ORDINANCE #1466

AN ORDINANCE OF THE CITY OF CLARKSTON, WASHINGTON RELATING TO THE ADOPTION OF REGULATIONS RELATING TO CONSTRUCTION AND POST-CONSTRUCTION STORMWATER CONTROL AND REGULATIONS AND ADDING A NEW CHAPTER, 14.21, TO THE CLARKSTON MUNICIPAL CODE.

WHEREAS, the City of Clarkston (the "City") is regulated under the Washington State Department of Ecology's Eastern Washington Phase II Municipal Stormwater Permit (the "Permit"); and

WHEREAS, the City will be adopting code policies and procedures as needed to comply with the Permit; and

WHEREAS, the Permit requires that a Stormwater Construction and Post-Construction Ordinance be developed and adopted no later than February 16, 2010, to be effective no later than February 16, 2011;

NOW, THEREFORE, the City Council of City of Clarkston, Washington, in a regular meeting assembled, does ordain as follows:

Section 1. A new Chapter 14.21 is added to Title 14 of the Clarkston Municipal Code to read as follows:

Chapter 14.21
CONSTRUCTION AND POST-CONSTRUCTION STORMWATER CONTROL AND REGULATIONS

Sections:

14.21.010 Policy and Purpose

It is the policy of the City to encourage development and redevelopment project proponents to maintain natural drainages and beneficial drainage patterns to the maximum extent possible, including reducing the total amount of impervious surfaces created by proposed projects. Developers and engineers are encouraged to apply innovative approaches such as Low Impact Development, and properly designed on-site retention to assist the City in meeting this policy objective.

The purpose of this ordinance is to establish minimum construction stormwater management requirements in order to comply with state and federal stormwater permits. This ordinance seeks to meet that purpose through the following objectives:

1. To enable City to comply with the National Pollution Discharge Elimination System permit, Washington Department of Ecology's Guidance for Underground Injection Control (UIC) wells that manage stormwater, and applicable federal and state regulations.
2. To regulate the contribution of pollutants, especially sediment, to the municipal separate storm sewer system (MS4) or UICs by stormwater discharges from development and redevelopment.
3. To protect the condition of state and federal waters for all reasonable public uses and ecological functions.
4. To provide long-term responsibility for and maintenance of construction stormwater Best Management Practices (BMPs).
5. To facilitate the integration of stormwater management and pollution control with other ordinances, programs, policies, and the comprehensive plan of City.
6. To establish legal authority to carry out all the inspection and monitoring procedures necessary to ensure compliance with this ordinance.
7. To facilitate compliance with state and federal standards and permits by owners of construction sites, developments, and permanent stormwater BMPs within City.

14.21.020 Definitions

"Agency" means the entities delegated the authority to implement and enforce this ordinance by City.

"Applicant" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns, who is responsible under this ordinance for filing the application, paying the fees, reporting to the agency or enforcement officer, scheduling inspections, filing as built drawings and requesting the stormwater certification of completion. It can mean the owner, developer, responsible engineer and contractors or subcontractors who must comply with the illicit discharge detection and elimination ordinance, erosion and sediment control plan or a stormwater pollution prevention plan until issuance of the stormwater system certificate of completion. Following issuance of the stormwater certification of completion, maintenance of the stormwater system will be the duty of the "responsible party" as defined below.

"Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and structural or managerial practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

"Bioretention treatment facilities" are vegetated treatment systems (typically grass) that remove pollutants by means of sedimentation, filtration, soil sorption, and/or plant uptake. They are typically configured as swales or filter strips. These facilities are designed to remove low concentrations and quantities of total suspended solids (TSS), heavy metals, petroleum hydrocarbons, and/or nutrients from stormwater.

"Certified Erosion and Sediment Control Lead or CESCL" is the employee designated as the responsible representative in charge of erosion and spill control. The CESCL shall be qualified in construction site erosion and sediment control regulatory requirements and BMPs, and shall have thorough knowledge and understanding of the Construction Stormwater Pollution Prevention Plan (SWPPP) for the project site.

"Channel" or "Waterway" means an open conduit, either naturally or artificially created, which periodically or continuously contains moving water, or which forms a connecting link between two bodies of water.

"Clearing" or "Site Clearing" means the removal of timber, brush, grass, ground cover or other vegetative matter from a site.

"Common Plan of Development" means 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.

"Construction site or Project site access/egress" is designated construction/project site entrances wherever traffic will be entering and leaving a construction/project site and traveling on paved roads or other paved areas within 1,000 feet of the site.

"Detention" means the release of stormwater runoff from the site at a slower rate than it is collected by the stormwater facility system, the difference being held in temporary storage with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

"Development" means new development, redevelopment, or both. See definitions

below.

"Downstream analysis" means an engineering analysis to identify any negative impacts post-project runoff on properties and drainage systems downstream of a development site, and identification of measures that will be implemented to mitigate or prevent identified impacts.

"Drainage control" means the management of drainage water. Drainage control is accomplished through the collection, conveyance, and discharge of drainage water, controlling the rate of discharge from a site, or separating, treating or preventing the introduction of pollutants.

"Drainage facility" means any facility, including best management practices, installed or constructed for the purpose of controlling the flow, quantity, and/or quality of drainage water. Drainage control facilities include, but are not limited to, all types of catch basins, pipes, detention/retention ponds, bioswales, and other structural and nonstructural components that handle surface water.

"Drainage system" means a system to collect, convey and control release of only drainage water. The system may serve public or private property. It includes constructed and/or natural components such as ditches, culverts, streams and drainage control facilities.

"Drainage water" means storm water, snow melt, surface water, surface and irrigation runoff, water from footing drains and other City approved drains or installed in compliance with this title and rules which may be adopted hereunder. Other water which is not an illicit discharge as defined in City Code shall be considered drainage water if it drains from the exterior of a building or structure, a pervious or impervious surface, or undeveloped land, or by surface or shallow subsurface flow.

"Ecology" means the Washington State Department of Ecology.

"Enforcement Officer" means the person or persons designated or appointed by the City or agency that is authorized to administer and enforce this Chapter, and their designees. Enforcement Officer will meet CESCL qualifications.

"Erosion" means the wearing away of the ground surface as a result of mass wasting or the movement of wind, water and/or ice.

"Erosion and Sediment Control" Any temporary or permanent measures taken to reduce erosion, control siltation and sedimentation, and ensure that sediment-laden water does not leave the project site.

"Erosion and Sediment Control BMPs" means BMPs that are intended to prevent erosion and sedimentation, such as preserving natural vegetation, seeding, mulching and matting, plastic covering, filter fences, sediment traps, and ponds. Erosion and sediment control BMPs are synonymous with stabilization and structural BMPs.

"Erosion and Sediment Control Plan" or "ESC Plan" means a set of plans indicating

the specific measures and sequencing to be used to control sediment and erosion on a project site during and after project activities. The ESC Plan shall be implemented beginning with initial soil disturbance and continue until final stabilization. Each ESC Plan shall bear the name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained together with the name of the principal contact at such firm and shall be accompanied by a filing fee.

