

## STORMWATER MANAGEMENT ORDINANCE

This ordinance is adopted for the City of Galax to comply with the Code of Virginia § 62.1-44.15:27; to establish a framework for the administration, implementation, and enforcement of the provisions of the Virginia Stormwater Management Act; to delineate the procedures and requirements for a VSMP permit; and to establish a Stormwater Utility Fee.

### 1-1. PURPOSE AND AUTHORITY.

- (a) The purpose of this Ordinance is to ensure the general health, safety, and welfare of the citizens of the City of Galax and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.
- (b) This ordinance is adopted pursuant to § 62.1-44.15:24 et seq. of the Code of Virginia and by the provisions of § 15.2-2114, Code of Virginia, as amended, to establish a utility to support stormwater management activities consistent with the Virginia Stormwater Management Act, § 62.1-44.15.24, et seq. , Code of Virginia, as amended, and other state and federal stormwater regulations.

### 1-2. DEFINITIONS.

In addition to the definitions set forth in 9VAC25-870-10 of the Virginia Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in this Ordinance have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

"*Administrator*" means the VSMP authority including the City of Galax Engineering Department.

"*Administrative Guidance Manual*" means the City of Galax Administrative Guidance Manual, which is a documentation of policies and procedures for documentation and calculations verifying compliance with the water quality and quantity requirements, review and approval of Stormwater Pollution Prevention Plans and Stormwater Management Plans, site inspections, obtaining and releasing bonds, reporting and recordkeeping, and compliance strategies for reviews, enforcement, and long-term maintenance and inspection programs.

"*Agreement in lieu of a stormwater management plan*" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

"*Applicant*" means any person submitting an application for a permit or requesting issuance of a permit under this Ordinance.

"*Best management practice*" or "BMP" means schedules of activities, prohibitions of

practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

*“Common plan of development or sale”* means a contiguous area where separate and distinct construction activities may be taking place at different times on different schedules. For the purpose of this Ordinance, the term shall not include individual lots within existing residential, commercial or industrial site plans and subdivision plans that were platted prior to July 1, 2004, and which are considered separate land-disturbing activities.

*“Control measure”* means any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

*“Clean Water Act”* or *“CWA”* means the federal Clean Water Act (33 U.S.C §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

*“Department”* means the Department of Environmental Quality.

*“Developed Property”* means real property that has been altered from its "natural" state by the addition of any improvements such as buildings, structures and other impervious surfaces. For new construction, property shall be considered developed pursuant to this section upon issuance of the certificate of occupancy (CO), temporary CO or equivalent.

*“Development”* means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silvicultural purposes.

*“Director”* means the Director of the Department of Environmental Quality.

*“General permit”* means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (9VAC25-880-1 et seq.) of the Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

*“Impervious surface”* means a man-made surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious cover includes, but is not limited to, roofs, buildings, concrete, asphalt, gravel surfaces that are or may become compacted, or managed or artificial turf athletic fields that have an underdrain system. An impervious surface includes that portion of the land surface covered by an elevated structure, such as a bridge or deck, regardless of whether the land surface itself remains pervious or impervious.

*“Land disturbance”* or *“land-disturbing activity”* means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in Section 1-3 (b) of this Ordinance.

*"Layout"* means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

*"Minor modification"* means an amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

*"Non-residential Property"* means a tax parcel with three (3) or more residential units or classified as a non-residential use and/or zoning.

*"Operator"* means the owner or operator of any facility or activity subject to regulation under this Ordinance.

*"Permit"* or *"VSMP Authority Permit"* means an approval to conduct a land-disturbing activity issued by the Administrator for the initiation of a land-disturbing activity, in accordance with this Ordinance, and which may only be issued after evidence of general permit coverage, if such statement is required, has been provided by the Department.

*"Permittee"* means the person to whom the VSMP Authority Permit is issued.

*"Person"* means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

*"Regulations"* means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 9VAC25-870, as amended.

*"Residential Property"* means a tax parcel with up to two (2) residential units; no other land use is permitted.

*"Site"* means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity.

*"State"* means the Commonwealth of Virginia.

*"State Board"* means the State Water Control Board.

*"State permit"* means an approval to conduct a land-disturbing activity issued by the State Board in the form of a state stormwater individual permit or coverage issued under a state general permit, if such permit is required, or an approval issued by the State Board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia

Stormwater Management Act and the Regulations.

*"State Water Control Law"* means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

*"State waters"* means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

*"Stormwater"* means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

*"Stormwater management plan"* means a document(s) containing material describing methods for complying with the requirements of Section 1-6 of this Ordinance.

*"Stormwater Pollution Prevention Plan"* or *"SWPPP"* means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this Ordinance. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

*"Subdivision"* means the same as defined in Section 130-4 of the City of Galax Subdivision Ordinance.

*"Total maximum daily load"* or *"TMDL"* means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

*"Virginia Stormwater Management Act"* or *"Act"* means Article 2.3 (§62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

*"Virginia Stormwater BMP Clearinghouse website"* means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

*"Virginia Stormwater Management Program"* or *"VSMP"* means the program established by the City to manage the quality and quantity of runoff resulting from land-disturbing activities in accordance with state law, and which has been approved by the State Board.

