

# Kelso City Council Agenda

Regular Meeting, 6:00 pm  
September 15, 2015  
City Hall, Council Chambers  
203 South Pacific  
Kelso, WA 98626



\*\*Special accommodations for the handicapped and hearing impaired are available  
by special arrangement through the City Clerk's Office at 360-423-0900\*\*

## **Invocation:**

Pastor Russ Jorgenson from Kelso Assembly of God

## **Roll Call to Council Members:**

### **1. Approve Minutes:**

1.1. September 1, 2015 – Regular Meeting

### **2. Consent Items:**

2.1. Appointment – Kelso Housing Authority  
2.2. Auditing of Accounts

### **3. Citizen Business:**

### **4. Council Business:**

4.1. Agreement Amendment – 911 Communication Center  
4.2. Agreement Amendment – Gordon Thomas Honeywell Governmental Affairs

### **5. Action/Motion Items:**

5.1. Ordinance, 1st Reading  
5.1.1. Nuisance Abatement Code Enforcement Chapter 1.40 General Penalties  
5.2. Ordinance, 1st Reading  
5.2.1. Amendments Code Enforcement Stormwater Management Chapter 13.09 and  
Illicit Discharge Chapter 13.11  
5.3. Ordinance, 2<sup>nd</sup> Reading  
5.3.1. Nuisance Abatement Code Adopting new Chapter 1.50 Code Enforcement

# Kelso City Council Agenda

Regular Meeting, 6:00 pm  
September 15, 2015  
City Hall, Council Chambers  
203 South Pacific  
Kelso, WA 98626



## **Other Items:**

- City Manager Report
- Staff/Dept Head Reports
- Council Reports
- Other Business
- Executive Session

Pastor Marv Kasemeier, New Song Worship Center, gave the invocation. Mayor David Futcher led the flag salute. The Regular Meeting of the Kelso City Council was called to order by Mayor Futcher. Councilmembers in attendance were: Jared Franklin, Gary Archer, Dan Myers, David Futcher, Todd McDaniel, Gary Schimmel, and Rick Roberson.

**Minutes:** Upon motion by Councilmember Schimmel, seconded by Councilmember Roberson, 'Approve the Minutes of the 8/18/15 Regular Meeting,' motion carried, all voting yes.

**Kelso Police Department:** Chief Andrew Hamilton announced that Detective Dave Voelker has turned in his resignation. He presented Detective Voelker with a plaque in appreciation for his 23 years of service.

**CITIZEN BUSINESS:**

**Ray Van Tongeren,** Longview, spoke about the Love Overwhelming Low Barrier Shelter.

**Robert P. Werner,** 150 Carroll Rd., spoke about water fluoridation.

**Bill Kasch,** 2619 Nichols Blvd., spoke about fireworks in the city. He distributed a State of Washington fireworks code packet to the Council.

**Shawn Nyman,** Cowlitz-Wahkiakum Central Labor Council President spoke about the sanctioned strike taken by AWPPW Local 153 against the Kapstone Paper & Packaging Corporation. She distributed a copy of a letter endorsing the strike to the Council.

**Daniel Baumfalk,** 2828 Allen Street, spoke about water fluoridation and the Love Overwhelming Low Barrier Shelter.

**PRESENTATION:**

**Cowlitz Economic Development Council:** Director Ted Sprague provided an overview of the organization's profile and a presentation highlighting projects that they are currently working on for the community.

**CONSENT AGENDA:**

1. **Agreement – Cowlitz Transit Authority Lease Extension**

Upon motion by Councilmember Roberson, seconded by Councilmember Myers, 'Approve the Consent Agenda' motion carried, all voting yes.

**COUNCIL BUSINESS:****Federal Aviation Administration Grant Agreement – Southwest Washington**

**Regional Airport:** Upon motion by Councilmember Schimmel, seconded by Councilmember Myers, ‘Authorize the City Manager to sign the agreement,’ motion passed, all voting yes.

**2016 Lodging Tax Distribution Allocations:** Upon motion by Councilmember McDaniel, seconded by Councilmember Roberson, ‘Approve the 2016 Lodging Tax Request for the distribution of funds as recommended by the Lodging Tax Committee,’ motion passed, all voting yes.

**Athletic Facilities and Bulk Water Rates Discussion:** City Manager Steve Taylor presented a request by Kelso baseball leagues for a relief, or general fund subsidy, from the City to help cover the expense of the irrigation water. After a lengthy discussion, it was the consensus of the Council to provide a percentage relief of the current water rate. City Manager Taylor spoke about a disparity in the bulk water rate for the use of fire hydrant meters. Council directed Staff to bring back a proposal for a water rate relief for the parks and a revised bulk water rate for their consideration.

**Citizens who spoke from the audience:**

- Rick Von Rock, 400 N 7<sup>th</sup> Avenue
- Rod Wright, 97 Banyon Drive

**Big Idea Project Discussion:** City Manager Taylor commented that this is a continuation discussion from the previous meeting for the use of the City’s Big Idea funding in 2017. Council directed Staff to move forward with the joint Way Finding Project with the City of Longview.

**MOTION ITEMS:**

**Ordinance No. (1<sup>st</sup> Reading previously tabled) – Nuisance Abatement Code adopting new Chapter 1.50 Code Enforcement:** Mayor Futcher pulled the item off the table. City Attorney Janean Parker confirmed that the amendments discussed at the August 18 meeting have been incorporated into the ordinance. Mayor Futcher reiterated the motion, ‘Approve on first reading,’ motion passed, all voting yes.

**Ordinance No. 15-3849 – Nuisance Abatement Code Amending Chapter 8.24 and adding new Chapter 15.04:** The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Roberson, seconded by Councilmember Archer, ‘Adopt Ordinance No. 15-3849, ‘AN ORDINANCE OF THE CITY OF KELSO RELATING TO THE CITY’S PROCEDURES FOR ABATEMENT OF PUBLIC NUISANCES BY ADOPTING A REVISED CHAPTER 8.24 OF THE MUNICIPAL CODE FOR THE ABATEMENT OF PUBLIC NUISANCES, AND ADDING A NEW

CHAPTER 15.04 PROPERTY MAINTENANCE TO THE MUNICIPAL CODE AND REPEALING 15.03.140.’ Motion passed, all voting yes.

**MANAGER’S REPORT:**

**Steve Taylor:** No report.

**COUNCIL REPORTS:**

**Rick Roberson:** No report.

**Gary Schimmel:** No report.

**Todd McDaniel:** No report.

**Dan Myers:** 1) Commented on the Studebaker Driver’s Club Event held at Tam O’Shanter Park last weekend. 2) Spoke about an annual Christmas Homes Tour Event.

**Gary Archer:** No report.

**Jared Franklin:** Commented that the archery season for deer hunting opens today.

**David Futcher:** 1) Commented that he is planning to visit Kelso’s Sister City, Makinohara, Japan, in October to celebrate their 10 Year Anniversary. 2) Commented that people from Kelso, Scotland, who are interested in performing at the 2016 Highlander Festival, have contacted the City. City Manager Taylor commented that the State of the Cities Event is September 16.

There being no further business, Mayor Futcher adjourned the meeting at 7:29 p.m.

---

**MAYOR**

---

**CITY CLERK**

# **AGENDA SUMMARY SHEET**

## **Business of the City Council City of Kelso, Washington**

---

---

### **SUBJECT TITLE:**

Appointment to the Kelso Housing Authority

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** Kelso Housing Authority

**For Agenda of:** September 15, 2015

### **PRESENTED BY:**

**Cost of Item:** \_\_\_\_\_

**City Manager:** Steve Taylor

---

---

### **AGENDA ITEM ATTACHMENTS:**

### **SUMMARY STATEMENT:**

This position on the Kelso Housing Authority Board has been advertised as vacant since February of 2015. Mr. Rubert will fulfill this appointment term ending on 01/01/2020.

The Executive Director of the Kelso Housing Authority has reviewed the submitted application and provided a recommendation to appoint Clifford Rubert to the Kelso Housing Authority Board.

### **RECOMMENDED ACTION:**

Staff recommends the Mayor appoint Clifford Rubert to the Kelso Housing Authority Board.

**AGENDA SUMMARY SHEET**  
**Business of the City Council**  
**City of Kelso, Washington**

---

---

**SUBJECT TITLE:**

Amendments to 911 Communication Center Agreement

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** \_\_\_\_\_ City Manager \_\_\_\_\_

**For Agenda of:** September 15, 2015

**Originator:** Steve Taylor

**PRESENTED BY:**

Steve Taylor

**City Attorney:** **Janean Parker**

**City Manager:** **Steve Taylor**

---

---

**Agenda Item Attachments:**

Proposed Amended Interlocal Agreement

Exhibit A – 2014 Funding Formula

Exhibit B – 911 Emergency Communication User Fees 2000-2015

Exhibit C – User Agency Funding Formula Terms and Methodology

**SUMMARY STATEMENT:**

The City of Kelso is party to an interlocal agreement with Cowlitz Communications Center (CCC) and our other neighboring jurisdictions to provide emergency dispatch and communication services for police, fire, and emergency medical aid. The CCC is owned, operated, and maintained by Cowlitz County. By participating in this agreement citizens are able to dial 9-1-1 in any perceived emergency and the information will be communicated to the proper agency for fast, efficient, response regardless of their location or nature of the incident.

The 911 Council appointed a Governance Committee (currently chaired by Steve Taylor) in 2013 to review the agreement's funding formula and definition of calls for service. The Committee reviewed the entire agreement and recommended the proposed changes to the 911 Executive Board and the 911 Council. The 911 Council authorized and unanimously approved the amended agreement on September 10th. The amendments cover three primary areas:

1. Establishes a new user agency funding formula based upon the average percentage allocation of fees to user agencies during the 2010-2014 period. The new percentage allocation method would be in place for the 2016 – 2020 budget years with opportunities for adjustment in certain circumstances.
2. Removes outdated and cumbersome meeting requirements for Law User and Fire User Subcommittees.
3. Allows for Executive Board voting members to designate an alternate in case of absence from E-Board meetings.

All participating agencies are required to approve and sign the amended interlocal agreement before the new language goes into effect.

**OPTIONS:**

- 1) Move to approve the Amended Interlocal Agreement with the Cowlitz County Communications Center;
- 2) Do not approve the Amended Interlocal Agreement;
- 3) Take no action and defer consideration to a subsequent regular meeting.

**RECOMMENDED ACTION:**

Move to approve the Amended Interlocal Agreement with the Cowlitz County Communications Center.



# **INTERLOCAL AGREEMENT FOR OPERATION, MAINTENANCE AND PARTICIPATION IN COWLITZ COUNTY COMMUNICATIONS CENTER**

## **BACKGROUND**

Prior to 1991, the City of Longview owned, operated and managed a communications center, housed in the Cowlitz County Hall of Justice, for the purpose of receiving and transmitting emergency and other information by radio, telephone and other means. As this communications center developed, it became more widely used, more emergency agencies became participants in the center, and its means of communication became more sophisticated and modern. In 1991, the ownership, operation and management of the Communications Center transferred to and became an agency and department of Cowlitz County, Washington.

Since 1991, Cowlitz County has owned, operated and maintained said communications center for the purpose of serving the needs of the general public as well as fire, police, medical emergency and other governmental services throughout the geographic area of the county, and beyond. This center is designed to receive information by telephone, radio, and computer (electronic) and to transmit information by the same means. The service rendered by this center is of great value to the general public, enabling a single "9-1-1" call to be made for any perceived emergency need from any location throughout the area of the county. This service is also of importance to all emergency and governmental agencies, enabling them to receive prompt notification of emergency situations; details regarding the nature of such situations; the locations and the quickest routes to such locations; and to provide for the dispatch of appropriate emergency or police response agencies and personnel in the most efficient manner.

Each of the parties to this agreement performs unique or specialized emergency or law enforcement services within a specific geographic area of the county, and each agency has become dependent upon the communications center for the dispatch of personnel and emergency equipment. The needs of members of the public are all different, and the responses to such needs by emergency response agencies or law enforcement agencies and/or personnel of such agencies, should be identified and determined by qualified personnel of the communications center as they receive such communications from the general public. Prompt notification and/or dispatch of appropriate emergency response agencies or law enforcement agencies, to the site of such emergencies is in the best interest of and serves the general health, welfare and safety of the general public. It is in the public interest that the Cowlitz County Communications Center continues to operate as a single common recipient of notification of emergencies and calls for assistance, aid, and help from the general public, and as a dispatching center in response to such notifications.

## **PURPOSE FOR THIS AGREEMENT**

It is necessary for the efficient and consistent operation of the Cowlitz Communications Center that the individual, specific, and special needs of each of the parties hereto be considered and that their unique and specialized services be used in a manner that best responds to the emergency needs of the

general public. It is also necessary that the cost of operation and maintenance of the center be shared in a fair and equitable manner by all of the parties hereto.

In order to accomplish these purposes, it is intent of this agreement to provide for the following:

1. The general responsibility for the ownership, operation, maintenance, repair, replacement, training and education, and financial management of the Cowlitz Communications Center (CCC) shall be vested in the Cowlitz County Board of Commissioners (BOCC).
2. The day-to-day management and operation of the CCC shall be under the supervision of and conducted by a Center Director, who shall be an employee of the county, and who shall be subject to all of the personnel rules of the county.
3. There shall be established, as provided in this agreement, a "9-1-1 Council", the duties, responsibilities and membership of which shall be as provided herein.
4. There shall be established, as hereinafter provided, an "E-Board", the duties, responsibilities and membership of which shall be as provided herein.
5. There shall be established, as hereinafter provided, ~~two~~ one "Combined User Committees" designated as the Fire Service ~~User Committee~~ and the Law Enforcement Service Combined User Committee, the duties, responsibilities and membership of each of which shall be as provided herein.
6. Contributions to the cost and expense of the operation, maintenance, repair and replacement, and all other related costs and expenses of the CCC, shall be divided and paid by each of the parties hereto in the amounts and in the manner provided herein, and annual budgets with respect to the CCC shall be prepared, approved and followed as provided in this agreement.
7. Withdrawal from this agreement and from participation in the CCC by a party hereto shall only be as provided in this agreement.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth and in consideration of the obligations of the other parties here, each of the parties hereto here promises and agrees as follows:

**1. IDENTIFICATION OF PARTIES TO THIS AGREEMENT:**

- (A) Cowlitz County, Washington, is acknowledged as the primary party to this agreement, because it owns, operates, manages, and houses the CCC, and because it is also a recipient of dispatch and communications services of the CCC through the Cowlitz County Sheriff's office.
- (B) The Cities of Longview, Kelso, Castle Rock, Kalama, and Woodland are acknowledged as parties to this agreement, because they are the recipients of

dispatch and communications services through their respective Police, Fire, Emergency Medical Aid services and departments.

- (C) Cowlitz County Rural Fire Districts 1, 3, 4, 5, ~~and 6~~, and Cowlitz 2 Fire and Rescue, ~~and Clark County Rural Fire District 2~~, are acknowledged as parties to this agreement, because they are the recipients of dispatch and communications services in connection with Fire, Emergency Medical services and other emergencies.
- (D) Other governmental agencies providing emergency services and requiring dispatch and communications services, and privately owned and operated emergency service providers desiring dispatch and communications services, may be permitted to become parties to this agreement upon such terms and conditions as shall be prescribed by the 9-1-1 Council and the E-Board.

## 2. 9-1-1 COUNCIL:

### (A) Membership:

#### (1) Voting members:

The 9-1-1 Council Membership shall be comprised of one representative from each party to this agreement, and such representative shall be an elected official of such party, and shall be designated in writing as the representative of such party. In addition, each party may designate an alternate representative who shall act as a voting member of the 9-1-1 Council in the absence of the principal representative, and who shall also be an elected official of such party. Each party's principal or alternative representative shall have one vote on all matters to come before the 9-1-1 Council, and a quorum consisting of a minimum of 5 voting members shall be necessary to conduct business or take action.

#### (2) Ex-Officio (non-voting) members:

The Center Director, one fire chief selected from among all of the fire departments, and one law enforcement chief officer selected from among all of the law enforcement or police departments shall serve as ex-officio (non-voting) members of the 9-1-1 Council.

### (B) Responsibility and Authority:

The 9-1-1 Council shall have the responsibility for and the authority to do and perform the following:

- (1) Establish the mission and goals of the CCC.
- (2) Review performance relative to the implementation of the CCC's policies and its budget.

- (3) Conduct an annual public hearing, during the month of September with respect to the annual budget of the CCC, and review, approve, amend or modify, and forward a budget to the BOCC on or before the last day of the month of September.
  - (4) Consider and resolve questions and issues presented to the 9-1-1 Council by the E-Board.
- (C) Meetings of the 9-1-1 Council:
- (1) Regular scheduled meetings of the 9-1-1 Council shall be held quarterly at such time and place as determined by the Chair. Special meetings may be called by the Chair as needed or desired, and shall be called within 72 hours after a request to do so by the E-Board. Not less than 24 hours' written or electronic notice of all meetings shall be given to all representatives and alternate representatives of the time and place of all meetings, and in accordance with RCW 42.30.
  - (2) All motions presented for approval shall require an affirmative vote of 2/3 of the members voting.
- (D) Officers of the 9-1-1 Council shall consist of a chairperson and a vice chair person to act in the absence of the chairperson, each of whom must be a voting member. A staff person of the CCC shall be designated by the Center Director to serve as secretary of the 9-1-1 Council to take and record minutes of all meetings and to give notices as directed by the chairperson.

### 3. EXECUTIVE BOARD ("E-Board"):

(A) Membership:

(1) Voting members:

The Executive Board ("E-Board") shall be comprised of the City Manager of the City of Longview, the City Manager of the City of Kelso, one Cowlitz County Commissioner (or the County Manager or County Administrator of Cowlitz County), and one Fire District Commissioner, selected by and from all of the Fire District Fire Commissioners, which are parties to this agreement. In addition, each party may designate in writing an alternate representative who shall act as a voting member of the Executive Board in the absence of the principal representative. Three members of the E-Board or their designated alternate shall constitute a quorum.

(2) Ex-Officio (non-voting) members:

The Center Director, one fire chief selected from among all of the fire departments, and one law enforcement chief officer selected from among all

of the law enforcement or police departments shall serve as ex-officio (non-voting) members of the E-Board.

(B) Responsibility and Authority:

The E-Board shall have the responsibility for and the authority to do and perform the following:

- (1) Development and oversight of the "User Structure" of the CCC.
- (2) Hiring and termination of the Center Director, with the assistance of the Cowlitz County ~~Human Resources~~ Personnel Department.
- (3) Supervision of the Center Director.
- (4) Conducting an annual performance review of the Center Director with the assistance of the Cowlitz County ~~Human Resources~~ Personnel Department.
- (5) Implementation of the mission, goals and budget as adopted by the 9-1-1 Council.
- (6) Providing direction to the Center Director in the development of annual operating and capital budgets.
- (7) Monitoring of revenues and expenses in relation to the approved annual budget.
- (8) Review of contracts with persons, firms and corporations, or any agencies of government, as necessary or desirable to acquire goods or services for the operation of the CCC, provided that all procurements shall conform to Cowlitz County's purchasing policies.
- (9) Receipt of reports from the Center Director regarding "Combined User Committee" recommendations and authorization of implementation, modification, or denial of such recommendations as appropriate. All responses to "Combined User Committee" recommendations shall be in writing.
- (10) Provide direction to the Center Director in the development of User policies regarding the delivery of service and the approval of such policies.
- (11) The E-Board shall respond promptly to all concerns expressed by parties to this agreement and presented to the E-Board.
- (12) The E-Board shall mediate disputes between the CCC and any party to this agreement. In the event that such mediation should not resolve the dispute, the E-Board shall refer the dispute to the 9-1-1 Council for its resolution.
- (13) The E-Board may create such temporary advisory committees, as it shall require, to investigate and make recommendations regarding special issues. The membership and responsibilities of such committees shall be as determined by the E-Board.

(C) Meetings of the E-Board:

- (1) Regular meetings of the E-Board shall be held monthly at such time and place as determined by the E-Board. Special meetings may be called by the Chair as needed or desired, and shall be called within 72 hours after a request to do so by two or more members of the E-Board.
- (2) All motions presented for approval shall require an affirmative vote of a majority of the whole membership of the voting members of the E-Board.

(D) Officers of the E-Board shall consist of a chairperson and a vice chair person to act in the absence of the chairperson, each of whom must be a voting member. A staff person of the CCC shall be designated by the Center Director to serve as secretary of the E-Board to take and record minutes of all meetings and to give notices as directed by the chairperson.

**4. USER COMMITTEES:**

(A) There shall be created a Combined User Committee, ~~together with a Fire Service User Subcommittee and a Law Enforcement User Subcommittee~~. The Combined User Committee shall consist of an equal number of representatives ~~appointed~~ appointed by the user agencies' representing Fire, Law Enforcement, and the 9-1-1 Communications Center. The Director, Chief and/or a designated spokesperson of the previously identified discipline will be the voting member by each of the said Subcommittees. Voting members of the Combined User Committee will be identified annually in writing by the Committee Chair, and a list provided to the Communication Center Secretary and the E-Board. It shall be the function and duty of the Combined User Committee to act upon the recommendations of the ~~User Subcommittees as described below~~ Special Committees, Task Force, or user agencies. Where approved by majority vote of the Combined User Committee, such recommendations shall be submitted to the Center Director and/or E-Board, as appropriate. ~~Both User Subcommittees shall be similarly structured.~~

(B) MEMBERSHIP:

COMBINED USER COMMITTEE

The Combined User Committee shall consist of representatives appointed by the user agencies representing Fire, Law Enforcement, and the 9-1-1 Communications Center. The Director, Chief and/or a designated spokesperson of the previously identified disciplines shall be the voting members. Voting members of the Combined User Committee shall be identified annually in writing by the Committee Chair, and a list shall be provided to the Communication Center Secretary and the E-Board. The voting membership shall not exceed three (3) Law Enforcement, three (3) Fire representatives, and one (1) Communication Center representative/spokesperson.

(1) FIRE SERVICE USER SUBCOMMITTEE:

~~The Fire Service User Subcommittee shall be comprised of all chief officers, or their appointees, of fire departments of the parties to this agreement together with an employee of the CCC designated by the Center Director who shall be a voting member of such committee.~~

~~(2) LAW ENFORCEMENT USER SUBCOMMITTEE:~~

~~The Law Enforcement User Subcommittee shall be comprised of all chief officers, or their appointees, of law enforcement or police departments of the parties to this agreement together with an employee of the CCC designated by the Center Director, who shall be a voting member of such committee.~~

~~(B)(C)~~ MEETINGS:

~~Each User Subcommittee shall meet not less than once monthly at~~ The Combined User Committee shall meet bi-monthly at such time and place as shall be determined by the ~~Chair of such submembers of the e~~Committee. Written or electronic notices of all meetings shall be given to the appropriate members of ~~the Committee, each User Subcommittee.~~

A quorum consisting of a majority of the voting members of ~~each User Sub~~the eCommittee shall be necessary to conduct business or take action. Each member of ~~a User Subcommittee~~ the Committee shall be entitled to one vote on matters before ~~it~~ its respective User SubCommittee.

~~(C)(D)~~ USER ~~SUB~~COMMITTEE OFFICERS:

The officers of ~~each User Sub~~ the eCommittee shall consist of a Chair and a Vice Chair, each of whom shall be a Chief, or designee, of his or her fire department or law enforcement or police department.

~~(D)(E)~~ RESPONSIBILITY AND AUTHORITY:

~~Each User Sub~~The e~~Combined~~ Committee shall have the responsibility for and the authority to do and perform the following:

- (1) Make recommendations in the development of telephone answering and dispatch protocol, procedures, policies, and systems related to service delivery for their respective User Service activity.
- (2) Make recommendations relative to dispatcher-staffing levels.
- (3) Make recommendations relative to service levels and performance standards. Changes in performance standards ~~recommended by a User Subcommittee~~ shall be submitted to the Center Director no later than ~~August 31~~April 30<sup>th</sup> in any year; such recommendations will be thereafter considered by the Center Director in the preparation of the ensuing year's budget.



- (4) Advise the Center Director in the preparation of the budget of the CCC.
- (5) Make recommendations regarding Standard Operating Procedures that are specific to the ~~User Sub~~Committee making such recommendations.
- (6) To the extent recommendations of the ~~User Sub~~Committees governing dispatch operations or Standard Operating Procedures are clearly encompassed within adopted E-Board policy, they shall be implemented as soon as practicable by the Center Director.
- (7) Provide an impact statement with recommendations to the E-Board and Director. The statement will include fiscal, training, operational, resource allocation impacts and recommendations, and timelines for implementation.

## **5. CENTER DIRECTOR:**

The CCC shall be managed, operated and supervised by a Center Director, employed by Cowlitz County, and subject to all of the provisions of the Cowlitz County Personnel Manual. The Center Director shall be selected on the basis of administrative and technical competence, and shall possess appropriate leadership and managerial skills and experience in technical, financial and administrative fields.

The Center Director shall work under the supervision of the E-Board.

(A) RESPONSIBILITY AND AUTHORITY:

- (1) The Center Director is responsible for the overall operation of the CCC.
- (2) The Center Director shall make monthly reports to the E-Board regarding outstanding issues from the Combined User Committees, and the financial status of the CCC.
- (3) The Center Director shall be the administrative head of the CCC and shall be responsible for administration, budget and personnel matters.
- (4) The Center Director shall be responsible for call answering, dispatching, records, communications, security, and other CCC functions and activities.
- (5) The Center Director shall comply with personnel policies of Cowlitz County, and shall comply with all operation policies and performance standards established by the E-Board.
- (6) The Center Director shall serve as an ex-officio member of the 9-1-1 Council and the E-Board and shall give advice and assistance when requested.
- (7) The Center Director shall designate an employee of the CCC to act as a voting member of the Combined User Committees.
- (8) The Center Director shall assure that ~~that~~ secretarial services are provided, as needed, to the 9-1-1 Council, the E-Board and the Combined User Committees; such services shall include recording and transcribing minutes of meetings, preparing correspondence as required, preparing and distributing notices of meetings and preparing agendas.
- (9) The Center Director shall prepare and present to the E-Board, the budget of the CCC in accordance with Cowlitz County budget timetables. Such budget shall be in a form required by Cowlitz County, and shall be based on the established service levels and performance standards provided by the Combined User Committees and the E-Board.
- (10) The Center Director shall be responsible for hiring, promoting, disciplining and termination of all CCC personnel, subject to personnel policies of Cowlitz County.
- (11) The Center Director shall participate in collective bargaining with representatives of any certified bargaining representative of the employees of the CCC.
- (12) The Center Director shall review and evaluate any proposals from the Combined User Committees for changes to service levels, performance

standards, and/or procedures for implementation costs, benefits and liabilities, or other matters, and prepare a written report of findings. The Center Director shall forward such proposals and findings to the E-Board.

(13) The Center Director shall prepare, revise and modify Standard Operating Procedures subject to the review of the E-Board or at the Combined User Committee, as appropriate.

(14) The Center Director shall establish policies consistent with Cowlitz County fiscal policies for the expenditure of budgeted items for the CCC. Such policies shall be submitted to the E-Board for approval, rejection or modification.

(15) The Center Director shall develop appropriate long-range plans, including strategic capital improvements, staffing, and other matters.

(15)(16) The Center Director shall track and maintain data, including but not limited to, calls for service, population, assessed valuation and agency contributions in accordance with the cost sharing formula in section 7(C). The Director is required to provide an annual report of the data to the E-Board and Council.

## 6. BUDGET PROCESS:

### (A) GENERAL:

(1) At the direction of the E-Board, the Center Director shall develop the annual operating budget of the CCC. The budget period shall be on a calendar year basis, beginning on the first day of January of each year and ending on the thirty-first day of December. The budgetary process shall be in accordance with Cowlitz County budget timetables.

(2) The amount to be paid by each member for participation in the CCC and receipt of services of the CCC for the ensuing calendar year shall be determined in accordance with this agreement and submitted to each member not later than October 1 of each year.

### (B) BUDGET COMMITTEE:

(1) The E-Board shall act as the Budget Committee on behalf of all parties to this agreement.

(2) The E-Board shall participate with the Center Director through all stages of the budget preparation, described below.

(3) The E-Board may make a recommendation to the Council based on the annual cost sharing report, to make necessary changes to the User Agency Funding Formula attached as Exhibit B to this

agreement. The recommendations could include an adjustment in the percentage of the agencies' user fees. Each user agency's average percentage of the total user fee as identified in Exhibit B will remain the same unless the E-Board recommends recalculation of the formula based on an actual or anticipated significant change. (For example, a significant change would include but not be limited to a substantial annexation, population increase or use of dedicated resources by one or more user agencies.) Authority to modify the User Agency Funding Formula remains with the Council.

(C) BUDGET STAGES:

- (1) REQUEST STAGE: The Combined User Committees shall work with the Center Director to determine their desired service levels and the amounts to be paid by each party hereto for the ensuing year.
- (2) PROPOSAL STAGE: The Center Director shall present a total proposed CCC budget for the ensuing year to the E-Board for their consideration and approval or modification. On or before the fifteenth day of August, the E-Board shall forward an approved budget to the 9-1-1 Council for its consideration.
- (3) APPROVAL STAGE: The 9-1-1 Council shall consider said budget and shall adopt said budget, or a modification thereof, and forward it to the BOCC on or before the first day of October.
- (4) ADOPTED STAGE: The BOCC shall adopt said budget as a part of the Cowlitz County budget for the ensuing year.
- (5) BUDGET CHANGES: In the event that there are any program changes and/or User changes, or in the event of changes in the parties to this agreement necessitating budget changes, any supplemental budget shall go the budget stages set forth herein and comply with all applicable Cowlitz County budget policies and local government budget laws and regulations.