"Grading" means any excavation, filling, or combination thereof, modification of land contours and/or modification of waterways or drainage areas. The physical manipulation of the earth's surface and/or drainage patterns in preparation for an intended development or redevelopment. Grading may be subject to stormwater regulation whether or not development or redevelopment is planned at the project site where grading is conducted.

"Hearing Officer" means the official appointed by the City for administrative hearings.

"Illicit discharge" means any direct or indirect non-stormwater discharge to the stormwater drainage system, except as permitted or exempted in City Ordinance 1456, Illicit Discharge Detection and Elimination Ordinance in Chapter 14.20.

"Impaired Waters" means those streams, rivers and lakes that currently do not meet their designated use classification and associated water quality standards under the Clean Water Act and listed on the most current State of Washington 303(d) list.

"Impervious Surface" is a relatively hard surface area, which either prevents or slows down the entry of water into the soil as under natural conditions prior to development. It is a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow different than the natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, paved parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled surfaces which similarly hinder the natural infiltration of stormwater.

"Inspector" means person designated by City or agency, inspection agency, or licensed civil engineer performing inspections mandated by this ordinance. An inspector will meet same training and certification requirements as an enforcement officer.

"Land Development" or "Development" means the division of land into lots or parcels in accordance with the City Subdivision Ordinance, and any clearing, excavation, dredging, drilling, filling, dumping, removal of earth and mineral materials, or other permanent or temporary modification of a project or construction site. For the purpose of this chapter, "development" also means any manmade change to improved or unimproved real estate located within the special flood hazard area, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling, temporary or permanent storage of equipment and works defined in this chapter.

"Land Disturbing Activity" means any activity that result 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, stockpiling materials and excavation. Compaction associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land-disturbing activity.

"Large Projects" are land development or redevelopment projects that disturbs one acre or more, or projects of less than one acre that are part of a common plan of development or sale, with ground disturbing activities resulting from clearing, grading, excavating, or stockpiling of fill material, including the cumulative acreage of the entire project whether in a single or in a multiphase project. A local stormwater permit is required for large projects. Additionally, Large Projects must also determine whether they are subject to the requirements of Ecology's Stormwater Construction Permit.

"Local Stormwater Permit" is a permit issued at the local level for medium and large projects and for projects that have additional environmental conditions described in Section 14.21.050(3).

"Medium Projects" are land development or redevelopment projects that disturb 5,000 square feet or more but less than one acre through clearing, grading, excavating, or stockpiling of fill material, including the cumulative acreage of the entire project whether in a single or in a multiphase project and/or has the potential to change natural drainage patterns. A local stormwater permit is required. If the project has the potential to directly affect impaired waters the agency has the discretion to require a stormwater pollution protection plan (SWPPP). Post-construction stormwater management tracking is waived.

"Municipal Separate Storm Sewer System (MS4)" or "Stormwater drainage system" includes, but is not limited to, the system of conveyances including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, street gutters, ditches, dry wells, retention and detention ponds, manmade channels, or storm drains owned and operated by the City.

"National Pollutant Discharge Elimination System (NPDES) Phase II Permit" means the "Eastern Washington Phase II Municipal Stormwater Permit" issued by the Washington State Department of Ecology with an effective date of February 16, 2007 and subsequent reissues.

"NPDES Construction Stormwater General Permit" means the statewide general permit for construction activities administered by the Department of Ecology. All projects disturbing one acre or more of ground and having the potential to discharge directly or indirectly to waters of the state must seek coverage under the permit or meet erosivity waiver criteria.

"New development" means any of the following activities: structural development, including construction of a new building or other structure; expansion or alteration of an existing structure that results in an increase in the footprint of the building or structure; land disturbing activities; creation or expansion of impervious surface; demolition; subdivision and short subdivision of land as defined in City Subdivision Code; Class IV general forest practices, as defined in WAC 22-16-050 that are conversions from timber land to other uses. No other forest practices or commercial agriculture are considered new development.

"Non-Stormwater Discharge" means any discharge to the storm drain system that is not composed entirely of stormwater.

"Point Source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, and container from which pollutants are or may be discharged to surface waters of the state. This term does not include return flows from irrigated agriculture.

"Pollutant" or "Pollution" shall be construed to mean such contamination or other alteration of the physical, chemical, or biological properties of any of the waters 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 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; as defined in RCW 90.48.020 as now existing or hereafter amended.

"Project Site" means any lot, parcel of land, street or highway right-of-way, or contiguous combination thereof, where new development, redevelopment, land disturbing activity, or grading work is proposed or performed.

"Licensed professional engineer or PE" means a person who is a licensed by the state of Washington to practice engineering.

"Receiving Water" means bodies of water or surface water systems to which surface runoff is discharged via a point source of stormwater or via sheet flow.

"Redevelopment" means a site that is already substantially developed, the replacement or improvement of impervious surfaces, including buildings and other structures, and replacement or improvement of impervious parking and road surfaces that is not part of a routine maintenance activity. Any new impervious surfaces, or any increase to existing impervious surface created by a redevelopment project are subject to the requirements for new development.

"Responsible Party" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns that is named on a stormwater maintenance agreement as responsible for long-term operation and maintenance of one or more stormwater BMPs.

"Retention" is the process of collecting and holding surface and stormwater runoff with no release or outflow.

"Retention/Detention Facility" is 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 stormwater runoff for

a short period of time and then release it to the surface and stormwater management system.

"Rough Grade" means a stage where grade conforms approximately to an approved plan.

"Sheet Erosion" The removal of a layer of exposed soil by the action of raindrop splash and runoff, as water moves in broad sheets over the land and is not confined in small depressions

"Small Projects" is a development or re-development project where land disturbing activities are less than 5,000 square feet and/or land disturbing activity does not have the potential to disturb or change existing drainage patterns. A local stormwater permit is not required. Post-construction stormwater management tracking is waived.

"Source Control BMPs" A structure or operation intended to prevent pollutants from coming into contact with stormwater through physical separation of areas or careful management of activities that are sources of pollutants. Source control BMPs are separated into two types. Structural source control BMPs are physical, structural, or mechanical devices or facilities that are intended to prevent pollutants from entering stormwater. Operational BMPs are non-structural practices that prevent or reduce pollutants from entering stormwater.

"Stabilization" means the use of practices that prevent exposed soil from eroding.

"Start of Project/Construction" The first land disturbing activity associated with a development, including land preparation such as clearing, grading, and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

"Stop Work Order" means an order issued that requires that all activity violating this ordinance or a permit granted under this ordinance on a project/construction site be stopped.

"Stormwater Management" means the use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.

