

**CHAPTER 4 – UTILITIES**  
**ARTICLE 6 - STORM DRAINAGE**

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**Section 4-6-101 to 4-6-199, inclusive. Storm Drainage-general provisions.**

**Section 4-6-101** Storm Drainage.

These regulations may be referred to as the “Storm Drainage Ordinance” for the City of Pierre.

**Section 4-6-102** Purpose.

The purpose of this Ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Pierre, with respect to storm drainage, to the maximum extent practicable and as required by federal and state law by:

1. Establishing methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) or SD Surface Water Discharge permit process.
2. Prohibiting Illicit Connections and Discharges to the MS4.
3. Establishing legal authority for the City of Pierre to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this Ordinance.
4. Establishing a drainage fee structure for funding public storm drainage infrastructure improvements within the City of Pierre.

**Section 4-6-103** Authority.

In accordance with the South Dakota Water Pollution Control Act (SDCL 34A-2) and the Administrative Rules of South Dakota (ARSD) Chapters 74:52:01 through 74:52:11 and any other authority provided by law or as such statutes may be amended, the City does hereby exercise the power and authority in the City.

**Section 4-6-104** Inspections by Authorized City Staff.

As part of the City's storm water pollution detection and elimination program, the City Engineer or designee reserves the right to inspect and monitor all facilities which discharge into the MS4. All inspections shall be documented and may include photographs of violations and potential problem areas.

**Section 4-6-105** Definitions.

The following words and phrases shall be as defined below:

Authorized Enforcement Agency – The South Dakota Department of Environment and Natural Resources (SDDENR).

Best Management Practices (BMPs) – Various activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to Waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control construction site runoff, sediment, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act (CWA) – The 1972 amendment to the Federal Pollution Control Act which provided the statutory basis for the NPDES or SD Surface Water Discharge permit program and the basic structure for regulating the discharge of pollutants from point sources to Waters of the State.

Concrete Washout - Any wash waters derived from the cleaning of concrete trucks and/or equipment.

Control Measures - Any BMP or other method used to minimize erosion and sedimentation, and thereby minimize the discharge of pollutants to Waters of the State.

Detention Basin - A structure or facility, natural or artificial, which stores storm water on a temporary basis and releases it at a controlled rate.

Development – A parcel of land or two or more contiguous parcels of land, where grading work is performed as a single unified operation on an area equal to or greater than one (1) acre.

Disturbed Area - An area of land subjected to erosion due to the removal of vegetative cover and/or earthmoving activities, including unstabilized fill and soil stockpiles.

Drainage Way - Any channel or conduit that conveys storm water runoff.

Final Stabilization means one of the following:

1. All soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a density of seventy percent (70 %) of the native cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent permanent stabilization measures (such as the use of gravel, riprap, gabions, geotextiles, etc.) have been employed; or
2. When background native vegetation will cover less than one hundred percent (100%) of the ground (e.g., arid areas, beaches), the seventy percent (70%) coverage criteria is adjusted as follows: if the native vegetation covers fifty percent (50%) of the ground, seventy percent of fifty percent ( $0.70\% \times 0.50\% = 0.35\%$ ) would require thirty-five percent (35%) total cover for Final Stabilization. On sites with no natural vegetation, no vegetative stabilization is required.
3. For construction projects on land used for agricultural purposes, Final Stabilization may be accomplished by returning the disturbed land to its pre-construction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to Waters of the State, and areas that are not being returned to their pre-construction agricultural use, shall meet the Final Stabilization criteria in (1) or (2) above.

Flood - An overflow of surface water onto lands not normally covered by water.

Floodplain - The area of land adjoining a lake or stream which is inundated when the flow exceeds the capacity of the normal feature. For mapping purposes, floodplains are designated according to the frequency of the flood event, such as the 100-year floodplain (1 percent (1%) chance of occurrence in any given year) or the 500-year floodplain (0.2 percent (0.2%) chance of occurrence in any given year).

General Storm Water Permit for Storm Water Construction Activities - SDDENR general NPDES or SD Surface Water Discharge construction storm water permit covering anyone conducting a Land Disturbing Activity which disturbs one (1) or more acres of land.

General Storm Water Permit for Storm Water Industrial Activities - SDDENR general NPDES or SD Surface Water Discharge industrial storm water permit covering any discharge due to storm water runoff, snow melt runoff, or surface runoff and drainage from industrial activities as defined in 40 CFR 122.26(b)(14).

Grading - Any stripping, clearing, stumping, excavating, filling, stockpiling, or any combination thereof, including the land in its excavated or filled condition.

Grading Permit – A permit obtained from the City of Pierre to perform a Land Disturbance Activity.

