

ORDINANCE NO. 20-_____

AN ORDINANCE REPEALING AND REORDAINING PART 15 (GRADING PLANS AND EROSION AND STORMWATER QUALITY CONTROL PLANS) OF ARTICLE 7 (SUBDIVISION REGULATIONS) OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO GRADING AND EROSION CONTROL AND STORMWATER QUALITY STANDARDS AND PROVIDING PENALTIES ANE REMEDIES FOR THE VIOLATION THEREOF

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Part 15 (Grading Plans and Erosion and Stormwater Quality Control Plans) of Article 7 (Subdivision Regulations) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is repealed and reordained to read as follows:

PART 15 - GRADING AND EROSION CONTROL PERMITTING AND PERMANENT CONTROL MEASURES

SECTION:

- 7.7.1501: Purpose
- 7.7.1502: Definitions
- 7.7.1503: Grading and Erosion Control Permit
- 7.7.1504: Plan Requirements
- 7.7.1505: Basic Grading, Erosion and Stormwater Quality Requirements and General Prohibitions
- 7.7.1506: Nuisance to the Public Health, Safety and Welfare Declared
- 7.7.1507: Inspections
- 7.7.1508: Commencement of Correction Proceedings
- 7.7.1509: Enforcement Measures and Remedies
- 7.7.1510: Notice and Order to Correct
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7.7.1526: Responsibility and Liability
7.7.1527: Inspections, Maintenance, and Enforcement of Permanent Control Measures

7.7.1501: PURPOSE:

The purpose of this part is to safeguard life, limb, property and the public welfare from grading, erosion and other potential stormwater quality impacts on private property. The intent is to require persons who engage in grading or who have grading undertaken to accomplish the grading in a safe manner and with the appropriate erosion and stormwater quality controls and construction control measures (CCMs) so that grading does not result in adverse effects to persons or property, or both. The intent is also to protect from adverse effects to persons or property, or both, by requiring persons owning or responsible for CCMs to properly inspect and maintain the CCMs.

7.7.1502: DEFINITIONS:

ASSOCIATE GEC PERMIT: City Associate Grading and Erosion Control Permit, which is required on individual sites within multi-lot residential or commercial projects with an overall GEC Permit where ownership has changed. This permit is legally associated with the existing GEC Permit for the larger development.

CONSTRUCTION ACTIVITY: Refers to ground surface disturbing and associated activities (land disturbance), which include, but are not limited to, clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Activities that include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility are not considered construction activities. Activities to conduct repairs that are not part of regular maintenance and activities that are for replacement are considered construction activities and are not considered routine maintenance. Repaving activities where underlying or surrounding soil is cleared, graded, or excavated as part of the repaving operation are construction activities.

CONSTRUCTION CONTROL MEASURES: Structural and non-structural Control Measures used to limit erosion and the transport of soil and other pollutants within or leaving construction sites. Construction Control Measures can be temporary (e.g. silt fence) and permanent (e.g. seeding).

CONTROL MEASURES: Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of State waters. Control Measures also include treatment, operating procedures, and practices to control site runoff, spillage or leaks, waste disposal, or drainage from material storage. Additionally, Control Measures include structural and nonstructural controls and may be temporary or permanent.

CSWMP: A written City Stormwater Management Plan required under the City GEC Permit that identifies potential measures that will be implemented to minimize erosion within construction sites and minimizes the discharge of pollutants in stormwater runoff from construction sites.

DANGEROUS GRADING: Any fill, excavation or grading that as a result of natural or unnatural conditions has or will result in damage to life, limb or property.

EROSION: The process by which the ground surface is worn away by action of wind, water, gravity, or any combination thereof.

EXCAVATION: The mechanical removal of earth material.

FILL: A deposit of earth material by mechanical means.

GEC PERMIT: City Grading and Erosion Control Permit, which is required prior to discharging stormwater from a construction site within the City. For the purposes of this chapter, references to GEC Permit include both the GEC Permit and the Associate GEC Permit.

GEC PLAN: A written Grading and Erosion Control Plan required under the City GEC Permit identifying measures that will be implemented to minimize the discharge of pollutants in stormwater.

GRADING: Any excavating or filling or combination thereof.

PERMANENT CONTROL MEASURES: Control Measures designed to permanently mitigate water quality impacts due to development and redevelopment projects. Examples of Permanent Control Measures include extended detention basins and sand filters.

