

## **Ordinance No. 21-10**

### **An Ordinance Amending Chapter 72 of the Code of Ordinances of the City of Brookings and Pertaining to Storm Drainage and Providing Requirements for Storm Water Discharges, Construction Site Runoff Erosion and Sediment Control, and Post-Construction Site Storm Water Runoff Control**

Be It Ordained and Enacted by the Council of the City of Brookings, State of South Dakota, that the Code of Ordinances be amended as follows:

#### **ARTICLE I. IN GENERAL**

##### **Sec. 72-1. Title.**

These regulations may be referred to as the “Storm Drainage Ordinance” for the City of Brookings and the area of extraterritorial jurisdiction.

##### **Sec. 72-2. Purpose.**

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Brookings, with respect to storm drainage, to the maximum extent practicable and as required by federal and state law by:

1. Establishing methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.
2. Prohibiting Illicit Connections and Discharges to the municipal separate storm sewer system (MS4).
3. Establishing legal authority for the City of Brookings to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.
4. Establishing a drainage fee structure for funding public storm drainage infrastructure improvements within the City of Brookings.
5. Establishing storm water design standards for the City of Brookings.

##### **Sec. 72-3. Authority.**

In accordance with the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota (ARSD) Chapters 74:52:01 through 74:52:11 and any other authority provided by law or as such statutes may be amended, the City does hereby exercise the power and authority in the City and for land in the area of extraterritorial jurisdiction.

##### **Sec. 72-4. Inspections by Authorized City Staff.**

As part of the City’s storm water pollution detection and elimination program, the City Engineer or designee reserves the right to inspect and monitor all facilities which discharge into the MS4. All inspections shall be documented and may include photographs of violations and potential problem areas.

Sec. 72-5. Definitions.

The following words and phrases shall be as defined below:

**Best Management Practices (BMP's)** – Various activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants to Waters of the State. BMP's also include treatment requirements, operating procedures, and practices to control construction site runoff, sediment, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

**Clean Water Act (CWA)** – The 1972 amendment to the Federal Pollution Control Act which provided the statutory basis for the NPDES permit program and the basic structure for regulating the discharge of pollutants from point sources to waters of the United States.

**Concrete Washout** - any wash waters derived from the cleaning of concrete trucks and/or equipment.

**Control Measures** - any BMP or other method used to minimize erosion and sedimentation, and thereby minimize the discharge of pollutants to Waters of the State.

**Detention Basin** - A structure or facility, natural or artificial, which stores storm water on a temporary basis and releases it at a controlled rate.

**Development** – A parcel of land or two or more contiguous parcels of land, where grading work is performed as a single unified operation on an area equal to or greater than one (1) acre.

**Disturbed Area** - An area of land subjected to erosion due to the removal of vegetative cover and/or earthmoving activities, including unstabilized fill and soil stockpiles.

**Drainage Way** - Any channel or conduit that conveys storm water runoff.

**Final Stabilization** means one of the following:

1. All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70% of the native cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of gravel, riprap, gabions, geotextiles, etc.) have been employed; or
2. When background native vegetation will cover less than 100 percent of the ground (e.g., arid areas, beaches), the 70 percent coverage criteria is adjusted as follows: if the native vegetation covers 50 percent of the ground, 70 percent of 50 percent ( $0.70 \times 0.50 = 0.35$ ) would require 35 percent total cover for final stabilization. On sites with no natural vegetation, no vegetative stabilization is required.
3. For construction projects on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its pre-construction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to waters of the state, and areas that are not being returned

to their pre-construction agricultural use, shall meet the final stabilization criteria in (1) or (2) above.

Flood - An overflow of surface water onto lands not normally covered by water.

Floodplain - The area of land adjoining a lake or stream which is inundated when the flow exceeds the capacity of the normal feature. For mapping purposes, floodplains are designated according to the frequency of the flood event, such as the 100-year floodplain (1% chance of occurrence in any given year) or the 500-year floodplain (0.2% chance of occurrence in any given year).