*"Virginia Stormwater Management Program authority"* or *"VSMP authority"* means the City of Galax.

### **Sec. 1-3. - STORMWATER PERMIT REQUIREMENT; EXEMPTIONS.**

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a VSMP authority permit has been issued by the Administrator in accordance with the provisions of this Ordinance.
- (b) Notwithstanding any other provisions of this Ordinance, the following activities are exempt, unless otherwise required by federal law:
  - (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
  - (2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;
  - (3) Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures.
  - (4) Land disturbing activities that disturb less than one acre of land except for activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance.
  - (5) Discharges to a sanitary sewer;
  - (6) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;
  - (7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this Subsection; and
  - (8) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of Subsection A of § 62.1-44.15:34C is required within 30 days of commencing the land-disturbing activity.

**Sec. 1-4. - STORMWATER MANAGEMENT PROGRAM ESTABLISHED; SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS.**

- (a) Pursuant to § 62.1-44.15:27 of the Code of Virginia, the City of Galax hereby establishes a stormwater management program for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes set out in Section 1-1 of this Ordinance. The City of Galax hereby designates the City of Galax Engineering Department as the Administrator of the Virginia Stormwater Management Program.
- (b) No VSMP authority permit shall be issued by the Administrator, until the following items have been submitted to and approved by the Administrator as prescribed herein:
  - (1) A permit application that includes a general permit registration statement, if such statement is required;
  - (2) An erosion and sediment control plan approved in accordance with the City of Galax Erosion and Sediment Control Ordinance, Chapter 122 of the City Code of the City of Galax, Virginia; and
  - (3) A stormwater management plan that meets the requirements of Section 1-6 of this Ordinance, or an executed agreement in lieu of a Stormwater Management Plan.
- (c) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained, if such permit is required.
- (d) No VSMP authority permit shall be issued until the fees required to be paid pursuant to Section 1-15, are received, and a reasonable performance bond required pursuant to Section 1-16 of this Ordinance has been submitted.
- (e) No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.
- (f) No grading, building or other local permit shall be issued for a property unless VSMP Authority permit has been issued by the Administrator, and the Applicant provides a certification that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit conditions.
- (g) As a condition of VSMP Authority permit approval, a construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator upon completion of construction. The construction record drawing shall be appropriately sealed and signed by a professional engineer, architect, surveyor, or landscape architect registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. Construction record drawings may not be required for stormwater management facilities for which maintenance agreement are not required pursuant to Section 1-10(b).

- (h) Notwithstanding the foregoing requirements or any other requirements of this Ordinance, for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale, no General Permit registration statement is required nor is payment of the Department portion of the permit fee, provided that all other state regulatory requirements are met. The land disturbing remains subject to the remaining provisions of this Ordinance, including but not limited to the SWPPP requirements set forth in Section 1- 5 and Section 1- 9, except as otherwise provided by law.

**Sec. 1-5. - STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.**

- (a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Section 9VAC25-870-54, 9VAC25-880-70, and any other applicable regulations including, but not limited to i) an approved erosion and sediment control plan, ii) a stormwater management plan or agreement in lieu of a plan that meets the requirements of this Ordinance iii) a pollution prevention plan that meets the requirements of Section 1-7 of this Ordinance, and iv) additional control measures necessary to address a TMDL.
- (b) The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP. The SWPPP shall also be amended by the operator, if an inspection reveals that the SWPPP is inadequate to satisfy applicable regulations. All amendments must be approved by the Administrator, as required. The SWPPP must be maintained by the operator at a central location onsite for use by those identified as having responsibilities under the SWPPP whenever they are on the construction site. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance of the construction site. The SWPPP must be made available for public review in an electronic format or in hard copy as required by the Regulations.

**Sec. 1-6. - STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN.**

- (a) The stormwater management plan required in Section 1-4(b)(3) of this Ordinance must apply the stormwater management technical criteria set forth in Section 1-8 of this Ordinance to the entire land-disturbing activity. Individual lots in new residential, commercial or industrial developments shall not be considered separate land-disturbing activities. A stormwater management plan shall include the following information and must consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff:
  - (1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and post-development drainage areas;
  - (2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or

properties affected;

- (3) A narrative that includes a description of current site conditions and final site conditions;
  - (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete and a note that states the stormwater management meets the requirements set forth in the VSMP Permit Regulations (9VAC25-870-55) and the Administrative Guidance Manual;
  - (5) Information on the proposed stormwater management facilities, including:
    - i. The type of facilities;
    - ii. Location, including geographic coordinates;
    - iii. Acres treated; and
    - iv. The surface waters or karst features, if present, into which the facility will discharge.
  - (6) Hydrologic and hydraulic computations, including runoff characteristics;
  - (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of Section 1-9 of this Ordinance and the Administrative Guidance Manual.
  - (8) A map or maps of the site that depicts the topography of the site and includes:
    - i. Contributing drainage areas;
    - ii. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
    - iii. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
    - iv. Current land use including existing structures, roads, and locations of known utilities and easements;
    - v. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
    - vi. The limits of clearing and grading, and the proposed drainage patterns on the site;
    - vii. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
    - viii. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
- (b) If an operator intends to meet the water quality and/or quantity requirements set forth in Section 1-9 of this Ordinance through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:35 of the Code of Virginia.



