

**Model Storm Water Ordinance Insert Language to Address
Long-term Storm Water Management Practice Maintenance**
(Waukesha County Land Resources Division)

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(Waukesha County Land Resources Division)

Notes:

- *The ordinance language provided below reflects possible additions or inserts to an existing storm water management or Storm Water Utility District ordinance to address specific issues related to long-term maintenance of storm water practices. Since local ordinances vary considerably, municipalities should consult with their legal counsel prior to incorporating any of this model language into their ordinances.*
- *The first time a defined term is used, it is italicized. See section 10 for the definition.*

Section 1. Authority for Ordinance.

This ordinance is adopted by the [community name] under the authority granted by Wisconsin Statutes section [59.693 (counties); 60.627 (towns); 61.354 (villages); 62.234 (cities)];

Note: No changes may be needed in this section since the above noted statutory authorities are the same as for adopting a storm water management ordinance, Some of the insert language may also be incorporated into a Storm Water Utility ordinance under Wisconsin Statutes Chapter 66 [sec. 66.0627 (special charges), 66.0821 (sewage and storm water systems), and 66.0827 (utility districts)].

Section 2. Findings

The [community name] further finds that:

Lack of long-term maintenance of *storm water management practices* can lead to malfunction or failure of the practice, flooding, damage to public infrastructure, nuisance conditions, property damage, reduced property value, *environmental degradation*, and other adverse impacts upstream or downstream of the *storm water management practice*.

Note: Adding this type of language to the findings section help establish the need for the other additions to the ordinance.

Section 3. Purpose and Intent

Specifically, this ordinance intends to:

Establish procedures for conducting storm water management practice inspections, documenting maintenance needs, ensuring the completion of maintenance activities, and recovering maintenance costs that may be incurred by the [community name] through enforcement of this Ordinance.

Note: To enforce the provisions of this ordinance, it is important to establish these purposes in this section of the ordinance. Any legal challenges will refer back to this section for support.

Section 4. General Administration.

(a) The [community name/department/position title], or their designee shall administer and enforce this ordinance, herein referred to as the “Administrator”.

Note: Changes may not be necessary in this section unless the municipality wants to assign storm water practice maintenance duties to different staff than those issuing and enforcing Storm Water Permits or administering a Storm Water Utility District.

(b) For the purpose of this Ordinance, and when not inconsistent with the context, words used herein in the present tense include the future, words in the singular number include the plural, and words in the plural number include the singular; the word "shall" is always mandatory and not merely permissive; and the word “may” is always permissive, but not obligatory.

Note: This ordinance language is generic, but may be help clarify the intent of some sections without needing to list all possible meanings of a word (i.e. owner vs. owner(s), etc.). Also, if this ordinance was administered through an intergovernmental agreement, this may also be the appropriate place to describe the institutional relationship and reference s. 66.0301 Wis. Stats. for the authority.

Section 5. Applicability for Storm Water Management Practice Maintenance

This section of this Ordinance applies to all storm water management practices located within the jurisdictional boundaries of the [community name] that are issued a Storm Water Permit, regardless of permit date, who issued the permit, construction date, or the design, location or ownership of the storm water management practice.

Note: This may be the beginning of a new section of the ordinance, or may be combined with existing language regarding the preparation and recording of storm water management practice maintenance agreements. Under this language, the requirements listed below would not apply to any storm water management practice that was installed prior to the issuance of Storm Water Permits within the community. This ordinance would apply to storm water practices that were issued permits by other units of government, such as lands later annexed by a city. It could also apply to other types of permits issued. The main point is that the community approved the design of the storm water practice before it went in. It may be legally and administratively problematic to apply the ordinance to storm water practices that were never permitted, due to lack of access to the site, unclear purpose or design of the facility, and lack of standards to apply to its maintenance. If older, non-permitted storm water management practices should become a problem, the community may be able to pursue regulatory actions under a nuisance ordinance.

Section 6. Inspection and Reporting

(a) Inspection. 1. Once every two (2) years, every storm water management practice shall be inspected by a *qualified inspector* to determine maintenance needs. The *owner* of the storm water management practice shall be responsible for all costs associated with the inspection. A qualified inspector shall use a minimum inspection check list provided by the Administrator for each type of storm water management practice inspected, and shall refer to any applicable as-built documentation and maintenance agreement that may be available.

