

LOCAL LAW NO.: 5 - 2007

OF

OCTOBER 22, 2007

A LOCAL LAW AMENDING CHAPTER 248 ENTITLED "SEWERS"
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH
BY ADDING A NEW ARTICLE IV
ENTITLED "STORMWATER MANAGEMENT REGULATIONS"

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION I: TITLE

This Local Law shall be referred to as "A Local Law amending Chapter 248 entitled "Sewers" of the Code of Ordinances of the City of Newburgh by adding a new Article IV entitled "Stormwater Management Regulations."

SECTION II: PURPOSE AND INTENT

Whereas The New York State Department of Environmental Conservation ("NYSDEC") has promulgated regulations requiring local municipalities including the City of Newburgh to adopt and enforce regulations concerning municipal separate storm sewer systems ("MS4") in order to obtain coverage under NYSDEC General Permit 02-02, and as same may be amended, The City of Newburgh has developed a stormwater management plan, which includes the enactment and enforcement of a local law requiring stormwater management for various activities within the City. It is the purpose of this local law to establish acceptable standards which must be met for subdivisions, site plans and construction projects which impact, disturb or alter surface coverage greater than one acre of property and/or will or may tend to have significant impacts upon the soil, water, infrastructure or natural or man-made city environment within City boundaries. Among such possible impacts are changes in watershed hydrology or erosion events due to land development, site grading, roadway construction and other construction activities. The City protects the general public from impacts associated with increased runoff from developed properties as well as protecting the water quality of receiving stream waters within the City and elsewhere by means of this local legislation. The purpose of this local law is to set forth standards for development of property within the City in order to obtain compliance with regulatory stormwater management requirements and sound engineering practices, as being in the best

interests of the City of Newburgh, and to protect the health, safety and welfare of the citizens of the City of Newburgh through the regulation of non-stormwater discharges to the MS4 to the maximum extent practicable as required by State and Federal law. This law establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with the requirements of the SPDES General Permit for Municipal Separate Storm Sewer Systems.

SECTION III. AMENDMENT

Chapter 248 entitled “Sewers” of the Code of Ordinances of the City of Newburgh is hereby amended as follows:

ARTICLE IV, STORMWATER MANAGEMENT REGULATIONS

§ 248-57. OBJECTIVES

The City seeks to minimize problems resulting from uncontrolled runoff, flooding and sediment pollution as well as adversely affected water quality which can negatively impact human health, water quality, receiving stream biodiversity and the general safety and welfare of the public. In keeping therewith it is the policy of the City Council that the City shall:

1. Enact regulations which comply with the requirements of the NYSDEC General Permit for Stormwater Discharges from the Municipal Separate Stormwater Sewer System (MS4);
2. Protect the public and prevent damage from flooding and stormwater run-off;
3. Implement a program to detect, enforce and eliminate illicit discharges to the City stormwater collection system and other City drainage system components;
4. Encourage the protection of natural drainage systems such as streams, lakes, State and Federal wetlands and other groundwater and subsurface waters in order to preserve the beneficial functions and values of those resources;
5. Require land development activities to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01 or as amended or revised;
6. Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;
7. Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;

8. Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable;
9. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained to eliminate threats to public health and safety.
10. Require the implementation of sound stormwater management and soil erosion and sediment control practices to be implemented on subdivisions, site plans and construction sites.
11. Provide for the adoption and use of the most current engineering practices on redeveloped and newly-developed sites.
12. To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No.: GP-02-02 or as amended or revised.
13. To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process or discharge non-stormwater wastes.
14. To prohibit Illicit Connections, Activities and Discharges to the MS4.
15. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this law.
16. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the MS4.

§ 248-58. DEFINITIONS

Unless specifically defined below, words and phrases shall be interpreted so as to give them the meaning they have in common language and to give these regulations their most effective application. Words used in singular shall include the plural and words used in the plural shall include the singular, and all terms shall be considered neutral and equal as to gender. Words used in the present tense shall include other tenses as the sense thereof requires. The word “shall” denotes mandatory and is not discretionary. The word “may” is permissive.

ADVERSE IMPACTS - any modifications, alterations, impacts or effects on a feature or characteristic of public waters, wetlands or adjacent lands, including their quality, quantity, hydrology, surface area, species composition, living resources, aesthetics, or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity or stability or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation, or which reasonably pose a risk or danger thereof.

AGRICULTURAL ACTIVITY - activity associated with farming and the production of farm products including raising and caring for livestock; planting, irrigating, harvesting and storing crops, growing trees and harvesting timber; and related activities.

APPLICANT - a property owner or the agent thereof who has filed an application seeking legal approval for a land development activity.

BEST MANAGEMENT PRACTICES (BMPs) - Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. 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.

CITY - except as may be otherwise provided, the City of Newburgh, New York.

CLEAN WATER ACT - The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendment thereto.

CONSTRUCTION ACTIVITY - any process or technique which involves the regrading or altering of existing topography, installation of pipes, bridges, structures, water systems, sewer systems, or other infrastructure having an influence on or influenced by the flow of water.

DEPARTMENT, DEC OR NYSDEC - Shall mean the New York State Department of Environmental Conservation, unless the word "department" is otherwise defined or referenced.

DESIGN PROFESSIONAL - A New York State-licensed professional engineer or licensed architect.

DEVELOPER - means any person who engages in development either as the Owner or the Agent of the Owner of property.

DEVELOPMENT or DEVELOPMENT ACTIVITY means:

- a) construction, installation, alternation, demolition or removal of a structure, impervious surface or drainage facility; or
- b) clearing, trimming, adding to or reducing, scraping, grubbing or otherwise removing or killing the vegetation of a site; or
- c) adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging or otherwise significantly disturbing the soil, mud, sand or rock or other topographical, surface or sub-surface feature(s) of a site.

DRAINAGE FACILITY - any component of the drainage system of the City.

DRAINAGE SYSTEM - the system through which water flows from the land, including but not limited to stormwatercourses, watercourses, waterbodies, streams, rivers, creeks, ponds, lakes, groundwater and wetlands.

EMERGENCY ~ A condition or circumstance whereby an actual or threatened discharge presents or may present imminent and substantial harm, damage or danger to the environment, to any property, to the health and/or welfare of any persons, and/or to the MS4.

EROSION - the wearing away or washing away of soil by the action of wind or water or changes in temperature.

EXTREME FLOOD CONTROL CRITERIA (Q_f) - Standards which when applied to a development project as defined and described herein require storage to attenuate the post development 100 year 24 hour peak discharge to predevelopment rates. Criteria for calculating Q_f shall be those set forth in the New York State Stormwater Management Design Manual, and as same shall be amended from time to time.

