

Ordinance Regulating the Use of Public and Private Stormwater Systems



Approved by the Shelburne Selectboard on ___/ ___/ ___

DRAFT 2020

(This Ordinance supersedes the Stormwater Discharge
Ordinance previously adopted on August 8, 2006.)

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The Selectboard of the Town of Shelburne hereby ordains:

ARTICLE I - GENERAL

1.1 Authority

This Ordinance Regulating the Use of Public and Private Stormwater Systems (the “Ordinance”) is adopted pursuant to 24 V.S.A. Chapters 99, 101 and Sections 1.4(3) and 1.6 of the Town of Shelburne Charter. It shall be a civil ordinance within the meaning of 24 V.S.A. Chapter 59.

1.2 Purpose

This Ordinance exists to establish an equitable fee collection system from all properties with impervious surfaces within the Town and to use these fees to manage and implement infrastructure projects, as informed by the Phosphorus Control Plan, the State of Vermont Stormwater Manual and as required by the Municipal Separate Storm Sewer System (MS4) Permit, to mitigate stormwater impacts to waterways and to prevent their further degradation and impairment.

1.3 Definitions

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Authorized Person The Town Manager, Stormwater Superintendent, Wastewater Superintendent and such other persons as they specifically appoint or authorize to perform duties for Stormwater management.

Best Management Practices (BMPs) Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of Pollutants directly or indirectly to the Stormwater System or waters of the State of Vermont or the United States. BMPs also include

treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Town Manager The Town Manager of the Town of Shelburne, or his/her authorized deputy, agent, or representative.

Combined Sewer A sewer receiving both Stormwater runoff and sewage.

Construction Activity shall mean activities including, but not limited to clearing and grubbing, grading, excavating, and demolition.

Credit An ongoing reduction in the stormwater user fee for certain identified and approved qualifying and ongoing private actions or activities that reduces the potential impact of increased Stormwater Discharges that result from development of a property.

Department of Public Works Wastewater Division That Town department responsible for construction, operation and maintenance of the sewage works.

Developed Property Any property that is altered from a natural state by construction or installation of more than five hundred (500) square feet of Impervious Surface.

Discharge Permit A permit issued by the Vermont Department of Environmental Conservation pursuant to authority granted in 10 V.S.A., Chapter 47, or the U.S. Environmental Protection Agency pursuant to 33 U.S.C. § 1251, et. seq.

Equivalent Residential Unit or ERU The base billing unit for stormwater fees and shall be equal to the square footage that represents the median of the area of Impervious Surface for all Single Family Residences in the Town as of the date of adoption or amendment of this Ordinance.

Exclusively Residential As used in Article IV of this Ordinance shall mean land development in the Town comprised of properties containing solely residential uses and permitted accessory uses, such as one-family, two-family and multi-family dwelling units. Land development with commercial, industrial or other non-residential uses is excluded.

Hazardous Material Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit Discharge Any direct or indirect Non-Stormwater Discharge to the Stormwater System.

Impervious Surface Those manmade surfaces, including, but not limited to, paved and unpaved roads, parking areas, roofs, driveways, sidewalks, walkways, compacted gravel and soil surfaces, and awnings

and other permanent fabric or plastic coverings, from which precipitation runs off rather than infiltrates.

Industrial Activity Activities subject to National Pollutant Discharge Elimination System (NPDES) Industrial Permits as defined in 40 CFR, Section 122.26(b)(14).

Industrial Wastes The liquid wastes from an industrial manufacturing process, trade, or business. Industrial Wastes do not include sanitary sewage.

MS4 Permit The Vermont Agency of Natural Resources' General Permit #3-9014, as amended or re-issued, pursuant to which the Town obtained coverage for Stormwater discharges from its municipal separate storm sewer system.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non Single-Family Residence (NSFR) All types of Developed Property in the Town except Single Family Residences.

Non-Stormwater Discharge Any discharge to the Stormwater System that is not composed entirely of Stormwater or such other waters or materials as are specifically authorized herein. It shall also include placing or depositing any Hazardous Material or Pollutant in the Stormwater System.

Parcel Any lot of land, plot of land, tract of land, subdivided piece of land, unit of land, any subset of land, land owned in common, or a condominium unit in the Town of Shelburne in separate ownership as of April 1 of the year the user fee is based on, and has a separate parcel identification number, map identification number or is identified as a separate parcel in the Town of Shelburne Grand List. Included in this definition are land controlled and managed by homeowners', condominium, planned community and unit owner associations. and all public and private roadways including but not limited to those owned by the Town, the State and the United States.

Person Any individual, firm, company, association, society, corporation, institution, partnership, governmental entity, group or other entity.

Private Stormwater System All elements of the Stormwater System located in the Town of Shelburne that are privately owned and not controlled and operated by Town.

Public Stormwater System All elements of the Stormwater System located in the Town of Shelburne that are controlled and operated by the Town of Shelburne or that carry Stormwater that drains directly or indirectly from any public property, including street rights-of-way.

Pollutant Any introduced substance which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous

liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, sediment, nutrients and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Regulated Private System Those Stormwater Systems located on privately owned property in the Town that are subject to or required to obtain a permit for Stormwater Discharges under federal or state law, which permits routinely require installation and maintenance of Stormwater management or treatment improvements.

