

ORDINANCE NO. 2010-01

AN ORDINANCE, of the City of Wenatchee regulating stormwater runoff from land disturbing activities, new development, and redevelopment, and establishing penalties for violations thereof.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wenatchee, as follows:

SECTION I

CONSTRUCTION AND POST-CONSTRUCTION STORMWATER

The following Chapter entitled "Construction and Post-Construction Stormwater," to be codified at Chapter 12.10 WCC, shall be added to the Wenatchee City Code:

12.10.010 PURPOSE

The purpose of this ordinance is to comply with the Eastern Washington Phase II Municipal Stormwater Permit, safeguard persons, protect property and prevent damage to the environment caused by stormwater runoff from land-disturbing activities, new development, and redevelopment. The ordinance seeks to meet that purpose through the following specific objectives:

- 1) Prevent accelerated soil erosion and control stormwater runoff resulting from earth changes both during and after construction through the use of best management practices.
- 2) Eliminate the need for costly maintenance and repairs to roads, embankments, ditches, streams, wetlands, and stormwater control facilities due to inadequate soil erosion and stormwater runoff control.
- 3) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management controls and to ensure that these management controls are properly maintained and pose no threat to public safety.

12.10.020 DEFINITIONS

For the purpose of this ordinance the definitions provided in the Stormwater Management Manual for Eastern Washington shall apply. In addition, the following shall mean:

- 1) "BMP" shall mean Best Management Practices as defined by the Stormwater Management Manual for Eastern Washington.
- 2) "City" shall mean the City of Wenatchee, Washington, a municipal corporation of the state of Washington, acting by and through its city council, unless such authority shall be delegated to other persons.
- 3) "Director" shall mean the City of Wenatchee public works director who is charged with certain duties and responsibilities by this chapter, or any other person the director may appoint.

- 4) "Existing" shall mean all facilities completed on or before February 16, 2011 and projects with complete applications submitted on or before the aforementioned date.
- 5) "Municipal Separate Storm Sewer System (MS4)" shall mean the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City of Wenatchee and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sanitary sewage.
- 6) "Non-Stormwater Discharge" shall mean any discharge to the storm drain system that is not composed entirely of stormwater.
- 7) "Person" shall mean any individual, association, organization, partnership, firm, corporation or other entity public or private and acting as either the owner or as the owner's agent.
- 8) "Start of Construction" shall mean the first land-disturbing activity associated with a development, including land preparation such as clearing, grading, and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.
- 9) "Stormwater Management Manual for Eastern Washington" (SWMMEW) shall mean the Stormwater Management Manual for Eastern Washington published by the Washington State Department of Ecology and dated September 2004 or latest edition thereof including any amendments by the city and revisions by the Washington State Department of Ecology.

12.10.030 APPLICABILITY

- 1) This ordinance shall be applicable to all land-disturbing activities, new subdivisions, and redevelopment projects disturbing greater than or equal to one (1) acre and to projects of less than one (1) acre that are part of a common plan of development or sale where the disturbed area of the entire plan is greater than or equal to one (1) acre.
- 2) Partial exemptions or exceptions may be granted in accordance with the SWMMEW. Jurisdiction-wide exceptions to the requirements in the SWMMEW shall be approved by the Washington State Department of Ecology.
- 3) The following practices shall be exempted from the requirements of this ordinance:
 - a. Forest practices regulated under Title 222 WAC.
 - b. Commercial agriculture practices involving working the land for production.
 - c. Oil and gas field activities including construction of drilling sites, waste management pits, access roads, transportation and treatment infrastructure.
 - d. Road and parking area preservation and maintenance including:
 - i. Pothole and square cut patching;
 - ii. Crack sealing;
 - iii. Resurfacing with in-kind material without expanding the road prism;
 - iv. Overlaying existing asphalt or concrete pavement with bituminous surface treatment (BST or "chip seal"), asphalt or concrete without expanding the area of coverage;

- v. Shoulder grading;
 - vi. Reshaping or re-grading drainage systems;
 - vii. Vegetation maintenance.
- 4) At the discretion of the director, a fee may be paid in lieu of the installation of stormwater facilities when the impacts to the stormwater system are mitigated by existing off-site facilities.

12.10.040 GENERAL REQUIREMENTS

All land-disturbing activities, new development and redevelopment unless otherwise exempted in accordance with WCC 12.10.030 shall be required to comply with the standards and requirements set forth by this ordinance and the:

- 1) City of Wenatchee standards; and
- 2) Stormwater Management Manual for Eastern Washington (SWMMEW).

