

ORDINANCE NO. 2020-10

AN ORDINANCE AMENDING THE WASHINGTON CITY CODE BY REPLACING CHAPTER 7 (“POSTCONSTRUCTION STORMWATER MANAGEMENT”) OF TITLE 8 (“BUILDING CODES AND CONSTRUCTION REGULATIONS”) IN ORDER TO COMPLY WITH CURRENT FEDERAL AND STATE REQUIREMENTS

WHEREAS, the federal government has established criteria for control of the introduction of pollutants into local municipal storm sewer systems; and

WHEREAS, the federal government has mandated that each municipality adopt regulations in order to require long-term maintenance of post construction Storm Water Facilities; and

WHEREAS, Washington City is desirous to comply with the federal mandate to adopt the regulations pertaining to the long-term maintenance of post construction Storm Water Facilities consistent with, and in compliance with, the federal mandate and regulations; and

WHEREAS, the Utah Department of Environmental Quality has mandated that each municipality adopt regulations in order to prevent the off-site discharge of the precipitation from all rainfall events less than or equal to 80th percentile rainfall event, unless technically infeasible, by way of a Low Impact Development approach; and

WHEREAS, the Washington City Council finds that it is in the best interest of the public and that it promotes the health, safety, and well-being of the community.

NOW, THEREFORE BE IT ORDAINED, by the City Council of Washington City, does hereby ordain as follows:

Post Construction Storm Water Management

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Section 1. General Provisions.

It is hereby determined that:

- a) Land development projects and associated increases in impervious cover alter the hydrologic response of local watersheds and increase *stormwater* runoff rates and volumes, flooding, stream channel erosion, and sediment transport and deposition;
- b) This *stormwater* runoff contributes to increased quantities of water-borne *pollutants*, and;
- c) *Stormwater* runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of *stormwater* runoff from development sites.

Section 2. Purpose.

The purpose of this “Post-Construction *Stormwater* Management Ordinance” (the “Ordinance”) is to provide for the health, safety, and general welfare of the citizens of Washington City through review and approval of *Post-Construction Stormwater Management Plans* and monitoring and enforcement of compliance with such plans as required by Federal and State law. This Ordinance establishes methods for post-construction *stormwater* management in order to comply with minimum control measures requirements of the federal *Clean Water Act*, of federal regulations and of Utah’s General Permit for *Discharges* from *Small Municipal Separate Storm Sewer Systems (MS4’s)*.

Section 3. Objectives.

This Ordinance seeks to meet the above purpose through the following objectives:

- A. Reduce the impact of post-construction *discharge* of *stormwater* on receiving waters; and
- B. Reduce *stormwater* runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through use of *Best Management Practices*, and ensure that these management controls are properly maintained and pose no threat to public safety.

Section 4. Definitions. (Note: Defined terms appear in *italics* throughout this ordinance).

For the purposes of this Ordinance, the terms listed below are defined as follows:

Applicant. "*Applicant*" means a *Person* with requisite right, title or interest or an agent for such *Person* who has filed an application for *New Development* or *Redevelopment* that requires a *Post-Construction Stormwater Management Plan* under this Ordinance.

Best Management Practices ("BMP"). "*Best Management Practices*" or "*BMPs*" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. *BMPs* also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act. "*Clean Water Act*" means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., also known as the "*Clean Water Act*"), and any subsequent amendments thereto.

Construction Activity. "*Construction Activity*" means work or activity undertaken on the *Premises* that results in one acre or more of *Disturbed Area*, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb equal to or greater than one acre.

Discharge. "*Discharge*" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of *Pollutants* to "waters of the State." "*Direct discharge*" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which *Pollutants* are or may be *discharged*.

Disturbed Area. "*Disturbed Area*" means all land areas that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a project.

"*Disturbed area*" does not include routine maintenance, but does include re-development and new impervious areas. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surfaces while maintaining the original line and grade, hydraulic capacity and original purpose of the facility is considered routine maintenance. Cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "*disturbed area*".

Enforcement Authority. "*Enforcement Authority*" means the Code Enforcement Officer and or the Public Works Director or their designee who are authorized by the *Municipality* to administer and enforce this Ordinance.

