

ORDINANCE 24-027

AN ORDINANCE AMENDING CHAPTER 72 OF THE CODE OF ORDINANCES OF THE CITY OF BROOKINGS AND PERTAINING TO STORM DRAINAGE.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF BROOKINGS, STATE OF SOUTH DAKOTA, AS FOLLOWS:

I.

THAT CHAPTER 72, ARTICLE I. and II. of the Code of Ordinances and pertaining to Storm Drainage is hereby amended to read as follows:

ARTICLE 1. – IN GENERAL

Sec. 72-1. Title.

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

(Ord. No. 21-10, 6-8-2010)

Sec. 72-2. Purpose.

The purpose of this chapter is to provide for the health, safety and general welfare 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 (hereinafter referred to as the "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 chapter.
- (4) Establishing a drainage fee structure for funding public storm drainage infrastructure improvements within the City of Brookings.
- (5) Establishing stormwater design standards for the City of Brookings.

(Ord. No. 21-10, 6-8-2010)

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 with respect to storm drainage in the city and for the area of extraterritorial jurisdiction.

(Ord. No. 21-10, 6-8-2010)

Sec. 72-4. Inspections by authorized city staff.

As part of the city's stormwater 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 may be documented and may include photographs of violations and potential problem areas.
(Ord. No. 21-10, 6-8-2010)

Sec. 72-5. Definitions.

The following words and phrases used in this chapter are defined below:

Best management practices (BMPs) mean various activities, prohibitions of practices, maintenance procedures and other management practices, either structural or non-structural, for the purpose of preventing or reducing the discharge of pollutants to the municipal stormwater system and/or waters of the state. Examples of structural BMPs may include permanent detention or retention ponds constructed to control and minimize stormwater runoff rates and volumes and to prevent, control, and minimize stormwater pollution. Non-structural BMPs may include ongoing treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. BMPs may also be temporary, such as BMPs put into place during construction and maintained until the site is permanently stabilized.

Clean Water Act (CWA) means the 1972 amendment to the Federal Pollution Control Act which provides 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 means any wash waters derived from the cleaning of concrete trucks and/or equipment.

Control measures means 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 means a structure or facility, natural or artificial, which stores stormwater on a temporary basis and releases it at a controlled rate.

Development means 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 acre.

Disturbed area means 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 means any channel or conduit that conveys stormwater runoff.

Equivalent Residential Unit (ERU) means the average impervious area for a residential property. The square footage of an equivalent residential unit is deemed to be 4,573 square feet.

ERU financial charge means the unit financial charge established by resolution of the City Council.

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 percent 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; or
- (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 subsections (1) or (2) immediately above.

Flood means an overflow of surface water onto lands not normally covered by water.

Floodplain means the area of land adjoining a lake or stream which is inundated when the flow of water 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 (one percent chance of occurrence in any given year) or the 500-year floodplain (0.2 percent chance of occurrence in any given year).

General stormwater permit means the South Dakota Department of Environment and Natural Resources (SD DENR) general National Pollutant Discharge Elimination System (NPDES) Construction Stormwater Permit covering anyone conducting a land disturbing activity which disturbs one or more acres of land.

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

Grading permit means a permit obtained from the City of Brookings to perform a land disturbance activity.

Infiltration means 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 means any direct or indirect, continuous or intermittent discharge to the MS4, except as exempted in article III of this chapter that is not composed entirely of stormwater, 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-stormwater discharge including sewage, process wastewater and wash water to enter the storm drainage system; or
- (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 means the process of percolating stormwater into the subsoil.

Jurisdictional wetland, or wetland means 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 means 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.

Municipal separate storm sewer system ("MS4") is defined in 40 CFR § 122.26(b)(8) and herein 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, county, district, association, or other public body having jurisdiction over disposal of sewage, industrial wastes, stormwater or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district or similar

- entity, or 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; and
- (2) Designed or used for collecting or conveying stormwater; and
 - (3) Not a combined sewer; and
 - (4) Not part of a publicly owned treatment works (POTW) as defined at 40 CFR §122.2.

Municipality means a city, town, 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 means a source of pollution that is not defined as a point source by the Environmental Protection Agency (EPA).

Non-stormwater discharge means any discharge to the storm drain system that is not composed entirely of stormwater.

Notice of intent ("NOI") means an SDDENR form that must be filed by anyone disturbing one or more acres of land prior to the commencement of any land disturbing activity in order to be covered by the SDDENR general permit.

