ORDINANCE NO. 16,073

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by adding Chapter 42, Article XI, Sections 42-558, 42-559, 42-560, 42-561, 42-562, 42-563, 42-564, 42-565, 42-566, relating to stormwater management standards for development and redevelopment for grading permits, site plans, and plat approvals.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by adding Chapter 42, Article XI, Sections 42-558, 42-559, 42-560, 42-561, 42-562, 42-563, 42-564, 42-565, 42-566, relating to stormwater management standards for development and redevelopment for grading permits, site plans, and plat approvals, as follows:

ARTICLE XI. STORMWATER MANAGEMENT STANDARDS FOR DEVELOPMENT AND REDEVELOPMENT FOR GRADING PERMITS, SITE PLANS AND PLAT APPROVALS

Sec. 42-558. Adoption of Iowa Stormwater Management Manual.

The City of Des Moines hereby adopts the Iowa Stormwater Management Manual (ISWMM), as such may be amended from time to time, for management of stormwater. The ISWMM is written as a guideline recommending certain techniques and advising against others in order to accomplish goals related to managing water volume and quality. Therefore, where the ISWMM states a design element or technique is "Essential" it is required by the City of Des Moines. Where ISWMM states a design element or technique is "Target" such design element or technique is desired by the City of Des Moines and every effort shall be made to accomplish. Where ISWMM states a given design element or technique is "Advisory" this design element or technique shall not be used within the City of Des Moines.

In cases where ISWMM does not speak to a stormwater issue, such as sizing or installation of pipes, the City of Des Moines follows the Iowa State-wide Urban Design and Specifications (SUDAS) as modified by City of Des Moines General Supplemental Specifications to SUDAS or streambank stabilization in the Iowa River Restoration Toolbox as applicable.

It is intended that this article be construed to be consistent with Chapter 42, Article II, Grading, Soil Erosion and Construction Site Runoff Control, Chapter 50 Floodplains, Chapter 106 Subdivisions, Chapter 135 Planning and Design, as well as any other applicable local, state or federal regulation**.**

The requirements of this article should be considered minimum requirements, and where any provision of this article imposes restrictions different from those imposed by any other section of this Code, or any other governmental rule or regulation, or other provision of law, whichever provisions are more restrictive shall take precedence.

Sec. 42-559. Definitions.

Definitions in this section, other than those defined below, shall have the meaning as set out in the Iowa Stormwater Management Manual. The definitions found in this article shall apply to the provisions of this article, provided, however that the following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means a property owner or his or her representative who has filed an application for development or redevelopment pursuant to chapters 42, 106 and 135 of this Code.

Benefitted Property means the property identified in the Stormwater Management Plan and in the Stormwater Facility Maintenance Agreement as being served by Best Management Practices.

Best Management Practices or BMP means physical stormwater practices or structures determined to be practices used to reduce pollutant loads, discharge volumes, peak flow discharge rates, and detrimental changes in stream temperature that affect water quality and habitat. BMPs can be structural or non-structural. Non-structural BMPs focus on preserving open space, protecting natural systems, and incorporating existing landscape features such as wetlands and stream corridors into a site plan to manage stormwater at its source. Structural BMPs include constructed ponds, pavement systems, oil/grease separators, planted vegetative areas such as grassed swales, bioretention and other infiltration based practices, outlet structures and other constructed facilities intended to manage stormwater.

Buffer means a vegetative area, including trees, shrubs, and herbaceous vegetation, that exists or is established to protect a stream system, lake, or reservoir area.

Building means the same definition as in Section 106-2 of this Code, with the addition that structures not intended for shelter such as a pergola, trellis, gazebo and any other constructed obstacle shall also be considered to be buildings and shall be reviewed for impact on Stormwater Management.

City engineer means the city engineer or his or her duly authorized designee.

City stormwater requirements means the standards, sizing criteria, BMPs and other requirements established in this section.

