

ORDINANCE NO. 3100

AN ORDINANCE OF THE CITY OF LONGVIEW REPEALING AND REPLACING CHAPTER 17.80 OF THE LONGVIEW MUNICIPAL CODE, WITH A NEW CHAPTER TO BE ENTITLED "STORMWATER MANAGEMENT," ALSO TO BE CODIFIED AS CHAPTER 17.80 LMC, TO REGULATE THE ILLICIT DISCHARGE OF POLLUTANTS INTO THE CITY'S STORMWATER UTILITY AND TO GUIDE AND ADVISE ALL WHO MAKE USE OF, CONTRIBUTE WATER TO, OR ALTER THE CITY DRAINAGE SYSTEM, AND TO ENSURE MAINTENANCE OF ALL STORMWATER FACILITIES WITHIN THE CITY BY SETTING MINIMUM STANDARDS FOR THEIR INSPECTION AND MAINTENANCE.

WHEREAS, the City desires to provide for the health, safety, and general welfare of its citizens; and

WHEREAS, the City finds that development patterns and illicit discharges together significantly increase water pollution and localized flooding risk, harming the ecological balance of receiving waters and posing safety hazards to life and property; and

WHEREAS, the City finds that such hazards and risks will be reduced in the future by requiring runoff quality and quantity controls for development, requiring long-term maintenance of stormwater facilities, and regulating illicit discharges; and

WHEREAS, the City is required to be in compliance with the Western Washington Phase II Municipal Stormwater NPDES Permit (Phase II Permit) by August 15, 2009 and WAC 173-218, the Underground Injection Control (UIC) program to regulate stormwater discharges to groundwater through infiltration systems created under the Phase II Permit; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LONGVIEW DO ORDAIN AS FOLLOWS:

SECTION 1.

The current Chapter 17.80 is hereby repealed and replaced in its entirety with a new Chapter 17.80, to read in its entirety as follows; provided manifest and numbering errors shall be corrected prior to publication:

CHAPTER 17.80 STORMWATER MANAGEMENT

Sections:

- 17.80.010 Purpose.**
- 17.80.020 Definitions.**
- 17.80.030 Applicability.**
- 17.80.040 General Requirements.**
- 17.80.050 Standards for Development.**
- 17.80.060 Inspections and Sampling.**
- 17.80.070 Industrial, Commercial, and Construction Discharges.**
- 17.80.080 Easements, Deeds, and Education.**
- 17.80.090 Dedication of Stormwater BMPs.**
- 17.80.100 Maintenance.**
- 17.80.110 Operation and Maintenance Agreement and Plan.**
- 17.80.120 Financial Guarantees.**
- 17.80.130 Protection of Facilities and Watercourse.**
- 17.80.140 Pollution Reporting and Responses.**
- 17.80.150 Enforcement.**
- 17.80.160 Suspension of Work and Access.**
- 17.80.170 Administration.**
- 17.80.180 Adjustments, Exceptions, and Appeals.**
- 17.80.190 General Provisions.**

17.80.010 PURPOSE.

The purpose of this Chapter 17.80 LMC is to provide for the health, safety, and general welfare of the citizens of the City of Longview through:

- A. The regulation of illicit discharges to the storm drainage system to the maximum extent practicable as required by federal and state law.
- B. The regulation of runoff from construction, development, and redevelopment.

This Chapter 17.80 LMC establishes methods for controlling the introduction of runoff and pollutants into the municipal storm drain system (MS4) in order to comply with requirements of the Western Washington Phase II Municipal Stormwater NPDES Permit process.

The objectives of this Chapter 17.80 LMC are to:

- A. Regulate the contribution of runoff and pollutants to the storm drain system from stormwater discharges;
- B. Prohibit illicit connections and discharges to the storm drain system;
- C. Establish legal authority to inspect, monitor, and enforce as necessary to ensure compliance with this Chapter 17.80 LMC;
- D. Minimize water quality degradation in streams, ponds, lakes, wetlands and other water bodies;

- E. Minimize the degradation of habitat and habitat forming processes in streams, ponds, lakes, wetlands, and other water bodies;
- F. Minimize the impact of increased volume and runoff rates, flooding, increases in stream temperature, erosion and sedimentation caused by land development and maintenance practices;
- G. Promote site planning and construction practices that are consistent with natural geological, topographical, vegetative, and hydrological conditions;
- H. Maintain and protect the City's stormwater management infrastructure and those downstream;
- I. Minimize disruption of hydrologic functions, patterns, and processes;
- J. Regulate the contribution of pollutants to the stormwater drainage system from illicit discharges and discharges from development and redevelopment;
- K. Provide long-term responsibility for and maintenance of stormwater BMPs; and,
- L. Meet the minimum requirements as established in WAC 173-218 and the NPDES Phase II permit.

17.80.020 DEFINITIONS.

For the purposes of this Chapter 17.80 LMC, the following definitions shall mean:

1. **Amenity.** A pleasant and/or engaging feature that increases attractiveness, value, and/or understanding of stormwater.
2. **Authorized Enforcement Agency.** An agency authorized by federal, state, or local statute or regulations, to review, permit, and inspect development, commercial, or industrial activities, or to enforce environmental regulations.
3. **Best Management Practices (BMP).** The schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other structural or managerial practices that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of the State or the stormwater drainage system.
 - a. **Source control BMP.** A BMP that is intended to prevent pollution from entering stormwater.
 - b. **Treatment BMP.** A BMP that is intended to remove pollution from stormwater.
 - c. **Flow control BMP.** A BMP that is intended to mitigate the impacts of increased surface and stormwater runoff rates generated by development.
 - d. **Low Impact Development BMP.** A stormwater management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic pre-development hydrologic functions.
 - e. **Experimental BMP.** Any treatment or methodology proposed for treatment or management of stormwater that is not in a current stormwater manual approved by Ecology.
4. **Bioretention.** An integrated stormwater management practice that uses the chemical, biological, and physical property of plants, microbes, and soils to remove or retain pollutants from stormwater runoff. Bioretention facilities are depressions

that can be isolated detention cells, swales for conveyance as well as treatment, or a connected-cell hybrid of the two. Bioretention facilities include compost amended soils, landscape plantings selected for tolerance to a range of conditions and a mulch layer.