**7. FUNDING:**

CCC Funding is intended to be self-sufficient. It is the intent of all of the parties to this agreement that each of them shall pay their proportionate share of the annual costs of maintenance, operation, repair and capital costs of the CCC, after the total of such costs are reduced by the amount of any and all grants, taxes or other sources of revenue other than payments by parties hereto as their proportionate share. It is acknowledged that Cowlitz County shall provide administrative services to the CCC as required. Such services include, but are not necessarily limited to: Facility space to house the CCC, personnel services, maintenance of the facility and systems, legal services, networking services, risk management, and financial services. It is the intent of the parties that the cost of such services shall be included in the CCC annual budget based upon approval of such costs by

the 9-1-1 Council and that the County will thereafter be reimbursed for the provision of such services as provided in such annual budget.

Upon request of any party hereto, or of any member of the 9-1-1 Council or the E-Board, the County will provide detailed information regarding administrative services that are proposed to be charged to and included in the CCC annual budget for any year; such detail shall include the number of hours anticipated for such services and the hourly cost to the County for such services.

(A) MAINTENANCE AND OPERATION COSTS:

- (1) Costs of maintenance, operation, repair and capital costs of the CCC are to be borne by and paid from grants, "911 taxes", and payments made by the parties hereto. All of such funds shall be for the sole and exclusive purpose of operating, repairing, maintaining, and administering the CCC, subject to review during adoption of the CCC's annual budget and any supplemental budgets adopted following Cowlitz County's budget policy and local budget laws.
- (2) Any excess of revenues from grants, "911 taxes" and payments by parties hereto over expenditures in any budget (calendar) year shall be carried forward into the then ensuing year's budget.
- (3) In the event that the expenditures in any budget (calendar) year should exceed the revenues, such excess expenditures shall, insofar as lawful under the budgetary laws of the state of Washington, be carried forward into the then ensuing year's budget.
- (4) Cowlitz County shall invoice each party hereto at the beginning of each quarter (3 months) for one-fourth of such party's share of the budget of the CCC. The amount of such invoice shall be determined by dividing such party's share of the CCC's then annual budget by four; payment of such invoices shall be made within 30 days thereafter.
- (5) In the event that the annual budget of the CCC should be changed by a supplemental budget because of increased expenditures or the addition of more parties to this agreement, the annual and quarterly payments required by each of the parties hereto shall be adjusted accordingly.
- (6) Additional emergency service providers may be permitted to become parties to this agreement with the approval of the 9-1-1 Council and the E-Board. If the joinder of additional parties is so permitted, the annual share of all of the parties hereto shall be recalculated, and pro rata adjustments shall be made to any remaining payments required of the parties hereto for the calendar year in which such joinder occurred.

(B) CAPITAL CONTRIBUTIONS - RESERVE FUND:

- (1) The CCC will maintain a capital reserve fund dedicated solely to the replacement of equipment and facilities of the CCC. The annual budget of the CCC will include an amount to be placed into such fund, and all parties hereto shall pay their proportionate share thereof, based on the same formula as is applicable to their shares of the maintenance and operational costs of the CCC. Funding of the capital reserve fund shall be based on a published amortization schedule of the CCC equipment and facilities. In the event that a party hereto should terminate and withdraw from this agreement in accordance with the provisions of section 8 hereof, none of the funds paid by such party into the capital reserve fund prior to the date of any termination notice shall be refunded, however such party shall not be required to make further payments to the capital reserve fund for the remainder of that calendar year until the effective date of termination.
- (2) In the event that a party to this agreement should require the installation of equipment or the performance of special services dedicated to the sole and special use of such party, to the exclusion of the other parties hereto, such party shall bear the entire cost of such equipment, its installation, maintenance, operation and repair. Such funds shall be non-refundable even on termination of such party and/or removal of such equipment or the termination of such special services.

(C) DIVISION OF COSTS:

- (1) The costs to be divided among the parties hereto shall be the actual annual budgeted operation, maintenance and capital costs, including the capital reserve fund, of the CCC, after deducting any grants, "911 taxes" and other revenues not constituting payments by parties hereto.
- (2) Expenses for the operations of the center shall be divided into cost centers representing major functional areas of operations, including but not limited to administration, 9-1-1 PSAP call-taking, fire dispatch and law enforcement dispatch. Such costs shall include personnel services, supplies, other services and charges, intergovernmental charges and capital costs. The ratio for the division of dispatch function personnel costs between law enforcement and fire services shall be based on the number of dedicated positions, or portions of dedicated positions for each service. For purposes of this agreement, costs allocated to administration and 9-1-1 PSAP call-taking shall be deemed "overhead costs." Revenues from sources, other than user shares, which are attributable to each cost center shall be distributed and applied against the costs in each cost center. The difference between costs and these revenues shall determine the net amount to be paid by user agencies.

The net costs for the law enforcement dispatch cost centers shall be divided by the percentage of calls for service dispatched for law agencies. The net costs for fire service dispatch shall be divided by the percentage of calls for service dispatched for fire service agencies.

Overhead costs, as described in the preceding paragraph, shall be divided 75% to law enforcement dispatch and 25% to fire services dispatch. The 75% of costs to be divided among law enforcement departments shall be divided among them by a 50/50 weighted average of population and valuation. The 25% of costs to be divided among fire service departments shall be divided among them based on valuation only.

The ratio set forth in this section and the method of dividing costs between law enforcement and fire services shall not be modified or changed in any manner, except by amendment of this agreement in the manner provided below

~~-(34)-~~The annual budget of the CCC will set forth the cost shares of each of the parties hereto for the ensuing year, and copies thereof shall be delivered or otherwise promptly sent to the chief executive officer of each of the parties hereto not later than October 1 of each year. By way of illustration, the ~~anticipated~~ budget for calendar year ~~2000~~2014, and cost shares for the parties determined pursuant to the above-described formula, is attached hereto and incorporated herein as Exhibit A. For the calendar year 2016 and beyond, the division of costs among the user agencies shall be allocated by the User Agency Funding Formula attached as Exhibit B in accordance with the User Agency Funding Formula Terms and Methodology attached as Exhibit C to this agreement.

## **8. WITHDRAWAL OF PARTY:**

### **(A) BY PARTY OTHER THAN COUNTY:**

Upon the giving of a written notice thereof to all of the parties to this agreement prior to April 1, any of the parties hereto, except the County, may withdraw from this agreement at the end of any calendar year. After April 1 and the giving of such notice, the withdrawing party shall not be required to make further contributions to the Capital Reserve Fund, but shall make all other payments for the remainder of the year and until the effective date of such withdrawal. In the event that the withdrawing party has purchased and installed special equipment in accordance with section 6(B)(2), such equipment may be removed upon withdrawal from this agreement; provided, however, that any and all costs associated with such removal shall be borne and paid by the withdrawing party.

### **(B) BY COUNTY:**

Upon the giving of 18 or more months' written notice thereof to all of the other parties to this agreement, the County may withdraw from this agreement at the end of a calendar year. After giving of such notice, and during the final 12 months immediately prior to the effective date of such withdrawal, the County shall not be required to make further contributions to the Capital Reserve Fund, but shall make all other payments required by this agreement until the effective date of such withdrawal. In the event that the County has purchased and installed special

equipment in accordance with section 6(B)(2), such equipment may be removed upon withdrawal from this agreement; provided, however, that any and all costs associated with such removal shall be borne and paid by the County.

In the event of the withdrawal by Cowlitz County, the CCC shall be dissolved. In the absence of a succeeding agreement among all of the other parties to this agreement at the time of such withdrawal which provides for collective operation of a communications center, all equipment, facilities and property of the CCC shall be divided among such parties in a fashion designed to best allow such parties to fulfill their emergency response duties.

**~~9. AMENDMENTS:~~**

**9. AGREEMENT ALTERATIONS AND AMENDMENTS**

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

~~This agreement may be amended only after approval of the proposed amendment by 2/3 of all of the members of the 9-1-1 Council, the E-Board, and a written document setting forth such amendment, executed by all of the then parties hereto. Any amendments to this agreement shall be attached hereto and become a part hereof.~~

**10. EFFECTIVE DATE:**

This agreement is in place of, supersedes, and replaces an existing "Interlocal Agreement for Operation, Maintenance and Participation in Cowlitz Communications Center", dated November 1<sup>st</sup>, 2002. This agreement, when counterparts hereof are executed by Cowlitz County, by all of the parties described in section 1(B), and by not less than three of the parties described in section 1(C), shall be deemed to be in full force and effect and binding upon all such parties. Notwithstanding the date of such separate execution hereof, the effective date of this agreement, and all of the obligations set forth shall be deemed in full force and effective for all purposes on November 1, 2002, \_\_\_\_\_, 2015.

**11. OWNERSHIP OF FACILITIES:**

There are no facilities or properties to be acquired or purchased as a result of this agreement; provided, however, upon termination of this agreement, all equipment, facilities and property of the CCC then owned by it, including any facilities or properties acquired from funds accumulated in the capital reserve fund, or otherwise, shall be divided among the parties hereto in the manner described in section 8(B) hereof; provided, further, that in the event that there is an accumulation of unexpended funds upon the termination of this agreement, such funds shall be refunded or paid to the then parties hereto in a manner which is proportionate to their respective contributions thereto.

**12. FILING OF AGREEMENT:**

This agreement shall be filed pursuant to the requirements of RCW 39.34.040.



**13. EXECUTION IN COUNTERPARTS:**

Cowlitz County shall execute the original of this agreement. Each other party hereto shall sign a counterpart of the original of this agreement. The parties hereto intend that all the signed counterparts taken together with the original will be considered as one original document, and given full force and effect as if all parties had signed one document.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20022015.

BOARD OF COUNTY COMMISSIONERS  
OF COWLITZ COUNTY, WASHINGTON

\_\_\_\_\_  
Michael A. Karnofski, Chairman

\_\_\_\_\_  
Dennis Weber, Commissioner

\_\_\_\_\_  
Joe Gardner, Commissioner

ATTEST: \_\_\_\_\_  
Tiffany Ostreim, Clerk of the Board

APPROVED  
AS TO FORM: \_\_\_\_\_  
Dana Gigler, Chief Civil Deputy  
Cowlitz County Prosecuting Attorney

INTERLOCAL AGREEMENT FOR OPERATION, MAINTENANCE AND PARTICIPATION IN COWLITZ COUNTY COMMUNICATIONS CENTER

Dated: \_\_\_\_\_, ~~2002~~2015.

CITY OF LONGVIEW

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

Attest:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Clerk

INTERLOCAL AGREEMENT FOR OPERATION, MAINTENANCE AND PARTICIPATION IN COWLITZ COUNTY COMMUNICATIONS CENTER

Dated: \_\_\_\_\_, ~~2002-2015~~.

CITY OF KELSO

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

Attest:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Clerk

INTERLOCAL AGREEMENT FOR OPERATION, MAINTENANCE AND PARTICIPATION IN COWLITZ COUNTY COMMUNICATIONS CENTER

Dated: \_\_\_\_\_, ~~2002-2015~~

CITY OF KALAMA

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

Attest:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Clerk

INTERLOCAL AGREEMENT FOR OPERATION, MAINTENANCE AND PARTICIPATION IN COWLITZ COUNTY COMMUNICATIONS CENTER

Dated: \_\_\_\_\_, ~~2002~~2015.

CITY OF CASTLE ROCK

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

Attest:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Clerk

INTERLOCAL AGREEMENT FOR OPERATION, MAINTENANCE AND PARTICIPATION IN COWLITZ COUNTY COMMUNICATIONS CENTER

Dated: \_\_\_\_\_, ~~2002~~2015.

CITY OF WOODLAND

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

Attest:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Clerk

INTERLOCAL AGREEMENT FOR OPERATION, MAINTENANCE AND PARTICIPATION IN COWLITZ COUNTY COMMUNICATIONS CENTER

Dated: \_\_\_\_\_, ~~2002~~2015.

COWLITZ COUNTY RURAL FIRE DISTRICT NO. 1

By: \_\_\_\_\_  
Chairman, Board of Commissioners

INTERLOCAL AGREEMENT FOR OPERATION, MAINTENANCE AND PARTICIPATION IN COWLITZ COUNTY COMMUNICATIONS CENTER

Dated: \_\_\_\_\_, ~~2002~~2015.

COWLITZ 2 FIRE AND RESCUE

By: \_\_\_\_\_  
Chairman, Board of Commissioners



INTERLOCAL AGREEMENT FOR OPERATION, MAINTENANCE AND PARTICIPATION IN COWLITZ COUNTY COMMUNICATIONS CENTER

Dated: \_\_\_\_\_, ~~2002-2015~~

COWLITZ COUNTY RURAL FIRE DISTRICT NO. 3

By: \_\_\_\_\_  
Chairman, Board of Commissioners

INTERLOCAL AGREEMENT FOR OPERATION, MAINTENANCE AND PARTICIPATION IN COWLITZ COUNTY COMMUNICATIONS CENTER

Dated: \_\_\_\_\_, ~~2002-2015~~

COWLITZ COUNTY RURAL FIRE DISTRICT NO. 5

By: \_\_\_\_\_  
Chairman, Board of Commissioners

INTERLOCAL AGREEMENT FOR OPERATION, MAINTENANCE AND PARTICIPATION IN COWLITZ COUNTY COMMUNICATIONS CENTER

Dated: \_\_\_\_\_, ~~2002~~.

COWLITZ COUNTY RURAL FIRE DISTRICT NO. 6

By: \_\_\_\_\_  
Chairman, Board of Commissioners



**COWLITZ COUNTY 911 COMMUNICATIONS**  
**FUNDING FORMULA - 2014-AMEND1**

**911 OPERATING ACCOUNT**  
**[412-535-000]**

**PROPERTY VALUATION / POPULATION / CALLS FOR SERVICE**

ENFORCEMENT AGENCY	Property Valuation		Population		Weighted Average Population / Valuation	Calls for Service		
	(PRELIM.) 2013 ASSESSMENT PAYABLE IN 2014	% of Total	4/1/13 Population	% of Total		7/1/12-6/30/13	% of Total	
County - Uninc	4,744,195,142	53.91%	44,345	42.93%	48.42%	17,246		66.91%
Castle Rock	118,794,657	1.35%	2,135	2.07%	1.71%	2,472		9.59%
Kalama	182,692,439	2.08%	2,400	2.32%	2.20%	1,629		6.32%
Kelso	676,837,474	7.69%	11,940	11.56%	9.63%		15,396	30.25%
Longview	2,523,161,344	28.67%	36,940	35.76%	32.22%		35,506	69.75%
Woodland (Co)	553,720,282	6.29%	5,540	5.36%	5.83%	4,426		17.17%
	8,799,401,338	100.00%	103,300	100.00%	100.00%	25,773	50,902	100.00%
<b>TOTAL LAW:</b>						<b>76,675</b>		

FIRE AREAS	Property Valuation		Calls for Service	Calls for Service	
	(PRELIM.) 2013 ASSESSMENT PAYABLE IN 2014	% of Total		7/1/12-6/30/13	% of Total
City of Longview	2,523,161,344	37.27%			
Fire District #1	365,802,596	5.40%		6,038	46.04%
Cowlitz 2 Fire	2,207,646,757	32.61%		360	2.75%
Fire District #3	234,091,391	3.46%		4,279	32.63%
Fire District #5	842,002,682	12.44%		393	3.00%
Fire District #5	842,002,682	12.44%		708	5.40%
Fire District #6	597,958,401	8.83%		1,336	10.19%
	6,770,663,171	100.00%	<b>TOTAL FIRE:</b>	<b>13,114</b>	100.00%

**TOTAL LAW AND FIRE CALLS FOR SERVICE: 89,789**

2013 Estimated Population data obtained from WA State OFM, Forecasting Division via internet website dated: 4/1/13.  
 Preliminary 2013 Assessed Values for taxes payable 2014 per Cowlitz County Assessor's Report, dated 8/8/13.

**REVENUE DISTRIBUTION --AMOUNT TO BE PAID BY USER AGENCIES**

	Overhead= Admin + Call Taking	Fire Overhead 25%	Fire Dispatch (Call Volume)	Total Fire	Law Overhead 75%	Law Dispatch Longview & Kelso	Law Dispatch CCSO & Small Cities	Total Law	Net Paid by User Agencies
Amount to be paid by Contracted User Agencies	\$ 249,163	\$ 62,291	\$ 443,373	\$ 505,664	\$ 186,872	\$ 454,700	\$ 454,040	\$ 1,095,612	\$ 1,601,276

AW AGENCIES	Overhead Shared by Population/ Valuation	Dispatch Shared By (Call Volume)	Total Longview/ Kelso	Dispatch Shared By (Call Volume)	Total CCSO & Small Cities	Net Paid by Law
Cowlitz County	\$ 90,487			\$ 303,821	\$ 394,307	
Castle Rock	\$ 3,193			\$ 43,549	\$ 46,741	
Kalama	\$ 4,111			\$ 28,698	\$ 32,809	
Kelso	\$ 17,987	\$ 137,530	\$ 155,517			
Longview	\$ 60,205	\$ 317,170	\$ 377,375			
Woodland (Cowlitz only)	\$ 10,891	\$ -		\$ 77,972	\$ 88,863	
	\$ 186,872	\$ 454,700	\$ 532,892	\$ 454,040	\$ 562,720	\$ 1,095,612

FIRE AGENCIE	SHARED BY			LESS AMR CREDITS	TOTAL	AMR CALL STATS		Net Paid by Fire/Aid
	SHARED BY VALUATION	CALL VOLUME	SUB-TOTAL	i/1/12-4/30/13		i/1/12-4/30/13	0	
City of Longview	\$ 23,213	\$ 204,140	\$ 227,353	\$ 79,041	\$ 148,312	5,057	\$15.63	
Fire District #1 - Woodland	\$ 3,365	\$ 12,171	\$ 15,537	\$ 2,985	\$ 12,551	191	\$15.63	
Cowlitz 2 Fire & Rescue	\$ 20,311	\$ 144,669	\$ 164,980	\$ 1,032	\$ 163,948	66	\$15.63	
Fire District #3 - Toutle	\$ 2,154	\$ 13,287	\$ 15,441	\$ 453	\$ 14,987	29	\$15.63	
Fire District #5 - Kalama	\$ 7,747	\$ 23,937	\$ 31,683	\$ 156	\$ 31,527	10	\$15.63	
Fire District #6 - Castle Rock	\$ 5,501	\$ 45,169	\$ 50,670	\$ 234	\$ 50,436	15	\$15.63	
	\$ 62,291	\$ 443,373	\$ 505,664	\$ 83,902	\$ 421,762	5,368		\$ 505,664



## User Agency Funding Formula Terms and Methodology

In 2015, the agencies who are parties to the Agreement approved amendments altering the manner in which the operational, maintenance, and capital costs of the Cowlitz Communications Center are allocated among the user agencies during the 2016 – 2020 budget years.

(A) Commencing in 2016, user agency fees shall be allocated based upon the *mean average annual percentage* user fee cost share during the 2010 – 2014 budget years. It is understood that the cost sharing methodology described within Section 7 (C) of the Agreement serves as the underlying basis of the allocation of fees during the 2010-2014 calculation period. The methodology will remain in place to provide guidance when changes to the user agency allocation percentage factors become necessary.

(B) The user agency allocation percentage factor will stay constant for the budget years 2016 – 2020, except as provided in Section 6 (B) (3) of the Agreement and Exhibit C below.

(C) User Agency Allocation Percentage Example (*refer to Exhibit B spreadsheet*)

- *Longview Fire Department*

2010	9.0%
2011	9.5%
2012	12.0%
2013	11.3%
<u>2014</u>	<u>9.8%</u>

**5-yr Average 10.3%** (*Sum of % from 2010-2014 divided by 5*)

- Percentage factors were adjusted to account for agencies that were parties to the Agreement during the calculation period, but are no longer users (*Clark Rural FD #2; Woodland Fire Dept, Ryderwood FD #4*). Prior to the adjustment, the sum of the 5-year average percentage factors of those user agencies who are presently party to the Agreement equaled 98.6%. After the adjustment, the sum of the percentage factors equals 100%.

- *Longview Fire Department*                      **10.3% (pre-adjusted)**

$$10.3\% \times (1 - 98.6\%) + 10.3\% = \mathbf{10.5\% \text{ (adjusted)}}$$

2015 User Fee Revenue Requirement: **\$1,535,169**

$$2015 \text{ Fee: } 10.5\% \times \$1,535,169 = \mathbf{\$160,732}$$



- (D) Prior to approving the 2019 budget and user fee allocation, the E-Board will compare the user agency allocation percentage factors in Exhibit B to the cost sharing methodology contained in Section 7 (C) of the Agreement. The E-Board may recommend adjustments to the percentage factors to the 911 Council for the 2019 and 2020 budget years.
- (E) Prior to approving the budget or user fee allocation for any year, the E-Board may recommend a recalculation of user agency allocation percentage factors to accommodate significant changes by one or more user agencies. A significant change would include, but not be limited to, an expansion or retraction of parties to the Agreement, a substantial annexation or population increase, or large use of dedicated resources by one or more agencies.
- (F) The User Agency Funding Formula described in Exhibit C will expire at the end of the 2020 budget year in the absence of an extension approved by the 911 Council. In that instance, the user agency cost sharing methodology described in Section 7 (C) of the Agreement will be used for the 2021 budget year and beyond.

# **AGENDA SUMMARY SHEET**

## **Business of the City Council City of Kelso, Washington**

---

---

**SUBJECT TITLE:** Professional Services Agreement with Gordon, Thomas, Honeywell Government Affairs for Lobbying Services

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** \_\_\_\_\_ City Council \_\_\_\_\_

**For Agenda of:** \_\_\_\_\_ September 15, 2015 \_\_\_\_\_

**Originator:** \_\_\_\_\_ Steve Taylor \_\_\_\_\_

**PRESENTED BY:**

Steve Taylor

**City Attorney:** Janean Parker

**City Manager:** Steve Taylor

---

---

**Agenda Item Attachments:**

Professional Services Agreement with Gordon, Thomas, Honeywell Government Affairs

**SUMMARY STATEMENT:**

The City has worked with Gordon, Thomas, Honeywell Government Affairs since August 1, 2014 for lobbyist services. The contract with GTH expired on July 31, 2015 after a highly successful legislative session and Staff would like to continue working with GTH on the City's numerous remaining priorities including phase two of the West Main Realignment project.

The terms of the agreement will remain the same and will run through April of 2016.

**RECOMMENDED ACTION:**

Move to approve the Professional Services Agreement with Gordon, Thomas, Honeywell Government Affairs for lobbying services.

**CITY OF KELSO  
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered into by and between City of Kelso and Gordon Thomas Honeywell Governmental Affairs (hereinafter referred to as “Consultant”), upon the following terms and conditions:

**A. Scope of Work.** Consultant will advise and assist the City of Kelso in accordance with Consultant’s Scope of Work, described in Attachment “A” hereto and incorporated herein, and Consultant will do and produce such other things as are set forth in the Scope of Work (the “Services”). Consultant’s Services will be in compliance with applicable laws, regulations, rules, orders, licenses and permits, now or hereinafter in effect, and Consultant shall furnish such documents as may be required to effect or evidence such compliance.

**B. Compensation; Expenses.** The City of Kelso will pay Consultant for satisfactorily rendered Services in accordance with the specific terms set forth in Attachment “A.”

**C. Invoices; Payment.** Consultant will furnish the City of Kelso invoices at regular intervals, as set forth in Attachment “A.”

**D. Term.** Consultant shall promptly begin the Services hereunder on the date set forth in Attachment “A” and shall terminate same on the date set forth in Attachment “A,” unless earlier terminated by mutual agreement. The City of Kelso or consultant may terminate consultant services for convenience at any time prior to the termination date set forth in Attachment “A,” provided that either party provides 30-days notice.

**E. Ownership of Work Product.** The product of all work performed under this agreement, including reports, and other related materials shall be the property of the City of Kelso or its nominees, and the City of Kelso or its nominees shall have the sole right to use, sell, license, publish or otherwise disseminate or transfer rights in such work product.

**F. Independent Contractor.** Consultant is an independent contractor and nothing contained herein shall be deemed to make Consultant an employee of the City of Kelso, or to empower consultant to bind or obligate the City of Kelso in any way. Consultant is solely responsible for paying all of Consultant’s own tax obligations, as well as those due for any employee/subcontractor permitted to work for Consultant hereunder.

**G. Release of Claims; Indemnity.** Consultant hereby releases, and shall defend, indemnify and hold harmless the City of Kelso from and against all claims, liabilities, damages and costs arising directly or indirectly out of, or related to, Consultant’s fault, negligence, strict liability or product liability of Consultant, and/or that of any permitted employee or subcontract or Consultant, pertaining to the Services hereunder.

**H. Insurance.** The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, their agents, representatives, employees or subcontractors.

1. Minimum Scope of Insurance. Consultant shall obtain insurance of the types described below:

A. Commercial General Liability insurance with written limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

B. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

C. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident covering all owned, non-owned, hired and leased vehicles.

2. The Consultant's insurance shall be endorsed to state as follows:

A. The coverage shall not be cancelled by either party, except after thirty (30) days prior written notice to the City.

B. The coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

**I. Assignment.** Consultant's rights and obligations hereunder shall not be assigned or transferred without the City of Kelso's prior written consent; subject thereto, this Agreement shall be binding upon and inure to the benefit of the parties' heirs, and successors.

**J. Governing Law; Severability.** This Agreement shall be governed by the laws of the State of Washington, U.S.A. (excluding conflict of laws provisions). If any term or provision of this Agreement is determined to be legally invalid or unenforceable by a court with lawful jurisdiction hereover (excluding arbitrators), such term or provision shall not affect the validity or enforceability of any remaining terms or provisions of this Agreement, and the court shall, so far as possible, construe the invalid portion to implement the original intent thereof.

**K. Arbitration.** Should any dispute arise concerning the enforcement, breach or interpretation of this Agreement, the parties shall first meet in a good faith attempt to resolve the dispute. In the event such dispute cannot be resolved by agreement of the parties, such dispute shall be resolved by binding arbitration pursuant to RCW 7.04A, as amended, and the Mandatory Rules of Arbitration (MAR); venue shall be placed in Kelso, Cowlitz County, Washington, the laws of the State of Washington shall apply, and the prevailing party shall be entitled to its reasonable attorney fees and costs.

**L. Entire Agreement; Etc.** This Agreement, and its incorporated attachments hereto, state the entire agreement between the parties regarding the subject matter hereof and supersede any prior agreements or understandings pertaining thereto. Any modification to this Agreement must be made in writing and signed by authorized representatives of both parties. Any provision hereof which may be reasonably deemed to survive the expiration or termination of this Agreement shall so survive, and remain in continuing effect. No delay or failure in exercising any right hereunder shall be deemed to constitute a waiver of any right granted hereunder or at law by either party.

**Consultant:**

Gordon Thomas Honeywell  
Governmental Affairs

**City of Kelso:**

\_\_\_\_\_  
Briahna Taylor, Vice President

\_\_\_\_\_  
Steve Taylor, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT “A” TO  
CITY OF KELSO CONSULTING AGREEMENT**

- A. Scope of Work:** Consultant shall provide the City of Kelso with the following governmental affairs services:

General Washington State Legislative Services

- Identify and track all relevant legislation.
- During the legislative session, provide the City with weekly reports and tracking lists.
- Attend all relevant legislative hearings.
- Attend all relevant legislative meetings.
- Coordinate City officials to testify at relevant legislative hearings.
- Lobby to amend, defeat or pass legislation or budgets that directly affect the City’s interests.
- Strengthen relevant legislative relationships between the City, state legislators, and executive offices.
- Work with the City to develop a legislative agenda that includes state budget requests and lobby the Legislature according to the legislative agenda.
- Engage in coalition building as needed to implement legislative agenda items.

Specific Legislative Issues:

- Assist in related grant/loan applications and seek funding opportunities in support of Kelso’s Minor Road Reservoir capital project.
- Develop and implement a communication plan in support of completion of the final phase of the West Main Street Realignment Project that includes both state agencies and legislators.
- Monitor allocation of funds in the transportation revenue package and advocate for timely and efficient delivery of funds toward Kelso’s Hazel Street Crossing project.
- Seek opportunities to address rising misdemeanor public defense costs due to stricter caseload standards.

- B. Compensation/Expenses:** The City of Kelso shall pay Consultant a monthly fee of \$2,000 for the services listed above. Consultant shall only bill communication and travel expenses, such as mileage, cell phone use, conference call service use, etc. Expenses shall not exceed \$2,000 for the term of the contract.

- C. Invoices/Payments:** (a) Consultant shall furnish the City of Kelso with invoices for services performed on a monthly basis, and (b) the City of Kelso shall pay each of Consultant’s invoices within thirty (30) days after City’s receipt and verification of invoices.

- D. Term of Agreement:** Consultant’s services shall commence on October 1, 2015 and shall terminate on April 30, 2016.

# **AGENDA SUMMARY SHEET**

## **Business of the City Council City of Kelso, Washington**

---

---

**SUBJECT TITLE:** AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE 1.40 GENERAL PENALTY TO PROVIDE GENERAL CRIMINAL PENALTIES AND GENERAL CIVIL PENALTIES

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** Community Development

**For Agenda of:** September 15, 2015

**Originator:** Steve Taylor

**City Attorney:** **Janean Parker**

**City Manager:** **Steve Taylor**

**PRESENTED BY:**

Steve Taylor

---

---

**Agenda Item Attachments:**

Ordinance

Exhibit A - Chapter 1.40

**SUMMARY STATEMENT:**

As part of the update to the City's code enforcement/nuisance abatement program changes were made to the process and penalties associated with violations of the Kelso Municipal Code. The proposed ordinance will add additional enforcement mechanisms to our general penalty provision. These changes include changing the general criminal penalty from a gross misdemeanor to a misdemeanor, the establishment of a general civil penalty, and a general civil infraction.

**RECOMMENDED ACTION:**

Move to approve on first reading an ordinance amending Chapter 1.40 General Penalty of the Kelso Municipal Code.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE 1.40 GENERAL PENALTY TO PROVIDE GENERAL CRIMINAL PENALTIES AND GENERAL CIVIL PENALTIES FOR VIOLATIONS THE KELSO MUNICIPAL CODE**

WHEREAS, the City Council has considered and adopted changes to the Kelso Municipal Code to create a new Chapter 1.50 Code Enforcement in order to establish civil penalties and a process for the enforcement of violations of the Kelso Municipal Code and to establish updated consistent enforcement procedures for code violations; and

WHEREAS, the City Council wishes to update its general penalty provisions at Kelso Municipal Code 1.40 to be consistent with the new civil penalty provisions; and

WHEREAS, the City Council wishes to change the general criminal penalty from a gross misdemeanor to a misdemeanor; which penalty shall be the general penalty for criminal violations unless otherwise specified.

