

NOTICE OF PUBLIC HEARING  
MUNICIPAL OFFICERS OF THE TOWN OF  
OLD ORCHARD BEACH

The Municipal Officers of the Town of Old Orchard Beach, Maine hereby give Public Notice that there will be a Public Hearing held at the Town Hall, Council Chambers, on December 4, 2012, at 7:00 p.m. to consider the following:

Be it hereby ordained, by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that section Chapter 71, Post-Construction Stormwater Management, is being added to the Town of Old Orchard Beach Code of Ordinances, as written below:

## **Chapter 71 – Post-Construction Stormwater Management**

### **ARTICLE I. IN GENERAL**

#### **Sec. 71-1. Purpose.**

The purpose of this Ordinance is to provide for the health, safety, and general welfare of the citizens of the Town of Old Orchard Beach through review and approval of post-construction stormwater management plans and monitoring and enforcement of compliance with such plans as required by federal and state law. This Ordinance establishes methods for post-construction stormwater management in order to comply with minimum control measure requirements of the federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit.

#### **Sec. 71-2. Objectives**

This Ordinance seeks to meet the above purpose through the following objectives:

- (a) Reduce the impact of post-construction discharge of stormwater on receiving waters; and
- (b) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through use of Best Management Practices as promulgated by the Maine Department of Environmental Protection pursuant to its Chapters 500 and 502 Rules, and ensure that these management controls are properly maintained and pose no threat to public safety.

#### **Sec. 71-3. Authority.**

The Town of Old Orchard Beach enacts this "Post-Construction Stormwater Management Ordinance" (the "Ordinance") pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 *et seq.* (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems," has listed the Town of Old Orchard Beach as having a Regulated Small Municipal Separate Storm Sewer System ("Small MS4"); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this Ordinance as part of the Municipality's Stormwater Management Program in order to satisfy the minimum control measures required by Part IV(H)(5) ("Post- construction

stormwater management in new development and redevelopment”).

#### **Sec. 71-4. Applicability.**

- (a) *In General.* This Ordinance applies to all New Development and Redevelopment within the Municipality and to associated Post-Construction BMPs.
- (b) *Exception.* This Ordinance does not apply to New Development or Redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that has an approved Post-Construction Stormwater Management Plan under this Ordinance; said lot, tract or parcel shall not require separate review under this Ordinance, but shall comply with the Post-Construction Stormwater Management Plan requirements for that approved subdivision.

#### **Sec. 71-5. Severability.**

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

#### **Sec. 71-6. Definitions.**

For the purpose of this Ordinance, the terms listed below are defined as follows:

- (a) *Applicant.* "Applicant" means a Person with requisite right, title or interest or an agent for such Person who has filed an application for New Development or Redevelopment that requires a Post-Construction Stormwater Management Plan under this Ordinance.
- (b) *Best Management Practices ("BMP").* "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- (c) *Clean Water Act.* "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.
- (d) *Construction Activity.* "Construction Activity" means Construction Activity including one acre or more of Disturbed Area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb equal to or greater than one acre; or 20,000 square feet or more of Impervious Area in the watershed of an urban impaired stream as listed in Chapter 502, Appendix B in the Maine Department of Environmental Protection Rules, as amended from time to time.
- (e) *Discharge.* "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to "waters of the State." "Direct discharge" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged.

(f) *Disturbed Area*. “Disturbed Area” means all land areas that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a project. Cutting of trees without grubbing, stump removal, disturbance or exposure of soil is not considered “Disturbed Area”. “Disturbed Area” does not include routine maintenance, but does include redevelopment and new impervious area. “Routine maintenance” is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the land or improvements thereon. Paving impervious gravel surface while maintaining the original line and grade, hydraulic capacity, and original purpose of the facility is considered routine maintenance.

(g) *Enforcement Authority*. “Enforcement Authority” means the Code Enforcement Officer for the Town of Old Orchard Beach.

(h) *Impervious Area*. “Impervious Area” means the total area of the Premises that consists of buildings and associated constructed facilities or areas that will be covered with a low-permeability material, such as asphalt or concrete, and areas such as gravel roads and unpaved areas that will be compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and other surfaces which similarly impede the natural infiltration of stormwater.