Dedication means the deliberate appropriation of property by its owner for general public use.

Developer means a person, persons, or entity who undertakes land disturbance activities.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations whether as a single site or part of a larger common plan of development.

Director means the director of the city public works department or his or her duly authorized representative.

Drainage easement means a legal right granted by a landowner to a grantee allowing the

use of private land for Stormwater Management purposes.

Iowa Stormwater Management Manual or ISWMM means the Iowa Stormwater Management Manual publication, by whatever name, as amended from time to time by Iowa Department of Natural Resources in collaboration with Iowa Stormwater Education Program.

Land disturbance activity means any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, tree clearing, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

Landowner means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

Native vegetation means vegetation originating naturally in the central Iowa region of the state. Native vegetation is not to be confused with all existing vegetation. Area preserved in native vegetation shall not contain noxious or invasive weeds as identified by the Iowa Code Chapter 317.1A.

Redevelopment means any manmade change to a previously developed site, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations whether as a single site or part of a larger common plan of development.

Responsible Party means the person or entity responsible for the maintenance of the Stormwater Management facilities pursuant to the SFMA.

Stormwater Facility Maintenance Agreement or SFMA means that covenant and easement agreement as described in section 42-564 that has been approved in writing by the city engineer which is binding on all subsequent owners of land and Benefitted Property served by the BMPs and is recorded in the applicable county recorder's office, including those SFMAs and Development Agreements in existence on February 1, 2022.

Stormwater Management means the use of BMPs to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates, and improve stream quality.

Stormwater Management Plan" or SWMP means the plan demonstrating how Stormwater Management will be accomplished as described in section 42-562.

Stormwater Pollution Prevention Plan or SWPPP means a plan that is designed to minimize the accelerated erosion, sediment, and other pollutant runoff at a site before, during and after construction activities.

Surface Water Flowage Easement or Overland Flowage Easement means an easement granted to the city which includes a legally described flow path where stormwater from large storm events can be transported across property not owned by the city. No Buildings or obstructions, including without limitation, fences, trees, bushes, or vegetation may be constructed or placed within the easement that block the flow of water without the prior written approval of the city engineer.

Sec. 42-560. Applicability.

Stormwater Management will be deemed necessary in the following circumstances:

(a) New Development: Any new development of land adding more than 10,000 square feet of new impervious surface shall provide Stormwater Management as described in this article. This threshold is a cumulative amount of new square footage and may be reached over time

in increments. At such time that a development site exceeds 10,000 cumulative square feet of new impervious surface the site will be required to come into compliance with this article.

(b) Redevelopment: Any redevelopment adding more than 10,000 square feet of new impervious surface but disturbing less than 50% of the site shall provide Stormwater Management at the Water Quality Volume standard and shall be asked to also meet the Channel Protection standard or demonstrate why doing so is infeasible. This threshold is a cumulative amount of new square footage and may be reached over time in increments.

(c) Any redevelopment disturbing 50% or more of a site shall be required to meet the same Stormwater Management standards as a new development. This threshold is a cumulative amount of new square footage and may be reached over time in increments.

(d) For purposes of this section, impervious areas and surfaces shall be determined using all building permits issued by the city's permit and development center, county assessor's records, and other applicable city records. Impervious area added prior to September 6, 1977 will not be counted towards the 10,000 square feet and 50% redevelopment requirements.

(e) Exemptions: The following activities shall be exempted from meeting the Stormwater Management standards of this ordinance:

(1) New development adding less than 10,000 square feet of new impervious surface.

(2) Redevelopment adding less than 10,000 square feet of new impervious surface and less than 50% site disturbance and if in compliance with a previously approved SWMP.

(3) Removal and replacement of impervious surface exactly matching location and area.

(4) Logging or agricultural activity that is consistent with an approved soil conservation plan or timber management plan prepared or approved by the appropriate agency, as applicable.

(5) Additions or modifications to single family structures.

