

**REGULAR MEETING OF THE TOWN BOARD  
OF THE TOWN OF NEW HARTFORD, NEW YORK  
HELD AT BUTLER MEMORIAL HALL IN SAID TOWN  
ON WEDNESDAY, SEPTEMBER 14, 2011 AT 7:00 P.M.**

Town Supervisor Patrick Tyksinski called the meeting to order at 7:00 P.M. and led those in attendance in the Pledge of Allegiance to the American Flag. The roll was then taken with the following Town Officials and Department Heads being present during the progress of the meeting.

**TOWN BOARD MEMBERS PRESENT:**

Councilman Donald C. Backman  
Councilwoman Christine G. Krupa  
Councilman David M. Reynolds  
Councilman Richard B. Woodland, Jr.  
Supervisor Patrick M. Tyksinski

**OTHER TOWN OFFICIALS/EMPLOYEES PRESENT:**

Codes Enforcement Officer Joseph A Booth  
Deputy Supervisor Matthew Bohn  
Engineering Dept. Coordinator Elisabetta DeGironimo  
Highway/Sewer Superintendent Richard Sherman  
Parks and Recreation Director Michael W. Jeffery  
Police Chief Michael A. Inserra  
Town Attorney Herbert J. Cully  
Town Clerk Gail Wolanin Young

Thereafter, a quorum was declared present for the transaction of business.

**ENGINEERING RECOMMENDATIONS – AWARD OF COMPETITIVE BIDS: BEECHWOOD ROAD DRAINAGE, AND TRAFFIC SIGNAL AT NYS ROUTE 5-APPLEWOOD BOULEVARD INTERSECTION**

***Beechwood Road Drainage Improvements – Phase I***

Allen Yager from Barton & Loguidice presented a certified tabulation of all bids received September 12, 2011 for the Beechwood Road drainage improvements; and, after a background check and review of public projects performed by the low bidder, recommended that the Town Board award the contract to the low bidder, ALX Hunter Excavation, Inc. Said low bidder is prepared to begin construction very quickly; therefore, the necessary easements must be secured and insurance papers in order as soon as possible. Bids for Phase II (retention ponds) will be bid later. The Town Supervisor apprised the Board that the Town Attorney, Highway Superintendent, Police Chief and he had met with the two (2) Beechwood Road property owners who had previously been unavailable and who now says they are willing to sign easements so the project can move forward. Thereafter, Councilman Backman introduced the following Resolution for adoption; seconded by Councilman Reynolds:

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**(RESOLUTION NO. 222 OF 2011)**

**WHEREAS**, the Town of New Hartford received the following bids on September 12, 2011 for the Beechwood Road Drainage Improvements – Phase I project:

- ALX Hunter Excavation, Inc. \$298,410.00
- Fred Burrows Trucking & Excavating, LLC \$317,982.50
- L. P. Trucking and Excavating, Inc. \$369,395.00
- Central Paving, Inc. \$437,917.50
- Murphy Excavating Corporation \$464,948.00
- D. H. Smith Co., Inc. \$481,996.28; and

**WHEREAS**, Barton & Loguidice has recommended award of the contract to the low bidder, ALX Hunter Excavation, Inc;

**NOW, THEREFORE, BE IT RESOLVED** that the Town Board of the Town of New Hartford does hereby accept the low bid of Two Hundred Ninety-eight Thousand Four Hundred Ten Dollars (\$298,410.00) submitted by ALX Hunter Excavation, Inc. and does further award the contract for said project to said low bidder; and be it

**FURTHER RESOLVED** that the Town Board does hereby authorize and direct the Town Supervisor to enter into and to execute all contract documents pertaining to the Beechwood Road Drainage Improvements – Phase I project.

A roll call vote was duly held and resulted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**. Barton & Loguidice will prepare the Notice to Proceed.

**Traffic Signal Improvements – Intersection of NYS Route 5 and Applewood Boulevard**

Allen Yager from Barton & Loguidice presented a certified tabulation of all bids received September 12, 2011 for the Traffic Signal Improvements at the Intersection of NYS Route 5 and Applewood Boulevard; and, after a background check and review of public projects performed by the low bidder, recommended that the Town Board award the contract to the low bidder, Syracuse Signal Systems. Thereafter, Councilman Woodland introduced the following Resolution for adoption; seconded by Councilwoman Krupa:

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**(RESOLUTION NO. 223 OF 2011)**

**WHEREAS**, the Town of New Hartford received the following bids on September 12, 2011 for the Traffic Signal Improvements at the Intersection of NYS Route 5 and Applewood Boulevard:

- Syracuse Signal Systems \$123,524.96
- Power Line Constructors, Inc. \$147,429.75; and

**WHEREAS**, Barton & Loguidice has recommended award of the contract to the low bidder, Syracuse Signal Systems;

**NOW, THEREFORE, BE IT RESOLVED** that the Town Board of the Town of New Hartford does hereby accept the low bid of One Hundred Twenty-three Thousand Five Hundred Twenty-four Dollars and Ninety-six Cents (\$123,524.96) submitted by Syracuse Signal Systems and does further award the contract for said project to said low bidder; and be it

**FURTHER RESOLVED** that the Town Board does hereby authorize and direct the Town Supervisor to enter into and to execute all contract documents pertaining to the Traffic Signal Improvements at the Intersection of NYS Route 5 and Applewood Boulevard.

The Town Supervisor polled the Board members who voted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**. Barton & Loguidice will prepare the Notice to Proceed.

**Funding – Traffic Signal Improvements: NYS Route 5 and Applewood Boulevard**

Councilman Reynolds then offered the following Resolution for adoption; seconded by Councilman Woodland:

**(RESOLUTION NO. 224 OF 2011)**

**RESOLVED** that, after the Town of New Hartford, New York and Syracuse Signal Systems have executed a contract for the Traffic Signal Improvements at the Intersection

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of NYS Route 5 and Applewood Boulevard, it shall become effective; and upon completion of said project, the Town Supervisor shall pay the amount of One Hundred Twenty-three Thousand Five Hundred Twenty-four Dollars and Ninety-six Cents (\$123,524.96) from mitigation fees for traffic improvements.

Upon roll call, the Town Board voted as follows:

Councilwoman Krupa	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Councilman Reynolds	-	Aye
Supervisor Tyksinski	-	Aye.

The Supervisor declared the Resolution unanimously carried and duly ***ADOPTED***.

**MINUTES APPROVAL**

Councilwoman Krupa introduced the following Resolution for adoption, seconded by Councilman Backman:

**(RESOLUTION NO. 225 OF 2011)**

**RESOLVED** that the New Hartford Town Board does hereby accept and approve as submitted the minutes of the Regular Town Board meetings held July 13, 2011 and August 17, 2011 and the Special Town Board meetings held August 4, 2011, August 11, 2011 (exclusive of Public Hearing which has not been filed with the Town by the Court Reporter) and August 24, 2011 and does further waive the reading of the same.

Upon roll call, the Board members voted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly ***ADOPTED***.

**PUBLIC PRESENTATIONS (RESIDENT CONCERNS)**

**Hydraulic Fracturing (aka Hydrofracking)**

Ted Zinski presented the Town Board with an invitation to attend a presentation being conducted by Ithaca attorneys at the Annunciation Church Hall, Clark Mills, NY on

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Wednesday, September 21, 2011 from 6:30 to 8:30 P.M., with a question and answer session to follow. The presentation will address hydrofracking and is open to all towns, council people, etc. in Oneida County.

**Beechwood Road Drainage Improvements**

Margaret (last name unknown) questioned the length of time that would be involved to complete the acquisition of easements for the Beechwood Road drainage project. The Town Supervisor stated that this matter would be discussed later in this meeting.

**REPORTS OF TOWN OFFICIALS BY STANDING COMMITTEE CHAIRPERSON**

**ZONING (CODES) AND PLANNING COMMITTEE – COUNCILMAN WOODLAND:**

**Training – Zoning Board of Appeals’ members**

Upon request of Zoning Board members, the following Resolution was introduced for adoption by Councilman Woodland and duly seconded by Councilwoman Krupa:

**(RESOLUTION NO. 226 OF 2011)**

**WHEREAS**, Section 77-b of the General Municipal Law allows the governing board of municipalities to authorize any officer or employee to attend a convention, conference or school conducted for the betterment of such municipality;

**NOW, THEREFORE, BE IT RESOLVED** that the Town Board of the Town of New Hartford does hereby grant permission to Karen Stanislaus and Timothy Tallman, members of the Zoning Board of Appeals, to attend the Herkimer-Oneida Counties Comprehensive Planning Program (ZBA basics, SEQRA Basics, Marcellus Shale, Public Meetings and Hearings, and Maps for Planning and Zoning) on October 1, 2011 at M.V.C.C. in Utica, New York, with expenses to be borne by said Town as budgeted.