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

**SECTION 1. KMC CHAPTER 1.40 AMENDED.** That Kelso Municipal Code Chapter 1.40 is hereby amended as set forth in Exhibit A, attached hereto and incorporated fully by this reference.

**SECTION 2. SEVERABILITY.** The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.



**SECTION 3. EFFECTIVE DATE.** This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

PUBLISHED: \_\_\_\_\_

Exhibit A

**Chapter 1.40  
GENERAL PENALTY**

**~~1.40.010 Punishment established.~~**

---

~~Notwithstanding the provisions of any other ordinance of the city, every person convicted by the municipal court of the city of a violation of the provisions of any criminal ordinance of the city shall be punished by a fine not to exceed five thousand dollars and imprisonment for up to one year in jail for each separate offense. Any violation which is by nature a continuing violation, including but not limited to violations of the Uniform Building Code, the Uniform Mechanical Code, Uniform Fire Code, the Uniform Plumbing Code, the Uniform Building Code Standards, all licensing and taxing ordinances, the animal control ordinance, zoning ordinance and public health ordinances, shall be deemed a separate offense for each and every day or portion thereof during which any violation is committed, continued or permitted.~~

**1.40.010 General penalties.**

Unless otherwise specified by City ordinance, any person who violates the provisions of any City of Kelso ordinance regulating, forbidding or prohibiting conduct shall be punished pursuant to the general penalty provisions set forth in this section.

A. General Criminal Penalty. Unless otherwise provided, the minimum criminal penalty is classified as a misdemeanor. Any person convicted of a misdemeanor shall be punished by a fine not to exceed \$1,000 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment.

B. General Civil Penalty. Unless otherwise provided, the violation of a city ordinance is punishable by a fine as set forth in KMC 1.50.230. In any court or administrative hearing to determine whether a violation has occurred, the City shall have the burden of proving by a preponderance of the evidence that a violation occurred. This section does not preempt the specific penalties set forth in ordinances of the City setting forth other penalties for violations of those ordinances.

B. Civil Infraction Penalty. A violation of an ordinance which is designated a civil infraction shall be deemed a civil infraction pursuant to Chapter 7.80 RCW. Unless otherwise provided, any such person shall be assessed a monetary penalty not to exceed a class 1 civil infraction or \$250.00, whichever is greater.

**1.10.020 Separate offense.**

Every person violating any of the provisions of any ordinance of the City is guilty of a separate offense for each and every day during any portion of which the violation is committed, continued or permitted by any such person.

**1.10.030 Nuisance.**

In addition to the penalties set forth in KMC 1.50.230, all remedies available by law for the prevention and abatement of nuisances shall apply regardless of any other remedy.

**1.10.040 Adoption of civil infraction system.**

Pursuant to RCW 35A.11.020 and 35A.12.140, the City adopts Chapter 7.80 RCW, entitled "Civil Infractions" as the procedure and system for adjudicating civil infractions that occur within the City of Kelso.

**1.10.050 Prosecution.**

Any violation of a City ordinance may be prosecuted by the city attorney or designee in the name of the City to include demands for fines and forfeitures paid to the City or may be adjudicated by civil action, or both.

# **AGENDA SUMMARY SHEET**

## **Business of the City Council City of Kelso, Washington**

---

---

**SUBJECT TITLE: AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE CHAPTER 13.09, STORMWATER MANAGEMENT AND CHAPTER 13.11 ILLICIT DISCHARGES—STORMWATER UTILITY TO AMEND THE ENFORCEMENT PROCEDURES TO BE CONSISTENT WITH NEW KMC CHAPTER 1.50 CODE ENFORCEMENT**

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** Community Development

**For Agenda of:** September 15, 2015

**Originator:** Steve Taylor

**City Attorney:** **Janean Parker**

**City Manager:** **Steve Taylor**

### **PRESENTED BY:**

Steve Taylor

---

---

### **Agenda Item Attachments:**

Ordinance

Exhibit A - Chapter 13.09 Clean

Exhibit B - Chapter 13.11 Clean

Chapter 13.09 Stormwater Management - Redline

Chapter 13.11 Illicit Discharge – Redline

### **SUMMARY STATEMENT:**

As part of the update to the City's code enforcement/nuisance abatement program a new chapter 1.50 Code Enforcement was drafted to create a process for certain violations of the Kelso Municipal Code. Our Engineering department recommended that violations to the City's Stormwater and Illicit Discharge chapters should be enforced using the mechanisms outlines in the new chapter 1.50; this ordinance makes those changes to the enforcement provisions of Chapters 13.09 and 13.11.

### **RECOMMENDED ACTION:**

Move to approve on first reading an ordinance amending Chapters 13.09 Stormwater Management and 13.11 Illicit Discharge of the Kelso Municipal Code.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE CHAPTER 13.09, STORMWATER MANAGEMENT AND CHAPTER 13.11 ILLICIT DISCHARGES—STORMWATER UTILITY TO AMEND THE ENFORCEMENT PROCEDURES TO BE CONSISTENT WITH NEW KMC CHAPTER 1.50 CODE ENFORCEMENT**

WHEREAS, the City Council adopted new stormwater regulations in 2009 and 2010 by Kelso Municipal Code Chapters 13.09 and 13.11 to comply with new state stormwater laws, including provisions for the enforcement of violation of such stormwater regulations; and

WHEREAS, the City Council has considered and adopted changes to the Kelso Municipal Code to create a new Chapter 1.50 Civil Penalties in order to establish civil penalties for certain violations of the Kelso Municipal Code and to establish updated consistent enforcement procedures for code violations; and

WHEREAS, the City Council wishes to update its stormwater enforcement regulations at Kelso Municipal Code 13.09 and 13.11 to be consistent with the new civil penalty provisions;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

**SECTION 1. KMC CHAPTER 13.09 AMENDED.** That Kelso Municipal Code Chapter 13.09 is hereby amended as set forth in Exhibit A, attached hereto and incorporated fully by this reference.

**SECTION 2. KMC CHAPTER 13.11 AMENDED.** That Kelso Municipal Code Chapter 13.11 is hereby amended as set forth in Exhibit B, attached hereto and incorporated fully by this reference.

**SECTION 3. SEVERABILITY.** The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

**SECTION 4. EFFECTIVE DATE.** This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.\

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST/AUTHENTICATION:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

PUBLISHED: \_\_\_\_\_

## Chapter 13.09

### STORMWATER MANAGEMENT

#### Sections:

- 13.09.010 Purpose/intent.
- 13.09.020 Definitions.
- 13.09.030 General provisions.
- 13.09.035 Stormwater management program adopted.
- 13.09.040 Applicability and exemptions.
- 13.09.050 General requirements.
- 13.09.060 Standards for development.
- 13.09.070 Construction inspection for permanent stormwater BMPs.
- 13.09.080 Easements, deeds and education.
- 13.09.090 Maintenance agreement and plan.
- 13.09.100 Stormwater performance bond.
- 13.09.110 As-built plans.
- 13.09.120 Dedication of stormwater BMPs.
- 13.09.130 Ongoing maintenance for stormwater BMPs.
- 13.09.140 Maintenance escrow requirement.
- 13.09.150 Maintenance and inspection.
- 13.09.160 Administration.
- 13.09.170 Adjustments, exceptions, and appeals.
- 13.09.180 Severability.
- 13.09.190 Compatibility with other permit and ordinance requirements.
- 13.09.200 Legal authority.
- 13.09.210 Liability.
- 13.09.220 Designation of public works – Powers and duties.

#### **13.09.010 Purpose/intent.**

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the city through the regulation of runoff from construction, development, and redevelopment. This chapter establishes methods for controlling the introduction of runoff and pollutants into the stormwater drainage system in order to comply with requirements of the Western Washington Phase II Municipal Stormwater Permit (Permit) process.

The objectives of this chapter are to:

- A. Minimize water quality degradation in streams, ponds, lakes, wetlands, and other water bodies;
- B. Minimize the degradation of habitat and habitat forming processes in streams, ponds, lakes, wetlands, and other water bodies;
- C. Minimize the impact of increased volume and runoff rates, flooding, increases in stream temperature, erosion and sedimentation caused by land development and maintenance practices;
- D. Promote site planning and construction practices that are consistent with natural geological, topographical, vegetational, and hydrological conditions;
- E. Maintain and protect the city's stormwater management infrastructure and those downstream;
- F. Minimize disruption of hydrologic functions, patterns, and processes;
- G. Regulate the contribution of pollutants to the stormwater drainage system by stormwater dischargers from development and redevelopment;
- H. Provide long-term responsibility for and maintenance of stormwater BMPs;

I. Establish legal authority to carry out all the inspection and monitoring procedures necessary;

J. Meet the minimum requirements as established in Chapter 173-218 WAC and the Permit.

The intent of this chapter is to place the obligation of complying with its requirements upon the owner and/or contractor. 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 anything~~ done or act performed pursuant to the provisions of this chapter. (Ord. 3727 § 1, 2010)

### **13.09.020 Definitions.**

For the purposes of this chapter, the following definitions shall mean:

1. "Amenity" means a pleasant and/or engaging feature that increases attractiveness, value, and/or understanding of stormwater.
2. "Best management practices (BMPs)" means 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 Washington State or the stormwater drainage system.
  - a. "Source control BMP" means a BMP that is intended to prevent pollution from entering stormwater.
  - b. "Treatment BMP" means a BMP that is intended to remove pollution from stormwater.
  - c. "Flow control BMP" means a BMP that is intended to mitigate the impacts of increased surface and stormwater runoff rates generated by development.
  - d. "Low impact development BMP" means 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 predevelopment hydrologic functions.
  - e. "Experimental BMP" means any treatment or methodology proposed for treatment or management of stormwater that is not in a current stormwater manual approved by the Washington State Department of Ecology (Ecology).
3. "Bioretention" means 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.
4. "City" means the city of Kelso.
5. "Clean Water Act (CWA)" means the federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.
6. "Clearing" means the destruction and removal of vegetation by manual, mechanical, chemical or other such method.
7. "Common plan of development or sale" 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.

8. "Critical areas" means areas defined in Chapter 18.20, 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.

9. "Detention" means 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.

10. "Development" means new development, redevelopment, or both, including a combination thereof.

11. "Director" means the city of Kelso public works director or his/her designee.

12. "Ecology" means the Washington State Department of Ecology.

13. "Stormwater Manual" means the "Stormwater Management Manual for Western Washington" by Ecology as currently adopted or hereafter modified.

14. "Erosion" means the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep.

15. "Excavation" means the mechanical removal of earth material.

16. "Fill" means a deposit of earth material placed by artificial means.

17. "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to road and trail construction; harvesting, final and intermediate; precommercial thinning; reforestation; fertilization; prevention and suppression of diseases and insects; salvage of trees; brush control, or slash burning.

18. "Highly contaminated runoff" means runoff containing toxicants which would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria.

19. "Highway" means a main public road connecting towns and cities.

20. "Illicit discharge (IDDE)" means any direct or indirect discharge to the stormwater drainage system that is not composed entirely of stormwater.

21. "Impervious surface" means 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 rooftops, 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. 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 Stormwater Manual shall be excluded in the determination of thresholds for compliance with this chapter.

22. "Kelso Engineering Design Manual (KEDM)" means a manual that sets forth certain standards of design and specifications for public works projects in the city and for projects subject to approval by the director. The manual is adopted at Section 13.09.050 and within this chapter for compliance with stormwater requirements for development.

23. "Land-disturbing activity" means any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land-disturbing activities

include, but are not limited to, 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.

24. “LID Guidance Manual” means 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.

25. “Low impact development (LID)” means 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 predevelopment hydrologic functions.

26. 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.

27. “MR” means Ecology’s Minimum Technical Requirement(s) or “Minimum Requirements” for New Development and Redevelopment for land disturbances of one acre or more or that are part of a larger common plan of development or sale.

28. “Municipal separate storm sewer system (MS4)” means 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 Clean Water Act 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.

29. “National Pollutant Discharge Elimination System (NPDES)” means 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 Washington State, are administered by Ecology under authority delegated pursuant to 33 U.S.C. Section 1342(b).

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

31. “New development” means 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.

32. “Nonstormwater discharge” means any discharge to the storm drainage system that is not composed entirely of stormwater. Examples may include but are not limited to sanitary wastewater, laundry wastewater, noncontact cooling water, vehicle wash wastewater, radiator flushing wastewater, spills from roadway accidents, and improperly disposed motor oil, solvents, lubricants, and paints.

33. “Permit” (the “Western Washington Phase II Municipal Stormwater Permit”) means a permit issued by Ecology under Sections 307, 402, 318, and 405 of the federal Clean Water Act that authorizes the discharge of pollutants to surface waters of the state. Also known as an NPDES permit.

34. “Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

35. “Pollution” means contamination or other alteration of the physical, chemical, or biological properties of 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.

36. Predeveloped Condition. For areas that drain directly or indirectly to a river or stream, “predeveloped condition” shall mean the native vegetation and soils that existed at a site prior to the influence of Euro-American settlement. The predeveloped 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.

37. “Project site” means that portion of a property, properties, or right-of-way subject to land-disturbing activities, new impervious surfaces, or replaced impervious surfaces. The total projected area of new, replaced or new plus replaced impervious surfaces for subdivisions shall constitute a project site.

38. “RCW” means the Revised Code of Washington.

39. “Receiving waters” means bodies of water or surface water systems to which surface runoff is discharged via a point source of stormwater or via sheet flow.

40. “Redevelopment” means, on a site that is already substantially developed (which means thirty-five percent 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, or other projects where any other city construction permit is required.

41. “Replaced impervious surface” means, 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.

42. “Routine maintenance” means 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.

43. "Site" means 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.
44. "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.
45. "Stormwater" means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.
46. "Stormwater drainage plan" means the comprehensive report containing all of the technical information and analysis necessary for a regulatory agency to evaluate a proposed new development or redevelopment project for compliance with stormwater requirements.
47. Stormwater Drainage System. See "municipal separate storm sewer system (MS4)."
48. "Stormwater facility (facility)" means 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.
49. "Stormwater Manual" means the "Stormwater Management Manual for Western Washington," February 2005, as prepared by Ecology. This manual contains BMPs to prevent, control or treat pollution in stormwater and reduce other stormwater-related impacts to waters of the state. The Stormwater Manual is intended to serve as a reference and supplement to this chapter to control the quantity and quality of stormwater runoff from new development and redevelopment.
50. "Stormwater master plan" means documents illustrating the location, facility types and connections of the city's stormwater drainage system. These documents include the current editions of the Kelso Stormwater Master Plan and are created and maintained for the comprehensive management of stormwater for the city of Kelso urban areas and suburban fringe areas.
51. "Stormwater pollution prevention plan (SWPPP)" means a written plan to implement BMPs to identify, prevent, and control the contamination of stormwater discharges to stormwater, stormwater drainage systems and/or receiving waters to the maximum extent practicable.
52. "WAC" means the Washington Administrative Code.
53. "Wastewater" means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
54. "Waterbody" means lakes, rivers, ponds, streams, inland waters, sloughs, ditches, and all other surface waters and watercourses within the jurisdiction of the state of Washington.
55. "Wetlands" means 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 nonwetland 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 nonwetland areas to mitigate the conversion of wetlands.
56. "Vegetation" means organic plant life growing on the surface of the earth. (Ord. 3727 § 1, 2010)

**13.09.030 General provisions.**

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

B. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter. (Ord. 3727 § 1, 2010)

**13.09.035 Stormwater management program adopted.**

The city of Kelso’s stormwater management program, as now or hereafter modified, is hereby adopted by reference and is hereinafter referred to as “the program.” The program contains information assembled for the purposes of identifying existing and projected problems, analyzing alternatives leading to recommendations, and preparing a program to implement recommendations. The city expresses no guarantee of the accuracy of the information, although updates will be made as necessary to reflect best available information. The use of information should be accompanied by adequate checks for accuracy along with good engineering practice and judgment.

The director shall be authorized to modify the program, in accordance with the city’s adopted policies and procedures, to reflect newly developed technical data, models, and other updated information. (Ord. 3727 § 1, 2010)

**13.09.040 Applicability and exemptions.**

A. Applicability. This chapter shall apply to all:

1. Water or pollutants directly or indirectly entering the storm drain system generated on any developed or 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:

1. Projects disturbing less than five acres that meet the requirements delineated in the KEDM may apply for an “erosivity waiver” to be exempt from Section 13.09.060H2, the requirement to submit a stormwater pollution prevention plan (SWPPP).
2. Commercial agriculture and forest practices regulated under WAC Title 222, except for Class IV – general forest practices that are conversions from timber land to other uses; are exempt from all technical and administrative requirements established in this chapter.
3. Road Maintenance. The following road maintenance activities are exempt from the additional nine Minimum Requirements required for projects that disturb one acre or more of land or that are part of a larger common plan of development or sale:
  - a. 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 are considered redevelopment subject to MRs No. 1 through 5, if impervious surfaces are not expanded. However, in most cases, only MR No. 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 Minimum Requirement No. 2, Construction Stormwater Pollution Prevention.

5. Normal landscape activities and gardening. (Ord. 3727 § 1, 2010)

**13.09.050 General requirements.**

A. City of Kelso Engineering Design Manual. The KEDM, as now or hereafter modified, is hereby adopted by reference for use in implementation of this chapter. The KEDM contains requirements and technical details for stormwater modeling, facility design, pollution and flow control, and application of these methods. The director shall be authorized to modify the KEDM, 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 KEDM shall be used to comply with the standards in this chapter.

2. Low Impact Development (LID). Low impact development BMPs shall be preferentially used as practicable in all activities subject to regulation in this chapter. Approved LID BMPs include those methods described in the Low Impact Development Guidance Manual or the Stormwater Manual.

3. 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 Section 13.09.170.

C. Illicit Discharges. Illicit discharges to stormwater drainage systems are prohibited.

D. Surface Water Quality Standards. All activities subject to the requirements of this chapter are expected to comply with the numerical water quality standards established in Chapter 173-201A WAC. The point of compliance is considered the first point of discharge from the development or redevelopment activity to a municipal stormwater drainage facility or to waters of the state. (Ord. 3727 § 1, 2010)

**13.09.060 Standards for development.**

Development projects within the city shall provide the 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 stormwater 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 caused by the project.

2. All projects shall comply with the city's general design and construction criteria for stormwater drainage systems contained in the KEDM.

B. Erosion and Sediment Control. Additionally, projects disturbing five thousand square feet or more of land are required to:

1. Obtain a local 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); and

2. Submit a site erosion and sediment control plan, and, if necessary, any supplemental information such as narratives, specifications, and/or calculations.

3. Provide and install adequate runoff controls per an approved plan prior to land-disturbing activity.

C. Basic Stormwater Control. Additionally, projects creating five thousand square feet or more of new impervious surfaces (cumulative over conditions existing in 1999) are required to:

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

D. Source Control.

1. Additionally, 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. Additionally, all projects requiring city approval that are changing the intended use of a parcel to one identified in the KEDM as needing oil/water separation shall provide such treatment.

E. Redevelopment. Additionally, projects that create and/or replace five thousand square feet or more of impervious surface that are not otherwise required in subsections C and G of this section to provide stormwater controls shall select among and comply with at least one of a reduced and flexible set of controls, as described in Chapter 4 – Storm Drainage of the KEDM.

F. Ecology's Construction Stormwater NPDES Permit. Additionally, projects that disturb one acre or more of land or that are part of a larger common plan of development or sale must obtain the state Construction NPDES Permit if 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 acre or more, including projects less than one acre that are part of a larger common plan of development or sale, must satisfy one or more of the Minimum Requirements required by Ecology and delineated in the KEDM. The Minimum Requirements are:

1. Site Plan;
2. Construction SWPPP;
3. Source Control;
4. Preserve Natural Drainage;
5. On-Site Runoff Management;
6. Runoff Treatment;
7. Flow Control;
8. Wetlands Protection; and/or
9. Operations and Maintenance.

They are subject to the site planning and BMP selection and design criteria of Ecology's Stormwater Management Manual for Western Washington, or other equivalent manual approved by Ecology.

H. This subsection identifies thresholds that determine the applicability of these nine Minimum Requirements (MR) to projects (that disturb at least one acre, or that are part of a larger common plan of development or sale that disturbs at least one acre).

1. Development.

- a. All new development shall be required to comply with MR No. 2.

b. The following new development shall comply with MRs No. 1 through 5 for the new and replaced impervious surfaces and the land disturbed:

- i. Creates or adds two thousand square feet, or greater, of new, replaced, or new plus replaced impervious surface area; or
- ii. Has land-disturbing activity of seven thousand square feet or greater.

c. The following new development shall comply with MRs No. 1 through 9 for the new impervious surfaces and the converted pervious surfaces:

- i. Creates or adds five thousand square feet, or more, of new impervious surface area; or
- ii. Converts three-fourths acre, or more, of native vegetation to lawn or landscaped areas; or
- iii. Converts two and one-half acres, or more, of native vegetation to pasture.

## 2. Redevelopment.

a. All redevelopment shall be required to comply with MR No. 2. In addition, all redevelopment that exceeds certain thresholds shall be required to comply with additional MRs as follows.

b. The following redevelopment shall comply with Minimum Requirements No. 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 two thousand square feet or more; or
- ii. Seven thousand square feet or more of land-disturbing activities.

c. The following redevelopment shall comply with MRs No. 1 through 9 for the new impervious surfaces and converted pervious areas:

- i. Adds five thousand square feet or more of new impervious surfaces; or
- ii. Converts three-fourths acre, or more, of native vegetation to lawn or landscaped areas; or
- iii. Converts two and one-half 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 Redevelopment 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 (No. 1 through 9) if the new impervious surfaces total five thousand square feet or more and total fifty percent or more of the existing impervious surfaces within the project limits. The project limits shall be defined by the length of the project and the width of the right-of-way.

b. Other types of redevelopment projects shall comply with all the MRs (No. 1 through 9) for the new and replaced impervious surfaces if the total of new plus replaced impervious surfaces is five thousand square



feet or more, and the valuation of proposed improvements – including interior improvements – exceeds fifty percent of the assessed value of the existing site improvements.

c. The city may adopt a plan and schedule, in accordance with the adjustment, exception/variance, and/or basin planning provisions of this chapter, 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 Section 13.09.170.

4. Basin/Watershed Planning. The city may allow alternative or regional approaches to treatment, flow control, and wetlands protection per the basin planning provisions of the Permit.

I. Financial Liability/Public Nuisance Declared. In addition to other remedies, vandalism of or failure to install and/or maintain water courses or stormwater facilities as required in this chapter and applicable permits is hereby declared to be a public nuisance, subject to abatement as provided by applicable laws of the city or the state of Washington. The property owner 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 stormwater facilities. (Ord. 3727 § 1, 2010)

#### **13.09.070 Construction inspection for permanent stormwater BMPs.**

A. Notice of Construction Commencement. The applicant must notify public works before the commencement of construction. 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.

B. Construction Inspections by Public Works or its Representatives. Public works or its representatives shall conduct periodic inspections of the stormwater BMPs shown on the approved stormwater management design 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 the KEDM. A final inspection by the stormwater authority is required before any performance bond or portion thereof shall be released. (Ord. 3727 § 1, 2010)

#### **13.09.080 Easements, deeds and education.**

A. Easements. Storm drainage easements shall be required where the conveyance, storage, or treatment of stormwater is identified on the stormwater management design plan, and where access is needed to structural or nonstructural stormwater measures.

The following conditions shall apply to all easements:

1. Dimensions. Easements shall be of a width and location specified in the KEDM.
2. Easements Approved Before Plat Approval. Easements shall be approved by public works and shall be recorded with Cowlitz County and on all property deeds.
3. With the exception of managed properties, such as apartment complexes, all residential stormwater facilities shall be placed in the public right-of-way, or a full easement shall be granted to the city for inspection and maintenance.

B. Deeds and Covenants for LID. Private home owner deed restrictions and homeowners'/building covenants shall be required for all properties with on-site 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.

C. Education. 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. (Ord. 3727 § 1, 2010)

**13.09.090 Maintenance agreement and plan.**

A. Responsible Party. The owner shall be responsible for the operation and maintenance of stormwater facilities and shall pass such responsibility to any successor owner, unless such responsibility is transferred to the city or to another governmental entity in Section 13.09.120.

B. Requirement for Maintenance Agreement and Plan. If a stormwater management design plan requires structural or nonstructural measures, the owner shall execute a stormwater maintenance agreement prior to public works granting final approval for the plan, or any plan of development or other development for which a permit is required under this chapter. The agreement shall be recorded in the office of the clerk of the circuit court for Cowlitz County and shall run with the land.

C. Required Elements for Maintenance Agreement and Plan. The stormwater maintenance agreement shall be in a form approved by the city, and shall, at a minimum:

1. Designate Responsible Party. Designate the owner or other legally established entity (responsible party) which shall be permanently responsible for maintenance of the structural or nonstructural measures required by the plan.
2. Pass Responsibility to Successors. Pass the responsibility for such maintenance to successors in title.
3. Right of Entry for Stormwater Authority. Grant public works and its representatives the right of entry at reasonable times and in a reasonable manner for the purposes of inspecting all stormwater BMPs. This includes the right to enter a property when public works has a reasonable basis to believe that a violation of this chapter is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this chapter.
4. Maintenance Plan. Ensure the continued performance of the maintenance obligations required by the plan and this chapter 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 KEDM. (Ord. 3727 § 1, 2010)

**13.09.100 Stormwater performance bond.**

A. Stormwater Performance Bond. At the discretion of public works, the applicant seeking to build a stormwater facility may be required to furnish a stormwater facility performance bond, or equivalent guarantee in a form acceptable to the city, in an amount sufficient to cover all costs associated with the construction of the facility. This bond is 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.

B. Term of Performance Bond. The stormwater performance bond furnished pursuant to this section, or the unexpended or unobligated portion thereof, shall be released to the applicant within sixty days of issuance by public works of the final acceptance of the permanent stormwater BMP by the public works department. A final inspection by public works is required before any performance bond will be released.

C. Term Extended for Initial Maintenance. At the discretion of public works, the 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. For the purposes of this section, the time shall not exceed two 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 KEDM and the approved stormwater maintenance plan.

D. Partial Release of Bond. The 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.

E. Bond Estimation. The applicant shall be responsible for determining 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 for public and private facilities is to be one hundred twenty-five percent of the estimated cost for the city to construct the stormwater features and achieve final stabilization. The director may allow an equivalent financial guarantee in a form acceptable to the city in lieu of a bond. (Ord. 3727 § 1, 2010)

**13.09.110 As-built plans.**

All applicants are required to submit as-built plans for any permanent stormwater management facilities located on site after final construction is completed. The plans must show the final design specifications for all stormwater management facilities, meet the criteria for as-built plans in the KEDM, and be sealed by a registered professional engineer. (Ord. 3727 § 1, 2010)

**13.09.120 Dedication of stormwater BMPs.**

The owner of a stormwater facility required by this chapter may offer to the city for dedication any such stormwater facility, together with such easements and appurtenances as may be reasonably necessary, as provided herein:

A. Preliminary Determination by Public Works. Upon receipt of such offer of dedication by the city, public works shall make a preliminary determination that 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. Public works shall forward its determination to the city council. Prior to making its determination, public works shall inspect the facility to determine whether it has been properly maintained and is in good repair.

B. Acceptance by City Council. The city council may accept the offer of dedication by adoption of a resolution. The document dedicating the stormwater BMP shall be recorded in the office of the clerk of the circuit court for Cowlitz County.

C. Owner to Provide Documentation. The owner, at his sole expense, shall provide any document or information requested by public works or the city council in order for a decision to be reached on accepting the facility. (Ord. 3727 § 1, 2010)

**13.09.130 Ongoing maintenance for stormwater BMPs.**

A. Maintenance Responsibility. The responsible party named in the recorded stormwater maintenance agreement shall maintain in good condition and promptly repair and restore all structural and nonstructural stormwater BMPs and all necessary access routes and appurtenances (grade surfaces, walls, drains, dams and structures, vegetation, erosion and sedimentation controls, and other protective devices). Such repairs or restoration and maintenance shall be in accordance with the approved stormwater management design plan, the stormwater maintenance agreement, and the stormwater maintenance plan.

B. Maintenance Inspection by Public Works or its Representatives. Public works or its representatives shall conduct periodic inspections for all stormwater facilities following project completion. All inspections shall be documented in writing. The inspection shall document any maintenance and repair needs and any discrepancies from the stormwater maintenance agreement and stormwater maintenance plans.

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 years. These records shall be made available to public works during inspection of the BMP(s) and at other reasonable times upon request.

D. Failure to Provide Adequate Maintenance. In the event that the stormwater BMP has not been maintained and/or becomes a danger to public safety or public health, public works shall notify the responsible party by registered or certified mail. The notice shall specify the measures needed to comply with the maintenance agreement and the maintenance plan and shall specify that the responsible party has thirty days or other time frame mutually agreed to between public works and the responsible party, within which such measures shall be completed. If such measures are not completed, then public works shall pursue enforcement procedures pursuant to Section 13.09.150.