"Stormwater Pollution Prevention Plan" or "SWPPP" or "Construction SWPPP" means a set of plans prepared indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction. Plans and specifications that involve "structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of industrial wastewater", including contaminated stormwater, must be prepared under the supervision of a licensed professional engineer (P.E.).

"Stormwater" means that portion of precipitation that does not naturally percolate into

the ground or evaporates, but flows via overland flow, interflow, pipes and other features of a stormwater drainage system into a defined surface water body, or a constructed infiltration facility.

"Stormwater Site Plan" or "SSP" is a comprehensive report containing all of the technical information and analysis necessary for regulatory agencies to evaluate a proposed new development or redevelopment project for compliance with stormwater requirements. Contents of the SSP will vary with the type and size of the project, individual site characteristics, and special requirements of the agency.

"Stream" means an area where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is an area that demonstrates clear evidence of the passage of water including, but not limited to, hydraulically sorted sediments, or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, stormwater runoff devices or other entirely artificial watercourses, unless they are used to convey streams naturally occurring prior to construction. Those topographic features that resemble streams but have no defined channels (i.e., swales) shall be considered streams when hydrologic and hydraulic analyses done pursuant to a development proposal predict formation of a defined channel after development.

"Surface Waters" includes lakes, rivers, ponds, streams, inland waters, salt waters, wetlands, other surface waters, and water courses as well as shallow ground water.

"Structure" means anything constructed or erected which requires location on the ground or attached to something having a location on the ground.

"Underground Injection Control Program, or UIC Program" means the Federal Safe Drinking Water Act program to protect existing and future underground sources of drinking water from contamination by injection of waste fluids, such as stormwater, into the ground. The UIC Program is administered under WAC 173-218 by the Washington State Department of Ecology.

"UIC device" means a system used to inject stormwater into the sub-surface, including dry wells, and infiltration trenches.

"Watercourse" and "river or stream" means any portion of a channel, bed, bank, or bottom below the ordinary high water line of waters of the state including areas in which fish may spawn, reside, or through which they may pass, and tributary waters with defined bed or banks, which influence the quality of fish habitat downstream. This includes watercourses which flow on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irrigation ditches, canals, stormwater run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse which has been altered by humans.

"Waters of the state" means all lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and water courses within the

jurisdiction of the state of Washington as defined in RCW 90.48.

"Wetlands" are areas characterized by saturated or nearly saturated soils most of the year that form an interface between terrestrial (land-based) and aquatic environments. Wetlands include marshes around lakes or ponds and along river or stream channels.

14.21.030 Regulated Activities

1. Any applicant who undertakes or causes to be undertaken any grading, land disturbing activity, new development or redevelopment shall ensure that soil erosion, sedimentation, increased pollutant loads and changed water flow characteristics resulting from the activity are controlled so as to prevent or minimize pollution of receiving waters. The requirements of this ordinance are minimum standards and an applicant's compliance with the same shall not relieve such applicant from the duty of enacting all measures necessary to prevent or minimize pollution of receiving waters.

2. The requirements of this ordinance /chapter are minimum requirements. They do not replace, repeal, abrogate, supersede, or affect any other more stringent requirements, rules, regulations, covenants, standards or restrictions. Where this ordinance imposes requirements which are more protective of human health or the environment than those set forth elsewhere, the provisions of this ordinance, chapter prevail. Approvals and permits granted under this ordinance\chapter are not waivers of the requirement of any other laws. Compliance is still required with all applicable federal, state and local laws and regulations.

3. This ordinance shall be applicable to all land disturbing activity, including, but not limited to, site plan applications, subdivision applications, and grading applications.

14.21.040 Permits Not Required

Small Projects are development or re-development projects where land disturbing activities are less than 5000 square feet and/or ground disturbing activity does not have the potential to disturb or change existing drainage patterns. A Local SW Permit is not required, so long as none of the conditions set forth in section 14.21.050(3) exist. Projects must comply with this ordinance, especially project/construction site access/egress control and management. Off-site tracking of materials is prohibited. Failure to conform to this requirement or the IDDE ordinance may result in a stop work order and/or fines or abatement proceedings. Post-construction best management practice monitoring is waived for projects that do not require a permit.

14.21.050 Permits required

1. Medium Projects are land development or redevelopment that disturbs 5000 square feet or more but less than one acre through clearing, grading, excavating, or stockpiling of fill material, including the cumulative acreage of the entire project whether in a single or in a multiphase project and/or has the potential to change natural drainage patterns. It is contemplated that most medium projects will only require ESC plans. If the site of a medium project has any of the conditions set forth

at C, below, or if the project has the potential to directly affect impaired waters, a SWPPP may be required and the project will be subject to the requirements and restrictions of large projects. A Local SW Permit is required for medium size projects. In order to obtain the Local SW Permit, Medium Projects must submit an application along with an ESC Plan, as outlined in Section 14.21.120(1). Post-construction stormwater best management practice monitoring is waived.

2. Large Projects are land development or redevelopment projects that disturbs one acre or more, or projects of less than one acre that are part of a common plan of development or sale, with ground disturbing activities resulting from clearing, grading, excavating, or stockpiling of fill material, including the cumulative acreage of the entire project whether in a single or in a multiphase project. A Local SW Permit is required for large projects. In order to obtain the Local SW Permit, Large Projects must submit an application and demonstrate compliance with all Core Elements and treatment levels applicable to the project, as outlined in Section 14.21.120(2). Additionally, Large Projects must also determine whether they are subject to the requirements of Ecology's Stormwater Construction Permit.

3. The agency may require any land disturbing project of any size obtain a local stormwater permit and be subject to developing an ESC Plan or SWPPP if any of the following conditions are met:

   a. A design that does not adhere to the criteria specified or referenced in this ordinance,

   b. Slopes with surface water flow,

   c. Slopes greater than 2:1,

   d. Impaired receiving waters;

   e. In areas of questionable soil conditions, such as:
      i. Soils with low infiltration or high runoff potential
      ii. Soils with moderate or severe building site development limitations, including limited area for containment or control
      iii. Occasional or frequent flooding with long or very long duration
      iv. Shallow water table depth
      v. Problematic bedrock conditions

   f. When extensive fill is proposed,

   g. Where the length of the slope requires terracing,

   h. In other situations where slope stability could be in question, as determined by the agency,

   i. In cases where the project may negatively affect downstream or neighboring parcels, subject to downstream analysis,

j. Discharge into or connection to the City MS4 is needed, or

k. Operation and maintenance of the drainage facilities will be assumed by the City.

14.21.050 Exemptions

The following activities are exempt from this ordinance:

1. Construction activities which discharge all stormwater and non-stormwater to ground water, and have no point source discharge to surface water or a storm water system (MS4) that drains to surface waters of the state. UIC wells must be protected from sediment in runoff generated during construction. City will not be required to accept dedications of non permitted stormwater systems unless they meet City requirements. The applicant may seek a permit for exempt activities.

