

**CITY OF WEST ALLIS
ORDINANCE O-2023-0029**

**ORDINANCE CORRECTING ERRORS AND CLARIFYING LANGUAGE IN THE
MUNICIPAL CODE - APRIL 2023**

AMENDING VARIOUS SECTIONS

WHEREAS, the common council seeks to update the language and structure of municipal code to promote consistency and clarity; and

WHEREAS, the entertainment device distributor license has very few licensees; and

NOW THEREFORE, the common council of the City of West Allis do ordain as follows:

SECTION 1: **REPEAL** “9.67 Entertainment Device Distributor” of the City Of West Allis Municipal Code is hereby *repealed* as follows:

R E P E A L

~~9.67 Entertainment Device Distributor~~ (*Repealed*)

1. License Required. No person may lease or place an entertainment device upon another person's public place, or receive profits from such a lease, without first having obtained a license under this section.
2. Exceptions. None.
3. Application Process. The application process in [WAMC 9.50](#) is adopted, except as modified below:
 - a. No premises description is required for this license.
 - b. The applicant shall provide a list of all addresses within the City at which the applicant has placed entertainment devices within the past year or will place amusement devices within the next year under the terms of a contract. The list shall include the number of machines placed or to be placed at the premises, and the legal names of the entities contracting for each entertainment device.
4. Regulations. (Reserved)
5. Discipline Process. The discipline process in [WAMC 9.51](#) is adopted.

SECTION 2: **AMENDMENT** “9.47 General Provisions” of the City Of West Allis Municipal Code is hereby *amended* as follows:

AMENDMENT

9.47 General Provisions

1. Vicarious Liability. A licensee is liable for any violations of any provision of this chapter committed in the course of conducting the licensed activity by the licensee's employee, agent, or contractor. Each licensee has the affirmative duty to see that every regulation is obeyed by employees, agents, and contractors. The licensee may be convicted for a violation committed by an employee, agent, or contractor only in a civil forfeiture action. None of the following are defenses to the liability imposed under this section:
 - a. The licensee was deceived about or ignorant of the violation.
 - b. The licensee was absent at the time of the violation.
 - c. The licensee had prohibited employees, agents, and contractors from doing the act that resulted in a violation.
2. State Law Applicable. Any duty or authority assigned by state law to a City body, officer, or department shall be in effect unless explicitly declined or rejected in this code. Nothing in this chapter may be construed to implicitly preclude, decline, or reject any authority or duty in state law.
3. License List. The table below indicates by type of license which city officer issues the license, whether the issuing officer may grant the license without council approval, whether a record check is required, the term of the license, and which city departments receive notification of an application for that license.

Type	Issuing Officer	Issuing Officer May Grant (a)	Record Check	Expires	Departments Notified							
					Code Enforcement	Clerk	Engineer	Fire	Health	Planning	Police	Public Works
Adult-Oriented Entertainment	Clerk	No	Yes	June 30	X	X		X	X		X	
Alcohol Beverages												
Class "B" Beer (provisio	Clerk	Yes(b)		60 days	X	X		X	X		X	

's (provisional)	Clerk	Yes(c)		60 days		X					X	
Operator's (regular)	Clerk	Yes(f)		Every other June 30		X					X	
Operator's (temporary)	Clerk	Yes		1-14 days		X					X	
Animal Sales and Service	Health Commissioner	Yes		June 30					X			
Bed and Breakfast Establishment	Health Commissioner	Yes	-	June 30 (e)					X			
Body Piercing	Health Commissioner	Yes		June 30					X			
Campground and Camping Resort	Health Commissioner	Yes		June 30(e)					X			
Cigarette and Tobacco Products Retailer	Clerk	Yes		June 30		X					X	
Concrete Contractor	Clerk Engineer	Yes		June 30		X	X					

tor												
Entertainment Device Distributor	Clerk	Yes		June 30	-	X	-	-	-	-	X	-
Escort Service	Clerk	No	Yes	June 30		X					X	
Fitness Center	Health Commissioner	Yes	-	June 30					X			
Hotel or Motel	Health Commissioner	Yes	-	June 30(e)					X			
Junk Picker	Clerk	Yes	-	4 months		X					X	X
Lodging House	Health Commissioner	Yes	-	June 30	X				X			
Manufactured and Mobile Home Community	Clerk	Yes	-	June 30+ Year	X	X					X	
Nicotine Products Retailer	Clerk	Yes	-	June 30	X	X			X		X	
Pawnbroker	Clerk	No	-	Dec. 31		X					X	
Public Entertainment												
Regular	Clerk	No	Yes	June 30	X	X		X	X	X	X	

Tempora ry	Clerk	No	Yes (d)	As state d on licen se		X					X(d)	
Public Swimmi ng Pool	Health Commi ssioner	Yes	-	June 30(e)					X			
Recreat ional and Educati onal Camp	Health Commi ssioner	Yes	-	June 30(e)					X			
Retail Food Establis hment	Health Commi ssioner	Yes	-	June 30(e)					X			
Second hand Article Dealer	Clerk	No	-	Dec. 31		X					X	
Second hand Jewelry Dealer	Clerk	No	-	Dec. 31		X					X	
Tattoo	Health Commi ssioner	Yes	-	June 30					X			
Tourist Roomin g House	Health Commi ssioner	Yes	-	June 30(e)	X				X			
Transie nt Mercha nt	Clerk	Yes	-	4 mont hs		X			X		X	

- a. The issuing officer may only grant a license to an applicant who is clearly qualified.

- b. The issuing officer shall grant a provisional retail license under [Wis. Stat. 125.185](#) only to applicants whose applications are pending before the common council and all the following applies:
 - i. The Public Safety Committee has recommended granting the license.
 - ii. The applicant has obtained all required licenses and permits.
 - iii. The applicant has passed all required inspections.
- c. The issuing officer shall grant a provisional operator's license to any applicant who meets the qualifications under [Wis. Stat. 125.17\(5\)](#).
- d. No record check is required ~~for a temporary public entertainment license if the applicant already holds a Class "B" license.~~
- e. Licenses initially issued during the period beginning on April 1 and ending on June 30 expire on June 30 of the following year.
- f. The issuing officer may grant and issue a regular operator's license only if the applicant does not have any of the following:
 - i. A pending criminal charge for any offense under [Wis. Stat. 111.335\(4\)\(a\)](#)
 - ii. A conviction for an offense counted under [Wis. Stat. 343.307](#) within two years of the application date
 - iii. A second or subsequent conviction for an offense counted under [Wis. Stat. 343.307](#) within five years of the application date
 - iv. Convictions for three or more violations of [Wis. Stat. 343.44](#) within two years of the application date
 - v. A conviction for any offense under [Wis. Stat. Ch. 125](#) or any offense for which the consumption, possession, or sale of alcohol is an element within ten years of the application date, except no violation of [Wis. Stat. 125.07](#) may be considered unless the applicant has committed two or more violations within one year;
 - vi. A conviction for a felony offense where the sentence for confinement, extended supervision, or probation has ended within five years of the application date; or
 - vii. Convictions for three or more misdemeanors within five years of the application date.
- 4. Fees. An applicant for a license shall pay any applicable fees listed in the [Fee Schedule](#).

