

ARTICLE VIII. - STORMWATER POLLUTION PREVENTION

DIVISION 1. - ILLICIT DISCHARGE DETECTION AND ELIMINATION

Sec. 102-290. - Purpose/Intent.

The purpose of this division is to provide for the protection of the health, safety, and general welfare of the citizens of the City of Charleston ("city") through the regulation of non-stormwater discharges into the municipal separate storm sewer system ("MS4") to the maximum extent practicable as required by federal and state law. This division establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with the city's National Pollutant Discharge Elimination System ("NPDES") permit. The objectives of this division are:

(a)To regulate the contribution of pollutants to the MS4 by Non-stormwater discharges;(b)To prohibit illicit connections and discharges to the MS4;(c)To establish legal authority to carry out all inspection, enforcement, surveillance and monitoring procedures necessary to ensure compliance with this Division; and(d)To comply with applicable federal and state statutory and regulatory requirements and schedules regarding the city's Stormwater management requirements.

(Bill No. 7648, 3-16-2015)

Sec. 102-291. - Definitions.

The following words, terms and phrases when used in this division shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

(a)Best management practices (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices that, when used singly or in combination, contribute to the control of the discharge of pollutants directly or indirectly into stormwater, receiving waters, or the MS4. BMPs also include treatment practices, operating procedures, and practices to contribute to the control of: site runoff of spillage or leaks, sludge or water disposal, or drainage from raw materials storage. BMPs

can be non-structural, which is an action that does not require construction, or structural, which involves constructed facilities or measures.(b)Clean Water Act ("CWA") means the federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), and any subsequent amendments thereto.(c)Construction means the act of building, grading, shaping, removing, demolishing, repairing, erecting, extending, installing equipment, or enlarging any building, structure, grounds, or premises.(d)Facility means, for the purposes of this division, a building, structure, installation, construction site or premises in which pollutants are produced and/or generated as a result of an activity conducted within or around such building, structure, installation, construction site or premises.(e)Hazardous materials means 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 present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.(f)Illicit discharge means any discharge to the MS4 or the waters of the state that does not consist entirely of stormwater, is not a discharge containing no Pollutants covered under the city's NPDES MS4 Permit, or is not one of those discharges listed in section 102-294 of this division.(g)Illicit connection means(1) any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4 or waters of the state including, but not limited to, conveyances which allow any Non-stormwater discharge to enter the MS4 and any connection to the MS4 from indoor drains and sinks, regardless of whether said drain or connection was previously allowed, permitted, or approved by the city or the WV Department of Environmental Protection (DEP); or (2) any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by a stormwater compliance officer after the effective date of the ordinance from which this division derives and which has not been located, identified, documented, and provided to a stormwater compliance officer after written notice.(h)Industrial activity means an activity subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26(b)(14).(i)Maximum extent practicable means a standard set forth in the CWA that requires NPDES permittees to have controls in place that are designed to reduce the discharge of Pollutants to the MS4 and waters of the state, including management practices, control techniques and system, design and engineering methods.(j)Municipal separate storm sewer system (MS4) 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) that are:(1)Owned or operated by the city;(2)Designed or used for collecting or conveying stormwater;(3)Not a combined sewer; and(4)Not part of a Publicly Owned Treatment Works (POTW) as defined in 40 CFR, Section 122.2(k)National Pollutant Discharge Elimination System (NPDES)