Illicit Discharge - Any direct or indirect, continuous or intermittent, discharge to the MS4, except as exempted in Part III of this Ordinance that is not composed entirely of storm water, and has not been authorized under a discharge permit issued by the State of South Dakota.

Illicit Connections - means either of the following:

1. Any drain, conveyance, or component of an MS4, whether on the surface or subsurface, which allows an illicit discharge to enter the storm sewer system, including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm water system.
2. Any connections to the storm sewer system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized agency.

Infiltration – The downward movement or seepage of water from the surface into the subsoil and/or groundwater. The infiltration rate is typically expressed in terms of inches per hour.

Jurisdictional Wetland - “Wetland” - An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

Land Disturbing Activity – Any land change that may result in soil erosion from wind, water, or melting, resulting in the movement of sediments into or upon waters, lands, or rights-of-way within the City of Pierre, including but not limited to building demolition, clearing and grubbing, grading, excavating, transporting, and filling of land.

Larger Common Plan of Development or Sale - A contiguous area of one (1) or more acres where multiple, separate, and distinct construction activities are anticipated to occur at different times on different schedules under one plan, commonly referred to as a “development”. Individual lots within the development which are sold to another party for the purpose of construction are still considered part of the “Larger Common Plan of Development” even after the sale.

MS4 – “Municipal Separate Storm Sewer System” - Is defined in 40 CFR §122.26(b)(8) to mean a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, swales, manmade channels, or storm drains) which are:

1. Owned and operated by a state, city, town, borough, county, parish, district, association, or other public body having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act (CWA) that discharges to Waters of the State;
2. Designed or used for collecting or conveying storm water;
3. Which is not a combined sewer; and
4. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR §122.2.

Municipality – A city, town, county, district, sanitary district, or other public body created by or under state law with jurisdiction over the disposal of sewage, industrial wastes, or other wastes.

Nonpoint Source – A source of pollution that is not defined as a point source by the Environmental Protection Agency (EPA).

Non-Storm Water Discharge - Any discharge to the storm sewer system that is not composed entirely of storm water.

NOI – “Notice of Intent” – An SDDENR form that must be filed by anyone disturbing one (1) or more acres of land prior to the commencement of any Land Disturbing Activity in order to be covered by the SDDENR General Permit.

NOT – “Notice of Termination” – An SDDENR form that must be filed after Final Stabilization of any Land Disturbing Activity that was covered by the SDDENR General Permit. The NOT notifies the SDDENR that permitted coverage is no longer required and that the site has been permanently stabilized.

NPDES – “National Pollutant Discharge Elimination System” – An EPA permit program that controls water pollution by regulated point sources that discharge pollutants into Waters of the State.

Phasing - Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

Point Source – (as defined by the EPA) Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include agricultural storm water discharges or return flows from irrigated agriculture.

Pollutant - Any dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, munitions, chemical wastes, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, cellar dirt, or any industrial, municipal, or agricultural waste discharged into Waters of the State.

Receiving Body of Water - Any lake, pond, creek, wetland, or groundwater into which storm water runoff is directed.

Responsible Party – The person(s), developer, or contractor who is responsible for carrying out all provisions and requirements of a Grading Permit or SDDENR Storm Water Discharge Permit for Construction Activities; or the person or entity who is responsible for a Land Disturbing Activity, or an industrial or commercial discharge into an MS4.

Sediment – Mineral or organic solid particulate matter that has been removed from its point of origin by soil erosion, suspension in water or wind, or water transport.

Sediment Control - BMPs that prevent eroded sediment from leaving the site.

Soil Erosion - The wearing away of land by the action of wind, water, gravity, or a combination thereof.

Stabilization - The use of BMPs that prevent exposed soil from eroding.

Storm Water – Water runoff, including snow and ice melt, which is the direct result of a precipitation event.

Stop Work Order - A notice issued by the City Engineer or designee, or a state or federal agency to a permittee, contractor, or property owner to immediately cease construction, grading, or development activities.

SWPPP – “Storm Water Pollution Prevention Plan” - A site-specific plan which identifies potential sources of storm water pollution at a construction site and specifies structural and non-structural BMPs that will be in place to minimize negative impacts caused by storm water discharges associated with construction activity.

Stripping - Any activity which removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.

TMDL – “Total Maximum Daily Load” - The maximum daily amount of the individual Waste Load Allocations (WLAs) for point sources, the Load Allocations (LAs) for nonpoint sources, and the natural background levels of pollutants that a watercourse can receive while still meeting federal or state water quality standards. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

Undeveloped Property – Property that has been left in its natural state and not altered by any Land Disturbing Activities.

Vegetative Cover - Grasses, shrubs, trees, and other vegetation which hold and stabilize soils.