Selectboard – A five member elected Selectboard constituting the legislative body of the Town. The Selectboard sets policy through budgets, ordinances, and tax rates among other regulatory duties.

Sewage and Stormwater Commissioners (or “Commissioners”, or “Board”) Members of the Selectboard acting as a Board of Sewage and Stormwater Commissioners under 24 V.S.A. Section 3614.

Sewer A pipe, culvert, ditch, swale or other conduit for carrying sewage or Stormwater.

Shall is mandatory; “may” is permissive.

Single Family Residence (SFR) Detached single family homes, duplexes, and triplexes.

Storm Drain A sewer intended to carry only Stormwater and surface waters.

Stormwater Excess water from rainfall and snow melt that does not evaporate or penetrate into the ground, which flows overland and is collected and transported to waters of the State of Vermont or the United States by the Stormwater System, together with any material that becomes dissolved or suspended in such water during its overland flow before entering surface waters of the State or a Stormwater System

Stormwater Appeal Board The Town Manager, and two other individuals appointed by the Selectboard.

Stormwater Discharge Any Stormwater that is transported, naturally or otherwise, from a Developed Property to the Public Stormwater System or surface waters.

Stormwater System Natural and man-made drainage structures, conveyances, Storm Drains, catch basins, and any other appurtenant device or structure where Stormwater is collected, transported, pumped, treated, infiltrated, dispersed or disposed of.

Stormwater Superintendent The Town Manager or his/her designee to oversee the Stormwater Services Division.

Stormwater Treatment Practice (STP) A specific device or technique, including but not limited to a non-structural practice, designed to provide stormwater quality treatment and/or quantity control as defined in the Vermont Stormwater Management Manual, as amended (VSMM)

Stormwater Upgrade Feasibility Analysis (SUFA) Those standards and procedures, as adopted and amended by Selectboard, defining the processes of engineering feasibility analysis for upgrade, repair and maintenance of Stormwater Systems in the Town, which shall be incorporated by reference herein.

VSMM The Vermont Stormwater Management Manual, as amended from time to time by the Vermont Agency of Natural Resources, which shall be incorporated by reference herein.

Wastewater Superintendent That employee of the Town of Shelburne who shall be designated by the Town Manager to oversee the Department of Public Works Wastewater Division.

Watercourse A perennial, intermittent or ephemeral river, brook or stream, or any natural or man-made channel that carries Stormwater to any perennial, intermittent or ephemeral river, brook, stream or Stormwater drainage system.

ARTICLE II - STORMWATER SYSTEM

2.1 Purpose

The purpose of this Article is to provide for the health, safety, and general welfare of the citizens of Shelburne through the regulation of Stormwater Discharges to the Stormwater System as required by federal and state law.

2.2 Applicability

Any discharge of Stormwater from Developed Property in the Town shall be subject to the provisions of this Article.

2.3 Required Approvals

(A) No owner of Developed Property in the Town shall change or alter, or allow to be changed or altered, the discharge of Stormwater from such property occurring on the effective date of this Article without first obtaining any permit or approval required under this or any other Town Ordinance, state law, or federal law. As used herein, change or alter shall mean an act done which will result in a direct or indirect impact on the contribution of Stormwater into the Public Stormwater System.

(B) No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public Storm Drain or appurtenance thereof without first obtaining a written permit from the Stormwater Superintendent.

2.4 Compliance with Existing Permits

It shall be a violation of this Article for any owner of Developed Property that is subject to any local, state, or federal permit requirements regarding the discharge of Stormwater to fail to comply with such permit requirements.

2.5 Use of the Public Stormwater System:

(A) The following may be discharged into the Public Stormwater System, subject to obtaining and complying with any required permit:

- (1) Stormwater;
- (2) Landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to Storm Drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, natural riparian habitat or wetland flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), emergency firefighting activities, and any other water source not containing Pollutants;
- (3) Discharges specified in writing by an Authorized Person as being necessary to protect public health and safety;
- (4) Dye testing is an allowable discharge, but requires a verbal notification to an Authorized Person prior to the time of the test;
- (5) Any non-Stormwater discharge permitted under a National Pollutant Discharge Elimination System (NPDES) permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the Storm Drain system.

(B) It shall be a violation of this Ordinance for any Person to cause or allow to occur any Illicit Discharge to the Public Stormwater System or allow any Illicit Discharge existing on the date this Article becomes effective to continue regardless of whether such existing discharge was permissible under law or practices applicable or prevailing at the time the discharge commenced.

(C) No Person shall throw, deposit, leave or maintain, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk,

component of the Storm Drain system, or Watercourse, any refuse, rubbish, garbage, litter, leaf and yard waste, or other discarded or abandoned objects, articles and accumulations, so that the same may cause or contribute to pollution. Any such wastes deposited in streets in proper waste receptacles for the purpose of collection are exempted from this prohibition.

2.6 Best Management Practices

(A) The Stormwater Superintendent will adopt requirements identifying Best Management Practices (BMPs) for any activity, operation, or facility which may cause or contribute to an Illicit Discharge to the Stormwater System. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from an accidental Illicit Discharge into the Public Stormwater System. Further, any Person responsible for a property or premises, which is, or may be, the source of an Illicit Discharge to the Public Stormwater System, may be required to implement, at said Person's expense, additional BMPs to prevent or discontinue the Illicit Discharge. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of Stormwater associated with Industrial Activity, to the extent practicable, shall be deemed in compliance with the provisions of this Section.