Stormwater Discharge Permit means a permit issued by the Federal Environmental Protection Agency (EPA) or by a state under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of Pollutants into waters of the United States.(l)Non-stormwater discharges means, unless otherwise provided in section 102-294, those discharges that include, but are not limited to, sanitary wastewater, car wash wastewater, radiator flushing disposal, spills from roadway accidents, carpet cleaning wastewater, effluent from septic tanks, improper oil disposal, laundry wastewater/gray water, improper disposal of auto and household toxics.(m)Person means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.(n)Pollutant means anything that causes or contributes to Pollution and may include, but is not limited to:(1)Paints, varnishes, and solvents;(2)Oil and other automotive fluids;(3)Non-hazardous liquid and solid wastes and yard wastes;(4)Refuse, rubbish, garbage, litter, or other discarded or abandoned objects;(5)Floatables;(6)Pesticides, herbicides, and fertilizers;(7)Hazardous substances and wastes;(8)Sewage, fecal coliform and pathogens;(9)Dissolved and particulate heavy metals;(10)Animal wastes;(11)Wastes and residues that result from constructing or renovating a building or structure;(12)noxious or offensive matter of any kind;(13)Hyperchlorinated water; and(14)Commercial car and building wash water.(o)Pollution means the degradation of the physical, thermal, chemical, biological or radioactive properties of the Watercourses and water supplies located in or running through the City and/or the discharge of any Pollutant into the Watercourses and water supplies located in or running through the City which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare or to impair the beneficial use of the water and/or the water environment.(p)Premises means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.(q)Stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation, including groundwater discharge and floodwater.(r)Stormwater compliance officer (hereinafter referred to as "compliance officer") means an employee of the City of Charleston City Engineer's Office or City Building Department designated by the city to administer, implement and enforce this article.(s)Stormwater pollution prevention plan (SWPPP) means a document that describes the best management practices and activities to be implemented by a Person to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges into stormwater, the MS4, and/or receiving waters to the maximum extent practicable.(t)Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.(u)Watercourse means a body of water flowing in a reasonably defined channel with a bed and banks.

(Bill No. 7648, 3-16-2015)

Sec. 102-292. - Applicability.

This division shall apply to all stormwater and non-stormwater discharges entering the MS4 from any premises located within the city unless explicitly exempted by the city or the West Virginia Department of Environmental Protection (WVDEP).

(Bill No. 7648, 3-16-2015)

Sec. 102-293. - Responsibility for administration.

City of Charleston Stormwater Compliance Officers shall administer, implement, and enforce the provisions of this division.

(Bill No. 7648, 3-16-2015)

Sec. 102-294. - Illicit discharge and connection prohibitions.

(a) Prohibition of illicit discharges. (1) Except for stormwater, no person shall discharge or cause to be discharged into the MS4 or waters of the state any materials, including, but not limited to, Pollutants or waters containing any Pollutants that cause or contribute to a violation of applicable water quality standards or any other federal, state, or local regulations. (2) The commencement or continuation of any Illicit discharge to the MS4 is prohibited except as described as follows: a. Discharges not containing Pollutants from the following: 1. Potable water sources including waterline flushings from which chlorine has been removed to the maximum extent practicable; 2. Landscape irrigation or lawn watering with potable water; 3. Diverted stream flows; 4. Rising ground water; 5. Groundwater infiltration to storm drains; 6. Pumped groundwater; 7. Foundation or footing drains where flows are not contaminated with pollutants (e.g. do not contain process materials such as solvents, heavy metals, etc.); 8. Crawl space pumps; 9. Air conditioning condensation; 10. Uncontaminated groundwater or spring water; 11. Springs; 12. Dewatering of work areas of collected Stormwater and ground water (filtering or chemical treatment may be necessary prior to discharge); 13. Water used to control dust; 14. Routine external building washdown that does not use detergents or other chemicals; 15. Waters used to

wash vehicles (of dust and soil, not process materials such as oils, asphalt or concrete) where detergents are not used and detention and/or filtering is provided before the water leaves the wash site; 16. Non-commercial washing of vehicles; 17. Natural riparian habitat or wetland flows; 18. Swimming pools (if dechlorinated to a concentration of one PPM chlorine or less); 19. Firefighting activities; or 20. Any other water source not containing pollutants.

b. Discharges approved in writing by a compliance officer as being necessary to protect public health and safety.

c. Dye testing is an allowable discharge, but requires written notification to a compliance officer prior to the time of the test.

d. The prohibition shall not apply to 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 EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge into the MS4.

