



**ORDINANCE 3443**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD AMENDING CHAPTER 13.40 OF THE LYNNWOOD MUNICIPAL CODE, ENTITLED "STORMWATER MANAGEMENT," AND CHAPTER 13.45 OF THE LYNNWOOD MUNICIPAL CODE, ENTITLED "STORMWATER QUALITY", ADDRESSING THE MANAGEMENT OF STORMWATER DISCHARGES, AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.**

**WHEREAS**, the City finds that amending this Chapter of the Lynnwood Municipal Code related to the treatment of water quantity and quality is necessary to protect the health, safety and welfare of the residents of Lynnwood and the integrity of the city's resources for the benefit of all by: minimizing or eliminating erosion, flooding, and minimizing water quality degradation; preserving and enhancing the suitability of waters for all beneficial uses; and preserving and enhancing the natural hydrologic processes, aesthetic quality and biotic integrity of the water; and

**WHEREAS**, the City recognizes that amending this Chapter is required under the federal Clean Water Act, 33 U.S.C. 1251 et. seq., and the Western Washington Phase II Municipal Stormwater General Permit issued by the Washington Department of Ecology pursuant to the Clean Water Act and Chapter 90.48 of the Revised Code of Washington; and

**WHEREAS**, while recognizing the necessity to comply with the Clean Water Act and Chapter 90.48 RCW, the City Council also recognizes the importance of maintaining economic viability while providing necessary environmental protection and believes that amending this Chapter of the Lynnwood Municipal Code will help achieve both goals; and,

**WHEREAS**, the City recognizes the erosive issues that occur downstream of the Perrinville Creek watershed can be attributed to large storm events that cause high velocity erosive flows. By elevating flow control requirements above those required by the State of Washington to match the level of protection required by our municipal neighbor the City of Edmonds, the occurrence of these damaging flows can be mitigated in a consistent manner throughout the watershed, and help to protect properties within the Perrinville Creek watershed.

**NOW THEREFORE THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** Adoption. Amendments of Chapter 13.40 of the Lynnwood Municipal Code are adopted as follows:

**Chapter 13.40**

**STORMWATER MANAGEMENT**

**Sections:**

13.40.010 Purpose.

- 53 13.40.020 Applicability.
- 54 13.40.030 Exemptions, exceptions, and adjustments.
- 55 13.40.040 Definitions.
- 56 13.40.050 Project types.
- 57 13.40.055 ~~Supplemental~~ Stormwater manual Guidelines adoption.
- 58 13.40.060 Minimum technical requirements.
- 59 13.40.065 Permit to be obtained for land clearing.
- 60 13.40.070 Submittal requirements.
- 61 13.40.080 Review and approval process.
- 62 13.40.090 Development in critical areas.
- 63 13.40.100 Establishment of regional facilities.
- 64 13.40.110 Bonds and liability insurance required.
- 65 13.40.120 Operation and maintenance requirements.
- 66 13.40.130 Applicability to governmental entities.
- 67 13.40.140 Protection of public and private rights.
- 68 13.40.150 Violations.
- 69 13.40.160 Enforcement.
- 70 13.40.170 Penalties.
- 71 13.40.180 Appeals.
- 72 13.40.190 Severability.

73  
74 **13.40.010 Purpose.**

75 The city council finds that this chapter is necessary to: promote sound development policies and  
76 construction procedures which respect and preserve the city’s watercourses; minimize water quality  
77 degradation; prevent sedimentation of creeks, streams, ponds, lakes and other water bodies; protect the  
78 life, health, and property of the general public; preserve and enhance the suitability of waters for contact  
79 recreation and fishing; preserve and enhance the aesthetic quality of the waters; maintain and protect  
80 valuable groundwater resources; minimize adverse effects of alterations in groundwater quantities,  
81 locations and flow patterns; ensure the safety of city roads and rights-of-way; decrease drainage-related  
82 damage to public and private property; and avoid or abate public nuisances. This chapter is also  
83 necessary to control stormwater runoff generated by development, redevelopment, construction sites, or  
84 modifications to existing stormwater systems that directly or indirectly discharge to the city stormwater  
85 system, in a manner that complies with the *Western Washington Phase II Municipal Stormwater Permit*  
86 issued by the Washington State Department of Ecology. (Ord. 2833 § 2, 2010)

87 **13.40.020 Applicability.**

88 The requirements of this chapter shall apply to all actions requiring the approval or issuance of a permit  
89 by either the development and business services department or the public works department, or projects  
90 involving 2,000 square feet or more of land-disturbing activity, new impervious surface, or replaced  
91 impervious surface. (Ord. 3399 § 2 (Exh. A), 2021; Ord. 2833 § 2, 2010)

92 **13.40.030 Exemptions, exceptions, and adjustments.**

93 Exemptions, exceptions, and adjustments to the provisions of this chapter are listed below.

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

- 96 1. Forest practices regulated under Title 222 WAC, except for Class IV general forest practices that  
97 are conversions from timber land to other uses, are exempt from the provisions of the minimum  
98 requirements.
- 99 2. Commercial agriculture practices that involve working land for production are generally exempt.  
100 However, land conversion from timberland to agriculture, and the construction of impervious  
101 surfaces are not exempt.
- 102 3. Construction of drilling sites, waste management pits, and associated access roads, and  
103 construction of transportation and treatment infrastructure such as pipelines, natural gas  
104 treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations are

105 exempt. Operators are encouraged to implement and maintain best management practices to  
 106 minimize erosion and control sediment during and after construction activities to help ensure  
 107 protection of surface water quality during storm events.

- 108 4. The following ~~pavement roadway~~ maintenance practices ~~or activities~~ are exempt: pothole and  
 109 square-cut patching, overlaying existing asphalt or concrete pavement with asphalt or concrete  
 110 without expanding the area of coverage, shoulder grading, reshaping / regrading drainage  
 111 systems, crack sealing, resurfacing with in-kind material without expanding the road prism,  
 112 pavement preservation activities that do not expand the road prism, and ~~roadside~~-vegetation  
 113 maintenance.

114 ~~For sites with 1 acre or more of land-disturbing activity,~~ The following ~~pavement road~~ maintenance  
 115 practices ~~or activities~~ are considered new or redevelopment, and therefore are not categorically  
 116 exempt. The extent to which this exemption applies is explained for each circumstance.

- 117 a. Removing and replacing a paved surface to base course or a lower level, or repairing the  
 118 ~~pavement roadway~~ base: These are considered replaced hard surfaces. If ~~hard impervious~~  
 119 surfaces are not expanded, ~~Large Site Project~~ Minimum Requirements #1 - #5 apply.  
 120 However, in most cases, only ~~Large Site Project~~ Minimum Requirement #2, Construction  
 121 Stormwater Pollution Prevention Plan, shall be required. Where appropriate, project  
 122 proponents are encouraged to look for opportunities to use permeable and porous  
 123 pavements.
- 124 b. Extending the pavement edge without increasing the size of the road prism, or paving  
 125 graveled shoulders are considered new hard impervious surfaces and are subject to the  
 126 minimum requirements that are triggered when the thresholds identified for new  
 127 ~~redevelopment~~ projects are met.
- 128 c. Resurfacing by upgrading from dirt to gravel, a bituminous surface treatment ("chip seal")  
 129 asphalt, or concrete; or upgrading from gravel to chip seal, asphalt, or concrete; or  
 130 upgrading from a ~~bituminous surface treatment ("chip seal")~~ to asphalt or concrete: These  
 131 are considered new impervious surfaces and are subject to the minimum requirements  
 132 that are triggered when the thresholds identified for new redevelopment projects are met.
- 133 5. Underground utility projects that replace the ground surface with in-kind material or materials with  
 134 similar runoff characteristics are only subject to Minimum Requirement #2 ~~(for Minor, Small, or~~  
 135 ~~Large Site Projects)~~, (Construction Stormwater Pollution Prevention Plan).
- 136 6. With respect to replaced impervious surfaces, a ~~Small Site~~ Project may be exempt from  
 137 compliance with ~~Small Site~~ Minimum Requirement #6 (Runoff Treatment), ~~Small Site~~ Minimum  
 138 Requirement #7 (Flow Control), or ~~Small Site~~ Minimum Requirement #8 (Wetlands  
 139 Protection) should the city adopt a plan and schedule that fulfills those requirements through a  
 140 regional drainage control plan (e.g., via a regional facility or facilities, stream restoration, or basin-  
 141 specific development requirements).

142 **B. Exceptions.** Exceptions to the minimum requirements may be granted by the director following legal  
 143 public notice of an application for an exception, legal public notice of the director's decision on the  
 144 application, and written findings of fact that documents the director's determination to grant an exception.  
 145 The department shall keep records, including the written findings of fact, of all local exceptions to the  
 146 Minimum Requirements for a period of five years.

147 Project-specific design exceptions based on site-specific conditions do not require prior approval of the  
 148 Washington State Department of Ecology (Ecology WDOE). However, the City must seek prior approval  
 149 from Ecology by the WDOE for any jurisdiction-wide exception.

- 150 1. The director may grant an exception to the minimum requirements if such application imposes a  
 151 severe and unexpected economic hardship. To determine whether the application imposes a  
 152 severe and unexpected economic hardship on the project applicant, the director must consider  
 153 and document with written findings of fact the following:
- 154 a. The current (pre-project) use of the site, and  
 155 b. How the application of the minimum requirement(s) restricts the proposed use of the site  
 156 compared to the restrictions that existed prior to the adoption of the minimum  
 157 requirements; and  
 158 c. The possible remaining uses of the site if the exception were not granted; and

- 159 d. The uses of the site that would have been allowed prior to the adoption of the minimum  
 160 requirements; and  
 161 e. A comparison of the estimated amount and percentage of value loss as a result of the  
 162 minimum requirements versus the estimated amount and percentage of value loss as a  
 163 result of requirements that existed prior to adoption of the minimum requirements; and  
 164 f. The feasibility for the owner to alter the project to apply the minimum requirements.  
 165 2. In addition, any exception must meet the following criteria:  
 166 a. The exception will not increase risk to the public health and welfare, nor be injurious to  
 167 other properties in the vicinity and/or downstream, and to the quality of waters of the  
 168 state; and  
 169 b. The exception is the least possible exception that could be granted to comply with the  
 170 intent of the minimum requirements.

171 **C. Adjustments.** Adjustments to the minimum requirements may be granted by the director; provided,  
 172 that a written finding of fact is prepared, that addresses the following:

- 173 1. The adjustment provides substantially equivalent environmental protection; and  
 174 2. Based on sound engineering practices, the objectives of safety, function, environmental  
 175 protection and facility maintenance, are met. (Ord. 2833 § 2, 2010)

#### 176 **13.40.040 Definitions.**

177 Words and phrases used in this chapter have the meaning set forth in this section:

178 **“Adjustment”** means a variation in the application of a Minimum Requirement to a particular project.

