

Chapter 18.30

STORM WATER MANAGEMENT

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18.30.000 Purpose.

A. To protect water resources, reduce the discharge of pollutants to the maximum extent practicable, and satisfy the state requirement under Chapter 90.48 RCW to apply all known, available, and reasonable methods of prevention, control, and treatment (“AKART”) to storm water runoff prior to discharge to receiving waters.

B. To control storm water runoff generated by development, redevelopment, construction sites, or modifications to existing storm water systems that directly or indirectly discharge to the city storm water system, in a manner that complies with the Western Washington Phase II Municipal Stormwater Permit issued by the Department of Ecology.

C. To protect land and the ecological balance of receiving water bodies near development sites from increased surface water runoff rates and durations that could cause flooding or erosion, scouring, and deposition of sediment (caused by development).

D. To protect private and public property and city streets and rights-of-way (including easements) from flooding or erosion due to development activity.

E. To provide for inspection and maintenance of storm water facilities in the city to ensure that these facilities perform as designed.

F. To require that all public and private storm water facilities be operated, maintained, and repaired in a manner that conforms to this chapter.

G. To establish the minimum standards that must be met for compliance.

H. To provide guidelines for all who inspect and maintain storm water facilities.

I. To promote development practices that ensure the above purposes are met. [Ord. 3792 § 1, 2010].

18.30.010 Definitions.

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

“Adjustment” means a variation in the application of a minimum requirement to a particular project. Adjustments provide substantially equivalent environmental protection.

“Applicant” means the owning individual(s) or corporations or their representatives applying for the permits or approvals described in this chapter.

“Approval” means the proposed work or completed work conforming to this chapter as approved by the public works director or their designee.

“Best management practice (BMP)” means the schedule of activities, prohibition of practices, maintenance procedures, and structural or managerial practices approved by the city that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State.

“City’s municipal separate storm sewer system” or “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) that are owned or operated by the city of Edmonds, designed or used for collecting or conveying storm water, and are not a combined sewer nor part of a publicly owned treatment works as defined in 40 Code of Federal Regulations (CFR) 122.2.

“Clearing” means the act of cutting or removing vegetation, including grubbing.

“Common plan of development or sale” means a site where multiple separate and distinct construction activities may take place at different times on different schedules, but still under a single plan. For example: 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; or 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.

“Construction activity” means land-disturbing operations including clearing, grading, or excavation that disturbs the surface of the land. Such activities may include road construction, construction of residential houses, office buildings, or industrial buildings, and demolition activity.

“Converted pervious surface” means the change in land cover changed from native vegetation to lawn, landscape, or pasture areas.

“Creek” is synonymous with “stream,” which is defined in ECDC 23.40.005.

“Critical areas” is defined in ECDC 23.40.005.

“Design storm” means a rainfall event or pattern of events for use in analyzing and designing drainage facilities.

“Detention” means a facility for controlling storm water runoff for a prescribed design storm and releasing the storm water at a prescribed rate.

“Director” means the public works director or a designee with an appropriate background in engineering or another related discipline.

“Earth material” means any rock, natural soil, fill, or any combination thereof.

“Ecology” means the Washington State Department of Ecology.

“Effective impervious surface” means those impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system including the city’s MS4. Impervious surfaces on residential development sites are considered ineffective if the runoff is dispersed through at least 100 feet of native vegetation in accordance with BMP T5.30 – “Full Dispersion,” as described in Chapter 5 of Volume V of the Stormwater Management Manual for Western Washington (2005).

“Erosion” means the displacement of any earth material or existing vegetation by rainfall, storm water runoff, or seepage.

“Excavation” means the removal of any earth material.

“Exception” means relief from the application of a minimum requirement to a project.

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

“Groundwater” means water in a saturated zone or stratum beneath the land surface or below a water body.

“Highway” means a main public road connecting towns and cities. In Edmonds, this includes State Highway 99 and portions of State Highway 104, both classified as principal arterials in the city’s comprehensive transportation plan.

“Illicit discharge” means any direct or indirect nonstorm water discharge to the city’s MS4, groundwaters, or a water body, except as expressly allowed by Chapter 7.200 ECC.

