

CHAPTER 37

STORM WATER MANAGEMENT

Article	
37-01	General Provisions, §§ 37-0101 to 37-0109.
37-02	Permanent Storm Water Management, §§ 37-0201 to 37-0205.
37-03	Erosion and Sediment Control Permit, §§ 37-0301 to 37-0312.
37-04	Violations and Enforcement, §§ 37-0401 to 37-0411.

ARTICLE 37-01

GENERAL PROVISIONS

Section	
37-0101	Purpose.
37-0102	Regulation and enforcement by city engineer.
37-0103	Definitions.
37-0104	Waivers.
37-0105	Extraterritorial zoning jurisdiction.
37-0106	Management and site vegetation.
37-0107	Operator is deemed agent of owner.
37-0108	Acknowledgement of rules and regulations.
37-0109	Notice of violations via electronic format.

37-0101. Purpose.--This chapter sets forth uniform requirements for storm water management systems within the city of Fargo. In the event of any conflict between the provisions of this chapter or other regulations adopted by the city of Fargo, Cass County, State of North Dakota or Federal authorities, the more restrictive standard prevails.

The objectives of this chapter are as follows:

- A. To promote, preserve, and enhance the natural resources within the city of Fargo from adverse or undesirable impacts occasioned by development or other activities;
- B. To protect and promote the health, safety, and welfare of the people and property through effective storm water quantity and quality management practices;
- C. To regulate land development activity, land disturbing activity, or other activities that may have an adverse and/or potentially irreversible impact on storm water quantity, water quality and/or environmentally sensitive lands and to encourage compatibility between such uses;
- D. To establish detailed review standards and procedures for land development activities throughout the city of Fargo, thereby achieving a balance between urban growth, development, and the protection of water quality; and

- E. To provide for adequate storm water system analysis and design as necessary to protect public and private property, water quality and existing natural resources.
Source: 4510 (2006), 4578 (2007).

37-0102. Regulation and enforcement by city engineer.--The city engineer, agents, designees, and employees thereof, shall have authority to adopt and promulgate regulations, rules, standards and practices to accomplish the objectives of this chapter and to prevent or reduce the pollution of waters of the state. Such regulations, rules, standards, and practices shall be approved by the board of city commissioners, are hereby adopted by reference and fully incorporated herein, including any amendments hereinafter adopted, and shall be controlling within the jurisdiction of the city engineer, including within the city's extraterritorial jurisdiction. The city engineer shall have authority to enforce this chapter and shall have authority to investigate and take action concerning all requirements herein.

37-0103. Definitions.--For the purpose of this chapter, the following terms, phrases, and words, and contact, words used in the present tense include the future tense. Words in the plural number include the singular number, singular include the plural number. The word "shall" is always mandatory and the word "may" is always permissive.

1. "Applicant" means any person that applies for a building permit, subdivision approval, zoning change, approach, excavation or special use permit, erosion and sediment control plan approval, erosion and sediment control permit, or any other permit which allows land disturbing activities. Applicant also means that person's agents, employees, and others acting under this person's direction. The term "applicant" also refers to the permit holder or holders and the permit holder's agents, employees, and others acting under this person's direction.

2. "Best Management Practices" (BMP) means the schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state and including treatment requirements, operating procedures and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage which are promulgated or approved and adopted by the city engineer.

3. "City" means the city of Fargo or its board of city commissioners.

4. "City engineer" means the city engineer of the city of Fargo or his designee.

5. "Erosion and sediment control permit" means a permit issued by the city in accordance with this chapter.

6. "Control measure" means a practice or combination of practices to control erosion and attendant pollution, see also Best Management Practices.

7. "Development" means any land disturbing activity that changes the site's runoff characteristics in conjunction with residential, commercial, industrial or institutional construction or alteration.

8. "Developer" means a person, firm, corporation, sole proprietorship, partnership, federal or state agency, or political subdivision thereof engaged in a land disturbing and/or land development activity.

9. "Discharge" means the release, conveyance, channeling, runoff, or drainage, of storm water, including snowmelt.

10. “Drainage easement” means a right to use the land of another for a specific purpose, such as a right-of-way for the movement of water across or under the land surface or the storage of water.

11. “Dwelling unit” means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

12. “Erosion” means removing or wearing away of the surface of the land by the action of water, wind, ice, or gravity. Erosion can be accelerated by the activities of man and nature.

13. “Erosion and sediment control plan” means a written description or plan indicating the number, locations, sizes, and other pertinent information about best management practice methods designed to reduce erosion of the land surface and the deposition of sediment within a waterway. The Erosion and Sediment Control Plans are used in developing the State mandated Storm Water Pollution Prevention Plan (SWPPP).

14. “Erosion control” means methods employed to prevent erosion. Examples include soil stabilization practices, horizontal slope grading, temporary or permanent cover, and construction phasing.

15. “Exposed soil” means all areas of the construction site where the vegetation (trees, shrubs, brush, grasses, etc.) or impervious surface has been removed thus rendering the soil more prone to erosion. This includes topsoil stockpile areas; borrow areas and disposal areas within the construction site. It does not include temporary stockpiles or surcharge areas of clean sand, gravel, concrete or bituminous, which have less stringent protection. Once soil is exposed, it is considered “exposed soil,” until it meets the definition of “final stabilization.”

16. “Final stabilization” means that disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of 70 percent of the native cover for unimproved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

17. “Hydric soils” means soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile.