(6) Repairs to any Stormwater Management BMP deemed necessary by the city.

Sec. 42-561. Stormwater Standards.

When applicable as described below, all development and redevelopment sites shall meet the requirements of the Unified Sizing Criteria, as described within the Iowa Stormwater Management Manual (ISWMM) and as noted below, unless Stormwater Management has been designated for an alternative off-site location or some other exemption or allowance has been prior approved by the City Engineer.

(a) Recharge Volume Standard: To effectively mitigate the effects of urban land use changes, post-development increases in stormwater runoff need to be minimized. Structural or non-structural practices or techniques shall be employed to minimize the amount of stormwater runoff by capture, infiltration, evapotranspiration or reuse the runoff expected to the greatest extent possible. The target goal of this criteria is to eliminate runoff created by the 1-inch rainfall event, however that may not be achievable at all sites. Site improvements where the requirements of this ordinance would apply should identify the practices and techniques to be used and quantify how far they would go toward achieving that target goal.

(b) Water Quality Volume Standard: To reduce potential increases in downstream water pollution, practices or techniques shall be employed that capture and treat runoff from a 1.25" rainfall event, as further defined within the ISWMM. This standard would address approximately 90% of the rainfall events that occur in Central Iowa.

(c) Channel Protection Standard: As urban developments occur, some of the largest increases in runoff rate and volume (by percentage increase) occur during the smaller, more frequently occurring storm events. For this reason, practices or techniques shall be employed that provide extended detention of the 1-year, 24-hour storm event – with release rates established as per methods defined within the ISWMM manual to provide a minimum drawdown period of 24 hours. This standard would address approximately 98% of the rainfall events that occur in Central Iowa.

(d) Overbank Protection Standard: To minimize surcharge of downstream storm sewer systems and reduce the frequency of flash flooding along urban streams and tributaries, practices and techniques shall be employed that limit allowable peak release rates that are anticipated to occur post-development during the 2-, 5- and 10-year, 24-hour storm events to levels no greater than those expected to occur from natural conditions a given site from a similar storm event (e.g. the post-development release rate from a 5-year storm event will be no greater than the natural release rate from a 5-year storm event).

(1) Natural conditions are defined as meadow in good condition, with times of concentrations calculated and Curve Numbers selected based on those natural surface conditions and drainage patterns. Curve Numbers shall be selected based on the Hydrologic Soil Group for site soils, but the weighted Curve Number used to determine allowable release rates for the site to be served by the detention practice shall not exceed a Curve Number of 58 unless demonstrated by a geotechnical report that a higher curve number is warranted, however, in no case shall the curve number exceed 71.

(2) Soil Group information shall be determined from current County Soil maps as available through the NRCS. If a Soil Group type has not been identified for a given location, the natural condition shall be assumed to be Hydrologic Soil Group B and the post-developed condition shall be assumed to be Hydrologic Soil Group C, unless geotechnical studies are provided for City review that provide evidence for use of another Soil Group for analysis.

(e) Extreme Protection Standard: To reduce the frequency and impacts caused by larger flood events, practices and techniques shall be employed that limit allowable peak release rates that are anticipated to occur post-development during the 25-, 50- and 100-year, 24-hour storm events to levels no greater than those expected to occur from natural conditions on a given site from a similar storm event (e.g. the post-development release rate from a 100-year storm event will be no greater than the natural release rate from a 100-year storm event).

(1) Natural conditions shall be defined as previously noted, with times of concentration and Curve Numbers calculated or selected on that basis.

(2) The post-development peak release rate from these events shall also not exceed the peak rate expected to be caused by the 5-year storm event under existing site

conditions. Existing conditions are defined as those that are present at the time that the site improvements are proposed.

(3) Detention of events larger than the 100-year storm event are not required, however, the design of auxiliary spillways should safely convey flows from the 500-year, 24-hour storm event or per DNR Dam Codes and requirements.

