done by Roll Call vote.

Let’s start the meeting by taking a Roll Call attendance. When each member states their name (and/or ward), also please state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law. (Additionally, Council members are required to state their name and ward each time they wish to speak.)

Deputy City Clerk Cassie Givara took the roll call. The following councilors were present and indicated that they were alone in the location from which they were connecting remotely: Councilors Abbott, Hailey, Lachapelle, and Lauterborn .Councilor Rice was excused.

2. **Public Input**

There was no correspondence received for public input and there was no one present to speak.

3. **Acceptance of the Minutes**

3.1 **April 1, 2021 *motion to approve***

Councilor Lauterborn **MOVED** to approve the minutes of the April 1, 2021 Codes & Ordinances Committee meeting. Councilor Abbott seconded the motion. The **MOTION CARRIED** by a 4 – 0 roll call vote with Councilors Hailey, Lauterborn, Lachapelle, and Abbott all voting in favor.

4. **Code of Ordinances Review**

4.1 **Building, Zoning, and Licensing Services**

4.1.1 **Chapters 40: Building Construction & Property Maintenance**

Jim Grant, Director of Building and Licensing, reiterated that the purpose of these discussions and bringing the ordinance to the Codes Committee is to update the 2006 International Property Maintenance Code to the more recent 2015 Code.

Councilor Abbott stated that there are three parts of the code in particular which he felt needed to be addressed; 304.11, 305.11, and 306.11. He explained that these portions refer to unsafe or dangerous buildings which are to a point where occupancy would no longer be permitted; his concern is that the language contained is very specific and, if adopted, would take precedence over the general code. Councilor Abbott gave some details on where this language and specific requirements could cause problems. He said that these portions continuously refer back to either the International Building Code or the existing building code. The existing building code would only come into play when a property owner wants to make a repair, which would then trigger these specific requirements.

Director Grant responded that he felt some of the verbiage in the newer code made more sense, but if these individual portions were a sticking point it might be best to just remove them and still enforce the requirements under the general code.

Councilor Abbott stated that under the general code, some of the burden of proof is on the City/inspector to prove what is unsafe, whereas in the International Property Maintenance Code the language is much more specific. He stated that he would prefer to amend the Code to remove these particular sections referenced.

Councilor Abbott **MOVED** to delete in their entirety sections 304.11, 305.11, and 306.11. Councilor Hailey seconded the motion. The **MOTION CARRIED** by a 4 – 0 roll call vote with Councilors Lauterborn, Abbott, Lachapelle, and Hailey all voting in favor.

Councilor Abbott referenced section 102.3 which references other codes which are applicable and need to be updated to the current fire code. Councilor Abbott **MOVED** to amend section 102.3 to bring the reference code to compliance with the State adopted building code and fire codes. Councilor Hailey seconded the motion. The **MOTION CARRIED** by a 4 – 0 roll call vote with Councilors Lachapelle, Abbott, Hailey, and Lauterborn all voting in favor.

Councilor Abbott inquired about the means of appeal; whether the City would follow the method laid out by RSA 48-A or if there should be a board put together to perform this function under the property maintenance code. Director Grant stated that the current method is an appeal of administrative decision and the ZBA. Councilor Abbott suggested that if there is going to be a fee for appeals, if the board overturns a decision then the petitioner should get their money back. There was discussion on what a new board would consist of and criteria for its members. Attorney O'Rourke said that the ZBA is the current means of appeals; when reviewing statements of interest which come in for new ZBA members, the applications can be reviewed to see if any of them would be qualified for a position on this new appeals board. Attorney O'Rourke cautioned that it is already difficult to fill vacant positions on existing City boards let alone a newly formed board which would require specific criteria. Councilor Abbott asked if the City would be able to adopt one of the appeals methods as contained in the housing standards as opposed to the ZBA. Attorney O'Rourke said he would look into the options.

Councilor Abbott **MOVED** to recommend the amendments to Chapter 40 to the full Council. Councilor Hainey seconded the motion. The **MOTION CARRIED** by a 4 – 0 roll call vote with Councilors Lachapelle, Hainey, Lauterborn, and Abbott all voting in favor.

4.2 Department of Public Works

4.2.1 Chapter 218: Stormwater Management & Erosion Control

Chairman Lachapelle said this information was heard by the Planning Board the previous month and supported unanimously. He stated that the changes proposed are dictated by State law.

Peter Nourse, Director of City Services, stated that he wanted to update the revisions to chapter 218 which are required to be implemented under State law. Director Nourse gave an overview of the MS4 permit, its history and scope, and the requirements included. He stated that there were several differences between the 2017 permit and the revised 2020 permit, including regulations for nitrogen discharge which had not been included in the earlier permit.

Renee Bourdeau, Geosyntec Consultants stormwater engineer, gave a presentation highlighting what is contained in chapter 218 and the revisions being made.

Councilor Hainey asked about the slide which referenced “using low impact development techniques” and asked for an example. Ms. Bourdeau said this refers to maintaining natural drainage patterns on site, making the smallest disturbance on site as possible by leaving trees and foliage in place; in essence, the idea is to maintain current conditions as much as possible while the area is being developed.

Councilor Abbott asked about what the changes would be for the average small home builder, for a single family home. Director Nourse said the trigger levels were left at 5,000 sqf and 20,000 sqf which would exclude most small home owners. The storm water construction requirements are enhanced, but these smaller developments would not be subject to the enhanced regulations. Ms. Bourdeau agreed that this doesn’t change much for a single-family home owner.

Councilor Abbott **MOVED** to recommend the amendments to Chapter 218 to full City Council. Councilor Hainey seconded the motion. The **MOTION CARRIED** by a 4 – 0 roll call vote with Councilors Abbott, Lauterborn, Lachapelle, and Hainey all voting in favor.

There was a discussion about which DPW chapters should be included for the next Codes and Ordinances Committee agenda. Director Nourse said that the water and sewer ordinances are complex and would possibly take multiple meetings in order to discuss all the suggested changes. Staff is currently still working on the amendments and may need another month before they are ready to be presented. The water ordinance was scheduled for August 5 Codes & Ordinances Committee.

5. Discussion: Ethics Committee & Code

Chairman Lachapelle stated that there had been a first session of the working group to develop the structure and mission of an ethics committee. City Attorney O’Rourke will be drafting

some Rochester-specific language after which another session or two will follow to further refine the committee. He stated that the working group would come back to the Codes & Ordinances committee once their work was complete within the next 2-3 weeks before finally going to full Council for a vote.

Councilor Lauterborn asked who was in the working group. Chairman Lachapelle stated that the group is made up of himself, Councilor Hutchinson, Councilor Belken, Councilor Walker, school board member Matt Pappas, school board member David Camire, and Police Commissioner Derek Peters.

**6. Discussion: Amendment to the General Ordinances of the City of Rochester
 Creating Chapter 41, Disorderly Residence**

Councilor Hainey stated that she did not have anything new to report and asked that this item be removed from the agenda for future meetings.

7. Other

Chairman Lachapelle announced that the meeting for June would be cancelled and opened the floor for discussion on whether or not to hold a meeting in July. The consensus of the Committee was to postpone any Codes meetings until August 5, 2021 at 6:00 PM.

8. Adjournment

Chairman Lachapelle **ADJOURNED** the Codes & Ordinances Committee meeting at 6:57 PM.

Respectfully Submitted,

Cassie Givara
Deputy City Clerk

Amendments to Chapter 40 of the General Ordinances of the City of Rochester

THE CITY OF ROCHESTER ORDAINS:

That Chapter 40 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in **RED**):

Chapter 40

Building Construction and Property Maintenance

[**HISTORY: Adopted by the City of Rochester 6-6-1995 as Ch. 40 of the 1995 Code. Amendments noted where applicable.**]

GENERAL REFERENCES

Fires and fire safety — See Ch. **75**.

Health and sanitation — See Ch. **94**.

Nuisances — See Ch. **149**.

Sewers — See Ch. **200**.

Stormwater management and erosion control — See Ch. **218**.

Water — See Ch. **260**.

Zoning — See Ch. **275**.

§ 40-1 Statutory authority.

The provisions of New Hampshire Revised Statutes Annotated Chapter 673, as amended, pertaining to an inspector of buildings, building plans, regulations, and appeal are hereby adopted.

§ 40-2 Building Code Board of Appeals.

The power of a Building Code Board of Appeals in Chapter 673 of the New Hampshire Revised Statutes Annotated shall be vested in the Rochester Zoning Board of Adjustment.

§ 40-3 Recognition and adoption of State Building Code and State Fire Code.

[Amended 4-19-2005]

The City of Rochester hereby recognizes that the State Building Code under RSA 155-A and the State Fire Code under RSA 153 are applicable within the City of Rochester and for enforcement purposes adopts the provisions of the same.

§ 40-4 Department of Building, Zoning, and Licensing Services.

[Amended 4-19-2005; 10-15-2013]

For enforcement purposes by the City of Rochester, all references in the State Building Code under RSA 155-A, or in any applicable successor code, to the "department of building safety" shall be deemed to refer to the Department of Building, Zoning, and Licensing Services for the City of Rochester, and all duties as defined therein, including those imposed upon the "Building Official," shall be assumed by said Director of the Building, Zoning, and Licensing Services Department, along with the right to enforce the same.

§ 40-5 Adoption of other codes.

