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Nathan R. Boudreau

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CITY OF GARDNER
MASSACHUSETTS 01440-2630

OFFICE OF THE
CITY COUNCIL

RECEIVED
2020 OCT -8 AM 8:03
CITY CLERK'S OFFICE
GARDNER, MA

October 8, 2020

CITY COUNCIL SPECIAL MEETING

Date: Wednesday, October 14, 2020
Time: 6:30 P.M.
Location: Remotely*

AGENDA

#10327, An Ordinance to Amend the Code of the City of Gardner by adding a New Chapter 565, to be Entitled "Stormwater Management."

CITY COUNCIL OF GARDNER
Elizabeth J. Kazinskas
ELIZABETH J. KAZINSKAS
Council President

***NOTICE:** The listing of Agenda items are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.*

**Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Gardner City Council will be conducted via Zoom remote participation and broadcast live on Gardner Educational Television, Channel 8, and the City's YouTube Channel. The audio or video recording, transcript, or other comprehensive record of proceedings will be posted on the City's website as soon as possible after the meeting.*

10327

City of Gardner, *Executive Department*

Michael J. Nicholson, Mayor

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2020 OCT -6 PM 4:28
CITY CLERK'S OFFICE
GARDNER, MA

October 6, 2020

Hon. Elizabeth J. Kazinskas, President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant St
Gardner, MA 01440

RE: Special Meeting Request – Item 10327: An Ordinance to Amend the Code of the City of Gardner by adding a New Chapter 565, to be Entitled "Stormwater Management."

Dear President Kazinskas and Councilors,

Thank you for your discussions regarding the above mentioned agenda item. As was stated during last evening's meeting of the City Council, the two proposed ordinances are being submitted in conjunction with a federal mandate and consent order that the City has received from the Environmental Protection Agency.

After reviewing the situation further with the Law Department, in order to be compliant with the consent order and subsequent extensions that the City has received, the proposed ordinances would have to be sent to their first printing by October 15th, 2020.

At last evening's meeting, the Council voted to send the proposed ordinances to the Committee of the Whole for study and report at an informal meeting. After speaking with the Council President, Gardner Educational Television, the Law Department, and the City Engineer's Office, I am writing to request that the informal meeting of the Council be scheduled for the evening of Wednesday, October 14th, with a special meeting of the Council scheduled immediately after for vote. This date was suggested by the above group of officials to account for the holiday on Monday, October 12, and the School Committee meeting that was already scheduled for Tuesday, October 13.

Thank you for your attention to this matter.

Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner

City Hall, 95 Pleasant Street, Room 125, Gardner, Massachusetts 01440
Telephone: (978) 630-1490 • Facsimile (978) 630-3778 • Email: mayor@gardner-ma.gov

10327

United States Environmental Protection Agency
Region 1 – New England
5 Post Office Square, Suite 100
Boston, MA 02109-3912

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GARDNER, MA

DEC 05 2019

Certified Mail
Return Receipt Required

Order for Compliance

The Honorable Mark Hawke
Mayor of the City of Gardner
95 Pleasant St.
Room 125
Gardner, MA 01440

Re: In the Matter of the Gardner, Mass. MS4 (NPDES # MAR041190) Order for Compliance under Section 309 of the Clean Water Act, Docket No. CWA-AO-R01-FY20-08

Dear Mayor Hawke:

Communities subject to the 2003 and 2016 National Pollutant Discharge Elimination System (NPDES) General Permits for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts (2003 and 2016 MS4 Permits) have been required to develop and implement programs to protect the water resources of the Commonwealth of Massachusetts for several years. Adequate legal instruments are among the foundational elements of such programs. Accordingly, the 2003 MS4 Permit required communities to have in place Illicit Discharge Detection and Elimination (IDDE), Construction/Erosion and Sediment Control, and Post-Construction Stormwater Management ordinances, by-laws, or other regulatory mechanisms by May 1, 2008 (see Part II, Subparts B.3(b), B.4(a), and B.5.(a) of 2003 MS4 Permit). The 2016 MS4 Permit continues to require that permittees have adequate legal authorities to implement these programs (see Parts 2.3.4.a (IDDE Program) 2.3.5.c.i (Construction Site Stormwater Runoff Control) and 2.3.6.a.ii. (Post Construction Stormwater Management of 2016 MS4 Permit).

The 2003 and 2016 MS4 Permits have required annual reporting to EPA, including information on the development and implementation of adequate legal mechanisms. Gardner's Notice of Intent (NOI) to be covered by the 2016 MS4 Permit confirmed that the Town did not yet have those regulatory authorities in place and established a June 30, 2019 milestone for doing so. Nonetheless, Gardner's Year 1 MS4 Annual Report (Reporting Period: May 1, 2018-June 30, 2019) stated that the City has still not fulfilled these obligations. This was confirmed during a

recent EPA inspection of the City's MS4 conducted on October 8, 2019, during which City representatives indicated that a draft ordinance related to IDDE was under review.

Order

Section 309(a)(3) of the Clean Water Act (Act) authorizes EPA's Administrator to order compliance with Sections 301 and 308 of the Act and any permit condition or limitation implementing any NPDES permit. This authority has been delegated to the Director of the Office of Enforcement and Compliance Assurance ("Director") in EPA Region 1. Pursuant to that authority, the City is hereby required **by June 30, 2020** to adopt the ordinances or regulatory authorities necessary under the 2016 MS4 Permit. EPA is establishing this schedule in accordance with Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A). Also, the City must notify Todd Borci, EPA Region 1, when such ordinances or regulatory authorities have been adopted and provide a copy of such authorities via email at borci.todd@epa.gov. Doing so will ensure EPA's immediate knowledge of the City's compliance with these requirements.

These obligations are effective upon the City's receipt of this letter, but EPA is not waiving or modifying the terms and conditions of the 2016 MS4 Permit. The 2016 MS4 Permit remains in full force and effect, and EPA reserves the right to seek any remedies available under Section 309 of the Act, 33 U.S.C. § 1319, for any violation identified herein. Also, please be aware that the City may seek federal judicial review of this action pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Finally, please be aware that Section 402(s) of the Clean Water Act, 33 U.S.C. § 1342(s), provides municipalities with the opportunity to develop an integrated plan as defined therein.

As the City undertakes efforts to comply with the 2016 MS4Permit, it may find the model ordinances available at https://www.epa.gov/npdes-permits/stormwater-tools-new-england to be helpful. We are also available to answer any questions that you have related to these matters. Feel free to contact Todd Borci of my staff at 617-918-1358, or your attorney may contact Jeff Kopf, Senior Enforcement Counsel, at 617-918-1796.

Sincerely,

Karen McGuire, Director
Enforcement and Compliance Assurance Division

cc: (via email)
Chris Coughlin, City Engineer, City of Gardner, Mass.
Todd Borci, Water Compliance Section, ECAD, EPA Region 1
Newton Tedder, Water Divison, EPA Region 1
Jeff Kopf, Senior Enforcement Counsel, EPA Region 1
Lealdon Langley, Director, Division of Watershed Management, MassDEP

10327-10328
CONSOLIDATED

ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER BY ADDING A NEW CHAPTER 565, TO BE ENTITLED "STORMWATER MANAGEMENT," WHICH CHAPTER PROVIDES FOR STORMWATER AND EROSION CONTROL MEASURES, ILLICIT CONNECTIONS AND DISCHARGES TO THE STORMWATER DRAIN SYSTEM, ENFORCEMENT, AND PENALTIES FOR VIOLATION OF THE CHAPTER.

Be it ordained by the City Council of the City of Gardner as follows:

Section 1.

The Code of the City of Gardner is hereby amended by adding thereto a new chapter, to be Chapter 565, Stormwater Management, to read as follows:

ARTICLE I
Stormwater and Erosion Control

§ 565-1. - Purpose and intent.