Low Impact Development (LID). “*Low Impact Development*” or “*LID*,” means a land planning and design approach which seeks to maintain a site’s predevelopment ecological and hydrological function through the protection, enhancement, or mimicry of natural processes.

Municipality. “*Municipality*” means Washington City.

Municipal Permitting Authority. “*Municipal Permitting Authority*” means the municipal official or body that has jurisdiction over the land use approval or permit required for a *New Development* or *Redevelopment*.

Municipal Separate Storm Sewer System, or MS4. “*Municipal Separate Storm Sewer System*” or “*MS4*,” means conveyances for *storm water*, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any *municipality*, sewer or sewage district, fire district, State agency or Federal agency or other public entity that *discharges* directly to surface waters of the State.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit. “*National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit*” means a permit issued by the U.S. Environmental Protection Agency (“EPA”) or by the State of Utah Department of Environmental Quality (DEQ) that authorizes the *discharge* of *pollutants* to waters of the United States, or waters of the State whether the permit is applicable on an individual, group, or general area-wide basis.

New Development. “*New Development*” means any *Construction Activity* on unimproved *Premises*.

Person. “*Person*” means any individual, firm, corporation, *municipality*, Quasi-municipal Corporation, State agency or Federal agency or other legal entity.

Pollutant. “*Pollutant*” means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-Construction Stormwater Management Plan. “*Post-Construction Stormwater Management Plan*” means *BMPs* and *Stormwater Management Facilities* employed by a *New Development* or *Redevelopment* to meet the standards of this Ordinance and approved by the *Municipal Permitting Authority*.

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

the *Municipality* from which *Discharges* to the *Storm Drainage System* are or may be created, initiated, originated or maintained.

Qualified Post-construction Stormwater Inspector. “*Qualified Post-construction Stormwater Inspector*” means a Professional Engineer or an individual who can document proficiency in observing, inspecting, and reporting on the implementation of storm water pollution prevention plans and has a practical knowledge of *stormwater* hydrology and *stormwater* management techniques, including the maintenance requirements for *stormwater management facilities*, and the ability to determine if *stormwater management facilities* are performing as intended.

Redevelopment. “*Redevelopment*” means *Construction Activity on Premises* already improved with buildings, structures or activities or uses, but does not include such activities as exterior remodeling.

Regulated Small MS4. “*Regulated Small MS4*” means any Small *MS4* regulated by the State of Utah Department of Environmental Quality “General Permit for the *Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems*”, including all those located partially or entirely within an Urbanized Area and those additional *Small MS4s* located outside a Urbanized Area that as of the issuance of the General Permit have been designated by the DEQ as *Regulated Small MS4s*.

Small Municipal Separate Storm Sewer System, or Small MS4. “*Small Municipal Separate Storm Sewer System*”, or “Small *MS4*,” means any *MS4* that is not already covered by the Phase I *MS4 stormwater* program including municipally owned or operated storm sewer systems and State or federally-owned systems, such as Utah Department of Transportation road systems and facilities.

Storm Drainage System. “*Storm Drainage System*” means the *Municipality’s Regulated Small MS4*.

Stormwater. “*Stormwater*” means any *Stormwater* runoff, snowmelt runoff, and surface runoff and drainage; “*Stormwater*” has the same meaning as “*Storm Water*.”

Stormwater Management Facilities. “*Stormwater Management Facilities*” means any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the *Post-Construction Stormwater Management Plan* for a *New Development* or *Redevelopment*.

Section 5. Applicability.

A. **In General.** This Ordinance shall apply to any application for a building permit, subdivision approval, site plan approval or other zoning, planning or land use approval that is filed on or after the date of adoption for any *New Development* or *Redevelopment* within the *Municipality* that *Discharges Stormwater* to the *Municipality’s MS4* and to associated *Stormwater Management Facilities*.

B. **Exception.** This Ordinance does not apply to *New Development* or *Redevelopment* on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that is approved under this Ordinance; said lot, tract or parcel shall not require separate review under this Ordinance, but shall comply with the *Post-Construction Stormwater Management Plan* requirements for that approved subdivision.