Watercourse or Waterway - Any body of water, including, but not limited to lakes, ponds, rivers, streams, and bodies of water delineated by the City, State or Federal Governments.

Waters of the State - All waters within the jurisdiction of the State of South Dakota, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, but not waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA other than cooling ponds as defined in 40 CFR 423.11(m).

**Sections 4-6-106 to 199, inclusive.** Reserved.

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**Section 4-6-201 to 299, inclusive. Storm Drainage Fee.**

**Section 4-6-201** Establishing storm drainage fee.

Storm Drainage Fee shall be collected at a Residential Property Rate or a Nonresidential, Commercial or Undeveloped Property Rate as defined in Section 4-2-501.

1. The purpose of this section is to establish a charge against real property within the City of Pierre for the operation, maintenance, and capital expenses of the storm sewer and drainage system.
2. All real property within the City of Pierre that is connected to a municipal utility shall be charged a monthly fee for the operation, maintenance, and capital improvements of the storm sewer and drainage system. For real property within the City that is not connected to a municipal utility, the fee will be on a yearly basis for the operation, maintenance, and capital improvements of the storm sewer and drainage system.
3. The fee for each such Nonresidential, Commercial or Undeveloped Property as defined in Section 4-2-501 shall be based on the parcel area, a runoff weighting factor, and a unit financial charge; and which fee is determined as follows:

The annual storm drainage fee equals the runoff weighting factor multiplied by parcel area (in square feet) and multiplied by unit financial charge (in dollars per thousand square feet).

- a. The parcel area (in square feet) shall be obtained from the records of the Hughes County Department of Equalization, South Dakota.
- b. The unit financial charge (in dollars per thousand square feet) shall be established by ordinance of the City Commission.
- c. The runoff weighting factor is determined by the type of land use and indicates the relative volume of storm water runoff from a land parcel as a function of the percentage of impervious surfaces covering each land parcel. The runoff weighting factor is to be assigned by land use type as show in Table I:

TABLE I

<u>Land Use Code</u>	<u>Land Use</u>	<u>Runoff Weighting Factor</u>
21	Apparel and textiles	17.0
22	Wood, furniture, fixtures	17.0
23	Lumberyards	17.0
24	Printing and publishing	17.0
25	Warehouse, indoor storage	17.0
26	Electronic, scientific, optical	17.0
27	Construction yards, including plumbing, electrical, heating contractors	17.0

28	Chemical, petroleum storage	17.0
29	Other light, pollution free manufacturing, not included elsewhere	17.0
31	Food, agricultural processing, stockyards, rendering	17.0
32	Paper and pulp	17.0
33	Chemical, petroleum, rubber and plastic	17.0
34	Stone, glass, clay, cement, brick	17.0
35	Primary metal, smelting	17.0
36	Metal fabricating	17.0
37	Salvage, junkyard, resource recycling	7.5
38	Other heavy manufacturing not elsewhere coded	17.0
41	Bus, railroad yards, terminals, right-of-way	5.0
42	Airport	5.0
43	Auto parking ramps and lots (commercial or public only not auxiliary parking)	18.75
44	Highway and street right-of-way	5.0
45	Communication (TV, radio, etc.)	17.0
46	Utilities (gas, sewer, water, telephone, etc.)	17.0
47	Truck terminal	17.0
48	Military base	17.0
49	Other transportation communications and utilities not elsewhere coded	17.0
51	Wholesale, food produce	18.75
52	Wholesale, other	18.75
53	Extensive retail, building supplies, including lumber, home repair supplies	18.75
54	Extensive retail, farm equipment and implements	18.75
55	Extensive retail, new and used car dealers	18.75
56	Extensive retail, recreational vehicles, marine	18.75
57	Extensive retail, tires, batteries, auto accessories	18.75
58	Extensive retail, auto repairs, body shop	18.75
59	Extensive retail, other retail with outside storage	18.75
61	Foodstore	18.75
62	Neighborhood commercial, hardware, pharmacy, laundromat, beauty shop, barbershop, neighborhood shopping center	18.75
63	Gasoline, auto service station	18.75
64	Department store, discount store, regional shopping center	18.75
65	Clothes and apparel	18.75