(b) Prohibition of Illicit Connections.

(1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.

(2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was previously permitted by the city and/or permissible under law or practices applicable or prevailing at the time of connection. Where such connections exist in violation of this ordinance and said connections were made prior to the effective date of this ordinance or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within six months following the effective date of this ordinance. However, the six-month grace period shall not apply to connections which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife or habitat.

(3) This prohibition includes any drain or conveyance connected from a commercial or industrial land use to the MS4 that has not been documented in plans, maps, or equivalent records and approved by a compliance officer after the effective date of this ordinance unless or until such drain or conveyance is located, identified, documented, and the documentation is provided to and approved by a compliance officer. The property owner or person using such drain or conveyance shall locate the same upon receipt of written notice from a compliance officer. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the requesting compliance officer.

(4) A person shall be in violation of this division if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(Bill No. 7648, 3-16-2015)

Sec. 102-295. - Watercourse protection.

Every person owning property through which a watercourse passes, or such person's lessee as a condition of its lease, shall keep and maintain that part of the watercourse located within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or cause the flow of water through the Watercourse to back up. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

(Bill No. 7648, 3-16-2015)

Sec. 102-296. - Industrial or construction activity discharges.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to a compliance officer prior to the allowance of discharges into the MS4.

(Bill No. 7648, 3-16-2015)

Sec. 102-297. - Requirement to prevent control, and reduce stormwater pollutants by the use of best management practices.

The city's will adopt requirements identifying best management practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the MS4, or waters of the state. The owner or operator of a commercial or industrial establishment shall provide, at his or her own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4.

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 in compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as is necessary for compliance with requirements of the NPDES permit.

(Bill No. 7648, 3-16-2015)

Sec. 102-298. - Access to facilities for inspection, monitoring, sampling, measuring, testing or copying records.

(a)Applicability: This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.(b)Access to facilities:(1)To the fullest extent permitted by law, compliance officers bearing proper identification are authorized by this division to enter and inspect regulated facilities to determine compliance with this division.(2)Facility operators shall allow Compliance Officers reasonable access to all parts of the premises for the purposes of inspecting, monitoring, sampling, measuring, or testing the Facility's Stormwater discharge. Compliance Officers shall also be allowed reasonable access for the purpose of copying records that must be kept under the conditions of an NPDES permit.(3)If a compliance officer has been refused access to any part of the premises of a facility from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this division involving illicit discharges or pollutants discharging into stormwater, the ms4 or waters of the state; 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 division or any order issued hereunder; or to protect the overall public health, safety, and welfare of the community, then the compliance officer may seek issuance of a search warrant from any court of competent jurisdiction to conduct of an investigation concerning compliance with the terms of this division.

(Bill No. 7648, 3-16-2015)

Sec. 102-299. - Notification of spills.

Notwithstanding other requirements of state or federal law, as soon as any Person responsible for a facility or responsible for emergency response for a facility, has information of any known or suspected release of materials which are resulting, or may

result, in illicit discharges or pollutants discharging into stormwater, the MS4, or waters of the state, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such 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 all other illicit discharges, said person shall notify the city's stormwater management department in person or by phone or email, no later than the next business day. All relevant contact information shall be listed on the city's website. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the stormwater management department within three business days of the 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.

(Bill No. 7648, 3-16-2015)

Sec. 102-300. - Reserved.

Editor's note— Bill No. 7822, adopted July 1, 2019, repealed § 102-300, which pertained to stormwater management board created and derived from Bill No. 7648, 3-16-2015.

Sec. 102-301. - Notice of violation.