RESPONSIBLE PARTY: The owner of the property on which BMPs have been constructed, and any other person or agent in control of the property (e.g., including but not limited to homeowners' associations and districts, etc.).

SE MANAGER: The Stormwater Enterprise Manager or the Stormwater Enterprise Manager's designated representative, as set forth in chapter 14, article 8 of the City Code.

STATE WATERS: Any and all surface and subsurface waters which are contained in or flow in or through this State, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

STORMWATER: Precipitation induced surface runoff and drainage.

STORMWATER ENTERPRISE: The enterprise of the City established pursuant to chapter 14, article 8 of the City Code.

7.7.1503: GRADING AND EROSION CONTROL PERMIT:

No person shall undertake any construction activities on public or private property that will result in:

- A. Construction activities disturbing one or more acres, or
- B. Construction activities that are part of a larger common plan of development or sale that disturbs one or more acres, or
- C. Any grading or construction activities within an open drainage channel as determined by the SE Manager, or
- D. Any time a Permanent Control Measure is constructed or substantially modified, to be defined as involving non-maintenance related activities. Adjustments or modifications to the control structure plate will not trigger the requirement for a GEC Permit, or
- E. On any site as deemed necessary and required by the SE Manager. The process and requirements for applying for and receiving a GEC Permit are defined in the Stormwater Construction Manual. Additional requirements for permit transfers and permit closeout are included in the Stormwater Construction Manual.

7.7.1504: PLAN REQUIREMENTS:

A. A GEC Plan must be approved by the Stormwater Enterprise prior to application for a GEC Permit. Requirements for GEC Plans, including plan phasing, are detailed in the Stormwater Construction Manual. All GEC Plans shall be signed and bear the seal of a registered professional engineer licensed by the State of Colorado. A GEC Plan may be required for specific minor land disturbing activities if deemed necessary by the SE Manager.

B. A CSWMP must be approved by the Stormwater Enterprise prior to application for a GEC Permit. Requirements for CSWMPs are detailed in the Stormwater Construction Manual.

C. A PCM Plan must be approved prior to implementation of the final phase of a GEC Plan, and prior to construction of the PCM. The SE Manager may issue a stop work order under section 7.7.1509 of this part if work under the final phase of the GEC Plan is started without an approved PCM Plan. Requirements for PCM Plans are detailed in the Drainage Criteria Manual. All PCM Plans shall be signed and bear the seal of a registered professional engineer licensed by the State of Colorado.

7.7.1505: BASIC GRADING, EROSION AND STORMWATER QUALITY REQUIREMENTS AND GENERAL PROHIBITIONS:

All construction activities on public or private land shall comply with the basic grading, erosion and stormwater quality requirements and general prohibitions as defined in the Stormwater Construction Manual and Drainage Criteria Manual.

7.7.1506: NUISANCE TO THE PUBLIC HEALTH, SAFETY AND WELFARE DECLARED:

The SE Manager, after inspection, may declare a site to be a nuisance to the public health, safety and welfare when any one of the following conditions are met: a) grading is determined to be dangerous, as defined in section 7.7.1502 of this part; or b) grading or any construction activity is taking place without an active GEC Permit, if required by this chapter; or c) the GEC Plan, CSWMP, and/or PCM Plan are not implemented per the accepted plans or are insufficient to protect public safety, property or water resources. A nuisance to the public health, safety and welfare shall be abated in accord with the requirements of the SE Manager, which may include, but are not limited to, submittal and implementation of a new or revised GEC Plan, CSWMP, and/or PCM Plan.

7.7.1507: INSPECTIONS:

A. Right Of Entry: The SE Manager may enter upon any property at reasonable times to conduct inspections of grading, erosion and stormwater quality control operations to determine compliance with City Code requirements, policies and procedures and to carry out duties in the enforcement of this part, including abatement of violations. In the event the owner of any property within the City

refuses to permit entry to the SE Manager when entry is sought pursuant to this part, or should permission to enter the property otherwise not be obtainable from the owner, the SE Manager may make application to any Judge of the Municipal Court of the City for the issuance of a warrant to inspect the property or carry out other duties, including the abatement of violations. Sworn application for entry and inspection shall identify the premises upon which entry is sought and the purpose for which entry is desired. The application shall state the facts giving rise to the belief that a condition which is in violation of the requirements of this part exists on the property, or that a violation in fact exists and must be abated. Any warrant issued shall command the owner to permit entry to the SE Manager or representative for the purposes stated in the application.