FLOOD ~ the temporary rise in the level of any waterbody, watercourse or wetland which results in the inundation of areas not ordinarily or usually covered by water.

HAZARDOUS MATERIALS ~ Any substance or admixture of substances containing chemicals, compounds, elements or other substances which are either: defined as dangerous or hazardous by any Federal, State or local law, rule or regulation; or are regulated or controlled by a Federal or State agency to prevent their unauthorized or uncontrolled release into the environment or exposure to human, animal or plant life; or which if released or discharged into the MS4 or into the environment would have or potentially would have adverse impacts as same are defined herein.

ILLICIT CONNECTIONS ~ Any drain or conveyance, whether on the surface or subsurface, whether manmade or natural or mixed, which allows an illegal discharge to enter the MS4, including but not limited to:

1. Any conveyances which allow any non-stormwater discharge including treated or untreated sewage, process wastewater, and wash water to enter the MS4 and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had previously allowed, permitted, or approved by an authorized enforcement agency; or
2. Any drain or conveyance connected from a commercial or industrial or residential or mixed land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

ILLICIT DISCHARGES - any direct or indirect non-stormwater discharge to the storm system other than naturally occurring surface water runoff or runoff which is exempted by NYSDEC MS4

regulations and/or by this Local Law. Illicit discharges can also include, but are not limited to stormwater with any admixtures including regulated chemicals and substances. Illicit discharges shall include, but are not limited to discharges from sanitary sewer systems, floor drains, or other sources but do not include uncontaminated condensate water.

IMPERVIOUS SURFACE - a surface, which has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water, including rainfall, melted snow and ice, and water from other sources. It includes semi-impervious areas such as compacted clay, as well as most conventionally surfaced streets, roofs, sidewalks, parking lots and other similar structures and sites.

INDIVIDUAL SEWAGE TREATMENT SYSTEM - A facility serving one or more parcels of land or residential households, or a private, commercial or institutional facility, that treats sewage or other liquid wastes for discharge into the groundwaters of New York State, except where a permit for such a facility is required under the applicable provisions of Article 17 of the Environmental Conservation Law.

INDUSTRIAL ACTIVITY - Activities requiring the SPDES permit for discharges from industrial activities except construction, GP-98-03, as amended or revised.

INDUSTRIAL STORMWATER PERMIT - a State Pollutant Discharge Elimination System (SPDES) permit issued in order to regulate the pollutant levels associated with water and other discharges and/or which specify pollution control requirements, measures or strategies.

INFILTRATION - the process of percolation of water, including stormwater, into the subsoil.

INFILTRATION BASIN - a permanent structure designed to recharge stormwater runoff to groundwater.

JURISDICTIONAL WETLAND - an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions commonly known as hydrophytic vegetation.

LAND DEVELOPMENT ACTIVITY - construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre; or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules; or activities disturbing any amount of land which has or tends to have impacts which are addressed in this local law.

LANDOWNER - the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land, also referred to herein as "Owner."

MAINTENANCE AGREEMENT - a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

MS4 - Municipal Separate Storm or Stormwater Sewer Systems” as defined by NYSDEC and/or by this Local Law. A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

1. Owned or operated by the City of Newburgh;
2. Designed or used for collecting or conveying stormwater;
3. Which is not a combined sewer; and
4. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40CFR 122.2.

MUNICIPALITY ~ The City of Newburgh, unless otherwise designated herein.

NATURAL SYSTEMS - systems which predominantly consist of or use those communities of plants, animals, bacterial and other flora and fauna which occur indigenously on the land, in the soil or in the water.

NONPOINT SOURCE POLLUTION - pollution from any source other than from any discernible, confined and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, development, subsurface disposal and urban runoff sources.

NON STORMWATER DISCHARGE ~ Any discharge to the MS4 that is not composed entirely of stormwater.

ONE YEAR DESIGN STORM - is the one-year, 24-hour design storm event. Three inches or more of rainfall in 24 hours shall be considered the minimum threshold for determining the occurrence of a One Year Design Storm.

OVERBANK FLOOD CONTROL CRITERIA (Qp) - overbank flood control criteria which require storage to attenuate the post development 10 year 24 hour peak discharge rate to predevelopment flow rates. Ten year design storm requirements shall be applicable upon the occurrence of a minimum of quantum rainfall in any 24 hour period, as indicated in the New York State Stormwater Management Design Manual, and as same shall be amended from time to time.

OWNER - the person in whom is vested the fee ownership, dominion, or title of property or his agent, manager, employee, heir, partner, or other designee responsible for such property, i.e., the proprietor. This term may also include a tenant, if chargeable under his lease for the maintenance

of the property, and any agent of the owner or tenant, including a developer, manager, superintendent or other person and/or entity responsible for same by operation of contract or law.

PERSON - any and all persons, individuals, associations, organizations or entity, natural or artificial and includes any individual, firm, corporation, government agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest or any other legal entity acting as the owner or as the owner's agent or legally responsible authorized representative.

PLANNING BOARD - except as otherwise indicated, the Planning Board of the City of Newburgh.

POLLUTANT ~ Dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, agricultural waste and ballast discharged into water; which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards.

PREMISES ~ Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

PROJECT - any land development activity.

RECEIVING BODIES OF WATER - any waterbodies, watercourse or wetlands into which surface waters flow either naturally, in man-made ditches, or other conduit whether or not such structure was intended to serve as such; or in closed conduit systems, or any combination of same or part thereof.

RECHARGE - the replenishment of subsurface water sources and reserves.

RESPONSIBLE PARTY(S) - the owner, owner of an interest, part owner, homeowners association, tenants association, lessee, manager, agent, superintendent or other person or entity responsible for the provision, operation, oversight and/or maintenance of stormwater management and stormwater management facilities, under law or by contract, and/or responsible for compliance with this local law and other applicable laws, rules and regulations.

RETENTION STRUCTURE - a permanent structure which provides for the storage of runoff by means of a permanent pool of water without release except by means of evaporation, infiltration or attenuated release when runoff volume exceeds the permanent storage capacity.

SEDIMENT - the fine particulate material, whether mineral or organic, that is in suspension or has settled in a waterbody.

SEDIMENT FACILITY - any structure or area which is designed to hold runoff water until suspended particles have settled.

SITE - any tract, lot or parcel of land or combination of tracts, lots or parcels of land which are in one ownership, or are contiguous and in diverse ownership where or in the vicinity of which development is to be performed as part of a unit, subdivision or project.

SPDES - State Pollutant Discharge Elimination System.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01 - a permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land and the impacts thereof upon the environment.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02 - a permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards.