- (c) Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional engineer, architect, surveyor, or landscape architect registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

**Sec. 1-7. – POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.**

The Pollution Prevention Plan, required by 9VAC25-870-56 and Section 1-5 of this Ordinance shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained as required by 9VAC25-870-56.A 1-3, B 1-4, and C.

**Sec. 1-8. - REVIEW OF STORMWATER MANAGEMENT PLAN.**

- (a) The Administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:
  - (1) The Administrator shall determine the completeness of a plan in accordance with Section 1-6 of this Ordinance, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.
  - (2) The Administrator shall have an additional 45 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subdivision (1), then plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.
  - (3) For plans not approved by the Administrator, all comments shall be addressed by the applicant within 180 calendar days. Plans that are not resubmitted within this time period may be subject to a new application fee.
  - (4) The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.
  - (5) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the Applicant. If the plan is not approved, the reasons for not approving the plan shall be provided in writing to the Applicant. Approval or denial shall be based on the plan's compliance with the requirements of this Ordinance and the Administrative Guidance Manual.
  - (6) If a plan meeting all requirements of this Ordinance is submitted and no action is taken within the time provided above in subdivision (2) for review, the plan shall be deemed approved.
- (b) Approved stormwater plans may be modified as follows:

- (1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.
- (2) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.
- (c) The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to Section 1-10 (b).

**Sec. 1-9 - TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES.**

- (a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the City of Galax hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations, as amended, expressly to include 9VAC25-870-62 [Applicability]; 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [offsite compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; 9VAC25-870-85 [stormwater management impoundment structures or facilities]; and, 9VAC25-870-92 [comprehensive stormwater management plans], which shall apply to all land-disturbing activities regulated pursuant to this Ordinance, except as expressly set forth in Sec. 1-9 (b) the technical criteria for regulated land-disturbing activities set forth in Part II C of the Regulations, as amended, 9VAC25-870-93 through 99 shall apply.
- (b) Any land disturbing activity shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of the VSMP Regulation provided:
  - (1) A plan of development proffered as part of a conditional rezoning and approved by the governing body, any other plan of development or site plan approved by the City including any plan approved pursuant to a rezoning request, a variance request, or a special use permit, an approved final subdivision plat or an approved preliminary plat where the applicant has diligently pursued final plat approval within a reasonable period time under the circumstances in accordance with § 15.2-2307 of the *Code of Virginia* (i) was approved by the locality prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C technical criteria of the VSMP Regulation, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;
  - (2) A state permit has not been issued prior to July 1, 2014; and

- (3) Land disturbance did not commence prior to July 1, 2014.
- (c) Locality, state and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of the VSMP Regulation provided:
  - (1) There has been an obligation of locality, state or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;
  - (2) A state permit has not been issued prior to July 1, 2014; and
  - (3) Land disturbance did not commence prior to July 1, 2014.
- (d) Land disturbing activities grandfathered under subsections (b) and (c) of this section shall remain subject to the Part II C technical criteria of the VSMP Regulation for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the State Board.
- (e) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C.
- (f) Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.
- (g) The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.
  - (1) Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the Director.
  - (2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.

**Sec. 1-10 - LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES**

- (a) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to general permit termination, if such a permit is required, or earlier as required by the Administrator and shall at a minimum:
  - (1) Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;
  - (2) Recite that it is intended to "run with the land";
  - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
  - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and
  - (5) Be enforceable by all appropriate governmental parties.
- (b) At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism outlined in the Administrative Guidance Manual.
- (c) If a recorded instrument is not required pursuant to Subsection 1-10 (b), the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Strategies for maintenance will be outlined in the Administrative Guidance Manual. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator.

**Sec. 1-11. - MONITORING AND INSPECTIONS.**

- (a) The Administrator shall inspect the land-disturbing activity during construction for:
  - (1) Compliance with the approved erosion and sediment control plan;
  - (2) Compliance with the approved stormwater management plan;
  - (3) Development, updating, and implementation of a pollution prevention plan; and
  - (4) Development and implementation of any additional control measures necessary to address a TMDL.
- (b) The Administrator has the right, at reasonable times and under reasonable circumstances,

to enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Ordinance. In the event the Administrator, or his agent shall be denied access to property, the Administrator may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a violation of this ordinance has occurred, request that the magistrate or court grant the Administrator an inspection warrant to enable the Administrator or his agent to enter the property for the purpose of determining whether a violation of this ordinance exists. The Administrator shall make a reasonable effort to obtain consent from the owner or occupant of the subject property prior to seeking the issuance of an inspection warrant under this section. It shall be a violation of this section for any person to deny the Administrator access to any property after the Administrator his agent has obtained an inspection warrant from a magistrate or a court of competent jurisdiction for the inspection of such property. Nothing herein shall be construed to authorize Administrator to enter or inspect the interior portions of any dwelling or structure situated on such property unless that inspection be reasonably necessary and directly related to verifying the presence and character of a stormwater control mitigation system or control measure that the owner of the property claims to be installed therein.