5. **CFR.** The Code of Federal Regulations.
6. **City.** The City of Longview.
7. **Clearing.** The destruction and removal of vegetation by manual, mechanical, chemical or other such method.
8. **Common plan of development or sale.** A site where multiple separate and distinct construction activities may be taking place at different times on different schedules, but still under a single plan. Examples include: phased projects and projects with multiple filings or lots, even if the separate phases or filings/lots will be constructed under separate contract or by separate owners (e.g. a development where lots are sold to separate builders); a development plan that may be phased over multiple years, but is still under a consistent plan for long-term development; and projects in a contiguous area that may be unrelated but still under the same contract, such as construction of a building extension and a new parking lot at the same facility. If the project is part of a common plan of development or sale, the disturbed area of the entire plan shall be used in determining permit requirements.
9. **Clean Water Act (CWA).** The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
10. **CDID#1.** Consolidated Diking Improvement District #1 (CDID #1). The Diking District that operates in and around the City of Longview.
11. **Critical areas.** Areas defined in Chapter 17.10 LMC, and any subsequent amendments thereto, with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, including unstable slopes, and associated areas and ecosystems.
12. **Detention.** The temporary storage of stormwater to facilitate the release of stormwater runoff from the site at a slower rate than it is collected by the stormwater facility system.
13. **Development.** The new development or redevelopment, including a combination thereof, or any work at a project site.
14. **Director.** The City of Longview Public Works Director or his/her designee.
15. **Ecology (DOE).** The Washington State Department of Ecology.
16. **Environment.** The air, water, minerals, organisms, sunlight, climate and all other external factors on, surrounding, in the vicinity of, affecting or affected by a premise at any time.
17. **Erosion.** The wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep.
18. **Excavation.** The mechanical removal of earthlike material.
19. **Fill.** A deposit of earthlike material including, but not limited to dirt, sand, concrete, rubble, etc., placed by artificial means.
20. **Forest practice.** Any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to road and trail construction; harvesting, final and intermediate; pre-commercial

thinning; reforestation; fertilization; prevention and suppression of diseases and insects; salvage of trees; brush control; or slash burning.

21. **Hazardous materials.** Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
22. **Highly contaminated runoff.** Runoff that contributes a pollutant loading considered to be sufficient to cause or exacerbate the deterioration of receiving water quality or instream habitat conditions.
23. **Hyperchlorinated water.** The water that contains more than 10mg/Liter chlorine.
24. **Illicit connections.** An illicit connection is defined as either of the following:
 - a. Any drain or conveyance, whether surface or subsurface, which allows an illicit discharge to enter the storm drain system, including but not limited to floor drains, sewer cross connections, process wastewater discharges, and wash-bay runoff, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or,
 - b. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
25. **Illicit discharge.** Any direct or indirect discharge to waters of the State or the stormwater drainage system that is not composed entirely of stormwater except discharges expressly exempted in LMC 17.80.040 (C).
26. **Industrial activity.** The activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).
27. **Impervious surface.** A hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. 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 paving, packed gravel surfaces, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for purposes of determining whether the thresholds for application of minimum requirements are exceeded. However, open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling. Impervious surfaces that meet the criteria for full dispersion or that are fully infiltrated in compliance with the SWMWW shall be excluded in the determination of thresholds for compliance with this Chapter 17.80 LMC.
28. **Land disturbing activity.** Any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land

disturbing activity. Vegetation maintenance practices or gardening are not generally considered land-disturbing activities.

29. **LID Guidance Manual.** The January 2005 Low Impact Development Technical Guidance Manual for Puget Sound, prepared by the Puget Sound Action Team and the Washington State University Pierce County Extension as now or hereafter amended or replaced.
30. **Longview Stormwater Manual (Manual).** The manual, as adopted by this Chapter 17.80.040(A) LMC or as hereafter modified or replaced, that sets forth certain standards of design and specifications for development and storm drainage.
31. **LMC.** The Longview Municipal Code.
32. **Low Impact Development (LID).** A stormwater management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic pre-development hydrologic functions.
33. **Maintenance.** Maintenance and repair includes activities conducted on currently serviceable structures, facilities, and equipment that involve no expansion or use beyond that previously existing use. Maintenance includes those usual activities taken to prevent a decline, lapse, or cessation in the use of structures and systems. Those usual activities may include removal and replacement of nonfunctional or poorly functioning facilities, including cases where environmental permits require replacing an existing structure with a different type structure, as long as the functioning characteristics of the original structure are not changed. By way of example is the replacement of a collapsed, fish blocking, round culvert with a new box culvert under the same span, or width, of roadway.
34. **Maximum Extent Practicable (MEP).** Refers to paragraph 402(p)(3)(B)(iii) of the federal Clean Water Act which reads as follows: Permits for discharges from municipal storm sewers shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design, and engineering methods, and other such provisions as the Administrator or the State determines appropriate for the control of such pollutants.
35. **“Minimum Requirements” (MRs).** The Ecology’s Minimum Technical Requirement(s) for New Development and Redevelopment for land disturbances of one acre or more or smaller if part of a larger common plan of development or sale as more specifically set forth in LMC 17.80.050(G).
36. **Municipal Separate Storm Sewer System (MS4).** A conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):
 - a. owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the United States,

- b. designed or used for collecting or conveying stormwater,
 - c. which is not a combined sewer, and
 - d. which is not part of a Publicly Owned Treatment Works as defined at 40 CFR 122.2.
37. **National Pollutant Discharge Elimination System (NPDES).** The national program for issuing, modifying, revoking, and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the State from point sources. These permits are referred to as NPDES permits and, in the State, are administered by Ecology under authority delegated pursuant to 33 USC § 1342(b).
38. **Native vegetation.** Vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest (i.e. western Washington) 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.
39. **New development.** Land disturbing activities, including Class IV - general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of impervious surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development.
40. **“One Acre Threshold.”** The threshold for applicability of Ecology’s nine minimum requirements and Ecology’s Construction Stormwater NPDES permit. It is any land disturbance of one acre or more, or less if part of a larger common plan of development or sale.
41. **Owner.** The owner of property (including, but not limited to, premises, stormwater facility, watercourse, or development project) or his or her designee or other person(s) having charge or physical/operational control of the property or portions of the property, including, but not limited to contractor(s), manager(s), lessee(s) and/or operator(s).
42. **Person.** Any owner, individual, association, organization, partnership, firm, corporation or other entity recognized by law.
43. **Phase II Permit.** See the definition for Western Washington Phase II Municipal Stormwater Permit (Permit).
44. **Pollutant.** Anything which causes or contributes to water pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; yard wastes, refuse, garbage, litter, or other discarded or abandoned objects and accumulations; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform, animal waste, and pathogens; dissolved and particulate metals; and noxious or offensive matter of any kind.
45. **Pollution.** Contamination or other alteration of the physical, chemical, or biological properties of waterbodies, 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 waterbodies 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.