B. The property owner or the property owner's designated agent shall perform regular inspections of all grading, erosion control and stormwater quality control operations in accord with the inspection procedures outlined in the Stormwater Construction Manual and the Drainage Criteria Manual.

7.7.1508: COMMENCEMENT OF CORRECTION PROCEEDINGS:

Whenever the SE Manager has inspected or caused to be inspected any grading or land disturbance and has declared a nuisance to the public health, safety and welfare or if the SE Manager has determined noncompliance with this part, the SE Manager shall cause enforcement measures and/or other remedies to be undertaken.

7.7.1509: ENFORCEMENT MEASURES AND REMEDIES:

The SE Manager shall have enforcement measures and remedies, including, but not limited to, those listed below, available with respect to declaring a nuisance to the public health, safety and welfare or determining noncompliance with this part:

A. The SE Manager shall have the authority to effectuate the abatement of the nuisance or compliance through informal meetings or conversations resulting in a verbal agreement.

B. The SE Manager shall issue a letter of noncompliance to the property owner, developer and/or contractor that contains a description of the measures required to eliminate the nuisance or noncompliance and a date by which these measures must be implemented.

C. If an imminent and substantial hazard exists that jeopardizes public safety, property and/or water resources, including water quality, the SE Manager may issue an immediate stop work order and/or take emergency actions to abate or minimize the hazard at the full expense of the record owner of the property.

D. The SE Manager may issue a stop work order for the entire site or a specified portion of the site for the purpose of preventing any adverse impacts or minimizing additional adverse impacts. The SE Manager may specify allowable work in order to eliminate the nuisance or bring the site into compliance.

E. The SE Manager may revoke the GEC Permit and require a resubmittal, approval and implementation of a new or revised GEC Plan or CSWMP.

F. The SE Manager may issue a notice and order ordering the elimination of the nuisance and/or noncompliance by a specified date based on the nature of the violation. If compliance with the notice and order is not achieved by the deadline, the SE Manager may proceed with abatement as authorized in this part.

G. The SE Manager may ask the City Attorney to initiate a civil action in the District Court for injunctive relief to abate the violations.

H. The SE Manager may pursue the issuance of a summons and complaint for violations of this part.

I. Enforcement processes and procedures are defined in the Stormwater Construction Manual.

J. Nothing in this chapter shall be construed to preclude the SE Manager from seeking other enforcement actions or remedies in addition to or in lieu of the remedies granted by this part. Enforcement actions or remedies provided in this part shall be cumulative and in addition to any other remedies which may be available to the SE Manager.

7.7.1510: NOTICE AND ORDER TO CORRECT:

Whenever the SE Manager commences abatement proceedings by filing a written notice and order, the notice and order shall include:

A. The street address and a description sufficient for identification of the property upon which the violation, nuisance or noncompliance is located.

B. A statement of the asserted violation, nuisance or noncompliance relating to this part.

C. A statement of the action required to be taken and/or the date or time period by which the violation must be abated or otherwise corrected.

D. A statement advising that if any required corrective measures are not commenced within the time specified, the SE Manager may proceed to cause the corrective measures to be undertaken and charge the corrective measures against the property or its owner.

E. Statements advising:

1. That any person having any record title or legal interest in the property may appeal from the notice and order directly to the Director, pursuant to section 1512 of this part, provided the appeal is made in writing and filed with the SE Manager within ten (10) days from the date of service of the notice and order; and
2. That failure to appeal will constitute a waiver of all right to a hearing and determination of the matter.

7.7.1511: SERVICE OF NOTICE AND ORDER:

A. To Whom Made: The notice and order, and any amended or supplemental notice and order, shall be served upon the record owner, or agent of the owner, or other Responsible Party, and posted on the property. Failure of the SE Manager to serve any person required to be served shall not invalidate any proceedings as to any other person duly served or relieve any person from any duty or obligation imposed by the provisions of this part.