General Storm Water Permit - is the South Dakota Department of Environment and Natural Resources (SD DENR) general National Pollutant Discharge Elimination System (NPDES) construction storm water permit covering anyone conducting a land disturbing activity which disturbs one (1) or more acres of land.

Grading - Any stripping, clearing, stumping, excavating, filling, stockpiling, or any combination thereof, including the land in its excavated or filled condition.

Grading Permit – A permit obtained from the City of Brookings to perform a Land Disturbance Activity.

Infiltration - The downward movement or seepage of water from the surface into the subsoil and/or groundwater. The infiltration rate is typically expressed in terms of inches per hour.

Illicit Discharge - Any direct or indirect, continuous or intermittent, discharge to the MS4, except as exempted in Article III of this ordinance that is not composed entirely of storm water, and has not been authorized under a discharge permit issued by the State of South Dakota.

Illicit Connections - means either of the following:

1. Any drain, conveyance, or component of an MS4 (as defined below), whether on the surface or subsurface, which allows an illicit discharge to enter the storm drainage system, including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drainage system.
2. Any connections to the storm drainage system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized agency.

Infiltration – the process of percolating storm water into the subsoil.

Jurisdictional Wetland, or “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 Disturbing Activity – is any land change that may result in soil erosion from wind, water, or melting, resulting in the movement of sediments into or upon waters, lands, or rights-of-way within the City of Brookings, including but not limited to building demolition, clearing and grubbing, grading, excavating, transporting, and filling of land.

Larger Common Plan of Development or Sale - a contiguous area of one (1) or more acres where multiple, separate, and distinct construction activities are anticipated to occur at different times on different schedules under one plan, commonly referred to as a “development”. Individual lots within the development which are sold to another party for the purpose of construction are still considered part of the “Larger Common Plan of Development” even after the sale.

MS4 or Municipal Separate Storm Sewer System - is defined in 40 CFR §122.26(b)(8) to mean a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, swales, manmade channels, or storm drains) which are:

1. Owned and operated by a state, city, town, borough, county, parish, district, association, or other public body having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act (CWA) that discharges to waters of the United States;
2. Designed or used for collecting or conveying storm water;
3. Which is not a combined sewer; and
4. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR §122.2.

Municipality – a city, town, county, district, sanitary district, or other public body created by or under state law with jurisdiction over the disposal of sewage, industrial wastes, or other wastes.

Nonpoint Source – a source of pollution that is not defined as a point source by the Environmental Protection Agency (EPA).

Non-Storm water Discharge - any discharge to the storm drain system that is not composed entirely of storm water.

NOI – “Notice of Intent” – An SDDENR form that must be filed by anyone disturbing one (1) or more acres of land prior to the commencement of any land disturbing activity in order to be covered by the SDDENR General Permit

NOT – “Notice of Termination” – An SDDENR form that must be filed after final stabilization of any land disturbing activity that was covered by the SDDENR General Permit. The NOT notifies the SDDENR that permitted coverage is no longer required and that the site has been permanently stabilized.

NPDES – “National Pollutant Discharge Elimination System” – An EPA permit program that controls water pollution by regulated point sources that discharge pollutants into Waters of the United States.

Phasing - Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

Point Source – (as defined by the EPA) any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

Pollutant - any dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, munitions, chemical wastes, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, cellar dirt, or any industrial, municipal, or agricultural waste discharged into waters of the state.

Receiving Body of Water - Any lake, pond, creek, wetland, or groundwater into which storm water runoff is directed.

Responsible Party – the person(s), developer, or contractor who is responsible for carrying out all provisions and requirements of a Grading Permit or SDDENR Storm water Discharge Permit for Construction Activities; or the person or entity who is responsible for an industrial or commercial discharges into an MS4.

Sediment – Mineral or organic solid particulate matter that has been removed from its point of origin by soil erosion, suspension in water or wind, or water transport.

Sediment Control - BMP's that prevent eroded sediment from leaving the site.

Soil Erosion - The wearing away of land by the action of wind, water, gravity, or a combination thereof.

Stabilization - The use of practices (BMP's) that prevent exposed soil from eroding.

Storm Water – water runoff, including snow and ice melt, which is the direct result of a precipitation event.