46. **Pollution Generating Surfaces.** Pollution-generating impervious surface (PGIS) and/or pollution generating pervious surfaces (PGPS), as defined in the SWMWW Volume I, Chapter 2. These are surfaces considered to be a significant source of pollutants in stormwater runoff. Such surfaces include those subject to vehicular use, industrial activities, storage of erodible or leachable materials, wastes, or chemicals, pesticides or fertilizers, or soil loss.
47. **Pre-developed condition.** For projects that are less than one acre and which are not part of a larger common plan of development or sale, pre-developed conditions are those prior to a development, typically pasture, landscaping, and impervious surfaces like pavement and structures, cumulative over conditions existing in 1999. Otherwise, consider pre-developed conditions to be the native vegetation and soils that existed at a site prior to the influence of Euro-American settlement; so the pre-developed condition shall be assumed to be a forested land cover unless reasonable historic information is provided that indicates the site was prairie prior to settlement.
48. **Premises.** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
49. **Project.** See the definition for Development.
50. **Project site.** That portion of premises or right of way subject to land disturbing activities, new impervious surfaces, or replaced impervious surfaces. The total projected area of new, replaced or new plus replaced impervious surfaces for subdivisions shall constitute a project site.
51. **Public Works.** The City of Longview Department of Public Works, their authorized representatives, or such other Department as may be designated by the City Manager.
52. **RCW.** The Revised Code of Washington.
53. **Receiving waters.** Bodies of water or surface water systems to which surface runoff is discharged via a point source of stormwater or via sheet flow.
54. **Redevelopment.** a) For sites meeting Ecology's one-acre threshold, it shall be: *"On a site that is already substantially developed (which means 35% or more of existing impervious surface coverage), 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; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities."* b) For projects that do not exceed the one acre threshold and which create less than 5,000 square feet of new impervious surface, redevelopment shall be projects where a City construction permit is required, such as the Building, Fill and Grade, Excavation and Grading permit, Right-of-Way, and Public Improvement permits.
55. **Regional facility.** A stormwater facility designed to address surface water runoff

problems on a basin or sub-basin level. Regional approaches are conditionally sanctioned in LMC 17.80.050(G)(3)(c) and (4).

56. **Replaced impervious surface.** For structures, the removal and replacement of any exterior impervious surfaces or foundation. For other impervious surfaces, the removal down to bare soil or base course and replacement.
57. **Routine maintenance.** Preventative or cyclical (weekly, monthly, etc.) maintenance that is an essential part of the on-going care and upkeep of a system or facility against normal wear and tear.
58. **Site.** The area defined by the legal boundaries of one or more parcels of land that is (are) subject to new development or redevelopment. For road projects, the length of the project site and the right-of-way boundaries define the site.
59. **State.** State of Washington.
60. **Soil.** 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.
61. **Stormwater.** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation, including surface runoff and drainage.
62. **Stormwater drainage plan.** The comprehensive report containing all of the technical information and analysis necessary for a regulatory agency to evaluate a proposed project for compliance with stormwater requirements.
63. **Stormwater drainage system.** See the definition for “Municipal Separate Storm Sewer System (MS4)”
64. **Stormwater facility (Facility).** A constructed component of a stormwater drainage system designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil/water separators, and biofiltration swales.
65. **Stormwater Management Manual for Western Washington (SWMWW).** This manual, as prepared by and updated by Ecology, contains BMPs to prevent, control or treat pollution in stormwater and reduce other stormwater-related impacts to waters of the State, and shall be interpreted to mean the current (most recent) edition. The Stormwater Manual is intended to serve as a reference and supplement to this Chapter 17.80 LMC to control the quantity and quality of stormwater runoff from new development and redevelopment.
66. **Stormwater master plan.** Documents illustrating the location, facility types and connections of the stormwater drainage system created and maintained for the comprehensive management of stormwater for urban areas and suburban fringe areas.
67. **Stormwater Pollution Prevention Plan (SWPPP).** A document which describes the BMPs and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.
68. **Underground Injection Control (UIC) Program.** A program created by Congress, and administered in the State by Ecology under Chapter 173-218 WAC to protect

underground sources of drinking water from discharges of fluids to the ground, by:

- a. Registering UIC wells with Ecology, and
 - b. Ensuring that current and future discharges to ground water are not endangered by pollutants in the discharge (non-endangerment standard). UIC wells are any manmade subsurface fluid distribution system designed to discharge fluids into the ground and consists of an assemblage of perforated pipes, drain tiles, or other mechanisms, or a dug hole that is deeper than the largest surface dimension. Subsurface infiltration systems include drywells, pipe or french drains, drain fields, and other similar devices. A UIC well may be used to manage stormwater when pollutant concentrations that reach groundwater are not expected to exceed State groundwater quality standards (Chapter 173-200 WAC).
69. **USC.** The United States Code.
 70. **WAC.** The Washington Administrative Code.
 71. **Waterbody.** Lakes, rivers, ponds, streams, inland waters, sloughs, ditches, and all other surface waters and watercourses within the jurisdiction of the State.
 72. **Western Washington Phase II Municipal Stormwater NPDES Permit (Phase II Permit).** A permit issued by Ecology under Sections 307, 402, 318, and 405 of the CWA that authorizes the discharge of pollutants to surface waters of the State from a “small” MS4 located either fully or partially within, an urbanized area as defined by the latest decennial census conducted by the U.S. Bureau of Census, or designated by the Department pursuant to 40 CFR 123.35(b) or 40 CFR 122.26(f).
 73. **Wetlands.** Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.
 74. **Vegetation.** Organic plant life growing on the surface of the earth.

Any term not defined herein shall be given its normal definition subject to guidance by definitions in the NPDES Phase II Permit, as well as federal, state and local codes.

17.80.030 APPLICABILITY AND EXEMPTIONS.

- A. **Applicability.** This Chapter 17.80 LMC shall apply to all:
 1. Water or pollutants directly or indirectly entering waters of the State or the storm drainage system generated on any developed and undeveloped lands; and
 2. New development, redevelopment, and construction site activities, unless explicitly exempted herein.