(4) Surface water flowage easements shall be provided as needed to reserve a safe and clear path for the width of expected concentrated flows for this type of event. Detention events larger than the 100-year can occur and surface water conveyance for those events should be considered.

Sec. 42-562. Stormwater Management Plan (SWMP) Requirements.

(a) The purpose of a SWMP is to identify in detail how stormwater runoff will be managed from a site including specifications on what Stormwater Management techniques and facilities will be used and where they will be located. It is the policy of the City of Des Moines that Stormwater Management is planned and designed early in the development process so that developments are built in harmony with nature versus forcing Stormwater Management to fit a development site design.

(b) A SWMP, prepared and certified by a professional engineer, architect, or landscape architect licensed in the state and familiar with Stormwater Management methods and techniques, must be submitted by the Applicant for approval by the City Engineer.

(c) The following items must be submitted with grading plan, site plan, or plat applications:

(1) Report and Narrative Information.

a. Cover sheet including project name, location, engineer and developer contact information.
b. Table of contents indicating sections and page numbers
c. Professional certification from Iowa Licensed Engineer
d. Summary of any previous studies or master plans
e. Natural Conditions and runoff analysis summary
f. Description and explanation of storm water analysis (i.e. computer generated hydrographs.
g. Summary of SWMP detailing compliance with design standards
h. Natural Resources Inventory
    i. Soil conditions (karst, hydric, etc.)
    ii. Forest cover
    iii. Topography
    iv. Wetlands/Prairie Potholes
    v. Streams and floodplains
    vi. Review of FEMA FIRM maps
    vii. Other Native Vegetative Areas
    viii. Environmentally Sensitive Areas
        1. Archeological and/or cultural resources
        2. Wildlife areas

ix. Wellhead protection and drinking water supply management areas
x. Areas of existing stormwater storage.

(2) Soil Management Plan.

The intent of a Soil Management Plan is to demonstrate what is to be done with soil on site, such as, determining where soil will be stockpiled and eventually spread and used on site. Depending on intended use of soil to meet stormwater requirements, the following items may be applicable:

a. Review NRCS or USGS soils maps or geotechnical reports if applicable.
b. Avoid disturbance of higher quality soils to maximum extent possible.
c. Avoid disturbance activities under the drip line of any trees intended to be preserved.
d. Identify where topsoil is to be stripped, stockpiled and replaced.
e. Identify locations where Soil Quality Restoration techniques are proposed to be used to manage water quality treatment requirements.
f. Geotechnical reports, if applicable.
g. US Army Corps of Engineers Section 404 Permit, if applicable.
h. Local or DNR Floodplain Development Permit, if applicable.

(3) Dams.

Where dams are proposed in any subdivision, they shall be designed by a registered professional engineer. A preliminary engineering report including soil investigations and design procedures shall be submitted to the city engineer for review. When such dam is constructed, the subdivider's engineer shall certify to the city engineer that the dam is constructed in accordance with the approved plans and specifications.

(4) Calculations.

Provide exhibits demonstrating how calculated and assumptions made, including:

a. Runoff coefficient and/or curve number calculations (allowable release rates)
b. Time of concentration calculations
c. Water volume infiltrated
d. Water Quality Volume calculations required and proposed
e. Channel Protection Volume calculations required and proposed
f. Large storm (100 year) calculations detention volume required and proposed
g. Storm system capacity calculations (outlet control, pipe capacity, swale/ditch capacity, erosion control and emergency dissipation measures, downstream capacity calculations)
h. Runoff and routing hydrographs
i. Floodplain modeling if applicable and base flood elevations.

(5) Project Summary.

a. Identify method(s) and location of proposed post-construction Stormwater Management BMPs
    i. Map indicating drainage area of each post-construction BMP
b. Discuss how proposed management methods comply with requirements
c. Post-construction BMP maintenance plan
    i. Operation and maintenance of post-construction BMPs
d. Identify post development stormwater impacts to adjacent properties and mitigation measures for any potential impacts.
e. Offsite / downstream conditions and runoff analysis if applicable.