- (c) In accordance with a performance bond, the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.
- (d) Pursuant to § 62.1-44-15:40 of the Code of Virginia, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this Ordinance, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance. Refer to § 62.1-44.15:40 regarding protection of specified confidential information.
- (e) Post-construction inspections of stormwater management facilities required by the provisions of this Ordinance and the recorded maintenance agreement shall be conducted by the Owner and at the Owner’s cost pursuant to the City of Galax's adopted and State Board approved inspection program, and shall occur within the minimum frequencies shown in Table 1-11-1 following approval of the final construction record report for each stormwater facility.

**Table 1-11-1**

<b>BMP Classification</b>	<b>BMP Type</b>	<b>Minimum Inspection Schedule</b>	<b>Notes</b>
1	Rooftop Disconnection	Every 5 Years	Owner shall inspect and provide documentation as per the requirements found on the Virginia Stormwater BMP
1	Sheetflow to Vegetated Filter	Every 5 Years	

	or Conserved Open Space		Clearinghouse Website and the Administrative Guidance Manual for BMPs within classification 2, 3, and 4. The City of Galax shall inspect all BMPs every 5 years.
1	Grass Channel	Every 5 Years	
1	Soil Amendments	Every 5 Years	
2	Permeable Pavement	Annually	
2	Infiltration	Annually	
2	Bioretention	Annually	
2	Dry Swale	Annually	
2	Wet Swale	Annually	
2	Filtering Practice	Annually	
2	Constructed Wetland	Annually	
2	Wet Pond	Annually	
2	Extended Detention	Annually	
3	Vegetated Roof	Twice per year (Spring/Fall)	
3	Rainwater Harvesting	Twice per year (Spring/Fall)	
4	Manufactured/ Other BMP	Yearly or per manufacturer recommendations, whichever is more frequent.	Owner shall inspect and provide documentation according to manufacturer's guidelines and the Administrative Guidance Manual.

- (f) The owner shall furnish to the Administrator an inspection report for BMPs within classifications 2, 3, and 4 as provided in Table 1-11-11 prepared by a qualified inspector within the timeframe listed in Table 1-11-1. This report shall include, but not be limited to, the items listed in Table 1-11-1, current photographs of the BMP, and a summary of the current BMP condition and any recommendations for improvements, if necessary.
- (g) Qualified inspection personnel include professional engineer, architect, landscape architect, or land surveyor registered in the Commonwealth of Virginia or project inspector for SWM or combined administrator for SWM who have met the certification requirements of 9VAC25-850-50.
- (h) Post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted by the Administrator pursuant to the City of Galax's adopted and State Board approved inspection program, and shall occur, at a minimum, at least once every five (5) years.

**Sec. 1-12. – HEARINGS**

- (a) Any applicant under the provision of this chapter who is aggrieved by any action of the City of Galax or its agent in disapproving plans submitted pursuant to this chapter shall have the right to apply for and receive a review of such action by the City Council of the City of Galax, provided an appeal is filed within 30 days from the date of the action. Any

applicant who seeks an appeal hearing before the City Council shall be heard at the next regularly scheduled City Council public meeting, provided that the City Council and other involved parties have at least 30 days' prior notice. In reviewing the agent's actions, the City Council shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the City Council may affirm, reverse or modify the action. The City Council's decision shall be final, subject only to review by the Circuit Court of the jurisdiction where VSMP permit coverage was to be or is provided.

#### **Sec. 1-13. - APPEALS.**

- (a) Any permit applicant or permittee who is aggrieved by a permit or enforcement decision of the City of Galax under this chapter is entitled to judicial review thereof by the Circuit Court of the jurisdiction where VSMP permit coverage was to be or is established, provided an appeal is filed within 30 days from the date of the decision being appealed. Verbatim record of proceedings must be taken and filed with local governing or appeals body.

#### **Sec. 1-14. - ENFORCEMENT**

- (a) If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.
  - (1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (b) or the permit may be revoked by the Administrator.
  - (2) If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall be issued in accordance with the City's local enforcement procedures and shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the City of Galax, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing

activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Subsection 1-14 (c).

- (b) In addition to any other remedy provided by this Ordinance, if the Administrator or his designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the Administrative Guidance Manual.
- (c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in Circuit Court of the jurisdiction where VSMP permit coverage was to be or is established by the City of Galax to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- (d) Any person who violates any provision of this Ordinance or who fails, neglects, or refuses to comply with any order of the Administrator, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
  - (1) Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:
    - i. Failing to have a general permit registration;
    - ii. Failing to prepare a SWPPP;
    - iii. Having an incomplete SWPPP;
    - iv. Failing to have a SWPPP available for review as required by law;
    - v. Failing to have an approved erosion and sediment control plan;
    - vi. Failing to install stormwater BMPs or erosion and sediment controls as required by this Ordinance and/or state law;
    - vii. Having stormwater BMPs or erosion and sediment controls improperly installed or maintained;
    - viii. Operational deficiencies;
    - ix. Failing to conduct required inspections, or having incomplete, improper, or missed inspections; and
    - x. Discharges not in compliance with the requirements of Section 9VAC25-880-70 of the general permit.
  - (2) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
  - (3) In imposing a civil penalty pursuant to this Subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.
  - (4) With the consent of any person who has violated or failed, neglected or refused to obey



any provision of this Ordinance, any condition of a permit or state permit, any regulation or order of the City, the City may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section.