(a)When a compliance officer determines after reasonable observation or investigation that a person has violated a prohibition or failed to meet a requirement of this division, he/she may order compliance by written notice of violation to that person. Such notice may require, without limitation:(1)the performance of monitoring, analyses and reporting;(2)the elimination of illicit connections or discharges;(3)that discharges, practices or operations that are in violation shall cease and desist;(4)the abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and/or(5)the implementation of source control or treatment BMPs.(b)Notice(s) of violation shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that a method of service effectuated by a mailing by the clerk of a court (e.g., service pursuant to West Virginia Rule of Civil Procedure 4(d)(1)(D)) shall be deemed to be effectuated by a mailing by a compliance officer. If service is made by certified mail consistent with West Virginia Rule of Civil Procedure

4(d)(1)(D) and delivery of the notice of the violation is refused, the compliance officer, promptly upon the receipt of the notice of such refusal, shall mail to the person being noticed, by first class mail, postage prepaid, (1) a copy of the notice of the violation(s) (2) a notice that despite such refusal, the notice of the violation(s) is valid, and (3) advising that the City will proceed to enforce the notice of violation(s). So long as such first class mailing is not returned as undeliverable by the U.S. Postal Service, service of the notice of violation(s) will be conclusively presumed to have been effectuated. Proof of service shall be made at the time of service by a written declaration, under oath, executed by the enforcement official effecting service and shall declare the time, date and manner by which service was made.(c)Any notice of violation(s) under this section shall be in writing and shall contain the following:(1)the date the notice of violation is given;(2)the name and address of the person(s) charged with the violation;(3)the nature of the violation;(4)a statement of the action required to be taken in order to correct the violation and further prevent it;(5)the time period allowed for the violation to be corrected. When determining the time period allowed for correction, a compliance officer shall take into consideration the threat posed by the violation to the health, safety and welfare of the public and the nature of the work required to correct the violation;(6)the maximum fines that may be assessed if the violation is not corrected and a citation is issued; and(7)the name, business address and telephone number of the compliance officer issuing the notice of violation.(d)Nothing in this section shall limit the authority of compliance officers to take any other lawfully prescribed enforcement action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(Bill No. 7648, 3-16-2015; Bill No. 7822, 7-1-2019)

Sec. 102-302. - Request for reconsideration.

Any person receiving a notice of violation from a compliance officer may submit a written request for reconsideration to the city engineer by mailing said request to The Office of the City Engineer, City of Charleston, P.O. Box 2749, Charleston, WV 25330, or by hand delivering said request to the Office of the City Engineer, 114 Dickenson Street, Charleston, West Virginia. The request for reconsideration must be received within ten days from the date of the notice of violation and shall include a written explanation of the basis for the request. Upon receipt of a timely request for reconsideration, the city engineer shall review the request and shall (1) uphold the notice of violation (2) reverse the notice of violation or (3) modify the notice of violation and shall provide written notice by certified mail of his or her decision to the person within 15 days of receipt thereof.

(Bill No. 7648, 3-16-2015; Bill No. 7822, 7-1-2019)

Editor's note— Bill No. 7822, adopted July 1, 2019, renamed the former Art. § 102-302 as set out herein.

Sec. 102-303. - Reserved.

Editor's note— Bill No. 7822, adopted July 1, 2019, repealed § 102-303, which pertained to appeal of notice of violation and derived from Bill No. 7648, 3-16-2015.

Sec. 102-304. - Enforcement measures.

(a)If the violation has not been corrected within ten days or any other period specified by the city engineer in his or her decision in the case of a request for reconsideration, then the compliance officer shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or bring the property into compliance.(b)If refused access to the subject property, the compliance officer may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property.

(Bill No. 7648, 3-16-2015; Bill No. 7822, 7-1-2019)

Editor's note— Bill No. 7822, adopted July 1, 2019, renamed the former Art. § 102-304 as set out herein.

Sec. 102-305. - Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this division. If a person has violated or continues to violate the provisions of this division, the city may petition a court of competent jurisdiction for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation. Any such person against whom such an injunction is issued shall be responsible for paying

all costs of the city in obtaining and enforcing such injunction, including the court costs and attorney's fees.

(Bill No. 7648, 3-16-2015)

Sec. 102-306. - Violations deemed a public nuisance.

