

Title 12
SURFACE WATER

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Chapter 12.01
GENERAL PROVISIONS

Sections:

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12.01.085 Relation to other laws.

12.01.090 Requirement to prevent, control, and reduce stormwater pollutants by the use of Best Management Practices (BMPs).

12.01.010 Intent and purpose.

The intent and purpose of this ~~chapter~~ **Title** is to provide for the health, safety, and general welfare of the citizens of the City of Albany and to protect and enhance the water quality and natural functions of watercourses and water bodies through the regulation of stormwater discharges; to set forth uniform requirements for direct and indirect contributors to the stormwater system; and to enable the City of Albany to comply with applicable state and federal laws. (Ord. 5498 § 1, 2001).

Notwithstanding the forgoing, nothing herein shall be deemed to impose a duty on the City to protect the property, health, or safety of third parties.

12.01.020 Objectives.

The objectives of this ~~chapter~~ **Title** are:

- (1) To prevent the introduction of pollutants **onto public rights-of-way, or** into the municipal stormwater system, ~~into~~ receiving waters, ~~waters~~ **Waters** of the State, and the environment;
- (2) To prohibit illicit connections and discharges to the stormwater system;
- (3) To protect, maintain and restore the integrity of waterways for their natural functions;
- (4) To prevent and control non-point source pollution, land surface erosion, sedimentation, and stream channel erosion;
- (5) To limit the effect of land-disturbing activities on the **municipal stormwater system and waters Waters** of the State;
- (6) To authorize the imposition of permit requirements and the collection of related fees to govern land-disturbing activities;**
- ~~(6)~~**(7)** To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this ~~chapter~~ **Title**;
- ~~(7)~~**(8)** To authorize the collection of in-lieu-of-assessment fees for properties that have not participated in the cost of constructing public stormwater facilities;
- ~~(8)~~**(9)** To authorize the imposition of a systems development charge fee and user charges for the construction, operation, and maintenance of stormwater system and facilities;
- ~~(9)~~**(10)** To protect and maintain the functions and values of areas within floodplains. (Ord. 5498 § 1, 2001).

12.01.030 Abbreviations.

- (1) “ENR” means “Engineering News Record.”
- (2) “NPDES” means “National Pollutant Discharge Elimination System.” (Ord. 5498 § 1, 2001).
- (3) “MS4” means “Municipal Separate Storm Sewer System.”**
- (4) “BMP” means “Best Management Practice.”**
- (5) “EPSC” means “Erosion Prevention and Sediment Control.”**
- (6) “ORS” means “Oregon Revised Statute.”**
- (7) “OAR” means “Oregon Administrative Rule.”**
- (8) “TMDL” means “Total Maximum Daily Load.”**

12.01.040 Definitions.

(1) **“Agricultural activity”** means private or commercial activities directly engaged in the production of nursery stock, sod, fruits, vegetables, forages, cover crops, field crops (grain, corn, oats, beans, etc.), timber, and livestock, or other related activities determined by the Director to conform to this definition; but shall not include construction or other activities for structures associated with agricultural activities.

(2) **“Best Management Practices (BMPs)”** means schedules of activities; prohibitions of deleterious practices; general good housekeeping practices; physical, structural, or chemical interventions; pollution prevention and educational activities; maintenance activities; and other management practices that prevent or minimize to the greatest extent practicable the discharge of pollutants directly or indirectly to public rights-of-way, the municipal stormwater system, receiving waters, or Waters of the State.

~~(1)~~(3) **“City”** means the City of Albany, a municipal corporation of the State of Oregon.

~~(2)~~(4) **“City Manager”** means the person chosen by the Albany City Council to meet the requirements of Section 22 of the Albany Charter or such person as may be designated by the City Manager to act in his/her name and capacity.

~~(3)~~(5) **“Clean Water Act”** means the federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and any subsequent amendments thereto.

(6) **“Construction Activity”** means activities related to any land development or construction project including but not limited to clearing and grubbing, grading, excavating, and demolition.

~~(4)~~(7) **“Director”** means the person, ~~or the duly authorized representative,~~ designated by the City Manager to supervise the Public Works Department and who is charged with certain duties and responsibilities by this ~~chapter~~ **Title, or the duly authorized representative.**

~~(5)~~(8) **“Discharger”** means any person who discharges or causes to be discharged any pollutant **onto public rights-of-way or into the municipal stormwater system, receiving waters, or Waters of the State.**

~~(6)~~(9) **“Floodplain”** means the relatively flat or lowland area adjoining a river, stream, watercourse, lake, or other water body that has been, or may be, inundated temporarily by floodwater.

~~(7)~~(10) **“Hazardous materials”** means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

~~(8)~~(11) **“Illegal discharge”** means any direct or indirect ~~non-stormwater~~ **pollutant-bearing** discharge to the **municipal stormwater system, receiving waters, or Waters of the State,** excepted as exempted by AMC 12.10.010.

~~(9)~~(12) **“Illicit connection”** is defined as either of the following:

(a) Any drain or conveyance, whether on the surface or subsurface, that allows an illegal discharge to enter the stormwater system including but not limited to any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the stormwater system and any connections to the stormwater system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency; or

(b) Any drain or conveyance connected from a commercial or industrial land use to the stormwater system that has not been documented in drawings, maps, or equivalent records and approved by the City.

(13) **“Land-disturbing activity”** means any activity that exposes the soil to erosion.

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

~~(10)~~(15) **“Nonpoint source”** means ~~causes~~ any source of water pollution that ~~are~~ is not associated with point sources. **Generally, a nonpoint source is a diffuse or unconfined source of pollution that can either enter into or be conveyed by the movement of water into the municipal stormwater system, receiving waters, or Waters of the State. Examples include: fertilizer/pesticide runoff;**

~~sediment runoff from construction; materials from deicing activities (salt or sand). Nonpoint sources may enter a discrete conveyance system and become a point source.~~

~~(11)~~**(16)** “Non-stormwater discharge” means any discharge to the stormwater system that is not composed entirely of stormwater.

~~(12)~~**(17)** “Person” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. The masculine gender shall include the feminine; the singular shall include the plural where indicated by the context.

~~(13)~~**(18)** “Point source” means any discernable, confined, and discrete conveyance, including but not limited to pipes, ditches, channels, tunnels, or conduits, from which pollutants are or may be discharged to a receiving water.

~~(14)~~**(19)** “Pollutant” means **any material or substance which may alter the chemical, physical, biological, and/or radiological condition of the Waters of the State.** ~~anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oils; automotive fluids; nonhazardous liquid and solid wastes and yard wastes; any liquid having a temperature that could have an adverse effect on the receiving streams; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal bacteria and pathogens; dissolved and particulate metals; animal wastes; residues that result from constructing a building or a structure (including but not limited to sediments, slurries, and concrete rinsates); and noxious or offensive matter of any kind.~~

~~(15)~~**(20)** “Pollution” means the human-made or human-induced **contribution of any pollutant into the municipal stormwater system, receiving waters, or Waters of the State.**~~alteration of the quality of waters by waste to a degree that unreasonably affects, or has the potential to unreasonably affect the waters of the State.~~

~~(16)~~**(21)** “Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

~~(17)~~**(22)** “Stormwater system” means any watercourse or facility by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems or ditches, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures. **The municipally owned portion of the stormwater system may also be referred to as a Municipal Separate Storm Sewer System (MS4).**

~~(18)~~**(23)** “Stormwater” means any surface flow, runoff, and drainage consisting entirely of water from precipitation events.

(24) “Toxic” means any substance or combination of substances listed as toxic in regulations promulgated by the Environmental Protection Agency in Section 307 (a)(1) of the Clean Water Act or Title III Section 313 of the Superfund Amendments and Reauthorization Act.