(A) The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare of the city by establishing minimum requirements and procedures to control the adverse effects of soil erosion and sedimentation, construction site runoff, increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment. It has been determined that proper management of stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, protect water and aquatic resources, protect and enhance wildlife habitat, and promote groundwater recharge to protect surface and groundwater drinking supplies. This ordinance seeks to meet that purpose through the following objectives:

(1) Establish a mechanism by which the municipality can monitor and ensure compliance with requirements of Phase II of the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate

Storm Sewer Systems (MS4) and other applicable State and Federal mandates. Under the Phase II stormwater permit, the U.S. Environmental Protection Agency (EPA) required regulated municipalities to reduce the discharge of pollutants in stormwater to the maximum extent practicable and to adopt ordinances to address the control of sources of pollutants entering the municipal storm drain system.

(2) Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources.

(3) Require that new development, redevelopment and other land alteration activities maintain the after-development runoff characteristics as equal to or better than the pre-development runoff characteristics where appropriate in order to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats.

(4) Establish minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality; establish minimum design criteria for the protection of properties and aquatic resources downstream from land development and land conversion activities from damages due to alterations in volume, velocity, frequency, duration, and peak flow rate of storm water runoff; establish minimum design criteria for measures to eliminate or minimize to the extent feasible nonpoint source pollution from stormwater runoff which would otherwise degrade water quality.

(5) Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet or exceed the minimum post-development stormwater management standards.

(6) Encourage the use of nonstructural stormwater management, environmentally sensitive site design practices, and low-impact development practices, such as reducing impervious cover, increasing site-wide infiltration, and preserving open space and other natural areas, to the maximum extent practicable.

(7) Establish provisions that require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities.

(8) Establish provisions to ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained.

(9) Establish provisions for the long-term operation and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety or the environment.

(10) Establish certain administrative procedures for the submission, review, approval or disapproval of stormwater management plans, erosion and sediment controls, the inspection of construction sites and approved active projects, and long-term monitoring.

(11) Ensure that construction and waste materials, toxic materials, hazardous materials, and other pollutants are prevented from mixing with stormwater runoff, which would degrade water quality.

(12) Establish the City of Gardner's legal authority and capacity to ensure compliance with the provisions of this ordinance through permitting, inspection, monitoring, and enforcement.

(B) Nothing in this ordinance is intended to replace the requirements of the City of Gardner Zoning Ordinance, the Massachusetts Wetlands Protection Act, the City of Gardner General Ordinance, any other ordinance that may be adopted by the City of Gardner, or any rules and regulations adopted there under.

§ 565-2. - Purpose and intent.

This ordinance is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

§ 565-3. - Definitions.

The following definitions shall apply in the interpretation, implementation, and enforcement of this ordinance:

Alter

Any activity that will measurably change the ability of a ground surface area to absorb water, will change existing surface drainage patterns, or will increase or decrease the rate or volume of flow from a site. Alter may be similarly represented as "alteration of drainage characteristics," and "conducting land-disturbing activities".

Applicant

Any person, individual, partnership, association, organization, firm, company, trust, corporation, agency, authority, department, or political subdivision of the commonwealth or the federal government, to the extent permitted by law, any officer, employee, or agent of such person who has filed an application for a stormwater permit.

Development

The modification of land to accommodate a new use, revised use, or expansion of use, usually involving construction.

Discharge of pollutants

The addition of any pollutant or combination of pollutants into the MS4 or into the waters of the United States or the waters of the commonwealth, from any source.

Environmentally sensitive site design: Design that incorporates low impact development techniques to prevent the generation of stormwater and nonpoint source pollution by reducing impervious surfaces, disconnecting stormwater sheet flow paths and treating stormwater at its source, maximizing open space, minimizing disturbance, protecting natural features and processes, and/or enhancing wildlife habitat, as defined in 310 CMR 10.

Impervious cover (IC) or impervious area (IA): Any material or structure on, above or below the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include, without limitation: roads, paved surfaces (parking lots, sidewalks, and driveways), concrete, brick, stone, and roof tops.

Infiltration

The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a site.

Land disturbance

Any action that causes removal of vegetation (including tree cutting) or that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material. See also "alter."

Land-disturbing activity

Any action that causes a change in the existing soil cover which includes the position or location of soil, sand, rock, gravel, or similar earth material. Land-disturbing activities include, but are not limited to, clearing, clearing of trees, grubbing, filling and excavation.

Low impact development (LID) techniques

Innovative stormwater management systems that are modeled after natural hydrologic features. See 310 CMR 10 for further clarification.

Massachusetts Stormwater Management Standards

The latest version as may be amended from time to time of the stormwater management standards and accompanying Stormwater Handbook issued by the Massachusetts Department of Environmental Protection Agency pursuant to authority under the Wetlands Protection Act, M.G.L.A. c. 131, § 40, and the Massachusetts Clean Waters Act, M.G.L.A. c. 21, § 26-53. The Stormwater Management Standards are incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k) and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

Municipal separate storm sewer system (MS4) or Municipal storm drain system: The conveyance or system of conveyances designed or used for collecting or conveying stormwater, which is not a combined sewer, including any road with a drainage system, municipal street, catch basins, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, ditch, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of Gardner.

Nonpoint source

Any source from which pollution is discharged which is not identified as a point source, including, but not limited to urban, agricultural, or silvicultural runoff. Nonpoint source pollution emanates from many diffuse sources caused by rainfall, snowmelt, or other methods of pollutant transport moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

Point source

The term "point source" 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 storm water discharges and return flows from irrigated agriculture.

Pollutant

Any element or property of sewage, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any storm drain system treatment works, ground water or surface water. Pollutants shall include, without limitation:

A. Paints, varnishes, and solvents;

B. Oil and other automotive fluids;

C. Non-hazardous liquid and solid wastes and yard wastes;

D. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, accumulations and floatables;

E. Pesticides, herbicides, and fertilizers;

F. Hazardous materials and wastes; sewage, fecal coliform, and pathogens;

G. Dissolved and particulate metals;

H. Animal wastes;

I. Rock, sand, salt, soils, with the exception of winter salting and sanding in quantities that will not clog or otherwise impair the performance of the MS4 and stormwater management systems;

J. Construction wastes and residues; and

K. Noxious or offensive matter of any kind.

Post-development

The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity in accordance with approved plans on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

Pre-development

The conditions that exist prior to the proposed disturbance activity. Where phased development or plan approval occurs (preliminary grading, roads, utilities, etc.) the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

Recharge

The replenishment of underground water reserves.

Reconstruction

Any action causing complete removal and replacement of paved surfaces, such as driveways, parking areas and roads.

Redevelopment

Any construction, alteration, improvement, repaving, or resurfacing on a previously-developed site.

Runoff

Rainfall or snowmelt water flowing over the ground surface or other source that may result in transport of pollutants.

Site

Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

Stockpiling

The storage of unsecured material for future use, excluding the storage of materials ten cubic yards or less when secured utilizing erosion controls to prevent erosion of material.

Stormwater

Stormwater runoff, snow melt runoff, and surface water runoff or drainage.

Stormwater best management practice (BMP)

A structural or non-structural technique for managing stormwater to prevent or reduce nonpoint source pollutants from entering surface waters or ground waters, as defined in 310 CMR 10. A structural stormwater best management practice includes a basin, discharge outlet, swale, rain garden, filter, or other stormwater treatment practice or measure either alone or in combination including, without limitation, any overflow pipe, conduit, weir control structure that:

A. Is not naturally occurring;

B. Is not designed as a wetland replication area; and

C. Has been designated, constructed, and installed for the purpose of conveying, collecting, storing, discharging, recharging or treating stormwater.