(a)In addition to the enforcement processes and penalties provided in this article, any condition caused or permitted to exist in violation of any of the provisions of this division shall be considered a threat to the public health, safety, welfare and the environment, may be declared and deemed a nuisance, and may be summarily abated and/or restored by, or at the direction of, the city, by and through its compliance officer. The city may initiate any administrative and civil actions as necessary to abate, enjoin or otherwise compel the cessation of such nuisance.(b)The cost of such abatement and/or restoration shall be the sole responsibility of the owner of the property and the cost thereof shall be a lien upon and against the property. Such lien shall continue in existence until the same shall be paid.

(Bill No. 7648, 3-16-2015)

Sec. 102-307. - Criminal prosecution.

In addition to, and not in lieu of, any administrative remedy provided in this division, violations of this division shall be a criminal misdemeanor, subject to criminal citation and punishable by a fine of not less than \$500.00. Every day or portion thereof that a person fails or refuses to remedy a violation shall be considered a separate offense. Fines may be reduced by the municipal court only upon agreement of the city by and through its prosecutor.

(Bill No. 7648, 3-16-2015)

Sec. 102-308. - Remedies not exclusive.

The remedies listed in this division are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the city to seek cumulative remedies.

(Bill No. 7648, 3-16-2015)

Sec. 102-309. - Severability.

The provisions of this division are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this division.

(Bill. No. 7648, 3-16-2015)

DIVISION 2. - CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

Sec. 102-310. - Purpose/intent.

The purpose of this division is to provide for the protection of the health, safety, and general welfare of the citizens of the City of Charleston ("city") through the regulation of those construction projects where the discharge of sediment and other construction related pollutants into adjacent waterways is likely to occur.

(Bill. No. 7656, 6-1-2015)

Sec. 102-311. - Definitions.

The following words, terms and phrases when used in this Division shall have the meanings ascribed to them in this Section except where the context clearly indicates a different meaning:

(a)Clearing means any activity that removes or causes the removal of the vegetative surface cover.(b)Construction means the act of building, grading, shaping, removing, demolishing, repairing, erecting, extending, installing equipment on/in, or enlarging any

building, structure, grounds, or premises.(c)Construction site means a parcel of land or a contiguous combination thereof where land disturbing activity occurs.(d)Drainage way means any channel that conveys surface runoff throughout the construction site.(e)Erosion means the wearing away of land surface by natural or artificial forces such as wind, water, ice, gravity or vehicle traffic.(f)Erosion control means a measure that is designed to prevent erosion.(g)Erosion and sediment control plan ("ESCP") means a set of plans indicating the specific measures and sequencing to be used to control erosion and sediment on a construction site.(h)Grading means the cutting and/or filling of the land surface to a desired slope, elevation, or contour.(i)Impervious area means an area composed of any material which impedes or prevents the natural infiltration of water into the soil, including but not limited to, concrete, asphalt, and roof surfaces.(j)Land disturbing activity ("LDA") means any activity that results in the movement or manipulation of soil, rock or other earth materials. This includes, but is not limited to, clearing and grubbing, grading, excavation, filling, embankment construction, road grading, ditch cleaning, mineral extraction, commercial timbering, initial landscape preparation and stockpiling of earth materials. The activities set forth in section 102-314(b) of this division are exempt from the definition of land disturbing activity for purposes of this division.(k)Perimeter control means a barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.(l)Person means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.(m)Phasing means disturbing a parcel of land in distinct phases, with the stabilization of each phase completed before disturbance of the next phase.(n)Sediment means soil, sand, silt, and minerals washed from land into water.(o)Sediment control means measures that prevent eroded sediment from leaving a construction site.(p)Stabilization means the use of practices that prevent exposed soil from eroding.(q)Start of construction means the first land disturbing activity associated with a construction project.(r)Stormwater compliance officer (hereinafter referred to as "compliance officer") means an employee of the City of Charleston City Engineer's Office or City Building Department designated by the city to administer, implement and enforce this article.(s)Watercourse means a body of water flowing in a reasonably defined channel with a bed and banks.(t)Waterway means a channel that directs surface runoff to a watercourse or to the MS4.