[Amended 4-19-2005; 9-4-2007; 5-18-2010; 10-15-2013]

- A. Pursuant to the provisions of RSA 42:8, 47:17, 47:22, 674:51 and 674:51-a and any other State law delegating authority to do so, there are hereby adopted by the City of Rochester for the purpose of establishing rules and regulations, including the issuance of permits for the construction, alteration, removal, demolition, equipment, location, maintenance, use and occupancy of buildings and structures, installation of plumbing, use of concrete, masonry, metal, iron and wood, and other building material, the installation of electric wiring, and fire protection incident thereto and for the prevention of fires, the following codes:
- (1) International Property Maintenance Code (2006 2015 edition), published by the International Code Council, Inc., Copyright 2006 2015 with the following additions and deletions:

Section 101.1. Insert: [City of Rochester]

Section 304.14. Insert: [May 15th to September 1st]

Section 602.3. Insert: [September 1st to May 15th]

Section 602.4. Insert: [September 1st to May 15th]

[A] 102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the ~~International Building Code, International Existing Building Code, International Energy Conservation Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Residential Code, International Plumbing Code~~ and NFPA-70 State Fire Code as defined in RSA 153:1, VI-a and the State Building Code as defined in RSA 155-A:1, IV. Nothing in this code shall be construed to cancel, modify or set aside any provision of ~~the International Zoning Code~~ Rochester Zoning Ordinances contained in Chapter 275.

[A] 112.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of ~~not less than [AMOUNT] dollars or more than [AMOUNT] dollars~~ in accordance with RSA 676:17.

Delete sections 103.5, 302.4, 304.1.1, 305.1.1, & 306.1.1

- (2) International Existing Building Code, as codified at RSA ~~453~~ 155-A. [Amended 8-6-2019]
- B. Three copies of each of the aforesaid codes have been and are now on file in the office of the City Clerk of the City of Rochester and three copies of such codes are filed with the Department of Building, Zoning, and Licensing Services for the City of Rochester. Such codes are hereby adopted and incorporated as fully as if set out at length herein, and from the date on which this section shall take effect, the provisions thereof shall be controlling on the construction of all buildings and other structures within the corporate limits of the City of Rochester. There are annexed to such of the aforesaid codes, as filed in the office of the City Clerk and the Department of Building, Zoning, and Licensing Services, as set forth below, the following exhibits setting forth the insertions in, deletions from, exceptions to and/or changes in such codes, which insertions, deletions, exceptions and/or changes are adopted as part

of the aforementioned codes:

- (1) ~~Exhibit A, Statement dated September 4, 2007, of insertions in, deletions from, exceptions to and changes in the International Property Maintenance Code (2006 edition) by the City of Rochester, New Hampshire.~~
- (2) Exhibit A, Statement dated January 4, 2011, of insertions in, deletions from, exceptions to and changes in the International Existing Building Code (2009 edition) by the City of Rochester, New Hampshire.

§ 40-6 Life Safety Code.

[Amended 4-19-2005; 8-6-2019]

The duties defined in and the enforcement of the Life Safety Code, as codified at RSA 153 or any applicable successor code, shall be assumed by the Fire Chief of the City of Rochester or his/her authorized representative.

§ 40-7 Electrical Code and Property Maintenance Code.

[Amended 4-19-2005; 9-4-2007; 10-15-2013; 8-6-2019]

The duties defined in and the enforcement of the NEC 2005, National Electrical Code, as codified by RSA 155-A, and the International Property Maintenance Code (2006 2015 edition), or any applicable successor codes, shall be assumed by the Director of Building, Zoning, and Licensing Services or his/her authorized representative.

§ 40-8 Plumbing Code.

[Amended 4-19-2005; 9-4-2007; 10-15-2013; 3-5-2019; 8-6-2019]

The duties defined in and the enforcement of the International Plumbing Code, as codified at RSA 155-A, or any applicable successor code, shall be assumed by the Director of Building, Zoning, and Licensing Services, or his/her authorized representative, except as otherwise provided in Chapter 200, Sewers, of the Code of the City of Rochester where the same are defined as the duties of the Commissioner of Public Works, with inspections to be done by the Director of Building, Zoning, and Licensing Services or an authorized member of the Division of Water Supply Works or Division of Sewage and Waste Treatment Works.

§ 40-9 Regulation of construction storage yards.

Any individual or entity engaged in excavation, development, construction, building, and/or similar project within the City and involving the outside storage of construction and/or related equipment and/or materials shall forthwith cease to store such equipment and/or materials upon the premises involving such excavation, development, construction, building and/or similar project upon the expiration of the building permit or other similar authorization for such project, or upon the written notification by the City Engineer that such project has been completed, whichever event shall first occur. Upon removal of such equipment and/or material upon the completion of a project, the land disturbed by such storage shall be returned to its original state.

§ 40-10 Right of entry.

[Amended 10-15-2013]

The Director of Building, Zoning, and Licensing Services, the Fire Chief, or their authorized representatives in the discharge of their official duties and upon proper identification shall have authority to enter any building, structures, or premises at any reasonable hour.

§ 40-11 Definitions.

Where the word "municipality" is used in any code adopted herein, it shall be deemed to mean the City of

Rochester. Where the words "corporate counsel" or "legal representative" are used in any code adopted herein, they shall be deemed to refer to the Rochester City Solicitor.

§ 40-12 Violations and penalties.

- A. Any person who shall violate any provisions of any code adopted herein, or fail to comply therewith or with any requirements thereof, or who shall erect, construct, alter, or repair or has erected, constructed, altered, or repaired a building or structure or portion thereof in violation of a detailed statement or plan submitted and approved thereunder, or of a permit or certificate issued thereunder, shall be punishable by a civil penalty of two hundred seventy-five dollars (\$275.) for the first offense and five hundred fifty dollars (\$550.) for subsequent offenses, for each day that such violation is found by a court to continue after the conviction date or after the date on which the violator receives written notice from the City that he/she is in violation thereof, whichever date is earlier. Each day that a violation continues shall be a separate offense. The owner of a building or structure or portion thereof or of the premises where anything in violation of any code adopted herein shall be placed or shall exist, and an architect, building contractor, agent, person or corporation employed in connection therewith and who may have assisted in the commission of such violation, shall be guilty of a separate offense and upon conviction thereof shall be punishable by a civil penalty of two hundred seventy-five dollars (\$275.) for the first offense and five hundred fifty dollars (\$550.) for subsequent offenses, for each day that such violation is found by a court to continue after the conviction date or after the date on which the violator receives written notice from the City that he/she is in violation thereof, whichever date is earlier. Each day that a violation continues shall be a separate offense. **[Amended 4-5-2016; 3-5-2019]**
- B. The imposition of the penalties herein prescribed shall not preclude the City Solicitor from instituting an appropriate action or procedure to prevent any unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, or to restrain, correct or abate a violation or to prevent the occupancy of a building, structure, or premises, or portion thereof, or of the premises, or to prevent an illegal act, conduct, business or use in or about the premises.

~~**§ 40-13 Fire limits established.**~~
~~**[Amended 3-5-2019]**~~

~~The fire limits for the City of Rochester are hereby established as those areas classified as Downtown Commercial, Office Commercial and Highway Commercial Districts and adjacent to North and South Main Streets in Rochester proper and Main Streets in Gonic and East Rochester, so called, as shown on the Zoning Maps, as an overlay, adopted as part of the Zoning Ordinance, adopted on March 4, 1986, which are incorporated herein by specific reference thereto.~~

§ 40-14 More restrictive provisions to apply.

When the provisions of any codes adopted herein cover essentially the same subject matter, the more restrictive provisions shall apply.

§ 40-15 Permits.

- A. Permits shall be obtained from the Director of Building, Zoning, and Licensing Services for the construction, alteration, removal, demolition, or repair of any foundation, footing, building or structure or for the installation of plumbing, use of concrete, masonry, metal, iron and wood, and other building material, the installation of electric wiring, and fire protection incident thereto for the prevention of fires, including but not limited to swimming pools, signs, and fences, except that no permit shall be required for painting, papering, laying floors, or upkeep in maintenance of any structure. Separate permits shall be required for building, electrical, plumbing, mechanical, fire protection, and demolition.

Commented [1]: Editor's Note: See Ch. 275, Zoning. Original § 40.14, Access to basements, which immediately followed this section, was repealed 9-6-2011.

Prior to the issuance of a foundation or building permit by the Director of Building, Zoning, and Licensing Services, the applicant for such permit shall file with the Department of the Building, Zoning, and Licensing Services a foundation certification plan bearing the stamp of a New Hampshire licensed land surveyor and containing a statement from such surveyor to the effect that the proposed building or structure complies with all applicable building or structure setback requirements and that no portion of the new building or structure is located within any of the setback areas required by law. The requirement for a foundation certification plan may be waived, in writing, by the Director of Building, Zoning, and Licensing Services if, in the discretion of the Director of Building, Zoning, and Licensing Services there are reasonable grounds to conclude that the preparation and submission of a foundation certification plan is unnecessary to ensure that the new building or structure does not violate any required setback. **[Amended 6-15-1999; 6-15-2004; 10-15-2013]**

- (1) The following fees shall be charged for said permits, based upon the estimated cost of construction as presented to the Director of Building, Zoning, and Licensing Services upon application forms provided by him/her: on proposed work, the fee of nine dollars (\$9.) per one thousand dollars (\$1,000.) of estimated cost of work, or any portion thereof, with a minimum fee of ten dollars (\$10.), in addition to an application fee of ten dollars (\$10.) for each permit. The following permits shall be a charged only the minimum permit fee of ten dollars (\$10.), in addition to an application fee of ten dollars (\$10.) for each permit: **[Amended 10-1-2019]**
 - (a) Fences.
 - (b) Roofing (re-shingling only).
 - (c) Siding.
 - (d) Sheds under 200 square feet.
 - (e) Window Replacements.
- (2) Each building permit shall expire 12 months from the date of issuance unless renewed by the Director of Building, Zoning, and Licensing Services prior to the expiration date. Any renewal shall require reapplication and payment of required fees based on the remaining work to be done. The Director of Building, Zoning, and Licensing Services may issue no building permit until such other permits or approvals as may be required by any code, other ordinances, or state statutes have been acquired.
- (3) ~~A separate permit shall be required for staging, scaffolding, platforms, or other similar equipment to be erected on private property that is to be erected for a period exceeding 30 days. Said permit shall expire 12 months from the date of issue and all equipment shall be removed upon said expiration or upon completion of the work, whichever comes first. The fee for said permit shall be five dollars (\$5.). The City reserves the right to revoke, deny, or not reissue said permit if work required is not being actively pursued in a timely or otherwise reasonable manner.~~
- (4) Fees for building permits shall be waived for an honorably discharged veteran or an active duty, National Guard or reserve member of the United States Armed Forces who plans to construct or have constructed for himself/herself a home or appurtenance to a home already owned by him/her for exclusive occupancy by himself/herself and his/her immediate family. **[Amended 1-12-2016]**