(5) Any civil penalties assessed by a court as a result of a summons issued by the City of Galax shall be paid into the treasury of the City of Galax to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the City of Galax and abating environmental pollution therein in such manner as the court may, by order, direct.

(e) Notwithstanding any other civil or equitable remedy provided by this Section or by law, any person who willfully or negligently violates any provision of this Ordinance, any order of the Administrator, any condition of a permit, or any order of a court shall, be guilty of a class 1 misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

**Sec. 1-15. – VSMP FEES**

(a) Fees for coverage under the general Permit for a detached single-family home construction within or outside of common plan of development or sale with a land-disturbing activity less than five (5) acres shall be paid as set forth in Table 1-15A. Half of the fees must be paid by the Applicant at the initial plan submittal, and the remaining half shall be paid prior to permit issuance.

Table 1-15A Land Disturbance Permit Fees For Detached Single-Family Home Construction Within Or Outside Of Common Plan Of Development Or Sale With A Land-Disturbing Activity Less Than Five (5) Acres

Fee type	Total Fee	VSMP Authority (Administrator) portion	Department (DEQ) portion
General / Stormwater Management - Detached Single-Family Home Construction (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)	\$290	\$209	\$0
General / Stormwater Management - Detached Single-Family Home Construction (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 Acres)	\$290	\$209	\$0

(b) Other than the fees set forth in subsection (a) above, fees to cover costs associated with

implementation of a VSMP related to land disturbing activities and issuance of general permit coverage and VSMP authority permits shall be imposed in accordance with the VSMP Permit Regulations 9VAC25-870-820 and as per the fee schedule provided below in Table 1-15B. Half of the fees must be paid by the Applicant at the initial plan submittal, and the remaining half shall be paid prior to permit issuance.

Table 1-15B Land Disturbance Permit Fees for the General Permit for Discharges of Stormwater from Construction Activities

<b>Fee type</b>	<b>Total Fee</b>	<b>VSMP Authority (Administrator) portion</b>	<b>Department (DEQ) portion</b>
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)	\$290	\$209	\$81
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 Acres)	\$2,700	\$1944	\$756
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$3,400	\$2448	\$952
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$4,500	\$3,240	\$1,260
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100	\$4,392	\$1,708
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$9,600	\$6,912	\$2,688

- (c) Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with the VSMP Permit Regulations 9VAC25-870-825 and as per the fee schedule provided below in Table 1-15C, and shall be paid directly to the Administrator.

**Table 1-15C** Fees for the Modification or Transfer of Registration Statements for the General Permit for Discharges of Stormwater from Construction Activities

<b>Type of Permit</b>	<b>VSMP Authority (Administrator) Fee Amount</b>
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$20
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 and less than 5 acres)	\$200
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$250
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$300
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$700

- (d) If the general permit modifications result in changes to stormwater management plans that require additional review by the City of Galax, such reviews shall be subject to the fees set out in the VSMP Permit Regulations 9VAC25-870-825 and the fee schedules provided above. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in the VSMP Permit Regulations

9VAC25-870-820 and as per the fee schedule provided in Table 1-15B. These fees shall be paid directly to the Administrator.

- (e) The annual permit maintenance fees shall be imposed in accordance with the VSMP Permit Regulations 9VAC25-870-830 and as per the fee schedule provided below in Table 1-15D, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated.

Table 1-15D Annual Maintenance Fees for the General Permit for Discharges of Stormwater from Construction Activities

<b>Type of Permit</b>	<b>VSMP Authority (Administrator) Fee Amount</b>
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$50
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than 1 acre and less than 5 acres)	\$400
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$500
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$650
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater 100 acres)	\$1,400

General permit coverage maintenance fees shall be paid annually to the City of Galax, by the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

- (e) No general permit application fees will be assessed to:

- (1) Applicants who request a permit for a detached single-family home construction within or outside of common plan of development or sale with a land-disturbing activity less than five (5) acres.
  - (2) Permittees who request minor modifications to general permits as defined in Section 1-2 of this Ordinance. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this Section.
  - (3) Permittees whose general permits are modified or amended at the initiative of the Department, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.
- (f) All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The City of Galax shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

**Sec. 1-16. - PERFORMANCE BOND**

- (a) Prior to issuance of any permit, the Applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the City of Galax attorney and Administrator, or designee, to ensure that measures could be taken by the City of Galax at the Applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the City of Galax takes such action upon such failure by the Applicant, the City of Galax may collect from the Applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the Applicant or terminated.