12.,10.050 SPECIFIC REQUIREMENTS

The following specific requirements apply to all land-disturbing activities, new development, and redevelopment unless exemptions or exceptions are approved in accordance with WCC 12.10.030. These requirements shall be implemented in accordance with the SWMMEW.

- 1) Core Element #1: Prepare a Stormwater Site Plan.
- 2) Core Element #2: Construction Stormwater Pollution Prevention. Prepare and maintain a Construction Stormwater Pollution Prevention Plan.
- 3) Core Element #3: Source Control of Pollution. Apply all known, available and reasonable source control BMPs. Operational and structural source control BMPs shall be selected, designed and maintained according to the SWMMEW.
- 4) Core Element #4: Preservation of Natural Drainage Systems. Preserve natural drainage systems to the extent possible at the site and if applicable in accordance with WCC 11.24.
- 5) Core Element #5: Runoff Treatment. When the technical thresholds/requirements for basic treatment, metals treatment, oil treatment or phosphorus treatment are met, the property owner shall select, design, size, construct, operate and maintain runoff treatment at the site.
- 6) Core Element #6: Flow Control. Projects that result in 10,000 square feet or more of new impervious surfaces and are located in a flow restricted basin as identified in the most current comprehensive stormwater plan shall construct stormwater flow control facilities for any discharge of stormwater directly, or through a storm drainage system, into surface water.
- 7) Core Element #7: Operation and Maintenance of Stormwater Facilities.
 - a. The property owner(s) shall be responsible for the continual performance, operation and maintenance of all stormwater facilities in accordance with the standards and requirements of the City and remain responsible for any liability as a result of these duties.

- b. New stormwater facilities shall have a written operation and maintenance (O&M) plan. Furthermore, existing facilities may be required to develop a written O&M plan.
 - i. The O&M plan shall at a minimum address all stormwater facilities and BMPs at the site and address the long-term funding mechanism to support O&M.
 - ii. The O&M plan shall be retained onsite or within reasonable access to the site, and shall be transferred with the property to the new owner(s).
 - iii. The property owner(s) shall maintain a log of maintenance activities.
 - c. All stormwater facilities, BMPs, O&M plans, and records shall be subject to inspection by the Director.
 - d. The City may assume ownership of privately-owned facilities where there is a regional benefit to the utility and if the following conditions have been met:
 - i. All necessary easements or dedications entitling the City to properly maintain the facility have been conveyed to the City;
 - ii. The Director has determined that the facility is in the dedicated public road right-of-way or that maintenance of the facility will contribute to protecting or improving the health, safety and welfare of the community based upon review of the existence of or potential for:
 - 1. Flooding,
 - 2. Downstream erosion,
 - 3. Property damage due to improper function of the facility,
 - 4. Safety hazard associated with the facility,
 - 5. Degradation of water quality, and
 - 6. Degradation to the general welfare of the community;
 - iii. The City has inspected the facility and any construction deficiencies have been repaired at the property owner(s) expense; and
 - iv. The Director has declared in writing acceptance of maintenance responsibility by the City.
 - e. The Director may terminate the City's assumption of maintenance responsibilities or decline the acceptance of a facility in writing to the property owner(s) after determining that maintenance by the City will not significantly contribute to protecting or improving the health, safety and welfare of the community based upon review of the existence of or potential for:
 - i. Flooding;
 - ii. Downstream erosion;
 - iii. Property damage due to improper function of the facility;
 - iv. Safety hazard associated with the facility;
 - v. Degradation of water quality; or
 - vi. Degradation to the general welfare of the community.
- 8) Core Element #8: Local Requirements.
- a. All new stormwater systems and facilities shall be in accordance with the most current comprehensive stormwater plan as adopted by the city council.
 - b. Additional requirements for all land-disturbing activities:
 - i. Construction site operators shall control all waste including but not limited to discarded building materials, concrete truck washouts, chemicals, litter, and

sanitary waste at construction sites to prevent stormwater pollution and non-stormwater discharges.

- ii. Construction site operators shall implement and maintain erosion and sediment control BMPs to reduce or eliminate stormwater pollution.