- (5) Permits issued to or for the City of Rochester are exempt from the above fees.
- B. The estimated cost of construction for purposes of Subsection **A** of this section shall be calculated on the following basis: **[Amended 9-4-2007; 1-4-2011]**
- (1) For contract work, new buildings and newly constructed additions, the building permit fee shall be based on the greater of all contract/construction costs associated with the total construction project or the cost of construction as determined using the latest "Building Valuation Data" as published periodically by the International Code Council. When construction costs are determined using the "Building Valuation Data" as published by the International Code Council, such costs shall be multiplied by a modification factor of 0.60. Construction costs shall include, but not be limited to, pile driving, foundations, structural and nonstructural framing, interior finish (as regulated by this chapter), fire protection systems and any other work which would render the building complete and ready for occupancy. **[Amended 3-5-2019]**
- (2) For non-contract work, not covered under Subsection **B(1)**, such as when a homeowner furnishes his/her own or has furnished free labor but purchases the materials, the fee shall be based on the actual cost of all materials with a multiplier of two applied. For example, total materials of five thousand dollars (\$5,000.): $\$5,000 \times 2 = \$10,000$. The permit fee would therefore be ninety dollars (\$90.) (or $10.0 \times \$9$). If, in the opinion of the Building Official, the cost of construction is underestimated on the application, the permit shall be denied, unless the applicant can show detailed documentation to meet the approval of the Building Official. Final building permit cost of construction shall be approved by the Building Official.
- (3) Any person who is found to have demolished, constructed, altered, removed, or changed the use of a building or structure without the benefit of a building, electrical, plumbing, mechanical, fire protection or demolition permit shall, ~~upon application for said permit(s),~~ **before issuing the permits,** be assessed a permit fee of twice the normal rate outlined in Subsection **A** of this section or twenty-five dollars (\$25.), whichever is greater. Example: Cost of materials = \$15,392; Labor = Self; Permit Fee = $16.0 \times \$9 \times 2$ (self labor) $\times 2$ (added fee) = \$576.
- (4) In the case of a revocation of a permit or abandonment or discontinuance of a building project, the portion of the work actually completed shall be computed and any excess fee for the uncompleted work shall be returned to the permit holder upon written request. All plan examination and permit processing fees and all penalties that have been imposed on the permit holder under the requirements of this chapter shall first be collected. The permit processing fee shall be 10% of the building permit application fee with a minimum fee of ten dollars (\$10.). **[Amended 3-5-2019]**

§ 40-16 Prospective application.

Nothing in this chapter or in the codes hereby adopted shall be construed to affect any suit or proceeding now pending in any court or any rights acquired or liability incurred, nor any causes of action accrued or existing, under any act or ordinance repealed hereby, nor shall any right or remedy of any character be lost, impaired, or affected by this chapter. This chapter shall have prospective application only.

§ 40-17 Severability.

The invalidity of any section or provision of this chapter or of the codes hereby adopted shall not invalidate any other sections or provisions thereof.

§ 40-18 Cleanup of construction sites.
[Amended 2-4-1997; 10-15-2013]

Within 30 days of the issuance of a certificate of occupancy or, in the case of a project which is terminated or delayed indefinitely, within 30 days of appropriate notification by the Director of Building, Zoning, and Licensing Services, the land at any construction site must be reclaimed. Such reclamation includes removal of all vehicles, equipment, materials, and temporary structures related to the construction project and restoration of any disturbed land to a grassed, planted, or otherwise erosion-free condition.

Amendments effective upon passage.

Chapter 218

STORMWATER MANAGEMENT AND EROSION CONTROL

§ 218-1. Purpose and objectives	§ 218-10. Post-construction stormwater management design standards
§ 218-2. Authority; when effective	§ 218-11. Installation, construction, maintenance and inspection requirements and responsibility
§ 218-3. Jurisdiction	§ 218-12. As-built plans and certification
§ 218-4. Severability	§ 218-13. Other required permits
§ 218-5. Amendments	§ 218-14. Illicit discharge and connection
§ 218-6. Definitions and abbreviations	§ 218-15. Waivers
§ 218-7. Applicability	§ 218-16. Enforcement and penalties
§ 218-8. Application; plan review and approval	
§ 218-9. Construction site erosion control design standards	

(HISTORY: Adopted by the City of Rochester 6-6-1995 as Ch. 50 of the 1995 Code. Amendments noted where applicable.)

§ 218-1. Purpose and objectives

- A. This chapter provides for the health, safety, and general welfare of the citizens of the City of Rochester through the regulation of discharges into the City's stormwater drainage system, water bodies, streams, and wetlands in a manner compliant with the requirements of state and federal law, including the provisions of the Clean Water Act governing discharges from municipal separate storm sewer systems (MS4s), as amended. The objectives are as follows:
- (1) Prohibit unpermitted discharges.
 - (2) Set forth the legal authority and procedures to carry out all inspection, monitoring, and enforcement activities necessary to ensure compliance with this chapter and applicable state and federal laws.
 - (3) Establish design, construction, and post-construction standards for stormwater drainage systems to improve stormwater management, minimize future costs to the City, protect the integrity of the City's water resources, reduce pollution of water bodies, and be compliant with other local, state, and federal regulations. These standards shall be used as part of any Site Plan and Subdivision review processes governing new construction, redevelopment, or any land disturbance activity as well as in the issuance of a stormwater, driveway, or building permits where applicable for any land disturbances.
- B. The provisions and standards of this chapter are implemented for the following purposes:
- (1) Managing stormwater runoff to protect water quality and quantity

- (2) Reducing pollutant contributions to a waterbody that is or may become impaired
- (3) Improving water quality of stormwater runoff discharged to drainage systems, surface water bodies, or wetlands
- (4) Taking preventative measures to avoid increasing stormwater runoff volumes and peak flow rates onto adjacent property more than existing stormwater runoff volumes and peak flow rates under current developed or undeveloped conditions

§ 218-2. Authority; when effective

- A. Authority is based on the following New Hampshire statutes that enable local regulation of stormwater as a component of zoning and land use:
 - (1) RSA 674:16 – Grant of Power
 - (2) RSA 674:17 – Purposes of Zoning Ordinances
 - (3) RSA 674:21 – Innovative Land Use Controls
 - (4) RSA 674:36 – Subdivision Regulations
 - (5) RSA 674:44 – Site Plan Review Regulations
- B. Additional Authority for Regulation of Stormwater Discharge
 - (1) RSA 149-I:6 provides municipal authority to regulate stormwater, independent of land use regulations.
- C. This chapter is adopted pursuant to the authority vested in the following:
 - (1) The City Council pursuant to RSA 47:13, 47:17, 38:26, 149-I:3 and 149:1:6 **(Amended at time of adoption of Code [see Ch. 1, General Provisions, Art. II])**
 - (2) The Planning Board pursuant to RSA 674:35, 674:36, 674:44 and 155-E:11
 - (3) The Building, Zoning, and Licensing Services Department pursuant to RSA 147:1 and 147:14.1 **(Amended at time of adoption of Code [see Ch. 1, General Provisions, Art. II])**
- D. This chapter shall become effective upon adoption by the City of Rochester City Council, in accordance with the statutory sections identified above.

§ 218-3. Jurisdiction

- A. This chapter shall pertain to all land within the boundaries of the City of Rochester, New Hampshire.
- B. In any case where a provision of this chapter is found to be in conflict with a provision of any other ordinance, regulation, code, or covenant in effect in the City of Rochester or with any state statute, with particular reference to New Hampshire RSA 676:14, 674:16 and 674:17 and the relevant subsections therein, the provision which is the more restrictive shall prevail.

§ 218-4. Severability

The invalidity of any section, subsection, paragraph, sentence, clause, phrase, or word of this chapter shall not be held to invalidate any other section, subsection, paragraph, sentence, clause, phrase, or word of this chapter.

§ 218-5. Amendments

This chapter may be amended by the approval of the several boards or entities identified in § 218-2 Authority; when effective above, provided that each such agency complies with any applicable statutory or local procedures governing its authority to adopt such ordinance. Amendments to zoning aspects shall be approved by City Council.

§ 218-6. Definitions and abbreviations

As used in this chapter, the following terms shall have the meanings indicated:

BEST MANAGEMENT PRACTICE (BMP) — A proven or accepted structural, nonstructural, or vegetative measures, maintenance procedures, and other management practices, the application of which reduces or prevents discharges of pollutants, erosion, sediment, or peak storm discharges to improve the quality of stormwater runoff.

BUFFER — A designated protected area along a watercourse or wetland where development is restricted or prohibited. See the City's Conservation Overlay District Ordinance, Article XII(c) for specific details on buffer setbacks and permitted uses within buffers.

CITY — The City of Rochester, New Hampshire.

CITY ENGINEER — Intended to refer to and identify the City Engineer or his/her designee or any qualified engineering consultant which the City Council, City Manager, Planning Board, Building, Zoning, and Licensing Services Department, Commissioner of Public Works, or their designee(s) engage(s) for the purpose of reviewing any application or plan submitted in accordance with this chapter or determining compliance herewith, when, in their judgment, such review is appropriate or necessary in order to ensure compliance with this chapter or determine if the provisions hereof have been violated. **(Amended at time of adoption of Code [see Ch. 1, General Provisions, Art. II])**

CONTIGUOUS — Land sharing a common border.