(B) Notwithstanding other requirements of law, as soon as any Person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in an Illicit Discharge into the Stormwater System, said Person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of a release of Hazardous Materials, said Person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said Person shall notify the Stormwater Superintendent in person or by phone or email no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Stormwater Superintendent within three business days of the phone notice. If the Illicit Discharge emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

2.7 Protection from Damage

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the Public Stormwater System.

2.8 Watercourse Protection

Every Person owning property through which a manmade or natural Watercourse passes, or such Person's lessee, shall not dump or dispose of trash, debris, or other obstacles that would pollute, contaminate or alter the flow of water through a Watercourse. In addition, the owner or lessee shall maintain existing privately-owned infrastructure within or adjacent to a Watercourse, so that such structures will not adversely impact the use, function, or physical integrity of the Watercourse. Natural riparian buffers and manmade Watercourses established as part of a development and required by Town regulations shall be maintained by the developer and all other subsequent property owners, including but not limited to associations, within the development.

ARTICLE III - STORMWATER SYSTEM USER FEES

3.1 Establishment of Stormwater User Fees

- (A) A user fee based on an Equivalent Residential Unit (ERU) shall be imposed on every owner of Developed Property within the Town. An ERU shall equal that square footage that represents the median of the area of Impervious Surface for all Single-Family Residences in the Town. The Selectboard shall, by resolution, establish the square footage that constitutes one ERU on a periodic basis.
- (B) The Selectboard shall have the authority to set and modify the user fee rates so that the total revenue generated by said charges, and any secondary sources of revenue, shall be sufficient to fund the Town's stormwater program.
- (C) The Selectboard shall establish by resolution the monthly rate for each ERU. The monthly user fee for a specific property is determined by multiplying the rate per ERU times the number of ERUs allocated to the property.
- (D) There are no exempt properties under this Article.

3.2 User Fee Credits:

- (A) The Stormwater Superintendent shall prepare for the Selectboard's approval, a "Credit Manual for Stormwater Fees" specifying the design and performance standards of on-site Private Stormwater Systems, facilities, activities and services which qualify for application of a user fee credit and the method of calculating Credits. The Selectboard shall have the authority to approve, modify and approve or disapprove the Credit Manual.

(B) Following approval of a Credit Manual, the Stormwater Superintendent may, at the request of a property owner, reduce the user fee established for any property by awarding a Credit based on the policies and conditions set forth in the Manual. No Credit shall exceed **seventy-five percent (75%)** of the applicable monthly user fee for a given property. Any property owner may appeal the Stormwater Superintendent's determination regarding an award of a Credit by filing a written notice of appeal with the Stormwater Appeal Board within ten (10) business days of the Stormwater Superintendent's decision. The Stormwater Appeal Board shall review such appeal at a meeting preceded by fifteen (15) calendar days written notice of the meeting date to the property owner. Following the meeting, the Stormwater Appeal Board shall issue its decision on the appeal in writing, which decision shall be final.

(C) Credits shall be applied to user fees on the next billing period after the completed credit application is approved.

(D) Any award of Credit shall be conditioned on continuing compliance with the Town's design and performance standards as stated in the "Credit Manual for Stormwater Fees" and/or upon continuing provision of the systems, facilities, services, and activities provided, operated, and maintained by the property owner or owners upon which the Credit is based. The Stormwater Superintendent may revoke or reduce a Credit at any time for non-compliance by providing thirty (30) days written notice of a non-complying condition and intent to revoke or reduce the Credit to the property owner. If the non-compliance is not cured within the thirty (30) day period, the Stormwater Superintendent shall eliminate the Credit for user fee bills issued to the property owner after such period. A property owner may appeal the Stormwater Superintendent's determination regarding Credit revocation or reduction in the same manner set forth in paragraph (B), above.

3.3 Establishment of ERUs:

(A) Each Single-Family Residence (SFR) with less than one acre of Impervious Surface shall be allocated one (1) ERU. Each Single-Family Residence (SFR) with equal to or more than one acre of Impervious Surface shall be allocated ten (10) ERUs.

(B) The ERUs allocated to NSFR properties, except Town highways, shall be determined in the following manner:

- (1) The amount of Impervious Surface on each Parcel shall be divided by the gross area of the Parcel resulting in the percent of imperviousness for the Parcel.
- (2) Based on the percent of Impervious Surface, a "tier factor" shall be determined, based on the following categories:

IMPERVIOUS PERCENTAGE OF GROSS AREA	TIER FACTOR
1 to 10.99%	* See Below
11 to 20.99%	0.15
21 to 30.99%	0.25
31 to 40.99%	0.35
41 to 50.99%	0.45
51 to 60.99%	0.55
61 to 70.99%	0.65
71 to 80.99%	0.75
81 to 90.99%	0.85
91 to 100%	0.95

*Fee will be based on actual amount of Impervious Surface, measured in square feet. The tier factor used shall be the percent impervious area of the Parcel represented as a decimal (e.g. 1.5% would be 0.015, 6.9% would be 0.069, 10.3% would be 0.103, etc). The gross area of the Parcel shall be multiplied by the tier factor, and then divided by the ERU. The resulting value is rounded up to the nearest whole number, which is the number of ERUs for the property.