SPECIAL CONDITIONS :

1. Discharge Compliance with Water Quality Standards. The condition that applies where a municipality has been notified that the discharge of stormwater authorized under their MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition the municipality must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.
2. 203(d) Listed Waters. The condition in the municipality's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.
3. Total Maximum Daily Load (TMDL) Strategy. The condition in the municipality's MS4 permit where a TMDL including requirements for control of stormwater discharges has been approved by EPA for a waterbody or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the municipality is required by State law to modify its stormwater or regulation management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.
4. The condition in the municipality's MS4 permit that applies if a TMDL is approved in the future by EPA for any waterbody or watershed into which an MS4 discharges. Under this

condition the municipality will review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If the MS4 is not meeting the TMDL stormwater allocations, the municipality will, within six (6) months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved, as required by State law, code, rule or regulation.

STABILIZATION - the use of practices that prevent exposed soil from eroding.

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER DISCHARGE PERMIT ~ A permit issued by the NYSDEC that authorizes the discharge of pollutants to the waters of the State.

STOP WORK ORDER - an order issued which requires that all construction activity on a site be stopped.

STORMWATER - rainwater, snow and ice melt, surface run-off, and other drainage.

STORMWATER HOT SPOTS - a land use or activity that generates higher concentrations of hydrocarbons, trace metals, or toxicants that are found in typical stormwater runoff, based on monitoring studies. NYSDEC has published a list of activities that are considered stormwater hotspots and are required to receive additional operational practices, which list in its then-current form shall be considered "Stormwater Hot Spots"; and such others as shall qualify hereunder or under the law, rules and regulations applicable thereto.

STORMWATER MANAGEMENT - the use of structural or non-structural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

STORMWATER MANAGEMENT FACILITY - one or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER (SMO) - an employee or officer designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board, inspect stormwater management practices and enforce the provisions of this Local Law in conjunction with other City officials and departments and other municipal agencies. Unless otherwise designated, the City Stormwater Management Officer shall be the City Consulting Engineer.

STORMWATER MANAGEMENT PLAN - the detailed analysis of stormwater and drainage as described in and required by these regulations, including standards, criteria, requirements and enforcement thereof.

STORMWATER MANAGEMENT PRACTICES (SMP's) - measures, either structural or nonstructural, that are determined to be effective, practical means of preventing flood damage

and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP) - a plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF - flow on the surface of the ground, resulting from precipitation or other drainage.

STREAM CHANNEL PROTECTION CRITERIA (CPv) - the volume of water calculated in a 24-hour extended detention of the one-year 24-hour storm event, and as calculated and determined by criteria used to calculate CPv as found in the New York State Stormwater Management Design Manual, and as same shall be amended from time to time.

STRUCTURE - that which is built or constructed, an edifice or building or any piece of work artificially built or composed of parts joined together in some definite manner but shall not include fences or signs.

303(d) LIST - A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by the Department as required by Section 303(d) of the Clean Water Act. 303(d) listed waters are estuaries, lakes and streams that fall short of state surface water quality standards and are not expected to improve within the next two years.

TOTAL MAXIMUM DAILY LOAD (TMDL) - The maximum amount of a pollutant to be allowed to be released into a water body so as not to impair uses of the water, allocated among the sources of that pollutant.

TWO YEAR DESIGN STORM - the occurrence of 3.75 inches or more in any 24 hour period.

TYPE THREE STORM DISTRIBUTION - the theoretical storm distribution simulating a North Atlantic hurricane as defined by generally accepted meteorological terminology to be used in modeling storms in the City of Newburgh.

VEGETATION - all plant growth, including, but not limited to, trees, shrubs, herbs, vines, ferns, mosses and grasses.

WASTEWATER - Water that is not stormwater and is contaminated with pollutants and is or will be discarded or discharged or released.

WATERS or PUBLIC WATERS - any and all water on or beneath the surface of the ground. It includes the water in any watercourse, waterbody or drainage system. It also includes diffused surface water and water standing, percolating or flowing beneath the surface of the ground.

WATER QUALITY VOLUMES (WQv) - is the volume of water designed to capture and treat 90% of the average annual stormwater runoff volume. The formula used to calculate WQv shall take into account impervious surface(s), site area(s) and the 90% rainfall event value. The criteria for calculating WQv shall be those found in the New York State Stormwater Management Design Manual, and as same shall be amended from time to time.

WATERCOURSE - any natural or artificial stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, street, roadway, swale or wash in which water flows in a definite direction, either continuously or intermittently, and which has a definite channel, bed or banks; or any combination of same or part or parts thereof.

WATERBODY - any natural or artificial pond, lake, reservoir or other area which ordinarily or intermittently contains water and which has a discernible shoreline.

WATERCOURSE - a permanent or intermittent stream or other body or flow of water, either natural or man-made, which gathers or carries water.

WATERSHED - a drainage area or basin contributing to the flow of water in a receiving body or bodies of water.

WATERWAY - a channel which directs runoff or drainage to a watercourse or to or into a public drain or pipe or drainage system.

WETLANDS - any area meeting the requirements of the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (latest edition), and/or any area identified by the NYSDEC as being a state protected wetland.

§ 248-59. APPLICABILITY

This Local Law shall apply to all water and other substances and materials entering the MS4 generated on any developed and/or undeveloped lands unless explicitly exempted by law, statute, rule or regulation or by an authorized enforcement agent or agency.

A stormwater management plan and stormwater pollution prevention plan developed in compliance with the New York State Stormwater Management Design Manual dated latest revision and prepared in accordance with the specifications herein must be submitted by the Owner and/or by his agent as authorized hereunder for review and acceptability to all City agencies and officials having jurisdiction over approval of a project including any one or more of the following:

- a) a subdivision of land;

- b) the approval of a site plan;
- c) issuance of a building permit where greater than one acre of property will be impacted;
- d) construction or extension of an existing City street or property, or private roadway;
- e) alteration of an existing drainage system or watercourse;
- f) redevelopment of existing sites ;
- g) such other project undertaken within the boundaries of the City or on or adjacent to property in which the City has an interest which poses an impact upon such property and which in the opinion of the City Engineer requires the creation and implementation of such plan or plans as necessary to satisfy the Purpose and Objectives of this Law.

§ 248-60. EXEMPTIONS

The following development activities are exempt from the Stormwater Management and Stormwater Pollution Prevention Plan Requirements.

