# ORDINANCE #O-2014-21

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| First Reading | May 19, 2014 |
| Second Reading | June 16, 2014 |
| Enacted | June 16, 2014 |
| Effective | July 1, 2014 |

**AN ORDINANCE TO ADD CHAPTER 58 ARTICLE IV TO THE CODE OF ORDINANCES, CITY OF MANASSAS, VIRGINIA (2002), RELATING TO VIRGINIA STORMWATER MANAGEMENT PROGRAM;**

**WHEREAS,** pursuant to the authority and mandates of the Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the Virginia Stormwater Management Program (VSMP) Permit Regulations (9VAC25-870 et seq.), this Ordinance is adopted as part of an initiative to integrate the City of Manassas stormwater management requirements with the City of Manassas erosion and sediment control requirements into a unified stormwater program.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Manassas, Virginia, meeting in regular session this 16th day of June, 2014:

1. That the Code of Ordinances, City of Manassas, Virginia (2002), is hereby amended by adding Chapter 58 Sections 58-97 through -114 as follows:

## ARTICLE IV. VIRGINIA STORMWATER MANAGEMENT PROGRAM

## DIVISION 1. GENERAL

### Sec. 58-97. TITLE, PURPOSE, AND AUTHORITY.

(a) The purpose of this Ordinance is to ensure the general health, safety, and welfare of the citizens of the City of Manassas and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land-disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.

(b) This ordinance is adopted under the specific authority of section 62.1-44.15:24 et seq of the Code of Virginia (the Virginia Stormwater Management Act). Authority to protect water quality is also provided by section 15.2-2283 of the Code of Virginia. Code of Virginia section 62.1-44.15:27 specifically requires the City to adopt a Virginia Stormwater Management Program. It is the intent of the City Council to include future amendments to the provisions of the Code of Virginia, acts of the General Assembly and state regulations incorporated by reference in this Article. This ordinance is also adopted

under the general authority to legislate for the protection of health, safety and welfare under City Charter Section 18 and section 15.2-1102 of the Code of Virginia.

*State Administrative Code reference – Sections 9VAC25-870-20 and 9VAC25-870-40*

## Sec. 58-98. DEFINITIONS.

In addition to the definitions set forth in 9VAC25-870-10 of the Virginia Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in this Ordinance have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

*Administrator* means the VSMP authority including the City of Manassas City Manager or his/her designee.

*"Agreement in lieu of a stormwater management plan"* means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

*Applicant* means any person submitting an application for a permit or requesting issuance of a permit under this Ordinance.

*Best management practice* or *BMP* means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

*City, the city* or *this city* means the City of Manassas, Virginia, a municipal corporation of the Commonwealth of Virginia.

*City council* means governing body of the city.

*Channel* means a natural or manmade waterway.

*Code* or "*the Code*" means the code of the City of Manassas.

*Common plan of development or sale* means a contiguous area where separate and distinct construction activities may be taking place at different times on difference schedules.

*Control measure* means any best management practice or stormwater management facility, or other method used to minimize the discharge of pollutants to state waters.

*Clean Water Act or CWA* means the federal Clean Water Act (33 USC §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217,

Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

*DCSM* means the Design and Construction Standards Manual as adopted by the City.

*Department* means the Commonwealth of Virginia Department of Environmental Quality or DEQ.

*Development* means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silvicultural purposes.

*Discharge* when used without qualification, means the discharge of a pollutant.

*Discharge of a pollutant* means:

1. Any addition of any pollutant or combination of pollutants to state waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

*Flooding* means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

*Floodplain* means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes, but is not limited to any floodplain designated by the Federal Emergency Management Agency.

*General permit* means the state permit titled *GENERAL PERMIT FOR* DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (9VAC25-880-1 et seq.) of the Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

*Inspection* means an on-site review of the project's compliance with the permit or the state permit, the City of Manassas stormwater management program, and any applicable design criteria; or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the Regulations and this Ordinance.

*Land disturbance* or *land-disturbing activity* means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation

except that the term shall not include those exemptions specified in Section 58-99 of this Ordinance.