CRITICAL AREAS —

Land disturbance of any size where any one of the following applies:

- 1) Within a designated Buffer as defined in the City's Conservation Overlay District Ordinance, Article XII(c).
- 2) Within 50 feet of a watercourse or a stream not identified in the City's Conservation Overlay District Ordinance
- 3) Within a 100-year floodplain identified on the most current effective Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map
- 4) Land disturbance exceeding 2,000 square feet in highly erodible soils

- 5) Land disturbance containing slope greater than 25%

CRITICAL HABITAT — Habitat needed to support recovery of listed species. When a species is listed under the Endangered Species Act, the State of New Hampshire Fish and Game is required to determine whether there are areas that meet the definition of critical habitat. These are defined as:

- 1) Specific areas within the geographical area occupied by the species at the time of listing that contain physical or biological features essential to conservation of the species and that may require special management considerations or protection; and
- 2) Specific areas outside the geographical area occupied by the species if the agency determines that the area itself is essential for conservation.

DEPARTMENT OF PUBLIC WORKS (DPW) — The term “DPW” when used in this chapter to designate the reviewing, approval, or enforcement authority hereunder, is intended to refer to and identify the City Engineer or any qualified professional engineering consultant which the City Council, City Administrator, Planning Board, Department of Building, Zoning and Licensing Services, DPW Director, or designees engage(s) for the purpose of reviewing any application or plan submitted in accordance with this chapter or determining compliance herewith.

DEVELOPMENT — Any construction or land disturbance or grading activities other than for agricultural and silvicultural practices. (See also New Development and Redevelopment below)

DISCONNECTED IMPERVIOUS COVER — The portion of impervious cover that is not hydraulically connected to a receiving body of surface water by means of continuous paved surfaces, gutters, drainage pipes or other conventional conveyance. Impervious cover that is treated by Low-Impact Development (LID), as defined in this chapter, is a disconnected impervious cover.

EFFECTIVE IMPERVIOUS COVER — The portion of impervious cover area that is hydraulically connected to the receiving body of surface water by means of continuous paved surfaces, gutters, drainage pipes or other conventional conveyance. Effective impervious cover is the area resulting from impervious cover minus disconnected impervious cover minus treated area.

ENVIRONMENTAL PROTECTION AGENCY (EPA) — The federal agency of the United States responsible for implementing the Clean Water Act, including the National Pollutant Discharge Elimination System (NPDES) program.

HIGHLY ERODIBLE SOILS — Any soil with an erodibility class (K factor) greater than or equal to 0.43 in any layer as found in Table 3-1 of the *Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire* (August 1992 or as updated).

EROSION — The detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

FILTRATION — The process of physically or chemically removing pollutants from stormwater runoff. Filtration includes practices that capture and store stormwater runoff and pass it through a filtering media such as sand, organic material, or the native soil for pollutant removal. Stormwater filters are primarily water quality control devices designed to remove particulate pollutants and, to a lesser degree, bacteria, and nutrients.

GROUNDWATER RECHARGE — The process by which water seeps into the ground and eventually replenishes groundwater aquifers and surface waters such as lakes, streams, and the oceans. Groundwater recharge maintains flow in streams and wetlands and preserves water table levels that

support drinking water supplies.

GROUNDWATER RECHARGE VOLUME (GRV) — Volume of stormwater runoff to be infiltrated as calculated in accordance with New Hampshire Code Admin. R. Part Env-Wq 1504.12.

IMPERVIOUS COVER — Those surfaces that cannot effectively infiltrate rainfall consisting of surfaces such as building rooftops, pavement, sidewalks, driveways, compacted gravel (e.g., dense graded aggregate [with fines] used in walkways, driveways, and parking lots).

INFILTRATION — The process of stormwater runoff percolating into the ground (subsurface materials), including stormwater treatment practices designed to capture stormwater runoff and infiltrate it into the ground over a period of days.

LAND DISTURBANCE — Action to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavating, cutting, and filling), soil compaction, and movement and stockpiling of topsoil.”

LARGER PLAN OF DEVELOPMENT — A project in which different parts of a property or properties that are under a common plan of development are either planned to be developed or are developed in geographical or time-based phases.

LOW-IMPACT DEVELOPMENT (LID) — LID is a site planning and design strategy intended to maintain or replicate predevelopment hydrology through the use of site planning, source control, and small-scale practices integrated throughout the site to prevent, infiltrate, and manage stormwater runoff as close to its source as possible. Examples of LID strategies are pervious pavement, rain gardens, green roofs, bioretention basins and swales, filtration trenches, and other functionally similar BMPs located near the stormwater runoff source.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) — A federal permit program administered by the EPA governing stormwater discharges under Section 402 of the Clean Water Act.

NEW DEVELOPMENT —Any construction, land disturbance, or improvement of a site or structure with less than 40% existing impervious cover, as described in § 218-10 Post-construction stormwater management. Calculated by dividing the total existing impervious cover by the size of the site and convert to a percentage.

NOTICE OF INTENT (NOI) — Document to apply for coverage under the EPA's construction general permit for stormwater discharges from construction activities.

NOTICE OF TERMINATION (NOT) — Document to end coverage of a construction activity under the EPA's construction general permit.

PROJECT AREA — Area within the subdivision or site plan boundaries plus any areas with associated off-site improvements.

POLLUTANT — Sediments, total suspended solids (TSS), phosphorus, nitrogen, metals, pathogens, floatable debris, thermal impacts, and oil and other petroleum products. Pollutant also means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean water, gas, other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes is approved by authority of the State of New Hampshire and if the State determines that such injection or disposal will not result in the degradation of ground

or surface water resources.

POLLUTANT LOAD — An estimated amount of pollutants that is discharged to a receiving waterbody typically measured in units of concentration or mass per time (i.e. concentration (mg/L) or mass (lbs./day)) on an average annual basis.

QUALIFIED PROFESSIONAL — A person knowledgeable in the principles and practice of stormwater management and erosion and sedimentation control, including a Certified Professional in Erosion and Sediment Control (CPESC), a Certified Professional in Storm Water Quality (CPSWQ) or a licensed Professional Engineer (PE).

RETENTION — The amount of precipitation on a drainage area that does not escape as stormwater runoff. It can be expressed as the difference between total precipitation and the sum of the total stormwater runoff, total evaporation, and total infiltration from an area.

REDEVELOPMENT — Any construction, land disturbance, or improvement on a site that has 40% or more of existing impervious cover area, as described in § 218-10 Post-construction stormwater management. Calculated by dividing the total existing impervious cover area by the parcel size area and convert to a percentage.

SEDIMENT — Solid material, either mineral or organic, that is in suspension, is transported, or has been moved from its site of origin by erosion.

SEWAGE — Domestic and industrial wastewater generated by a community and conveyed in sanitary sewer pipes to treatment facilities.

SITE — A parcel or right-of way area where construction activities are proposed including but not limited to the creation of new impervious cover and improvement of existing impervious cover

STABILIZED — When the soil erosion rate approaches that of undisturbed soils. Soils which are disturbed will be considered stabilized when one of the following is achieved:

- a. A minimum of 85% vegetative cover has been established.
- b. A minimum of 3 inches of nonerosive material such as stone or riprap has been installed.
- c. Erosion control blankets have been installed in accordance with Env-Wq 1506.03.

STEEP SLOPE — Slopes greater than 25 percent.

STORMWATER MANAGEMENT AND EROSION CONTROL PLAN (SMECP) — A plan required by the City which outlines project features, proposed temporary and permanent erosion control features, maintenance schedules and practices, and design basis used to establish temporary and permanent stormwater design features.

STORMWATER PERMIT (SWP) — A permit issued by the City of Rochester per the requirements outlined in this chapter.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP) — A plan required by the Environmental Protection Agency (EPA) that clearly describes appropriate pollution control measures and includes a description of all pollution control measures (e.g., BMPs) that will be implemented as part of the construction activity to control pollutants in stormwater discharges and describes the interim and permanent stabilization practices for the site.

STORMWATER RUNOFF — The water from precipitation that is not absorbed, evaporated, retained, or otherwise stored within the contributing drainage area.

STREAM — Areas of flowing water occurring for sufficient time to develop and maintain defined channels, but which may not flow during dry portions of the year. This includes all perennial and intermittent streams located on U.S. Geological Survey Maps.

TREATED AREA — The area of impervious cover from which stormwater runoff is treated by a stormwater BMP or LID as per the requirements of this chapter.

WATERCOURSE — Any body of water flowing in an identifiable channel or course at least six months of the year.

WATER QUALITY VOLUME (WQV) — Volume of stormwater runoff to be retained or treated as calculated in accordance with New Hampshire Code Admin. R. Part Env-Wq 1504.10.

§ 218-7. Applicability (Amended at time of adoption of Code [see Ch. 1, General Provisions, Art. II])

This chapter shall apply to any action that will hinder, alter, add to, or modify the existing stormwater flow, drainage, and/or related infrastructure and any discharges into the stormwater drainage system, water bodies, watercourse, streams, and wetlands within the City of Rochester

A. Requirement for Stormwater Permit (SWP).

Except as permitted by this chapter, no person shall alter land or engage in any activity which causes or contributes to stormwater runoff discharge without first having obtained a Stormwater Permit (SWP) from DPW for the activities listed in (1) and (2) below. Activities exempt from this chapter are described in Section § 218-7, Part B.

- (1) Any land disturbance activity within a Critical Area
- (2) Any land disturbance activity more than 5,000 square feet

Nothing in this chapter shall be a defense from noncompliance associated with a stricter standard set forth in a federal NPDES permit requirement and/or imposed under the New Hampshire Department of Environmental Services (NHDES) programs.

B. Exemptions

The following allowed activities listed in (1) through (7) below are exempt from the requirements of this chapter.