SECTION 3: AMENDMENT “9.73 Manufactured And Mobile Home Community” of the City Of West Allis Municipal Code is hereby *amended* as follows:

AMENDMENT

9.73 Manufactured And Mobile Home Community

1. License Required. [Wis. Stat. 66.0435\(2\)\(a\)](#) is adopted.
2. Exceptions. (Reserved)
3. Application Process. The application process in [Wis. Stat. 66.0435\(4\)](#) is adopted, except as modified below:
 - a. Each applicant shall also submit the following with each initial or renewal application, unless the information is the same as stated in a previous application:
 - i. For an individual applicant, that person's phone number, date of birth, and email address. For an entity applicant, the person's federal employer identification number and names and addresses of the person's officers, members, or partners.
 - ii. The name, address, phone number, and email address of a person who manages the manufactured and mobile home community.
 - iii. A scale drawing of the manufactured and mobile home community prepared and certified by a registered professional engineer, surveyor, or architect. The drawing shall contain:
 - (1) Accurate dimensions of the community;
 - (2) Location and width of all roads and approaches;
 - (3) The method of ingress and egress from, and dimensions and locations of public highways;
 - (4) The complete electric service installation and the location of poles, wire service outlets, and lighting facilities;
 - (5) All snow storage areas and utility easements;
 - (6) A complete layout of unit spaces and number of square feet therein, together with the dimensions thereof. Each unit space shall bear a number in accordance with a numbering system approved by the [Code Enforcement](#) Director, ~~of the Department of Building Inspection and Neighborhood Services~~
 - (7) The location of the electric power distribution systems, water mains, or wells for water supply outlets for domestic water users;
 - (8) Location of sanitary facilities, bathrooms, garbage disposal units, incinerators, sanitary sewers, sewer drain lines, and any other building or structure;
 - (9) The location of required vehicle and supplementary parking spaces for vehicles, boats, and other towed vehicles.
4. Regulations
 - a. Fair Trade Practices. [Wis. Adm. Code Ch. ATCP 125](#) is adopted.
 - b. Licensee to Collect Monthly Permit Fee. The manufactured and mobile home community operator shall collect the monthly municipal permit fee from each unit owner.
 - c. Responsibilities of Licensee. Every person licensed to operate and manage a manufactured and mobile home community shall be responsible for:

- i. Maintaining all records pertaining to the management, operation, and supervision of the manufactured and mobile home community for the current licensing year and previous 2 licensing years.
 - ii. The maintenance of an orderly and clean manufactured and mobile home community and the maintenance of all streets, roadways, or thoroughfares necessary as fire lanes of a manufactured and mobile home community free and clear of all refuse, rubbish, snow, ice, or other materials or objects.
 - iii. The numbering of all units, which numbers shall correspond to the number shown in the registry signed by each new arrival, permitting such person to occupy a given site.
 - iv. The proper illumination on the premises of all streets, roadways, private driveways, and entrances and exits to and from the premises from 30 minutes after sunset to 30 minutes before sunrise on the succeeding day.
 - v. The prompt reporting to the Police Department of any violation of an ordinance, statute, or other law committed on the premises that the licensee knew or should have known about.
 - vi. The observation of fire prevention rules and laws; the keeping of all buildings, fences, illumination, streets, roadways, water systems, sewer systems, and electric streetlighting systems in good serviceable condition, clean, sanitary, and in good repair; and the keeping of the entire premises clean and sanitary so as to minimize obnoxious odors, rodent harborage, flies, mosquitoes, vermin, or other insects.
 - vii. The maintenance of a register of all owners and occupants of manufactured and mobile homes located in the manufactured and mobile home community.
 - viii. The licensee's registered contact person shall, during reasonable hours, be available in the community, in close proximity to the community, or via electronic or telephonic means.
5. Discipline Process. The discipline process in [Wis. Stat. 66.0435\(2\)\(d\)](#) is adopted.

SECTION 4: **AMENDMENT** “9.84 Transient Merchant” of the City Of West Allis Municipal Code is hereby *amended* as follows:

A M E N D M E N T

9.84 Transient Merchant

- 1. License Required. No person may conduct a business that engages in the sale of personal services or merchandise from a temporary location without first obtaining a transient merchant license.

2. Exceptions. No license is required under this section if any of the following applies:
 - a. The person is a permanent merchant who has continuously operated an established place of business in the City for at least 6 months.
 - b. The person is an auctioneer registered under [Wis. Stat. Ch. 480](#) and conducting an auction sale.
 - c. The person is a resident of this state selling produce or other perishable products at retail or wholesale.
 - d. The person is a minor operating a stand in compliance with [Wis. Stat. 66.0416](#).
 - e. The person is renting space at the Farmers Market.
 - f. The person is selling goods at wholesale to dealers in such goods.
 - g. The person is selling agricultural products which the person has grown.
 - h. The person is delivering newspapers, fuel, dairy products, bakery goods or similar goods to regular customers on established routes.
 - i. The person is engaging in a transaction initiated by the buyer specifically requesting a home visit.
 - j. The person is holding a sale required by law.
 - k. The person is any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of that organization.
 - l. The person is operating under a special statewide peddler's license under [Wis. Stat. 440.51](#).
3. Application Process. The application process in [WAMC 9.50](#) is adopted, except as modified below:
 - a. The application shall include all the following:
 - i. Nature of the business to be conducted and a brief description of the goods and services offered.
 - ii. Make, model, and license plate number of any vehicle to be used by the applicant in the conduct of the business.
 - iii. Names of the last 3 municipalities in which the applicant conducted similar business.
 - iv. Proof of a retail sales tax permit if required by Wis. Stat. 77.52.
 - b. No premises description is required for this license, but the applicant shall disclose the location(s) from which the business will be conducted and the proposed dates and times instead of a premises description.
4. Regulations. Any person who engages in the sale of personal services or merchandise from a temporary location, with or without a license, shall:
 - a. Specifically disclose, upon request, what portion of the sale price of goods or services being offered will actually be used for a charitable purpose, expressed as a percentage of the sale price of the goods.
 - b. Not produce sound that is audible from 100 feet away.
 - c. Maintain the area around the person free from rubbish or litter, regardless of whether the person was the source of that rubbish or litter.
 - d. Conduct business only from property upon which the person has a legal right to occupy and that has been disclosed in the license application.
 - e. Maintain open ingress and egress to adjacent properties

