

# **Town of Williston**

## Ordinance Regulating the Use of Public and Private Stormwater Systems

~~Third~~ Fourth Draft March ~~12~~20, 2014

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ORDINANCE REGULATING the USE of  
PUBLIC and PRIVATE STORMWATER SYSTEMS

for

Town of Williston

RULES AND REGULATIONS

The Town of Williston, by and through its Selectboard, ordains that the rules and regulations herein set forth are established as necessary and desirable for regulating the use of public and private stormwater systems, and the discharge of stormwater into the public stormwater system and providing penalties for violations thereof in the Town of Williston, County of Chittenden, State of Vermont.

Be it ordained and enacted by the Selectboard of the Town of Williston, State of Vermont as follows:

Article I. ~~ARTICLE I~~ GENERAL

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Section 1.01 ~~SECTION 1.~~ Purpose and Authority:

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(a) This Ordinance is adopted pursuant to 24 V.S.A. § 2291, subsection (14). Its provisions shall be civil ordinances within the meaning of 24 V.S.A. Chapter 59, in order to establish charges, rules and regulations for the control and operation of the Stormwater Services of the Department of Public Works, and the charges, rules and regulations herein established are enacted for such purpose.

(b) The purpose of this Ordinance is to:

(1) Protect, maintain, and enhance the environment of the Town of Williston, Vermont by effective stormwater quality and quantity control throughout the Town, controlling discharges of pollutants to the Town's stormwater system and to maintain and improve the quality of the receiving waters into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the Town, ~~and~~

(2) Enable the Town of Williston to comply with the National Pollution Discharge Elimination System permit (NPDES) and applicable regulations, 40 CFR

| §122.26 for stormwater discharges, ~~and~~:-

(3) Allow the Town of Williston to exercise the powers granted by the State of Vermont through 24 V.S.A. Chapter 59 and other applicable statutes to:

(i) Exercise general regulation over the planning, location, construction, and operation and maintenance of stormwater facilities in the Town, whether or not owned and operated by the Town; and

(ii) Adopt any regulations deemed necessary to accomplish the purposes of this Ordinance, including the adoption of a system of fees for services and permits.

| Section 1.02 ~~SECTION 1. Definitions~~

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Unless the context specifically indicates otherwise, the meaning of terms and abbreviations used in this Ordinance shall be as follows:

“Abatement” shall mean any action taken to remedy, correct, or eliminate a condition within, associated with, or impacting a drainage system.

“Agent” shall mean a person authorized to act in the place of another person.

“Authorized Person” shall mean any person that is specifically appointed or authorized to perform duties for the Stormwater Services of the Department of Public Works.

| “Best Management Practices (BMPs)” as defined by the Final 2012 ~~MS4~~ Municipal Separate Storm Sewer System (MS4) Permit shall mean schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to the stormwater system or waters of the State of Vermont or the United States. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

“Change or Alter” shall mean an act done which will result in a direct or indirect impact on the contribution of stormwater into the public stormwater system.

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

“Developed Property” shall mean any property that is altered from a natural state by removal of vegetation, construction, or installation of improvements such as buildings, structures, or other impervious surfaces, or by other alteration that results in a meaningful change in the hydrology of the property during and following rainfall events.

“Development” shall mean the construction of improvements on a tract of land for any purpose, including, but not limited to, residential, commercial, industrial, manufacturing, farming, educational, medical, charitable, civic, recreational, and religious uses.

“ERU” is an acronym for “Equivalent Residential Unit” and shall mean the square footage that represents the median of the area of impervious surface for all single family residences (SFR) in the Town. The Town Selectboard shall, by resolution, establish the square footage that constitutes one ERU on a periodic basis.

“Hazardous Materials” shall mean any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“Illicit Connection,” as defined by the Final 2012 MS4 Permit, means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

“Illicit Discharge” is defined [at in 40 CFR 122.26\(b\) \(2\)](#) and refers to any discharge to a municipal separate storm sewer that is not entirely composed of stormwater, except discharges authorized under an NPDES permit (other than the NPDES permit for discharges from the small MS4) and discharges resulting from firefighting activities.

