

**CITY OF MILTON
ORDINANCE NO. 1910-17**

AN ORDINANCE OF THE CITY OF MILTON, WASHINGTON;
AMENDING PORTIONS OF CHAPTER 13.26, OF THE
MILTON MUNICIPAL CODE ADOPTING NEW CODE
LANGUAGE TO IMPLEMENT LOW IMPACT
DEVELOPMENT

WHEREAS, the Washington State Department of Ecology has mandated that all National Pollution Discharge Elimination System (NPDES) permittees review and make standard Low Impact Development design and development principles; and,

WHEREAS, the City of Milton is an NPDES permittee; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF MILTON, WASHINGTON DO
ORDAIN AS FOLLOWS:

Section 1. That the following Sections of Chapter 13.26 STORM DRAINAGE OF SURFACE WATER – UTILITY, MANAGEMENT AND MAINTENANCE are amended as follows (additions shown by underline and deletions shown by strikeout):

**Chapter 13.26
STORM DRAINAGE OF SURFACE WATER – UTILITY,
MANAGEMENT AND MAINTENANCE**

Sections:

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13.26.010 Findings.

A. The city council finds that all real property in the city contributes runoff to the common drainage problem, and that all real property in the city benefits from the storm and surface water utility system in the city.

B. The city council finds that the intensity of development on all parcels of real property, as measured by the square footage of impervious surface area, is an appropriate basis for determination of an individual parcel's contribution to the problem of storm and surface water runoff.

C. The city council also finds that each owner of a parcel of real property within the city should pay for his or her share of the cost of constructing, operating, maintaining, repairing, improving and replacing drainage facilities in proportion to the amount of runoff contributed to the drainage system.

D. The city council finds that the storm water utility protects all city properties, whether or not those properties contribute to storm water runoff. The storm water utility provides a benefit to all city property owners by protecting groundwater and protecting residents from flooding, landslides, erosion, and water quality degradation. (Ord. 1655 § 1, 2006).

13.26.020 Potential hazard declared.

The city council finds and declares that, absent effective maintenance, operation, regulation and control, existing storm water drainage conditions in all drainage basins within the city constitute a potential hazard to the health, safety and general welfare of the city. The city council further finds that natural and manmade storm water facilities and conveyances together constitute a storm water drainage system, and that effective regulation and control of storm water through formation, by the city, of a storm and surface water utility require the transfer to the utility of all storm water facilities and conveyances and related rights belonging to the city. (Ord. 1655 § 1, 2006).

13.26.030 Purpose.

The provisions of this chapter are intended to guide and advise all who conduct new development or redevelopment within the city. The provisions of this chapter establish the minimum level of compliance which must be met to permit a property to be developed or redeveloped.

It is the purpose of this section to:

- A. Minimize water quality degradation and control of sedimentation in streams, ponds, lakes, wetlands, and other water bodies;
- B. Minimize the impact of increased runoff, erosion, and sedimentation caused by land development and maintenance practices;
- C. Maintain and protect groundwater resources;
- D. Minimize adverse impacts of alterations on ground and surface water quantities, locations, and flow patterns;
- E. Decrease potential landslide, flood, and erosion damage to public and private property;
- F. Promote site planning and construction practices that are consistent with natural, topographical, vegetational, and hydrological conditions;
- G. Maintain and protect the city storm water management infrastructure and those downstream;
- H. Provide a means of regulating clearing and grading of private and public land while minimizing water quality impacts in order to protect public health and safety;
- I. Provide minimum development and redevelopment regulations and construction procedures which will preserve, replace, or enhance, to the maximum extent practical, existing vegetation to preserve and enhance the natural qualities of lands, wetlands, and water bodies.
- J. Preserve and enhance the suitability of water for contact recreation and fish habitat; and
- K. Protect threatened and endangered species and their habitats. (Ord. 1655 § 1, 2006).

13.26.040 Storm and surface water management utility created – Responsibilities.

There is created and established pursuant to Chapters [35A.80](#) and [35.67](#) RCW, and Article II, Section 11 of the Washington State Constitution, a storm and surface water utility. All references to “the utility” in this chapter refer to the storm and surface water utility. The utility will have authority and responsibility for planning, design, construction, maintenance, administration and operation of all city storm water conveyances and facilities. (Ord. 1655 § 1, 2006).

13.26.050 Property transferred to utility.

Title and all other incidents of ownership of the following assets are hereby transferred to and vested in the utility: all properties, interests and physical and intangible rights of every nature owned or held by the city, however acquired, insofar as they relate to or concern storm water, further including, without limitation, all properties, interests and rights acquired by adverse possession or by prescription, directly or through another, in and to the drainage or storage, or both, of storm waters, through, under or over lands, watercourses, sloughs, streams, ponds, lakes

and swamps, all beginning in each instance at a point where storm waters first enter the system of the city and ending in each instance at a point where the storm waters exit from the system of the city, and in width to the full extent of inundation caused by storm or flood conditions. (Ord. 1655 § 1, 2006).

13.26.060 Utility plan.

There is hereby specified and adopted as the system and plan of the utility, including a declaration of the estimated costs thereof, the city storm water management plan dated March, 1996. Where there is any conflict or discrepancy between the provisions of the plan and any provision of this chapter, the latter shall control. Said plan may be updated and amended subject to council approval. (Ord. 1655 § 1, 2006).

13.26.070 Utility administered by director.

The utility shall be administered by the director. (Ord. 1655 § 1, 2006).

13.26.080 System of charges.

There is imposed a system of rates and charges on each parcel of real property within the city served by or to which is available for service the utility established by this chapter. The charges are found to be reasonable and necessary to fund the current administration, planning, design, construction, operation, maintenance and repair of existing storm and surface water facilities; provided, however, that the city reserves the right to fix, alter, regulate and control the rates and charges. (Ord. 1655 § 1, 2006).

13.26.090 Charges.

The following utility charges are established for all parcels of real property within the city:

A. Developed Commercial and Industrial Parcels. The storm drainage utility monthly service charge shall be computed by dividing the total amount of measured impervious surface on the property, in square feet, by 2,800 and then multiplying the quotient by the monthly unit rate of \$15.50.

B. Developed Single-Family and Two-Family Residential (Duplex). All single-family and two-family residences (“residence” is defined in MMC 17.08.720) shall be billed according to a tiered system. This system shall have three tiers that are based upon percentage of a parcel that is covered with impervious surfaces as follows:

Tier	% Covered	Monthly Rate
1	0 – 40%	\$15.50

Tier	% Covered	Monthly Rate
2	41 – 70%	\$25.50
3	71% +	\$35.50

C. Developed Multifamily Residential. All residential multifamily parcels shall be charged by impervious surface calculation according to subsection A of this section.

D. Undeveloped Parcels. Undeveloped parcels (lots with less than 750 square feet of impervious surface) shall be charged \$5.10 per month and shall be invoiced annually.

E. State Highway Rights-of-Way. State of Washington highway rights-of-way shall be charged consistent with this chapter and Chapter [90.03](#) RCW including RCW [90.03.525](#).

F. Service Charge Credit.

1. Credit shall apply to all categories of land use with the exception of vacant/undeveloped, forest and timber land and city streets, roads, and public highways.

2. Low income senior citizens and low income disabled persons receiving relief under RCW [84.36.381](#) shall receive the following partial exemption from storm water utility charges and surcharge, as applicable:

a. All parcels for which a person qualifies for an exemption under RCW [84.36.381\(5\)\(a\)](#) shall be exempt from 40 percent of storm water utility charges.

b. All parcels for which a person qualifies for an exemption under RCW [84.36.381\(5\)\(b\)\(i\)](#) shall be exempt from 60 percent of storm water utility charges.

c. All parcels for which a person qualifies for an exemption under RCW [84.36.381\(5\)\(b\)\(ii\)](#) shall be exempt from 80 percent of storm water utility charges.

G. Detention System Credits. The detention system credits defined below shall be applicable only to detention systems approved prior to February 1, 2006. No detention system credits shall be allowed for any retention or detention systems approved after January 31, 2006.

Credits shall be given to applicants upon approval by the public works director subject to rates pursuant to this chapter as follows:

1. Seventy-Five Percent Credit. Property served by a privately maintained detention system with a 100-year storage/two-year predevelopment release rate shall be given a credit in the amount of 75 percent of the full utility rate. This credit shall also apply to any eligible city-owned and maintained system.

2. Twenty-Five Percent Credit. Property owned by other than the city served by a city-maintained detention system with a 100-year storage/two-year predeveloped release rate shall be given a credit in the amount of 25 percent of the full utility rate.

3. Existing detention system credits shall only be applicable to \$8.50 per ESU of the storm drain utility monthly charge. Such credits shall not apply to any monthly charge in excess of \$8.50 per ESU.

4. If the city determines at any time that the detention system does not meet the requirements of subsection (G)(1) or (2) of this section, or is not operating at the level of storage/release for which credit is being applied for or for which credit has been granted, the director shall have the authority to reduce the credit to the next applicable level, if any, or to eliminate the credit entirely if the system is determined to not comply with the requirements of subsection (G)(1) or (2) of this section.

5. Appeals. A request for reconsideration of the director's decision to reduce or eliminate any existing credit may be made by providing design calculations and maintenance records that confirm the detention system does meet the design and maintenance requirements for which credit is being applied or for which credit has been granted. The decision of the director shall be final and conclusive, unless within 10 days of the date of the director's action, the applicant gives written notice of appeal to the hearing examiner for review of the action.

H. Rates shall become effective for the October 2016 billing cycle. (Ord. 1902 § 1, 2016; Ord. 1867 § 1, 2015; Ord. 1655 § 1, 2006).

13.26.100 Billing and collection.

Utility rates and charges for each parcel of real property within the city shall be computed on a monthly basis. The city shall bill the owner of the served property for the payment of utility rates and charges specified in this chapter; however, the owner may have the bills mailed to a tenant, or agent, but this shall not relieve the owner from liability for utility rates and charges. (Ord. 1655 § 1, 2006).

13.26.110 Penalties for nonpayment of bills.

A. Collection of and penalties for nonpayment of bills shall be pursuant to the following sections of the Revised Code of Washington which are adopted by reference as though set forth herein in full: RCW 35.67.190, 35.67.200, 35.67.210, 35.67.220, 35.67.230, 35.67.240, 35.67.250, 35.67.260, 35.67.270, and 35.67.280.

B. Pursuant to RCW 35.67.200, accounts are past due after the fifteenth day of the month following billing, or after the first business day following the fifteenth if that date is on a weekend or holiday, and shall bear interest at ~~8~~¹² percent per annum, computed on a monthly basis.

C. The city shall have the right and privilege of discontinuing water service to any premises for nonpayment of the service charge for use of the storm and surface water utility of the city in the same manner and subject to the same terms as now or hereafter prescribed by law for discontinuance of water service for nonpayment of water bills pursuant to RCW 35.67.290, which section is adopted by reference as though set forth herein in full. (Ord. 1655 § 1, 2006).