(Bill. No. 7656, 6-1-2015)

Sec. 102-312. - Applicability.

This division shall apply to all Construction projects located within the city that involve land disturbing activity ("LDA") exceeding 5,000 square feet or an increase in impervious area by 1,000 square feet or greater unless exempted by section 102-314(b) this division.

(Bill. No. 7656, 6-1-2015)

Sec. 102-313. - Responsibility for administration.

The City of Charleston City Engineer's Office and City of Charleston Stormwater Compliance Officers shall administer, implement, and enforce the provisions of this division.

(Bill. No. 7656, 6-1-2015)

Sec. 102-314. - Approval of land disturbing activity.

(a)Any person applying for a City of Charleston building permit that proposes a construction project involving LDA exceeding 5000 square feet, or an increase in impervious area by 1000 square feet or greater, is required to obtain approval for such LDA from the City Building Department and/or city engineer's office. Requests for approval shall be made at the time of application for a building permit; provided, however, that a building permit shall not be issued in the absence of prior approval of LDA.(b)Notwithstanding section 102-314(a) herein, approval for LDA shall not be required for the following activities:(1)Interior renovations;(2)Roof repair;(3)Building facade maintenance;(4)Milling and repaving of existing asphalt or concrete streets, parking lots, or sidewalks;(5)Maintenance of existing landscaping or gardens;(6)Cutting of trees and brush (provided the area remains vegetated and no grubbing of root system occurs); and(7)Maintenance of pervious sports fields such as replacement of the clay surface to baseball infields, turf plugging of golf fairways and greens.

(Bill. No. 7656, 6-1-2015; Bill No. 7822, 7-1-2019)

Sec. 102-315. - Submission of erosion and sediment control plan; modifications.

(a) Any person requesting approval of LDA is required to submit an Erosion and Sediment Control Plan ("ESCP") to the city building department as part of the building permit application for review and approval. The ESCP shall comply with the provisions set forth in the City of Charleston Stormwater Management Guidance Manual regarding erosion and sediment control measures. The Stormwater Management Guidance Manual will be available to the public on the city's stormwater website, as well as on file at the city engineer's office. (b) All control measures set forth in an approved ESCP shall be followed and maintained at all times during the construction project unless modified with the approval of the city building department and/or city engineer's office. Any significant modifications to an ESCP must be approved by the city building department and/or city engineer's office via written authorization to the permittee. Minor modifications to the ESCP may be approved by the city building department and/or city engineer's office at the construction site. (c) A copy of the approved ESCP shall be kept on the construction site during all stages of a construction project and shall be made available for review upon request by a compliance officer.

(Bill. No. 7656, 6-1-2015; Bill No. 7822, 7-1-2019)

Sec. 102-316. - Erosion and sediment control design requirements.

(a) Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth in the most recent version of the city's Stormwater Management Guidance Manual and shall be adequate to prevent transportation of sediment from the construction site. (b) Clearing and grading of natural resources, such as protected habitats and wetlands, shall not be permitted, except when in compliance with the Stormwater Management Guidance Manual. (c) Clearing, except to the extent necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized. (d) Minimum erosion control requirements shall include: (1) Temporary seeding must be applied if the construction site is idle for more than 21 days. (2) Special techniques that meet the design criteria outlined in the Stormwater Management Guidance Manual on steep slopes or in drainage ways shall be used to ensure stabilization. (3) Soil stockpiles must be stabilized or covered at all times. (4) The entire construction site must be stabilized at the close of the construction season, which may include, but is not limited to, temporary seeding, mulching, and the use of erosion controls. (5) Techniques shall be employed to prevent the transportation of dust or sediment from the construction site. (6) Techniques shall be employed to divert upstream runoff away from LDA without causing any additional Erosion. (e) Minimum sediment control requirements shall include: sediment basins, stormwater inlet protection, sediment traps,

