ORDINANCE NO. 15-3852

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 6th day of October _____, 2015.

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: 10-10-15

Chapter 13.09

STORMWATER MANAGEMENT

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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

ILLICIT DISCHARGE—STORMWATER UTILITY

Sections:

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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)