66	Specialty retail, jewelry, gifts, etc.	18.75
67	Furniture, household appliances	18.75
68	Other retail not elsewhere coded	18.75
71	Banks and financial institutions	18.75
72	Churches	11.25
73	Nursing homes and hospitals	11.25
74	Colleges and universities, adult education	11.25
75	Primary and secondary education	11.25
76	Day care centers	11.25
77	Medical offices, clinics	18.75
78	Government offices	18.75
79	Offices not elsewhere coded (real estate, law, etc.)	18.75
81	Cultural activities, libraries, museums, etc.	18.75
82	Assembly areas, arenas, stadiums	18.75
83	Theaters	18.75
84	Restaurants, bars, lounges	18.75
85	Hotels, motels, resort lodging	18.75
86	Public parks, golf courses, fairgrounds	1.0
87	Private country club and other recreational uses	1.0
88	Other cultural and entertainment uses, not elsewhere coded	1.0
89	Floodway (per Flood Insurance Rate Map 5/17/04 by the Federal Emergency Management Agency)	0.0
90	Undeveloped Properties	0.0
91	Cropland and farms	1.0
92	Feed lots	1.0
93	Grasslands	1.0
94	Mining and quarrying*	1.0
95	Cemetery	1.0
96	Sanitary landfills	1.0
97	Vacant	1.0
98	Under construction	1.0
99	Other not elsewhere coded	1.0

\* Quarries are individually calculated with a runoff weighting factor of 0.00 for the actual quarry area.

4. Upon written request from a property owner, a detailed site study will be conducted by the City Engineering Department to determine the runoff weighting factor. The Engineering Department

shall calculate the percentage of impervious area for the subject parcel which contributes storm water runoff to the drainage system of the City. This system includes the storm sewer system, drainage ways, and all ditches and waterways within and flowing away from the City. The runoff weighting factor is then determined through utilization of Table II.

TABLE II

<u>Percentage Impervious Area</u>	<u>Average Runoff to Rainfall Ratio (R**)</u>	<u>Runoff Weighting Factor (R × 25)</u>
0	0.04	1.0
10	0.19	4.75
15	0.26	6.5
20	0.30	7.50
30	0.38	9.50
40	0.45	11.25
50	0.53	13.25
60	0.60	15.00
70	0.68	17.00
80	0.75	18.75
90	0.83	20.75
100	0.90	22.50

\*\*These values are derived from the "STORM" equation (Figure 5-20, page 5-49), "A Statistical Method for the Assessment of Urban Storm Drainage," EPA, Washington, D.C., January 1979. For low percentage impervious surfaces (zero percent (0%) to twenty percent (20%)), a linear relationship was assumed between "STORM" equation and empirical data derived from drainage runoff in high depression storage, loose soils, and flat areas. Interpolation of the runoff weighting factor for a given percentage to impervious area not listed in Table II may be obtained by assuming a linear relationship between the values listed.

The City Engineer may direct that the runoff weighting factor for a given parcel is calculated by a detailed site investigation and the use of Table II, where an obvious departure from the percentage of impervious surfaces of similar land uses exists. A determination of the runoff weighting factor, resulting from a detailed site investigation and use of Table II, brought about either by the written request of a property owner or by direction from the City, shall be used in the calculation of the storm drainage fee of the subject parcel and shall replace the factor previously derived from Table I, even if the resulting value is higher.

**Section 4-6-202** Collection.

The storm drainage fee established in Section 4-6-101 shall be a monthly charge for all real properties within the City that are connected to a municipal utility. For real properties within the City that are not

connected to a municipal utility, the fee will be a yearly charge billed annually on July 1. This fee shall be remitted and paid to the City of Pierre Business Office.

Upon written request from a property owner, the City may issue a refund if the incorrect drainage fee has been charged to the property. The Engineering Department shall calculate the drainage fee and determine the amount of any refund owed to the property owner. The maximum refund the City may issue shall be the fee for the last twelve months.

**Section 4-6-203** Owner's right to dispute fees.

Any owner may dispute the amount of a storm drainage fee by the method detailed in SDCL 46A-10B-25.

**Section 4-6-204** Fund established.

The storm drainage fees paid to the City shall be maintained in a separate fund to be known as the "Storm Drainage Fund". This fund shall be used to pay the cost of financing the operation, maintenance, or construction of the drainage and storm sewer system. Two-thirds of the collected fee shall go toward capital improvements and one-third shall go toward operation and maintenance of the storm drainage system.

**Section 4-6-205** Annual review.

The unit financial charge shall be reviewed annually and shall be revised as necessary so that revenues are reasonably in balance with anticipated expenditures. Excess funds may be carried forward from year to year to build sufficient funds for large drainage construction projects which are scheduled or programmed for the near future. In addition, funds may be carried over to provide sufficient monies for unanticipated repairs, replacements, or maintenance of the drainage system.

**Sections 4-6-206 to 299, inclusive.** Reserved.

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**Section 4-6-301 to 399, inclusive. Illicit Discharges.**

**Section 4-6-301** Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the MS4 or a watercourse any materials that cause or contribute to a violation of applicable water quality standards, including but not limited to pollutants or waters containing any pollutants.