Notice of termination ("NOT") means 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 or National Pollutant Discharge Elimination System means an EPA permit program that controls water pollution by regulated point sources that discharge pollutants into waters of the United States.

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

Point source (as also defined by the EPA) means 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 stormwater discharges and return flows from irrigated agriculture.

Pollutant means 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 means any lake, pond, creek, wetland or groundwater into which stormwater runoff and conveyance systems are directed.

Responsible party means the person, developer or contractor who is responsible for performing all provisions and requirements of a grading permit or SDDENR stormwater discharge permit for construction activities, or the person or entity who is responsible for industrial or commercial discharges into an MS4.

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

Soil erosion means the wearing away of land by the action of wind, water, gravity or a combination thereof.

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

Stormwater means water runoff, including snow and ice melt, which is the direct result of a precipitation event.

Stop work order means a notice issued by the city engineer or the city's designated representative, or a state or federal agency to a person, permittee, contractor, developer or property owner to immediately cease construction, grading or development activities.

Stormwater pollution prevention plan ("SWPPP") means a site-specific plan which identifies potential sources of stormwater pollution at a construction site and specifies structural and nonstructural controls (BMP's) that will be in place to minimize negative impacts caused by stormwater discharges associated with construction activity.

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

Total maximum daily load ("TMDL") means 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 means grasses, shrubs, trees and other vegetation which hold and stabilize soils.

Watercourse or *waterway* means 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 means 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.

Water of the United States means all waters as defined in 40 CFR § 230.3(s).
(Ord. No. 21-10, 6-8-2010; Ord. No. 17-031, 1-9-2018)

Secs. 72-6—72-16. Reserved.

ARTICLE II. STORM DRAINAGE FEE

Sec. 72-17. Fee.

- (a) The purpose of this chapter is to establish a charge against real property within the City for the operation, maintenance, public education, and capital expenses of the storm sewer and drainage system.
- (b) *Annual fee; basis.* All parcels within the city shall be charged an annual fee for the operation, maintenance, public education, and capital improvements of the storm sewer and drainage system. The fee for each such property shall be based on the impervious lot area, and an Equivalent Residential Unit (ERU) financial charge. The storm drainage fee is determined as follows: a) Single family parcels will be charged a storm drainage fee based on 1 ERU; b) For all other parcels the storm drainage fee shall equal the impervious area (in square feet) divided by 4,573(ERU) multiplied by the ERU financial charge (in dollars per ERU). Each parcel will be charged a storm drainage fee based on a minimum of 1 ERU.
- (c) *Exemptions:* parcels that do not convey stormwater runoff to a MS4 as determined by the City Engineer are exempt from paying the annual storm drainage fee.
- (d) *Request for site study.* Upon written request and payment of the processing fee by a property owner, a site study will be conducted by the City Engineering Division to determine the amount of impervious area a parcel contains and the appropriate fee. This written request must be submitted to the City Engineer on or before February 1 of the year the fees are charged to the subject land parcel. The site study will include a calculation of the impervious area for the subject parcel which contributes stormwater runoff to the MS4. If after completion of a site study, the storm drainage fee is determined to be incorrect, the property owner will be eligible to request an amended property tax bill. No refunds of the storm drainage fee will be issued for previous years.

(Ord. No. 21-10, 6-8-2010)

Sec. 72-18. Collection.

The storm drainage fee established in section 72-17 shall be an annual charge. The first one-half of such fee is due on or by April 30 and the second one-half is due on or by October 30 of the same year, payable at the office of the county finance department.

(Ord. No. 21-10, 6-8-2010)

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, public education, maintenance or construction of the drainage and storm sewer system.

(Ord. No. 21-10, 6-8-2010)

Sec. 72-20. Annual review.

The ERU financial charge may be reviewed annually and 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, and to provide sufficient monies for unanticipated repairs, public education, replacements or maintenance of the MS4.

(Ord. No. 21-10, 6-8-2010)

Secs. 72-21—72-31. Reserved.

II.

Any or all ordinances in conflict herewith are hereby repealed.

FIRST READING: August 13, 2024
SECOND READING: August 27, 2024
PUBLISHED: August 30, 2024

CITY OF BROOKINGS, SD

Oepke G. Niemeyer, Mayor

ATTEST:

Bonnie Foster, City Clerk