“Impervious surface” means a hard surface area that either prevents or retards the entry of water into the soil mantle as it occurs under natural conditions prior to development, resulting in storm water runoff from the surface in greater quantities or at an increased rate of flow compared to storm water runoff characteristics 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, gravel roads, packed earthen materials, and oiled macadam or other surfaces that similarly impede the natural infiltration of storm water. Open, uncovered retention/detention facilities shall not be considered impervious surfaces for purposes of determining whether the thresholds for application of minimum requirements are exceeded. However, open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling. Outdoor swimming pools shall be considered impervious surfaces in all situations.

“Lake” means an inland body of fresh water surrounded by land.

“Land-disturbing activity” means any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and nonvegetative) 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 are not considered land-disturbing activity.

“Low impact development” means development conducted in a way that seeks to minimize or completely prevent alterations to the natural hydrology of the site. Low impact development includes site planning and design to reduce alterations of natural soil and vegetation cover, minimize impervious surfaces, and specific practices that help to replicate natural hydrology such as permeable pavements, green roofs, soil amendments, bioretention systems, and dispersion of runoff.

“Maintenance” means repair and maintenance activities conducted on currently serviceable structures, facilities, and equipment that involves no expansion or use beyond that previously existing, and results in no significant adverse hydrologic impact. It includes those usual activities taken to prevent a decline, lapse, or cessation in the use of structures and systems. Those usual activities may include replacement of dysfunctional 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.

“Maximum extent feasible” means the requirement is to be fully implemented, constrained only by the physical limitations of the site, practical considerations of engineering design, and reasonable considerations of financial costs and environmental impacts.

“MS4” means the city’s municipal separate storm sewer system.

“Native vegetation” means vegetation comprised of plant species (other than noxious weeds) indigenous to the coastal region of the Pacific Northwest which could have been reasonably expected to occur naturally 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.

“Natural drainage systems and outfalls” means the location of the channels, swales, and other nonmanmade conveyance systems as defined by the earliest documented topographic contours existing for the subject property, either from maps or photographs, or such other means as appropriate.

“New development” means land-disturbing activities, including Class IV general forest practices that are conversions from timber land to other uses per RCW 76.09.050; 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. If the project is part of a common development plan or sale, the disturbed area of the entire plan shall be used in determining permit requirements.

“New impervious surface” means impervious surface created after July 6, 1977 (the effective date of the city’s first drainage control ordinance) that meets the conditions described in the city of Edmonds storm water supplement (see ECDC 18.30.060).

“Person” means any individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, agency of the state, or local government unit, however designated.

“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. If the project is part of a common development plan or sale, the disturbed area of the entire plan shall be used in determining permit requirements.

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

“Redevelopment” means, on a site that is already substantially developed, 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.

“Replaced impervious surface” means, for structures, the removal and replacement of any exterior impervious surfaces or foundation. For other impervious surfaces, it means the removal down to bare soil or base course and replacement. For sites with existing single-family dwelling units (as defined in ECDC 21.90.080), a project that solely replaces the other impervious surfaces in kind (footprint and imperviousness of material does not change) shall not be considered replaced impervious surface for the purposes of this chapter, unless the project site has one acre or greater of land-disturbing activities. (Note: These surfaces may qualify as “new impervious surface.” See definition in this section.)

“Roadway” means the traveled impervious portion of any public or private road or street.

“Site” means the area defined by the legal boundaries of a parcel or parcels of land that is (are) subject to new development or redevelopment. For road projects, or utility projects in the right-of-way, the length of the project site and the right-of-way boundaries define the site.

“Slope” means the degree of slant of a surface measured as a numerical ratio, percent, or in degrees. Expressed as a ratio, the first number is the horizontal distance (run) and the second is the vertical distance (rise), as 2:1. A 2:1 slope is a 50 percent slope. Expressed in degrees, the slope is the angle from the horizontal plane, with a 90-degree slope being vertical (maximum) and 45 degrees being a 1:1 or 100 percent slope.

“Soil” means the unconsolidated mantle of the earth that serves as a natural medium for the growth of land plants.

“Source control” means a structure or operation that is intended to prevent pollutants from coming into contact with storm water through physical separation of areas or careful management of activities that are sources of pollutants.

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

“Storm water facility” means a constructed component of a storm water drainage system, designed and constructed to perform a particular function or multiple functions. Storm water facilities include, but are not limited to, pipes, pumping systems, swales, ditches, culverts, street gutters, catch basins, detention basins, wetlands, infiltration devices, and pollutant removal devices.