(6) Maps.
   a. Existing drainage contour map illustrating and labeling pre-development drainage patterns, basins, swales/ditches, creeks, river, streams, etc. and any other relevant on-site or off-site information.
   b. Proposed drainage contour map illustrating and labeling post development drainage patterns, areas for which Stormwater Management will be provided, conveyance methods (pipes, swales, etc.) and any other relevant on-site or off-site information.
      i. Location of existing and proposed buildings, roads, parking areas, utilities and
      ii. Stormwater Management facilities and erosion/sediment control, easements, ROWs
      iii. Preliminary stormwater storage estimation
      iv. Proposed land use
      v. Existing and proposed drainage patterns
      vi. Limits of clearing and grading.
   c. Map(s) identifying where stormwater runoff enters and leaves the project limits.
   d. Watershed area delineations
   e. Floodplain delineations
   f. Natural Resources Inventory Map.

(7) BMP operation and maintenance plan.
   a. The Applicant shall provide to the City an operation and maintenance plan detailing the operation and maintenance and repair procedures for all stormwater BMPs. These plans will identify the parts of components of a stormwater BMP that will need maintained. The operation and maintenance plan will also identify the Responsible Party.
   b. The ongoing operation and maintenance procedures must be documented in the SFMA.

Sec. 42-563. Stormwater Management Plan Application Process.

(a) A SWMP must be submitted by the Applicant for approval by the city engineer.

(b) The city engineer shall review the SWMP for conformance with the objectives set forth in this article. Each plan will be evaluated on its own merits according to the particular characteristics of the project and the site to be developed.

(c) The city engineer shall approve or disapprove a complete SWMP per grading permit, site plan, and/or plat approval process, as applicable.

(d) Sustainable stormwater management practices identified in the ISWMM, such as rain gardens, bioswales, permeable pavement, or other such technologies, may be utilized and may be required when determined reasonably practicable by the city engineer.

(e) An Applicant desiring a full or partial waiver of compliance with this section may make a written application on forms supplied by the city engineer. Waiver applicants must show that incorporation of stormwater management standards set forth in this article are not possible to install due to exceptional physical limitations of the site. If a waiver is granted, the Applicant must develop and incorporate other measures, which the Applicant can demonstrate to the satisfaction of the city engineer comply with the requirements of this article to the extent reasonably possible. Requests for waivers shall be granted or denied, in writing by the city engineer.

(f) Prior to approval of the subdivision plat, site plan, grading permit or SWMP, or the issuance of any permit that has a SWMP requirement, the Applicant or property owner must execute a SFMA that shall be binding on all Benefited Property in compliance with section 42-564.

(g) Prior to approval and recording of the SFMA, the Applicant and property owner on which the BMPs are located shall be responsible for the maintenance of the BMPs to their design capacity unless or until the city engineer agrees in writing to a transfer of such responsibility to another person or entity or Responsible Party.

Sec. 42-564. Stormwater Facility Maintenance Agreement (SFMA) Requirements.

(a) The Stormwater Facility Maintenance Agreement is comprised of a maintenance/repair easement and a maintenance agreement and permanent covenant approved by the city engineer. The SFMA shall be recorded with the appropriate county recorder's office by the Applicant or property owner at their expense and they shall provide a copy of the recoded SFMA to the city engineer. The SFMA shall reference the operation and maintenance requirements for the BMPs included in the SWMP and provide for periodic inspections by the Responsible Party to ensure that the BMPs are maintained in proper working condition to meet the SWMP requirements. If operation and maintenance requirements are updated, the current version will be appended to the SWMP that is on file with the city.

(b) Maintenance and repair easement requirements.

