



# Town of Palmer

*Bondsville, Depot Village, Thorndike & Three Rivers*  
*“The Town of Seven Railroads”*

## Town Council

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February 9, 2009

Sponsor: Planning Board

## TOWN ORDINANCE 2009-02

### AMENDMENT TO THE CODE OF ORDINANCES OF THE TOWN OF PALMER

#### BE IT ENACTED BY THE PALMER TOWN COUNCIL

**That the Code of Ordinances of the Town of Palmer be amended to add Chapter 144, §1-11 – Stormwater Management Ordinance – Small Development Projects, as follows:**

#### § 144-1 PURPOSE AND AUTHORITY

##### 1. Purpose

- A. The purpose of this Ordinance is to better manage land development in order to protect, maintain, and enhance the public health, safety, and general welfare of the citizens of Palmer by establishing minimum requirements and procedures to control the adverse impacts associated with stormwater runoff before, during, and after construction.
- B. The proper management of stormwater runoff will meet the following objectives:
1. Reduce the adverse water quality impacts of stormwater discharges to rivers, lakes, reservoirs and streams in order to attain federal water quality standards;
  2. Prevent the discharge of pollutants, including hazardous chemicals, into stormwater runoff;
  3. Minimize the volume and rate of stormwater that is discharged, to rivers, streams, reservoirs, lakes, and combined sewers that flows from any site during and following development;
  4. Prevent erosion and sedimentation from land development, and reduce stream channel erosion caused by increased runoff;
  5. Provide for the recharge of groundwater aquifers and maintain the base flow of streams;
  6. Provide stormwater facilities that are attractive, maintain the natural integrity of the environment, and are designed to protect public safety;

7. Maintain or reduce pre-development runoff characteristics after development to the extent feasible;
8. Minimize damage to public and private property from flooding;
9. Ensure that these management controls are properly maintained;
10. Inform the public about the value and benefits of groundwater recharge and pollution reduction and clean water.

C. As a means to the objectives described above, stormwater best management practices that mimic natural hydrology (i.e., nonstructural and small-scale upland management approaches) should be considered as first-line practices. Given appropriate soils and conditions, all opportunities to use nonstructural and small-scale upland management designs must be exhausted prior to exploring end-of-pipe stormwater management approaches.

D. It is the intent that upon having followed the guidance of the Ordinance that the applicant will have done sufficient planning and documentation for Conservation Commission review (where there is jurisdiction) and for U.S. Environmental Protection Agency review where a National Pollution Discharge Elimination System construction general permit is required.

## **§ 144-2 APPLICABILITY**

### **1. Applicability**

This Ordinance applies to the construction activity related to all development projects involving new construction of single or two-family dwellings, and any additions to existing structures that result in less than or equal to a 25% increase in floor area, or that because of the construction, will result in an increase of up to 25% in vehicle traffic, parking, number of tenants/occupants, and/or number of employees, and for any land disturbance that does not fall under the Planning Board's purview.

Prior to the issuance of a building permit for any proposed development, a stormwater management permit, or a determination of inapplicability of the requirement for a stormwater management permit, must be approved by the Permit Granting Authority. No person shall, on or after the effective date of this Ordinance, initiate construction activity or development activities without first complying with this Ordinance.

### **2. Exemptions**

The following activities are exempt from the requirements for submittal and approval of an erosion and sediment control plan and a stormwater management plan under Section 144-4, but must comply with the design requirements and performance standards in Sections 144-6 and 144-7:

- A. Any agricultural activity which is consistent with an existing, approved soil conservation plan prepared or approved by the Natural Resource Conservation Service;

- B. Any logging activity that is consistent with a existing timber management plan approved under the Forest Cutting Practices Act by Massachusetts Department of Environmental Management;
- C. Repairs to any stormwater treatment system deemed necessary and ordered by the Palmer Department of Public Works;
- D. Any emergency activity that is immediately necessary for the protection of life, property or the environment, as determined by the Department of Public Works.
- E. Maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling;
- F. The construction of fencing that will not substantially alter existing terrain or drainage patterns.

### **3. Authority**

The Town of Palmer's Department of Public Works shall administer and implement this Ordinance. Any powers granted to or duties imposed upon the Department of Public Works may be delegated in writing and enforced by the Department of Public Works or its employees and/or agents.