Nonstructural stormwater best management practices include source control and pollution prevention measures.

Stormwater management permit (SMP)

A permit issued by the stormwater authority, after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the city from the deleterious effects of uncontrolled and untreated stormwater runoff.

Surface waters

All water other than groundwater within the jurisdiction of the commonwealth including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, and coastal waters, as defined in 310 CMR 10.00.

Toxic material or hazardous material or waste

Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious, or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous material include any synthetic organic chemical, petroleum, product, heavy metal, radioactive or infectious waste, acid, and alkali, and any substance defined as toxic or hazardous under M.G.L.A. c. 21C and c. 21E, and the regulations at 310 CMR 30.300 and 310 CMR 40.0000.

§ 565-4. - Applicability.

(A) This ordinance shall be applicable to the following activities. Compliance with all provisions of this ordinance, to the maximum extent practicable as determined by the stormwater authority, shall be a requirement for issuance of a stormwater management permit.

(1) All subdivisions as defined in the Massachusetts Subdivision Control Law (M.G.L.A. c. 41 §§ 81K—81GG) requiring approval of a definitive subdivision plan;

(2) Any activity that will result in a land disturbance of ten thousand square feet or greater within the City of Gardner.

(B) This ordinance shall apply to land or parcels of land that are held in common ownership (including ownership by related or jointly-controlled persons or entities) as of the effective date of this ordinance, if the total land-disturbing activities on said land or parcels, considered as a whole, would presently or ultimately exceed the minimum thresholds in this ordinance. A development shall not be segmented or phased in a manner to avoid compliance with this ordinance. The building department shall review all building permits to determine if a storm water management permit will be required, and, if required, will direct the applicant or potential applicant to the designated contact person at the department of public works.

(C) Coordination with other city permits.

(1) No building permit, subdivision approval, special permit, variance, or finding shall constitute compliance with this ordinance. For a project or activity that meets the scope and applicability of this section of this ordinance, no work may commence until the site owner or his agent submits the required documentation, the stormwater authority issues a stormwater permit, and the site owner and responsible parties sign and certify that all land clearing, construction and development will be done pursuant to the approved plans and permit.

(2) The ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence.

(3) In case of conflicting requirements, applicable state and or federal statutes and regulations shall be considered the more restrictive or more protective of human health and the environment, and shall take precedence over the City of Gardner's Stormwater and Erosion Control Ordinance and the rules and regulations promulgated thereunder. These state statutes and regulations include, but are not limited to the Massachusetts Wetlands Protection Act, the Massachusetts Rivers Act, the Massachusetts Watershed Protection Act, and the Massachusetts Stormwater Management Standards, as amended.

(4) In no instances shall a stormwater management permit constitute authorization for alteration of wetland resources subject to the jurisdiction of the Wetlands Protection Act.

§ 565-5. - Exemptions.

(A) Exemptions from this ordinance apply to the following activities, provided that a project is solely comprised of any one of these activities:

(1) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.04 ("Agricultural"), M.G.L.A. c. 40A, § 3 and the conversion of additional land to agricultural use, when undertaken in such a manner as to prevent erosion and siltation through the use of best management practices recommended by the U.S. Department of Agriculture Natural Resources Conservation Service or the Massachusetts Department of Agricultural Resources.

(2) Any work or projects for which all necessary approvals and permits were issued before the effective date of this ordinance. All applicable and relevant regulations must be met; city, state and federal. (This exemption does not apply to amendments or extensions of approved projects that have not started construction. In these cases, the applicant may need to re-design the project to comply with these requirements.)

(3) Routine maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling. Routine maintenance includes activities that are regularly scheduled to maintain the health and condition of a landscaped area. Examples include removal of weeds or invasive species, pruning, mowing, raking, and other activities that are done at regular intervals within the course of a year.

(4) Construction of any fence that will not alter existing terrain or drainage patterns.

(5) Construction, reconstruction, operation and maintenance of utilities (including but not limited to gas, city stormwater, water, sanitary sewer, road maintenance, electric, telephone, or cable television) excluding the construction of new MS4, where the surface vegetation and contours of the area shall be substantially restored.

(6) Emergency repairs to any existing utilities (gas, water, sanitary sewer, septic, electric, telephone, cable television, etc.) and emergency repairs to any stormwater management facility that poses a threat to public health or safety, as deemed necessary by the department of public works. All reasonable efforts must be made to use proper stormwater erosion controls in all emergency repairs.

(7) Repair, replacement or expansion of septic systems. Note—Proper erosion controls must be used.

§ 565-6. – Administration and permitting process.

(A) Stormwater Authority. The Department of Public Works is hereby designated as the stormwater authority. The stormwater authority, or his/her agent, shall administer, implement, and enforce this ordinance. The Department of Public Works may delegate in writing another city department, commission or board to act as his/her agent to review application submittals and for site inspections and enforcement of this ordinance.

(B) Stormwater and Erosion Control Regulations ("Regulations"). The stormwater authority may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, delegation of authority, procedures and administration of this ordinance. Failure of the stormwater authority to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this ordinance.

(C) Stormwater Management Handbook. The stormwater authority will utilize the Massachusetts Stormwater Management Standards and the Massachusetts Stormwater Handbooks, as amended from time to time, for criteria and information including specifications and standards of the latest edition of the Massachusetts Stormwater Management Handbook for the execution of the provisions of this ordinance. These include a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. Unless specifically made more stringent in this ordinance and the rules and regulations promulgated hereunder, stormwater management practices that are designed, constructed, and maintained in accordance with the Massachusetts Stormwater Handbooks' design and sizing criteria shall be presumed by the stormwater authority to be protective of the Massachusetts Water Quality Standards.

(D) Stormwater Management Permit. The Stormwater Authority shall have the authority to issue a Stormwater Management Permit (SMP) for projects exceeding the thresholds defined in this Ordinance. Requirements of the SMP may be defined and included within the regulations promulgated pursuant to this Ordinance.

(E) Appeals of Actions by the Stormwater Authority. A decision by the stormwater authority made under this ordinance shall be final. Further relief shall be to the Superior Court in accordance with the provisions of M.G.L.A c. 249, § 4.

§ 565-7. – Enforcement.

(A) The stormwater authority, or an authorized agent of the stormwater authority, shall enforce this ordinance, and any regulations, permit orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for violations.

(B) If a person violates the provisions of this ordinance or its regulations, or a permit, notice or order issued there under, the stormwater authority may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or to compel the person to perform abatement or remediation of the violation.

(C) The stormwater authority, or an authorized agent of the stormwater authority, may issue a written order to enforce the provisions or this ordinance or the regulations, which may include requirements to:

(1) Cease and desist from land-disturbing activity until there is compliance with the ordinance or provisions of an approved SMP;

(2) Maintain, install or perform additional erosion and sediment control measures;

(3) Perform monitoring, analyses, and reporting;

(4) Remediate erosion and sedimentation resulting directly or indirectly from land-disturbing activity;

(5) Comply with requirements in the SMP for operation and maintenance of stormwater management systems; and

(6) Remediate adverse impacts resulting directly or indirectly from malfunction of the stormwater management systems. If the stormwater authority or its authorized agent determines that abatement or remediation is required, the order shall set forth a deadline by which such abatement or remediation must be completed.

(D) Criminal Penalties. Any person who violates any provisions of this ordinance, regulation, order or permit issued hereunder, shall be punished by a fine of not more than three hundred dollars. Each day a violation exists shall constitute a new and separate violation.