18. “Hydrophytic vegetation” means macrophytic (large enough to be observed by the naked eye) plant life growing in water, soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

19. “Impervious area” means a constructed hard surface that either prevents or retards the entry of water into the soil, and causes water to run off the surface in greater quantities and at an increased rate of flow than existed prior to development. Examples include rooftops, sidewalks, patios, driveways, parking lots, storage areas; and concrete, asphalt, or gravel parking lots and roads.

20. “Land development activity” means the act of subdivision or platting properties for personal use, adding value or for the purposes of resale. This includes the construction and/or demolition of buildings, structures, roads, parking lots, paved storage areas, and similar facilities.

21. “Land disturbing activity” means any land change that may result in soil erosion from water or wind and the movement of sediments into or upon waters or lands within the city’s

jurisdiction, including construction, clearing & grubbing, grading, excavating, transporting and filling of land. Within the context of this ordinance, land disturbing activity does not mean:

- A. Minor land disturbing activities such as home gardens and an individual's home landscaping, repairs, and maintenance work, which will not result in sediments entering the storm water system.
- B. Additions or modifications to existing single family structures that result in creating under five thousand (5,000) square feet of exposed soil or impervious surface and will not result in sediments entering the storm water system.
- C. Construction, installation, and maintenance of trees, fences, signs, posts, poles, and electric, telephone, cable television, utility lines or individual service connections to these utilities, which result in creating less than five thousand (5,000) square feet of exposed soil or impervious surface and will not result in sediments entering the storm water system.
- D. Tilling, planting, harvesting or customary field maintenance activities associated with agricultural, horticultural, or silvicultural (forestry) crops.
- E. Emergency work to protect life, limb, or property and emergency repairs, unless the land disturbing activity would have otherwise required an approved erosion and sediment control plan, except for the emergency. If such a plan would have been required, then the disturbed land area shall be shaped and stabilized in accordance with the city's requirements as soon as possible.

22. "Landowner" means any person holding title to or having a divided or undivided interest in land.

23. "National pollution discharge elimination system permit" ("NPDES permit") means any permit or requirement enforced pursuant to the United States Clean Water Act [insert legal citation], as amended, for the purpose of regulating storm water discharge.

24. "Noncompliance fee" means the administrative fee charged to offset the additional costs and oversight necessary for re-inspection of a property which may be assessed to a permittee, land owner, developer or their contractor(s) for noncompliance with the provisions and/or conditions of an approved storm water plan and/or permit or the violation of any other provisions contained in this storm water ordinance.

25. "One or two dwelling unit building" means any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

26. "Outlet" means any discharge point, including storm sewers, into a watercourse, pond, ditch, lake or other body of surface or groundwater.

27. "Operator" means the person (usually the general contractor), who has day to day operational control and/or the ability to modify project plans and specifications related to the SWPP plan. The person must be knowledgeable in those areas of the permit for which the operator is responsible and must perform those responsibilities in a workmanlike manner.

28. "Owner" means the person or party possessing the title of the land on which the construction activities will occur; or if the construction activity is for a lease holder, the party or individual identified as the lease holder; or the contracting government agency responsible for the construction activity.

29. “Permanent cover” means final stabilization. Examples include grass, gravel, asphalt, and concrete.

30. “Permit” within the context of this chapter is a grant Erosion and Sediment Control Permit.

31. “Permittee” means any person who applies for and receives approval of an erosion and sediment control plan and/or permit from the city.

32. “Person” means a developer, contractor, individual, firm, corporation, partnership, franchise, association, owner, occupant of property, or agency, either public or private, who engages in a land disturbing activity or who is otherwise subject to the rules and regulations of this chapter.

33. “Prohibited discharge” (also known as an illicit discharge) means a discharge into the storm water system or river, stream, pond, channel or ditch, including but not limited to:

- A. Dumping of debris or other materials such as grass clippings, vegetative materials, tree branches, earth fill, rocks, concrete chunks, metal, other demolition or construction materials, structures, or snow or ice in connection with snow removal.
- B. Connecting storm water collection systems, such as roof gutters, roof drains, drain tile and sump systems, or other such facility, with a municipal sanitary sewer system unless authorized under Chapter 17. The term municipal separate storm sewer system includes a storm sewer opening, a drainage ditch, waterway or other storm water conveyance. A storm water collection system is connected with a municipal separate storm sewer or sanitary system when storm water is allowed to be directly deposited into the municipal system.
- C. The disposal or misuse of chemicals or any other materials that would degrade the quality of waters within the system, including, but not limited to chemicals (fertilizers, herbicides, pesticides, etc.) or petroleum based products (gasoline, oil, fuels, solvents, paints, etc.).
- D. Erosion and sediment originating from a property and deposited onto city streets, private properties or into the storm water conveyance system, including those areas not specifically covered under an approved erosion and sediment control plan or erosion and sediment control permit.
- E. Failure to remove sediments transported or tracked onto city streets by vehicles or construction traffic by the end of each work day, or as needed to prevent or minimize the transport of sediment to the storm sewer system.
- F. For the purposes of this ordinance, prohibited discharges do not include the following, unless information is available to indicate otherwise:
 - 1) Water line flushing
 - 2) Landscape irrigation
 - 3) Diverted stream flows
 - 4) Rising ground water
 - 5) Uncontaminated ground water infiltration
 - 6) Uncontaminated pumped ground water
 - 7) Discharges from potable water sources

- 8) Foundation drains
- 9) Air conditioning condensate
- 10) Irrigation water
- 11) Springs
- 12) Water from crawl space pumps
- 13) Footing drains
- 14) Lawn watering
- 15) Individual residential car washing
- 16) Flows from riparian habitats and wetlands
- 17) De-chlorinated swimming pool discharges
- 18) Street wash water
- 19) Sump pump connections (properly connected) to the storm sewer.