“Storm water site plan” means the report and associated plans containing all of the technical information and analysis necessary for the city to evaluate a proposed new development or redevelopment project for compliance with storm water requirements. Contents of the storm water site plan will vary with the type and size of the project, and individual site characteristics. It may include a construction storm water pollution prevention plan (construction SWPPP) and a permanent storm water control plan (PSC plan).

“Substantially developed” means for sites in zone district RS (as defined in ECDC Title 16) those that have an existing single-family dwelling unit (as defined in ECDC 21.90.080). For sites within all other zone districts, “substantially developed” shall mean those sites with 35 percent or more existing impervious surface coverage.

“Threshold discharge area” means an on-site area that drains to either a single natural discharge location or multiple natural discharge locations that combine within one-quarter mile downstream (as determined by the shortest flowpath). The examples in Figure 2.1 presented in Volume I of the Stormwater Management Manual for Western Washington (2005) illustrate this definition. The purpose of this definition is to clarify how the thresholds of this code are applied to project sites with multiple discharge points.

“Variance” means the same as “exception.”

“Water body” means a surface water feature, whether standing or flowing, including (but not limited to) sounds, lakes, ponds, rivers, streams, and creeks including waters of the state.

“Watershed” means a geographic region within which water drains into a particular river, stream, or water body.

“Waters of the state” includes those waters defined as “waters of the United States” in 40 CFR 122.2 within the geographic boundaries of Washington State, and “waters of the state” as defined in Chapter 90.48 RCW which includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and water courses within the jurisdiction of the state of Washington.

“Wetlands” are as defined in ECDC 23.40.005. [Ord. 3792 § 1, 2010].

18.30.020 Regulation.

A. The public works director or a designee shall administer this chapter and shall be referred to as the director. The director shall have the authority to develop and implement procedures to administer and enforce this chapter.

B. The director shall approve and enforce procedures in accordance with state and federal regulations, and compliance with this chapter. [Ord. 3792 § 1, 2010].

18.30.030 Applicability.

A. This chapter applies if any of the following pertains to a site:

1. Issuance of a city permit is required under all other chapters of ECDC Title 18 or 19.
2. A subdivision application is submitted per ECDC 20.75.040.
3. The proposed project:
 - a. Involves 500 square feet or more of land-disturbing activity, new impervious surface, or replaced impervious surface. Routine landscape maintenance practices outside of critical areas (as defined in ECDC Title 23) and ongoing farming or gardening activities shall be excluded unless there is the potential for such an activity to cause an illicit discharge to the city’s MS4.
 - b. Is a utility or other construction project consisting of 500 lineal feet or more of trench excavation.
 - c. Is located in, adjacent to, or drains into (currently or as a result of the project) a critical area or a critical area buffer.

B. This chapter applies to actions whenever the director determines there is a potential for:

1. An illicit discharge or physical damage to the city's MS4 or downstream properties; or
2. A violation of applicable city, state, or federal laws, regulations, or permits related to water quality.

C. If a city permit has been issued or a subdivision application submitted for a site, as provided in subsection (A) of this section, the requirements of this chapter shall be administered under those permits. If the site activities triggered in subsection (A)(3) or (B) of this section do not necessitate a city-issued permit, the requirements of this chapter shall be administered under a storm water permit as described in ECDC 18.30.040(B)(2).

D. The requirements of this chapter are minimum requirements. They do not replace, repeal, abrogate, supersede or affect any other more stringent requirements, rules, regulations, covenants, standards, or restrictions. Where this chapter imposes requirements that are more protective of human health or the environment than those set forth elsewhere, the provisions of this chapter shall prevail. When this chapter imposes requirements that are less protective of human health or the environment than those set forth elsewhere, the provisions of the more protective requirements shall prevail.

E. The minimum requirements that apply to a project site will differ based on (but are not limited to) the following: project scope and configuration, physical site characteristics, site location, and subsurface conditions. The combination of site activities and physical characteristics will classify the type of project as described in ECDC 18.30.050. Storm water management requirements are described in ECDC 18.30.060.

F. Approvals and permits granted under this chapter are not waivers of the requirements of any other laws, nor do they indicate compliance with any other laws. Compliance is still required with all applicable federal, state and local laws and regulations, including rules promulgated under authority of this chapter.