If a responsible person fails or refuses to meet the requirements of an inspection report, maintenance agreement, or maintenance plan, the city, after thirty days' written notice (except, that in the event the violation constitutes an immediate danger to public health or public safety, twenty-four hours' notice shall be sufficient), may correct a violation of the design standards or maintenance requirements by performing the necessary work to place the BMP in proper working condition. The city may assess the responsible party for the cost of repair work which shall be a

lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as ordinary taxes by the city. (Ord. 3727 § 1, 2010)

**13.09.140 Maintenance escrow requirement.**

At the discretion of the director, the property owner will be required to post a cash escrow, letter of credit, or other acceptable form of performance security in an amount that would cover costs associated with maintenance or repair in the event of BMP failure in the event the director determines that such security is necessary to ensure the facility satisfies the maintenance and performance requirements identified in the KEDM and the approved stormwater maintenance plan. This instrument is required to be posted prior to completion of construction and release of the stormwater performance bond and remain in place for a minimum of two years. (Ord. 3727 § 1, 2010)

**13.09.150 Maintenance and inspection.**

A. General Requirements.

1. Maintenance Required. All stormwater facilities shall be maintained in accordance with this chapter and the KEDM. Systematic, routine preventive maintenance is preferred.

2. Compliance. Property owners are responsible for the maintenance, operation and repair of stormwater drainage systems and BMPs on their properties unless the city has accepted maintenance responsibility in writing and a written easement exists granting the city an adequate and sufficient right, at the city's discretion, to enter the property and conduct these activities. Property owners shall maintain, operate and repair the facilities in compliance with the requirements of this chapter and the KEDM.

B. Administration. The director shall develop and administer an inspection program for stormwater facilities in Kelso.

C. Inspection Program.

1. Authorization. Whenever implementing the provisions of the inspection program or whenever there is cause to believe that a violation of this chapter has been or is being committed, the inspector is authorized to inspect stormwater drainage systems within Kelso to determine compliance with the provisions of this chapter.

2. Development Inspection. All new development shall provide for and install adequate runoff controls per an approved stormwater drainage plan and SWPPP. Failure to provide such required runoff controls prior to or simultaneously with the commencement of land-disturbing activities shall result in an order to stop all work upon the site for a minimum of three working days. After the stop-work period, the director may allow work on site to recommence; provided, that such work is necessary to bring the site into compliance with this chapter, 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.

**13.09.160 Administration.**

A. Director. The director shall administer this chapter and shall have the authority to develop and implement administrative procedures to implement and enforce this chapter. Enforcement shall be addressed pursuant to KMC Chapter 1.50.

B. Review and Approval. The director may approve, conditionally approve or deny an application for activities regulated by this chapter. (Ord. 3727 § 1, 2010)

**13.09.170 Adjustments, exceptions, and appeals.**

A. Authority. The director may grant an adjustment or exception from the requirements of this chapter. In so granting, the director may prescribe conditions that are deemed necessary or desirable for the public interest.

B. Adjustments. Adjustments to the requirements of this chapter may be granted; provided, that a written finding of fact is prepared that addresses the following:

1. The adjustment provides substantially equivalent environmental protection.

2. Based on sound engineering practices, the objectives of safety, function, environmental protection and facility maintenance are met.

C. Exceptions and Variances. Exceptions to the requirements of this chapter may be granted; provided, that a written finding of fact is prepared that documents the city's determination to grant an exception and:

1. The exception will not increase risk to the public health and welfare, nor be 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 Section 13.09.060H may be granted only if such an application imposes a severe and unexpected economic hardship, according to the criteria provided in the KEDM, and:

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

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

E. Duration of Variance. Variances granted shall be valid for two years, unless granted for a shorter period.

F. Right of Appeal. Except as otherwise provided in this chapter, all actions of the director in the administration and enforcement of this chapter shall be final and conclusive unless, within thirty days of receipt of the director's action, the original applicant or an aggrieved party files a notice of appeal with the hearing examiner for review of the action. The decision of the hearing examiner shall be final and conclusive unless, within ten days after receipt of the decision of the hearing examiner, an aggrieved party appeals the same to Cowlitz County superior court. (Ord. 3727 § 1, 2010)

**13.09.200 Severability.**

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter 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.

If this chapter is in conflict with any other section of the Kelso Municipal Code, this chapter shall control. (Ord. 3727 § 1, 2010)

**13.09.210 Compatibility with other permit and ordinance requirements.**

This chapter is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this chapter should be considered minimum requirements, and where any provision of this chapter 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. (Ord. 3727 § 1, 2010)

**13.09.220 Legal authority.**

The ordinance codified in this chapter is adopted pursuant to authority conferred by and in accordance with the Permit. (Ord. 3727 § 1, 2010)

**13.09.230 Liability.**

Any person who undertakes or causes to be undertaken any land disturbance shall ensure that soil erosion, sedimentation, increased pollutant loads and changed water flow characteristics resulting from the activity are controlled so as to minimize pollution of receiving waters. The requirements of this chapter 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 pollution of receiving waters. (Ord. 3727 § 1, 2010)

**13.09.240 Designation of public works – Powers and duties.**

Public works shall administer and enforce this chapter, and may furnish additional policy, criteria and information including specifications and standards, for the proper implementation of the requirements of this chapter. (Ord. 3727 § 1, 2010)

## Chapter 13.11

### ILLCIT DISCHARGE—STORMWATER UTILITY

#### Sections:

- 13.11.010 Purpose—Intent.
- 13.11.020 Definitions.
- 13.11.030 Applicability.
- 13.11.040 Responsibility of administration.
- 13.11.050 Discharge prohibitions.
- 13.11.060 Industrial or construction activity discharges.
- 13.11.070 Inspection and sampling.
- 13.11.080 Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.
- 13.11.090 Protection of facilities and watercourses.
- 13.11.100 Notification of spills.
- 13.11.110 Enforcement.
- 13.11.120 Severability.

#### **13.11.010 Purpose—Intent.**

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the city of Kelso, and provide protection for wildlife and the environment, through the regulation of illicit discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (storm drainage system) in order to comply with requirements of the Western Washington Phase II Municipal Stormwater Permit process. The objectives of this chapter are:

- A. To regulate the contribution of pollutants to the stormwater drainage system by stormwater discharges;
- B. To prohibit illicit connections and discharges to the stormwater drainage system;
- C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter. (Ord. 3713 § 1, 2009)

#### **13.11.020 Definitions.**

For the purposes of this chapter, the following definitions shall mean:

“Best management practices (BMPs)” means 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 Washington State or the stormwater drainage system. 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.

“CFR” means Code of Federal Regulations.

“City” means the city of Kelso.

“Clean Water Act (CWA)” means the federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.

“Construction activity” means activities subject to NPDES construction permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

“Director” means the director of the city of Kelso public works department or his/her designee.

“Hazardous materials” means 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.

“Hyperchlorinated water” means the water that contains more than ten milligrams per liter chlorine.

“Illicit connections” means any manmade conveyance that is connected to the storm drainage system without a permit. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the stormwater drainage system.

“Illicit discharge” means any direct or indirect discharge to the stormwater drainage system that is not composed entirely of stormwater except discharges expressly exempted in Section 13.11.050.

“Industrial activity” means the activities subject to NPDES Industrial Permits as defined in 40 CFR 122.26(b)(14).

“KMC” means the Kelso Municipal Code.

Maximum Extent Practicable (MEP). 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.

“Municipal separate storm sewer system (MS4)” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. 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;
2. Designed or used for collecting or conveying stormwater;
3. Which is not a combined sewer; and
4. Which is not part of a “publicly owned treatment works” as defined at 40 CFR 122.2.

“National Pollutant Discharge Elimination System (NPDES)” means 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 Washington State, are administered by the Washington Department of Ecology.

“Nonstormwater discharge” means any discharge to the storm drainage system that is not stormwater. Examples may include but are not limited to sanitary wastewater, laundry wastewater, noncontact cooling water, vehicle wash wastewater, radiator flushing wastewater, spills from roadway accidents, and improperly disposed motor oil, solvents, lubricants, and paints.

“Owner” means any individual, association, organization, partnership, firm, corporation or other entity recognized by law who is (1) the owner of the premises or the owner’s agent, or (2) in control of the premises, or (3) the owner of any facility causing the illicit discharge, or the owner’s agent, or (4) in control of any facility causing the illicit discharge.

“Pollutant” means anything which causes or contributes to 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 wastes and pathogens; dissolved and particulate metals; and noxious or offensive matter of any kind.

“Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“RCW” means the Revised Code of Washington.

Stormwater Drainage System. See the definition for “Municipal separate storm sewer system (MS4).”

“Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

“Stormwater facility (facility)” means 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.

“Stormwater pollution prevention plan (SWPPP)” means a written plan to implement best management practices to identify, prevent, and control the contamination of stormwater discharges to stormwater, stormwater drainage systems and/or receiving waters to the maximum extent practicable.

“Water body” means lakes, rivers, ponds, streams, inland waters, sloughs, ditches, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

“Western Washington Phase II Municipal Stormwater Permit (permit)” means a permit issued by the Washington Department of Ecology under Sections 307, 402, 318, and 405 of the federal Clean Water Act that authorizes the discharge of pollutants to surface waters of the state. Also known as an NPDES permit.

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. (Ord. 3713 § 1, 2009)

#### **13.11.030 Applicability.**

This chapter shall apply to all owners responsible for and/or otherwise causing water directly or indirectly entering the storm drain stormwater drainage system generated on any developed and undeveloped lands unless explicitly exempted herein. (Ord. 3713 § 1, 2009)

#### **13.11.040 Responsibility for administration.**

The director shall administer, implement, and enforce the provisions of this chapter. (Ord. 3713 § 1, 2009)

#### **13.11.050 Discharge prohibitions.**

A. Prohibition of Illicit Discharges. No owner or individual 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 groundwaters any material other than stormwater or allowable nonstormwater discharges. All illicit discharges, as defined in this chapter, constitute a violation of this chapter.

1. Exempt Nonstormwater Discharges. The following categories of nonstormwater discharges are allowed, unless they are identified as a significant source of pollution:

- a. Diverted stream flows.
- b. Rising groundwaters.
- c. Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20)).
- d. Uncontaminated pumped groundwater.
- 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. Nonstormwater discharges covered by another NPDES permit.
- m. Discharges from emergency fire-fighting activities.

2. Conditional Discharges. The following categories of nonstormwater discharges are allowed if the conditions stated in this section are met unless they are identified by the city as a significant source of pollution. Failure to comply with the conditions shall constitute a violation of this chapter.

- 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 dechlorinated to a concentration of one-tenth ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater drainage system.
- b. Discharges from swimming pools, hot tubs and similar discharges. These discharges shall be dechlorinated to a concentration of one-tenth ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater drainage system. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the stormwater drainage system.
- c. Nonstormwater 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 granted that written approval has been granted for discharge to the stormwater drainage system.
- d. Other nonstormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan (SWPPP) reviewed by the city, which addresses control of such discharge by applying all known and reasonable methods of prevention control and treatment (AKART) to prevent contaminants from entering surface and groundwater.
- 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 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.

**B. Prohibition of Illicit Connections.** The construction, use, maintenance or continued existence of illicit connections to the stormwater drainage system, including but not limited to any sewage connection, is prohibited and constitutes a violation of this chapter. 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. (Ord. 3713 § 1, 2009)

**13.11.060 Industrial or construction activity discharges.**

A. Any owner subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the city prior to the allowing of discharges to the stormwater drainage system.

B. Access to Facilities.

1. If an owner has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the city.

2. Owners shall allow the city 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 conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by local, state and/or federal law.

3. 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 stormwater discharge.

4. The city has the right to require the discharger 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 discharger at their own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator 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 operator.

Any unreasonable delays in allowing the city access to a facility is a violation of this chapter. (Ord. 3713 § 1, 2009)

**13.11.070 Inspection and sampling.**

A. The director is authorized to develop inspection procedures and requirements for all stormwater drainage systems in the city.

B. Inspection Procedure. Prior to entry of the premises for the purpose of making any inspections, sampling, or records examination, the city shall obtain permission to enter the premises as follows:

1. The director shall present identification credentials, state the reason for the inspection and request entry of the owner, if available.

2. Unoccupied Building. If the premises or any building or structure on the premises is unoccupied, the director shall make reasonable efforts to locate the owner and request entry. In the event of an imminent hazard to persons or property as set forth in subsection (B)(3) of this section, such reasonable efforts shall be satisfied by attempting to contact the owner on site and by telephone at the last known number.

3. Imminent Hazard. If, after reasonable efforts, the director is unable to locate the owner, and has reason to believe the condition of the premises or of the private stormwater drainage system creates an imminent hazard to persons or property, the director may enter to abate the danger.

C. Inspection Parameters. Inspections for compliance with the provisions of this chapter shall be allowed as follows:

1. Construction and Development Inspection. A city representative or authorized designee shall have the right of entry to access any premises for which a permit requiring erosion controls or a stormwater facility has been issued, during regular business hours, or when reasonable under the circumstances for the purpose of review of erosion control practices and private stormwater drainage systems, and to ensure compliance with the terms of

such permit. Applicants for any such permit shall agree in writing, as a condition of permit issuance, that such access shall be permitted for such purposes. Inspection procedures shall be as outlined in this section.

2. Inspection for Cause. Whenever the city has cause to believe that a violation of any provision of this chapter has been or is being committed, the director, following procedures prescribed in this section, is authorized to enter the premises to inspect the premises during regular business hours, or when reasonable in the circumstances to ensure compliance with this chapter and Chapter 13.09.\* Level of cause includes, but is not limited to, a citizen notification or an observation by a city employee.

3. Inspection for Maintenance and Source Control Best Management Practices. The director, following procedures prescribed in this section, is authorized to enter the premises to inspect private stormwater drainage systems during regular business hours, or at any other time reasonable under the circumstances, 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, Chapter 13.09,\* and any maintenance schedule adopted during the plan review process for the premises. The director also may enter the premises for the purposes of observing source control BMPs.

D. Water Sampling and Analysis. Water sampling and analysis for determination of compliance with this chapter shall be allowed as follows:

1. Sample Collection. When the city has reason to believe that a violation exists or is occurring on a premises, the director is authorized to enter the property 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 the Department of 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 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.

E. If the city has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this chapter, 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 chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of a search warrant from any court of competent jurisdiction. (Ord. 3713 § 1, 2009)

\*Code reviser's note: Chapter 13.09 will be adopted in February 2010.

**13.11.080 Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.**

The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from spill or loss of prohibited materials or other wastes into the stormwater drainage system or watercourses through the use of structural and nonstructural BMPs. The design and selection of BMPs shall be from the 2005 Western Washington Stormwater Management Manual or BMPs with city approval. Further, any owner responsible for a premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said owner's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the stormwater drainage system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the maximum extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit. (Ord. 3713 § 1, 2009)

**13.11.090 Protection of facilities and watercourses.**

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

B. Responsibility. Every owner upon whose property exists a water body shall keep and maintain that part of the water body within the property free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water into or through the water body. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a water body, so that such structures will not become a hazard to the use, function, or physical integrity of the water body. (Ord. 3713 § 1, 2009)

**13.11.100 Notification of spills.**

A. Reporting. Notwithstanding other requirements of law, as soon as any owner 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.

B. Response. Notwithstanding other requirements of law, as soon as any owner responsible for a premises or operation, or responsible for emergency response for a premises or operation, shall immediately take all necessary steps to ensure the discovery, containment, and full cleanup of water pollutants or potential pollutants is performed and to the satisfaction of the city and/or Ecology. In the event of such a release of hazardous materials, said owner 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 or operator 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 years. (Ord. 3713 § 1, 2009)

**13.11.110 Enforcement.**

A. Order of Enforcement. The order of escalating enforcement procedures and actions will begin with education and technical assistance. Further non-compliance or first time violators of intentional acts or gross negligence will be enforced pursuant to KMC Chapter 1.50.

**13.11.120 Severability.**

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

B. If this chapter is in conflict with any other section of the Kelso Municipal Code, this section shall control. (Ord. 3713 § 1, 2009)

## Chapter 13.09

### STORMWATER MANAGEMENT

#### Sections:

- 13.09.010 Purpose/intent.
- 13.09.020 Definitions.
- 13.09.030 General provisions.
- 13.09.035 Stormwater management program adopted.
- 13.09.040 Applicability and exemptions.
- 13.09.050 General requirements.
- 13.09.060 Standards for development.
- 13.09.070 Construction inspection for permanent stormwater BMPs.
- 13.09.080 Easements, deeds and education.
- 13.09.090 Maintenance agreement and plan.
- 13.09.100 Stormwater performance bond.
- 13.09.110 As-built plans.
- 13.09.120 Dedication of stormwater BMPs.
- 13.09.130 Ongoing maintenance for stormwater BMPs.
- 13.09.140 Maintenance escrow requirement.
- 13.09.150 Maintenance and inspection ~~and enforcement~~.
- 13.09.160 Administration.
- 13.09.170 Adjustments, exceptions, and appeals.
- ~~13.09.180 Infractions Penalty.~~
- ~~13.09.190 Misdemeanors Penalty.~~
- 13.09.~~200~~180 Severability.
- 13.09.~~210~~190 Compatibility with other permit and ordinance requirements.
- 13.09.~~220~~200 Legal authority.
- 13.09.~~230~~210 Liability.
- 13.09.~~240~~220 Designation of public works – Powers and duties.

#### **13.09.010 Purpose/intent.**

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the city through the regulation of runoff from construction, development, and redevelopment. This chapter establishes methods for controlling the introduction of runoff and pollutants into the stormwater drainage system in order to comply with requirements of the Western Washington Phase II Municipal Stormwater Permit (Permit) process.

The objectives of this chapter are to:

- A. Minimize water quality degradation in streams, ponds, lakes, wetlands, and other water bodies;
- B. Minimize the degradation of habitat and habitat forming processes in streams, ponds, lakes, wetlands, and other water bodies;
- C. Minimize the impact of increased volume and runoff rates, flooding, increases in stream temperature, erosion and sedimentation caused by land development and maintenance practices;
- D. Promote site planning and construction practices that are consistent with natural geological, topographical, vegetational, and hydrological conditions;
- E. Maintain and protect the city's stormwater management infrastructure and those downstream;
- F. Minimize disruption of hydrologic functions, patterns, and processes;
- G. Regulate the contribution of pollutants to the stormwater drainage system by stormwater dischargers from development and redevelopment;

- H. Provide long-term responsibility for and maintenance of stormwater BMPs;
- I. Establish legal authority to carry out all the inspection and monitoring procedures necessary;
- J. Meet the minimum requirements as established in Chapter 173-218 WAC and the Permit.

The intent of this chapter is to place the obligation of complying with its requirements upon the owner and/or contractor. 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. (Ord. 3727 § 1, 2010)

### **13.09.020 Definitions.**

For the purposes of this chapter, the following definitions shall mean:

1. "Amenity" means a pleasant and/or engaging feature that increases attractiveness, value, and/or understanding of stormwater.
2. "Best management practices (BMPs)" means 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 Washington State or the stormwater drainage system.
  - a. "Source control BMP" means a BMP that is intended to prevent pollution from entering stormwater.
  - b. "Treatment BMP" means a BMP that is intended to remove pollution from stormwater.
  - c. "Flow control BMP" means a BMP that is intended to mitigate the impacts of increased surface and stormwater runoff rates generated by development.
  - d. "Low impact development BMP" means 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 predevelopment hydrologic functions.
  - e. "Experimental BMP" means any treatment or methodology proposed for treatment or management of stormwater that is not in a current stormwater manual approved by the Washington State Department of Ecology (Ecology).
3. "Bioretention" means 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.
4. "City" means the city of Kelso.
5. "Clean Water Act (CWA)" means the federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.
6. "Clearing" means the destruction and removal of vegetation by manual, mechanical, chemical or other such method.
7. "Common plan of development or sale" 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.

8. “Critical areas” means areas defined in Chapter 18.20, 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.

9. “Detention” means 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.

10. “Development” means new development, redevelopment, or both, including a combination thereof.

11. “Director” means the city of Kelso public works director or his/her designee.

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

13. “Stormwater Manual” means the “Stormwater Management Manual for Western Washington” by Ecology as currently adopted or hereafter modified.

14. “Erosion” means the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep.

15. “Excavation” means the mechanical removal of earth material.

16. “Fill” means a deposit of earth material placed by artificial means.

17. “Forest practice” means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to road and trail construction; harvesting, final and intermediate; precommercial thinning; reforestation; fertilization; prevention and suppression of diseases and insects; salvage of trees; brush control, or slash burning.

18. “Highly contaminated runoff” means runoff containing toxicants which would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria.

19. “Highway” means a main public road connecting towns and cities.

20. “Illicit discharge (IDDE)” means any direct or indirect discharge to the stormwater drainage system that is not composed entirely of stormwater.

21. “Impervious surface” means 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 rooftops, 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. 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 Stormwater Manual shall be excluded in the determination of thresholds for compliance with this chapter.

22. “Kelso Engineering Design Manual (KEDM)” means a manual that sets forth certain standards of design and specifications for public works projects in the city and for projects subject to approval by the director. The manual is adopted at Section 13.09.050 and within this chapter for compliance with stormwater requirements for development.



23. “Land-disturbing activity” means any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land-disturbing activities include, but are not limited to, 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.

24. “LID Guidance Manual” means 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.

25. “Low impact development (LID)” means 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 predevelopment hydrologic functions.

26. 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.

27. “MR” means Ecology’s Minimum Technical Requirement(s) or “Minimum Requirements” for New Development and Redevelopment for land disturbances of one acre or more or that are part of a larger common plan of development or sale.

28. “Municipal separate storm sewer system (MS4)” means 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 Clean Water Act 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.

29. “National Pollutant Discharge Elimination System (NPDES)” means 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 Washington State, are administered by Ecology under authority delegated pursuant to 33 U.S.C. Section 1342(b).

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

31. "New development" means 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.

32. "Nonstormwater discharge" means any discharge to the storm drainage system that is not composed entirely of stormwater. Examples may include but are not limited to sanitary wastewater, laundry wastewater, noncontact cooling water, vehicle wash wastewater, radiator flushing wastewater, spills from roadway accidents, and improperly disposed motor oil, solvents, lubricants, and paints.

33. "Permit" (the "Western Washington Phase II Municipal Stormwater Permit") means a permit issued by Ecology under Sections 307, 402, 318, and 405 of the federal Clean Water Act that authorizes the discharge of pollutants to surface waters of the state. Also known as an NPDES permit.

34. "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

35. "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of 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.

36. Predeveloped Condition. For areas that drain directly or indirectly to a river or stream, "predeveloped condition" shall mean the native vegetation and soils that existed at a site prior to the influence of Euro-American settlement. The predeveloped 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.

37. "Project site" means that portion of a property, properties, or right-of-way subject to land-disturbing activities, new impervious surfaces, or replaced impervious surfaces. The total projected area of new, replaced or new plus replaced impervious surfaces for subdivisions shall constitute a project site.

38. "RCW" means the Revised Code of Washington.

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

40. "Redevelopment" means, on a site that is already substantially developed (which means thirty-five percent 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, or other projects where any other city construction permit is required.

41. "Replaced impervious surface" means, 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.

42. "Routine maintenance" means 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.

43. "Site" means 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.
44. "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.
45. "Stormwater" means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.
46. "Stormwater drainage plan" means the comprehensive report containing all of the technical information and analysis necessary for a regulatory agency to evaluate a proposed new development or redevelopment project for compliance with stormwater requirements.
47. Stormwater Drainage System. See "municipal separate storm sewer system (MS4)."
48. "Stormwater facility (facility)" means 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.
49. "Stormwater Manual" means the "Stormwater Management Manual for Western Washington," February 2005, as prepared by Ecology. This manual contains BMPs to prevent, control or treat pollution in stormwater and reduce other stormwater-related impacts to waters of the state. The Stormwater Manual is intended to serve as a reference and supplement to this chapter to control the quantity and quality of stormwater runoff from new development and redevelopment.
50. "Stormwater master plan" means documents illustrating the location, facility types and connections of the city's stormwater drainage system. These documents include the current editions of the Kelso Stormwater Master Plan and are created and maintained for the comprehensive management of stormwater for the city of Kelso urban areas and suburban fringe areas.
51. "Stormwater pollution prevention plan (SWPPP)" means a written plan to implement BMPs to identify, prevent, and control the contamination of stormwater discharges to stormwater, stormwater drainage systems and/or receiving waters to the maximum extent practicable.
52. "WAC" means the Washington Administrative Code.
53. "Wastewater" means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
54. "Waterbody" means lakes, rivers, ponds, streams, inland waters, sloughs, ditches, and all other surface waters and watercourses within the jurisdiction of the state of Washington.
55. "Wetlands" means 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 nonwetland 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 nonwetland areas to mitigate the conversion of wetlands.
56. "Vegetation" means organic plant life growing on the surface of the earth. (Ord. 3727 § 1, 2010)

**13.09.030 General provisions.**

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

B. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter. (Ord. 3727 § 1, 2010)

**13.09.035 Stormwater management program adopted.**

The city of Kelso’s stormwater management program, as now or hereafter modified, is hereby adopted by reference and is hereinafter referred to as “the program.” The program contains information assembled for the purposes of identifying existing and projected problems, analyzing alternatives leading to recommendations, and preparing a program to implement recommendations. The city expresses no guarantee of the accuracy of the information, although updates will be made as necessary to reflect best available information. The use of information should be accompanied by adequate checks for accuracy along with good engineering practice and judgment.

The director shall be authorized to modify the program, in accordance with the city’s adopted policies and procedures, to reflect newly developed technical data, models, and other updated information. (Ord. 3727 § 1, 2010)

**13.09.040 Applicability and exemptions.**

A. Applicability. This chapter shall apply to all:

1. Water or pollutants directly or indirectly entering the storm drain system generated on any developed or 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:

1. Projects disturbing less than five acres that meet the requirements delineated in the KEDM may apply for an “erosivity waiver” to be exempt from Section 13.09.060H2, the requirement to submit a stormwater pollution prevention plan (SWPPP).
2. Commercial agriculture and forest practices regulated under WAC Title 222, except for Class IV – general forest practices that are conversions from timber land to other uses; are exempt from all technical and administrative requirements established in this chapter.
3. Road Maintenance. The following road maintenance activities are exempt from the additional nine Minimum Requirements required for projects that disturb one acre or more of land or that are part of a larger common plan of development or sale:
  - a. 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 are considered redevelopment subject to MRs No. 1 through 5, if impervious surfaces are not expanded. However, in most cases, only MR No. 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 Minimum Requirement No. 2, Construction Stormwater Pollution Prevention.

5. Normal landscape activities and gardening. (Ord. 3727 § 1, 2010)

**13.09.050 General requirements.**

A. City of Kelso Engineering Design Manual. The KEDM, as now or hereafter modified, is hereby adopted by reference for use in implementation of this chapter. The KEDM contains requirements and technical details for stormwater modeling, facility design, pollution and flow control, and application of these methods. The director shall be authorized to modify the KEDM, 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 KEDM shall be used to comply with the standards in this chapter.

2. Low Impact Development (LID). Low impact development BMPs shall be preferentially used as practicable in all activities subject to regulation in this chapter. Approved LID BMPs include those methods described in the Low Impact Development Guidance Manual or the Stormwater Manual.

3. 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 Section 13.09.170.

C. Illicit Discharges. Illicit discharges to stormwater drainage systems are prohibited.

D. Surface Water Quality Standards. All activities subject to the requirements of this chapter are expected to comply with the numerical water quality standards established in Chapter 173-201A WAC. The point of compliance is considered the first point of discharge from the development or redevelopment activity to a municipal stormwater drainage facility or to waters of the state. (Ord. 3727 § 1, 2010)

**13.09.060 Standards for development.**

Development projects within the city shall provide the 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 stormwater 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 caused by the project.

2. All projects shall comply with the city's general design and construction criteria for stormwater drainage systems contained in the KEDM.

B. Erosion and Sediment Control. Additionally, projects disturbing five thousand square feet or more of land are required to:

1. Obtain a local 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); and

2. Submit a site erosion and sediment control plan, and, if necessary, any supplemental information such as narratives, specifications, and/or calculations.

3. Provide and install adequate runoff controls per an approved plan prior to land-disturbing activity.

C. Basic Stormwater Control. Additionally, projects creating five thousand square feet or more of new impervious surfaces (cumulative over conditions existing in 1999) are required to:

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

D. Source Control.

1. Additionally, 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. Additionally, all projects requiring city approval that are changing the intended use of a parcel to one identified in the KEDM as needing oil/water separation shall provide such treatment.

E. Redevelopment. Additionally, projects that create and/or replace five thousand square feet or more of impervious surface that are not otherwise required in subsections C and G of this section to provide stormwater controls shall select among and comply with at least one of a reduced and flexible set of controls, as described in Chapter 4 – Storm Drainage of the KEDM.

F. Ecology's Construction Stormwater NPDES Permit. Additionally, projects that disturb one acre or more of land or that are part of a larger common plan of development or sale must obtain the state Construction NPDES Permit if 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 acre or more, including projects less than one acre that are part of a larger common plan of development or sale, must satisfy one or more of the Minimum Requirements required by Ecology and delineated in the KEDM. The Minimum Requirements are:

1. Site Plan;
2. Construction SWPPP;
3. Source Control;
4. Preserve Natural Drainage;
5. On-Site Runoff Management;
6. Runoff Treatment;
7. Flow Control;
8. Wetlands Protection; and/or
9. Operations and Maintenance.

They are subject to the site planning and BMP selection and design criteria of Ecology's Stormwater Management Manual for Western Washington, or other equivalent manual approved by Ecology.

H. This subsection identifies thresholds that determine the applicability of these nine Minimum Requirements (MR) to projects (that disturb at least one acre, or that are part of a larger common plan of development or sale that disturbs at least one acre).

1. Development.

- a. All new development shall be required to comply with MR No. 2.

b. The following new development shall comply with MRs No. 1 through 5 for the new and replaced impervious surfaces and the land disturbed:

- i. Creates or adds two thousand square feet, or greater, of new, replaced, or new plus replaced impervious surface area; or
- ii. Has land-disturbing activity of seven thousand square feet or greater.

c. The following new development shall comply with MRs No. 1 through 9 for the new impervious surfaces and the converted pervious surfaces:

- i. Creates or adds five thousand square feet, or more, of new impervious surface area; or
- ii. Converts three-fourths acre, or more, of native vegetation to lawn or landscaped areas; or
- iii. Converts two and one-half acres, or more, of native vegetation to pasture.