34. “Public storm sewer” means a storm sewer located entirely within publicly-owned land or easements.

35. “Runoff” means the rainfall, snowmelt, dewatering, or irrigation water flowing over the ground surface and into open channels, underground storm sewers, and detention or retention ponds.

36. “Sediment” means solid material or organic material that, in suspension, is being transported or has been moved by air, water, gravity, or ice, and deposited at another location.

37. “Sediment control” means the methods employed to prevent sediment from leaving the development site. Examples of sediment control practices include, but are not limited to silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, and temporary or permanent sedimentation basins.

38. “Site” means the entire area included in the legal description of the parcel or other land division on which the land development or land disturbing activity is proposed.

39. “Stabilize” means the exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, wood fiber blanket, or other material that prevents erosion from occurring. Grass seeding alone is not stabilization.

40. “Stabilized” means the exposed ground surface after it has been covered by sod, erosion control blanket, riprap, pavement or other material that prevents erosion. Simply sowing grass seed is not considered stabilization. Ground surfaces may be temporarily or permanently stabilized (also see Final Stabilization).

41. “State” means the State of North Dakota.

42. “Storm sewer” means a pipe or conduit for carrying storm waters, surface runoff, and drainage, excluding sewage and industrial wastes.

43. “Storm water” means precipitation runoff, storm water runoff, snow melt runoff, and any other surface runoff and drainage.

44. “Storm water detention” means temporary storage of storm water runoff in ponds, parking lots, depressed grassy areas, rooftops, buried underground tanks, etc., for future or controlled release. Used to delay and attenuate flow.

45. “Storm water management” means the planned set of public policies and activities undertaken to regulate runoff and reduce erosion, and maintain or improve water quality under various specified conditions within various portions of the drainage system.

46. “Storm water management system” means physical facilities that collect, store, convey, and treat storm water runoff in urban areas. These facilities normally include detention and retention facilities, streets, storm sewers, inlets, open channels, and special structures, such as inlets, manholes, and energy dissipaters.

47. “Storm water pollution prevention plan” (SWPPP) means a joint storm water and erosion and sediment control plan that is written as a prerequisite to obtaining an NPDES Storm Water Permit for Construction Activity that, when implemented, will decrease soil erosion on a parcel of land and off-site non-point pollution and includes both temporary and permanent controls.

48. “Structure” means anything manufactured, constructed, or erected which is normally attached to or positioned on land, including portable structures, earthen structures, roads, parking lots, and paved storage areas.

49. “Subdivision” means any tract of land divided into building lots for private, public, commercial, industrial, etc. development for the purpose of sale, rent, or lease, including planned unit development.

50. “Temporary protection” means short-term methods employed to prevent erosion. Examples of such protection are straw, mulch, erosion control blankets, wood chips, and erosion netting.

51. “Undeveloped land” means land that in its current state has not been impacted by significant land disturbing activities annexed into the city or subdivided into multiple ownership lots and is typically zoned agricultural.

52. “User” means any person who discharges, causes, or permits the discharge of storm water into the city’s Storm Water Management System.

53. “Waters of the state” means any and all surface waters that are contained in or flow in or through the state of North Dakota as defined in NDCC 61-28-02. This definition includes all water courses, even if they are usually dry.

54. “Watercourse” means the natural path for the flow of water where there is sufficient natural and accustomed runoff to form and maintain a distinct and defined channel or an open channel facility that has been constructed for such purpose. This shall include any easements obtained for the purposes of runoff conveyance.

55. “Wetlands buffer area” means a protective vegetated zone located adjacent to a natural resource, such as a water of the state that is subject to direct or indirect human alteration. Such a buffer strip is an integral part of protecting an aquatic ecosystem through trapping sheet erosion, filtering pollutants, reducing channel erosion and providing adjacent habitat.

56. “Wetlands” means lands transitional between terrestrial and aquatic systems (excluding drainage ditch bottoms) where the water table is usually at or near the surface or the land is covered by shallow water. For purposes of this definition, wetlands must have the following three attributes:

- A. A predominance of hydric soils;
- B. Are inundated or saturated by the surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- C. Under normal circumstances support the prevalence of such vegetation.

Source: 4510 (2006), 4578 (2007).

37-0104. Waivers.--The city engineer may waive any requirements of this chapter upon making a finding that compliance with the requirement will involve an unnecessary hardship, and that waiver of such requirement is not contrary to the objectives of this chapter. The city engineer may require as a condition of the waiver, a dedication or construction, or agreement to dedicate or construct, as may be necessary to adequately meet the said standards and requirements. All waivers must be in writing to be valid.

Source: 4510 (2006), 4578 (2007).

37-0105. Extraterritorial zoning jurisdiction.--This chapter is intended to be enacted as a zoning regulation and to apply to all areas within the city's extraterritorial zoning jurisdiction as authorized by state law. This chapter shall, therefore, apply to the city's extraterritorial zoning jurisdiction and references in this chapter to violations occurring within the city shall be deemed to include the extraterritorial zoning jurisdiction of the city.

