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APPENDIX B Erosion Control Ordinance

SECTION 1.0. AUTHORITY, FINDINGS AND PURPOSE.

1.1. Authority.

This ordinance is adopted under the authority granted by Section 62.234, Wis. Stats., and applies to land disturbing construction activities and land developing activities on land within the boundaries and jurisdiction of the City. The Department of Natural Resources Wisconsin Construction Site Best Management Practice Handbook is adopted by reference and shall become a part of this ordinance, a copy of which shall be kept on file in the offices of the City Building Inspector and Public Works/Engineering.

1.2. Findings.

The City finds runoff and erosion from land developing activities and land disturbing construction activities greatly impacts the amount of sediment and other pollutants that enter the waters and rights-of-way of the state and the City.

1.3. Purpose.

It is the purpose of this ordinance to preserve the natural resources; to protect the quality of the waters of the state and the City; and to protect and promote the health, safety and welfare of the people, to the extent practicable by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land developing activities and land disturbing construction activities to lakes, streams and wetlands.

1.4. Title.

This ordinance shall be known as the Construction Site Erosion Control Ordinance for Sheboygan, Wisconsin.

SECTION 2.0. APPLICABILITY OF ORDINANCE.

2.1. Applicability.

(a) This ordinance applies to the following land developing or land disturbing construction activities within the boundaries and jurisdiction of the City of Sheboygan except as provided under sub. (b):

- (1) A construction site which has one or more acres of land disturbing construction activity;
- (2) Those activities requiring a subdivision plat approval;

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- (3) Those activities requiring a certified survey map approval;
- (4) Those activities involving grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing construction activity affecting surface area of four thousand square feet or more;
- (5) Those activities involving excavation or filling or a combination of excavation and filling affecting four hundred cubic yards or more of dirt, sand or other excavation of fill material;
- (6) Those activities involving street, highway, road or bridge construction, enlargement, relocation or reconstruction;
- (7) Those activities involving the laying, repairing, replacing or enlarging of an underground pipe or facility for a distance of three hundred feet or more.
- (b) This ordinance does not apply to the following:
 - (1) Land disturbing construction activity that includes the construction of a building;
 - (2) A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system (NPDES) permit issued under Chapter 40, Code of Federal Regulations, part 122, for land disturbing construction activity;
 - (3) Nonpoint discharges from agricultural facilities and practices;
 - (4) Nonpoint discharges from silviculture activities;
 - (5) Routine maintenance for project sites under 5 acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility;
 - (6) Activities conducted by a State agency, as defined under sec. 227.01(1), Wis. Stats., but also including the office of district attorney, which is subject to the State plan promulgated or a memorandum of understanding entered into under sec. 281.33(2), Wis. Stats.
- (c) Notwithstanding the applicability requirements in paragraph (a), this ordinance applies to construction sites of any size that, in the opinion of the City Engineer are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

2.2. Interpretation.

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the municipality and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes.

2.3. Severability.

Should any portion of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall remain in force and not be affected.

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SECTION 3.0. DEFINITIONS.

- (a) *Agricultural land use* means use of land for planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or yarding of livestock.
- (b) *Best management practice* or *BMP* means structural or nonstructural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.
- (c) *BMPH* means the Department of Natural Resources Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222, November 1993 Revision.
- (d) *Commercial land use* means use of land for the retail or wholesale sale of goods or services.
- (e) *Construction site control measure* means a control measure used to meet the requirements of section 6.0.
- (f) *Control measure* means a practice or combination of practices to control soil erosion and attendant pollution.
- (g) *Erosion* means the detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity.
- (h) (1) *Erosion control plan statement* means a written description of the number, locations, sizes and other pertinent information of control measures designed to meet the requirements of this ordinance submitted by the applicant for review and approval by the Department of Public Works/Engineering, for developments of up to one acre or single lot, except for one and two family dwelling units.
- (2) *Erosion and sediment control plan* means a written plan of the number, locations, sizes and other pertinent information of control measures designed to meet the requirements of this ordinance submitted by the applicant for review and approval by the Department of Public Works/Engineering for development of greater than one acre or multiple lots.
- (i) *Final stabilization* means that all land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established, with a density of at least 70 percent of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.
- (j) *Land developing activity* means the construction of utilities, roads, parking lots, paved storage areas and similar facilities.
- (k) *Land disturbing construction activity* means any manmade change of the land surface, including removing vegetative cover, excavating, filling and grading, but not including, agricultural land uses such as planting, growing, cultivating and harvesting of crops; growing and tending of gardens; harvesting of trees; and landscaping modifications.
- (l) *Landowner* means any person holding title to or having an interest in land.
- (m) *Land user* means any person operating, leasing, renting or having made other arrangements with the landowner by which the landowner authorizes use of his or her land.