*Layout* means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

*Minor modification* means an amendment to an existing permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

*Operator* means the owner or operator of any facility or activity subject to regulation under this Ordinance.

*Permit* or *VSMP Authority Permit* means an approval to conduct a land-disturbing activity issued by the Administrator for the initiation of a land-disturbing activity, in accordance with this Ordinance, and which may only be issued after evidence of general permit coverage has been provided by the Department.

*Permittee* means the person to whom the VSMP Authority Permit is issued, including any owner or operator whose construction site is covered under a state construction general permit.

*Person* means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

*Pollutant* means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or

2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well is used either to facilitate production or for disposal purposes is approved by the State Water Control Board and if the State Water Control Board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

*Pollution* means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or

other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this Ordinance.

*Postdevelopment* refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site.

*Predevelopment* refers to the conditions that exist at the time that plans for the land development of a tract of land are submitted to the City of Manassas. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the first item being submitted shall establish predevelopment conditions.

*Regulations* or VSMP Regulations means the Virginia Stormwater Management Program (VSMP) Permit Regulations 9VAC25-870-10 et seq, as amended.

*Site* means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

*State* means the Commonwealth of Virginia.

*State Board* means the State Water Control Board.

*State permit* means an approval to conduct a land-disturbing activity issued by the State Water Control Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the State Board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia Stormwater Management Act and the Regulations.

*State Water Control Law* means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia or successor law.

*State waters* means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

*Stormwater* means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

*Stormwater management facility* means a control measure that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

*Stormwater management plan* means a document(s) containing material for describing methods for complying with the requirements of Section 58-103 of this Ordinance.

*Stormwater Pollution Prevention Plan* or *SWPPP* means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this Ordinance. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan

*Subdivision* means the same as defined in Section 106-1 of the City of Manassas Subdivision Ordinance.

*This Ordinance* means this Article IV of Chapter 58 of the Code.

*Total maximum daily load* or *TMDL* means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

*Virginia Stormwater Management Act* or *Act* means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia or successor law.

*"Virginia Stormwater BMP Clearinghouse website"* means a website administered by the state that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

*Virginia Stormwater Management Program or VSMP* means a program approved by the State Board after September 13, 2011, that has been established by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

*Virginia Stormwater Management Program authority* or *VSMP authority* means an authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program. For the purpose of this article, the city is the VSMP authority.

*Wasteload allocation* or *wasteload* or *WLA* means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

*Wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

*State Administrative Code reference – Section 9VAC25-870-10*

**Sec. 58-99. STORMWATER PERMIT REQUIREMENT; EXEMPTIONS.**

(a) Except as provided herein, no person shall conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance in accordance with the provisions of this Ordinance.

(b) Notwithstanding any other provisions of this Ordinance, the following activities are exempt, unless otherwise required by state and federal law:

(1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia

(2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of the Code of Virginia.

(3) Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures. However,

(i) For construction activities involving single-family detached residential structure, within or outside a common plan of development or sale, such projects shall adhere to the requirements of the general permit; and

(ii) Registration statement is not required for single-family detached residential construction within or outside of common plan of development or sale.

(4) Land disturbing activities that disturb less than one acre of land area that are not part of a larger common plan of development or sale that is one acre or greater of disturbance;

(5) Discharges to a sanitary sewer or a combined sewer system;

(6) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;

(7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this Subsection; and

(8) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of Subsection (a) is required within 30 days of commencing the land-disturbing activity.

**Sec. 58-100. STORMWATER MANAGEMENT PROGRAM ESTABLISHED; SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS.**

(a) Pursuant to § 62.1-44.15:27 of the Code of Virginia, the City hereby establishes a Virginia stormwater management program for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for VSMPs promulgated by the State Water Control Board for the purposes set out in Section 58-97 of this Code.

(b) No VSMP authority permit shall be issued by the Administrator, until the following items have been submitted to and approved by the Administrator as prescribed herein:

(1) A permit application that includes a general permit registration statement;

(2) An erosion and sediment control plan approved in accordance with the City of Manassas Erosion and Sediment Control Ordinance Chapter 58 Article 3 of the Code;

(3) A stormwater management plan approved in accordance with Section 58-103 of the Code;

(c) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.