- a) developments which disturb less than one acre of land and which in the professional opinion of the City Engineer and/or Stormwater Management Officer will not cause or may be reasonably anticipated to not cause stormwater accumulation, discharges, or flows equivalent to or greater than such as are regulated under and restricted or prohibited hereunder, or which will not cause or may be reasonably anticipated to not cause prohibited discharges, pollution, erosion, sedimentation, flooding or other impacts intended to be regulated, restricted or prohibited by this Local Law, regardless of the size of the parcel of land being developed or re-developed.
- b) agricultural land management activities;
- c) maintenance or improvement of an existing structure which will not have an impact on the quantity and/or quality of surface water discharge from the site, and which are performed in such manner as to maintain pre-existing grade, facilities, boundaries, hydraulic capacity and/or function and purpose;
- d) repairs to any stormwater management practice or facility deemed required by the Stormwater Management Officer and/or City Engineer;
- e) cemeteries, graves, and plots therein which existed prior to the enactment of this law and/or which are exempt under State law, rule or regulation;

- f) emergency activities undertaken to protect the life, health and safety of any person(s), or property or natural resources, as same may be deemed an emergency by the City Manager or by the Stormwater Management Officer;
- g) home gardening undertaken for the personal benefit of the owner which does not generate the impacts intended to be regulated hereby.

§ 248-61. DISCHARGE PROHIBITIONS

1. Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the MS4 any materials other than stormwater except as provided in Section 1.a. hereinbelow. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:

- 1.a. The following discharges are exempt from discharge prohibitions established by this Local Law, unless the Department of the municipality has determined them to be substantial contributors of pollutants or the cause of impacts prohibited hereunder: water line flushing or flushing of other portable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising ground water, uncontaminated ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains, crawl space or basement sump pumps, air conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire fighting activities, and any other water source not containing pollutants or causing impacts prohibited hereunder. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants or mitigating or eliminating prohibited impacts.
- 1.b. Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that, such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this Local Law.
- 1.c. Dye testing in compliance with applicable state and local laws is an allowable discharge, but requires a verbal notification to the SMO prior to the time of the test.

- 1.d. This prohibition shall not apply to any discharge permitted under a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Department, 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 to the MS4.

§ 248-62. PROHIBITION OF ILLICIT AND/OR ILLEGAL CONNECTIONS

1. The construction, use, maintenance or continued existence of illicit or illegal connections to the MS4 is prohibited, and shall be considered a violation of this Local Law. Each day that such violation continues shall be considered a separate violation. This shall be in addition to and not instead of any violation under any other law, code, rule or regulation.
2. This prohibition expressly includes, without limitation, illicit or illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. A person is considered to be in violation of this Local Law if the person connects a line conveying sewage to the municipality's MS4, or allows such a connection to continue, or owns or controls any property upon or from or to which such connection exists.

§ 248-63. PROHIBITION AGAINST FAILING INDIVIDUAL SEWAGE TREATMENT SYSTEMS

1. No person(s) shall operate or allow to exist upon property which they own or control a failing individual sewage treatment system in any areas tributary to the municipality's MS4. A failing individual sewage treatment system is one which has one or more of the following conditions:
 - a. The backup of sewage into a structure.
 - b. Discharges of treated or untreated sewage onto the ground surface.
 - c. A connection or connections to a separate stormwater sewer system.
 - d. Liquid level in the septic tank above the outlet invert.
 - e. Structural failure of any component of the individual sewage treatment system that could lead to any of the other failure conditions as noted in this section.
 - f. Contamination of off-site groundwater.
2. Response to Special Conditions requiring no increase of pollutants or requiring a reduction of pollutants.

Where individual sewage treatment systems are contributing to the municipality's being subject to the Special Conditions as defined in Section 248-58 of this Local Law, the owner or operator of such individual sewage treatment systems shall be required to:

A. Maintain and operate individual sewage treatment systems as follows:

- i. Inspect the septic tank annually to determine scum and sludge accumulation. Septic tanks must be pumped out whenever the bottom of the scum layer is within three inches of the bottom of the outlet baffle or sanitary tee or the top of the sludge is within ten inches of the bottom of the outlet baffle or sanitary tee.
- ii. Avoid the use of septic tank additives.
- iii. Avoid the disposal of excessive quantities of detergents, kitchen wastes, laundry wastes, and household chemicals; and
- iv. Avoid the disposal of cigarette butts, disposable diapers, sanitary napkins, trash and other such items.

B. Tanks shall be pumped out no less frequently than every three years. More frequent pumping may be required by the SMO depending on use. Inspection of the tank for cracks, leaks and blockages shall be done by the septage hauler as required by the property owner or person responsible therefor at the time of pumping of the tank contents.

C. As required, repair or replace individual sewage treatment systems as follows:

- i. In accordance with 10NYCRR Appendix 75 A to the maximum extent practicable.
- ii. A design professional licensed to practice in New York state shall prepare design plans for any type of absorption field that involves:
 - a. Relocating or extending an absorption area to a location not previously approved for such.
 - b. Installation of a new subsurface treatment system at the same location.
 - c. Use of alternate system or innovative system design or technology.
- iii. A written certificate of compliance shall be submitted by the design professional to the municipality at the completion of construction of the repair or replacement system.

§ 248-64. PROHIBITION AGAINST ACTIVITIES CONTAMINATING STORMWATER

1. Activities that are subject to the requirements of and which are prohibited by this section are those types of activities that:

- a. cause or contribute to a violation of the municipality's MS4 SPDES permit; or
- b. cause or contribute to the municipality being subject to the Special Conditions as defined in §248-58 (Definitions) of this Local Law; or
- c. include failing individual sewage treatment systems as defined in §248-63, or improper management of pet waste or fertilizer or other organic or inorganic materials or any other activity that causes or contributes to violations of the municipality's MS4 SPDES permit authorization.

§248-65. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

1. Best Management Practices.

Where the SMO has identified illicit and/or illegal discharges as defined in §248-62 and/or 248-63 or activities contaminating stormwater as defined in §248-64 the municipality may require implementation of Best Management Practices (BMPs) to control those illicit discharges and activities.

- 1.a. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and non-structural BMPs.
- 1.b. Any person responsible for a property or premise, which is, or may be, the source of an illicit or illegal discharge as defined in §248-58 or an activity contaminating stormwater as defined in §248-63 or §248-64, may be required to implement, at said person's expense, additional structural and non-structural BMPs to reduce or eliminate the source of pollutant(s) to the MS4. In the event the City gives notice of an illicit or illegal discharge as described in this Section and such person fails to implement at their own expense such additional and non-structural BMP's to reduce or eliminate the source(s) of pollutant(s) to the MS4 in a prompt and effective manner as required by the City SMO(s), the City shall have the authority to undertake any and all appropriate actions, including but not limited to legal action, engineering, practical and physical intervention and other remedial and preventative measures, both on-site and off-site or both, to cure and prevent all such illicit or illegal discharges. In such event, City shall have the right to recover any and all of its costs and expenses incurred in connection with such actions, including but not limited to legal and attorneys fees and expenses, materials and equipment, labor, consultants, agents and employees costs and expenses, fines and penalties, insurance liability and all others, from the person or persons responsible

for such illicit or illegal discharges, individually and collectively. In the event such person(s) fail to fully compensate the City for all such costs and expenses, City shall have the right to use all legal means and methods to collect same, including but not limited to adding such costs and expenses to the tax bill chargeable against such property and enforcing same in the same manner as is authorized by law for the enforcement and collection of taxes.

2. Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this Section, 248-65.

§ 248-66. SUSPENSION OF ACCESS TO MS4. ILLICIT DISCHARGES IN EMERGENCY SITUATIONS

1. The SMO may, without prior notice, suspend MS4 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 harm, damage and/or danger to the environment, to the health or welfare of any persons, or to the MS4, which is defined herein as an emergency. The SMO shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the City and/or SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4, or to minimize danger to any persons or to the environment. In the event the violator fails to comply with a suspension order and/or fails to promptly and effectively abate an actual or threatened discharge which presents or may present imminent and substantial harm, damage and/or danger to the environment, to the health or welfare of any persons or to the MS4 and the City and/or the SMO take such steps to minimize such harm, damage or danger, then the City shall have the right to recover any and all of its costs and expenses incurred in taking such steps, including all costs relating to such matters as described in §248-65, 1.b. hereinabove; and the City shall have the right to enforce collection of any and all such costs and expenses in any lawful manner including as described in §248-65, 1.b. hereinabove.

2. Suspension due to the detection of illicit discharge. Any person discharging to the municipality's MS4 in violation of this law may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the City Manager and SMO for a reconsideration and hearing. Access may be granted by the City Manager and SMO if they find that the illicit discharge has ceased and the discharger has taken sufficient and proper steps to prevent its recurrence. Access may be denied if the City Manager and/or SMO determines in writing that the illicit discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City Manager or SMO. Such offense may be prosecuted by the City in the City Court of the City of Newburgh as a violation of the City Code, or in any court of competent jurisdiction. A conviction of such offense shall be considered a Class A Misdemeanor punishable as set forth in Section C4.32, A (1)(2) of the City Charter.

§248-67. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to an industrial or construction activity SPDES 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 the municipality prior to the allowing of discharges to the MS4.

§248-68. ACCESS AND MONITORING OF DISCHARGES

1. Applicability. This section applies to all facilities that the SMO must inspect to enforce any provision of this Law, or whenever the authorized enforcement agency has probable cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Law.

2. Access to Facilities.

- a. The SMO shall be permitted to enter and inspect facilities subject to regulation under this Law as often as may be necessary to determine compliance with this Law. If a person who is the owner or is in control of or is responsible for such premises or who is a discharger has security measures in force which require proper identification and clearance before entry into its premises, such person(s) shall make the necessary arrangements to allow access to the SMO.
- b. Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this law.
- c. The municipality shall have the right to set up on any facility subject to this Law such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.
- d. The municipality has the right to require the facilities subject to this Law to install monitoring equipment at the expense of the owner, operator or responsible person(s) or discharger(s) as is reasonably necessary to determine compliance with this Law. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by such person(s) at their own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- e. Unreasonable delays in allowing the municipality access to a facility subject to this Law is a violation of this Law. A person who is the owner, operator, person responsible for or discharger of a facility subject to this Law commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this Law. Such offense shall be considered a Class A Misdemeanor and may be prosecuted as set forth in §248-66.2. and as set forth in §248-65, 1b., hereinabove.

- f. If the SMO has been refused access to any part of the premises from which is stormwater discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Law, 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 Law or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction in addition to all other remedies as set forth in this Chapter.

§248-69 NOTIFICATION OF SPILLS

Notwithstanding other requirements of law, as soon as any person responsible for a property, facility or operation, or responsible for emergency response for a property, facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the MS4, said person shall take all necessary steps to ensure the discovery, reporting, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies including but not limited to the City of Newburgh and the DEC of the occurrence via any effective means including in person, by telephone, by facsimile or other means. In the event of a release of non-hazardous materials, said person shall notify the municipality in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the municipality within three business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of or person responsible for 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 six years, and shall be subject to the review and audit of the City or by the DEC at any and all reasonable times.

§ 248- 70 . CONTENTS OF THE STORMWATER MANAGEMENT PLAN

The Stormwater Management and Stormwater Pollution Prevention Plan shall fully document compliance with the requirements of the NYSDEC Construction SPDES Permit and New York State Stormwater Management Design Manual. All sites requiring a Stormwater Management Plan and/or a Stormwater Pollution Prevention Plan to be implemented must document a zero increase in peak discharge from the predevelopment conditions as compared to post development conditions.

§ 248- 71 . COMPONENTS OF A STORMWATER MANAGEMENT PLAN

1. Stormwater Management Plans shall be prepared by a professional licensed by the State of New York to prepare such documents. Plans shall consist of an analysis of the predevelopment runoff rates, versus post development runoff rates with engineering controls implemented to assure that predevelopment peak discharge at property lines, streams or water courses are not exceeded in the post development conditions for each design storm event and return frequency. Each stormwater management report shall take into account existing soils, vegetation and cover

types, and topography in the analysis. Reports shall identify engineering computations and variables utilized in all calculations. Any assumptions utilized in the calculations shall be clearly identified. Stormwater management reports shall comply with the requirements of the New York State Stormwater Management Design Manual, (year of latest revision), and appropriate regulatory guidelines and standards. Additional information shall be provided as requested by the Planning Board, Building Inspector, Stormwater Management Officer or City Engineer. Stormwater management reports will address both water quantity control as well as water quality control including storage requirements for water quality and/or volume, stream, brook and other water and watercourse protection, ten-year peak runoff control and a 100 year flood control. Detention ponds shall be analyzed for a 25 year return frequency storm event for pre and post development runoff analysis. This local law by reference will utilize the New York State Stormwater Management Design Manual (year of latest revision) as a basis for stormwater management and design guidelines for stormwater management practices; and shall include such other and further provisions as the City Engineer and/or Stormwater Management Officer may reasonably require as being in the best interests of the City and as are required or defined in all applicable laws, rules and regulations.

2. Such Plans shall include but not be limited to the following:

- i. Background information about the scope of the project, including location, type and size of project.
- ii. Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges; *Site map should be at a scale no smaller than 1" = 100.*
- iii. Description of the soil(s) present at the site.
- iv. Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five (5) acres shall be disturbed at any one time unless pursuant to an approved Stormwater Management Plan.
- v. Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff.

- vi. Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response.
- vii. Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out.
- viii. A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice.
- ix. Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins.
- x. Temporary practices that will be converted to permanent control measures.
- xi. Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place.
- xii. Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice.
- xiii. Name(s) of the receiving water(s).
- xiv. Delineation Plan implementation responsibilities for each part of the site.
- xv. Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable.
- xvi. Any existing data that describes the stormwater runoff at the site.