- f. Refrain from approaching any person occupying a vehicle.
- g. Engage in displaying or selling goods or services only from the location set forth in the license, if applicable.
- h. Conduct business only between the hours of 9 a.m. and 9 p.m., except by appointment.
- i. Upon initially making contact with another person on that person's private property, state the licensee's name and the purpose of the solicitation.
- j. Accurately represent the purpose of any solicitation.
- k. Remain at least 300 feet away from the Farmers Market during the hours that the market is open for business, unless the person is otherwise authorized by the Farmers Market.
- l. During the dates established for the Wisconsin State Fair, remain outside an area bounded by the north City limits, the east half of South 84th Street, the north half of West Greenfield Avenue and the west half of South 77th Street.
- m. Remain at least 500 feet away from the Wisconsin State Fair grounds on the days in which the Wisconsin State Fair is occurring if the person is selling admission tickets.
- n. When using a vehicle:
 - i. Not remain on the same block in an area zoned residential for more than 1 hour per day, unless specifically authorized through a special event or community event.
 - ii. Display the person's transient merchant license, if any, on the person's vehicle.
 - iii. Display the person's name and telephone number on the person's vehicle in lettering not less than 4 inches high.
 - iv. Remain at least 300 feet from any school grounds.
 - v. Remain at least 100 feet from any licensed restaurant, unless the vehicle is lawfully parked on private property or ~~such restaurant is owned by the person or~~ the person has written permission from the restaurant licensee's owner or agent to park on a street within 100 feet of the licensed restaurant.
- o. Remain at least 100 feet away from any permitted special event premises, unless the person is otherwise authorized by the special event organizer.

5. Discipline Process. The discipline process in [WAMC 9.51](#) is adopted.

SECTION 5: **AMENDMENT** “11.11 Facilities In Right-Of-Way” of the City Of West Allis Municipal Code is hereby *amended* as follows:

AMENDMENT

11.11 Facilities In Right-Of-Way

1. Registration for Right-of-Way Occupancy.
 - a. Facility Owner/Lessee Registration. Each ~~service, utility service or right-of-way user~~person who occupies, uses, or seeks to occupy or use, the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, facilities (NOTE: "Facilities" means all equipment owned, operated, leased or subleased in connection with the operation of a service or utility service, or some other right-of-way use, and shall include but is not limited to poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, lines and other structures and appurtenances;) located in any right-of-way shall register with the City Engineer and pay the fee set forth in the Fee Schedule~~Section 11.11(3) of this Code. Registration consists of providing application information and paying a registration fee.~~ This section shall not apply to those persons exclusively utilizing facilities provided by another right-of-way user.
 - b. Contractor Registration~~Prior to Work~~. No persons may construct, install, repair, remove, relocate, or perform any other work on, ~~or use~~ any facilities or any part thereof in any right-of-way without first being registered with the City Engineer and paying the fee set forth in the Fee Schedule.
2. Registration Information.
 - a. Information Required. The information provided to the City Engineer at the time of registration shall include, but not be limited to:
 - i. Each registrant's name, Diggers Hotline registration certificate number (if any), mailing address, and email address, ~~if applicable~~, and telephone ~~and facsimile~~ numbers.
 - ii. The name, mailing address, and email address, ~~if applicable~~, and telephone ~~and facsimile~~ numbers of a local representative. The local representative or designee shall be available at all times. ~~Current information regarding how to contact the local representative in an emergency shall be provided at the time of the registration.~~
 - iii. All right-of-way users shall demonstrate to the satisfaction of the City the financial capability to cover any liability that might arise out of their presence in the right-of-way. If the person is a corporation, a limited liability company or limited liability partnership, that person shall provide a copy of any certificate required to be filed under Wisconsin Statutes as recorded and certified to by the Secretary of State.
 - iv. A copy of the person's certificate of authority from the Public Service Commission of Wisconsin or other applicable state or federal agency, where the person is lawfully required to have such certificate from said Commission or other state or federal agency.
 - v. Execution of an indemnification agreement in a form prescribed by the City Engineer, which is consistent with, and shall not exceed the obligations provided in, ~~Section~~ WAMC 11.11(12).
 - b. Annual Report to be Filed. Any person occupying or using in, upon, or beneath the surface of any right-of-way within the City of West Allis any facilities and/or underground construction, as herein set forth, in pursuance of

any permit, resolution, ordinance or franchise, is hereby directed to file with the City Engineer complete drawings, plans and profiles showing the location, character and extent of all facilities and/or underground construction on or before the first day of April each year.

- c. Notice of Changes. The registrant shall keep all of the information listed above current at all times by providing to the City Engineer information as to changes within ~~fifteen (15)~~ days following the date on which the registrant has knowledge of any change.

3. Registration Fee.

- a. Annual Registration Fee. Each registrant shall annually renew its registration and pay the fee listed on the Fee Schedule or discontinue and properly abandon its facilities. ~~The City Engineer shall establish the registration fee in an amount sufficient to recover the costs incurred by the City for processing registrants. This fee shall be computed as the average of labor cost, indirect costs, and other costs associated with the registration.~~
- b. ~~Fee Computation. The City Engineer may recalculate and establish a new registration fee each year as established in Section 11.18.~~

4. Permit Requirement.

- a. ~~Permit Requirement.~~ Special Right-of-Way Permit Required. Except as otherwise provided in Section 11.11, or other Chapters of the Revised Municipal Code, no person shall excavate, obstruct, or occupy the right-of-way or place or collocate facilities in a right-of-way without first obtaining a special right-of-way permit [see Subsection 11.18(3)] from the City Engineer. No person shall engage or continue in construction in the right-of-way beyond the date or area specified in the permit, unless such person makes application for a permit to perform such additional work before the expiration of the initial permit. No permit is necessary under this paragraph for routine maintenance, the replacement of a small wireless facility with a small wireless facility that is substantially similar to, or the same size or smaller than, the existing small wireless facility, or the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between existing utility poles in compliance with the National Electrical Safety Code.
- b. Permit Display. A copy of any permit issued under Section 11.11 shall be made available at all times by the permittee ~~(person to whom a permit to excavate or occupy a right-of-way has been granted by the City under Section 11.11)~~ at the indicated work site and shall be available for inspection by the City Engineer upon request.

5. Permit Application.

- a. Application for a special right-of-way permit shall be made to the City Engineer. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
 - i. Registration with the City Engineer as required by Subsection 11.11(1);
 - ii. Submission of a completed permit application form, including the following:
 - (1) If the proposed project involves the installation of poles or

towers the applicant shall submit scaled drawings of the poles or towers and all proposed attachments. Details with descriptions of all attachments shall be shown on submitted drawings.