**Sec. 1-17. – LIMITATIONS OF RESPONSIBILITY.**

- (a) The city shall be responsible only for the portions of the stormwater system that are in city maintained street rights-of-way, permanent stormwater easements conveyed to and accepted by the city, or as otherwise explicitly stated in a written agreement with the city. Repairs and improvements to the drainage system shall be in accordance with established standards, policies and schedules.
- (b) The city's acquisition of permanent storm drainage easements and/or the construction or repair by the city of stormwater control measures and drainage facilities does not constitute a warranty against stormwater hazards, including, but not limited to, flooding, erosion or standing water.

**Sec. 1-18. – LIMITATION ON CITY'S LIABILITY FOR FAILURE OF SUPPLY OF STORMWATER SERVICES.**

- (a) Floods from runoff may occur that exceed the capacity of stormwater facilities constructed and maintained by funds made available pursuant to this chapter. This chapter does not imply that property subject to the fees and charges established herein will be free from stormwater flooding or flood damage. The city shall not be liable to any person for any flood damage. Further, payment of a stormwater fee to the city for stormwater service does not relieve a property owner from obtaining flood insurance.

**Sec. 1-19. – STORMWATER UTILITY FEE**

- (a) There is hereby established a stormwater utility fee (fee) imposed on all tax parcels in the City that exist on January 1 of each year regardless of whether the parcel is subject to taxation under Chapter 135 of City Code of the City of Galax, Virginia. All revenue from the fee shall be deposited into a stormwater utility enterprise fund for the sole purpose of funding the activities described in subsection (h) below.
- (b) The annual utility fee rate for each billing unit as defined in subsection (i) below shall be set by City Council by separate resolution or with the adoption of the City budget. Each tax parcel in the City shall be charged in accordance with subsection (i) below.
- (c) Except as otherwise provided in this Chapter, the impervious surface of a parcel shall be determined by the City using one or more of the following, at the discretion of the Administrator: aerial photography; as-built drawings; final approved site plans; building permits; field surveys; or, other appropriate engineering and mapping analysis tools.
- (d) All payments for this service shall be the responsibility of the owner.
- (e) When there are improvements to the tax parcel or change in land use (zoning), fees will be adjusted commencing with either completion of a frame or slab inspection, or upon completion of any construction which contributes impervious surface area where no certificate is issued or required for such construction, or upon change of land use.
- (f) In the event of alteration or addition to a nonresidential property which alters the amount of impervious surface area, the stormwater management fees will be adjusted upon either the completion of a frame or slab inspection or upon completion of the construction, whichever occurs first, and the adjustment will be reflected in the next billing cycle.
- (g) **Exemptions.** Notwithstanding subsection (a) through (f) above, the following parcels shall be exempt from the stormwater utility fee:
  - (1) Parcels owned by a federal, state, or local government, or public entity, that holds a permit to discharge stormwater from a municipal separate storm sewer system, except that this exemption shall apply only to parcels or portions of parcels covered by any such permit and shall not apply to parcels owned and maintained by the City of Galax that are not otherwise exempt under subsection (3) below; and,

- (2) Public roads and street rights-of-way that are owned and maintained by the Commonwealth of Virginia or the City of Galax, including property rights-of-way acquired through the acquisitions process.
- (h) **Stormwater utility enterprise fund.** There shall be established a stormwater utility enterprise fund (fund) from the deposit of all fees, charges, and other revenue collected by the utility, as well as any other revenue as may be determined by Council or the City Manager, including but not limited to grants and special appropriations. The fund shall be used exclusively to pay or recover costs for the following:
- (1) The acquisition by gift, purchase, or condemnation, as authorized by law, of real and personal property, and interest therein, necessary to construct, operate, and maintain stormwater control facilities;
  - (2) The cost of administration of such programs;
  - (3) Planning, design, engineering, construction, and debt retirement for new facilities and enlargement or improvement of existing facilities, including the enlargement or improvement of dams, levees, floodwalls, and pump stations, whether publicly or privately owned, that serve to control stormwater;
  - (4) Facility operation and maintenance, including the maintenance of dams, levees, floodwalls, and pump stations, whether publicly or privately owned, that serve to control stormwater;
  - (5) Monitoring of stormwater control devices and ambient water quality monitoring; and,
  - (6) Other activities consistent with the state or federal regulations or permits governing stormwater management, including, but not limited to, public education, watershed planning, inspection and enforcement activities, and pollution prevention planning and implementation.
- (i) **Stormwater utility fee calculation.** Utility fees shall be charged to owners of all property in the City, unless otherwise exempted in subsection (g) above.
- (1) Rates will be based upon equivalent residential units (ERU). An ERU will be the equivalent of 4,700 square feet of impervious surface area, which will include all buildings, structures and other impervious surfaces which contribute to stormwater runoff.
  - (2) The minimum annual charge shall be equal to one ERU, even when credits are provided as outlined in subsection (j). The number of ERU's will be determined by the Administrator or his designee.
  - (3) A residential tax parcel shall be charged one ERU annually. A non-residential tax parcel shall be charged the annual fee in the amount specified for the range of impervious area of the actual impervious area of the tax parcel, as per Table 1-19A.
  - (4) The ERU rate shall be \$45.00 annually.