~~(19)~~**(25)** “Water or ~~waters~~ Waters of the State” means **all natural waterways, intermittent streams, constantly flowing streams, lakes, wetlands, and all other navigable and non-navigable bodies of water** ~~any lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters); which are wholly or partially within or bordering the State or within its jurisdiction.~~

~~(20)~~**(26)** “Watercourse” means a channel in which a flow of water occurs, either continuously or intermittently, and if the latter, with some degree of regularity. Watercourses may be either natural or artificial. (Ord. 5498 § 1, 2001).

12.01.050 Applicability.

This ~~chapter~~ **Title** shall apply to all water entering the stormwater system generated on any developed and undeveloped lands unless explicitly exempted by AMC 12.10.010. (Ord. 5498 § 1, 2001).

12.01.060 Responsibility for administration.

The Director shall be authorized to administer, implement, and enforce the provisions of this Title. Any powers granted or duties imposed upon the Director are also conferred upon those persons tasked by the Director to administer, implement, and enforce the provisions of this Title. The Director shall have the authority to develop and implement procedures, policies, standards, and forms necessary for the implementation of this Title. The Director is granted discretion to allocate resources, or undertake enforcement of this Title as he or she deems appropriate with consideration to time, resources, and conflicting obligations of the City and its staff. ~~The Director shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon the Director may be delegated in writing by the Director to persons or entities acting in the beneficial interest of or in the employ of the City. (Ord. 5498 § 1, 2001).~~

12.01.070 Severability.

The provisions of this ~~chapter~~ **Title** are hereby declared to be severable. If any provision, clause, sentence, or paragraph of the ~~chapter~~ **Title** or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ~~chapter~~ **Title**. (Ord. 5498 § 1, 2001).

12.01.080 Ultimate responsibility of the discharger.

The standards set forth herein and promulgated pursuant to this ~~chapter~~ **Title** are minimum standards; therefore this ~~chapter~~ **Title** does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into the waters of the State caused by said person. This ~~chapter~~ **Title** shall not create liability on the part of the City of Albany, or any agent or employee thereof for any damages that result from any discharger's reliance on this ~~chapter~~ **Title** or any administrative decision lawfully made thereunder. (Ord. 5498 § 1, 2001).

12.01.085 Relation to other laws.

Neither Title 12 nor any administrative decision made under it exempts the permittee or any other person from procuring other required permits or complying with the requirements and conditions of such permit; or complying with any other applicable law or regulation; or limits the right of any person to maintain, at any time, any appropriate action, at law or in equity; for relief or damages against the permittee or any other person arising from the activity regulated by Title 12.

Where the provisions of Title 12 impose restrictions different from those set forth in other regulations under the Albany Municipal Code, Land Development Code, or State or Federal regulations, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

12.01.090 Requirement to prevent, control, and reduce stormwater pollutants by the use of Best Management Practices.

The Director may require Best Management Practices (BMPs) for any activity, operation, or facility which may cause or contribute to the introduction of pollutants to adjacent properties or rights-of-way, wetlands, drainage ways, the municipal stormwater system, receiving waters, and/or areas that include or contribute directly to the Waters of the State. Where BMP requirements are

promulgated by the Director, the owner or operator of such activity, operation, or facility shall provide, at their own expense, reasonable protection from the discharge of pollutants, as described above, through the use of these structural and/or non-structural BMPs.

Further, any person responsible for a property or premises that is, or may be, the source of an illicit or prohibited discharge may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent any further discharges of pollutants.

Chapter 12.10
PROHIBITED DISCHARGES

Sections:

- 12.10.010 **Prohibited** ~~Illegal~~ discharges.
- 12.10.050 **Prohibition of illicit** ~~illicit~~ connections.
- ~~12.10.070 Waste disposal prohibitions.~~
- 12.10.080 Watercourse protection.
- 12.10.090 Discharges in violation of industrial or construction activity NPDES stormwater discharge permit.
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- 12.10.147 Requirement to monitor and analyze.
- 12.10.150 Suspension of access.
- 12.10.160 Damage to the stormwater system.
- 12.10.170 Right of entry: inspection and sampling.**

12.10.010 **Prohibited** ~~Illegal~~ discharges.

No person shall cause any pollutant to be discharged to **public rights-of-way, municipal stormwater system, or** any ~~waters~~-Waters of the State or cause any pollutant to be placed in a location where such pollutant is likely to escape or be carried into the **public rights-of-way, municipal stormwater system or** ~~and by said stormwater systems~~ into the ~~waters~~-Waters of the State.

(1) Prohibited discharges include, but are not limited to, the following:

(a) Any liquids, solids, or gases that by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the operation of the municipal stormwater system.

(b) Any solid or viscous substances that may cause obstruction to the flow in the stormwater system, such as but not limited to: grease, garbage, sand, straw, grass clippings, rags, plastics, or mud.

(c) Any discharge having a pH less than six or greater than 10, unless the divergence from these limits can be proven to occur from rainfall pH.

(d) Any discharge containing toxic pollutants.

(e) Pollutants that result in the presence of toxic gases, vapors, or fumes within the stormwater system that may cause acute worker health or safety problems.

(f) Any substance that may cause the City to violate its NPDES and/or other storm system permits, or that may cause the City to violate instream water quality standards set by the State of Oregon.

(g) Any substance that causes or may cause visible discoloration of the receiving waters such as but not limited to dyes and inks, except as described in AMC 12.10.010(2)(b).

(h) Any discharge having a temperature that may inhibit biological activity in the receiving waters or cause the City to violate instream water quality standards set by the State of Oregon, or that could harm the stormwater system.

(i) Any discharge containing oxygen demanding pollutants that may elevate the oxygen demand within the municipal stormwater system or Waters of the State.

(j) Any hauled waste, septage, or discharge from cleaning tanks including those from mobile cleaning services.

(k) Stormwater runoff containing eroded sediments from land-disturbing activities.

(l) Any refuse, rubbish, garbage, litter, or other discarded or abandoned objects.

(2) The following are exempt from discharge prohibitions established by this Chapter:

(a) Water line flushing with dechlorination; discharges from potable water sources; landscape irrigation; irrigation water; footing drains; lawn watering; individual residential car washing; dechlorinated swimming pool discharges; foundation drains; air conditioning condensate; water from crawl space pumps; diverted stream flows; rising ground waters; uncontaminated ground water infiltration; uncontaminated pumped ground water; springs; flows from riparian habitats and wetlands; and street wash water.

(b) Discharges associated with dye testing, provided verbal notification is made to the Director prior to the start of the test.

(c) Discharges from fire fighting or other emergency actions by a public utility, the City, or any other governmental agency necessary to protect public health and safety.

~~The commencement, conduct, or continuance of any illegal discharge is prohibited except as described as follows:~~

(3) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the State of Oregon under the authority of the Federal Environmental Protection Agency; provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided the written approval has been granted by the City of Albany for any discharge to the stormwater system. (Ord. 5498 § 1, 2001).

12.10.050 ~~Prohibition of~~ **Prohibition of illicit** ~~illicit~~ connections.

(1) No person shall construct, use, maintain, or allow the continued existence of an illicit connection to the stormwater system. Existing illicit connections are expressly prohibited, without limitation, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. (Ord. 5498 § 1, 2001).