- (2) The applicant shall submit drawings, plans and profiles identifying in detail the location of the proposed project and any affected right-of-way, public utility easements, and the location of all existing and proposed facilities and obstructions within the project area in addition to installation details.
- (3) If the proposed project involves the installation or modification of poles or towers in the right-of-way, the city engineer may propose an alternate location to construct or modify a utility pole for collocation, and the applicant shall use the alternate location if it has the right to use the alternate structure on reasonable terms and conditions and the alternate location is technically feasible and does not impose material additional costs.
- (4) If the proposed project involves the installation of poles or towers in the right-of-way that are greater than ~~ten~~ (10) feet taller than existing poles or towers nearby in the right-of-way, the applicant must submit evidence to demonstrate that:
 - (A) The greater height is required to accomplish the applicant's purpose;
 - (B) The applicant is prohibited from using existing poles or towers (either owned by applicant or a third party) to accomplish its purposes because such use is technically infeasible, economically prohibited, or prohibited by law; and
 - (C) The pole or tower, due to its height and size, poses no greater danger to health, safety, and welfare of the public than existing poles or towers nearby in the right-of-way.
- (5) If the applicant is a communications service provider installing a small wireless facility, certification that the facility:
 - (A) Will comply with relevant federal communications commission regulations concerning radio frequency emissions from radio transmitters and unacceptable interference with public safety spectrum, including compliance with the abatement and resolution procedures for interference with public safety spectrum established by the federal communications commission set forth in 47 CFR 22.970 to 22.973 and 47 CFR 90.672 to 90.675.
 - (B) Will not materially interfere with the safe operation of

traffic control equipment, sight lines or clear zones for transportation or pedestrians, federal Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

iii. Payment of all money due to the City for:

- (1) Applicable permit fees ~~and costs as established in Section 11.18;~~
- (2) Unpaid fees or costs for prior permits or construction by the applicant; ~~or~~
- (3) Any loss, damage, or expense suffered by the City including any emergency actions taken by the City because of applicant's prior permits or construction in the right-of-way; ~~and~~
- (4) A certified check or cashier's check in an amount to be determined by the City Engineer, payable to the City of West Allis. This check will be returned after the proper restoration of the right-of-way has been completed. The applicant must inform the City Engineer when all restoration work has been completed and allow the City Engineer ~~three (3)~~ business days for final inspection. This provision may be waived by the City Engineer when circumstances deem it appropriate.

iv. A statement that the applicant will comply with all local, state and federal codes, including but not limited to safety, building, traffic control codes and the Federal Highway Administration Manual of Uniform Traffic Control Devices (MUTCD) and Wisconsin Supplement to the Manual of Uniform Traffic Control Devices.

v. Furnish a certificate of liability insurance compliant with standards of the City Engineer.

6. Right-of-Way Repair and Restoration. In addition to repairing its own work, the permittee must restore the general area of the work and the surrounding areas, including the paving and its foundations, if any, to the specifications of the City. The City shall inspect the area of the work and accept the work when it determines that proper restoration has been made per specifications of the City.

- a. Standards. The permittee shall perform repairs and restoration according to the specifications and with the materials specified by the City. The City shall have the authority to prescribe the manner and extent of the restoration and may do so in written procedures of general application or on a site-specific basis.
- b. Guarantees. The permittee guarantees its work and shall maintain it for ~~thirty-six (36)~~ months following its completion, except for organic material, which shall be maintained for ~~twelve (12)~~ months. During either period, the permittee shall, upon notification from the City, correct all repair work to the extent completed within ~~ten (10)~~ calendar days of the receipt of the notice from the City, not including days during which work cannot be done because of circumstances constituting force majeure.
- c. Failure to Restore. If the permittee fails to restore the right-of-way in the

manner and to the condition required by the City or fails to complete satisfactorily and timely all restoration required by the City, the City at its option may do such work. In that event the permittee shall pay to the City, within ~~thirty~~ (30) days of billing, the cost of restoring the right-of-way. If the permittee fails to pay as required, the City will apply the amount filed by the permittee under ~~Subsection~~ WAMC 11.11(5)(a)~~3(iii)b~~ above to the cost of restoration and may exercise its right to refuse future permits.

7. Inspection.

- a. Notice of completion. When the work under any permit issued hereunder is completed, the permittee shall notify the City Engineer.
- b. Site inspection. The permittee shall make the work site available to the City and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- c. Authority of City Engineer. At the time of inspection the City may order the immediate cessation of any work which poses a threat to the life, health, safety or well-being of the public. The City may issue an order to the registrant for any work which does not conform to the applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ~~ten~~ (10) days after issuance of the order, the registrant shall present proof to the City Engineer that the violation has been corrected. If such proof has not been presented within the required time, the City may revoke the permit.

8. Revocations, Suspensions, and Refusals To Issue Permits.

- a. Grounds. The City may refuse to issue a permit or may revoke or suspend an existing permit if it finds any of the following grounds:
 - i. The applicant or permittee is required by Section 11.11(1) to be registered and has not done so or the permit application is otherwise incomplete;
 - ii. The applicant or permittee is seeking to perform work not included in its permit application [see Section 11.11(5)] which work was reasonably foreseeable by the applicant or permittee at the time said permit was filed;
 - iii. Issuance of a permit for the requested date would interfere with an exhibition, celebration, festival, or other event;
 - iv. Misrepresentation of any fact by the applicant or permittee;
 - v. Failure of the applicant or permittee to complete work in a timely manner;
 - vi. Failure of the permittee to maintain the facility in an acceptable condition;
 - vii. The proposed activity is contrary to the public health, safety or welfare;
 - viii. The extent to which space is available in the right-of-way for which the permit is sought and/or the competing demands for the particular space in the right-of-way;
 - ix. The availability of other locations in the right-of-way or in other

- rights-of-way for the facilities of the permittee or applicant;
 - x. If the permittee or applicant proposes to install a new pole or tower in the right-of-way, the availability of other existing poles or towers owned by the permittee or applicant or by a third party;
 - xi. The applicability of ordinances or other regulations of the right-of-way that affect location of facilities in the right-of-way;
 - xii. The condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction; or
 - xiii. The applicant or permittee is otherwise not in full compliance with the requirements of Section 11.11 or state or federal law.
- b. Appeals. Any person aggrieved by a decision to revoke, suspend or refuse to issue a permit may file a request for review first with the City Engineer and then with the Board of Public Works. A request for review by the City Engineer shall be filed within ten (10) days of the decision being appealed. An appeal to the Board shall be filed within five (5) days of receipt of the City Engineer's determination. The Board, in its discretion and depending on the circumstances, may conduct a hearing. On appeal, the initial decision may be affirmed, reversed or modified.
9. Installation Requirements. The installation of any permanent facilities or structures in the right-of-way shall comply with the following standards:
- a. Poles and other utility structures over sixty (60) feet in height shall be located so that all residential, commercial, retail or other occupied buildings are outside the fall radius of the structure.
 - b. Rigid non-breakaway poles and other utility structures shall be located a minimum of two (2) feet from roadway curbs or shoulders and behind existing or future sidewalks.
 - c. Any mobile service support structure that is constructed on or adjacent to a parcel of land that is subject to a zoning ordinance that permits single-family residential use on that parcel shall be set back at least the height of the proposed structure from the lot lines of any such parcels. This provision does not apply to an existing or new utility pole, or wireless support structure in a right-of-way that supports a small wireless facility, if the pole or facility meets the height limitations in Wis. Stat. §§ 66.0414(2)(e)2 and 3.
10. Relocation of Facilities.
- a. Except as prohibited by state or federal law, a registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way whenever the City Engineer requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation. The City Engineer may make such request to prevent interference by the company's facilities:
 - i. When public health, safety and welfare require it;
 - ii. When the safety and convenience of ordinary travel over the right-of-way requires it;
 - iii. With a public improvement undertaking by the City;