- (5) The utility fee for unoccupied developed and undeveloped property, both residential and nonresidential, shall be the same as that for occupied property of the same class.
- (6) The stormwater utility fees shown below are hereby authorized for all utility customers in the City.

<i>Range of Impervious Area (sf)</i>		<i>ERU</i>	<i>Annual Fee</i>
Equal to	Less Than		
0	6,000	1.0	\$45.00
6,000	8,000	1.3	\$59.00
8,000	10,000	1.7	\$77.00
10,000	13,000	2.1	\$95.00
13,000	17,000	2.8	\$126.00
17,000	22,000	3.6	\$162.00
22,000	29,000	4.7	\$212.00
29,000	38,000	6.2	\$279.00
38,000	49,000	8.1	\$365.00
49,000	64,000	10.4	\$468.00
64,000	83,000	13.6	\$612.00
83,000	108,000	17.7	\$797.00
108,000	140,000	23.0	\$1,035.00
140,000	182,000	29.8	\$1,341.00
182,000	237,000	38.7	\$1,742.00
237,000	308,000	50.4	\$2,268.00
308,000	400,000	65.5	\$2,948.00
>400,000		85.1	\$3,830.00



- (j) **Stormwater utility fee credits.** § 15.2-2114.B, Code of Virginia, as amended, recognizes that a continued investment in an on-site stormwater management facility results in a reduced impact on the public stormwater management system.

The Administrator is authorized to adopt policies, procedures, and manuals necessary to implement, administer, and enforce this section.

- (1) Credit Eligibility. Only on-site stormwater management facilities meeting the following criteria are eligible for a credit against the stormwater utility fee:

- i. The tax parcel owner must submit a Credit Application Form provided by the City in accordance with subsection (3) below.
- ii. The tax parcel owner must maintain the structure and function of a stormwater management facility and operate the stormwater management facility.
- iii. The tax parcel owner must have a properly executed maintenance agreement with the City that has been properly recorded in the land records where designated by the City of Galax.
- iv. The tax parcel owner must demonstrate to the City's satisfaction that the facility is functioning as originally designed. The structure must be maintained to the satisfaction of the Administrator in accordance with the properly executed maintenance agreement, the requirements set out in the most recent Virginia Stormwater Management Regulations, or the Virginia BMP Clearinghouse, whichever is most stringent.
- v. The facility must have met the criteria in existence at the time of construction in at least one of the following stormwater controls in accordance with Section 1-6 and 1-9 above:
  - a. Water Quality; or
  - b. Both Stream Channel Erosion and Flooding.

- (2) Credit Amounts.

- i. For an on-site stormwater management facility, the credit amount is based on the amount of impervious surface located on the tax parcel draining to the facility, and not the total amount of impervious surface cover on the tax parcel.
- ii. Credits for on-site stormwater management facilities are as follows if the facility was required under the provisions of the Stormwater Management Ordinance of the City Code of the City of Galax, Virginia:
  - a. A fifteen percent (15%) credit is allowed if the facility, or facilities, provides water quality benefits in accordance with Section 1-6 and Section 1-9 above.
  - b. A fifteen percent (15%) credit is allowed if the facility, or facilities, provide both stream channel erosion control and flood control benefits in accordance with Section 1-6 and Section 1-9 above.
- iii. If an on-site stormwater management facility is part of a voluntary retrofit, the amount of credit the facility is eligible to receive in accordance with subsections a. and b. above.

The owner of an eligible facility that treats off-site impervious surface located within the City may take a credit for treating the off-site impervious surface. The off-site credit amount shall be calculated in the same manner as if the

facility was located on the off-site parcel. However, in no case shall the fee be less than the rate equivalent to 1 ERU.

(3) Application and Maintenance Verification.

- i. There is no fee for a credit application.
- ii. To apply for the initial credit for an on-site stormwater management facility, the tax parcel owner must submit, at his or her own expense, a Credit Application Form to be provided by the Administrator. The Credit Application Form shall require the following information:
  - a. A description of the type of facility (or facilities), the stormwater control standard met by the facility, and the year the facility was built;
  - b. A drainage area map, drawn to scale, for the facility showing the drainage boundaries and the impervious area treated by the facility in square feet;
  - c. As-built or other acceptable engineering plans for the facility;
  - d. A narrative of the known maintenance history of the facility, including routine maintenance and significant structural maintenance and repair;
  - e. A copy of the City's standard maintenance agreement that has been executed by the City and properly recorded in the land records of the Office of the Clerk of the Circuit Court of the county where the property is located. If there is no existing facility maintenance agreement, then one must be completed and properly recorded;
  - f. Information on any public funds used to construct, repair, upgrade, or retrofit the facility, including the amount and the date(s);
  - g. Calculations to determine the monetary amount of the claimed credit; and
  - h. A completed inspection checklist certifying that the facility is functioning as originally designed. "Functioning as originally designed" means that the facility is operating in accordance with the original design specifications, regardless of the standard in effect at the time of the installation. The checklist must be signed and sealed by a Professional Engineer. The inspection checklist shall be no more than one year old at the time of application.
- iii. Once approved, the tax parcel owner will remain eligible for the credit as long as the facility continues to function as originally designed. The City may revoke the credit if an inspection by the City or a designated representative determines that the facility is no longer being properly maintained or functioning as designed. Such revocation will be effective thirty (30) days after the City has notified the tax parcel owner in writing of the deficiency(s) and if the problems are not resolved. The revocation may be delayed for an additional period, at the discretion of the Administrator, provided that the tax parcel owner is diligently pursuing work to eliminate deficiencies.
- iv. Any maintenance or functional deficiencies must be remedied at the owner's expense before a facility may qualify, or re-qualify (after revocation), for a credit.