(2) **Examples of illicit connections include but are not limited to wastewater lines such as those from sanitary sewers, or drains carrying wash or industrial process water.**

(3) **A person is in violation of this Title if the person connects a line conveying sewage to the municipal stormwater system, or allows such a connection to continue. Improper connections in violation of this Title must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or to the sanitary sewer system upon approval of the Director.**

~~12.10.070 Waste disposal prohibitions.~~

~~No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, maintained, or kept in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the stormwater system, or waters of the State, any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. (Ord. 5498 § 1, 2001).~~

12.10.080 Watercourse protection.

Every person owning **or occupying** property through which a watercourse passes, ~~or such person's lessee,~~ shall keep and maintain that part of the watercourse within the property free of trash, debris, and other obstacles that ~~would pollute,~~ **may reasonably be expected to** contaminate, or ~~retard~~ **impede** the

flow of water through the watercourse. In addition, the owner or ~~lessee~~ **occupant** shall remove or maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. No person shall remove native vegetation in the vicinity of a watercourse except where it poses an imminent hazard to human health and safety or nearby structures. No person shall remove vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. Within the limits established through any required state or federal permits, the property owner or lessee shall maintain and stabilize the banks of the watercourse within their property lines in order to protect against erosion and degradation of the watercourse. Watercourse banks shall be stabilized using planted vegetation and natural materials instead of hard materials (e.g., concrete, asphalt, rock, logs, lumber, etc.) wherever practicable. (Ord. 5498 § 1, 2001).

12.10.090 Discharges in violation of industrial or construction activity NPDES stormwater discharge permit.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Director **at the following times: prior to the Director allowing discharges to the stormwater system;** or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause. (Ord. 5498 § 1, 2001).

12.10.100 Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials that is resulting in, or may result in, illegal discharges ~~or of~~ **pollutants onto or discharging into public rights-of-way, stormwater, the municipal stormwater system, or waters** ~~Waters~~ of the State, said person shall take all necessary steps to ensure the discovery, immediate notification, containment, and cleanup of such release.

(1) In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the Public Works Department immediately in person or by telephone. Notification of the emergency response agencies or the Public Works Department does not relieve the discharger of their responsibility to also notify appropriate state and federal agencies.

(a) Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the City of Albany Public Works Director within five business days of the original notice. The notice shall include a detailed written statement submitted by the discharger describing the causes of the discharge, measures taken to mitigate the spill, and the measures taken to prevent any future occurrence.

(b) If the discharge emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

(2) The person responsible for the discharge of pollutants or hazardous materials to the environment shall be responsible for all cleanup costs. All related City expenses including, but not limited to, costs for identification, hazard assessment, and containment shall also be fully reimbursed.

(3) In general, reimbursement costs are those incident costs that are eligible, reasonable, necessary, and allocable to the incident. Costs allowable for reimbursement may include, but are not limited to:

- (a) Disposable materials and supplies provided, consumed and expended specifically for the purpose of the incident for which reimbursement is being requested;
- (b) Compensation of the employees for the time devoted specifically to the incident;
- (c) Rental or leasing of equipment used specifically for the incident;

- (d) Replacement costs for equipment or property owned by the City that is contaminated or damaged beyond reuse or repair;
- (e) Decontamination of equipment that was used during the incident;
- (f) Special technical services required for the incident; and
- (g) Laboratory expenses for the purpose of analyzing samples taken during the incident. (Ord. 5498 § 1, 2001).

12.10.120 Requirement to eliminate illegal discharges.

The Director may require, by written notice, that a person responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges. (Ord. 5498 § 1, 2001).

12.10.140 Requirement to eliminate illicit connections.

The Director may require, by written notice, that a person responsible for an illicit connection to the stormwater system immediately, or by a specified date, comply with the requirements of this ~~chapter~~ **Title** to eliminate the connection, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of this ~~chapter~~ **Title**.

If, subsequent to eliminating a connection found to be in violation of this ~~chapter~~ **Title**, the responsible person can demonstrate that an illegal discharge will no longer occur, said person may request City approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense. (Ord. 5498 § 1, 2001).

12.10.143 Requirement to remediate.

Whenever the Director finds that an illegal discharge is taking place or has occurred that will result in or has resulted in pollution of stormwater, the stormwater system, or ~~waters~~ **Waters** of the State, the Director may require by written notice to the owner of the property and/or the responsible person **or entity** that the pollution be remediated and the affected property restored within a specified time pursuant to the provisions of ~~AMC 12.80.010 through 12.80.090~~ **12.80**. (Ord. 5498 § 1, 2001).

12.10.147 Requirement to monitor and analyze.

The Director may require, by written notice, that any person engaged in any activity and/or owning or operating any facility that may cause or contribute to stormwater pollution, illegal discharges, and/or non-stormwater discharges to the stormwater system or waters of the State, to undertake at said person's expense such monitoring and analyses and furnish such reports to the City of Albany as deemed necessary to determine compliance with this ~~chapter~~ **Title**. (Ord. 5498 § 1, 2001).

12.10.150 Suspension of access.

The City of Albany may, without prior notice, suspend access to the stormwater system when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, to the stormwater system, or waters of the State.

If the violator fails to comply with a suspension order, the City of Albany may take such steps as deemed necessary to prevent or minimize damage to the stormwater system, prevent or minimize danger to the environment, or to prevent or minimize danger to persons. (Ord. 5498 § 1, 2001).

12.10.160 Damage to the stormwater system.

When a discharge causes obstruction, damage, or other impairment to the stormwater system, the Director may assess a charge against the discharger for the work required to clean or repair the facility. If the discharger fails to pay said charge, the costs to clean or repair the facility may be assessed against the property pursuant to AMC ~~12.80.050~~**12.80.040**. (Ord. 5498 § 1, 2001).

12.10.170 Right of entry: inspection and sampling.

The Director shall be authorized and have the right to inspect all premises, sites, and/or activities covered under this Title to determine compliance with this Title and any rules or orders adopted by the Council or issued pursuant to this Title.

(1) The Director shall have the right to set up on the discharger's or permittee's property, or require installation of, such devices as are necessary to conduct sampling, inspection compliance, and/or monitoring operations.

(2) Where a discharger or permittee has security measures in force which require proper identification and clearance before entry into its premises, the dischargers shall make necessary arrangements so that, upon presentation of suitable identification, the Director or authorized representatives shall be permitted to enter without delay for the purposes of performing specific responsibilities.

(3) Facility operators shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

(4) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the discharger at the written or verbal request of the Director and shall not be replaced. The costs of clearing such access shall be borne by the discharger.

(5) Unreasonable delays in allowing the Director access to a permitted facility is a violation of this Title. A person who is the operator of a facility with an NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Director reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Title.

Chapter 12.20 PERMITS FOR CONNECTION OR CONSTRUCTION

Sections:

- 12.20.010 Permits required.
- 12.20.020 Approval of drawings.
- 12.20.030 Construction to conform to standards.
- 12.20.040 Inspection, approval of construction.
- 12.20.050 Connection to stormwater mains.
- 12.20.060 Extension of stormwater systems.
- 12.20.070 Tapping of manholes.

12.20.010 Permits required.

Prior to commencing any work on a building storm drain or public stormwater system, all applicable permits from the City of Albany and other agencies must be secured and all associated permit fees paid in full. The permits necessary may include, but are not limited to, **an EPSC permit**, a plumbing permit, a permit to construct public facilities, and an encroachment permit. The permit shall set forth at what point the connection is to be made, the location, size of facility, type of construction, and other details as the Director or his/her designee may reasonably require. (Ord. 5498 §1, 2001).

12.20.020 Approval of drawings.

Drawings for all public stormwater systems shall be approved by the Director or his/her designee prior to construction. Unless otherwise approved by the Director, such drawings shall conform to applicable stormwater system master plans as well as City of Albany Standard Construction Specifications. Such approval shall be required in addition to any other approval required by State law. (Ord. 5498 § 1, 2001).