- iv. With a present or future City use of the right-of-way; or
 - v. With an economic development project in which the City has an interest or investment.
 - b. Notwithstanding the foregoing, a registrant shall not be required to remove or relocate its facilities from any right-of-way which has been vacated in favor of a nongovernmental entity unless and until the reasonable costs thereof are first paid to the registrant therefor.
- 11. Interference with Other facilities during Municipal Construction. When the City performs work in the right-of-way and finds it necessary to maintain, support, shore, or move a registrant's facilities, the City shall notify the local representative. The registrant shall meet with the City's representative within twenty-four (24) hours and coordinate the protection, maintenance, supporting, and/or shoring of the registrant's facilities. The registrant shall accomplish the needed work within seventy-two (72) hours, unless the City agrees to a longer period. In the event the registrant does not proceed to maintain, support, shore, or move its facilities, the City may arrange to do the work and bill the registrant, said bill to be paid within thirty (30) days. The City may also impose alternate delay damage charges.
- 12. Indemnification. By accepting a permit under Section 11.11, the person or persons to whom a permit is issued agrees to indemnify, defend, and hold harmless the City, its officers, boards, committees, commissions, elected officials, employees and agents (collectively, "indemnified parties") from and against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon an indemnified party for damages because of bodily injury, including death, at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the person or persons to whom a permit is issued, acts or omissions in exercise of its right under this permit, whether caused by or contributed to by the City or its agents or employees.
- 13. Abandoned Facilities.
 - a. Discontinued Operations.
 - i. A registrant who has determined to discontinue its operations in the City must either:
 - (1) Provide information satisfactory to the City Engineer that the registrant's obligations for its facilities under Section 11.11 have been lawfully assumed by another registrant; or
 - (2) Submit to the City Engineer a proposal and instruments for dedication of its facilities to the City. If the registrant proceeds under this clause, the City may, at its option:
 - (A) Accept the dedication for all or portion of the facilities; or
 - (B) Require the registrant, at its own expense, to remove the facilities in the right-of-way at ground or above ground level; or
 - (C) Require the registrant to post a bond or provide payment sufficient to reimburse the City for

reasonably anticipated costs to be incurred in removing the facilities.

- ii. However, any registrant who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way within two (2) years, unless the City Engineer waives this requirement.
 - b. Abandoned Facilities. Facilities of a registrant who fails to comply with Section 11.11(13)(a), and which for two (2) years remain unused, shall be deemed as abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the City may, at its option (i) abate the nuisance, (ii) take possession of the facilities, or (iii) require removal of the facilities by the registrant, or the registrant's successor in interest.
 - c. Public Utilities. Section 11.11(12) shall not apply to a Public Utility that is required to follow the provisions of Wisconsin Statute § 196.81.
14. Reservation of Regulatory and Police Powers. The City, by the granting of a permit to excavate, obstruct and/or occupy the right-of-way, or by registering a person under Section 11.11, does not surrender or to any extent lose, waive, or impair, the lawful powers and rights, which it has now or may be hereafter granted to the City under the Constitution and statutes of the State of Wisconsin to regulate the use of the right-of-way by the permittee; and the permittee by its acceptance of a permit to excavate, obstruct and/or occupy the right-of-way or of registration under Section 11.11 agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. A permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general law, and ordinances enacted by the City pursuant to such powers.
15. Severability. If any section, subsection, sentence, clause, phrase, or portion of Section 11.11 is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

~~{Ord. O-2016-0048, 10/18/2016} Editor's Note: This ordinance also repealed former Section 11.11, High Voltage Wires.~~

SECTION 6: **AMENDMENT** “11.18 Permit Fee Schedule” of the City Of West Allis Municipal Code is hereby *amended* as follows:

AMENDMENT

11.18 Permit Fee Schedule

Before receiving any permit under this Chapter, the ~~application fee shall be paid. The fees shall be established within the most current Schedule of Fees resolution~~ applicant shall pay all applicable fees listed in the Fee Schedule.

SECTION 7: AMENDMENT “11.19 Post-Construction Stormwater Management” of the City Of West Allis Municipal Code is hereby *amended* as follows:

AMENDMENT

11.19 Post-Construction Stormwater Management

1. Authority. This ordinance is adopted by the Common Council under the authority granted by § 62.234, Wis. Stats. This ordinance supersedes all provisions of an ordinance previously enacted under § 62.23, Wis. Stats., that relate to stormwater management regulations.
2. Findings of Fact. The Common Council finds that uncontrolled, post-construction runoff has a significant impact upon water resources and the health, safety and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can:
 - a. Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.
 - b. Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants.
 - c. Alter wetland communities by changing wetland hydrology and/or by increasing pollutant loads.
 - d. Reduce the quality of groundwater by increasing pollutant loading.
 - e. Threaten public health, safety, property and general welfare by overtaxing storm sewers, drainageways, and other minor drainage facilities.
 - f. Threaten public health, safety, property and general welfare by increasing major flood peaks and volumes.
 - g. Undermine floodplain management efforts by increasing the incidence and levels of flooding; and
 - h. Aggravate excessive infiltration and inflow of water into sanitary sewer connections during peak storm events causing the conveyance system to surcharge, overflow or backup into basements.
3. Purpose. This ordinance integrates federal and state construction post-construction site stormwater water quality standards with duties to reasonably manage the quantity of water run-off for regional flood abatement. This chapter implements the Milwaukee Metropolitan Sewerage District rules on release rates for new development and or redevelopment, to reduce the probability of increased regional floods.

4. Stormwater Quality and Quantity Management Applicability.

- a. The water quality management duties apply to property development/redevelopment as required by Wisconsin Department of Natural Resources NR 151, and the water quantity management duties apply to development/redevelopment sites as required by Milwaukee Metropolitan Sewerage District Chapter 13 rules.
- b. Notwithstanding the applicability requirements in Paragraph (a), this ordinance applies to post-construction sites of any size that, in the opinion of the City Engineer, are likely to result in runoff that exceeds the capacity of the existing drainage facilities or the level of flooding protection in a watercourse, causes undue channel erosion, increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.
- c. Comity. State agencies should design and incorporate best management practices for surface water quality and stormwater quantity management for new impervious surfaces. The runoff management techniques should be the same as flood abatement plans and techniques utilized by local governments in the watershed. The lead agency preparing an environmental assessment for a federal or state project shall identify the mitigating runoff management techniques to prevent increases in peak flood flows from new impervious areas.