## 2. Redevelopment.

a. All redevelopment shall be required to comply with MR No. 2. In addition, all redevelopment that exceeds certain thresholds shall be required to comply with additional MRs as follows.

b. The following redevelopment shall comply with Minimum Requirements No. 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 two thousand square feet or more; or
- ii. Seven thousand square feet or more of land-disturbing activities.

c. The following redevelopment shall comply with MRs No. 1 through 9 for the new impervious surfaces and converted pervious areas:

- i. Adds five thousand square feet or more of new impervious surfaces; or
- ii. Converts three-fourths acre, or more, of native vegetation to lawn or landscaped areas; or
- iii. Converts two and one-half 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 Redevelopment 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 (No. 1 through 9) if the new impervious surfaces total five thousand square feet or more and total fifty percent or more of the existing impervious surfaces within the project limits. The project limits shall be defined by the length of the project and the width of the right-of-way.

b. Other types of redevelopment projects shall comply with all the MRs (No. 1 through 9) for the new and replaced impervious surfaces if the total of new plus replaced impervious surfaces is five thousand square

feet or more, and the valuation of proposed improvements – including interior improvements – exceeds fifty percent of the assessed value of the existing site improvements.

c. The city may adopt a plan and schedule, in accordance with the adjustment, exception/variance, and/or basin planning provisions of this chapter, 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 Section 13.09.170.

4. Basin/Watershed Planning. The city may allow alternative or regional approaches to treatment, flow control, and wetlands protection per the basin planning provisions of the Permit.

I. Financial Liability/Public Nuisance Declared. In addition to other remedies, vandalism of or failure to install and/or maintain water courses or stormwater facilities as required in this chapter and applicable permits is hereby declared to be a public nuisance, subject to abatement as provided by applicable laws of the city or the state of Washington. The property owner 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 stormwater facilities. (Ord. 3727 § 1, 2010)

#### **13.09.070 Construction inspection for permanent stormwater BMPs.**

A. Notice of Construction Commencement. The applicant must notify public works before the commencement of construction. 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.

B. Construction Inspections by Public Works or its Representatives. Public works or its representatives shall conduct periodic inspections of the stormwater BMPs shown on the approved stormwater management design 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 the KEDM. A final inspection by the stormwater authority is required before any performance bond or portion thereof shall be released. (Ord. 3727 § 1, 2010)

#### **13.09.080 Easements, deeds and education.**

A. Easements. Storm drainage easements shall be required where the conveyance, storage, or treatment of stormwater is identified on the stormwater management design plan, and where access is needed to structural or nonstructural stormwater measures.

The following conditions shall apply to all easements:

1. Dimensions. Easements shall be of a width and location specified in the KEDM.
2. Easements Approved Before Plat Approval. Easements shall be approved by public works and shall be recorded with Cowlitz County and on all property deeds.
3. With the exception of managed properties, such as apartment complexes, all residential stormwater facilities shall be placed in the public right-of-way, or a full easement shall be granted to the city for inspection and maintenance.

B. Deeds and Covenants for LID. Private home owner deed restrictions and homeowners'/building covenants shall be required for all properties with on-site 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.

C. Education. 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. (Ord. 3727 § 1, 2010)



**13.09.090 Maintenance agreement and plan.**

A. Responsible Party. The owner shall be responsible for the operation and maintenance of stormwater facilities and shall pass such responsibility to any successor owner, unless such responsibility is transferred to the city or to another governmental entity in Section 13.09.120.

B. Requirement for Maintenance Agreement and Plan. If a stormwater management design plan requires structural or nonstructural measures, the owner shall execute a stormwater maintenance agreement prior to public works granting final approval for the plan, or any plan of development or other development for which a permit is required under this chapter. The agreement shall be recorded in the office of the clerk of the circuit court for Cowlitz County and shall run with the land.

C. Required Elements for Maintenance Agreement and Plan. The stormwater maintenance agreement shall be in a form approved by the city, and shall, at a minimum:

1. Designate Responsible Party. Designate the owner or other legally established entity (responsible party) which shall be permanently responsible for maintenance of the structural or nonstructural measures required by the plan.
2. Pass Responsibility to Successors. Pass the responsibility for such maintenance to successors in title.
3. Right of Entry for Stormwater Authority. Grant public works and its representatives the right of entry at reasonable times and in a reasonable manner for the purposes of inspecting all stormwater BMPs. This includes the right to enter a property when public works has a reasonable basis to believe that a violation of this chapter is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this chapter.
4. Maintenance Plan. Ensure the continued performance of the maintenance obligations required by the plan and this chapter 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 KEDM. (Ord. 3727 § 1, 2010)

**13.09.100 Stormwater performance bond.**

A. Stormwater Performance Bond. At the discretion of public works, the applicant seeking to build a stormwater facility may be required to furnish a stormwater facility performance bond, or equivalent guarantee in a form acceptable to the city, in an amount sufficient to cover all costs associated with the construction of the facility. This bond is 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.

B. Term of Performance Bond. The stormwater performance bond furnished pursuant to this section, or the unexpended or unobligated portion thereof, shall be released to the applicant within sixty days of issuance by public works of the final acceptance of the permanent stormwater BMP by the public works department. A final inspection by public works is required before any performance bond will be released.

C. Term Extended for Initial Maintenance. At the discretion of public works, the 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. For the purposes of this section, the time shall not exceed two 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 KEDM and the approved stormwater maintenance plan.

D. Partial Release of Bond. The 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.

E. Bond Estimation. The applicant shall be responsible for determining 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 for public and private facilities is to be one hundred twenty-five percent of the estimated cost for the city to construct the stormwater features and achieve final stabilization. The director may allow an equivalent financial guarantee in a form acceptable to the city in lieu of a bond. (Ord. 3727 § 1, 2010)

**13.09.110 As-built plans.**

All applicants are required to submit as-built plans for any permanent stormwater management facilities located on site after final construction is completed. The plans must show the final design specifications for all stormwater management facilities, meet the criteria for as-built plans in the KEDM, and be sealed by a registered professional engineer. (Ord. 3727 § 1, 2010)

**13.09.120 Dedication of stormwater BMPs.**

The owner of a stormwater facility required by this chapter may offer to the city for dedication any such stormwater facility, together with such easements and appurtenances as may be reasonably necessary, as provided herein:

A. Preliminary Determination by Public Works. Upon receipt of such offer of dedication by the city, public works shall make a preliminary determination that 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. Public works shall forward its determination to the city council. Prior to making its determination, public works shall inspect the facility to determine whether it has been properly maintained and is in good repair.

B. Acceptance by City Council. The city council may accept the offer of dedication by adoption of a resolution. The document dedicating the stormwater BMP shall be recorded in the office of the clerk of the circuit court for Cowlitz County.

C. Owner to Provide Documentation. The owner, at his sole expense, shall provide any document or information requested by public works or the city council in order for a decision to be reached on accepting the facility. (Ord. 3727 § 1, 2010)

**13.09.130 Ongoing maintenance for stormwater BMPs.**

A. Maintenance Responsibility. The responsible party named in the recorded stormwater maintenance agreement shall maintain in good condition and promptly repair and restore all structural and nonstructural stormwater BMPs and all necessary access routes and appurtenances (grade surfaces, walls, drains, dams and structures, vegetation, erosion and sedimentation controls, and other protective devices). Such repairs or restoration and maintenance shall be in accordance with the approved stormwater management design plan, the stormwater maintenance agreement, and the stormwater maintenance plan.

B. Maintenance Inspection by Public Works or its Representatives. Public works or its representatives shall conduct periodic inspections for all stormwater facilities following project completion. All inspections shall be documented in writing. The inspection shall document any maintenance and repair needs and any discrepancies from the stormwater maintenance agreement and stormwater maintenance plans.

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 years. These records shall be made available to public works during inspection of the BMP(s) and at other reasonable times upon request.

D. Failure to Provide Adequate Maintenance. In the event that the stormwater BMP has not been maintained and/or becomes a danger to public safety or public health, public works shall notify the responsible party by registered or certified mail. The notice shall specify the measures needed to comply with the maintenance agreement and the maintenance plan and shall specify that the responsible party has thirty days or other time frame mutually agreed to between public works and the responsible party, within which such measures shall be completed. If such measures are not completed, then public works shall pursue enforcement procedures pursuant to Section 13.09.150.

If a responsible person fails or refuses to meet the requirements of an inspection report, maintenance agreement, or maintenance plan, the city, after thirty days' written notice (except, that in the event the violation constitutes an immediate danger to public health or public safety, twenty-four hours' notice shall be sufficient), may correct a violation of the design standards or maintenance requirements by performing the necessary work to place the BMP in proper working condition. The city may assess the responsible party for the cost of repair work which shall be a

lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as ordinary taxes by the city. (Ord. 3727 § 1, 2010)

**13.09.140 Maintenance escrow requirement.**

At the discretion of the director, the property owner will be required to post a cash escrow, letter of credit, or other acceptable form of performance security in an amount that would cover costs associated with maintenance or repair in the event of BMP failure in the event the director determines that such security is necessary to ensure the facility satisfies the maintenance and performance requirements identified in the KEDM and the approved stormwater maintenance plan. This instrument is required to be posted prior to completion of construction and release of the stormwater performance bond and remain in place for a minimum of two years. (Ord. 3727 § 1, 2010)

**13.09.150 Maintenance, ~~and inspection and enforcement.~~**

A. General Requirements.

1. Maintenance Required. All stormwater facilities shall be maintained in accordance with this chapter and the KEDM. Systematic, routine preventive maintenance is preferred.

2. Compliance. Property owners are responsible for the maintenance, operation and repair of stormwater drainage systems and BMPs on their properties unless the city has accepted maintenance responsibility in writing and a written easement exists granting the city an adequate and sufficient right, at the city's discretion, to enter the property and conduct these activities. Property owners shall maintain, operate and repair the facilities in compliance with the requirements of this chapter and the KEDM.

B. Administration. The director shall develop and administer an inspection program for stormwater facilities in Kelso.

C. Inspection Program.

1. Authorization. Whenever implementing the provisions of the inspection program or whenever there is cause to believe that a violation of this chapter has been or is being committed, the inspector is authorized to inspect stormwater drainage systems within Kelso to determine compliance with the provisions of this chapter.

2. Development Inspection. All new development shall provide for and install adequate runoff controls per an approved stormwater drainage plan and SWPPP. Failure to provide such required runoff controls prior to or simultaneously with the commencement of land-disturbing activities shall result in an order to stop all work upon the site for a minimum of three working days. After the stop-work period, the director may allow work on site to recommence; provided, that such work is necessary to bring the site into compliance with this chapter, 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. Enforcement.~~

~~1. Orders. The director shall have the authority to issue to an owner or person an order to install, maintain or repair a component of a stormwater facility or BMP to bring it in compliance with this chapter, the Stormwater Manual, and/or city regulations. The order shall include:~~

~~a. A description of the specific nature, extent and time of the violation and the damage or potential damage that reasonably might occur;~~

~~b. A notice that the violation or the potential violation cease and desist and, in appropriate cases, the specific corrective actions to be taken; and~~

~~c. A reasonable time to comply, depending on the circumstances.~~

~~2. Civil Penalty. In addition to any other remedy or sanction available, a person who fails to comply with an order issued by the director or the Kelso city council pursuant to this chapter, or who fails to conform to the terms of an approval issued, shall be subject to a civil penalty.~~

~~a. Amount of Penalty. Violation of any of the provisions of this chapter shall constitute a civil infraction and upon appropriate finding, the violator shall be assessed a civil penalty as established by the court, not to exceed five hundred dollars, or as hereinafter amended. Each day of violation shall constitute a separate and distinct infraction.~~

~~b. Aiding or Abetting. Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.~~

~~c. Notice of Penalty. A civil penalty shall be imposed by the director, by a notice in writing, which shall be served either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall describe the violation, the date(s) of violation, and shall order the acts constituting the violation to cease and desist, and, in appropriate cases, require necessary corrective action within a specified time.~~

~~d. Application for Remission or Mitigation. Any person incurring a penalty may apply in writing within ten days of receipt of the notice of penalty to the director for remission or mitigation of such penalty. Upon receipt of the application, the director may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. The director's decision may be appealed to the hearing examiner within ten days of the decision.~~

~~e. Appeal of Civil Penalty. Persons incurring a penalty imposed by the director may appeal in writing within ten days of the receipt of the notice of penalty to the hearing examiner. The hearing examiner shall hold a de novo hearing to consider the appeal and may affirm, modify or reverse the penalty. The decision of the hearing examiner may be appealed to superior court within ten days of the receipt of the hearing examiner's decision. A fee to appeal the civil penalty shall be one thousand five hundred dollars and shall be paid to the city along with the appeal.~~

~~3. Penalties Due. Penalties imposed under this section shall become due and payable ten days after notice of the penalty is mailed or delivered, whichever occurs first, unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made or an appeal to the hearing examiner is filed (including payment of all applicable hearing examiner fees), penalties shall become due and payable ten days after the date of the decision regarding the remission or payable after all review proceedings and a final decision has been issued confirming all or part of the penalty. If the amount of a penalty owed is not paid within the time specified in this section, the city may take actions necessary to recover such penalty.~~

~~4. Penalty Recovered. Penalties recovered shall be paid to the stormwater utility.~~

~~E. City Action. In addition to any other remedies the city may have under this chapter or at law or in equity, nothing in this chapter 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 critical areas or habitat is likely as a result of the action or inaction of the property owner(s). If the city effects repairs or maintenance, the cost will be charged to the property owner(s) together with any penalties incurred under this chapter and any costs of collection (including attorneys' fees), all of which shall be considered a lien against the subject property and also collectable as an in personam debt against the property owner(s). (Ord. 3727 § 1, 2010)~~

### **13.09.160 Administration.**

A. Director. The director shall administer this chapter and shall have the authority to develop and implement administrative procedures to implement and enforce this chapter. Enforcement shall be addressed pursuant to KMC Chapter 1.50.

B. Review and Approval. The director may approve, conditionally approve or deny an application for activities regulated by this chapter. (Ord. 3727 § 1, 2010)

**13.09.170 Adjustments, exceptions, and appeals.**

A. Authority. The director may grant an adjustment or exception from the requirements of this chapter. In so granting, the director may prescribe conditions that are deemed necessary or desirable for the public interest.

B. Adjustments. Adjustments to the requirements of this chapter may be granted; provided, that a written finding of fact is prepared that addresses the following:

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

C. Exceptions and Variances. Exceptions to the requirements of this chapter may be granted; provided, that a written finding of fact is prepared that documents the city's determination to grant an exception and:

1. The exception will not increase risk to the public health and welfare, nor be 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 Section 13.09.060H may be granted only if such an application imposes a severe and unexpected economic hardship, according to the criteria provided in the KEDM, and:

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

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

E. Duration of Variance. Variances granted shall be valid for two years, unless granted for a shorter period.

F. Right of Appeal. Except as otherwise provided in this chapter, all actions of the director in the administration and enforcement of this chapter shall be final and conclusive unless, within thirty days of receipt of the director's action, the original applicant or an aggrieved party files a notice of appeal with the hearing examiner for review of the action. The decision of the hearing examiner shall be final and conclusive unless, within ten days after receipt of the decision of the hearing examiner, an aggrieved party appeals the same to Cowlitz County superior court. (Ord. 3727 § 1, 2010)

~~**13.09.180—Infractions—Penalty.—**~~

~~A violation of any provision of this chapter, other than as set forth in Section 13.09.150, shall be considered an infraction punishable by a fine not to exceed five hundred dollars, or as hereinafter amended. This penalty shall be in addition to any other remedy or sanction provided in this chapter or by other law or in equity.—~~

~~The court may order, in addition to any fine imposed, that a person found to have committed an infraction shall make restitution to any person damaged by the violation. (Ord. 3727 § 1, 2010)~~

~~**13.09.190—Misdemeanors—Penalty.**~~

~~Any violation of this chapter which results in damage to public or private property, other than the property of the violator, in an amount greater than two hundred fifty dollars, or as hereinafter amended, or which results in any physical injury to a person shall be a misdemeanor. For purposes of this section "damage" shall include cost to restore as well as loss of value.~~

~~Each second or subsequent violation of this chapter by any person within a period of three years shall be a misdemeanor.~~

~~Each misdemeanor shall be punishable by a fine not to exceed one thousand nine hundred dollars or ninety days in jail, or as hereinafter amended, or both. This penalty shall be in addition to any other remedy or sanction provided in this chapter or by other law or in equity.~~

~~The court may order, in addition to any fine imposed, that a person found to have committed a misdemeanor shall make restitution to any person damaged by the violation. (Ord. 3727 § 1, 2010)~~

**13.09.200 Severability.**

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter 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.

If this chapter is in conflict with any other section of the Kelso Municipal Code, this chapter shall control. (Ord. 3727 § 1, 2010)

**13.09.210 Compatibility with other permit and ordinance requirements.**

This chapter is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this chapter should be considered minimum requirements, and where any provision of this chapter 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. (Ord. 3727 § 1, 2010)

**13.09.220 Legal authority.**

The ordinance codified in this chapter is adopted pursuant to authority conferred by and in accordance with the Permit. (Ord. 3727 § 1, 2010)

**13.09.230 Liability.**

Any person who undertakes or causes to be undertaken any land disturbance shall ensure that soil erosion, sedimentation, increased pollutant loads and changed water flow characteristics resulting from the activity are controlled so as to minimize pollution of receiving waters. The requirements of this chapter 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 pollution of receiving waters. (Ord. 3727 § 1, 2010)

**13.09.240 Designation of public works – Powers and duties.**

Public works shall administer and enforce this chapter, and may furnish additional policy, criteria and information including specifications and standards, for the proper implementation of the requirements of this chapter. (Ord. 3727 § 1, 2010)

## Chapter 13.11

### ILLICIT DISCHARGE—STORMWATER UTILITY

#### Sections:

- 13.11.010 Purpose—Intent.
- 13.11.020 Definitions.
- 13.11.030 Applicability.
- 13.11.040 Responsibility of administration.
- 13.11.050 Discharge prohibitions.
- 13.11.060 Industrial or construction activity discharges.
- 13.11.070 Inspection and sampling.
- 13.11.080 Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.
- 13.11.090 Protection of facilities and watercourses.
- 13.11.100 Notification of spills.
- 13.11.110 Enforcement.
- ~~13.11.120 Appeal of notice and order of compliance or suspension order.~~
- ~~13.11.130 Failure to appeal.~~
- ~~13.11.140 Method and form of appeal decision.~~
- ~~13.11.150 Enforcement measures after appeal.~~
- ~~13.11.160 Cost of abatement of the violation.~~
- ~~13.11.170 Injunctive relief.~~
- ~~13.11.180 Compensatory action.~~
- ~~13.11.190 Violations deemed a public nuisance.~~
- ~~13.11.200 Criminal prosecution.~~
- ~~13.11.210 Remedies not exclusive.~~
- 13.11.2120 Severability.

#### **13.11.010 Purpose—Intent.**

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the city of Kelso, and provide protection for wildlife and the environment, through the regulation of illicit discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (storm drainage system) in order to comply with requirements of the Western Washington Phase II Municipal Stormwater Permit process. The objectives of this chapter are:

- A. To regulate the contribution of pollutants to the stormwater drainage system by stormwater discharges;
- B. To prohibit illicit connections and discharges to the stormwater drainage system;
- C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter. (Ord. 3713 § 1, 2009)

#### **13.11.020 Definitions.**

For the purposes of this chapter, the following definitions shall mean:

“Best management practices (BMPs)” means 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 Washington State or the stormwater drainage system. 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.

“CFR” means Code of Federal Regulations.

“City” means the city of Kelso.

“Clean Water Act (CWA)” means the federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.

“Construction activity” means activities subject to NPDES construction permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

“Director” means the director of the city of Kelso public works department or his/her designee.

“Hazardous materials” means 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.

“Hyperchlorinated water” means the water that contains more than ten milligrams per liter chlorine.

“Illicit connections” means any manmade conveyance that is connected to the storm drainage system without a permit. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the stormwater drainage system.

“Illicit discharge” means any direct or indirect discharge to the stormwater drainage system that is not composed entirely of stormwater except discharges expressly exempted in Section 13.11.050.

“Industrial activity” means the activities subject to NPDES Industrial Permits as defined in 40 CFR 122.26(b)(14).

“KMC” means the Kelso Municipal Code.

Maximum Extent Practicable (MEP). 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.

“Municipal separate storm sewer system (MS4)” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. 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;
2. Designed or used for collecting or conveying stormwater;
3. Which is not a combined sewer; and
4. Which is not part of a “publicly owned treatment works” as defined at 40 CFR 122.2.

“National Pollutant Discharge Elimination System (NPDES)” means 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 Washington State, are administered by the Washington Department of Ecology.

“Nonstormwater discharge” means any discharge to the storm drainage system that is not stormwater. Examples may include but are not limited to sanitary wastewater, laundry wastewater, noncontact cooling water, vehicle wash



wastewater, radiator flushing wastewater, spills from roadway accidents, and improperly disposed motor oil, solvents, lubricants, and paints.

“Owner” means any individual, association, organization, partnership, firm, corporation or other entity recognized by law who is (1) the owner of the premises or the owner’s agent, or (2) in control of the premises, or (3) the owner of any facility causing the illicit discharge, or the owner’s agent, or (4) in control of any facility causing the illicit discharge.

“Pollutant” means anything which causes or contributes to 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 wastes and pathogens; dissolved and particulate metals; and noxious or offensive matter of any kind.

“Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“RCW” means the Revised Code of Washington.

Stormwater Drainage System. See the definition for “Municipal separate storm sewer system (MS4).”

“Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

“Stormwater facility (facility)” means 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.

“Stormwater pollution prevention plan (SWPPP)” means a written plan to implement best management practices to identify, prevent, and control the contamination of stormwater discharges to stormwater, stormwater drainage systems and/or receiving waters to the maximum extent practicable.

“Water body” means lakes, rivers, ponds, streams, inland waters, sloughs, ditches, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

“Western Washington Phase II Municipal Stormwater Permit (permit)” means a permit issued by the Washington Department of Ecology under Sections 307, 402, 318, and 405 of the federal Clean Water Act that authorizes the discharge of pollutants to surface waters of the state. Also known as an NPDES permit.

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. (Ord. 3713 § 1, 2009)

#### **13.11.030 Applicability.**

This chapter shall apply to all owners responsible for and/or otherwise causing water directly or indirectly entering the storm drain stormwater drainage system generated on any developed and undeveloped lands unless explicitly exempted herein. (Ord. 3713 § 1, 2009)

#### **13.11.040 Responsibility for administration.**

The director shall administer, implement, and enforce the provisions of this chapter. (Ord. 3713 § 1, 2009)

#### **13.11.050 Discharge prohibitions.**

A. Prohibition of Illicit Discharges. No owner or individual 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 groundwaters any material other than stormwater or allowable nonstormwater discharges. All illicit discharges, as defined in this chapter, constitute a violation of this chapter.

1. Exempt Nonstormwater Discharges. The following categories of nonstormwater discharges are allowed, unless they are identified as a significant source of pollution:

- a. Diverted stream flows.
- b. Rising groundwaters.
- c. Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20)).
- d. Uncontaminated pumped groundwater.
- 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. Nonstormwater discharges covered by another NPDES permit.
- m. Discharges from emergency fire-fighting activities.

2. Conditional Discharges. The following categories of nonstormwater discharges are allowed if the conditions stated in this section are met unless they are identified by the city as a significant source of pollution. Failure to comply with the conditions shall constitute a violation of this chapter.

- 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 dechlorinated to a concentration of one-tenth ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater drainage system.
- b. Discharges from swimming pools, hot tubs and similar discharges. These discharges shall be dechlorinated to a concentration of one-tenth ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater drainage system. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the stormwater drainage system.
- c. Nonstormwater 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 granted that written approval has been granted for discharge to the stormwater drainage system.
- d. Other nonstormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan (SWPPP) reviewed by the city, which addresses control of such discharge by applying all known and reasonable methods of prevention control and treatment (AKART) to prevent contaminants from entering surface and groundwater.
- 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 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.

B. Prohibition of Illicit Connections. The construction, use, maintenance or continued existence of illicit connections to the stormwater drainage system, including but not limited to any sewage connection, is prohibited and constitutes a violation of this chapter. 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. (Ord. 3713 § 1, 2009)

**13.11.060 Industrial or construction activity discharges.**

A. Any owner subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the city prior to the allowing of discharges to the stormwater drainage system.

B. Access to Facilities.

1. If an owner has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the city.
2. Owners shall allow the city 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 conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by local, state and/or federal law.
3. 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 stormwater discharge.
4. The city has the right to require the discharger 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 discharger at their own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator 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 operator.

Any unreasonable delays in allowing the city access to a facility is a violation of this chapter. (Ord. 3713 § 1, 2009)

**13.11.070 Inspection and sampling.**

A. The director is authorized to develop inspection procedures and requirements for all stormwater drainage systems in the city.

B. Inspection Procedure. Prior to entry of the premises for the purpose of making any inspections, sampling, or records examination, the city shall obtain permission to enter the premises as follows:

1. The director shall present identification credentials, state the reason for the inspection and request entry of the owner, if available.
2. Unoccupied Building. If the premises or any building or structure on the premises is unoccupied, the director shall make reasonable efforts to locate the owner and request entry. In the event of an imminent hazard to persons or property as set forth in subsection (B)(3) of this section, such reasonable efforts shall be satisfied by attempting to contact the owner on site and by telephone at the last known number.

3. Imminent Hazard. If, after reasonable efforts, the director is unable to locate the owner, and has reason to believe the condition of the premises or of the private stormwater drainage system creates an imminent hazard to persons or property, the director may enter to abate the danger.

C. Inspection Parameters. Inspections for compliance with the provisions of this chapter shall be allowed as follows:

1. Construction and Development Inspection. A city representative or authorized designee shall have the right of entry to access any premises for which a permit requiring erosion controls or a stormwater facility has been issued, during regular business hours, or when reasonable under the circumstances for the purpose of review of erosion control practices and private stormwater drainage systems, and to ensure compliance with the terms of such permit. Applicants for any such permit shall agree in writing, as a condition of permit issuance, that such access shall be permitted for such purposes. Inspection procedures shall be as outlined in this section.

2. Inspection for Cause. Whenever the city has cause to believe that a violation of any provision of this chapter has been or is being committed, the director, following procedures prescribed in this section, is authorized to enter the premises to inspect the premises during regular business hours, or when reasonable in the circumstances to ensure compliance with this chapter and Chapter 13.09.\* Level of cause includes, but is not limited to, a citizen notification or an observation by a city employee.

3. Inspection for Maintenance and Source Control Best Management Practices. The director, following procedures prescribed in this section, is authorized to enter the premises to inspect private stormwater drainage systems during regular business hours, or at any other time reasonable under the circumstances, 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, Chapter 13.09,\* and any maintenance schedule adopted during the plan review process for the premises. The director also may enter the premises for the purposes of observing source control BMPs.

D. Water Sampling and Analysis. Water sampling and analysis for determination of compliance with this chapter shall be allowed as follows:

1. Sample Collection. When the city has reason to believe that a violation exists or is occurring on a premises, the director is authorized to enter the property 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 the Department of 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 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.

E. If the city has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this chapter, 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 chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of a search warrant from any court of competent jurisdiction. (Ord. 3713 § 1, 2009)

\*Code reviser's note: Chapter 13.09 will be adopted in February 2010.

**13.11.080 Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.**

The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from spill or loss of prohibited materials or other wastes into the stormwater drainage system or watercourses through the use of structural and nonstructural BMPs. The design and selection of BMPs shall be from the 2005 Western Washington Stormwater Management Manual or BMPs with city approval. Further, any owner responsible for a premises, which is, or may be, the source of an illicit discharge, may be required to implement, at

said owner's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the stormwater drainage system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the maximum extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit. (Ord. 3713 § 1, 2009)

### **13.11.090 Protection of facilities and watercourses.**

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

B. Responsibility. Every owner upon whose property exists a water body shall keep and maintain that part of the water body within the property free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water into or through the water body. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a water body, so that such structures will not become a hazard to the use, function, or physical integrity of the water body. (Ord. 3713 § 1, 2009)

### **13.11.100 Notification of spills.**

A. Reporting. Notwithstanding other requirements of law, as soon as any owner 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.