G. Compliance with the provisions of this chapter does not necessarily mitigate all impacts to the environment. Thus, compliance with this chapter should not be construed as mitigating all drainage water or other environmental impacts, and additional mitigation may be required to protect the environment pursuant to other applicable laws and regulations. The primary obligation for compliance with this chapter and for preventing environmental harm on or from property is placed upon the applicant. [Ord. 3792 § 1, 2010].

18.30.040 Administration.

A. Applications. All storm water review submittals shall contain, in addition to the information required under any other applicable city code, a storm water site plan as described in the storm water supplement (see ECDC 18.30.060) and other information as the director shall require.

B. Review.

1. The director shall review all plans for compliance with this chapter.
2. The director may administratively, without hearing, approve and issue a storm water permit when required by ECDC 18.30.030 if the proposed activity complies with requirements in this chapter.

C. Inspection. All activities regulated by this chapter shall be inspected by the director. The director shall inspect projects for approval at various stages of the work to determine that they are being constructed per the approved storm water site plans. Stages of work requiring inspection include (but are not limited to) preconstruction, installation of BMPs, land-disturbing activities, installation of utilities, landscaping, and completion of project. When reasonably required by the director to accomplish the purpose of this chapter or to comply with local, state or federal law or regulation on storm water, a special inspection or testing shall be performed. The drainage system shall be installed concurrently with site development and shall be completed as shown on the approved plan before city approval of an occupancy permit or final inspection.

D. Fees. Application, review and inspection fees as set in Chapter 15.00 ECDC shall be paid. [Ord. 3792 § 1, 2010].

18.30.050 Project classification.

For purposes of this chapter, projects are classified as large site, small site, or minor site as described below, primarily based on the extent of land-disturbing activities.

A. Large Site Project. Projects are large site projects if they involve:

1. One acre or more of land-disturbing activity; or
2. If the project disturbs less than one acre of land and it is part of a larger common plan of development or sale where land-disturbing activity involves one acre or more.

B. Small Site Project. Projects are small site projects if they are not large site projects and they involve:

1. Two thousand square feet or greater of new, replaced, or new plus replaced impervious surface area; or
2. At least 7,000 square feet of land-disturbing activity; or
3. Fifty cubic yards or more of either grading, filling, or excavating as described in ECDC 18.40.000.

C. Minor Site Project. Projects are minor site projects if they involve:

1. Five hundred square feet or greater of new development or redevelopment including land-disturbing activity and utility projects that cause land disturbance; and
2. Are not a large or small site project. [Ord. 3792 § 1, 2010].

18.30.060 Storm water management requirements.

A. General.

1. All activities covered by this chapter shall comply with the site planning and best management selection and design criteria in the Storm Water Code Supplement to Edmonds Community Development Code (ECDC) Chapter 18.30 (Exhibit A*) available for review in the city clerk's office, herein referred to as the storm water supplement, to implement the applicable minimum technical requirements listed in this chapter.
2. The city may allow alternative or regional approaches to treatment, flow control, or other minimum requirements per the basin/watershed provisions of the Western Washington Phase II Municipal Stormwater Permit.

B. Illicit Discharges and Connections. Nonstorm water illicit discharges, including spills into the city's storm water drainage system, are prohibited per Chapter 7.200 ECC.

C. Low Impact Development. Low impact development techniques shall be employed where feasible, reasonable, and appropriate. When low impact development techniques are employed, the design shall be consistent with the most recent version of the Low Impact Development, Technical Guidance for Puget Sound (Puget Sound Action Team and Washington State University Pierce County Extension), other low impact development standards approved by Ecology, or the storm water supplement.

D. Minimum Technical Requirements by Project Classification. The following lists the additional requirements that apply to the specific project classes:

1. Large Site Projects. Large site projects shall meet the minimum technical requirements outlined in Section 3 and Section 4 of Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit and the storm water supplement.
2. Small Site Projects. Small site projects are further defined as Category 1 or Category 2. All new development or redevelopment projects shall, at a minimum, comply with the applicable requirements for Category 1 or Category 2 as found in the storm water supplement. Any or all of the small site minimum requirements (SSMRs) may be required on any small site project by the director to meet the purpose of this chapter based on site-specific factors including, but not limited to, location, soil conditions, slope, and designated use. These requirements are summarized as follows:

a. Category 1. For small site projects with less than 5,000 square feet of new, replaced, or new plus replaced impervious surface area, the following SSMRs shall apply:

- i. SSMR No. 1 – Preparation of Stormwater Site Plan;
- ii. SSMR No. 2 – Construction Stormwater Pollution Prevention Plan;
- iii. SSMR No. 3 – Source Control of Pollution;
- iv. SSMR No. 4 – Preservation of Natural Drainage Systems and Outfalls;
- v. SSMR No. 5 – On-Site Stormwater Management;
- vi. SSMR No. 7 – Flow Control. This SSMR may be waived by the director based on the extent of application of SSMR No. 5 to infiltrate, disperse, and retain storm water runoff on site without causing flooding or erosion impact, per the criteria in the storm water supplement;
- vii. SSMR No. 8 – Wetland Protection;
- viii. SSMR No. 9 – Operation and Maintenance;
- ix. SSMR No. 11 – Financial Liability. Applies to storm water systems constructed in or adjacent to critical areas or critical area buffers.

b. Category 2. For small site projects that include 5,000 square feet or greater of new, replaced, or new plus replaced impervious surface area; or convert three-fourths acre or more of native vegetation to lawn or landscaped area; or, through a combination of creating effective impervious surface and converted pervious surfaces, causes a 0.1 cubic foot per second increase in the 100-year flow frequency from a threshold discharge area as estimated using an approved model. The following SSMRs shall apply:

- i. SSMR No. 1 – Preparation of Stormwater Site Plan;
- ii. SSMR No. 2 – Construction Stormwater Pollution Prevention Plan;
- iii. SSMR No. 3 – Source Control of Pollution;
- iv. SSMR No. 4 – Preservation of Natural Drainage Systems and Outfalls;
- v. SSMR No. 5 – On-Site Stormwater Management;
- vi. SSMR No. 6 – Runoff Treatment;
- vii. SSMR No. 7 – Flow Control;
- viii. SSMR No. 8 – Wetland Protection;
- ix. SSMR No. 9 – Operation and Maintenance;
- x. SSMR No. 10 – Off-Site Analysis and Mitigation;
- xi. SSMR No. 11 – Financial Liability.

c. Any or all of the SSMRs may be required on any small site project by the director to meet the purpose of this chapter based on site-specific factors including, but not limited to, location, soil conditions, slope, and designated use.

3. Minor Site Projects. The following minimum requirements apply to minor site projects:

- a. Minor site construction storm water pollution prevention practices as described in the storm water supplement.
- b. Additional requirements may be imposed by the director or designee on minor site projects to meet the purpose of this chapter based on site-specific factors including, but not limited to, location, soil conditions, slope, and designated use. [Ord. 3792 § 1, 2010].

*Code reviser's note: Exhibit A is on file and available for review in the city clerk's office.

18.30.070 Exemptions, exceptions, adjustments and appeal.

A. Exemptions. The following land uses and land-disturbing activities are exempt from the provisions of this chapter:

1. 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 the provisions of the minimum requirements.
2. Commercial agriculture practices that involve working land for production are generally exempt. However, land conversion from timberland to agriculture and the construction of impervious surfaces are not exempt.
3. Construction of drilling sites, waste management pits, and associated access roads, and construction of transportation and treatment infrastructure such as pipelines, natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations are exempt. Operators are encouraged to implement and maintain best management practices to minimize erosion and control sediment during and after construction activities to help ensure protection of surface water quality during storm events.
4. Roadway Projects. The following roadway maintenance practices or activities are exempt: 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 roadside vegetation maintenance.
 - a. For large site projects only, the following road maintenance practices or activities are considered redevelopment, and therefore are not categorically exempt. The extent to which this exemption applies is explained for each circumstance.
 - i. Removing and replacing a paved surface to base course or a lower level, or repairing the roadway base: if impervious surfaces are not expanded, large site project minimum requirements No. 1 through No. 5 apply. However, in most cases, only large site project minimum requirement No. 2, Construction Stormwater Pollution Prevention, shall be required. Where appropriate, project proponents are encouraged to look for opportunities to use permeable and porous pavements.
 - ii. Extending the pavement edge without increasing the size of the road prism or paving graveled shoulders are considered new impervious surfaces and are subject to the minimum requirements that are triggered when the thresholds identified for redevelopment projects are met.
 - iii. Resurfacing by upgrading from dirt to gravel, asphalt or concrete; or upgrading from gravel to asphalt or concrete; or upgrading from a bituminous surface treatment ("chip seal") to asphalt or concrete: these are considered new impervious surfaces and are subject to the minimum requirements that are triggered when the thresholds identified for redevelopment projects are met.
5. 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.
6. With respect to replaced impervious surfaces, a redevelopment project may be exempt from compliance with SSMR 6 (treatment), SSMR 7 (flow control), and SSMR 8 (wetlands protection) (or the associated applicable minimum requirements for large sites) should the city adopt a plan and schedule that fulfills those requirements through a regional drainage control plan (e.g., via a regional facility or facilities, stream restoration, or basin-specific development requirements).