The Resolution was voted upon by roll call as follows:

Councilwoman Krupa	-	Aye
Councilman Woodland	-	Aye
Councilman Reynolds	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**.

**Property Maintenance – 1443 Nye Ave**

Upon recommendation of the Codes Enforcement Officer, the following Resolution was

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introduced for adoption by Councilman Woodland and duly seconded by Councilman Backman:

**(RESOLUTION NO. 227 OF 200.)**

**WHEREAS**, the Town of New Hartford had adopted on September 24, 1994 a Local Law regulating property maintenance and which Law prohibits the accumulation of brush, grass, rubbish or weeds on any real property in said Town (Code, Chapter 94); and

**WHEREAS**, the Town Codes Enforcement Officer has received complaints about high grass and weeds upon premises located at 1443 Nye Ave (Tax Map Parcel No. 317.012-3-24) in the Town of New Hartford, New York owned by Richard Gentile whose last known address is 1443 Nye Ave, P. O. Utica, New York 13502; and

**WHEREAS**, the property appears to be abandoned, and the Codes Enforcement Officer had communicated with said owner via certified mail with no response having been received;

**NOW, THEREFORE, BE IT RESOLVED** that the Town Board of the Town of New Hartford does hereby authorize and direct the Codes Enforcement Officer to forward a written communication to Richard Gentile, giving him ten (10) days to remove the existing nuisance(s) from 1443 Nye Ave; and that if Mr. Gentile fails to comply with the law, that the Codes Enforcement Officer, through the Parks and Recreation Department, proceed with mowing the lawn and clearing the property of debris at 1443 Nye Ave as well as boarding the doors and windows, and that the costs and expenses incurred by the Town in connection with said proceedings be assessed against the land on which said public nuisance exists; specifically, the Town Board does hereby authorize and direct Oneida County to levy such charges on the 2012 Town and County tax bill and/or subsequent tax year billings.

The foregoing Resolution was duly put to a vote upon roll call, as follows:

Councilwoman Krupa	-	Aye
Councilman Woodland	-	Aye
Councilman Reynolds	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**.

**TOWN CLERK COMMITTEE – COUNCILWOMAN KRUPA:**

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**Raffle Consent**

The following Resolution was introduced for adoption by Councilwoman Krupa and duly seconded by Councilman Backman:

**(RESOLUTION NO. 228 OF 2011)**

**RESOLVED** that the New Hartford Town Board does hereby grant permission to the American Heart Association, 120 Lomond Court, Utica New York 13502, an organization duly granted a Games of Chance Identification Number by the New York State Racing and Wagering Board, to sell raffle tickets in Calendar Year 2012 at Sangertown Square Mall, New Hartford, New York, in accordance with all rules and regulations of said Racing and Wagering Board; and be it

**FURTHER RESOLVED** that the Town Clerk be, and she hereby is, authorized and directed to execute Form GC-RCF, Raffle Consent Form.

Upon roll call, the Town Board voted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**.

**PUBLIC WORKS AND SEWER COMMITTEE – COUNCILMAN BACKMAN:**

**Elm Street (Chadwicks) Bridge Replacement**

Councilman Backman questioned the delay in the completion of the Elm Street bridge replacement, referring to a July 2011 letter stating that the project would be completed in eight (8) weeks. Guard rail on the left (north) side of the Elm Street bridge has not yet been installed but is expected to be in place in two (2) to three (3) weeks. He informed the Town Board that both adjoining properties on the north side of Elm Street, traveling toward Mohawk Street, have experienced damage. Michael Scott has been “more than generous” in allowing the contractor to use a portion of his property (Tax Map Parcel No. 349.020-1-29) to store equipment and parking of trucks and discussion ensued about the possibility of Town-aided remediation to Mr. Scott’s gravel driveway. Highway Superintendent Sherman stated that the contractor would be paving “a good portion of the apron” of the driveway since the contractor’s equipment contributed to the situation. The two storms – one on August 28, 2011 and the second storm ten (10) days later – caused some erosion of stream banks.

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Town Board consensus was that it's the contractor's responsibility to repair Mr. Scott's driveway.

The house just before the Elm Street bridge (north side going traveling toward Mohawk Street), owned by Patricia Omes (Tax Map Parcel No. 349.020-1-28), suffered tremendous land erosion after both recent storms. As a result, two of their vehicles fell into the Sauquoit Creek. Also, there are several large, 70 – 75 feet trees leaning over the Sauquoit Creek that sometime in the near future need to be removed. Highway Superintendent Sherman said that the NYS Department of Environmental Conservation had issued a work permit to allow the Town to perform restorative work.

**Lease – 2011 Mack Truck**

Councilman Backman introduced the following Resolution for adoption; seconded by Councilman Reynolds:

**(RESOLUTION NO. 229 OF 2011)**

**RESOLVED** that the Town Board of the Town of New Hartford, New York does hereby agree to enter into a Lease/Purchase Agreement with Baystone Financial, 1680 Charles Pl., Manhattan, Kansas 66502, for a 2011 Mack 10-Wheeler Dump Snowplow, with the first of seven (7) annual payments of Thirty-two Thousand Three Hundred Sixty-nine Dollars and Fifty-eight Cents (\$32,369.58) to be due January 15, 2012 and that the said Town Board does hereby authorize and direct the Town Supervisor to enter into and to execute a Letter of Intent with regard to this Lease.

Highway Superintendent Sherman stated that with this Lease, the Town has the option of paying it off ahead of time without any penalty and that at the end of the Lease Agreement the Town would own the vehicle. The Town Attorney will review the documents for approval. A roll call vote was duly held as follows:

Councilwoman Krupa	-	Aye
Councilman Woodland	-	Aye
Councilman Reynolds	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**.

**Recent Storms – Sewer Lateral Damage/Sauquoit Creek**

Highway/Sewer Superintendent Sherman reported that during the two (2) recent storms, flooding wiped away a sewer lateral crossing at Sauquoit Creek between Oxford Road and the New York State Route 8 (Sauquoit Valley) Arterial.



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Immediate attention was needed and Superintendent Sherman was able to get a contractor to remedy the situation on the Friday of Labor Day weekend by installing a temporary by-pass. The NYS Department of Environmental Conservation became involved because of contamination to Sauquoit Creek. Barton & Loguidice are working on a design for a permanent solution.

**Buildings and Grounds – Kellogg Road Community Center**

While replacing the Kellogg Road Community Center roof, Jewett Bros. Home Improvement found rotted wood that needed to be replaced with plywood. The Highway Superintendent and Town Supervisor took care of the problem prior to an imminent rainstorm and noted that an extra \$3600 had been incurred and is reflected on a voucher before the Board tonight.

**August 28, 2011 Storm damage - Stormwater Management (Advisory) Improvement Committee**

Councilman Backman stated there were a lot of people who wanted to come before the Stormwater Management Committee; Elisabetta DeGironimo, Engineering Department Coordinator, said the Committee will meet the 4<sup>th</sup> Monday of September, 2011.

**Beechwood Road Drainage Improvements – Phase I/Easements**

Upon recommendation of the Town Supervisor, Councilwoman Krupa offered the following Resolution for adoption; seconded by Councilman Reynolds:

**(RESOLUTION NO. 230 OF 2011)**

**RESOLVED** that the Town Board of the Town of New Hartford, New York does hereby retain the legal services of Attorney Herbert J. Cully to prepare easements and related documents/correspondence, secure signatures of property owners and record the easements in the Oneida County Clerk’s Office, in relation to the Beechwood Road Drainage Improvements project, at an hourly rate of One Hundred Fifty Dollars (\$150), said work being above and beyond the scope of his duties as Town Attorney.

The Town Board members then voted upon roll call:

Councilwoman Krupa	-	Aye
Councilman Woodland	-	Aye
Councilman Reynolds	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**.