B. Response. Notwithstanding other requirements of law, as soon as any owner responsible for a premises or operation, or responsible for emergency response for a premises or operation, shall immediately take all necessary steps to ensure the discovery, containment, and full cleanup of water pollutants or potential pollutants is performed and to the satisfaction of the city and/or Ecology. In the event of such a release of hazardous materials, said owner 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 or operator 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 years. (Ord. 3713 § 1, 2009)

### **13.11.110 Enforcement.**

A. Order of Enforcement. The order of escalating enforcement procedures and actions will begin with education and technical assistance. ~~to issuance of a notice and order of compliance for civil penalties and then to criminal prosecution. Criminal prosecution for first time violators will be limited to incidents of intentional acts or gross negligence where the acts or negligence has caused significant damage or risk to the public health or water quality. Further non-compliance or first time violators of intentional acts or gross negligence will be enforced pursuant to KMC Chapter 1.50.~~

~~B. Notice and Order of Compliance. Whenever the city finds that an owner has violated a prohibition or failed to meet a requirement of this chapter, the director may issue a notice and order of compliance to correct the violation and take such action as may be necessary to assure compliance with this chapter. The order shall specify the actions to be taken and the time for compliance. The order may be appealed in accordance with the provisions of Section 13.11.120.~~

~~C. Form of Notice and Order of Compliance.~~

~~1. The written notice and order of compliance to the owner shall contain:~~

~~a. The street address or legal description sufficient for identification of the premises upon which the illicit discharge is located.~~

~~b. A brief and concise description or picture of the violation, together with a citation to the ordinance provision which the illicit discharge violates.~~

~~c. A demand that the illicit discharge be abated or restored in accordance with the local, state, and federal laws.~~

~~d. A statement advising the party issued the citation that they may appeal the order to the city's hearings examiner upon payment of the appropriate appeal fee and that such an appeal shall be served upon the public works department.~~

~~e. 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 owner fail to remediate or restore within the established deadline, the work may be done by the city or an authorized agent, and the expense thereof shall be charged to the owner.~~

~~2. Such notice and order of compliance may require without limitation:~~

~~a. The elimination of illicit discharges or practices, or operations that violate this chapter;~~

~~b. The elimination of illicit connections or discharges;~~

~~c. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;~~

~~d. The performance of monitoring, analyses, and reporting of stormwater facilities or nonstormwater discharges;~~

~~e. Payment of a fine to cover administrative and remediation costs;~~

~~f. Payment of penalties in an amount not to exceed five hundred dollars per day per violation; and~~

~~g. The implementation of source control or treatment BMPs.~~

~~3. Service of Notice and Order of Compliance. The notice and order of compliance shall be served upon the last known address of the owner of the property where the illicit discharge exists.~~

~~4. Method of Service. Service of the notice and order of compliance shall be made upon all owners entitled thereto pursuant to civil court rules and Chapter 4.28 RCW. Service by mail shall be deemed effective on the date of mailing.~~

~~5. Proof of Service. Proof of service of the notice and order of compliance shall be certified to at the time of service by a written declaration under the penalty of perjury as authorized by the laws of the state of Washington, or by a showing of mailing via certified mail.~~

#### ~~D. Suspension of Stormwater Drainage System Access.~~

~~1. Suspension Due to Illicit Discharges in Emergency Situations. The city may, without prior notice, issue a suspension order to suspend all access to the stormwater drainage system to an owner 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 to the stormwater drainage system or waters of the state. It shall be unlawful for any owner to fail to comply with an emergency suspension order. If any owner fails to immediately comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize danger and damage to the environment, public safety, the stormwater drainage system or waters of the state. The owner who has failed to comply with the order shall be responsible for all costs incurred by the city in abating the conditions which caused the issuance of the order.~~

~~2. Suspension Due to the Detection of Illicit Discharge. The city may, upon written notice, issue a suspension order to suspend all access to the stormwater drainage system to an owner discharging to the stormwater drainage system in violation of this chapter if such termination would abate or reduce an illicit discharge. The director will notify a violator of the proposed termination of its stormwater drainage system access.~~

~~3. Reinstatement of Access. The reinstatement of a connection which has been terminated pursuant to this section without the prior approval of the director shall constitute a violation of this chapter.~~

~~4. A suspension order issued under this section may be appealed to the city's hearings examiner in accordance with Section 13.11.120. An appeal shall not relieve any owner of the obligation to comply with an emergency suspension order.~~

~~E. Residential and Charity Car Washing. 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 car washes, redirection of wash waters to a sanitary sewer or to pervious surfaces such as grass or gravel, and the use of phosphate-free soap. (Ord. 3713 § 1, 2009)~~

~~**13.11.120 — Appeal of notice and order of compliance or suspension order.**~~

~~A. Any owner receiving a notice and order of compliance or suspension order may appeal the determination of the city to the city's hearings examiner. The notice of appeal must be received within ten days from receipt of the notice and order of compliance or suspension order. A copy of the appeal must be served on the public works department. Hearing on the appeal shall take place within thirty days from the date of receipt of the notice of appeal. The decision of the hearings examiner shall be the final decision of the city. Any appeal shall be processed in accordance with the provisions of this chapter, Chapter 2.14, and the appeal provisions of Chapter 8.24. In the event of a conflict, the provisions of this chapter shall govern.~~

~~B. The notice of appeal shall include the following:~~

- ~~1. The heading in the words of "Before the Hearings Examiner of the City of Kelso."~~
- ~~2. A caption reading "Appeal of the Illicit Discharge at (address or legal description)."~~
- ~~3. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice.~~
- ~~4. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed.~~
- ~~5. The signatures of all appellants named, together with their addresses and telephone numbers. Signatures affixed to this appeal document shall constitute a verification that the appeal is made in good faith and not merely an effort to delay, harass, or annoy in any way that is frivolous or without merit.~~

~~C. The notice of appeal shall be accompanied by the payment of an appeal fee in an amount set by the city council by separate ordinance. (Ord. 3713 § 1, 2009)~~

~~**13.11.130 — Failure to appeal.**~~

~~Failure of any owner to file an appeal in accordance with the provisions herein shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof; said failure shall not be deemed an exhaustion of administrative remedies. (Ord. 3713 § 1, 2009)~~

~~**13.11.140 — Method and form of appeal decision.**~~

~~A. Form of Appeal Decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements for compliance therewith. A copy of the decision shall be delivered to the appellant personally or sent by certified mail, postage prepaid, return receipt requested. The decision shall be a matter of public record.~~

~~B. Effective Date of Decision. The effective date of the decision shall be as stated therein. (Ord. 3713 § 1, 2009)~~

~~**13.11.150 — Enforcement measures after appeal.**~~

~~If the violation has not been corrected pursuant to the requirements set forth in the notice and order of compliance, or in the event of an appeal, within twenty one days of the decision of the hearings examiner, then the city may enter the premises and are authorized to take any and all measures necessary to abate the violation and/or restore the premises. Right of entry shall be obtained in the manner set forth for inspection procedures at Section 13.11.070. (Ord. 3713 § 1, 2009)~~

**~~13.11.160~~—Cost of abatement of the violation.**

~~Upon the city's abatement of the violation, the city will notify the owner of the cost of abatement, including administrative costs. The owner may file a written protest objecting to the amount of the assessment within fifteen days. If the amount due is not paid within a timely manner as determined by the city, the charges shall become a special assessment against the premises and shall be grounds for the city to file a lien on the premises for the amount of the assessment. (Ord. 3713 § 1, 2009)~~

**~~13.11.170~~—Injunctive relief.**

~~It shall be unlawful for any owner to violate any provision or fail to comply with any of the requirements of this chapter. If an owner has violated or continues to violate the provisions of this chapter, the city may petition for a preliminary or permanent injunction restraining the owner from activities which would create further violations or compelling the owner to perform abatement or remediation of the violation. (Ord. 3713 § 1, 2009)~~

**~~13.11.180~~—Compensatory action.**

~~In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the city may impose upon a violator alternative compensatory actions. Examples of these activities include, but are not limited to, attendance at compliance or training workshops, river, stream, or creek cleanup activities, or other community service activities. (Ord. 3713 § 1, 2009)~~

**~~13.11.190~~—Violations deemed a public nuisance.**

~~In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter that is a threat to public health, safety, and welfare, and is declared and deemed a nuisance may be subject to abatement as provided by applicable laws of the city or the state of Washington. (Ord. 3713 § 1, 2009)~~

**~~13.11.200~~—Criminal prosecution.**

~~Any owner that has violated or continues to violate this chapter shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a misdemeanor criminal penalty of one thousand nine hundred dollars per violation per day and/or imprisonment for a period of time not to exceed ninety days, or as hereinafter amended. (Ord. 3713 § 1, 2009)~~

**~~13.11.210~~—Remedies not exclusive.**

~~The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law. (Ord. 3713 § 1, 2009)~~

**~~13.11.220~~120 Severability.**

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

B. If this chapter is in conflict with any other section of the Kelso Municipal Code, this section shall control. (Ord. 3713 § 1, 2009)



# **AGENDA SUMMARY SHEET**

## **Business of the City Council City of Kelso, Washington**

---

---

**SUBJECT TITLE:** AN ORDINANCE OF THE CITY OF KELSO RELATING TO CODE ENFORCEMENT BY ADOPTING A NEW CHAPTER 1.50 CODE ENFORCEMENT TO THE KELSO MUNICIPAL CODE

**Agenda Item:** \_\_\_\_\_

**Dept. of Origin:** Community Development

**For Agenda of:** September 15, 2015

**Originator:** Steve Taylor

**City Attorney:** **Janean Parker**

**City Manager:** **Steve Taylor**

**PRESENTED BY:**

Steve Taylor

---

---

**Agenda Item Attachments:**

Proposed Ordinance  
Proposed new KMC Chapter 1.50 w/ redlined changes  
Proposed new KMC Chapter 1.50 clean  
Memo from City Attorney

**SUMMARY STATEMENT:**

At the August 18 meeting staff proposed the adoption of a general code enforcement chapter outlining the process for addressing violations of the nuisance abatement code as well as violations of other parts of the Kelso Municipal Code. During the discussion Council provided staff with comments and guidance. The revised version incorporates the desired changes expressed by Council as it relates to the penalty provisions; several other noted comments will be incorporated into the procedures as staff implements the new program.

**RECOMMENDED ACTION:**

Move to approve on second reading an ordinance adding Chapter 1.50 Code Enforcement to the Kelso Municipal Code.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF KELSO RELATING TO CODE ENFORCEMENT BY ADOPTING A NEW CHAPTER 1.50 CODE ENFORCEMENT TO THE KELSO MUNICIPAL CODE**

WHEREAS, Kelso Municipal Code Chapter 8.24 Abatement of Public Nuisances was adopted in 2003 and contains several outdated enforcement provisions; and

WHEREAS, in conjunction with the revision of Chapter 8.24, the City wishes to consolidate the enforcement provisions of the old Chapter 8.24 with updated enforcement provisions related to the whole of the municipal code to provide a single uniform and efficient enforcement process for code violations throughout the City; and

WHEREAS, the City wishes to update this enforcement process to more clearly describe the enforcement process, include alternatives for voluntary compliance, and provide a progressive enforcement program that utilizes a civil hearing process.

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

**SECTION 1. CHAPTER 1.50 ADDED.** That a new Kelso Municipal Code Chapter 1.50—Code Enforcement is hereby adopted as set forth in Exhibit “A” attached hereto and incorporated fully by this reference.

**SECTION 2. SEVERABILITY.** The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

**SECTION 3. EFFECTIVE DATE.** This Ordinance shall be in full force and effect on December 1, 2015 upon its passage and publication of summary as required by law.

**ADOPTED** by the City Council and **SIGNED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST/AUTHENTICATION:

---

MAYOR

---

CITY CLERK

APPROVED AS TO FORM:

---

CITY ATTORNEY

PUBLISHED: \_\_\_\_\_

## **Chapter 1.50 Code Enforcement**

### Sections:

- 1.50.010 Purpose and scope.
- 1.50.020 Definitions.
- 1.50.030 Obligations of person responsible for code violation.
- 1.50.040 Enforcement authority and administration.
- 1.50.050 Transfer of ownership.
- 1.50.060 Procedures when probable violation is identified.
- 1.50.070 Service – Warning notice and notice and order.
- 1.50.080 Determination of compliance.
- 1.50.090 Warning notice – Effect.
- 1.50.100 Written Warning notice – Contents.
- 1.50.110 Warning notice – Modification or revocation.
- 1.50.120 Voluntary compliance agreement – Authority.
- 1.50.130 Voluntary compliance agreement – Contents.
- 1.50.140 Failure to meet terms of voluntary compliance agreement.
- 1.50.150 Notice and order – Authority.
- 1.50.160 Notice and order – Effect.
- 1.50.170 Notice and order – Contents.
- 1.50.180 Notice and order – Recording.
- 1.50.190 Notice and order – Supplementation, revocation, modification.
- 1.50.200 Notice and order – Administrative conference.
- 1.50.210 Notice and order – Remedies – Abatement.
- 1.50.220 Notice and order – Remedy – Civil penalties.
- 1.50.230 Civil penalties – Assessment schedule.
- 1.50.240 Civil penalties – Duty to comply.
- 1.50.250 Cost recovery.
- 1.50.260 Collection of civil penalties, fees, and costs.
- 1.50.270 Abatement.

- 1.50.280 Administrative appeals – Standing – Filing requirements.
- 1.50.290 Administrative appeal – Notice of hearing.
- 1.50.300 Administrative appeal – Procedures.
- 1.50.310 Administrative appeal hearing – Procedure.
- 1.50.320 Administrative appeal – Final order.
- 1.50.330 Judicial enforcement – Petition for enforcement.
- 1.50.340 Criminal Penalty.
- 1.50.350 Citations – Authority.
- 1.50.360 Chapter not exclusive.
- 1.50.370 Application with other codes.
- 1.50.380 General duty.

#### 1.50.010 Purpose and scope.

The purpose of this chapter is to set forth the enforcement procedures for violations of the Kelso Municipal Code, to provide an opportunity for a prompt hearing and decision on alleged violations, and to establish monetary penalties for such violations. This Chapter shall apply to the violations of public nuisance provisions of KMC Chapter 8.24, and such other sections of the Kelso Municipal Code making reference to this Chapter.

#### 1.50.020 Definitions.

Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this section. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the singular. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

(1) “Abate” means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the authorized representative of the City determines is necessary in the interest of the general health, safety, welfare of the community or the environment. It shall include to stop, discontinue, or do away with a condition on any premises, which is in violation of this chapter or any part of the Kelso Municipal Code.

(2) “Director” means the director of the department or any designated alternate empowered by ordinance or by the City Manager to enforce the applicable city ordinance or regulation.

(3) “Authorized representative or agent” means any person having authority to act on behalf of the City of Kelso within the terms of this chapter, including, but not limited to, the City Manager, City Attorney, applicable Director (or his/her designee), code enforcement officers and any other person granted the authority to act on behalf of the City pursuant to this chapter.

(4) “Civil violation” means a code violation for which a monetary penalty may be imposed.

(5) “City” or “the City” means the City of Kelso, Washington, acting by and through the authorized representatives or agents.

(6) “Code” means the Kelso Municipal Code.

(7) "Code violation" or "violation" means and includes an act or omission contrary to:

(a) Any ordinance, resolution, regulation or public rule of the City.

(b) The conditions of any permit, notice and order or stop work order issued pursuant to any such ordinance, resolution, regulation or public rule.

(8) "Determination of compliance" means a written statement from the City that evidence to determine that the violation(s) has been sufficiently abated as to the violation(s) stated in the voluntary compliance agreement, warning notice or notice and order.

(9) "Development" means the activity or purpose for which land or structures or a combination of land and structures are designed, arranged, occupied or maintained together with any associated site improvements. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself including any clearing, grading, leveling, paving or excavation. "Development" also means any existing or proposed configuration of land, structures and site improvements, and the use thereof.

(10) "Emergency" means a situation which in the opinion of the Director requires immediate action to prevent or eliminate an immediate threat to the health or safety of people or property.

(11) "Hearing Examiner" or "examiner" means the City of Kelso Hearing Examiner, as provided by Chapter [2.14](#) KMC, Hearing Examiner, as adopted or hereafter amended.

(12) "High risk case" means where there is an imminent likelihood of actual bodily harm, damage to public resources or facilities, damage to real or personal property, public health exposure or environmental damage or contamination.

(13) "Omission" means a failure to act.

(14) "Permit" means any form of certificate, approval, registration, license or any other written permission issued by the city. All conditions of approval, and all easements and use limitations shown on the face of an approved final plat map which are intended to serve or protect the general public are deemed conditions applicable to all subsequent plat property owners, owners' tenants, and owners' agents as permit requirements enforceable under this chapter.

(15) "Person" means any individual, association, partnership, corporation or legal entity, public or private, and the agents, heirs, executors, administrators, contractors, and assigns of such individual, association, partnership, corporation or legal entity.

(16) "Person responsible for a code violation" or "responsible person" means any person, as above defined, who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the City, and includes but is not limited to owner(s), lessor(s), tenant(s) or other person(s) entitled to control, use and/or occupy property where a civil violation occurs.

(17) "Property" means any building, lot, parcel, real estate, land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

(18) "Public rule" means any rule, including those policies and procedures of any department of the City, properly promulgated to implement provisions of this code.

(19) "Remediate" means to restore a site to a condition that complies with sensitive area or other regulatory requirements as they existed before the violation occurred; or, for sites that have been degraded under prior ownerships, restore to a condition which does not pose a probable threat to the environment or to the general public health, safety or welfare.

(20) "Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance has been sought within one year or a notice and order has been issued within two years.

(21) "Resolution," for purposes of this chapter, means any resolution adopted by the City of Kelso City Council.

(22) "Warning" is any notice given verbally or in writing advising a person responsible for a code violation of such code violation.

(23) "Subject Property" means any building, lot, parcel, real estate, land, or portion of land, whether improved or unimproved, including adjacent sidewalks and planter strips whereupon a public nuisance or code violation occurs.

#### 1.50.030 Obligations of person responsible for code violation.

It shall be the responsibility of any person identified as responsible for a code violation to achieve full code compliance, including bringing property into a safe and reasonable condition. Payment of civil penalties, applications for permits, acknowledgement of stop work orders, and compliance with other remedies does not substitute for performing corrective work and/or performance of actions required for code compliance and/or having property brought into compliance to the extent reasonably possible under the circumstances; the department director shall have the final authority to determine what is "reasonably possible under the circumstances."

#### 1.50.040 Enforcement authority and administration

(1) In order to discourage public nuisances and/or otherwise promote compliance with the Kelso Municipal Code, the City may, in response to field observations, investigations or reliable complaints, determine that violations of the Kelso Municipal Code have occurred or are occurring as adopted or hereafter amended. The City may utilize any of the civil or administrative compliance and enforcement provisions contained in this Chapter.

(a) Issue warning notices, notice and orders, assess civil penalties, and/or recover costs as authorized by this chapter and/or other applicable code sections;

(b) Enter into voluntary compliance agreements with a person responsible for code violations;

(c) Require abatement by means of a judicial abatement order, and if such abatement is not timely completed by the person responsible for a code violation, undertake the abatement and charge the reasonable costs of such work as authorized by this chapter;

(d) Forward a written statement providing all relevant information relating to the violation to the office of the City Attorney with a recommendation to prosecute willful and knowing violations as misdemeanor offenses; and/or

(e) Require any other remedy available by law through the Hearing Examiner and/or court of applicable jurisdiction in Cowlitz County.

(2) The procedures set forth in this chapter are not exclusive. These procedures shall not in any manner limit or restrict the City from remedying or abating violations of the Kelso Municipal Code in any other manner authorized by law.

(3) In addition to, or as an alternative to, utilizing the procedures set forth in this chapter, the City may seek legal or equitable relief to abate and/or remedy any conditions or enjoin any acts or practices which constitute a code violation.

(4) In addition to, or as an alternative to, utilizing the procedures set forth in this chapter, the City may assess or recover civil penalties accruing under this chapter by legal action filed in the court of applicable jurisdiction in Cowlitz County by the office of the City Attorney.

(5) The provisions of this chapter shall in no way adversely affect the rights of the owner, lessee, or occupant of any property to recover all costs and expenses incurred and required by this chapter from any person causing such violation.

(6) In administering the provisions for code compliance, the City shall have the authority to waive any one or more such provisions so as to avoid substantial injustice. Any determination of substantial injustice shall be made in writing supported by appropriate facts. For purposes of this subsection, substantial injustice cannot be based exclusively on financial hardship.

(7) The City may, upon presentation of proper credentials, with the consent of the owner or occupier of a building or property, or pursuant to a lawfully issued court order, enter at reasonable times any building or property subject to the consent or court order to perform the duties imposed by the Kelso Municipal Code.

(8) The City may request that the police, appropriate fire district, Cowlitz Regional Health District, or other appropriate city department or other public agency assist in enforcement of this code.

#### 1.50.050 Transfer of ownership.

It shall be unlawful for the owner of any dwelling unit, building, structure or property who has received a notice and order to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit, building, structure or property to another until the provisions of the notice and order have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any notice and order issued by the community development director, or his authorized agent and shall furnish to the community development director, or his authorized agent a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notice and order and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order.

#### 1.50.060 Procedures when probable violation is identified.

(1) The City shall determine, based upon information derived from sources including, but not limited to, field observations, the statements of witnesses, relevant documents, and data systems for tracking violations and applicable city codes, regulations and other applicable laws, whether or not a violation has occurred. When the City has reasonable cause to determine that a violation has occurred, the violation should be documented and the person responsible for the code violation notified of such violation.

(2) When the City determines a violation has occurred, the City shall issue a written warning violation to the person determined to be responsible for the violation and the owner of the property, if different. The warning shall inform the person of the code violation of the violation and allow the person an opportunity to correct it. In cases of emergency or a high risk case the City may require immediate correction.

(3) The responsible person and the City may enter into a voluntary compliance agreement. If the responsible person does not agree to a voluntary compliance agreement, the City may issue a notice and order not earlier than 10 days from the date of the first warning by the City. Nothing herein is to limit the ability of the City and the responsible person from entering into a voluntary compliance agreement at any time prior to the appeal decision.

(4) The department director shall not be required to issue a warning and may immediately require correction, issue a notice and order, criminal citation, or notice of infraction in the following circumstances:

- (a) High risk cases;
- (b) Cases involving the public right-of-way;
- (c) Repeat violation cases;
- (d) Cases that are already subject to a voluntary compliance agreement;
- (e) When the Director determines, based on the circumstances, that a warning is not appropriate.

(5) The responsible party shall be responsible for advising the department director of his/her compliance with any warning or notice and order. The department director shall make any re-inspections as determined necessary by such department director.



### 1.50.070 Service – Warning notice and notice and order.

(1) Service of a written warning notice or notice and order shall be made on a person responsible for a code violation by one or more of the following methods:

(a) Personal service of a warning notice or notice and order may be made on the person identified by the City as being responsible for the code violation, or by leaving a copy of the notice and order at the person's house of usual abode with a person of suitable age and discretion who resides there, or if the violation involves a business, with an employee of the business of a suitable age and discretion;

(b) Service directed to the business owner, landowner and/or occupant of the property may be made by posting the notice and order in a conspicuous place on the property where the violation occurred and concurrently mailing notice as provided for below, if a mailing address is available;

(c) Service by mail may be made for a notice and order by mailing one copy, postage prepaid, by certified mail, five-day return receipt requested, to the person responsible for the code violation at his or her last known address, at the address of the violation, or at the address of the place of business of the person responsible for the code violation. The taxpayer's address as shown on the tax records of Cowlitz County shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the property where the violation occurred. Service by mail shall be presumed effective upon the third business day following the day upon which the notice and order was placed in the United States mail; or

(d) Service by mail may be made for a warning notice by mailing a copy, postage prepaid, by first class mail to the person responsible for the code violation at his or her last known address, at the address of the violation, or at the address of the place of business of the person responsible for the code violation. The taxpayer's address as shown on the tax records of Cowlitz County shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the property where the violation occurred. Service by mail shall be presumed effective upon the third business day following the day upon which the warning notice was placed in the mail.

(2) For notice and orders only, when the address of the person responsible for the code violation cannot be reasonably determined, service may be made by publication once in an appropriate regional or neighborhood newspaper or trade journal. Service by publication shall conform to the requirements of Civil Rule 4 of the Rules for the Superior Courts of the State of Washington.

(3) The failure of the City to make or attempt service on any person named in the warning notice or notice and order shall not invalidate any proceedings as to any other person duly served.

### 1.50.080 Determination of compliance.

After issuance of a warning notice, voluntary compliance agreement or notice and order and after the person responsible for a violation has come into compliance, the City shall issue a written determination of compliance. The City shall mail copies of the determination of compliance to each person originally named in the warning notice, voluntary compliance agreement or notice and order.

### 1.50.090 Warning notice – Effect.

(1) A warning notice represents a determination that a code violation has occurred and that the noticed party is a person responsible for a code violation and may be subject to penalties.

(2) Issuance of a warning notice in no way limits the City's authority to issue a notice and order to any person responsible for a code violation pursuant to this chapter and/or other applicable code section(s).

### 1.50.100 Written Warning notice – Contents.

The written warning notice shall contain the following information:

(a) The address, when available, or location of the code violation, when applicable;

- (b) A legal description of the real property or the Cowlitz County tax parcel number where the violation occurred or is located, or a description identifying the property by commonly used locators, when applicable;
- (c) A statement that the City has found the named person to have committed a code violation and a brief description of the violation(s) found;
- (d) A statement of the specific ordinance, resolution, regulation, public rule, or notice and order provision that was or is being violated;
- (e) A statement that the warning notice represents a determination that a code violation has occurred and that the noticed party may be subject to civil and/or criminal penalties;
- (f) A statement of the amount of the civil penalty that may be assessed if the violations are not corrected as required;
- (g) A statement of the corrective or abatement action required to be taken and that any required permits to perform the corrective action must be obtained from the proper issuing agency;
- (h) A statement advising that, if any required action is not completed within the time specified by the warning notice, the City may proceed to seek a judicial or administrative abatement order, or may seek other applicable relief from Cowlitz County Superior Court to abate and/or remedy the violation;
- (i) A statement advising the person responsible for a code violation of his/her duty to notify the City of any actions taken to achieve compliance with the warning notice;
- (j) A statement advising that a failure to correct the violation(s) cited in the warning notice could lead to the denial of subsequent city permit applications on the subject property, when applicable; and
- (k) A statement advising that a willful and knowing violation may be referred to the office of the City attorney for prosecution.

#### 1.50.110 Warning notice – Modification or revocation.

- (1) The City may add to, revoke in whole or in part, or otherwise modify a warning notice by issuing a written supplemental warning notice. The supplemental warning notice shall be governed by the same procedures and time limits applicable to all warning notices contained in this chapter.
- (2) The City may revoke or issue a supplemental warning notice.
- (3) Such revocation or modification shall identify the reasons and underlying facts for modification or revocation, and shall be served, in conformity with this chapter, on the person responsible for a violation.

#### 1.50.120 Voluntary compliance agreement – Authority.

- (1) Whenever the City determines that a code violation has occurred or is occurring, the City shall make reasonable efforts to secure voluntary compliance from the person responsible for the code violation. Upon contacting the person responsible for the code violation, the parties may enter into a voluntary compliance agreement as provided for in this chapter. The City is under no obligation to enter into a voluntary compliance agreement. It is the responsibility of the person responsible for the violation to correct the violation within the time specified in the warning notice or notice and order.
- (2) A voluntary compliance agreement may be entered into at any time before an appeal is decided. If an administrative appeal has already been filed, then the voluntary compliance agreement shall require the signature of the department director for approval of the terms of the agreement.
- (3) By entering into a voluntary compliance agreement, a person responsible for a code violation admits that the violations described in the voluntary compliance agreement existed and constituted a code violation, waives the right to administratively appeal, and authorizes the City to enter onto the subject property to correct the violation in the event of a default of the voluntary compliance agreement.

(4) The voluntary compliance agreement shall incorporate the shortest reasonable time period for compliance, as determined by the department director. An extension of the time limit for compliance or a modification of the required corrective action may be granted by the department director. Any such extension or modification must be in writing and signed by the department director and person who signed the original voluntary compliance agreement.

(5) The voluntary compliance agreement is not a settlement agreement.

#### 1.50.130 Voluntary compliance agreement – Contents.

The voluntary compliance agreement is a written, signed commitment by the person responsible for a code violation in which such person agrees to abate the violation, remediate the site, mitigate the impacts of the violation and/or remedy a code violation to achieve code compliance. The voluntary compliance agreement shall include the following:

- (a) The name and address of the person responsible for the code violation;
- (b) The address or other identification of the location of the violation, if applicable;
- (c) A description of the violation and a reference to the provision(s) of, resolution or regulation which has been violated;
- (d) A description of the necessary corrective action to be taken and identification of the date or time by which compliance must be completed;
- (e) The amount of the civil penalty to be paid, if any, and any civil penalty that will be imposed in the event the terms of the voluntary compliance agreement are not satisfied;
- (f) An acknowledgement that if the City determines that the terms of the voluntary compliance agreement are not met, the City may, without issuing any further notice, (1) impose any remedy authorized by this chapter or other applicable code section(s), (2) enter the subject property and perform abatement of the violation by the City (when applicable), (3) assess the costs incurred by the City to pursue code compliance and/or to abate the violation, including reasonable legal fees and costs, and (4) cause the suspension, revocation or limitation of a development permit obtained or to be sought by the person responsible for the code violation;
- (g) An acknowledgement that if a penalty is assessed, and if any assessed penalty, fee or cost is not paid, the City may charge the unpaid amount as a lien against the subject property where the code violation occurred, when applicable, and that the unpaid amount may be a joint and several personal obligation of all persons responsible for the violation;
- (h) An acknowledgement that by entering into the voluntary compliance agreement, the person responsible for the code violation thereby admits that the conditions or factors described in the voluntary compliance agreement existed and constituted a code violation; and
- (i) An acknowledgement that the person responsible for the code violation understands that he or she has the right to administratively appeal any such notice and order, and that he or she is knowingly and intelligently waiving those rights.

#### 1.50.140 Failure to meet terms of voluntary compliance agreement.

(1) If the terms of the voluntary compliance agreement are not completely met, and an extension of time has not been granted, the authorized representatives of the City may take whatever reasonable steps are necessary to gain compliance, including but not limited to entering onto the subject property and abating the violation without seeking a judicial abatement order. The person responsible for the violation may, without being issued a notice and order, be assessed a civil penalty as set forth by this chapter, plus all costs incurred by the City to pursue code compliance, including abating the violation, and may be subject to other remedies authorized by this chapter and/or other applicable code section(s). Penalties imposed when a voluntary compliance agreement is not met accrue from the date that an appeal of any preceding notice and order was to

have been filed or from the date the voluntary compliance agreement was entered into if there was not a preceding notice and order.

(2) The City may issue a notice and order or proceed with any other legal remedy authorized by law, for failure to meet the terms of a voluntary compliance agreement.

#### 1.50.150 Notice and order – Authority.

When the City has reason to believe that a code violation exists or has occurred, and the City is unable to secure voluntary correction, pursuant to KMC 1.50.120, or that the terms of a voluntary compliance agreement have not been met, the City is authorized to issue a notice and order to any person responsible for a code violation.

#### 1.50.160 Notice and order – Effect.

(1) A notice and order represents a determination that a violation has occurred, that the party to whom the notice is issued is a person responsible for a code violation, and that the violations set out in the notice and order require the assessment of penalties and other remedies that may be specified in the notice and order.

(2) The City is authorized to impose civil and/or criminal penalties upon a determination by the City that a violation has occurred pursuant to a notice and order.

(3) Issuance of a notice and order in no way limits the City's authority to issue a stop work order to a person previously cited through the notice and order process pursuant to this chapter.

(4) Imposition of a civil penalty creates a joint and several personal obligation in all persons responsible for a code violation who are served with notice of the violation.