Plan Certification.

In addition to the foregoing, land development activities as defined in this Law and meeting conditions “A”, “B” or “C” below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth below as applicable and as may be required by the Stormwater Management Officer and/or City Engineer.

Condition A ~ Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department’s 303(d) list of impaired waters or a Total Maximum Daily Load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.

Condition B ~ Stormwater runoff from land development activities disturbing five (5) or more acres.

Condition C ~ Stormwater runoff from land development activity disturbing between one (1) and five (5) acres of land during the course of the project, exclusive of the construction of single family residences and construction activities at agricultural properties.

SWPPP Requirements for Condition A, B and C:

- i. All information in Section VII, 2 of this local law.
- ii. Description of each post-construction stormwater management practice.
- iii. Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice.
- iv. Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms.
- v. Comparison of post-development stormwater runoff conditions with pre-development conditions.
- vi. Dimensions, material specifications and installation details for each post-construction stormwater management practice.
- vii. Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice.
- viii. Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easement shall be recorded on the plan and shall remain in effect with transfer of title to the property.
- ix. Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with the provisions of this local law.

3. Plan Certification

- i. The Stormwater Management Plan shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meets the requirements in this local law.

- ii. Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards." The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
- iii. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

4. Other Environmental Permits

The applicant shall assure that all other applicable environmental or legal permits and other approvals have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

§ 248-72 . TECHNICAL AND DESIGN STANDARDS

1. Stormwater management facilities shall be provided with the appropriate easements encompassing the stormwater management facilities and a reasonable area surrounding them for operation and maintenance of the stormwater management devices. Stormwater management appurtenances shall not be located within State or Federally designated wetlands.

Closed pipe systems and swales shall be designed to convey the calculated hydraulic flow rate from a 25 year return frequency storm event in the turbidity area. Swales for water quality treatment shall be designed according to the New York State Stormwater Management Design Manual, and as same shall be amended from time to time.

Detention/Retention ponds shall have a maximum interior slope of 4:1 or flatter with 10 to 15 benches as the City Engineer may require to provide a safe zone in compliance with the New York State Stormwater Management Design Manual and as same shall be amended from time to time.

Sediment forebays shall be provided to protect stormwater management facilities as specified in the New York State Stormwater Management Design Manual and as same shall be amended from time to time.

2. Technical Standards

For the purpose of this local law, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this law and such other requirements as may be imposed by the Stormwater Management Officer and/or City Engineer.

The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the Design Manual.)

New York Standards and Specifications for Erosion and Sediment Control, (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the Erosion Control Manual.)

3. Water Quality Standards

Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

§ 248-73 . MAINTENANCE

1. The Applicant or Developer

Stormwater management and stormwater pollution prevention plans shall address maintenance of all stormwater related improvements on subdivisions and site plans. Maintenance activity shall be the responsibility of the Owner and/or responsible party as defined herein of the site. Erosion control plans, in compliance with NYSDEC standards and as approved by the Planning Board, Zoning Board of Appeal, Building Department, Office of Code Compliance, City Engineer or Stormwater Management Officer, or any office, department, agency or officer charged with enforcement of law, codes or regulations, shall be implemented prior to construction activities commencing on a site. Soil erosion control methods and techniques shown on the approved plans and any additional controls required by the Code Compliance Supervisor, Building Inspector, Stormwater Management Officer and/or City Engineer shall be implemented and maintained throughout the project construction phase. Erosion and sediment control devices shall remain properly maintained on the site until the site has been stabilized. Maintenance of stormwater management appurtenances on site plans shall continue to be the responsibility of the site Owner and/or responsible party as defined herein. Periodic maintenance of stormwater management control is required to assure their functions. Maintenance shall be performed in accordance with the stormwater pollution prevention plan and sound environmental practices, and as may be reasonably required by the Stormwater Management Officer and/or City Engineer. Maintenance activities shall include, but are not limited to, mowing of vegetation, removal of debris, removal of sediment, cleaning of catch basins and pipes, repair and replacement of defective structures, equipment, or devices. During construction, sediment shall be removed from sediment traps,

sediment ponds and other sediment collection facilities and points as soon as and whenever their total design capacity has been reduced for any reason or cause by fifty (50%) percent.

2. Post development maintenance of stormwater management facilities designed and constructed on a residential subdivision shall be performed by a Homeowners Association, or other individual, partnership, association, corporation, Owner or other legally-responsible party, or a drainage district established by the City Council in order to provide for required maintenance activities. Appropriate easements shall be provided to City and to other parties as necessary, for access to and maintenance of all stormwater management facilities. Costs for maintenance shall be borne either by a Homeowners Association, or other individual, partnership, association, corporation, Owner or other legally-responsible party, or a drainage district. Cost associated with maintenance within a district shall be assessed to each individual property annually on an ad valorem basis, as same is approved by the State Comptroller and as is assessed and administered under law.

3. The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices. Inspection reports shall be completed every 7 days and within 24 hours of any storm event producing 0.5 inches of precipitation or more. The reports shall be delivered to the Stormwater Management Officer and also copied to the site log book.

4. Maintenance Easement(s)

Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at all reasonable times for periodic inspection by the City of Newburgh to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this local law. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the Corporation Counsel for the City of Newburgh.

5. Stormwater Management and Maintenance after Construction

A. Owners and/or other responsible parties are hereby made responsible for the continued operation and maintenance of all stormwater management facilities on properties, construction sites and subdivisions. The policy of the City of Newburgh is to reduce negative impacts associated with construction activities, including reducing impacts to receiving water quality as well as to maintain appropriate erosion, run-off and flood control from developed sites. All temporary soil erosion and sediment control devices and appurtenances required during the construction phase shall be maintained until sites become stabilized either through the provision of impervious surfaces or the establishment of vigorous vegetative growth, or the permanent establishment of such facilities and controls as the Stormwater Management Officer and/or City Engineer may reasonably require. All areas disturbed during construction shall be revegetated sufficiently to control erosion from all disturbed areas. Prior to issuance of a Certificate of Occupancy for a site

plan or the first residential structure on a subdivision, the involved engineer shall certify to the City of Newburgh Engineer and Code Compliance Supervisor and Stormwater Management Officer and/or Building Department official that all stormwater management facilities have been constructed in conformance with the applicable stormwater pollution prevention plan. All appropriate and necessary elements of the stormwater pollution prevention plan shall become part of the approved site plan/subdivision and shall be enforceable by the City code enforcement officer. The City of Newburgh hereby recognizes that the stormwater management and soil erosion sediment control plans are an important part of site development plans and therefore require enforcement of the implementation of said plans as part of the site development building permit process, as well as of such other and further legal procedures as may be proper under applicable law, rules and regulations.