(E) Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the stormwater authority may elect to utilize the non-criminal disposition procedure set forth in M.G.L.A c. 40, § 21D, in which case any police officer of the City of Gardner, the city engineer, and such other persons as are authorized by the stormwater authority shall be the enforcing person. If non-criminal disposition is used, any person who violates any provision of this ordinance, regulation, order or permit issued thereunder, shall be punished as follows:

(1) First violation: Warning

(2) Second violation: one hundred dollars

(3) Third violation: two hundred dollars

(4) Fourth and subsequent violations: three hundred dollars.

(5) Each day a violation exists shall constitute a separate violation. Each day of noncompliance shall constitute a new and separate violation. The conservation agent, DPW personnel and any other city employee designated in writing by the Stormwater Authority, may as an alternative to initiating criminal proceedings, seek the noncriminal disposition of violations of the Storm Water Ordinance, by following the procedure set forth in M.G.L.A. c. 40, § 21D. Any person, corporation, company, or partnership that violates any provision of this ordinance shall be subject to a penalty of one hundred dollars for the second offense, two hundred dollars for the third offense, and three hundred dollars for the fourth and each additional offense.

(F) Remedies Not Exclusive. The remedies listed in this ordinance are not exclusive of any other remedies available to the stormwater authority or the city under any applicable federal, state or local law.

§ 565-8. – Severability.

(A) The invalidity of any section, provision, paragraph, sentence, or clause of this ordinance shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

ARTICLE II
Illicit Connections and Discharges to the Storm Drain System

§ 565-9. - Purpose and Authority.

(A) The purpose of this article is to regulate illicit connections and discharges to the storm drain system, which is necessary for the protection of Gardner's water bodies, groundwater, and to safeguard the public health, safety, welfare and the environment.

The objectives of this article are:

(1) To prevent pollutants from entering Gardner's municipal separate storm sewer system (MS4).

(2) To prohibit illicit connections and unauthorized discharges to the MS4.

(3) To require the removal of all such illicit connections.

(4) To comply with state and federal statutes and regulations relating to stormwater discharges.

(5) To establish the legal authority to ensure compliance with the provisions of this article through inspection, monitoring and enforcement.

(6) To prevent contamination of drinking water supplies.

(B) Authority. The Department of Public Works shall administer, implement and enforce this article.

§ 565-10. - Definitions.

For the purposes of this article, the following shall mean:

Authorized enforcement agency

The Department of Public Works, its employees or agents designated to enforce this article.

Best management practice (BMP)

An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improved the quality of stormwater runoff.

Clean Water Act

The Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.) as hereafter amended.

Discharge of pollutants

The addition from any source of any pollutant or combination of pollutants into the storm drain system or into the waters of the United States or Commonwealth from any source.

Groundwater

All water beneath the surface of the ground.

Illegal discharge

Any direct or indirect nonstormwater discharge to the storm drain system, except as specifically exempted in sections 5(4) and 5(5). The term does not include a discharge in compliance with an NPDES stormwater discharge permit.

Illicit connection

Any surface or subsurface drain or conveyance, which allows an illegal discharge into the storm drain system. Illicit connections include conveyances which allow a nonstormwater discharge to the storm drain system, including sewage, process wastewater or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether such connection was previously allowed, permitted, or approved before the effective date of this article.

Impervious surface

Any material or structure on or above the ground that prevents water from infiltrating the underlying soil.

Municipal separate storm sewer system (MS4) or municipal storm drain system

The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system; street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of Gardner.

National pollutant discharge elimination system (NPDES) storm water discharge permit

A permit issued by United States Environmental Protection Agency or jointly with the state that authorized the discharge of pollutants to waters of the United States.

Nonstormwater discharge

Any discharge to the storm drain system, not composed entirely of stormwater.

Person

Any individual, partnership, association, firm, company, trust, corporation, and, any agency, authority, department or political subdivision of the commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

Pollutant

Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the commonwealth. Pollutants shall include:

A. Paints, varnishes and solvents.

B. Oil and other automotive fluids.

C. Nonhazardous liquid and solid wastes and yard wastes.

D. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, accumulations and floatables.

E. Pesticides, herbicides and fertilizers.

F. Hazardous materials and wastes; sewage, fecal coliform and pathogens.

G. Dissolved and particulate metals.

H. Animal wastes.

I. Rock, sand, salt, soils, with the exception of winter salting and sanding in quantities that will not clog or otherwise impair the performance of the MS4 and stormwater management systems;

J. Construction wastes and residues.

K. Noxious or offensive matter of any kind.

Process wastewater

Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

Recharge

The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

Storm drain system

The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system on public or private ways within the City of Gardner.

Stormwater

Runoff from precipitation or snow melt.

Toxic or hazardous material or waste

Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as toxic or hazardous under G.L. chapters 21C and 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000.

Uncontaminated

Water containing no pollutants.

Wastewater

Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

Waters of the commonwealth

All waters within the jurisdiction of the commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters and groundwater.

§ 565-11. - Applicability.

This article shall apply to flows entering the storm drain system on public or private ways with the City of Gardner.

§ 565-12. - Regulations.

The Department of Public Works may promulgate rules, regulations and a permitting process to effectuate the purposes of this article. Failure by the Department of Public Works to promulgate such rules and regulations shall not have the effect of suspending or invalidating this article.

§ 565-13. – Prohibited activities.

(A) Illegal Discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or nonstormwater discharge into the storm drain system, watercourse, or into the waters of the commonwealth.

(B) Illicit Connections. No person shall construct, use, allow, maintain or continue any illicit connection to the storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

(C) Obstruction of Storm Drain System. No person shall obstruct or interfere with the normal flow of stormwater in or out of the storm drain system without prior approval from the Department of Public Works or its designated agent.

(D) Exemptions. This section shall not apply to any of the following nonstormwater discharges or flows provided that the source is not a significant contributor of a pollutant to the storm drain system:

(1) Municipal waterline flushing.

(2) Discharges from landscape irrigation or lawn watering.

(3) Water from individual residential car washing and temporary fund-raising car wash events.

(4) Discharges from dechlorinated swimming pool water, provided it is allowed to stand for one week prior to draining, or tested for chlorine levels with a pool test kit prior to draining (less than one part per million chlorine), and the pool is drained in such a way as not to cause a nuisance.

(5) Discharges from street sweepers of minor amounts of water during operations.

(6) Discharges or flows resulting from fire fighting activities.

(7) Nonstormwater discharges permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations.

(E) Exemptions with Permit from Department of Public Works. This section shall not apply to any of the following nonstormwater discharges or flows, provided that the source is not a significant contributor of a pollutant to the storm drain system, and provided that a permit is approved by the Department of Public Works:

(1) Flows from potable water sources.

(2) Springs.

(3) Natural flows from riparian habitats and wetlands.

(4) Diverted stream flows.

(5) Rising groundwater.

(6) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater.

(7) Uncontaminated groundwater discharge from a sump pump, with a permit from the Department of Public Works.

(8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems, such as dewatering excavations for foundation or pipelines), crawl space pumps, or air conditioning condensation.

(9) Dye testing, provided verbal notification is given to the Department of Public Works prior to the time of the test.

(10) Unforeseen sources, on a case by case basis

The Department of Public Works may develop criteria for issuing permits under this section, based on the need to maintain capacity of the storm drain system and to protect public health, safety, welfare of the environment.

§ 565-14. – Suspension of storm drain system access.

(A) The Department of Public Works may suspend storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened illegal discharge that presents or may present imminent risk of harm to the public health, safety, welfare or the environment. In the event, any person fails to comply with an emergency suspension order, the authorized enforcement agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

(B) Any person in violation of this section may have their storm drain system access terminated, if such termination would abate or reduce an illicit discharge. The Department of Public Works will notify a violator of the proposed termination of storm drain system access. The violator may petition the Department of Public Works for reconsideration and hearing. Any person who reinstates storm drain system access to premises terminated pursuant to this section, without prior approval from the Department of Public Works, shall be deemed to have violated this article.