“Impervious Surface” shall mean those manmade surfaces, including, but not limited to, paved and unpaved roads, parking areas, roofs, driveways, sidewalks, walkways, compacted gravel and soil surfaces, and awnings and other permanent fabric or plastic coverings, from which precipitation runs off rather than infiltrates.

“MS4” is an acronym for “Municipal Separate Storm Sewer System” as defined by the Final 2012 MS4 Permit, and is used to refer to a Large, Medium, or Small Municipal Separate Storm Sewer System. The term is used to refer to either the system operated by a single entity or a group of systems within an area that are operated by multiple entities. “MS4” is defined [at in 40 CFR 122.26\(b\) \(8\)](#) and means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned

or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Clean Water Act that discharges to waters of the State and waters of the United States; (ii) Designed or used for collecting or conveying stormwater; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined ~~at~~in 40 CFR 122.2.

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

“Non-Single Family Residence” (NSFR) shall mean all types of developed property in the Town with 500 square feet or more of impervious area, except single family residences.

“Non-Stormwater Discharge” shall mean any discharge to the stormwater system that is not composed entirely of stormwater or such other waters or materials as are specifically authorized herein.

**Comment [KW1]:** This comes up under Section 5.a.5. and is different from illicit discharges.

“Outfall” shall mean any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

“Owner” shall be any person vested with ownership, legal or equitable, sole or partial, or possession of any property.

“Person” shall mean any individual, firm, company, association, society, corporation, group, or other legal entity.

“Pollutant” as defined by the Final 2012 MS4 Permit shall mean dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels" within the meaning of section 1322 of the Clean Water Act; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

“Pollution” shall mean the contamination or other alteration of the physical, chemical or biological properties of any natural waters of the United States, or the discharge of any liquid, gaseous, solid, radioactive or other substance into any such waters as will or is likely to create a nuisance, or render such water harmful, detrimental, or injurious to the public health, safety and welfare or to other beneficial uses.

“Private Stormwater System” shall mean all elements of a stormwater system located in the Town of Williston that are controlled and operated by individuals, corporations, and other organizations and not by the Town of Williston, County, State, or Federal Government Agency, or that carry water that drains from any private property.

“Public Stormwater System” shall mean all elements of the stormwater system located in the Town of Williston that are controlled and operated by the Town of Williston or that carry water that drains from any public property, including street rights-of-way.

“Sewage” shall mean a combination of the water carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface and stormwaters as may be present.

“Shall” is mandatory; “May” is permissive.

“Single Family Residence” (SFR) shall mean detached single family homes, duplexes, and triplexes.

“Storm Drain” (synonymous with “Storm Sewer”) shall mean a pipe, culvert, ditch, swale or other conduit which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water

“Stormwater” shall mean stormwater runoff, snowmelt runoff, and surface runoff and drainage as defined [at in](#) 40 CFR 122.26(b) (13).

“Stormwater Discharge” shall mean any stormwater that is transported, naturally or otherwise, from a developed property to the public stormwater system.

“Stormwater Fee” shall mean the periodic fee imposed pursuant to this [article Ordinance](#) for the purpose of funding costs related to stormwater programs, services, systems, and facilities.

“Stormwater Services” shall mean the Department of Public Works, which is responsible for construction, operation and maintenance of the public stormwater system.

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

“Structure” shall mean a house, building or any other assembly of materials used for human occupancy, including but not limited to residence, place of employment, meeting places and places used for recreation.

“Town” shall mean the municipality of Williston, Chittenden County, State of Vermont acting by and through its Selectboard or, in appropriate cases, acting by and through its authorized representatives, agents, deputies or operators.

“Undeveloped Property” shall mean any property that exists in a natural state with no more than five hundred (500) square feet of impervious surface.

“Watercourse” shall mean a channel in which a flow of water occurs, either continuously or intermittently.

“Waters of the State” shall mean all waters as defined in 10 V.S.A. §1251.

“Wetlands” as defined by the Final 2012 MS4 Permit shall mean 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.

## Article II. ~~ARTICLE II~~- STORMWATER SYSTEM USE

### Section 2.01 ~~SECTION 1~~-Applicability

(a) Any discharge of stormwater from developed property in the Town shall be subject to the provisions of this ~~Article~~Ordinance.