- B. Exemptions.** The following development activities are exempt from certain provisions of this Chapter 17.80 LMC:
1. Projects disturbing less than five acres that meet the requirements delineated in the Manual may apply for an “Erosivity Waiver” to be exempt from LMC 17.80.050(G)(2), the requirement to submit a Stormwater Pollution Prevention Plan (SWPPP).
 2. Commercial agriculture and forest practices regulated under WAC Title 222 are exempt from all technical and administrative requirements established in this Chapter 17.80 LMC. Class IV General Forest Practices that are conversions from timber land to other uses are not exempt.
 3. Road Maintenance:
 - a. The following road maintenance practices are exempt from Ecology’s additional nine Minimum Requirements [MRs #1-#9] as set forth in LMC 17.80.050 (G), for projects that disturb one (1) acre or more of land or that are part of a larger common plan of development or sale: 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.
 - b. Removing and replacing a paved surface to base course or lower, or repairing the roadway base itself, if impervious surfaces are not expanded, are considered redevelopment exempt from MRs #6 - #9. However, in most cases, only MR #2, Construction Stormwater Pollution Prevention, will be germane.
 - c. The following examples of redevelopment are considered new impervious surfaces and have no exemption: resurfacing by upgrading from dirt to gravel, asphalt, or concrete; upgrading from gravel to asphalt, or concrete (for example by extending the pavement edge without increasing the size of the road prism, or paving graveled shoulders); or upgrading from a bituminous surface treatment (“chip seal”) to asphalt or concrete.
 4. Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics are only subject to the local erosion control requirements, set forth in LMC 17.80.050 (B), and Ecology’s erosion control requirements, MR #2, set forth in LMC 17.80.050 (G).
 5. Normal landscape activities and gardening are exempt from LMC 17.80.050 (B) through (G).
 6. Areas below and protected by dikes operated by CDID#1 are exempt from Ecology’s flow control requirement MR #7, set forth in LMC 17.80.050 (G). Local flow control requirements still apply as per LMC 17.80.050 (C) and/or (E).

17.80.040 GENERAL REQUIREMENTS.

A. City of Longview Stormwater Manual (Manual). The Manual, as now or hereafter modified or replaced, is hereby adopted by reference for use in implementation of this Chapter 17.80 LMC. The Manual contains requirements and technical detail for stormwater modeling, facility design, pollution and flow control, and application of these methods. The

Director shall be authorized to modify the Manual, in accordance with the City's adopted Policies and Procedures, to reflect newly updated technical data, models, and other information.

B. Stormwater Best Management Practices (BMPs):

1. **General:** BMPs shall be used to minimize stormwater pollution and control stormwater flow. BMPs described and/or referenced in the Manual shall be used to comply with the standards in this Chapter 17.80 LMC.
2. **Low Impact Development (LID):** Low Impact Development BMPs shall be preferentially used as practicable in all activities subject to regulation in this Chapter 17.80 LMC. Approved LID BMPs include those methods described in the Low Impact Development Guidance Manual or the SWMWW.
3. **Spill and Source Control:** The owner of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from spill or loss of materials or wastes into the municipal storm drain system or watercourses through the use of structural and non-structural BMPs. Further, any person responsible for a premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section, LMC 17.80.040(B)(3). These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.
4. **Experimental BMPs:** Experimental BMPs are encouraged as a means of solving problems in a manner not addressed by the Manual in an effort to improve stormwater quality technology. Experimental BMPs must be approved prior to implementation by the Director, in accordance with the variance criteria outlined in LMC 17.80.180.

C. Discharge Prohibitions: No person shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain, or discharge into the storm drain system and/or surface or ground waters any material other than stormwater or allowable non-stormwater discharges.

1. **Exempt Non-Stormwater Discharges.** The following categories of non-stormwater discharges are allowed, unless they are identified as a significant source of pollution:
 - a. Diverted stream flows.
 - b. Rising ground waters.
 - c. Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)).
 - d. Uncontaminated pumped ground water.
 - e. Foundation drains.
 - f. Air conditioning condensation.
 - g. Irrigation water from agricultural sources that is commingled with urban stormwater.

- h. Springs.
 - i. Water from crawl space pumps.
 - j. Footing drains.
 - k. Flows from riparian habitats and wetlands.
 - l. Discharges from emergency fire fighting activities.
2. **Conditional Discharges.** The following categories of non-stormwater discharges are allowed if the conditions stated below are met, and unless they are identified by the City as a significant source of pollution:
- a. Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the MS4.
 - b. Dechlorinated swimming pool, hot tub, and similar discharges. These discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the storm drain system. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the storm drain system.
 - c. Non-stormwater discharges covered by another NPDES permit, provided, that the discharger is in compliance with that permit, waiver, or order and other applicable laws and regulations; and provided that written approval has been granted by the City for the discharge to the storm drain system.
 - d. Other non-stormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan (SWPPP) reviewed and approved in writing by the City, which addresses control of such discharges by applying all known and reasonable methods of prevention, control, and treatment (AKART) to prevent contaminants from entering surface and ground waters.
 - e. Discharges specified in writing by the Director as being necessary to protect public health and safety.
 - f. Dye testing is an allowable discharge, but requires a verbal notification to the Director prior to the time of the test.
3. **Other Conditional Discharges.** The following shall be addressed through public education and water conservation efforts to prevent illicit discharge:
- a. Discharges from lawn and garden watering and other irrigation runoff are permitted but shall be minimized.
 - b. 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 water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street.
4. **Prohibition of Illicit Connections.**
- a. The construction, use, maintenance or continued existence of illicit connections to the storm drain system, including but not limited to any sewage connection, is prohibited.

- b. 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.

D. Surface Water Quality Standards: All activities subject to the requirements of this Chapter 17.80 LMC are expected to comply with the water quality standards established in WAC 173-201A. The point of compliance is considered to be the first connection with the MS4 or waters of the State.

E. Ground Water Quality Standards. All activities subject to the requirements of this Chapter 17.80 LMC are expected to comply with WAC 173-200, water quality standards for groundwater, and WAC 173-218, the Underground Injection Control (UIC) program, to regulate stormwater discharges to groundwater through infiltration systems.

17.80.050 STANDARDS FOR DEVELOPMENT.

Development projects within the City shall provide erosion and stormwater controls in accordance with the thresholds and standards described herein.

A. General Applicability.

1. All projects shall protect the public right-of-way, the storm drainage system, receiving waters, and adjoining properties from the deposition of materials, discharge of sediments and other pollutants, and damage from increased surface and subsurface flow rates influenced by the project.
2. All projects shall comply with the City's general design and construction criteria for stormwater drainage systems contained in the Manual.

B. Erosion and Sediment Control.

Projects disturbing 5,000 square feet or more of land are required to:

1. Obtain a City Excavation and Grading permit for the project prior to the land disturbance (this permit may be waived if a Right-of-Way, Building, or Public Improvement permit for the same project has been issued);
2. Submit a site erosion and sediment control plan, and if necessary, any supplemental information such as narratives, specifications, and/or calculations for City approval; and
3. Provide and install adequate runoff controls per the City-approved site erosion and sediment control plan prior to land disturbing activity.

C. Basic Stormwater Control.

Projects creating 5,000 square feet or more of new impervious surfaces (cumulative over conditions existing in 1999) are also required to:

1. Submit a stormwater drainage plan and supporting information (e.g. design calculations, geotechnical report, details, specifications, and maintenance requirements); and
2. Satisfy water quality, quantity (detention), and amenity criteria as outlined in the Manual.