The commencement, conduct, or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:

1. Discharges specifically exempt from the discharge prohibitions established by this Ordinance:
  - a. Water line flushing or other potable water source flows;
  - b. Landscape irrigation or lawn watering;
  - c. Diverted stream flows;
  - d. Rising ground water;
  - e. Ground water infiltration to storm drains;
  - f. Uncontaminated pumped ground water;
  - g. Foundation or footing drains (not including active groundwater dewatering systems) and crawl space pumps;
  - h. Air conditioning condensation;
  - i. Non-commercial washing of vehicles;
  - j. Natural riparian habitat or wetland flows;
  - k. Uncontaminated swimming pool water (if dechlorinated - typically less than one (1) PPM chlorine);
  - l. Fire fighting activities; and
  - m. Any other water source deemed by an accredited testing laboratory not to contain pollutants.
2. Discharges specified in writing by the City of Pierre as being necessary to protect public health and safety.
3. Dye testing which has been authorized by the City of Pierre prior to the time of the test.
4. Any non-storm water discharge permitted under an NPDES or SD Surface Water Discharge permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA or SD DENR, provided that the discharger is in full compliance with all requirements of the NPDES or SD Surface Water Discharge permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm sewer system.

**Section 4-6-302** Prohibition of Illicit Connections.

1. The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. A person is considered to be in violation of this Ordinance if the person connects a line conveying sewage to the MS4, or allows such connection to continue.

**Section 4-6-303** Suspension of MS4 Access Due to Illicit Discharges in Emergency Situations.

The City of Pierre may, without prior notice, suspend MS4 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, or to the health or welfare of persons, or to the

MS4 or Waters of the State. If the violator fails to comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the State, or to minimize danger to persons.

**Section 4-6-304** Suspension of MS4 Access Due to the Detection of Illicit Discharge.

Any person discharging to the MS4 in violation of this Ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City of Pierre will notify a violator of the proposed termination of its MS4 access. The violator may petition the City for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City.

**Section 4-6-305** Industrial or Construction Activity Discharges.

Any person subject to an industrial or construction activity DENR NPDES or SD Surface Water Discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Pierre prior to allowing of discharges to the MS4.

**Section 4-6-306** Monitoring and Inspection of Discharges.

This section applies to all facilities that have storm water discharges associated with industrial and construction activity.

1. The City of Pierre shall be permitted to enter and inspect facilities subject to regulation under this Ordinance as often as may be necessary to determine compliance with this Ordinance.
2. The City of Pierre shall have the right to set up on any permitted facility such devices as are necessary, in the opinion of the authorized enforcement agency, to conduct monitoring and/or sampling of the facility's storm water discharge.
3. The City of Pierre has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.
4. Unreasonable delays in allowing the City of Pierre access to a permitted facility is a violation of a storm water discharge permit and of this Ordinance. A person who is the operator of a facility with a NPDES or SD Surface Water Discharge permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.
5. If the City of Pierre has been refused access to any part of the premises from which storm water is discharged where there is 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 enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

**Section 4-6-307** Requirements to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices (BMPs).

The City of Pierre will require BMPs for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or Waters of the State. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES or SD Surface Water Discharge permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed as compliance with the provisions of this section. These BMPs shall be part of a SWPPP as necessary for compliance with requirements of the NPDES or SD Surface Water Discharge permit.

**Section 4-6-308** Watercourse Protection.

Every person owning property through which a watercourse passes, or such person's lessee or tenant, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

**Section 4-6-309** Notification of Spills.

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 illicit discharges or pollutants discharging into storm water, the storm drain system, or Waters of the State, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such 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 authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Pierre within three business days of the verbal notice. If the discharge of prohibited materials 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 (3) years.

**Section 4-6-310** Enforcement.

Whenever the City of Pierre or state or federal authorized enforcement agency finds that a person has violated a prohibition or failed to meet a requirement of this Part, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
5. Payment of a fine or penalty; and
6. The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore by the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

The authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

**Section 4-6-311** Appeal of Notice of Violation.

Any person receiving a Notice of Violation from the City of Pierre may appeal the determination. The notice of appeal must be received within five (5) days from the date of the Notice of Violation. Hearing on the appeal before the City Administrator or designee shall take place within fifteen (15) days from the date of receipt of the notice of appeal. The decision of the City Administrator or its designee shall be final.

**Section 4-6-312** Cost of Abatement of the Violation.

Within ten (10) 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 five (5) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the

provisions of this Part shall become liable to the City by reason of such violation.

**Section 4-6-313** Injunctive Relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this Ordinance, the City may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**Section 4-6-314** Remedies Not Exclusive.