(C) The ERUs allocated to properties comprised solely of Town owned roadways shall be determined by dividing two-thirds of the total Impervious Surface for the property by the ERU. The resulting value is then rounded up to the nearest whole number which is the number of ERUs for the property.

3.4 Billing and Collection

(A) Stormwater user fees will be billed quarterly and shall be reflected on the water and sewer bills for each property owner, where applicable. The bill shall also state the ERUs allocated to each property.

(B) Stormwater user fees will be phased in over a three-year period, such that in the first year (fiscal year 2020-2021), fees billed will be 33% of what would otherwise be the full billable rate; in the second year (fiscal year 2021-2022), fees billed will be 66% of what would otherwise be the full billable

rate; and in the third year (fiscal year 2022-2023) and beyond, fees billed will be at the full billable rate (100%). This phased approach is a Townwide master billing approach for all properties subject to this Ordinance and existing as of the date of adoption of this Ordinance. Any property developed after that date will be billed user fees based on that master billing cycle. All user fees will be net of any credits earned and accepted per the Town's Credit Manual.

(C) A property owner may appeal an allocation of ERUs to the Stormwater Superintendent by submitting a written notice of appeal to the Stormwater Superintendent within fifteen (15) calendar days of the mailing date of the bill. The Stormwater Superintendent shall promptly meet with the property owner and issue a decision of the allocation of ERUs. A property owner may appeal the Stormwater Superintendent's determination regarding Credit revocation in the same manner set forth in Section 3.3(B). The filing of an appeal shall not relieve a property owner of the obligation to pay the user fee when due.

(D) In the event any stormwater user fee is not paid within thirty (30) days from the billing date, a late penalty charge will be added to the fee together with interest charges. The amount of the late penalty charge and the interest rate on the overdue accounts shall be the same as those applied to delinquent taxes. If such payment is not made, such stormwater user fee shall be a lien upon such real estate and may be collected in the manner provided in 24 V.S.A. §§ 3504 and 3612. Any payment made to the Town for utility fees shall first be allocated to delinquent water, then delinquent sewer, then delinquent stormwater fees. The remaining amount of the payment shall first be allocated to current water, then current sewer, then current stormwater fees.

3.5 Expenditures.

(A) The user fees, as well as any secondary sources of revenue, shall be used to fund the Town's efforts to manage Stormwater. Acceptable expenditures include, but are not limited to, capital construction, maintenance and operations, engineering and planning, regulation and enforcement, water quality programs, special services, administration and management, coverage requirements, reserve funds, staff or labor costs, vehicle and equipment purchases, water quality related public education, and miscellaneous overhead costs.

(B) Excess revenues may be placed into a sinking fund, and may be retained and expended pursuant to 24 V.S.A. § 3616. The Town reserves the right to increase, decrease, stop and/or maintain regular deposits into a sinking fund not exceeding 15% of the normal total budgeted expenses for maintenance/replacement in that year. The Selectboard holding office shall have the authority to withdraw sinking fund amounts only for the purposes of paying acceptable expenditures as outlined in Section 3.5(A), above.

ARTICLE IV – ACCEPTANCE OR INSPECTION OF REGULATED PRIVATE SYSTEMS

4.1 Exclusively Residential Regulated Private Systems.

(A) Subject to the terms and conditions of this Ordinance, the Town may accept conveyance of and assume responsibility for the following types of Regulated Private Systems that serve Exclusively Residential development in the Town:

- (1) Regulated Private Systems with valid Vermont stormwater discharge permits issued pursuant to the guidance and standards in the Vermont Stormwater Management Manual (VSMM) if the Regulated Private System has been constructed and maintained in accordance with the approved plans and specifications;
- (2) Regulated Private Systems with valid Vermont stormwater discharge permits issued under standards in effect prior to the adoption of the VSMM, if the Regulated Private System is not located in a stormwater-impaired watershed and the Regulated Private System has been constructed and maintained in full accordance with the approved plans and specifications;
- (3) Regulated Private Systems with expired Vermont stormwater discharge permits located within a stormwater-impaired watershed if the Regulated Private System is upgraded in accordance with the Stormwater Upgrade Feasibility Analysis (“SUFA”);
- (4) Regulated Private Systems with valid Vermont stormwater discharge permits issued under standards older than the VSMM and located in a stormwater-impaired watershed only if the Regulated Private System is upgraded in accordance with the SUFA; and
- (5) Regulated Private Systems with valid Vermont individual stormwater discharge permits provided that the Stormwater Services Division determines that the permit’s requirements and the maintenance of any associated offset projects would not place an undue burden on the Town.

(B) The Owner of any Regulated Private System listed in Section (A), above, may offer to convey such system to the Town by:

- (1) Applying to the Stormwater Superintendent, using forms developed by the Stormwater Superintendent;
- (2) Paying the applicable fee as determined by resolution of the Shelburne Selectboard; and
- (3) Agreeing to reimburse the Town for any reasonable costs, fees, expenses and other charges the Town incurs in evaluating the Regulated Private System’s design and inspecting the Regulated Private System’s Stormwater management and treatment improvements prior to acceptance of such Regulated Private System.