2. Stormwater from any site covered under an existing NPDES individual permit, at the time of adoption of this ordinance, in which stormwater management and/or treatment requirements are included for all stormwater discharges associated with construction activity.

3. Any emergency activity that is immediately necessary for the protection of life, property, or natural resources. The responsible party shall clean and/or remove any eroded material and sediment immediately after the emergency situation is alleviated.

4. Forest practices regulated under Title 222 WAC. Conversions of forest lands to other uses are not exempt. Silvicultural roads that are used to access other land uses subject to this ordinance are not exempt.

5. Commercial agriculture practices involving working the land for production. Construction of impervious surfaces are not exempt.

6. Oil and gas field activities such as construction of drilling sites, waste management pits, and access roads, as well as construction of transportation and treatment infrastructure such as pipelines natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations.

a. Discharge of sediment or other stormwater pollution from an oil or gas field activity is subject to the illicit discharge ordinance of City, Chapter 14.20.

7. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility that conforms to this ordinance.

a. Discharge of sediment from a routine maintenance activity is subject to the illicit discharge ordinance of City, Chapter 14.20.

8. Small projects exemptions, so long as none of the conditions set forth in Section

14.21.050(3) are present:

a. Gardens – non-commercial
b. Fencing
c. Raised decks, patio covers, awnings
d. Sprinkler system as a stand alone project, small disturbance
e. Minor landscaping – tree & shrub planting, flower beds
f. Residential infrastructure replacement such as waterlines, septic systems, electrical lines, etc.

14.21.070 Severability

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

14.21.080 Liability

By approving a plan under this regulation, agency does not accept responsibility for the design, installation, and operation and maintenance of stormwater BMPs.

14.21.090 Design Manuals

1. To guide stormwater standards for new development and redevelopment, the City adopts, by reference, definitions, minimum requirements and exceptions, adjustment and variance criteria found in Appendix 1 of the National Pollutant Discharge Elimination Phase II General Stormwater Permit (Phase II Permit) for Eastern Washington, including the mandatory incorporated provisions of the Stormwater Management Manual for Eastern Washington, as amended. The regulatory thresholds are as described in Appendix 1 of the Phase II Permit except where superseded within Section 14.21.050 of this chapter. All Large Projects shall follow all requirements of the Stormwater Management Manual for Eastern Washington except where superseded in Appendix 1 of the Phase II Permit, or this chapter. Unless the context requires otherwise, references to the local jurisdiction shall be construed to mean the City of Clarkston. The City shall maintain a copy of current Stormwater Management Manual for Eastern Washington and NPDES II Permit Appendix 1 materials on file.

2. Other Ecology approved Stormwater Manuals may be used as guidance, as long as applicant references the other manual.

3. The minimum requirements for hydraulic analysis and design of stormwater collection, conveyance, outfalls, energy dissipation and armoring facilities shall be as described in the WSDOT Hydraulics Manual, current version or as follows:

   a.. Storm drainage conveyance facilities (open channels, ditches, pipe systems, gutters, and drainage inlets) shall be designed for a storm frequency of 10 years with 0.5 feet of freeboard in open channels and ditches and 0.5 feet of freeboard between the projected water surface and the rim of any inlet or

structure in pipe systems. Agency may increase design storm frequency where overflow of these facilities may result in threat to public safety and/or potential property damage.

b. Culverts shall be designed for a storm frequency of 25 years and follow the WSDOT Hydraulics Manual for other design requirements. Agency may increase design storm frequency where culvert failure of these facilities may result in threat to public safety and/or potential property damage.

c. The minimum catch basin lateral pipe size shall be eight inches in diameter and the minimum storm main size shall be twelve inches in diameter.

d. The minimum diameter of culvert pipes under a main roadway shall be 18 inches. Culvert pipe under roadway approaches shall have a minimum diameter of 12 inches.

e. Manholes in trunk sewers shall have a maximum spacing of 400 feet.

f. Construction materials and methods shall be in accordance with the Standards and Specifications for Municipal Public Works Construction prepared by the American Public Works Association, latest edition.

4. Acceptable Design Storms for Runoff Treatment

Permanent stormwater treatment and flow control BMPs must be properly sized for the peak flow rate or runoff volume generated by designated design storms. The agency requires the following hydrologic methods and design storms to be used when designing permanent treatment and flow control BMPs:

a. Volume Based Treatment BMPs – Volume based treatment BMPs, when required, shall be designed for the post development runoff volume based on the SCS Type II 24 hour storm distribution with a 6 month design storm precipitation depth. Designers must follow BMP specific design criteria within the Stormwater Management Manual for Eastern Washington (2004, or current edition).

b. Flow Based Treatment BMPs – Flow rate based treatment BMPs, when required, shall be designed for the post development peak flow based on the SCS Type II 24 hour storm distribution with a 6 month design storm precipitation depth. Designers must follow BMP specific design criteria within the Stormwater Management Manual for Eastern Washington (2004, or current edition).

c. Flow Control BMPs – Direct discharges to the Snake River are exempt from flow control requirements. However, new discharges into other tributaries may be subject to flow control. In addition, new discharges to agency drainage systems may be subject to flow control depending on the capacity of the existing drainage system and the characteristics of the proposed development. Designers must obtain a flow control determination from the agency prior to designing connections to any City drainage system or otherwise proposing to discharge stormwater off-site. Designers must follow flow control BMP specific design criteria within the Stormwater

Management Manual for Eastern Washington (2004, or current edition) or, when applicable, Ecology's UIC guidance documents.

i. Retention Flow Control BMPs, such as on-site infiltration systems, when required, shall be designed using the SCS Type II 24 hour storm distribution. The retention facility shall be designed to retain the entire 10 year storm event volume on site. When sizing retention systems, designers may account for infiltration occurring during the runoff event using a long term infiltration rate. Flows in excess of the 10 year event can pass through or be routed around the retention facility; however designers must ensure that facility or downstream damages will not occur as a result of site runoff for up to the 100 year event. Note that infiltration facilities used to meet treatment objectives as well as flow control must meet water quality design requirements as described in the Stormwater Management Manual for Eastern Washington or Ecology's UIC guidance documents.

ii. Detention Flow Control BMPs, when required, shall be designed using the SCS Type II 24 hour storm distribution. Detention facilities shall be sized so that: (a) the post development peak outflow rate for the 2 year event matches *one half* of the existing condition 2 year event flow rate (*retention of the post development 2 year event is required if the existing condition 2 year flow rate is zero*); and, (b) the post development peak outflow rate for the 25 year event matches the existing condition 25 year event flow rate. Flows in excess of the 25 year event can pass through or be routed around the facility; however designers must ensure that facility or downstream damage will not occur as a result of site runoff for up to the 100 year event.