## **§ 144-3 DEFINITIONS**

The following definitions describe the meaning of the terms used in this Ordinance:

Adverse impact means any effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity, or stability or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

Best Management Practice (BMPs) are structural or biological devices that retain, temporarily store, and/or treat stormwater runoff to reduce the quantity and/or improve the quality of stormwater runoff. BMPs, as recognized by both the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Management, can also be non-structural practices, such as a maintenance procedure, that reduce pollutants at their source. BMPs are further described in a stormwater design manual, *Stormwater Management, Volume Two: Stormwater Technical Handbook* (March, 1997, Mass. Department of Environmental Protection, as may from time to time be updated or amended or by any similar descriptions for such practices as may be adopted by the Mass. Department of Environmental Protection to replace or supplement this guide).

Construction activity is disturbance of the ground by removal or moving of vegetative surface cover or topsoil, grading, excavation, clearing or filling.

Design storm is a rainfall event of specified size and return frequency that is used to calculate the runoff volume and peak discharge rate to a BMP.

Detention is the temporary storage of storm runoff in a BMP, which is used to control the" peak discharge rates, and which provides gravity settling of pollutants.

Disturbance is any land clearing, grading, bulldozing, digging or similar activities.

Drainage area means that area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridgeline.

Drywell is similar to an infiltration trench but smaller with inflow from a pipe; commonly covered with soil and used for drainage areas of less than 1 acre such as roadside inlets and rooftops runoff.

Easement means a grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

Flow attenuation means prolonging the flow time of runoff to reduce the peak discharge.

Hydrology model may include one of the following:

- TR-20, a watershed hydrology model developed by the Natural Resources Conservation Service act that is used to route a design storm hydrograph through a pond;
- TR 55, or Technical Release 55, "Urban Hydrology for Small Watersheds" is a publication developed by the Natural Resources Conservation Service to calculate stormwater runoff and an aid in designing detention basins;
- Hydrocad.

Impervious Surfaces are developed areas, such as pavement or rooftops, that prevent the infiltration of water into the soil.

Infiltration is the downward movement of water from the surface to the subsoil.

Infiltration Trench is a stormwater management excavation filled with aggregate that removes both soluble and particulate pollutants. Trenches are not intended to trap coarse sediments.

Outfall is the terminus of a storm drain or other stormwater structure where the contents are released.

Peak Discharge is the maximum instantaneous rate of flow during a storm, usually in reference to a specific design storm event

Permeable Soils are soil materials with a sufficiently rapid infiltration rate so as to greatly reduce or eliminate surface and stormwater runoff. These soils are generally classified as NRCS hydrologic soil types A and B.

Permit Granting Authority is the Department of Public Works for all development projects involving single or two-family dwellings, any additions that result in a 25% increase in floor area, vehicle traffic, parking, number of tenants, and/or number of employees. The Department of Public Works shall also administer this Ordinance for any land disturbance of one acre or more that does not fall under the Planning Board's purview. Permit Granting Authority can include Department of Public Works or its employees or agents.

Person is any individual, association, partnership, corporation, company, business, organization, trust, estate, administrative agency, public or quasi-public corporation or body, the Commonwealth or political subdivision thereof.

Retention is the holding of runoff in a basin without release except by means of evaporation, infiltration, or emergency bypass.

Start of Construction is the first land-disturbing activity associated with a development, including land preparation such as: clearing and grubbing, grading and filling; installation of streets and walkways; excavation for basements; footings, piers or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

Swale is a natural depression or wide shallow ditch used to temporarily store, route, or filter runoff.

## **§ 144-4 PERMIT PROCEDURES AND REQUIREMENTS**

### **1. Permit Required**

No land owner or land operator shall receive any of the building, grading, or other land development permits required for land disturbance activities, and no land owner shall commence land disturbance activities, without approval of a Stormwater Management Permit from the appropriate Permit Granting Authority and meeting the requirements of this Ordinance.