12.20.030 Construction to conform to standards.

All public stormwater systems, whether publicly or privately constructed, shall conform to City of Albany Standard Construction Specifications and the City of Albany Design Standards with regard to legal and design requirements, materials, and workmanship. Failure to meet tests for performance and workmanship shall be grounds for refusal of acceptance by the City. Permits to connect to stormwater systems that have not been accepted will not be issued until the system has been approved and accepted. (Ord. 5498 § 1, 2001).

12.20.040 Inspection, approval of construction.

Reasonable notice and access shall be given to allow inspection of all work in connection with the construction or reconstruction of any public stormwater facilities. Use of the stormwater facilities will not be allowed until the building storm sewer and the public improvement receives final approval. (Ord. 5498 § 1, 2001).

12.20.050 Connection to stormwater mains.

Piped storm drain connections shall be made only to the single wye branch designated for use by the connecting property. If no wye is available, connection shall be made by tapping the stormwater main line in accordance with City Standard Construction Specifications and only after securing all necessary permits and paying all required permit fees. (Ord. 5498 § 1, 2001).

12.20.060 Extension of stormwater systems.

The following rules shall apply to all stormwater system extensions:

(1) The minimum size of stormwater mains or other stormwater system components to be installed shall be in conformance with the most recent version of the City of Albany Design Standards where a larger size is not needed to provide an adequate system, conform with the size of the existing system, meet future needs, or conform to the size specified by the City of Albany's stormwater system facility plan.

(2) All stormwater system facilities serving more than one property shall be public, installed in public rights-of-way or public utility easements. The normal routing for stormwater system extensions shall be in a dedicated right-of-way.

(3) All stormwater system extensions shall extend to the extreme property line of the development or lot. If the property has excess frontage on the right-of-way and only partial development is to occur, then some consideration may be given to shortening the initial extension, provided sufficient assurance is

given to ensure the completion of the extension at the time other development occurs. Where systems are being extended into the interior of a property or development, the systems shall be extended through to the boundaries of the property at all such points as shall be needed to provide current or future service to adjacent properties. (Ord. 5498 § 1, 2001).

12.20.070 Tapping of manholes.

Tapping of building storm drains directly into manholes is prohibited except where shown in construction drawings that have been approved by the Director or his/her designee. (Ord. 5498 § 1, 2001).

Chapter 12.30 STORMWATER MANAGEMENT FEES

(Reserved)

Chapter 12.35 GRADING

Sections:

- 12.35.010 Grading – When permits are required.
- 12.35.020 Grading – General provisions.
- 12.35.030 Grading – Permit procedure.
- 12.35.040 Grading – Notification of adjacent property owners.
- 12.35.050 Grading – Approval standards.
- 12.35.060 Grading – Permits shall be tentative pending resolution of appeals.
- 12.35.070 Grading – Standing to appeal.
- 12.35.080 Grading – Appeal procedure.
- 12.35.090 Grading – Fees.
- 12.35.100 Removal of excavation, embankment or fill required when determined to be a hazard.

12.35.010 Grading – When permits are required.

Grading permits are not required by the City of Albany for grading activities (including excavation and fill) within the City limits, except in the following circumstances:

(1) When any grading is proposed in floodplains. Floodplains are those areas subject to inundation from a 100-year flood and identified on federal Flood Insurance Rate Maps (FIRMs) and Floodway Maps by the letter A, A1 – A30, AE, or AO.

(2) When any grading is proposed in any watercourse shown in the City of Albany Drainage Master Plan, in any watercourse receiving drainage from a public roadway, or in any watercourse lying within a public easement or right-of-way. A watercourse is any natural or artificial stream, river, creek, ditch, drainageway, channel, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows in a definite direction or course, either continuously or intermittently, and has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or flood water.

(3) When placement of a structure is proposed in a watercourse shown in the City of Albany Drainage Master Plan, or within a public easement or right-of-way.

(4) When grading involving more than 50 cubic yards is proposed in areas that have an average slope of 12 percent or greater.

(5) When grading is proposed over an existing public storm drain, sanitary sewer, or waterline. This does not include grading authorized under a public works contract awarded by the City of Albany, grading approved as part of a permit to construct public facilities as provided in Chapter 15.06 AMC, or grading conducted by City of Albany maintenance forces.

(6) Notwithstanding any of the foregoing, a grading permit is not required in any of the following circumstances:

- (a) Grading incidental to a valid building permit and excavation below grade for basements, foundations, or footings for retaining walls or other structures authorized by a valid building permit;
- (b) Construction of driveways or underground utilities;
- (c) Grading or landscaping when less than 50 cubic yards of earth is moved;
- (d) Grading or excavation associated with public works projects, roads, public ways, graves, or work controlled by other processes or regulations, such as wells, tunnels, utilities, or disposal sites;
- (e) Minor adjustments in active grading permits or applications when necessary in order to adhere to City requirements or good engineering practices;

(f) Grading or excavation determined by the Public Works Director or designee to be in substantial compliance with the intent of the grading ordinance. Such a determination shall be appealable to the City Council. In the event of such an appeal, the decision of the City Council shall be final. (Ord. 5647 § 1 (Exh. E), 2006; Ord. 5328 § 1, 1997; Ord. 5265 § 4, 1996. Formerly 18.04.015).

12.35.020 Grading – General provisions.

The rules prescribed in this chapter shall apply to all lands within the City limits of the City of Albany.

(1) Compliance. No excavation or grading operation shall hereafter be performed, or existing graded lot altered, without full compliance with the terms of this chapter and other applicable regulations.

(2) Abrogation and Greater Restrictions. This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter and other chapters conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(3) Relationship to Permits Required by State or Federal Agencies. Excavation, grading, and fill activities may require state and/or federal permits. Such permits are likely to be required if hydric soils are present on the site or if the site contains other wetland characteristics. The issuance of a permit by the City of Albany under this chapter does not eliminate the need for compliance with other state, federal, or local regulations.

(4) Warning and Disclaimer of Liability. The issuance of a permit by the City of Albany under this chapter constitutes a determination that the applicant has met the minimum requirements for the City's regulatory purposes. Issuance of a permit does not relieve the permit holder from any responsibilities or liabilities that grading, excavation or fill activities may create if third parties are damaged or injured by such actions. (Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.020).

12.35.030 Grading – Permit procedure.

Application for a grading permit shall be made to the Public Works Director or designee. The Public Works Director or designee shall provide the application forms. (Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.030).

12.35.040 Grading – Notification of adjacent property owners.

The Public Works Director or designee will provide written notice that a grading permit application has been filed to the owners of property adjacent to the property on which the grading is proposed. The list of owners to be notified will be compiled from the most recent property tax assessment roll. This requirement shall be deemed met when the City can provide an affidavit or other certification that such notice was given.

(1) The notice and procedures used by the City will:

- (a) Provide a 14-day period for submission of written comments prior to the decision of the Public Works Director or designee concerning whether the grading permit should be issued.

(b) State that issues which may provide the basis for an appeal shall be raised in writing prior to the expiration of the comment period. Issues shall be raised with sufficient detail that the Public Works Director or designee will be able to respond to the issue.

(c) List the approval standards of AMC 12.35.050.

(d) Set forth the street address or other easily understood geographical reference to the subject property.

(e) State the place, date and time that comments are due.

(f) State that copies of all information submitted by the applicant is available for review, and that copies can be obtained at cost.

(g) Include the name and phone number of the City representative to contact for information about the permit application.

(h) Provide that any person who submits comments during the 14-day period referenced above shall receive a notice of the decision of the Public Works Director or designee. The notice of decision will include an explanation of appeal procedures.