(i) *Municipality*. “Municipality” means the Town of Old Orchard Beach.

(j) *Municipal Permitting Authority*. “Municipal Permitting Authority” means the Town of Old Orchard Beach Planning Board.

(k) *Municipal Separate Storm Sewer System, or MS4*. “Municipal Separate Storm Sewer System” or “MS4,” means conveyances for stormwater, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the State.

(l) *National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit*. “National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit” means a permit issued by the U.S. Environmental Protection Agency (“EPA”) or by the Maine Department of Environmental Protection (“DEP”) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

(m) *New Development*. “New Development” means any Construction Activity on unimproved Premises.

(n) *Person*. “Person” means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity.

(o) *Pollutant*. “Pollutant” means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

(p) *Post-Construction*. “Post-Construction” means the point in time at which Construction

Activity has begun on a Premises and any of the Stormwater Management BMPs and Facilities serving that Premises are in functioning mode.

(q) *Post-Construction Stormwater Management Plan*. “Post-Construction Stormwater Management Plan” means BMPs and Stormwater Management Facilities (together referred to as "**Post-Construction BMPs**") employed by a New Development or Redevelopment to meet the standards of this Ordinance and approved by the Municipal Permitting Authority.

(r) *Premises*. “Premises” means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Municipality.

(s) *Qualified Post-Construction Stormwater Inspector*. “Qualified Post-Construction Stormwater Inspector” means a person who conducts Post-Construction BMP inspections and meets the following qualifications:

1. The inspector must not have any ownership or financial interest in the property being inspected nor be an employee or partner of any entity having ownership or financial interest in the property, and

#### Non-Proprietary Post-Construction BMPs

2. The inspector must be on the list of approved third-party inspectors maintained by the Department of Public Works, or be approved by the Director of Public Works prior to conducting the inspection(s). The Director shall approve third-party inspectors only if they meet the following criteria:
  - a. Have a working knowledge of Chapter 500, Stormwater Management Rules and Maine Stormwater BMP Manual,
  - b. Have a post-secondary degree in an environmental science or civil engineering, or comparable expertise,
  - c. Have a demonstrated practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for Post-Construction BMPs, and
  - d. Have the ability to determine if Post-Construction BMPs are performing as intended.

#### Proprietary Post-Construction BMPs

- a. Proprietary Post-Construction BMPs must be inspected by a person approved by the manufacturer or equivalent.

(t) *Redevelopment*. “Redevelopment” means Construction Activity on Premises already improved with buildings, structures or activities or uses.

(u) *Regulated Small MS4*. “Regulated Small MS4” means any Small MS4 regulated by the State of Maine “General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems” effective July 1, 2008 (“MS4 General Permit”), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside a UA that as of the issuance of the MS4 General Permit have been designated by

the DEP as Regulated Small MS4s.

(v) *Small Municipal Separate Storm Sewer System, or Small MS4.* “Small Municipal Separate Storm Sewer System”, or “Small MS4,” means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, state or federally-owned systems, such as colleges, universities, prisons, military bases and facilities, and Maine Department of Transportation and Maine Turnpike Authority road systems and facilities.

(w) *Storm Drainage System.* “Storm Drainage System” means the Municipality’s Regulated Small MS4.

(x) *Stormwater.* “Stormwater” means any Stormwater runoff, snowmelt runoff, and surface runoff and drainage; “Stormwater” has the same meaning as “Storm Water.”

(y) *Stormwater Management Facilities.* “Stormwater Management Facilities: means any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the Post-Construction Stormwater Management Plan for a New Development or Redevelopment.

(z) *Urbanized Area (“UA”).* “Urbanized Area” or “UA” means the areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau of the Census.

**Sec. 71-7 – 71-20. Reserved.**

## **ARTICLE II. POST-CONSTRUCTION MANAGEMENT PLANS.**

### **Sec. 71-21. Post-Construction Stormwater Management Plan Approval.**

Except as provided in Section 71-4(b) above, no Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable shall receive such permit or approval for that New Development or Redevelopment unless the Municipal Permitting Authority for that New Development or Redevelopment also determines that the Applicant’s Post-Construction Stormwater Management Plan for that New Development or Redevelopment meets the requirements of this Ordinance.