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- (n) *Responsible party* means any entity holding fee title to the property or performing services to meet the performance standards of this ordinance through a contract or other agreement.
- (o) *Runoff* means the rainfall, snowmelt or irrigation water flowing over the round surface.
- (p) *Sediment* means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.
- (q) *Site* means the entire area included in the legal description of the land on which the land disturbing construction activity or land developing activity is proposed in the permit application.
- (r) *Stop-work order* means an order issued by the City Engineer or Building Inspector which requires that all construction activity on the site be stopped.
- (s) *Ten-year twenty-four-hour design storms* means the rain intensities and rain volumes as described in BMPH.
- (t) *Waters of the state* has the meaning given in section 281.01(18), Wis. Stats.

SECTION 4.O. DESIGN CRITERIA, PERFORMANCE STANDARDS AND SPECIFICATIONS FOR CONTROL MEASURES.

4.1. Erosion, sediment and other pollutant control standards.

- (a) BMP's that by design, achieve to the maximum extent practicable, a reduction of 80% of the sediment load carried in runoff, on an average annual basis, as compared with no sediment or erosion controls until the construction site has undergone final stabilization. No person shall be required to exceed an 80% sediment reduction to meet the requirements of this paragraph. Erosion and sediment control BMP's may be used alone or in combination to meet the requirements of this paragraph. Credit toward meeting the sediment reduction shall be given for limiting the duration or area, or both, of land disturbing construction activity, or other appropriate mechanism.
- (b) Notwithstanding par. (a), if BMP's cannot be designed and implemented to reduce the sediment load by 80%, on an average annual basis, the plan shall include a written and site-specific explanation as to why the 80% reduction goal is not attainable and the sediment load shall be reduced to the maximum extent practicable.
- (c) Where appropriate, the plan shall include sediment controls to do all of the following to the maximum extent practicable:
 - (1) Prevent tracking of sediment from the construction site onto roads and other paved surfaces.
 - (2) Prevent the discharge of sediment as part of site dewatering.
 - (3) Protect the separate storm drain inlet structure from receiving sediment.
 - (4) The use, storage and disposal of chemicals, cement and other compounds and materials used on the construction site shall be managed to prevent their entrance into waters of the state. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this paragraph.

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4.2. [Control measures and standards]

All control measures required to comply with this article shall meet the design criteria, standards and specifications for the control measures based on accepted design criteria, standards and specifications identified by the BMPH and the City.

4.3. Other standards.

Other technical standards not identified or developed in subsection 4.1 above, may be used provided that the methods have been approved by the Department of Public Works/Engineering.

SECTION 5.0. MAINTENANCE OF CONTROL MEASURES

All sedimentation basins and other control measures necessary to meet the requirements of this ordinance shall be maintained by the applicant or subsequent landowner during the period of the land disturbing construction activity or land developing activity of the site up until the site has undergone final stabilization in a satisfactory manner to ensure adequate performance and to prevent nuisance conditions (identified in the BMPH). The standards for maintenance of control measures shall be as set forth in the BMPH as adopted by reference by the City.

SECTION 6.0. CONTROL OF EROSION AND POLLUTANTS DURING LAND DISTURBING CONSTRUCTION ACTIVITIES AND LAND DEVELOPING ACTIVITY.

(a) Erosion and Sediment Control Requirements. The following requirements shall be met on all sites described in section 2.1:

(1) *Site Dewatering.* Water pumped from the site shall be treated by control measures specified in the BMPH. Water may not be discharged in a manner that causes erosion of the site, adjacent sites or receiving channels. Untreated water may not be pumped directly into a sewer which drains directly to a receiving body of water.

(2) *Waste and Material Disposal.* All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, toxic materials or hazardous materials) shall be properly disposed of and not allowed to be carried by runoff into a receiving channel or storm sewer system.

(3) *Tracking.* Each site shall have graveled roads, access drives and parking areas of sufficient width and length to prevent sediment from being tracked onto public or private roadways, as specified in BMPH. Any sediment reaching a public or private road shall be removed by street cleaning (not flushing) before the end of each workday.

(4) *Drain Inlet Protection.* All stormdrain inlets downstream shall be protected with a straw bale, filter fabric or equivalent barrier meeting accepted design criteria, standards and specifications.

