

POULSBO DISTRIBUTION SCHEDULE

ORDINANCE NO. 2010-01

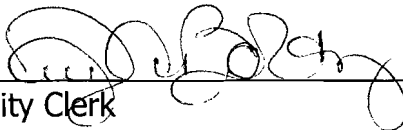
SUBJECT: Stormwater Management Ordinance

CONFORM AS TO DATES & SIGNATURES

- (X) Filed with the City Clerk: 01/11/2010
- (X) Passed by the City Council: 01/20/2010
- (X) Signature of Mayor
- (X) Signature of City Clerk
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City Clerk

Date January 21, 2010

ORDINANCE NO. 2010-01

AN ORDINANCE OF THE CITY OF POULSBO, WASHINGTON, PROVIDING FOR THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE CITIZENS OF POULSBO; THE PROTECTION AND ENHANCEMENT OF THE WATER QUALITY OF WATERCOURSES AND WATER BODIES OF THE CITY THROUGH THE REGULATION OF STORMWATER DISCHARGES FROM NEW DEVELOPMENT, REDEVELOPMENT, AND CONSTRUCTION SITE ACTIVITIES IN COMPLIANCE WITH THE REQUIREMENTS OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PHASE II MUNICIPAL STORMWATER PERMIT; ADDING A NEW CHAPTER 13.17 TO THE POULSBO MUNICIPAL CODE; AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, the regulation and management of stormwater runoff discharges from land development, redevelopment, and construction activities provides a method to control and minimize increased stormwater runoff rates and volumes, soil erosion, stream channel erosion, flooding, and nonpoint source pollution associated with stormwater runoff; and

WHEREAS, the regulation and management of stormwater runoff discharges from land development, redevelopment, and construction activities is in the public interest and will minimize threats to public health and safety, threats to public and private property, economic and beneficial use losses, maintenance costs of drainage systems, and habitat degradation for fish and other living aquatic resources; and

WHEREAS, the proper and timely maintenance of privately owned stormwater facilities is essential for the protection of aquatic resources and the reduction of maintenance costs; and

WHEREAS, the City of Poulsbo is subject to the requirements of the Western Washington Phase II Municipal Stormwater Permit issued by the Washington State Department of Ecology which requires the City to adopt regulations to address run-off from new development, redevelopment, and construction site activities; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF POULSBO, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Stormwater Management. A new chapter to be known as "Chapter 13.17 Stormwater Management" is hereby added to the Poulsbo Municipal Code to read as follows:

Section 13.17.010	Purpose
Section 13.17.020	Definitions
Section 13.17.030	Applicability
Section 13.17.040	Administration, approval, and inspection authority
Section 13.17.050	Requirements for approval of stormwater site plans
Section 13.17.060	General stormwater management requirements
Section 13.17.070	Plan submittal

Section 13.17.080	Performance deposit and agreement for site stabilization
Section 13.17.090	General maintenance requirements
Section 13.17.100	Maintenance covenant required for privately maintained drainage facilities
Section 13.17.110	Inspections of privately maintained stormwater facilities
Section 13.17.120	Assumption of permitted drainage facilities by the City
Section 13.17.130	Assumption of existing stormwater facilities
Section 13.17.140	Enforcement and penalties
Section 13.17.150	Appeals
Section 13.17.160	Construction - intent

13.17.010 Purpose.

A. Purpose. The provisions of this chapter are intended to establish regulations for all development, redevelopment, and construction activities within the City that will, or may, impact surface water or stormwater. The provisions of this chapter establish the minimum level of compliance which must be met to permit a property to be developed, redeveloped, or proceed with construction activities within the City. It is the purpose of this chapter to:

1. Protect the health, safety and welfare of the inhabitants of the City.
2. Provide a means of minimizing water quality impacts to surface and ground waters resulting from land development, redevelopment, and construction activities.
3. Maintain and protect storm water management infrastructure and downstream systems and properties.
4. Decrease stormwater-related damage to public and private property from existing and future runoff.
5. Preserve and enhance the aesthetic quality and suitability of surface waters for contact recreation, fishing, and other beneficial uses.
6. Provide minimum development regulations and construction procedures that will preserve, replace, enhance, or maintain existing vegetation and the natural qualities of lands, wetlands and water bodies to the maximum extent practicable.

13.17.020 Definitions.

The terminology in this chapter shall have the meanings described as follows:

"Best Management Practices (BMPs)" means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices that, when used singly or in combination, prevent or reduce the discharge of pollutants or other adverse impacts directly or indirectly to Waters of the State, and have been approved by the Washington State Department of Ecology. BMPs are listed and described in the Stormwater Manual.

"City" means Poulsbo, Washington, or as indicated by the context, the Public Works Director or other authorized representative of the governmental authority of the City of Poulsbo.