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### **Draft Local Law – Windmills/Windpower**

Codes Enforcement Officer Booth stated that Advisory Committee on Zoning member Mark Krasinski came across new regulations adopted by the State and he wanted one more review of the legislation. The Town Attorney acknowledged that, prior to scheduling a Public Hearing, the Local Law must be in its final form before being introduced by the Town Board; the Town Clerk noted that SEQRA must also be addressed. The matter will be placed on the Agenda for the September 24, 2011 Town Board meeting.

### **Hydraulic Fracturing (aka Hydrofracking) Zoning**

Town Attorney Cully has discussed with Kirkland Town Attorney Anthony Hallak and Town of Paris Attorney Stuart Finer if they would be interested in working in concert to prepare zoning regulations for the three (3) municipalities; the SEQRA process must be followed for this proposed local law.

### **Town Attorney opinion – Sewer Districts**

Councilman Backman asked for the Town Attorney's opinion on the methods of taxing properties in sewer districts. It was agreed this matter would be postponed until the September 28, 2011 Town Board meeting.

## **PARKS AND RECREATION COMMITTEE – COUNCILMAN REYNOLDS:**

### **Rayhill Trail Expansion Project**

The Parks and Recreation Director had met with the Town Attorney, Highway Superintendent and Councilman Reynolds with regard to some minor survey work and appraisal of a small portion of land for the extension of the Rayhill Trail. The Town Attorney has discussed this with property owner and the NYS Department of Transportation will revise the map to show the change if the property owner is okay with it. The Parks and Recreation Director anticipates having the signed purchase agreement and New York Mills railroad crossing in October 2011, bidding the project in the 2011-12 winter season and construction in Spring 2012.

## **MATTERS SUBMITTED BY COUCILMEN AND TOWN ATTORNEY**

### **COUNCILWOMAN KRUPA:**

**Stormwater (recent floodings):** Councilwoman Krupa attended a meeting in Whitesboro with regard to the Sauquoit Creek in general. The issues are bigger than each municipality being able to go in with a permit and do what they can. The NYS Department of Environmental Conservation has issued permits for limited dredging of the creek bed but the problem recurs; unauthorized work can result in fines to municipalities. The Federal Emergency Management Agency (FEMA) is not going to

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help and not at the first floor level. The Town Supervisor noted that Governor Cuomo has passed an exemption from the State.

### **COUNCILMAN BACKMAN:**

#### **No Parking Zone**

Councilman Backman had received a constituent complaint about parking on Sherrill Lane and asking that a no parking zone be established. After making an on-site inspection, Police Chief Inserra believes that a “no parking” zone is not warranted.

### **TOWN ATTORNEY:**

#### **Local Law Introductory “G” of 2011 – Stormwater/MS4**

The Town Attorney will meet on September 20, 2011 with Engineering Department Coordinator Elisabetta DeGironimo, Sidney Perry and Dr. Rao to finalize any additional comments or revisions for this proposed local law. The Town Clerk inquired if the Town Attorney would be completing the SEQR forms; Attorney Cully replied affirmatively. Thereafter, Councilman Backman introduced the following legislation for the Town Board’s consideration at a future Town Board meeting; co-sponsored by Councilwoman Krupa:

Town of New Hartford, NY  
Local Law Introductory “G” of 2011

A Local Law to amend the Code of the Town of New Hartford by creating a new **Chapter 101** entitled **STORMWATER MANAGEMENT**.

### **Part 1**

### **Stormwater Management, Erosion and Sediment Control**

### **ARTICLE I General Provisions**

#### **Section 101-1. Findings of fact.**

It is hereby determined that:

- A. Land development activities and associated increases in site impervious cover of often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;

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- B. This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- C. Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
- D. Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing streambank erosion and sedimentation;
- E. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- F. Substantial economic losses can result from these adverse impacts on the waters of the municipality;
- G. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- H. The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety;
- I. Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

### **Section 101-2. Purpose.**

This Part 1 is enacted to establish minimum stormwater management requirements that will protect and safeguard the general health, safety, and welfare of the public residing within the Town of New Hartford and to address the findings of fact in Section 101-1 hereof. The regulations seek to meet those purposed by achieving the following objectives:

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- A. Meet the requirements of Minimum Measures 4 and 5 of the New York State Current General Permit for Construction Activities, and the Current General Permit for MS4's, and Permit GP-02-02 or as amended, or revised;
- B. Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;
- C. Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- D. Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
- E. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.
- F. Require land development activities to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System General Permit for Construction Activities GPO-2-0. or as amended or revised.

### **Section 101-3. Statutory authority.**

In accordance with Section 10 of the Municipal Home Rule Law of the State of New York, the Town Board of the Town of New Hartford has the authority to enact local laws and amend local laws for the purpose of promoting the health, safety or general welfare of the Town of New Hartford and for the protection and enhancement of its physical environment. The Town Board of the Town of New Hartford may include in any such local law provisions for the appointment of any municipal officer, employees, or independent contractor to effectuate, administer and enforce such local law.

## **ARTICLE II Scope**

### **Section 101-4. Applicability.**

- A. The stormwater management requirements of this Part 1 shall be applicable to all land development activities as defined in this Part 1.

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- B. The municipality designates the Codes Enforcement Officer (with reservation of right to change such designation) to accept all stormwater pollution prevention plans who shall forward such plans to the Town Engineer and such other municipal boards as may be necessary. The Codes Enforcement Officer may:
- (1) Review the plans;
  - (2) Upon approval by the Town Board of the Town of New Hartford, and subject to an agreement by the Developer to pay the cost thereof engage the services of a registered professional engineer to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by said governing board;
  - (3) Accept the certification of a licensed professional that the plans conform to the requirements of the New York current General Permit for Construction Activities, and the current General Permit for MS4's;
- C. All land development activities subject to review and approval by the applicable board of the Town of New Hartford under subdivision, site plan, and/or special permit regulations shall be reviewed subject to the standards contained in this local law per model law.
- D. All land development activities not subject to review and stated in Section 4.3 shall be required to submit an SWPPP to the Codes Enforcement Officer who shall approve it if it compiles with the requirement of this law.

### **Section 101-5. Exemptions.**

The following activities are exempt from the stormwater management requirements of this Part 1.

- A. Agricultural activity as defined in this Part 1.
- B. Logging activity undertaken pursuant to an approved timber management plan prepared or approved by the County Soil and Water Conservation District or the New York State Department of Environmental Conservation, except that landing areas and log haul roads are subject to this Part 1.
- C. Routine maintenance activities that disturb less than five acres or are performed to maintain the original line and grade, hydraulic capacity or original purpose of a stormwater management facility.

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- D. Repairs to any stormwater management practice or facility deemed necessary by the municipality or its designee.
- E. Any part of a subdivision if a plat for the subdivision has been approved by the Town of New Hartford on or before the effective date of this Part 1.
- F. Land development activity(ies) for which a building permit has been approved on or before the effective date of this Part 1.
- G. Creation of graves at cemeteries.
- H. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- I. Emergency activity immediately necessary to protect life, property or natural resources.
- J. Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for use by that person and his or her family.
- K. Landscaping and horticultural activities in connection with an existing structure.
- L. Cutting trees for firewood or personal uses.

### **Section 101-6. Definitions.**

As used in this Part 1, the following terms shall have the meanings indicated:

**AGRICULTURE** – The raising for profit/gain of fruits, grains, vegetables and the like and structures incident thereto but not including the raising or keeping of animals. “Agriculture,” as defined in this Part 1, does not include all of the uses defined as agricultural uses in New York’s Agriculture and Markets Law.

**APPPLICANT** – A property owner or agent of a property owner who has filed an application for a land development activity.

**BUILDING** - Any roofed structure intended for the shelter, housing or enclosure of persons, animals or chattels. When a building is divided into separate parts extending from the ground up, each part so divided is deemed a separate building.

**CHANNEL** – A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

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**CLEARING** – Any activity that removes the vegetative surface cover.

**COMMERCIAL RECREATION** – Outdoor facilities, operated as a business and open to the public with facilities for uses such as horseback riding, swimming, golf courses, driving ranges, miniature golf and outdoor and open air live theater.

**DEDICATION** – The deliberate appropriation of property from its owner by a municipality for general public use.

**DESIGN MANUAL** - The New York State Stormwater Design Manual, most recent version including applicable updates, that serves as the official guide for stormwater management principles, methods and practices.