§ 565-15. – Notification of spills.

(A) Notwithstanding any other requirements of local, state, or federal 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 at that facility operation which is resulting or may result in illegal discharge of pollutants that person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the Gardner Fire and Police departments. In the event of a release of nonhazardous material, such person shall notify the authorized enforcement agency not later than the next business day. Written confirmation of all telephone, facsimile or in person notifications shall be provided to the authorized enforcement agency within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§ 565-16. - Enforcement.

(A) Enforcement. The Department of Public Works or its authorized agent shall enforce this article, and the regulations promulgated thereunder, as well as the terms and conditions of all permits, notices, and orders, and may pursue all civil and criminal remedies for such violations.

(B) Civil Relief. If anyone violates the provisions of this article, regulations, permit, notice, or order issued thereunder, the Department of Public Works may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or compel the person to abate or remediate the violation.

(C) Orders. The Department of Public Works may issue a written order to enforce the provisions of this article or the regulations thereunder, which may include: (1) elimination of illicit connections or discharges to the storm drain system; (2) termination of access to the storm drainage

system; (3) performance of monitoring, analyses, and reporting; (4) cessation of unlawful discharges, practices, or operations; and (5) remediation of contamination in connection therewith. If the Department of Public Works determines that abatement or remediation of contamination is required, the order shall set forth a deadline for completion of the abatement or remediation. Such order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the city may, at its option, undertake such work, and expenses thereof shall be charged to the violator or property owner.

Within thirty days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the city, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Department of Public Works within thirty days following a decision of the receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty days following a decision of the Department of Public Works affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of such costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. chapter 59, section 57 after the thirty-first day at which the costs first become due.

(D) Criminal and Civil Penalties. Any person who violates any provision of this article, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine not to exceed three hundred dollars for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the city in any court of competent jurisdiction.

(E) Noncriminal Disposition. As an alternative to criminal prosecution or civil action, the City of Gardner may elect to utilize the noncriminal disposition procedure set forth in G.L. chapter 40, section 21D. The Department of Public Works shall be the enforcing entity. The penalty for the 1st violation shall be one hundred dollars. The penalty for the 2nd violation shall be two hundred

dollars. The penalty for the 3rd and subsequent violations shall be three hundred dollars. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

(F) Entry to Perform Duties under this Article. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Department of Public Works, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this article and regulations and may make or cause to be made such examinations, surveys or sampling as the Department of Public Works deems reasonably necessary.

(G) Appeals. The decisions or orders of the Department of Public Works shall be final. Further relief shall be to a court of competent jurisdiction.

(H) Remedies Not Exclusive. The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law.

§ 565-17. - Severability.

(A) If any provision, paragraph, sentence, or clause, of this article shall be held invalid for any reason, all provisions shall continue in full force and effect.

10327-10328

City of Gardner, *Executive Department*

Michael J. Nicholson, Mayor

RECEIVED
2020 AUG 20 PM 2:28
CITY CLERK'S OFFICE
GARDNER, MA

August 20, 2020

The Honorable Elizabeth Kazinskas, President
And Gardner City Councilors
95 Pleasant St., Rm 121
Gardner, MA 01440

RE: Proposed Stormwater Ordinances

Dear President Kazinskas and Councilors,

In 2017, the Federal Environmental Protection Agency ("EPA") issued new mandates for cities and towns across the United States to implement new regulations regarding Stormwater discharge as part of their respective ordinances. The initial mandate that was given for these ordinances was to have these items passed and codified into cities' ordinances by the end of the 2019 calendar year or the EPA would issue significant fines and penalties to those that did not comply.

Following the EPA issuing a compliance order to the City in December of 2019, the City received two (2) extensions from this deadline – once to be able to complete the review of the requirements in time, and the second as a result of the absence of having an elected mayor for six months in 2020. Our current extension expires on October 15, 2020. The City has also been informed that we will likely not be issued an additional extension. Failure to adopt ordinances by the October 15th deadline will likely result in the Federal Government issuing significant fines and penalties against the City.

The two (2) attached ordinance proposals have been worked on and reviewed by the City Engineer's Office, the City's Law Department, and officials from the EPA in order to ensure all of the mandated requirements are met.

Thank you for your attention to these matters.

Respectfully,

Michael J. Nicholson
Mayor, City of Gardner

Enclosures:

- Stormwater and Erosion Control Proposed Ordinance
- Illicit Connections and Discharges to Storm Drain System Proposed Ordinance

10327

XXXXXX. - STORMWATER AND EROSION CONTROL

Sec. XXXX. - Purpose and intent.

(a) The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare of the city by establishing minimum requirements and procedures to control the adverse effects of soil erosion and sedimentation, construction site runoff, increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment. It has been determined that proper management of stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, protect water and aquatic resources, protect and enhance wildlife habitat, and promote groundwater recharge to protect surface and groundwater drinking supplies. This ordinance seeks to meet that purpose through the following objectives:

(1) Establish a mechanism by which the municipality can monitor and ensure compliance with requirements of Phase II of the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and other applicable State and Federal mandates. Under the Phase II stormwater permit, the U.S. Environmental Protection Agency (EPA) required regulated municipalities to reduce the discharge of pollutants in stormwater to the maximum extent practicable and to adopt ordinances to address the control of sources of pollutants entering the municipal storm drain system.

(2) Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources.

(3) Require that new development, redevelopment and other land alteration activities maintain the after-development runoff characteristics as equal to or better than the pre-development runoff characteristics where appropriate in order to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats.

(4) Establish minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality; establish minimum design criteria for the protection of properties and aquatic resources downstream from land development and land conversion activities from damages due to alterations in volume, velocity, frequency, duration, and peak flow rate of storm water runoff; establish minimum design criteria for measures to eliminate or minimize to the extent feasible nonpoint source pollution from stormwater runoff which would otherwise degrade water quality.

(5) Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet or exceed the minimum post-development stormwater management standards.

(6) Encourage the use of nonstructural stormwater management, environmentally sensitive site design practices, and low-impact development practices, such as reducing impervious cover, increasing site-wide infiltration, and preserving open space and other natural areas, to the maximum extent practicable.

(7) Establish provisions that require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities.

(8) Establish provisions to ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained.

(9) Establish provisions for the long-term operation and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety or the environment.

(10) Establish certain administrative procedures for the submission, review, approval or disapproval of stormwater management plans, erosion and sediment controls, the inspection of construction sites and approved active projects, and long-term monitoring.

(11) Ensure that construction and waste materials, toxic materials, hazardous materials, and other pollutants are prevented from mixing with stormwater runoff, which would degrade water quality.

(12) Establish the City of Gardner's legal authority and capacity to ensure compliance with the provisions of this ordinance through permitting, inspection, monitoring, and enforcement.

(b) Nothing in this ordinance is intended to replace the requirements of the City of Gardner Zoning Ordinance, the Massachusetts Wetlands Protection Act, the City of Gardner General Ordinance, any other ordinance that may be adopted by the City of Gardner, or any rules and regulations adopted there under.

Sec. XXXX. - Authority.

This ordinance is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34., and as authorized by the residents of the City of Gardner at City Council Meeting dated XXXXXXXXXX.

Sec. XXXXX. - Definitions.

The following definitions shall apply in the interpretation, implementation, and enforcement of this ordinance:

Alter: Any activity that will measurably change the ability of a ground surface area to absorb water, will change existing surface drainage patterns, or will increase or decrease the rate or volume of flow from a site. Alter may be similarly represented as "alteration of drainage characteristics," and "conducting land-disturbing activities".

Applicant: Any person, individual, partnership, association, organization, firm, company, trust, corporation, agency, authority, department, or political subdivision of the commonwealth or the federal government, to the extent permitted by law, any officer, employee, or agent of such person who has filed an application for a stormwater permit.