D. Source Control.

1. Any new development or redevelopment, regardless of size, that is identified by the City to have the potential to generate highly contaminated runoff shall design and implement a level of treatment commensurate with the risk.
2. All projects requiring City approval that are changing the intended use of a parcel to one identified in the Manual as needing oil/water separation, shall provide such treatment.

E. Redevelopment.

Projects that create and/or replace 5,000 square feet or more of impervious surface that are not otherwise required in paragraphs C and G of this section, LMC 17.80.050, to provide stormwater controls, shall select among and comply with at least one of a reduced and flexible set of controls, as described in the Manual.

F. Ecology's Construction Stormwater NPDES Permit.

Additionally, projects that disturb one (1) acre or more of land or that are part of a larger common plan of development or sale must obtain Ecology's Construction NPDES Permit if/as required by Ecology.

G. Ecology's Nine Minimum Requirements for Development and Redevelopment.

Additionally, new development, redevelopment, and construction site activities that result in land disturbance of one (1) acre or more, including projects less than one (1) acre that are part of a larger common plan of development or sale, must satisfy one or more of the following Minimum Requirements (MRs) required by Ecology, as set below:

1. Site Plan;
2. Construction SWPPP;
3. Source Control;
4. Preserve Natural Drainage;
5. On-site Runoff Management;
6. Runoff Treatment;
7. Flow Control (areas below and protected by dikes operated by CDID #1 are exempt from this requirement. Local flow control still applies, as delineated above);
8. Wetlands Protection; and/or
9. Operations and Maintenance.

These requirements are subject to the site planning and BMP selection and design criteria of Ecology's Stormwater Management Manual for Western Washington (SWMWW), or other equivalent manual approved by Ecology, provided that the following thresholds are met:

1. Development

- a. All new development shall be required to comply with MR #2.
- b. The following new development shall comply with MRs #1 through #5 for the new and replaced impervious surfaces and the land disturbed:
 - i. Creates or adds 2,000 square feet, or greater, of new, replaced, or new plus replaced impervious surface area, or

- ii. Has land disturbing activity of 7,000 square feet or greater.
- c. The following new development shall comply with MRs #1 through #9 for the new impervious surfaces and the converted pervious surfaces:
 - i. Creates or adds 5,000 square feet, or more, of new impervious surface area, or
 - ii. Converts $\frac{3}{4}$ acres, or more, of native vegetation to lawn or landscaped areas, or
 - iii. Converts $2\frac{1}{2}$ acres, or more, of native vegetation to pasture.

2. Redevelopment

- a. All redevelopment shall be required to comply with MR #2.
- b. The following redevelopment shall comply with Minimum Requirements #1 through #5 for the new and replaced impervious surfaces and the land disturbed:
 - i. The new, replaced, or total of *new plus replaced* impervious surfaces is 2,000 square feet or more, or
 - ii. 7,000 square feet or more of land disturbing activities.
- c. The following redevelopment shall comply with MRs #1 through #9 for the new impervious surfaces and converted pervious areas:
 - i. Adds 5,000 square feet or more of *new* impervious surfaces or,
 - ii. Converts $\frac{3}{4}$ acres, or more, of native vegetation to lawn or landscaped areas, or
 - iii. Converts $2\frac{1}{2}$ acres, or more, of native vegetation to pasture.
- d. 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 stormwater treatment facilities must be sized for the entire flow that is directed to them.
- e. An equivalent (flow and pollution characteristics) area within the same site can be used to meet the MRs. For public roads' projects, the equivalent area does not have to be within the project limits, but must drain to the same receiving water.

3. Additional Requirements for Re-development Project Sites

- a. For road-related projects, runoff from the replaced and new impervious surfaces (including pavement, shoulders, curbs, and sidewalks) shall meet all the MRs (#1 through #9) if the new impervious surfaces total 5,000 square feet or more and total 50% 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.
- b. Other types of redevelopment projects shall comply with all the MRs (#1 through #9) for the new and replaced impervious surfaces if the total of new plus replaced impervious surfaces is 5,000 square feet or more, and the valuation of proposed improvements – including interior improvements – exceeds 50% of the assessed value of the existing site improvements.
- c. The City may adopt a plan and schedule, in accordance with the Adjustments, Exceptions, and Appeals (LMC 17.80.180) and/or Basin Planning provisions of this Chapter 17.80 LMC, to provide regional treatment, flow control, and/or

wetlands protection to the replaced impervious surfaces of redevelopment projects.

- d. The City may grant a variance/exception to the application of the flow control requirements to replaced impervious surfaces if such application imposes a severe economic hardship per LMC 17.80.180.

4. **Basin/Watershed Planning**

The Director may allow alternative or regional approaches to treatment, flow control, and wetlands protection per the Basin Planning provisions of the City's Phase II permit.

17.80.060 INSPECTIONS AND SAMPLING.

A. Inspection:

1. **General Inspection.** For inspections pursuant to this Chapter 17.80 LMC or if the Director has cause to believe that a violation of this Chapter 17.80 LMC has been, is being, or is likely to be committed, the Director shall obtain permission from the owner to enter the premises to inspect for compliance with federal, state or local laws governing stormwater.
2. **Permit Inspection.** By submitting an application or receiving a permit for any development activity, the owner shall be considered to have granted permission to the Director to enter any premise for which a permit from the City has been requested or granted, and the Director shall be allowed ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the condition of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by local, state, or federal law. The Director will provide notice to the owner of his/her intent to enter the property for an inspection
3. **Presentation of Credentials.** When entering a property, the Director shall present identification credentials, state the reason for the inspection, and then enter the property to carry out the inspection.
4. **Premise Safety and Security.** If an owner has safety and security measures in force which require proper clearance before entry into the premises, the owner shall make the necessary arrangements to allow access to representatives of the City.
5. **Access Obstructions.** Any temporary or permanent obstruction to safe and easy access to the place or facility to be inspected and/or sampled shall be promptly removed by the owner at the written or oral request of the City and shall not be replaced. The costs of clearing such access shall be borne by the owner.
6. **Search Warrant.** If the Director does not have permission as provided in LMC 17.80.060 A(1) or (2), or is unable to locate the owner or is refused access to any part of the premises for which an inspection is to be performed, the Director may obtain a search warrant from any court of competent jurisdiction by showing probable cause that he/she believes that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order

issued hereunder, or to protect the overall health, safety, and welfare of the community or the environment.