(i) Include such other information as the Public Works Director or designee deems appropriate.

(2) The Public Works Director's or designee's decision on a grading permit application may be appealed as set forth in AMC 12.35.080. (Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.035).

12.35.050 Grading – Approval standards.

Grading permit applications will be approved if the applicant has shown that each of the following criteria which are applicable have been met:

(1) Provisions have been made to maintain adequate flood carrying capacity of existing watercourses, including future maintenance of that capacity.

(2) No grading will be permitted over an existing public storm drain, sanitary sewer, or water line unless it can be demonstrated to the satisfaction of the City Engineer that the proposed grading will not be detrimental to the anticipated service life, operation and maintenance of the existing utility.

(3) In floodplain areas, where no floodway is shown on the applicable map, grading will not be permitted unless it is demonstrated by the applicant that the cumulative effect of the proposed grading, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(4) No grading will be permitted in a floodway, except where the applicant has supplied evidence prepared by a professional engineer that demonstrates the proposal will not result in any increase in flood levels during the occurrence of the 100-year flood.

(5) The applicant shall notify the City of Albany, any adjacent community, and the Natural Hazards Mitigation Office of the Oregon Department of Land Conservation and Development of any proposed grading activity that will result in alteration or relocation of a watercourse.

(6) All drainage facilities shall be designed to carry waters to the nearest practicable watercourse approved by the designee as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of non-erosive down drains or other devices.

(7) Building pads shall have a drainage gradient of two percent toward approved drainage facilities, unless waived by the Public Works Director or designee; except the gradient from the building pad may be one percent if all of the following conditions exist throughout the permit area:

(a) No proposed fills are greater than 10 feet in maximum depth.

(b) No proposed finished cut or fill slope faces have a vertical height in excess of 10 feet.

(c) No existing slope faces, which have a slope face steeper than 10 horizontal to one vertical, have a vertical height in excess of 10 feet.

(8) In areas that have an average slope of 12 percent or greater, the following requirements also apply:

(a) Cut and fill slopes shall not exceed a two (horizontal) to one (vertical) ratio. Slopes which are steeper (e.g., 1.5:1 or 1:1) may be approved by the Public Works Director or designee, upon

certification by a qualified soils engineer or geologist, that the slope will remain stable under foreseeable conditions. The certification must delineate any specific stabilization measures deemed necessary by the soils engineer or geologist. (Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.040).

12.35.060 Grading – Permits shall be tentative pending resolution of appeals.

Grading permits, if approved, shall be “tentative” permits and shall not permit grading action until the permit has become “final.” A grading permit shall become “final” when the time for appeal has passed with no appeal made, or in the event of an appeal, until the appeal has been resolved by the City. (Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.045).

12.35.070 Grading – Standing to appeal.

Only those persons who own property adjacent to the premises on which grading is proposed and who have previously submitted comments in writing to the Public Works Director or designee as provided in AMC 12.35.040(1) shall have standing to appeal the issuance of a grading permit. (Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.046).

12.35.080 Grading – Appeal procedure.

(1) An appeal of the Public Works Director’s or designee’s decision on a grading permit application shall be to the City Council. No appeal shall be timely unless a notice of appeal is actually received at the office of the Public Works Director or designee not later than 14 days after the notice of decision is mailed. The notice of appeal shall contain:

(a) An identification of the decision sought to be reviewed, including the date of the decision.

(b) A statement of the standing of the person seeking review and that he/she submitted written comments to the Public Works Director or designee during the period allowed in AMC 12.35.040(1)(a).

(c) The specific approval standard on which the appeal is based.

(d) If a de novo review is requested, a statement summarizing the new evidence which will be offered and the approval standard to which it will relate.

(2) The person who appeals the Public Works Director’s or designee’s decision has the burden of proof to show that the decision is in error.

(3) The City Council will determine the scope of review on appeal to be one of the following:

(a) Restricted to the record.

(b) Limited to such issues as the City Council determines necessary for a proper resolution of the matter.

(c) A de novo hearing.

(4) The City Council may affirm, remand, reverse, or modify the Public Works Director’s or designee’s decision.

(5) The decision of the City Council shall be final. (Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.047).

12.35.090 Grading – Fees.

(1) A minimum grading plan review fee, applicable to all grading permits, in the amount of \$____ is hereby established.

(2) A minimum grading permit fee, applicable to all grading permits, in the amount of \$____ is hereby established.

(3) In addition to the minimum fees called for in subsections (1) and (2) of this section, grading fees shall also include any cost incurred by the City and shall include overhead and any costs of outside

consultants, inspectors or plan review by the Public Works Director or designee. When services by outside consultants, inspectors or plan reviewers are required by the Public Works Director or designee, an approximate cost of those services shall be collected at either the time of application for the plan review or at the time of issuance of the permit for inspection services. If the fees initially collected are not sufficient to cover the cost incurred by the City, adjustments to the fees owed the City may be made at the time of permit issuance or prior to final approval of the permitted work.

(4) An appeal fee in the amount of \$____ is hereby established. (Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.048).

12.35.100 Removal of excavation, embankment or fill required when determined to be a hazard.

If the Public Works Director or designee determines that any excavation, embankment, or fill on private property has become a hazard, he/she may order the hazard abated by the owner or responsible party. The owner of the property upon which the excavation or fill is located, or the responsible party, upon receipt of notice in writing, shall repair or eliminate such excavation or embankment so as to eliminate the hazard. (Ord. 5647 § 1 (Exh. E), 2006; Ord. 5265 § 4, 1996. Formerly 18.04.049).

Chapter 12.40
EROSION PREVENTION AND **SEDIMENT CONTROL**

~~(Reserved)~~

Sections:

- 12.40.010 EPSC Manual**
- 12.40.020 Applicability of EPSC requirements**
- 12.40.030 Permit required**
- 12.40.031 Permit exemptions**
- 12.40.032 Application for a permit**
- 12.40.033 Permit transfer**
- 12.40.034 Permit duration**
- 12.40.040 EPSC Plan required**
- 12.40.050 Commencement of land-disturbing activities restricted**
- 12.40.090 EPSC fees required**

12.40.010 EPSC Manual.

The Public Works Director is authorized to develop, implement, and maintain an Erosion Prevention and Sediment Control (EPSC) Manual. This manual, and such other resources as the Director may deem necessary, will provide technical guidance for the design, installation, maintenance, and inspection of temporary and permanent erosion prevention and sediment control Best Management Practices. In the event that any provision of the EPSC Manual is in conflict with any section of this title, the provisions of this title will govern.

12.40.020 Applicability of EPSC requirements.

Persons or entities engaged in land-disturbing activities that require an EPSC permit as described in this Chapter shall utilize Best Management Practices as described in the City of Albany Erosion Prevention and Sediment Control Manual, or more effective measures, as necessary to satisfy the requirements of this Title.

12.40.030 Permit required.

An erosion prevention and sediment control (EPSC) permit shall be obtained for land-disturbing activities affecting an area of two thousand square feet or greater, cumulatively.

12.40.031 Permit exemptions

(1) The following activities may be exempted from the requirements of 12.40.030

(a) Land-disturbing activities affecting an area less than two thousand square feet, cumulatively

(b) Replacement or re-establishment of an existing lawn on a single lot, not exceeding ten thousand square feet

(c) Agricultural activities

(2) Permit exempted activities must meet all requirements of this Title, and are subject to the provisions of Chapter 12.80 as applicable.

12.40.032 Application for a permit

To obtain a permit, the property owner shall apply to the City of Albany Public Works Department. Every such application shall:

(1) Identify and describe the work to be covered by the permit;

(2) Describe the land on which the proposed work is to be done by legal description, street address, or similar description that will readily identify and definitely locate the proposed work.