(5) Any person identified in the notice and order as responsible for a code violation may appeal the notice and order within 15 days as provided for in this chapter.

(6) Failure to appeal the notice and order within the applicable time limits shall render the notice and order a final determination of the City that the conditions or factors described in the notice and order existed and constituted a violation, and that the named party is liable as a person responsible for a code violation.

#### 1.50.170 Notice and order – Contents.

The notice and order shall contain the following information:

- (a) The address, when available, or location of the violation;
- (b) A legal description of the real property or the Cowlitz County tax parcel number where the violation occurred or is located, or a description identifying the property by commonly used locators, when applicable;
- (c) A statement that the City has found the named person to have committed a violation and a brief description of the violation(s) found;
- (d) A statement that the notice and order represents a determination that a code violation has occurred and that the person responsible may be subject to criminal penalties;
- (e) A statement of the specific provisions of the ordinance, resolution, regulation, public rule, permit condition, or notice and order provision that was or is being violated;
- (f) A statement that a civil penalty is being assessed, including the dollar amount of the civil penalties per separate violation, and that any assessed penalties must be paid within 30 days of service of the notice and order;
- (g) A statement advising that any costs of enforcement incurred by the City shall also be assessed against the person to whom the notice and order is directed;

- (h) A statement that payment of the civil penalties assessed under this chapter does not relieve a person found to be responsible for a code violation of his or her duty to correct the violation or to pay any and all civil penalties or other cost assessments issued pursuant to this chapter;
- (i) A statement of the corrective or abatement action required to be taken and that all required permits to perform corrective action must be obtained from the proper issuing agency;
- (j) A statement advising that, if any required work is not commenced or completed within the time specified by the notice and order, the City may proceed to seek a judicial abatement order from Cowlitz County Superior Court to abate the violation, when applicable;
- (k) A statement advising that, if any assessed penalty, fee or cost is not paid on or before the due date, the City may charge the unpaid amount as a lien against the subject property where the code violation occurred, when applicable, and as a joint and several personal obligation of all persons responsible for a code violation;
- (l) A statement advising that any person named in the notice and order, or having any record or equitable title in the subject property against which the notice and order may be recorded, may appeal from the notice and order to the Hearing Examiner within 15 days of the date of service of the notice and order; except that, for violations of KMC 10.06 Junk Vehicles, there shall be a statement that the nuisance must be abated within fifteen (15) days or the City will proceed to abate and assess costs of removal against the registered vehicle owner and/or property owner and that the person may request a hearing before the City's Hearing Examiner to contest the City's notice and order.
- (m) A statement advising that a failure to correct the violations cited in the notice and order could lead to the denial of subsequent Kelso permit applications on the subject property, when applicable;
- (n) A statement advising that a failure to appeal the notice and order within the applicable time limits renders the notice and order a final determination that the conditions or factors described in the notice and order existed and constituted a violation, and that the named party is liable as a person responsible for a violation;
- (o) A statement advising the person responsible for a code violation of his/her duty to notify the City of any actions taken to achieve compliance with the notice and order; and
- (p) A statement advising that a willful and knowing violation may be referred to the office of the City attorney for prosecution.

#### 1.50.180 Notice and order – Recording.

- (1) When a notice and order is served on a person responsible for a code violation of a specific piece of real property, the City may record and/or file a copy of the same with the Cowlitz County Auditor's office.
- (2) In the event notice and order is recorded as set forth in section 1 above, when all violations specified in the notice and order have been corrected or abated to the satisfaction of the City, the City shall record a certificate of compliance with the Cowlitz County Auditor's office within 15 days of receiving evidence of abatement. The certificate shall include a legal description of the property where the violation occurred and shall state whether any unpaid civil penalties for which liens have been filed are still outstanding and, if so, shall continue as liens on the property.
- (3) After all liens have been satisfied, the City shall file a notice of satisfaction of lien with the Cowlitz County Auditor's office within 15 days of final payment to the City.

#### 1.50.190 Notice and order – Supplementation, revocation, modification.

- (1) The City may add to, revoke, in whole or in part, or otherwise modify a notice and order by issuing a written supplemental notice and order. The supplemental notice and order shall be governed by the same procedures and time limits applicable to all notice and orders contained in this chapter.

(2) The City may issue a supplemental notice and order, or revoke a notice and order issued under this chapter.

(3) Such revocation or modification shall identify the reasons and underlying facts for modification or revocation, and shall be served on the person responsible for a violation in conformity with this chapter.

#### 1.50.200. Notice and order – Administrative conference.

An informal administrative conference may be conducted by the City at any time for the purpose of facilitating communication among concerned persons and providing a forum for efficient resolution of any violation. Interested parties shall not unreasonably be excluded from such conferences.

#### 1.50.210 Notice and order – Remedies – Abatement.

In addition to, or as an alternative to, any other judicial or administrative remedy, the City may use the notice and order provisions of this chapter to order any person responsible for a code violation to abate the violation and to complete the work at such time and under such conditions as the City determines reasonable under the circumstances. If the required corrective work is not commenced or completed within the time specified, the City may seek a judicial abatement order or other legal remedy pursuant to this chapter.

#### 1.50.220 Notice and order – Remedy – Civil penalties.

(1) In addition to any other judicial or administrative remedy, the City may assess civil penalties for the violation of any notice and order or voluntary correction agreement according to any other applicable code section(s) or the civil penalty schedule established in KMC 1.50.230.

(2) Violation of a notice and order shall be a separate violation from any other code violation.

#### 1.50.230 Civil penalties – Assessment schedule.

(1) Civil penalties for code violations shall be imposed for remedial purposes and shall be assessed for each violation, pursuant to applicable code section(s) and/or the following schedule:

(a) The monetary penalty for each violation ~~per day or portion thereof~~ shall be \$200.00. In the event the violation is not corrected within 15 days of the beginning on the date set by the Director for correction of the violation in the Notice and order or the Voluntary Correction Agreement, the penalty shall be increased by one hundred fifty percent (150%) of the initial penalty. For each additional 15 day period thereafter that the violation is not corrected, the penalty shall be increased by two hundred percent (200%) of the initial penalty.

(b) In determining the monetary penalty assessment, the Director or the Hearing Examiner shall consider the following factors and may decrease the assessment of penalties based on these factors:

- (i) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation.
- (ii) Whether the person showed due diligence and/or substantial progress in correcting the violation
- (iii) Whether a genuine code interpretation issue exists; and
- (iv) Any other relevant factors.

(c) In determining the monetary penalty assessment, the Director or the Hearing Examiner shall consider the following factors and may increase the assessment of penalties to an amount not to exceed double the ~~original assessed~~ penalty amount based on these factors:

- (i) Whether the violation is a repeat violation or the person has a history of similar violations;
- (ii) Whether the violation is intentional;

- (iii) Whether the violation creates significant environmental or property damage;
- (iv) Whether there is economic benefit to the person responsible for the violation; and
- (v) Any other relevant factors.

(2) Civil penalties shall be paid within 30 days of service of the notice and order if not appealed. Payment of the civil penalties assessed under this chapter does not relieve a person found to be responsible for a code violation of his or her duty to correct the violation and/or to pay any and all civil penalties or other cost assessments issued pursuant to this chapter.

(3) Civil penalties assessed create a joint and severable personal obligation in all persons responsible for a code violation.

(4) In addition to, or in lieu of, any other state or local provision for the recovery of civil penalties, the City may file record and/or file with the Cowlitz County Auditor to claim a lien against the real property for the civil penalties assessed under this chapter if the violation was reasonably related to the real property. Any such lien can be filed under this chapter if, after the expiration of 30 days from when a person responsible for a code violation receives the notice and order (excluding any appeal), any civil penalties remain unpaid in whole or in part.

(5) The City shall state in writing the basis for a decision to waive, reduce or increase penalties, and such statement shall become part of the record.

#### 1.50.240 Civil penalties – Duty to comply.

A person responsible for a code violation has a duty to notify the City in writing of any actions taken to achieve compliance with the warning notice or notice and order. For purposes of assessing civil penalties, a violation shall be considered ongoing until the person responsible for a code violation has come into compliance with the warning notice, notice and order, or voluntary compliance agreement, and has provided sufficient evidence, as determined by the City, of such compliance. Proof of sufficient evidence may require right of entry by the code official to verify compliance.

#### 1.50.250 Cost recovery.

(1) In addition to the other remedies available under this chapter and those authorized by law, upon issuance of a notice and order the City shall charge the costs of pursuing code compliance and abatement incurred to correct a code violation to the person responsible for a code violation. These charges include:

- (a) Reasonable Legal Fees and Costs. For purposes of this section, “reasonable legal fees and costs” shall include, but are not limited to, legal personnel costs, both direct and related, incurred to enforce the provisions of this chapter as may be allowed by law;
- (b) Administrative Personnel Costs. For purposes of this section, “administrative personnel costs” shall include, but are not limited to, administrative employee costs, both direct and related, incurred to enforce the provisions of this chapter;
- (c) Abatement Costs. The City shall keep an itemized account of costs incurred by the City in the abatement of a violation under this chapter. Upon completion of any abatement work, the City shall prepare a report specifying a legal description of the real property where the abatement work occurred, the work done for each property, the itemized costs of the work, and interest accrued; and
- (d) Actual expenses and costs of the City in preparing notices, specifications and contracts; in accomplishing or contracting and inspecting the work; and the costs of any required printing, mailing, or court filing fees.

(2) Such costs are due and payable 30 days from mailing of the invoice unless otherwise stated in a written agreement with the City. The City reserves the right to collect interest at the statutory set rate on any outstanding balance not paid within 30 days.

(3) All costs assessed by the City in pursuing code compliance and/or abatement create a joint and several personal obligation in all persons responsible for a violation.

(4) In addition to, or in lieu of, any other state or local provision for the recovery of costs, the City may, after abating a violation pursuant to this chapter, file and/or record with the Cowlitz County Auditor to claim a lien against the real property for the assessed costs identified in this chapter if the violation was reasonably related to the real property, in accordance with any lien provisions authorized by state law.

(5) Any lien filed shall be subordinate to all previously existing special assessment liens imposed on the same property and shall be superior to all other liens, except for state and county taxes, with which it shall share priority. The City may cause a claim for lien to be filed and/or recorded within 90 days from the later of the date that the monetary penalty is due or the date the work is completed or the nuisance abated. The claim of lien shall contain sufficient information regarding the notice and order, a description of the property to be charged with the lien, the owner of record, and the total of the lien. Any such claim of lien may be amended from time to time to reflect changed conditions. Any such lien shall bind the affected property for the period as provided for by state law.

#### 1.50.260 Collection of civil penalties, fees, and costs.

In addition to the remedies available under this chapter and those authorized by law, the City may use the services of a collection agency, or any other legal means, in order to collect any civil and/or criminal penalties, fees, costs, and/or interest owing under this chapter.

#### 1.50.270 Abatement.

(1) Emergency Abatement. Whenever a condition constitutes an immediate threat to the public health, safety or welfare or to the environment, the City may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

(2) Upon failure to comply with a final unappealed notice and order, or final disposition of any appeal therefrom of a violation of KMC 10.06, the vehicle, automobile hulk, junk vehicle or parts thereof shall be removed at the request of the chief of police and disposed of to a registered tow truck operator, with notice to the Washington State Patrol and the Washington State Department of Motor Vehicles that such a vehicle, automobile hulk, or junk vehicle has been wrecked.

(3) Judicial Abatement. The City may seek a judicial abatement order from Cowlitz County Superior Court, to abate a condition which continues to be a violation of this code where other methods of remedial action have failed to produce compliance.

(4) The City shall seek to recover the costs of abatement as authorized by this chapter.

(5) No person shall obstruct, impede or interfere with the City or its authorized agents, or with any person who owns or holds any interest or estate in any property in performing any tasks necessary to correct the violation.

#### 1.50.280 Administrative appeals – Standing – Filing requirements.

(1) Any person issued or named in a notice and order, and any owner of the land where the violation for which a notice and order is issued, shall have standing to appeal and may file a notice of appeal of the order.

(2) Any person filing an appeal under this chapter shall do so by obtaining the appeal form from the City and filing the completed appeal form along with the appeal fee as identified in the City's Master Fee Schedule within 15 days of service of the notice and order.

(3) Any administrative appeal considered under this chapter will be determined by the Hearing Examiner pursuant to the procedures set forth in this chapter and Chapter 2.14 KMC, unless in conflict with specific provisions of this chapter, in which case the specific provisions of this chapter shall control.

#### 1.50.290 Administrative appeal – Notice of hearing.



Upon receipt of a notice of appeal, the City shall provide a hearing notice stating the time, location and date of the hearing on the issues identified in the appeal. Such date shall not be less than ten days nor more than sixty days from the date of the appeal filing with the City. Written notice of the time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant by the examiner's office either by causing a copy of such notice to be delivered to the appellants personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address showing on the appeal.

#### 1.50.300 Administrative appeal – Procedures.

(1) The appeal hearing shall be conducted as provided for this chapter and in Chapter 2.14 KMC, as adopted or hereafter amended.

(2) Enforcement of any notice and order of the City issued pursuant to this chapter shall be stayed during the pendency of any administrative appeal except when the City determines that the violation poses a significant threat of immediate and/or irreparable harm and so states in any notice and order issued.

(3) When multiple notice and orders or stop work orders have been issued simultaneously for any set of facts constituting a violation, only one appeal of all the enforcement actions shall be allowed.

(4) Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled if the department director approves the completed required corrective action and payment of penalties, if any, at least 48 hours prior to the scheduled hearing.

#### 1.50.310 Administrative appeal hearing – Procedure.

The Hearing Examiner shall conduct a hearing on the appeal of notice and order pursuant to the rules of procedure of the Hearing Examiner. The authorized representative of the City and the appellant may participate as parties in the hearing and each party may call witnesses. The City shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the authorized representative of the City as to the need for the required corrective action shall be accorded substantial weight by the Hearing Examiner in determining the reasonableness of the required corrective action.

#### 1.50.320 Administrative appeal – Final order.

(1) Decision of the Hearing Examiner.

(a) The Hearing Examiner shall determine whether the City has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the City's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions;

(b) The Hearing Examiner shall issue an order, within 20 days of the hearing. A copy of the decision shall be delivered to the City and to the appellant personally or sent by certified mail, postage prepaid, return receipt requested which contains the following information:

(i) The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

(ii) The required corrective action;

(iii) The date and time by which the correction must be completed;

(iv) The monetary penalties assessed based on the criteria section 1.50.230 of this chapter; and

(v) The date and time after which the City may proceed with abatement of the unlawful condition or other action if the required correction is not completed.

(c) Notice of Decision. The Hearing Examiner shall mail a copy of the decision to the appellant and to the department director within 20 working days of the hearing.

(d) Failure to Appear. If the person to whom the notice and order was issued fails to appear at the scheduled hearing, the Hearing Examiner will enter an order finding that the violation occurred and assessing the appropriate monetary penalty. The City will carry out the Hearing Examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.

(2) The Hearing Examiner's final order shall be final and conclusive unless a request for reconsideration is made in accordance with subsection (4) of this section or proceedings for review of the decision are properly commenced in Cowlitz County Superior Court within the time period specified in subsection (5) of this section.

(3) Any aggrieved person upon good cause that the decision of the Hearing Examiner is based on erroneous procedure, error of law or fact, error in judgment, or the discovery of new evidence which could not have been reasonably available at the hearing, may make a written request for reconsideration by the Hearing Examiner within 10 days of the date the written decision of the Hearing Examiner was mailed to the person to whom the notice and order was directed. The request must set forth in writing the specific errors or new information relied upon by such person. The Hearing Examiner, within 10 days of the written request for reconsideration being filed with the City, after review of the record and materials, will issue a written decision of whether there will be any changes to the original decision. The time to file an appeal to the Cowlitz County Superior Court shall be stayed from the date the reconsideration is filed with the City to the date the decision on the reconsideration is mailed to the person requesting the reconsideration.

(4) An appeal of the decision of the Hearing Examiner must be filed with Cowlitz County Superior Court 30 calendar days from the date the Hearing Examiner's decision was mailed to the person to whom the notice and order was directed, or is thereafter barred.

(5) If, after any order of the City or Hearing Examiner made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the City may (1) cause such person to be prosecuted as provided for in this chapter, or (2) institute any appropriate action to abate such building or nuisance and assess the costs of abatement to the property owner as provided for in this chapter.

#### 1.50.330 Judicial enforcement – Petition for enforcement.

(1) In addition to any other judicial or administrative remedy, the office of the City attorney, on behalf of the City, may seek enforcement of the City's order by filing a petition for enforcement in Cowlitz County Superior Court.

(2) The petition must name as respondent each person against whom the City seeks to obtain civil enforcement.

(3) A petition for civil enforcement may request monetary relief, declaratory relief, temporary or permanent injunctive relief, and any other civil remedy provided by law, or any combination of the foregoing.

#### 1.50.340 Criminal Penalty.

After any notice and order, stop work order, any other compliance order of the building official or Director, or any decision of the Hearing Examiner made pursuant to this Chapter shall have become final, no person to whom any such order or decision is directed shall fail, neglect or refuse to obey any such order or decision. Any such person who fails to comply with any such order is guilty of a misdemeanor.

#### 1.50.350 Citations – Authority.

Whenever the City has determined, based upon investigation of documents, statements of witnesses, field observations, data system(s) for tracking violations and/or physical evidence, that a code violation has occurred, the City may in lieu of the enforcement procedures of this chapter issue a citation of civil infraction to any person responsible for the violation.

#### 1.50.360 Chapter not exclusive.

The provisions of this chapter are in addition to any other provisions of this code and may be enforced separately from such other provisions or in combination therewith.

#### 1.50.370 Application with other codes.

To the extent other codes adopted by reference conflict with the provisions of this chapter, the latter shall control, unless otherwise determined by an administrative code interpretation.

#### 1.50.380 General duty.

None of the provisions of this chapter are intended to create a cause of action or provide the basis for a claim against the City, its officials, or employees for the performance or failure to perform a duty or obligation running to a specific individual or specific individuals. Any duty or obligation created herein is intended to be a general duty or obligation running in favor of the general public.

Exhibit A

**Chapter 1.50  
Code Enforcement**

Sections:

- 1.50.010 Purpose and scope.
- 1.50.020 Definitions.
- 1.50.030 Obligations of person responsible for code violation.
- 1.50.040 Enforcement authority and administration.
- 1.50.050 Transfer of ownership.
- 1.50.060 Procedures when probable violation is identified.
- 1.50.070 Service – Warning notice and notice and order.
- 1.50.080 Determination of compliance.
- 1.50.090 Warning notice – Effect.
- 1.50.100 Written Warning notice – Contents.
- 1.50.110 Warning notice – Modification or revocation.
- 1.50.120 Voluntary compliance agreement – Authority.
- 1.50.130 Voluntary compliance agreement – Contents.
- 1.50.140 Failure to meet terms of voluntary compliance agreement.
- 1.50.150 Notice and order – Authority.
- 1.50.160 Notice and order – Effect.
- 1.50.170 Notice and order – Contents.
- 1.50.180 Notice and order – Recording.
- 1.50.190 Notice and order – Supplementation, revocation, modification.
- 1.50.200 Notice and order – Administrative conference.
- 1.50.210 Notice and order – Remedies – Abatement.
- 1.50.220 Notice and order – Remedy – Civil penalties.
- 1.50.230 Civil penalties – Assessment schedule.
- 1.50.240 Civil penalties – Duty to comply.
- 1.50.250 Cost recovery.
- 1.50.260 Collection of civil penalties, fees, and costs.
- 1.50.270 Abatement.

## Exhibit A

- 1.50.280 Administrative appeals – Standing – Filing requirements.
- 1.50.290 Administrative appeal – Notice of hearing.
- 1.50.300 Administrative appeal – Procedures.
- 1.50.310 Administrative appeal hearing – Procedure.
- 1.50.320 Administrative appeal – Final order.
- 1.50.330 Judicial enforcement – Petition for enforcement.
- 1.50.340 Criminal Penalty.
- 1.50.350 Citations – Authority.
- 1.50.360 Chapter not exclusive.
- 1.50.370 Application with other codes.
- 1.50.380 General duty.

### 1.50.010 Purpose and scope.

The purpose of this chapter is to set forth the enforcement procedures for violations of the Kelso Municipal Code, to provide an opportunity for a prompt hearing and decision on alleged violations, and to establish monetary penalties for such violations. This Chapter shall apply to the violations of public nuisance provisions of KMC Chapter 8.24, and such other sections of the Kelso Municipal Code making reference to this Chapter.

### 1.50.020 Definitions.

Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this section. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the singular. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

(1) “Abate” means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the authorized representative of the City determines is necessary in the interest of the general health, safety, welfare of the community or the environment. It shall include to stop, discontinue, or do away with a condition on any premises, which is in violation of this chapter or any part of the Kelso Municipal Code.

(2) “Director” means the director of the department or any designated alternate empowered by ordinance or by the City Manager to enforce the applicable city ordinance or regulation.

(3) “Authorized representative or agent” means any person having authority to act on behalf of the City of Kelso within the terms of this chapter, including, but not limited to, the City Manager, City Attorney, applicable Director (or his/her designee), code enforcement officers and any other person granted the authority to act on behalf of the City pursuant to this chapter.

(4) “Civil violation” means a code violation for which a monetary penalty may be imposed.

(5) “City” or “the City” means the City of Kelso, Washington, acting by and through the authorized representatives or agents.

(6) “Code” means the Kelso Municipal Code.

## Exhibit A

(7) "Code violation" or "violation" means and includes an act or omission contrary to:

(a) Any ordinance, resolution, regulation or public rule of the City.

(b) The conditions of any permit, notice and order or stop work order issued pursuant to any such ordinance, resolution, regulation or public rule.

(8) "Determination of compliance" means a written statement from the City that evidence to determine that the violation(s) has been sufficiently abated as to the violation(s) stated in the voluntary compliance agreement, warning notice or notice and order.

(9) "Development" means the activity or purpose for which land or structures or a combination of land and structures are designed, arranged, occupied or maintained together with any associated site improvements. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself including any clearing, grading, leveling, paving or excavation. "Development" also means any existing or proposed configuration of land, structures and site improvements, and the use thereof.

(10) "Emergency" means a situation which in the opinion of the Director requires immediate action to prevent or eliminate an immediate threat to the health or safety of people or property.

(11) "Hearing Examiner" or "examiner" means the City of Kelso Hearing Examiner, as provided by Chapter [2.14](#) KMC, Hearing Examiner, as adopted or hereafter amended.

(12) "High risk case" means where there is an imminent likelihood of actual bodily harm, damage to public resources or facilities, damage to real or personal property, public health exposure or environmental damage or contamination.

(13) "Omission" means a failure to act.

(14) "Permit" means any form of certificate, approval, registration, license or any other written permission issued by the city. All conditions of approval, and all easements and use limitations shown on the face of an approved final plat map which are intended to serve or protect the general public are deemed conditions applicable to all subsequent plat property owners, owners' tenants, and owners' agents as permit requirements enforceable under this chapter.

(15) "Person" means any individual, association, partnership, corporation or legal entity, public or private, and the agents, heirs, executors, administrators, contractors, and assigns of such individual, association, partnership, corporation or legal entity.

(16) "Person responsible for a code violation" or "responsible person" means any person, as above defined, who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the City, and includes but is not limited to owner(s), lessor(s), tenant(s) or other person(s) entitled to control, use and/or occupy property where a civil violation occurs.

(17) "Property" means any building, lot, parcel, real estate, land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

(18) "Public rule" means any rule, including those policies and procedures of any department of the City, properly promulgated to implement provisions of this code.

(19) "Remediate" means to restore a site to a condition that complies with sensitive area or other regulatory requirements as they existed before the violation occurred; or, for sites that have been degraded under prior ownerships, restore to a condition which does not pose a probable threat to the environment or to the general public health, safety or welfare.

(20) "Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance has been sought within one year or a notice and order has been issued within two years.

## Exhibit A

(21) "Resolution," for purposes of this chapter, means any resolution adopted by the City of Kelso City Council.

(22) "Warning" is any notice given verbally or in writing advising a person responsible for a code violation of such code violation.

(23) "Subject Property" means any building, lot, parcel, real estate, land, or portion of land, whether improved or unimproved, including adjacent sidewalks and planter strips whereupon a public nuisance or code violation occurs.

### 1.50.030 Obligations of person responsible for code violation.

It shall be the responsibility of any person identified as responsible for a code violation to achieve full code compliance, including bringing property into a safe and reasonable condition. Payment of civil penalties, applications for permits, acknowledgement of stop work orders, and compliance with other remedies does not substitute for performing corrective work and/or performance of actions required for code compliance and/or having property brought into compliance to the extent reasonably possible under the circumstances; the department director shall have the final authority to determine what is "reasonably possible under the circumstances."

### 1.50.040 Enforcement authority and administration

(1) In order to discourage public nuisances and/or otherwise promote compliance with the Kelso Municipal Code, the City may, in response to field observations, investigations or reliable complaints, determine that violations of the Kelso Municipal Code have occurred or are occurring as adopted or hereafter amended. The City may utilize any of the civil or administrative compliance and enforcement provisions contained in this Chapter.

(a) Issue warning notices, notice and orders, assess civil penalties, and/or recover costs as authorized by this chapter and/or other applicable code sections;

(b) Enter into voluntary compliance agreements with a person responsible for code violations;

(c) Require abatement by means of a judicial abatement order, and if such abatement is not timely completed by the person responsible for a code violation, undertake the abatement and charge the reasonable costs of such work as authorized by this chapter;

(d) Forward a written statement providing all relevant information relating to the violation to the office of the City Attorney with a recommendation to prosecute willful and knowing violations as misdemeanor offenses; and/or

(e) Require any other remedy available by law through the Hearing Examiner and/or court of applicable jurisdiction in Cowlitz County.

(2) The procedures set forth in this chapter are not exclusive. These procedures shall not in any manner limit or restrict the City from remedying or abating violations of the Kelso Municipal Code in any other manner authorized by law.

(3) In addition to, or as an alternative to, utilizing the procedures set forth in this chapter, the City may seek legal or equitable relief to abate and/or remedy any conditions or enjoin any acts or practices which constitute a code violation.

(4) In addition to, or as an alternative to, utilizing the procedures set forth in this chapter, the City may assess or recover civil penalties accruing under this chapter by legal action filed in the court of applicable jurisdiction in Cowlitz County by the office of the City Attorney.

(5) The provisions of this chapter shall in no way adversely affect the rights of the owner, lessee, or occupant of any property to recover all costs and expenses incurred and required by this chapter from any person causing such violation.

## Exhibit A

(6) In administering the provisions for code compliance, the City shall have the authority to waive any one or more such provisions so as to avoid substantial injustice. Any determination of substantial injustice shall be made in writing supported by appropriate facts. For purposes of this subsection, substantial injustice cannot be based exclusively on financial hardship.

(7) The City may, upon presentation of proper credentials, with the consent of the owner or occupier of a building or property, or pursuant to a lawfully issued court order, enter at reasonable times any building or property subject to the consent or court order to perform the duties imposed by the Kelso Municipal Code.

(8) The City may request that the police, appropriate fire district, Cowlitz Regional Health District, or other appropriate city department or other public agency assist in enforcement of this code.

### 1.50.050 Transfer of ownership.

It shall be unlawful for the owner of any dwelling unit, building, structure or property who has received a notice and order to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit, building, structure or property to another until the provisions of the notice and order have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any notice and order issued by the community development director, or his authorized agent and shall furnish to the community development director, or his authorized agent a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notice and order and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order.

### 1.50.060 Procedures when probable violation is identified.

(1) The City shall determine, based upon information derived from sources including, but not limited to, field observations, the statements of witnesses, relevant documents, and data systems for tracking violations and applicable city codes, regulations and other applicable laws, whether or not a violation has occurred. When the City has reasonable cause to determine that a violation has occurred, the violation should be documented and the person responsible for the code violation notified of such violation.

(2) When the City determines a violation has occurred, the City shall issue a written warning violation to the person determined to be responsible for the violation and the owner of the property, if different. The warning shall inform the person of the code violation of the violation and allow the person an opportunity to correct it. In cases of emergency or a high risk case the City may require immediate correction.

(3) The responsible person and the City may enter into a voluntary compliance agreement. If the responsible person does not agree to a voluntary compliance agreement, the City may issue a notice and order not earlier than 10 days from the date of the first warning by the City. Nothing herein is to limit the ability of the City and the responsible person from entering into a voluntary compliance agreement at any time prior to the appeal decision.

(4) The department director shall not be required to issue a warning and may immediately require correction, issue a notice and order, criminal citation, or notice of infraction in the following circumstances:

- (a) High risk cases;
- (b) Cases involving the public right-of-way;
- (c) Repeat violation cases;
- (d) Cases that are already subject to a voluntary compliance agreement;
- (e) When the Director determines, based on the circumstances, that a warning is not appropriate.

(5) The responsible party shall be responsible for advising the department director of his/her compliance with any warning or notice and order. The department director shall make any re-inspections as determined necessary by such department director.



## Exhibit A

### 1.50.070 Service – Warning notice and notice and order.

(1) Service of a written warning notice or notice and order shall be made on a person responsible for a code violation by one or more of the following methods:

(a) Personal service of a warning notice or notice and order may be made on the person identified by the City as being responsible for the code violation, or by leaving a copy of the notice and order at the person's house of usual abode with a person of suitable age and discretion who resides there, or if the violation involves a business, with an employee of the business of a suitable age and discretion;

(b) Service directed to the business owner, landowner and/or occupant of the property may be made by posting the notice and order in a conspicuous place on the property where the violation occurred and concurrently mailing notice as provided for below, if a mailing address is available;

(c) Service by mail may be made for a notice and order by mailing one copy, postage prepaid, by certified mail, five-day return receipt requested, to the person responsible for the code violation at his or her last known address, at the address of the violation, or at the address of the place of business of the person responsible for the code violation. The taxpayer's address as shown on the tax records of Cowlitz County shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the property where the violation occurred. Service by mail shall be presumed effective upon the third business day following the day upon which the notice and order was placed in the United States mail; or

(d) Service by mail may be made for a warning notice by mailing a copy, postage prepaid, by first class mail to the person responsible for the code violation at his or her last known address, at the address of the violation, or at the address of the place of business of the person responsible for the code violation. The taxpayer's address as shown on the tax records of Cowlitz County shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the property where the violation occurred. Service by mail shall be presumed effective upon the third business day following the day upon which the warning notice was placed in the mail.