Stop Work Order - A notice issued by the City Engineer or the City's designated representative, or a state or federal agency to a permittee, contractor, or property owner to immediately cease construction, grading, or development activities.

SWPPP – (Storm Water Pollution Prevention Plan) - A site-specific plan which identifies potential sources of storm water pollution at a construction site and specifies structural and

non-structural controls (BMP's) that will be in place to minimize negative impacts caused by storm water discharges associated with construction activity.

Stripping - Any activity which removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.

TMDL or Total Maximum Daily Load - The maximum daily sum total of the individual Waste Load Allocations (WLAs) for point sources, the Load Allocations (LAs) for nonpoint sources, and the natural background levels of pollutants that a watercourse can receive while still meeting federal or state water quality standards. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

Vegetative Cover - Grasses, shrubs, trees, and other vegetation which hold and stabilize soils.

Watercourse or waterway - Any body of water, including, but not limited to lakes, ponds, rivers, streams, and bodies of water delineated by the City, State or Federal Governments.

Waters of the State - all waters within the jurisdiction of the State of South Dakota, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the State of South Dakota.

Secs. 72-6--72-16. Reserved

## ARTICLE II. STORM DRAINAGE FEE

Sec. 72-17. Fee.

(a) *For operation, maintenance, and capital expenses of storm sewer and drainage system.* The purpose of this chapter is to establish a charge against real property within the city for the operation, maintenance, and capital expenses of the storm sewer and drainage system.

(b) *Annual fee; basis.* All real property within the city shall be charged an annual fee for the operation, maintenance, and capital improvements of the storm sewer and drainage system. The fee for each such property shall be based on the lot area, a runoff weighting factor, and a unit financial charge, and which fee is determined as follows: Storm drainage fee equals the runoff weighting factor multiplied by parcel area (in square feet) multiplied by unit financial charge (in dollars per square foot).

(c) *Runoff weighting factor; assignment by use of Table I.* The runoff weighting factor is determined by the type of land use and indicates the relative volume of storm water runoff from a land parcel as a function of the percentage of impervious surfaces covering each land parcel. The runoff weighting factor is to be assigned by land use type as show in Table I:

TABLE I

<u>Land Use Code</u>	<u>Land Use</u>	<u>Runoff Weighting Factor</u>
11	Single-family	7.5

12	Duplex	7.5
13	Townhouses	7.5
14	Apartment building (1--3 stories)	11.25
15	Apartment building (4 stories or more)	11.25
16	Dormitories	11.25
17	Mobile homes and trailers	11.25
18	Other residential	11.25
19	Estate (single-family, on 30,000 square feet or more)	2.50
21	Apparel and textiles	17.0
22	Wood, furniture, fixtures	17.0
23	Lumberyards	17.0
24	Printing and publishing	17.0
25	Warehouse, indoor storage	17.0
26	Electronic, scientific, optical	17.0
27	Construction yards, including plumbing, electrical, heating contractors	17.0
28	Chemical, petroleum storage	17.0
29	Other light, pollution free manufacturing, not included elsewhere	17.0
31	Food, agricultural processing, stockyards, rendering	17.0
32	Paper and pulp	17.0
33	Chemical, petroleum, rubber and plastic	17.0
34	Stone, glass, clay, cement, brick	17.0
35	Primary metal, smelting	17.0
36	Metal fabricating	17.0
37	Salvage, junkyard, resource recycling	7.5
38	Other heavy manufacturing not elsewhere coded	17.0
41	Bus, railroad yards, terminals, right-of-way	5.0
42	Airport	5.0
43	Auto parking ramps and lots (commercial or public only not auxiliary parking)	18.75
44	Highway and street right-of-way	5.0
45	Communication (TV, radio, etc.)	17.0
46	Utilities (gas, sewer, water, telephone, etc.)	17.0
47	Truck terminal	17.0
48	Military base	17.0
49	Other transportation communications and utilities not elsewhere coded	17.0
51	Wholesale, food produce	18.75
52	Wholesale, other	18.75
53	Extensive retail, building supplies, including lumber, home repair supplies	18.75