13.26.120 Storm and surface water utility account – Annual report.

A. Of the money collected through utility rates and charges, \$2.50 per ESU shall be deposited in the storm drainage utility capital improvement fund, and all other money collected through the utility rates and charges shall be deposited in the storm water utility fund as established and maintained by the director of finance.

B. The director shall conduct an annual review of the utility's operations, the total costs of operation and maintenance of the storm water retention, detention, collection and conveyance systems, and the schedule of rates and charges. The director shall submit an annual report to the mayor and city council by ~~April 1st~~ Feb 15th for the preceding calendar year, summarizing the review and containing any recommendations for rate adjustments to:

1. Maintain the proper proportionate distribution of operation and maintenance costs among users and user classes;
2. Ensure generation of sufficient revenue to pay the total operation and maintenance costs for the proper operation, maintenance and improvement of the utility; and
3. Address those portions of previous rate increases attributable to major projects at the conclusion of payments for bonds or debt service related to those projects and determine if conditions exist for a reduction of rates because of the retirement of debt service in light of the total operational requirements of the utility. (Ord. 1687 § 1, 2007; Ord. 1655 § 1, 2006).

13.26.130 Reserved.

(Ord. 1655 § 1, 2006).

13.26.140 Appeal of charges, rate adjustments, and credit determinations.

A. Any person making a timely payment of the city's total utility bill who considers the utility charges applied to a parcel to be inaccurate, or who otherwise disagrees with a utility rate determination, including any determination regarding credit pursuant to MMC 13.26.090(~~FE~~), may apply to the director for a rate adjustment, stating in writing the grounds of the appeal. The director will review the case file and determine whether an adjustment is necessary to provide for reasonable and equitable application of the utility rates and charges.

B. The director of public works shall decide rate adjustments pursuant to Process Type II (Chapter 17.71 MMC, Permit Decision and Appeal Processes). (Ord. 1741 § 11, 2009).

13.26.150 Definitions.

For the purposes of this chapter, the ~~following~~ definitions shall be as defined below and in the Manual referenced in 13.26.180 apply:

1. “Approval” means the proposed work or completed work conforms to this chapter in the opinion of the director.

~~2. “Basin plan” means a plan adopting and implementing all regulations and procedures including, but not limited to, land use management practices adopted by ordinance for managing surface and storm water management facilities and features within individual sub-basins or drainage areas, including any basin or area identified in the city storm water management plan. A plan should include but not be limited to recommendations for:~~

~~a. Storm water requirements for new development and redevelopment;~~

~~b. Capital improvement projects;~~

~~c. Source control activities including public education and involvement, and business programs;~~

~~d. Other targeted storm water programs and activities, such as maintenance, inspections, and enforcement;~~

~~e. Monitoring;~~

~~f. An implementation schedule and funding strategy.~~

~~3. “Best management practice” or “BMP” means the schedule of activities, prohibitions of practices, physical, structural, managerial practices that, when used singly or in combination, prevent or reduce pollution of water. BMPs are listed and described in the Storm Water Management Manual.~~

~~4. “Clearing” means the destruction and removal of vegetation by manual, mechanical, or chemical methods.~~

~~5. “Commercial agriculture” means those activities conducted on lands defined in RCW 84.34.020(2) and activities involved in the production of crops or livestock wholesale trade. An activity ceases to be considered commercial agriculture when the area on which it is conducted is proposed for conversion to a nonagricultural use or has lain idle for more than five years unless the idle land is registered in a federal or state soils conservation program or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity.~~

~~6. “Construction storm water pollution prevention plan” or “construction SWPPP” means a plan that includes a narrative, drawings, and details for describing construction practices, stabilization~~

techniques, and structural BMPs that are to be implemented to prevent erosion and sedimentation, and control other pollutants at a construction site.

7. “Conveyance system” means the drainage facilities, both natural and manmade, which collect, contain, and provide for the flow of surface and storm water from the highest points on the land down to a receiving water. The natural elements of the conveyance system include swales and small drainage courses, streams, rivers, lakes, and wetlands. The humanmade elements of the conveyance system include gutters, ditches, pipes, channels, and most retention/detention facilities.

8. “Contractor erosion and spill control lead (CESCL)” means the employee designated as the responsible representative in charge of erosion and spill control. The CESCL shall have a current certificate in construction site erosion and sediment control from Associated General Contractors—Education Foundation or approved equivalent.

9. 2. “Critical areas” means those areas defined and regulated pursuant to Chapter 18.16 MMC.

10. “Design storm” means a prescribed hyetograph and total precipitation amount (for a specific duration recurrence frequency) used to estimate runoff for a hypothetical storm of interest or concern for the purposes of analyzing existing drainage, designing new drainage facilities, or assessing other impacts of a proposed project on the flow of surface water. (A hyetograph is a graph of percentages of total precipitation for a series of time steps representing the total time during which the precipitation occurs.)

11. “Detention” means the release of storm water runoff from the site at a slower rate than it is collected by the storm water facility system, the difference being held in temporary storage.

12. “Detention facility” means an above or below ground facility, such as a pond or tank, that temporarily stores storm water runoff and subsequently releases it at a slower rate than it is collected by the drainage facility system. There is little or no infiltration of stored storm water.

13. “Director” means the public works director or his/her designee.

14. “Drainage basin” means a geographic and hydrologic subunit of a watershed.

15. “Drainage system” means the system of collecting, conveying, and storing surface and storm water runoff. Drainage facilities shall include but not be limited to all surface and storm water runoff conveyance and containment facilities including: streams, pipelines, channels, ditches, swamps, lakes, wetlands, closed depressions, infiltration facilities, retention/detention facilities, erosion/sedimentation control facilities, and other drainage structures and appurtenances, both natural and manmade.

16. “Earth material” means any rock, natural soil, or fill and/or any combination thereof.

17. “Ecology” means the Washington State Department of Ecology.

~~18. “Effective impervious area” means those impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system.~~

~~19. “Equivalent service unit (ESU)” means a configuration of development, or impervious surfaces on a parcel, estimated to contribute an amount of runoff to the city’s storm and surface water system which is approximately equal to that created by the average single family residential parcel. One ESU is equal to 2,800 square feet of impervious surface area or any portion thereof.~~

~~20. “Erosion” means the wearing away of the land surface by running water, wind, ice, or other geological agents, including other processes such as gravitational creep, detachment and movement of soil or rock fragments by water, wind, ice, or gravity.~~

~~21. “Excavation” means the mechanical removal of earth material.~~

~~22. “Experimental BMP” means a BMP that has not been tested and evaluated by the Department of Ecology in collaboration with local governments and technical experts.~~

~~23. “Fill” means a deposit of manmade or natural material placed by artificial means.~~

~~24. “Forest practice” means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:~~

~~a. Road and trail construction;~~

~~b. Harvesting, final and intermediate;~~

~~c. Precommercial thinning;~~

~~d. Reforestation;~~

~~e. Fertilization;~~

~~f. Prevention and suppression of diseases and insects;~~

~~g. Salvage of trees; and~~

~~h. Brush control.~~

~~25. “Grade” means the slope of a road, channel, or natural ground; the finished surface of a canal bed, roadbed, top of embankment, or bottom of excavation; any surface prepared for the support of construction such as paving or the laying of a conduit.~~

~~a. “Existing grade” means the grade prior to grading.~~

b. ~~“Rough grade” means the stage at which the grade approximately conforms to the approved plan.~~

c. ~~“Finish grade” means the final grade of the site, which conforms to the approved plan.~~

26. ~~“Grading” or “grading activity” means any excavating, filling, or grading or combination thereof.~~

27. ~~“Ground water” means water in a saturated zone or stratum beneath the surface of land or a surface water body.~~

28. ~~“Hydroperiod” means the seasonal occurrence of flooding and/or soil saturation; it encompasses depth, frequency, duration, and seasonal pattern of inundation.~~

29. ~~“Illicit discharge” means all nonstorm water discharges to storm water drainage systems that cause or contribute to a violation of state water quality, sediment quality, or groundwater quality standards, including, but not limited to, sanitary sewer connections, industrial process water, interior floor drains, car washing, and greywater systems.~~

30. ~~“Impervious surface” means a hard surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt pavement, gravel roads, packed earthen materials, and oiled, macadam, or other surfaces which similarly impede the natural infiltration of storm water. Open, uncovered retention and detention facilities shall not be considered impervious surfaces, for purposes of determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling.~~

31. ~~“Interflow” means that portion of rainfall that infiltrates into the soil and moves laterally through the upper soil horizons until intercepted by a stream channel or until it returns to the surface in a wetland, spring, or seep.~~

32. ~~“Land clearing” or “clearing” means the destruction or removal of vegetation from a site by physical, mechanical, chemical or other means. This does not mean mowing, landscape maintenance or pruning consistent with accepted horticultural and arboricultural practices, which does not impair the health or survival of the trees and associated vegetation.~~

33. ~~“Land disturbing activity” means any activity that results in a movement of earth or a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, demolition, construction, clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity.~~

4. “LID” or “Low Impact Development” is a stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

~~34. “Manual” or “Storm Water Management Manual” means the latest edition of the “Storm Water Management Manual for Western Washington” (April 2005) prepared by Ecology, which manual is adopted by reference as though set forth herein in full with modifications provided herein.~~

~~35. “Mitigation” means, in the following order of preference:~~

- ~~a. Avoiding the impact altogether by not taking a certain action or part of an action;~~
- ~~b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;~~
- ~~c. Rectifying the impacts by repairing, rehabilitating, or restoring the affected environment;~~
- ~~d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and~~
- ~~e. Compensation for the impact by replacing, enhancing, or providing substitute resources or environment.~~

~~36. “Native vegetation” means vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples include trees such as Douglas fir, western hemlock, western red cedar, alder, big leaf maple, and vine maple; shrubs such as willow, elderberry, salmonberry, and salal; and herbaceous plants such as sword fern, foam flower, and fireweed.~~

~~37. “Natural location” means the location of those channels, swales, and other nonmanmade conveyance systems as defined by the first documented topographic contours existing for the subject property, either from maps or photographs, or such other means as appropriate.~~

~~38. “New development” means the following activities: land disturbing activities; structural development, including construction, installation of a building or other structure; creation of impervious surfaces; Class IV general forest practices that are conversions from timber land to other uses; and subdivision and short subdivision of land as defined in Chapter 58.17 RCW and MMC Title 16. All other forest practices and commercial agriculture are not considered new development.~~

~~39. “On-site storm water management BMPs” means site development techniques that serve to infiltrate, disperse, and retain storm water runoff on-site.~~

40. “Permanent erosion and sediment control” means the continuous on-site and off-site control measures that are needed to prevent accelerated erosion, sedimentation or related pollution from occurring after completion of the grading activity or the construction project.

41. “Permanent storm water control (PSC) plan” means a plan which includes permanent BMPs for the control of pollution from storm water runoff after construction and/or land disturbing activity has been completed.

42. “Person” means any individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, agency of the state, or local government unit, however designated.