5. **Design Standards for UIC Facilities**

The City adopts, by reference, the Guidance for UIC Wells that Manage Stormwater, and the UIC Guidance for Infiltration Trench Design, both published by the Washington State Department of Ecology (latest edition). These documents replace Chapter 5.6 of the Stormwater Management Manual for Eastern Washington. In addition to meeting the Core Elements described in the reference material above, the construction of all drywells and infiltration trenches shall conform to the Guidance for UIC Wells that Manage Stormwater, and the UIC Guidance for Infiltration Trench Design, and shall comply with the requirements set forth in WAC 173-218 Underground Injection Control Program. The City shall maintain a copy of current UIC reference materials on file.

6. Use of BMPs not designed, constructed, and maintained in accordance with manuals identified in the preceding paragraphs shall be subject to agency approval and must be monitored for performance to demonstrate that they meet the minimum water quality performance standards of the Phase II Permit requirements.

14.21.100 Amendments to Design Manuals

1. The Stormwater Management Manual for Eastern Washington, (or Ecology approved equivalent), may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience. The most current version of the Stormwater Management Manual for Eastern Washington, (or Ecology approved equivalent) is to be used where referenced by this ordinance.

2. Prior to developing, amending or updating a local stormwater management manual or guidance, proposed changes shall be publicized and made available for review, and an opportunity for comment by interested persons shall be provided.

3. If the specifications, guidelines, or other information in the Stormwater Management Manual for Eastern Washington, (or Ecology approved equivalent), are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

14.21.110 Right of entry

Where it is necessary to make an inspection to enforce the provisions of this ordinance, or where the enforcement officer has reasonable cause to believe that there exists a violation of this ordinance, or permit issued under this ordinance, the enforcement officer is authorized to enter the project/construction site at reasonable times to inspect or to perform the duties imposed by this ordinance, provided that if such project/construction site be occupied that credentials be presented to the applicant and entry requested. If such project/construction site is unoccupied, the enforcement officer shall first make a reasonable effort to locate the applicant or other person having charge or control of the project/construction site and request entry. If entry is refused, the enforcement officer shall have recourse to the remedies provided by law to secure entry.

14.21.120 Permit Requirements

1. Medium Projects - Erosion and Sediment Control Plans

a. Projects meeting the Medium Project threshold shall prepare an Erosion and Sediment Control (ESC) Plan for construction activity. The ESC Plan shall be implemented beginning with initial soil disturbance and continue until final stabilization.

b. Each ESC Plan shall bear the name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained together with the name of the principal contact at such firm and shall be accompanied by a filing fee.

c. A plan may require a performance surety if permanent stormwater facilities are involved.

d. Each ESC Plan shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the ESC Plan.

e. The ESC Plan and inspection records shall be maintained at the site during the progress of work.

f. ESC Plan Elements - The ESC Plan shall include the following elements:

i. Project schedule including sequencing/phasing a project as appropriate and plan for site stabilization

ii. Boundary of clearing and land disturbing activities (including access and egress).

iii. Project/construction site access/egress control, stabilization and management. Off-site tracking of materials is prohibited.

iv. Stabilize soils during and after project activities, including disturbed areas and stockpiles. Plan should include erosion and sediment controls utilizing BMPs, acknowledging site run-on and run-off and dust control.

v. Identify and protect stormwater control facilities (MS4 and UIC) that may be impacted.

vi. Control of pollutants such as demolition debris, waste materials, oils, greases, concrete wastes and chemicals.

vii. Maintenance of BMPs and the ESC Plan.

g. ESC Plan Map Contents and Requirements - The ESC Plan shall also include a legible site map (or maps) showing the entire construction site. The following features shall be identified, unless not applicable due to site conditions:

i. The direction of north, property lines, and existing structures and roads;

ii. Cut and fill slopes indicating the top and bottom of slope catch lines;

iii. Approximate slopes, contours, and direction of stormwater flow before and after major grading activities;

iv. Areas of soil disturbance and areas that will not be disturbed;

v. Locations of structural and nonstructural controls (BMPs) identified in the ESC Plan;

vi. Locations of off-site material, stockpiles, waste storage, borrow areas,

and vehicle/equipment storage areas;

vii. Locations of all adjacent surface water bodies, including wetlands;

viii. Locations where stormwater or non-stormwater discharges off-site and/or to a surface water body, including wetlands;

ix. Location and dimensions of stormwater facilities

2. Large Projects Permits

a. All large projects will conform to the standards in the design manuals identified in Section 14.21.090 of this ordinance. Large projects are required to include the applicable minimum technical requirements of the core elements outlined below:

i. Core Element #1: Preparation of a Stormwater Site Plan – Used to integrate stormwater management into project planning and design, demonstrate compliance with other applicable Core Elements, and illustrate and validate the design of the permanent stormwater management facilities (see Chapter 3 of the SW Management Manual for Eastern WA (2004, or current version)).

ii. Core Element #2: Construction Stormwater Pollution Prevention – The purpose of this Core Element is to control erosion and prevent sediment and other pollutants from leaving the site. Detailed information about each element can be found in SW Management Manual for Eastern WA (2004, or current version).

iii. Core Element #3: Source Control of Pollution – The purpose of this Core Element is to prevent stormwater from coming into contact with potential pollutants. Apply all known, available and reasonable source control BMPs to new development and redevelopment projects. All source control BMPs shall be selected, designed and maintained according to Chapter 8 of the SW Management Manual for Eastern WA (2004, or current version), as amended.

iv. Core Element #4: Preservation of Natural Drainage Systems – The purpose of this Core Element is to maximize the extent to which stormwater discharge patterns, rates, and outfall locations remain the same after a development project. The manner by which runoff is discharged from the project site must not cause a significant adverse impact to downstream receiving waters and down-gradient properties and should be addressed as part of the off-site analysis described in Appendix 3A of the SW Management Manual for Eastern WA (2004, or current version), as amended.

v. Core Element #5: Runoff Treatment – The purpose of this Core Element is to protect water quality in the receiving water by reducing the loads and concentrations of pollutants in stormwater using biological, physical and chemical removal methods. Applicable only to sites that are determined to have

sufficient pollutant generating potential.

vi. Core Element #6: Flow Control – The purpose of this Core Element is to protect stream morphology and habitat by mitigating the impacts of increased storm runoff volumes and flow rates to streams. New development projects that result in 10,000 square feet or more of new impervious surfaces shall construct stormwater flow control facilities for any discharge of stormwater directly, or through a conveyance system, into surface water.

vii. Core Element #7: Operation and Maintenance – The purpose of this Core Element is to prevent failure of stormwater treatment facilities or improper discharges due to inadequate maintenance or improper operation. Where structural BMPs are required, property owners shall operate and maintain the facilities in accordance with an Operation and Maintenance (O&M) plan prepared in accordance with the provisions of Chapters 5 and 6 of the SW Management Manual for Eastern WA (2004, or current version).

viii. Core Element #8: Any Additional Local Requirements

b. Stormwater Pollution Prevention Plan (SWPPP) Elements

i. Large Projects shall prepare a Stormwater Pollution Prevention Plan (SWPPP) for land disturbing activity as part of the Core Elements of stormwater management for new development. The SWPPP shall be implemented beginning with initial soil disturbance and continue until final stabilization.

ii. Each SWPPP shall bear the name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm and shall be accompanied by a filing fee.

iii. A plan may require a performance surety if permanent stormwater facilities are involved.

iv. Each SWPPP shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the SWPPP and that a Certified Erosion and Sediment Control Lead (CESCL) shall be on site or on call on all days when construction or grading activity takes place.

v. The applicant shall include each of the twelve elements below in the narrative of the SWPPP and ensure they are implemented unless site conditions render the element unnecessary and the exemption from that element is clearly justified in the SWPPP.