Source: 4510 (2006), 4578 (2007).

37-0106. Management of site vegetation.--All landowners shall provide for the installation and maintenance of vegetation on their property as follows regardless as to whether or not an erosion and sediment control permit has been approved or is necessary under this chapter and failure to do so shall be a violation of this chapter. All unimproved areas shall be covered either by plants or vegetative growth or, in the alternative, by other means of storm water protection approved by the city engineer. The term unimproved area means all areas other than driveways, sidewalks, patios, areas occupied by structures and landscaped areas.

Source: 4510 (2006), 4578 (2007).

37-0107. Operator is deemed agent of owner.--For purposes of enforcing the rules and regulations of this chapter, where a permit is issued to an operator instead of to the owner of the property in question, the owner is deemed to have designated the operator as his or her agent for purposes of compliance with this chapter.

37-0108. Acknowledgement of rules and regulations.--Any permittee issued a permit under this chapter, or any owner of property for which a permit is issued pursuant to the rules and regulations of this chapter, is deemed to be on notice of the rules and regulations stated herein and agrees to comply with the same.

37-0109. Notice of violation via electronic format.-- Any permittee or owner of property for which a permit is issued under this chapter acknowledges and agrees that notice of a violation of this chapter, received via facsimile or in other electronic format, in addition to personal service, is sufficient. Notice of violation sent by the city via facsimile or electronically is deemed served on the date and time issued.

Source: 4578 (2007).

ARTICLE 37-02

PERMANENT STORM WATER MANAGEMENT

Section	
37-0201	Permanent storm water facilities design--One and two dwelling units exempt.
37-0202	Methodologies and computations.
37-0203	Operation, maintenance and inspection.
37-0204	Easements.
37-0205	Record drawings.

37-0201. Permanent storm water facilities design--One and two dwelling units exempt.--An owner must submit to the city engineer a plan for storm water management and control including detention and retention facilities. The plan shall be submitted, and approval obtained from the city engineer prior to the owner (a) obtaining approval of an application for a plat, pursuant to §20-0907 of the Land Development Code of the city, or (b) engaging in any land disturbing activity. Said plan may include, in the discretion of the city engineer, arrangements for further planning and implementation of permanent facilities for storm water management and control by subsequent owners of the property being platted or by the current owner at a later time. Plans submitted for review shall at a minimum contain the total acreage of the development, total impervious area being added by the improvement, and a calculation showing the water detention/retention capacity of the facility. Construction of one or two dwelling unit buildings shall be exempt from the requirements of this chapter. Projects administered by the city engineering department that include storm water facilities shall be designed under the guidance of the city engineer and shall be approved by a registered professional engineer, but shall be exempt from the requirements of this section.

Source: 4510 (2006), 4578 (2007).

37-0202. Methodologies and computations--Storm water control facilities and erosion/sediment control features shall be designed in conformance with the city's storm water management and control policy approved by resolution of the board of city commissioners.

Source: 4510 (2006).

37-0203. Operation, maintenance and inspection.--All storm water management systems shall be designed to minimize the need for maintenance, to provide easy vehicle (typically eight (8) feet or wider) and personnel access for maintenance purposes, and to be structurally sound. All storm water management systems shall have a plan of operation and maintenance that assures continued effective removal of pollutants carried in storm water runoff. The city engineer may inspect all public and private storm water management systems at any time. Inspection records will be kept on file at the city engineer's office. It shall be the responsibility of the applicant to obtain any necessary easements or other property interests to allow access to the storm water management system for inspection and maintenance purposes.

Source: 4510 (2006).

37-0204. Easements.--Easements may be required as conditions to the issuance of an erosion and sediment control permit. If a storm water management system involves directing some or all of the site's runoff to a drainage easement, the applicant or his designated representative shall obtain from the property owners any necessary easements or other property interests concerning the flowing of such water.

Source: 4510 (2006).

37-0205. Record drawings.--The owner shall provide the city engineer notice, in writing, any changes or material modifications to the original permitted design in the form of as-built, or record, drawings. The record drawings shall contain the final configuration for all improvements as constructed. A professional engineer registered in the state shall certify the record drawings. If no significant or material changes occurred between the approved plan and final construction, the record drawings need not be submitted to the city engineer. The owner, however, is responsible to retain copies of said drawings and provide them to the city engineer upon request. Failure to provide these drawings upon written request constitutes a violation of this chapter.

Source: 4510 (2006).

ARTICLE 37-03

EROSION AND SEDIMENT CONTROL PERMIT

Section

37-0301	Permit and required fee.
37-0302	One or two dwelling unit buildings--Exemption.
37-0303	Permit delays.
37-0304	Permit conditions.
37-0305	Permit duration.
37-0306	Permit modification.
37-0307	Permit amendments.
37-0308	Permit transfer.
37-0309	Monitoring facilities.
37-0310	Inspection.
37-0311	Frequency of inspection.
37-0312	Construction plans and specifications.

37-0301. Permit and required fee.--Prior to engaging in any land disturbing activity, an owner shall first (a) submit for review and approval the owner's erosion and sediment control plan and (b) obtain from the city engineer an erosion and sediment control permit. The owner shall complete and file with the city an application for an erosion and sediment control permit in the form prescribed by the city engineer and accompanied by a fee established by the board of city commissioners. Projects administered by the city engineering department shall include erosion and sediment control plans that are designed under the guidance of the city engineer and

shall be approved by a registered professional engineer, but shall be exempt from the requirements of this section.