### Section 2.02 ~~SECTION 2~~-Required Approvals

(a) No owner of developed property in the Town shall change or alter, or allow to be changed or altered, the discharge of stormwater from such property occurring on the effective date of this ~~Article~~Ordinance without first obtaining ~~any the~~ permit or approval required under this or any other Town Ordinance, state law, or federal law.

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(b) No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public storm drain or appurtenance ~~thereof~~ thereto without first obtaining written permission from the Director of Public Works.

Section 2.03 ~~SECTION 3.~~ **Compliance with Existing Permits**

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

Section 2.04 ~~SECTION 4.~~ **Use of the Public Stormwater System**

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(a) The following may be discharged into the public stormwater system, subject to obtaining and complying with any required permit:

(1) Stormwater;

(2) Non-stormwater discharges provided that these sources are not substantial contributors of pollutants to the system including: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensate, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, flows from riparian habitats and wetlands, and discharges from firefighting activities.

Comment [KW2]: This is directly from the MS4 permit.

(3) Discharges specified in writing by the authorized enforcement agent as being necessary to protect public health and safety;

(4) Dye testing ~~is an allowable discharge, but requires a written~~ (Written notification to the authorized enforcement agent prior to the time of the test is required);

(5) Any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided further that written approval has been granted for any discharge to the storm drain system.

(b) It shall be a violation of this Ordinance for any person to cause or allow to occur any illicit discharge to the public stormwater system or allow any illicit discharge existing on the date this ~~Article~~ Ordinance becomes effective to continue regardless of whether such existing discharge was permissible under law or practices applicable or prevailing at

the time the discharge commenced.

Section 2.05 ~~SECTION 5.~~ Best Management Practices

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(a) The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from an accidental illicit discharge into the public stormwater system ~~BMPs~~. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge to the public stormwater system, may be required to implement, at said person's expense, additional BMPs to prevent or discontinue the illicit discharge. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

(b) Every person owning property through which a watercourse passes shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, fill, and other obstacles that would pollute, contaminate, or significantly restrict the flow of water through the watercourse. In addition, the owner shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

(c) Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in an illicit discharge into the stormwater system, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Department of Public Works in person or by phone, email or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Department of Public Works within three business days of the phone notice. If the illicit discharge emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

Section 2.06 ~~SECTION 6.~~ Protection from Damage

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

be subject to immediate arrest ~~under the charge of~~for unlawful mischief as set forth in Title 13, Section 3701 of the Vermont Statutes Annotated.

## Article III. ~~ARTICLE III-~~**STORMWATER SYSTEM USER FEES**

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### Section 3.01 ~~SECTION 1-~~**Establishment of Stormwater User Fees**

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(a) A user fee based on an Equivalent Residential Unit (ERU) shall be imposed on every owner of non-exempt developed property within the Town. An ERU shall equal that square footage that represents the median of the area of impervious surface for all single family residences in the Town. The Town Selectboard shall, by resolution, establish the square footage that constitutes one ERU on a periodic basis.

(b) The Town Selectboard shall have the authority to set and modify the user fee rates so that the total revenue generated by said charges, and any secondary sources of revenue, shall be sufficient to fund the Town's stormwater program.

(c) The Town Selectboard shall establish by resolution the monthly rate for each ERU. The monthly user fee for a specific property is determined by multiplying the rate per ERU times the number of ERUs allocated to the property.

(d) The only exempt property under this Article is undeveloped property, defined as any property with an ~~imperious~~impervious area of less than 500 square feet.

### Section 3.02 ~~SECTION 2-~~**User Fee Credits:**

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(a) The "Stormwater User Fee Credit Manual" shall specify the design and performance standards of on-site stormwater systems, facilities, activities and services which qualify for application of a user fee credit and the method of calculating credits. The Town Selectboard, by resolution, shall have the authority to approve, modify and approve or disapprove the Credit Manual.

(b) Any property owner may appeal the determination regarding an award of a credit. The appeal process is outlined under ~~Article IV Inspection, Enforcement and Appeals, Section 3~~Section 4.03 – Appeals, of this Ordinance.

(c) Credits may be awarded retroactively for one (1) year from the date of initiation of the stormwater user fee. Thereafter, credits shall be applied to user fees on the next billing period after the completed credit application is approved.