1. Preserve Vegetation/Mark Clearing Limits
2. Establish Construction Access
3. Control Flow Rates

4. Install Sediment Controls
5. Stabilize Soils
6. Protect Slopes
7. Protect Drain Inlets
8. Stabilize Channels and Outlets
9. Control Pollutants
10. Control De-Watering
11. Maintain BMPs
12. Manage the Project

vi. The applicability, requirements, and design details for each core element are outlined in the Stormwater Management Manual for Eastern Washington and Appendix 1 of the Phase II Permit.

vii. The SWPPP and inspection records shall be maintained at the site during the progress of work. The Construction SWPPP shall be modified whenever there is a significant change in the design, construction, operation, or maintenance of any BMP.

c. Storm Water Pollution Prevention Plan (SWPPP) Map Contents and Requirements

i. The SWPPP shall also include a vicinity map or general location map (e.g. USGS Quadrangle map, a portion of a county or city map, or other appropriate map) with enough detail to identify the location of the construction site and receiving waters within one mile of the site.

ii. The SWPPP shall also include a legible site map (or maps) showing the entire construction site. The following features shall be identified, unless not applicable due to site conditions:

1. The direction of north, property lines, and existing structures and roads;
2. Cut and fill slopes indicating the top and bottom of slope catch lines;
3. Approximate slopes, contours, and direction of stormwater flow before and after major grading activities;
4. Areas of soil disturbance and areas that will not be disturbed;
5. Locations of structural and nonstructural controls (BMPs) identified in the SWPPP
6. Locations of off-site material, stockpiles, waste storage, borrow areas, and vehicle/equipment storage areas;
7. Locations of all surface water bodies, including wetlands;
8. Locations where stormwater or non-stormwater discharges off-site and/or to a surface water body, including wetlands;
9. Location of water quality sampling station(s), if sampling is required by state or local permitting authority; and
10. Areas where final stabilization has been accomplished and no further construction-phase requirements apply.

d. Special conditions

The agency has the discretion to require a SWPPP or ESC plan if any of the conditions in Section 14.21.050(3) apply.

14.21.130 Enhanced Permit Criteria for Impaired Waters

Land disturbing activity that discharges via the City MS4 to impaired waters and wetlands with stormwater waste load allocations, as designated in the most recent Eastern Washington Phase II Municipal Stormwater Permit, shall meet enhanced criteria.

A. In these cases, the agency may require additional storage, treatment, filtering, infiltration, or other techniques. The use of non-structural practices shall be used to the maximum extent practical to meet enhanced criteria.

B. Where an applicable Total Maximum Daily Load (TMDL) specifically precludes or prohibits discharges from construction activity, the applicant is not eligible for discharge to the MS4 under this ordinance.

14.21.130 Procedures and Requirements

1. **Application Requirements**: Applications shall be submitted and considered in the manner established by City as follows:

   a. Completed application and all applicable fees submitted to the agency.
   b. ESC Plan or SWPPP must be submitted with the application, unless site visit is requested prior to plan development.
   c. Schedule site visit and meeting to review application and ESC Plan or SWPPP, as necessary.
   d. Written review and request for changes will be submitted to Applicant.
   e. Any changes needed on required plans and comments provided by agency must be incorporated into updated plans prior to final approval.
   f. Approval of Local SW Permit.

   These requirements do not replace or supersede existing requirements for subdivisions or other development review. All other requirements must be met.

2. **Substantive Changes to Plan:** No substantive changes shall be made to an approved plan without review and written approval by the agency. The agency may request additional data with a plan amendment as may be necessary for a complete review of the plan and to ensure that changes to the plan will comply with the requirements of this ordinance.

3. **Expiration of Plan Approval***:* The ESC Plan and SWPPP's approval expires upon issuance of a certificate of completion or one year from the date of approval unless work has actually begun on the site. The recordation of a final plat for a section of a subdivision (or initiation of construction in a section) does not vest the approval of the SWPPP for the remainder of the subdivision. If the ESC Plan or SWPPP expires, the applicant shall file

with agency for re-approval of the Construction SWPPP or ESC Plan.

14.21.150 Inspection for Permanent Stormwater BMPs.

1. **Notice of Project Commencement**: The applicant must notify the agency before the commencement of land disturbing activities. In addition, the applicant must notify the agency in advance of construction of critical components of the stormwater practices on the approved stormwater management design plan. The agency may, at its discretion, issue verbal or written authorization to proceed with critical construction steps, such as installation of permanent stormwater practices based on stabilization of the drainage area and other factors.

2. **Construction Inspections by Agency**: The agency shall conduct periodic inspections of the stormwater practices shown on the approved SWPPP or ESC Plan and especially during critical installation and stabilization steps. All inspections shall be documented in writing. The inspection shall document any variations or discrepancies from the approved plan, and the resolution of such issues. Additional information regarding inspections can be found in Stormwater Management Manual for Eastern Washington. A final inspection by the agency is required before any performance bond or guarantee, or portion thereof, shall be released.

    a. All Enforcement Officers and\ or inspectors shall be certified prior to conducting any inspections or submitting any inspection documentation to the agency.

3. **Final As-Built Submittal:** If the project included construction of conveyance systems, treatment facilities, flow control facilities, or structural source control BMPs, the applicant must submit as-built plan (Record Drawings) to the agency. These shall be engineering drawings that accurately represent the project as constructed. These corrected drawings must be legibly drafted revisions that are stamped, signed, and dated by a licensed engineer registered in the state of Washington.

4. **Certified Inspectors:** Inspectors may be employees of the agency or private contractors that are not under the functional control of the applicant or responsible party. The agency will maintain a list of inspectors who have requested a jurisdictional listing and who meet the requirements of Ecology sanctioned training programs. At a minimum, inspectors will be CESCL qualified.

    a. The agency may use private inspectors to conduct and document inspections during construction, as agency staff workload and other limitations dictate and/or the complexity of the project warrants additional technical support. Such private inspectors shall submit all inspection documentation in writing directly to the agency. All costs and fees associated with the use of private inspectors shall be the responsibility of the applicant.

    b. If private inspectors are utilized by the agency, then inspections by the agency employees may be reduced in frequency. However, the agency shall remain the

responsible entity for ultimate inspection, approval, and acceptance of all stormwater BMPs, and for issuance of the Certificate of Completion in accordance with the following section.