43. “Pollutant” shall mean any substance which, when added to water, would contaminate or alter the chemical, physical, or biological properties of any waters of the city’s drainage system or of the state. This includes a change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the city’s drainage system or of the state and will or is likely to create a nuisance. It also includes any substance which renders such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial use, or to livestock, wild animals, birds, fish, or other aquatic life.

44. “Pollution” means contamination or other alteration of the physical, chemical, or biological properties of waters of the city’s drainage system or of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the city’s drainage system or of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

45. “Pollution generating impervious surface (PGIS)” means those impervious surfaces considered to be a significant source of pollutants in storm water runoff. Such surfaces include those which are subject to: vehicular use; industrial activities; or storage of erodible or leachable materials, wastes, or chemicals, and which receive direct rainfall or the run-on or blow-in of rainfall. Erodible or leachable materials, wastes, or chemicals are those substances which, when exposed to rainfall, measurably alter the physical or chemical characteristics of the rainfall runoff. Examples include erodible soils that are stockpiled, uncovered process wastes, manure, fertilizers, oily substances, ashes, kiln dust, and garbage dumpster leakage. Metal roofs are also considered to be PGIS unless they are coated with an inert, nonleachable material (e.g., baked-on enamel coating).

A surface, whether paved or not, shall be considered subject to vehicular use if it is regularly used by motor vehicles. The following are considered regularly used surfaces: roads, unvegetated road shoulders, bike lanes within the traveled lane of a roadway, driveways, parking lots, unfenced fire lanes, vehicular equipment storage yards, and airport runways.

The following are not considered regularly used surfaces: paved bicycle pathways separated from and not subject to drainage from roads for motor vehicles, fenced fire lanes, and infrequently used maintenance access roads.

46. “Pollution-generating pervious surface (PGPS)” means any nonimpervious surface subject to use of pesticides, fertilizers, or loss of soil.

47. “Project site” means that portion of a property, properties, or right of way subject to land disturbing activities, new impervious surfaces, or replaced impervious surfaces.

48. “Redevelopment” on an already substantially developed site (i.e., has 35 percent or more of existing impervious surface coverage) means the creation or addition of impervious surfaces, the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation, or expansion of a building or other structure, and/or replacement of impervious surface that is not part of a routine maintenance activity, and land disturbing activities.

49. “Regional detention facility” means a storm water quantity control structure designed to correct existing surface water runoff problems for all or a portion of a basin or subbasin. This term is also used when a detention facility is used to detain storm water runoff from a number of different businesses, developments or areas within a catchment.

50. “Replaced impervious surface” means the removal and replacement of any exterior impervious surfaces or foundation of a structure. Other impervious surfaces are considered replaced if first removed down to bare soil or base course.

51. “Retention/detention facility (R/D)” means a type of drainage facility designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration, and/or infiltration into the ground or to hold surface and storm water runoff for a short period of time and then release it to the surface and storm water management system.

52. “Sediment” means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its original site of origin.

53. “Sedimentation” means the process by which sediment has been transported off the site of the grading activity and settled onto land or the bed of a creek, stream, river, wetland, pond, or other water body.

54. “Site” means the area within the legal boundaries of a parcel or parcels of land subject to new development or redevelopment. For road projects, the length of the project site and the right-of-way boundaries define the site.

55. “Slope” means the degree of deviation of a surface from the horizontal, measured as a numerical ratio, percent, or in degrees. Expressed as a ratio, the first number is the horizontal distance (run) and the second number is the vertical distance (rise), as 2:1. A 2:1 slope is a 50

percent slope. Expressed in degrees, the slope is the angle from the horizontal plane, with a 90-degree slope being vertical (maximum) and a 45-degree slope being a 1:1 or 100 percent slope.

56. “Soil” means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

57. “Source control BMP” means a structure or operation that is intended to prevent pollutants from coming into contact with storm water through physical separation of areas or careful management of activities that are sources of pollutants. A few examples of source control BMPs are erosion control practices, maintenance of storm water facilities, constructing roofs over storage and working areas, and directing wash water and similar discharges to the sanitary sewer or a dead end sump.

58. “Storm water” means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels, pipes or other features of a storm water system into a defined surface water channel or a constructed infiltration facility.

59. “Storm water facility” means a constructed component of a storm water drainage system, designed or constructed to perform a particular function or multiple functions. Storm water facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention basins, retention basins, constructed wetlands, infiltration devices, catch basins, oil/water separators, sediment basins, and modular pavement.

60. “Storm water site plan” means the comprehensive report containing all of the technical information and analysis necessary to evaluate a proposed new development or redevelopment project for compliance with storm water requirements. Contents of the storm water site plan will vary with the type and size of the project, and individual site characteristics. It includes a construction storm water pollution prevention plan (construction SWPPP) and a permanent storm water control plan (PSC plan).

61. “Surface water” means the naturally occurring water that flows over or is stored on the earth’s surface.

62. “Temporary erosion control” means the on-site and off-site control measures that are needed during construction activities to prevent accelerated erosion, sedimentation or related pollution from occurring, but may not be needed when the project is completed or when ground conditions have been stabilized by permanent erosion control measures.

63. “Threshold discharge area” means an on-site area draining to a single natural discharge location or multiple natural discharge locations that combine within one-quarter mile downstream (as determined by the shortest flowpath).

64. “Treatment BMP” means a BMP that is intended to remove pollutants from storm water. A few examples of treatment BMPs are wetponds, oil/water separators, biofiltration swales, and constructed wetlands.

~~65. “Vegetation” means all organic plant life growing on the surface of the earth.~~

~~66. “Water body” means surface waters including rivers, streams, lakes, marine waters, estuaries and wetlands.~~

~~67. “Water quality design flow rate” means:~~

~~a. Preceding detention facilities or when detention facilities are not required: that rate at or below which 91 percent of the runoff volume, as estimated by an approved continuous runoff model, will be treated.~~

~~b. Downstream of detention facilities: the full two-year release rate from the detention facility.~~

~~68. “Water quality design storm” means the 24-hour rainfall amount with a six-month return frequency. It is commonly referred to as the six-month, 24-hour design storm.~~

~~69. “Water quality design storm volume” means the volume of runoff predicted from a 24-hour storm with a six-month return frequency.~~

~~70. “Watershed” means a geographic region within which water drains into a particular river, stream, or body of water as identified and numbered by the State of Washington Water Resource Inventory Areas (WRIAs) as defined in Chapter 173-500 WAC.~~

~~71. “Wetlands,” for the purposes of inventory, incentives, and nonregulatory programs, means those lands defined and regulated pursuant to Chapter 18.16 MMC and/or any federally regulated wetlands.~~

~~72. “Wetpool” means a pond or constructed wetland that stores runoff temporarily and whose normal discharge location is elevated so as to maintain a permanent pool of water between storm events. (Ord. 1655 § 1, 2006).~~

13.26.160 General provisions for permitting.

A. Storm Water Drainage Permits. Any person proposing development or redevelopment of a parcel that falls within the parameters of this chapter shall be required to submit an application for a storm water drainage permit to the city. The application shall include:

1. The name and address of the applicant;
2. The name and address of the property owner;
3. The exact location of the proposed work by street address and/or parcel number;
4. Storm water site plan;
5. Civil drawings and other information required by the manual; and

6. Other information as requested.

The application will be reviewed as determined by the city director.

B. Regulated Activities. Prior to fulfilling the requirements of this chapter, the city shall not grant any approval or permission to conduct a regulated activity. Regulated activities include, but are not limited to, the following permits and approvals: building permit, binding site plan, conditional use permit, grading and clearing permit, street work permit, shoreline substantial development permit, variance, rezone, subdivision, or any subsequently adopted permit or required approval not expressly exempted by this chapter.

C. Permit Issuance. Regulated activities that require a storm water site plan under this chapter shall only be conducted after the city approves the plan pursuant to Process Type I (Chapter 17.71 MMC, Permit Decision and Appeal Processes). Upon approval of the storm water site plan, the city shall issue a storm drainage permit.

D. Storm Drainage Plan Check Fees. A fee for storm drainage plan check shall be charged to all storm drainage plan submittals. The purpose of the fee is to recover all costs associated with the plan review. ~~The amount of the fee shall be the actual costs incurred by the city in reviewing the plans, consulting fees charged for meetings conducted in reference to the storm drainage plan plus a 15 percent administrative fee.~~

The city shall not issue any permits for a parcel until the storm drainage plan check fee has been paid in full.

In accordance with the most current fee schedule, a partial payment of the drainage plan check fee shall be collected at the time the storm drainage plan is submitted to the city. (Ord. 1741 § 12, 2009; Ord. 1655 § 1, 2006).

13.26.170 Regulated activities and allowed activities.

A. New Development. The minimum requirements discussed in this section are described in the Manual as referenced in MMC 13.26.200~~13.26.180~~. ~~All new development shall be required to comply with minimum requirement Nos. 1, 2, and 4 (MMC 13.26.200(A), (B) and (D)). In addition, new development that exceeds certain thresholds shall be required to comply with additional minimum requirements described in MMC 13.26.200 as follows:~~

~~1. The following new development shall comply with minimum requirement Nos. 1 through 5 (MMC 13.26.200(A) through (E)):~~

~~a. Development that includes the creation or addition of 2,000 square feet or greater of new, replaced, or new plus replaced impervious surface area; or~~

~~b. Development that includes land disturbing activity of 7,000 square feet or greater.~~

~~2. The following new development shall comply with minimum requirements Nos. 1 through 10 (MMC 13.26.200(A) through (J)):~~

- ~~a. Creates or adds 5,000 square feet or greater of new impervious surface area; or~~
- ~~b. Converts three-quarter acres or more of native vegetation to lawn or landscaped areas; or~~
- ~~c. Converts two and one-half acres or more of native vegetation to pasture.~~

~~3. Clear, Grade and Fill Activities. The public works director shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. The public works director has all authority under the code to enforce federal, state, and city requirements in connection with clearing, grading and filling, including but not limited to permit issuance and inspections.~~

~~a. All clear, grade and fill activities must be approved by the public works director or designee and are subject to the provisions of the current fee schedule approved by the city council.~~

B. Redevelopment. The minimum requirements discussed in this section are described in the Manual as referenced in MMC 13.26.180.