### **Sec. 71-22. Performance Standards.**

- (a) The Applicant shall make adequate provision for the management of the quantity and quality of all stormwater generated by the New Development or Redevelopment through a Post- Construction Stormwater Management Plan. This Post-Construction Stormwater Management Plan shall be designed to meet the standards contained in the Maine Department of Environmental Protection’s Chapters 500 and 502 Rules and shall comply with the practices described in the most recently revised version of the manual *Stormwater Management for Maine*, published by the Maine Department of Environmental Protection, which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.
- (b) The Applicant may meet the quantity and quality standards above either on-site or off-site, but where off-site facilities are used, the Applicant must submit to the Municipality documentation, approved as to legal sufficiency by the Municipality’s attorney,

that the Applicant has a sufficient property interest in the property where the off-site facilities are located (by easement, covenant or other appropriate legal instrument) to ensure that the facilities will be able to provide post-construction stormwater management for the New Development or Redevelopment and that the property will not be altered in a way that interferes with the off-site facilities.

- (c) Where the Applicant proposes to retain ownership of the Post-Construction BMPs shown in its Post-Construction Stormwater Management Plan, the Applicant shall submit to the Municipality documentation, approved as to legal sufficiency by the Municipality's attorney that the Applicant, its successors, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the Post-Construction BMPs. Applications for New Development or Redevelopment requiring Post-Construction BMPs that will not be dedicated to the Municipality shall enter into a Maintenance Agreement with the Municipality prior to the start of construction. The Applicant shall cause the Maintenance Agreement to be recorded in the York County Registry of Deeds within 30 days of the date of execution of the Agreement. Failure to comply with the terms of the Maintenance Agreement shall constitute a violation of this Ordinance.
- (d) Whenever elements of the Post-Construction BMPs are not within the right-of-way of a public street and the facilities will not be offered to the Municipality for acceptance as public facilities, the Municipal Permitting Authority may require that perpetual easements not less than thirty (30) feet in width, conforming substantially with the lines of existing natural drainage, and in a form acceptable to the Municipality's attorney, shall be provided to the Municipality allowing access for maintenance, repair, replacement and improvement of the Post-Construction BMPs. When an offer of dedication is required by the Municipal Permitting Authority, the Applicant shall be responsible for the maintenance of these Post-Construction BMPs under this Ordinance until such time (if ever) as they are accepted by the Municipality.
- (e) In addition to any other applicable requirements of this Ordinance and the Municipality's land use ordinances, any New Development or Redevelopment which also requires a stormwater management permit from the Maine Department of Environmental Protection (DEP) under 38 M.R.S.A. 420-D shall comply with the rules adopted by DEP under 38 M.R.S.A. 420-D(1), as the same may be amended from time to time, and the applicant shall document such compliance to the Municipal Permitting Authority. Where the standards or other provisions of such stormwater rules conflict with municipal ordinances, the stricter (more protective) standard shall apply.

#### **Sec. 71-23. Engineering and administrative fees.**

All engineering and administrative fees associated with the review of the Post-Construction Stormwater Management Plan shall be assessed as part of the peer review process for materials submitted in support of the associated subdivision or site plan application.

In addition, any persons required to file an annual certification under Section 71-41 of this Ordinance shall include with the annual certification payment in the amount specified in the Schedule of License, Permit and Application Fees established by order of the Town Council to pay the administrative and technical costs of review of the annual certification.

**Sec. 71-24. Notice of Post-Construction BMP Discharge to Municipality's MS4.** At the time of application, the Applicant shall notify the Municipal Permitting Authority if its Post-

Construction Stormwater Management Plan includes any Post-Construction BMP(s) that will discharge to the Municipality's MS4 and shall include in this notification a listing of which Post-Construction BMP(s) will so discharge. Following construction, the Applicant shall notify the Municipal Permitting Authority of all Post-Construction BMPs that were installed. The notification shall include a listing of all Post-Construction BMPs, their location, where they discharge, as well as a copy of the record drawing or as-builts for the associated Post-Construction BMPs.

**Sec. 71-25 – 71-40. Reserved.**

### **ARTICLE III. COMPLIANCE.**

#### **Sec. 71-41. General Requirements.**

Any Person owning, operating, leasing or having control over Post- Construction BMPs required by a Post-Construction Stormwater Management Plan approved under this Ordinance shall demonstrate compliance with that Plan as follows.