5. Stormwater Certificate of Completion: Subsequent to final installation and stabilization of all stormwater BMPs shown on the stormwater management design plan, submission of all necessary as-built plans, and final inspection and approval by the agency, the agency shall issue a Stormwater Certificate of Completion for the project. In issuing such a certificate, the agency shall determine that all work has been satisfactorily completed in conformance with this Ordinance.

14.21.160 Post-construction

1. Stormwater facility construction and certification.

a. Construction and stabilization of all stormwater facilities shall be completed prior to any final plat, short plat, binding site plan, or the issuance of certificate of completion. At the discretion of the agency, a test of the facility may be performed to demonstrate adequate performance. The test shall be performed in the presence of development engineering personnel and Enforcement Officer.

b. A warranty surety shall be submitted to the agency upon successful completion and certification of all stormwater related improvements to guarantee against defects in construction. The warranty surety will be for a period of two years from the date the facility is accepted by the agency.

c. Acceptance of performance sureties, in lieu of completed improvements, shall be permitted only when completion of improvements prior to final land action or permanent certificate of occupancy is impractical (i.e., due to construction season delays or other factors beyond the proponent's control).

d. In the event that a performance surety is accepted by the agency or City, the applicant will complete the following measures prior to the release of the surety:

i. All aspects of the drainage facility, including landscaping, irrigation, and establishment of specified vegetation, shall be completed in accordance with the accepted plans on file with the agency. The proponent's engineer shall certify the improvements and request an oversight inspection from Enforcement Officer.

ii. An exception may be granted for single-family or two-family dwellings where the completion of stormwater facilities is not practical until such time as the dwellings are constructed. The applicant shall rough-grade any stormwater retention, detention, or treatment swales to the required volume and install any drywells, infiltration trenches, inlets, curb drops and other structures in

accordance with the accepted plans on file with the agency. Erosion control measures shall be implemented to protect the installed drainage facilities and to prevent erosion and/or failure of the rough graded stormwater components. This includes, but is not limited to, lining facilities such as swales with geo-fabric that can be removed along with accumulated silt, until final grading and vegetation.

2. Maintenance.

a. The responsible party is responsible for the maintenance, operation and repair of all stormwater drainage systems and BMPs serving their property unless the agency or City has accepted maintenance responsibility in writing and a written easement exists granting an adequate and sufficient right, in the agency's discretion, to enter the property and conduct these activities. The responsible party shall maintain, operate and repair the facilities in compliance with the requirements of this chapter and the Stormwater Management Manual for Eastern Washington (current edition) or WSDOT Highway Runoff Manual (current edition).

b. The agency is required to ensure that public and private stormwater BMPs are properly maintained and operated in order to comply with the Phase II Permit. The agency must have continued access to private properties so agency employees can carry out periodic inspections of structural BMPs to ensure that proper maintenance is occurring. This inspection may be conducted by an inspector from the list referenced at Section 14.21.150(4).

c. The following are the minimum standards for the maintenance of stormwater facilities:

i. Facilities shall be inspected annually and cleared of debris, sediment and vegetation when they affect the functioning and/or design capacity of the facility.

ii. Grassy swales and other biofilters shall be inspected monthly and mowed or replanted as necessary. Clippings are to be removed and properly disposed of.

iii. Maintenance of stormwater facilities including Low Impact Development facilities, which may include, but are not limited to, bioretention, dispersion, and infiltration facilities, amended soils, pervious systems, vegetated roofs, or roof water harvesting, shall be maintained consistent with conditions of approval, and recorded agreements against subject properties, and City standards as enacted at the time of approval.

iv. Where lack of maintenance is causing or contributing to a water quality problem or violation, immediate action shall be taken by the responsible party to correct the problem.

v. Proper access routes shall be constructed and maintained to allow equipment to access and carry out maintenance and repair work on all stormwater systems. Access routes shall include an easement, covenant, or restriction.

vi. Upon completion of a Large Project, and prior to issuance of certificate of completion, responsible party shall submit to the City or agency a stormwater system operation and maintenance plan (O&M Plan). The O&M Plan shall address all stormwater facilities and BMPs, and identify the party/parties responsible for maintenance and operation. The O&M Plan must address the long term funding mechanism that will support proper O&M. The O&M Plan shall also be retained on-site or within reasonable access to the site, and shall be transferred with the property to the new owner.

vii. Responsible parties who fall under the Large Project category shall keep records of stormwater system operation and maintenance activities.

14.21.170 Responsible party responsibilities.

1. The responsible party shall comply with provisions of this chapter and City standards. The responsible party shall be responsible for repair, restoration, and perpetual maintenance of the stormwater facility installed on private property and any portion of the facility situated in a public right-of-way adjacent to their respective properties.

2. The responsible party within single-family and two-family residential subdivisions are not responsible for maintenance of structures such as drywells, trenches, inlets, pipes, and ditches that receive runoff from public right-of-way and conform to City access standards and are located within the public right-of-way or a border easement dedicated to the City. The agency will maintain the stormwater facilities upon acceptance of the public infrastructure that has been legally recorded.

3. The responsible party is responsible for keeping open the drainage and stormwater easements on their property. If a drainage or stormwater easement is unlawfully encroached upon or the function of a designated drainage or stormwater easement is reduced, the property owner is responsible for removing the encroachment or detriment.

4. The responsible party is responsible for keeping open maintenance access easements serving drainage facilities and drainage easements.

5. The responsible party shall not place or permit, and shall immediately remove, vehicles, equipment, objects, refuse, garbage or litter from the stormwater facility.

14.21.180 Fees

1. **Fee Authority**. The agency may obtain with each local stormwater permit application an application fee as established by the City in separate resolution to cover expenses connected with the review of the ESC Plan and/or SWPPP and a technical review fee sufficient to cover professional review services for the project. The agency is authorized to retain a Registered Professional Engineer or other professional consultant to advise the agency on any or all aspects of these plans.

   a. Applicants must pay application fees before the review process may begin.

   b. Application fees are payable at the time of application and are non-refundable.

   c. These fees are in addition to any other local or state fees that may be charged under any other law, bylaw, or local ordinance.

   d. Fees for review of engineered practices in complex projects will be paid by the applicant.

   e. Performance bonds for permanent stormwater facilities must be in place prior to issuance of stormwater certificate of completion.

2. **Application Fees**

   Application fees for erosion and sediment control plans and/or stormwater pollution prevention plans, administration, review, inspection, and monitoring of projects subject to this ordinance are non-refundable. These fees will be established by resolution at a public hearing of the City Council.

3. **Revision of Fee Schedules and Regulations Governing Fees**

   The City may review and propose revision to its regulations and fee schedules periodically as it sees fit.
   1. Amendments shall be preceded by a public hearing.
   2. The schedule of fees and charges proposed by the City shall be adopted by the City Council and established by resolution and may be altered or amended only by the City Council.