The easement shall provide for access to the BMPs and the Benefitted Property at reasonable times for inspection and maintenance purposes by the Responsible Party and for the city or the city's designee for inspection for maintenance purposes, at the city's discretion, to ensure that the BMPs are maintained in proper working condition to meet the SWMP requirements, and to the city for regular or special assessments of property owners to ensure that the BMPs are maintained in proper working condition.

(c) Maintenance Agreement and Covenant Requirements.

The maintenance agreement shall provide that maintenance of all BMPs shall be ensured through the creation of a maintenance covenant that must be approved by the city engineer and recorded as part of the SFMA. As part of such covenant, a schedule shall be developed for when and how often maintenance will occur to ensure proper function of the stormwater BMPs. The covenant shall also include plans for periodic inspections to ensure proper performance of the BMPs. As determined to be needed by the city engineer or director, the maintenance agreement and covenant may require the following:

(1) Removal of litter, sediment and debris.

(2) Requirements for vegetation management. The vegetation shall not be removed or changed without the prior written consent of the city engineer or director except for BMPs that must be moved in accordance with the SWMP.

(3) No yard debris as defined in Chapter 98 of this Code, soil or rocks or concrete, or similar materials, shall be placed within a BMP without the prior written consent of the city engineer or director.

(4) The area of the BMPs shall not re-graded without the prior written consent of the city engineer or director.

(5) Any action that will render a BMP inoperable or will significantly decrease its functioning is prohibited.

Sec. 42-565. Stormwater Facility Maintenance Agreement Process.

(a) Responsible Party Inspections.
All BMPs must undergo, at the minimum, an annual inspection by the Responsible Party to document maintenance and repair needs and ensure compliance with the requirements of this article. Any required maintenance identified by inspection must be corrected by the Responsible Party within 30 days of identification of such maintenance and repair needs. In the event the identified maintenance or repair cannot be completed within 30 days of notice or identification, the Responsible Party must contact the city with 30 days of notice to explain why repair or maintenance cannot be completed within 30 days and provide a plan acceptable to the city engineer or director for completing repair or maintenance.

(b) All Responsible Party maintenance records must be maintained by the Responsible Party for at least five years.

(c) The inspection and maintenance requirement may be increased as deemed necessary by the city engineer or director to ensure proper functioning of the BMPs after a city inspection has been completed and a violation has been documented pursuant to section 42-566(b).

(d) City Inspection of Stormwater BMPs.
Inspection programs may be established by the city engineer or director on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of State or Federal water or sediment quality standards or the NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs, and evaluating the condition of BMPs.

(e) Right of Entry for Inspection.
When any new stormwater BMP is installed on private property, or when any new connection is made between private property and a public drainage facility as defined in section 42-477 of this chapter, sanitary sewer or combined sewer, the property owner shall grant to city the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when city has a reasonable basis to believe that a violation of this article is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this article.

(f) Records of Installation, Maintenance and Repair Activities.
Upon request, the Responsible Party shall submit to the city engineer a maintenance and inspection report including all records of the installation and of all maintenance and repairs conducted for up to the previous 5 years. These records shall be made available to the City during inspection of the SBMP and at other reasonable times upon request.

(g) As-Built Drawings

1. At the time of final completion of the BMP, as-built drawings shall be prepared and provided to the city for all BMPs to determine compliance with the SWMP design.
2. If deemed necessary by the city during the life of the BMPs, the city engineer may request updated as-built drawing of BMPs to determine compliance with the SWMP design.
3. At such time as a property owner or Applicant, including developers, transfers control of BMPs to a homeowner association, the city or other Responsible Party, the developer shall provide notice to the city engineer and the city may require the responsible party complete updated as-built drawings of the BMPs, and the city shall have the right to confirm that the BMPs are in compliance with the SWMP design. prior to transfer. A maintenance bond or letter of credit shall be provided to the city for any required work to stormwater BMPs to correct to as-built standard prior to transfer of ownership or responsibility. After transfer of ownership or responsibility, the bond or letter of credit will be released by the city.

Sec. 42-566. Enforcement.