(2) For notice and orders only, when the address of the person responsible for the code violation cannot be reasonably determined, service may be made by publication once in an appropriate regional or neighborhood newspaper or trade journal. Service by publication shall conform to the requirements of Civil Rule 4 of the Rules for the Superior Courts of the State of Washington.

(3) The failure of the City to make or attempt service on any person named in the warning notice or notice and order shall not invalidate any proceedings as to any other person duly served.

### 1.50.080 Determination of compliance.

After issuance of a warning notice, voluntary compliance agreement or notice and order and after the person responsible for a violation has come into compliance, the City shall issue a written determination of compliance. The City shall mail copies of the determination of compliance to each person originally named in the warning notice, voluntary compliance agreement or notice and order.

### 1.50.090 Warning notice – Effect.

(1) A warning notice represents a determination that a code violation has occurred and that the noticed party is a person responsible for a code violation and may be subject to penalties.

(2) Issuance of a warning notice in no way limits the City's authority to issue a notice and order to any person responsible for a code violation pursuant to this chapter and/or other applicable code section(s).

### 1.50.100 Written Warning notice – Contents.

The written warning notice shall contain the following information:

(a) The address, when available, or location of the code violation, when applicable;

## Exhibit A

- (b) A legal description of the real property or the Cowlitz County tax parcel number where the violation occurred or is located, or a description identifying the property by commonly used locators, when applicable;
- (c) A statement that the City has found the named person to have committed a code violation and a brief description of the violation(s) found;
- (d) A statement of the specific ordinance, resolution, regulation, public rule, or notice and order provision that was or is being violated;
- (e) A statement that the warning notice represents a determination that a code violation has occurred and that the noticed party may be subject to civil and/or criminal penalties;
- (f) A statement of the amount of the civil penalty that may be assessed if the violations are not corrected as required;
- (g) A statement of the corrective or abatement action required to be taken and that any required permits to perform the corrective action must be obtained from the proper issuing agency;
- (h) A statement advising that, if any required action is not completed within the time specified by the warning notice, the City may proceed to seek a judicial or administrative abatement order, or may seek other applicable relief from Cowlitz County Superior Court to abate and/or remedy the violation;
- (i) A statement advising the person responsible for a code violation of his/her duty to notify the City of any actions taken to achieve compliance with the warning notice;
- (j) A statement advising that a failure to correct the violation(s) cited in the warning notice could lead to the denial of subsequent city permit applications on the subject property, when applicable; and
- (k) A statement advising that a willful and knowing violation may be referred to the office of the City attorney for prosecution.

### 1.50.110 Warning notice – Modification or revocation.

- (1) The City may add to, revoke in whole or in part, or otherwise modify a warning notice by issuing a written supplemental warning notice. The supplemental warning notice shall be governed by the same procedures and time limits applicable to all warning notices contained in this chapter.
- (2) The City may revoke or issue a supplemental warning notice.
- (3) Such revocation or modification shall identify the reasons and underlying facts for modification or revocation, and shall be served, in conformity with this chapter, on the person responsible for a violation.

### 1.50.120 Voluntary compliance agreement – Authority.

- (1) Whenever the City determines that a code violation has occurred or is occurring, the City shall make reasonable efforts to secure voluntary compliance from the person responsible for the code violation. Upon contacting the person responsible for the code violation, the parties may enter into a voluntary compliance agreement as provided for in this chapter. The City is under no obligation to enter into a voluntary compliance agreement. It is the responsibility of the person responsible for the violation to correct the violation within the time specified in the warning notice or notice and order.
- (2) A voluntary compliance agreement may be entered into at any time before an appeal is decided. If an administrative appeal has already been filed, then the voluntary compliance agreement shall require the signature of the department director for approval of the terms of the agreement.
- (3) By entering into a voluntary compliance agreement, a person responsible for a code violation admits that the violations described in the voluntary compliance agreement existed and constituted a code violation, waives the right to administratively appeal, and authorizes the City to enter onto the subject property to correct the violation in the event of a default of the voluntary compliance agreement.

## Exhibit A

(4) The voluntary compliance agreement shall incorporate the shortest reasonable time period for compliance, as determined by the department director. An extension of the time limit for compliance or a modification of the required corrective action may be granted by the department director. Any such extension or modification must be in writing and signed by the department director and person who signed the original voluntary compliance agreement.

(5) The voluntary compliance agreement is not a settlement agreement.

### 1.50.130 Voluntary compliance agreement – Contents.

The voluntary compliance agreement is a written, signed commitment by the person responsible for a code violation in which such person agrees to abate the violation, remediate the site, mitigate the impacts of the violation and/or remedy a code violation to achieve code compliance. The voluntary compliance agreement shall include the following:

- (a) The name and address of the person responsible for the code violation;
- (b) The address or other identification of the location of the violation, if applicable;
- (c) A description of the violation and a reference to the provision(s) of, resolution or regulation which has been violated;
- (d) A description of the necessary corrective action to be taken and identification of the date or time by which compliance must be completed;
- (e) The amount of the civil penalty to be paid, if any, and any civil penalty that will be imposed in the event the terms of the voluntary compliance agreement are not satisfied;
- (f) An acknowledgement that if the City determines that the terms of the voluntary compliance agreement are not met, the City may, without issuing any further notice, (1) impose any remedy authorized by this chapter or other applicable code section(s), (2) enter the subject property and perform abatement of the violation by the City (when applicable), (3) assess the costs incurred by the City to pursue code compliance and/or to abate the violation, including reasonable legal fees and costs, and (4) cause the suspension, revocation or limitation of a development permit obtained or to be sought by the person responsible for the code violation;
- (g) An acknowledgement that if a penalty is assessed, and if any assessed penalty, fee or cost is not paid, the City may charge the unpaid amount as a lien against the subject property where the code violation occurred, when applicable, and that the unpaid amount may be a joint and several personal obligation of all persons responsible for the violation;
- (h) An acknowledgement that by entering into the voluntary compliance agreement, the person responsible for the code violation thereby admits that the conditions or factors described in the voluntary compliance agreement existed and constituted a code violation; and
- (i) An acknowledgement that the person responsible for the code violation understands that he or she has the right to administratively appeal any such notice and order, and that he or she is knowingly and intelligently waiving those rights.

### 1.50.140 Failure to meet terms of voluntary compliance agreement.

(1) If the terms of the voluntary compliance agreement are not completely met, and an extension of time has not been granted, the authorized representatives of the City may take whatever reasonable steps are necessary to gain compliance, including but not limited to entering onto the subject property and abating the violation without seeking a judicial abatement order. The person responsible for the violation may, without being issued a notice and order, be assessed a civil penalty as set forth by this chapter, plus all costs incurred by the City to pursue code compliance, including abating the violation, and may be subject to other remedies authorized by this chapter and/or other applicable code section(s). Penalties imposed when a voluntary compliance agreement is not met accrue from the date that an appeal of any preceding notice and order was to

## Exhibit A

have been filed or from the date the voluntary compliance agreement was entered into if there was not a preceding notice and order.

(2) The City may issue a notice and order or proceed with any other legal remedy authorized by law, for failure to meet the terms of a voluntary compliance agreement.

### 1.50.150 Notice and order – Authority.

When the City has reason to believe that a code violation exists or has occurred, and the City is unable to secure voluntary correction, pursuant to KMC 1.50.120, or that the terms of a voluntary compliance agreement have not been met, the City is authorized to issue a notice and order to any person responsible for a code violation.

### 1.50.160 Notice and order – Effect.

(1) A notice and order represents a determination that a violation has occurred, that the party to whom the notice is issued is a person responsible for a code violation, and that the violations set out in the notice and order require the assessment of penalties and other remedies that may be specified in the notice and order.

(2) The City is authorized to impose civil and/or criminal penalties upon a determination by the City that a violation has occurred pursuant to a notice and order.

(3) Issuance of a notice and order in no way limits the City's authority to issue a stop work order to a person previously cited through the notice and order process pursuant to this chapter.

(4) Imposition of a civil penalty creates a joint and several personal obligation in all persons responsible for a code violation who are served with notice of the violation.

(5) Any person identified in the notice and order as responsible for a code violation may appeal the notice and order within 15 days as provided for in this chapter.

(6) Failure to appeal the notice and order within the applicable time limits shall render the notice and order a final determination of the City that the conditions or factors described in the notice and order existed and constituted a violation, and that the named party is liable as a person responsible for a code violation.

### 1.50.170 Notice and order – Contents.

The notice and order shall contain the following information:

- (a) The address, when available, or location of the violation;
- (b) A legal description of the real property or the Cowlitz County tax parcel number where the violation occurred or is located, or a description identifying the property by commonly used locators, when applicable;
- (c) A statement that the City has found the named person to have committed a violation and a brief description of the violation(s) found;
- (d) A statement that the notice and order represents a determination that a code violation has occurred and that the person responsible may be subject to criminal penalties;
- (e) A statement of the specific provisions of the ordinance, resolution, regulation, public rule, permit condition, or notice and order provision that was or is being violated;
- (f) A statement that a civil penalty is being assessed, including the dollar amount of the civil penalties per separate violation, and that any assessed penalties must be paid within 30 days of service of the notice and order;
- (g) A statement advising that any costs of enforcement incurred by the City shall also be assessed against the person to whom the notice and order is directed;

## Exhibit A

- (h) A statement that payment of the civil penalties assessed under this chapter does not relieve a person found to be responsible for a code violation of his or her duty to correct the violation or to pay any and all civil penalties or other cost assessments issued pursuant to this chapter;
- (i) A statement of the corrective or abatement action required to be taken and that all required permits to perform corrective action must be obtained from the proper issuing agency;
- (j) A statement advising that, if any required work is not commenced or completed within the time specified by the notice and order, the City may proceed to seek a judicial abatement order from Cowlitz County Superior Court to abate the violation, when applicable;
- (k) A statement advising that, if any assessed penalty, fee or cost is not paid on or before the due date, the City may charge the unpaid amount as a lien against the subject property where the code violation occurred, when applicable, and as a joint and several personal obligation of all persons responsible for a code violation;
- (l) A statement advising that any person named in the notice and order, or having any record or equitable title in the subject property against which the notice and order may be recorded, may appeal from the notice and order to the Hearing Examiner within 15 days of the date of service of the notice and order; except that, for violations of KMC 10.06 Junk Vehicles, there shall be a statement that the nuisance must be abated within fifteen (15) days or the City will proceed to abate and assess costs of removal against the registered vehicle owner and/or property owner and that the person may request a hearing before the City's Hearing Examiner to contest the City's notice and order.
- (m) A statement advising that a failure to correct the violations cited in the notice and order could lead to the denial of subsequent Kelso permit applications on the subject property, when applicable;
- (n) A statement advising that a failure to appeal the notice and order within the applicable time limits renders the notice and order a final determination that the conditions or factors described in the notice and order existed and constituted a violation, and that the named party is liable as a person responsible for a violation;
- (o) A statement advising the person responsible for a code violation of his/her duty to notify the City of any actions taken to achieve compliance with the notice and order; and
- (p) A statement advising that a willful and knowing violation may be referred to the office of the City attorney for prosecution.

### 1.50.180 Notice and order – Recording.

- (1) When a notice and order is served on a person responsible for a code violation of a specific piece of real property, the City may record and/or file a copy of the same with the Cowlitz County Auditor's office.
- (2) In the event notice and order is recorded as set forth in section 1 above, when all violations specified in the notice and order have been corrected or abated to the satisfaction of the City, the City shall record a certificate of compliance with the Cowlitz County Auditor's office within 15 days of receiving evidence of abatement. The certificate shall include a legal description of the property where the violation occurred and shall state whether any unpaid civil penalties for which liens have been filed are still outstanding and, if so, shall continue as liens on the property.
- (3) After all liens have been satisfied, the City shall file a notice of satisfaction of lien with the Cowlitz County Auditor's office within 15 days of final payment to the City.

### 1.50.190 Notice and order – Supplementation, revocation, modification.

- (1) The City may add to, revoke, in whole or in part, or otherwise modify a notice and order by issuing a written supplemental notice and order. The supplemental notice and order shall be governed by the same procedures and time limits applicable to all notice and orders contained in this chapter.

## Exhibit A

(2) The City may issue a supplemental notice and order, or revoke a notice and order issued under this chapter.

(3) Such revocation or modification shall identify the reasons and underlying facts for modification or revocation, and shall be served on the person responsible for a violation in conformity with this chapter.

### 1.50.200. Notice and order – Administrative conference.

An informal administrative conference may be conducted by the City at any time for the purpose of facilitating communication among concerned persons and providing a forum for efficient resolution of any violation. Interested parties shall not unreasonably be excluded from such conferences.

### 1.50.210 Notice and order – Remedies – Abatement.

In addition to, or as an alternative to, any other judicial or administrative remedy, the City may use the notice and order provisions of this chapter to order any person responsible for a code violation to abate the violation and to complete the work at such time and under such conditions as the City determines reasonable under the circumstances. If the required corrective work is not commenced or completed within the time specified, the City may seek a judicial abatement order or other legal remedy pursuant to this chapter.

### 1.50.220 Notice and order – Remedy – Civil penalties.

(1) In addition to any other judicial or administrative remedy, the City may assess civil penalties for the violation of any notice and order or voluntary correction agreement according to any other applicable code section(s) or the civil penalty schedule established in KMC 1.50.230.

(2) Violation of a notice and order shall be a separate violation from any other code violation.

### 1.50.230 Civil penalties – Assessment schedule.

(1) Civil penalties for code violations shall be imposed for remedial purposes and shall be assessed for each violation, pursuant to applicable code section(s) and/or the following schedule:

(a) The monetary penalty for each violation shall be \$200.00. In the event the violation is not corrected within 15 days of the date set by the Director for correction of the violation in the Notice and order or the Voluntary Correction Agreement, the penalty shall be increased by one hundred fifty percent (150%) of the initial penalty. For each additional 15 day period thereafter that the violation is not corrected, the penalty shall be increased by two hundred percent (200%) of the initial penalty.

(b) In determining the monetary penalty assessment, the Director or the Hearing Examiner shall consider the following factors and may decrease the assessment of penalties based on these factors:

- (i) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation.
- (ii) Whether the person showed due diligence and/or substantial progress in correcting the violation
- (iii) Whether a genuine code interpretation issue exists; and
- (iv) Any other relevant factors.

(c) In determining the monetary penalty assessment, the Director or the Hearing Examiner shall consider the following factors and may increase the assessment of penalties to an amount not to exceed double the assessed penalty amount based on these factors:

- (i) Whether the violation is a repeat violation or the person has a history of similar violations;
- (ii) Whether the violation is intentional;

## Exhibit A

- (iii) Whether the violation creates significant environmental or property damage;
- (iv) Whether there is economic benefit to the person responsible for the violation; and
- (v) Any other relevant factors.

(2) Civil penalties shall be paid within 30 days of service of the notice and order if not appealed. Payment of the civil penalties assessed under this chapter does not relieve a person found to be responsible for a code violation of his or her duty to correct the violation and/or to pay any and all civil penalties or other cost assessments issued pursuant to this chapter.

(3) Civil penalties assessed create a joint and severable personal obligation in all persons responsible for a code violation.

(4) In addition to, or in lieu of, any other state or local provision for the recovery of civil penalties, the City may file record and/or file with the Cowlitz County Auditor to claim a lien against the real property for the civil penalties assessed under this chapter if the violation was reasonably related to the real property. Any such lien can be filed under this chapter if, after the expiration of 30 days from when a person responsible for a code violation receives the notice and order (excluding any appeal), any civil penalties remain unpaid in whole or in part.

(5) The City shall state in writing the basis for a decision to waive, reduce or increase penalties, and such statement shall become part of the record.

### 1.50.240 Civil penalties – Duty to comply.

A person responsible for a code violation has a duty to notify the City in writing of any actions taken to achieve compliance with the warning notice or notice and order. For purposes of assessing civil penalties, a violation shall be considered ongoing until the person responsible for a code violation has come into compliance with the warning notice, notice and order, or voluntary compliance agreement, and has provided sufficient evidence, as determined by the City, of such compliance. Proof of sufficient evidence may require right of entry by the code official to verify compliance.

### 1.50.250 Cost recovery.

(1) In addition to the other remedies available under this chapter and those authorized by law, upon issuance of a notice and order the City shall charge the costs of pursuing code compliance and abatement incurred to correct a code violation to the person responsible for a code violation. These charges include:

- (a) Reasonable Legal Fees and Costs. For purposes of this section, “reasonable legal fees and costs” shall include, but are not limited to, legal personnel costs, both direct and related, incurred to enforce the provisions of this chapter as may be allowed by law;
- (b) Administrative Personnel Costs. For purposes of this section, “administrative personnel costs” shall include, but are not limited to, administrative employee costs, both direct and related, incurred to enforce the provisions of this chapter;
- (c) Abatement Costs. The City shall keep an itemized account of costs incurred by the City in the abatement of a violation under this chapter. Upon completion of any abatement work, the City shall prepare a report specifying a legal description of the real property where the abatement work occurred, the work done for each property, the itemized costs of the work, and interest accrued; and
- (d) Actual expenses and costs of the City in preparing notices, specifications and contracts; in accomplishing or contracting and inspecting the work; and the costs of any required printing, mailing, or court filing fees.

(2) Such costs are due and payable 30 days from mailing of the invoice unless otherwise stated in a written agreement with the City. The City reserves the right to collect interest at the statutory set rate on any outstanding balance not paid within 30 days.

## Exhibit A

(3) All costs assessed by the City in pursuing code compliance and/or abatement create a joint and several personal obligation in all persons responsible for a violation.

(4) In addition to, or in lieu of, any other state or local provision for the recovery of costs, the City may, after abating a violation pursuant to this chapter, file and/or record with the Cowlitz County Auditor to claim a lien against the real property for the assessed costs identified in this chapter if the violation was reasonably related to the real property, in accordance with any lien provisions authorized by state law.

(5) Any lien filed shall be subordinate to all previously existing special assessment liens imposed on the same property and shall be superior to all other liens, except for state and county taxes, with which it shall share priority. The City may cause a claim for lien to be filed and/or recorded within 90 days from the later of the date that the monetary penalty is due or the date the work is completed or the nuisance abated. The claim of lien shall contain sufficient information regarding the notice and order, a description of the property to be charged with the lien, the owner of record, and the total of the lien. Any such claim of lien may be amended from time to time to reflect changed conditions. Any such lien shall bind the affected property for the period as provided for by state law.

### 1.50.260 Collection of civil penalties, fees, and costs.

In addition to the remedies available under this chapter and those authorized by law, the City may use the services of a collection agency, or any other legal means, in order to collect any civil and/or criminal penalties, fees, costs, and/or interest owing under this chapter.

### 1.50.270 Abatement.

(1) Emergency Abatement. Whenever a condition constitutes an immediate threat to the public health, safety or welfare or to the environment, the City may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

(2) Upon failure to comply with a final unappealed notice and order, or final disposition of any appeal therefrom of a violation of KMC 10.06, the vehicle, automobile hulk, junk vehicle or parts thereof shall be removed at the request of the chief of police and disposed of to a registered tow truck operator, with notice to the Washington State Patrol and the Washington State Department of Motor Vehicles that such a vehicle, automobile hulk, or junk vehicle has been wrecked.

(3) Judicial Abatement. The City may seek a judicial abatement order from Cowlitz County Superior Court, to abate a condition which continues to be a violation of this code where other methods of remedial action have failed to produce compliance.

(4) The City shall seek to recover the costs of abatement as authorized by this chapter.

(5) No person shall obstruct, impede or interfere with the City or its authorized agents, or with any person who owns or holds any interest or estate in any property in performing any tasks necessary to correct the violation.

### 1.50.280 Administrative appeals – Standing – Filing requirements.

(1) Any person issued or named in a notice and order, and any owner of the land where the violation for which a notice and order is issued, shall have standing to appeal and may file a notice of appeal of the order.

(2) Any person filing an appeal under this chapter shall do so by obtaining the appeal form from the City and filing the completed appeal form along with the appeal fee as identified in the City's Master Fee Schedule within 15 days of service of the notice and order.

(3) Any administrative appeal considered under this chapter will be determined by the Hearing Examiner pursuant to the procedures set forth in this chapter and Chapter 2.14 KMC, unless in conflict with specific provisions of this chapter, in which case the specific provisions of this chapter shall control.

### 1.50.290 Administrative appeal – Notice of hearing.



## Exhibit A

Upon receipt of a notice of appeal, the City shall provide a hearing notice stating the time, location and date of the hearing on the issues identified in the appeal. Such date shall not be less than ten days nor more than sixty days from the date of the appeal filing with the City. Written notice of the time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant by the examiner's office either by causing a copy of such notice to be delivered to the appellants personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address showing on the appeal.

### 1.50.300 Administrative appeal – Procedures.

(1) The appeal hearing shall be conducted as provided for this chapter and in Chapter 2.14 KMC, as adopted or hereafter amended.

(2) Enforcement of any notice and order of the City issued pursuant to this chapter shall be stayed during the pendency of any administrative appeal except when the City determines that the violation poses a significant threat of immediate and/or irreparable harm and so states in any notice and order issued.

(3) When multiple notice and orders or stop work orders have been issued simultaneously for any set of facts constituting a violation, only one appeal of all the enforcement actions shall be allowed.

(4) Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled if the department director approves the completed required corrective action and payment of penalties, if any, at least 48 hours prior to the scheduled hearing.

### 1.50.310 Administrative appeal hearing – Procedure.

The Hearing Examiner shall conduct a hearing on the appeal of notice and order pursuant to the rules of procedure of the Hearing Examiner. The authorized representative of the City and the appellant may participate as parties in the hearing and each party may call witnesses. The City shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the authorized representative of the City as to the need for the required corrective action shall be accorded substantial weight by the Hearing Examiner in determining the reasonableness of the required corrective action.

### 1.50.320 Administrative appeal – Final order.

(1) Decision of the Hearing Examiner.

(a) The Hearing Examiner shall determine whether the City has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the City's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions;

(b) The Hearing Examiner shall issue an order, within 20 days of the hearing. A copy of the decision shall be delivered to the City and to the appellant personally or sent by certified mail, postage prepaid, return receipt requested which contains the following information:

(i) The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

(ii) The required corrective action;

(iii) The date and time by which the correction must be completed;

(iv) The monetary penalties assessed based on the criteria section 1.50.230 of this chapter; and

(v) The date and time after which the City may proceed with abatement of the unlawful condition or other action if the required correction is not completed.

## Exhibit A

(c) Notice of Decision. The Hearing Examiner shall mail a copy of the decision to the appellant and to the department director within 20 working days of the hearing.

(d) Failure to Appear. If the person to whom the notice and order was issued fails to appear at the scheduled hearing, the Hearing Examiner will enter an order finding that the violation occurred and assessing the appropriate monetary penalty. The City will carry out the Hearing Examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.

(2) The Hearing Examiner's final order shall be final and conclusive unless a request for reconsideration is made in accordance with subsection (4) of this section or proceedings for review of the decision are properly commenced in Cowlitz County Superior Court within the time period specified in subsection (5) of this section.

(3) Any aggrieved person upon good cause that the decision of the Hearing Examiner is based on erroneous procedure, error of law or fact, error in judgment, or the discovery of new evidence which could not have been reasonably available at the hearing, may make a written request for reconsideration by the Hearing Examiner within 10 days of the date the written decision of the Hearing Examiner was mailed to the person to whom the notice and order was directed. The request must set forth in writing the specific errors or new information relied upon by such person. The Hearing Examiner, within 10 days of the written request for reconsideration being filed with the City, after review of the record and materials, will issue a written decision of whether there will be any changes to the original decision. The time to file an appeal to the Cowlitz County Superior Court shall be stayed from the date the reconsideration is filed with the City to the date the decision on the reconsideration is mailed to the person requesting the reconsideration.

(4) An appeal of the decision of the Hearing Examiner must be filed with Cowlitz County Superior Court 30 calendar days from the date the Hearing Examiner's decision was mailed to the person to whom the notice and order was directed, or is thereafter barred.

(5) If, after any order of the City or Hearing Examiner made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the City may (1) cause such person to be prosecuted as provided for in this chapter, or (2) institute any appropriate action to abate such building or nuisance and assess the costs of abatement to the property owner as provided for in this chapter.

### 1.50.330 Judicial enforcement – Petition for enforcement.

(1) In addition to any other judicial or administrative remedy, the office of the City attorney, on behalf of the City, may seek enforcement of the City's order by filing a petition for enforcement in Cowlitz County Superior Court.

(2) The petition must name as respondent each person against whom the City seeks to obtain civil enforcement.

(3) A petition for civil enforcement may request monetary relief, declaratory relief, temporary or permanent injunctive relief, and any other civil remedy provided by law, or any combination of the foregoing.

### 1.50.340 Criminal Penalty.

After any notice and order, stop work order, any other compliance order of the building official or Director, or any decision of the Hearing Examiner made pursuant to this Chapter shall have become final, no person to whom any such order or decision is directed shall fail, neglect or refuse to obey any such order or decision. Any such person who fails to comply with any such order is guilty of a misdemeanor.

### 1.50.350 Citations – Authority.

Whenever the City has determined, based upon investigation of documents, statements of witnesses, field observations, data system(s) for tracking violations and/or physical evidence, that a code violation has occurred, the City may in lieu of the enforcement procedures of this chapter issue a citation of civil infraction to any person responsible for the violation.

### 1.50.360 Chapter not exclusive.

## Exhibit A

The provisions of this chapter are in addition to any other provisions of this code and may be enforced separately from such other provisions or in combination therewith.

### 1.50.370 Application with other codes.

To the extent other codes adopted by reference conflict with the provisions of this chapter, the latter shall control, unless otherwise determined by an administrative code interpretation.

### 1.50.380 General duty.

None of the provisions of this chapter are intended to create a cause of action or provide the basis for a claim against the City, its officials, or employees for the performance or failure to perform a duty or obligation running to a specific individual or specific individuals. Any duty or obligation created herein is intended to be a general duty or obligation running in favor of the general public.

**MEMORANDUM  
OFFICE OF THE CITY ATTORNEY**



To: Members of the City Council  
From: Janean Parker, City Attorney  
CC: Steve Taylor, City Manager  
Date: August 13, 2015  
Re: Overview of Code Enforcement Changes

---

**I. Introduction.**

For your consideration on August 18 staff will present two ordinances that, collectively, make several changes to the City's code enforcement program. Staff has been working on these changes for several months and believes that the updated codes will provide a stronger, more effective, and more efficient code enforcement program to improve conditions within the City of Kelso. At your meeting on July 21, 2015, we presented a brief description of the changes and since that meeting have made further changes to attempt to address some of the comments and concerns of Council.

Below is a brief description of the key provisions of the new changes of each ordinance and an outline of the enforcement process under the new codes. These changes are generally modelled upon the language of Longview's code enforcement program for regional consistency, but with changes that reflect Kelso's concerns and processes.

In the event that Council proceeds with these changes, staff will also be bringing forward a few additional housekeeping ordinances that bring several other portions of the municipal code into conformance with these new processes. The current proposed effective date for each of the ordinances is December 1, 2015 to allow time for these other revisions and for adequate training and implementation prior to the ordinances becoming effective.

**II. Nuisance Ordinance.**

The first ordinance amends Title 15 and Title 8 as follows:

1. The International Property Maintenance Code (the "IPMC") is adopted by reference as one of the uniform international codes of the City into a new Chapter 15.04 of Title 15. Title 15 is where all other uniform codes are adopted by reference. This IPMC provides a comprehensive and uniform standard that is nationally recognized for the maintenance of property.

2. The IPMC is also amended to be consistent with other chapters of the municipal code and procedures of the City and also to reflect the particular definitions and code enforcement concerns of the City.
3. In particular, the list of enumerated public nuisances from the text of Chapter 8.24 is moved into the International Property Maintenance Code in order to provide for a single listing in one place of all property related nuisances.
4. Title 8.24 is amended to make the International Property Maintenance Code as adopted by the City in Title 15 as the standard for property maintenance and to define violations of the IPMC as a public nuisance.
5. The process for enforcement of nuisances have been removed from Chapter 8.24 and replaced with a reference to a new chapter to be adopted as described below. This process language is expanded and updated into this new code enforcement chapter where public nuisances as well as all other types of code violations can be enforced with one clear and uniform process.

### **III. Code Enforcement Ordinance.**

The second ordinance adopts a new Chapter 1.50 called Code Enforcement that provides a single enforcement process that can be used for nuisances and other municipal code violations. Key provisions are as follows:

1. A new formalized voluntary correction program is codified to promote compliance.
2. A revised warning and notice process is set out. These provisions were modified since the last meeting so that penalties will not accrue until after the warning process and a notice and order has been issued for noncompliance.
3. The assessment of penalties is authorized and an assessment schedule set out that allows increase, reduction or waiver of penalties based on specific factors of a case. These provisions were modified since the last meeting to make them more flexible with conditions that allow the penalties to be raised or lowered depending on the seriousness of the violation and the cooperation of the person responsible.
4. The abatement and cost recovery provisions were updated.
5. The appeal process has been updated.
6. The authority for an alternative civil infraction (ticket) process was also added to allow for enforcement of other general code violations. This enforcement mechanism would be for things that are generally not ongoing or property related, but for one time violations that cannot be corrected.
7. The authority further criminal penalties, which is in the current code, was updated and limited to willful and knowing violations.

#### **IV. Conclusion.**

Collectively, staff believes these changes will clarify the enforcement process, give additional tools and flexibility to the enforcement officer, bring more consistency to enforcement proceedings, and bring more compliance with the City's property maintenance and other codes.

## Enforcement Process:

