CHAPTER 23
CONSTRUCTION SITE EROSION CONTROL AND POST CONSTRUCTION STORM WATER MANAGEMENT

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CONSTRUCTION SITE EROSION CONTROL AND POST CONSTRUCTION STORM WATER MANAGEMENT

23.01 AUTHORITY.

(1) This ordinance is adopted under the authority granted by s. 62.234, Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under s. 62.23, Wis. Stats., that relate to construction site erosion control. Except as otherwise specified in s. 62.234 Wis. Stats., s. 62.23, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.

(2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.

(3) The City Council hereby designates the City Engineer to administer and enforce the provisions of this ordinance.

(4) The requirements of this ordinance do not pre-empt more stringent erosion and sediment control requirements that may be imposed by any of the following:

(a) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under ss. 281.16 and 283.33, Wis. Stats.

(b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

23.02 FINDINGS OF FACT.

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

23.03 PURPOSE.

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

23.04 APPLICABILITY AND JURISDICTION.

(1) APPLICABILITY.

(a) This ordinance applies to the following land disturbing construction activities except as provided under sub. (b):

1. A construction site, which has 4,000 square feet or greater of land disturbing construction activity.

2. A construction site, which has 100 cubic yards or greater of excavation volume, filling volume, or some combination of excavation and filling volume.

3. A construction site, which has 100 linear feet or greater of land disturbance to a highway, street, driveway, swale, ditch, waters of the state, wetland, protective area, or other non-agricultural drainage facility which conveys concentrated flow. Wetlands shall be delineated in accordance with s. NR 103.08(1m).

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

1. Land disturbing construction activity that includes the construction of 1- and 2-family residential dwellings that are not part of a larger common plan of development or sale and that result in less than 1 acre of disturbance. These construction sites are regulated by the Wisconsin Department of Commerce under s. COMM 21.125 Wis. Adm. Code.

2. A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under chapter 40, Code of Federal Regulations, part 122, for land disturbing construction activity.

3. Nonpoint discharges from agricultural activity areas.

4. Nonpoint discharges from silviculture activities.

5. Mill and crush operations.

(c) Notwithstanding the applicability requirements in paragraph (a), this ordinance applies to construction sites of any size that, in the opinion of the City Engineer, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

(2) JURISDICTION.

This ordinance applies to land disturbing construction activity on construction sites located within the boundaries and jurisdiction of the City of Fond du Lac.

(3) EXCLUSIONS.

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

23.05 <u>DEFINITIONS</u>.

(1) "Administering authority" means a governmental employee, or a regional planning commission empowered under s. 62.234, Wis. Stats., that is designated by the City Council to administer this ordinance.

(2) "Agricultural activity area" means the part of the farm where there is planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or outside yarding of livestock, including sod farms and silviculture. Practices in this area may include waterways, drainage ditches, diversions, terraces, farm lanes, excavation, filling and similar practices. The agricultural activity area does not include the agricultural production area.

(3) "Agricultural production area" means the part of the farm where there is concentrated production activity or impervious surfaces. Agricultural production areas include buildings, driveways, parking areas, feed storage structures, manure storage structures, and other impervious surfaces. The agricultural production area does not include the agricultural activity area.

(4) "Average annual rainfall" means a calendar year of precipitation, excluding snow, which is considered typical. For purposes of this ordinance, average annual rainfall means measured precipitation in Green Bay, Wisconsin between March 29 and November 25, 1969.

(5) "Best management practice" or "BMP" means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.

(6) "Business day" means a day the office of the City Engineer is routinely and customarily open for business.

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

(8) "Common plan of development or sale" means a development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A common plan of development or sale includes, but is not limited to, subdivision plats, certified survey maps, and other developments.

(9) "Construction site" means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development.

(10) "Development" means residential, commercial, industrial, institutional, or other land uses and associated roads.

(11) "Division of land" means the creation from one or more parcels or building sites of additional parcels or building sites where such creation occurs at one time or through the successive partition within a 5 year period.

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

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

(14) "Extraterritorial" means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.

(15) "Final stabilization" means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established, with a density of at least 70 percent of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.

(16) "Governing body" means town board of supervisors, county board of supervisors, city council, village board of trustees or village council.

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

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

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

(20) "Permit" means a written authorization made by the City Engineer to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

(21) "Pollutant" has the meaning given in s. 283.01 (13), Wis. Stats.

(22) "Pollution" has the meaning given in s. 281.01 (10), Wis. Stats.

(23) "Protective area" has the meaning given in 23.207(3)(d) of the City of Fond du Lac Post-Construction Storm Water Management Ordinance.

(24) "Responsible party" means any entity holding fee title to the property or performing services to meet the performance standards of this ordinance through a contract or other agreement.

(25) "Runoff" means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

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

(27) "Separate storm sewer" means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:

a. Is designed or used for collecting water or conveying runoff.

b. Is not part of a combined sewer system.

c. Is not draining to a storm water treatment device or system.

d. Discharges directly or indirectly to waters of the state.

(28) “Site” means the entire area included in the legal description of the land on which the land disturbing construction activity is proposed in the permit application.

(29) “Stop work order” means an order issued by the City Engineer which requires that all construction activity on the site be stopped.

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

(31) “Waters of the state” has the meaning given in s. 281.01 (18), Wis. Stats.

23.06 <u>TECHNICAL STANDARDS</u>.

(1) DESIGN CRITERIA, STANDARDS AND SPECIFICATIONS. All BMPs required to comply with this ordinance shall meet the design criteria, standards and specifications based on any of the following:

(a) Design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.

(b) Technical standards and other guidance identified within the City of Fond du Lac Stormwater Reference Guide.

(c) For this ordinance, average annual basis is calculated using the appropriate annual rainfall or runoff factor, also referred to as the R factor, or an equivalent design storm using a type II distribution, with consideration given to the geographic location of the site and the period of disturbance.

(2) OTHER STANDARDS. Other technical standards not identified or developed in sub. (1), may be used provided that the methods have been approved by the City Engineer.

23.07 PERFORMANCE STANDARDS.

(1) RESPONSIBLE PARTY. The responsible party shall implement an erosion and sediment control plan, developed in accordance with 23.09 that incorporates the requirements of this section.

(2) PLAN. A written erosion and sediment control plan shall be developed in accordance with 23.09 and implemented for each construction site.

(3) REQUIREMENTS. The erosion and sediment control plan shall meet the following minimum requirements to the maximum extent practicable:

(a) BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the construction site as follows.

1. For construction sites with 1 acre or greater of land disturbing construction activity, reduce the total suspended solids load by 80%, on an average annual basis, as compared with no sediment or erosion controls until the construction site has undergone final stabilization. No person shall be required to exceed an 80% sediment reduction to meet the requirements of this paragraph. Erosion and sediment control BMPs may be used alone or in combination to meet the requirements of this paragraph. Credit toward meeting the sediment reduction shall be given for limiting the duration or area, or both, of land disturbing construction activity, or other appropriate mechanism.

2. For construction sites with less than 1 acre of land disturbing construction activity, reduce the total suspended solids load using BMPs from the City of Fond du Lac Stormwater Reference Guide. These sites are not required to satisfy a numeric performance standard.

(b) Notwithstanding par. (a), if BMPs cannot be designed and implemented to reduce the sediment load by 80%, on an average annual basis, the plan shall include a written and site-specific explanation as to why the 80% reduction goal is not attainable and the sediment load shall be reduced to the maximum extent practicable.

(c) Where appropriate, the plan shall include sediment controls to do all of the following to the maximum extent practicable:

1. Prevent tracking of sediment from the construction site onto roads and other paved surfaces.

2. Prevent the discharge of sediment as part of site de-watering.

3. Protect the separate storm drain inlet structure from receiving sediment.

(d) The use, storage and disposal of building materials, chemicals, cement, concrete truck washout, litter, sanitary waste, and other compounds and materials used on the construction site shall be managed during the construction period, to prevent their entrance into storm sewers and waters of the state. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this paragraph.

(4) LOCATION. The BMPs used to comply with this section shall be located prior to runoff entering waters of the state.

(5) ALTERNATE REQUIREMENTS. The City Engineer may establish requirements more stringent than those set forth in this section if the City Engineer determines that an added level of protection is needed for sensitive resources.

23.08 <u>PERMITTING REQUIREMENTS, PROCEDURES AND FEES</u>.

(1) PERMIT REQUIRED. No responsible party may commence a land disturbing construction activity subject to this ordinance without receiving prior approval of an erosion and sediment control plan for the site and a permit from the City Engineer.

(2) PERMIT APPLICATION AND FEES. At least one responsible party desiring to undertake a land disturbing construction activity subject to this ordinance shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of 23.09 and shall pay an application fee to the City Engineer. By submitting an application, the applicant is authorizing the City Engineer to enter the site to obtain information required for the review of the erosion and sediment control plan.

(3) REVIEW AND APPROVAL OF PERMIT APPLICATION. The City Engineer shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:

(a) Within 20 business days of the receipt of a complete permit application, as required by sub. (2), the City Engineer shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this ordinance.

(b) If the permit application and plan are approved, the City Engineer shall issue the permit.

(c) If the permit application or plan is disapproved, the City Engineer shall state in writing the reasons for disapproval.

(d) The City Engineer may request additional information from the applicant. If additional information is submitted, the City Engineer shall have 20 business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.

(e) Failure by the City Engineer to inform the permit applicant of a decision within 20 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.

(4) SURETY BOND. As a condition of approval and issuance of the permit, the City Engineer may require the applicant to deposit a surety bond, cash escrow, or irrevocable letter of credit to guarantee a good faith execution of the approved erosion control plan and any permit conditions.

(5) PERMIT REQUIREMENTS. All permits shall require the responsible party to:

(a) Notify the City Engineer after the completion of any BMPs and prior to commencing any land disturbing construction activity.

(b) Obtain permission in writing from the City Engineer prior to any modification pursuant to 23.09(3) of the erosion and sediment control plan.

(c) Install all BMPs as identified in the approved erosion and sediment control plan.

(d) Maintain all road drainage systems, stormwater drainage systems, BMPs and other facilities identified in the erosion and sediment control plan.

(e) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land disturbing construction activities and document repairs in weekly inspection reports.

(f) Conduct construction site inspections at least once per week and within 24 hours after a precipitation event of 0.5 inches or greater. Repair or replace erosion and sediment control BMPs as necessary within 24 hours of an inspection or notification that repair or replacement is needed. Maintain, at the construction site, weekly written reports of all inspections. Weekly inspection reports shall include all of the following: date, time and location of the construction site inspection; the name of individual who performed

the inspection; an assessment of the condition of erosion and sediment controls; a description of any erosion and sediment control BMP implementation and maintenance performed; and a description of the present phase of land disturbing construction activity at the construction site.

(g) Allow the City Engineer to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the control plan. Keep a copy of the erosion and sediment control plan, storm water management plan, amendments, weekly inspection reports, and permit at the construction site until permit coverage is terminated.

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

(6) PERMIT CONDITIONS. Permits issued under this section may include conditions established by the City Engineer in addition to the requirements set forth in sub. (5), where needed to assure compliance with the performance standards in 23.07.

(7) PERMIT DURATION. Permits issued under this section shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The City Engineer may extend the period one or more times for up to an additional 180 days. The City Engineer may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this ordinance.

(8) MAINTENANCE. The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this ordinance until the site has undergone final stabilization.

(9) ALTERNATE REQUIREMENTS. The City Engineer may prescribe requirements less stringent for applicants seeking a permit for a construction site with less than 1 acre of disturbance.

23.09 <u>EROSION AND SEDIMENT CONTROL PLAN, STATEMENT, AND AMENDMENTS</u>.

(1) PLAN REQUIREMENTS. The erosion and sediment control plan required under 23.07 (2) shall comply with the City of Fond du Lac Stormwater Reference Guide and contain at a minimum the following information:

(a) Name, address, and telephone number of the landowner and responsible parties.

(b) A legal description of the property proposed to be developed.

(c) A site map with property lines, disturbed limits, and drainage patterns.

(d) Total area of the site and total area of the construction site that is expected to be disturbed by construction activities.

(e) Performance standards applicable to site.

(f) Proposed best management practices.

(2) EROSION AND SEDIMENT CONTROL PLAN STATEMENT. For each construction site identified under 23.04 (1)(c), an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the City Engineer. The control plan statement shall briefly describe the site, including a site map. Further, it shall also include the best management practices that will be used to meet the requirements of the ordinance, including the site development schedule.

(3) AMENDMENTS. The applicant shall amend the plan if any of the following occur:

(a) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the plan.

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

(c) The City Engineer notifies the applicant of changes needed in the plan.

(4) ALTERNATE REQUIREMENTS. The City Engineer may prescribe requirements less stringent for applicants seeking a permit for a construction site with less than 1 acre of disturbance.

23.10 FEE SCHEDULE.

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

23.11 INSPECTION.

If land disturbing construction activities are being carried out without a permit required by this ordinance, the City Engineer may enter the land pursuant to the provisions of ss. 66.0119(1), (2), and (3), Wis. Stats.

23.12 ENFORCEMENT.

(1) The City Engineer may post a stop-work order if any of the following occurs:

(a) Any land disturbing construction activity regulated under this ordinance is being undertaken without a permit.

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

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

(2) If the responsible party does not cease activity as required in a stop-work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the City Engineer may revoke the permit.

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

(4) The City Engineer or the board of appeals may retract the stop-work order issued under sub. (1) or the permit revocation under sub. (2).

(5) After posting a stop-work order under sub. (1), the City Engineer may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The City Engineer may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this subsection by the City Engineer, plus interest at the rate authorized by City Engineer shall be billed to the responsible party or recovered from the surety bond, cash escrow, or irrevocable letter of credit. In the event a responsible party fails to pay the amount due, the clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to subch. VII of ch. 66, Wis. Stats.

(6) Any person violating any of the provisions of this ordinance shall be subject to a forfeiture and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.

(7) Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctional proceedings.

23.13 <u>APPEALS</u>.

(1) APPEALS. The City Manager:

(a) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the City Engineer in administering this ordinance except for cease and desist orders obtained under 23.12 (3).

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

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

(2) WHO MAY APPEAL. Appeals to the City Manager may be taken by any aggrieved person or by any office, department, board, or bureau of the City of Fond du Lac affected by any decision of the City Engineer.

23.14 <u>SEVERABILITY</u>.

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

POST-CONSTRUCTION STORM WATER MANAGEMENT

23.201 AUTHORITY.

(1) This ordinance is adopted by the City Council under the authority granted by s. 62.234, Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under s. 62.23, Wis. Stats., that relate to storm water management regulations. Except as otherwise specified in s. 62.234, Wis. Stats., s. 62.23, Wis. Stats., applies to this ordinance and to any amendments to this ordinance.

(2) The provisions of this ordinance are deemed not to limit any other lawful regulatory powers of the same governing body.

(3) The City Council hereby designates the City Engineer to administer and enforce the provisions of this ordinance.

(4) The requirements of this ordinance do not pre-empt more stringent storm water management requirements that may be imposed by any of the following:

(a) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under ss. 281.16 and 283.33, Wis. Stats.

(b) Targeted non-agricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under s. NR 151.004, Wis. Adm. Code.

23.202 FINDINGS OF FACT.

The City Council finds that uncontrolled, post-construction runoff has a significant impact upon water resources and the health, safety and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can:

(1) Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.

(2) Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants.

(3) Alter wetland communities by changing wetland hydrology and by increasing pollutant loads.

(4) Reduce the quality of groundwater by increasing pollutant loading.

(5) Threaten public health, safety, property and general welfare by overtaxing storm sewers, drainage ways, and other minor drainage facilities.

(6) Threaten public health, safety, property and general welfare by increasing major flood peaks and volumes.

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

23.203 <u>PURPOSE AND INTENT</u>.

(1) PURPOSE. The general purpose of this ordinance is to establish long-term, post-construction runoff management requirements that will diminish the threats to public health, safety, welfare and the aquatic environment. Specific purposes are to:

(a) Further the maintenance of safe and healthful conditions.

(b) Prevent and control the adverse effects of storm water; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.

(c) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger downstream property.

(2) INTENT. It is the intent of the City Council that this ordinance regulates post-construction storm water discharges to waters of the state. This ordinance may be applied on a site-by-site basis. The City Council recognizes, however, that the preferred method of achieving the storm water performance standards set forth in this ordinance is through the preparation and implementation of comprehensive, systems-level storm water management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe regional storm water devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state. Where such plans are in conformance with the performance standards developed under s. 281.16, Wis. Stats., for regional storm water management measures and have been approved by the City Council, it is the intent of this ordinance that the approved plan be used to identify post-construction management measures acceptable for the community.

23.204 APPLICABILITY AND JURISDICTION.

(1) APPLICABILITY.

(a) Where not otherwise limited by law, this ordinance applies to all post-construction sites, unless the site is otherwise exempt under paragraph (b).

(b) A post-construction site that meets any of the criteria in this paragraph is exempt from the requirements of this ordinance.

1. 1- and 2-family residential dwellings that are not part of a larger common plan of development or sale and that result in less than 1 acre of disturbance.

2. Non-point discharges from agricultural activity areas.

3. Non-point discharges from silviculture activities.

4. Mill and crush operations.

(c) Notwithstanding the applicability requirements in paragraph (a), this ordinance applies to post-construction sites of any size that, in the opinion of the City Engineer, is likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

(2) JURISDICTION.

This ordinance applies to post construction sites within the boundaries and jurisdiction of the City of Fond du Lac.

(3) EXCLUSIONS.

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

23.205 DEFINITIONS.

(1) “Administering authority” means a governmental employee, or a regional planning commission empowered under s. 62.234, Wis. Stats., that is designated by the City Council to administer this ordinance.

(2) “Agricultural activity area” means the part of the farm where there is planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or outside yarding of livestock, including sod farms and silviculture. Practices in this area may include waterways, drainage ditches, diversions, terraces, farm lanes, excavation, filling and similar practices. The agricultural activity area does not include the agricultural production area.

(3) “Agricultural production area” means the part of the farm where there is concentrated production activity or impervious surfaces. Agricultural production areas include buildings, driveways, parking areas, feed storage structures, manure storage structures, and other impervious surfaces. The agricultural production area does not include the agricultural activity area.

(4) “Average annual rainfall” means a calendar year of precipitation, excluding snow, which is considered typical. For purposes of this ordinance, average annual rainfall means measured precipitation in Green Bay, Wisconsin between March 29 and November 25, 1969.

(5) “Best management practice” or “BMP” means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize sediment or pollutants carried in runoff to waters of the state.

(6) “Business day” means a day the office of the City Engineer is routinely and customarily open for business.

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

(8) “Combined sewer system” means a system for conveying both sanitary sewage and storm water runoff.

(9) “Common plan of development or sale” means a development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A common plan of development or sale includes, but is not limited to, subdivision plats, certified survey maps, and other developments.

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

(11) “Construction site” means an area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale.

(12) “Design storm” means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total depth of rainfall. The TR-55, Type II, 24-hour design storms for City of Fond du Lac are: 1-year, 2.3 inches; 2-year, 2.5 inches; 5-year, 3.4 inches; 10-year, 3.9 inches; 25-year, 4.4 inches; 50-year, 5.0 inches; and 100-year, 5.5 inches.

(13) “Development” means residential, commercial, industrial, institutional, or other land uses and associated roads.

(14) “Division of land” means the creation from one or more parcels or building sites of additional parcels or building sites where such creation occurs at one time or through the successive partition within a 5 year period.

(15) “Effective infiltration area” means the area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.

(16) “Erosion” means the process by which the land’s surface is worn away by the action of wind, water, ice or gravity.

(17) "Exceptional resource waters" means waters listed in s. NR 102.11, Wis. Adm. Code.

(18) “Extraterritorial” means the unincorporated area within 3 miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.

(19) "Final stabilization" means that all land disturbing construction activities at the construction site have been completed and that a uniform, perennial, vegetative cover has been established, with a density of at least 70% of the cover, for the unpaved areas and areas not covered by permanent structures, or employment of equivalent permanent stabilization measures.

(20) “Financial guarantee” means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the City Engineer by the responsible party to assure that requirements of the ordinance are carried out in compliance with the storm water management plan.

(21) “Governing body” means town board of supervisors, county board of supervisors, city council, village board of trustees or village council.

(22) “Highway” has the meaning given in s. 340.01 (22), Wis. Stats.

(23) "Highway reconditioning" has the meaning given in s. 84.013 (1)(b), Wis. Stats.

(24) "Highway reconstruction" has the meaning given in s. 84.013(1)(c), Wis. Stats.

(25) "Highway resurfacing" has the meaning given in s. 84.013(1)(d), Wis. Stats.

(26) "Impervious surface" means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, parking lots and streets are examples of areas that typically are impervious. Gravel surfaces are considered impervious, unless specifically designed to encourage infiltration.

(27) "In-fill area" means a new development area less than 5 acres in size that is located within existing urban sewer service areas, surrounded by already existing development or existing development and natural or man-made features where development cannot occur..

(28) "Infiltration" means the entry of precipitation or runoff into or through the soil.

(29) "Infiltration system" means a device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.

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

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

(32) "Maintenance agreement" means a legal document that provides for long-term maintenance of storm water management and best management practices.

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

(34) “Minor reconstruction of a highway” means reconstruction of a highway that is limited to 1.5 miles in continuous or aggregate total length of realignment and that does not exceed 100 feet in width of roadbed widening.

(35) “New development” means that portion of a post-construction site where impervious surfaces are being created or expanded. Any disturbance where the amount of impervious area for the post-development condition is greater than the pre-development condition is classified as new development. For purposes of this ordinance, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.

(36) “Off-site” means located outside the property boundary described in the permit application.

(37) “On-site” means located within the property boundary described in the permit application.

(38) "Ordinary high-water mark" has the meaning given in s. NR 115.03(6), Wis. Adm. Code.

(39) “Outstanding resource waters” means waters listed in s. NR 102.10, Wis. Adm. Code.

(40) “Percent fines” means the percentage of a given sample of soil, which passes through a # 200 sieve.

(41) “Performance standard” means a narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

(42) “Permit” means a written authorization made by the City Engineer to the applicant to conduct land disturbing construction activity or to discharge post-construction runoff to waters of the state.

(43) “Permit administration fee” means a sum of money paid to the City Engineer by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit.

(44) “Pervious surface” means an area that releases as runoff a small portion of the precipitation that falls on it. Lawns, gardens, parks, forests or other similar vegetated areas are examples of surfaces that typically are pervious.

(45) “Pollutant” has the meaning given in s. 283.01(13), Wis. Stats.

(46) “Pollution” has the meaning given in s. 281.01(10), Wis. Stats.

(47) “Post-construction site" means a construction site following the completion of land disturbing construction activity and final site stabilization.

(48) “Post-development” means the extent and distribution of land cover types present after the completion of land disturbing construction activity and final site stabilization.

(49) “Pre-development” means the extent and distribution of land cover types present before the initiation of land disturbing construction activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.

(50) “Preventive action limit” has the meaning given in s. NR 140.05(17), Wis. Adm. Code.

(51) "Redevelopment” means that portion of a post-construction site where impervious surfaces are being reconstructed, replaced, or reconfigured. Any disturbance where the amount of impervious area for the post-development condition is equal to or less than the pre-development condition is classified as redevelopment. For purposes of this ordinance, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.

(52) “Responsible party” means any entity holding fee title to the property or other person contracted or obligated by other agreement to implement and maintain post-construction storm water BMPs.

(53) “Routine maintenance” means that portion of a post-construction site where pre-development impervious surfaces are being maintained to preserve the original line and grade, hydraulic capacity, drainage pattern, configuration, or purpose of the facility. Remodeling of buildings and resurfacing of parking lots, streets, driveways, and sidewalks are examples of routine maintenance, provided the lower ½ of the impervious surface’s granular

base is not disturbed. The disturbance shall be classified as redevelopment if the lower ½ of the granular base associated with the pre-development impervious surface is disturbed or if the soil located beneath the impervious surface is exposed. For purposes of this ordinance, a post-construction site is classified as new development, redevelopment, routine maintenance, or some combination of these three classifications as appropriate.

(54) “Runoff” means storm water or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

(55) “Separate storm sewer” means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:

(a) Is designed or used for collecting water or conveying runoff.

(b) Is not part of a combined sewer system.

(c) Is not draining to a storm water treatment device or system.

(d) Discharges directly or indirectly to waters of the state.

(56) “Site” means the entire area included in the legal description of the land on which the land disturbing construction activity occurred.

(57) “Stop work order” means an order issued by the City Engineer which requires that all construction activity on the site be stopped.