- (a) That Person shall hire a Qualified Post-Construction Stormwater Inspector to, at least annually, inspect, the Post-Construction BMPs, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved Post-Construction Stormwater Management Plan.
- (b) That person shall take any necessary corrective action(s) required to maintain properly functioning Post-Construction BMPs as intended by the approved Post-Construction Stormwater Management Plan, and that Person shall repair any deficiencies found during inspection of the Post-Construction BMPs.
- (c) The Qualified Post-Construction Stormwater Inspector hired by that Person shall perform an inspection to determine the status of the Post-Construction BMPs. If the inspection identifies any deficiencies with the Post-Construction BMPs, the same Qualified Post-Construction Stormwater Inspector shall re-inspect the Post-Construction BMPs after they have been maintained or repaired to determine if they are performing as intended. The Qualified Post-Construction Stormwater Inspector will be responsible for furnishing a copy of all inspection reports to the Enforcement Authority.
- (d) The Qualified Post-Construction Stormwater Inspector hired by that Person shall provide, on or by June 30 of each year, a completed and signed certification to the Enforcement Authority in a form provided by the Municipality, certifying that the Post-Construction BMPs have been inspected and that they are adequately maintained and functioning as intended by the approved Post-Construction Stormwater Management Plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the Post-Construction BMPs, and if the Post-Construction BMPs require maintenance or repair of deficiencies in order to function as intended by the approved Post-Construction Stormwater Management Plan, that Person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.

**Sec. 71-42. Right of Entry.** In order to determine compliance with this Ordinance and with the

Post- Construction Stormwater Management Plan, the Enforcement Authority may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the Post- Construction BMPs.

**Sec. 71-43. Inspections.** The Municipality, as deemed appropriate, may annually conduct "spot" inspections of Post-Construction BMPs that were reported as requiring maintenance or repair to ensure that corrective action has adequately been taken.

**Sec. 71-44 – Sec. 71-60. Reserved.**

#### **ARTICLE IV. ENFORCEMENT.**

**Sec. 71-61. Enforcement.**

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance or of the Post-Construction Stormwater Management Plan. Whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Enforcement Authority may enforce this Ordinance in accordance with 30-A M.R.S.A. § 4452.

**Sec. 71-62. Notice of Violation.** Whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Enforcement Authority may order compliance with this Ordinance or with the Post-Construction Stormwater Management Plan by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

1. The abatement of violations, and the cessation of practices, or operations in violation of this Ordinance or of the Post-Construction Stormwater Management Plan;
2. At the Person's expense, compliance with BMPs required as a condition of approval of the New Development or Redevelopment, the repair of Stormwater Management Facilities and/or the restoration of any affected property; and/or
3. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation, compliance with BMPs, repair of Stormwater Management Facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

**Sec. 71-63. Penalties/Fines/Injunctive Relief.** Any Person who violates this Ordinance or the Post- Construction Stormwater Management Plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Municipality's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any Person who violates this Ordinance or the Post-Construction Stormwater Management Plan also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the Municipality for violation of federal and state environmental laws and regulations caused by or related to that Person's violation of this Ordinance or of the Post-Construction Stormwater Management Plan;

this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this Section.

**Sec. 71-64. Consent Agreement.** The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance or of the Post-Construction Stormwater Management Plan for the purposes of eliminating violations of this Ordinance or of the Post-Construction Stormwater Management Plan and of recovering fines, costs and fees without court action.

**Sec. 71-65. Appeal of Notice of Violation.** Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Enforcement Authority to the Board of Appeals in accordance with the provisions of Chapter 78, Article II, Division 2 of the Town of Old Orchard Beach Code of Ordinances. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the Enforcement Authority. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

**Sec. 71-66. Enforcement Measures.** 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 to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the Enforcement Authority's decision, then the Enforcement Authority may recommend to the municipal officers that the municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

Enacted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Effective Date: \_\_\_\_\_, 20\_\_.

Per Order of the Municipal Officers this 20<sup>th</sup> day of November, 2012.

A True Copy

Attest:

s/Kim M. McLaughlin

Kim M. McLaughlin, Town Clerk