"Director" means the Public Works Director or designee(s).

"Impervious surface" means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling; however, open, uncovered retention/detention facilities shall not be considered as impervious surfaces for purposes of determining whether the thresholds for application of minimum requirements are exceeded.

"Land disturbing activity" means any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land-disturbing activity.

"Low Impact Development" means a non-structural measure for stormwater control and treatment that uses natural processes, restoration or enhancement of natural systems, or design approaches to control runoff and/or reduce pollutant levels. Such measures are used in lieu of or to supplement structural practices on a land development site. Non-structural measures include, but are not limited to: minimization and/or disconnection of impervious surfaces; development design that reduces the rate and volume of runoff; restoration or enhancement of natural areas such as riparian areas, wetlands, and forests; and on-lot practices such as rain barrels, cisterns, and vegetated areas that intercept roof and driveway 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.

"Maintenance covenant" means a legally recorded binding agreement between the City of Poulsbo and the person or persons holding title to a property served by a stormwater facility whereby the property owner promises to, among other things, maintain certain storm water facilities; grants the City the right to enter the subject property to inspect and to make certain repairs or perform certain maintenance procedures on the storm water control facilities when such repairs or maintenance have not been performed by the property owner; and promises to reimburse the City for the cost should the City perform such repairs or maintenance.

"Maintenance Procedures Manual" means a compilation of maintenance-related policies, standards, responsibilities, procedures, and practices developed by the Director to implement this chapter.

"Maintenance schedule" means a document detailing required stormwater facility maintenance activities to be performed at specified intervals.

"NPDES Permit" ("National Pollutant Discharge Elimination System Stormwater Discharge Permit") means the permit issued by the Washington State Department of Ecology on January 17, 2007 to the City of Poulsbo that authorizes the discharge of pollutants to waters of the United States. It shall also mean any permit appendices, subsequent modifications, and new permits for subsequent permit terms issued by the Washington State Department of Ecology. Also known as "Western Washington Phase II Municipal Stormwater Permit".

"New development" means land disturbing activities, including Class IV general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of impervious surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development.

"Off-site drainage analysis" means a study of those land areas contributing surface runoff to a development site as well as a study of the existing and predicted impacts of surface runoff from the development site on properties and drainage features that have the potential to receive stormwater from the development site.

"Operation and maintenance manual" means a written manual, prepared by a qualified civil engineer, that provides a description of operation and maintenance procedures for specific stormwater control facilities, for use by operation and maintenance personnel.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a piece of land. As used herein, owner also refers to, in the appropriate context: (i) any other person authorized to act as the agent for the owner; (ii) any person who submits a stormwater management concept or design plan for approval or requests issuance of a permit, when required, authorizing land development to commence; and (iii) any person responsible for complying with an approved stormwater management design plan.

"Person" means any individual, association, organization, partnership, firm, corporation, business or other entity recognized by law and acting as either the owner or as the owner's agent.

"Premises" means any building, lot, parcel of land, or portion of land whether improved or unimproved.

"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.

"Recharge" means the replenishment of underground water reserves.

"Redevelopment" means, on a site that is already substantially developed (i.e., has 35% or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities.

"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, the length of the project site and the right-of-way boundaries define the site.

"Stop Work Order" means an order issued that requires that all construction activity on a site be stopped.

"Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and/or other features of a stormwater drainage system into a defined surface water body or a constructed infiltration facility.

"Stormwater drainage system" means constructed and natural features which function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat, or filter stormwater. A system includes, but is not limited to, the City's municipal separate storm sewer system, roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, retention and detention basins, ditches, and other drainage structures.

"Stormwater facility" means a component of a manmade drainage feature, or features, designed or constructed to perform a particular function or multiple functions, including, but not limited to, pipes, swales, bioretention facilities, ditches, culverts, street gutters, detention basins, retention basins, wetponds, constructed wetlands, infiltration devices, catch basins, oil/water separators and sediment basins. Stormwater facilities shall not include building gutters, downspouts and drains serving one single-family residence.

"Stormwater Management" means the use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.

"Stormwater Manual" means the most current technical standards and specifications adopted by the City for stormwater management pursuant to Poulsbo Municipal Code 12.02 in accordance with the City's NPDES permit.

"Stormwater Site Plan" means a comprehensive report containing all of the technical information and analysis necessary to evaluate a proposed new development or redevelopment project for compliance with stormwater requirements for both construction and permanent stormwater management on the site.

"Watercourse" means a depression formed by runoff moving over the surface of the earth; any natural or artificial channel through which water flows; a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically.

"Waters of the State" means lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the State of Washington as defined in RCW 90.48.