(58) “Storm water management plan” means a comprehensive plan designed to reduce the discharge of pollutants from storm water after the site has under gone final stabilization following completion of the construction activity.

(59) “Storm water management system plan” is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.

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

(61) “Top of the channel” means an edge, or point on the landscape, landward from the ordinary high-water mark of a surface water of the state, where the slope of the land begins to be less than 12% continually for at least 50 feet. If the slope of the land is 12% or less continually for the initial 50 feet, landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.

(62) "TR-55" means the United States Department of Agriculture, Natural Resources Conservation Service (previously Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986.

(63) "Transportation facility" means a public street, a public road, a public highway, a public mass transit facility, a public-use airport, a public trail, or any other public work for transportation purposes such as harbor improvements under s. 85.095(1)(b), Stats.

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

(65) "Waters of the state" has the meaning given in s. 281.01 (18), Wis. Stats.

23.206 TECHNICAL STANDARDS.

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

(1) Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.

(2) Technical standards and guidance identified within the City of Fond du Lac Stormwater Reference Guide.

(3) Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the City Engineer.

(4) In this ordinance, the following year and location has been selected as average annual rainfall(s): Green Bay, 1969 (Mar. 29-Nov. 25).

23.207 PERFORMANCE STANDARDS.

(1) RESPONSIBLE PARTY. The responsible party shall implement a post-construction storm water management plan that incorporates the requirements of this section.

(2) PLAN. A written storm water management plan in accordance with 23.209 shall be developed and implemented for each post-construction site.

(3) REQUIREMENTS. The storm water management plan shall meet the following minimum requirements to the maximum extent practicable:

(a) TOTAL SUSPENDED SOLIDS. BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as follows. The total suspended solids reduction shall be based on the average annual rainfall, as compared to no runoff management controls.

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

a. Reduce the total suspended solids load by 80% for new development.

b. Reduce the total suspended solids load by 40% for redevelopment.

c. No total suspended solids load reduction is required for routine maintenance areas, unless runoff from the routine maintenance area discharges into a proposed water quality BMP.

2. For post-construction sites with less than 20,000 square feet of impervious surface disturbance, reduce the total suspended solids load using BMPs from the City of Fond du Lac Stormwater Reference Guide. These sites are not required to satisfy a numeric performance standard.

3. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after the adoption date of this ordinance are required to satisfy the performance standards within 23.207(3)(a)1.a, b, and c.

4. The amount of total suspended solids control previously required for the site shall not be reduced as a result of the proposed development or disturbance.

5. Notwithstanding subds. 1. to 4., if the design cannot achieve the applicable total suspended solids reduction specified, the storm water management plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable.

(b) PEAK DISCHARGE. BMPs shall be designed, installed and maintained to control peak discharges from the post-construction site as follows:

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

   a. The peak post-development discharge rate shall not exceed the peak pre-development discharge rate for the 2-year, 5-year, and 100-year, 24-hour design storms. These peak discharge requirements apply to new development and redevelopment areas. No peak discharge control is required for routine maintenance areas, unless runoff from the routine maintenance area discharges into a proposed peak flow control facility.

   b. TR-55 methodology shall be used for peak discharge calculations, unless the administering authority approves an equivalent methodology. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. Peak pre-development discharge rates shall be determined using the following "meadow" runoff curve numbers:

Maximum Pre-Development Runoff Curve Numbers - Meadow				
Hydrologic Soil Group	A	B	C	D
Runoff Curve Number	30	58	71	78

2. For post-construction sites with less than 20,000 square feet of impervious surface disturbance, reduce peak post-development discharge rates using BMPs from the City of Fond du Lac Stormwater Reference Guide. These sites are not required to satisfy a numeric performance standard.

3. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after the adoption date of this ordinance are required to satisfy the performance standards within 23.207(3)(b)1.a and b.

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

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

6. Exemptions. The following transportation facilities are not required to meet the peak discharge requirements of this paragraph (b) provided the transportation facility is not part of a larger common plan of development or sale:

   a. A transportation facility where the change in hydrology due to development does not increase the existing surface water elevation at any point within the downstream receiving surface water by more than 0.01 of a foot for the 2-year, 24-hour storm event.

   b. A highway reconstruction site.

   c. A transportation facility that is part of a redevelopment project.

(c) INFILTRATION. BMPs shall be designed, installed, and maintained to infiltrate runoff in accordance with the following, except as provided in subds. 8. through 11.

1. For residential developments with 20,000 square feet or more of impervious surface disturbance or residential developments with 1 acre or more of land disturbance, one of the following shall be met:

   a. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 90% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.

   b. Infiltrate 25% of the post-development runoff from the 2 year -24 hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 1% of the project site is required as an effective infiltration area.

2. For non-residential developments with 20,000 square feet or more of impervious surface disturbance or non-residential developments with 1 acre or more of land disturbance, including commercial, industrial and institutional development, one of the following shall be met:

   a. Infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60% of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

   b. Infiltrate 10% of the runoff from the 2 year - 24 hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes, and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

3. Pre-development condition shall assume “good hydrologic conditions” for appropriate land covers as identified in TR-55 or an equivalent methodology approved by the administering authority. The meaning of “hydrologic soil group” and “runoff curve number” are as determined in TR-55. However, when pre-development land cover is cropland, rather than using TR-55 values for cropland, the following runoff curve numbers shall be used:

Maximum Pre-Development Runoff Curve Numbers - Cropland				
Hydrologic Soil Group	A	B	C	D
Runoff Curve Number	56	70	79	83

4. For residential and non-residential developments with less than 20,000 square feet of new impervious surfaces, infiltrate runoff volume using BMPs from the City of Fond du Lac Stormwater Reference Guide. These sites are not required to satisfy a numeric performance standard.

5. Sites with a cumulative addition of 20,000 square feet or greater of impervious surfaces after the adoption date of this ordinance are required to satisfy the performance standards within 23.207(3)(c)1, 2, and 3.

6. The amount of infiltration previously required for the site shall not be reduced as a result of the proposed development or disturbance.

7. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subd. 11. Pretreatment options may include, but are not limited to, oil/grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

8. Exclusions. Infiltration of runoff from the following areas are prohibited from meeting the infiltration requirements of this paragraph (c):

    a. Areas associated with tier 1 industrial facilities identified in s. NR 216.21(2)(a), Wis. Adm. Code, including storage, loading, rooftop and parking.

    b. Storage and loading areas of tier 2 industrial facilities identified in s. NR 216.21(2)(b), Wis. Adm. Code.

    c. Fueling and vehicle maintenance areas.

    d. Areas within 1000 feet upgradient or within 100 feet downgradient of karst features.

    e. Areas with less than 3 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock, except this subd. 8.e. does not prohibit infiltration of roof runoff.

f. Areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than 5 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.

g. Areas within 400 feet of a community water system well as specified in s. NR 811.16(4), Wis. Adm. Code, or within 100 feet of a private well as specified in s. NR 812.08(4), Wis. Adm. Code, for runoff infiltrated from commercial, industrial and institutional land uses or regional devices for residential development.

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

i. Any area where the soil does not exhibit one of the following soil characteristics between the bottom of the infiltration system and the seasonal high groundwater and top of bedrock: at least a 3-foot soil layer with 20% fines or greater; or at least a 5-foot soil layer with 10% fines or greater. This does not apply where the soil medium within the infiltration system provides an equivalent level of protection. This subd. 8.i. does not prohibit infiltration of roof runoff.

9. Exemptions. Infiltration of runoff from the following areas are not required to meet the infiltration requirements of this paragraph (c):

a. Areas where the infiltration rate of the soil is less than 0.6 inches/hour measured at the site.

b. Parking areas and access roads less than 5,000 square feet for commercial and industrial development.

c. Redevelopment and routine maintenance areas.

d. In-fill areas less than 5 acres.

e. Infiltration areas during periods when the soil on the site is frozen.

f. Roads in commercial, industrial and institutional land uses, and arterial residential roads.

g. Highways provided the transportation facility is not part of a larger common plan of development or sale.

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

11.a. Infiltration systems designed in accordance with this paragraph shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with ch. NR 140, Wis. Adm. Code. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.

b. Notwithstanding subd. par. a., the discharge from BMPs shall remain below the enforcement standard at the point of standards application.

(d) PROTECTIVE AREAS.

1. “Protective area” means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this paragraph, “protective area” does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.

a. For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in s. NR 103.04, 75 feet.

b. For perennial and intermittent streams identified on a United States geological survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.

c. For lakes, 50 feet.

d. For highly susceptible wetlands, 50 feet. Highly susceptible wetlands include the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes and seasonally flooded basins.

e. For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass.

f. In subd. 1.a., d. and e., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03.

g. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.

2. Wetlands shall be delineated. Wetland boundary delineations shall be made in accordance with s. NR 103.08(1m). This paragraph (d) does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed.

3. This paragraph (d) applies to post-construction sites located within a protective area, except those areas exempted pursuant to subd. 6 below.

4. The following requirements shall be met:

a. Impervious surfaces shall be kept out of the protective area to the maximum extent practicable. The storm water management plan shall contain a written site-specific explanation for any parts of the protective area that are disturbed during construction.

b. Where land disturbing construction activity occurs within a protective area, and where no impervious surface is present, adequate sod or self-sustaining

vegetative cover of 70% or greater shall be established and maintained. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion, such as on steep slopes or where high velocity flows occur.

c. Best management practices such as filter strips, swales, or wet detention basins, that are designed to control pollutants from non-point sources may be located in the protective area.

5. A protective area established or created after the adoption date of this ordinance shall not be eliminated or reduced, except as allowed in subd. 6.b, c, or d below.

6. Exemptions. The following areas are not required to meet the protective area requirements of this paragraph (d):

a. Redevelopment and routine maintenance areas provided the minimum requirements within in subd. 5 above are satisfied.

b. Structures that cross or access surface waters such as boat landings, bridges and culverts.

c. Structures constructed in accordance with s. 59.692(1v), Wis. Stats.

d. Post-construction sites from which runoff does not enter the surface water, except to the extent that vegetative ground cover is necessary to maintain bank stability.

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

(f) SWALE TREATMENT FOR TRANSPORTATION FACILITIES. This 23.207(3)(f) is not applicable to transportation facilities that are part of a larger common plan of development or sale.

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

   a. Be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.

   b. Carry runoff through a swale for 200 feet or more in length that is designed with a flow velocity no greater than 1.5 feet per second for the peak flow generated using either a 2-year, 24-hour design storm or a 2-year storm with a duration equal to the time of concentration as appropriate. If a swale of 200 feet in length cannot be designed with a flow velocity of 1.5 feet per second or less, then the flow velocity shall be reduced to the maximum extent practicable.

2. Exemptions. The City Engineer may, consistent with water quality standards, require other provisions of this section be met on a transportation facility with an average daily travel of vehicles greater than 2500 and where the initial surface water of the state that the runoff directly enters is any of the following:

   a. An outstanding resource water.

   b. An exceptional resource water.

   c. Waters listed in s. 303(d) of the federal clean water act that are identified as impaired in whole or in part, due to nonpoint source impacts.

   d. Waters where targeted performance standards are developed under s. NR 151.004, Wis. Adm. Code, to meet water quality standards.

(g) EXEMPTIONS. The following areas are not required to meet the performance standards within 23.207(3):

1. Agricultural production areas with less than 100,000 square feet of impervious surface disturbance.

2. Underground utility construction such as water, sewer, gas, electric, telephone, cable television, and fiber optic lines. This exemption does not apply to the construction of any above ground structures associated with utility construction.

3. The following transportation facilities are exempt, provided the transportation facility is not part of a larger common plan of development or sale.

   a. Reconditioning or resurfacing of a highway.

   b. Minor reconstruction of a highway. Notwithstanding this exemption, the protective area requirements within NR 151.24(6) Wisconsin Administrative Code apply to minor reconstruction of a highway.

   c. A redevelopment transportation facility with no increase in exposed parking lots or roads.

   d. A transportation facility with less than 10% connected imperviousness based on complete development of the transportation facility, provided the cumulative area of all parking lots and rooftops is less than one acre.

   e. Routine maintenance for transportation facilities if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.

(4) GENERAL CONSIDERATIONS FOR ON-SITE AND OFF-SITE STORM WATER MANAGEMENT MEASURES. The following considerations shall be observed in managing runoff:

(a) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.

(b) Emergency overland flow for all storm water facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.