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(5) *Site Erosion Control.* The criteria set out in paragraphs a. through d. of this subdivision apply only to land developing or land disturbing construction activities that result in runoff leaving the site:

- a. Channelized runoff from adjacent areas passing through the site shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected as described in subparagraph iii. of paragraph c. of this subdivision. Sheet flow runoff from adjacent areas greater than nineteen thousand square feet in area shall also be diverted around disturbed areas, unless shown to have resultant runoff velocities of less than 0.5 feet per second across the disturbed area for the ten-year twenty-four-hour design storms. Diverted runoff shall be conveyed in a manner that will not erode the conveyance and receiving channels. (Note: U.S. Department of Agriculture Soil Conservation Service guidelines for allowable velocities in different types of channels shall be followed);
- b. All activities on the site shall be conducted in a logical sequence to minimize the area of bare soil exposed at any one time;
- c. Runoff from the entire disturbed area on the site shall be controlled by meeting either subparagraphs i. and ii. or i. and iii:
 - i. All disturbed ground left inactive for seven or more days shall be stabilized by seeding or sodding (required from April 15th to September 15th) or by mulching or covering or other equivalent control measure;
 - ii. For sites with ten or more acres disturbed at one time, or if a channel originates in the disturbed area, one or more sedimentation basins shall be constructed. Each sedimentation basin shall be designed and constructed as specified in the BMPH;
 - iii. For sites with less than ten (10) acres disturbed at one time, filter fences, straw bales and sediment traps or equivalent control measures shall be placed along all sideslope and downslope sides of the site. If a channel or area of concentrated runoff passes through the site, filter fences shall be placed along the channel edges to reduce sediment reaching the channel.
- d. Runoff from sites with slopes of twelve percent or more may require additional or different controls than listed in paragraph c. of this subdivision. Requirements for such slopes shall be as specified by the Department of Public Works/Engineering.
- e. Any soil or dirt storage piles containing more than ten cubic yards of material should not be located with a downslope drainage length of less than twenty-five feet to a roadway or drainage channel. If remaining for more than seven days, they shall be stabilized by mulching, vegetative cover, tarps, filter fabric fences or straw bale fences. Erosion from piles which will be in existence for less than seven days shall be controlled by placing straw bales or filter fence barriers around the pile. Instreet utility repair or construction soil or dirt storage located closer than twenty-five feet of a roadway or drainage channel must be covered with tarps or suitable filter alternative control, if exposed for more than seven days, and downstream stormdrain inlets must be protected with straw bale or other appropriate filtering barriers.

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SECTION 7.0. EROSION AND SEDIMENT CONTROL PLANS, CONTROL PLAN STATEMENTS AND AMENDMENTS.

No landowner or land user may commence a land disturbing construction activity or land developing activity subject to this ordinance without receiving prior approval of an erosion and sediment control plan for the site and a permit from the Department of Public Works/Engineering. At least one landowner or land user controlling or using the site and desiring to undertake a land disturbing construction activity or land developing activity subject to this article shall submit an application for a permit and control plan and pay an application fee to the City. By submitting an application, the applicant is authorizing the City Building Inspector's office and Department of Public Works/Engineering personnel to enter the site to obtain information required for the review of the control plan.

(a) *Content of the Erosion and Sediment Control Plan for Land Disturbing Construction Activities and Land Development Activities Covering One or More Acres.* The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The plan shall include, at minimum, the following items:

(1) Existing Site Map. A map of existing site conditions on a scale of at least one inch equals one hundred feet and at a contour interval not to exceed five feet showing the site and an immediately adjacent area extending a minimum of two hundred feet in each direction including:

- a. Site boundaries and adjacent lands which accurately identify the site location;
- b. Lakes, streams, wetlands, channels, ditches and other water courses on the site or within one thousand feet;
- c. One-hundred-year floodplain, flood fringes and floodway;
- d. Location of the predominant soil types;
- e. Vegetative cover;
- f. Location and dimensions of stormwater drainage systems and natural drainage patterns on the site;
- g. Locations and dimensions of utilities, structures, roads, highways and paving;
- h. Site topography at a contour interval not to exceed five feet; and
- i. Primary and/or secondary environment corridors or other areas of significance.

(2) Plan of Final Site Conditions. A plan of final site conditions on the same scale as the existing site map showing the site changes.