### **2. Application Requirements**

#### **Application for approval of a Stormwater Management Permit:**

All plans shall be prepared, signed, and sealed by a Massachusetts registered engineer or landscape architect, whichever is appropriate. Submissions shall include four (4) sets of the materials outlined below:

- A. All Stormwater Management Permit applications requiring review by the DPW shall consist of the following:
  - i. An existing conditions plan;
  - ii. A plan identifying and showing locations of all erosion and sediment control features for before and during construction (see Section 144-6, 2. & 3.);
  - iii. A site plan identifying and showing locations of post-construction drainage controls for the roof, driveway and any drains;
  - iv. An ongoing operation, maintenance, and inspection agreement (see Section 144-7);
  - v. A non-refundable stormwater management permit application fee of one-hundred dollars (\$100.00);
  - vi. An application review fee, if required (see Section 144-4.5 for information);
  - vii. A non-refundable inspection fee of one-hundred fifty dollars (\$150.00) to cover the cost of the three required inspections at \$50.00 per inspection (see Section 144-5.6.). Should any of the inspections indicate a failure to comply, and an additional

inspection is required, an additional fee of fifty dollars (\$50.00) per inspection will be charged to the applicant. Should any inspection be deemed unnecessary, the balance shall be reimbursed to the applicant.

- B. The applicant may request, and the Permit Granting Authority may grant, a waiver from any information requirements it judges to be unnecessary to the review of a particular plan.

### **3. Waivers**

- A. The SPGA may waive strict compliance with any requirement of this Ordinance where:
  - i. Such action is allowed by federal, state and local statutes and/or regulations;
  - ii. It is in the public interest,
  - iii. It is consistent with the purpose and intent of this Ordinance
- B. Any applicant may submit a written request to be granted such a waiver. The request shall be accompanied by a \$25.00 review fee. Such a request shall be accompanied by an explanation or documentation supporting the waiver request, and shall demonstrate that the proposal does not inhibit the purposes or objectives of this Ordinance.
- C. If, in the SPGA's opinion, additional information is required for review of a waiver request, the information shall be provided or the waiver request shall be denied.

## **§ 144-5 PROCEDURE FOR REVIEW AND APPROVAL**

- A. The procedures for review and approval of Stormwater Management Permits shall be consistent with the existing review procedures of the Permit Granting Authority.
- B. The Permit Granting Authority may refer copies of the Stormwater Management application to a competent professional authority for review, and shall consider any comments submitted by the competent professional authority during the review period.

### **1. Criteria for Review of Stormwater Permits**

In addition to other criteria used by the appropriate Permit Granting Authority in making permit decisions for the uses specified in this Ordinance, the Permit Granting Authority must also find that the Erosion and Sediment Control Plan and the Stormwater Management Plan submitted with the permit application meet the following criteria:

- A. The Erosion and Sediment Control Plan and the Stormwater Management Plan are consistent with the Purposes and Objectives of this Ordinance in Section 144-1.
- B. The Erosion and Sediment Control plan meets the Design Requirements in Section 144-6.

- C. The Stormwater Management Plan meets the Performance Standards described in Section 144-6.

## **2. Department of Public Works Action**

The Department of Public Works' action, rendered in writing, shall consist of either:

- A. Approval of the Stormwater Management Permit Application based upon determination that the proposed plan meets the purposes in Section 144-1 and the requirements and standards in Sections 144-6 and 144-7, and will adequately protect the water resources of the community and is in compliance with the requirements set forth in this ordinance;
- B. Approval of the Stormwater Management Permit Application subject to any conditions, modifications or restrictions required by the Permit Granting Authority which will ensure that the project meets the purposes in Section 144-1 and the requirements and standards in Sections 144-6 and 144-7, and adequately protects water resources, as set forth in this ordinance;
- C. Disapproval of the Stormwater Management Permit Application based upon a determination that the proposed plan, as submitted, does not meet the purposes in Section 144-1 and the requirements and standards in Sections 144-6 and 144-7, or adequately protect water resources, as set forth in this ordinance.

## **3. Inspections**

No Plan will be approved without adequate provision for inspection of the property before development activity commences. The applicant shall arrange with the Department of Public Works for the following Stormwater permit related inspections:

- i. Initial Inspection, prior to approval of plan and issuance of stormwater management permit;
- ii. Erosion and Sediment Control Inspection, after site clearing, rough grading and final grading to verify that erosion control practices are in accord with the plan;
- iii Final Inspection when all work including construction of stormwater management facilities and landscaping have been completed.