All site plans and subdivisions which are subject to this stormwater management Local Law shall contain appropriate notes under seal of the authorized and licensed professional responsible therefor requiring ongoing maintenance of all stormwater management facilities and devices during construction. Annual review and inspection of the stormwater management facilities by the Owner, homeowners association, or other responsible party, or district as may be applicable, shall be required; and such other further and more frequent reviews, inspections and reports thereupon shall be performed as the City Engineer and/or Stormwater Management Officer may reasonably require.

B. The owner or operator of permanent stormwater management practices installed in accordance with this law shall be operated and maintained to achieve the goals of this law. Proper operation and maintenance shall include as a minimum, the following:

- i. A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this law.
- ii. Written procedures for operation and maintenance and training and qualification of new maintenance personnel.
- iii. Discharges from the SMP's shall not exceed design criteria or cause or contribute to water quality standard violations.

6. Maintenance Agreements

The City of Newburgh may approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of this local law and all applicable provisions of local or State code, rules and regulations. The City of Newburgh, in lieu of a maintenance agreement, at its sole discretion may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this local law and includes adequate and

perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

7. Maintenance Bonds; Required documents and filing

A. The Planning Board and/or City Council shall have authority to require a maintenance bond be posted to meet the construction, improvement and/or maintenance obligations for stormwater management facilities. The bonds if required shall be posted prior to final approval of a plan before the Planning Board or the issuance of a building permit by the Building Inspector, or the issuance of formal final City Council approval, as may be required, whichever occurs first. Maintenance bonds shall cover the estimated cost of maintaining the system for five years after issuance of the final certificates of occupancy on a site plan, subdivision or building permit. Ownership and responsibility for operational maintenance of stormwater management appurtenances of residential subdivisions shall be determined by the terms and provisions of this and/or other applicable laws, rules and regulations, or by the City Council or Planning Board, with the advice and recommendations of the City Engineer and/or Stormwater Management Officer. Owners, developers and/or their authorized agents shall execute necessary agreements, documents, deed restrictions, covenants or easements, and any and all other required documents required to comply with this and other provisions of this local law, and shall be responsible for satisfying all filing and certification requirements prior to final approval of a residential subdivision by the City Planning Board.

B. Construction Completion Guarantee

In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the City in its approval of the Stormwater Pollution Prevention Plan, the City may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the City of Newburgh as the beneficiary. The security shall be in an amount to be determined by the City based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the City, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one year inspection has been conducted and the facilities have been found to be acceptable to the City. Per annum interest on cash escrow deposits if any shall be reinvested in the account until the surety is released from liability.

C. Maintenance Guarantee

Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required in the City's discretion to provide the City with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the City may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

§ 248-74 . INSPECTIONS, REPORTS, RECORDS, ADMINISTRATION AND ENFORCEMENT

The Stormwater Management Officer (SMO), the City Engineer, the Director of Code Compliance and any City officer designated as such by the City Manager including the City Manager shall have the authority to administer, implement and enforce the provisions of this Local Law.

1. Construction Inspection

Whenever a project subject to the provisions of this local law is undertaken, or whenever any stormwater management facility is installed on public or private property, or whenever any new connection is made between private property and the City Stormwater System, the City of Newburgh City Engineer, Code Compliance Supervisor and/or Stormwater Management Officer may require such inspections as necessary to determine compliance with this law and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this law and any Stormwater Pollution Prevention Plans (SWPPP) as approved. The owner or responsible party shall grant to the City the right to enter upon the property at any and at all reasonable times for the purpose of performing any or all of the inspections referenced herein. To obtain inspections, the applicant shall notify the City of Newburgh Code Compliance Office at least 72 hours before any of the following as required by the City:

- i. Start of construction,
- ii. Installation of sediment and erosion control measures
- iii. Completion of site clearing,
- iv. Completion of rough grading,
- v. Completion of final grading,
- vi. Close of the construction season,

- vii. Completion of final landscaping,
- viii. Successful establishment of landscaping in public areas.

If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the City.

2. Stormwater Management Practice Inspections

The City Engineer and/or Stormwater Management Officer, is responsible for conducting inspections of Stormwater Management Practices (SMP's). All applicants are required to submit "as built" plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.

3. Inspection of Stormwater Facilities after Project Completion

Inspection programs shall be established on any reasonable basis, as may be required by the City Engineer and/or Stormwater Management Officer, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharge of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but not be limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices. A report of such inspection shall be prepared following each such inspection and shall be kept on file for ready access at all reasonable times by the City official responsible therefor.

4. Submission of Reports

The City Engineer and/or Stormwater Management Officer in their discretion may require monitoring and reporting, in writing, from entities subject to this law as are necessary to determine compliance with this law at any and all times.

5. Record Keeping

The City Engineer and/or Stormwater Management Officer may require entities subject to this law to maintain records demonstrating compliance with this law. Such records shall be maintained in a current and audit-ready condition at all times and shall be made available for City inspection at City's request at all reasonable times.

§ 248- 75 . PROHIBITED DISCHARGES; REMEDIES AND PENALTIES

1. A. No private or corporate person, Owner, developer, contractor, site operator or other party or entity or agent shall cause to be discharged to any stormwater collection or conveyance system, natural water course or water body within the City of Newburgh, any substance other than naturally occurring surface water discharges, naturally-occurring melted snow and ice, uncontaminated groundwater discharges from foundation footing drains, air conditioning or other uncontaminated non-toxic condensate, irrigation waters, springs, water from crawl space and basement sump pumps, lawn watering, individual residential car washing, declorinated swimming pool discharges, street wash water and fire fighting water.

B. The above discharges must be free from any hazardous or toxic chemicals or substances, petroleum products, sanitary sewage, pesticides, herbicides or other noxious, dangerous or harmful chemicals, pollutants or substances.

C. With the exception of the discharges identified above, no discharge piping from any floor drain, sanitary drains, process piping or other similar source shall be connected to any City owned or maintained stormwater collection and conveyance system. The Building Inspector and/or Code Enforcement Officer shall be authorized to enforce the provisions of this section.

2. Violations of this Section shall be punishable by the penalties set forth in Section 248-68 herein. Every new day measured from 12:00 a.m. during all or part of which a violation is found to exist shall constitute a separate violation hereof. In addition to such penalty, the City may bring a separate civil action in any court of competent jurisdiction to recover from any violator(s) the cost of any damages caused by such violation plus the cost of remediating such damage, plus any legal and attorneys fees and costs associated with such action; including the right of the City to compel compliance or to restrain by injunction any such violations of this Section. This shall be in addition to any other penalties or remedies provided by any other law, regulation, or rule or section hereof.