Source: 4510 (2006), 4578 (2007).

37-0302. One or two dwelling unit buildings--Exemption.--Construction of one or two dwelling unit buildings shall be exempt from the requirement of submitting or obtaining approval of a plan for permanent facilities for storm water management and control, as provided in Article 37-02, and shall be exempt from the requirement of submitting for review and approval an erosion and sediment control plan as required by this section; however, said construction must comply with the requirement of obtaining an erosion and sediment control permit and construction must conform with best management practices, as described in the City of Fargo's Guide to Erosion and Sediment Control Practices, or as described in such other set of rules, regulations, guides, or practices promulgated by the city engineer for purposes of accomplishing the goals of this chapter and approved by the board of city commissioners.

Source: 4510 (2006), 4578 (2007).

37-0303. Permit delays.--The city engineer may withhold granting approval of an erosion and sediment control permit until all issues associated with the site are resolved to the satisfaction of the city engineer. Permits may be conditioned with delays such that work cannot begin until a specified date or until after the site is inspected.

Source: 4510 (2006).

37-0304. Permit conditions.--Permits are issued subject to all provisions of this chapter and all other applicable regulations, user charges and fees established by the board of city commissioners. Permits may contain, but are not limited to, any of the following conditions:

1. Limits on the maximum rate of allowable storm water discharge;
2. Requirements for water quality of storm water discharge;
3. Requirements for the installation, operation and maintenance of storm water facilities including detention/retention or other treatment facilities;
4. Requirements for erosion and sediment control, including measures to be implemented and other procedures necessary to protect the storm water system;
5. Compliance schedule;
6. Requirements for notification to and acceptance by the city engineer of any land disturbing activities which have the potential for increasing the rate of storm water discharge resulting in degradation of storm water quality; and
7. Easements
8. Other conditions as deemed appropriate by the city engineer to insure compliance with this chapter.

Source: 4510 (2006).

37-0305. Permit duration.--Permits must be issued for a time period specified by the city engineer. An extension of a permit may be granted, in the discretion of the city engineer, upon application for such extension submitted in writing at least thirty (30) days prior to the expiration of the permit.

Source: 4510 (2006).

37-0306. Permit modification.--The city engineer is authorized to modify erosion and sediment control permits for cause. The city engineer shall provide written notice of the modification to the permit, and state the cause therefore, at least thirty days before the modified permit is to take effect. Written notice shall be deemed to be delivered upon mailing the notice to the address of the applicant and the owner as provided in the application or such other address as the applicant or owner may provide to the city engineer in writing. Cause for modifying the permit shall include but not be limited to:

1. Promulgation of new federal, state or local regulatory requirements;
2. Changes in the requirements of this chapter;
3. Changes in the process used by the permittee or changes in discharge rate, volume, or character; and
4. Changes in the design or capability of receiving storm water systems.

The city engineer shall include within the modified permit a reasonable time schedule for compliance with the altered or added requirements in the modified permit.

Source: 4510 (2006).

37-0307. Permit amendments.--Permits may be amended by the applicant or owner by a written request submitted to the city engineer. This request shall contain the reason for the change and documentation related to any additional impacts, which may result from amendment approval. Amendment requests submitted prior to issuance of a permit shall be considered part of the original submittal. Amendment requests filed after permit approval shall be considered and reviewed under the same procedures and guidelines used for the permit applications under this section. Depending on the extent of the amendment, the city engineer may waive any additional fees for a permit amendment review.

Source: 4510 (2006).

37-0308. Permit transfer.--A permit runs with the property it covers, until the permitted activities are completed, and is transferable to new landowners in its entirety or by parcel, with each parcel being subject to the permit and any conditions, which apply to that parcel. In the event land under such a permit is transferred or conveyed in fee, such transfer or conveyance must be reported in writing, to the city engineer within seven (7) days of the transfer. This section refers to city-issued permits and does not release the applicant or owner from transfer requirements of a NPDES permit including, but not limited to, permit transfers.

Source: 4510 (2006).

37-0309. Monitoring facilities.--The city engineer may require the owner to provide and operate at the owner's expense a monitoring facility to allow inspection, sampling, and flow measurements of each storm water system component. Where at all possible, the monitoring facility shall be located on the owner's property as opposed to being located on public rights-of-way. Ample room must be allowed for accurate flow measuring and sampling and the facility shall be kept in a safe and proper operating condition.

Source: 4510 (2006).

37-0310. Inspection.--The city engineer may inspect the storm water management system of any permittee to determine compliance with the requirements of this chapter. The

owner shall promptly allow the city and their authorized representatives, upon presentation of credentials to:

1. Enter upon the permitted site for the purpose of obtaining information, examination of records, conducting investigations, inspections or surveys.
2. Bring such equipment upon the permitted site as is necessary to conduct such inspections, surveys and investigations.
3. Examine and copy any books, papers, records, or memoranda pertaining to activities or records required to be kept under the terms and conditions of this permitted site.
4. Inspect the storm water pollution control measures.
5. Sample and monitor any items or activities pertaining to storm water pollution control measures.