(3) Be accompanied by an EPSC plan conforming to the requirements of 12.40.040;

(4) Identify the person or entity performing the land-disturbing activity;

(5) Provide a 24 hour emergency contact person and phone number;

(6) Be signed by the owner of the property upon which the land-disturbing activities will occur;

(7) Contain a statement of financial responsibility for damages resulting from noncompliance with EPSC requirements, should any such occur;

(8) Be accompanied by the applicable fees described in AMC 12.40.090

12.40.033 Permit transfer

EPSC permits shall be obtained by the person(s) or entity holding title for the property upon which the land-disturbing activities will occur.

(1) An EPSC permit may not be transferred to any person(s) or entity except upon transfer of title for the property;

(2) The person(s) or entity obtaining title to a property with an active EPSC permit shall apply for transfer of the existing EPSC permit, or shall obtain a new EPSC permit;

(3) The person(s) or entity transferring title for a property with an active EPSC permit shall notify the new owner(s) of the requirements of 12.40.033(2);

(4) The most recent EPSC permit for a property will supersede all other EPSC permits that apply to that property.

12.40.034 Permit duration

(1) EPSC permits issued under this title will be valid for a period of one year, or until land-disturbing activities are completed, and surface conditions stabilized with permanent measures to prevent future erosion as verified by the Director, whichever is shorter;

(2) Prior to the expiration of an EPSC permit, the permit holder may present a written request for an extension to the Director. If, in the opinion of the Director, an extension is warranted, up to a twelve month extension may be granted. Extensions will be subject to the applicable fees described in AMC 12.40.090.

12.40.040 EPSC Plan required

Applicants for an EPSC permit shall submit as a part of their permit application an EPSC Plan. EPSC Plans shall comply with the minimum standards outlined in the City of Albany Erosion Prevention and Sediment Control Manual and the provisions of this Title.

(1) Major land-disturbing activities, as defined in the EPSC Manual, shall require submission of an EPSC plan prepared by a professional licensed in Oregon as a civil or environmental engineer, landscape architect, geologist, or certified professional in erosion and sediment control (CPESC).

(2) Minor land-disturbing activities, as defined in the EPSC Manual, do not require a professional to prepare the EPSC plan.

12.40.050 Commencement of land-disturbing activities restricted

Land-disturbing activities shall not commence until an EPSC permit has been issued. An EPSC permit will not be issued until the following conditions have been met:

- (1) An EPSC application has been submitted to the City with an attached EPSC Plan;
- (2) The applicant’s EPSC plan has been reviewed and received initial approval by the Director;
- (3) EPSC BMPs have been installed in accordance with the approved EPSC plan;
- (4) The Director has verified condition (3) above in an inspection of the site
- (5) The permit holder has modified BMPs or installed additional BMPs as required by the Director following the initial site inspection.

12.40.090 EPSC fees required

Fees applied under this title shall be as adopted by resolution of the Albany City Council.

Chapter 12.50
CONNECTIONS OF UNASSESSED PROPERTIES

(Repealed by Ord. 5565)

Chapter 12.60
FLOODPLAIN PRESERVATION AND MANAGEMENT

(Reserved)

Chapter 12.70
STREAM BUFFERS/RIPARIAN ZONE PROTECTION – OPEN WATERWAYS

(Reserved)

Chapter 12.80
ENFORCEMENT

Sections:

- ~~12.80.010 Notice of violation.~~
- ~~12.80.020 Compliance schedule.~~
- ~~12.80.030 Appeal.~~
- ~~12.80.040 Abatement by City.~~
- ~~12.80.050 Recovery of abatement costs.~~
- ~~12.80.060 Immediate abatement.~~

- ~~12.80.070—Penalties for violations.~~
- ~~12.80.080—Compensatory action.~~
- ~~12.80.090—Violations deemed a public nuisance.~~

~~12.80.010 Notice of violation.~~

~~Whenever the Director finds that a person has violated a provision of this chapter, the Director may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:~~

- ~~(1) The performance of monitoring, analyses, and reporting;~~
- ~~(2) The elimination of illicit connections or illegal discharges;~~
- ~~(3) That violating discharges, practices, or operations cease and desist;~~
- ~~(4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;~~
- ~~(5) The implementation of source controls or treatment best management practices; and~~
- ~~(6) The submittal of a compliance schedule.~~

~~If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which a compliance schedule for such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore the affected property within the deadlines established by and agreed to in the compliance schedule, the work will be done by the City or a contractor designated by the Director and the expense thereof shall be the responsibility of the violator pursuant to AMC 12.80.040 through 12.80.060. (Ord. 5498 § 1, 2001).~~

~~12.80.020 Compliance schedule.~~

~~Following a release to the environment, the Director may require the discharger to submit a compliance schedule. This schedule will be a detailed outline of actions to be taken to correct, clean, remediate, or restore the environment, structures, or property harmed by the release. The schedule will also address measures to prevent recurrence of the problem. The following conditions shall apply to this schedule:~~

~~(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the user meeting applicable standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction);~~

~~(2) No increment referred to in subsection (1) of this section shall exceed nine months.~~

~~(3) Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the Director including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the Director.~~

~~(4) Any other information as may be deemed by the City to be necessary to evaluate the schedule.~~

~~(5) The schedule shall be signed by an executive officer and, when required by the City, a qualified engineer, where applicable. Within 30 days after full evaluation and acceptance of the data furnished, the City shall notify the user of the City's acceptance or rejection thereof. (Ord. 5498 § 1, 2001).~~

~~12.80.030 Appeal.~~

~~Notwithstanding the provisions of AMC 12.80.060, any person receiving a notice of violation under AMC 12.80.010 above may appeal the determination of the Director. The appeal must be in writing and must be received by the City Manager within seven days of receipt of the notice of violation. If requested in writing, a hearing on the appeal shall be scheduled before the City Council of the City of Albany, or such Appeal Hearings Officer as the City may appoint for such purpose. The City Manager shall have the~~

authority and discretion to appoint a Hearings Officer or direct the appeal to the City Council. Thereafter, the City Council or the Appeal Hearings Officer may render its decision based upon the record of the hearing on the notice of violation, grant an additional hearing to take additional evidence, or conduct a de novo hearing.

The City Council, or Appeal Hearings Officer, in consultation with the City Attorney, shall establish rules and procedures for the conduct of the appeal in order to accord the discharger minimum due process. The burden of proof, on appeal, shall remain with the City by a preponderance of the evidence. The City Council or Appeal Hearings Officer, shall affirm, reverse, or modify the findings, conclusions, and requirements of the notice of violation and shall serve its decision, in writing, upon the discharger. The decision of the City Council or Appeal Hearings Officer shall be final. (Ord. 5498 § 1, 2001).

12.80.040 Abatement by City.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or in the event of an appeal under AMC 12.80.030, within 10 days of the decision of the City Council or Appeal Hearings Officer upholding the decision of the Director, then the City or a contractor designated by the Director shall enter upon the subject private property and is authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the City or designated contractor to enter upon the premises for the purposes set forth above. (Ord. 5498 § 1, 2001).

12.80.050 Recovery of abatement costs.

(1) Within 30 days after abatement of the nuisance by City, the Director or his designee shall prepare a recap of all costs incurred to abate the nuisance, including administrative costs.

(2) A summary of costs shall be mailed by registered or certified mail to the same person or persons to whom the notice of violation was sent per AMC 12.80.010, or their successors in title, and shall advise of the City's intent to assess said costs against the real property and shall further advise the owner/owners of their right to a hearing before the City Council prior to assessment upon receipt by the Director, within 15 days of the date of mailing, of a written request for a hearing.