~~All redevelopment shall be required to comply with minimum requirement No. 2 (MMC 13.26.200(B)). In addition, redevelopment that exceeds certain thresholds shall be required to comply with additional minimum requirements described in MMC 13.26.200, as follows:~~

~~1. The following redevelopment shall comply with minimum requirement Nos. 1 through 5 (MMC 13.26.200(A) through (E)) for the new and replaced impervious surfaces and the land disturbed:~~

- ~~a. The new, replaced, or total of new plus replaced impervious surfaces is 2,000 square feet or more; or~~
- ~~b. Redevelopment that includes land disturbing activity of 7,000 square feet or more.~~

~~2. The following redevelopment shall comply with minimum requirement Nos. 1 through 10 (MMC 13.26.200(A) through (J)) for the new impervious surfaces and converted pervious surfaces:~~

- ~~a. Redevelopment that adds 5,000 square feet or more of new or new plus replaced impervious surfaces; or~~
- ~~b. Redevelopment that converts three-quarter acres or more of native vegetation to lawn or landscaped areas; or~~
- ~~c. Redevelopment that converts two and one-half acres or more of native vegetation to pasture.~~

~~3. Commingled Storm Water. If the runoff from the new impervious surfaces and converted pervious surfaces is not separated from runoff from other surfaces on the project site, the storm water treatment facilities must be sized for the entire flow that is directed to them.~~

~~4. Equivalent Area. The director may allow the minimum requirements to be met for an equivalent (flow and pollution characteristics) area within the same site. For public road projects, the equivalent area does not have to be within the project limits, but must drain to the same receiving water.~~

~~5. Road-Related Projects. Runoff from the replaced and new impervious surfaces (including pavement, shoulders, curbs, and sidewalks) shall meet all the minimum requirements if the new impervious surfaces total 5,000 square feet or more and total 50 percent or more of the existing impervious surfaces within the project limits. The project limits shall be defined by the length of the project and the width of the right-of-way.~~

~~6. Regional Facilities. The director may exempt or institute a stop-loss provision for redevelopment projects from compliance with minimum requirements for treatment, flow control, and wetlands protection as applied to the replaced impervious surfaces if the city has adopted a plan and schedule that fulfills those requirements in regional facilities.~~

C. Exemptions and Exceptions.

Exemptions and exceptions are described in the Manual as referenced in MMC 13.26.180.

~~1. Forest practices regulated under WAC Title 222, except for Class IV general forest practices that are conversions from timber land to other uses, are exempt from the provisions of this chapter.~~

~~2. Commercial agricultural practices involving working the land for production are generally exempt. However, the conversion from timberland to agriculture, and the construction of impervious surfaces are not exempt; and~~

~~3. Development undertaken by the Washington State Department of Transportation in state highway rights-of-way is regulated by Chapter 173-270 WAC, the Puget Sound Highway Runoff System.~~

~~4. The following road maintenance practices are exempt: pothole and square cut patching, overlaying existing asphalt or concrete pavement with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/regrading drainage systems, crack sealing, resurfacing with in-kind material without expanding the road prism, and vegetation maintenance. See the manual for road activities not exempt.~~

All other new development and redevelopment is subject to the minimum requirements of this chapter. (Ord. 1702 § 2, 2007; Ord. 1655 § 1, 2006).

13.26.180 General requirements.

A. Storm Water Management Manual Adopted. The ~~latest edition of the~~ Department of Ecology's 2014 Stormw-Water Management Manual for Western Washington (April 2005), including and as amended by Appendix 1 of the National Pollution Discharge Elimination System (NPDES) Phase II general permit, together with any subsequent amendments thereto, is hereby adopted by reference and is referred to as the "manual" in this chapter. Appendix 1 is intended to replace the thresholds, definitions, minimum requirements and exception, adjustment and variance criteria in Volume 1, Chapter 2 of the 2005-2014 DOE Stormwater Management Manual.

B. Storm Water Best Management Practices (BMPs).

1. General. BMPs shall be used to control pollution from storm water. BMPs shall be used to comply with the standards in this chapter. Best management practices are found in the manual.

2. Experimental BMPs. In those instances, where appropriate BMPs are not in the manual, experimental BMPs will be considered. Experimental BMPs are encouraged as a means of solving problems in a manner not addressed by the manual in an effort to improve storm water quality technology. Experimental BMPs must be approved in accordance with the approval process outlined in the manual.

3. Low impact development facilities. For low impact development facilities, the contributing drainage area shall be stabilized prior to directing water to the area. BMP measures shall be applied to prevent compaction and sedimentation of these facilities during construction.

C. Illicit Discharges. Illicit discharges to storm water drainage systems are prohibited as provided in MMC [13.26.265](#).

D. Quality of Fill Material. All fill material shall be of a quality which will permit the construction of buildings upon the fill. No fill that contains a substantial amount of decomposable materials shall be used. No hydraulic fill shall be permitted unless approved by the city engineer. Any fill that is not clean fill will require a permit from the Tacoma-Pierce County or King County health department.

E. Culvert Requirement. When a driveway is to be constructed across an existing drainage ditch, a suitable culvert or other drainage structure as determined by the director shall be provided at the expense of the abutting property owner. (Ord. 1757 § 1, 2010; Ord. 1748 § 1, 2009; Ord. 1655 § 1, 2006).

13.26.190 Approval standards.

All storm water site plans prepared for any of the permits and/or approvals listed in MMC [13.26.160](#) shall be submitted to the director for review and approval. (Ord. 1655 § 1, 2006).

13.26.200 Minimum requirements.

~~All minimum requirements are as defined within the currently adopted manual per MMC 13.26.180. This section identifies the 11 minimum requirements for storm water management applicable to new development and redevelopment sites. See the manual for additional details related to each of the minimum requirements.~~

~~A. Minimum Requirement No. 1—Preparation of Storm Water Site Plans. All projects meeting the thresholds in MMC 13.26.170 shall prepare a storm water site plan.~~

~~B. Minimum Requirement No. 2—Construction Storm Water Pollution Prevention (SWPP). All new development and redevelopment shall comply with construction SWPP elements No. 1 through No. 12 (subsection (B)(1) through (12) of this section).~~

~~Projects in which the new, replaced, or new plus replaced impervious surfaces total 2,000 square feet or more or disturb 7,000 square feet or more of land must prepare a construction SWPPP plan (SWPPP) as part of the storm water site plan. Each of the 12 elements must be considered and included in the construction SWPPP unless the director decides that site conditions render the element unnecessary and the exemption from that element is clearly justified in the narrative of the SWPPP.~~

~~Projects that add or replace less than 2,000 square feet of impervious surface or disturb less than 7,000 square feet of land are not required to prepare a construction SWPPP, but must consider all of the 12 elements of construction storm water pollution prevention and develop controls for all elements that pertain to the project site.~~

~~1. Element 1—Mark Clearing Limits.~~

~~a. Prior to beginning land disturbing activities, including clearing and grading, all clearing limits, sensitive areas and their buffers, and trees that are to be preserved within the construction area should be clearly marked, both in the field and on the plans, to prevent damage and off-site impacts.~~

~~b. Plastic, metal, or stake wire fence may be used to mark the clearing limits.~~

~~2. Element 2—Establish Construction Access.~~

~~a. Access Limited. Construction vehicle access and exit shall be limited to one route if possible.~~

~~b. Tracking Sediment. Access points shall be stabilized with quarry spall or crushed rock to minimize the tracking of sediment onto public roads.~~

~~c. Wheel Wash. Wheel wash or tire baths should be located on-site, if applicable.~~

~~d. Clean Public Roads. Public roads shall be cleaned thoroughly at the end of each day. Sediment shall be removed from roads by shoveling or pickup sweeping and shall be transported to a controlled sediment disposal area. Street washing will be allowed only after sediment is removed in this manner.~~

~~e. Street Wash Water. Street wash wastewater shall be controlled by pumping back on-site, or otherwise be prevented from discharging into systems tributary to state surface waters.~~

~~3. Element 3—Control Flow Rates.~~

~~a. General. Properties and waterways downstream from development sites shall be protected from erosion due to increases in the volume, velocity, and peak flow rate of storm water runoff from the project site.~~

~~b. Downstream Analysis. Downstream analysis is necessary if changes in flows could impair or alter conveyance systems, stream banks, bed sediment or aquatic habitat.~~

~~c. BMPs Functional. Storm water retention/detention facilities shall be constructed as one of the first steps in grading. Detention facilities shall be functional prior to construction of site improvements (e.g., impervious surfaces).~~

~~d. Additional Flow Standards. The director may require pond designs that provide additional or different storm water flow control if necessary to address local conditions or to protect properties and waterways downstream from erosion due to increases in the volume, velocity, and peak flow rate of storm water runoff from the project site.~~

~~e. Permanent Infiltration Ponds. If permanent infiltration ponds are used for flow control during construction, these facilities should be protected from siltation during the construction phase.~~

~~4. Element 4—Install Sediment Controls.~~

~~a. Natural Vegetation. The duff layer, native top soil, and natural vegetation shall be retained in an undisturbed state to the maximum extent practicable.~~

~~b. Sediment Removal BMP. Prior to leaving a construction site, or prior to discharge to an infiltration facility, storm water runoff from disturbed areas shall pass through a sediment pond or other appropriate sediment removal BMP. Runoff from fully stabilized areas may be discharged without a sediment removal BMP, but must meet the flow control performance standard of element No. 3 (subsection (B)(3) of this section). Full stabilization means concrete or asphalt paving; quarry spalls used as ditch lining; or the use of rolled erosion products, a bonded fiber matrix product, or vegetative cover in a manner that will fully prevent soil erosion. The director shall inspect and approve areas stabilized by means other than pavement or quarry spalls.~~

~~c. BMPs Functional. Sediment ponds, vegetated buffer strips, sediment barriers or filters, dikes, and other BMPs intended to trap sediment on-site shall be constructed as one of the first steps in grading. These BMPs shall be functional before other land-disturbing activities take place.~~

~~d. Seeding. Earthen structures such as dams, dikes, and diversions shall be seeded and mulched according to the timing indicated in element No. 5 (subsection (B)(5) of this section).~~

5. Element 5—Stabilize Soils.

a. ~~General.~~ All exposed and unworked soils shall be stabilized by application of effective BMPs that protect the soil from the erosive forces of raindrop impact and flowing water, and wind erosion.

b. ~~Seasonal Work Limitations.~~ From October 1st through April 30th, no soils shall remain exposed and unworked for more than two days. From May 1st to September 30th, no soils shall remain exposed and unworked for more than seven days.[‡] This condition applies to all soils on-site, whether at final grade or not.

c. ~~Applicable Practices.~~ Applicable practices include, but are not limited to, temporary and permanent seeding, sodding, mulching, plastic covering, soil application of polyacrylamide (PAM), early application of gravel base on areas to be paved, and dust control.

d. ~~Soil Stabilization.~~ Soil stabilization measures selected should be appropriate for the time of year, site conditions, estimated duration of use, and potential water quality impacts that stabilization agents may have on downstream waters or ground water.

e. ~~Soil Stockpiles.~~ Soil stockpiles must be stabilized and protected with sediment trapping measures.

f. ~~Linear Facilities.~~ Work on linear construction sites and activities, including right-of-way and easement clearing, roadway development, pipelines, and trenching for utilities, shall not exceed the capability of the individual contractor for his portion of the project to install the bedding materials, roadbeds, structures, pipelines, and/or utilities, and to restabilize the disturbed soils, meeting the timing conditions listed in subsection (B)(5)(b) of this section.