2. Temporary Inspection Waiver. At the written request of the owner of any storm water management practice, the Administrator may grant a temporary waiver for an inspection under this section if the Administrator determines an inspection is not necessary to determine the condition or maintenance needs of the storm water management practice. As a condition of granting a temporary inspection waiver, the Administrator may require the owner to provide access to the site for an inspection by the Administrator, or may require some basic information to be submitted by the owner, such as digital photographs of the storm water management practice. Any temporary inspection waiver shall be provided by the Administrator in writing and shall state the end date of the waiver, which shall not exceed two (2) years.

(b) Inspection Report. The results of all inspections under (a) above shall be reported to the Administrator in an electronic format, as determined by the Administrator. At a minimum, the report shall include all of the following:

1. A scaled map or aerial photograph, showing the location of the storm water management practice in relation to surrounding identifiable features, including the nearest road;
2. A description of the type and general design features of storm water management practice;
3. A list of the applicable items inspected, at a minimum, including the checklist noted in (a) above;
4. A list of maintenance activities conducted during the inspection, if any;
5. A photograph of the storm water management practice and each item inspected, before and after maintenance, if practical;
6. A condition statement for each item inspected, comparing it to the design and as-built conditions, if available;
7. A summary of additional maintenance work recommended to be completed. For each maintenance item, the report shall include a recommended timeline for completion, estimated costs, if available, and recommendations for any additional site investigation, planning or engineering that may be needed, or any applicable technical specifications that may apply to the recommended maintenance work;
8. A statement signed and dated by the qualified inspector verifying the information provided in the report is truthful and accurate to the best professional judgment of the inspector; and
9. Any other items the Administrator determines are necessary to determine compliance with this ordinance.

Section 7. Maintenance

(a) Maintenance Required. Upon receipt of an inspection report that recommends the completion of maintenance work under section 6 above, or by order of the Administrator under section 8 below, the owner of a storm water management practice shall, at the owner's cost, complete all maintenance work recommended in the report or ordered by the Administrator within a reasonable time period, as determined by the Administrator. All maintenance work shall comply with applicable *technical standards*.

(b) Plan and Permits. If additional plans or permits are required to complete the work under (a) above, the owner shall be responsible for preparing the plans and obtaining the applicable permits.

(c) Maintenance Notification. Prior to any *land disturbing activity*, the owner of the storm water management practice shall notify the Administrator in writing of the maintenance work proposed to be completed and shall designate a contact person to represent the owner. Within ten (10) *working days* of receiving notification, the Administrator shall determine if any additional plans or permits are required prior to engaging in the proposed work and shall notify the contact person in writing.

(d) Maintenance Oversight. The Administrator may require the owner to provide, at the owner's cost, a qualified professional to oversee and be responsible for the maintenance work proposed to be completed, and verify compliance with any applicable approved plans and technical standards for grading, landscape planting, structure repair, or other work.

(e) Maintenance Report. Upon completion of maintenance work under (a) above, the owner of the storm water management practice shall submit a report to the Administrator, in an electronic format prescribed by the Administrator, accurately describing the work completed, accompanied by digital photos, any applicable professional verification required under (d) above, and any other information determined by the Administrator as necessary to determine compliance with approved plans or this ordinance.

Section 8. Enforcement

(a) General. Not complying with any requirement of this ordinance shall be deemed a violation, and shall subject the owner of any storm water management practice to enforcement action under this section. The [community name] may take any action authorized by law to enforce the requirements of this chapter. Enforcement is not limited to the actions listed in this section. The [community name] may take any combination of actions in any sequence, without regard for the order in which actions are listed in this section.