(d) Any award of credit shall be conditioned on continuing compliance with the Town's design and performance standards as stated in the "Stormwater User Fee Credit Manual" and/or upon continuing provision of the systems, facilities, services, and activities provided, operated, and maintained by the property owner or owners upon which the credit is based. The Director of Public Works may revoke a credit at any time for non-compliance by providing thirty (30) days written notice of a non-complying condition and intent to revoke the credit to the property owner. If the non-compliance is not cured within the thirty (30) day period, the Director of Public Works shall eliminate the credit for user fee bills issued to the property owner after such period.

(1) A property owner may appeal the Director of Public Works' determination regarding credit revocation in the same manner set forth starting with [Step 2 of the appeals process outlined in Section 4.03\(a\)\(2\) under Article IV Inspection, Enforcement and Appeals, Section 3](#)—Appeals of this Ordinance.

**Section 3.03 ~~SECTION 3~~ Establishment of ERUs:**

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(a) Each Single Family Residence (SFR) shall be allocated one (1) ERU.

(b) The ERUs allocated to Non-Single Family Residence (NSFR) properties shall be determined in the following manner:

(1) The amount of impervious surface on each parcel shall be divided by the gross area of the parcel resulting in the percent of imperviousness for the parcel. The resulting value is rounded to the nearest whole number. ~~In those instances~~ instances when the calculation produces a value exactly half-way between two numbers, that is when the fraction part is exactly 0.5, ~~are the fraction is~~ rounded up to the next whole number.

(2) Based on the percent imperviousness, a "tier factor" shall be determined, based on the following categories:

IMPERVIOUS PERCENTAGE	TIER FACTOR
1 to 10%	* See Below
11 to 20%	0.15
21 to 30%	0.25
31 to 40%	0.35
41 to 50%	0.45

51 to 60%	0.55
61 to 70%	0.65
71 to 80%	0.75
81 to 90%	0.85
91 to 100%	0.95

\* Fee will be based on actual amount of impervious area, measured in square feet.

(3) The gross area of the parcel shall be multiplied by the tier factor, and then divided by the ERU. The resulting value is rounded up to the nearest whole number which is the number of ERUs for the property.

Section 3.04 ~~SECTION 4. Billing and Collection~~

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(a) Stormwater user fees will be billed quarterly and shall be reflected on the water and sewer bills for each property owner, where applicable, or on a separate stormwater bill. The bill shall also state the ERUs allocated to each property.

(b) A property owner may appeal an allocation of ERUs to the Director of Public Works in the same manner set forth ~~under Article IV Inspection, Enforcement and Appeals, Section 3~~ under Step 1 of the appeals process as outlined in Section 4.03 – Appeals, of this Ordinance. The filing of an appeal shall not relieve a property owner of the obligation to pay the user fee when due.

(c) In the event any stormwater user fee is not paid within thirty (30) days from the billing date, a late penalty charge will be added to the fee together with interest charges. The amount of the late penalty charge and the interest rate on the overdue accounts shall be the same as those applied to delinquent water/sewer use fees. If such payment is not made, such stormwater user fee shall be a lien upon such real estate in the same manner as to the same effect as taxes are a lien upon real estate pursuant to Title 32 Vermont Statutes Annotated Section 5061. Any payment made to the Town for stormwater fees shall first be allocated to delinquent water, then delinquent sewer, then delinquent stormwater fees. The remaining amount of the payment shall first be allocated to current water, then current sewer, then current stormwater fees.

Section 3.05 ~~SECTION 5. Establishment of Stormwater Enterprise Fund:~~

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(a) The user fees, as well as any secondary sources of revenue, shall be used to fund the Town's efforts to manage stormwater.

(b) Excess revenues may be placed into the Stormwater Enterprise Fund, and may be retained and expended in the manner set forth herein.