(3) Site Construction Plan. A site construction plan including:

- a. Locations and dimensions of all proposed land disturbing construction activity and land developing activity;
- b. Locations and dimensions of all temporary soil or dirt stockpiles;
- c. Locations and dimensions of all construction site management control measures necessary to meet the requirements of this ordinance;

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d. Schedule of anticipated starting and completion date of each land disturbing construction activity or land developing activity including the installation of construction site control measures needed to meet the requirements of this ordinance;

e. The sequence of construction of the development site, including stripping and clearing, rough grading, utility installation, construction of infrastructure and buildings and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation; and

f. Provisions for maintenance of the construction site control measures during construction.

(4) Plan Performance Standards. The plan shall include the control measures that will be used to achieve the performance standards set forth in section 4 of this ordinance.

(5) Estimates including calculations, if any, of the runoff coefficient of the site before and after construction activities are completed.

(6) Calculations to show the expected percent reduction in the average annual sediment load carried in runoff as compared to no sediment or erosion controls.

(7) Existing data describing the surface soil as well as subsoils.

(8) Each erosion and sediment control plan shall include a description of appropriate controls and measures that will be performed at the site to prevent pollutants from reaching waters of the state. The plan shall clearly describe the appropriate control measures for each major activity and the timing during the construction process that measures will be implemented. The description of erosion controls shall include, when appropriate, the following minimum requirements:

a. Description of interim and permanent stabilization practices, including a practice implementation schedule. Site plans shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.

b. Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the Director, structural measures shall be installed on upland soils.

c. Trapping of sediment in channelized flow.

d. Staging construction to limit bare areas subject to erosion.

e. Protection of downslope drainage inlets where they occur.

f. Minimize tracking at all sites.

g. Clean up of off-site sediment deposits.

h. Proper disposal of building and waste materials in all sites.

i. Stabilization of drainage ways.

j. Control of soil erosion from dirt stockpiles.

k. Installation of permanent stabilization practices as soon as possible after final grading.

l. Minimization of dust to the maximum extent practicable.

(b) *Content of Erosion Control Plan Statement for Land Disturbing Construction Activities and Land Developing Activities Covering up to One Acre.* An erosion control plan statement (with simple map) shall be submitted to briefly describe the site and erosion controls

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(including the site development schedule) that will be used to meet the requirements of this ordinance. The plan statement shall be filed at the time of building permit application.

(c) *Amendments.* The applicant shall amend the plan if any of the following occur:

- (1) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the plan;
- (2) The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff;
- (3) The Department of Public Works/Engineering notifies the applicant of changes needed in the plan.

SECTION 8.0. PERMITTING REQUIREMENTS, PROCEDURES AND FEES.

8.1. Permit required.

No responsible party may commence a land disturbing construction activity subject to this ordinance without receiving prior approval of an erosion and sediment control plan for the site and a permit from the Department of Public Works/Engineering.

8.2. Permit application and fees.

At least one responsible party desiring to undertake a land disturbing construction activity subject to this ordinance shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of section 7. By submitting an application, the applicant is authorizing the Department of Public Works/Engineering to enter the site to obtain information required for the review of the erosion and sediment control plan.

8.3. Review of plans.

Within forty-five days of receipt of the application, erosion and sediment control plan (or erosion control plan statement) and fee, the Department of Public Works/Engineering shall review the application and control plan to determine if the requirements of this ordinance are met. The City Engineer shall review all erosion and sediment control plans for compliance with this ordinance. If the requirements of this ordinance are met and the City Engineer has approved the erosion and sediment control plan, the City Engineer shall approve the plan, inform the applicant and issue a permit. If the requirements of this ordinance are not met, the City Engineer shall inform the applicant in writing and may either require needed information or disapprove the plan. Within thirty days of receipt of needed information, the City Engineer shall again determine if the plan meets the requirements of this ordinance. If the plan is disapproved, the City Engineer shall inform the applicant in writing of the reasons for the disapproval.

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8.4. Permits.