Section 6. Post-Construction Stormwater Management Plan Approval

A. **General Requirement.** Except as provided in Section 5.B. above, no *Applicant* for a building permit, subdivision approval, site plan approval or other land use approval for *New Development* or *Redevelopment* to which this Ordinance is applicable shall receive such permit or approval for that *New Development* or *Redevelopment* unless the *Municipal Permitting Authority* for that *New Development* or *Redevelopment* also determines that the *Applicant's Post-Construction Stormwater Management Plan* for that *New Development* or *Redevelopment* meets the requirements of this Ordinance and the Maintenance Agreement has been recorded in the office of the Washington County Recorder.

B. Performance Standards

1. **Stormwater Treatment Required.** The *Applicant* shall make adequate provision for the management of the quantity and quality of all *stormwater* generated by the *New Development* or *Redevelopment* through a *Post-Construction Stormwater Management Plan*. This *Post-Construction Stormwater Management Plan* shall be designed by a Professional Engineer to meet the standards contained in the Grading Manual and must include evaluation of *Low Impact Development* as well as fully comply with all practices described in the Storm Water General Permit.

2. **Location of Facilities.** The *Applicant* may meet the quantity and quality standards above either on-site or off-site, but where off-site facilities are used, the *Applicant* must submit to the *Municipality* documentation, approved as to legal sufficiency by the *Municipality's* attorney, that the *Applicant* has a sufficient property interest in the property where the off-site facilities are located -- by easement, covenant or other appropriate legal instrument -- to ensure that the facilities will be able to provide post-construction *stormwater* management for the *New Development* or *Redevelopment* and that the property will not be altered in a way that interferes with the off-site facilities.

3. **Maintenance Agreement Required.** Where the *Applicant* proposes to retain ownership of the *Stormwater Management Facilities* shown in its *Post-Construction Stormwater Management Plan*, the *Applicant* shall submit to the *Municipality* documentation, approved as to legal sufficiency by the *Municipality's* attorney that the *Applicant*, its successors, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the *stormwater management facilities*. Applications for *New Development* or *Redevelopment* requiring *Stormwater Management Facilities* shall enter into a Maintenance Agreement with the *Municipality*. A sample of this Maintenance Agreement is attached as Appendix 1 to this Ordinance.

4. **Easements and Dedications.** Whenever elements of the *Stormwater Management Facilities* are not within the right-of-way of a public street and the facilities will not be offered to the *Municipality* for acceptance as public facilities, the *Municipal Permitting Authority* may require that perpetual easements conforming substantially with the lines of existing natural drainage, and in a form acceptable to the *Municipality's* attorney, shall be provided to the *Municipality* allowing access for maintenance, repair, replacement and improvement of the *Stormwater Management Facilities*. When an offer of dedication is required by the *Municipal Permitting Authority*, the *Applicant* shall be responsible for the maintenance of these *Stormwater Management Facilities* under this Ordinance until such time (if ever) as they are accepted by the *Municipality*.

5. **Conflict with State Laws or Rules.** In addition to any other applicable requirements of this Ordinance and the *Municipality's* land use ordinances, any *New Development* or *Redevelopment* which also requires a *stormwater* management permit from the State of Utah Department of Environmental Quality (DEQ) shall comply with the rules adopted by DEQ, as the same may be amended from time to time, and the *Applicant* shall document such compliance to the *Municipal Permitting Authority*. Where the standards or other provisions of such *stormwater* rules conflict with municipal ordinances, the stricter (more protective) standard shall apply.

6. **Engineering and administrative fees.** At the time of application, the *Applicant* shall pay to the *Municipality* a fee as reflected on the Washington City Master Fee Schedule for the review of the proposal unless it is determined by the Public Works Department that a third party review of the proposal is necessary. If it is determined that a third party review is necessary an estimate will be provided to the owner for payment prior to review by third party.