(C) Upon receipt of a complete application described in Section (B), above, the Stormwater Superintendent shall determine whether the Regulated Private System meets the applicable standards which determination shall be final.

(D) Upon a determination that a Regulated Private System meets applicable standards, the Stormwater Superintendent, working with the Town Attorney or the Town Attorney's designee, shall direct the Owner of the Regulated Private System to prepare all documents, using forms developed by the Stormwater Superintendent, the Town Attorney, or the Town Attorney's designee, necessary to convey the Regulated Private System, free and clear of all encumbrances, to the Town and transfer any applicable permit to the Town. The Stormwater Superintendent, Town Attorney or the Town Attorney's designee shall review such documents to determine their accuracy and completeness.

(E) Upon an Owner of the Regulated Private System's satisfactory completion of the work required under paragraphs (A) through (D) above, and payment of any sums due under paragraph (B) above, the Stormwater Superintendent shall submit to the Selectboard the Owner's offer to convey the Regulated Private System to the Town. The Selectboard may accept such offer if it determines that such acceptance is in the best interests of the Town.

(F) Upon acceptance of a Regulated Private System pursuant to paragraph (E) above, the Town shall be responsible for operating, maintaining, repairing, replacing and upgrading the Regulated Private System to comply with any applicable permit and for renewing or obtaining any permit required for operation and maintenance of the Regulated Private System, except that the Former Owner of the Regulated Private System shall be responsible for all costs, fees, charges and expenses for:

- (1) Remedying damage caused by the Former Owner of the Regulated Private System; or
- (2) In the event that an extreme unforeseen circumstance requires extraordinary repair and reconstruction measures unique to the Regulated Private System. As used herein, an "extreme unforeseen circumstance" shall mean an act, event, cause or condition that is beyond the Town's reasonable control such as a fire, storm, earthquake, flood, lightning, landslide, hurricane, tornado, war, strike, terrorism, riot or insurrection.

(G) For a period of twenty (20) years from the date the Town accepts a Regulated Private System and other than the User Fee described in Article III hereof, the Town shall not impose an assessment or surcharge that is unique to the Former Owner of such accepted Regulated Private System to cover all or a portion of the cost of performing the Town's duties outlined in paragraph (F) above, unless the Town imposes a similar assessment or surcharge on other Former Owners of other similar Regulated Private Systems, or in the event of a need to remedy damage described in subparagraphs (F)(1) and (F)(2) above.

(H) For purposes of this Article VII, the phrase "Former Owner" includes the successors in interest of Owners of Regulated Private Systems that have been accepted by the Town pursuant to the procedures outlined in paragraphs (B) through (G) of this Section 4.1. If a "Former Owner" is a membership organization, company, corporation or other entity, whether for profit or not-for-profit, the phrase

“Former Owner” shall also include its officers, members, directors and their respective successors in interest.

4.2 Regulated Private Systems That Are Not Exclusively Residential

(A) Subject to the terms and conditions of this Ordinance, the Town may, at the discretion of the Stormwater Superintendent, allow Regulated Private Systems that serve properties with non-residential uses to obtain permit coverage under the Town’s MS4 Permit provided the Owner of such Regulated Private System meets all of the following conditions:

- (1) The Regulated Private System shall comply with the VSMM or the Stormwater Upgrade Feasibility Analysis (“SUFA”).
- (2) Regulated Private Systems located in a stormwater-impaired watershed, as determined by said watershed’s placement on the State’s list of stormwater-impaired waters pursuant to 33 U.S.C. Section 1313(d), shall satisfy the goals outlined in any Agency of Natural Resources-approved plan for the Town to meet MS4 Permit requirements (e.g., the Town’s Flow Restoration Plan).
- (3) The Owner of a Regulated Private System enters into an agreement with the Town obligating the Owner of the Regulated Private System to maintain the Regulated Private System in accordance with the MS4 Permit and the VSMM or the SUFA, as applicable to that Regulated Private System, and grants the Town access by license:
 - (a) To monitor and inspect the Regulated Private System at regular intervals to confirm compliance with the MS4 Permit and either the VSMM or the SUFA, as applicable to that Regulated Private System; or
 - (b) To maintain the Regulated Private System only in the event the Superintendent determines that the Owner of the Regulated Private System has failed to perform maintenance of the Regulated Private System in accordance with the VSMM or the SUFA, as applicable to that Regulated Private System and that public good requires that the Town to perform such maintenance on the Regulated Private System. The Town’s performance of maintenance on a Regulated Private System shall be performed at its sole discretion and shall not relieve the Owner from complying with the MS4 Permit and the VSMM or the SUFA, as applicable. If the Town chooses to perform such maintenance after the Owner’s failure or refusal to do so, the Owner shall reimburse the Town for its costs, fees, expenses and other charges it incurs as a result of the Owner’s failure or refusal to perform such maintenance. If the Owner refuses to reimburse the Town within thirty days of the Town’s mailing of a bill for such charges, such charges shall be a lien on the Owner’s property and enforceable in accordance with 24 V.S.A. §§ 3504 and 3612 .
- (4) The Superintendent determines that allowing the Regulated Private System to obtain coverage under the Town’s MS4 Permit would not place an undue burden on the Town.