179 **“Arterial”** means a road or street primarily for through traffic. ~~The term generally includes roads or streets~~  
 180 ~~considered collectors. It does not include A major arterial connects an Interstate Highway to cities and~~  
 181 ~~counties. A minor arterial connects major arterials to collectors. A collector connects an arterial to a~~  
 182 ~~neighborhood. A collector is not an arterial. A local access roads which are generally limited to providing~~  
 183 ~~access to abutting property. See also RCW 35.78.010, RCW 36.86.070, and RCW 47.05.021 connects~~  
 184 ~~individual homes to a collector.~~

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

188 **“Category 1 Project Site”** means a project site subject to Minimum Requirements No. 1 through No. 5.  
 189 See LMC 13.40.050.

190 **“Category 2 Project Site”** means a project site subject to Minimum Requirements No. 1 through No. 9.  
 191 See LMC 13.40.050.

192 **“Certified erosion and sediment control lead (CESCL)”** means an individual who has current  
 193 certification through an approved erosion and sediment control training program that meets the minimum  
 194 training standards established by ~~Ecology~~the Department (see BMP C160: Certified Erosion and  
 195 Sediment Control Lead in the Stormwater Management Manual for Western Washington). A CESCL is  
 196 knowledgeable in the principles and practices of erosion and sediment control. The CESCL must have  
 197 the skills to assess site conditions and construction activities that could impact the quality of stormwater  
 198 and the effectiveness of erosion and sediment control measures used to control the quality of stormwater  
 199 discharges. Certification is obtained through an Ecology approved erosion and sediment control course.  
 200 Course listings are provided online at Ecology’s website.

201 **“Chapter”** means this chapter and any administrative rules and regulations adopted to implement this  
 202 chapter.

203 ~~“Comprehensive Drainage Plan” means a detailed analysis for each drainage basin which compares~~  
 204 ~~the capabilities and needs for runoff accommodation based on the project type, land use, and structural~~  
 205 ~~and nonstructural management alternatives. The plan recommends the form, location and extent of~~  
 206 ~~quantity and quality control measures which optimally would meet the legal constraints, water quality~~  
 207 ~~standards and community standards, as well as identifies the institutional and funding requirements for~~  
 208 ~~plan implementation.~~

209 ~~“Computations” means calculations, including coefficients and other pertinent data, made to determine~~  
 210 ~~the drainage plan with rates of flow of water given in cubic feet per second and cubic meters per second~~  
 211 ~~(cms).~~

212 ~~“Conceptual Drainage Plan” means a plan for the collection, transport, treatment and discharge of storm~~  
 213 ~~water within the subject property. The requirements and contents for a conceptual drainage plan are~~  
 214 ~~outlined in the Supplemental Stormwater Guidelines.~~

215 **“Construction stormwater pollution prevention plan (construction SWPPP)”** means a document that  
 216 describes the potential for pollution problems on a construction project and explains and illustrates the  
 217 measures to be taken on the construction site to control those problems.

218 **“Critical area”** means the following areas:

219 A. Wetlands;

220 B. Streams;

221 C. Fish and wildlife priority habitat;

222 D. Geologically hazardous areas; and

223 E. Any additional areas defined or established as critical areas under the provisions of the Washington

224 State Growth Management Act or the provisions of Chapter 17.10 LMC.

225 **“Department”** means the Lynnwood public works department.

226 **“Design storm”** means that rainfall event or pattern of events which is selected by the public works  
 227 department for use in analyzing and designing drainage facilities.

228 **“Detention facilities”** means facilities designed to hold runoff while gradually releasing it at a  
 229 predetermined maximum rate.

230 ~~“Detailed Drainage Plan” means a plan for collection, transport, treatment, and discharge of storm water~~  
 231 ~~within the subject property, including all computations required to determine the extent and nature of the~~  
 232 ~~proposed plan. It shall include a Construction Stormwater Pollution Prevention Plan (Construction~~  
 233 ~~SWPPP) and a Permanent Stormwater Control Plan (PSC Plan), when required by this chapter. Such~~  
 234 ~~plan shall be prepared by a registered professional civil engineer. The requirements and contents for a~~  
 235 ~~detailed drainage plan are outlined in the Supplemental Stormwater Guidelines.~~

236 **“Developer”** means the individual(s), corporation(s), or other legal entity submitting stormwater  
 237 site drainage plans as described in LMC 13.40.070.

238 **“Director”** means the Lynnwood public works director and/or the director’s designee.

239 **“Drainage area”** means the watershed contributing water runoff to and including the subject property.

240 **“Drainage Plan”** See “Conceptual drainage plan,” “Detailed drainage plan.”

241 ~~“Drainage System” means any system which collects, conveys, stores, and treats storm water runoff,~~  
 242 ~~and / or surface waters. Drainage systems shall include, but not be limited to, streams, pipelines,~~  
 243 ~~channels, ditches, swamps, lakes, wetlands, infiltration systems, retention/detention systems, quality and~~  
 244 ~~quantity treatment facilities, and other drainage structures, both natural and manmade.~~

245 **“Drainage Treatment / Abatement facilities”** means any facilities installed or constructed in conjunction  
 246 with a stormwater site drainage plan for the purpose of flow control or runoff treatment ~~or abatement of~~  
 247 ~~urban runoff.~~

248 **“Ecology”** means the Washington State Department of Ecology.

249 **“Effective impervious surface”** means those impervious surfaces that are connected via sheet flow or  
 250 discrete conveyance to a drainage system. Impervious surfaces ~~on residential development sites~~ are  
 251 considered ineffective if:

252 1. ~~The runoff is dispersed through at least 100 one hundred~~ feet of native vegetation in accordance  
 253 with BMP T5.30: ~~—“Full Dispersion,”~~ as described in Chapter 5 of Volume V of the Stormwater  
 254 Management Manual for Western Washington.

255 2. Residential roof runoff is infiltrated in accordance with BMP T5.10A: Downspout Full Infiltration; or

256 3. Approved continuous runoff modeling methods indicate that the entire runoff file is infiltrated.

257 ~~“Erodible or leachable materials” means wastes, chemicals, or other substances that which,~~  
 258 ~~measurably alter the physical or chemical characteristics of runoff when exposed to rainfall. Examples~~  
 259 ~~include erodible soils that are stockpiled, uncovered process wastes, manure, fertilizers, oily substances,~~  
 260 ~~ashes, kiln dust, and garbage dumpster leakage.~~

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

262 **“Exemption”** means land uses and land-disturbing activities that are not required to follow the provisions  
 263 of this chapter.

264 **“Groundwater”** means water in a saturated zone or stratum beneath the surface of the land or  
 265 below a surface water body. Refer to Chapter 173-200 WAC.



266 **“Hard Surface”** means an impervious surface, a permeable pavement, or a vegetated roof.

267 **“Highway”** means a main public road connecting towns and cities.

268 **“Impervious surface”** means a ~~non-vegetated~~~~hard~~ surface area ~~which~~~~that~~ either prevents or retards the

269 entry of water into the soil mantle as under natural conditions prior to development. A ~~non-vegetated~~~~hard~~

270 surface area which causes water to run off the surface in greater quantities or at an increased rate of flow

271 from the flow present under natural conditions prior to development. Common impervious surfaces

272 include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas,

273 concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other

274 surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention

275 facilities shall not be considered as impervious surfaces for purposes of determining whether the

276 thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention

277 facilities shall be considered impervious surfaces for purposes of runoff modeling.

278 **“Land-disturbing activity”** means any activity that results in ~~movement of earth, or~~ a change in the

279 existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land-

280 disturbing activities include, but are not limited to, clearing, grading, filling, and excavation. Compaction

281 that is associated with stabilization of structures and road construction shall also be considered a land-

282 disturbing activity. Vegetation maintenance practices, including landscape maintenance and gardening,

283 are not considered land-disturbing activity. Stormwater facility maintenance is not considered land-

284 disturbing activity if conducted according to established standards and procedures.

285 **“LID Best Management Practices (BMPs)”** means distributed stormwater management practices,

286 integrated into a project design, that emphasize pre-disturbance hydrologic processes of infiltration,

287 filtration, storage, evaporation and transpiration. LID BMPs include, but are not limited to, bioretention,

288 rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, minimal

289 excavation foundations, vegetated roofs, and water re-use.

290 **“LID principles”** means land use management strategies that emphasize conservation, use of on-site

291 natural features, and site planning to minimize impervious surfaces, native vegetation loss, and

292 stormwater runoff.

293 **“Low impact development”** is a stormwater and land use management strategy that strives to mimic pre-

294 disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by

295 emphasizing conservation, and use of existing on-site natural features, site planning, and integrated

296 with distributed, small-scale stormwater management practices that are integrated into a project

297 design~~controls to more closely mimic natural hydrologic patterns on the site.~~

298 **“Maintenance”** includes activities conducted on currently serviceable structures, facilities, and equipment

299 that involves no expansion or use beyond that previously existing and results in no significant adverse

300 hydrologic impact. It includes those usual activities taken to prevent a decline, lapse, or cessation in the

301 use of structures and systems. Those usual activities may include replacement of dysfunctional facilities,

302 including cases where environmental permits require replacing an existing structure with a different type

303 structure, as long as the functioning characteristics of the original structure are not changed. One

304 example is the replacement of a collapsed, fish blocking, round culvert with a new box culvert under the

305 same span, or width, of roadway. In regard to stormwater facilities, maintenance includes assessment to

306 ensure ongoing proper operation, removal of built-up pollutants (i.e., sediments), replacement of failed or

307 failing treatment media, and other actions taken to correct defects as identified in the BMP design

308 guidance within Volume V of the SWMMWW. See also Road Maintenance exemptions in LMC 13.40.030.

309 **“Maximum extent ~~practicable~~Feasible”** refers to paragraph 402(p)(3)(B)(iii) of the federal Clean Water

310 Act which reads as follows: Permits for discharges from municipal storm sewers shall require controls to

311 reduce the discharge of pollutants to the maximum extent practicable, including management practices,

312 control techniques, and system, design, and engineering methods, and other such provisions as the

313 Administrator or the State determines appropriate for the control of such pollutants. ~~means the~~

314 ~~requirement is to be fully implemented, constrained only by the physical limitations of the site, practical~~

315 ~~considerations of engineering design, and reasonable considerations of financial costs and environmental~~

316 ~~impacts.~~

317 **“Municipal separate storm sewer system (MS4)”** means a conveyance or system of conveyances

318 (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade

319 channels, or storm drains):

- 320 A. Owned or operated by the city of Lynnwood;  
 321 B. Designed or used for collecting or conveying stormwater;  
 322 C. Which is not part of publicly owned treatment works (POTW) as defined at 40 CFR 122.2; and  
 323 D. Which is not a combined sewer; ~~and~~  
 324 E. Which is defined as a “large” or “medium” or “small” or otherwise designated by Ecology pursuant to  
 325 40 CFR 122.26.