13.17.030 Applicability.

All persons engaging in development, redevelopment, and/or construction site activities which meet the regulatory thresholds pursuant to Poulsbo Municipal Code 12.02 and the criteria set forth in this chapter shall be subject to its requirements. All public and private facilities constructed prior to the adoption of this Chapter shall be subject to the maintenance requirements of this chapter, except that a maintenance covenant is not required.

13.17.040 Administration, approval, and inspection authority.

A. Administrator. This chapter shall be administered, implemented and enforced by the Public Works Director or his/her designee(s). The Director shall have the authority to develop, adopt, and implement programs, policies and procedures to administer, implement, and enforce this chapter.

B. Review and approval. The Director may approve, conditionally approve, or deny any application for activities regulated by this chapter.

C. Inspection.

1. All development, redevelopment, and construction activities regulated by this chapter shall be inspected by the Director.

a. Prior to clearing and construction, the Director shall inspect all development sites that have a high potential for sediment transport as determined through plan review based on definitions and requirements of the NPDES permit.

b. The Director shall inspect projects at various stages of the work requiring approval to determine that adequate control is being exercised. Stages of work requiring inspection include, but are not limited to, preconstruction, installation of BMPs, land-disturbing activities, installation of utilities, permanent storm water control facilities, landscaping, retaining walls and completion of project. When required by the Director, special inspection and/or testing shall be performed.

2. The Director is directed and authorized to develop a maintenance inspection program for stormwater facilities in the City as provided for in Section 13.17.110.

13.17.050 Requirements for approval of stormwater site plans.

A. Stormwater site plan approval required. Except for exempt activities as described in subsection D below, no regulated activity may be conducted on any site within the City unless and until the person proposing to conduct such an activity shall have applied for and obtained approval of a stormwater site plan from the Director.

B. Regulated Activities. Consistent with the minimum requirements contained in the Stormwater Manual and any other applicable standards adopted pursuant to Poulsbo Municipal Code 12.02, the Director shall approve or disapprove stormwater site plans for the following activities, unless exempted in subsection D below:

1. New development.

- a. Land disturbing activities;
- b. Structural development, including construction, installation or expansion of an existing building or other structure;
- c. Creation of impervious surfaces;
- d. Class IV general forest practices that are conversions from timber land to other uses; and
- e. Subdivision, short subdivision and binding site plans, as defined in RCW 58.17.

2. Redevelopment.

- a. The creation, addition, and/or replacement of impervious surfaces that is not part of a routine maintenance activity;
- b. Structural development including construction, installation or expansion of a building or other structure;

c. Land disturbing activities, including those associated with structural or impervious surface redevelopment;

3. Incremental development or redevelopment. Projects that are incrementally developed or redeveloped at levels below the regulatory thresholds for land disturbance pursuant to the NPDES permit, as the same now exists or as the same may be hereafter amended or superseded, and which are not part of a larger development at the time, must address the cumulative changes in the amount and type of impervious surfaces and land disturbed once the combined increments meet or exceed minimum regulatory threshold values.

C. Additional reviewers. The following agencies may also require a drainage review to assess a site's impact. Any requirements imposed by these agencies are separate from the city mandates. It is the applicant's sole responsibility to resolve any conflicting issues that may arise from submittal reviews.

1. U.S. Army Corps of Engineers;
2. Washington State Department of Natural Resources;
3. Bremerton-Kitsap County Health District;
4. Washington State Department of Ecology: general permit is required for sites that disturb one acre or more;
5. Washington State Department of Fish and Wildlife;
6. Washington State Department of Transportation; and
7. Kitsap County.

D. Exemptions. The following activities are exempt from the provisions of this chapter:

1. Activities as described and detailed in Section 1 of NPDES Permit Appendix 1 and subsequent permit renewals, modifications, and/or amendments; and
2. Activities undertaken by the Washington State Department of Transportation (WSDOT) within state highway rights-of-way and which is regulated by Chapter 173-270 of the Washington Administrative Code, the Puget Sound Highway Runoff Program.

13.17.060 General stormwater management requirements.

A. Design, construction and maintenance requirements. Stormwater management design, construction, and maintenance standards, thresholds, and technical requirements are as adopted pursuant to Poulsbo Municipal Code 12.02 and the provisions of this chapter.

B. Low Impact Development. Low impact development methods may be utilized when designed and constructed in accordance with the standards and criteria adopted pursuant to Poulsbo Municipal Code 12.02; however, the use of LID techniques shall not be in conflict with other City codes or standards. Requirements to address site conditions, access, and long-term maintenance shall be taken into account prior to approval.