(b) Violations. Violations of this ordinance shall include but not be limited to the following:

1. Failure to complete an inspection or file an inspection report with the Administrator in accordance with Section 6 of this ordinance;
2. Failure to complete maintenance work within a reasonable time period in accordance with sub. 7.(a) of this ordinance;
3. Failure to notify the Administrator prior to engaging in a land disturbing activity in accordance with sub. 7.(b) of this ordinance;
4. Failure to prepare required plans or obtain required permits in accordance with sub. 7.(c) of this ordinance;
5. Failure to provide a qualified professional to oversee maintenance work or verify compliance with approved plans in accordance with sub. 7(d) of this ordinance;
6. Failure to file a maintenance report in accordance with sub. 7(e) of this ordinance;
7. Failure to respond to or complete the required work in any order or notice of violation under sub (c) below within a reasonable amount of time.

(c) Orders and Notices of Violation.

1. General procedures. The Administrator shall send all written orders and notices of violations under this subsection to the owner of the property where the storm water management practice is located. A copy of all orders and notices of violations shall be sent to any other known *responsible party* involved, as determined by the Administrator. The order or notice shall be hand delivered to the owner or sent to the last known mailing address, with a reasonable attempt to verify that the intended recipient received it. The owner and other recipients shall have thirty (30) days to respond to the order or notice of violation, and a reasonable amount of time to complete the work required in the order, as determined by the Administrator.

2. Inspection Order. The Administrator may order an inspection of a storm water management practice in accordance with Section 6 of this ordinance if the Administrator determines that an inspection is needed to determine compliance with applicable maintenance requirements for the storm water management practice. If the owner fails to comply with an inspection order, the Administrator may arrange for an inspection in accordance with Section 6 and charge the owner for all associated costs in accordance with sub. (d)7. below. The Administrator shall provide a copy of any inspection report produced under this section to the owner and any other known responsible party.

3. Maintenance Order. The Administrator may order maintenance of a storm water management practice based on the results of any inspection report under Section 6 or par. 2. above if the Administrator determines that:

A. Lack of maintenance may lead to the malfunction or failure of the storm water management practice; and

B. Malfunction or failure of the storm water management practice may cause damage to public infrastructure, nuisance conditions, property damage, reduced property value, environmental degradation, or other adverse impacts upstream or downstream of the storm water management practice.

If the owner fails to comply with a maintenance order, the Administrator may arrange for completion of the maintenance work, including any associated plans, permits, oversight and maintenance reporting required under Section 7, and the [community name] shall charge the owner for all associated costs in accordance with sub. (d)7. below. The Administrator shall provide a copy of any maintenance report produced under this subsection to the owner and any other known responsible party.

4. **Notice of Violation.** The Administrator shall notify the owner of any violation of this ordinance. The notice of violation shall describe the violation, remedial action required to comply with this ordinance, a schedule for all remedial action to be completed, and possible consequences for non-compliance.

(d) Enforcement Action. Any enforcement measures shall continue until compliance is achieved or as ordered by the court. The [community name] is authorized to use the following methods of enforcement in any combination thereof against any owner of a storm water management practice or other responsible party that is found to be in violation of any provision of this ordinance:

1. **Forfeiture.** Any violator shall be subject to a forfeiture of not less than \$100 or more than \$1000 plus the cost of prosecution for each violation. Each day that a violation exists shall constitute a separate offense.

2. **Stop Work Order.** Any violator is subject to an order to stop all work except that which is needed as a corrective action to bring the site into compliance.

3. **Permit Revocation.** The [community name] may revoke any applicable permit issued by [community name] that relates to compliance with this ordinance. Upon loss of the permit, all construction shall cease and the site shall be stabilized, with any costs incurred by the [community name] to be charged to the owner.

4. **Injunction.** The [community name], or any person affected by activities regulated under this ordinance, may enforce the provisions of this ordinance by a temporary restraining order, injunction and other such relief as a court may order.

5. **Declared nuisances.** Any activity carried out in violation of the provisions of this Ordinance is hereby declared to be a nuisance *per se*, and the [community name] may apply to any court of competent jurisdiction to restrain or abate such nuisance.

6. **Emergency Action.** The [community name] may enter upon the property and take any necessary emergency action if the Administrator determines that the site in violation is an immediate threat to public health, safety, welfare, the environment or downstream property. Any cost incurred by the [community name] as a result of this action shall be charged to the owner and possibly others, as described in sub. 7 below. The [community name] shall provide reasonable notice to the permit holder and other responsible party after exercising this emergency authority.