326 **“Native vegetation”** means vegetation is comprised of plant species, other than noxious weeds, that are  
 327 indigenous to the coastal region of the Pacific Northwest and which reasonably could have been  
 328 expected to naturally occur on the site. Examples ~~may~~ include, ~~but aren’t limited to,~~ trees such as  
 329 Douglas Fir, western hemlock, western red cedar, alder, big-leaf maple, and vine maple; shrubs such as  
 330 willow, elderberry, salmonberry, and salal; and herbaceous plants such as sword fern, foam flower, and  
 331 fireweed.

332 **“New development”** includes land disturbing activities, including Class IV -general forest practices that  
 333 are conversions from timber land to other uses; structural development, including construction or  
 334 installation of a building or other structure; creation of hard impervious surfaces; ~~mining; dredging; filling;~~  
 335 ~~grading; landscaping; excavation; drilling operations;~~ and subdivision, short subdivision and binding site  
 336 plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment  
 337 shall not be considered new development.

338 **“New impervious surface”** means a surface that is:

- 339 • changed from a pervious surface to an impervious surface (e.g., resurfacing by upgrading from  
 340 dirt to gravel, a bituminous surface treatment (“chip seal”), asphalt, concrete, or an impervious  
 341 structure); or
- 342 • upgraded from gravel to chip seal, asphalt, concrete, or an impervious structure; or
- 343 • upgraded from chip seal to asphalt, concrete, or an impervious structure.  
 344 Note that if asphalt or concrete has been overlaid by a chip seal, the existing condition should be  
 345 considered as asphalt or concrete.

346 **“Pervious surface”** means any surface material that allows stormwater to infiltrate into the ground.  
 347 Examples include lawn, landscape, pasture, native vegetation areas, and permeable pavements.

348 **“Pollutant”** means any substance which, when added to water, would contaminate or alter the chemical,  
 349 physical, or biological properties of any waters of the state. This includes a change in temperature, taste,  
 350 color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other  
 351 substance into any waters of the state as will or is likely to create a nuisance. It also includes any  
 352 substance which renders such waters harmful, detrimental, or injurious to the public health, safety, or  
 353 welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial  
 354 uses, or to livestock, wild animals, birds, fish, or other aquatic life.

355 **“Pollution-generating hard surface”** means those hard surfaces considered to be a significant source  
 356 of pollutants in stormwater runoff. See the listing of surfaces under the pollution-generating impervious  
 357 surface definition.

358 **“Pollution-generating impervious surface (PGIS)”** “Pollution-generating impervious surface (PGIS)”  
 359 means those impervious surfaces considered to be a significant source of pollutants in stormwater runoff.  
 360 Such surfaces include those which are subject to any of the following:

- 361 • vehicular use;
- 362 • industrial activities (as further defined in the glossary ~~of Volume 1~~ of the Stormwater Management  
 363 Manual for Western Washington); ~~or~~
- 364 • storage of erodible or leachable materials, wastes, or chemicals, and which receive direct rainfall  
 365 or the run-on or blow-in of rainfall.
- 366 • ~~Erodible or leachable materials, wastes, or chemicals are those substances which, when exposed~~  
 367 ~~to rainfall, measurably alter the physical or chemical characteristics of the rainfall runoff. Examples~~  
 368 ~~include erodible soil that are stockpiled, uncovered process wastes, manure, fertilizers, oily~~  
 369 ~~substances, ashes, kiln dust, and garbage dumpster leakage.~~
- 370 • ~~m~~ Metal roofs ~~are also considered to be PGIS~~ unless they are coated with an inert, non-leachable  
 371 material (e.g., baked-on enamel coating); ~~or,~~
- 372 • roofs that are subject to venting significant amounts of dusts, mites, or fumes from manufacturing,  
 373 commercial, or other indoor activities.

- 374 • ~~A surface, whether paved or not, shall be considered subject to vehicular use if it is regularly used~~  
 375 ~~by motor vehicles. The following are considered regularly used surfaces: roads, unvegetated road~~  
 376 ~~shoulders, bike lanes within the traveled lane of a roadway, driveways, parking lots, unfenced fire~~  
 377 ~~lanes, vehicular equipment storage yards, and airport runways.~~  
 378 ~~The following are not considered regularly used surfaces: paved bicycle pathways separated from~~  
 379 ~~and not subject to drainage from roads for motor vehicles, fenced fire lanes, and infrequently~~  
 380 ~~used maintenance access roads.~~

381 **“Pollution-generating pervious surfaces (PGPS)”** means any ~~pervious~~~~non-impervious~~ surface subject  
 382 to any of the following:

- 383 • vehicular use,
- 384 • industrial activities,
- 385 • storage of erodible or leachable materials, wastes, or chemicals, and that receive direct rainfall or  
 386 run-on or blow-in of rainfall,
- 387 • use of pesticides and fertilizers, or
- 388 • loss of soil

389 Typical PGPS include permeable pavement subject to vehicular use, lawns, ~~and~~ landscaped areas  
 390 including; golf courses, parks, cemeteries, and sports fields (natural and artificial turf).

391 **“Project site”** means that portion of a property, properties, or right of way subject to land-disturbing  
 392 activities, new ~~hard~~~~impervious~~ surfaces, or replaced ~~hard~~~~impervious~~ surfaces.

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

398 **“Replaced hard surface”** means the removal and replacement of hard surfaces down to the foundation  
 399 for structures. For other hard surfaces, means the removal down to bare soil or base course and  
 400 replacement.

401 **“Replaced impervious surface”** means the removal and replacement of ~~any exterior~~ impervious  
 402 surfaces ~~down to the~~~~er~~ foundation for structures. For other impervious surfaces, means the removal down  
 403 to bare soil or base course and replacement.

404 **“Retention/detention facilities”** means a type of drainage facility designed either to hold water for a  
 405 considerable length of time and then release it by evaporation, plant transpiration, and/or infiltration into  
 406 the ground; or to hold surface and stormwater runoff for a short period of time and then release it to the  
 407 surface and stormwater management system.

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

411 **“Source control BMP”** means a structure or operation intended to prevent pollutants from coming into  
 412 contact with stormwater through physical separation of areas or careful management of activities that are  
 413 sources of pollutants. The Stormwater Management Manual for Western Washington separates source  
 414 control BMPs into two types. Structural Source Control BMPs are physical, structural, or mechanical  
 415 devices or facilities that are intended to prevent pollutants from entering stormwater. Operational Source  
 416 Control BMPs are non-structural practices that prevent or reduce pollutants from entering stormwater.  
 417 See Volume IV of the Stormwater Management Manual for Western Washington for details.

418 **“Storm drainage system”** means publicly or privately owned facilities, including the city’s municipal  
 419 separate storm sewer system, by which stormwater is collected and/or conveyed, including but not limited  
 420 to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, ditches  
 421 and/or swales, pumping facilities, retention and detention basins, natural and human made or altered  
 422 drainage channels, reservoirs, and other drainage structures.

423 **“Stormwater”** means runoff during and following water originating from rainfall and other precipitation and  
 424 snowmelt events, including surface runoff, and drainage, or interflow.

425 **“Stormwater Manual”** means the Stormwater Management Manual for Western Washington prepared  
 426 by the Washington State Department of Ecology. The City adopts the Stormwater Management Manual



427 for Western Washington per the deadlines specified in the Western Washington Phase II Municipal  
 428 Stormwater Permit.  
 429 “Stormwater site plan” means the comprehensive report containing all of the technical information and  
 430 analysis necessary for regulatory agencies to evaluate a proposed development project for compliance  
 431 with stormwater requirements. Contents of the stormwater site plan will vary with the type and size of the  
 432 project, and individual site characteristics. It includes a construction stormwater pollution prevention plan  
 433 (construction SWPPP) and a permanent stormwater control plan (PSC Plan). Guidance on preparing a  
 434 stormwater site plan is contained in the Stormwater Manual.

435 “Supplemental Stormwater Guidelines” means the manual of technical and administrative procedures  
 436 established by the public works department which delineates methods to be used, the level of detail of  
 437 analysis required, and other details for implementation of the provisions of this chapter.

438 “Vehicular use” means regular use of an impervious or pervious surface by motor vehicles. The  
 439 following are subject to regular vehicular use:

- 440 • roads,
- 441 • unvegetated road shoulders,
- 442 • bike lanes within the traveled lane of a roadway,
- 443 • driveways,
- 444 • parking lots,
- 445 • unrestricted access fire lanes,
- 446 • vehicular equipment storage yards, and
- 447 • airport runways.

448 The following are not considered to be subject to regular vehicular use:

- 449 • sidewalks not subject to drainage from roads for motor vehicles,
- 450 • paved bicycle pathways separated from and not subject to drainage from roads for motor  
 451 vehicles,
- 452 • restricted access fire lanes, and
- 453 • infrequently used maintenance access roads.

454 “Wetland” means areas that are inundated or saturated by surface water or ~~groundwater~~ground water at  
 455 a frequency or duration sufficient to support, and under normal circumstances do support, a prevalence of  
 456 vegetation typically adapted for life in saturated soils conditions. Wetlands generally include swamps,  
 457 marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created  
 458 from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales,  
 459 canals, detention ~~facilities~~ponds, wastewater treatment facilities, farm ponds, and landscape amenities, or  
 460 those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction  
 461 of a road, street, or highway. Wetlands ~~may~~include those artificial wetlands intentionally created from  
 462 non-wetland areas to mitigate conversion of wetlands. (Ord. 2833 § 2, 2010)

#### 463 **13.40.050 Project types.**

464 For purposes of this chapter, projects are classified as Category 1 or Category 2 sites~~Large Site, Small~~  
 465 ~~Site, or Minor Site projects~~ as described below, primarily based on the extent of hard~~impervious~~ surface  
 466 ~~area~~generated and the type of land-disturbing activities that will occur.

467 A. Category 1 project sites shall comply with Minimum Requirements No. 1 through No. 5. Category 1  
 468 includes projects that~~Large Site Projects~~ involve:

- 469 1. Result in 2,000 square feet, or greater, of new, replaced, or new plus replaced hard surface area~~4~~  
 470 acre or more of land-disturbing activity; or
- 471 2. Have land disturbing activity of 7,000 square feet or greater~~If the project disturbs less than 1 acre~~  
 472 of land and it is part of a larger common plan of development or sale where land-disturbing  
 473 activity involves 1 acre or more.