(a) The department of public works or city engineer may enter at all reasonable times and as often as necessary in or upon any private property for the purpose of investigating BMP which may be maintained in violation of this article and to determine compliance with this article; including the right to take samples and examine and copy records and the performance of additional duties defined by state and federal laws. The requirements of this article shall be enforced by the department of public works or the city engineer. The director or city engineer shall have full authority to declare a violation and issue notices provided for in this article and to take action as required and permitted by this article. The director or city engineer shall have all powers and authority necessary to cause the abatement of violations under this article. The director shall have the authority to terminate access to the municipal storm water system of a person or entity violating this article if such termination would abate a violation pursuant to this article.

(b) The city engineer or director or his designee is authorized to issue a notice of violation imposing an administrative penalty upon any person or entity or Responsible Party who fails to perform an act required by this section, including the Benefitted Property owner(s) or the property owners or parties responsible for the maintenance in accordance with the SFMA for the cost of repair work.

1. The administrative penalty for such violations shall be as provided in the schedule of administrative penalties adopted by the city council by resolution.
2. Notice of violation, with the applicable penalty for such violation noted thereon, shall be issued to the violator by the director or city engineer. Service of the notice may be by regular mail or delivery in person. Penalties shall be paid in full within 30 days of the issuance of the notice.
3. Such notice shall include:
    i. a statement that the violator has a right to appeal regarding the violation; and

ii. a statement that the violator may file a written request for hearing with the director or city engineer, as applicable, or his or her authorized representative. The appeal must be made within 30 days of issuance of the notice and identify the notice of violation appealed from, state the basis for the appeal, and the violator's name, mailing address, email address, and daytime telephone number. The director or city engineer, or his or her authorized representative will review the appeal on the basis of the record and will notify the violator by mail, telephone or email of the decision as promptly as is reasonably possible. The appeal shall stay payment of the administrative penalty until the appeal is decided. If issuance of the notice of violator is upheld, the violator shall have 30 days from issuance of the appeal decision to pay the administrative penalty.

4. Penalties assessed pursuant to notice of violation shall be paid by the violator in full as directed in the notice within thirty (30) days of its issuance. Corrective action as required pursuant to notice of violation shall be completed by the violator as directed in the notice within thirty (30) days of its issuance. The public works department or engineering department, as applicable, shall maintain a record of all administrative penalties charged or other enforcement actions taken.
5. The administrative penalties set out in the schedule of administrative penalties shall be charged in lieu of the fines and penalties provided for in section 1-15 of this Code, unless the violator refuses to correct the violation and pay the scheduled administrative penalty, or the director determines that immediate prosecution pursuant to misdemeanor or municipal infraction prosecution pursuant to section 1-15 is, in view of the particular circumstances of the case, necessary to achieve compliance with the requirements of this article.

(c) Recipients of notice of violation imposing an administrative penalty pursuant to this section whose appeal pursuant to this section is denied by the director or city engineer, or his or her designee, may request an administrative hearing in writing, which is either hand-delivered to the city clerk no later than seven (7) calendar days from the date of the decision, or sent to the city clerk via regular mail postmarked by official U.S. postal service cancellation and not by postage meter no later than seven (7) calendar days from the date of the decision. Such request for hearing shall be made pursuant to Section 42-358.02(b). The conduct of such administrative hearing shall be as set forth in sections 42-358.02(c)(d) and (e). If the recipient of the notice of violation chooses to have an agent duly authorized by the recipient to file a request for an administrative hearing and/or to represent him/her at the hearing, such agent must be identified in a notarized statement filed with the request for administrative hearing.

(d) Failure to maintain BMPs in violation of this article or the SFMA are deemed to constitute a public nuisance.