(c) The Selectboard of the Town of Williston shall establish a dedicated stormwater enterprise fund in the Town budget and an accounting system for the purpose of managing all funds collected for the purposes and ~~responsibilities~~ obligations of the stormwater program. All revenues and receipts of the stormwater program shall be placed in the enterprise fund, which shall be separate from all other funds, and only expenses of the stormwater program shall be paid by the fund. Fees will be set at a rate that covers the costs associated with stormwater management planning, staffing, engineering, maintenance and repair, public education, capital improvements, technical support, and other services approved by the municipality that authorizes the function of this stormwater program. Expenditure of funds may consider both stormwater quality and quantity management needs, and is limited to the following:

- i. Operating expenses;
- ii. Non-operating expenses, such as equipment;
- iii. Payment on principal and interest on debt obligations;
- iv. Capital investments including stormwater best management practices (BMPs) and components (e.g., ditch lining, pond and culvert construction, etc.);
- v. Reserve expenses; and
- vi. Other costs as deemed necessary by the Williston Selectboard.

## Article IV. ~~ARTICLE IV~~—INSPECTION, ENFORCEMENT AND APPEALS

### Section 4.01 ~~SECTION 1~~—Power and Authority of Inspectors

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

(b) If a property owner has security measures in force which require proper

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Comment [KW3]: This is the same language as the Sewer Use Ordinance.

identification and clearance before entry into onto the property, the owner shall make the necessary arrangements to allow access to any authorized person.

(c) Any temporary or permanent obstruction to safe and easy access to any property to be inspected and/or sampled shall be promptly removed by the property owner at the written or oral request of any authorized person and shall not be replaced. The costs of clearing such access shall be borne by the property owner.

(d) Causing an unreasonable delay in allowing an authorized person access to a property subject to regulation under this Ordinance is a violation of this Ordinance.

(e) If an authorized person is refused access to any part of the property containing facilities, records or discharges subject to regulation under this Ordinance, and if the authorized person is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized person may seek issuance of a search warrant from any court of competent jurisdiction.

**Section 4.02** ~~SECTION 2~~ **Administrative Enforcement**

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(a) Any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action may be taken to abate, enjoin, or otherwise compel the cessation of such nuisance ~~may be taken~~.

(b) Any person found to be violating any provision of this Ordinance shall be served by the Town with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit discharges;
- (3) The cessation of improper practices and operations and implementation of proper practices and operations;
- (4) The abatement or remediation of any contamination of the public stormwater system and waters of the State of Vermont or the United States and restoration of any property impacted by such contamination;
- (5) Establishment of time limits for the completion of all required work;
- (6) Payment of a fine; and/or
- (7) State that the Notice may be appealed in the manner set forth in

~~Article IV Inspection, Enforcement and Appeals, Section 3~~ [the appeals process as set forth in Section 4.03](#)– Appeals, of this Ordinance.

(c) ~~The Town has the right to require a property owner found to be in violation of this Ordinance to install monitoring equipment and maintain such equipment in proper operating condition, including proper calibration, all at the property owner's expense.~~

Comment [RM4]: This wording is covered in Section 2 (b) (1) above.

(d) If a violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, the Town or persons retained by the Town may enter upon the subject property to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Town or designated persons to enter upon the premises for the purposes set forth above.

(e) Within thirty (30) days after abatement [by the Town](#) of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs.

(1) The property owner may appeal the cost of abatement in the same manner set forth [in the appeals process](#) under ~~Article IV Inspection, Enforcement and Appeals, Section 3~~ [Section 4.03 - Appeals](#), of this Ordinance.

(2) If the amount due is not paid within ~~30 days or such longer period, if any, mandated by the Town, a timely manner as determined by the decision of the Town or by the expiration of the time in which to file an appeal~~, the charges shall constitute a lien on the property for the amount of the assessment and shall bear interest at the rate of one percent (1%) per month, or portion thereof.

(f) The Director of Public Works may, without prior notice, suspend stormwater system discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the stormwater system, or waters of the State of Vermont or the United States. If the violator fails to comply with a suspension order issued in an emergency, the Director of Public Works may take such steps as deemed necessary to prevent or minimize damage to the stormwater system or waters of the State of Vermont or United States, or to minimize danger to persons.

(g) Any person discharging to the stormwater system in violation of this Ordinance may have their stormwater system access terminated if such termination would abate or reduce an illicit discharge. The Director of Public Works ~~will~~ [shall](#) notify in writing a violator of the proposed termination of its stormwater system access.