**DEVELOPER** – A person or entity which undertakes land development activities.

**EROSION CONTROL MANUAL** – The most recent version of the “New York Standards and Specifications for Erosion and Sediment Control” manual, commonly known as the “Blue Book.”

**FAMILY** – A single person; two or more persons related by blood or marriage; persons who are formally parties in a domestic partnership entered into pursuant to the laws of the United States or any state; or one or more persons acting as parental guardians for other household occupants.

**GRADING** – Excavation of fill of material, including the resulting conditions thereof.

**IMPERVIOUS COVER** – Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snowmelt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

**INDUSTRIAL STORMWATER PERMIT** – A State Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

**INFILTRATION** – The process of percolating stormwater into the subsoil.

**LAND DEVELOPMENT ACTIVITY** – Construction activity, including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of at least one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different



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schedules.

**LANDOWNER** – The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

**LOGGING ACTIVITY** – Clearing and removal of trees as part of a business enterprise on land in excess of one acre in size except for personal use or property maintenance.

**MAINTENANCE AGREEMENT** – A legally recorded document which places restrictions on the use or enjoyment of real property (e.g., deed restrictions), and which provides for long-term maintenance of stormwater management practices.

**NONPOINT SOURCE POLLUTION** – Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

**PHASING** – Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

**POLLUTANT OF CONCERN** – Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

**PROJECT** – Land development activity or proposed land development activity.

**RECHARGE** – The addition of water to an aquifer or to a pumping well; the replenishment of underground water reserves; also, the amount of water added to an aquifer or a pumping well. Recharge is typically expressed as a rate, e.g., inches per year or gallons per day.

**SEDIMENT CONTROL** – Measures that prevent eroded sediment from leaving the site.

**SENSITIVE AREAS** – Cold-water fisheries, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

**SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES** – A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

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**SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS** – A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewer systems (MS4) for compliance with EPA established water quality standards and/or to specify stormwater control standards.

**STABILIZATION** – The use of practices that prevent exposed soil from eroding.

**STOP-WORK ORDER** – An order issued by the Codes Enforcement Officer or agency with jurisdiction over a particular activity which requires that all construction activity on a site be stopped.

**STORMWATER** – Rainwater, surface runoff, snowmelt and drainage.

**STORMWATER HOTSPOT** – A land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on recognized or generally accepted monitoring studies.

**STORMWATER MANAGEMENT** – The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

**STORMWATER MANAGEMENT FACILITY** – One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

**STORMWATER MANAGEMENT PRACTICES (SMPS)** – Measures, either structural or non structural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or non point source pollution inputs to stormwater runoff and water bodies.

**STORMWATER POLLUTION PREVENTION PLAN (SWPPP)** – A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

**STORMWATER RUNOFF** – Flow on the surface of the ground, resulting from precipitation.

**SURFACE WATERS OF THE STATE OF NEW YORK** – Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all

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other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

**WATERCOURSE** – A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

**WATERWAY** – A channel that directs surface runoff to a watercourse or to the public storm drain.

**WETLAND** – Any area where water is at or near the surface of the ground each year to promote the formation of hydric soils or hydrophytes (water-loving plants).

### **Article III Requirements and Design Criteria**

#### **Section 101-7. Stormwater pollution prevention plans.**

A. Stormwater pollution prevention plan requirement. No application for approval Of a land development activity shall be considered until the Planning Board has received a stormwater pollution prevention plan (SWPPP) prepared in accordance with the NYS current General Permit for Construction Activities, and the current General Permit for MS4's.

B. Contents of stormwater pollution prevention plans.

(1) In accordance with NYS current General Permit for Construction Activities, and the current General Permit for MS4's, all SWPPPs shall provide the following background information and erosion and sediment controls:

(a) Background information about the scope of the project, including location, type and size of project;

(b) Site map/construction drawing(s) for the project, including a general location map at a scale no smaller than one inch equals 100 feet. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction

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activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharge(s);

(c) Description of the soil(s) present at the site;

(d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP;

(e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;

(f) Description of construction and waste materials expected to be stored on site with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;

(g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;

(h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;

(i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;

(j) Temporary practices that will be converted to permanent control measures;

(k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;

(l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;

(m) Name(s) of the receiving water(s);

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- (n) Delineation of SWPPP implementation responsibilities for each part of the site;
  - (o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
  - (p) Any existing data that describes the stormwater runoff at the site.
- (2) Land development activities meeting Condition A, B or C below shall also include water quantity and water quality controls (postconstruction stormwater runoff controls) as set forth in Section 101-7B(3) below as applicable:
- (a) Condition A: stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water 303 (d) identified on New York State Department of Environmental Conservation list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
  - (b) Condition B: stormwater runoff from land development activities disturbing five or more acres.
  - (c) Condition C: stormwater runoff from construction activity or land development disturbing between one and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties.
- (3) SWPPP content requirements for Condition A, B and C:
- (a) All information in Section 101-7B(1) of this Part 1;
  - (b) Description of each postconstruction stormwater management practice;
  - (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice;
  - (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
  - (e) Comparison of postdevelopment stormwater runoff conditions with predevelopment conditions;

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- (f) Dimensions, material specifications and installation details for each postconstruction stormwater management practice;
  - (g) Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice;
  - (h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;
  - (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with Part 1.
  - (j) For Condition A, the SWPPP shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in this local law.
- C. Plan certification. The SWPPP shall be prepared by a landscape architect, (CPESC) certified professional in erosion and sediment control or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in the NYS current General Permit for Construction Activities, and the current General Permit for MS4's.
- Construction Activities and this Part 1.
- D. Other environmental permits. The applicant shall certify that all other applicable environmental permits have been, or will be, acquired for the land development activity prior to making application to the Town of New Hartford.
- E. Contractor certification.
- (1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity.

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“I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards.”

- (2) The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
  - (3) The certification statement(s) shall become part of the SWPPP for the land development activity.
- F. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

### **SECTION 101-8. Performance and design criteria.**

All land development activities shall be subject to the following performance and design and criteria:

- A. Technical standards. For the purpose of this Part 1, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this Part 1:
- (1) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the “Design Manual”).
  - (2) New York Standards and Specifications for Erosion and Sediment Control, (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version of its successor, hereafter referred to as the “Erosion Control Manual”).
- B. Equivalence to Technical Standards. Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth and the SWPPP shall be prepared by a licensed professional.

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- C. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

### **Section 101-9. Maintenance, Inspection and Repair of Stormwater Facilities.**

- A. Maintenance and Inspection during construction.

(1) The applicant or developer of the land development activity shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this Part 1. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.

(2) The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices. Inspection reports shall be completed every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. The reports shall be delivered to the Codes Enforcement Officer and also copied to the site logbook.

- B. Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the NYS Department of Environmental Conservation and/or a designated representative of the Town of New Hartford to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this Part 1. The easement shall be recorded by the grantor in the Office of the County Clerk after review by the Counsel for the Town of New Hartford and acceptance by the Town Board of the Town of New Hartford.
- C. Maintenance after construction. Permanent stormwater management practices installed in accordance with this Part 1 shall be operated and maintained to achieve the goals of this Part 1. Proper operation and maintenance also includes, as a minimum, the following:



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- (1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this Part 1.
  - (2) Written procedures for operation and maintenance and training new maintenance personnel.
  - (3) Actions to insure discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with Section 101-8.
- D. Maintenance agreements. Prior to final plan approval, the Town of New Hartford shall approve a formal maintenance agreement for stormwater management facilities that shall be binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property. The maintenance agreement shall be consistent with the terms and conditions of Appendix B2 of this Part 1 entitled "Sample Stormwater Control Facility Maintenance Agreement." In lieu of a maintenance agreement, the Town of New Hartford may, at its sole discretion, accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this Part 1 and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

### **ARTICLE III-A**

#### **Subdivision Regulation Amendment**

- The Subdivision Regulations of the Town of New Hartford are hereby amended by adding the following to the information requirements.
- A. For Preliminary Subdivision Plat add: Stormwater Pollution Prevention Plan: A Stormwater Pollution Prevention Plan (SWPPP) consistent with the requirements of Article 1 and 2 of this local law shall be required for Preliminary Subdivision Plat approval. The SWPPP shall meet the performance and design criteria and standards in Article 2 of this local law. The approved Preliminary Subdivision Plat shall be consistent with the provisions of this local law.
  - B. For Final Subdivision Plat approval add: Stormwater Pollution Prevention Plan: A Stormwater Pollution Prevention Plan consistent with the requirements of Article 1 and 2 of this local law and with the terms of preliminary plan approval shall be required for Final Subdivision Plat approval. The SWPPP shall meet the performance and design criteria and standards in Article 2 of this local law. The

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approved Final Subdivision Plat shall be consistent with the provisions of this local law.