54	Extensive retail, farm equipment and implements	18.75
55	Extensive retail, new and used car dealers	18.75
56	Extensive retail, recreational vehicles, marine	18.75
57	Extensive retail, tires, batteries, auto accessories	18.75
58	Extensive retail, auto repairs, body shop	18.75
59	Extensive retail, other retail with outside storage	18.75
61	Foodstore	18.75
62	Neighborhood commercial, hardware, pharmacy, laundromat, beauty shop, barbershop, neighborhood shopping center	18.75
63	Gasoline, auto service station	18.75
64	Department store, discount store, regional shopping center	18.75
65	Clothes and apparel	18.75
66	Specialty retail, jewelry, gifts, etc.	18.75
67	Furniture, household appliances	18.75
68	Other retail not elsewhere coded	18.75
71	Banks and financial institutions	18.75
72	Churches	11.25
73	Nursing homes and hospitals	11.25
74	Colleges and universities, adult education	11.25
75	Primary and secondary education	11.25
76	Day care centers	11.25
77	Medical offices, clinics	18.75
78	Government offices	18.75
79	Offices not elsewhere coded (real estate, law, etc.)	18.75
81	Cultural activities, libraries, museums, etc.	18.75
82	Assembly areas, arenas, stadiums	18.75
83	Theaters	18.75
84	Restaurants, bars, lounges	18.75
85	Hotels, motels, resort lodging	18.75
86	Public parks, golf courses, fairgrounds	1.0
87	Private country club and other recreational uses	1.0
88	Other cultural and entertainment uses, not elsewhere coded	1.0
90	Floodway (per Flood Boundary Map 10-17-1978, by the National Flood Insurance Program)	0.00
91	Cropland and farms	1.0
92	Feed lots	1.0
93	Grasslands	1.0
94	Mining and quarrying*	1.0
95	Cemetery	1.0

96	Sanitary landfills	1.0
97	Vacant	1.0
98	Under construction	1.0
99	Other not elsewhere coded	1.0

\* Quarries are individually calculated with a runoff weighting factor of 0.00 for the actual quarry area.

(d) Request for site study; calculation of runoff weighting factor by Table II. Upon written request from a property owner, a detailed site study will be conducted by the city engineering department to determine the runoff weighting factor. This written request shall be submitted to the city engineer on or before April 30 of the year the fees are charged to the subject land parcel. The engineering department shall calculate the percentage of impervious area for the subject parcel which contributes storm water runoff to the drainage system of the city. This system includes the storm sewer system, drainageways, and all ditches and waterways within and flowing away from the city. The runoff weighting factor is then determined through utilization of Table II.

TABLE II

<u>Percentage Impervious Area</u>	<u>Average Runoff to Rainfall Ration (R**)</u>	<u>Runoff Weighting Factor (R × 25)</u>
0	0.04	1.0
10	0.19	4.75
15	0.26	6.5
20	0.30	7.50
30	0.38	9.50
40	0.45	11.25
50	0.53	13.25
60	0.60	15.00
70	0.68	17.00
80	0.75	18.75
90	0.83	20.75
100	0.90	22.50

\*\*These values are derived from the "STORM" equation (Figure 5-20, page 5-49), "A Statistical Method for the Assessment of Urban Storm Drainage," EPA, Washington, D.C., January 1979. For low percentage impervious surfaces (0 percent to 20 percent), a linear relationship was assumed between "STORM" equation and empirical data derived from drainage runoff in high depression storage, loose soils, and flat areas. Interpolation of the runoff weighting factor for a given percentage to impervious area not listed in Table II may be obtained by assuming a linear relationship between the values listed. The city engineer may direct that the runoff weighting factor for a given parcel is calculated by a detailed site investigation and the use of Table II, where an obvious departure from the percentage of impervious surfaces of similar land uses exists. A determination of the runoff weighting factor, resulting from a detailed site investigation and use of Table II, brought about either by the written request of a property owner or by direction from the city, shall be used in the calculation of the storm drainage fee of the subject

parcel and shall replace the factor previously derived from Table I, even if the resulting value is higher.