7. City capital and maintenance projects are exempt from the financial liability minimum requirement.

B. Exceptions.

1. The director may approve a request for an exception to the minimum requirements of this chapter following legal public notice of an application for an exception and of the director's decision on the application. All legal public notice related to this request for an exception shall be in the manner prescribed in ECDC 20.03.002 and the applicant shall pay all costs to publish the legal public notices required by this provision. The director shall provide and keep written findings of fact of the decision.

2. The approval of the exception shall only be granted when the applicant demonstrates that the exception will not increase risks to public health, safety, and welfare, or to water quality, or to public and private property in the vicinity or downstream of the property, and the exception shall be the least possible exception that could be granted and still provide compliance with the intent of the minimum requirements. In addition, the exception shall only be granted when it has been determined by the director that one or more of the following applies:

- a. The requirement would cause a severe and unexpected financial hardship that outweighs the requirement's benefits, and the criteria for an adjustment cannot be met; or
- b. The requirement would cause harm or a significant threat of harm to public health, safety, and welfare, the environment, or public and private property, and the criteria for an adjustment cannot be met; or
- c. The requirement is not technically feasible, and the criteria for an adjustment cannot be met; or
- d. An emergency situation exists that necessitates approval of the exception.

3. An application for an exception on the grounds of severe and unexpected financial hardship shall describe, at a minimum, all of the following:

- a. The current, pre-project use of the site; and
- b. How application of the requirement(s) for which an exception is being requested restricts the proposed use of the site compared to the restrictions that existed prior to adoption of this chapter; and
- c. The possible remaining uses of the site if the exception were not granted; and
- d. The possible uses of the site that would have been allowed prior to the adoption of this chapter; and
- e. A comparison of the estimated amount and percentage of value loss as a result of the requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the requirements of this chapter; and
- f. The feasibility of the applicant to alter the project to apply the requirements of this chapter.

4. An exception to the requirements shall only be granted to the extent necessary to provide relief from the economic hardship as determined by the director, to alleviate the harm or threat of harm to the degree that compliance with the requirement becomes technically feasible, or to perform the emergency work that the director determines is warranted.

5. The director may require an applicant to provide additional information at the applicant's expense, including (but not limited to) an engineer's report or analysis.

6. When an exception is granted, the director may impose new or additional requirements to offset or mitigate harm or the threat of harm that may be caused by granting the exception, or that would have been prevented if the exception had not been granted.

C. Adjustments.

1. The director may approve a request for adjustments to the requirements of this chapter when the director finds that:

- a. The adjustment provides substantially equivalent environmental protection; and
- b. The objectives of safety, function, environmental protection, and facility maintenance are met, based on sound engineering practices.

2. During construction, the director may require, or the applicant may request, that the construction of drainage control facilities and associated project designs be adjusted if physical conditions are discovered on the site that are inconsistent with the assumptions on which the approval was based, including (but not limited to) unexpected soil or water conditions, weather-generated problems, or changes in the design of the improved areas; and

3. A request by the applicant for an adjustment shall be submitted to the director for review and approval prior to implementation. The request shall be in writing and shall provide facts substantiating the requirements of subsection (C)(1) of this section, and if made during construction, the factors in subsection (C)(2) of this section. Any such modifications made during the construction of drainage control facilities shall be included with the final approved drainage control plan.

D. Appeal.

1. The director's decision on an application for an exception or adjustment may appeal to the hearing examiner in accordance with a Type II appeal process in Chapter 20.06 ECDC.

2. The applicant shall carry the burden of proof.

3. The decision of the hearing examiner is appealable to superior court in accordance with Chapter 36.70C RCW. [Ord. 3792 § 1, 2010].

18.30.080 Easements, deeds, and covenants.

A. Easements. A public storm drainage inspection easement shall be required where:

1. Stormwater facilities identified on project plans will be located on property owned by a party other than the owner of the project site; or
2. Access is needed to structural or nonstructural storm water facilities for inspection by the city to ensure that these storm water best management practices continue to function as designed.