7. **Imminent Hazard.** If the Director does not have permission as provided in LMC 17.80.060 A(1) or (2) or is unable to locate the owner or is refused access to any part of the premises from which an inspection is to be performed and he/she has good cause to believe the condition of the premises or of the private stormwater drainage system creates an imminent hazard to persons, property, or the environment, the Director may enter to solely abate the danger and must then obtain permission or a search warrant as provided in LMC 17.80.060(A)(6) for any further action.
8. **Delays.** Any unreasonable delays in allowing the City access as provided under this Chapter 17.80 LMC is a violation of this Chapter.

B. Inspection Parameters. Following compliance with LMC 17.80.060(A), inspections shall be as follows:

1. **Inspection for Cause.** Inspection for a possible violation of federal, state or local laws governing stormwater shall be in compliance with LMC 17.80.060(A).
2. **Inspection for Maintenance.** The Director shall conduct periodic inspections of public and private stormwater control facilities in order to ensure continued functioning of the facilities for the purposes for which they were constructed, and to ensure that maintenance is being performed in accordance with the standards of this Chapter 17.80 LMC and any maintenance schedule adopted during the plan review process for the property. The Director may also inspect for the purposes of observing source control BMPs. All inspections shall be documented in writing, and include any variations or discrepancies from the approved plan, and the resolution of such issues.
3. **Inspection for Construction.** The owner must notify Public Works prior to commencement of development activities, and prior to critical installation and stabilizations steps. The Director may conduct periodic inspections of the stormwater BMPs shown on the approved stormwater management design plan, and especially during critical installation and stabilization steps, or as required by the Phase II Permit. All inspections shall be documented in writing, and include any variations or discrepancies from the approved plan, and the resolution of such issues. Public Works may, at its discretion, issue verbal or written authorization to proceed with critical construction components, such as installation of permanent stormwater BMPs, based on stabilization of the drainage area and other factors, once a permit has been issued. Public Works shall have the right of entry as set forth in LMC 17.80.060(A) for the purpose of ensuring compliance with this Chapter 17.80 LMC and adherence to the approved plans.

C. Water Sampling and Analysis. After obtaining access as described in this Section 17.80.060(A), water sampling and analysis for determination of compliance with this Chapter 17.80 LMC shall be as follows:

1. **Sample Collection.** When the City has reason to believe that a violation exists or is occurring on a premise, the Director is authorized to set up on the premises such

devices as are necessary to conduct sampling, inspection, compliance monitoring, or flow measuring operations.

2. **Sample Analysis.** Analysis of samples collected during investigation of potential violations shall be analyzed by a laboratory certified by Ecology as competent to perform the required analysis using standard practices and procedures.
3. **Cost of Sample Collection and Analysis.** If it is determined that a violation of this Chapter 17.80 LMC exists on the premises, the owner shall pay the City's actual costs for collecting samples and for laboratory analysis of those samples. If it is found that a violation does not exist, the City will pay such charges.

17.80.070 INDUSTRIAL, COMMERCIAL, OR CONSTRUCTION DISCHARGES

A. **Applicability.** This Section, LMC 17.80.070, applies to all facilities that have stormwater discharges associated with industrial, commercial, and construction activity.

B. **Proof of Compliance.** Proof of compliance with an industrial or construction NPDES discharge permit may be required in a form acceptable to the City prior to the allowing of discharges to the stormwater drainage system.

C. **Access to Facilities.**

1. Access to premises and facilities shall be the same as provided in LMC 17.80.060(A).
2. The City shall have the right to set up on any facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of the facility's direct or indirect discharges to the stormwater drainage system.
3. The City has the right to require the owner of a facility that directly or indirectly discharges to the stormwater drainage system to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner at their own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

17.80.080 EASEMENTS, DEEDS, AND EDUCATION

A. **Easements.** Storm drainage easements shall be required where the public conveyance, storage, or treatment of stormwater is identified on the stormwater management design plan, and where City access is needed to maintain and/or inspect structural or non-structural stormwater measures. Easements shall be of a width and location specified in the Manual, pre-approved by the Director prior to plat approval, and recorded with the Cowlitz County Auditor and identified on all property deeds. Easements may also be required at time of development, for non-public conveyance or storage of stormwater where filling or blocking of such conveyance or storage may cause flooding on adjacent or nearby property.

B. Deeds and Covenants for LID. Property deed restrictions and property owner/building covenants shall be required and recorded with the Cowlitz County Auditor for all properties with onsite LID BMPs to ensure that the stormwater management applications continue to function as designed. The deed restrictions or covenants shall specifically address and/or append the requirements and responsibilities for long-term management and maintenance of any LID BMPs as set forth in the Manual.

C. Education for LID. Education measures (e.g. fact sheet or brochure) describing the functions of conservation areas and LID BMPs shall be developed and distributed during the initial and all successive sales of properties using LID BMPs.

17.80.090 DEDICATION OF STORMWATER BMPs.

The City may accept a dedication of a stormwater facility, together with necessary easements and appurtenances, upon a determination and acceptance, as provided herein, except that dedications made during the subdivision platting process shall not be subject to the following process:

- 1. Preliminary Determination by Public Works:** Upon receipt by the City of an offer of dedication of a stormwater facility, Public Works shall make a preliminary determination whether or not the dedication of the facility is appropriate to protect the public health, safety and general welfare, and furthers the goals of the City's stormwater management program and/or associated watershed plans. Budgetary implications may be a component of the determination. Public Works shall forward its determination to the Director. Prior to making its determination, Public Works shall inspect the facility to determine whether it has been properly maintained and is in good repair, and may condition the recommendation of acceptance on completion of any necessary maintenance items. The Director may reject the offer of dedication or forward the offer to the City Manager for acceptance.
- 2. Acceptance by the City:** The City Manager may accept or reject the offer of dedication. Upon acceptance, the document dedicating the stormwater facility shall be recorded with the Cowlitz County Auditor at the owner's expense.
- 3. Owner to Provide Documentation:** The owner, at his or her sole expense, shall provide any document or information requested by the City in order for a decision to be reached on whether or not to accept the facility.

17.80.100 MAINTENANCE.

A. Maintenance Required.

All erosion controls, watercourses, and stormwater facilities (including structural and non-structural BMPs, catch basins and other protective devices, necessary access routes, and appurtenances) shall be operated, maintained, and promptly repaired in accordance with the manufacturer's specifications, the SWMWW, Manual, the approved design, and the stormwater maintenance agreement and plan.

B. Responsible Party.

Owners are responsible for the maintenance, operation and repair of stormwater drainage systems and BMPs on their properties, unless such responsibility is transferred to the City or to another entity as provided in LMC 17.80.090.

C. Records of Maintenance Activities

The responsible party shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five (5) years. These records shall be made available to Public Works during inspection of the BMP(s) and at other reasonable times upon request.