- (1) Small projects that will result in less than 5,000 square feet of land disturbance and are located outside of Critical Areas, provided that minimum erosion control measures are applied (refer to § 218-9 Construction site erosion control design standards).
- (2) Normal maintenance and improvement of land in agricultural use provided in the *Manual of Best Management Practices (BMP's) for Agriculture in New Hampshire* as established by the New Hampshire Department of Agriculture, Markets and Food dated June 2011, or as amended.
- (3) Maintenance of existing landscaping, gardens, or lawn areas.
- (4) The construction of any fence that will not alter existing terrain or drainage patterns.

- (5) Construction of utilities (gas, water, sewer, electric, telephone, storm drainage, etc.), disturbing less than 20,000 contiguous square feet, within the limits of an existing paved roadway that will not increase impervious area, or permanently change drainage patterns, and where construction trenches are stabilized at the end of each working day.
- (6) Disturbance solely related to maintenance and improvement of an existing street or road unless an increase in impervious area is proposed and the disturbance is greater than 20,000 square feet. This exemption applies for roadway projects that do not disturb highly erodible soils (e.g., reclaim and pave, resurfacing, milling).
- (7) Emergency repairs to any stormwater management facility or practice that poses a threat to public health or safety, or as deemed necessary by the Department of Building, Zoning and Licensing Services and DPW.

C. Requirement for Stormwater Management and Erosion Control Plan

Proposed projects meeting one or more of the following conditions listed below shall also, as part of the SWP application, submit a Stormwater Management and Erosion Control Plan (SMECP) to the DPW.

- (1) A cumulative land disturbance exceeding 20,000 square feet, whether the project is or is not part of a larger plan of development.
- (2) A subdivision of four or more lots (i.e., Major Subdivision).
- (3) Phasing of three or more contiguous lots per year of an existing or proposed subdivision.
- (4) Construction of utilities (gas, water, sewer, electric, drainage, telephone, etc.) requiring contiguous land disturbance of greater than 20,000 square feet.
- (5) Any land disturbance activity within a Critical Area.

§ 218-8. Application submittal and approval requirements

A. Stormwater Permit

For projects that require a Stormwater Permit as listed under § 218-7 Applicability, Part A and are not otherwise listed as exempt under § 218-7 Applicability Part B, applicants shall submit a completed SWP application¹ to the DPW or through the City's Online Permit Center on the City's website².

At a minimum, the Applicant shall include the following in the SWP application:

- (1) A description of the proposed construction erosion and sediment controls which meet § 218-9 Construction Site Erosion Control Design Standards.
- (2) A description of the proposed post-construction stormwater management measures which meet § 218-10, Part B. Additional post-construction stormwater management controls may be required, at the discretion of the DPW.

¹

https://www.rochesternh.net/sites/g/files/vyhlf1131/f/file/stormwater_management_erosion_control_permit_application_3-27-15.pdf

² <https://rochesternh.viewpointcloud.com/>

B. Stormwater Management and Erosion Control Plan

For projects that require a SMECP as listed under § 218-7 Applicability, Part C and are not otherwise listed as exempt under § 218-7 Applicability, Part B, applicants shall submit at a minimum a SMECP to the DPW the items listed in (1) and (2) below. Additional requirements may be requested by the DPW, at its discretion.

If a project requires submission of a SWPPP under federal law, the applicant may completely incorporate SMECP requirements into the SWPPP and request that the SWPPP cover both the SWPPP and SMECP requirements.

(1) Narrative Stormwater Management and Erosion Control Report (Report)

The Report shall contain the following items:

- (a) Description of construction period and earth movement schedule, including anticipated project start and completion dates, sequence and duration of grading and construction activities, and sequence and timing of installation and/or application of soil erosion and sediment control measures as well as sequence for final stabilization of the project site.
- (b) Description of the on-site and adjacent wetlands, streams, water bodies, or other natural resources; including the date and methods used to identify/delineate these resources; a description of any buffer setbacks that may apply, steep slopes, critical habitat, critical areas, existing vegetation, and 100-year floodplain limits and whether any downstream water bodies are listed as impaired and their impairment according to NHDES's most recent 303(d) list.
- (c) Description of existing drainage patterns, receiving water bodies, or drainage infrastructure and soil types (as described in § 218-8.B(2)(g), below).
- (d) Description of BMP and LID measures that were considered and are proposed to limit the development footprint, preserve existing vegetation, and mimic existing hydrology to the extent feasible. Describe BMP and LID measures that were considered but determined not to be feasible.
- (e) Description of proposed changes in impervious cover and any changes in pre- and post-development drainage patterns.
- (f) Description of the methods, calculations, and proposed measures to demonstrate how the proposed project meets:
 - (i) Construction site erosion control design standards (§ 218-9).
 - (ii) Post-construction stormwater management design standards (§ 218-10).
- (g) Description of the following procedures:
 - (i) Limit and/or optimize the use of deicing materials and minimize off-site increases in chloride levels in adjacent surface and groundwater.
 - (ii) Control waste such as discarded building materials, concrete

washout, chemicals, litter, and sanitary waste during the construction process that may cause adverse impacts to water quality.

- (h) An Inspection and Maintenance Plan consistent with § 218-11 Installation, construction, maintenance, and inspection requirements
- (i) Copies of pertinent state and federal permits (as referenced in § 218-13 Other required permits)
- (j) Any other specific study, calculation, or investigation as requested by the City
- (k) Certification by a Qualified Professional.

(2) Site Development Plan

The Site Development Plan shall meet the qualifications as outlined in the Site Plan or Subdivision Regulations. The following items are specific to this chapter:

- (a) Project limit or boundary
- (b) Critical Areas
- (c) Limits of surface waters, wetlands, and drainage patterns, including direction of flow of stormwater runoff using arrows, within the project area and 200 feet outside of project boundary
- (d) Limits of watershed delineation any off-site and upstream areas contributing flow to shared drainage channels and/or infrastructure.
- (e) Limits and type of existing vegetation (including invasive species)
- (f) Extent of 100-year floodplain boundaries, if published or determined.
- (g) Soils
 - (i) Areas of poorly and very poorly drained soils and areas proposed to be filled
 - (ii) Soils information for proposed land disturbance from a National Cooperative Soil Survey soil series map (web based or hard copy) or a High Intensity Soil Map of the site, prepared in accordance with Society of Soil Scientists of Northern New England Special Publication No. 1
 - (iii) Highly erodible soils shall be determined by soil series
- (h) Earth Disturbance
 - (i) Limits and areas of soil disturbance
 - (ii) Areas of cut and fill
- (i) Erosion and Sediment Control
 - (i) Location of perimeter controls
 - (ii) Locations of earth stockpiles
 - (iii) Locations of equipment storage and staging
 - (iv) Locations of proposed construction and vehicle or equipment fueling areas
 - (v) Locations of waste disposal facilities for solid waste, construction debris, sanitary waste, concrete washout, and a plan for stump disposal

- (vi) Methods of site stabilization
- (j) Location of temporary and permanent snow management areas
- (k) The location, elevation, and size of all existing and proposed stormwater infrastructure and control measures (e.g., catch basins, drywells, drainage ditches, retention ponds)

C. Plan review and approval

- (1) The Planning Board, Building, Zoning, and Licensing Services Department, and Director of DPW, or designees, may, if in their judgment deem it necessary or helpful to assist in their review of the SMECP, require it be reviewed by a third-party registered Professional Engineer or other professional consultant acceptable to them, the cost of which shall be borne by the applicant.

This review cost would be in addition to applicant borne costs associated with site inspections and water quality monitoring (as applicable), to ensure sensitive resources are adequately protected where proposed projects are deemed to pose a higher risk of potential impacts due to factors, including but not limited to the project size, location, duration and history of the contractor's performance.

- (2) The DPW or other agency having jurisdiction shall indicate approval of the SMECP, as filed, if it complies with the requirements and objectives of this chapter. As applicable, such approval shall be a component of Site Plan or Subdivision approval.
- (3) Final SMECP approval shall be contingent upon collection of any required fees or escrow amounts related to technical review of the SWP prepared under this chapter.

D. Preconstruction meeting

- (1) The applicant and the applicant's engineer (or technical representative) may be required to schedule and attend a mandatory preconstruction meeting with DPW prior to commencement of construction. All required documents to be recorded, escrow deposits and bonding shall be in place prior to the scheduled meeting. Three copies of the SMECP (including the SWPPP and NOI, if required), up-to-date construction schedule, and associated construction documents shall be provided at that time. The SMECP shall bear the seal and signature of the New Hampshire Registered Professional Engineer preparing the documents. The SMECP may be combined with the SWPPP, if labeled as both and meeting the requirements of both. Prior to commencement of construction, the Department of Planning and Development will confirm that the documents submitted meet the conditions of Planning Board approval. An appropriate notation will be made on the official construction set used by the Code Enforcement and DPW. (Note: Preconstruction conferences will typically not be required for construction of one single-family home or one residential duplex, not part of a larger plan of construction.)
- (2) The Department of Planning and Development and DPW reserve the right to prepare and request the applicant's acknowledgement of a preconstruction checklist.

§ 218-9. Construction site erosion control design standards

A. Temporary construction stormwater management design

The following design standards shall be applied in Planning for stormwater management and erosion control as related to construction.

(Note: These standards are in addition to requirements that may be found in other sections of the Site Plan, Subdivision, and other land use regulations or ordinances. These standards are also in addition to requirements set forth in the NH Small MS4 NPDES General Permit, NPDES General Permit for Discharges from Construction Activities, NHDES Wetlands Permits [RSA 482-A] and the NHDES Alteration of Terrain Rules [RSA 485-A:17]).

- (1) All measures in the plan shall meet, as a minimum, the BMPs set forth in the *New Hampshire Stormwater Manual, Volume 3* (2008 or as updated) A copy of the *New Hampshire Stormwater Manual* is available from the NHDES website at:

<https://www.des.nh.gov/water/stormwater>

Note: The manuals and website links in this section are provided for information and are subject to change. The most current version of the manual and link reference should be used by the applicant.