**ARTICLE III-B**

**Site Plan Review Regulation Amendment**

The Site Plan Review Regulations of the Town of New Hartford are hereby amended by adding the following to the information requirements.

**For Site Plan Approval add:** Stormwater Pollution Prevention Plan: A Stormwater Pollution Prevention Plan consistent with the requirements of Article 1 and 2 of this local law shall be required for Site Plan Approval. The SWPPP shall meet the performance and design criteria and standards in Article 2 of this local law. The approved Site Plan shall be consistent with the provisions of this local law.

**ARTICLE IV**

**Enforcement and Administration**

**Section 101-10. Stormwater management/construction inspections.**

A. Inspection during construction.

(1) The Town Board, or its designee, Planning Board, Town Engineer, and/or Codes Enforcement Officer of the Town of New Hartford may choose to require or conduct inspections during construction as necessary to determine compliance with the stormwater management provisions of this Part 1. Following any such inspection, the Codes Enforcement Officer may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this Part 1 and/or the stormwater pollution prevention plan (SWPPP). So that the municipality may determine the need for an inspection, the applicant shall notify the Town of New Hartford enforcement official at least 48 hours before any of the following:

- (a) Start of construction.
- (b) Installation of sediment and erosion control measures.
- (c) Completion of site clearing.
- (d) Completion of rough grading.
- (e) Completion of final grading.
- (f) Close of the construction season.

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- (g) Completion of final landscaping.
- (h) Successful establishment of landscaping in public areas.

(2) If any violations of this Part 1 or other applicable codes, laws or rules are found, the applicant and developer shall be notified, in writing, of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the Codes Enforcement Officer.

B. As-build filing requirements. All applicants are required to submit to the Town Codes Enforcement officer as-built plans for any stormwater management practices located on site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer located on site and within 45 days of the completion of final construction. Failure to do so shall constitute a Codes violation subject to enforcement.

C. Inspection of stormwater facilities after project completion.

(1) Inspection programs may be established on any reasonable basis after construction.

(2) The Town of New Hartford may choose to conduct routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher-than-typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher-than-usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards of the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws.

(3) Inspections may include, but are not limited to: reviewing maintenance and repair records, sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.

(4) Such inspections may be performed by officials of the Town of New Hartford or the Town Board may designate an inspector required to have a professional engineer's (PE) license or certified professional in erosion and sediment control

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- (CPESC) certificate, as long as the designated inspector is required to submit a report.
- D. Submission of monitoring reports. The Town Board, Planning Board, and/or Codes Enforcement Officer of the Town of New Hartford may require monitoring and reporting from entities or applicants subject to this Part 1 as are necessary to determine compliance with this Part 1.
- E. Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the Town of New Hartford the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in Section 101-10 C.

### **Section 101-11. Stormwater management performance guarantee.**

- A. Construction completion and performance guarantee.
- (1) In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town of New Hartford in its approval of stormwater management activities, the Town of New Hartford may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of New Hartford as the beneficiary.
- (2) The security shall be in an amount to be determined by the Town of New Hartford, or its consultant based on submission of final design plans, with reference to actual construction and landscaping costs.
- (3) The performance guarantee shall remain in force until the surety is released from liability by the Town of New Hartford, provided that such period shall not be less than five years from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a five-year inspection has been conducted and the facilities have been found to be acceptable to the Town of New Hartford. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.
- B. Stormwater maintenance guarantee

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- (1) Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, shall be required to provide the Town of New Hartford with a Performance Bond or an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction and until the facilities are transferred to the Town of New Hartford after completion of the period of the Performance Bond.
  - (2) If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities during the period of the Performance Bond, the Town of New Hartford may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.
  - (3) A new Performance Bond is required during and after construction of each phase of development.
- C. Recordkeeping. The Town of New Hartford may require entities and applicants subject to this Part 1 to maintain records demonstrating compliance with this Part 1.
- D. The owner or developer is responsible of all violations and penalties.

### **Section 101-12. Enforcement; penalties for offenses. A. Notice of violation.**

A. When the Town of New Hartford determines that stormwater, erosion and/or sediment control activities associated with a land development activity are not being carried out in accordance with the stormwater management, erosion and sediment control requirements of this Part 1, it may issue a written notice of violation to the landowner. The notice of violation shall contain:

- (a) The name and address of the landowner, developer or applicant;
- (b) The address when available or a description of the building, structure or land upon which the violation is occurring;
- (c) A statement specifying the nature of the violation;

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- (d) A description of the remedial measures necessary to bring the land development activity into compliance with this Part 1 and a time schedule for the completion of such remedial action;
  - (e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
  - (f) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation.
- B. Stop-work orders. The Town of New Hartford may issue a stop-work order for violations of this Part 1. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Town of New Hartford confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this Part 1.
- C. Violations. Any land development activity that is commenced or is conducted contrary to this Part 1, may be restrained by injunction or otherwise abated in a manner provided by law.
- D. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Part 1 shall be guilty of a violation punishable by a fine of 2% of security amount (Section 101-11.A(2)) not exceeding \$1,500 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine 2% of security amount (Section 101-11.A(2)) not less than \$1,500 nor more than \$3,000 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine 5% of security amount (Section 101-11.A(2)) not less than \$3,000 nor more than \$10,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this Part 1 shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

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- E. Withholding of certificate of occupancy. If any building, stormwater management, erosion and sediment control, or land development activity is installed or conducted in violation of this Part 1, the Codes Enforcement Officer may prevent the occupancy of said building or land.
- F. Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of New Hartford may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

### **Section 101-13. Fees for services.**

(1) The Town of New Hartford may require any person undertaking land development activities regulated by this Part 1 to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or stormwater management maintenance performed by the Town of New Hartford or performed by a third party (P. E. Consultant) for the Town of New Hartford.

(2) All parties involved with the preparation of the SWPPP, construction of SMP's, inspector and consultant engineering for the developer, or the Town of New Hartford, are advised to undertake the assignment under contract with adequate liability insurance.

### **Section 101-14. Severability.**

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this Part 1 shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this Part 1.

### **Section 101-15 through Section 101-19. (Reserved)**

## **Part 2**

### **Storm Sewers**

## **ARTICLE V**

### **Illicit Discharges, Activities' and Connections [Adopted 10-10-2007 by L.L. No. 2-2007]**

**Section 101-20. Purpose/Intent.**

The purpose of this Part 2 is to provide for the health, safety, and general welfare of the citizens of the Town of New Hartford through the regulation of nonstormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This Part 2 establishes methods for controlling introduction of pollutants into the MS4 in order to comply with requirements of the SPDES General Permit for Municipal Separate Storm Sewer Systems. The objectives of this Part 2 are:

- A. To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02 or as amended or revised;
- B. To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process or discharge nonstormwater wastes;
- C. To prohibit illicit connections, activities and discharges to the MS4;
- D. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Part 2; and
- E. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, law chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the MS4.

**Section 101-21. Definitions.**

Whenever used in this Part 2, unless a different meaning is stated in a definition applicable to only a portion of this Part 2, the following terms will have meanings set forth below:

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 stormwater, receiving waters, or stormwater conveyance systems. 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.



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**CLEAN WATER ACT** – The Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.

**CONSTRUCTION ACTIVITY** – Activities requiring authorization under the SPDES Permit for Stormwater Discharges from Construction Activity, GP-02-01, as amended or revised. These activities include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

**DEPARTMENT** – The New York State Department of Environmental Conservation.

**DESIGN PROFESSIONAL** – New York State licensed professional engineer or licensed architect.

**HAZARDOUS MATERIALS** – 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 CONNECTIONS** – Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including but not limited to:

A. Any conveyances which allow any nonstormwater discharge including treated or untreated sewage, process wastewater, and wash water to enter the MS4 and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or

B. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

**ILLICIT DISCHARGE** – Any direct or indirect nonstormwater discharge to the MS4, except as exempted in Section 101-25 of this Part 2.