(3) If the costs of abatement are not paid to the City within 30 days from the date of the mailing of the summary of costs, said summary shall be presented to the City Council and if the Council finds said costs to be reasonable, the Council shall pass an ordinance directing the amount of said costs be entered in the docket of City liens; and upon such entry being made, said costs shall constitute a lien upon the property in question. Prior to passing said ordinance, the Council will afford the property owner/owners a right to be heard by the Council if a written request for hearing has been received by the Director within 30 days of the date of mailing of the aforesaid summary of costs.

(4) The lien shall be enforced and shall bear interest at a rate to be determined by the Council at the time of the ordinance referred to above. The interest shall commence from the date of entry of the lien in the lien docket and shall have priority over all other liens and assessments to the maximum extent permitted by law.

(5) An error in the name of the property owner/owners/agents shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property. (Ord. 5498 § 1, 2001).

12.80.060 Immediate abatement.

The Director is authorized to require immediate abatement of any violation of this chapter that constitutes an immediate threat to the environment or the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the Director, the City of Albany is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the City of Albany shall be fully reimbursed by the

~~property owner and/or responsible party. Any relief obtained under this section shall not prevent the City from seeking other and further relief authorized under this chapter. (Ord. 5498 § 1, 2001).~~

~~12.80.070 Penalties for violations.~~

~~(1) It shall be a misdemeanor punishable under the general penalty provisions of Chapter 1.04 AMC for any person to violate any provision or fail to comply with any of the requirements of this chapter. The maximum fine or penalty imposed by the municipal court shall be no less than \$250.00 for each violation and no part of the fine shall be suspended. Each day upon which a violation occurs or continues shall constitute a separate violation.~~

~~(2) The City may commence an action for appropriate legal and/or equitable relief in the appropriate local court to enforce the penalty or remedy imposed by the City hereunder. (Ord. 5498 § 1, 2001).~~

~~12.80.080 Compensatory action.~~

~~In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the Director may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc. (Ord. 5498 § 1, 2001).~~

~~12.80.090 Violations deemed a public nuisance.~~

~~In addition to the enforcement processes and penalties herein before provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the environment, public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored by the City at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the City. (Ord. 5498 § 1, 2001).~~

Sections:

- 12.80.010 Violations.**
- 12.80.015 Enforcement.**
- 12.80.020 Notices deemed received.**
- 12.80.025 Emergency suspension of municipal stormwater system access.**
- 12.80.030 Warning notice.**
- 12.80.031 Notice of violation.**
- 12.80.032 Administrative order.**
- 12.80.034 Permit suspension and revocation.**
- 12.80.035 Stop work order.**
- 12.80.036 Compliance schedule.**
- 12.80.040 Abatement.**
- 12.80.050 Violations deemed a public nuisance.**
- 12.80.060 Penalties.**
- 12.80.070 Appeal.**
- 12.80.080 Remedies not exclusive.**

12.80.010 Violations.

(1) It shall be unlawful for any person to violate any provision of, or fail to comply with, any of the requirements of this Title. Any person who has violated, or continues to violate, the provisions of this Title may be subject to any or all of the enforcement actions outlined in AMC 12.80, or may be restrained by injunction or otherwise abated in a manner provided by law.

(2) Each day a violation occurs or continues shall be considered a separate violation.

12.80.015 Enforcement.

(1) The enforcement actions provided in this Chapter are not exclusive; may be exercised singly, simultaneously, or cumulatively; may be combined with any other remedies authorized under law; and may be exercised in any order.

(2) To enforce any of the requirements of this title, the Director may gain compliance by:

- (a) Instituting any or all actions as set out in this chapter below;**
- (b) Causing appropriate action to be instituted in a court of competent jurisdiction; and/or**
- (c) Taking other action as the Director, in the exercise of the Director's discretion, deems appropriate.**

12.80.020 Notices deemed received.

(1) Written Notices required by this Title shall be deemed received by an alleged violator under any of the following circumstances, whichever shall first occur:

- (a) Upon personal service to the violator, or the violator's authorized agent, or any person apparently in charge of any office or place of business maintained by the alleged violator; or**
- (b) Upon execution of any return receipt or other proof of receipt of mail delivery by the alleged violator or any of the persons listed in (a) above; or**
- (c) Three days following mailing by the City, via first-class U.S. Mail, to the alleged violator at the alleged violator's last known residence or place of business; or**
- (d) Upon proof of actual notice to the alleged violator of the general substance of the written notice.**

12.80.025 Emergency suspension of municipal stormwater system access

(1) When the Director finds that any discharger has violated any provision of this ordinance, or any order issued hereunder, or that the discharger's past violations are likely to recur, and that said violations have caused or contributed to an actual or threatened discharge to the municipal separate storm sewer system or Waters of the State which reasonably appears to present an imminent or substantial endangerment to the health or welfare of people or the environment, the Director may issue an order to the discharger directing an immediate cease and desist of all such violations.

(a) The order will direct the discharger to:

- i. Immediately comply with all ordinance requirements; and**
- ii. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.**

(b) Any person notified of an emergency order directed to him under this Title shall immediately comply and stop or eliminate any endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Director may take such steps as deemed necessary to prevent or minimize harm to the municipal separate storm sewer system or Waters of the State, and/or endangerment to persons or the environment, including immediate termination of the facility's Municipal Stormwater connection, or other municipal utility services.

(c) The Director may require a person that is responsible, in whole or in part, for any discharge presenting imminent danger to submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence. Such written statement shall be submitted to the Director within 30 days of receipt of the order.

(d) A person commits an offense if the person reinstates municipal separate storm sewer system access to premises terminated pursuant to this chapter without the prior approval of the Director.

(e) The Director may allow the discharger to recommence its discharge when it has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this chapter.

(f) Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

12.80.030 Warning Notice.

When the Director finds that any person has violated, or continues to violate, any provision of this Title, or any order issued hereunder, the Director may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after the receipt of the Warning Notice.

12.80.031 Notice of violation.

Whenever the Director finds that a person has violated, or continues to violate, any provision of this Title, or any order issued hereunder, the Director may order compliance by written Notice of Violation to the responsible person stating the nature of the violation(s).

(1) Such notice may require without limitation any or all of the following:

(a) The performance of monitoring, analyses, and reporting;

(b) The elimination of illicit connections or illegal discharges;

(c) That violating discharges, practices, or operations cease and desist;

(d) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;

(e) The implementation of source controls or Best Management Practices (BMPs); and

(f) The submittal of a compliance schedule.

(2) If abatement of a violation and/or restoration of affected property is required, the notice may set forth a deadline within which a compliance schedule for such remediation or restoration must be completed in accordance with AMC 12.80.036. Said notice may further advise that, should the violator fail to remediate or restore the affected property within the deadlines established by and agreed to in the compliance schedule, the work will be done by the City or a contractor designated by the Director and the expense thereof shall be the responsibility of the violator pursuant to AMC 12.80.040.

12.80.032 Administrative order.

Whenever the Director finds that a person has violated, or continues to violate, any provision of this Title, or any order issued hereunder, the Director may provide a written administrative order stating the nature of the violation(s) and imposing sanctions.

(1) This order will be served upon the discharger in accordance with AMC 12.80.020.

(2) These sanctions may include:

(a) An order requiring corrective action.

(b) An order setting penalties as described in AMC 12.80.060 in the event corrective action is not undertaken as ordered.

(c) An order imposing penalties as described in AMC 12.80.060 in lieu of, or in addition to, an order of corrective action.

(d) An order requiring payment of City costs incurred as a result of a violation.