Development: The modification of land to accommodate a new use, revised use, or expansion of use, usually involving construction.

Discharge of pollutants: The addition of any pollutant or combination of pollutants into the MS4 or into the waters of the United States or the waters of the commonwealth, from any source.

Environmentally sensitive site design: Design that incorporates low impact development techniques to prevent the generation of stormwater and nonpoint source pollution by reducing impervious surfaces, disconnecting stormwater sheet flow paths and treating stormwater at its source, maximizing open space, minimizing disturbance, protecting natural features and processes, and/or enhancing wildlife habitat, as defined in 310 CMR 10.

Impervious cover (IC) or impervious area (IA): Any material or structure on, above or below the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include, without limitation: roads, paved surfaces (parking lots, sidewalks, and driveways), concrete, brick, stone, and roof tops.

Infiltration: The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a site.

Land disturbance: Any action that causes removal of vegetation (including tree cutting) or that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material. See also "alter."

Land-disturbing activity: Any action that causes a change in the existing soil cover which includes the position or location of soil, sand, rock, gravel, or similar earth material. Land-disturbing activities include, but are not limited to, clearing, clearing of trees, grubbing, filling and excavation.

Low impact development (LID) techniques: Innovative stormwater management systems that are modeled after natural hydrologic features. See 310 CMR 10 for further clarification.

Massachusetts Stormwater Management Standards: The latest version as may be amended from time to time of the stormwater management standards and accompanying Stormwater Handbook issued by the Massachusetts Department of Environmental Protection Agency pursuant to authority under the Wetlands Protection Act, M.G.L.A. c. 131, § 40, and the Massachusetts Clean Waters Act, M.G.L.A. c. 21, § 26-53. The Stormwater Management Standards are incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k) and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

Municipal separate storm sewer system (MS4) or Municipal storm drain system: The conveyance or system of conveyances designed or used for collecting or conveying stormwater, which is not a combined sewer, including any road with a drainage system, municipal street, catch basins, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, ditch, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of Gardner.

Nonpoint source: Any source from which pollution is discharged which is not identified as a point source, including, but not limited to urban, agricultural, or silvicultural runoff. Nonpoint source pollution emanates from many diffuse sources caused by rainfall, snowmelt, or other methods of pollutant transport moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

Point source: The term "point source" 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 storm water discharges and return flows from irrigated agriculture.

Pollutant: Any element or property of sewage, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any storm drain system treatment works, ground water or surface water.

Pollutants shall include, without limitation:

(1) Paints, varnishes, and solvents;

(2) Oil and other automotive fluids;

(3) Non-hazardous liquid and solid wastes and yard wastes;

(4) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, accumulations and floatables;

(5) Pesticides, herbicides, and fertilizers;

(6) Hazardous materials and wastes; sewage, fecal coliform, and pathogens;

(7) Dissolved and particulate metals;

(8) Animal wastes;

(9) Rock, sand, salt, soils, with the exception of winter salting and sanding in quantities that will not clog or otherwise impair the performance of the MS4 and stormwater management systems;

(10) Construction wastes and residues; and

(11) Noxious or offensive matter of any kind.

Post-development: The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity in accordance with approved plans on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

Pre-development: The conditions that exist prior to the proposed disturbance activity. Where phased development or plan approval occurs (preliminary grading, roads, utilities, etc.) the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

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Recharge: The replenishment of underground water reserves.

Reconstruction: Any action causing complete removal and replacement of paved surfaces, such as driveways, parking areas and roads.

Redevelopment: Any construction, alteration, improvement, repaving, or resurfacing on a previously-developed site.

Runoff: Rainfall or snowmelt water flowing over the ground surface or other source that may result in transport of pollutants.

Site: Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

Stockpiling: The storage of unsecured material for future use, excluding the storage of materials ten cubic yards or less when secured utilizing erosion controls to prevent erosion of material.

Stormwater: Stormwater runoff, snow melt runoff, and surface water runoff or drainage.

Stormwater best management practice (BMP): A structural or non-structural technique for managing stormwater to prevent or reduce nonpoint source pollutants from entering surface waters or ground waters, as defined in 310 CMR 10. A structural stormwater best management practice includes a basin, discharge outlet, swale, rain garden, filter, or other stormwater treatment practice or measure either alone or in combination including, without limitation, any overflow pipe, conduit, weir control structure that:

(1) Is not naturally occurring;

(2) Is not designed as a wetland replication area; and

(3) Has been designated, constructed, and installed for the purpose of conveying, collecting, storing, discharging, recharging or treating stormwater.

Nonstructural stormwater best management practices include source control and pollution prevention measures.

Stormwater management permit (SMP): A permit issued by the stormwater authority, after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the city from the deleterious effects of uncontrolled and untreated stormwater runoff.

Surface waters: All water other than groundwater within the jurisdiction of the commonwealth including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, and coastal waters, as defined in 310 CMR 10.00.

Toxic material or hazardous material or waste: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious, or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous material include any synthetic organic chemical, petroleum, product, heavy metal, radioactive or infectious waste, acid, and alkali, and any substance defined as toxic or hazardous under M.G.L.A. c. 21C and c. 21E, and the regulations at 310 CMR 30.300 and 310 CMR 40.0000.

Sec. XXXXX- Applicability.

(a) This ordinance shall be applicable to the following activities. Compliance with all provisions of this ordinance, to the maximum extent practicable as determined by the stormwater authority, shall be a requirement for issuance of a stormwater management permit.

(1) All subdivisions as defined in the Massachusetts Subdivision Control Law (M.G.L.A. c. 41 §§ 81K—81GG) requiring approval of a definitive subdivision plan;

(2) Any activity that will result in a land disturbance of ten thousand square feet or greater within the City of Gardner.

(b) This ordinance shall apply to land or parcels of land that are held in common ownership (including ownership by related or jointly-controlled persons or entities) as of the effective date of this ordinance, if the total land-disturbing activities on said land or parcels, considered as a whole, would presently or ultimately exceed the minimum thresholds in this ordinance. A development shall not be segmented or phased in a manner to avoid compliance with this ordinance. The building department shall review all building permits to determine if a storm water management permit will be required, and, if required, will direct the applicant or potential applicant to the designated contact person at the department of public works.

(c) Coordination with other city permits.

(1) No building permit, subdivision approval, special permit, variance, or finding shall constitute compliance with this ordinance. For a project or activity that meets the scope and applicability of this section of this ordinance, no work may commence until the site owner or his agent submits the required documentation, the stormwater authority issues a stormwater permit, and the site owner and responsible parties sign and certify that all land clearing, construction and development will be done pursuant to the approved plans and permit.

(2) The ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence.

(3) In case of conflicting requirements, applicable state and or federal statutes and regulations shall be considered the more restrictive or more protective of human health and the environment, and shall take precedence over the City of Gardner's Stormwater and Erosion Control Ordinance and the rules and regulations promulgated thereunder. These state statutes and regulations include, but are not limited to the Massachusetts Wetlands Protection Act, the Massachusetts Rivers Act, the Massachusetts Watershed Protection Act, and the Massachusetts Stormwater Management Standards, as amended.

(4) In no instances shall a stormwater management permit constitute authorization for alteration of wetland resources subject to the jurisdiction of the Wetlands Protection Act.

Sec. XXXXX. - Exemptions.

Exemptions from this ordinance apply to the following activities, provided that a project is solely comprised of any one of these activities:

(a) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.04 ("Agricultural"), M.G.L.A. c. 40A, § 3 and the conversion of additional land to agricultural use, when undertaken in such a manner as to prevent erosion and siltation through the use of best management practices recommended by the U.S. Department of Agriculture Natural Resources Conservation Service or the Massachusetts Department of Agricultural Resources.