and/or perimeter controls.(f)Minimum waterway and watercourse protection requirements shall include:(1)Approval of a waterway or watercourse crossing by all applicable federal and state agencies having jurisdiction, which may include, but is not limited to, West Virginia Department of Natural Resources, United States Army Corps of Engineers, and the United States Environmental Protection Agency.(2)Stabilization of a watercourse before, during, and after any in-channel work.(3)All on-site stormwater conveyance channels designed according to the criteria outlined in the Stormwater Management Guidance Manual.(4)Stabilization adequate to prevent erosion located at the outlets of all pipes and paved channels.(g)Construction site access requirements shall include: establishment and maintenance of a stabilized construction site entrance as outlined in the Stormwater Management Guidance Manual.

(Bill No. 7656, 6-1-2015; Bill No. 7822, 7-1-2019)

Sec. 102-317. - Review and approval of land disturbing activity and erosion and sediment control plan.

The city engineer's office and/or city building department shall review each request for approval of LDA and the corresponding ESCP to determine conformance with the requirements of this division. Within ten days after receiving a building permit application and corresponding ESCP, the city engineer's office and/or city building department shall, in writing:

(1)Approve the requested LDA and corresponding ESCP;(2)Approve the requested LDA and corresponding ESCP subject to conditions as may be necessary to satisfy the objectives of this Division; or(3)Deny the requested LDA and corresponding ESCP, indicating the reason(s) for denial and the procedure for submitting a revised ESCP, if appropriate.

(Bill No. 7656, 6-1-2015; Bill No. 7822, 7-1-2019)

Editor's note— Bill No. 7822, adopted July 1, 2019, renamed the former Art. § 102-317 as set out herein.

Sec. 102-318. - Inspection of construction site.

(a) All construction sites involving LDA and requiring an approved ESCP shall be inspected and approved by a compliance officer. Compliance officers shall inspect construction sites as authorized by this section and shall either approve that portion of the work completed or shall notify the person receiving approval for the LDA that the work is not in compliance with the approved ESCP. To obtain the required permits and inspections, the person receiving approval for the LDA shall notify the city engineer's office and/or city building department of the construction start date. If there is to be a change in said start date, the city engineer's office and/or city building department is to be notified at least two working days before start of construction. Compliance officer inspections may consist of, but not be limited to, the following stages: (1) Installation of erosion and sediment control measures; (2) Completion of demolition; (3) Completion of site clearing and rough grading; (4) Installation of any stormwater conveyance structures; and (5) Completion of project. (b) The person receiving approval for LDA and corresponding ESCP shall make regular inspections of all control measures in accordance with the inspection schedule outlined in the approved ESCP. The purpose of such inspections will be to determine the overall effectiveness of the ESCP and the potential need for additional control measures. All inspections shall be documented in writing and shall be kept on site.

(Bill. No. 7656, 6-1-2015; Bill No. 7822, 7-1-2019)

Sec. 102-319. - Notice of noncompliance and order to correct.

(a) When a compliance officer determines after reasonable observation or investigation that a person has not complied with any provision of this division or has failed to comply with an approved ESCP, the compliance officer may order compliance by written notice of noncompliance and order to correct. (b) Notice(s) of noncompliance and order(s) to correct shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that a method of service effectuated by a mailing by the clerk of a court (e.g., service pursuant to West Virginia Rule of Civil Procedure 4(d)(l)(D)) shall be deemed to be effectuated by a mailing by a compliance officer. If service is made by certified mail consistent with West Virginia Rule of Civil Procedure 4(d)(l)(D) and delivery of the notice of noncompliance and order to correct is refused, the compliance officer, promptly upon the receipt of the notice of such refusal, shall mail to the person being noticed, by first class mail, postage prepaid, (1) a copy of the notice of noncompliance and order to correct (2) a notice that despite such refusal, the notice of noncompliance and order to correct is valid, and (3) advising that the city will proceed to enforce the notice of noncompliance and order to correct. So long as such first class mailing is not returned as undeliverable by the U.S. Postal Service, service of the notice of