The Department of Public Works or its agent shall inspect the work and either approve it or notify the applicant in writing in what respects there has been a failure to comply with the requirements of the approved plan. Any portion of the work that does not comply shall be promptly corrected by the applicant, or the applicant will be subject to the bonding provisions of Section 144-9 or the penalty provisions of Section 144-10. The Department of Public Works or its agents may conduct random inspections to ensure effective control of erosion and sedimentation during all phases of construction.

## **4. Right-of-Entry for Inspection**

When any new drainage control facility is installed on private property, or when any

new connection is made between private property and a public drainage control system or sanitary sewer, the filing of an application shall be deemed as the property owner's permission to the Permit Granting Authority for the right to enter the property at reasonable times and in a reasonable manner for the purpose of the inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this Ordinance is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this Ordinance.

#### **5. Application Review Fees**

Applicants must pay an "application review fee" consisting of the reasonable costs incurred by the Permit Granting Authority for employment of outside professional expertise and/or consultants engaged to assist in the review of an application in accordance with *MGL Chapter 44, Section 53G*.

A. For all development projects for which the Department of Public Works requires the professional review of an outside consultant, the applicant shall be given written notice of the selection. Said notice shall state the identity of the consultant, the amount of the review fee to be charged to the applicant, and a request for payment of said fee in its entirety. The fee must be received in its entirety prior to the initiation of consulting services. The Permit Granting Authority may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services.

### **§ 144-6 STORMWATER MANAGEMENT PERFORMANCE STANDARDS AND DESIGN REQUIREMENTS**

#### **1. Minimum Control Requirements**

All Projects must meet the Standards of the Massachusetts Stormwater Management Policy. These Standards are:

- A. No new stormwater conveyances (e.g. outfalls) may discharge untreated stormwater directly to or cause erosion in wetlands or waters of the Commonwealth.
- B. Stormwater management systems must be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates.
- C. Loss of annual recharge to groundwater should be minimized through the use of infiltration measures including environmentally sensitive design, stormwater best management practices, and good operation and maintenance. The annual recharge from the post-development site should approximate the annual recharge rate from the pre-development or existing site conditions, based on soil types.
- D. Stormwater discharges within the Zone II or Interim Wellhead Protection Area of a public water supply and/or near to any other critical areas must utilize certain stormwater management BMPs approved for critical areas. See *Stormwater Management, Volume One: Stormwater Policy Handbook* (March, 1997, Mass. Department of Environmental Protection, as updated or amended). Critical areas are Outstanding Resource Waters (ORWs), shellfish beds, swimming beaches, cold water fisheries and recharge areas for public water supplies.
- E. Redevelopment of previously developed sites must meet the Stormwater



Management Standards to the maximum extent practicable. However, if it is not practicable to meet all the Standards, new (retrofitted or expanded) stormwater management systems must be designed to improve existing conditions.

- F. Erosion and sediment controls must be implemented to prevent impacts during disturbance and construction activities.
- G. All illicit discharges to the stormwater management system are prohibited.

In efforts to meet the above stated standards, all projects shall be designed in compliance with the following guides and manual:

- A. 1. *The Massachusetts Erosion and Sediment Control Guidelines for Urban and Suburban Areas* (May 2003, Massachusetts Department of Environmental Protection, as updated or amended); and  
2. Chapter 6 of the *Massachusetts Nonpoint Source Pollution Management Manual* located at <http://projects.geosyntec.com/NPSManual/> (May 2006, Massachusetts Department of Environmental Protection, as updated or amended). These two general guides to conservation measures and erosion and sediment control practices are hereby incorporated by reference as part of this Ordinance, and shall furnish additional criteria and information.
- B. *Stormwater Management, Volume Two: Stormwater Technical Handbook* (March, 1997, Mass. Department of Environmental Protection, as updated or amended). This stormwater design manual is hereby incorporated by reference as part of this Ordinance and shall furnish additional policy, criteria and information including specifications and standards, for the proper implementation of the requirements of this Ordinance. This manual includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. The manual may be updated and expanded from time to time, based on improvements in engineering, science, monitoring and local maintenance experience, at the discretion of the Department of Public Works or the Massachusetts Department of Environmental Protection. Stormwater treatment practices that are designed and constructed in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards.