In addition, any *persons* required to file an annual certification under **Section 7** of this Ordinance shall pay, prior to the issuance of any temporary or permanent certificate of compliance for the *New Development* or *Redevelopment*, a fee as reflected on the Washington City Master Fee Schedule for review of the annual certification.

7. **Notice of BMP Discharge to Municipality's MS4.** At the time of application, the *Applicant* shall notify the *Municipal Permitting Authority* if its *Post-Construction Stormwater Management Plan* includes any BMP(s) that will *discharge* to the *Municipality's MS4* and shall include in this notification a listing of which BMP(s) will so *discharge*.

8. **As-Built Certification.** Prior to the issuance of a Certificate of Compliance for a project requiring a *Post-Construction Stormwater Management Plan* under this ordinance, the *Applicant* shall submit evidence in the form of a letter or plan prepared and stamped by a Professional Engineer who either prepared the *Post-Construction Stormwater Management Plan* and its associated Facilities or supervised the Plan and Facilities construction and implementation. The letter or plan shall certify that the *Stormwater Management Facilities* have been installed in accordance with the approved *Post-Construction Stormwater Management Plan* and that they will function as intended by said Plan. This certification must specifically include any *LID* measures incorporated into the *Post-Construction Stormwater Management Plan* and the as constructed volume of each

toward the 80th percentile retention requirement. Any *LID* features to be constructed at a later date (such as facilities on individual building lots) shall be specifically defined including volume requirements for each facility and recorded as a deed restriction against the property or have notes placed upon the final plat describing the specific requirements.

Section 7. Post-Construction Stormwater Management Plan Compliance

A. **General Requirements.** Any *Person* owning, operating, leasing or having control over *Stormwater Management Facilities* required by a *Post-Construction Stormwater Management Plan* approved under this Ordinance, and the *Facilities* are located in the *Municipality* and *Discharge Stormwater* to the *Municipality's MS4*, shall at their own expense demonstrate compliance with that Plan as follows.

1. **Scope of Inspection.** A *Qualified Post-construction Stormwater Inspector* shall, at least annually, inspect the *Stormwater Management Facilities*, including but not limited to any parking areas, catch basins, *LID* features, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved *Post-Construction Stormwater Management Plan*.

2. **Deficiencies Identified.** If the *Stormwater Management Facilities* require maintenance or repair to function as intended by the approved *Post-Construction Stormwater Management Plan*, that *Person* shall take or cause to be taken corrective action(s) to address the deficiency or deficiencies.

3. **Submission of Inspection Form.** A *Qualified Post-construction Stormwater Inspector* shall, on or by July 1 of each year, provide a completed and signed certification to the Public Works Department in a form identical to that attached as Appendix 2 to this Ordinance, certifying that he/she has inspected the *Stormwater Management Facilities* and that they are adequately maintained and functioning as intended by the approved *Post-Construction Stormwater Management Plan*, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the *Stormwater Management Facilities* and, if the *Stormwater Management Facilities* require maintenance or repair of deficiencies in order to function as intended by the approved *Post-Construction Stormwater Management Plan*, the *Person* shall provide a record of the required maintenance or deficiency and corrective action(s) taken.

B. **Right of Entry.** In order to determine compliance with this Ordinance and with the *Post-Construction Stormwater Management Plan*, the *Enforcement Authority* may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the *Stormwater Management Facilities*.

C. **Annual Report.** Beginning September 1, 2012 and September 1 each year thereafter, the *Municipality* shall include the following in its Annual Report to the State of Utah Department of Environmental Quality (DEQ):

1. The cumulative number of sites that have *Stormwater Management Facilities* discharging into their *MS4*;
2. A summary of the number of sites that have *Stormwater Management Facilities* discharging into their *MS4* that were reported to the *Municipality*;
3. The number of sites with documented functioning *Stormwater Management Facilities*; and;
4. The number of sites that required routine maintenance or remedial action to ensure that *Stormwater Management Facilities* are functioning as intended.

Section 8. Enforcement

A. **Enforcement Authority:** The *Municipality* may issue notices of violation, stop work orders, citations, and impose civil penalties. The *Municipality* may complete periodic inspections to ensure that the *Applicant's* chosen *Post-Construction Stormwater Management Facilities* are performing adequately. If facilities are not performing, the *Municipality* may require changes to be made to the *Post-Construction Stormwater Management Plan*.