- (1) Duration. Permits shall be valid for a period of one hundred eighty days from the date of issuance, or the length of the building permit or other construction authorizations, whichever is longer. The City Engineer may extend the period one or more times for up to an additional one hundred eighty days. The City Engineer may require additional control measures as a condition of extension if they are necessary to meet the requirements of this ordinance.
- (2) Surety Bond. As a condition of approval and issuance of the permit, the City Engineer may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved control plan and any permit conditions, in the amount necessary to implement the approved control plan.
- (3) Permit Conditions. All permits shall require the permitted to:
 - a. Notify the Building Inspector and/or City Engineer within forty-eight hours of commencing any land disturbing construction activity or land developing activity;
 - b. Notify the Building Inspector and/or City Engineer of completion of any control measures within fourteen days after their installation;
 - c. Obtain permission in writing from the City Engineer prior to modifying the control plan;
 - d. Install all control measures as identified in the approved control plan;
 - e. Maintain all road drainage systems, stormwater drainage systems, control measures and other facilities identified in the control plan;
 - f. Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land developing or land disturbing construction activities;
 - g. Inspect the construction control measures within twenty-four hours after each rain of 0.5 inches or more which results in runoff during active construction periods, and at least once each week make needed repairs;
 - h. Allow the Building Inspector and/or City Engineer to enter the site for the purpose of inspecting compliance with the control plan or for performing any work necessary to bring the site into compliance with the control plan; and
 - i. Keep a copy of the control plan on the site.
- (4) Permits issued under this section may include conditions established by the Department of Public Works/Engineering in addition to the requirements set forth in subsection (3) where needed to assure compliance with the performance standards in section 4.
- (5) Maintenance. The responsible party throughout the duration of the construction activities shall maintain the BMP's necessary to meet the requirements of this ordinance until the site has undergone final stabilization.

8.5 Fees.

The appropriate fees as set forth in section 26-38 of the municipal code shall be submitted at the time of permit issuance.

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SECTION 9.0. INSPECTION.

9.1. [Inspection of erosion control]

The Department of Public Works/Engineering shall be responsible for permitting and inspection of erosion control on public projects and work in the public right-of-way. The Building Inspection Department shall be responsible for inspection and erosion control on private lands.

9.2. [Inspection of construction sites]

The Building Inspector and/or City Engineer shall inspect construction sites at least once a month during the period starting March 1 st and ending October 31 st and at least two times during the period starting November 1 st and ending February 28 th to ensure compliance with the control plan. If land disturbing construction activities or land developing activities are being carried out without a permit, the Building Inspector shall enter the land pursuant to the provisions of Sections 66.0119(1), (2) and (3), Wisconsin Statutes.

SECTION 10.0. ENFORCEMENT.

- (a) The Building Inspector and/or City Engineer may post a stop-work order if:
- (1) Any land disturbing construction activity or land developing activity regulated under this ordinance is being undertaken without a permit;
 - (2) The control plan is not being implemented in a good faith manner; or
 - (3) The conditions of the permit are not being met.
- (b) If the responsible party does not cease activity as required in a stop-work order posted under this section or fails to comply with the control plan or permit conditions within twenty-four hours, the Building Inspector and/or City Engineer may revoke the permit.
- (c) If the landowner or land user where no permit has been issued does not cease the activity within twenty-four hours, or if a responsible party violates a stop-work order posted under subsection (a), the Building Inspector and/or City Engineer may request the City Attorney to obtain a cease and desist order in any court with jurisdiction.
- (d) Forty-eight hours after posting a stop-work order, the Building Inspector may issue a notice to the responsible party or landowner or land user of the City's intent to perform work necessary to comply with this ordinance. The City Engineer may go on the land and commence the work forty-eight hours after issuing the notice of intent. The costs of the work performed under the supervision of the City Engineer plus interest at the rate authorized by the City shall be billed to the responsible party or the landowner. In the event a responsible party or landowner fails to pay the amount due, the clerk shall enter the amount due on the tax rolls and collect as a special charge against the property pursuant to section 66.0627, Wis. Stats.

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(e) In the event of emergency conditions, as deemed by the Building Inspector and/or City Engineer, whatever measures are necessary to bring the site into compliance shall be taken and all costs involved shall be paid by the responsible party.

(f) Compliance with the provisions of this ordinance may also be enforced by injunction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunction proceedings.

(g) Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$50.00 nor more than \$1000.00, together with the costs of prosecution for each violation and, in default of payment of such forfeiture and costs, to imprisonment in the county jail until the forfeiture and costs are paid, but not in excess of 40 days for each offense. Each day a violation exists shall constitute a separate offense.

SECTION 11.0. APPEALS.

(a) Board of Zoning Appeals. Pursuant to section 62.234(4)(b), Wisconsin Statutes, the Board of Zoning Appeals established under section 15.934 of the Sheboygan Zoning Ordinance:

(1) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Building Inspector and/or City Engineer in administering this ordinance, except for cease and desist orders obtained under section 10.0(c);

(2) Upon appeal may authorize variances from the provisions of this ordinance which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship; and

(3) Shall use the rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.

(b) Who May Appeal. Appeals to the Board of Zoning Appeals may be taken by any aggrieved person or by any officer, department, board or bureau of the City affected by a decision of the Building Inspector and/or City Engineer within twenty days of such decision.

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