7. **Special Charges.** If the violator refuses to take the corrective action as ordered by the Administrator the [community name] may enter upon the property and take any necessary action to bring the site into compliance with an order or notice of violation. Any costs incurred by [community name] during the enforcement of this ordinance, including, but not limited to storm water management practice inspections, maintenance work, and related plans, permits and reports, shall be charged back to the owner of the storm water management practice under sec. 66.0627 Wis. Stats.

If the Administrator determines that the storm water management practice receives *runoff* from more properties than just the owner, the [community name] may impose special charges on all properties from which the Administrator determines storm water drains to the storm water management practice. Under this provision, the special charges shall be prorated to each property based on the proportion of runoff discharged to the storm water management practice from each property, following technical standards adopted by the [community name].

Note: The above provision in particular requires assistance from legal counsel experienced in administering special charges. There may be conflicting storm water maintenance documents recorded on property deeds that need to be resolved during this process. To minimize legal challenges, the community must develop consistent technical standards for applying compliance costs to all properties in the contributing watershed. A community-wide Storm Water Utility District may help resolve these issues.

8. Citation. A. The [city/village/town] elects to also use the citation method of enforcement under Section 66.0113 of the Wisconsin Statutes for violations of this ordinance, including those for which a statutory counterpart exists. The procedures contained in Section 66.0113(3) of the Wisconsin Statutes, relating to the options of an alleged violator and default are adopted and incorporated herein by reference.

B. Authority to issue a citation under this ordinance shall be limited to the Administrator. The authority delegated to such official or employees to issue citations may only be granted or revoked by the [community board/council]. This subsection does not preclude the [community name] or any authorized officer from proceeding under any other ordinance or law or by any other enforcement method to enforce any ordinance regulation or order.

C. The schedule of cash deposits including penalty assessment, jail assessment, crime lab assessment, drug/law enforcement assessment, any applicable domestic abuse or consumer information assessments or any other assessment applicable by law for use with citations issued under this section shall be as adopted by the [community name] from time to time and such schedule shall be on file in the Offices of the [community name] Police Department, [city/village/town] Clerk and Clerk of Court and receipts shall be given for cash deposits. The citation shall contain the following information:

- (i) The name and address of the alleged violator.
- (ii) The factual allegations describing the alleged violation.
- (iii) The time and place of the offense.
- (iv) The section of the ordinance violated.
- (v) A designation of the offense in such a manner as can be reasonably understood by a person making a reasonable effort to do so.
- (vi) The time at which the alleged violator may appear in court.
- (vii) A statement which, in essence, informs the alleged violator:

-That a cash deposit based on the schedule established by the [city/village/town] Board, from time to time, and on file in the office of the [city/village/town] Clerk, be made to and deposited with the Clerk of the [community

name] Circuit Court or the Sheriff's Department prior to the time of the scheduled court appearance.

-That if a deposit is made, no appearance in court is necessary unless he is subsequently summoned or the citation requests a court appearance.

-That if a cash deposit is made and the alleged violator does not appear in court, he will be deemed to have entered a plea of no contest and submitted to a forfeiture, a penalty assessment, a jail assessment crime lab assessment and drug/law enforcement assessment and any applicable domestic abuse or consumer information assessments of, if the court does not accept the plea of no contest, a summons will be issued commanding him or her to appear in court to answer the complaint.

-That if no cash deposit is made and the alleged violator does not appear in court at the time specified, the court may issue a summons or a warrant for the defendant's arrest or consider the nonappearance to be a plea of no contest and enter judgment or an action may be commenced to collect the forfeiture, penalty assessment, jail assessment, crime lab assessment and drug/law enforcement assessment and any applicable domestic abuse or consumer information assessments.

-That if the court finds that the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both, and that the violation resulted in damage to the property of or physical injury to a person other than the alleged violator, the court may summon the alleged violator into court to determine if restitution shall be ordered.

(viii) A direction that if the alleged violator elects to make a cash deposit, the statement which accompanies the citation shall be signed to indicate that the statement required under sub. 7. above has been read. Such statement shall be sent or brought with the cash deposit.