C. Prohibition of illicit discharges. In accordance with the City's NPDES permit and Poulsbo Municipal Code Chapter 13.18, it is unlawful for any person to throw, drain, or otherwise discharge, or cause or allow others under its control to throw, drain or otherwise discharge any materials other than stormwater into the municipal storm drain system and/or surface and ground waters of the City. Prohibited materials include, but are not limited to, pollutants or waters containing any pollutants, that cause or contribute to a violation of applicable water quality standards. The commencement, conduct, or continuance of any illicit discharge to the stormwater drainage system is prohibited.

D. Maintenance covenant. Development and redevelopment projects which meet the regulatory thresholds adopted pursuant to Poulsbo Municipal Code 12.02 and which will have privately owned storm drainage facilities shall be required, as a condition of approval for development/redevelopment, to provide a maintenance covenant in accordance with Section 13.17.100.

13.17.070 Plan submittal.

A. Affected parties. All development and redevelopment projects meeting the regulatory thresholds adopted pursuant to Poulsbo Municipal Code 12.02 shall submit plans and analyses to the City for approval in accordance with the technical requirements of Poulsbo Municipal Code 12.02, the criteria stipulated in this section, and the policies and procedures of the Director.

B. Fees and deposits. Plan review and inspection fees and deposits shall be paid pursuant Poulsbo Municipal Code 3.12.

C. Qualifications. All plans and analyses shall be prepared by a qualified professional engineer.

D. Required submittals. Submittals shall include the following, along with any other additional information required by the Director:

1. Off-site drainage analysis. An off-site drainage analysis identified as "optional guidance" in Volume 1 of the Stormwater Manual shall be mandatory and shall be prepared by a qualified professional engineer and be based on a field investigation of the development's off-site contributing and receiving drainage areas.

2. Geotechnical analysis. A geotechnical analysis prepared by a professional geotechnical engineer or licensed engineering geologist is required for development activities where grading or the construction of retention facilities, detention facilities, or other storm water facilities is proposed within a critical area pursuant to Poulsbo Municipal Code 16.20, or where the Director deems that the proposed construction

poses a potential hazard due to its proximity to a critical area. The analysis shall address the effects of groundwater interception and infiltration, seepage, potential slip planes and changes in soil bearing strength. Analysis of additional elements may be required.

3. Hydrogeological report. A hydrogeological report is required for development activities occurring in Critical Aquifer Recharge Areas pursuant to Poulso Municipal Code 16.20.

4. Soils analysis. A soils analysis is required where the soils underlying the proposed project have not been mapped, or where existing soils maps of the project site are inconsistent, or where the Director deems that existing soils maps of the project site are not of sufficient resolution to allow proper engineering analysis.

5. Operation and maintenance manual. An operation and maintenance manual that is consistent with this chapter and the Stormwater Manual shall be provided for all proposed stormwater facilities and BMPs. The party/parties responsible for maintenance and operation shall be identified in the operation and maintenance manual. For private facilities, a copy of the manual shall be provided to the City prior to occupancy and a copy shall be retained onsite or within reasonable access to the site, and shall be transferred with the property to subsequent owners. The property owner shall keep a log of maintenance activity that indicates what actions were taken and make the log available for inspection by the Director. The copy of the manual submitted to the City shall be retained in the Public Works Department.

13.17.080 Performance deposit and agreement for site stabilization.

Pursuant to Poulso Municipal Code 15.35, all development subject to clearing and/or grading permits or development that involves soil disturbing activity to an extent that is potentially damaging to the environment or property shall be required to execute an agreement and make a cash deposit in an amount determined by the City Engineer to be sufficient to guarantee the performance and maintenance of site stabilization measures. The applicant shall also execute a right-of-entry authorizing the City and its authorized representatives and contractors to enter upon the property for the purpose of: (1) inspecting the premises for compliance with the permit conditions secured by the cash deposit required herein, and (2) performing any and all work necessary to provide interim erosion control, site stabilization, and control of drainage in the event of the permit applicant's failure to comply with the permit conditions secured by the cash deposit. The agreement and deposit shall remain in place until the City Engineer has granted final acceptance of the permitted activities.

13.17.090 General maintenance requirements.

A. Maintenance required. All public and private stormwater facilities shall be operated and maintained in accordance with this chapter and the following. Systematic, routine preventive maintenance is the goal of this chapter. Where differences occur between the standards, the most restrictive standards shall apply unless specifically determined otherwise by the Director.

1. The provisions of the Stormwater Manual, as adopted pursuant to Poulsbo Municipal Code 12.02, as the same now exists or as the same may be hereafter amended or superseded.

2. The provisions of the NPDES Permit, as the same now exists or as the same may be hereafter amended or superseded.

3. The provisions of an Operations and Maintenance Manual which the Director is hereby authorized to develop, adopt, and update as necessary in order to implement this chapter.