(e) Parcel area. The parcel area shall be obtained from the records of the city engineer's office.

(f) Unit financial charge. The unit financial charge shall be established by resolution of the city council.

#### Sec. 72-18. Collection.

The storm drainage fee established in section 72-1 shall be an annual charge. The first one-half of such fee shall be due on May 1 and the second one-half shall be due on November 1 of the same year, payable at the office of the county treasurer. These fees shall be remitted and paid to the city clerk of the city at least monthly by the county treasurer.

Refund: Upon written request from a property owner, the city may issue a refund if the incorrect drainage fee has been charged to the property owner. The engineering department shall calculate the drainage fee and determine the amount of any refund owed to the property owner. The maximum refund the city may issue shall be the fee for the current year and the preceding two years.

#### Sec. 72-19. Fund established.

The drainage fees paid to the city shall be maintained in a separate fund to be known as the drainage and storm sewer fund. This fund shall be used to pay the cost of financing the operation, maintenance or construction of the drainage and storm sewer system.

#### Sec. 72-20. Annual review.

The unit financial charge shall be reviewed annually and shall be revised as necessary so that revenues are reasonably in balance with anticipated expenditures. Excess funds may be carried forward from year to year in order to build sufficient funds for large drainage construction projects which are scheduled or programmed for the near future. In addition, funds may be carried over to provide sufficient monies for unanticipated repairs, replacements, or maintenance of the drainage system.

Secs. 72-21—72-31. Reserved.

### ARTICLE III. ILLICIT DISCHARGE

#### Sec. 72-32. Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the municipal separate storm drain system (MS4) or a watercourse any materials that cause or contribute to a violation of applicable water quality standards, including but not limited to pollutants or waters containing any pollutants.

The commencement, conduct, or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:

- I. Discharges specifically exempt from the discharge prohibitions established by this ordinance:
  - a. Water line flushing or other potable water source flows

- b. Landscape irrigation or lawn watering
  - c. Diverted stream flows
  - d. Rising ground water
  - e. Ground water infiltration to storm drains
  - f. Uncontaminated pumped ground water
  - g. Foundation or footing drains (not including active groundwater dewatering systems) and crawl space pumps
  - h. Air conditioning condensation
  - i. Non-commercial washing of vehicles
  - j. Natural riparian habitat or wetland flows
  - k. Uncontaminated swimming pool water (if dechlorinated - typically less than one (1) PPM chlorine)
  - l. Fire fighting activities
  - m. Any other water source deemed by an accredited testing laboratory not to contain pollutants.
2. Discharges specified in writing by the City of Brookings as being necessary to protect public health and safety.
  3. Dye testing which has been authorized by the City of Brookings prior to the time of the test.
  4. Any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Environmental Protection Agency (EPA), provided that the discharger is in full compliance with all requirements of the NPDES 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.

**Sec. 72-33. Prohibition of Illicit Connections.**

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
2. 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.
3. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such connection to continue.

**Sec. 72-34. Suspension of MS4 Access Due to Illicit Discharges in Emergency Situations.**

The City of Brookings 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 danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

**Sec. 72-35. Suspension of MS4 Access 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 City of Brookings will notify a violator of the proposed termination of its MS4 access. The violator may petition the City for a reconsideration and hearing.

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.

**Sec. 72-36. Industrial or Construction Activity Discharges.**

Any person subject to an industrial or construction activity NPDES storm water 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 City of Brookings prior to allowing of discharges to the MS4.

**Sec. 72-37. Monitoring and Inspection of Discharges.**

This section applies to all facilities that have storm water discharges associated with industrial and construction activity.

1. The City of Brookings 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.
2. The City of Brookings shall have the right to set up on any permitted facility such devices as are necessary, in the opinion of the authorized enforcement agency, to conduct monitoring and/or sampling of the facility's storm water discharge.
3. The City of Brookings has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.
4. Unreasonable delays in allowing the City of Brookings access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
5. If the City of Brookings has been refused access to any part of the premises from which storm water is discharged where there is probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

**Sec. 72.38. Requirements to Prevent, Control and Reduce Storm Water Pollutants by the Use of Best Management Practices.**

The City of Brookings will require Best Management Practices (BMP's) for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. 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 non-structural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMP's to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed as compliance with the provisions of this section. These BMP's shall be part of a storm water pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

**Sec. 72-39. Watercourse Protection.**

Every person owning property through which a watercourse passes, or such person's lessee or tenant, 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.