**INDIVIDUAL SEWAGE TREATMENT SYSTEM** – A facility serving one or more parcels of land or residential households, or a private, commercial or institutional facility, that treats sewage or other liquid wastes for discharge into

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the groundwaters of New York State, except where a permit for such a facility is required under the applicable provisions of Article 17 of the Environmental Conservation Law.

**INDUSTRIAL ACITIVITY** – Activities requiring the SPDEs Permit for Discharges from Industrial Activities Except Construction, GP-98-03, as amended or revised.

**MS4** – Municipal separate storm sewer system.

**MUNICIPALITY** – The Town of New Hartford.

**MUNICIPAL SEPARATE STORM SEWER SYSTEM** – A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- A. Owned or operated by the Town of New Hartford;
- B. Designed or used for collecting or conveying stormwater;
- C. Which is not a combined sewer; and
- D. Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

**NONSTORMWATER DISCHARGE** – Any discharge to the MS4 that is not composed entirely of stormwater.

**PERSON** – Any individual, association, organization, partnership, firm corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

**POLLUTANT** – Dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat wrecked or discarded equipment, rock, sand and industrial, municipal, agricultural waste and ballast discharged into water; which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards.

**PREMISES** – Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

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### **SPECIAL CONDITIONS –**

A. Discharge compliance with water quality standards. The condition that applies where a municipality has been notified that the discharge of stormwater authorized under their MS4 permit may have been caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition, the municipality must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.

B. 303(d) listed waters. The condition in the municipality's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition, the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.

C. Total maximum daily load (TMDL) strategy. The condition in the municipality's MS4 permit where a TMDL, including requirements for control of stormwater discharges has been approved by EPA for a water body or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the municipality was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

D. The condition in the municipality's MS4 permit that applies if a TMDL is approved in the future by EPA for any water body or watershed into which an MS4 discharges. Under this condition the municipality must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the municipality must, within six months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

**STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES)  
STORMWATER DISCHARGE PERMIT – A permit issued by the Department that authorizes the discharge of pollutants to waters of the state.**

**STORMWATER – Rainwater, surface runoff, snowmelt and drainage.**

**STORMWATER MANAGEMENT OFFICER (SMO) – An employee, the Municipal Engineer or other public official(s) designated by the Town of New Hartford to enforce this Part 2. The SMO may also be designated by the municipality to accept and review stormwater pollution prevention plans, forward**

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the plans to the applicable municipal board and inspect stormwater management practices.

303(d) LIST - A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by the Department as required by Section 303(d) of the Clean Water Act. 303(d) listed waters are estuaries, lakes and streams that fall short of state surface water quality standards and are not expected to improve within the next two years.

TMDL – Total maximum daily load.

TOTAL MAXIMUM DAILY LOAD – The maximum amount of a pollutant to be allowed to be released into a water body so as not to impair uses of the water, allocated among the sources of that pollutant.

WASTEWATER – Water that is not stormwater, is contaminated with pollutants and is or will be discarded.

**Section 101-22. Applicability.**

This Part 2 shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

**Section 101-23. Responsibility for administration.**

The Stormwater Management Officer(s) [SMO(s)] shall administer, implement, and enforce the provisions of this Part 2. Such powers granted or duties imposed upon the authorized enforcement official may be delegated, in writing, by the SMO as may be authorized by the municipality.

**Section 101-24. Severability.**

The provisions of this Part 2 are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Part 2 of the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Part 2.

**Section 101-25. Discharge and connection prohibitions.**

A. Prohibition of illegal discharges. No person shall discharge or cause to be

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discharged into the MS4 any materials other than stormwater except as provided herein. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:

(1) The following discharges are exempt from discharge prohibitions established by this Part 2, unless the Department or the municipality has determined them to be substantial contributors of pollutants: water line flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains, crawl space or basement sump pumps, air-conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire-fighting activities, and any other water source not containing pollutants. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants.

(2) Discharges approved, in writing, by the SMO to protect life or property from imminent or damage, provided that, such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this Part 2.

(3) Dye testing in compliance with applicable state and local laws is an allowable discharge, but requires a verbal notification to the SMO prior to the time of the test.

(4) The prohibition shall not apply to any discharge permitted under a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Department, 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 MS4.

### **B. Prohibition of illicit connections.**

(1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.

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(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 Part 2 if the person connects to a line conveying sewage to the municipality's MS4 or allows such a connection to continue.

**Section 101-26. Prohibition against failing individual sewage treatment systems.**

No persons shall operate a failing individual sewage treatment system in areas tributary to the municipality's MS4. A failing individual sewage treatment system is one which has one or more of the following conditions:

- A. The backup of sewage into a structure.
- B. Discharges of treated or untreated sewage onto the ground surface.
- C. A connection or connections to a separate stormwater sewer system.
- D. Liquid level in the septic tank above the outlet invert.
- E. Structural failure of any component of the individual sewage treatment system that could lead to any of the other failure conditions as noted in this section.
- F. Contamination of off-site groundwater.

**Section 101-27. Prohibition against activities contaminating stormwater.**

A. Activities that are subject to the requirements of this section are those types of activities that:

(1) Cause or contribute to a violation of the municipality's MS4 SPDES permit.

(2) Cause or contribute to the municipality being subject to the special conditions as defined in Section 101-21, (Definitions) of this Part 2.

B. Such activities include failing individual sewage treatment systems as defined III Section 101-26, improper management of pet waste or any other activity that causes or contributes to violations of the municipality's MS4 SPDES permit authorization.

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C. Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the municipality's MS4 SPDES permit authorization, that person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the municipality's MS4 SPDES permit authorization.

### **Section 101-28. Prevention, control, and reduction of stormwater pollutants by use of best management practices.**

A. Best management practices. Where the SMO had identified illicit discharges as defined in Section 101-21 or activities contaminating stormwater as defined in Section 101-27, the municipality may require implementation of best management practices (BMPs) to control those illicit discharges and activities.

(1) 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 MS4 through the use of structural and nonstructural BMPs.

(2) Any person responsible for a property or premises, which is or may be the source of an illicit discharge as defined in Section 101-21 or an activity contaminating stormwater as defined in Section 101-27, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.

(3) Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

B. Individual sewage treatment systems. Response to special conditions requiring no increase of pollutants or requiring a reduction of pollutants where individual sewage treatment systems are contributing to the municipality's being subject to the special conditions as defined in Section 101-21 of this Part 2, the owner or operator of such individual sewage treatment systems shall be required to:

(1) Maintain and operate individual sewage treatment systems as follows:

(a) Insect the septic tank annually to determine scum and sludge accumulation.

[1] Septic tanks must be pumped out whenever the bottom of the scum layer is within three inches of the bottom of the outlet baffle or sanitary tee or the top

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of the sludge is within 10 inches of the bottom of the outlet baffle or sanitary tee.

(b) Avoid the use of septic tank additives.

(c) Avoid the disposal of excessive quantities of detergents, kitchen wastes, laundry wastes and household chemicals; and

(d) Avoid the disposal of cigarette butts, disposable diapers, sanitary napkins, trash and other such items.

(e) Most tanks should be pumped out every two to three years. However, pumping may be more or less frequent depending on use. Inspection of the tank for cracks, leaks and blockages should be done by the septage hauler at the time of pumping of the tank contents.

(2) Repair or replace individual sewage treatment systems as follows:

(a) In accordance with 10 NYCRR Appendix 75A to the maximum extent practicable.

(b) A design professional licensed to practice in New York State shall prepare design plans for any type of absorption field that involves:

[1] Relocating or extending an absorption area to a location not previously approved for such.

[2] Installation of a new subsurface treatment system at the same location.

[3] Use of alternate system or innovative system design or technology.

(c) A written certificate of compliance shall be submitted by the design professional to the municipality at the completion of construction of the repair or replacement system.

### **Section 101-29. Suspension of access to MS4.**

A. Illicit discharges in emergency situations. The SMO 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, to the health



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or welfare of persons, or to the MS4. The SMO shall notify the person of such suspension within a reasonable time thereafter, in writing, of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.

B. Suspension due to the detection of illicit discharge. Any person discharging to the municipality's MS4 in violation of this Part 2 may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The SMO will notify a violator, in writing, of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMO for a reconsideration and hearing. Access may be granted by the SMO if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMO determines, in writing, that the illicit discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the SMO.