4. The provisions of any maintenance standards established pursuant to Section B below.

5. The provisions of any approved Operation and Maintenance Manual for the facilities, as required by Section 13.17.070 of this chapter.

6. The provisions of the manufacturer for manufactured BMPs.

7. Where lack of maintenance is causing or contributing to a water quality problem, immediate action shall be taken by the property owner to correct the problem. If a problem is observed by the City, after initial recognition of the problem, the City inspector shall revisit the facility to assure that the problem has been rectified within the time frame allowed by any Notice and Order issued pursuant to Section 13.17.140.

8. Disposal of waste from maintenance activities shall be conducted in accordance with the minimum Functional Standards for Solid Waste Handling, Chapter 173-304 WAC, and where appropriate, the Dangerous Waste Regulations, Chapter 173-303 WAC.

B. Establishment of additional standards. Pursuant to the NPDES permit, as the same now exists or as the same may be hereafter amended or superseded, the Director is hereby authorized to develop maintenance standards for facilities which do not have standards provided for in the stormwater manual.

C. Responsibility for maintenance.

1. Determination. Prior to approval of any stormwater site plan required to be submitted under this chapter, the Director shall determine whether such facilities are appropriately a part of the City-owned and maintained stormwater drainage system or whether the facilities shall remain privately owned and maintained. The conditions of approval for the site plan shall address the Director's determination and reflect the requirements of this section.

2. City-owned stormwater facilities. The City shall be responsible for the operation, maintenance, and repair of all City-owned stormwater drainage systems and BMPs.

3. Privately-owned stormwater facilities. Property owners shall be responsible for the maintenance, operation, and repair of privately owned stormwater drainage systems and BMPs. Privately owned facilities are those which have not been assumed by the City pursuant to Section 13.17.120.

a. Where a privately owned stormwater drainage system is located in a private easement, the owner of the stormwater drainage system shall be responsible for obtaining all necessary rights to maintain the same from the owners of the property on which the system is located.

b. The maintenance requirements specified in this chapter shall be enforced against the owner(s) of the subject property served by the stormwater facility. In addition, all properties are subject to Chapter 13.18, Illicit Discharge and Detection and Elimination.

13.17.100 Maintenance covenant and compliance inspections required for privately maintained drainage facilities.

A. Maintenance covenant required. Development and redevelopment projects which meet the technical thresholds adopted pursuant to Poulsbo Municipal Code 12.02 and which will have privately owned storm drainage facilities shall be required, as a condition of approval for development/redevelopment, to provide a maintenance covenant and allow compliance inspections. Prior to the use of the development or redevelopment project, a maintenance covenant shall be recorded on a form approved by the City Attorney, which guarantees the City of Poulsbo that the stormwater facilities shall be properly operated, maintained and inspected by the property owner, and which gives the City the right of entry to enter and inspect the facility for conformance with the covenant, compliance with this chapter, and to take any necessary enforcement action pursuant to this chapter and Chapter 13.18. The restrictions set forth in such covenant shall run with the land be included in any instrument of conveyance of the subject property and shall be recorded with the Kitsap County auditor. Recording costs shall be paid by the owner.

B. Term of covenant. Maintenance covenants shall remain in force for the life of the development.

13.17.110 Inspections of privately maintained stormwater facilities.

A. Purpose. The purpose of the inspection program for privately maintained stormwater facilities shall be to determine if the stormwater facilities, conveyance structures, and water quality facilities are in good working order and are properly maintained, and to ensure that stormwater quality BMPs are in place and that nonpoint source pollution control is being implemented.

B. Property owner required to perform and document periodic inspections. The property owner is responsible for the inspection of all components of his stormwater facilities and for documenting all maintenance and inspection activities. Inspection, maintenance, and documentation shall be performed in accordance with this chapter.

C. Frequency.

1. Annual Inspection. Inspection of stormwater treatment and flow control facilities shall be conducted at least annually. The Director may determine that more frequent inspections are required due to:

- a. The type of facility involved;
- b. The critical nature of the facility;
- c. Unique site conditions or special circumstances affecting the property;
- d. Other factors related to public or environmental protection; or
- e. The manufacturer of any BMP recommends more frequent inspections.

2. Frequency reduction. A reduction in inspection frequency from the minimum annual requirement shall be in accordance with the requirements of the NPDES Permit.

3. For new residential developments that are part of a larger common plan of development or sale, flow control and water quality treatment facilities, including catch basins, shall be inspected every 6 months during the first two years following subdivision approval or until 80% of the houses are complete, whichever is later.

D. Compliance inspections authorized. Whenever necessary to fulfill the requirements of the inspection program or whenever there is cause to believe that a violation of this chapter has occurred or is occurring, the Director is authorized to make inspections of privately maintained stormwater drainage systems within the City in order to determine compliance with this chapter. Inspections by the Director do not relieve the owner of his obligations under this chapter and are not in lieu of the inspections required of the owner.