**Sec. 72-40. 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 illicit discharges or pollutants discharging into storm water, the storm drain system, or waters of the U.S., 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 non-hazardous materials, said person shall notify the authorized enforcement agency 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 City of Brookings within three business days of the verbal 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.

**Sec. 72-41. Enforcement.**

Whenever the City of Brookings or state or federal authorized enforcement agency finds that a person has violated a prohibition or failed to meet a requirement of this Article, the authorized

enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
5. Payment of a fine to cover administrative and remediation costs; and
6. The 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 by 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.

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

#### Sec. 72-42. Appeal of Notice of Violation.

Any person receiving a Notice of Violation from the City of Brookings may appeal the determination. The notice of appeal must be received within five (5) days from the date of the Notice of Violation. Hearing on the appeal before the city manager or designee shall take place within fifteen (15) days from the date of receipt of the notice of appeal. The decision of the City or its designee shall be final.

#### Sec. 72-43. Cost of Abatement of the Violation.

Within ten (10) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within five (5) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the City by reason of such violation.

#### Sec. 72-44. Injunctive Relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this Ordinance, the City may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

Sec. 72-45. Remedies Not Exclusive.

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

Secs. 72-46—72.60. Reserved

ARTICLE IV. SITE RUNOFF EROSION AND SEDIMENT CONTROL

DIVISION I. GRADING AND CONSTRUCTION ACTIVITIES

Sec. 72-61. Permits Required.

1. No person may commence any Land Disturbance Activities which disturb one (1) acre or more of land without first obtaining:
  - i. A Grading Permit from the City of Brookings; and
  - ii. A storm water permit from the South Dakota Department of Environment and Natural Resources (SDDENR) Storm Water Division. Applications for the state permit can be obtained from the State of South Dakota website homepage under the construction activities section.
2. No person may commence any Land Disturbance Activity which disturbs 5,000 square feet or more of land without first obtaining a Grading Permit from the City.
3. No Grading Permit is required by the City of Brookings for the following activities:
  - i. Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
  - ii. Existing nursery and agricultural operations conducted as a permitted main or accessory use.
  - iii. Cemetery graves.
  - iv. Land Disturbance Activity that does not exceed 5,000 square feet.

Sec. 72-62. Grading Permit

The Landowner upon whose property will undergo a Land Disturbance Activity is ultimately responsible for illicit discharges into the MS4 and upon neighboring properties. When a Grading Permit is required per Section 72-61, a Grading Permit shall be obtained at the Brookings City Engineer's Office by either the Landowner or the Landowner's contractor or representative. The permittee listed on the Grading Permit application shall be responsible for all requirements of the permit, up to and including final stabilization of the disturbed area. The permittee shall be designated as the Responsible Party.

Each application for a Grading Permit shall:

1. Bear the name(s), address(es), and phone number(s) of the Responsible Party.
2. Bear the name(s) and address(es) of the Landowner or developer of the site, contractor, and any consulting firm retained by the applicant together with the name of the applicant's principal contact.
3. Be accompanied by a filing fee in an amount to be determined by the City Council.
4. Include a sketch or drawing of the entire property, including dimensions, showing the size and location of all Land Disturbing Activities proposed. At minimum the drawing shall also include the following:

- a. Location of all storm sewer features on or adjacent to the property, including but not limited to: streets, storm water inlets and outlets, swales, channels, detention ponds, and ditches.
  - b. Location of all other watercourses on or adjacent to the property.
  - c. Arrows indicating the general direction of runoff flow, as well as the path of flow of any storm water conveyance feature on or adjacent to the property.
  - d. Location and description of all storm water pollution control BMP's to be incorporated on the site, as required by this ordinance. Recommendations and descriptions of various BMP's can be found in the SDDOT 2006 Erosion and Sediment Control manual, which can be downloaded free of charge from the South Dakota DOT website at [www.sddot.com](http://www.sddot.com) . Additional BMP guidance can be found at [www.epa.gov](http://www.epa.gov).
5. Be accompanied by a drainage plan if required by the City Engineer. The drainage plan shall conform to the city approved Storm Drainage Design and Technical Criteria Manual. All drainage facilities including storm sewers, on-site detention, drainageways, detention basins and detention channels shall be designed compliance with the Storm Drainage Design and Technical Criteria Manual and are subject to approval of the City Engineer.
  6. When a Land Disturbance Activity exceeds one (1) acre in size, the Grading Permit applicant shall also provide a copy of the NOI and the SWPPP, as is required by the SDDENR. No Grading Permit shall be issued by the City for this type of activity until the SDDENR has been properly notified. Information, NOI forms, and a sample SWPPP can be found on the SDDENR website at <http://denr.sd.gov>.

#### Sec. 72-63. Permit Review and Approval.

The City Engineer or designee will review each Grading Permit application and accompanying storm water plan to determine its conformance with the provisions of this regulation.

Within ten (10) business days after receiving an application, the City Engineer shall, in writing:

1. Approve the permit application; or
2. Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
3. Disapprove the permit application, indicating the reason(s) and procedure for submitting a revised application and/or submission.

Failure of the City Engineer to act on an original or revised application within ten (10) business days of receipt shall authorize the applicant to proceed in accordance with the plans as filed, unless such time is extended by agreement between the applicant and the City Engineer. City approval of a Grading Permit application and storm water plan does not relieve the applicant of any responsibility for the effectiveness of the applicant's storm water plan.

#### Sec. 72-64. Failure to Obtain a Grading Permit.

It will be the goal of the City to encourage and assist Landowners to obtain the proper permitting of Land Disturbance Activities without the need to levee penalties. If the owner of a property upon which Land Disturbance Activities have commenced fails to obtain a Grading

Permit pursuant to Sec. 72-61, the City shall issue a written notice to the Landowner and/or contractor performing the Land Disturbance Activity. Additionally, the City will make every reasonable attempt to contact the Landowner, including telephone, fax, e-mail, and/or site visits. The Landowner or a Responsible Party shall, within ten (10) business days of the date of the written notice of violation, obtain a Grading Permit from the City Engineer's Office. Failure to obtain a Grading Permit shall constitute a violation of this ordinance and be subject to penalty as follows:

1. Within ten (10) business days of the notice of violation: No Penalty
2. After ten (10) business days of the notice of violation: \$100.00 Penalty per day, beginning with the eleventh (11<sup>th</sup>) day after the notice of violation.
3. After twenty (20) business days of the notice of violation: The City shall notify the South Dakota DENR of the violation. The Landowner may be subject to additional penalties and enforcement actions of the SDDENR.

Sec. 72-65. Failure to Comply With the Provisions of a Grading Permit.

A Grading Permit applicant failing to comply with the provisions of a Grading Permit after commencing the Land Disturbance Activity shall be notified of the noncompliance by the City. The City shall make a reasonable attempt to assist the applicant with technical advice in correcting the noncompliance without penalty. All costs of corrections and/or abatement of pollutants discharged into the MS4 by the applicant shall be borne by the applicant. If the applicant fails or refuses to make corrections that are satisfactory to the City Engineer, the City will issue a written notice of the noncompliance. Failure of the applicant to correct the noncompliance after the written notice shall constitute a violation of this ordinance and be subject to penalty as follows:

1. Within ten (10) business days of the notice of violation: No Penalty
2. After ten (10) business days of the notice of violation: \$50.00 Penalty per day, beginning with the eleventh (11<sup>th</sup>) day after the notice of violation.
3. After twenty (20) business days of the notice of violation: The City shall notify the South Dakota DENR of the violation. The Landowner may be subject to additional penalties and enforcement actions of the SDDENR.

Sec. 72-66. Permit Termination, Expiration or Revocation.