(b) Any work or projects for which all necessary approvals and permits were issued before the effective date of this ordinance. All applicable and relevant regulations must be met; city, state and federal. (This exemption does not apply to amendments or extensions of approved projects that have not started construction. In these cases, the applicant may need to re-design the project to comply with these requirements.)

(c) Routine maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling. Routine maintenance includes activities that are regularly scheduled to maintain the health and condition of a landscaped area. Examples include removal of weeds or invasive species, pruning, mowing, raking, and other activities that are done at regular intervals within the course of a year.

(d) Construction of any fence that will not alter existing terrain or drainage patterns.

(e) Construction, reconstruction, operation and maintenance of utilities (including but not limited to gas, city stormwater, water, sanitary sewer, road maintenance, electric, telephone, or cable television) excluding the construction of new MS4, where the surface vegetation and contours of the area shall be substantially restored.

(f) Emergency repairs to any existing utilities (gas, water, sanitary sewer, septic, electric, telephone, cable television, etc.) and emergency repairs to any stormwater management facility that poses a threat to public health or safety, as deemed necessary by the department of public works. All reasonable efforts must be made to use proper stormwater erosion controls in all emergency repairs.

(g) Repair, replacement or expansion of septic systems. Note—Proper erosion controls must be used.

Sec. XXXX - Administration and permitting process.

(a) Stormwater Authority. The Department of Public Works is hereby designated as the stormwater authority. The stormwater authority, or his/her agent, shall administer, implement, and enforce this ordinance. The Department of Public Works may delegate in writing another city department, commission or board to act as his/her agent to review application submittals and for site inspections and enforcement of this ordinance.

(b) Stormwater and Erosion Control Regulations ("Regulations"). The stormwater authority may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, delegation of authority, procedures and administration of this ordinance. Failure of the stormwater authority to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this ordinance.

(c) Stormwater Management Handbook. The stormwater authority will utilize the Massachusetts Stormwater Management Policy and the Massachusetts Stormwater Handbooks Volumes 1, 2 and 3, as amended from time to time, for criteria and information including specifications and standards of the latest edition of the Massachusetts Stormwater Management Handbook for the execution of the provisions of this ordinance. These include a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. Unless specifically made more stringent in this ordinance and the rules and regulations promulgated hereunder, stormwater management practices that are designed, constructed, and maintained in accordance with the Massachusetts Stormwater Handbooks' design and sizing criteria shall be presumed by the stormwater authority to be protective of the Massachusetts Water Quality Standards.

(d) Stormwater Management Permit. The Stormwater Authority shall have the authority to issue a Stormwater Management Permit (SMP) for projects exceeding the thresholds defined in this Ordinance. Requirements of the SMP may be defined and included within the regulations promulgated pursuant to this Ordinance.

(e) Appeals of Actions by the Stormwater Authority. A decision by the stormwater authority made under this ordinance shall be final. Further relief shall be to the Superior Court in accordance with the provisions of M.G.L.A c. 249, § 4.

Sec. XXXXX. - Enforcement.

(a) The stormwater authority, or an authorized agent of the stormwater authority, shall enforce this ordinance, and any regulations, permit orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for violations.

(b) If a person violates the provisions of this ordinance or its regulations, or a permit, notice or order issued there under, the stormwater authority may seek injunctive relief in a court of competent

jurisdiction to restrain the person from activities which would create further violations or to compel the person to perform abatement or remediation of the violation.

(c) The stormwater authority, or an authorized agent of the stormwater authority, may issue a written order to enforce the provisions or this ordinance or the regulations, which may include requirements to:

(1) Cease and desist from land-disturbing activity until there is compliance with the ordinance or provisions of an approved SMP;

(2) Maintain, install or perform additional erosion and sediment control measures;

(3) Perform monitoring, analyses, and reporting;

(4) Remediate erosion and sedimentation resulting directly or indirectly from land-disturbing activity;

(5) Comply with requirements in the SMP for operation and maintenance of stormwater management systems; and

(6) Remediate adverse impacts resulting directly or indirectly from malfunction of the stormwater management systems.

If the stormwater authority or its authorized agent determines that abatement or remediation is required, the order shall set forth a deadline by which such abatement or remediation must be completed.

(d) Criminal Penalties. Any person who violates any provisions of this ordinance, regulation, order or permit issued hereunder, shall be punished by a fine of not more than three hundred dollars. Each day a violation exists shall constitute a new and separate violation.

(e) Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the stormwater authority may elect to utilize the non-criminal disposition procedure set forth in M.G.L.A c. 40, § 21D, in which case any police officer of the City of Gardner, the city engineer, and such other persons as are authorized by the stormwater authority shall be the enforcing person. If non-criminal disposition is used, any person who violates any provision of this ordinance, regulation, order or permit issued thereunder, shall be punished as follows:

(1) First violation: Warning

(2) Second violation: one hundred dollars

(3) Third violation: two hundred dollars

(4) Fourth and subsequent violations: three hundred dollars.

(5) Each day a violation exists shall constitute a separate violation. Each day of noncompliance shall constitute a new and separate violation.

The conservation agent, DPW personnel and any other city employee designated in writing by the Stormwater Authority, may as an alternative to initiating criminal proceedings, seek the noncriminal disposition of violations of the Storm Water Ordinance, by following the procedure set forth in M.G.L.A. c. 40, § 21D. Any person, corporation, company, or partnership that violates any provision of this ordinance shall be subject to a penalty of one hundred dollars for the second offense, two hundred dollars for the third offense, and three hundred dollars for the fourth and each additional offense.

(f) Remedies Not Exclusive. The remedies listed in this ordinance are not exclusive of any other remedies available to the stormwater authority or the city under any applicable federal, state or local law.

Sec. XXXXX. - Severability.

The invalidity of any section, provision, paragraph, sentence, or clause of this ordinance shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

Sec. XXXXXX - Effective date.

This ordinance shall take effect on XXXXXXXXXX

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XXXXX. - ILLICIT CONNECTIONS AND DISCHARGES TO THE STORM DRAIN SYSTEM.

XXXXX. - Purpose and authority.

(a) The purpose of this article is to regulate illicit connections and discharges to the storm drain system, which is necessary for the protection of Gardner's water bodies, groundwater, and to safeguard the public health, safety, welfare and the environment.

The objectives of this article are:

(1) To prevent pollutants from entering Gardner's municipal separate storm sewer system (MS4).

(2) To prohibit illicit connections and unauthorized discharges to the MS4.

(3) To require the removal of all such illicit connections.

(4) To comply with state and federal statutes and regulations relating to stormwater discharges.

(5) To establish the legal authority to ensure compliance with the provisions of this article through inspection, monitoring and enforcement.

(6) To prevent contamination of drinking water supplies.

(b) Authority. The Department of Public Works shall administer, implement and enforce this article.

XXXXXX. - Definitions.

For the purposes of this article, the following shall mean:

"Authorized enforcement agency" means the Department of Public Works, its employees or agents designated to enforce this article.

"Best management practice (BMP)" means an activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improved the quality of stormwater runoff.

"Clean Water Act" means the Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.) as hereafter amended.

"Discharge of pollutants" means the addition from any source of any pollutant or combination of pollutants into the storm drain system or into the waters of the United States or Commonwealth from any source.

"Groundwater" means all water beneath the surface of the ground.

"Illegal discharge" means any direct or indirect nonstormwater discharge to the storm drain system, except as specifically exempted in sections 5(4) and 5(5). The term does not include a discharge in compliance with an NPDES stormwater discharge permit.

"Illicit connection" means any surface or subsurface drain or conveyance, which allows an illegal discharge into the storm drain system. Illicit connections include conveyances which allow a nonstormwater discharge to the storm drain system, including sewage, process wastewater or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether such connection was previously allowed, permitted, or approved before the effective date of this article.