B. Method Of Service: Service of the notice and order shall be made either personally or by mailing a copy of the notice and order by certified mail, postage prepaid, return receipt requested, to each owner or agent of the owner at the address which appears on the assessment roll of the County or is known to the SE Manager. If no address of any person so appears or is not known to the SE Manager, then a copy of the notice and order shall be mailed, addressed to the person, at the address of the real property involved in the proceedings. Failure of any person to receive notice shall not affect the validity of any proceedings taken under this part. Service by certified mail in the manner provided shall be effective on the date of mailing.

C. Proof Of Service: Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date, manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice and order retained by the SE Manager.

7.7.1512: APPEAL PROCEDURES:

A. Appeal Authority: The Public Works Director (the "Director") shall serve as the appeal authority in accord with this part. The Director shall have the authority to retain a hearing officer to conduct any appeal hearings.

B. Authority Of the Director: The Director will hear all appeals of the notice and order from the SE Manager, and at the conclusion of the hearing on the appeal will decide whether to modify, affirm or reverse the decision and requirements of the SE Manager.

In hearing appeals, the Director may make reasonable interpretations of the provisions of this part.

C. Appeal and Hearing Procedures:

1. Any Responsible Party ("appellant") served may appeal from any notice and order any action of the SE Manager by filing a written appeal with the Director at the office of the SE Manager.

2. The written appeal shall be filed within ten (10) days after the date of service of the notice and order. The appeal shall include:

a. The names, official mailing addresses and signatures of all parties named as appellants.

b. A brief statement setting forth the legal interest of each of the appellants in the land involved in the notice and order.

c. A brief statement, in ordinary and concise language, of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant. The appellant must substantiate the following:

(1) Identify the specific City Code provisions which are in dispute.

(2) Show that the SE Manager's decision is incorrect because of one or more of the following:

(A) It was against the express language of the City Code; or

(B) It was against the express intent of the City Code; or

(C) It is unreasonable; or

(D) It is erroneous; or

(E) It is clearly contrary to law.

- d. A brief statement, in ordinary and concise language, of the relief sought and the reasons why it is claimed the protested order should be reversed, modified or otherwise set aside. The appellant must identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits to the community, including the general health, safety and welfare.
3. If all required appeal information is not provided, the SE Manager will notify the appellant that the appeal will not be scheduled until all required information is received.
4. The SE Manager shall provide written notice to the appellant of the time, date and place of the hearing on the appeal. The hearing date shall not be less than ten (10) days nor more than thirty (30) days from the date the appeal was received at the office of the SE Manager. A hearing notice shall also be posted on or adjacent to the affected property by the appellant or a designated representative at least ten (10) days prior to the date of the hearing. The appellant or designated representative shall also sign an affidavit stating the property was properly posted in accord with the posting requirements of the SE Manager. The completed affidavit must be received by the SE Manager at least three (3) days prior to the day of the hearing, or the hearing will be canceled.
5. The hearing on the appeal will only consider those matters or issues specifically raised by the appellant in the written appeal.
6. A record of the entire proceeding shall be made by the Director by tape recording or by any other means of recording determined to be appropriate. A recording of the proceedings shall be made available to all parties upon request. The recording shall be maintained in compliance with the City's applicable record retention policy.
7. The Director shall have the authority to make and adopt rules and regulations governing procedures before the Director. However, Colorado Rules of Evidence shall not apply at the hearing. The SE Manager and appellants will have the following rights:
 - a. To call and examine witnesses on any relevant matter or issue; and
 - b. To introduce documents or other physical evidence; and
 - c. To cross examine opposing witnesses on any relevant matter or issue; and

- d. To impeach any witness regardless of which party first called them to testify; and
- e. To rebut the evidence against them; and
- f. To represent themselves or to be represented by a licensed Colorado attorney. The SE Manager shall be represented by the Office of the City Attorney.

8. The Director shall issue a written decision within 14 days following the conclusion of the hearing on appeal. The Director may modify, affirm or reverse the decision or requirements of the notice and order.

9. The decision of the Director constitutes final agency action. Any appellant who is aggrieved by the decision of the Director may appeal that decision to the courts of Colorado in accord with the Colorado Rules of Civil Procedure, rule 106(a)(4), as now existing or hereinafter amended.

D. Liability Of Director: The Director acting for the City in good faith and without malice for the City in the discharge of their duties, shall not hereby render themselves personally liable, and they are hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required, or by reason of any act or omission related to the discharge of their duties. Any suit brought against the Director, due to an act or omission performed by them in the discharge of their duties, shall be defended by the City to the final termination of the proceedings.