Permits shall terminate automatically in the event construction activities have not commenced within one (1) year of the date of issuance or in the event construction activities have halted and not commenced within six (6) months. The permit holder may request a written extension from the City.

Grading Permits may be terminated by the applicant in writing prior to the expiration date if the City Engineer or designee has verified that:

1. No Land Disturbance Activity has taken place on the site; or
2. Final stabilization of the site is satisfactory to these requirements; or
3. Ownership of the site or responsibility of the Grading Permit has been properly transferred to another party.

Any permit may be revoked or suspended by the City for any of the following causes after a notice and an opportunity for rebuttal is given to the applicant:

1. A violation of a condition or requirement of the permit; or
2. Obtaining a permit by misrepresentation or failure to fully disclose relevant facts in the application or the erosion and sediment control plan

Sec. 72-67. Inspection.

The City Engineer or designated agent may conduct random site inspections as necessary and either approve that portion of the work completed or notify the permittee, wherein the work fails to comply with the approved Grading Permit or Storm Water Pollution Prevention Plan (SWPPP). All inspections shall be documented by the City Engineer.

Sec. 72-68. Discharge of Pollutants from a Land Disturbance Activity With or Without a Permit.

Any detectible discharge of pollutants from a construction or Land Disturbance Activity into the MS4 and/or onto neighboring properties shall be considered an Illicit Discharge subject to Article III of this Chapter, with or without a Grading Permit and regardless of the size and scope of the activity.

## DIVISION 2. POST CONSTRUCTION SITE RUNOFF EROSION AND SEDIMENT CONTROL

Sec. 72-69. Permits and Termination of Permits

Following completion of Land Disturbance Activities, all Grading Permits obtained pursuant to this ordinance shall remain effective until final stabilization of the site has been verified and approved in writing by the City Engineer. It shall be the responsibility of the permit applicant to fulfill and maintain the requirements of the Grading Permit until final stabilization has been achieved.

Sec. 72-70. Final Stabilization Requirements.

Final site stabilization will be accomplished by the following:

1. Installing compacted granular surface, hard surface or porous pavement on those areas necessary for vehicular and pedestrian ingress and egress, driving, parking, loading/unloading, and maneuvering;
2. Establishing vegetation on the remainder of the disturbed areas of the site;
3. Employing other stabilization and management techniques as may be required to address unique site conditions.
4. All requirements of the SWPPP have been fulfilled.
5. The City Engineer or designee has verified in writing that each of the preceding requirements have been fulfilled to the satisfaction of the City Engineer.

For purposes of this section, final stabilization means all land-disturbing activities at the site have been completed, compacted granular and paved surfaces have been installed, non-vegetative permanent stabilization and management techniques (riprap, gabions, geotextiles, etc.) have been employed, and a uniform perennial vegetative cover with a density of 70% of the native cover has been established for non-paved areas not otherwise stabilized with other permanent stabilization and management techniques.

Sec. 72-71. Inspection of Permanent BMP's.

All storm sewers, open channel drainage ways, detention/retention ponds, postconstruction water quality BMPs, and any other element of the storm water management system shall be subject to inspection by the City Engineer or designees.

Secs. 72-72—72-82. Reserved.

ARTICLE V. STORM WATER DESIGN STANDARDS

Sec. 72-83. Storm Drainage Design Requirements.

The design of all storm drainage systems and facilities shall conform to the Storm Drainage Design and Technical Criteria Manual. The Storm Drainage Design and Technical Criteria Manual may be viewed at the City Engineer's Office or on the City of Brookings website.

Sec. 72-84. BMP Design Requirements

The design and application or utilization of all temporary and permanent BMPs shall conform to the South Dakota Department of Transportation 2006 Sediment and Erosion Control Manual and the South Dakota Department of Transportation 2010 Erosion and Sediment Control and Storm Water Management Manual.

If any violations are found, the applicant shall be subject to the enforcement provisions contained herein.

Any or all ordinances in conflict herewith are hereby repealed.

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CITY OF BROOKINGS

  
\_\_\_\_\_  
Tim Reed, Mayor

  
Shari Thornes, City Clerk