6. Element 6—Protect Slopes.

a. ~~Cut and Fill Slopes.~~ Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion.

b. ~~Soil Types.~~ Consider soil type and its potential for erosion.

c. ~~Runoff Velocities.~~ Reduce slope runoff velocities by reducing the continuous length of slope with terracing and diversions, reduce slope steepness, and roughen slope surface.

d. ~~Diverted Flows.~~ Divert upslope drainage and run-on waters from off-site with interceptors at top of slope. Off-site storm water should be handled separately from storm water generated on the site. Diversion of off-site storm water around the site may be a viable option. Diverted flows shall be redirected to the natural drainage location at or before the property boundary.

e. ~~Collected Flows.~~ Contain downslope collected flows in pipes, slope drains, or protected channels.

~~f. Ground Water. Provide drainage to remove ground water intersecting the slope surface of exposed soil areas.~~

~~g. Excavation. Excavated material shall be placed on the uphill side of trenches, consistent with safety and space considerations.~~

~~h. Check Dams. Check dams shall be placed at regular intervals within trenches that are cut down a slope.~~

~~i. Stabilize Soils. Stabilize soils on slopes, as specified in element No. 5 (subsection (B)(5) of this section).~~

~~7. Element 7—Protect Drain Inlets.~~

~~a. General. All storm drain inlets made operable during construction shall be protected so that storm water runoff shall not enter the conveyance system without first being filtered or treated to remove sediment.~~

~~b. Roads. All approach roads shall be kept clean, and all sediment and street wash water shall not be allowed to enter storm drains without prior and adequate treatment unless treatment is provided before the storm drain discharges to waters of the state.~~

~~8. Element 8—Stabilize Channels and Outlets.~~

~~a. General. All temporary on-site conveyance channels shall be designed, constructed and stabilized to prevent erosion from the expected velocity of flow from a two-year, 24-hour frequency storm for the developed condition.~~

~~b. Stabilization. Stabilization, including armoring material, adequate to prevent erosion of outlets, adjacent stream banks, slopes and downstream reaches shall be provided at the outlets of all conveyance systems.~~

~~9. Element 9—Control Pollutants.~~

~~a. General. All pollutants, including waste materials and demolition debris, that occur on-site during construction shall be handled and disposed of in a manner that does not cause contamination of storm water.~~

~~b. Vandalism. Cover, containment, and protection from vandalism shall be provided for all chemicals, liquid products, petroleum products, and noninert wastes present on the site.~~

~~c. Equipment Maintenance. Maintenance and repair of heavy equipment and vehicles involving oil changes, hydraulic system drain-down, solvent and de-greasing cleaning operations, fuel tank drain-down and removal, and other activities which may result in discharge or spillage of pollutants to the ground or into storm water runoff must be conducted using spill prevention measures, such as drip pans. Contaminated surfaces shall be cleaned immediately following any~~

~~discharge or spill incident. Emergency repairs may be performed on-site using temporary plastic placed beneath and, if raining, over the vehicle.~~

~~d. Wheel Wash. Wheel wash, or tire bath, wastewater shall be discharged to a separate on-site treatment system. It may be discharged to the sanitary sewer system only if expressly allowed by the local sewer district authority.~~

~~e. Agricultural Chemicals. Application of agricultural chemicals, including fertilizers and pesticides, shall be conducted in a manner and at application rates that will not result in loss of chemicals to storm water runoff. Manufacturers' recommendations shall be followed for application rates and procedures.~~

~~f. pH Management. Management of pH-modifying sources shall prevent contamination of runoff and storm water collected on the site. These sources include, but are not limited to, bulk cement, cement kiln dust, fly ash, new concrete washing and curing waters, waste streams generated from concrete grinding and sawing, exposed aggregate processes, and concrete pumping and mixer washout waters.~~

~~10. Element 10—Control Dewatering.~~

~~a. General. All foundation, vault, and trench dewatering water, which have similar characteristics to storm water runoff at the site, shall be discharged into a controlled conveyance system, prior to discharge to a sediment trap or sediment pond. Channels must be stabilized, as specified in element No. 8 (subsection (B)(8) of this section).~~

~~b. Clean Water. Clean, nonturbid dewatering water, such as well-point ground water, can be discharged to systems tributary to state surface waters, as specified in element No. 8 (subsection (B)(8) of this section), provided the dewatering flow does not cause erosion or flooding of the receiving waters. These clean waters should not be routed through sediment ponds with storm water.~~

~~c. Contaminated Water. Highly turbid or otherwise contaminated dewatering water, such as from construction equipment operation, clamshell digging, concrete tremie pour, or work inside a cofferdam, shall be handled separately from storm water at the site.~~

~~d. Other Disposal Options. Depending on site constraints, dewatering may include: infiltration; transport off-site in vehicle, such as a vacuum flush truck, for legal disposal in a manner that does not pollute state waters; on-site treatment using chemical treatment or other suitable treatment technologies; or sanitary sewer discharge with local sewer district approval approval if there is no other option.~~

~~11. Element 11—Maintain BMPs.~~

~~a. General. All temporary and permanent erosion and sediment control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function. All maintenance and repair shall be conducted in accordance with BMPs.~~

~~b. Inspection. Sediment control BMPs shall be inspected weekly or after a runoff-producing storm event during the dry season and daily during the wet season.~~

~~c. Remove BMPs. All temporary erosion and sediment control BMPs shall be removed within 30 days after final site stabilization is achieved or after the temporary BMPs are no longer needed. Trapped sediment shall be removed or stabilized on-site. Disturbed soil areas resulting from removal of BMPs or vegetation shall be permanently stabilized.~~

~~12. Element 12—Manage the Project.~~

~~a. Phasing of Construction. Development projects shall be phased where feasible in order to prevent, to the maximum extent practicable, the transport of sediment from the project site during construction. Revegetation of exposed areas and maintenance of that vegetation shall be an integral part of the activities for any phase. Clearing and grading activities for developments shall be permitted only if conducted pursuant to an approved site development plan (e.g., subdivision approval) that establishes permitted areas of clearing, grading, cutting, and filling. When establishing these permitted clearing and grading areas, consideration should be given to minimizing removal of existing trees and minimizing disturbance/compaction of native soils except as needed for building purposes. These permitted clearing and grading areas and any other areas required to preserve critical or sensitive areas, buffers, native growth protection easements, or tree retention areas as may be required by the director shall be delineated on the site plans and the development site.~~

~~b. Seasonal Work Limitations. From October 1st through April 30th, clearing, grading, and other soil disturbing activities shall only be permitted if shown to the satisfaction of the director that silt-laden runoff will be prevented from leaving the construction site through a combination of the following:~~

~~i. Site conditions including existing vegetative coverage, slope, soil type and proximity to receiving waters; and~~

~~ii. Limitations on activities and the extent of disturbed areas; and~~

~~iii. Proposed erosion and sediment control measures.~~

~~c. Modify Seasonal Limits. Based on the information provided, and/or local weather conditions, the director may expand or restrict the seasonal limitation on site disturbance. If, during the course of any construction activity or soil disturbance during the seasonal limitation period, silt-laden runoff leaving the construction site causes a violation of the surface water quality standard or if clearing and grading limits or erosion and sediment control measures shown in the approved plan are not maintained, the director shall take enforcement action according to MMC 13.26.290.~~

~~d. Exemptions. The following activities are exempt from the seasonal clearing and grading limitations:~~

~~i. Routine maintenance and necessary repair of erosion and sediment control BMPs;~~

~~ii. Routine maintenance of public facilities or existing utility structures that do not expose the soil or result in the removal of the vegetative cover to soil; and~~

~~iii. Activities where there is 100 percent infiltration of surface water runoff within the site in approved and installed erosion and sediment control facilities.~~

~~e. Coordination with Other Contractors. The primary project applicant shall evaluate, with input from utilities and other contractors, the storm water management requirements for the entire project, including the utilities, when preparing the construction SWPPP.~~

~~f. Inspection. All BMPs shall be inspected, maintained, and repaired as needed to assure continued performance of their intended function.~~

~~g. Certified Professional. A certified erosion and sediment control specialist shall be identified in the construction SWPPP and shall be on-site or on-call at all times. Certification may be obtained through an approved training program that meets the erosion and sediment control training standards established by Ecology.~~

~~h. Sampling. Sampling and analysis of the storm water discharges from a construction site may be necessary on a case-by-case basis to ensure compliance with standards. Monitoring and reporting requirements may be established by the director when necessary.~~

~~i. Modify SWPPP. Whenever inspection and/or monitoring reveals that the BMPs identified in the construction SWPPP are inadequate, due to the actual discharge of or potential to discharge a significant amount of any pollutant, the SWPPP shall be modified, as appropriate, in a timely manner.~~

~~j. Construction SWPPP. The construction SWPPP shall be retained on-site or within reasonable access to the site. The construction SWPPP shall be modified whenever there is a significant change in the design, construction, operation, or maintenance of any BMP.~~

~~C. Minimum Requirement No. 3—Source Control of Pollution. All known, available and reasonable source control BMPs shall be applied to all projects. Source control BMPs shall be selected, designed, and maintained according to the manual.~~

~~D. Minimum Requirement No. 4—Preservation of Natural Drainage Systems and Outfalls. Natural drainage patterns shall be maintained, and discharges from the project site shall occur at the natural location, to the maximum extent practicable. All outfalls require energy dissipation.~~

~~The manner by which runoff is discharged from the project site must not cause a significant adverse impact to downstream receiving waters and downgradient properties. Downstream properties shall not be unreasonably burdened with increased flow rates, negative impacts or unreasonable changes in manner of flow from upstream properties. Drainage problems shall not be transferred from one location to another. However, downstream properties cannot block natural or existing runoff through their site and shall accept runoff from upstream properties.~~

~~Planning and design of drainage systems shall not be based on the premise that storm water can be transferred from one basin to another unless part of an adopted city regional drainage system plan.~~

~~The flow of storm runoff shall be maintained within its natural drainage course unless reasonable use is demonstrated otherwise. When storm water is discharged into an existing drainage course, the peak discharge into the water course shall not adversely affect or cause damage to property along the drainage course now or in the future based on existing zoning. Erosional impacts due to concentration of flows and increased flow durations shall be evaluated and mitigated.~~

~~E. Minimum Requirement No. 5—On-Site Storm Water Management. Projects shall employ on-site storm water management BMPs to infiltrate, disperse, and retain storm water runoff on-site to the maximum extent feasible without causing flooding or erosion impacts. On-site storm water management BMPs as identified in the manual shall be used for roof downspout control, flow dispersion, and soil quality.~~

~~F. Minimum Requirement No. 6—Runoff Treatment.~~

~~1. Thresholds. The following require construction of storm water treatment facilities (see Table 13.26.200.F):~~

~~a. Projects in which the total of effective, pollution-generating impervious surface (PGIS) is 5,000 square feet or more in a threshold discharge area of the project; or~~

~~b. Projects in which the total of pollution-generating pervious surfaces (PGPS) is three-quarters of an acre or more in a threshold discharge area, and from which there is a surface discharge in a natural or manmade conveyance system from the site.~~

~~c. That portion of any development project in which the above PGIS or PGPS thresholds are not exceeded in a threshold discharge area shall apply on-site storm water management BMPs in accordance with minimum requirement No. 5 (subsection (E) of this section).~~