(ix) Such other information as the [city/village/town] deems necessary.

Section 9. Appeals.

(a) Authority. The Board of Appeal shall act as the review and appeal authority for any order, requirement, decision or determination under this ordinance.

(b) Procedure. The rules, procedures, duties and powers of the Board of Appeals shall be as provided in the [city/village/town] Code of Ordinances. Applicable Wisconsin Statutes shall apply to any review or appeal under this ordinance.

(c) Variances. Upon appeal, the Board of Appeal may authorize variances from the provisions of this ordinance that are not contrary to the public interest or the purpose and intent of this ordinance, and where owing to special conditions beyond the control of the applicant, a literal enforcement of this ordinance will result in unnecessary hardship.

(d) Who May Appeal. Appeals to the Board of Appeal may be taken by any aggrieved person or by an officer, department, board, or bureau of the [city/village/town] affected by any decision of the [community name].

Section 10. Definitions.

1. “**Administrator**” means the person or their designee specified under Section 4 above to administer and enforce all provisions of this ordinance.

2. “**Environmental degradation**” means adverse impacts on the water quality of lakes, streams, groundwater or wetlands; or soil erosion, flooding or other damages to woodlands, streambanks, environmental corridors, or other environmentally sensitive areas, as defined in the Storm Water Ordinance.

3. “**Land disturbing activity**” means any man-made alteration of the land surface that may expose the soil to erosion, result in a change in the topography or vegetative cover, or change a structural component of a storm water management practice, such as inlets or outlets, earthen berms, spillways, rock riprap, water level control, stone trenches, pipes or other related components. Land disturbing activity includes, but is not limited to removal of a vegetative cover from the soil, excavating, filling, grading and dewatering of a storm water management practice.

4. “**Owner**”, means any person(s) or entity holding fee title to the property upon which the storm water management practice is located, as recorded at the Waukesha County Register of Deeds.

5. “**Qualified inspector**” means a landscape architect, professional hydrologist, professional engineer, or other person experienced in storm water management practice design, installation and maintenance. The Administrator shall have the right to reject any inspection report, maintenance report, compliance verification, and other materials involved in demonstrating compliance with this ordinance if the materials submitted do not meet [community name] standards for accuracy and professionalism.

6. “**Responsible party**” means any person or entity holding fee title to the property or acting as the owners representative, including any person, firm, corporation or other entity performing services, contracted, subcontracted or obligated by other agreement, or by designation of the Administrator under sub. 8.(d)7. above to design, implement, inspect, verify or maintain storm water management practices under this Ordinance.

7. “**Runoff**” means water from rain, snow or ice melt, or dewatering that moves over the land surface via sheet or channelized flow.

8. “**Storm water**” has the same meaning as the term “runoff”.

9. “**Storm water management practice**” means any permanent storm water management facility designed to collect or manage the quantity or quality of storm water runoff. Some examples include, but are not limited to: wet or dry detention basin, infiltration trench or basin, bio-retention basin, stilling basin, sand filter, green roof, rain garden, filter strip, artificial wetland, or any combination of these or other permanent storm water management device, as determined by the Administrator.

10. “**Technical standard**” means a document that specifies design, predicted performance, construction or testing methods, material use, and operation and maintenance requirements for a storm water management practice. Examples include but are not limited to those published by the Wisconsin Department of Natural Resources, the USDA – Natural Resource Conservation Service, and the [community name]. A technical standard may also reflect the procedures used by the Administrator to prorate special charges to watershed properties under sec. 8(d)7. of this Ordinance.

11. **“Working day”** means any day the office of the Administrator is routinely and customarily open for business, and does not include Saturday, Sunday and any official county holiday or furlough days.

Section 11. Validity.

(a) Conflicting ordinances. This ordinance supersedes all provisions of an ordinance previously enacted by [community name] relating to the long-term maintenance of storm water management practices.

(b) Declaration of severability. The several sections, subsections and paragraphs of this Ordinance are hereby declared to be severable. If any section, subsection, or paragraph or subparagraph of this Ordinance shall be declared by a decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of the Ordinance, or of the section of which the invalid portion or paragraph may be a part.