- (2) Erosion and sediment control measures shall be installed prior to any soil disturbance and shall be reviewed and approved by DPW prior to any land disturbance.
- (3) Whenever practical, natural vegetation shall be maintained, protected, or supplemented. Stripping of vegetation shall be done in a manner that minimizes soil erosion. Natural buffers shall be maintained.
- (4) The area of disturbance shall be kept to a minimum and be limited to an area only large enough to accommodate construction activities for a particular construction phase.
- (5) Measures shall be taken to control erosion within the project area. Sediment in stormwater runoff shall be trapped and retained within the project area. Wetland areas and surface waters shall be protected from sediment. Soil disturbance shall be avoided within established buffer setbacks as defined and consistent with the provisions included in the Conservation Overlay District (Zoning Ordinance § 275-12).
- (6) Off-site surface water and stormwater runoff shall be diverted away from areas of land disturbance where feasible or implement measures to convey stormwater through the project area without causing erosion of sediment shall be included. Integrity of downstream drainage systems shall be maintained.
- (7) Perimeter Controls
 - (a) Install sediment controls along any perimeter areas of the site that will receive stormwater runoff.
 - (b) Perimeter controls shall not be placed within wetland areas, stream channels, or wetland buffers.
- (8) Stabilization
 - (a) In areas where final grading has not occurred, temporary stabilization measures should be in place within 5 calendar days for exposed soil areas that are within 100 feet of a surface waterbody or a wetland and no more than 14 calendar days for all other areas. Permanent stabilization should be

- in place within 3 calendar days following completion of final grading of exposed soil areas.
- (b) Stabilization measures shall be provided with the submission for any disturbance on slopes equal to or steeper than 3H:1V.
 - (c) Specify permanent and temporary erosion and sedimentation control measures, seeding mixtures and rates, types of sod, methods of seedbed preparation, expected seeding dates (or limitations on seeding timeframes), type and rate of lime and fertilizer application, and type and quantity of mulching for temporary and permanent control facilities.
- (9) Winter Construction
- (a) For construction during the winter season, an additional erosion and sedimentation control plan and timeline shall be submitted by September 1 to the DPW.
 - (b) Additional temporary stabilization shall be deployed for the winter season consistent with *New Hampshire Stormwater Manual* guidelines for land disturbance that are not permanently stabilized by October 1 or implemented per the discretion of DPW.
 - (c) Active construction areas should be limited to the area necessary to gain access and sustain planned improvements that will be completed during the winter season.
- (10) Sediment Basins and Traps
- (a) Use of temporary sediment basins should avoid any additional vegetation clearing or site disturbance not otherwise needed for post-construction. Sediment basin locations shall be reviewed by DPW prior to construction and shall consider the potential for off-site impacts, including public safety, especially as it relates to sediment movement or sediment basin failure, and alternative sediment controls approved by DPW shall be used where site limitations preclude a safe design.
- (11) Waste Control
- (a) Procedures shall be implemented to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste during the construction process that may cause adverse impacts to water quality.
- (12) Inspection Schedule
- (a) All temporary erosion and sediment control measures shall be maintained in functioning condition until final site stabilization is accomplished. A proposed inspection schedule, in accordance with the guidelines of the *New Hampshire Stormwater Manual*, or NPDES General Permit for Discharges from Construction Activities shall be included in the submittal.
- (13) Removal of temporary controls
- (a) All temporary erosion and sediment control measures shall be removed after the site is stabilized unless the measures are intended to be left in place and approved by DPW on a case-by-case basis. Trapped sediment and other disturbed soil areas resulting from the removal of temporary measures shall

be permanently stabilized within three (3) calendar days unless conditions dictate otherwise.

§ 218-10. Post-construction stormwater management design standards

The following design standards shall be applied for post-construction stormwater management.

(Note: These standards are in addition to requirements that may be found in other sections of the Site Plan, Subdivision, and other land use regulations or ordinances. These standards are also in addition to requirements set forth in the NH Small MS4 NPDES General Permit, NPDES General Permit for Discharges from Construction Activities, NHDES Wetlands Permits [RSA 482-A], and the NHDES Alteration of Terrain Rules [RSA 485-A:17]).

A. Design Guidelines

- (1) All proposed stormwater treatment practices and measures shall be appropriately selected, designed, installed, and maintained in accordance with manufacturers' specifications and performance specifications in the *New Hampshire Stormwater Manual, Volume 2* (2008 or as updated), a copy of which is available from the NHDES website at:
<https://www.des.nh.gov/water/stormwater>
- (2) Innovative stormwater practice design standards that have been demonstrated to have treatment benefits in accordance with the purpose and objectives of this chapter may be accepted at the discretion of the DPW and may include techniques or practices in use and accepted by other jurisdictions (e.g., state agencies, municipalities, EPA). This may include proprietary and nonproprietary allowing for the continued advancement of the practice.
- (3) Annual pollutant removal from structural and nonstructural BMPs shall be calculated using methods consistent with the following:
 - (a) Attachment 3 to Appendix F of the 2017 New Hampshire Small MS4 General Permit (as modified Jan. 6, 2021), the Stormwater BMP Performance Analysis for EPA Region 1, or other tools provided by EPA Region 1 consistent with these resources.
 - (b) If the specified EPA Region 1 tools do not provide annual pollutant load removal performance data for planned or installed BMP types, the *New Hampshire Stormwater Manual, Volume 2* (2008 or as updated) BMP design guidance or performance standards may be used.
- (4) Design storm depths shall be based on local rainfall amounts using the extreme precipitation table provided by the Northeast Regional Climate Center located at <http://precip.eas.cornell.edu/>.
- (5) The design of the stormwater drainage system shall provide for the discharge of stormwater without flooding or functional impairment to streets, adjacent properties, downstream properties, soils, or vegetation.
- (6) Stormwater management systems designed to treat stormwater runoff generated from new development and redevelopment sites discharging to water bodies that are water quality limited due to nitrogen or their tributaries without an approved total maximum daily load (as listed on the most current version of the NHDES 303(d) list) shall additionally optimize stormwater treatment practices for nitrogen

removal.

B. Low-Impact Development (LID) Design Strategies

- (1) LID site planning and design strategies shall be used to the maximum extent practicable for both New Development and Redevelopment projects to reduce the discharge of stormwater runoff volume, protect water quality, and maintain predevelopment site hydrology. LID techniques include preserving existing vegetation, reducing impervious footprint, disconnecting impervious area, and using enhanced stormwater BMPs (such as raingardens, bioretention, tree box filters and similar stormwater practices) in landscaped areas. Applicants shall document why LID strategies are not feasible if not used to manage stormwater, and such documentation shall be approved by DPW during review of the stormwater management system.
- (2) Whenever practicable, native site vegetation shall be maintained, protected, or supplemented. Any stripping of vegetation shall be done in a manner that minimizes soil erosion.

C. Stormwater Management Design Standards for New Development

For proposed projects that meet the definition of New Development or meet the requirements for a SMECP (§ 218-7 Applicability, Part C), the following standards shall be met:

- (1) **Pollutant Discharge Minimization Requirements**
 - (a) Stormwater runoff from the total post-construction impervious area shall be treated on the development site to achieve at least 80% removal of the average annual load of Total Suspended Solids (TSS) AND 50% removal of both Total Phosphorus (TP) and Total Nitrogen (TN) using appropriate stormwater treatment measures and pollutant removal calculation methods consistent with this chapter.
 - (b) Stormwater runoff shall not be discharged to municipal drainage systems or privately owned drainage systems (whether enclosed or open drainage) or to surface water bodies and wetlands, unless it meets the minimum pollutant discharge requirements in (a) above or is from a vegetated area conveyed as sheet flow.
 - (c) Stormwater treatment practices shall be designed for the water quality volume (WQV) or water quality flow (WQF), as applicable, calculated in accordance with Env-Wq 1504.10 and Env-Wq 1504.11, respectively.
 - (d) No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, noxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into surface water or groundwater so as to contaminate, pollute, harm, impair, or not meet water quality standards of such waters.
 - (e) All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials shall meet the regulations of NHDES, including those involving underground storage tanks, aboveground storage tanks, hazardous waste, and required BMPs for groundwater protection (Env-Wq 401).

- (f) The physical, biological, and chemical integrity of the receiving waters shall not be degraded by the stormwater runoff from the development site.
 - (2) Groundwater Recharge Requirements
 - (a) Measures shall be taken to protect groundwater resources by reducing the post-development stormwater runoff volume by infiltrating the Groundwater Recharge Volume (GRV) according to the following ratios of Hydrologic Soil Group (HSG) type versus infiltration rate multiplier: HSG-A: 1.0; HSG-B: 0.75; HSG-C: 0.4; HSG-D: 0.15.
 - (b) For sites where infiltration is limited or not practical, the applicant shall demonstrate that the stormwater volume discharged from the site will not cause adverse impacts to downstream properties, infrastructure, aquatic habitat, or water quality degradation in downstream water bodies.
 - (3) Peak Stormwater Runoff and Volume Control Requirements
 - (a) Measures shall be taken to control the post-development peak rate of stormwater runoff and volume so that it does not exceed the pre-development peak rate of stormwater runoff and volume for the 2-year, 10-year, and 25-year, 24-hour design storm.
 - (b) Runoff shall not be discharged to surface water bodies or wetlands more than volumes discharged under existing conditions (developed condition or undeveloped condition).
 - (c) If an increase in post-development peak rate or volume is anticipated due to site constraints that limit the ability to implement LID measures, the applicant shall demonstrate that the project will not cause adverse impacts to downstream properties, infrastructure, aquatic habitat or water quality degradation in downstream water bodies.
 - (4) Flooding Impacts
 - (a) Where proposed changes are anticipated within mapped limits of the 100-year floodplain, provide hydrologic and hydraulic analysis to show no net increase in flood elevations for the 100-year flood.
- D. Stormwater Management Design Standards for Redevelopment
- (1) For sites meeting the definition of a Redevelopment site, the project shall meet one of the following stormwater treatment standards:
 - (a) Implement measures on-site that result in disconnection or treatment of at least 30% of the existing impervious cover and 50% of the additional proposed impervious cover and pavement areas preferably using infiltration or filtration practices.
 - (b) Implement other LID techniques on-site to the maximum extent practicable to provide treatment for at least 50% of the entire site area.
 - (c) Provide off-site mitigation if (a) or (b), above, cannot be met due to site constraints. Off-site mitigation shall be equivalent to no less than the total area of impervious cover or site area not treated on-site in accordance with (a) or (b) above.
 - (i) An approved off-site location shall be identified, the specific

Commented [RB1]: This should be the FIRM proposed language. Let's make it consistent.