Any temporary or permanent obstruction to the safe and easy access of such an inspection shall be promptly removed upon the inspector's request. The cost of providing such access shall be born by the owner.

Source: 4510 (2006).

37-0311. Frequency of inspections.--The owner shall be responsible for inspecting any measures called for by the approved erosion and sediment control plan or in the owner's approved SWPPP, as applicable. From the date the permit is issued, during construction and until final stabilization, inspections shall be done at least once every 14 days by the owner, and within twenty-four (24) hours after every storm or snow melt event large enough to result in runoff from the site (approximately 0.5 inches or more in twenty-four (24) hours). The owner shall be responsible for providing to the city engineer, upon request, documentation of the inspections performed, and action taken in response to such inspections, as applicable.

Source: 4510 (2006).

37-0312. Construction plans and specifications.--The erosion and sediment control plan shall be submitted in a format acceptable to the city engineer. The plan shall contain a drawing or drawings delineating the features incorporated into the SWPPP including details of perimeter protection, construction phasing, storm drain inlet protection, erosion control measures, temporary and final stabilization measures, and all BMPs. In addition the plan shall contain construction specifications containing technical provisions describing erosion, sedimentation, and water control measures to be utilized during and after construction as well as to define the entities responsible for the installation and maintenance of BMPs. The permittee shall notify the city engineer, in writing, as to any changes or material modifications to the original permitted design. The permittee is responsible for retaining copies of said drawings and providing them to the city engineer upon request. Failure to provide these drawings upon written request constitutes a violation of this chapter.

Source: 4510 (2006).

ARTICLE 37-04

VIOLATIONS AND ENFORCEMENT

Section	
37-0401	Violations--prohibited conduct; performing land disturbing activity without required permit or approval, duty to comply with erosion and sediment control requirements.
37-0402	Notice of violation; administrative order to correct.
37-0403	Administrative citation--appeal.
37-0404	Noncompliance/re-inspection administrative fees.
37-0405	Failure to obtain required permit--late permit fee.
37-0406	Remedies and enforcement powers.
37-0407	Notice of revocation/suspension of plan or permit; issuance of stop work order; hearing.
37-0408	Other powers.
37-0409	Continuation.
37-0410	Power and authority of inspectors--Right of entry.
37-0411	Savings clause--Conflict.

37-0401. Violations--prohibited conduct; performing land disturbing activity without required permit or approval, duty to comply with erosion and sediment control requirements.-- All of the following constitute violations of this chapter and are subject to the remedies and penalties provided in this chapter, the Fargo Municipal Code and state law, where applicable. The city includes the extraterritorial zoning jurisdiction of the city as provided in Section 37-0104.

- A. Land disturbing activity without required permit or approval. No person shall initiate within the city any land development activity, land disturbing activity, or other activity resulting in an increase in storm water quantities, degradation of storm water quality, or restriction of flow in any storm sewer system, open ditch or natural channel, storm water easement, water body, or wetland outlet, without having first complied with the terms of this chapter, including application for, and receipt of, and receipt of any permits required under this chapter.
- B. Land disturbing activity in violation of plan or chapter requirements. No person shall engage in land disturbing activities in contravention of the plans set forth in an approved SWPPP, an erosion and sediment control permit, any conditions for such plan or permit, any provision of this chapter or any other term, condition, or qualification imposed by city engineer, or other decision-making body, imposed or stated as part of a permit, certificate, or other form of authorization. This section applies to all persons including owners, their contractors and any utility companies or their contractors engaging in land disturbing activities.

- C. Permanent facilities inconsistent with requirements. It is a violation of this chapter to erect, construct, reconstruct, remodel, alter, maintain, move, or use any permanent storm water management or control facility in violation or contravention of this chapter or of an approved plan as provided in this chapter.
- D. No person shall cause a prohibited discharge within the city as defined in section 37-0102(33).
- E. The owner shall cause to be removed sediments transported or tracked from owner's land onto city streets by vehicles or construction traffic before the end of the each work day and failure to do so shall be a violation of this chapter.
- F. As to construction activities, the owner shall comply with the requirements of the erosion and sediment control permit, and with the following, and failure to do so shall be a violation of this chapter:
 - 1. Site dewatering. Water pumped from the site shall be treated by temporary sedimentation basins, grit chambers, sand filters, upflow chambers, hydro-cyclones, soil concentrators, sediment bags or other appropriate controls as approved by the city engineer. Water may not be discharged in a manner that causes erosion, sedimentation, or flooding on the site, on downstream properties, in the receiving channels, or in any wetland.
 - 2. Waste and material disposal. All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, petroleum based products, paints, concrete or concrete wash water, toxic materials, or other hazardous materials) shall be properly disposed of off-site and shall not be allowed to be carried by runoff into a receiving channel, storm sewer system, or wetland.
 - 3. Tracking management. The use of clay or other cohesive soils to construct access roads or ramps over curbs or onto paved streets shall not be allowed.
 - 4. Water quality protection. The construction contractor, including the general contractor and all subcontractors, shall be required to control oil and fuel spills and chemical discharges to prevent such spills or discharges from entering any watercourse, sump, sewer system, water body, or wetland.
- G. One or two dwelling unit building. Construction of a one or two dwelling unit building must comply with in-place BMPs and any existing permitted SWPPP for the subdivision, including NPDES permit requirements and failure to do so shall be a violation of this chapter.
- H. Utility service lines. Utility companies or contractors working in a street right-of-way to repair existing or install new utilities that involve land disturbing activities shall obtain an excavation permit from the city