(d) No VSMP authority permit shall be issued until the fees required to be paid are received, and a reasonable performance bond required pursuant to Section 58-114 of the Code has been submitted.

(e) No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing construction, disturbance, land development and drainage will be done according to the approved permit.

(f) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the Administrator.

**Sec. 58-101. Grandfathering**

(a) Any land-disturbing activity shall be considered grandfathered by the City and shall be subject to the Part II C technical criteria of the VSMP Regulation provided:

(1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the City to be equivalent thereto (i) was approved by the City prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C technical criteria of the VSMP Regulation, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;

(2) A state permit has not been issued prior to July 1, 2014; and

(3) Land disturbance did not commence prior to July 1, 2014.

(b) City, state, and federal projects shall be considered grandfathered by the City and shall be subject to the Part II C technical criteria of the VSMP Regulation provided:

(1) There has been an obligation of City, state, or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012.

(2) A state permit has not been issued prior to July 1, 2014; and

(3) Land disturbance did not commence prior to July 1, 2014.

(c) Land disturbing activities grandfathered under subsections (a) and (b) of this section shall remain subject to the Part II C technical criteria of the VSMP Regulation for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the State Board.

(d) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the Part II C technical criteria of the VSMP Regulation.

(e) Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.

*State Administrative Code reference – Section 9VAC25-870-51*

**Sec. 58-102. STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS**

(a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Section 9VAC25-870-54, which includes but is not limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to Section 9VAC25-870-54. If a specific WLA for a pollutant has been established in an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA. The SWPPP must also comply with the requirements and general information set forth in Section 9VAC25-880-70, Section II [stormwater pollution prevention plan] of the general permit.

(b) The SWPPP shall be amended by the operator within thirty days whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.

(c) The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.

**Sec. 58-103. STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN.**

(a) A stormwater management plan shall be developed and submitted to the City. The stormwater management plan shall be implemented as approved or modified by the City and shall be developed in accordance with the following:

(1) A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in the VSMP regulations to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities, throughout the development life even if ownership changes.

(2) A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

(b) A complete stormwater management plan shall include the following elements:

(1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features if present, and the predevelopment and postdevelopment drainage areas;

(2) Contact information including the name, address, telephone number and email address of the owner and the tax reference number and physical address or lot number(s) of the property or properties affected;

(3) A narrative that includes a description of current site conditions, final site conditions and any proffers or conditions relating to stormwater management;

(4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;

(5) Information on the proposed stormwater management facilities, including:

(i) The type of facilities;
(ii) Location, including geographic coordinates;
(iii) Acres treated; and
(iv) The surface waters or karst features, if present, into which the facility will discharge.

(6) Hydrologic and hydraulic computations, including runoff characteristics;

(7) Documentation and calculations verifying compliance with the water quality and quantity requirements of the VSMP Regulations.

(8) A map or maps of the site that depicts the topography of the site and includes;

(i) All contributing drainage areas;
(ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
(iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
(iv) Current land use including existing structures, roads, and locations of known utilities and easements;
(v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
(vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
(vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
(viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

(c) If an operator intends to meet the water quality and/or quantity requirements established in 9VAC25-870-63 or 9VAC25-870-66 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity.

(d) Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

(e) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

*State Administrative Code reference – Section 9VAC25-870-55*

**Sec. 58-104. POLLUTION PREVENTION PLAN; CONTENTS OF PLANS**

(a) A Pollution Prevention Plan, required by 9VAC25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

(1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

(b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

(1) Wastewater from washout of concrete, unless managed by an appropriate control;

(2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

(3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

(4) Soaps or solvents used in vehicle and equipment washing.

(c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

*State Administrative Code reference – Section 9VAC25-870-56*

**Sec. 58-105. REVIEW OF STORMWATER MANAGEMENT PLAN.**

(a) The Administrator or any duly authorized agent of the Administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:

(1) The Administrator shall determine the completeness to review a plan in accordance with Section 58-103 of the Code, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete. Where available to the applicant, electronic communication may be considered communication in writing.