(e) An order requiring a compliance schedule as described in AMC 12.80.036

(f) Disconnection from the municipal stormwater system pursuant to the rights and procedures set forth concerning emergency suspension of service in AMC 12.80.025.

12.80.034 Permit suspension and revocation.

By written notification the Director may suspend or revoke a permit issued under the provisions of this Title. Such suspension or revocation may be issued whenever the permit is issued on the basis of incorrect information supplied, or if its issuance or activity there-under is in violation of any term or condition of the permit, this Title, or of other pertinent federal, state, or local statute, code, or regulation implemented through the enforcement of this Title. Suspension or revocation of a permit will be subject to the provisions of 12.80.035.

12.80.035 Stop work order.

When a person or entity engages in an activity in such a manner as to cause, or creates a condition which causes a violation of the provisions of this Title or of other pertinent federal, state, or local statute, code, or regulation implemented through the enforcement of this Title, the Director may order all related activities stopped. The Director's order will be served by notice, in writing, to persons engaged in the activity or causing such activity to be undertaken. Such persons shall forthwith stop all related activities until authorized by the Director to proceed with the work.

12.80.036 Compliance schedule.

Following a release to the environment, the Director may require the discharger to submit a compliance schedule. This schedule will be a detailed description of specific actions to be taken to correct, clean, remediate, or restore the environment, structures, or property harmed by the release within a time period acceptable to the Director. The schedule will also address measures to prevent recurrence of the problem. Once approved by the Director, any violation of the Compliance Schedule is considered a violation of this section.

12.80.040 Abatement.

(1) Immediate abatement. The Director is authorized to require immediate abatement of any violation of this Title that constitutes an immediate threat to the environment or the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the Director, the City of Albany is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the City of Albany shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the City from seeking other and further relief authorized under this Title.

(2) Abatement by the City. If the violation has not been corrected pursuant to the requirements set forth in any enforcement action issued by the Director under this Chapter, or in the event of a decision of an appeal under AMC 12.80.070, within 10 days of the decision of the City Council, Building Board of Appeals, or Appeal Hearings Officer upholding the decision of the Director, the City or a contractor designated by the Director may enter upon the subject private property and is authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the City or designated contractor to enter upon the premises for the purposes set forth above.

(3) Recovery of abatement costs. Within 30 days after abatement of the nuisance by City, the Director or his/her designee may prepare a summary of all costs incurred to abate the nuisance, including administrative costs. This summary of costs may be delivered to the same person or

persons to whom the enforcement action was sent per AMC 12.80.020, or their successors in title, and shall advise of the City's intent to assess said costs against the real property and shall further advise the owner/owners of their right to a hearing before the City Council prior to assessment upon receipt by the Director, within 15 days of the date of receipt of notice, of a written request for a hearing.

(a) If the costs of abatement are not paid to the City within 30 days from the date of the receipt of the summary of costs, said summary shall be presented to the City Council and if the Council finds said costs to be reasonable, the Council shall pass an ordinance or resolution directing the amount of said costs be entered in the docket of City liens; and upon such entry being made, said costs shall constitute a lien upon the property in question. Prior to passing said ordinance or resolution, the Council will afford the property owner/owners a right to be heard by the Council if a written request for hearing has been received by the Director within 30 days of the date of mailing of the aforesaid summary of costs.

(b) The lien shall be enforced and shall bear interest at a rate to be determined by the Council at the time of the ordinance or resolution referred to above. The interest shall commence from the date of entry of the lien in the lien docket and shall have priority over all other liens and assessments to the maximum extent permitted by law.

(c) An error in the name of the property owner/owners/agents shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property.

12.80.050 Violations deemed a public nuisance.

In addition to the enforcement processes and penalties herein provided, any condition caused or permitted to exist in violation of any of the provisions of this Title is a threat to the environment, public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored by the City at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the City.

12.80.060 Penalties.

(1) **Administrative Fines.** When the Director finds that a discharger has violated, or continues to violate, any provision of this Title or any order issued hereunder, and that said violations have caused or contributed to an actual or threatened discharge to the municipal stormwater system or Waters of the State which reasonably appears to present an imminent or substantial endangerment to the health or welfare of people or the environment, the Director may fine such discharger. The amount of such administrative fine shall not be less than \$250.00 per violation nor more than \$2,500 per violation. Each day upon which a violation occurs or continues shall constitute a separate violation.

(2) **Recovery of Costs Incurred by the City.** Any person violating any of the provisions of this Title who discharges or causes a discharge producing an obstruction or causes damage to or impairs the city's stormwater system shall be liable to the City for any expense, loss, or damage caused by such violation or discharge. The City may require the discharger to pay for the costs incurred by the City for any cleaning, repair, or replacement work caused by the violation or discharge and for costs incurred by the City in investigating the violation and in enforcing this Title against the user, including reasonable administrative costs, fees for testing, attorney fees, court costs, and all expenses of litigation. Refusal to pay the ordered costs shall constitute a violation of this Title. The user shall also reimburse the City for any and all fines or penalties levied against the City as a result of a discharge by the user

(3) **Criminal Penalties.** It shall be a misdemeanor punishable under the general penalty provisions of AMC Chapter 1.04 for any person to violate any provision or fail to comply with any of the requirements of this Title. The maximum fine or penalty imposed by the municipal court

shall be no less than \$250.00 for each violation and no part of the fine shall be suspended. Each day upon which a violation occurs or continues shall constitute a separate violation. The City may commence an action for appropriate legal and/or equitable relief in the appropriate local court to enforce the penalty or remedy imposed by the City hereunder.

(4) **Compensatory Action.** In-lieu-of enforcement proceedings, penalties, and remedies authorized by this Title, the Director and alleged violator may agree upon alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

12.80.070 Appeal.

(1) Notwithstanding the provisions of AMC 12.80.025 and 12.80.040(1), any person or entity receiving a written notification of an enforcement action under this Title may, within ten days of the receipt of such notice, request in writing that the Director review the enforcement action. The written request (letter of appeal) shall state all points of disagreement and objection to the enforcement action. Upon receipt of the letter of appeal, a meeting shall be scheduled with the Public Works Director of the City of Albany, or authorized representative. The Director or authorized representative shall affirm, modify, or dismiss the enforcement action, and shall give written notice of his or her decision to the alleged violator.

(2) Within ten days of receipt of the Public Works Director's written notice of decision outlined above, the alleged violator may appeal the Public Works Director's decision by serving a written notice of such appeal in the same manner as provided above. Thereafter, a hearing on such appeal shall be scheduled before City Council of the City of Albany, the Building Board of Appeal, or such Appeal Hearings Officer as the City may appoint for such purpose, at the discretion of the City Manager, considering the nature of the issues presented on appeal and the time constraints, resources, and schedule of the public hearing bodies. Thereafter, the City Council, Building Board of Appeal, or the Appeal Hearings Officer may render its decision based upon the record of the hearing on the enforcement action, grant an additional hearing to take additional evidence, or conduct a de novo hearing. The City Council, Building Board of Appeal, or Appeal Hearings Officer, in consultation with the City Attorney, shall establish rules and procedures for the conduct of the appeal in order to accord the discharger minimum due process. The burden of proof, on appeal, shall remain with the City by a preponderance of the evidence. The City Council, Building Board of Appeal, or Appeal Hearings Officer, shall affirm, reverse, or modify the findings, conclusions, and requirements of the enforcement action and shall serve its decision, in writing, upon the discharger. The decision of the City Council or Appeal Hearings Officer shall be final.

12.80.080 Remedies not exclusive.

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

Section 2: Emergency Clause. Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of the City of Albany, an emergency is hereby declared to exist. This ordinance will be in full force and effect immediately upon its passage by the Council and approval by the Mayor.

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

City Clerk