Shanna will reach out to FIRM people

management measures identified, and an implementation schedule developed in accordance with Planning Board approval. The applicant shall also demonstrate that there are no downstream drainage or flooding impacts because of not providing on-site management for large storm events.

- (ii) Off-site mitigation must be implemented within the same United States Geological Survey HUC10 or smaller watershed, within the project's drainage area or within the drainage area of the receiving waterbody. To comply with local watershed objectives the mitigation site should be in the same watershed as the development and impact/benefit the same receiving water.

E. Stormwater Treatment Practice Selection and Specifications

- (1) Existing surface waters including lakes, ponds, rivers, perennial and intermittent streams, and wetlands (including vernal pools) shall be protected by the minimum buffer setbacks as specified in the Conservation Overlay District Zoning Ordinance. Stormwater management BMPs shall be located outside the specified buffer zone unless otherwise approved by the Planning Board. Alternatives to stream and wetland crossings that eliminate or minimize environmental impacts shall be considered whenever possible. When necessary, as determined by the Planning Board or their representative, stream and wetland crossings shall comply with state stream crossing rules (Env-Wt 900), as appropriate, and, the recommended design standards to minimize impacts to flow and enhance animal passage (see the University of New Hampshire's *New Hampshire Stream Crossing Guidelines* (May 2009, as updated) available from the NHDES website at:
<http://des.nh.gov/organization/divisions/water/wetlands/documents/nh-stream-crossings.pdf>
- (2) Selection of stormwater treatment practices shall consider the use pervious parking surfaces as an alternative to impervious asphalt or concrete for general and overflow parking areas. Pervious pavement shall be appropriately sited and designed for traffic and vehicle loading conditions. Pervious pavement shall be maintained, and a Post-Construction Inspection and Maintenance Agreement prepared in accordance with § 218-11.C.
- (3) Selection and design of stormwater treatment and infiltration practices shall follow guidance in the *New Hampshire Stormwater Manual Volume 2* (2008 or as updated). Design considerations shall include the following, as appropriate:
 - (a) Where practical, the use of natural, vegetated filtration and/or infiltration BMPs or subsurface gravel wetlands for water quality treatment is preferred.
 - (b) Infiltration BMPs shall be in locations with the highest permeability on the site. If these areas are needed for other use, documentation shall be provided to DPW detailing the reasons the infiltration BMPs are located outside the highest permeability area and that the permeability of the soil is sufficient for the intended use.
 - (c) All infiltration areas shall be designed to drain within a maximum of 72 hours for water quality and flood control.

- (d) BMP design shall account for frozen ground conditions when the devices may not function at their optimal design.
 - (e) For sites where infiltration is limited due to existing soil conditions and increases in post-development stormwater runoff volumes are expected, the applicant shall demonstrate with supporting calculations that the increased stormwater volume to be discharged will not cause adverse impacts to downstream properties, infrastructure, aquatic habitat or water quality degradation in downstream water bodies.
 - (f) All vegetated stormwater management systems shall be planted with native plants appropriate for the site conditions: grasses, shrubs, trees and/or other native plants in sufficient numbers and density to prevent soil erosion and to achieve the water quality treatment requirements of this section.
- (4) The design of the stormwater treatment systems shall account for upstream and upgradient stormwater runoff that flows onto, over, or through the site to be developed or redeveloped and provide for this contribution of stormwater runoff.
 - (5) Stormwater runoff shall be directed into recessed vegetated and landscape areas designed for treatment and/or filtration to minimize effective impervious cover and reduce the need for irrigation systems.
 - (6) Access for maintenance of stormwater facilities shall be provided as part of the design. Access easements may be required.
 - (7) Deicing material storage areas shall be located under cover and loading, and offloading areas shall be designed and maintained such that untreated stormwater runoff is not discharged to receiving waters. Snow storage areas shall be located such that no direct untreated discharges to receiving waters are possible from the storage site. Stormwater runoff from snow and deicing storage areas shall enter treatment areas as specified above before being discharged to receiving waters or allowed to infiltrate into the groundwater. See NHDES guidance facts sheet on storage and management of deicing materials, a copy of which is available on the NHDES website at:
<https://www4.des.state.nh.us/nh-ms4/wp-content/uploads/2020/11/Salt-Storage.pdf>

F. Stormwater Drainage System Specifications

- (1) Drainage design should follow the design guidelines contained in the *Manual on Drainage Design for Highways*, as published by the State of New Hampshire Department of Transportation or the *New Hampshire Stream Crossing Guidelines*, as published by the University of New Hampshire.
- (2) Design criteria
 - (a) All closed drainage systems shall be sized for the 25-year, 24-hour storm frequency. All drainage pipes larger than 48 inches shall be designed to accommodate a 50-year, 24-hour storm frequency event.
 - (b) All drainage culverts shall be sized in accordance with the *New Hampshire Stream Crossing Guidelines*. Calculations should also be provided to demonstrate that the proposed culvert can safely convey the 25-year, 24-

hour storm frequency for culverts with an opening equivalent to a pipe diameter less than 48 inches. For culvert openings equivalent to a pipe diameter greater than 48 inches, calculations should be provided for the 50-year, 24-hour storm frequency.

- (c) If the project will affect drainage flow to an existing roadway culvert or if a detention or retention area is proposed, a minimum of a 25-year storm shall be used to evaluate potential off-site effects. If a state-owned or -maintained culvert is affected by the development, State of New Hampshire Department of Transportation (NHDOT) guidelines shall be used for evaluation of the culvert. Written approval from the NHDOT shall be submitted before final approval is granted.
 - (d) All slopes equal to or steeper than 2:1 adjacent to a public right-of-way shall have stabilization details provided with the submission.
 - (e) Proposed riprap within a public right-of-way shall be placed a minimum of 12 inches deep.
- (2) Velocities
- (c) For open channel systems (e.g., swales), velocities less than 10 feet per second are required prior to entering a swale. Maximum design velocity within the swale shall be 1.0 foot per second during passage of the 25-year, 24-hour storm.
 - (d) For closed drainage systems, a minimum velocity of 2 feet per second is required. Velocities of greater than 10 feet per second may be allowed, at the discretion of DPW.
- (3) Access for maintenance of stormwater facilities shall be included as part of the design, where necessary. Access easements may be required.

§ 218-11. Installation, construction, maintenance and inspection requirements and responsibility

A. Requirements

- (1) Site development shall not begin before the SMECP has been reviewed and approved by the City and if applicable, all Planning Board conditions have been fulfilled. BMPs shall be installed as designed and scheduled as a condition of final approval of the SMECP. In cases where a SWPPP is provided to comply with the EPA Construction General Permit, the SWPPP contents can be used to fulfill components of the SMECP in the final review and approval of the SMECP. In addition, site development shall not begin until a NOI has been acknowledged by the EPA (if applicable).
- (2) The DPW or Department of Planning and Development may require a bond or other security with surety conditions in an amount satisfactory to the City, providing for the actual construction, installation, and removal of such measures within a period specified by the City and expressed in the bond or the security.
- (3) The Department of Planning and Development, DPW, or Office of Code

Enforcement may require the owner or his/her authorized agent to deposit in escrow with the City an amount of money sufficient to cover the City's cost for inspection and any professional assistance required for site compliance and monitoring.

- (4) The owner of record of the property shall record the Notice of Decision and a Stormwater Inspection and Maintenance Agreement at the Registry of Deeds. The Stormwater Inspection and Maintenance Agreement shall include a Maintenance and Inspection Plan meeting all requirements in Part E(1), below.

B. Responsibility

(1) Responsible Parties During Construction

(a) Commercial and Industrial Development and/or Redevelopment

The owner, and owner's legally designated representative (if any) shall all hold responsibility for implementing the SMECP. This includes but is not limited to the installation, construction, inspection, and maintenance of all stormwater management and erosion control measures required by the provisions of this chapter.

(b) Residential Development and Redevelopment

The owner is responsible for implementing the SMECP. Excluding any post-development requirements of plan implementation, there are two ways for the City to consider an owner to be removed as the responsible party (the owner may also be required to comply with other regulating entities' additional requirements):

(i) The owner completes the project in a manner satisfactory to the City and if a NOI has been filed for the project, the NOI permittee files a Notice of Termination (NOT) with the EPA in accordance with the terms of the federal requirements.

(ii) The owner passes legal responsibility for the SMECP to another competent party. In the case of a new subdivision where lots may be transferred to a different entity for construction of the buildings, it is the owner's responsibility to ensure that the owner has a legal basis to require compliance by the new entity.

(c) Individual Homeowner Development

The homeowner or a homeowner who has taken control of a subdivided property bears responsibility for compliance with the approved SMECP. If the homeowner is contracting building services to another person or entity, the homeowner may choose to pass legal responsibility of compliance to the contracted entity. If the responsibility is not passed, the homeowner remains the responsible party and shall comply with the terms of the original SMECP.

(2) Responsible Parties - Post-construction / Long -term maintenance.