The remedies listed in this Ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

**Sections 4-6-315 to 399, inclusive.** Reserved.

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**Section 4-6-401 to 499, inclusive. Grading and other construction Activities—Site Runoff Erosion and Sediment Control**

**Section 4-6-401** Permits Required.

1. This section shall be used in conjunction with Section 11-1-101, Adoption of International Building Code.
2. No person may commence any Land Disturbance Activities which disturb one (1) acre or more of land without first obtaining:
  - a. A Grading Permit from the City of Pierre; and
  - b. A storm water permit from the SDDENR Surface Water Quality Program. Applications for the state permit can be obtained from the State of South Dakota website homepage under the construction activities section.
3. No person may commence any Land Disturbance Activity which disturbs fifty (50) cubic yards of earth material without first obtaining a Grading Permit from the City.
4. A Grading Permit is not required by the City of Pierre for the following:
  - a. When approved by the building official, grading in an isolated, self-contained area if there is no danger to private or public property.
  - b. An excavation below finished grade for basements and footings of a building, retaining wall or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation or exempt any excavation having an unsupported height greater than five (5) feet after the completion of such structure.

- c. Cemetery graves.
- d. Refuse disposal sites controlled by other regulations.
- e. Excavations for wells, tunnels, or utilities.
- f. Mining, quarrying, excavating, processing, or stockpiling of rock, sand, gravel, aggregate, or clay where established and provided for by law, provided such operations do not affect the lateral support or increase the stresses in or pressure upon any adjacent or contiguous property.
- g. Exploratory excavations under the direction of soil engineers or engineering geologists.
- h. An excavation that is less than two (2) feet in depth or does not create a cut slope greater than five (5) feet in height and steeper than 1 unit vertical in 1½ units horizontal (66.7 percent slope).
- i. A fill less than one (1) foot in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (twenty percent (20%) slope), or less than three (3) feet in depth, not intended to support structures, that does not exceed fifty (50) cubic yards on any one lot and does not obstruct a drainage course.

Exemption from the permit requirements of this section shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this section or any other laws or ordinances of this jurisdiction.

**Section 4-6-402** Grading Permit.

The landowner upon whose property will undergo a Land Disturbance Activity is ultimately responsible for illicit discharges into the MS4 and upon neighboring properties. When a Grading Permit is required per Section 4-6-401, a Grading Permit shall be obtained at the City of Pierre Building Official's Office by either the landowner or the landowner's contractor or representative. The permittee listed on the Grading Permit application shall be responsible for all requirements of the permit, up to and including Final Stabilization of the disturbed area. The permittee shall be designated as the Responsible Party.

Each application for a Grading Permit shall:

1. Bear the name(s), address(es), and phone number(s) of the Responsible Party.
2. Bear the name(s) and address(es) of the landowner or developer of the site, contractor, and any consulting firm retained by the applicant together with the name of the applicant's principal contact.
3. Be accompanied by a filing fee in an amount to be determined by the City Commission.
4. Include a sketch or drawing of the entire property, including dimensions, showing the size and location of all Land Disturbing Activities proposed. At minimum the drawing shall also include the following:
  - a. Location of all storm sewer features on or adjacent to the property, including but not limited to: streets, storm water inlets and outlets, swales, channels, detention ponds, and ditches;
  - b. Location of all other watercourses on or adjacent to the property;
  - c. Arrows indicating the general direction of runoff flow, as well as the path of flow of any storm water conveyance feature on or adjacent to the property; and

- d. Location and description of all storm water pollution control BMPs to be incorporated on the site, as required by this Ordinance. Recommendations and descriptions of various BMPs can be found in the SDDOT Water Quality Enhancement Program Design Manual, which can be downloaded from the SDDOT website at [www.sddot.com/pe/roaddesign/plans.asp](http://www.sddot.com/pe/roaddesign/plans.asp). Additional BMP guidance can be found at [www.epa.gov](http://www.epa.gov).
5. Be accompanied by a drainage plan if required by the City Engineer. All drainage facilities including storm sewers, on-site detention, drainage ways, detention basins, drainage structures, and detention channels are subject to approval of the City Engineer.
6. When a Land Disturbance Activity exceeds one (1) acre in size, the Grading Permit applicant shall also provide a copy of the NOI, SDDENR's permit coverage, and the SWPPP, as is required by the SDDENR General Storm Water Permit for Construction. No Grading Permit shall be issued by the City for this type of activity until the SDDENR has been properly notified. Information, NOI forms, and a sample SWPPP can be found on the SDDENR website at <http://denr.sd.gov>.

**Section 4-6-403** Grading Permit Review and Approval.

The City Engineer or designee will review each Grading Permit application and accompanying storm drainage plan to determine its conformance with the provisions of this regulation. The City Engineer or designee shall, in writing:

1. Approve the permit application; or
2. Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
3. Disapprove the permit application, indicating the reason(s) and procedure for submitting a revised application and/or submission.