### **Section 101-30. Industrial or construction activity discharges.**

Any person subject to an industrial or construction activity SPDES stormwater 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 municipality prior to the allowing of discharges to the MS4.

### **Section 101-31. Access and monitoring of discharges.**

A. Applicability. This section applies to all facilities that the SMO must inspect to enforce any provision of this Part 2, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Part 2.

B. Access to facilities.

(1) The SMO shall be permitted to enter and inspect facilities subject to regulation under this Part 2 as often as may be necessary to determine compliance with this Part 2. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMO.

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(2) Facility operators shall allow the SMO ready access to all parts of the premises for the purpose of inspection, sampling, examination and copying of records as may be required to implement this Part 2.

(3) The municipality shall have the right to set up on any facility subject to this Part 2 such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.

(4) The municipality has the right to require the facilities subject to this Part 2 to install monitoring equipment as is reasonably necessary to determine compliance with this Part 2. 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 stormwater flow and quality shall be calibrated to ensure their accuracy.

(5) Unreasonable delays in allowing the municipality access to a facility subject to this Part 2 is a violation of this Part 2. A person who is the operator of a facility subject to this Part 2 commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this Part 2.

(6) If the SMO has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Part 2, 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 Part 2 or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction.

### **Section 101-32. 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 illegal discharges or pollutants discharging into MS4, 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 nonhazardous materials, said person shall notify the municipality in person or by telephone or facsimile no later than the next business day.

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Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the municipality within three business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or the 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.

### **Section 101-33. Enforcement.**

A. Violation. It shall be unlawful for any person to violate any provision or to fail to comply with any requirements of this Part 2.

B. Notice of violation. When the municipality's SMO finds that a person has violated a prohibition or failed to meet a requirement of this Part 2, he/she may order compliance by written notice of violation to the responsible person or may issue an appearance ticket charging that person with a violation of this Part 2. Such notice may require without limitation:

- (1) The elimination of illicit connections or discharges;
- (2) That violating discharges, practices, or operations shall cease and desist;
- (3) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any effected property;
- (4) The performance of monitoring, analyses, and reporting;
- (5) Payment of a fine; and
- (6) The implementation of source control of treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within 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.

C. Appeal of notice violation. Any person receiving a notice of violation may appeal the determination of the SMO to the Town Board of the Town of New Hartford within 15 days of its issuance, which shall hear the appeal within 30 days after the filing of the appeal, and within five days of making its decision, file

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its decision in the office of the Municipal Clerk and mail a copy of its decision by certified mail to the discharger.

D. Corrective measures after appeal.

(1) If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within five business days of the decision of the municipal authority upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.

(2) If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger.

**Section 101-34. Penalties for offenses; remedies.**

A. Penalties.

(1) In addition to or as an alternative to any penalty provided herein or by law, any person who violated the provisions of this Part 2 shall be guilty of a violation punishable by a fine not exceeding \$500 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$500 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$1,000 nor more than \$2,000 imprisonment for a period not, to exceed six months, or both.

(2) However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this Part 2 shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

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B. Alternative remedies.

(1) Where a person has violated a provision of this Part 2, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Municipal Attorney and concurrence of the Municipal Code Enforcement Officer, where:

- (a) The violation was unintentional.
- (b) The violator has no history of previous violations of this Part 2.
- (c) Environmental damage was minimal.
- (d) The violator acted quickly to remedy violation.
- (e) The violator cooperated in investigation and resolution.

C. Violations deemed a public nuisance. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Part 2 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.

D. Injunctive relief. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Part 2. If a person has violated or continues to violate the provisions of this Part 2, the SMO 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.

E. Remedies not exclusive. The remedies listed in this Part 2 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.

**STORMWATER MANAGEMENT 101**

**Attachment 1**

**Town of New Hartford**

**Appendix B**

**Sample Stormwater Control Facility Maintenance Agreement**

Whereas, the Town of New Hartford (“Municipality”) and the (“facility Owner”) want to enter into an agreement to provide for the long term maintenance and continuation of stormwater control measures approved by the Municipality for the below named project, and

Whereas, the Municipality and the facility owner desire that the stormwater control measures be built in accordance with the approved project plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the components. Therefore, the Municipality and the facility owner agree as follows:

1. This agreement binds the Municipality and the facility owner, its successors and assigns, to the maintenance provisions depicted in the approved project plans which are attached as Schedule A of this agreement.
2. The facility owner shall maintain, clean, repair, replace and continue the stormwater control measures depicted in Schedule A as necessary to ensure optimum performance of the measures to design specifications. The stormwater control measures shall include, but shall not be limited to, the following: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes, culverts, soil absorption devices and retention ponds.
3. The facility owner shall be responsible for all expenses related to the maintenance of the stormwater control measures and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities.
4. The facility owner shall provide for the periodic inspection of the stormwater control measures, not less than once in every five-year period, to determine the condition and integrity of the measures. Such inspection shall be performed by a professional engineer licensed by the State of New York. The inspecting engineer shall prepare and submit to the Municipality within 30 days of the inspection, a written report of the findings, including recommendations for those actions necessary for the continuation of the stormwater control measures.
5. The facility owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the stormwater control measures except in accordance with written approval of the Municipality.
6. The facility owner shall undertake necessary repairs and replacement of the stormwater control measures at the direction of the Municipality or in accordance with the recommendations of the inspecting engineer.

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7. The facility owner shall provide to the Municipality within 30 days of the date of this agreement, a security for the maintenance and continuation of the stormwater control measures in the form of (a bond, letter of credit or escrow account).
8. This agreement shall be recorded in the Office of the County Clerk, County of Oneida together with the deed for the common property and shall be included in the offering plan and/or prospectus approved pursuant to \_\_\_\_\_.
9. If the Municipality ever determines that the facility owner has failed to construct or maintain the stormwater control measures in accordance with the project plan or has failed to undertake corrective action specified by the Municipality or by the inspecting engineer, the Municipality is authorized to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the stormwater control measures and to affix the expenses thereof as a lien against the property.
10. This agreement is effective \_\_\_\_\_.

**Schedule Public Hearing – Local Law Introductory “G” of 2011**

Councilman Backman then offered the following Resolution for adoption; seconded by Councilwoman Krupa:

**(RESOLUTION NO. 231 OF 2011)**

**RESOLVED** that the Town Board of the Town of New Hartford shall conduct a Public Hearing on Wednesday, October 5, 2011 at **7:00 P.M.**, or as soon thereafter as reached in the regular course of business, in Butler Memorial Hall, 48 Genesee Street, New Hartford to consider **Local Law Introductory “G” of 2011** which, if adopted, would amend the Code of the Town of New Hartford by creating a new **Chapter 101** entitled **STORMWATER MANAGEMENT**, establishing minimum stormwater management requirements and regulating non-stormwater discharges to the municipal storm sewer system (MS4) to the maximum extent practicable as required by federal and state law; and be it

**FURTHER RESOLVED** that the Town Board does authorize and direct the Town Clerk to publish the legal requisite Notice of Public Hearing in The Observer Dispatch.

A roll call vote ensued:

Councilwoman Krupa	-	Aye
Councilman Woodland	-	Aye
Councilman Reynolds	-	Aye
Councilman Backman	-	Aye

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Supervisor Tyksinski - Aye.

The Resolution was declared unanimously carried and duly **ADOPTED**.