7.7.1513: EFFECT OF FAILURE TO APPEAL:

The failure of any person to file an appeal in accord with the provisions of section 7.7.1512 of this part shall constitute a waiver of the right to a hearing and adjudication of all or a portion of the notice and order, or any portion thereof.

7.7.1514: NO STAY OF ORDER DURING APPEALS:

Any stop work order or notice and order issued by the SE Manager shall be in effect from the time issued. The notice and order or stop work order shall be in effect and remain in effect during the pendency of any appeal. Failure to comply with a stop work order or notice and order shall be a violation of the City Code regardless of whether an appeal has been filed or is pending before the Director or the courts of Colorado.

7.7.1515: ENFORCEMENT OF ORDER AND COMPLIANCE WITH THE CITY CODE:

A. Noncompliance Prohibited: It is unlawful for any person to fail, neglect or refuse to comply with any order issued pursuant to this part. A stop work order and/or notice and order issued pursuant to this part shall be in effect from the time issued. A violation of this section is punishable by up to ninety (90) days in jail, a fine of not less than two hundred fifty dollars (\$250.00) or more than five hundred dollars (\$500.00), probation or a combination thereof. Each day in violation of an order issued pursuant to this part shall be deemed a separate offense under this section.

B. It shall be unlawful for any property owner or other person to conduct construction activities:

1. If a stop work order or notice and order has been issued by the SE Manager, except for specific grading, erosion or stormwater quality control activities allowed as a part of the stop work order or notice and order;

2. Without an active GEC Permit, if required under this part;

3. In a manner that causes, permits, or contributes to the discharge into the municipal stormwater drainage system pollutants that could cause the City of Colorado Springs to be in violation of its Colorado discharge permit system Municipal stormwater discharge permit;

4. In a manner that does not comply with the "Colorado Water Quality Control Act" (CRS § 25-8-103 (2013)), "Clean Water Act" (33 U.S.C §§ 1251 et seq.), regulations promulgated, certifications or permits issued, in addition to the requirements included in the Stormwater Construction Manual. In the event of conflicts between these requirements and water quality control laws, rules or regulations of other Federal or State agencies, the more restrictive laws, rules or regulations shall apply.

Any violation of this subsection shall be a violation of the City Code punishable by up to ninety (90) days in jail, a fine of not less than two hundred fifty dollars (\$250.00) or more than five hundred dollars (\$500.00), probation or a combination thereof. Each day in violation shall be deemed a separate offense under this section.

7.7.1516: ACCOUNTING OF EXPENSES/BILLING OF PROPERTY OWNER:

The SE Manager shall keep an itemized account of the expenses incurred by the City and/or Stormwater Enterprise in correction of any nuisance to the public health, safety and welfare under this part or in correction of any noncompliance with this part. The SE Manager will then bill the property owner for all costs incurred by the City and/or Stormwater Enterprise. Service of the bill shall be made either personally or by mailing a copy of the bill by certified mail, postage prepaid, return receipt requested, to each property owner at their address as it appears

on the tax records of the County or as known to the SE Manager. If full payment is not received within thirty (30) days of receipt of bill (or 30 days from mailing if no return receipt received), the SE Manager will ask the City Clerk to schedule a hearing before City Council on charges to be made against the property owner or the property.

7.7.1517: SETTING OF HEARING:

The City Clerk shall fix the time, date and place for hearing the charges as billed by the SE Manager, and any protests or objections to the charges. The City Clerk shall cause notice of the hearing to be served by certified mail, postage prepaid, return receipt requested, addressed to the property owner as their name appears on the tax records of the County Assessor, if such so appears, or as known to the Clerk. Notice shall be given at least ten (10) days prior to the date set for the hearing, and shall specify the day, hour and place when City Council will hear and pass upon the charges billed by the SE Manager, together with any objections or protests which may be filed in accord with the provisions of section 7.7.1518 of this part.

7.7.1518: PROTESTS AND OBJECTIONS:

Any property owner affected by the proposed charge may file written protests or objections with the City Clerk. The protest or objection must be received by the City Clerk at least the day before the hearing. Each protest or objection must contain a description of the property and the grounds of the protest or objection. The City Clerk shall endorse on every protest or objection the date it was received and shall present the protest or objections to the City Council at the time set for the hearing. No other protests or objections shall be considered.

7.7.1519: HEARING ON REPORT, PROTEST:

Upon the day and hour fixed for the hearing, the City Council shall hear and pass upon the charges as billed by the SE Manager together with any objections or protests. The Council may make revisions, corrections and modifications to the charges it may deem just. The decision of the City Council on the charges, and on all protests or objections shall be final and conclusive.

7.7.1520: PERSONAL OBLIGATION OR SPECIAL ASSESSMENT:

The City Council may order that a charge be made a personal obligation of the property owner or assess the charge against the property involved.

A. Personal Obligation: If the City Council orders that the charge be a personal obligation of the property owner, it shall direct the City Attorney to collect the same on behalf of the City and/or Stormwater Enterprise by use of all appropriate legal remedies.

B. Special Assessment: If the City Council orders that the charge be assessed against the property, it shall confirm the assessment roll, and the assessment shall then constitute a special assessment against the property, and shall be collected in the same manner as any other special assessment of the City.

7.7.1521: CONTEST ASSESSMENT:

The validity of any assessment made under the provisions of this part shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the assessment is placed upon the assessment roll as provided. Any appeal from a final judgment in such action or proceeding must be perfected within thirty (30) days after entry of the judgment.

7.7.1522: LIEN OF ASSESSMENT:

A. Priority: Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The liens shall be subordinate to all existing special assessment liens previously imposed upon the same property, and shall be paramount to all other liens except for State, County and municipal liens with which it shall be upon a parity. The liens shall continue until the assessment and all interest due and payable are paid.

B. Interests: All assessments remaining unpaid after thirty (30) days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of one percent (1%) per month from and after the date.

7.7.1523: REPORT TO ASSESSOR AND TAX COLLECTOR:

After confirmation of the report, certified copies of the assessment shall be given to the County Treasurer on or before October 15.

7.7.1524: COLLECTION OF ASSESSMENT:

The amount of the assessment shall be collected at the same time and in the same manner as general taxes are collected; and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for general municipal taxes. All laws applicable to the levy, collection and enforcement of general municipal taxes shall be applicable to the assessment.

7.7.1525: REPAYMENT OF CORRECTION FUND:

All money received by payment of the charge or assessment or from the sale of property at foreclosure sale shall be paid to the Chief Financial Officer who shall credit the same to the Stormwater Enterprise.

7.7.1526: RESPONSIBILITY AND LIABILITY:

Any person who engages in construction activities is declared to be totally responsible to those persons who may have been endangered or, in fact, does endanger, as a result of not having or not following a GEC Plan, CSWMP, and/or PCM Plan or following an incorrect GEC Plan, CSWMP, and/or PCM Plan.

7.7.1527: INSPECTIONS, MAINTENANCE, AND ENFORCEMENT OF PERMANENT CONTROL MEASURES:

A. Responsible Party Inspection and Maintenance Required: PCMs, a requirement of section 7.7.906 of this article, shall be inspected and maintained by the responsible party, in accord with the provisions of this section and in accord with the measures outlined in the most recent version of the Drainage Criteria Manual. Noncompliance with those measures may result in issuance of a notice of violation (NOV). Inspection requirements do not apply to PCMs constructed prior to June 1, 2008.

B. PE Certification: All private and public stormwater quality PCM construction shall be certified in compliance with the approved construction plans and specifications by a professional engineer (PE) licensed in the State of Colorado, prior to release of the PCM financial assurance.

C. Inspection And Maintenance Plan; Maintenance Agreement:

1. An inspection and maintenance plan (IM plan) shall be developed by the owner concurrently with the design of the facility and submitted with PCM Plan for approval by the SE Manager. The IM plan shall specify the responsible party and those responsible for inspection and maintenance (i.e., property owner, homeowners' association), owner and responsible party contact information, facility address, list recommended inspection and maintenance activities and frequencies, access, specify approximate annual maintenance costs, and specify responsibilities for financing maintenance. The responsible parties shall perform inspections of stormwater PCMs on a periodic basis in accordance with the approved IM plan, document the inspection(s), and submit an annual inspection report to the SE Manager, as outlined in the IM plan.

2. The City shall provide a template of a maintenance agreement for completion by the responsible party. A signed maintenance agreement shall be submitted by the owner to the Stormwater Enterprise. The approved maintenance agreement shall be recorded with deed records

to ensure that the maintenance agreement is bound to the property in perpetuity. The SE Manager may release the erosion control financial assurances at their discretion, but will not release the PCM financial assurances until the maintenance agreement is recorded at the responsible party's expense.

D. Inspection By City:

1. The SE Manager may enter upon the subject private or public property at reasonable times to conduct on site inspections or maintenance or to confirm the information in the annual inspection reports submitted by responsible party. If maintenance activities are not completed in a timely manner or as specified in the approved plan or if there exists an immediate danger to public health or safety as a result of the PCM, the SE Manager, other Stormwater Enterprise staff under the direction of the SE Manager, or a contractor engaged by the Stormwater Enterprise, may enter upon the subject private or public property and complete the necessary maintenance and/or repair at the responsible party's expense.

2. If deficiencies are noted during City inspections, the City will notify the owner by U.S. mail, first class, postage prepaid with a certificate of mailing, at the property's legal address listed in the records of the El Paso County Assessor's Office. The responsible party shall have twenty (20) business days or other time frame mutually agreed to between the SE Manager and the responsible party to correct the deficiencies. The SE Manager will then conduct a follow up inspection to verify the repairs. If repairs are not undertaken or are not found to be done properly, the SE Manager may complete the necessary maintenance at the responsible party's expense.

E. Notice Of Violation: In the event that the IM plan annual inspection report is not submitted by the responsible party to the SE Manager, the SE Manager will notify the owner of the missed inspection report by U.S. mail, first class, postage prepaid with a certificate of mailing, at the property's legal address listed in the records of the El Paso County Assessor's Office. The responsible party will have twenty (20) business days to complete the inspection and mail it to the SE Manager. A notice of violation (NOV) may be issued by the SE Manager if an inspection is not submitted after the twentieth business day. The notice will include a date which will be identified as the "date of notice of violation" for purposes of appeal rights.

F. Appeal: Any person receiving a notice of violation under this section may appeal the determination of the SE Manager to the Director. The notice of appeal must be received by the Director within ten (10) days from the date of the notice of violation. A hearing on the appeal before the Director shall take place within

fifteen (15) days from the date the City received the timely notice of appeal. An appeal of the Director's determination can be made to the Mayor. The notice of appeal must be received by the Mayor within ten (10) days from the date of the Director's determination. A de novo hearing on the appeal before the Mayor shall take place within fifteen (15) days from the date the Mayor received a timely notice of appeal of the Director's determination. The decision of the Mayor shall be final.

G. Charging Cost of Abatement; Liens: Within thirty (30) days after maintenance and/or repair of the PCM by the Stormwater Enterprise, the SE Manager shall notify in writing the property owner of the cost of repair, including administrative costs. The SE Manager's notice shall include an "official notice date". The property owner may file a written protest objecting to the amount of the assessment with the City Clerk within fifteen (15) days of the "official notice date". The City Clerk shall set the matter for public hearing by the City Council and shall notify the appellant of the date of the hearing. The decision of the City Council shall be set forth by resolution and shall be final. In addition to any lien placed upon real property, the cost of abatement, including administrative costs, shall be deemed a joint and severable personal debt of the property owner. If the amount due is not paid within ten (10) days of the decision of the City Council, or the expiration of the time in which to file an appeal to City Council under this section if no appeal is filed, the charges shall become a special assessment against the property and shall constitute a priority lien on the property for the amount of the assessment. This lien shall be deemed in priority of, and superior to, any and all liens then existing on the property or later levied upon the property. A copy of the resolution shall be filed with the County Assessor and the County Treasurer so that the Assessor may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the tax collector shall include the amount of the full amount of the assessment on the bill for taxes levied against the parcel of land.

Section 2. Any person violating Part 15 (Grading Plans and Erosion and Stormwater Quality Control Plans) of Article 7 (Subdivision Regulations) of Chapter 7 (Planning, Development and Building) shall be subject to the applicable penalties and remedies provided in this Part 15 (Grading Plans and Erosion and Stormwater Quality Control Plans) of Article 7 (Subdivision Regulations) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended.

Section 3. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 4. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____ day of _____, 2020.

Finally passed: _____

Council President

Mayor's Action:

- Approved on _____.
- Disapproved on _____, based on the following objections:

Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

Council President

ATTEST:

Sarah B. Johnson, City Clerk