474 B. Category 2 project sites shall comply with Minimum Requirements No. 1 through No. 9. Category 2  
 475 includes projects that~~Small Site Projects~~ involve:

- 476 1. Result in 5,000~~Five thousand~~ square feet, or greater, of new, replaced, or new plus replaced  
 477 hard~~impervious~~ surface area, or
- 478 2. Convert 0.75 acres, or more, of vegetation to lawn or landscaped areas~~At least 7,000 square feet~~  
 479 of land-disturbing activity; or~~and~~

480 3. ~~Convert 2.5 acres, or more, of native vegetation to pasture~~Are not a Large Site Project.

481 ~~C. Minor Site Projects~~ involve:

482 1. ~~2,000 square feet or greater of new, replaced, or new plus replaced impervious surface area, and~~

483 2. ~~Are not a Small Site Project or a Large Site Project.~~ (Ord. 2833 § 2, 2010)

484 **13.40.055 Supplemental ~~S~~stormwater manual guidelines adoption**

485 ~~The City adopts the Stormwater Management Manual for Western Washington prepared by the Washington~~

486 ~~State Department of Ecology per the deadlines specified in the Western Washington Phase II Municipal~~

487 ~~Stormwater Permit. The Director may adopt, and amend as deemed prudent and necessary, the City of~~

488 ~~Lynnwood Supplemental Stormwater Guidelines to further the purposes of this chapter. This document~~

489 ~~shall serve as a guidance~~ manual ~~provides~~of technical and administrative procedures to assist the end user

490 in the methods to be used, the level of detail of analysis required, and other technical details for

491 implementation of, and compliance with the provisions of this chapter. (Ord. 2833 § 2, 2010)

492 **13.40.060 Minimum technical requirements.**

493 **A. General**

494 1. All activities covered by this chapter shall comply with the site planning and best management

495 practice selection and design criteria in the ~~Stormwater Manual~~~~City of Lynnwood Supplemental~~

496 ~~Stormwater Guidelines, herein referred to as the Supplemental Stormwater Guidelines,~~ to

497 implement the applicable minimum technical requirements listed in this chapter.

498 2. The city may allow alternative or regional approaches to stormwater treatment, flow control, or

499 other minimum requirements per the Basin/Watershed provisions outlined in the Western

500 Washington Phase II Municipal Stormwater Permit, Appendix 1, Section 7-0.

501 3. **Low Impact Development.** Consistent with the City of Lynnwood comprehensive plan

502 (environmental resources element, and other sections) and surface water management

503 comprehensive plan, low impact development ~~principals and BMP~~techniques shall be employed

504 to the maximum extent ~~practicable-feasible~~. When low impact development ~~principles and~~

505 ~~BMP~~techniques are employed, the design shall be consistent with the ~~Stormwater Manual~~most

506 ~~recent version of the Low Impact Development, Technical Guidance for Puget Sound (Puget~~

507 ~~Sound Action Team and Washington State University Pierce County Extension) or the~~

508 ~~Supplemental Stormwater Guidelines.~~

509 4. ~~Perrinville Creek Basin Flow Control Standard (applies to all discharges within the Perrinville Creek~~

510 ~~Basin) shall have an elevated level of flow control when Minimum Requirement No. 7 (Flow Control)~~

511 ~~is triggered for a new development or redevelopment project. Discharges to the Perrinville Creek~~

512 ~~Basin shall maintain flow durations at their predevelopment levels for all flows greater than one-~~

513 ~~half of the 2-year flow up to the 50-year flow AND hold the 100-year peak flow rate at its~~

514 ~~predevelopment level. The predevelopment peak flow rates for the 2-year and 10-year runoff~~

515 ~~events are also intended to be maintained.~~

516 **B. Drainage and Retention/Detention System Design Requirements.**

517 1. All drainage easements within the subject property shall be at least 20 feet in width for operation

518 and maintenance of open channel or closed system installation, unless otherwise deemed

519 necessary and approved by the director.

520 2. Open retention/detention ponds and infiltration facilities shall not be located in dedicated public

521 road right-of-way areas unless specifically waived by the director.

522 **C. Minimum Technical Requirements by Project Type.**

523 1. ~~Category 1 and Category 2~~Large site projects shall meet the ~~large site~~ minimum requirements

524 outlined in the ~~Stormwater Manual~~Supplemental Stormwater Guidelines.

525 ~~2. Small Site Projects shall, at a minimum, comply with the small site minimum requirements~~

526 ~~outlined in the Supplemental Stormwater Guidelines.~~

527 ~~3. Minor Site Projects shall, at a minimum, comply with the minor site minimum requirements~~

528 ~~outlined in the Supplemental Stormwater Guidelines.~~

529 2. Additional requirements may be imposed by the director or designee on ~~minor~~ project sites to

530 meet the purpose of this chapter based on site specific factors including, but not limited to,

531 location, soil conditions, slope, and designated use. (Ord. 2833 § 2, 2010)

532 **13.40.065 Permit to be obtained for land clearing.**

533 Because of potential impacts to surface water systems, a permit application for any land clearing in  
 534 excess of one-eighth of an acre shall be submitted to the department of public works for processing as  
 535 required by LMC 2.44.040. (Ord. 2833 § 2, 2010)

536 **13.40.070 Submittal requirements.**

537 **A. Open Channel Construction.** Applicants proposing to handle drainage with open channels must  
 538 meet the following submittal requirements:

- 539 1. The water surface elevation will be indicated on the plan and profile drawings.
- 540 2. The configuration of the finished grades constituting the banks of the open channel will be shown  
 541 on the drawings.
- 542 3. The proposed cross-section of the channel will be shown with stable side slopes as approved by  
 543 the public works department.
- 544 4. The water surface elevation of the flow for the design storm will be indicated on the cross-section.
- 545 5. The director may require the applicant to submit calculations and/or other design information to  
 546 prove that channel erosion will not occur.

547 ~~**B. Conceptual Drainage Plan.** Applicants proposing Minor Site Projects that are not located within an  
 548 environmentally critical area shall submit a Conceptual Drainage Plan, which shall include the following  
 549 information:~~

- 550 1. ~~Character of the existing site~~
- 551 2. ~~Natural drainage features on or adjacent to the site~~
- 552 3. ~~Location and dimensions of all impervious surfaces~~
- 553 4. ~~Flow arrows indicating the direction of stormwater flows on-site~~
- 554 5. ~~Any off-site flows entering the site~~
- 555 6. ~~Proposed method of utilizing the existing drainage system~~
- 556 7. ~~Documentation specifying how the project complies with all applicable minimum requirements.~~

557 ~~The required contents of the Conceptual Drainage Plan are described in the *Supplemental Stormwater*  
 558 *Guidelines*. Based upon the review of the Conceptual Drainage Plan, the Director shall determine if  
 559 further drainage plans are required.~~

560 ~~**B. Stormwater Site Detailed Drainage Plan.** In addition to the elements required for the Conceptual  
 561 Drainage Plan, a Applicants proposing Category 1 or Category 2 small site projects or large site projects  
 562 shall submit a stormwater site Detailed Drainage plan. Stormwater site plans shall use site-appropriate  
 563 development principles to retain native vegetation and minimize impervious surfaces to the extent  
 564 feasible. Stormwater site plans shall be prepared in accordance with the Stormwater Manual, which shall  
 565 include the following information with respect to surface and pertinent subsurface water flows entering,  
 566 flowing within, and leaving the subject property both during and after construction:~~

- 567 1. ~~Project description.~~
- 568 2. ~~Background computations for sizing drainage facilities.~~
- 569 3. ~~Proposed measures for handling the computed runoff at the detail level specified in the  
 570 *Supplemental Stormwater Guidelines*.~~
- 571 4. ~~Proposed measures for controlling runoff and erosion/sedimentation during clearing, grading and  
 572 construction, and proposed staging and schedule of all building, clearing, grading activities, in  
 573 accordance with the *Supplemental Stormwater Guidelines*.~~
- 574 5. ~~Documentation specifying how the project complies with all applicable minimum requirements.~~

575 ~~The required contents of the Detailed Drainage Plan are described in the *Supplemental Stormwater*  
 576 *Guidelines*.~~

577 **C.** Commencement of construction work meeting any of the thresholds identified in LMC 13.40.050 shall  
 578 not begin until such time as a storm drainage permit is applied for, the permit is processed by the public  
 579 works department as required by LMC 2.44.040, and final approval of the stormwater site drainage plan is  
 580 obtained in accordance with LMC 13.40.080. Failure to comply with this provision shall result in  
 581 revocation of all permits for the proposed development, and the city may proceed as authorized under  
 582 LMC 13.40.150. The same plan submitted during one permit/approval process may be subsequently  
 583 submitted with further required applications. The plan shall be supplemented with such additional

584 information as required by LMC 2.44.040 and/or required by the provisions of [Stormwater](#)  
 585 [ManualSupplemental Stormwater Guidelines](#).  
 586 **D.** The requirements of this section may be modified at the discretion of the director when more  
 587 information is deemed necessary. (Ord. 2833 § 2, 2010)

588 **13.40.080 Review and approval process.**

589 **A.** All stormwater [sitedrainage](#)-plans listed in LMC 13.40.070 shall be submitted for review by and  
 590 approval of the public works department in accordance with the procedures established in the [Stormwater](#)  
 591 [ManualSupplemental Stormwater Guidelines](#) and as required by LMC 2.44.040.

592 **B.** At the time of approval of the [stormwater sitedrainage](#)-plan for the subject property, a schedule for  
 593 inspection of construction and facilities will be established by the public works department. (Ord. 2833 §  
 594 2, 2010)

595 **13.40.090 Development in critical areas.**

596 All development in and adjacent to critical areas shall be required to comply with the terms and conditions  
 597 of Chapter 17.10 LMC, in addition to any requirements of this chapter. (Ord. 2833 § 2, 2010)

598 **13.40.100 Establishment of regional facilities.**

599 In the event that public benefits would accrue due to modification of the [stormwater sitedrainage](#)-plan for  
 600 the subject property to better implement the recommendations of the [stormwater sitecomprehensive](#)  
 601 [drainage](#)-plan, the public works department may recommend that the city should assume responsibility for  
 602 the further design, construction, operation and maintenance of drainage facilities on the subject property.  
 603 Such decision shall be made concurrently with review and approval of the plan as specified in LMC  
 604 13.40.080. In the event that the city decides to assume responsibility for design, construction, operations  
 605 and maintenance of the facilities, the developer will be required to contribute a pro rata share to the  
 606 construction cost of the facilities. The developer may be required to supply additional information at the  
 607 request of the public works department to aid in the determination by the city. Guidelines for implementing  
 608 this section will be defined in the [Stormwater ManualSupplemental Stormwater Guidelines](#) or by the  
 609 public works department. (Ord. 2833 § 2, 2010)

610 **13.40.110 Bonds and liability insurance required.**

611 **A.** The public works department is authorized to require all persons constructing retention/detention or  
 612 other drainage [treatment/abatement](#) facilities to post surety and cash bonds.