(5) LOCATION AND REGIONAL TREATMENT OPTION.

(a) The BMPs may be located on-site or off-site as part of a regional storm water device, practice or system.

(b) Post-construction runoff within a non-navigable surface water that flows into a BMP, such as a wet detention pond, is not required to meet the performance standards of this ordinance. Post-construction BMPs may be located in non-navigable surface waters.

(c) Except as allowed under par. (d), post-construction runoff from new development shall meet the post-construction performance standards prior to entering a navigable surface water.

(d) Post-construction runoff from any development within a navigable surface water that flows into a BMP is not required to meet the performance standards of this ordinance if:

1. The BMP was constructed prior to the effective date of this ordinance and the BMP either received a permit issued under ch. 30, Stats., or the BMP did not require a ch. 30, Wis. Stats., permit; and

2. The BMP is designed to provide runoff treatment from future upland development.

(e) Runoff from existing development, redevelopment and in-fill areas shall meet the post-construction performance standards in accordance with this paragraph.

1. To the maximum extent practicable, BMPs shall be located to treat runoff prior to discharge to navigable surface waters.

2. Post-construction BMPs for such runoff may be located in a navigable surface water if allowable under all other applicable federal, state and local regulations such as ch. NR 103, Wis. Adm. Code and ch. 30, Wis. Stats.

(f) The discharge of runoff from a BMP, such as a wet detention pond, or after a series of such BMPs is subject to this chapter.

(g) The City Engineer may approve off-site management measures provided that all of the following conditions are met:

1. The City Engineer determines that the post-construction runoff is covered by a storm water management system plan that is approved by the City of Fond du Lac and that contains management requirements consistent with the purpose and intent of this ordinance.

2. The off-site facility meets all of the following conditions:

   a. The facility is in place.

   b. The facility is designed and adequately sized to provide a level of storm water control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this ordinance.

   c. The facility has a legally obligated entity responsible for its long-term operation and maintenance.

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

(6) ALTERNATE REQUIREMENTS. The City Engineer may establish storm water management requirements more stringent than those set forth in this section if the City Engineer determines that an added level of protection is needed to protect sensitive resources. Also, the City Engineer may establish storm water management requirements less stringent than those set forth in this section if the City Engineer determines that less protection is needed to protect sensitive resources and provide reasonable flood protection. However, the alternative requirements shall not be less stringent than those requirements promulgated in rules by Wisconsin Department of Natural Resources under NR 151 Wisconsin Administrative Code.

23.208 PERMITTING REQUIREMENTS, PROCEDURES AND FEES.

(1) PERMIT REQUIRED. No responsible party may undertake a land disturbing construction activity without receiving a post-construction runoff permit from the City Engineer prior to commencing the proposed activity.

(2) PERMIT APPLICATION AND FEES. Unless specifically excluded by this ordinance, any responsible party desiring a permit shall submit to the City Engineer a permit application made on a form provided by the City Engineer for that purpose.

(a) Unless otherwise excepted by this ordinance, a permit application must be accompanied by a storm water management plan, a maintenance agreement and a non-refundable permit administration fee.

(b) The storm water management plan shall be prepared to meet the requirements of 23.207 and 23.209, the maintenance agreement shall be prepared to meet the requirements of 23.210, the financial guarantee shall meet the requirements of 23.211, and fees shall be those established by the City Council as set forth in 23.212.

(3) REVIEW AND APPROVAL OF PERMIT APPLICATION. The City Engineer shall review any permit application that is submitted with a storm water management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:

(a) Within 20 business days of the receipt of a complete permit application, including all items as required by sub. (2), the City Engineer shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.

(b) If the storm water permit application, plan and maintenance agreement are approved, or if an agreed upon payment of fees in lieu of storm water management practices is made, the City Engineer shall issue the permit.

(c) If the storm water permit application, plan or maintenance agreement is disapproved, the City Engineer shall detail in writing the reasons for disapproval.

(d) The City Engineer may request additional information from the applicant. If additional information is submitted, the City Engineer shall have 20 business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.

(e) Failure by the City Engineer to inform the permit applicant of a decision within 20 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.

(4) PERMIT REQUIREMENTS. All permits issued under this ordinance shall be subject to the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. The City Engineer may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the City Engineer to suspend or revoke this permit may be appealed in accordance with 23.214.

(a) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.

(b) The responsible party shall design and install all structural and non-structural storm water management measures in accordance with the approved storm water management plan and this permit.

(c) The responsible party shall notify the City Engineer within 10 business days upon completion of the storm water management practices. If required as a special condition under sub. (5), the responsible party shall make additional notification according to a schedule set forth by the City Engineer so that practice installations can be inspected during construction.

(d) Practice installations required as part of this ordinance shall be certified "as built" by a licensed professional engineer. Completed storm water management practices must pass a final inspection by the City Engineer or its designee to determine if they are in accordance with the approved storm water management plan and ordinance. The City Engineer or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.

(e) The responsible party shall notify the City Engineer of any significant modifications it intends to make to an approved storm water management plan. The City Engineer may require that the proposed modifications be submitted to it for approval prior to incorporation into the storm water management plan and execution by the responsible party.

(f) The responsible party shall maintain all storm water management practices in accordance with the storm water management plan until the practices either become the responsibility of the City Council, or are transferred to subsequent private owners as specified in the approved maintenance agreement.

(g) The responsible party authorizes the City Engineer to perform any work or operations necessary to bring storm water management measures into conformance with the approved storm water management plan, and consents to a special assessment or charge against the property as authorized under subch. VII of ch. 66, Wis. Stats., or to charging such costs against the financial guarantee posted under 23.211.

(h) If so directed by the City Engineer, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved storm water management plan.

(i) The responsible party shall permit property access to the City Engineer or its designee for the purpose of inspecting the property for compliance with the approved storm water management plan and this permit.

(j) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the City Engineer may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.

(k) The responsible party is subject to the enforcement actions and penalties detailed in 23.213, if the responsible party fails to comply with the terms of this permit.

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

(5) PERMIT CONDITIONS. Permits issued under this subsection may include conditions established by City Engineer in addition to the requirements needed to meet the performance standards in 23.207 or a financial guarantee as provided for in 23.211.

(6) PERMIT DURATION. Permits issued under this section shall be valid from the date of issuance through the date the City Engineer notifies the responsible party that all storm water management practices have passed the final inspection required under sub. (4)(d).