E. Inspection hours. All inspections shall be conducted during regular business hours or at other reasonable times, provided that inspections may occur at other times in the case of an emergency or as circumstances related to any alleged violation may warrant.

F. Inspection access to properties with a maintenance covenant. Access by the Director is secured without prior approval by the owner in accordance with the maintenance covenant required pursuant to Section 13.17.120.

G. Inspection access to properties without a maintenance covenant. Prior to making any inspection, the Director shall present identification credentials to the owner or other person occupying or in control of the property where the stormwater drainage facility is located, shall state the reason for the inspection, and shall request entry. Entry shall be limited as follows:

- 1. If the property or any building or structure on the property is unoccupied, the Director shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the property or portions of the property and request entry.

2. If after reasonable effort, the Director is unable to locate the owner or other person(s) having charge or control of the property, and has reason to believe the condition of the stormwater drainage system creates an imminent hazard to persons or property, the Director may enter.

3. Unless entry is consented to by the owner or person(s) in control of the property or portion of the property or unless conditions are reasonably believed to exist which create imminent hazard, the Director shall obtain a warrant, prior to entry, as authorized by the laws of the State of Washington.

4. The Director may inspect the stormwater drainage system without obtaining a search warrant provided for in Subsection 3 above, provided the inspection can be conducted while remaining on public property or other property on which permission to enter is obtained.

H. Documentation.

1. Maintenance and inspection activities shall be documented and a copy of said documentation shall be provided to the City in accordance with the Operations and Maintenance manual adopted pursuant to Section 13.17.090(A)(3).

2. Maintenance and inspection records for each facility shall be maintained on file by the City in accordance with the policies and procedures adopted pursuant to this chapter.

13.17.120 Assumption of permitted drainage facilities by the City

A. Determination. Pursuant to Section 13.17.090(C), the Director shall determine which permitted facilities are appropriate for City ownership and maintenance.

B. Maintenance Bond or Other Security. After satisfactory completion of facilities which are to be owned and maintained by the City, the applicant constructing the facilities shall commence a maintenance period during which the applicant shall guarantee that the facilities will remain free from defects in workmanship or materials and shall operate according to the approved design thereof. The maintenance period shall be for two years or, in the case of single-family residential plats, until eighty percent of the residences are complete, whichever is longer. A maintenance bond or other suitable security, in a form approved by the City Attorney and in an amount to be determined by the Director, shall be posted to guarantee such obligation for the maintenance period.

C. Assumption. The City may assume operation, and maintenance responsibility for retention/detention or other stormwater drainage facilities proposed for assumption in an approved stormwater site plan after expiration of the warranty period established by Section (B) above if the following conditions are met:

1. All of the requirements of the approved plan have been complied with and the storm water facility, as designed and constructed, conforms to the provisions of this chapter; and

2. In single-family residential plats at least eighty percent of the lots have been completed, unless waived by the Director; and

3. All drainage facilities have been inspected and accepted by the Director and have been in satisfactory operation for at least two years; and

4. The applicant has made corrections or repairs to the facility as directed by the Director; and

5. All drainage facilities reconstructed during the maintenance period have been accepted by the Director; and

6. For non-standard drainage facilities, an operation and maintenance manual, including a maintenance schedule, has been submitted to and accepted by the City; and

7. All necessary easements or dedications entitling the City to properly own and/or operate and maintain the facility have been conveyed to the City and recorded with the Kitsap County auditor; and

8. The applicant has supplied to the City an accounting of maintenance activities, including those scheduled as required plus any additional activities, and expenses for the permanent drainage facilities up to the end of the maintenance period; and

9. A complete and accurate set of reproducible as-built drawings have been provided to the City. A professional engineer shall certify that both the vertical and horizontal alignment meet the design objectives.

13.17.130 Assumption of existing stormwater facilities.

A. Conditions for assumption. The City may accept for maintenance those stormwater facilities for single-family residential plats existing prior to the effective date of the ordinance codified in this chapter that meet the following conditions:

1. Improvements have been completed on at least eighty percent of the lots; and

2. The person or persons holding title to the properties served by the stormwater facilities show proof of the correction of any defects in the drainage facilities, as required by the Director; and

3. An inspection by the Director has determined that the stormwater facilities are functioning as designed; and

4. The stormwater facilities have had at least two years of satisfactory operation and maintenance, unless otherwise waived by the Director; and

5. The person or persons holding title to the properties served by the stormwater facilities submit a petition containing the signatures of the title holders of more than fifty

percent of the lots served by the stormwater facilities requesting that the City maintain the stormwater facilities; and

6. All necessary easements or dedications entitling the City to properly access, own, and/or operate and maintain the facility have been conveyed to the City and recorded with the Kitsap County auditor.