## **2. The design requirements of the Erosion and Sediment Control Plan are:**

- A. Minimize total area of disturbance.
- B. Sequence activities to minimize simultaneous areas of disturbance.
- C. Minimize peak rate of runoff in accordance with the MA DEP Stormwater Policy.
- D. Minimize soil erosion and control sedimentation during construction. Prevention of erosion is preferred over sedimentation control.
- E. Divert uncontaminated water around disturbed areas.
- F. Maximize groundwater recharge.
- G. Install and maintain all erosion and sediment control measures in accordance with the manufacturers specifications and good engineering practices.
- H. Prevent off-site transport of sediment.
- I. Protect and manage on and off-site material storage areas (overburden and stockpiles of dirt, borrow areas, or other areas used solely by the permitted project are considered a part of the project).
- J. Comply with applicable Federal, State and local laws and regulations including

waste disposal, sanitary sewer or septic system regulations, and air quality requirements, including dust control.

- K. Prevent adverse impact from the proposed activities to habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as endangered, threatened or of special concern, estimated habitats of rare wildlife and certified vernal pools, and priority habitats of rare species.
- L. Institute interim and permanent stabilization measures. Stabilization measures shall be instituted on a disturbed area of the site as soon as practicable, but no more than 14 days after construction activity has temporarily or permanently been completed on that portion of the site.
- M. Properly manage on-site construction and waste materials.
- N. Prevent off-site vehicle tracking of sediments.

When the proposed stormwater discharge may have an impact upon a sensitive receptor, including streams, storm sewers, and/or combined sewers, the DPW may require an increase in these minimum requirements, based on existing stormwater system capacity.

### **3. Stormwater Management Measures**

- A. Stormwater management measures shall be required to satisfy the minimum control requirements. Best Management Practices (BMPs) that mimic natural hydrology must be used unless soil or site conditions make such measures impracticable. All opportunities to use nonstructural and small-scale upland management practices must be exhausted prior to exploring end-of-pipe stormwater management measures such as detention basins and retention basins. Stormwater management measures shall be implemented in the following order of preference:
  - i. Infiltration, flow attenuation, and pollutant removal of runoff on-site to existing areas with grass, trees, and similar vegetation and through the use of open vegetated swales and natural depressions;
  - ii. Use of stormwater on-site to replace water used in industrial processes or for irrigation;
  - iii. Stormwater detention structures for the temporary storage of runoff which is designed so as not to create a permanent pool of water;
  - iv. Stormwater retention structures for the permanent storage of runoff by means of a permanent pool of water; and
  - v. Retention and evaporation of stormwater on rooftops or in parking lots.
- B. Infiltration practices shall be utilized to reduce runoff volume increases. A combination of successive practices may be used to achieve the applicable minimum control requirements. Justification shall be provided by the applicant for rejecting each practice based on site conditions.
- C. Best Management Practices shall be employed to minimize pollutants in stormwater runoff prior to discharge into a separate storm drainage system or water body.
- D. All stormwater management facilities shall be designed to provide an emergency overflow system, and incorporate measures to provide a non-erosive velocity of flow along its length and at any outfall.
- E. The designed release rate of any stormwater structure shall be modified if any increase in flooding or stream channel erosion would result at a downstream dam, highway, structure, or normal point of restricted stream flow.

#### 4. Specific Design Criteria

Additional policy, criteria, and information including specifications and design standards may be found in the Stormwater Design Manual.