City approval of a Grading Permit application and storm drainage plan does not relieve the applicant of any responsibility for the effectiveness of the applicant's storm drainage plan.

**Section 4-6-404** Failure to Obtain a Grading Permit.

It will be the goal of the City to encourage and assist landowners to obtain the proper permitting of Land Disturbance Activities without the need to levee penalties. If the owner of a property upon which Land Disturbance Activities have commenced fails to obtain a Grading Permit pursuant to Section 4-6-161, the City shall issue a written notice to the landowner and/or contractor performing the Land Disturbance Activity. Additionally, the City will make every reasonable attempt to contact the landowner, including telephone, fax, e-mail, and/or site visits. The landowner or a Responsible Party shall, upon notice of the violation, immediately obtain a Grading Permit from the City Building Official's Office. Failure to obtain a Grading Permit shall constitute a violation of this Ordinance and shall be subject to penalty as follows:

1. After twenty-four (24) hours of the notice of violation: \$100.00 Penalty per day, beginning with the second (2<sup>nd</sup>) day after the notice of violation.
2. After ten (10) days of the notice of violation: The City shall notify the SDDENR of the violation. The landowner may be subject to additional penalties and enforcement actions of the SDDENR.

**Section 4-6-405** Failure to Comply With the Provisions of a Grading Permit.

A Grading Permit applicant failing to comply with the provisions of a Grading Permit after commencing the Land Disturbance Activity shall be notified of the noncompliance by the City. The City shall make a reasonable attempt to assist the applicant with technical advice in correcting the noncompliance without penalty. All costs of corrections and/or abatement of pollutants discharged into the MS4 by the applicant shall be borne by the applicant. If the applicant fails or refuses to make corrections that are satisfactory to the City Engineer, the City will issue a written notice of the noncompliance. Failure of the applicant to correct the noncompliance after the written notice shall constitute a violation of this Ordinance and shall be subject to penalty as follows:

1. After twenty-four (24) hours of the notice of violation: \$50.00 Penalty per day, beginning with the second (2<sup>nd</sup>) day after the notice of violation.
2. After ten (10) days of the notice of violation: The City shall notify the SDDENR of the violation. The landowner may be subject to additional penalties and enforcement actions of the SDDENR.

**Section 4-6-406** Grading Permit Termination, Expiration or Revocation.

Grading Permits shall terminate automatically in the event construction activities have not commenced within one (1) year of the date of issuance or in the event construction activities have halted and not commenced within six (6) months. The permit holder may request a written extension from the City.

Grading Permits may be terminated by the applicant in writing prior to the expiration date if the City Engineer or designee has verified that:

1. No Land Disturbance Activity has taken place on the site; or
2. Final Stabilization of the site is satisfactory to these requirements; or
3. Ownership of the site or responsibility of the Grading Permit has been properly transferred to another party.

Any permit may be revoked or suspended by the City for any of the following causes after a notice and an opportunity for rebuttal is given to the applicant:

1. A violation of a condition or requirement of the permit; or
2. Obtaining a permit by misrepresentation or failure to fully disclose relevant facts in the application or the erosion and sediment control plan

**Section 4-6-407** Inspection.

The City Engineer or designee may conduct random site inspections as necessary and either approve that portion of the work completed or notify the permittee, wherein the work fails to comply with the approved Grading Permit or SWPPP. All inspections shall be documented by the City Engineer.

**Section 4-6-408** Other Construction Activities.

1. General erosion and sediment migration from individual building sites with Land Disturbing Activities needs to be controlled. Sediment moving off a building or construction site shall not impede storm sewer inlets or cause pollutants to be discharged into Waters of the State. Erosion controls shall follow recognized BMPs.
2. The responsibility for sediment control in new developments shall transfer from the developer to the new property owners when the parcels are purchased. The property owners and their building contractors shall become the Responsible Parties in the management of erosion, sediment transport, and storm water runoff related to the individual building sites.
3. Individual property owners and their contractors shall be responsible for installing and maintaining sediment and erosion control measures for construction projects on their individual properties. The sediment control measures to be maintained during construction shall include but are not limited to keeping public rights-of-way free from mud and sediment, maintaining perimeter run-off controls, and establishing Final Stabilization of the property. Recommendations and descriptions of various BMPs can be found in the SDDOT Water Quality Enhancement Program Design Manual, which can be downloaded from the SDDOT website at [www.sddot.com/pe/roaddesign/plans.asp](http://www.sddot.com/pe/roaddesign/plans.asp). Additional BMP guidance can be found at [www.epa.gov](http://www.epa.gov).
4. Property owners and contractors that fail to comply with the provisions of Section 4-6-168 after commencing a Land Disturbance Activity shall be notified of a noncompliance by the City. The City shall make a reasonable attempt to assist the property owner with technical advice to correct the noncompliance without penalty. All costs of corrections and/or abatement of pollutants discharged into the MS4 by the property owner or contractor shall be borne by the Responsible Party. If the property owner or contractor fails or refuses to make corrections that are satisfactory to the City Engineer, the City will issue a written notice of the noncompliance. Failure of the property owner or contractor to correct the noncompliance after the written notice shall constitute a violation of this Ordinance and shall be subject to penalty as follows:
  - a. After twenty-four (24) hours of the notice of violation: \$50.00 Penalty per day, beginning with the second (2<sup>nd</sup>) day after the notice of violation.
  - b. After ten (10) days of the notice of violation: The City shall notify the SDDENR of the violation. The landowner may be subject to additional penalties and enforcement actions of the SDDENR.