5. Definitions.

- a. "Best management practice" or "BMP" means structural or nonstructural measures, practices, techniques or devices employed to:
 - i. Avoid or minimize sediment or pollutants carried in runoff to waters of the state; and/or
 - ii. Manage the rate or volume of runoff.
- b. "Business day" means a day the City of West Allis City Hall is routinely and customarily open for business.
- c. "Cease and desist order" means a court-issued order to halt land-disturbing construction activity that is being conducted without the required permit.
- d. "Development" means construction of residential, commercial, industrial or institutional land uses and associated roads, including redevelopment.
- e. "Financial guarantee" means a performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantees submitted to the City Engineer by the responsible party to assure that requirements of the ordinance are carried out in compliance with the stormwater management plan.
- f. "Land-disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land-disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.
- g. "Maintenance agreement" means a legal document that provides for long-term maintenance of stormwater management practices.

- h. "New development" means development resulting from the conversion of previously undeveloped land or agricultural land uses.
 - i. "Redevelopment" means new construction, modification or replacement of older development.
 - j. "Responsible party" means any entity holding fee title to the property or other person contracted or obligated by other agreement to implement and maintain post-construction stormwater BMPs.
 - k. "Runoff" means stormwater or precipitation including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.
 - l. "Site" means the entire area included in the legal description of the land on which the land-disturbing construction activity occurred.
 - m. "Stop-work order" means an order issued by the Code Enforcement Director or the City Engineer which requires that all construction activity on the site be stopped.
 - n. "Stormwater management plan" means a comprehensive plan designed to reduce the discharge of pollutants from stormwater after the site has undergone final stabilization following completion of the construction activity.
 - o. "Stormwater management system plan" is a comprehensive plan designed to reduce the discharge of runoff and pollutants from hydrologic units on a regional or municipal scale.
 - p. "Water quality management" means the stormwater standards and duties established under the Clean Water Act, 33 U.S.C. § 1251 et seq., parallel state law regulating the discharge of pollutants, and implementing regulations.
 - q. "Water quantity management" means stormwater duties and practices to abate peak flood flows during regional storm events pursuant to Chapter 13 of the Milwaukee Metropolitan Sewerage District rules as implemented and enforced by this municipality.
6. Technical Standards. The following methods shall be used in designing the water quality, peak flow shaving and infiltration components of stormwater practices needed to meet the requirements of this ordinance:
- a. Technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under Chapter NR 151, Wis. Adm. Code.
 - b. Where technical standards have not been identified or developed by the Wisconsin Department of Natural Resources, other technical standards may be used, provided that the Code Enforcement Director or the City Engineer has approved the methods.
 - c. The rainfall data from the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation - Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013, or more protective data shall be the basis for the analyses required by this ordinance for water quantity analysis.
7. Performance Standards.
- a. Responsible Party. The responsible party shall implement a post-construction stormwater management plan that incorporates the requirements of this

section.

- b. Plan. A written stormwater quality and quantity management plan in accordance with Subsection (9) shall be developed and implemented for each post-construction site.
- c. Requirements. The water quality plan required under Subsection (7)(b) shall include the following:
 - i. Total Suspended Solids. BMPs shall be designed, installed and maintained to control total suspended solids carried in runoff from the post-construction site as defined by the Wisconsin Department of Natural Resources under Chapter NR 151, Wis. Adm. Code.
 - ii. Water Quantity and Management of Peak Runoff.
 - (1) BMPs shall manage the volume, timing, and peak flow rate of runoff to prevent increases in the regional flood and stream bank erosion rates and in accordance with Milwaukee Metropolitan Sewerage District's Chapter **13** rules.
 - (2) These BMPs may be implemented on either a watershed basis or an individual site basis.
 - (3) When implemented on a watershed basis, the BMPs implemented at a particular site shall comply with the findings of the relevant local or regional stormwater management plan, rather than Subdivisions 4 and 5.
- d. Alternate Requirements. The Code Enforcement Director or the City Engineer may establish stormwater management requirements more stringent than those set forth in this section if the City Engineer determines that an added level of protection is needed to protect sensitive resources.

8. Permitting Requirements, Procedures and Fees.

- a. Permit Required. No responsible party may undertake a qualifying land-disturbing construction activity without a Stormwater Management Plan approved by the Code Enforcement Director or the City Engineer prior to commencing the proposed activity. A Stormwater Permit shall be issued by the Code Enforcement Director or the City Engineer upon the satisfactory installation of the approved stormwater management system.
- b. Permit Application and Fees. Any responsible party desiring a permit shall submit to the Code Enforcement Director or the City Engineer a Stormwater Management Plan as described in Subsection (9). The fee for the Stormwater Permit shall be determined by the plan review cost to the City.
- c. Review and Approval of Permit Application. The Code Enforcement Director or the City Engineer shall review the stormwater management plan as follows:
 - i. Within twenty (20) business days of the receipt of a complete stormwater management plan, the Code Enforcement Director or the City Engineer shall inform the applicant whether the plan and maintenance agreement are approved or disapproved based on the requirements of this ordinance.
 - ii. If the stormwater management plan is approved, the Code

Enforcement Director or the City Engineer shall grant permission to proceed with obtaining required Building Permits.

- iii. If the stormwater permit application, plan or maintenance agreement is disapproved, the Code Enforcement Director or the City Engineer shall detail in writing the reasons for disapproval.
 - iv. The Code Enforcement Director or the City Engineer may request additional information from the applicant. If additional information is requested, the City Engineer shall have the option to restart the review time from the time of receiving the complete plan.
 - v. Failure by the Code Enforcement Director or the City Engineer to inform the permit applicant of a decision within twenty (20) business days of a complete submittal shall be deemed an approval of the submittal and the applicant may proceed as if a permit had been issued.
- d. Permit Requirements. All permits issued under this ordinance shall be subject to the following conditions, and holders of permits issued under this ordinance shall be deemed to have accepted these conditions. The Code Enforcement Director or the City Engineer may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action to suspend or revoke this permit may be appealed in accordance with Subsection (14).
- i. The responsible party shall design and install all structural or identify nonstructural stormwater management measures, or both, in accordance with the approved stormwater management plan and this permit.
 - ii. The responsible party shall notify the Code Enforcement Director at least five (5) business days before commencing any work in conjunction with the stormwater management plan, and within five (5) business days upon completion of the stormwater management practices. If required as a special condition under Subsection (8)(e), the responsible party shall make additional notification according to a schedule set forth by the ~~Code Enforcement Director~~ ~~of Building Inspection and Neighborhood Services~~, so that practice installations can be inspected during construction.
 - iii. Practice installations required as part of this ordinance shall be certified "as built." Completed stormwater management practices must pass a final inspection by the Code Enforcement Director or its designee to determine if they are in accordance with the approved stormwater management plan and ordinance. The Code Enforcement Director or its designee shall notify the responsible party in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.
 - iv. The responsible party shall maintain all stormwater management practices until the responsibility is transferred to the Common Council, or subsequent private owners as specified in the approved

maintenance agreement.