noncompliance and order to correct will be conclusively presumed to have been effectuated. Proof of service shall be made at the time of service by a written declaration, under oath, executed by the enforcement official effecting service and shall declare the time, date and manner by which service was made.(c)Any notice of noncompliance and order to correct under this section shall be in writing and shall contain the following:(1)The date the notice of noncompliance and order to correct is given;(2)The name and address of the person(s) charged with the noncompliance;(3)The nature of the noncompliance;(4)A statement of the action required to be taken in order to correct the noncompliance and further prevent it;(5)The time period allowed for correction. When determining the time period allowed for correction, a compliance officer shall take into consideration the threat posed by the noncompliance to the health, safety and welfare of the public and the nature of the work required to correct the noncompliance;(6)The maximum fines that may be assessed if the noncompliance is not corrected and a citation is issued; and(7)The name, business address and telephone number of the compliance officer issuing the notice of noncompliance and order to correct.(d)Nothing in this section shall limit the authority of compliance officers to take any other lawfully prescribed enforcement action, including emergency actions or any other enforcement action, without first issuing a notice of noncompliance and order to correct.(e)Failure to correct the noncompliance by the date set forth in the notice of noncompliance and order to correct shall be reported to the building department. Any subsequent work performed shall constitute work being performed in a dangerous or unsafe manner or in a manner contrary to the W.Va. State Building Code, as adopted by Charleston Municipal Code section 14-33(a), and the person charged with the noncompliance may be issued a stop work order or the building permit may be revoked.

(Bill. No. 7656, 6-1-2015; Bill No. 7822, 7-1-2019)

Sec. 102-320. - Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this division. If a person has violated or continues to violate the provisions of this division, the city may petition a court of competent jurisdiction for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation. Any such Person against whom such an injunction is issued shall be responsible for paying all costs of the city in obtaining and enforcing such injunction, including the court costs and attorney's fees.

(Bill. No. 7656, 6-1-2015)

Sec. 102-321. - Violations deemed a public nuisance; penalties.

(a) In addition to the enforcement processes and penalties provided in this division, any condition caused or permitted to exist in violation of any of the provisions of this division shall be considered a threat to the public health, safety, welfare and the environment, may be declared and deemed a nuisance, and may be summarily abated and/or restored by, or at the direction of, the city, by and through its compliance officer. The city may initiate any administrative or civil actions as necessary and appropriate to abate, enjoin or otherwise compel the cessation of such nuisance. (b) The cost of any such abatement and/or restoration by the city shall be the sole responsibility of the owner of the property and the cost thereof shall be a lien upon and against the property. Such lien shall continue in existence until the same shall be paid.

(Bill. No. 7656, 6-1-2015)

Sec. 102-322. - Criminal prosecution.

In addition to any administrative remedy provided in this division, violations of this division constitute a criminal misdemeanor, subject to criminal citation and punishable by a fine of not less than \$500.00. Every day or portion thereof that a person fails or refuses to remedy a violation shall be considered a separate offense. Fines may be reduced by the municipal court only upon agreement of the city by and through its prosecutor.

(Bill. No. 7656, 6-1-2015)

Sec. 102-323. - Remedies not exclusive.

The remedies listed in this Division are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the city to seek cumulative remedies.

(Bill. No. 7656, 6-1-2015)

Sec. 102-324. - Severability.

The provisions of this division are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article, or the application thereof to any person, establishment, or circumstances, shall be held invalid, such invalidity shall not affect the other provisions or application of this division.

(Bill. No. 7656, 6-1-2015)

Secs. 102-325—102-330. - Reserved.

Secs. 102-280—102-289. - Reserved.