13.17.140 Enforcement and penalties.

A. Authorization. The Director is authorized to enforce this chapter and any permit, order, or approval issued pursuant to this chapter, against any violation or threatened violation thereof.

B. Cumulative Civil Penalty. Any person who violates the provisions of this chapter, who fails to operate or maintain a stormwater drainage facility according to the provisions of this chapter or any condition of an approved stormwater site plan, who fails to comply with corrective measures set forth in a notice and order issued under this section, or who aids or abets any other person in any such violation or failure to comply, shall incur a cumulative civil penalty in the amount of one hundred dollars per day for each day that elapses from the date set by the Director for correction until the correction takes place.

C. Notice and Order. Whenever the Director determines that a violation or failure to comply has or is occurring, the Director is authorized to issue a Notice and Order to the violator. The Notice and Order shall be in writing and shall contain:

1. The name and address of the violator, if known;
2. The street address, when available, and the tax parcel number of the real property or a legal description sufficient for identification of the building, structure, premises, or land upon or within which the violation is occurring;
3. A statement of the nature of such violation(s);
4. A statement of the action required to be taken in order to correct the violation, including repair of any stormwater drainage facility, as determined by the Director, and a date for correction; and
5. A statement that a cumulative penalty as provided in subsection (B) shall be assessed against the violator for each and every day following the date set for correction on which the violation continues.

D. Service of Notice. The notice may be served upon the violator by use of any or all of the following methods:

1. By personal delivery, in which case the notice shall be deemed received on the date delivered; or

2. By posting the notice on the property on which the violation has or is occurring, together with mailing as provided in subsections (3) or (4), in which case the notice shall be deemed received as provided in those subsections; or

3. By certified mail, return receipt requested, in which case the notice shall be deemed received upon signature of the return receipt; or

4. By regular mail, in which case the notice shall be deemed received three days after the Director deposits the same, postage prepaid, in the United States mail.

E. Stop Work Order. In addition to the notice of violation, the Director may issue a stop work order if an action is being undertaken in violation of this chapter. If a portion of a project is in violation of this chapter, the Director may issue a stop work order for the entire project. Stop work orders shall be issued as follows:

1. The order shall contain:

a. A description of the nature, extent, and time of the violation; and

b. A requirement that the violation immediately cease and, in appropriate cases, the specific corrective action, including site restoration, to be taken within a specific time.

2. Stop work orders shall become effective immediately upon service of the same upon the violator. Service shall be effective upon the sooner of:

a. Personal delivery; or

b. Posting of the site of the violation; or

c. Receipt of certified mail, return receipt requested; or

d. Three days after the Director deposits the same, postage prepaid, in the United States mail.

F. Criminal Penalty. Any person violating any stop work order issued under the provisions of this chapter shall be guilty of a gross misdemeanor and, upon conviction thereof, shall be punished as provided in Section 2.16.110(C) of the Poulsbo Municipal Code.

G. Nuisance. In addition to the penalties provided elsewhere in this section, any condition caused or permitted to exist in violation of the provisions of this chapter is a public nuisance, and any and all remedies given by law for the prevention and abatement of nuisances shall apply in addition to any other remedy.

H. Remedies not exclusive. The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state, or local law or ordinance and it is within the discretion of the City to seek cumulative remedies.

13.17.150 Appeals.

A. Appeal submittal. The Director's Notice and Order may be appealed to the City Council by persons to whom the Notice and Order is issued. An appeal shall be considered timely if, but only if, it is filed in writing with the Director within 10 working days of service, and the appeal fee is paid in full. In addition to the appeal fee, if the Director determines that the services of an independent consultant are reasonably necessary in adjudicating the appeal, the appellant shall make an initial cash deposit to pay for an independent review as the same may be reasonably required by the Director. The initial deposit, which is only an estimate of the consultant's costs, shall be paid in advance of the hearing. If it is determined during any point in the appeal process that the initial deposit is insufficient to cover all reasonable consultant costs, the appellant shall be required to make an additional deposit in an amount sufficient to cover the same. Any portion of the deposit that is not used to cover all reasonable consultant costs shall be refunded to the appellant. The amount of the deposit shall be at least \$500 but not more than \$1500, and it shall be determined by the Director based upon a good faith estimate of permissible costs. The appellant shall be given equal access to any report prepared by the consultant.