Table 13.26.200.F

Treatment Requirements by Threshold Discharge Area				
-	< 3/4 acres of PGPS	≥ 3/4 acres PGPS	< 5,000 s.f. PGPS	≥ 5,000 s.f. PGPS
Treatment Facilities	-	√	-	√
On-Site Storm Water BMPs	√	√	√	√

~~PGPS = pollution-generating pervious surfaces~~

~~PGIS = pollution-generating impervious surfaces~~

s.f. — square feet

~~2. Treatment Facility Sizing. Treatment facilities shall be sized to provide effective treatment of 91 percent of the annual average runoff volume.~~

~~a. The water quality design volume shall be used to size volume-based treatment facilities. The volume of runoff shall be estimated using methods approved in the manual.~~

~~b. The water quality design flow rate shall be used to size flow rate-based treatment facilities.~~

~~c. The director may allow alternative methods if they identify volumes and flow rates that are at least equivalent.~~

~~3. Treatment Facility Selection, Design, and Maintenance. Storm water treatment facilities shall be:~~

~~a. Selected in accordance with the process identified in the manual;~~

~~b. Designed in accordance with the design criteria in the manual; and~~

~~c. Maintained in accordance with the maintenance schedule in the manual.~~

~~4. Untreated Storm Water. Direct discharge of untreated storm water from pollution-generating impervious surfaces to ground water is prohibited, except for the discharge achieved by infiltration or dispersion of runoff from residential sites through use of on-site storm water management BMPs.~~

~~G. Minimum Requirement No. 7—Flow Control:~~

~~1. Applicability:~~

~~a. Flow Control. Projects must provide flow control to reduce the impacts of storm water runoff from impervious surfaces and land cover conversions. The requirement below applies to projects that discharge storm water directly, or indirectly through a conveyance system, into fresh water, except for discharges into a stream that leads to a wetland or to a wetland that has an outflow to a stream in which both this requirement and minimum requirement No. 8 (subsection (H) of this section) must be met.~~

~~b. Exempt Areas. The director may petition the Department of Ecology to exempt projects in certain areas, provided those areas also meet the following criteria:~~

~~i. The area must be drained by a conveyance system that is comprised entirely of manmade conveyance elements (e.g., pipes, ditches, outfall protection, etc.) and extends to the ordinary high water line of the receiving water; and~~

ii. Any erodible elements of the manmade conveyance system for the area must be adequately stabilized to prevent erosion; and

iii. Surface water from the area must not be diverted from or increased to an existing wetland, stream, or near-shore habitat sufficient to cause a significant adverse impact.

2. Thresholds. The following require construction of flow control facilities and/or land use management BMPs:

Table 13.26.200.G

Flow Control Requirements by Threshold Discharge Area		
	Flow Control Facilities	On-Site Storm Water Management BMPs
< 3/4 acres conversion to lawn/landscape, or < 2.5 acres to pasture	-	✓
≥ 3/4 acres conversion to lawn/landscape, or ≥ 2.5 acres to pasture	✓	✓
≤ 5,000 square feet of effective impervious area	-	✓
≥ 5,000 square feet of effective impervious area	✓	✓
≥ 0.1 cubic feet per second increase in the 100-year flood frequency	✓	✓

a. Projects in which the total of effective impervious surfaces is 5,000 square feet or more in a threshold discharge area, or

b. Projects that convert three-quarters of an acre or more of native vegetation to lawn or landscape, or convert two and one-half acres or more of native vegetation to pasture in a threshold discharge area, and from which there is a surface discharge in a natural or manmade conveyance system from the site, or

c. Projects that through a combination of effective impervious surfaces and converted pervious surfaces, cause a one-tenth cubic foot per second increase in the 100-year flow frequency from a threshold discharge area as estimated using the Western Washington hydrology model or other model authorized by the director.

d. That portion of any development project in which the above thresholds are not exceeded in a threshold discharge area shall apply on-site storm water management BMPs in accordance with minimum requirement No. 5 (subsection (E) of this section).

e. The director may require flow control for individual lots due to sensitive areas, historical flooding, or other relevant reasons as deemed necessary by the director.

~~3. Standard Requirement.~~

~~a. Peak Flows. Storm water discharges shall match developed discharge durations to predeveloped durations for the range of predeveloped discharge rates from 50 percent of the two-year peak flow up to the full 50-year peak flow.~~

~~b. Predeveloped Condition. The predeveloped condition to be matched shall be a forested land cover unless:~~

~~i. Reasonable, historic information is provided that indicates the site was prairie prior to settlement (modeled as “pasture” in the Western Washington hydrology model); or~~

~~ii. The drainage area of the immediate stream and all subsequent downstream basins have had at least 40 percent total impervious area for the last 20 years. In this case, the predeveloped condition to be matched shall be the existing land cover condition. Whenever basin specific studies determine a stream channel to be unstable, even though the above criterion is met, the predeveloped condition assumption shall be the “historic” land cover condition, or a land cover condition commensurate with achieving a target flow regime identified by an approved basin study.~~

~~c. This standard requirement is waived for sites that will reliably infiltrate all the runoff from impervious surfaces and converted pervious surfaces.~~

~~d. Flow Control Facility Selection, Design, and Maintenance. Flow control facilities shall be selected, designed, and maintained in accordance with the manual.~~

~~H. Minimum Requirement No. 8—Wetlands Protection.~~

~~1. Applicability. The requirements below apply only to projects whose storm water discharges into a wetland, either directly or indirectly through a conveyance system. These requirements must be met in addition to meeting minimum requirement No. 6, Runoff Treatment (subsection (F) of this section).~~

~~2. Thresholds. The thresholds identified in minimum requirement No. 6—Runoff Treatment (subsection (F) of this section), and minimum requirement No. 7—Flow Control (subsection (G) of this section) shall also be applied for discharges to wetlands.~~

~~3. Standard Requirement. Discharges to wetlands shall maintain the hydrologic conditions, hydrophytic vegetation, and substrate characteristics necessary to support existing and designated uses. A wetland can be considered for hydrologic modification and/or storm water treatment in accordance with guidance within the manual.~~

~~4. Additional Requirements. The standard requirement does not excuse any discharge from the obligation to apply whatever technology is necessary to comply with state water quality standards, Chapter 173-201A WAC, or state ground water standards, Chapter 173-200 WAC or successor regulations. Storm water treatment and flow control facilities shall not be built within a~~

natural vegetated buffer, except for: necessary conveyance systems as approved by the director; or as allowed in wetlands approved for hydrologic modification and/or treatment in accordance with the manual. An adopted and implemented basin plan (minimum requirement No. 9 (subsection (I) of this section)), or a total maximum daily load (TMDL) may be used to develop requirements for wetlands that are tailored to a specific basin.

~~I. Minimum Requirement No. 9—Basin/Watershed Planning. Projects may be subject to equivalent or more stringent minimum requirements for erosion control, source control, treatment, and operation and maintenance, and alternative requirements for flow control and wetlands hydrologic control as identified in basin/watershed plans. Standards developed from basin plans shall not modify any of the above minimum requirements until the basin plan is formally adopted and implemented by the city within the basin, and approved or concurred with by the Department of Ecology.~~

~~J. Minimum Requirement No. 10—Operation and Maintenance. An operation and maintenance manual that is consistent with the manual shall be provided for all proposed storm water facilities and BMPs, and the person responsible for maintenance and operation shall be identified. At private facilities, a copy of the manual shall be retained on site or within reasonable access to the site, and shall be transferred with the property to the new owner. For public facilities, a copy of the manual shall be retained by the director or other appropriate location. A log of maintenance activity that indicates what actions were taken shall be kept and be available for inspection by the director.~~

~~K. Minimum Requirement No. 11—Financial Liability. Projects that may require bonding include, but are not limited to, those occurring in environmentally sensitive areas and where problems are anticipated.~~

~~1. Financial Instrument Required. The director shall require all persons proposing activities regulated by this chapter to provide an acceptable financial instrument to protect the city. Where such person has previously provided, or are required to provide, another financial instrument on the facility itself or on other construction related to the facility, such person may, with the permission of the director, and to the extent allowable by law, combine all such financial instruments into a single instrument; provided, that at no time shall the amount guaranteed be less than the total amount which would have been required by the separate instruments; and provided further, that such an instrument shall on its face clearly delineate those separate instruments which it is intended to replace.~~

~~2. Construction. Prior to commencing construction, the person constructing the facility shall post a construction bond in an amount not less than 150 percent of the cost of drainage improvements and shall be sufficient to cover the cost of performing said construction per the approved drainage plans. Alternatively, an equivalent cash deposit to an escrow account administered by a local bank may be allowed by the director. An assignment of funds shall be administered for preconstruction activities such as for erosion control.~~

~~3. Maintenance. After satisfactory completion of the facilities and release of the construction financial instrument by the city, the person constructing the facility shall satisfactorily maintain~~

~~the facility for a two-year period. A financial instrument, to be used at the discretion of the city, to correct deficiencies in maintenance must be provided and continued throughout the two-year maintenance period. The amount of the financial instrument shall be 150 percent of the cost of drainage improvements. In addition, at the discretion of the director, a financial instrument to cover the cost of design defects or failures in workmanship shall also be posted and maintained through the two-year maintenance period. Alternatively, the director may allow an equivalent cash deposit to an escrow account administered by a local bank.~~

~~4. Liability Policy. The person constructing the facility shall maintain a liability policy in an amount to be determined by the director which shall name the city as an additional insured and which shall protect the city from any liability for any accident, negligence, failure of the facility, or any other liability whatsoever, relating to the construction or maintenance of the facility. The owner of the facility shall maintain the liability policy for the duration of the facility. (Ord. 1655 § 1, 2006).~~

13.26.210 Contents of a storm water site plan.

~~A. Site Plan Required. Minimum Requirement No. 1 within the manual as adopted by MCC 13.26.180 shall be referenced for when a site plan is required. All projects for new development or redevelopment, which exceed the thresholds of 2,000 square feet for impervious surfaces or 7,000 square feet for land disturbance, must prepare a storm water site plan.~~

~~B. Contents of Plan. Minimum Requirement No. 1 within the manual as adopted by MCC 13.26.180 shall be referenced for the contents of the storm water site plan. Contents of a storm water site plan will vary with the type and size of the project and individual site characteristics. Two major elements included in a storm water site plan are a construction storm water pollution prevention plan and a permanent storm water control plan. The following documents are to be included in a storm water site plan:~~

- ~~1. Project overview;~~
- ~~2. Existing conditions summary;~~
- ~~3. Off-site analysis report;~~
- ~~4. Construction storm water pollution prevention plan;~~
- ~~5. Permanent storm water control plan;~~
- ~~6. Special reports and studies;~~
- ~~7. Other permits;~~
- ~~8. Operation and maintenance manual; and~~
- ~~9. Bond quantities worksheet.~~

~~C. Detailed Information in Manual. Additional details on the content and the procedures for preparation of a storm water site plan, a construction storm water pollution prevention plan, and a permanent storm water quality control plan are included in the manual. (Ord. 1655 § 1, 2006).~~

13.26.220 Deviation.

A. Authority. The director of public works may grant a deviation from the requirements of this chapter. In granting any deviation, the director may prescribe conditions that are deemed necessary or desirable for the public interest.