(1) The violator may appeal the Director of Public Works' determination in

the same manner set forth starting with ~~step (a)(2) under Article IV Inspection, Enforcement and Appeals, Section~~ [step 2 of the appeals process outlined in Section 4.03 Appeals 3](#)— Appeals of this Ordinance.

(h) A person commits an offense if the person reinstates stormwater system access to premises terminated pursuant to sub-section (f), above, without the [written](#) prior approval of the Director of Public Works.

### [Section 4.03](#) ~~SECTION 3. A~~ Appeals

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(a) The following process shall be followed for appeals to decisions pertaining to this Ordinance:

(1) [Step 1](#): Any aggrieved property owner shall have the right of appeal by filing a written notice of appeal within 30 calendar days of said decision to the Director of Public Works, who shall issue a [written](#) decision within 30 calendar days. [The notice of appeal shall specify the legal basis for the appeal.](#)

(2) [Step 2](#): If said appeal is denied by the Director of Public Works, the said aggrieved party shall have the right to appeal by filing a written notice of appeal to the Town Manager, provided that said appeal is entered within 30 calendar days from the issue of the decision of the Director of Public Works.

(3) [Step 3](#): If said appeal is denied by the Town Manager, then said aggrieved party shall have the right to appeal [to the Selectboard](#) by filing a written notice of appeal ~~with the Town Clerk, to the Selectboard~~, provided that said appeal is entered within 30 calendar days from the ~~issuance~~ of the decision of the Town Manager.

(4) The Selectboard shall issue its decision on the appeal in writing, which decision shall be final.

(5) The filing of an appeal shall not relieve a property owner of the obligations of this Ordinance.

### [Section 4.04](#) ~~SECTION 4. Judicial Enforcement:~~

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(a) This Ordinance shall constitute a Civil Ordinance within the meaning of 24 V.S.A. Chapter 59.

(b) Any law enforcement officer or other individual designated by the Town Selectboard to enforce this Ordinance may act as an issuing Municipal Official and issue and pursue before the Judicial Bureau (formerly the Traffic and Municipal Ordinance Bureau) a municipal complaint for any violation of any provision of this Ordinance.

(c) In addition to the enforcement procedures available before the Judicial Bureau, the Town is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law.

**Section 4.05** ~~SECTION 5.~~ **Penalties:**

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(a) ~~Civil Penalty: An issuing Municipal Official is authorized to recover civil penalties for violation of this Ordinance~~ Waiver Fee – An issuing municipal official who is authorized to recover a waiver fee, in lieu of a civil penalty, in the following amounts, for any person who declines to contest a municipal complaint and pays the waiver fee. Each and every day that the violation exists after the time allowed under the notice of violation has expired, shall constitute a separate offense and shall incur the following fees:

- First Offense: \$75.00
- Second Offense: \$150.00
- Third Offense and subsequent offenses: \$300.00
- Offenses shall be counted on a 12 month basis.

Offenses shall be counted on a twelve (12) month basis beginning with the date of the first offense.

(b) ~~Civil Penalty - Any person that has violated or continues to violate this Ordinance shall be liable to civil penalties to the fullest extent of the law, and shall be subject to a fine of up to \$500 dollars per violation per day~~ An issuing municipal official is authorized to recover civil penalties in the following amounts for each violation of this ordinance:. Each and every day that the violation exists after the time allowed under the notice of violation has expired, shall constitute a separate offense and shall incur the following civil penalties:

- First Offense: ~~\$75~~100.00
- Second Offense: ~~\$150~~200.00
- Third Offense and subsequent offenses: ~~\$4~~300.00
- Offenses shall be counted on a 12 month basis beginning with the date of

the first offense.

**Section 4.06** ~~SECTION 6.~~ **Other Enforcement Remedies, Fines and Injunctive Relief**

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(a) Expenses for Restoration: In addition to any other penalty authorized by this ~~section~~Ordinance, any person, partnership, or corporation found to have violated any of the provisions of this Ordinance shall be required to bear the expense of the restoration

required to abate the violation.