B. Hearing schedule and fee refunds. The Director shall accept appeals that meet the requirements of this section and shall schedule such appeals for consideration by the City Council. The City Council hearing shall be scheduled within 60 days after the appeal is accepted. The Director shall reject any appeal that fails to meet the filing and submittal requirements of this section. The appeal fee shall be refunded in the event the Director rejects the appeal or in the event that the appellant files a statement with the Director withdrawing the appeal at least 15 calendar days before the scheduled hearing. In all other cases, the appeal fee shall be nonrefundable.

C. Appeal contents. The written appeal shall contain all of the following information and attachments:

1. A copy of the notice and order being appealed;
2. The name of the property owner and, if applicable, the owner's agent;
3. The name and signature of each appellant and a statement showing that each is entitled to file the appeal under subsection A of this section; and
4. A statement of appeal identifying each issue in the notice and order that the appellant wishes to appeal, the reasons why each issue is in error as a matter of fact and/or law, and evidence relied upon.

D. Appeal hearing. The City Council, under its quasi-judicial authority, shall hear the appeal in an open record hearing. At least ten business days before the hearing, notice of the same shall be mailed to parties who are entitled to notice of the decision. The notice of hearing does not need to be posted or published. The appeal shall be limited to those issues raised in subsection (C)(4), and shall be similar in format as other quasi-judicial matters that may from time to time come before the City Council.

E. Appellant report. At least ten business days before the hearing, the appellant shall submit, as part of the record, a report to the City Council containing a statement of the issues and applicable laws, discussion and analysis, proposed findings of fact and conclusions of law, and copies of any pertinent documents referenced therein. The burden shall be on the City to support the order of the Director by a preponderance of the evidence. Reports, if any, prepared by the independent consultant referenced above in subsection (A) shall be part of the record. The City Council shall decide as follows, based upon the record made during the course of the public hearing:

1. Uphold the order of the Director in its entirety; or
2. Uphold the order of the Director in part and reverse the order in part; or
3. Reverse the order of the Director in its entirety.

F. City Council decision. The City Council shall issue a final decision on the appeal supported by written findings and conclusions within 10 business days of the hearing. The decision shall also include venue information and limitations on filing judicial appeal(s) of the decision. The Director shall serve a copy of the final decision to the appellant and other parties of record. Service shall be in the same manner as set forth in Section 13.17.160(D).

13.17.160 Construction - intent.

This chapter is enacted as an exercise of the City's power to protect and preserve public health, safety, and welfare. Its provisions shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. This chapter is not enacted to create or otherwise establish or designate any particular class or group of persons who will, or should be, especially protected or benefited by the terms of this chapter. The primary obligation of compliance with this chapter is placed upon the person holding title to the property. Nothing contained in this chapter is intended to be, or shall be, construed to create or form a basis for liability for the City, its officers, employees or agents for any injury or damage resulting from the failure of the person holding title to the property (owner of record) to comply with the provisions of this chapter, or by reason or in consequence of any act or omission, to act in connection with the implementation or enforcement of this chapter by the City, its officers, employees, or agents.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance or any code section adopted or amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance or any code section adopted or amended hereby.

Section 3. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of the attached summary, which is hereby approved.

APPROVED:



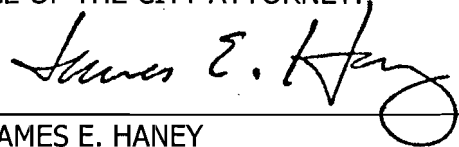
MAYOR, REBECCA ERICKSON

ATTEST/AUTHENTICATED:



CITY CLERK, JILL A. BOLTZ

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 

JAMES E. HANEY

FILED WITH THE CITY CLERK: 01/11/2010
PASSED BY THE CITY COUNCIL: 01/20/2010
PUBLISHED: 01/29/2010
EFFECTIVE DATE: 02/03/2010
ORDINANCE NO. 2010-01

SUMMARY OF ORDINANCE NO. 2010-01


of the City of Poulsbo, Washington

On the 20th day of January, 2010, the City Council of the City of Poulsbo passed Ordinance No. 2010-01. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF POULSBO, WASHINGTON, PROVIDING FOR THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE CITIZENS OF POULSBO; THE PROTECTION AND ENHANCEMENT OF THE WATER QUALITY OF WATERCOURSES AND WATER BODIES OF THE CITY THROUGH THE REGULATION OF STORMWATER DISCHARGES FROM NEW DEVELOPMENT, REDEVELOPMENT, AND CONSTRUCTION SITE ACTIVITIES IN COMPLIANCE WITH THE REQUIREMENTS OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PHASE II MUNICIPAL STORMWATER PERMIT; ADDING A NEW CHAPTER 13.17 TO THE POULSBO MUNICIPAL CODE; AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

The full text of this Ordinance will be mailed upon request.

DATED this 21st day of January, 2010.


CITY CLERK, JILL A. BOLTZ