(2) The Administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subsection (a) (1) of this Section, then plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.

(3) The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.

(4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this Ordinance and all applicable codes, regulations, and policies, as determined by the Administrator.

(5) If a plan meeting all requirements of this Ordinance and all applicable codes, regulations, and policies, as determined by the Administrator, is submitted and no action is taken within the time provided above in subsection (a) (2) of this Section for review, the plan shall be deemed approved.

(b) Approved stormwater plans may be modified as follows:

(1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.

(2) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.

(c) The Administrator shall require the submission of a construction record drawing or as-built plans for permanent BMPs and stormwater management facilities. Construction record drawings shall be prepared in accordance with the provisions set forth in the Design and Construction Standards Manual. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

**Sec. 58-106. TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES.**

(a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the design and construction standards manual (DCSM) shall be the primary regulating document for all technical requirements relating to construction standards for materials and design, plan processing and waiver of those technical standards as provided for within the DCSM. However, the DCSM does not supercede any regulation required by the Code or any condition imposed under the provisions of the Code.

(b) The water quality and quantity technical criteria set forth in Parts II B or Part II C of the Regulations are contained within the DCSM and shall be enforceable as provided in Sec. 58-112 of this Ordinance.

(c) The technical criteria for land-disturbing activities are found in 9VAC25-870-93 through -99.

**Sec. 58-107. EXCEPTIONS TO THE TECHNICAL REQUIREMENTS**

(a) The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.

(1) Under no circumstance shall the VSMP authority grant an exception to the requirement that the land-disturbing activity obtain required state permits, nor approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, except where allowed under Part II C (9VAC25-870-93 et seq.) of the Regulations.

(2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.

(3) A record of all exceptions granted shall be maintained by the VSMP authority in accordance with 9VAC25-870-126.

(b) Nothing in this section shall preclude an operator from constructing to a more stringent standard at their discretion. The Administrator has the sole authority to determine whether a proposed standard is, in fact, more stringent than required under this ordinance.

*State Administrative Code reference – Section 9VAC25-870-57 and 9VAC25-870-122.*

## DIVISION 2. MAINTENANCE

### Sec. 58-108. LONG-TERM MAINTENANCE OF PERMANENT STORMWATER

(a) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in a Private Maintenance Agreement recorded in the Prince William County land records prior to obtaining any land disturbance related permits and shall at a minimum:

(1) Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;

(2) Be stated to run with the land;

(3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;

(4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator on an annual basis. Details related to the inspection are found on the Virginia BMP Clearinghouse website and DCSM;

(5) Provide inspection reports certified by a professional engineer licensed in Virginia;

(6) Provide that additional maintenance required by the Administrator is completed within thirty (30) days of notification;

(7) Permit the city to maintain the stormwater management facilities or perform inspections at the owner's expense should the owner fail to maintain the stormwater management facilities in good working order in accordance with the maintenance specifications in the agreement or fail to perform the periodic inspections required by the agreement;

(8) Provide that in the event the city, pursuant to the agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the owner will reimburse the city for all costs incurred by the city within thirty days of the date of invoice; and

(9) Be enforceable by all appropriate governmental parties.

(b) At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator. If the Administrator exercises the discretion granted by this subsection (b), he or she will document that decision and the nature of the enforceable mechanism in the applicable record, which will thereafter be retained for as long as the enforceable mechanism remains in effect, and for one year thereafter.

(c) If a recorded instrument is not required pursuant to Section 58-108 (b), the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities may not be subject to the requirement for an inspection to be conducted by the Administrator.

*State Administrative Code reference – Section 9VAC25-870-58*

**Sec. 58-109. MONITORING AND INSPECTIONS.**

(a) The permittee shall notify the Administrator before the commencement of construction.

(b) The Administrator or any duly authorized agent of the Administrator shall inspect the land-disturbing activity during construction for:

(1) Compliance with the approved erosion and sediment control plan;

(2) Compliance with the approved stormwater management plan;

(3) Development, updating, and implementation of a pollution prevention plan; and

(4) Development and implementation of any additional control measures necessary to address a TMDL.