**Section 4-6-409** Discharge of Pollutants from a Land Disturbance Activity With or Without a Permit.

Any detectible discharge of pollutants from a construction or Land Disturbance Activity into the MS4 and/or onto neighboring properties shall be considered an Illicit Discharge subject to Part III of this section, with or without a Grading Permit and regardless of the size and scope of the activity.

**Sections 4-6-410 to 499, inclusive. Reserved.**

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**Section 4-6-501 to 599, inclusive. Grading and other Construction Activities—Post Construction Site Runoff Erosion and Sediment Control**

**Section 4-6-501** Permits and Termination of Permits.

Following completion of Land Disturbance Activities, all Grading Permits obtained pursuant to this Ordinance shall remain effective until Final Stabilization of the site has been verified and approved in writing by the City Engineer. It shall be the responsibility of the permit applicant to fulfill and maintain the requirements of the Grading Permit until Final Stabilization has been achieved.

**Section 4-6-502** Final Stabilization Requirements.

Final site stabilization will be accomplished by the following:

1. Installing compacted granular surface, hard surface, or porous pavement on those areas necessary for vehicular and pedestrian ingress and egress, driving, parking, loading/unloading, and maneuvering;
2. Establishing vegetation on the remainder of the disturbed areas of the site;
3. Employing other stabilization and management techniques as may be required to address unique site conditions;
4. All requirements of the SWPPP have been fulfilled; and
5. The City Engineer or designee has verified in writing that each of the preceding requirements have been fulfilled to the satisfaction of the City Engineer.

For purposes of this section, Final Stabilization means all land-disturbing activities at the site have been completed, compacted granular and paved surfaces have been installed, non-vegetative permanent stabilization and management techniques (riprap, gabions, geotextiles, etc.) have been employed, and a uniform perennial vegetative cover with a density of seventy percent (70%) of the native cover has been established for non-paved areas not otherwise stabilized with other permanent stabilization and management techniques.

**Section 4-6-503** Inspection of Permanent BMPs.

All storm sewers, open channel drainage ways, detention/retention ponds, post construction water quality BMPs, and any other element of the storm drainage management system shall be subject to inspection by the City Engineer or designees.

**Sections 4-6-504 to 599, inclusive.** Reserved.

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**Section 4-6-601 to 699, inclusive. Storm Sewer Study and Design Standards**

**Section 4-6-601** Storm Water Map.

The City has adopted a resolution which designates the city limits line on the City map as the boundaries for storm water.

**Section 4-6-602** Storm Sewer Study.

A “Comprehensive Storm Sewer Study” was prepared for the City of Pierre by Banner Associates, Inc. in 1998. This document is on file with the City Engineer.

**Section 4-6-603** BMP Design Requirements.

The design and application or utilization of all temporary and permanent BMPs shall conform to the SDDOT Water Quality Enhancement Program Design Manual, which can be downloaded from the SDDOT website at [www.sddot.com/pe/roaddesign/plans.asp](http://www.sddot.com/pe/roaddesign/plans.asp).

**Sections 4-6-604 to 699, inclusive.** Reserved.

**Source:** Ord. 1683, 2011.

**Statutory references:** SDCL 46A-10B-18, Adaption of master drainage plan and stormwater map; SDCL 46A-10B-19, Solicitation of entities to carry out plan; SDCL 46A-10B-20, Establishment of stormwater basin development and utility fees; SDCL 46A-10B-21, Payment of development fee as condition for development; SDCL 46A-10B-22, Imposition of stormwater utility fee; SDCL 46A-10B-23, Fees deposited in fund; SDCL 46A-10B-24, Collection of unpaid charges; and SDCL 46A-10B-25, Owner’s right to dispute fees or other determinations.