engineer, in accordance with Chapter 18 of the Fargo Municipal Code. With respect to utility companies that are working in a street right-of-way and are engaging in land disturbing activities, in addition to the requirements of Chapter 18, including the obligation of obtaining an excavation permit, the excavation permittee shall implement storm water protection measures and utilize construction methods to minimize the potential for sediment or other contaminants to enter the city's storm sewer system. The utility company or contractor shall provide street sweeping as necessary to prevent sediments from their activities from entering the storm sewer system. All sediments or other materials shall be removed from the site within one working day of completion of utility installation on the site. All disturbed vegetation shall be replaced with seed or sod within seven (7) days of completion of utility installation on the site or other appropriate means of erosion and sediment control shall be implemented and maintained until the restoration is complete. All seeded or sodded areas shall be maintained by the utility company or contractor until vegetation is established except in the case of a utility repair for a private residence. For utility repairs to private residences the homeowner shall be responsible for the maintenance of vegetation until it is established. The contractor shall provide the homeowner with a "Sediment and Erosion Control for New Homeowners" fact sheet from the ND State Health Department. The city will make available guidelines for acceptable temporary protection BMPs until the requirements for final stabilization are met.

- I. Illicit connections. Storm water systems are designed to carry uncontaminated storm water. Legal connection to the city's storm water system includes sump pumps lawfully connected to the storm sewer system under chapter 17, and uncontaminated storm water conveyances (such as roof drains). All other connections shall be considered illicit connections and therefore constitute a prohibited discharge and a violation of this chapter.
- J. Illicit dumping. The dumping or disposal of debris materials such as grass clippings, vegetative materials, tree branches, stumps, earth fill, rocks, concrete chunks, metal, other demolition or construction materials, or structures, any chemicals, or other materials that could degrade the quality of waters within the system by dumping in a manner that allows them to come into contact with storm water is prohibited. It is a violation of this chapter to allow such a discharge to occur.

Source: 4510 (2006), 4578 (2007), 4697 (2009).

37-0402. Notice of violation; administrative order to correct.--Whenever the city engineer or his designee has reason to believe a violation of the rules or regulations of this chapter has occurred, the city engineer shall give written notice of the violation. The notice to correct may be in the form of an administrative order to correct or such other form sufficient to give notice of the violation and the corrective action required. Notice may be issued to the

person alleged to be in violation of the rules and regulations of this chapter via electronic format as stated above. The notice of violation shall describe the violation, corrective action required to correct the violation, the deadline for taking corrective action, any additional enforcement action that may be taken if compliance is not obtained, and the amount of scheduled fee if compliance is not obtained, if applicable.

Source: 4464 (2005), 4578 (2007).

37-0403. Administrative citation--appeal.--If compliance is not achieved after issuance of an administrative order, in addition to imposing re-inspection fees authorized under this chapter, the city engineer may issue an administrative citation, which shall be served by personal service or by certified mail upon the operator and owner of the property. The administrative citation shall describe the nature of the offense, the scheduled fee amount, the manner for paying the fee, the deadline for paying the fee, and the deadline for appealing the administrative citation. The operator, owner, or person responsible for the violation must either pay the scheduled fee amount or request a hearing within fourteen (14) days after issuance of the administrative citation by filing a written request for such hearing with the city engineer. A hearing requested under this section shall be held before the administrative enforcement board as that board is referenced in Article 1-04. The procedural rules concerning the hearing, including basis for appeal, time and manner of hearing, are governed by Fargo Municipal Code sections 1-0407 through 1-0409, or according to such procedure as may be amended. Payment of the fee constitutes an admission of the violation.

Source: 4578 (2007).

37-0404. Noncompliance/re-inspection administrative fees.--If re-inspection of the site reveals that the violation continues to exist, the city engineer may impose an administrative re-inspection fee according to a fee schedule approved by resolution of the board of city commissioners for this purpose. Such administrative fees are imposed to offset the additional costs and oversight necessary to confirm compliance with the rules listed in this chapter. Administrative re-inspection fees may be billed by the city to the owner, operator, contractor, permittee, or other person responsible for the violation according to the procedure for billing permit fees charged under this chapter. Any re-inspection fees remaining unpaid may be charged against the owner's property and the assessment filed in the office of the city auditor.

Source: 4578 (2007).

37-0405. Failure to obtain required permit--late permit fee. Any person who engages in a land disturbing activity without first applying for and obtaining a permit required under this chapter shall be subject to an administrative fee imposed by the city engineer, according to a fee schedule approved by resolution of the board of city commissioners for this purpose. Such administrative fees are imposed to offset the additional costs and oversight necessary to confirm compliance with the rules listed in this chapter. Late permit fees may be billed by the city to the owner, operator, contractor, or permittee according to the procedure for billing permit fees charged under this chapter.

Source: 4578 (2007).

37-0406. Remedies and enforcement powers.--The city shall have the following remedies and enforcement powers, including all authority set forth in Article 1-04 of the municipal code regarding administrative enforcement.