B. Application. Any applicant may apply to the director for a deviation from the storm drainage requirements of this chapter with the submission of a completed application and fee pursuant to Chapter 17.70 MMC (Application Requirements).

C. Findings of Fact. The director may grant a deviation to minimum requirements ~~Nos. 1 through 11 (MMC 13.26.200(A) through (K))~~ prior to permit approval and construction. A deviation may be granted; provided, that a written finding of fact is prepared by the city engineer that addresses the following:

1. The deviation provides equivalent environmental protection and is in the overriding public interest; and that the objectives of safety, function, environmental protection, and facility maintenance, based upon sound engineering, are fully met;
2. The granting of the deviation will not be detrimental to the public health, nor injurious to other properties in the vicinity and/or downstream, and will not injure the quality of waters of the state;
3. The deviation is the least possible exception that could be granted to comply with the intent of the minimum requirements; and
4. The deviation does not violate any other local, state, county, or federal regulation or ordinance.

D. Prior Approval. Any deviation shall be approved prior to permit approval and construction.

E. Duration of Deviation. Deviations granted by the director shall expire one year from the date of approval. The director may grant successive extensions of up to one year each for good cause if the requested deviation continues to satisfy the standards of approval. The construction permitted under this deviation shall be completed prior to expiration of the deviation.

F. Decision and Appeal. Decisions and appeals to deviations to standards shall be made using Process Type II (Chapter 17.71 MMC, Permit Decision and Appeal Processes). (Ord. 1741 § 13, 2009; Ord. 1655 § 1, 2006).

13.26.230 Purpose – Maintenance.

The provisions of the this section and MMC 13.26.240 are intended to accomplish the following purposes:

- A. Provide for inspection and maintenance of storm water facilities in the city to provide for an effective, functional storm water drainage system.
- B. Authorize the public works department to require that storm water facilities be operated, maintained, and repaired in conformance with this chapter.
- C. Establish the minimum level of compliance which must be met.
- D. Guide and advise all who conduct inspection and maintenance of storm water. (Ord. 1655 § 1, 2006).

13.26.240 Maintenance – General requirements.

A. Maintenance Required. All storm water facilities shall be maintained in accordance with this chapter and the approved manual. Systematic, routine preventive maintenance is preferred.

B. Minimum Standards. The following are the minimum standards for the maintenance of storm water facilities:

1. Facilities shall be inspected annually and cleared of debris, sediment, and vegetation when they affect the functioning and/or design of the facility.
2. Where lack of maintenance is causing or contributing to a water quality problem, immediate action shall be taken to correct the problem. Within one month, the director shall revisit the facility to assure that it is being maintained.

C. Maintenance of Drainage Structures. All drainage structures between the property line and the roadway shall be maintained in a safe and usable condition by the abutting property owner.

D. Disposal of Waste from Maintenance Activities. Disposal of waste from maintenance activities shall be conducted in accordance with the minimum functional standards for solid waste handling, Chapter 173-304 WAC, guidelines for disposal of waste materials from storm water maintenance activities, and, where appropriate, the dangerous waste regulations, Chapter 173-303 WAC.

E. Compliance. Property owners are responsible for the maintenance, operation, or repair of storm water drainage systems and BMPs. Property owners shall maintain, operate, and repair these facilities in compliance with the requirements of this chapter and the approved manual. (Ord. 1655 § 1, 2006).

13.26.250 Inspection program.

A. Inspection. Whenever implementing the provisions of this inspection program or whenever there is cause to believe that a violation of this chapter has been or is being committed, the inspector is authorized to inspect during regular working hours and at other reasonable times all storm water drainage systems within the city to determine compliance with the provisions of this chapter.

B. Procedures. Prior to making any inspections, the inspector shall present identification credentials, state the reason for the inspection, and request entry.

1. If the property or any building or structure on the property is unoccupied, the inspector shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the property or portions of the property and request entry.

2. If, after reasonable effort, the inspector is unable to locate the owner or other person(s) having charge or control of the property, and has reason to believe the condition of the storm water drainage system creates an imminent hazard to persons or property, the inspector may enter.

3. Unless entry is consented to by the owner or person(s) in control of the property or portion of the property or unless conditions are reasonably believed to exist which create imminent hazard, the inspector shall obtain a search warrant, prior to entry, as authorized by the laws of the state of Washington.

4. The inspector may inspect the storm water drainage system without obtaining a search warrant, provided the inspection can be conducted while remaining on public property or other property on which permission to enter is obtained.

C. Annual Inspection Schedule. The director shall establish a master inspection and maintenance schedule to inspect appropriate storm water facilities that are not owned by the city. Inspections shall be annual. Critical storm water facilities may require a more frequent inspection schedule.

D. Annual Inspection Fee. The fee for the annual inspection shall be per the city's current fee schedule.

E. Inspection and Maintenance Records. As existing storm water facilities are encountered, they shall be added to the master inspection and maintenance schedule. Records of new storm water facilities shall include the following:

1. As-built plans and locations.

2. Findings of fact from any variance granted by the city.

3. Operation and maintenance requirements and records of inspections, maintenance actions, and frequencies.

4. Engineering reports, as appropriate.

F. Reporting Requirements. The director shall report annually to the city council about the status of the inspections. The annual report may include, but need not be limited to, the proportion of the components found in and out of compliance, the need to upgrade components, enforcement actions taken, compliance with the inspection schedule, the resources needed to comply with the schedule, and comparisons with previous years. (Ord. 1655 § 1, 2006).

13.26.260 General provisions.

A. Abrogation and Greater Restrictions. It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

B. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter. (Ord. 1655 § 1, 2006).

13.26.265 Illicit discharges and connections.

A. Prohibition of Illicit Discharges. No person shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain or otherwise discharge into the municipal storm drain system and/or surface and ground waters any materials other than storm water. Illicit discharges are prohibited and constitute a violation of this chapter. Examples of prohibited contaminants include, but are not limited to, the following:

1. Trash or debris.
2. Construction materials.
3. Petroleum products including but not limited to oil, gasoline, grease, fuel oil and heating oil.
4. Antifreeze and other automotive products.
5. Metals in either particulate or dissolved form.
6. Flammable or explosive materials.
7. Radioactive material.
8. Batteries.
9. Acids, alkalis, or bases.
10. Paints, stains, resins, lacquers, or varnishes.
11. Degreasers and/or solvents.

12. Drain cleaners.
13. Pesticides, herbicides, or fertilizers.
14. Steam cleaning wastes.
15. Soaps, detergents, or ammonia.
16. Swimming pool or spa filter backwash.
17. Chlorine, bromine, or other disinfectants.
18. Heated water.
19. Domestic animal wastes.
20. Sewage.
21. Recreational vehicle waste.
22. Animal carcasses.
23. Food wastes.
24. Bark and other fibrous materials.
25. Lawn clippings, leaves, or branches.
26. Silt, sediment, concrete, cement or gravel.
27. Dyes.
28. Chemicals not normally found in uncontaminated water.
29. Any other process-associated discharge except as otherwise allowed in this section.
30. Any hazardous material or waste not listed above.

B. Allowable Discharges. The following types of discharges shall not be considered illicit discharges for the purposes of this chapter unless the public works director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water:

1. Diverted stream flows.
2. Rising ground water.

3. Uncontaminated ground water infiltration – as defined in 40 CFR 35.2005(20).
4. Uncontaminated pumped ground water.
5. Foundation drains.
6. Air conditioning condensation.
7. Irrigation water from agricultural sources that is commingled with urban storm water.
8. Springs.
9. Uncontaminated ~~W~~water from crawl space pumps.
10. Footing drains.
11. Flows from riparian habitats and wetland.
12. Discharges from emergency fire fighting activities.

C. Conditional Discharges. The following types of discharges shall not be considered illicit discharges for the purpose of this chapter if they meet the stated conditions, or unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water:

1. Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary, and in volumes and velocities controlled to prevent resuspension of sediments in the storm water system.
2. Lawn watering and other irrigation runoff are permitted but shall be minimized through, at a minimum, public education activities and water conservation efforts.
3. Dechlorinated swimming pool discharges. These discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary, and in volumes and velocities controlled to prevent resuspension of sediments in the storm water system.
4. Street and sidewalk wash water, water used to control dust, and routine external building wash-down that does not use detergents are permitted if the amount of street wash and dust control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street.
5. Non-storm water discharges covered by another NPDES permit; provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted for any discharge to the storm drain system.

6. Other non-storm water discharges. The discharges shall be in compliance with the requirements of the city's storm water pollution prevention plan (SWPPP), which addresses control of such discharges.

D. Prohibition of Illicit Connection.

1. The construction, use, maintenance, or continued existence of illicit connections to the storm drain systems are prohibited and constitute a violation of this chapter.
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 section if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

E. Interpretation. All provisions and terms of this section should be interpreted consistently with the NPDES Phase II municipal storm water permit issued to the city. In the event of a conflict, the NPDES Phase II municipal storm water permit shall govern.

F. Source Control Best Management Practices. Any person causing or allowing discharge to a public drainage facility, natural drainage system, surface and storm water, or ground water shall control contamination in the discharge by implementing appropriate operational source control BMPs, as described in Volume IV of the ~~2005 Stormwater Management Manual for Western Washington~~. Failure to implement such practices shall constitute a violation of this chapter. Guidance on designing and implementing BMPs is provided in the standard plans.

G. Implementation of structural BMPs shall be required if operational BMPs are not effective at reducing or eliminating an illicit discharge. Guidance for design of structural BMPs is provided in Volume IV of the ~~2005 Stormwater Management Manual for Western Washington~~, herein incorporated by reference.

H. Inspections. Inspections to investigate illicit discharges or connections may be made according to MMC [13.26.250](#). (Ord. 1757 § 2, 2010).

13.26.270 Applicability.

When any provision of any other chapter of the Milton Municipal Code conflicts with this chapter, that which provides more environmental protection shall apply unless specifically provided otherwise in this chapter.

The director is authorized to adopt written procedures for the purpose of carrying out the provisions of this chapter. (Ord. 1655 § 1, 2006).

13.26.280 Administration.

A. Director. The director shall administer this chapter. The director shall have the authority to develop and implement administrative policies and procedures to administer and enforce this chapter.

B. Review and Approval. The director may approve, conditionally approve, or deny an application for activities regulated by this chapter.

C. Inspection Authority. The director is directed and authorized to develop an inspection program for storm water facilities in the city.

D. Inspection. All activities regulated by this chapter, except those exempt in MMC 13.26.170, shall be inspected by the director. The director shall inspect projects at various stages of the work requiring approval to determine that adequate control is being exercised. Stages of work requiring inspection include, but are not limited to, preconstruction, installation of BMPs, land disturbing activities, installation of utilities, landscaping, retaining walls, and completion of project. When required by the director, a special inspection and/or testing shall be performed.