Easements shall be as specified in engineering division documents or approved by the director, and recorded with Snohomish County and on all proper deeds.

B. Deeds and Covenants for Low Impact Development. Deed restrictions and covenants shall be required for all sites using low impact development techniques to ensure that these storm water best management practices continue to function as designed. The deed restrictions or covenants shall address or append requirements and responsibilities for long-term management and maintenance of these best management practices. [Ord. 3792 § 1, 2010].

18.30.090 Inspection and maintenance roles and responsibilities.

Proper inspection and maintenance of storm water facilities (including construction BMPs) is essential for the protection of the city's MS4 and the environment. Inspection and maintenance of all storm water facilities shall be required in accordance with the storm water supplement.

A. Storm Water Maintenance and Inspection Standards. Storm water facilities shall be inspected and maintained per the requirements of the storm water supplement. For systems which do not have a maintenance standard, the owner shall develop a standard based on guidelines from the manufacturer, designer, or a registered professional engineer and submit the standards to the director for approval.

B. Ownership. Storm water facilities are either privately or publicly owned and maintained. All storm water facilities that serve commercial and industrial sites are private. Storm drainage facilities or controls that are privately owned by a homeowner's association or similar organization also are private.

C. Maintenance and Inspection. All privately owned storm drainage facilities or controls shall be maintained by the owner, or the homeowner or owner association ("owner") if one is established as part of a residential or commercial development. All private storm drainage facilities shall be regularly inspected to ensure proper operation and shall monitor the facility or control as required or as set forth in the storm water supplement. The owner shall maintain records of inspection and maintenance, disposal receipts, and monitoring results. The records shall catalog the action taken, the person who took it, the date said action was taken, how it was done, results of any monitoring effort, and any problems encountered or follow-up actions required. The records shall be made available to the city upon request. The owner shall maintain a copy of the Stormwater Operations and Maintenance Manual (if required) on site, and shall make reference to such document in real property records filed with Snohomish County, so others who acquire real property served by the privately owned storm drainage facilities or controls are notified of their obligation to maintain such facilities or controls.

D. When an inspection identifies an exceedance of the maintenance standard, maintenance shall be performed:

1. Within one year for wet pool facilities and retention/detention facilities;
2. Within six months for typical maintenance;
3. Within nine months for maintenance requiring revegetation; and
4. Within two years for maintenance that requires capital construction of less than \$25,000.

E. Disposal of Waste from Maintenance Activities. Disposal of waste from maintenance activities shall be conducted in accordance with the Minimum Functional Standards for Solid Waste Handling, Chapter 173-304 WAC, guidelines for disposal of waste materials from storm water maintenance activities, and where appropriate, the Dangerous Waste Regulations, Chapter 173-303 WAC.

F. City Inspection. The regular inspection of privately owned storm drainage facilities or controls is essential to enable the city to evaluate the proper operation of the city's MS4 and the environment. The city shall have access to private storm water facilities for inspection to ensure they are properly operated and maintained in accordance with ECC 7.200.100. The city may offer an incentive program to owners to encourage the proper maintenance of private storm drainage facilities. [Ord. 3792 § 1, 2010].

18.30.100 Enforcement procedures.

A. General enforcement action shall be in accordance with this chapter whenever a person has violated any provision of this chapter. The choice of enforcement action is at the discretion of the city. The severity of any penalty shall be based on the nature of the violation, the damage, or risk to the public or to public resources, or the degree of bad faith of the person subject to the enforcement action.

B. Notice of Violation and Order to Correct. The director shall have the authority to serve a person a notice of violation and order to correct (NOV/OTC) if an action is being undertaken in violation of this chapter. Issuance of any other warning, notice, or order is not a condition precedent for the director to issue an NOV/OTC.

1. Content of NOV/OTC. The NOV/OTC shall contain:

- a. A description of the specific nature, extent, and time of violation and the damage or potential damage;
- b. A notice that the violation or the potential violation cease and desist, and, in appropriate cases, the specific corrective action to be taken within a given time;
- c. A civil penalty under subsection (D) of this section may be issued with the order;
- d. Appeal rights.

2. Notice. An NOV/OTC may be imposed by a notice in writing, either by certified mail with return receipt requested, or by personal service, to the person(s) shown on the rolls of the Snohomish County assessor as the owner of the site, noted as the applicant on any application for development approval or observed doing regulated activity on the site.