14.21.190 Violations, Enforcement and Penalties

1. **Violations** - Any violation of this ordinance may be addressed by a written notice of violation or stop work order. The enforcement officer has the discretion to decide whether the actions taken by the applicant within 48 hours are sufficient to have addressed the problem, or whether a fine should be imposed. Imposition of a fine will require a written statement of the continued violation.

a. Stop Work Order

i. Authority - Whenever the Enforcement Officer or agency employed inspector finds any work regulated by this code being performed in a manner contrary to the provisions of this code the Enforcement Officer is authorized to issue a stop work order.

ii. Issuance – The stop work order shall be in writing and shall be given to the applicant involved. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the time frame to meet the conditions under which the cited work will be permitted to resume.

iii. Unlawful Continuance – Any applicant who shall continue any work after having been served with a stop work order, except such work as that applicant is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as set forth below.

b. The notice of violation will contain verbiage that informs the recipient that if the violation is not abated, a fine of up to $1000 per day may be imposed until the violation is abated. The written notice will also contain instructions on how to appeal the notice of violation. The enforcement officer will deliver the written notice of violation to the applicant and request the applicant's signature on the notice acknowledging receipt of the written notice of violation. The stop work notice will be posted at the entrance to the site.

c. The written notice may also be mailed, by regular mail and return receipt required to the alleged violator and deemed served three days from date of mailing. Proof of this mailing and proof of posting the notice at the property will be required at any appeal.

d. Second and subsequent violations within 12 months constitute a misdemeanor pursuant to RCW 9A.20.010(2). The penalty for second violations will increase. The first day of a violation, the fine will be up to $100, 2nd day the violation continues, the fine will be up to $200, the 3rd day and every subsequent day the violation continues the fine will be $300 up to $1,000 and 30 days in the county jail. The City may elect to prosecute under any possible violations of the Federal Clean Water Act, NPDES Phase II Permit, and/or RCW 90.48 and will report second and subsequent violations to the Washington State Department of Ecology

e. The Enforcement Officer has the right to install or require the applicant to install monitoring equipment as is reasonably necessary in the opinion of the Enforcement Officer to conduct appropriate monitoring and/or sampling of the facility's stormwater discharge. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the applicant at his/her own expense. All devices used to measure stormwater flow and quality shall be calibrated according to industry standards to ensure their accuracy.

All data shall be collected in accordance with a sampling and analysis plan that is approved by the Enforcement Officer.

f. The City may elect to implement an ordinance authorizing enforcement of this ordinance by in rem actions.

2. **Hearing Request.**

a. "Hearing Officer" means the official appointed by the City for administrative hearings.

i. The hearing officer shall hear all appeals of decisions under this ordinance.

ii. The hearing officer shall hear evidence presented by whomever the City designates.

iii. The hearing officer shall likewise hear evidence presented by the applicant appealing the decision or interpretation.

iv. In the case of an appeal of a notice of civil violation and/or order to abate issued by the Enforcement Officer, the burden of proof at the hearing shall rest with the City. If the decision of the enforcement officer is found to be supported by a preponderance of the evidence, the decision shall be affirmed.

v. Formal rules of evidence need not be followed, but witnesses shall be sworn by the hearing officer and a written order issued.

vi. An applicant may appeal the written notice of violation entered by the Hearing Officer to the District Court within twenty (20) days of the hand delivered notice or within twenty (20) days of the postmark of the mailed notice. The request must contain a copy of the written notice, and the name, address and telephone number of the applicant requesting the hearing. The request must also include a brief description of the reason the applicant believes there is no violation. This request will be mailed to the agency that will set the hearing date. The address will appear on the Notice of Violation. The District Court will review the matter de novo.

vii. The City is not required to pay the hearing officer if a decision on a hearing has not been rendered within 30 days of the date of the hearing.

b. An applicant may appeal the written notice of violation before the Hearing Officer within twenty (20) days of the hand delivered notice or within twenty (20) days of the postmark of the mailed notice. The request must contain a copy of the written notice, and the name, address and telephone number of the applicant requesting the hearing. The request must also include a brief description of the reason the applicant believes there is no violation. This request will be mailed to the agency that will set the hearing date.

c. A notification giving the time, location and date of such hearing on the questions of abatement and removal of the illicit discharge or connection will be sent to the applicant requesting the hearing or his/her authorized representative by certified mail with a five (5) day return receipt requested.

d. Failure of any applicant to file a timely appeal or failure of any applicant who has filed an appeal to attend the scheduled hearing, shall constitute a waiver of his or her right to an appeal hearing.

e. Filing of an appeal shall stay the enforcement of any notice of civil violation, order to abate, collection of fine, penalties or assessments or termination of service during the pendency of such appeal except as otherwise provided.

f. A copy of the final order of the hearing officer shall be mailed to the appellant(s) within three (3) working days following the entry of a written order under this section. Unless otherwise stated in the order, such order shall be final and conclusive ten (10) days from the date of mailing thereof unless any party of record makes application to a court of competent jurisdiction for judicial review and stay of enforcement.

The result of this hearing may be appealed to the District Court. The court may consider mitigating factors to reduce or suspend fines and jail time.

3. **Additional Remedies.**

In addition to any other remedy provided by this chapter, the City may initiate injunction or abatement proceedings or any other appropriate action in courts against any applicant who violates or fails to comply with any provision of this chapter to prevent, enjoin, abate, and/or terminate violations of this chapter and/or to restore a condition which existed prior to the violation. In any such proceeding, the applicant violating and/or failing to comply with any provisions of this chapter shall be liable for the costs and reasonable attorneys' fees incurred by the City in bringing, maintaining and/or prosecuting such action.

4. **Reimbursement of Enforcement Costs**

If it becomes necessary for the City to take enforcement actions as a result of violation the responsible party shall reimburse the City costs, including restoration and remediation costs, management and administrative costs and the costs of collection and reasonable attorney's fees incurred with such enforcement.

5. **Denial of Permit**

The agency may deny a permit for failure to meet the requirements and conditions of this ordinance or if the agency determines that the denial is necessary to protect the public health, safety, and welfare. The agency may withhold issuance of a permit until conditions of the previous permit, including payment of performance sureties are complied with in full. These conditions may include payment of fines from prior violations, failure to secure a certificate of completion on a previously granted permit, and extends to any sub-contractor or specialty contractor on the permitted project who has not met the above conditions.

14.21.200 Effective Date

The ordinance codified in this chapter shall go into effect within the City on January 1, 2011.

PASSED by the City Council this 8th day of February, 2010.

APPROVED by the Mayor this 17th day of February, 2010.

Donna M. Engle
Donna Engle, Mayor

ATTEST/AUTHENTICATE:
Vickie Storey
Vickie Storey, City Clerk

APPROVED AS TO FORM:
James Grow
James Grow, City Attorney