"Impervious surface" means any material or structure on or above the ground that prevents water from infiltrating the underlying soil.

"Municipal separate storm sewer system (MS4) or municipal storm drain system" means the system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system; street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the City of Gardner.

DRAFT

"National pollutant discharge elimination system (NPDES) storm water discharge permit" means a permit issued by United States Environmental Protection Agency or jointly with the state that authorized the discharge of pollutants to waters of the United States.

"Nonstormwater discharge" means any discharge to the storm drain system, not composed entirely of stormwater.

"Person" means any individual, partnership, association, firm, company, trust, corporation, and, any agency, authority, department or political subdivision of the commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

"Pollutant" means any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the commonwealth. Pollutants shall include:

(1) Paints, varnishes and solvents.

(2) Oil and other automotive fluids.

(3) Nonhazardous liquid and solid wastes and yard wastes.

(4) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, accumulations and floatables.

(5) Pesticides, herbicides and fertilizers.

(6) Hazardous materials and wastes; sewage, fecal coliform and pathogens.

(7) Dissolved and particulate metals.

(8) Animal wastes.

(9) Rock, sand, salt, soils, with the exception of winter salting and sanding in quantities that will not clog or otherwise impair the performance of the MS4 and stormwater management systems;

(10) Construction wastes and residues.

(11) Noxious or offensive matter of any kind.

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

"Recharge" means the process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

"Storm drain system" means the system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system on public or private ways within the City of Gardner.

"Stormwater" means runoff from precipitation or snow melt.

"Toxic or hazardous material or waste" means any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as toxic or hazardous under G.L. chapters 21C and 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.000.

"Uncontaminated" means water containing no pollutants.

DRAFT

"Wastewater" means any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

"Waters of the commonwealth" mean all waters within the jurisdiction of the commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters and groundwater.

XXXXX. - Applicability.

This article shall apply to flows entering the storm drain system on public or private ways with the City of Gardner.

XXXXXX. - Regulations.

The Department of Public Works may promulgate rules, regulations and a permitting process to effectuate the purposes of this article. Failure by the Department of Public Works to promulgate such rules and regulations shall not have the effect of suspending or invalidating this article.

XXXXXX. - Prohibited activities.

(a) Illegal Discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or nonstormwater discharge into the storm drain system, watercourse, or into the waters of the commonwealth.

(b) Illicit Connections. No person shall construct, use, allow, maintain or continue any illicit connection to the storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

(c) Obstruction of Storm Drain System. No person shall obstruct or interfere with the normal flow of stormwater in or out of the storm drain system without prior approval from the Department of Public Works or its designated agent.

(d) Exemptions. This section shall not apply to any of the following nonstormwater discharges or flows provided that the source is not a significant contributor of a pollutant to the storm drain system:

(1) Municipal waterline flushing.

(2) Discharges from landscape irrigation or lawn watering.

(3) Water from individual residential car washing and temporary fund-raising car wash events.

(4) Discharges from dechlorinated swimming pool water, provided it is allowed to stand for one week prior to draining, or tested for chlorine levels with a pool test kit prior to draining (less than one part per million chlorine), and the pool is drained in such a way as not to cause a nuisance.

(5) Discharges from street sweepers of minor amounts of water during operations.

(6) Discharges or flows resulting from fire fighting activities.

(7) Nonstormwater discharges permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations.

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(e) Exemptions with Permit from Department of Public Works. This section shall not apply to any of the following nonstormwater discharges or flows, provided that the source is not a significant contributor of a pollutant to the storm drain system, and provided that a permit is approved by the Department of Public Works:

(1) Flows from potable water sources.

(2) Springs.

(3) Natural flows from riparian habitats and wetlands.

(4) Diverted stream flows.

(5) Rising groundwater.

(6) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater.

(7) Uncontaminated groundwater discharge from a sump pump, with a permit from the Department of Public Works.

(8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems, such as dewatering excavations for foundation or pipelines), crawl space pumps, or air conditioning condensation.

(9) Dye testing, provided verbal notification is given to the Department of Public Works prior to the time of the test.

(10) Unforeseen sources, on a case by case basis

The Department of Public Works may develop criteria for issuing permits under this section, based on the need to maintain capacity of the storm drain system and to protect public health, safety, welfare of the environment.

XXXXX. - Suspension of storm drain system access.

(a) The Department of Public Works may suspend storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened illegal discharge that presents or may present imminent risk of harm to the public health, safety, welfare or the environment. In the event, any person fails to comply with an emergency suspension order, the authorized enforcement agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

(b) Any person in violation of this section may have their storm drain system access terminated, if such termination would abate or reduce an illicit discharge. The Department of Public Works will notify a violator of the proposed termination of storm drain system access. The violator may petition the Department of Public Works for reconsideration and hearing. Any person who reinstates storm drain system access to premises terminated pursuant to this section, without prior approval from the Department of Public Works, shall be deemed to have violated this article.

XXXXXX. - Notification of spills.

Notwithstanding any other requirements of local, state, or federal 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 at that facility operation which is resulting or may result in illegal discharge of pollutants that person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the

person shall immediately notify the Gardner Fire and Police departments. In the event of a release of nonhazardous material, such person shall notify the authorized enforcement agency not later than the next business day. Written confirmation of all telephone, facsimile or in person notifications shall be provided to the authorized enforcement agency within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

XXXXXX. - Enforcement.

(a) Enforcement. The Department of Public Works or its authorized agent shall enforce this article, and the regulations promulgated thereunder, as well as the terms and conditions of all permits, notices, and orders, and may pursue all civil and criminal remedies for such violations.

(b) Civil Relief. If anyone violates the provisions of this article, regulations, permit, notice, or order issued thereunder, the Department of Public Works may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or compel the person to abate or remediate the violation.

(c) Orders. The Department of Public Works may issue a written order to enforce the provisions of this article or the regulations thereunder, which may include: (1) elimination of illicit connections or discharges to the storm drain system; (2) termination of access to the storm drainage system; (3) performance of monitoring, analyses, and reporting; (4) cessation of unlawful discharges, practices, or operations; and (5) remediation of contamination in connection therewith. If the Department of Public Works determines that abatement or remediation of contamination is required, the order shall set forth a deadline for completion of the abatement or remediation. Such order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the city may, at its option, undertake such work, and expenses thereof shall be charged to the violator or property owner.

Within thirty days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the city, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Department of Public Works within thirty days following a decision of the receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty days following a decision of the Department of Public Works affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of such costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. chapter 59, section 57 after the thirty-first day at which the costs first become due.

(d) Criminal and Civil Penalties. Any person who violates any provision of this article, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine not to exceed three hundred dollars for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the city in any court of competent jurisdiction.

(e) Noncriminal Disposition. As an alternative to criminal prosecution or civil action, the City of Gardner may elect to utilize the noncriminal disposition procedure set forth in G.L. chapter 40, section 21D. The Department of Public Works shall be the enforcing entity. The penalty for the 1st violation shall be one hundred dollars. The penalty for the 2nd violation shall be two hundred dollars. The penalty for the 3rd and subsequent violations shall be three hundred dollars. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

(f) Entry to Perform Duties under this Article. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Department of Public Works, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their

duties under this article and regulations and may make or cause to be made such examinations, surveys or sampling as the Department of Public Works deems reasonably necessary.

(g) Appeals. The decisions or orders of the Department of Public Works shall be final. Further relief shall be to a court of competent jurisdiction.

(h) Remedies Not Exclusive. The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law.

XXXXX. - Severability.

If any provision, paragraph, sentence, or clause, of this article shall be held invalid for any reason, all provisions shall continue in full force and effect.

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