- v. The responsible party authorizes the Code Enforcement Director or the City Engineer to perform any work or operations necessary to bring stormwater management measures into conformance with the approved stormwater management plan, and consents to a special assessment or charge against the property as authorized under Subch. VII of Ch. 66, Wis. Stats., or to charging such costs against the financial guarantee posted under Subsection (11).
 - vi. If so directed by the Code Enforcement Director or the City Engineer, the responsible party shall repair at the responsible party's own expense all damage to adjoining municipal facilities and drainageways caused by runoff, where such damage is caused by activities that are not in compliance with the approved stormwater management plan.
 - vii. The responsible party shall permit property access to the Code Enforcement Director or the City Engineer or its designee for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.
 - viii. Where site development or redevelopment involves changes in direction, increases in the peak rate or the total volume of runoff, the Code Enforcement Director or the City Engineer may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.
- e. Permit Conditions. Permits issued under this subsection may include reasonable and necessary conditions established by Code Enforcement Director or the City Engineer in addition to the requirements needed to meet the performance standards in Subsection (7) or a financial guarantee as provided for in Subsection (11).
 - f. Permit Duration. Permits issued under this section shall be valid from the date of issuance through the date the Code Enforcement Director or the City Engineer notifies the responsible party that all stormwater management practices have passed the final inspection required under Subsection (8)(d)3.
9. Stormwater Management Plan.
- a. Plan Requirements. The stormwater management plan required under Subsection (8)(b) shall contain at a minimum the following information:
 - i. Name, address, and telephone number for the following or their designees: landowner; developer; project engineer for practice design and certification; person(s) responsible for installation of stormwater management practices; and person(s) responsible for maintenance of stormwater management practices prior to the transfer, if any, of maintenance responsibility to another party.
 - ii. A proper legal description of the property proposed to be developed, referenced to the U.S. Public Land Survey system or to block and lot numbers within a recorded land subdivision plat.

iii. Pre-development site conditions, including:

- (1) One or more site maps at a scale of not less than one (1) inch equals one hundred (100) feet. The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed two (2) feet; topography and drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all stormwater conveyance sections; watershed boundaries used in hydrology determinations to show compliance with performance standards; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the regional flood (the one-percent probability storm event) floodplain; location of wells and wellhead protection areas covering the project area and delineated pursuant to § NR 811.16, Wis. Adm. Code.
- (2) Hydrology and pollutant loading computations as needed to show compliance with performance standards. All major assumptions used in developing input parameters shall be clearly stated. The geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).

iv. Post-development site conditions, including:

- (1) Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.
- (2) Explanation of any restrictions on stormwater management measures in the development area imposed by wellhead protection plans and ordinances.
- (3) One (1) or more site maps at a scale of not less than one (1) inch equals one hundred (100) feet showing the following: post-construction pervious areas including vegetative cover type and condition; impervious surfaces including all buildings, structures, and pavement; post-construction topographic contours of the site at a scale not to exceed two (2) feet; post-construction drainage network including enough of the contiguous properties to show runoff patterns onto, through, and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all stormwater conveyance sections; location and

type of all stormwater management conveyance and treatment practices, including the on-site and off-site tributary drainage area; location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet such as a curbed street, storm drain, or natural drainageway; watershed boundaries used in hydrology and pollutant loading calculations and any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.

(4) Hydrology and pollutant loading computations as needed to show compliance with performance standards. The computations shall be made for each discharge point in the development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).

(5) Results of investigations of soils and groundwater required for the placement and design of stormwater management measures. Detailed drawings including cross-sections and profiles of all permanent stormwater conveyance and treatment practices.

v. A description and installation schedule for the stormwater management practices needed to meet the performance standards in Subsection (7).

vi. A maintenance plan developed for the life of each stormwater management practice including the required maintenance activities and maintenance activity schedule.

vii. Other information requested in writing by the Code Enforcement Director or the City Engineer to determine compliance of the proposed stormwater management measures with the provisions of this ordinance.

viii. All site investigations, plans, designs, computations, and drawings shall be certified by a licensed professional engineer to be prepared in accordance with accepted engineering practice and requirements of this ordinance.

10. Maintenance Agreement.

a. Maintenance Agreement Required. The maintenance agreement required under Subsection (8)(c)1 and 3 for stormwater management practices shall be an agreement between the Code Enforcement Director and the responsible party to provide for maintenance of stormwater practices beyond the duration period of this permit. The maintenance agreement shall be filed with the County Register of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the stormwater management practices.

b. Agreement Provisions. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance

plan required by Subsection (9)(a)6:

- i. Identification of the stormwater facilities and designation of the drainage area served by the facilities.
- ii. A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under Subsection (8)(b).
- iii. Identification of the responsible party(s), organization or city, county, town or village responsible for long-term maintenance of the stormwater management practices identified in the stormwater management plan required under Subsection (8)(b).
- iv. Requirement that the responsible party(s), organization, or city, county, town or village shall maintain stormwater management practices in accordance with the schedule included in Paragraph (b).
- v. Authorization for the Code Enforcement Director or the City Engineer, its designee to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
- vi. Agreement that the party designated under Paragraph (b)3, as responsible for long-term maintenance of the stormwater management practices, shall be notified by the Code Enforcement Director or the City Engineer of maintenance problems which require correction. The specified corrective actions shall be undertaken within a reasonable time frame as set by the Code Enforcement Director or the City Engineer.
- vii. Authorization of the Code Enforcement Director or the City Engineer to perform the corrected actions identified in the inspection report if the responsible party designated under Paragraph (b)3 does not make the required corrections in the specified time period. The Code Enforcement Director or the City Engineer shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to Subch. VII of Ch. 66, Wis. Stats.

11. Financial Guarantee.

- a. Establishment of the Guarantee. The Code Enforcement Director or the City Engineer may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the Code Enforcement Director or the City Engineer. The financial guarantee shall be in an amount determined by the Code Enforcement Director or the City Engineer to be the estimated cost of construction and the estimated cost of maintenance of the stormwater management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the Code Enforcement Director or the City Engineer the authorization to use the funds to complete the stormwater management practices if the responsible party defaults or does not properly implement the approved stormwater management plan, upon written notice to the responsible

party by the Code Enforcement Director or the City Engineer that the requirements of this ordinance have not been met.

b. Conditions for Release. Conditions for the release of the financial guarantee are as follows:

- i. The Code Enforcement Director or the City Engineer shall release the portion of the financial guarantee established under this section, less any costs incurred by the Code Enforcement Director or the City Engineer to complete installation of practices, upon submission of "as built plans" by a licensed professional engineer. The Code Enforcement Director or the City Engineer may make provisions for a partial pro-rata release of the financial guarantee based on the completion of various development stages.
- ii. The Code Enforcement Director or the City Engineer shall release the portion of the financial guarantee established under this section to assure maintenance of stormwater practices, less any costs incurred by the Code Enforcement Director or the City Engineer at such time that the responsibility for practice maintenance is passed on to another entity via an approved maintenance agreement.

12. Fee Schedule. The fees referred to in other sections of this ordinance shall be established by the Code Enforcement Director or the City Engineer and may from time to time be modified by resolution. A schedule of the fees established by the City Engineer shall be available for review in the City Engineering Department.