(c) The Administrator or any duly authorized agent of the Administrator may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Ordinance.

(d) In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions

associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

(e) Pursuant to § 62.1-44.15:40 of the Code of Virginia, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this Ordinance, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance. Such information shall be held as confidential and not disclosed under FOIA to the extent permitted by § 62.1-44.15:40 of the Code of Virginia.

(f) Post-construction inspections of stormwater maintenance facilities required by the provisions of this Ordinance shall be conducted by the Administrator or any duly authorized agent of the Administrator pursuant to the city's adopted and State Water Control Board approved inspection program, and shall occur, at minimum, at least once every five (5) years except as may otherwise be provided for in Section 58-108.

*State Law reference – Code of Virginia, § 62.1-44.15:39 and § 62.1-44.15:40*
*State Administrative Code reference – Section 9VAC25-870-114*

## DIVISION 3. HEARINGS AND APPEALS

### Sec. 58-110. HEARINGS

(a) Any permit applicant or permittee, or person subject to this Ordinance's requirements, aggrieved by any action of the city taken without a formal hearing, or by inaction of the city, may demand in writing a formal hearing by the city council. A petition requesting a hearing based on City action must be filed with the Administrator within 30 days after notice of such action is given by the Administrator. A petition based on City inaction must be filed within thirty days after the city's deadline for action, if there is one, or if there is no deadline then within thirty days of the date the petitioner had actual or constructive notice that the city should have acted.

(b) The hearings held under this section shall be conducted by the city council at a regular or special meeting of the city council, or by at least one member of the city council designated by the city council to conduct such hearings on behalf of the city council at any other time and place authorized by the city council. The City shall give at least 15 days notice of the date, time and location of the hearing to the party filing the appeal and to the property owner or record. In reviewing the Administrator's actions, the City Council or its designee(s) shall consider evidence and opinions presented by the aggrieved applicant and the Administrator. After considering the evidence and opinions, the City Council or its designee(s) may affirm, reverse or modify the action. Such decision shall be final, subject only to appeal under Section 58-111 of the Code.

(c) A verbatim record of the proceedings of such hearings shall be taken and filed with the city council. Depositions may be taken and read as in actions at law.

(d) The city council or its designated member(s), as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the city council, or its designated member(s), whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

*State Law reference – Code of Virginia, §§ 62.1-44.15:44, 62.1-44.15:45, and 62.1-44.26.*

**Sec. 58-111. APPEALS**

(a) Final decisions of the city under this article shall be subject to appeal to the Prince William Circuit Court, provided that an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land disturbing activities.

(b) The burden shall be upon the party complaining of City action to designate and demonstrate an error subject to review by the court. Allegations of error may be based upon: (i) accordance with constitutional right, power, privilege, or immunity, (ii) compliance with statutory authority, jurisdiction limitations, or right as provided in the Act, the stated objectives for which regulations may be made, and the factual showing respecting violations or entitlement in connection with case decisions, (iii) observance of required procedure where any failure therein is not mere harmless error, and (iv) the substantiality of the evidentiary support for findings of fact. The determination of the substantiality of the evidence shall be made upon the whole evidentiary record provided by the City and the court shall determine whether there was substantial evidence in the City's record to support its decision.

(c) The court shall take due account of the presumption of official regularity, the experience and specialized competence of the City, and the purposes of the Act.

(d) The court may dismiss the appeal, order the City to take any nondiscretionary action that the City has withheld, or remand the matter to the City for further proceedings as the court may permit or direct in accordance with law. The court shall not itself undertake to supply City action committed by the Act to the City.

*State Law reference – Code of Virginia, §§ 2.2-4027, 2.2-4029 and 62.1-44.15:46.*

## DIVISION 4. ENFORCEMENT

**Sec. 58-112. ENFORCEMENT**

(a) If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served by registered or certified mail to the address specified in the permit application, or by delivery at the site of the development activities to the agent or employee supervising such activities.

(1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (b) of this section or the permit may be revoked by the Administrator.