613 **B.** Where such persons have previously posted or are required to post other such bonds on the facility  
 614 itself or on other construction related to the facility, such persons may, with the permission of the public  
 615 works department and to the extent allowable by law, combine all such bonds into a single bond;  
 616 provided, that at no time shall the amount thus bonded be less than the total amount which would have  
 617 been required in the form of separate bonds; and provided, further, that such a bond shall on its face  
 618 clearly delineate those separate bonds which it is intended to replace.

619 1. **Construction Bond.** Prior to commencing construction, the person constructing the facility shall  
 620 post a construction bond in an amount sufficient to cover the cost of conforming the construction  
 621 with the approved [stormwater sitedrainage](#)-plans. The amount of the bond shall be increased at  
 622 one-year intervals in a proportion equivalent to the prevailing rate of inflation in construction costs  
 623 [as specified in the Supplemental Stormwater Guidelines](#). After determination by the public works  
 624 department that all facilities are constructed in compliance with the approved plans, the  
 625 construction bond shall be released. Alternatively, an equivalent cash deposit to an escrow  
 626 account administered by a local bank designated by the city could be required at city option.

627 2. **Maintenance Bond.** After satisfactory completion of the facilities and concurrent with release of  
 628 the construction bond by the city, the person constructing the facility shall commence a two-year  
 629 period of satisfactory maintenance of the facility. A cash bond to be used at the discretion of the  
 630 engineer to correct deficiencies in the maintenance affecting public health, safety and welfare  
 631 must be posted and maintained throughout the two-year maintenance period. The amount of the  
 632 cash bond shall be determined by the city engineer, but shall not be in excess of 10 percent nor  
 633 less than five percent of the estimated construction cost of the drainage facilities. In addition, a

634 surety bond or cash bond to cover the cost of design defects or failures in workmanship of the  
 635 facilities shall also be posted and maintained throughout the two-year maintenance period. The  
 636 amount of the bonds shall be increased at one-year intervals in a proportion equivalent to the  
 637 prevailing rate of inflation. Alternatively, an equivalent cash deposit to an escrow account  
 638 administered by a local bank designated by the city could be required at city option.  
 639 3. **Liability Policy.** The person constructing the facility shall maintain a liability policy in the amount  
 640 of \$100,000 per individual, \$300,000 per occurrence, and \$50,000 property damage, which shall  
 641 name the city as an additional insured and which shall protect the city from any liability up to  
 642 those amounts for any accident, negligence, failure of the facility, or any other liability  
 643 whatsoever, relating to the construction or maintenance of the facility. The liability policy shall be  
 644 maintained for the duration of the facility by the owner of the facility; provided, that in the case of  
 645 facilities assumed by the city for maintenance pursuant to LMC 13.40.120, the liability policy shall  
 646 be terminated when the city maintenance responsibility commences. (Ord. 2833 § 2, 2010)

647 **13.40.120 Post construction inspectionOperation and maintenance requirements.**

648 Inspection and maintenance of ~~all~~ stormwater facilities ~~and operational and structural source control BMPs~~  
 649 ~~at businesses/sites~~ shall be performed in accordance with the ~~Stormwater Manual~~Supplemental  
 650 ~~Stormwater Guidelines.~~

651 **A. Stormwater Maintenance and Inspection Standards.** Stormwater facilities shall be inspected and  
 652 maintained per the requirements of the ~~Stormwater Manual~~Supplemental ~~Stormwater Guidelines.~~ For  
 653 systems which do not have a maintenance standard, the owner shall develop a standard based on  
 654 guidelines from the manufacturer, designer, or a registered professional engineer and submit the  
 655 standards to the director for approval. ~~Operational and structural source control BMPs shall be~~  
 656 ~~maintained per the requirements of Volume IV of the Stormwater Manual. The purpose of the~~  
 657 ~~maintenance standard is to determine if maintenance is required. The maintenance standard is not a~~  
 658 ~~measure of the facility's required condition at all times between inspections. Exceeding the maintenance~~  
 659 ~~standard between inspections is not a violation of this chapter.~~

660 **B. Ownership.** Stormwater facilities are either privately or publicly owned ~~and maintained.~~ All stormwater  
 661 facilities that serve commercial ~~sites, and~~ industrial sites, ~~and homeowner's associations or similar~~ are  
 662 ~~privately owned. Storm drainage facilities or controls that are privately owned by a homeowner's~~  
 663 ~~association or similar organization also are private.~~

664 1. ~~The city may assume the operation and maintenance responsibility of retention/detention or other~~  
 665 ~~drainage treatment/abatement facilities after the expiration of the required operation and~~  
 666 ~~maintenance period in connection with the subdivision of land if:~~

667 a. ~~All of the requirements of LMC 13.40.110 have been fully complied with;~~

668 b. ~~The facilities have been inspected and approved by the public works department after~~  
 669 ~~two years of operation in accordance with the Supplemental Stormwater Guidelines;~~

670 c. ~~All necessary easements entitling the city to properly operate and maintain the facility~~  
 671 ~~have been conveyed to the city and recorded with the Snohomish County auditor;~~

672 d. ~~The developer or owner has supplied to the city an accounting of capital, construction,~~  
 673 ~~and operation and maintenance expenses or other items, for the drainage facilities up to~~  
 674 ~~the end of the previous two-year period, for the purpose of establishing the basis for~~  
 675 ~~future bonding requirements for other developments.~~

676 2. ~~In the event that the city elects not to assume the operation and maintenance responsibility for~~  
 677 ~~the facilities, it~~ ~~is~~ ~~will be~~ the responsibility of the developer to make arrangements with the  
 678 occupants or owners of the subject property for assumption of ~~operation and~~ maintenance in a  
 679 manner subject to the approval of the public works department or in accordance with the  
 680 ~~Stormwater Manual~~Supplemental ~~Stormwater Guidelines.~~ Such arrangements shall be completed  
 681 and approved prior to the end of the ~~initial~~ two-year ~~maintenance~~ period ~~of developer~~  
 682 ~~responsibility.~~

683 3. ~~If the city elects not to assume operation and maintenance responsibility, the drainage facilities~~  
 684 ~~shall be operated and maintained in accordance with the arrangements as approved by the public~~  
 685 ~~works department. The city may inspect the facilities in order to ensure continued use of the~~



686 ~~facilities for the purposes for which they were built and in accordance with these arrangements.~~  
 687 ~~(Ord. 908 § 10, 1977)~~

688 ~~4. If any person constructing retention/detention or other drainage treatment/abatement facilities~~  
 689 ~~and/or receiving approval of drainage plans prior to the effective date of the ordinance codified in~~  
 690 ~~this chapter re-evaluates according to the requirements of this chapter the facilities and/or plans~~  
 691 ~~so constructed and/or approved and demonstrates to the engineer's satisfaction acceptable~~  
 692 ~~compliance with its requirements the city may, after inspection, approval and acknowledgment of~~  
 693 ~~the proper posting of the required bonds as specified in LMC 13.40.110, assume operation and~~  
 694 ~~maintenance responsibility of the facilities.~~

695 ~~5. In cases in which all or part of the drainage facilities are not accessible for operation or~~  
 696 ~~maintenance purposes due to overlying structures or other causes, the city shall be held~~  
 697 ~~harmless for damages which might occur due to failure of design or workmanship of these~~  
 698 ~~segments, and further will not be responsible for their maintenance, replacement, or~~  
 699 ~~rehabilitation. In such cases, responsibility shall revert to the existing owner of such facilities.~~  
 700 ~~(Ord. 908 § 11, 1977)~~

### 701 **C. Inspection and Maintenance Responsibilities.**

- 702 1. All storm~~water drainage~~ facilities or controls shall be regularly inspected to ensure proper  
 703 operation as required in the ~~Stormwater Manual~~Supplemental Stormwater Guidelines. ~~The owner~~  
 704 ~~shall maintain a copy of the~~An stormwater operations and maintenance manual consistent with  
 705 the provisions in Volume V of the Stormwater ~~Management Manual for Western Washington is~~  
 706 ~~required~~ for all ~~proposed~~ stormwater facilities and BMPs. For private facilities, a copy of the  
 707 operation and maintenance manual shall be retained onsite or within reasonable access to the  
 708 site, and shall be transferred with the property to the new owner. For public facilities, a copy of  
 709 the manual shall be retained in the appropriate department. A log of maintenance activity that  
 710 indicates what actions were taken shall be kept and be available for inspection.
- 711 2. When an inspection identifies an exceedance of the maintenance standard, maintenance shall be  
 712 performed:
- 713 a. Within one year for typical maintenance of facilities, except catch basins.
  - 714 b. Within six months for catch basins.
  - 715 c. Within two years for maintenance that requires capital construction of less than \$25,000.
- 716 3. Operational and structural source control BMPs are also required to be repaired and/or brought up  
 717 to applicable standards by the property owner or the person responsible for the business/site.

718  
 719 **D. Disposal of Waste from Maintenance Activities.** Disposal of waste from maintenance activities shall  
 720 be conducted in accordance with the minimum Functional Standards for Solid Waste Handling, Chapter  
 721 173-304 WAC, guidelines for disposal of waste materials from storm water maintenance activities, and  
 722 where appropriate, the Dangerous Waste Regulations, Chapter 173-303 WAC.

723 **E. City Inspection of Private Stormwater Facilities.** ~~The city shall have the authority to periodically~~  
 724 ~~regular inspection of privately owned stormwater drainage facilities for compliance with this chapter or~~  
 725 ~~controls is essential to enable the city to evaluate the proper operation of the city's MS4 and the~~  
 726 ~~environment. The city shall have access to private stormwater facilities for inspection to ensure they are~~  
 727 ~~properly operated and maintained.~~

728 **F. City Inspection of Existing Businesses/Sites.** The city shall have the authority to periodically  
 729 inspect private businesses and sites for compliance with Minimum Requirement No. 3 (Source Control of  
 730 Pollution).