B. **Notification of Violation (NOV):**

1. **Written Notice:** Whenever the *Municipality* finds that the *person* discharging *stormwater* has violated or is violating this Ordinance or a permit or order issued hereunder, the *Municipality* may serve upon such *person* written notice of the violation. Within ten (10) days of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the *Municipality*. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.

2. **Consent Orders:** The *Municipality* is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the *person* responsible for the noncompliance. Such orders will include specific action to be taken by the *person* to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to subsections B4 and B5 of this section.

3. **Show Cause Hearing:** The *Municipality* may order any *person* who violates this Ordinance or permit or order issued hereunder, to show cause why a proposed enforcement action should not be taken. Notice shall be served on the *person* specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by mail.

4. **Compliance Order:** When the *Municipality* finds that any *person* has violated or continues to violate this Ordinance or a permit or order issued hereunder, they may issue an order to the violator directing that, following a specific time period, adequate structures or devices, be installed or procedures implemented and properly operated. Orders may

also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the construction of appropriate structures, installation of devices, self-monitoring and management practices.

5. **Cease and Desist Orders:** When the *Municipality* finds that any *person* has violated or continues to violate this Ordinance or any permit or order issued hereunder, the *Municipality* may issue an order to cease and desist all such violations and direct those *persons* in noncompliance to:

- a. Comply forthwith; or
- b. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the *discharge*.

C. **Conflicting Standards:** Whenever there is a conflict between any standard contained in this Ordinance and in any other Local, State or Federal requirements, the strictest standard shall prevail.

Section 9 Penalties:

A. **Violations:** Any person who shall commit any act declared unlawful under this Ordinance, who violates any provision of this Ordinance, who violates the provisions of any permit issued pursuant to this Ordinance, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action by the *Municipality*, shall be guilty of a class B misdemeanor. Each day of violation shall constitute a separate violation.

Section 10. Recovery of Damages and Costs:

The *Municipality* may recover:

A. All damages caused by the violator to the *Municipality*, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with this Ordinance, or any other actual damages caused by the violation.

B. The costs of the *Municipality* maintenance of *Stormwater Management Facilities* when the user of such facilities fails to maintain them as required by this Ordinance.

1. **Other Remedies:** The *Municipality* may bring legal action to enjoin the continuing violation of this chapter, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.

2. **Remedies Cumulative:** The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted.

Section 11. Appeals:

- A. **Appeal:** Any *person* aggrieved by the imposition of a civil penalty or damage assessment as provided by this Ordinance may appeal said penalty or damage assessment to the administrative code enforcement administrative law judge.
- B. **Appeals to Be In Writing:** The appeal shall be in writing and filed with the Washington City recorder within fifteen (15) days after the civil penalty or damage assessment is served.
- C. **Upon Receipt of an Appeal:** The administrative law judge shall hold a hearing upon receipt of an appeal. Notice shall be provided to the appealing party at the address provided by the appealing party at the time of appeal. The decision of the administrative law judge shall be the final municipal administrative decision.
- D. **Appealing Decisions of the Administrative Law Judge:** Any alleged violator may appeal a decision of the administrative law judge pursuant to the applicable appeal provision of the administrative law judge section of this code.

Section 12. Adoption of Ordinance

- A. If any provision or clause of this ordinance or the application thereof to any person or entity or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses or applications hereof which can be implemented without the invalid provision(s), clause(s) or application(s) hereof, and to this end the provisions and clauses of this ordinance are declared to be severable.
- B. This Ordinance supersedes or repeals the provision(s) of any ordinance(s) or resolution(s) that is(are) inconsistent with the provisions of this ordinance.
- C. This Ordinance shall take effect upon publication or posting.

PASSED AND ORDERED POSTED on this 24th day of June 2020.

WASHINGTON CITY

Kenneth F. Neilson, Mayor

Attest:

Danice B. Bulloch, MMC
City Recorder