**MATTERS SUBMITTED BY TOWN SUPERVISOR**

**FINANCIAL:**

**Audit of Vouchers**

Councilman Reynolds presented the following Resolution for adoption; seconded by Councilman Backman:

**(RESOLUTION NO. 232 OF 2011)**

**RESOLVED** that the Town Board of the Town of New Hartford does hereby authorize and direct the payment of the bills itemized on the following Abstracts, which had been duly audited by the Town Board:

Capital Elm St. Bridge Abstract #7	
Vouchers HB17-HB18	\$ 16,724.00
Rec. Center Bldg. Abstract # 3	
Vouchers H75	\$ 7,000.00
Street Lighting Vouchers #9	
Vouchers SL10	\$ 7,313.32
Trust & Agency Abstract #30	
Vouchers TT149-TT155	\$ 14,594.83
New Hartford Business Park Abstract #2	
Vouchers H02-H03	\$ 377.93
Trust & Agency Abstract #31	
Vouchers TT156-TT163	\$ 14,751.02
General Fund Part-Town Abstract #11	
Vouchers BB132-BB139	\$ 8,958.41
General Fund Part-Town Police Abstract # 13	
Vouchers BP232-BP252	\$ 86,373.38
General Fund Whole-Town Abstract #23	
Vouchers A1036-1039	\$ 11,137.01
General Fund Whole-Town Abstract #24	
Vouchers A1040	\$ 200.00
General Fund Whole-Town Abstract #25	
Vouchers A1041	\$ 4,932.00
General Fund Whole-Town Abstract #26	
Vouchers A1042-A1139	\$ 82,267.43



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Highway/Par-Town Abstract #11	
Vouchers DB665-DB723	\$125,998.75
Sewer Fund Abstract #16	
Vouchers SS59	\$ 1,150.80
Sewer Fund Abstract #17	
Vouchers SS60-SS63	<u>\$ 16,077.87</u>
<b>TOTAL:</b>	<b>\$326,027.48</b>

Upon roll call, the Board members voted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

This Resolution was declared unanimously carried and duly ***ADOPTED***.

**Elm Street (Chadwicks) bridge replacement**

Supervisor Tyksinski has released for payment the bills submitted by Lochner Engineering as the delays in the bridge replacement had nothing to do with this firm (inspections). The Town Supervisor will be meeting with the contractor, Economy Paving Co., Inc, and he is withholding payment of one of the contractor's vouchers/invoices.

**Health Insurance Updates – Police Benevolent Association (PBA) Union Contract and Non-Union Employees' Handbook**

The Town Supervisor briefed the Town Board on needed language updates with regard to health insurance for the PBA union contract and the non-union employees benefit and compensation document, brought to his attention by Personnel Technician Schwenzfeier. Thereafter, Councilwoman Krupa introduced the following Resolution for adoption and Councilman Woodland seconded same:

**(RESOLUTION NO. 233 OF 2011)**

**WHEREAS**, on August 17, 2011 the Town Board adopted Resolution No. 214, electing to participate as a participating employer in the New York State Health Insurance Program and to include in such plan its officers and employees and to include in such plan its retired officers and employees, subject to and in accordance with the provisions of Article XI of the Civil Service Law and Regulations governing the New York State Health Insurance program, as presently existing or hereafter amended, together with such

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provisions of the insurance contracts as may be approved by the President of the Civil Service Commission and any administrative rule or directive governing the plan; and

**WHEREAS**, on August 24, 2011 the Town Board adopted Resolution No. 219 accepting the low quote submitted by Guardian Insurance and approved a contract for Guardian Insurance to provide insurance coverage for dental, vision and disability to the PBA members and the non-union employees, effective October 1, 2011;

**NOW, THEREFORE, BE IT RESOLVED** that the New Hartford Town Board does hereby authorize and direct that the Police Benevolent Association (PBA) Union Contract, Article XXVIII (Health Insurance) be updated to be in compliance with New York State Health Insurance Plan (NYSHIP) rules and regulations and, further, that the Non-Union Benefits and Compensation documents (Section 506 and 507) of the Employees Handbook be likewise updated to be in compliance with NYSHIP rules and regulations.

The Supervisor polled the Board members who voted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

This Resolution was declared unanimously carried and duly **ADOPTED**.

**Guarantee Agreement – Lawrence Adler; New Hartford Office Group**

The Town Attorney reported on an Agreement provided by developer Larry Adler in which Mr. Adler acknowledges his responsibility and that of the New Hartford Office Group for any costs for the NYS 840 Eastbound ramp project in excess of \$1.1 million. Supervisor Tyksinski introduced the following Resolution, which was duly seconded by Councilwoman Krupa:

**(RESOLUTION NO. 234 OF 2011)**

**WHEREAS**, developer Lawrence Adler and the New Hartford Office Group have provided the New Hartford Town Board with an Agreement in which they acknowledge their responsibility for any costs associated with the construction of the NYS Route 840 Eastbound ramp project in excess of \$1.1 million dollars; and

**WHEREAS**, said costs in excess of \$1.1 million dollars would include, but not be limited to, acquisition costs associated with the Clinton Street Extension, appraisal fees,

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engineering design, inspection services, all construction expenses and Town Attorney expenses above and beyond the routine attorney duties; and

**WHEREAS**, the Town of New Hartford has been holding a Letter of Credit from developer Lawrence Adler;

**NOW, THEREFORE, BE IT RESOLVED** that the New Hartford Town Board does hereby authorize and direct the Town Supervisor to enter into and to execute the Guarantee Agreement among the Town of New Hartford, developer Lawrence Adler and the New Hartford Office Group contingent upon Mr. Adler signing said Agreement “individually”.

A roll call vote was duly held and resulted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

This Resolution was declared unanimously carried and duly **ADOPTED**.

**Agreement Allocating PILOT Payments – The Hampton Inn**

The Town Attorney noted that the Agreement Allocating PILOT Payments for The Hampton Inn, to be approved by the Town, Oneida County, New Hartford Central School and OCIDA, deals with \$1.1 million dollars and \$600,000 in bonding and has similar terms as the initial PILOT that had been adopted for The Hartford; however, this is not the final version. He is awaiting the comments from the New Hartford Central School District as the District has concerns with regard to how any surplus money would be handled. The Town Board discussed any surplus being held for twelve (12) months. Councilwoman Krupa then introduced the following Resolution; seconded by Councilman Woodland:

**(RESOLUTION NO. 235 OF 2011)**

**RESOLVED** that the New Hartford Town Board does hereby adopt and approve for authorized signature of the Town Supervisor the Agreement Allocating PILOT Payments with regard to The Hampton Inn, said approval and authorization subject to the finalization of said Agreement by all parties, which is expected prior to the September 28, 2011 Town Board meeting; specifically, upon the Town of New Hartford receiving the final version of the Agreement Allocating PILOT Payments addressing the concerns of the New Hartford Central School District, and upon approval of the Town Attorney, the

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Town Supervisor is hereby authorized to execute the final version of the aforesaid Agreement.

The foregoing Resolution was duly put to a vote upon roll call, resulting as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

This Resolution was declared unanimously carried and duly *ADOPTED*.

**Notice of Claim – Concerned Citizens vs Town & Fairbrother; Dismissal**

The Town Attorney reported in behalf of the Town that he had received the Order signed by NYS Supreme Court Justice Samuel Hester, dismissing the complaint of the Concerned Citizens group against the Town and Fairbrother (former Town Supervisor Earle Reed, former Town Attorney Gerald Green and former Deputy Town Supervisor David Reynolds).

**EXECUTIVE SESSION**

Councilman Backman introduced the following Resolution for adoption and Councilman Reynolds seconded same:

**B i9i(RESOLUTION NO. 236 OF 2011)**

**RESOLVED** that the New Hartford Town Board does hereby move to enter into an Executive Session to discuss pending union negotiations and to discuss the promotion/dismissal of a particular person.

A roll call vote ensued:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

Thereafter, the Resolution was declared unanimously carried and duly *ADOPTED*. All persons present, including the news media and Department Heads, were then excused from the meeting at 8:18 P.M. The Town Attorney and Deputy Supervisor remained for the Executive Session.

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[NOTE: The Town Attorney provided the following transcription on Thursday, September 15, 2011.]

**END OF EXECUTIVE SESSION**

Councilman Reynolds then offered the following Resolution for adoption and Councilman Woodland seconded same:

**(RESOLUTION NO. 237 OF 2011)**

**RESOLVED** that the New Hartford Town Board does hereby move to end its Executive Session and to reconvene the regular portion of the Town Board meeting.

The Board members voted upon roll call that resulted as follows:

Councilwoman Krupa	-	Aye
Councilman Reynolds	-	Aye
Councilman Woodland	-	Aye
Councilman Backman	-	Aye
Supervisor Tyksinski	-	Aye.

The Supervisor declared the Resolution unanimously carried and duly **ADOPTED**; the Executive Session ended at 9:00 P.M. The regular portion of the Town Board meeting was immediately reconvened and the public re-invited to the meeting.

**ADJOURNMENT**

There being no further business to come before the Town Board, upon motion of Councilwoman Krupa and seconded by Councilman Reynolds, the meeting was adjourned at 9:02 P.M.

Respectfully submitted,

Gail Wolanin Young  
Town Clerk