731 **G. Right of Entry.** An authorized representative of the city may enter private property at all reasonable  
 732 times to conduct inspections, tests or to carry out other duties imposed by a state or Federal program  
 733 provided that the city makes a good faith effort to notify the property owner or person responsible for the  
 734 premises prior to entering and presents proper credentials to that person. If entry is refused or cannot be  
 735 obtained, the director shall have recourse to every remedy provided by law to secure entry, including but  
 736 not limited to, obtaining an administrative warrant for entry. (Ord. 2833 § 2, 2010)

737 **13.40.130 Applicability to governmental entities.**

738 **A.** All municipal corporations and governmental entities shall be required to submit a stormwater  
 739 sitedrainage plan and comply with the terms of this chapter when developing and/or improving land,  
 740 including but not limited to road building and widening, within the areas of the city.  
 741 **B.** It is recognized that many other city, county, state and federal permit conditions may apply to the  
 742 proposed action and that compliance with the provisions of this chapter does not constitute compliance  
 743 with such other requirements. (Ord. 2833 § 2, 2010)

744 **13.40.140 Protection of public and private rights.**  
 745 ~~Implementation of any provision of this chapter shall not cause nor be construed as an infringement of the~~  
 746 ~~rights of individuals, municipalities, or corporations other than the developer submitting a drainage plan as~~  
 747 ~~described in LMC 13.40.070. (Ord. 908 § 14, 1977)~~

748 **13.40.150 Violations.**  
 749 It shall be unlawful for any person to violate any provision of this chapter. Any person found to be in  
 750 violation of any provision of this chapter shall be guilty of a misdemeanor. Each day's violation of the  
 751 provisions of this chapter shall be deemed a separate offense.  
 752 Any person who, through an act of commission or omission, aids or abets in a violation shall be  
 753 considered to have committed a violation of this chapter. The director may take enforcement action, in  
 754 whole or in part, against any violator. Each violator is jointly and severally liable for a violation of this  
 755 chapter. The decisions whether to take enforcement action, what type of action to take, and which person  
 756 to take action against, are decisions entirely within the director's discretion.  
 757 Furthermore, any person who violates any provision of this chapter or any provision of any requirement  
 758 issued pursuant to this chapter may also be in violation of the Clean Water Act and may be subject to the  
 759 sanctions of that act including civil and criminal penalties. (Ord. 2833 § 2, 2010)

760 **13.40.160 Enforcement.**  
 761 The director shall have the authority to enforce any and all provisions of this chapter. A progressive  
 762 approach is typically implemented to assist businesses and other entities, persons, and residents in  
 763 achieving and maintaining compliance with this chapter. This approach emphasizes outreach, education,  
 764 and technical assistance before taking further enforcement actions or assessment penalties, unless a  
 765 flagrant, serious, or purposeful violation has occurred.  
 766 **A. Public Nuisance.** Any violation of any provision of this chapter is a threat to public health, safety, and  
 767 welfare, and is declared and deemed a public nuisance, and is subject to the terms and provision of the  
 768 code enforcement chapter of the Lynnwood Municipal Code (Chapter 1.40 LMC).  
 769 **B. ProgressiveEscalating Enforcement.** When a violation of this chapter has been committed, the  
 770 director may use an escalating method of progressive severity to gain compliance; however, the director  
 771 may take any enforcement action without regard to precedence, or any available legal recourse provided  
 772 by law, to eliminate or end an emergency. Escalating enforcement actions shall be taken in the following  
 773 order of precedence:  
 774 1. First Violation. Verbal and written notice to cease and desist activity, notification of violation and  
 775 warning, which may includeing outreach, education, and technical assistance on addressing the  
 776 current illicit discharge and preventing further illicit discharges.  
 777 2. Second Violation. Written notice to cease and desist activity, and notice of violation and order of  
 778 corrective action.  
 779 3. Third Violation. Written notice to cease and desist activity, and citation for civil infraction shall be  
 780 issued in accordance with the provisions of Chapter 1.40 LMC.  
 781 4. Fourth Violation. Written notice to cease and desist activity, citation for civil infraction, and order  
 782 assessing civil penalties shall be issued in accordance with the provisions of Chapter 1.40 LMC.  
 783 5. Fifth Violation and Thereafter. Written notice to cease and desist activity, citation for civil  
 784 infraction, and order assessing civil penalties shall be issued in accordance with the provisions of  
 785 Chapter 1.40 LMC, and pursuit of criminal charges. (Ord. 2833 § 2, 2010)

786 **13.40.170 Penalties.**  
 787 When a violation of this chapter has been committed, the following penalties may be assessed:

788 **A. Corrective Actions.** The director shall have the authority to require any and all of the following corrective  
789 actions in order to gain compliance with this chapter:

- 790 1. Cease and desist or stop work order;
- 791 2. Elimination of illicit connection;
- 792 3. Abatement of any and all contaminants;
- 793 4. Implementation of source control or treatment BMPs;
- 794 5. Restoration of affected property, waterway, or conveyance;
- 795 6. Other actions deemed necessary by the director.

796 **B. Abatement by City.**

- 797 1. City Action. If the violation has not been corrected pursuant to the requirements set forth in the  
798 notice of corrective action, the city may enter upon the subject premises and is authorized to take  
799 any and all measures necessary to abate the violation. It shall be unlawful for any person, owner,  
800 agent or person in possession of any premises to refuse to allow the city or designated contractor  
801 to enter upon the premises for the purposes set forth above and the city may pursue any lawful  
802 remedy at its disposal.
- 803 2. Recovering Cost of Abatement. Should a person be found in violation of this chapter, the city  
804 shall be entitled to recover all abatement costs, personnel expenses, sampling and monitoring  
805 costs, attorney's fees, court costs and other administrative expenses associated with  
806 enforcement hereof.

807 **C. Civil Penalties.** Any person found to be in violation of this chapter may be subject to civil penalties.  
808 Civil penalties shall constitute a personal obligation of the person against whom the penalties were  
809 imposed. An assessed civil penalty must be paid to the office of the finance director, City of Lynnwood.  
810 The provisions of this section are in addition to, and not in lieu of, any other penalty, sanction, or right of  
811 action provided by the law.

- 812 1. Daily Fines. These fines shall be cumulative, accrue daily until the required corrective action is  
813 taken, and be assessed as follows:
  - 814 a. First day: \$100 for each violation.
  - 815 b. Second day: \$200 for each violation.
  - 816 c. Third day: \$300 for each violation.
  - 817 d. Fourth day: \$400 for each violation.
  - 818 e. Each additional day: \$500 for each violation.
- 819 2. Economic Benefit. The director may assess a civil penalty equivalent to the economic benefit the  
820 violator derives from the violation. The value of the assessed penalty shall be documented, and  
821 shall be based on the greater of: the resulting increase in value of the property or business  
822 received by the violator for not complying with this chapter; or the savings of construction or  
823 retrofit costs realized by the violator for not complying with this chapter.
- 824 3. Use of Collection Agency Authorized. The city in its sole and exclusive discretion, may retain a  
825 collection agency to collect any and all fines assessed under this chapter. When a collection agency  
826 is used, fines will be collected at a rate of 150 percent pursuant to RCW 19.16.500.

827 **D. Criminal Penalties.** Any person found to be in violation of this chapter may be subject to criminal  
828 penalties, as prescribed by state law, RCW 90.48.140. (Ord. 2833 § 2, 2010)

829 **13.40.180 Appeals.**

830 Any person who objects to a final order of the city under this chapter may file an appeal to the hearing  
831 examiner. The person shall file a written protest objecting to the order of the city with the city clerk within  
832 14 days of the order. The city shall process the appeal under Process VI, LMC 1.35.600. (Ord. 2833 § 2,  
833 2010)

834 **13.40.190 Severability.**

835 If any paragraph, clause, sentence, section or part of this chapter or the application thereof to any person  
836 or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or  
837 judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect  
838 or invalidate the remainder of any part thereof to any other person or circumstances and to this end the  
839 provisions of each paragraph, clause, sentence, section or part of this chapter are hereby declared to be  
840 severable. (Ord. 2833 § 2, 2010)

841  
 842 **Section 2.** Adoption. Amendments of Chapter 13.45 of the Lynnwood Municipal Code are adopted as  
 843 follows:

844  
 845 **Chapter 13.45**

846  
 847 **SURFACE WATER QUALITY**

848 **Sections:**

849	13.45.005	Purpose.
850	13.45.010	Definitions.
851	13.45.015	Applicability.
852	13.45.020	Administration.
853	13.45.025	Illicit discharges into Lynnwood surface waters prohibited.
854	13.45.030	Best management practices.
855	13.45.035	Emergency spill control plan.
856	13.45.040	Discharges not considered illicit.
857	13.45.045	Inspection and monitoring of discharges.
858	13.45.050	Notification of spills.
859	13.45.055	Violations.
860	13.45.060	Enforcement.
861	13.45.065	Penalties.
862	13.45.070	Appeals.
863	13.45.075	Severability.

864  
 865 **13.45.005 Purpose.**

866 The purpose of this chapter is to protect the city's surface and ~~groundwater~~~~ground-water~~ quality by  
 867 providing minimum requirements for reducing and controlling the discharge of contaminants. The city  
 868 council recognizes that water quality degradation can result either directly from one discharge or through  
 869 the collective impact of many non-point source discharges. Therefore, this chapter prohibits the discharge  
 870 of contaminants into surface and stormwater and ~~groundwater~~~~ground-water~~, and outlines preventive  
 871 measures to restrict contaminants from entering such waters. These measures include education, source  
 872 control, implementation of best management practices (BMPs), as well as enforcement, amongst others.  
 873 (Ord. 2834 § 1, 2010)

874  
 875 **13.45.010 Definitions.**

876 The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

877 "AKART" means all known, available and reasonable methods of prevention, control and treatment.

878 AKART represents the most current methodology that can be reasonably required for preventing,  
 879 controlling or abating the pollutants associated with a discharge. AKART applies to both point and non-

880 point sources of pollution. See also State Water Pollution Control Act, Chapter 90.48.010 RCW, and  
 881 Chapter 90.48.520 RCW.

882 "**Best management practices**" or "**BMPs**" means the schedules of activities, prohibitions of practices,  
 883 maintenance procedures, and best available and reasonable physical, structural, or managerial practices  
 884 approved by Ecology or behavioral activities, that, when used singly or in combination, prevent, eliminate  
 885 or reduce the release of pollutants and other adverse impacts to waters of Washington  
 886 State contamination of both surface and Ground Waters.

887 "**Chapter**" means this chapter and any administrative rules and regulations adopted to implement this  
 888 chapter.

889 "**Clean Water Act**" means 33 U.S.C. 1251 *et. seq.*, and any subsequent amendments thereto.