3. Effective Date. The stop work order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.

4. Compliance. Failure to comply with the terms of an NOV/OTC shall result in additional enforcement actions including (but not limited to) criminal prosecution, the issuance of additional civil penalty and abatement.

C. Maintenance Orders. The director shall have the authority to issue to an owner or person an order to maintain or repair a component of a storm water facility or BMP to bring it into compliance with this chapter, the storm water supplement, and the Edmonds Community Development Code. The order shall include:

1. A description of the specific nature, extent and time of the violation and the damage or potential damage that reasonably might occur;
2. A notice that the violation or the potential violation cease and desist and, in appropriate cases, the specific corrective actions to be taken; and
3. A reasonable time to comply, depending on the circumstances.

D. Civil Penalty. A person who fails to comply with the requirements of this chapter, who fails to conform to an approval or order issued, who undertakes new development without first obtaining approval, or who fails to comply with a stop work order issued under these regulations shall be subject to a civil penalty levied in accordance with the provisions of Chapter 20.110 ECDC; provided, however, that the appeal process shall commence with a notice of violation as provided in ECDC 20.110.040(B).

1. Civil penalties for code violations shall be imposed in accordance with the provisions of Chapter 20.110 ECDC; provided, however, that in addition to the penalties set forth in that chapter, the hearing examiner is authorized to levy a penalty of up to \$20,000 per occurrence based upon an assessment of the following factors. Where such factors are present, the hearing examiner is authorized to levy such penalty after taking into consideration the full impact of the violation and any mitigating circumstances (see subsection (D)(2) of this section):

- a. The violation created a risk to public health and the significance of the risk.
- b. The violation damaged the environment and the significance of the damage.
- c. The violation caused damage to public and private property and the significance of such damage.
- d. A history of similar violations, if any.
- e. The economic benefit of the violations, if any, to the person or entity responsible for the violations.

2. Mitigating circumstances which may be used to offset or reduce the time resulting from the application of the preceding factors are limited to:

- a. Full compliance with a voluntary compliance agreement and no history of similar violations.
- b. Full compliance with a voluntary compliance agreement and a history of one or two similar violations (lesser reduction).
- c. A "voluntary compliance agreement" is defined as a legally binding agreement entered into between the city and the alleged violators, by which the violator(s) acknowledge the existence of the violation, waive all appeal rights, and agree to and do pay a fine in an amount stipulated to between the violator and the city.

3. If the violation(s) are not corrected as ordered, or a voluntary compliance agreement is not entered into within that time period and no appeal is filed, the penalty for the next 15-day period shall be 150 percent of the initial penalties, and the penalties for the next 15-day period shall be 200 percent of the initial penalties. The intent of this subsection is to increase penalties beyond the maximum penalties stated as an additional means to achieve timely compliance.

4. Unless otherwise provided in a voluntary compliance agreement, civil penalties shall be paid within 30 days of service of the notice and order or stop work order if not appealed. Payment of the civil penalties assessed under this chapter does not relieve a person found to be responsible for a code violation of his or her duty to correct the violation or to pay any and all civil penalties or other cost assessments issued pursuant to this chapter.

5. The city may suspend immediate payment of civil penalties if the person responsible for a code violation has entered into a voluntary compliance agreement. Penalties shall begin to accrue again pursuant to the terms of the voluntary compliance agreement if any necessary permits applied for are denied, canceled or not pursued, if corrective action identified in the voluntary compliance agreement is not completed as specified, or if the property is allowed to return to a condition similar to that condition which gave rise to the voluntary compliance agreement; provided, however, that additional penalties shall not be imposed until additional notice and opportunity for hearing have been provided in accordance with Chapter 20.110 ECDC.

6. Civil penalties assessed create joint and several personal obligations in all persons responsible for a code violation.

E. The determination of the hearing examiner issued in accordance with Chapter 20.110 ECDC shall be appealable to the Snohomish County superior court in accordance with the provisions of Chapter 36.70C RCW.

F. The remedies provided for in this section shall not be exclusive. The city may also use other civil and administrative remedies available to it, including but not limited to the remedies provided in ECDC Title 19 and the state building and dangerous buildings codes. [Ord. 3792 § 1, 2010].

REFERENCE ONLY - SEE NEW CODE EFFECTIVE JAN 1, 2017