(B) The Owner of a Regulated Private System meeting the requirements of paragraph (A), above, may request coverage under the Town's MS4 Permit by:

- (1) Applying to the Stormwater Superintendent, using forms developed by the Stormwater Superintendent;
- (2) Paying the applicable fee as determined by the Shelburne Selectboard;
- (3) Submitting a plan for maintenance and repair of the Regulated Private System to ensure compliance with the MS4 Permit and either the VSMM or the SUFA, as applicable to that Regulated Private System; and
- (4) Agreeing to reimburse the Town for any reasonable costs, fees, expenses and other charges the Town incurs in evaluating the Regulated Private System's design and inspecting the Regulated Private System's Stormwater management and treatment improvements prior to the Town accepting coverage of such Regulated Private System under its MS4 Permit.

(C) Upon receipt of a complete application as described in paragraph (B) above, the Superintendent shall determine whether the Regulated Private System meets the VSMM or the SUFA, as applicable to that Regulated Private System. The Superintendent's determination shall be final.

(D) Upon determination that a Regulated Private System satisfies the VSMM or the SUFA, as applicable to that Regulated Private System, the Stormwater Superintendent, working with the Town Attorney or the Town Attorney's designee, shall direct the Owner of the Regulated Private System to prepare all documents, using forms developed by the Stormwater Superintendent, the Town Attorney or the Town Attorney's designee, necessary for the Regulated Private System to obtain coverage under the Town's MS4 Permit. The Stormwater Superintendent, Town Attorney or the Town Attorney's designee shall review such documents to determine their accuracy and completeness.

(E) Upon an Owner of the Regulated Private System's satisfactory completion of the work required by paragraphs (A) through (D) above, and payment of any sums due under paragraph (B) above, the Stormwater Superintendent shall submit to the Selectboard the Regulated Private System Owner's request to obtain coverage under the Town's MS4 Permit. The Selectboard may approve such request if it determines that such approval is in the best interests of the Town.

(F) Upon allowing a Regulated Private System to obtain coverage under the Town's MS4 Permit pursuant to paragraph (E) above, the Town shall periodically monitor, inspect and report on the Regulated Private System per the Town's MS4 Permit requirements. Notwithstanding such coverage, the Owner of the Regulated Private System remains responsible for all costs, fees, charges and expenses for:

- (1) Operation, maintenance, repair, improvement or replacement of the Regulated Private System to ensure compliance with the MS4 Permit and with either the VSMM or the SUFA, as applicable to that Regulated Private System;

(2) Remedying damage caused by the Owner of the Regulated Private System; and

(3) In the event that an extreme unforeseen circumstance requires extraordinary repair and reconstruction measures unique to the Regulated Private System. As used herein, an “extreme unforeseen circumstance” shall mean an act, event, cause or condition that is beyond the Town’s reasonable control such as a fire, storm, earthquake, flood, lightening, landslide, hurricane, tornado, war, strike, terrorism, riot or insurrection.

(G) For a period of twenty (20) years from the date the Town allows a Regulated Private System to obtain coverage under the Town’s MS4 Permit and other than the User Fee described in Article III hereof, the Town shall not impose an assessment or surcharge that is unique to the Owner of such Regulated Private System to cover all or a portion of the cost of performing the Town’s duties outlined in paragraph (F) above unless either:

(1) The Town imposes a similar assessment or surcharge on Owners of other similar Regulated Private Systems;

(2) In the event of a need to remedy damage caused by negligence or malfeasance on the part of the Owner;

(3) In the event that an extreme unforeseen circumstance requires extraordinary repair and reconstruction measures unique to the Regulated Private System; or

(4) If the Town deems in the reasonable exercise of its discretion that the Owner has failed to maintain, repair or improve the Regulated Private System to comply with the Town’s MS4 Permit and such maintenance, repair or improvement is necessary, as determined by the Stormwater Superintendent’s sole discretion, to ensure compliance with the Town’s MS4 Permit.

(H) For purposes of this Section 4.2, the term “Owner” includes the successors in interest of Owners of Regulated Private Systems that have obtained coverage under the Town’s MS4 Permit. If an “Owner” is a membership organization, company, corporation or other entity, whether for profit or not-for-profit, the phrase “Owner” shall also include its officers, members, directors and their respective successors in interest.

(I) In addition to the rights and remedies for non-compliance with this Ordinance provided in Article VI below, if the Owner of the Regulated Private System fails to operate, improve, inspect, maintain, repair and replace its Regulated Private System in accordance with the Town’s MS4 Permit, the VSMM or the SUFA, as applicable to that Regulated Private System, then the Stormwater Superintendent in his sole discretion and at any time may terminate the agreement described in Section 4.2(A)(3), above, provided the Superintendent mailed a notice of termination to the Owner thirty (30) days in advance of such termination.

ARTICLE V – MUNICIPAL COST SHARING

5.1 Purpose

The Purpose of this article is to establish a Town policy regarding cost sharing of upgrading or improving Stormwater Treatment Practices on private property that are required by the MS4 Permit, Flow Restoration Plans (FRPs), Phosphorus Control Plans (PCPs) or any other future MS4 permit requirement.

5.2 Applicability

(A) This section shall apply to stormwater system upgrades or improvements as required by Article IV of this document.