§ 248- 76 . FEES FOR SERVICES

The City of Newburgh may require any person undertaking land development or other activities regulated by this Law to pay reasonable costs at prevailing rates for review of SWPPP's, inspections, or SMP maintenance performed by the City or performed by a third party for or on behalf of the City. The City may require the payment of such fees and/or the establishment of an escrow account in an amount to be determined by the City upon the recommendation of the City Engineer and/or Stormwater Management Officer to provide a fund sufficient to pay the reasonably anticipated costs thereof.

§ 248- 77 . ENFORCEMENT AND PENALTIES

1. Notice of Violation

A. The City shall have the right to gain access to and to inspect any stormwater sewer or other collection system or conduct whether man-made or natural or combination of both in the same manner and with the same authority as provided by this Local Law or by any law, code, rule or regulation which provides the City with the authority to gain access to and inspect property and structures to ensure and enforce compliance with all state and local building, fire, safety and health codes, rules and regulations, including but not limited to this Local Law. When the City determines that a land development activity is not being carried out in accordance with the requirements of this Local Law, or that a person has violated a provision hereof, it may issue a written notice of violation to the landowner, operator, person responsible for same or the discharger. The notice of violation shall contain:

the name and address of the landowner, developer, applicant, operator, discharger and/or responsible party;

the address when available or a description of the building, structure or land upon which the violation is occurring.;

a statement specifying the nature of the violation;

a description of the remedial measures required of the owner, operator, person responsible or discharger necessary to bring the land development activity and/or to eliminate any illicit or illegal connections or discharges and to bring such premises and persons into compliance with this Local Law; and a time schedule for the completion of such remedial action;

a statement of the penalty or penalties that are, shall or may be assessed against the person to whom the notice of violation is directed;

a statement and description of any monitoring, analysis and reporting requirements to be imposed;

a statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within fifteen (15) days of service of notice of violation with the Code Compliance Office;

the description of the required implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

B. Cease and Desist / Stop Work Orders

The City may issue a Cease and Desist and/or a Stop Work Order for violations of this Law. Persons receiving a Cease and Desist or Stop Work Order shall be required to halt all land development activities, except those activities that address the violations leading to the Order as the City may allow. The Order shall be in effect until the City confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to obey an Order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this Local Law.

C. Violations - Injunctions

Any land development or other activity that is commenced or is conducted contrary to this Local Law, may be restrained by injunction or otherwise abated in a manner provided by law. The City may recover from the violator(s) any and all of its costs and expenses including attorneys fees incurred in securing injunctive relief, fines or other relief or remedies.

D. Withholding of Certificate of Occupancy or other approval or permit

If any building or land development or other activity is installed or conducted in violation of this Local Law the City Engineer, Stormwater Management Officer and/or Code Enforcement Officer may prevent the occupancy of said building or land by withholding, suspending or rescinding a Certificate of Occupancy or other permit issued by any City agency or official.

E. Restoration of Lands

Any violator may be required to restore land and related facilities to its undisturbed condition and to remove or to require corrections of defective or non-compliant or illegal connections to any storm sewer system or other system or conduit whether man-made or natural or any combination thereof. In the event that restoration is not undertaken within a reasonable time after notice, the City may take necessary corrective action, the cost of which shall become a lien upon the property until paid. If said cost remains unpaid, it shall become a tax upon the premises and may be enforceable by the City in the same manner as provided by law for the enforcement of unpaid taxes, as provided for and as described in §248-65, 1.b. hereinabove.

F. Appeal of Notice of Violation

Any person receiving a Notice of Violation may appeal the determination of the SMO to the City Manager within fifteen (15) days of its issuance, who shall hear the appeal within thirty (30) days after the filing of the appeal, and within five (5) days of making a decision, shall file such decision in the office of the municipal clerk and mail a copy of the decision by certified mail to the violator(s).

2. Alternative Remedies

Where a person has violated a provision of this Law, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the City Manager and/or SMO and/or Director of Code Compliance where:

- a. the violation was unintentional,
- b. the violator has no history of previous violations of this Law,
- c. environmental damage was minimal,
- d. violator acted quickly to remedy violation,
- e. violator cooperated in investigation and resolution,
- f. other significant mitigating factors.

Alternative remedies may consist of one or more of the following:

- a. attendance at compliance workshops,
- b. storm drain stenciling or storm drain making,
- c. river, stream or creek cleanup activities,
- d. any other activity deemed by the City to be a significant contribution to the health, safety and welfare of the City of Newburgh, its citizens and/or the environment.

3. Any person who commits any act in violation of any provision of this Local Law shall be deemed to have committed an offense and shall be liable for penalties imposed herein for such violation. Each act committed in violation of any provision of this Local Law shall constitute a separate offense. Each day a violation continues shall be deemed a separate act.

- a. Except as otherwise provided in this Local Law, for every violation of every provision of this Local Law, a person shall be subject to a fine of not less than \$200.00 but not more than \$1,000.00, or imprisonment not exceeding 15 days, or both.
- b. Any person violating this Local Law shall be subject to a civil penalty enforceable and collectable by the City in the amount of \$500.00 for each such offense.
- c. In addition to the above provided penalties, the City also may bring an action or proceeding in the name of the City in the City Court of the City of Newburgh, or other court of competent jurisdiction to compel compliance with, or to restrain by injunction or otherwise the violation of this Local Law, or of the New York State Department of Environmental Conservation Rules and Regulations, not-

withstanding that a penalty or other enforcement measure for such violation has otherwise been provided or imposed.

- d. In addition to the foregoing and at the City's discretion, after due notice and opportunity to correct any violation(s) have been given by City, the City may undertake any and all necessary and proper actions to correct such violation(s). City may then seek full reimbursement for all of its costs and expenses including attorneys fees and court costs, which the City has incurred for such corrections and any legal action brought hereunder, as provided in §248-65 1.b. hereinabove.

4. The remedies listed in this Local Law are not exclusive of any other remedies available under this law, or under any other local law, regulation, rule, code or ordinance, or under any applicable federal, state, county or regulatory law, code, rule or regulation; and it shall be within the discretion of the City and its enforcement officers to seek individual or cumulative or any combination of such remedies.

SECTION IV. SEPARABILITY AND SEVERABILITY

Should any section, paragraph, sentence, clause or phase of this Local Law or rules and regulations promulgated in conjunction with or hereunder be declared invalid or unconstitutional or unjust for any reason by a court of competent jurisdiction or the application thereof to any person or circumstance, such invalidity shall not affect the remainder of this Local Law which shall not be affected thereby nor its remaining provisions or applications as the sense thereof may require.

SECTION V. EFFECTIVE DATE

This Law shall take effect immediately upon proper filing with and recordation by the Secretary of State, as provided under the Municipal Home Rule Law.