E. Enforcement Authority. The director shall have the authority to initiate enforcement of this chapter. (Ord. 1655 § 1, 2006).

13.26.290 Enforcement.

The following subsections contain the enforcement processes and penalties associated with violations of this chapter. The definitions contained in this chapter supplement this section and shall apply in replacement (where duplicates exist). Reference to “director” in this section shall mean the respective director or his designee for the development services and utility departments. The director or designee has the authority to reassign any of the investigations identified in this section to any other city employee within the director’s supervision or to assign the investigation to another employee with approval by the employee’s supervisor.

A. Civil Violations. The following constitute civil violations of this chapter:

1. General. It is a violation to not comply with any requirement, or to act in a manner prohibited by this chapter, permits or other approvals, correction notices, stop work orders, or notices of violation issued pursuant to this section;

2. Aiding and Abetting. It is a violation to aid, abet, counsel, hire or otherwise procure another person to violate this chapter, permits or other approvals, correction notices, stop work orders, or notices of violation issued pursuant to this section;

3. Interference. It is a violation for any person to interfere with or impede the correction of any violation, or compliance with any correction notices, stop work orders, emergency orders, notices of violation, or the abatement of any nuisance;

4. Altering a Posted Order. It is a violation for any person to remove, obscure, or mutilate any posted order of the director or his designee, including correction notices, stop work orders, emergency orders, or notices of violation issued pursuant to this section; and

5. Continuing Work. It is a violation for any work to be done after service or posting of a notice of violation, emergency order, stop work order, or correction notice until authorization is given by the director or his designee; provided, work necessary to perform the required corrective action may be performed and would not constitute a violation.

B. Liability and Defenses of Responsible Persons.

1. Who Must Comply. It is the intent of this section to place the obligation of compliance with this chapter, permits or other approvals, correction notices, stop work orders, or notices of violation issued pursuant to this section upon responsible person(s).

2. Liability. Each responsible person is jointly and severally liable for violations of this chapter, permits or other approvals, correction notices, stop work orders, or notices of violation issued pursuant to this section. The director, his designee, or an enforcement officer may take enforcement action, in whole or in part, against any responsible person. All applicable civil penalties may be imposed against each responsible person(s).

C. Defenses. A responsible person shall not be liable under this section when the responsible person proves, by a preponderance of the evidence, one of the following:

1. The violation was caused solely by an act of God;

2. The violation was caused solely by another responsible person over whom the defending responsible person had no authority or control, and the defending responsible person could not have reasonably prevented the violation;

3. The violation was caused solely by a prior owner or occupant when the defending responsible person took possession of the subject property without knowledge of the violation, after using reasonable efforts to identify violations; provided, the defending responsible person shall be liable for all continuing, recurrent, or new violations after becoming the owner or occupant of the subject property; or

4. The responsible person implemented and maintained all appropriate drainage control facilities, treatment facilities, flow control facilities, erosion and sediment controls, source controls, and best management practices identified in this chapter, correction notices, stop work orders, or notices of violation to correct a violation, or as otherwise identified and required by the director in writing.

D. Right of Entry – Substantial, Present, or Imminent Danger – Emergency Entry. The director, his designee, or an enforcement officer may enter any property to investigate and correct a condition associated with prohibited discharges, grading, drainage, erosion control, drainage water, or a drainage facility when it reasonably appears that the condition creates a substantial

and present or imminent danger to the public health, safety, welfare, the environment, or public or private property without permission or a warrant of abatement or other order from a court with competent jurisdiction only in the case of an extreme emergency placing human life, property, or the environment in immediate and substantial jeopardy, which requires corrective action before either permission or warrant or another court order can be obtained.

E. Enforcement Process. The provisions of this section may be utilized when the director, his designee, or the enforcement officer determines that a violation of this chapter, permits or other approvals, correction notices, stop work orders, or notices of violation issued pursuant to this section has occurred or is occurring.

1. Voluntary Correction Process.

a. At the discretion of the director, his designee, or the enforcement officer, reasonable attempt to secure voluntary correction may be pursued by contacting the responsible person(s) for the violation when possible, explaining the violation, providing education on how to avoid or otherwise correct the violation, and requesting correction.

b. As part of the city's attempt to secure voluntary compliance, the city may require the responsible party to perform, including but not limited to, the following:

i. Implementation of business practices which prevent the violation from occurring again;

ii. Implementation of more stringent or additional best management practices to mitigate or correct source control to cease the exceedance of the prohibited discharge;

iii. Elimination of the cause or contributing factor to the known or likely violation of water quality standards and of the city's NPDES permit; or

iv. Construction or installation of a facility or structural modifications to prevent the pollutant from entering the storm and surface water system.

c. In addition to the provisions contained in subsection (E)(1)(b) of this section, during the voluntary correction process, the city may:

i. Issue a correction notice;

ii. Issue a stop work order to cease all ongoing development work or activity, except for work necessary to correct or mitigate the violation, or to regain compliance; or

iii. Execute a voluntary correction agreement.

d. No civil penalty shall be imposed during the voluntary correction process; provided, penalties may be issued in connection with execution of a voluntary correction agreement.

2. Notice of Violation. The director, his designee, or the enforcement officer may issue a notice of violation when the following circumstances occur:

- a. When there are violations of this chapter, permits or other approvals, correction notices, stop work orders, or notices of violation issued pursuant to this section;
- b. When the violation is determined to be an illicit connection and subsection (C)(4) of this section does not apply;
- c. When the director reasonably determines based on the provisions and stated purpose of this chapter that the activity requires issuance of a notice of violation.

F. Procedural Requirements.

1. Contents. The content of a notice of violation or stop work order for purposes of administering this section shall include the following:

- a. A description of the violation;
- b. A description of the corrective action required to bring the property into compliance;
- c. A date by which the corrective action shall be completed; and
- d. A description on how to appeal the notice of violation or stop work order.

2. Delivery. The correction notice, stop work order, notice of violation, or stop work order shall be personally served on the responsible person(s), posted conspicuously on the premises, or mailed to responsible person(s) with delivery confirmation.

G. Penalties. The director or hearing examiner, after considering all available information, shall assess a penalty for each violation described in subsection A of this section but the amount of the penalty may be modified based on the mitigating factors set forth below:

1. Schedule of Civil Penalties. The director or hearing examiner shall determine penalties as follows:

a. Maximum Penalty. A violation described in subsection A of this section is subject to a civil penalty of up to \$500.00 per day. Each day or portion thereof during which the violation exists is a separate civil violation and may be considered a repeat violation as described in subsection (G)(2) of this section.

b. Commencement Date. The penalty shall commence on the date of the violation, unless otherwise provided for in a notice of violation.

c. Mitigating Factors. The penalty shall be assessed by the director or hearing examiner based on the severity of the violation, taking into account the following mitigating factors described below:

- i. Was the responsible party willful or knowing of the violation?
- ii. Was the responsible party unresponsive in correcting the violation?
- iii. Was there improper operation or maintenance?
- iv. Does the violation provide economic benefit for noncompliance?
- v. Does the discharge result in adverse economic impact to others?
- vi. Will cleanup activities be able to fully mitigate or remediate the impacts?
- vii. Is there a history of violations?
- viii. Were there unforeseeable circumstances that precluded compliance? and
- ix. Did the responsible party make a good-faith effort to comply?

2. Repeat Violations. For repeat violations that occur within two years of a previous violation, the director or hearing examiner may impose the following penalties, taking into account the mitigating factors described in subsection (G)(1) of this section:

- a. For the first repeat violation, the penalty may equal up to \$1,000 per day;
- b. For the second repeat violation, the penalty may equal up to \$2,000 per day;
- c. For the third repeat violation, the penalty may equal up to \$3,000 per day;
- d. For the fourth repeat violation, the penalty may equal up to \$4,000 per day; and
- e. For each additional violation that may occur beyond the fourth repeat violation, the penalty may equal up to \$5,000 per day.

3. Allocation of Penalties. In the event a notice of violation is issued against more than one responsible person(s), recoverable penalties, costs, and expenses may be allocated among the responsible person(s) based upon the extent to which each responsible person's acts or omissions caused the violation. If this factor cannot easily be determined, the following may be considered:

- a. Awareness of the violation;
- b. Ability to correct the violation;

- c. Ability to pay the damages, costs, and expenses;
- d. Cooperation with governmental agencies;
- e. Degree to which any impact or threatened impact on water or sediment quality, human health, the environment, or public or private property is related to acts or omissions by each responsible person;
- f. Degree to which the responsible persons made good-faith efforts to avoid a violation or to mitigate its consequences; and
- g. Other equitable factors.

H. Collection of Monetary Penalty and Abatement Costs.

1. The monetary penalty constitutes a personal obligation of the responsible person to whom the notice of violation is directed. Any monetary penalty assessed must be paid to the city at the permit center within 10 calendar days from the date of mailing of the hearing examiner's decision or a notice from the city that penalties are due;

2. The city attorney or her designee is authorized to take appropriate action to collect the monetary penalty;

3. The city ~~will~~ ~~may~~ take appropriate action to collect all monies spent by the city to abate existing violations of this chapter, permits or other approvals, correction notices, stop work orders, or notices of violation issued pursuant to this section; Those costs create a joint and several personal obligation.- The city may collect these costs by turning the debt over to a collection agency, filing a civil lawsuit, filing a lien or other legal means;

4. The responsible person named in a notice of violation is not relieved of the duty to correct the violation by paying the penalty associated with such violations.

I. In the event of a conflict between this chapter and any other provision of the Milton Municipal Code or city ordinance providing for a civil penalty, this chapter shall control.

J. For the purposes of this code, whenever "civil infraction" and "civil penalty" are used in any code, ordinance or regulation of the city, these terms shall be deemed to have the same meaning as the terms "civil violation" and "monetary penalty," respectively, as used herein.

K. If any one or more sections, subsections or sentences of this chapter are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this chapter and the same shall remain in full force and effect.

L. Appeal provisions set forth in MMC [17.78.050](#) et seq. shall apply to appeals of notice of violation and stop work order issued pursuant to this section. Unless it is timely appealed to the

hearing examiner, the notice of violation shall be final. (Ord. 1862 § 3 (Exh. B), 2015; Ord. 1655 § 1, 2006).

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~~These time limits are based upon the average time between storm events for the two periods based upon SeaTac rainfall. These time limits may be adjusted by a local government if it can document different average times between storm events. Adjustments are subject to review and approval by Ecology.~~


Passed by the Milton City Council the 21st day of February, 2017, and approved by the Mayor, the 21st day of February, 2017.

APPROVED:




DEBRA PERRY, MAYOR

ATTEST/AUTHENTICATED:



KATIE BOLAM, CITY CLERK

BY 

WILLIAM M. CAMERON, CITY ATTORNEY

FILED WITH THE CITY CLERK: 2-21-2017
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