- (4) Credit for Industrial Stormwater Permits. Subject to the maximum credit in subsection (2) above, a ten percent (10%) credit is allowed for any tax parcel, or portion of a tax parcel, that is subject to, and in compliance with, an individual or general Virginia Pollutant Discharge Elimination System industrial stormwater permit issued in

accordance with 9VAC25-31-120, Virginia Administrative Code, as amended. To apply for the initial credit, the tax parcel owner must provide the Administrator with proof of permit coverage, the date of permit expiration, and a cover letter affirming that the tax parcel is in full compliance with the permit requirements. The credit will expire on permit expiration unless the tax parcel owner provides proof to the Administrator that the permit has been renewed.

- (5) Affirmative Duty and Timing. It is the sole responsibility of the tax parcel owner to apply for a credit in accordance with policies, procedures, and manuals adopted by the Administrator. A credit that is approved by January 1 of a given year thereafter will be applied in full to the upcoming billing cycle.

**(k) Billing, penalties, and interest.**

- (1) The stormwater utility fee shall be billed and payable on the same schedule as prescribed in Chapter 135, Code of the City of Galax, Virginia, and shall be subject to the same penalties and interest as prescribed in Section (2) below, unless a petition for adjustment has been submitted and is under active consideration by the Administrator in accordance with Section (l.1) below. The stormwater utility fee may be billed separately or may be combined with other billings, and, when combined, payment will be applied first to the stormwater utility fee and then to all other taxes and fees, as determined by the Director of Finance, in accordance with § 15.2-2114.G, Code of Virginia, as amended.
- (2) A delinquent stormwater utility fee, along with cumulative interest and penalties, shall constitute a lien on the tax parcel ranking in parity with liens for unpaid taxes and shall be collected in the same manner as provided for the collection of unpaid real estate taxes.

**(l) Petitions for adjustments.**

- (1) Any tax parcel owner may request an adjustment of the stormwater utility fee by submitting a request in writing to the Administrator within thirty (30) days after the date the bill is mailed or issued to the tax parcel owner. Grounds for adjustment are limited to the following:
  - i. An error was made regarding the square footage of impervious surface;
  - ii. The tax parcel is exempt under the provisions of subsection (g) above;
  - iii. There is a mathematical error in the fee calculation;
  - iv. The identification of the tax parcel owner invoiced is in error; or,
  - v. An approved credit was incorrectly applied.
- (2) The tax parcel owner shall complete a Stormwater Utility Fee Adjustment application form supplied by the Administrator.
- (3) If the request for adjustment is regarding an error in the measured impervious surface, a plan view of the tax parcel's impervious surface must be submitted with the application, and shall be prepared at the owner's expense.

The plan must show all impervious surfaces and label their dimensions within the tax parcel boundaries; and

- (4) The requirement for a plan view of the tax parcel's impervious surfaces required in subsection (3) above may be waived, if in the sole discretion of the Administrator the error is obvious and is the result of a technical error or oversight by the City. In such case, the City shall be responsible for recalculating the impervious surface of the tax parcel.
- (5) The Administrator shall make a determination within thirty (30) days of receipt of a complete submittal for the request for adjustment. In the event that the Administrator finds that the appeal is deficient or incomplete, the Administrator shall offer the owner thirty (30) days to supply the missing information from the time of the determination. If the information is not provided to the Administrator within the additional thirty (30) day period, the request will be deemed withdrawn.
- (6) The Administrator's decision on a fee adjustment petition is a final decision from which an aggrieved party may appeal to the Circuit Court of the jurisdiction within thirty (30) days after the date of such decision, after which time no further appeal shall be allowed.

Effective Date: This ordinance shall become effective the date of its adoption.

Date of Public Hearing: June 9, 2014

Effective Date: July 1, 2014

Councilwoman Crouse offered the foregoing ordinance, which was seconded by Councilman Garner.

Thereupon, the ordinance was put to a vote upon its final adoption, the results as follows:

For: 6 Mitchell, Greene, Garner, Webb, Crouse, & Plichta  
Against: 0

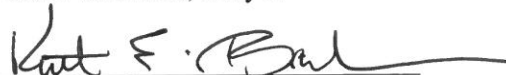
(Lazo – absent)

Dated: June 9, 2014

Approved:

  
\_\_\_\_\_  
C.M. Mitchell, Mayor

Attest:

  
\_\_\_\_\_  
Keith E. Barker, City Manager