- A. Infiltration systems
  - i. Infiltration systems shall be equipped with clean stone and or filter fabric adjacent to the soil or other sediment removal mechanisms;
  - ii. Infiltration systems greater than 3 feet deep shall be located at least 10 feet from basement walls;
  - iii. Due to the potential for groundwater contamination from dry wells, they shall not be an acceptable method for management of runoff containing pollutants;
  - iv. Infiltration systems designed to handle runoff from commercial or industrial impervious parking areas shall be a minimum of 100 feet from any drinking water supply well;
  - v. Infiltration systems shall not be used as sediment control basins during construction unless specific plans are included to restore or improve the basin surface;
  - vi. Infiltration basins shall be constructed with a three foot minimum separation between the bottom of the structure and the seasonal high groundwater elevation, as determined by a certified soil evaluator; and
  - vii. Provisions shall be made for safe overflow passage, in the event of a storm that exceeds the capacity of an infiltration system.
- B. The applicant shall give consideration in any plan to incorporating the use of natural topography and land cover such as natural swales, and depressions as they exist prior to development to the degree that they can accommodate the additional flow of water.
- C. The applicant shall consider public safety in the design of any stormwater facilities. The banks of detention, retention, and infiltration basins shall be sloped at a gentle grade into the water as a safeguard against personal injury, to encourage the growth of vegetation and to allow the alternate flooding and exposure of areas along the shore. Basins shall have a 4:1 slope to a depth two feet below the control elevation. Side slopes must be stabilized and planted with vegetation to prevent erosion and provide pollutant removal. The banks of detention and retention areas shall be designed with sinuous rather than straight shorelines so that the length of the shoreline is maximized, thus offering more space for the growth of vegetation;
- D. Where a stormwater management plan involves direction of some or all runoff off the site, it shall be the responsibility of the applicant to obtain from adjacent property owners any easements or other necessary property interests concerning flowage of water. Approval of a stormwater management plan does not create or affect any such rights.
- E. All applicants, whose projects must incorporate the storage or use of hazardous chemicals, shall utilize "best management practices" to ensure the proper handling and storage of such chemicals so as to prevent any contaminating runoff to discharge from a site and further enter into any associated infiltration systems, receiving water bodies, or storm drains. A list of such chemicals shall be included in the application.
- F. Runoff from parking lots shall be treated by oil and water separators or other stormwater management controls to properly remove oil and sediment.

- G. The basic design criteria methodologies and construction specifications, subject to the approval of the Department of Public Works and City Engineer, shall be those generally found in the most current edition of the *Stormwater Management, Volume Two: Stormwater Technical Handbook* (March, 1997, Mass. Department of Environmental Protection, as updated or amended).

## § 144-8 MAINTENANCE

### Operation, Maintenance and Inspection Agreement

- A. Prior to issuance of any building permit for which stormwater management is required, the Permit Granting Authority shall require the applicant or owner to execute an operation, maintenance and inspection agreement binding on all subsequent owners of land served by the private stormwater management facility. The agreement shall be designed to ensure that water quality standards are met in all seasons and throughout the life of the system. Such agreement shall provide for access to the facility at reasonable times for regular inspections by the Town or its authorized representative and for regular or special assessments of property owners to ensure that the facility is maintained in proper working condition to meet design standards and any provision established. The agreement shall include:
- (1) The name(s) of the owner(s) for all components of the system.
  - (2) Maintenance agreements that specify:
    - (a) The names and addresses of the person(s) responsible for operation and maintenance;
    - (b) The person(s) responsible for financing maintenance and emergency repairs;
    - (c) A maintenance schedule for all drainage structures, including swales and ponds;
    - (d) A list of easements with references to books and pages of the recorded documents with the purpose and location of each;
    - (e) The signature(s) of the owner(s).
  - (3) Stormwater management easements as necessary for:
    - (a) Access for facility inspections and maintenance;
    - (b) Preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the 100-year storm event;
    - (c) Direct maintenance access by heavy equipment to structures requiring regular cleanout.
  - (4) Stormwater management easement requirements:
    - (a) The purpose of each easement shall be specified in the maintenance agreement signed by the property owner;
    - (b) Stormwater management easements are required for all areas used for off-site stormwater control, unless a waiver is granted by the Town;
    - (c) Easements shall be recorded with the Registry of Deeds prior to issuance of a Certificate of Completion.
  - (5) Changes to Operation and Maintenance Plans:
    - (a) The owner(s) of the stormwater management system must notify the Permit Granting Authority of changes in ownership or assignment of financial responsibility. The recorded agreement shall require any

subsequent owner of the property to report to the appropriate authorized agency and to provide updated information expressing the changes resulting from the new ownership;

- (b) The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this Ordinance by mutual agreement of the authorized administrative agency and the responsible parties. Amendments must be in writing and signed by all responsible parties. Responsible parties must include owner(s), persons with financial responsibility, and persons with operational responsibility.

B. The agreement shall be recorded by the applicant and/or owner in the land records of the Registry of Deeds.

C. The agreement shall also provide that, if after notice by the Permit Granting Authority to correct a violation requiring maintenance work, satisfactory corrections are not made by the owner(s) within thirty days, the Department of Public Works may perform all necessary work to place the facility in proper working condition and place a municipal lien on the affected property as security for all of the costs assumed by the town to perform the work. The owner(s) of the facility shall be assessed the cost of the work and any penalties.