(b) Injunctive Relief: An action, injunction, or other enforcement proceeding may be instituted by the Town to prevent, restrain, correct, or abate any violation or activity causing a violation. The relief sought may include the right to enter onto private property to abate or correct the violation, to restrain any activity that would create further violations, or to compel a person or persons to perform abatement or remediation of the violation; and to seek damages for all costs, including reasonable attorney's fees, incurred by the Town in pursuing and obtaining such relief. In addition to any other remedies authorized in law or equity, the Town may seek an order specifically requiring:

- (1) The elimination of illicit connections and/or non-storm water discharges to the MS4;
- (2) The discontinuance of practices, activities, or operations that lead to violations of this Ordinance;
- (3) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (4) The implementation of source control or treatment through the use of best management practices;
- (5) The performance of monitoring, analysis, and reporting.

(c) Offsite remediation: In place of fines, any person, partnership, or corporation found to have violated any of the provisions of this Ordinance may perform offsite stormwater and/or erosion control remediation to improve existing stormwater and/or erosion control problems elsewhere in the Town. This option shall require the written agreement of the person, partnership, or corporation found to have violated the provisions of this Ordinance, the property owner of the offsite remediation site, and the Town.

**Article V. ~~ARTICLE V~~—LIMITATION OF LIABILITY**

**Section 5.01 ~~SECTION 1~~—Limits of Liability:**

(a) Floods from stormwater may occasionally occur which exceed the capacity of the storm drainage facilities constructed, operated, or maintained by funds made available under this chapter. This chapter shall not be interpreted to mean that property subject to the fees and charges established herein will always (or at any time) be free from stormwater flooding or flood damage, or that stormwater systems capable of handling all storm events can be cost-effectively constructed, operated or maintained.

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Therefore the following limitations on liability are set forth:

(1) It is the express intent of the Ordinance Regulating the Use of Public and Private Stormwater Systems to protect the public health, safety and welfare of properties and persons in general. However, this Ordinance does not create any special duty or relationship with any individual person or specific property either within or outside the jurisdiction of the stormwater program.

(2) The Town of Williston shall not be held liable for flood damage or assessing and removing pollution sources and reserves the right to assert all available immunities and defenses in any action seeking monetary compensation from the Town, or its officers, agents or employees for alleged damages arising from alleged failure or breach of duties or relationship as may now exist or hereafter be created.

(3) The issuance of any permit, plan acceptance or inspection shall not constitute a warranty, express or implied, nor shall it afford the basis for any action seeking the imposition of monetary damages against the Town or its officers, employees or agents.

(4) Operation of stormwater systems located on private property or public property not owned by the Town of Williston and for which there has been no public dedication and acceptance of such systems and facilities for operation, maintenance and/or improvements of the system, shall be the legal responsibility of the property owner, except as may be affected by the laws of the State of Vermont and the United States of America.

Article VI. ~~ARTICLE VI – VALIDITY~~ Miscellaneous

Section 6.01 ~~SECTION 1 – Validity~~

(a) The Selectboard may make such rules and regulations relating to the use of the public stormwater system of the Town as they shall deem necessary for proper operations of the public stormwater system.

(b) These rules may be amended at any time by the Selectboard as provided by law.

(c) If any State Statute or document referred to in this Ordinance shall be amended, this Ordinance shall be deemed to refer to such amended statute or document.

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**~~ARTICLE VII – SEVERABILITY~~**

**~~Section 6.02 SECTION 1 – Severability~~**

(a) Each section of this Ordinance is severable from all other sections.

(b) If any section, sentence, or phrase of this Ordinance and any amendments made hereto are held unconstitutional or invalid by a decree or decision of any court of competent jurisdiction, the remainder of this Ordinance and any amendments made hereto shall not be affected and shall remain in full force and effect.

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**~~ARTICLE VIII – ORDINANCE IN FORCE~~**

**~~Section 6.03 SECTION 1 – Ordinance in Force:~~**

(a) The Ordinance shall be in full force and effect from and after its passage, approval, recording and publication as provided by law.

(b) Passed and adopted by the Selectboard of the Town of Williston, State of Vermont on this \_\_\_ day of \_\_\_\_\_, 2014

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Williston Town Selectboard

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Terry Macaig

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Jeff Fehrs

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Debbie Ingram

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Jay Michaud

Chris Roy

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