890 "**Combined sewer**" means a system that collects sanitary sewage and stormwater in a single sewer  
 891 system.

892 "**Director**" means the Lynnwood public works director, and /or the director's designee.

893 "Discharge" means to throw, drain, release, dump, spill, empty, emit, or pour forth any matter or to cause  
894 or allow matter to flow, run or seep from land or be thrown, drained, released, dumped, spilled, emptied,  
895 emitted or poured into water.

896 "Drainage facility" means a constructed or engineered feature that collects, conveys, stores or treats  
897 surface and stormwater runoff. "Drainage facility" includes, but is not limited to, a constructed or  
898 engineered stream, pipeline, channel, ditch, gutter, lake, wetland, closed depression, flow control or water  
899 quality treatment facility, erosion and sediment control facility and other structure and appurtenance that  
900 provides for drainage.

901 "Ecology" means the Washington State Department of Ecology.

902 "~~Groundwater~~Ground Water" means ~~all waters in a saturated zone or stratum that exist~~ beneath the ~~land~~  
903 surface ~~of the land or below beneath the bed of any stream, lake or reservoir or other body of a~~ surface  
904 water ~~body, whatever may be the geological formation or structure in which such water stands or flows,~~  
905 ~~percolates or otherwise moves. Refer to Chapter 173-200 WAC.~~

906 "Hazardous material" means any ~~liquid, solid, gas, or sludge, material,~~ including any material, substance,  
907 product, commodity, or waste, or combination thereof, which because of its ~~regardless of~~ quantity,  
908 ~~concentration, or that exhibits any of the~~ physical, chemical, or biological properties described in WAC  
909 173-303-090 or WAC 173-303-100~~infectious characteristics may cause, or significantly contribute to, a~~  
910 ~~substantial present or potential hazard to human health, safety, property, or the environment when~~  
911 ~~improperly treated, stored, transported, disposed of, or otherwise managed.~~

912 "~~Hyperchlorinated~~" means ~~water that contains more than 10mg/Liter chlorine.~~

913 "~~Hyperchlorinated~~" means water that contains more than 10 mg/liter chlorine.

914 "~~Illicit connection~~" means any infrastructure connection to the MS4~~man-made conveyance that is~~  
915 ~~connected to a Municipal Separate Storm Sewer without a~~ that is not intended, permitted, or used for  
916 collecting and conveying stormwater or non-stormwater discharges allowed as specified in LMC  
917 13.45.040, excluding roof drains and other similar type connections. Examples include sanitary sewer  
918 connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the  
919 ~~Municipal Separate Storm Sewer System~~MS4.

920 "~~Illicit discharge~~" means any ~~direct or indirect non-stormwater~~ discharge to the city's storm drain~~age~~  
921 system that is not composed entirely of stormwater or of non-stormwater discharges, except as expressly  
922 allowed by this chapter.

923 "~~Low Impact Development~~" is a ~~stormwater management strategy that emphasizes conservation and~~  
924 ~~use of existing site features integrated with distributed, small-scale stormwater controls to more closely~~  
925 ~~mimic natural hydrologic patterns on the site.~~

926 "**Municipal separate storm sewer system**" (MS4) means a conveyance or system of conveyances  
927 (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-  
928 made channels, or storm drains):

929 A. Owned or operated by the City of Lynnwood;

930 B. Designed or used for collecting or conveying stormwater;

931 C. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2; and

932 D. Which is not a combined sewer; and

933 E. Which is defined as "large" or "medium" or "small" or otherwise designated by Ecology pursuant to  
934 40 CFR 122.26.

935 "**National Pollutant Discharge Elimination System**" or "NPDES" means the national program for  
936 issuing, modifying, revoking, and reissuing, terminating, monitoring, and enforcing permits, and imposing  
937 and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the Federal Clean  
938 Water Act, for the discharge of pollutants to surface waters of the State from point sources~~controlling~~  
939 ~~Pollutants from point source discharges directly into waters of the United States under the Clean Water~~  
940 ~~Act. These permits are referred to as NPDES permits and, in Washington State, are administered by the~~  
941 Washington State Department of Ecology.

942 "**National Pollutant Discharge Elimination System (NPDES) Permit**" means an authorization, license  
943 or equivalent control document issued by the Environmental Protection Agency or the Washington state  
944 Department of Ecology to implement the requirements of the NPDES program.

945 "**Non-stormwater discharge**" means any discharge to the storm drain system that is not composed  
946 entirely of stormwater.



947 "Person" means an individual and his or her agent or assign, municipality, political subdivision,  
 948 government agency, partnership, corporation, business or any other entity.

949 "Pollutant" means any substance which, when added to water, would contaminate or alter the chemical,  
 950 physical, or biological properties of any waters of the state. This includes a change in temperature, taste,  
 951 color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other  
 952 substance into any waters of the state as will or is likely to create a nuisance. It also includes any  
 953 substance which renders such waters harmful, detrimental, or injurious to the public health, safety, or  
 954 welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial  
 955 uses, or to livestock, wild animals, birds, fish, or other aquatic life.

956 "POTW" means any device or system used in treatment of municipal sewage or industrial wastes of a  
 957 liquid nature which is publicly owned.

958 "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved,  
 959 including adjacent sidewalks and parking strips.

960 "Receiving waters" means naturally and/or reconstructed naturally occurring surface water bodies, such  
 961 as creeks, streams, rivers, lakes, wetlands, estuaries, and marine waters, or groundwater, to which a  
 962 MS4 discharges of water or surface water systems to which surface runoff is discharged via a point  
 963 source of stormwater or via sheet flow.

964 "Source control BMP" means a structure or operationBMP intended to prevent pollutants~~contaminants~~  
 965 from coming into contact with~~entering surface and~~ stormwater through physical separation of areas or  
 966 careful management of activities that are sources of pollutants~~or ground water including the modification~~  
 967 of processes to eliminate the production or use of contaminants. The Stormwater Management Manual  
 968 for Western Washington separates sSource control BMPs into two types~~can be either structural or~~  
 969 nonstructural. Structural source control BMPs involve the construction of a are physical, structural, or  
 970 mechanical devices or facilities that are intended to prevent pollutants from entering stormwater~~structure~~  
 971 on-site, or other type of physical modification to a site. An example of a structural source control BMP is  
 972 building a covered storage area. Operational~~A Nonstructural~~ source control BMPs are non-structural  
 973 practices that prevent or reduce pollutants from entering stormwater ~~involves the modification or addition~~  
 974 of managerial or behavioral practices. Examples of a non-structural Source Control BMPs include is  
 975 using less toxic alternatives to current products or sweeping parking lots. See Volume IV of the  
 976 Stormwater Management Manual for Western Washington for details.

977 "State waste discharge permit" means an authorization, license, or equivalent control document issued  
 978 by the Washington State Department of Ecology in accordance with Chapter 173-216 WAC.

979 "Storm drainage system" means publicly or privately owned facilities, including the city's municipal  
 980 separate storm sewer system, by which stormwater is collected and/or conveyed, including but not limited  
 981 to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, ditches  
 982 and / or swales, pumping facilities, retention and detention basins, natural and human made or altered  
 983 drainage channels, reservoirs, and other drainage structures.

984 "Stormwater" ~~or "Surface Water"~~ means runoff during and following~~water originating from rainfall and~~  
 985 other precipitation and snowmelt events, including surface runoff, drainage, or interflow, ~~that is found on~~  
 986 ground surfaces and in drainage facilities, rivers,

987 "Surface waters" includes rivers, streams, springs, seeps, ponds, lakes, wetlands, inland waters, salt  
 988 waters, and all other surface water courses within the jurisdiction of the State of Washington ~~as well as~~  
 989 and shallow ground water.

990 "Stormwater pollution prevention plan (SWPPP)" means a document which describes the best  
 991 management practices and activities to be implemented by a person to identify sources of pollution or  
 992 contamination at a premises and the actions to eliminate or reduce pollutant discharges to stormwater,  
 993 stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

994 "Treatment BMP" means a BMP intended to remove pollutants ~~from contaminants once they are already~~  
 995 ~~contained in~~ stormwater. Examples of Treatment BMPs include oil/water separators, biofiltration swales  
 996 and wetponds. (Ord. 2834 § 1, 2010)

### 997 998 **13.45.015 Applicability.**

999 This chapter shall apply to all discharges entering the MS4, groundwater~~ground waters~~, or a waterbody  
 1000 from any developed or undeveloped lands, unless explicitly exempted by the city. (Ord. 2834 § 1, 2010)

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**13.45.020 Administration.**

The director or his designee is authorized to implement the provisions of this chapter. To do so, the director is authorized to promulgate and adopt administrative rules and regulations as necessary. The director will coordinate the implementation and enforcement of this chapter with other departments of the city. (Ord. 2834 § 1, 2010)

**13.45.025 Illicit discharges into Lynnwood surface waters prohibited.**

A. **Illicit Discharges.** It is unlawful for any person to cause or permit to discharge any contaminants into surface ~~waters, and~~ stormwater, the storm drainage system, ~~or groundwaterground water or stream.~~

Contaminants that, if discharged, would constitute an illicit discharge include, but are not limited, to the following:

1. Trash or debris;
2. Construction materials;
3. Petroleum products including but not limited to oil, gasoline, grease, fuel oil, heating oil;
4. Any and all automotive fluid, parts and products;
5. Metals in either particulate or dissolved form;
6. Flammable or explosive materials;
7. Radioactive material;
8. Batteries;
9. Acids, alkalis, or bases;
10. Paints, stains, resins, lacquers or varnishes;
11. Degreasers and solvents;
12. Drain cleaners;
13. Pesticides, herbicides or fertilizers;
14. Steam cleaning wastes;
15. Soaps, detergents or ammonia;
16. Swimming pool, ~~spa, or hot tub~~ drainage ~~or cleaning wastewater, or filter backwash;~~
17. Chlorine, bromine and other disinfectants;
18. Heated water;
19. Domestic animal wastes;
20. Sewage;
21. Recreational vehicle waste;
22. Animal carcasses;
23. Food wastes;
24. Bark and other fibrous materials;
25. Collected lawn clippings, leaves or branches;
26. Silt, sediment, ~~concrete, cement~~ or gravel;
27. Dyes, except as stated in subsection 13.45.040;
28. Chemicals not normally found in uncontaminated water;
29. Any other process-associated discharge except as otherwise allowed in this section.
30. Any hazardous material or waste not listed above.