Long-term maintenance of approved stormwater practices shall be ensured through the Stormwater Inspection and Maintenance Plan as described in Part D(1), below. Responsibility for implementing the Inspection and Maintenance Plan is as follows:

(a) Commercial and Industrial Development and/or Redevelopment

The owner, and owner's legally designated representative (if any) shall all hold responsibility for implementing the Maintenance and Inspection Plan. The responsible party(ies) may contract with one or more third parties to conduct the inspection and maintenance activities but shall remain responsible for ensuring long-term effectiveness and maintaining records as required by Part D(1), below.

(b) Residential Development and/or Redevelopment

For residential development and/or redevelopment where a homeowners' association will not be established, the individual homeowners share joint and several liability for implementing the Maintenance and Inspection Plan. For residential developments where a homeowners' association will be established the following applies:

- (i) The homeowners' association shall assume responsibility and be specified as such in the documentation that establishes the association.
- (ii) If the homeowners' association is dissolved or discontinued, the individual homeowners share joint and several liability for maintenance and inspection activities.

The responsible party(ies) may contract with one or more third parties to conduct the inspection and maintenance activities but shall remain responsible for ensuring long-term effectiveness and maintaining records as required by Part D(1), below.

C. Post-Construction Inspection and Maintenance

- (1) The Stormwater Inspection and Maintenance Agreement shall include an Inspection and Maintenance Plan for post-construction monitoring of stormwater BMPs to ensure long-term performance and functionality, including the following:
 - (a) Details of each BMP, including a plan showing the location of each BMP
 - (b) Name of responsible party for inspections and maintenance
 - (c) Proposed schedule of inspection frequency consistent with the *New Hampshire Stormwater Manual*
 - (d) Inspection checklist and photo documentation requirements
 - (e) A sample log to document each inspection and maintenance activity
 - (f) A sample deicing log to track amount and type of deicing materials applied to the site
 - (g) Description of maintenance response actions, including actions to be taken if invasive species begin to grow in the BMPs
 - (h) Documentation of how reports will be completed, submittal and retention procedures, and contingency plans if future maintenance is required
- (2) The owner of record of the property shall record the approved Stormwater Inspection and Maintenance Agreement at the Registry of Deeds.

- (3) Inspections shall be conducted by a third party, Qualified Professional.
- (4) Responsible party(ies) shall remain responsible for ensuring long-term effectiveness and maintaining records as required by the Inspection and Maintenance Plan.
- (5) Inspections of the post-construction BMPs shall be conducted at the frequency specified in the Inspection and Maintenance Plan. Copies of inspection reports shall be made available upon request to DPW.

D. Providing Site Access for Maintenance and Inspection

Municipal staff or their designated agent shall have site access to complete routine inspections to ensure compliance with the approved SMECP. Such access shall be implied with the issuance of a SWP and/or as indicated in development approvals. Such inspections shall be conducted at a time agreed upon with the owner of record. If permission to inspect is denied by the landowner, it shall be deemed a violation.

Municipal staff or their designated agent reserve the right to secure an administrative inspection warrant from the district or superior court under RSA 595-B Administrative Inspection Warrants. Expenses associated with inspections shall be the responsibility of the property owner.

E. Notification for Spills or Other Non-Stormwater Discharges

As soon as any owner, owner's agent, or designated person responsible for a facility, site, activity, or operation has information of any known or suspected release of pollutants or non-stormwater discharges which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the municipal storm drain system, State waters, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release to minimize the effects of the discharge. If said individual is not competent to assess, contain, or clean up, that person shall immediately notify another competent individual or firm. If the substance poses an immediate health or safety concern (emergency situation), the City of Rochester Emergency Services shall immediately be notified, and then notification shall be made to the City of Rochester Office of Building, Zoning and Licensing Services, and the DPW. Notifying the City of Rochester does not preclude, supersede, or provide any liability coverage for any federal- or state-required notifications related to material spills. In nonemergency situations, notification should be made as soon as possible; however, no later than the next business day following an event.

§ 218-12. As-built plans and certification

As-built plans shall be provided for all projects which require a SMECP. As-builts shall be provided in the format outlined in the Site Plan or Subdivision Regulations.

§ 218-13. Other required permits

In addition to local approval, copies of the following permits shall be required if applicable:

- A. Alteration of Terrain Permit. RSA 485-A:17 requires a permit from NHDES for "*any person proposing to significantly alter the characteristic of the terrain, in such a manner as to impede natural runoff or create an unnatural runoff.*" Regulations require this permit for any project involving more than 100,000 contiguous square feet of disturbance or

50,000 contiguous square feet in the protected shoreland.

- B. EPA Construction General Permit for Stormwater Discharges associated with Construction Activity under the NPDES Program. A permit issued by EPA or by the State under authority delegated pursuant to 33 U.S.C. § 1342(b) that authorizes the discharge of pollutants to waters of the United States. For a cumulative disturbance of one acre or more of land that EPA considers "construction activity," which includes but is not limited to clearing, grading, excavation, and other activities that expose soil typically related to landscaping, demolition, and construction of structures and roads, a federal permit will be required. Consult EPA for specific rules. This EPA permit is in addition to any State or local permit required. To apply, the entity or individual responsible for construction site operations shall file a NOI with the EPA at least seven (7) days prior to initiating work. Discharge is authorized when the application status is listed as "authorized" in the EPA public NOI database or when the applicant receives an EPA authorization letter by mail.
- C. Wetlands permit. RSA 482-A requires a permit from the NHDES for any person desiring to "*excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state.*"

§ 218-14. Illicit discharge and connection

- A. Prohibition of Illegal Discharges
 - (1) No person shall allow or cause to be allowed any discharge into the municipal storm drain system or watercourses that is not composed entirely of stormwater, or any stormwater containing any pollutants that cause or contribute to a violation of applicable water quality standards. The commencement, conduct, or continuance of any such discharge is prohibited except as follows:
 - (a) Water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioner condensate, springs, individual resident car washing, material riparian habitat or wetland flows, dechlorinated swimming pool water (less than 1 part per million [ppm] chlorine), firefighting activities, street wash waters and residential building wash waters without detergents or other pollutants, and any other water source not containing pollutants.
 - (b) Discharges specified in writing by the City and other governing bodies as being necessary to protect public health and safety.
 - (c) Dye testing is an allowable discharge but requires written and verbal notification to DPW at least 10 days prior to testing. DPW reserves the right to require additional information prior to testing and such information shall be provided at least 2 business days prior to testing.
 - (d) In the event the City determines that any of the above discharges is causing or contributing to the violation of any applicable water quality standards, the City may order the discharger to immediately cease such discharge.
 - (2) Any non-stormwater discharge permitted under an NPDES stormwater discharge, waiver, or Consent Order issued to the discharger and administered under the authority of the EPA, 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 sewer system.

B. Prohibition of Illicit Connections

- (1) An illicit connection is any connection to the municipal storm drain system that is not composed entirely of stormwater or contains a discharge that is prohibited in Part A(1)(a), above.
- (2) The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

C. Watercourse Protection

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly restrict 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.

§ 218-15. Waivers

A. Conditions for Granting of Waivers

The Planning Board or DPW may waive any provision of these regulations herein where the board or DPW finds that:

- (1) Strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of these regulations; or
- (2) Specific circumstances relative to the SMECP or the conditions of the land in the SMECP indicate that the waiver will properly carry out the spirit and intent of these regulations.

The basis for any waiver granted by the Planning Board shall be recorded in the minutes of the board or DPW shall record with the conditions in the permit.

§ 218-16. Enforcement and penalties

- A.** The Department of Building, Zoning and Licensing Services, DPW Director, City Engineer, Planning Board, or their designee, and subject to the provisions below, shall have the authority to enforce all aspects of this chapter. In that regard, said official(s) shall be empowered hereby to invoke all statutory enforcement prerogatives that may be applicable to the purported violation as it relates to any plan submitted hereunder or activity regulated hereby. By way of illustration and not by way of limitation, it is contemplated that the following statutory enforcement prerogatives would apply:

Type of Proposal	Applicable Board or Authority	Applicable Enforcement Statute
Site Plan & Subdivision Proposals	Planning Board	RSA 676:15, 16, 17, 17-a, & 17-b
Proposals affecting single existing tracts	Building, Zoning and Licensing, Planning Board	RSA 147:9RSA 676:17, RSA 673:1(V), and RSA 676
Proposals affecting existing public roads or public stormwater systems in place	City Council or DPW	RSA 47:17, RSA 25:9-V-a.
Proposals affecting any water/sewer infrastructure in place	City Council or DPW	RSA 38:26, II, and RSA 149-I:6,III
Proposals involving Earth Material Removal Permits or other mining activities regulated by RSA 155-E	Planning Board	RSA 155-E:10

- B. The Department of Building, Zoning and Licensing Services, DPW Director, Health Officer, or their designee is authorized by means of this chapter to take any action to enforce this chapter and to act on behalf of the various boards or agencies identified above. It is intended that said Department of Building, Zoning and Licensing Services, DPW Director, Health Officer, or their designee shall have the authority to seek individual specific remedies, including, where appropriate, suspension or revocation of any permit or approval issued hereunder, additional monitoring, injunctive relief, the issuance of Notices of Violation, the pursuit of civil and/or criminal sanctions, or, without limitation, any other sanction as authorized by applicable law, regulation or statute. Nothing herein shall be interpreted to limit or otherwise curtail any statutory authority which the City is entitled to exercise independent of this chapter.
- C. Nothing in this section is intended to limit in any way the Department of Building, Zoning and Licensing Services, DPW Director, Health Officer, or their designee from exercising any authority that state law allows them to exercise on behalf of any state agency which has preemptive or concurrent jurisdiction over any conduct that would be considered a violation of this chapter.
- D. Notwithstanding anything to the contrary, nothing herein is deemed to affect the enforcement discretion of the City under applicable law.