(7) ALTERNATE REQUIREMENTS. The City Engineer may prescribe alternative requirements for applicants seeking an exemption to on-site storm water management performance standards under 23.207 (5) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

23.209 <u>STORM WATER MANAGEMENT PLAN</u>.

(1) PLAN REQUIREMENTS. The storm water management plan required under 23.208 (2) shall comply with the City of Fond du Lac Stormwater Reference Guide and contain at a minimum the following information:

(a) Name, address, and telephone number of the landowner and responsible parties.

(b) A legal description of the property proposed to be developed.

(c) Pre-development site map with property lines, disturbed limits, and drainage patterns.

(d) Post-development site map with property lines, disturbed limits, and drainage patterns.

1. Total area of disturbed impervious surfaces within the site.

2. Total area of new impervious surfaces within the site.

3. Performance standards applicable to site.

4. Proposed best management practices.

5. Groundwater, bedrock, and soil limitations.

6. Separation distances. Storm water management practices shall be adequately separated from wells to prevent contamination of drinking water.

(2) ALTERNATE REQUIREMENTS. The City Engineer may prescribe alternative submittal requirements for applicants seeking an exemption to on-site storm water management performance standards under 23.207 (5) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

23.210 MAINTENANCE AGREEMENT.

(1) MAINTENANCE AGREEMENT REQUIRED. The maintenance agreement required under 23.208 (2) for storm water management practices shall be an agreement between the City Engineer and the responsible party to provide for maintenance of storm water practices beyond the duration period of this permit. The maintenance agreement shall be filed with the County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the storm water management practices.

(2) AGREEMENT PROVISIONS. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required in the City of Fond du Lac Stormwater Reference Guide by 23.209(1)(f):

(a) Identification of the storm water facilities and designation of the drainage area served by the facilities.

(b) A schedule for regular maintenance of each aspect of the storm water management system consistent with the storm water management plan required under 23.208 (2).

(c) Identification of the responsible party(s), organization or city, county, town or village responsible for long term maintenance of the storm water management practices identified in the storm water management plan required under 23.208 (2).

(d) Requirement that the responsible party(s), organization, or city, county, town or village shall maintain storm water management practices in accordance with the schedule included in par. (b).

(e) Authorization for the City Engineer to access the property to conduct inspections of storm water management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.

(f) A requirement on the City Engineer to maintain public records of the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the storm water management practice into proper working condition.

(g) Agreement that the party designated under par. (c), as responsible for long term maintenance of the storm water management practices, shall be notified by the City Engineer of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the City Engineer.

(h) Authorization of the City Engineer to perform the corrected actions identified in the inspection report if the responsible party designated under par. (c) does not make the required corrections in the specified time period. The City Engineer shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to subch. VII of ch. 66, Wis. Stats.

(3) ALTERNATE REQUIREMENTS. The City Engineer may prescribe alternative requirements for applicants seeking an exemption to on-site storm water management performance standards under 23.207 (5) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

23.211 FINANCIAL GUARANTEE.

(1) ESTABLISHMENT OF THE GUARANTEE. The City Engineer may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the City Engineer. The financial guarantee shall be in an amount determined by the City Engineer to be the estimated cost of construction and the estimated cost of maintenance of the storm water management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the City Engineer the authorization to use the funds to complete the storm water management practices if the responsible party defaults or does not properly implement the approved storm water management plan, upon written notice to the responsible party by the City Engineer that the requirements of this ordinance have not been met.

(2) CONDITIONS FOR RELEASE. Conditions for the release of the financial guarantee are as follows:

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

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

(3) ALTERNATE REQUIREMENTS. The City Engineer may prescribe alternative requirements for applicants seeking an exemption to on-site storm water management performance standards under 23.207 (5) or for applicants seeking a permit for a post-construction site with less than 20,000 square feet of impervious surface disturbance.

23.212 FEE SCHEDULE.

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

23.213 <u>ENFORCEMENT</u>.

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

(2) The City Engineer shall notify the responsible party by certified mail of any non-complying land disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action which may be taken.

(3) Upon receipt of written notification from the City Engineer under sub. (2), the responsible party shall correct work that does not comply with the storm water management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the City Engineer in the notice.

(4) If the violations to a permit issued pursuant to this ordinance are likely to result in damage to properties, public facilities, or waters of the state, the City Engineer may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the City Engineer plus interest and legal costs shall be billed to the responsible party.

(5) The City Engineer is authorized to post a stop work order on all land disturbing construction activity that is in violation of this ordinance, or to request the municipal attorney to obtain a cease and desist order in any court with jurisdiction.

(6) The City Engineer may revoke a permit issued under this ordinance for non-compliance with ordinance provisions.

(7) Any permit revocation, stop work order, or cease and desist order shall remain in effect unless retracted by the City Engineer or by a court with jurisdiction.

(8) The City Engineer is authorized to refer any violation of this ordinance, or of a stop work order or cease and desist order issued pursuant to this ordinance, to the municipal attorney for the commencement of further legal proceedings in any court with jurisdiction.

(9) Any person, firm, association, or corporation who does not comply with the provisions of this ordinance shall be subject to a forfeiture and the costs of prosecution for each violation. Each day that the violation exists shall constitute a separate offense.

(10) Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctional proceedings.

(11) When the City Engineer determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices set forth in the storm water management plan, or has failed to comply with schedules set forth in said storm water management plan, the City Engineer or a party designated by the City Engineer may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan. The City Engineer shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to 23.211 of this ordinance. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon.

23.214 APPEALS.

(1) APPEALS. The City Manager shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the City Engineer in administering this ordinance. The City Manager shall also use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals. Upon appeal, the board may authorize variances from the provisions of this ordinance that are not contrary to the public interest, and where owing to special conditions a literal enforcement of the ordinance will result in unnecessary hardship.

(2) WHO MAY APPEAL. Appeals to the City Manager may be taken by any aggrieved person or by an officer, department, board, or bureau of the City of Fond du Lac affected by any decision of the City Engineer.

23.215 SEVERABILITY.

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

Historical Updates			
Page	**Paragraph**	**Ordinance No.**	**Date Adopted**
Pgs. 1 – 44	23.01 to 23.215	3381	9/10/2008