5.3 Municipal Share of Stormwater Project Costs

(A) The Town shall share in the cost of upgrading or improving Stormwater Treatment Practices (STPs) that are required by the MS4 Permit, Flow Restoration Plans (FRPs), and/or Phosphorus Control Plans (PCPs) as follows:

- (1) The Town shall contribute funds from the stormwater utility budget for the construction of upgrades or improvements to STPs on a pro rata basis. Cost sharing shall be determined by the percentage of Impervious Surface area that is publicly owned and covered by the existing Stormwater permit as compared to the total Impervious Surface area covered by the existing Stormwater permit;
 - (a) Areas outside of the existing Stormwater permit that drain to the STP will not be included in this calculation unless the additional off-site area is routed to the STP as part of the upgrade or improvement. If offsite areas are being redirected to the STP as part of the upgrade or improvement, then these areas will be included as part of the Town's Impervious Surface area in the cost sharing calculation.
- (2) The Town's share of funding for upgrades or improvement of any particular STP will be determined on a schedule established by and at the discretion of the Town. The Town will update this schedule on an annual basis, as needed, to ensure that expenditures are budgeted in a way that is sustainable for both the Stormwater utility sinking fund and Stormwater utility rate payers, and to permit the required objectives.
- (3) The Town will cost share in the upgrade or improvement of an STP to the minimum design requirements that achieve the Stormwater treatment necessary to satisfy FRPs and the Vermont Stormwater Management Manual (VSMM). Work included as part of any upgrade or improvement that is beyond the minimum necessary to meet the minimum design requirements will be the responsibility of the Owner of the Regulated Private System. The Town will not share in the cost of any work undertaken that is not directly related to the STP.

- (4) The Town shall review and will share in the costs of any change orders during construction until the total of change order requests exceeds 10% of the estimated total project cost. Change order requests seeking cost increases beyond 10% of the estimated total project cost will be borne by the Owner of the Regulated Private System, unless otherwise agreed to by the Town in the Stormwater Superintendent's sole and complete discretion.
- (5) The Town shall not contribute funds for engineering or design services incurred as part of upgrades or improvements to STPs unless:
- (a) The Town obtains grant or other outside funding for the engineering or design project and a signed Stormwater system improvement agreement with the Owner of the Regulated Private System that addresses engineering or design cost sharing is in place;
 - (b) The Town will not be responsible for engineering or design costs that were incurred prior to the effective date of a Stormwater system improvement agreement for the upgrade or improvement to the STP.
- (6) The Town will provide its pro rata share of STP upgrade or improvement costs only after the Stormwater Superintendent or his designee has inspected the Stormwater treatment system and the STP upgrade or improvement and certified that it has been constructed in accordance with the previously approved project plans.
- (7) The Town is not required to obtain grants or other outside funding for any individual project. Grants will be obtained at the discretion of the Stormwater Superintendent based on staff availability and other factors.
- (8) If a grant or outside funding is obtained by the Town for a STP upgrade or improvement project, such grant or outside funding will first be applied to offset the Town's pro rata share of the STP upgrade or improvement costs. Any amount in exceedance of the Town's pro rata share may be applied to the Regulated Private System Owner's pro rata share of the STP upgrade or improvement project costs at the discretion of the Stormwater Superintendent.
- (9) STP upgrade or improvement projects that are eligible for Town cost sharing must follow the process outlined for inclusion of the Stormwater treatment system under the Town's MS4 Permit as established in Article IV of this Ordinance.
- (a) If a Regulated Private System Owner performs an upgrade or improvement to an STP, but does not intend to obtain coverage under the MS4 Permit and instead obtains permit coverage directly from the State of Vermont, they may still obtain cost sharing from the Town pursuant the requirements of this Article. In order to be eligible, these projects must:

- (i) Submit engineering and design plans for STP upgrade or improvement to the Stormwater Superintendent and obtain written approval of these plans prior to incurring any costs that would be eligible for cost sharing; and
- (ii) Sign a Stormwater system improvement agreement with the Town that establishes pro rata cost sharing for all parties involved; and
- (iii) Obtain the Stormwater Superintendent's written confirmation that the STP upgrade or improvement was constructed in conformance with the approved plans once construction is complete.

ARTICLE VI - INSPECTION AND ENFORCEMENT

6.1 Power and Authority of Inspectors

- (A) Any Authorized Person bearing proper credentials and identification shall be permitted to enter all properties subject to regulation under this Ordinance for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this Ordinance. Authorized Persons shall have the right to set up such devices as are necessary to conduct monitoring and/or sampling of any regulated discharge from the property. Authorized Persons may also examine and copy records required to be kept under any permit subject to this ordinance. Authorized Persons shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the Public Stormwater System.
- (B) Any Authorized Person bearing proper credentials and identification shall be permitted to enter all private properties through which the Town holds an easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance or any portion of the Public Stormwater System lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the easement pertaining to the private property involved.
- (C) If a property owner has security measures in force which require proper identification and clearance before entry into onto the property, the owner shall make the necessary arrangements to allow access to any Authorized Person.
- (D) Any temporary or permanent obstruction to safe and easy access to any property to be inspected and/or sampled shall be promptly removed by the property owner at the written or oral request of any Authorized Person and shall not be replaced. The costs of clearing such access shall be borne by the property owner.

(E) Causing an unreasonable delay in allowing an Authorized Person access to a property subject to regulation under this Ordinance is a violation of this Ordinance.