(2) If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall be issued in accordance with the city's procedures. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the Prince William land records, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Subsection 58-112 (c).

(b) In addition to any other remedy provided by this Ordinance, if the Administrator or his or her designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the applicable law.

(c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in any appropriate court by the locality to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

(d) Any person who violates any provision of this Ordinance or who fails, neglects, or refuses to comply with any order of the Administrator shall be subject to a civil penalty not to exceed $32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

(1) Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:
   (i) No permit registration;
   (ii) No SWPPP;
   (iii) Incomplete SWPPP;
   (iv) SWPPP not available for review;
   (v) No approved erosion and sediment control plan;
   (vi) Failure to install stormwater BMPs or erosion and sediment controls;
   (vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
   (viii) Operational deficiencies;
   (ix) Failure to conduct required inspections;
   (x) Incomplete, improper, or missed inspections; and
   (xi) Discharges not in compliance with the requirements of Section 9VAC25-880-70 of the general permit.

(2) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.

(3) In imposing a civil penalty pursuant to this subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

(4) Any civil penalties assessed by a court as a result of a summons issued by the city shall be paid into the treasury of the city to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the city and abating environmental pollution therein in such manner as the court may, by order, direct.

(e) Notwithstanding any other civil or equitable remedy provided by this section or by law, the City may prosecute violations criminally under Code of Virginia *§62.1-44.15:48*.

*State Administrative Code reference – Section 9VAC25-870-116*

## DIVISION 5. FEES

### Sec. 58-113. FEES

(a) Fees for coverage under the general permit shall be imposed in accordance with a fee schedule established by an uncodified ordinance enacted by the city council. When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed

acreage of their site or sites according to the fee schedule established by an uncodified ordinance enacted by the city council.

(b) Fees for the modification or transfer of registration statements from the general permit issued by the State Water Control Board shall be imposed in accordance with the fee schedule. If the general permit modifications result in changes to stormwater management plans that require additional review by the city, such reviews shall be subject to the fees set out in the fee schedule. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in the fee schedule.

(c) Annual permit maintenance shall be imposed in accordance with the fee schedule, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated. General permit coverage maintenance fees shall be paid annually to the city, by the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

(d) The fees set forth in this section above shall apply to:

(1) All persons seeking coverage under the general permit.

(2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.

(3) Persons whose coverage under the general permit has been revoked shall apply to the Department for an Individual Permit for Discharges of Stormwater from Construction Activities.

(4) Permit and permit coverage maintenance fees established by an uncodified ordinance enacted by the city council may apply to each general permit holder.

(e) No permit application fees will be assessed to:

(1) Permittees who request minor modifications to permits as defined in Section 58-98 of this chapter. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this section.

(2) Permittees whose permits are modified or amended at the initiative of the Department, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.

(f) All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment

rate set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The city shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

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**Sec. 58-114. Performance Bond (9VAC25-870-104.D)**

(a) Prior to issuance of any permit, the Applicant may be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the city attorney, to ensure that measures could be taken by the city at the Applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the city takes such action upon such failure by the Applicant, the city may collect from the Applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the Applicant or terminated.

*State Administrative Code reference – Section 9VAC25-870-104 D.*

2. That this ordinance shall take effect on July 1st, 2014.

**BY ORDER OF THE COUNCIL**

_____

Harry J. Parrish, II, Mayor
On Behalf of the City Council of
Manassas, Virginia

ATTEST:

_____

City Clerk

**MOTION: WOLFE**

Date: June 16, 2014

**SECOND: AVENI**

Regular Meeting

Ord. No. O-2014-21

**RE: An Ordinance to Add Chapter 58 Article IV to the Code of Ordinances, City of Manassas, Virginia (2002), Relating to Virginia Stormwater Management Program**

ACTION: Adopted

**Votes:**
**Ayes: Aveni, Harrover, Randolph, Way, Wolfe**
**Nays: None**
**Absent from Vote: Lovejoy**
**Absent from Meeting: Lovejoy**

**CERTIFIED COPY** _____

**Andrea Madden, City Clerk**