12.10.060 REVIEW OF DOCUMENTS

The City shall review documents required under WCC 12.10.050 and submitted as part of an application for a proposed land-disturbing activity, development or redevelopment project. Review of required documents must be completed by the City prior to the start of construction.

12.10.070 RIGHT OF ENTRY

1) Inspection and Sampling

The City shall be permitted to enter and inspect sites subject to regulation under this ordinance as often as may be necessary to determine compliance. Inspections may occur before, during and after construction.

- a. The City shall have access to all parts of the site for the purposes of inspection, sampling and examination of discharges to the MS4, and the performance of additional duties as defined by State and Federal law.
- b. The City has the right to set up such devices as are necessary to conduct monitoring and/or sampling of the site's stormwater discharge.
- c. The City has the right to require an owner or occupier of sites to install such sampling and monitoring equipment, as the City deems necessary. Sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or occupier at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure accuracy.
- d. Any temporary or permanent obstruction to safe and easy access to the sites shall be promptly removed by the owner or occupier upon the written or oral request of the director and shall not be replaced. The costs of clearing such access shall be paid by the owner or occupier.
- e. Property owner(s) shall upon request provide the director access to all records related to the operation and maintenance of the stormwater facilities and BMPS including but not limited to Stormwater Site Plans, Stormwater Pollution Prevention Plans, and Operation & Maintenance Plans.

2) Search Warrants

If the Director has been refused access to any part of the premises from which a discharge has occurred or is likely to occur, and the Director is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City may seek issuance of a search warrant from any court of competent jurisdiction.

12.10.080 VIOLATIONS, ENFORCEMENT, AND PENALTIES

1) Violations

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in

this section or may be restrained by injunction or otherwise abated in a manner provided by law. In the event the violation constitutes an immediate danger to public health or public safety, the City is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The City is authorized to seek costs of the abatement in accordance with WCC 4.10.100.

2) Compensatory Action

In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the City may impose alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, cleanup, or other alternative actions deemed appropriate by the City.

3) Enforcement

Enforcement action for a first offense shall be taken in accordance with WCC 2.11 Civil Infractions.

4) Suspension of MS4 Access

a. Emergency Cease and Desist Orders

When the City finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the City may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

i. Immediately comply with all ordinance requirements; and

ii. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge. Any person notified of an emergency order under this Subsection shall immediately comply and stop or eliminate the endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the City may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

b. Suspension in Emergency Situations

The City may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or

minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

c. Suspension due to the Detection of Illicit Discharge

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City.

5) Criminal Prosecution

Any person that has violated or continues to violate this ordinance two or more times shall be liable to criminal prosecution to the fullest extent of the law, and shall be guilty of a misdemeanor punishable by a fine of not more than \$1000 per violation per day and/or imprisonment for a period of time not to exceed ninety (90) days per violation per day. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

6) Cost of Abatement of the Violation

The owner of the property or person responsible for the violation will be notified of the cost of abatement, including administrative costs. Payment in full shall be due within thirty (30) days and on the 31st day interest may be applied at a rate of eight percent per annum. After ninety (90) days, if payment in full has not been received, a lien may be filed on the property and foreclosed as provided in Chapter 35.67 RCW. The director may approve a payment plan of equal payments evenly spaced over no more than twelve (12) months.

7) Remedies not Exclusive

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City to seek cumulative remedies. The City may recover all attorneys' fees, court costs and other expenses associated with enforcement of this ordinance, including but not limited to sampling and monitoring expenses.

12.10.090 COMPATIBILITY WITH OTHER REGULATIONS

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

12.10.100 ULTIMATE RESPONSIBILITY

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

12.10.110 EFFECTIVE DATE

This ordinance shall take effect on February 16, 2011.

SECTION II

SEVERABILITY

The provisions of this ordinance are hereby 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 III

EFFECTIVE DATE

This ordinance shall take effect on February 16, 2011 after approval and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE, at a regular meeting thereof, this 14 day of January, 2010.

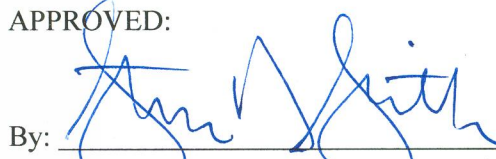
CITY OF WENATCHEE, a Municipal Corporation

By: 
DENNIS JOHNSON, Mayor

ATTEST:

By: 
TAMMY L. STANGER, City Clerk

APPROVED:

By: 
STEVE D. SMITH, City Attorney