(F) If an Authorized Person is refused access to any part of the property containing facilities, records or discharges subject to regulation under this Ordinance, and if the Authorized Person is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Authorized Person may seek issuance of a search warrant from any court of competent jurisdiction.

(G) While performing the necessary work on private properties referred to in this Section, Authorized Persons shall observe all safety rules applicable to the premises established by the property owner and the property owner shall be held harmless for injury or death to the Town employees and the Town shall indemnify the property owner against loss or damage to its property for personal injury or property damage asserted against the property owner and growing out of the gauging and sampling operation, except as may be caused by negligence or failure of the property owner to maintain safe conditions as required by law.

6.2 Administrative Enforcement

(A) Any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

(B) Any Person found to be violating any provision of this Ordinance shall be served by the Town with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of Illicit Discharges;
- (3) The cessation of improper practices and operations and implementation of proper practices and operations;
- (4) The abatement or remediation of any contamination of the Public Stormwater System and waters of the State of Vermont or the United States and restoration of any property impacted by such contamination;
- (5) Establishment of time limits for the completion of all required work;

(6) Payment of a fine; and

(7) State that the Notice may be appealed in the manner set forth in paragraph (G), below.

(C) The Town has the right to require a property owner found to be in violation of this Ordinance to install monitoring equipment and maintain such equipment in proper operating condition, including proper calibration, all at the property owner's expense.

(D) If a violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, the Town or persons retained by the Town may enter upon the subject property to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any Person, owner, agent or Person in possession of any premises to refuse to allow the Town or designated persons to enter upon the premises for the purposes set forth above.

(E) Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within fifteen (15) days. If the amount due is not paid within a timely manner as determined by the decision of the Town Manager or by the expiration of the time in which to file an appeal, the charges shall constitute a lien on the property for the amount of the assessment and shall bear interest at the rate of one percent (1%) per month, or portion thereof.

(F) The Town Manager may, without prior notice, suspend Public Stormwater System discharge access to a Person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, to the Public Stormwater System, or to waters of the State of Vermont or the United States. If the violator fails to comply with a suspension order issued in an emergency, the Town Manager may take such steps as deemed necessary to prevent or minimize damage to the Public Stormwater System or waters of the State of Vermont or United States, or to minimize danger to persons.

(G) Any Person discharging to the Public Stormwater System in violation of this Ordinance may have their Public Stormwater System access terminated if such termination would abate or reduce an Illicit Discharge. The Town Manager will notify a violator of the proposed termination of its Public Stormwater System access. The violator may appeal the Town Manager's determination to the Selectboard by filing a written notice of appeal with the Town Manager within ten (10) business days of the Town Manager's decision. The Selectboard shall review such appeal at a meeting of the Selectboard preceded by fifteen (15) calendar days written notice of the meeting date to the violator. Following the meeting, the Selectboard shall issue its decision on the appeal in writing, which decision shall be final.

(H) A Person commits an offense if the Person reinstates Public Stormwater System access to premises terminated pursuant to paragraph (F), above, without the prior approval of the Town Manager.

6.3 Judicial Enforcement

(A) This Ordinance shall constitute a civil ordinance within the meaning of 24 V.S.A. Chapter 59. Any Person who violates a provision of this Ordinance or who violates any condition of a permit issued hereunder shall be subject to a civil penalty of up to \$800 per day for each day that such violation continues. Any law enforcement officer or the Town Manager or Stormwater Superintendent may act as an Issuing Municipal Official and issue and pursue before the Judicial Bureau a municipal complaint for any violation of any provision of this Ordinance.

(B) In addition to the enforcement procedures available before the Judicial Bureau, the Town Manager is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law.

6.4 Civil Penalty; Waiver Fee

(A) An Issuing Municipal Official is authorized to recover civil penalties in the following amounts for each violation:

First offense	\$160
Second offense	\$320
Third offense	\$480
Fourth offense	\$640
Fifth and subsequent offenses	\$800

(B) An Issuing Municipal Official is authorized to recover a waiver fee, in lieu of a civil penalty, in the following amounts, for any Person who declines to contest a municipal complaint and pays the waiver fee:

First offense	\$100
Second offense	\$250
Third offense	\$400
Fourth offense	\$550
Fifth and subsequent offenses	\$700

(C) Each day the violation continues shall constitute a separate violation.

6.5 Severability

If any portion of this Ordinance is held to be invalid by a court of competent jurisdiction, such finding shall not invalidate any other part of this Ordinance.

6.6 Remedies and Penalties Not Exclusive

Nothing in this Ordinance shall be construed to limit any other remedies or penalties available to the Town under any applicable federal, state, or local law, rule, regulation or ordinance, and it is within the discretion of the Town to seek cumulative remedies. The Town may seek to recover all attorney's fees, court costs, and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

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ARTICLE VII – ULTIMATE RESPONSIBILITY

7.1 Ultimate Responsibility

The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore, this Ordinance does not intend nor imply that compliance by any person or entity will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

Adopted at Shelburne, Vermont this _____ day of _____, 2020, and to be effective upon adoption.

SHELBURNE SELECTBOARD

_____, Chair

_____, Vice Chair

_____, Clerk

DRAFT

Received and recorded this _____ day of _____, 2020.

_____, Town Clerk