17.80.110 OPERATION & MAINTENANCE AGREEMENT AND PLAN.

A. Requirement for Operation and Maintenance Agreement & Plan: For all stormwater management facilities and required BMPs, the owner shall execute a stormwater maintenance agreement in a form approved by the Director and shall record the plan with the Cowlitz County Auditor prior to Public Works granting final approval for the plan, or any plan of development for which a permit is required under this Chapter 17.80 LMC.

B. Required Elements for Operation and Maintenance Agreement & Plan: The stormwater operation and maintenance agreement shall be in a form approved by the Director, and shall, at a minimum, provide for the following:

1. **Designate Responsible Party:** Designate the owner or other legally established entity (responsible party) which shall be permanently responsible for the operation and maintenance of the structural or non-structural measures required by the plan.
2. **Pass Responsibility to Successors:** Pass the responsibility for such operation and maintenance to successors in title.
3. **Right of Entry for Stormwater Authority:** Grant the City and its representatives the right of entry for the purposes of inspecting stormwater BMPs, for abatement of a public nuisance, or correction of a violation of this Chapter 17.80 LMC as provided in LMC 17.80.060(A).
4. **Operation and Maintenance Plan:** Ensure the continued performance of the maintenance obligations required by the plan and this Chapter 17.80 LMC through a maintenance plan (which may be an attachment to the actual maintenance agreement). The plan shall include a list of inspection and maintenance tasks, a schedule for routine inspection and maintenance, actions to be taken when maintenance is required, and other items listed in the Manual.

17.80.120 FINANCIAL GUARANTEES.

A. Stormwater Performance Bond: At the discretion of the Director, the applicant seeking to build a stormwater facility may be required to furnish a stormwater performance bond, or equivalent financial instrument in a form acceptable to the City, in an amount that would cover all costs associated with the construction of the facility. This bond shall be in

a form approved by the Director to secure the installation and performance of the stormwater facilities identified in the approved stormwater management design plan. The applicant shall be responsible for any costs incurred by the City to secure performance of the stormwater facilities that are in excess of the amount of the bond.

1. **Term of Performance Bond:** The stormwater performance bond or the unexpended or unobligated portion thereof, shall be released to the applicant within sixty (60) days of issuance by Public Works of the final acceptance of the permanent stormwater BMP by the Director, subject to LMC 17.80.120(A)(2). A final inspection by Public Works is required before any performance bond will be released.
2. **Term Extended for Initial Maintenance:** At the discretion of the Director, the term of a stormwater performance bond may be extended beyond the time period specified above to cover a reasonable period of time for testing the BMPs during storm events and for initial maintenance activities, in lieu of the maintenance escrow requirement described in LMC 17.80.120(B). The time shall not exceed two (2) years beyond final acceptance of the construction of the BMP, unless the Director determines that an extension is necessary to ensure that the facility satisfies the maintenance and performance requirements identified in the Manual.
3. **Partial Release of Bond:** Public Works shall have the sole discretion to adopt provisions for a partial pro-rata release of the performance bond on the completion of various stages or phases of development.
4. **Bond Estimation:** The applicant shall be responsible for determining the estimated bond value and submitting the estimation to Public Works for approval. If the Director disagrees with the applicant's estimate, the Director shall determine a reasonable estimate. The bond value is to be 150 percent of the estimated cost, set or approved by the Director, for the City to construct the stormwater features.

B. Maintenance Escrow Requirement.

At the discretion of the Director, the owner may be required to post a cash escrow, maintenance bond, letter of credit, or other form of performance security in a form acceptable to the City and in an amount that would cover costs associated with maintenance and repair or replacement in the event of BMP failure. This instrument is required to be posted prior to completion of construction and release of the Stormwater Performance Bond, and then remain in place for a minimum of two (2) years.

17.80.130 PROTECTION OF FACILITIES AND WATERCOURSES.

A. Protection. It is a violation for any person to break, block, damage, destroy, uncover, deface or tamper with any watercourse, stormwater facility, or erosion control system.

B. Responsibility. Every owner of a premises with a stormwater facility or through which a watercourse passes shall keep and maintain that facility or that part of the watercourse within the premises free of pollutants, trash, debris, excessive vegetation, and other obstacles that would contaminate or significantly retard the flow of water into or through the watercourse. In addition, the owner shall maintain existing privately owned structures within

or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the facility or watercourse.

17.80.140 POLLUTION REPORTING AND RESPONSE.

A. Reporting. Notwithstanding other requirements of law, as soon as any person who has information of any known or suspected spill, deposition, discharge, or other loss of materials which are resulting or may result in illicit discharges or pollutants discharging to stormwater shall notify the City. Notifications can be made to the City's Stormwater hotline, Public Works, or through such other convenient reporting processes as the City may provide.

B. Response. Notwithstanding other requirements of law, any person responsible for a premises or operation, or person responsible for emergency response for a premise or operation, and other responsible party, shall immediately take all necessary steps to ensure the discovery, containment, and full cleanup of water pollutants or potential pollutants is performed to the satisfaction of the City and/or Ecology. In the event of such a release of oil or hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least five (5) years.

17.80.150 ENFORCEMENT.

It shall be unlawful to violate the provisions of this Chapter 17.80 LMC. Enforcement of this Chapter 17.80 LMC shall be in accordance with Chapter 1.33 LMC or any other means available by local, state and/or federal law.

A. Liability for Installation and Maintenance. The owner of premises and all persons engaged in development or land-disturbing activity shall be liable, jointly and severally, for all costs incurred by the City in any public nuisance action taken hereunder, or on account of damage or threatened damage to City property or facilities or water bodies, or associated with remedial actions necessitated by the failure to install and/or maintain required erosion controls and/or stormwater facilities.

B. Remedies. Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this Chapter 17.80 LMC, the City may order compliance as outlined in Chapter 1.33 LMC. Such an order may require without limitation:

1. Installation, maintenance, or repair a component of a stormwater facility or BMP;
2. The performance of monitoring, analyses, and reporting;
3. The elimination of illicit connections or discharges;
4. That violating discharges, practices, or operations shall cease and desist;

5. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
6. Payment of a fine and/or administrative and remediation costs; and
7. The implementation of source control or treatment BMPs.

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

D. **City Action.** In addition to any other remedies the City may have under this Chapter 17.80 LMC or at law or in equity, nothing in this Chapter 17.80 LMC or elsewhere within this Code shall prevent the City from effecting repairs or maintenance to stormwater facilities if the Director determines that imminent danger to public safety, health or welfare, or public or private property, or the environment, including critical areas or habitat, is likely as a result of the actions or inaction of the owner(s). If the City effects repairs or maintenance, the cost will be charged to and payable by the owner(s) of the premises together with any penalties incurred under this Chapter 17.80 LMC and any costs of collection (including attorneys' fees), all of which shall be considered a lien against the subject premises, prorated against the beneficial users of the premises, placed on the tax bill and collected as ordinary taxes by the City, and also collectable as an in personam debt against the responsible party(s).

E. **Penalties:**

1. **Civil Penalties.** In addition to other remedies, civil penalties for violation(s) of this Chapter 17.80 LMC shall be imposed for remedial purposes and shall be assessed for each violation identified in a notice of violation, Notice and Order, or Stop Work Order, pursuant to LMC 1.33.430 and applicable state or federal laws.
2. **Criminal Penalties.** In addition to other remedies, the Director may forward to the office of City Attorney a detailed factual background of the alleged violation with a recommendation that a gross misdemeanor charge be filed against the person responsible for any willful violation of any provision of this Chapter 17.80 LMC. The court may order, in addition to any fine or jail time, that a person found to have committed a violation of this Chapter 17.80 LMC shall make restitution to any person damaged by the violation.
3. **Penalty Recovered.** Penalties recovered for violations shall be paid to the Stormwater utility except for reimbursement of costs and expenses incurred by other departments of the City.

F. **Residential and Charity Car Washing.** In conjunction with the enforcement process provided for herein, the City will take a public education approach to compliance for individual residential and charity car washing. These discharges shall be minimized through, at a minimum, water conservation efforts and public education activities that

encourage use of commercial carwashes, redirection of washwaters to a sanitary sewer or to pervious surfaces such as grass or gravel, and the use of phosphate-free soap.

17.80.160 SUSPENSION OF WORK OR ACCESS.

A. Suspension due to Illicit Discharges in Emergency Situations

The City, without prior notice, may suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons or property, or to the MS4 or Waters of the United States. It shall be unlawful for any person to fail to comply with an emergency suspension order. If any person fails to immediately comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize danger and damage to the environment, public safety, the storm drainage system, or waters of the State. An appeal shall not relieve any person of the obligation to comply with an emergency work order.

B. Suspension due to the Detection of Illicit Discharge

The City may, upon written notice, suspend all access to the stormwater drainage system to any person discharging to the stormwater drainage system in violation of this Chapter 17.80 LMC if such termination would abate or reduce an illicit discharge. The Director will notify a violator of the proposed termination of its MS4 access.

C. Suspension of Work.

Unpermitted clearing and grading or failure to provide required runoff controls for land disturbing activities shall result in an order to stop all work upon the site. After the stop-work period, the Director may allow work onsite to recommence, provided that such work is necessary to ensure compliance with this Chapter 17.80 LMC, permits, or an approved stormwater drainage plan or SWPPP. Once the site is found to be in compliance, land disturbing activities shall be allowed to continue.

D. Reinstatement.

Resumption of work or reconnection to the MS4 which has been suspended pursuant to this section, LMC 17.80.160, without the prior approval of the Director, constitutes a violation of this Chapter 17.80 LMC.

17.80.170 ADMINISTRATION.

A. Director: The Director shall administer, implement, and enforce the provisions of this Chapter 17.80 LMC.

B. Review and approval: The Director may approve, conditionally approve, or deny an application for activities regulated by this Chapter 17.80 LMC.

17.80.180 ADJUSTMENTS, EXCEPTIONS, AND APPEALS.

A. **Authority:** The Director may grant an adjustment or exception from the requirements of this Chapter 17.80 LMC. In so granting, the Director may prescribe conditions that are deemed necessary or desirable for the public interest.

B. **Adjustments:** The Director may grant adjustments to the requirements of this Chapter 17.80 LMC provided that a written finding of fact is prepared, that establishes the following:

1. The adjustment provides substantially equivalent environmental protection; and,
2. The adjustment is based on sound engineering practices, and the objectives of safety, function, environmental protection and facility maintenance, are met.

C. **Exceptions/Variances:** The Director may grant exceptions to the requirements of this Chapter, LMC 17.80, provided that a written finding of fact that establishes the following:

1. The exception will not increase risk to the public health and welfare, nor injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the State; and
2. The exception is the least possible exception that could be granted to comply with the intent of the Minimum Requirements.

Additionally, exceptions to LMC 17.80.050(G) may be granted only if such an application imposes a severe and unexpected economic hardship, according to the criteria provided in the Manual, and:

1. Prior legal public notice is provided of an application for an exception,
2. Legal public notice of the City's decision on the application is published,
3. Ecology approval is obtained for any jurisdiction-wide exception, and
4. The City maintains records, including the written findings of fact, of all granted exceptions to the MRs.

The applicant shall pay all costs to publish the legal public notices required by this provision.

D. **Prior approval:** Adjustments and variances shall be granted by the City prior to permit approval and construction. For developments exceeding the one-acre threshold, the City may grant project-specific design exceptions based on site-specific conditions as described in the Phase II Permit. However, City must secure Ecology approval prior to any jurisdiction-wide exception to the State requirements and standards.

E. **Duration of variance:** Variances shall be valid for two (2) years, unless used or granted for a shorter period or extended by the Director.

F. **Right of appeal:** Except as otherwise provided in this Chapter 17.80 LMC, all actions of the Director in the administration and enforcement of this Chapter 17.80 LMC shall be final and conclusive; unless appealed in accordance with Chapter 1.33 LMC.

17.80.190 GENERAL PROVISIONS.

- A. **Abrogation and Greater Restrictions:** It is not intended that this Chapter 17.80 LMC repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. The requirements of this Chapter 17.80 LMC should be considered minimum requirements, and where any provision of this Chapter 17.80 LMC imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.
- B. **Interpretation:** The provisions of this Chapter 17.80 LMC shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this Chapter 17.80 LMC.
- C. **Severability:** The provisions of this Chapter 17.80 LMC are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Chapter 17.80 LMC or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Chapter 17.80 LMC.
- D. **Liability:** The requirements of this Chapter 17.80 LMC are minimum standards and a person's compliance with the same shall not relieve such person from the duty of enacting all measures necessary to minimize the hydrologic impact of development and the pollution of receiving waters.
- E. **Intent:** The intent of this Chapter 17.80 LMC is to place the obligation of complying with its requirements upon the owner. Neither the City nor any officer, agent, or employee thereof shall incur or be held as assuming any liability by reason or in consequence of any permission, inspection or approval authorized herein, or issued as provided herein, or by reason or consequence of any thing done or act performed pursuant to the provisions of this Chapter 17.80 LMC.
- F. **Legal Authority:** This Chapter 17.80 LMC is adopted pursuant to authority conferred by and in accordance with the Permit.

SECTION 2.

This Ordinance shall be in full force and effect thirty (30) days after its final passage, adoption, and publication.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of _____, 20_____.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED:_____