(e) If the director or the city engineer determines that a violation of this article, has occurred or is occurring, such nuisance may be abated and enforced against and the costs of such abatement invoiced and assessed as set forth in and pursuant to article VI of chapter 42 of the Code and this section. The city may correct a violation by performing all necessary work to place the BMPs in proper working condition after providing the Responsible Party with notice of the need to abate such nuisance, that if not abated the city will cause such

abatement, the costs of abatement and that the city will assess the costs for such abatement. The notice shall be provided to the Benefitted Property owner(s) or the property owners or parties responsible for the maintenance in accordance with the SFMA and provide at least a 24 hour period for abatement of the nuisance prior to the city's abatement action, provided, however, that the city may cause such abatement without prior notice in the event that such failure to repair presents an imminent risk of harm to person or property, and the director or city engineer declares an emergency on account thereof.

(f) When the city abates the nuisance pursuant to article VI, chapter 42, the city may assess the actual costs of such abatement to the Benefitted Property owner(s) or the property owners or parties responsible for the maintenance in accordance with the SFMA for the cost of repair work, in addition to taking any other action provided for in this section.

(g) Any person who fails to perform an act required by this article or who commits an act prohibited by this article or who resists the enforcement of any section of this article shall be guilty of a misdemeanor punishable by a fine as provided in section 1-15 of this Code.

(h) Any person who fails to perform an act required by this chapter or who commits an act prohibited by this chapter or who resists the enforcement of any section of this article shall be guilty of a municipal infraction punishable by a civil penalty as provided by section 1-15 of this Code.

(i) The public works department or city engineer may enter at all reasonable times in or upon any or public private property to inspect and investigate work being done which is not in compliance with the requirements of this article and to inspect and investigate conditions and practices which may be a violation of this article. The director or city engineer shall have the authority to issue an order in writing to the owner of the property and/or any person engaged in such activities on the property, ordering such person or persons to cease and desist from construction activities due to failure to implement or maintain the SWMP or to maintain any BMPs therein identified. The order shall be delivered by personal service unless any of the above cannot be found within the city, in which event notice shall be by ordinary mail addressed to the person's last known address and by posting a copy of the notice in a conspicuous place at the construction site.

1. Construction activities shall cease on the date stated in the city engineer's or director's order and shall not recommence without the prior written approval of the city engineer.
2. The person to whom the notice is directed may make a written request to the city engineer or director, as appropriate, for a reconsideration and hearing on the cease and desist order and/or abatement order within ten days from the issuance of the order, provided, however, that work on such property shall cease pending the outcome of the hearing.
3. The request for hearing shall (1) contain the address of the person requesting the hearing and to which all further notices shall be mailed or served, and (2) shall state the basis for the appeal.
4. The hearing shall be scheduled to be held as soon as practicable and no later than 14 days after the request for hearing was filed with the city engineer or director. The person requesting the hearing shall be notified in writing or by telephone of the date and place of such hearing at least three days in advance thereof. At such hearing the city engineer

or director and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence as necessary.

5. If the city engineer or director determines that the violation has created a public nuisance, the city engineer may order abatement of the nuisance by whatever means the city engineer or director may determine appropriate.
6. The determination of the city engineer or director shall be a final administrative decision.
7. In the event that the abatement as ordered by the city engineer or director is not performed, the city engineer or director may cause the abatement of the nuisance and assess the costs of abatement to the property in compliance with this article.

(j) The city is not precluded from seeking alternative relief from the court, including an order for abatement or injunctive relief, in the event that the city files a misdemeanor citation, notice of administrative penalty, and/or files a municipal infraction for the same violation of this article.

Section 2. This ordinance shall be in full force and effect on and after its passage and publication on February 1, 2022.

FORM APPROVED:

Ann DiDonato, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest: I, P. Kay Cmelik, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an Ordinance (Roll Call No. 21-1697), passed by the City Council of said City at the meeting held on November 1, 2021 and signed by the Mayor on November 1, 2021 and published and provided by law in the Business Record on November 19, 2021 Authorized by Publication Order No. 11722.

P. Kay Cmelik, City Clerk