## **2. Maintenance Responsibility**

- A. The owner of the property on which work has been done pursuant to this Ordinance for private stormwater management facilities, or any other person or agent in control of such property, shall maintain in good condition and promptly repair and restore all grade surfaces, walls, drains, dams and structures, vegetation, erosion and sediment control measures and other protective devices. Such repairs or restoration and maintenance shall be in accordance with approved plans.
- B. A maintenance schedule shall be developed for the life of any stormwater management facility and shall state who shall be legally responsible to perform the maintenance, maintenance to be completed and the time period for completion. This maintenance schedule shall be printed on the stormwater management plan.
- C. A record of installation and a rolling log of operation and maintenance activities shall be retained for a minimum of three years. The log shall be made available to the Permit Granting Authority upon request.
- D. Failure to properly maintain practices during and post construction is considered a violation of the stormwater permit.

## **§ 144-10 ENFORCEMENT AND PENALTIES**

### **1. Enforcement**

The responsibility for enforcement of this Ordinance falls under the jurisdiction of the Department of Public Works, and/or its employees or agents.

### **2. Violations**

Any development activity that has commenced or is conducted contrary to this Ordinance may be restrained by injunction or otherwise abated in a manner provided by law.

### **3. Notice of Violation**

When the Permit Granting Authority determines that an activity is not being carried out in accordance with the requirements of this Ordinance, it shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:

- A. the name and address of the owner and applicant if different from the owner;
- B. the address when available or the description of the building, structure, or land upon which the violation is occurring;
- C. a statement specifying the nature of the violation;
- D. a description of the remedial measures necessary to bring the development activity into compliance with this Ordinance and a time schedule for the completion of such remedial action;
- E. a statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed.

### **4. Stop Work Orders**

- A. Persons receiving a notice of violation(s) will be required to halt all construction activities. This “stop work order” will be in effect until the Permit Granting Authority confirms that the development activity is in compliance and the violation has been satisfactorily addressed. Failure to correct a violation in a timely manner can result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this Ordinance.
- B. Failure to correct a violation within the time limits imposed by the notice of violation shall constitute a public nuisance and subject the violator(s) to all of these statutory and common law remedies available to the town including performance of the necessary measures by the town to correct the violations and imposing the costs thereof on the owner of the property.

### **5. Penalties**

In enforcing this Ordinance, the Permit Granting Authority shall have the following options:

- A. Criminal Complaint: Whoever violates any provision of this Ordinance may be penalized by a complaint brought in the District Court. Except as otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation, or offense brought in this manner, shall be three hundred (\$300.00). Each day a violation continues shall constitute a separate offense; or
- B. Non-criminal disposition: Whoever violates any provision of this Ordinance may be penalized by a non-criminal disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D and may be punished by a non-criminal fine of fifty dollars (\$50.00) for the 1<sup>st</sup> offense, seventy-five dollars (\$75.00) for the 2<sup>nd</sup> offense, and one hundred dollars (\$100.00) for the 3<sup>rd</sup> offense. Each day a

violation continues shall constitute a separate offense.

**6. Appeals**

The decision of the Department of Public Works shall be final but is reviewable in the Superior Court in an action filed within sixty (60) days in accordance with MGL C.249 §4.

**7. Restoration of Lands**

Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Permit Granting Authority may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

**8. Holds on Occupancy Permits**

Occupation permits will not be granted until corrections to all stormwater practices have been made and accepted by the Permit Granting Authority.

**§ 144-11 SEVERABILITY**

The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision thereof.

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Michael R. Magiera, Council President

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Matthew Streeter, Town Manager

**Adoption History:**

Agenda item and First Reading at Regular Town Council Meeting held on January 12, 2009

Public Hearing was warned in Palmer Journal Register on January 15 and January 22, 2009

Public Hearing was held at 7:00 PM on February 9, 2009 at Palmer Town Building.

Agenda Item and Second Reading at Regular Town Council Meeting held on February 9, 2009

Vote on Ordinance at Regular Council Meeting and entered into the minutes of this meeting approved on March 9, 2009

Posted in public places on February 10, 2009

Notice of adoption published in the Palmer Journal Register on February 12, 2009

Effective Date: March 2, 2009