13. Illicit Discharge Prohibition and Disconnection.

- a. This section establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the Wisconsin Pollutant Discharge Elimination System (WPDES) permit process.
- b. Applicability. This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the Code Enforcement Director or the City Engineer.
- c. Responsibility for Administration. The Code Enforcement Director or the City Engineer shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the Code Enforcement Director or the City Engineer may be delegated to persons or entities acting in the beneficial interest of or in the employ of the City.
- d. Illicit Discharge Prohibitions.
 - i. No person shall discharge or cause to be discharged into the municipal storm sewer system or watercourses 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, other than stormwater.
 - ii. Exemptions. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:
 - (1) The following discharges are exempt from discharge

prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, noncommercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated: typically less than one PPM chlorine), firefighting activities, and any other water source not containing pollutants.

- (2) Discharges specified in writing by the Code Enforcement Director or the City Engineer as being necessary to protect public health and safety.
- (3) Dye testing is an allowable discharge, but requires a verbal notification to the Code Enforcement Director or the City Engineer prior to the time of the test.
- (4) The prohibition shall not apply to any non-stormwater discharge permitted under an WPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Wisconsin Department of Natural Resources, 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 storm drain system.

e. Illicit Connection Prohibitions. The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

f. Suspension of MS4 Access.

- i. Suspension due to Illicit Discharges in Emergency Situations. The Code Enforcement Director or the City Engineer may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the State of Wisconsin. If the violator fails to comply with a suspension order issued in an emergency, the Code Enforcement Director or the City Engineer may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the State of Wisconsin, or to minimize danger to persons.
- ii. Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this ordinance may have their

MS4 access terminated if such termination would abate or reduce an illicit discharge. The Code Enforcement Director or the City Engineer notify a violator of the proposed termination of its MS4 access. The violator may petition the Code Enforcement Director or the City Engineer for a reconsideration and hearing.

g. Monitoring of Discharges.

- i. The Code Enforcement Director or the City Engineer shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.
- ii. Facility operators shall allow the Code Enforcement Director or the City Engineer ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of a WPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

- iii. Unreasonable delay in allowing the Code Enforcement Director or the City Engineer access to a permitted facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a facility with a WPDES permit to discharge stormwater associated with industrial activity commits an offense if

the person denies the Code Enforcement Director or the City Engineer reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

- iv. If the Code Enforcement Director or the City Engineer has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Code Enforcement Director or the City Engineer may seek issuance of a search warrant from any court of competent jurisdiction.

- h. Requirement To Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices. 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 municipal storm drain system or watercourses through the use of these structural and nonstructural BMPs. Further, any person responsible for a property or premises, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system.

- i. Watercourse Protection. Every person owning property through which a

watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. 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.

- j. Notification of Spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the State of Wisconsin 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 nonhazardous materials, said person shall notify the Code Enforcement Director or the City Engineer in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Code Enforcement Director or the City Engineer within three (3) business days of the phone notice. If the discharge of prohibited materials 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 (3) years.

14. Enforcement.

- a. Any land-disturbing construction activity, post-construction runoff, or illicit discharge initiated after the effective date of this ordinance by any person subject to the ordinance provisions shall be deemed a violation unless conducted in accordance with the requirements of this ordinance.
- b. The Code Enforcement Director or the City Engineer shall notify the responsible party of any noncomplying land-disturbing construction activity, post-construction runoff, or illicit discharge. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, or additional enforcement action that may be taken. Any technique that effectively provides actual and verifiable notice may be used.
- c. If the violations are likely to result in damage to properties, public facilities, or waters of the state, the Code Enforcement Director or the City Engineer may enter the land and take corrective actions necessary to prevent such damage. The costs incurred by the Code Enforcement Director or the City Engineer plus interest and legal costs shall be paid by the responsible party.
- d. If the Code Enforcement Director or the City Engineer determines that any person is in violation of this ordinance or a stormwater permit, the Code Enforcement Director or the City Engineer may issue a notice of violation, a

stop-work order, a cease and desist order, or revoke the permit, or refer the noncompliance to the City Attorney for civil enforcement, penalties, injunctive orders or other appropriate relief.

- e. Every violation of this ordinance is a public nuisance. Any person who violates this ordinance shall be subject to a forfeiture of not less than ten dollars (\$10.) or more than ten thousand dollars (\$10,000.) per offense, together with the costs of prosecution. Each day each violation continues shall constitute a separate offense.
- f. When the Code Enforcement Director or the City Engineer determines that the holder of a permit issued pursuant to this ordinance has failed to follow practices, has failed to comply with schedules in a stormwater management plan, or has failed to comply with the terms of the illicit discharge suspension, the Code Enforcement Director or the City Engineer or a party designated by the Code Enforcement Director or the City Engineer may enter upon the land and perform the work or other operations necessary to bring the condition of said lands approved plan. The Code Enforcement Director or the City Engineer shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to Subsection (11) of this ordinance. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with the property taxes.

SECTION 8: **AMENDMENT** “13.02 Code Enforcement Department” of the City Of West Allis Municipal Code is hereby *amended* as follows:

AMENDMENT

13.02 Code Enforcement Department

1. Supervision. The Code Enforcement Department ~~of Building Inspections and Zoning~~ shall be under the supervision of the Code Enforcement Director, who shall be the Building Inspector. The Building Inspector may employ qualified persons who shall bear the title of Assistant Building Inspectors. The Assistant Building Inspectors shall perform such inspection work, as the Building Inspector may direct, and shall perform such other duties as the Building Inspector may assign to them from time to time.
2. Records. There shall be kept in the Code Enforcement Department a record of all applications for building permits in a book for such purpose and each permit shall be regularly numbered in the order of its issue. A record shall also be kept showing the number, description and size of all buildings erected, indicating the kind of materials used and the cost of each building, and the aggregate cost of all buildings of the various classes. A record shall also be kept of all inspections made and of all removal and condemnation of buildings and a record of all fees collected, showing the date of

their receipt and delivery to the City Treasurer. The Inspector shall make an annual report to the Common Council of these matters.

SECTION 9: **EFFECTIVE DATE** This Ordinance shall be in full force and effect on and after the required approval and publication according to law.

PASSED AND ADOPTED BY THE CITY OF WEST ALLIS COUNCIL APRIL 18, 2023.

	AYE	NAY	ABSENT	ABSTAIN
Ald. Vince Vitale	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Ald. Ray Turner	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Ald. Tracy Stefanski	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Ald. Marty Weigel	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Ald. Suzzette Grisham	<u> </u>	<u> </u>	<u>X</u>	<u> </u>
Ald. Danna Kuehn	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Ald. Thomas Lajsic	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Ald. Dan Roadt	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Ald. Rosalie Reinke	<u> </u>	<u> </u>	<u>X</u>	<u> </u>
Ald. Kevin Haass	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

Attest

Presiding Officer

Rebecca Grill

Rebecca Grill, City Clerk, City Of
West Allis

Dan Devine

Dan Devine, Mayor, City Of West
Allis