- A. Withhold permits. The city may deny or withhold all permits, certificates or other forms of authorization as to any applicant for a permit. Instead of withholding or denying an authorization, the city may grant such authorization subject to the condition that the violation be corrected. This enforcement provision applies regardless of whether the current owner or applicant is responsible for the violation in question. The city may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned by a person who owns, developed or otherwise caused an uncorrected violation of a provision of this chapter or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by a decision-making body. This provision applies regardless of whether the property for which the permit or other approval is sought is the property in violation.
- B. Revoke Permits. A permit may be revoked when the city engineer determines that:
 - 1. There is departure from the plans, specifications, or conditions as required under terms of a permit or approved plan;
 - 2. The plans, specifications, or conditions were obtained by false representation or was issued by mistake; or
 - 3. Any of the provisions of this chapter are being violated as to the project under the permit.
- C. Revoke plan or other approval. When a violation of this chapter involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the city engineer may, upon giving proper notice, revoke the plan or other approval, allow work to continue on condition of strict compliance with all applicable rules and regulations, or impose such other conditions as the city engineer deems appropriate and necessary.
- D. Suspension of plan or permit. The city engineer shall have authority to suspend a storm water management plan, a storm water permit or grading/erosion control permit upon finding that an actual or threatened discharge exists or when such conditions present an imminent or substantial danger to the environment, natural resources, storm water quantity, water quality, and/or environmentally sensitive lands. Upon issuance of suspension order, all work in the area covered by the permit, if a permit has been issued, shall cease immediately. If any person fails to comply with the suspension order, the city shall commence whatever steps are necessary to obtain compliance. The city engineer may lift the suspension order upon proof of compliance with all plan or permit conditions.

- E. Stop work order. The city engineer shall have authority to issue a stop work order, ordering suspension of all work and activity at the site, upon finding that an actual or threatened discharge exists or when such conditions present an imminent or substantial danger to the environment, natural resources, storm water quantity, water quality, and/or environmentally sensitive lands. Upon issuance of a stop work order, all work in the area covered by the permit, if a permit has been issued, shall cease immediately. If any person notified of such suspension order fails to comply with the stop work order, the city shall commence whatever steps are necessary to obtain compliance. The city engineer may lift the stop work order upon proof of compliance with all plan or permit conditions.
- F. Injunctive relief. The city may seek an injunction or other equitable relief in court to stop any violation of this chapter or of a permit, certificate or other form of authorization granted hereunder.
- G. Abatement. The city may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.
- H. Restitution. The city may seek an order requiring restitution as a condition to be met by a person before the person's permit is restored, before the person is allowed to lawfully discharge into the sewer system, or before other action may be taken by the person as determined by an appropriate order.
- I. Costs of damage. Any person violating any of the provisions of this chapter or who initiates an activity causes a deposit, obstruction, or damage or other impairment to the city's storm water management system is liable to the city for any expense, loss, or damage caused by the violation or the discharge. The city may bill the person violating this chapter the costs of any cleaning, repair or replacement work caused by the violation of storm water discharge, and if unpaid within ninety (90) days may result in assessment of such costs against the violator's property.
- J. City attorney's fees and costs. In addition to the fees and penalties provided herein, the city may recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses of litigation by appropriate action against the person found to have violated this chapter or the orders, rules, regulations and permits issued hereunder.
- K. Other remedies. The city shall have such other remedies as are and as may be from time to time provided by North Dakota law and municipal codes for the violation of this chapter or related provisions.
- L. Remedies cumulative. The remedies and enforcement powers established in this chapter are cumulative.

Source: 4510 (2006), 4578 (2007).

37-0407. Notice of revocation/suspension of a plan or permit; issuance of stop work order; hearing.--Whenever the city engineer orders the suspension of a plan or permit, or issues a stop work order, notify thereof shall be given to the owner, to the owner's agent, or to the person engaging in the unlawful activity in person or by certified mail. Upon issuance by the city engineer of an order revoking or suspending a plan or permit, or upon issuance of a stop work order, the person subject to the order has the right to an informal hearing before the city engineer. A request for such hearing must be made in to the city engineer and submitted within five (5) days of the order. The hearing with the engineer shall be held within ten (10) days of the request. Following the hearing, the city engineer may affirm, modify or rescind the order. The owner or operator may seek further review of the city engineer's decision by filing a written request for a hearing with the city engineer, within fifteen (15) days of receipt of the order. A hearing requested under this section will be held before the administrative enforcement board according to the procedural rules listed in article 1-04. A request for a hearing filed pursuant to this section does not stay any order of the city engineer while the hearing is pending.

Source: 4578 (2007).

37-0408. Other powers.--In addition to the enforcement powers specified in this chapter, the city may exercise any and all enforcement powers granted to them by North Dakota law.

Source: 4510 (2006), 4578 (2007).

37-0409. Continuation.--Nothing in this chapter shall prohibit the continuation of previous enforcement actions undertaken by the city pursuant to previous and valid ordinances and laws.

Source: 4510 (2006), 4578 (2007).

37-0410. Power and authority of inspectors--Right of entry.--Where it is necessary to make an inspection to enforce the provisions of this code, or where the engineers or inspections officer has reasonable cause to believe that there exists in a structure or upon a premises a condition which is contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the engineer or inspections officer is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the engineer or inspections officer shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the engineer shall have recourse to the remedies provided by law to secure entry.

Source: 4510 (2006).

37-0411. Savings clause--Conflict.--In the event that any provision, paragraph, word, section or chapter of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and articles shall not be affected and shall continue in full force and effect; all ordinances and parts of ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

Source: 4510 (2006), 4578 (2007).