B. **Illicit Connections.** Any connection identified by the Director that could convey anything not composed entirely of surface and stormwater directly to surface and stormwater or ~~groundwaterground~~ ~~water~~ is considered an illicit connection and is prohibited, with the following exceptions:

1. Connections conveying allowable discharges under this chapter;
2. Connections conveying allowable discharges pursuant to an NPDES permit. (Ord. 2834 § 1, 2010)

**13.45.030 Best management practices.**

A. **BMP Design.** The owner or operator of a commercial or industrial establishment shall provide and maintain, at its own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drainage system or waterbody through the use of ~~these~~ structural and nonstructural BMPs. Further, any person responsible for a premises which is, or may be, the source

1055 of an illicit discharge, may be required to implement, at said person's expense, additional structural and  
 1056 nonstructural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer  
 1057 system.

1058 For any activity which may result in illicit discharges, ~~the Director may require~~ the use of the Washington  
 1059 State Department of Ecology's ~~2005~~ Stormwater Management Manual for Western Washington, Volume  
 1060 IV Source Control BMPs, and Volume V Runoff Treatment, Flow Control, and LID BMPs Library  
 1061 (hereafter "Manual"), or other appropriate manual or guidance (as approved by director) is required. The  
 1062 manual outlines requirements identifying best management practices, including pollutant source control  
 1063 for any activity, operation, or facility which may cause or contribute to pollution or contamination of  
 1064 stormwater, the storm drainage system, or waters of the United States.

1065 Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of  
 1066 stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance  
 1067 with the provisions of this section. These BMPs shall be part of a SWPPP as necessary for compliance  
 1068 with requirements of the NPDES permit.

1069 **B. Activities Requiring BMPs.** BMPs shall be applied to any business or residential activity that might  
 1070 result in prohibited discharges. Activities that might result in prohibited discharges should use and  
 1071 maintain appropriate BMPs (as approved by the Director), and may include but are not limited to  
 1072 following:

- 1073 1. Potable water line flushing (see LMC 13.45.030.C);
- 1074 2. Lawn watering with potable water (see LMC 13.45.030.C);
- 1075 3. Dust control with potable water;
- 1076 4. Automobile and boat washing;
- 1077 5. Pavement and building washing (see LMC 13.45.030.C);
- 1078 6. Swimming pool, spa, and hot tub maintenance (see LMC 13.45.030.C);
- 1079 7. Auto repair and maintenance;
- 1080 8. Building repair and maintenance;
- 1081 9. Landscape maintenance;
- 1082 10. Hazardous waste handling;
- 1083 11. Solid and food waste handling; and
- 1084 12. Application of pesticides. (Ord. 2834 § 1, 2010)

1085 **C. Conditionally Allowable Discharges.** The following categories of non-stormwater discharges are  
 1086 allowed if the stated conditions are met:

- 1087 1. Discharges from potable water sources, including but not limited to water line flushing,  
 1088 hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test  
 1089 water. Planned discharges shall be dechlorinated to a total residual chlorine concentration of 0.1  
 1090 ppm or less, pH-adjusted, if necessary, and volumetrically and velocity controlled to prevent re-  
 1091 suspension of sediments in the MS4.
- 1092 2. Discharges from lawn watering and other irrigation runoff. These discharges shall be minimized  
 1093 through, at a minimum, public education activities and water conservation efforts.
- 1094 3. Dechlorinated swimming pool, spa and hot tub discharges. The discharges shall be dechlorinated  
 1095 to a total residual chlorine concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if  
 1096 necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the  
 1097 MS4. Discharges shall be thermally controlled to prevent an increase in temperature of the  
 1098 receiving water. Swimming pool cleaning wastewater and filter backwash shall not be discharged  
 1099 to the MS4.
- 1100 4. Street and sidewalk wash water, water used to control dust, and routine external building  
 1101 washdown that does not use detergents. The Permittee shall reduce these discharges through, at  
 1102 a minimum, public education activities and/or water conservation efforts. To avoid washing  
 1103 pollutants into the MS4, Permittees shall minimize the amount of street wash and dust control  
 1104 water used.
- 1105 5. Other non-stormwater discharges. The discharges shall be in compliance with the requirements  
 1106 of a pollution prevention plan reviewed by the city, which addresses control of such discharges.

1107  
 1108 **13.45.035 Emergency spill control plan.**

1109 A. **Regulated Businesses.** The following parties shall be required to prepare and implement, at their own  
 1110 expense, an emergency spill control plan:  
 1111 1. Any owners or operators of a facility that is already required by state or federal law to have an  
 1112 emergency spill control plan; and  
 1113 2. A new or used oil generator. A new or used oil generator is any person whose act or process  
 1114 produces used oil. Private resident "do-it-yourselfer" used oil generators are not subject to regulation but  
 1115 are required to properly dispose of all used oil generated.

1116 3. Private development projects

1117 4. Capital projects

1118 B. **Contents of Emergency Spill Control Plan.** An emergency spill control plan is subject to review and  
 1119 approval by the director, and shall contain the following elements:

- 1120 1. A description of the facility/site including the owner's name and address;
- 1121 2. The nature of the activity at the facility/site or a description of the construction activities for a  
 1122 development project;
- 1123 3. The potential spill sources including, fuel, petroleum products, and other hazardous  
 1124 materialtypes of chemicals used or stored at the facility/site;
- 1125 4. A description of pre-existing contamination and contaminant sources (e.g., buried pipes, buried  
 1126 tanks, buried drums, or other buried containers);
- 1127 5. A description of the spill prevention, containment, and response training provided;
- 1128 6. A site ~~map~~plan showing the facility/site location and boundaries; facility/site access roads; pre-  
 1129 existing contamination; location of storage, stockpiles, and existing buildings areas for chemicals,  
 1130 ~~the~~ locations of sewer and storm drains; ~~the areas~~ draining to storm drains; and the  
 1131 location and description of any devices to stop spills from leaving the site such as positive control  
 1132 valves, berms, or absorbent material;
- 1133 7. A description of spill responseCleanup procedures, materials, and their locations;
- 1134 8. Notification procedures to be used in the event of a spill, such as notifying key personnel and  
 1135 regulatory agencies. Depending on the type of discharge,At a minimum, agencies such as the  
 1136 Washington State Department of Ecology, ~~the~~ Lynnwood Police and/or Fire Department, and/or  
 1137 the Lynnwood ~~surface water~~ quality hotline-utility shall- may need to be notified;
- 1138 9. A spill report form;
- 1139 10. The name of the designated responsible person(s) with overall spill cleanup and notification  
 1140 responsibility.
- 1141 11. Time retention for records.

1142 C. **Implementation of Emergency Spill Control Plan.**

- 1143 1. The designated responsible person(s), and any other key personnel, shall be trained in the  
 1144 implementation of the emergency spill control plan.
- 1145 2. Prepare a summary of the plan and post it at appropriate points in the building, identifying the  
 1146 designated responsible person(s), location of cleanup kits, and phone numbers of regulatory agencies to  
 1147 be contacted in the event of a spill.
- 1148 3. All employees shall be informed of the location of the emergency spill control plan, and shall  
 1149 know who the designated responsible person(s) is.
- 1150 4. The emergency spill control plan shall be reviewed and updated if necessary annually.
- 1151 5. Immediately notify the Washington State Department of Ecology and the Lynnwood surface water  
 1152 utility if a spill may reach sanitary sewers, storm drainage systems-or storm-sewers, groundwaterground  
 1153 water, or surface water.
- 1154 6. Immediately clean up spills in accordance with the emergency spill control plan. Absorbent  
 1155 material shall not be washed down a floor drain or storm sewer.
- 1156 7. Locate emergency spill containment and cleanup kit(s) in high potential spill areas. The contents  
 1157 of the kit shall be appropriate for the type and quantities of chemical liquids stored at the facility.
- 1158 8. The Emergency Spill Control Plan shall be made available to city personnel upon request.

1159 D. **Necessary Facility Repairs or Improvements.** If, upon evaluation of information obtained by the  
 1160 Director, it is determined that repairs or structural improvements are necessary in order to eliminate  
 1161 threats to the surface water system, the Director may require the owner or operator to complete such  
 1162 repairs or improvements at their own expense. (Ord. 2834 § 1, 2010)

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**13.45.040 Allowable discharges not Considered Illicit.**

A. **Allowable Discharges not Considered Illicit.** The following types of discharges shall not be considered illicit discharges for the purpose of this chapter unless the director determines that the type of discharge, whether singly or in combination with other discharges, is causing or is likely to cause pollution of significant contamination of surface waters, and stormwater, or groundwaterground-water:

1. Spring water, including spring water with naturally occurring iron oxide bacteria;
2. Diverted stream flows;
3. Rising groundwaters;
4. Uncontaminated water from crawl space pumps, foundation drains or footing drains;
5. Uncontaminated groundwaterground-water infiltration (as defined at 40 CFR 35.2005(b)(20)).
6. Pumped groundwaterground-water flows that are uncontaminated;
7. Materials placed as part of an approved habitat restoration or bank stabilization project;
8. Natural uncontaminated surface water or groundwaterground-water;
9. Flows from riparian habitats and wetlands;
10. Collected rainwater that is uncontaminated;
11. Uncontaminated groundwaterground-water that seeps into or otherwise enters stormwater conveyance systems;
12. Air conditioning condensation;
13. Irrigation water from agricultural sources that is commingled with urban stormwater runoff;
14. Discharges from emergency fire fighting activities; and
15. Other types of discharges as determined by the director.

B. **Dye Testing.** Dye testing is allowable on an as-needed basis, but requires verbal notification to the director at least one day prior to the date of test. The Snohomish County Health District does not need to provide advance notification.

C. **Other Exceptions.** A discharge will not be considered illicit if:

1. That responsible person has properly designed, constructed, implemented and is maintaining BMPs, and is carrying out AKART as required by this chapter, but pollutantscontaminants continue to enter surface and stormwater or groundwaterground-water; or
2. That responsible person can demonstrate that there are no additional pollutantscontaminants being discharged from the site above the background conditions of the water entering the site.
3. Emergency response activities or other actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter in order to avoid an imminent threat to public health or safety, shall be exempt from this section. The director by public rule may specify actions that qualify for this exception in city procedures. A person undertaking emergency response activities shall take steps to ensure that the discharges resulting from such activities are minimized. In addition, this person shall evaluate BMPs and the site plan, where applicable, to restrict recurrence. (Ord. 2834 § 1, 2010)

**13.45.045 Inspection and monitoring of discharges.**

**A. Access to Facilities**

1. As a condition of service, all persons and premises connected to the municipal storm drainage system shall allow the city to:
  - a) Enter onto the person's property at reasonable times after notice, and with the permission of the property owner, to inspect the system and any connection made to the system by the property owner or to install appropriate monitoring equipment. This provision shall not be interpreted to limit the city's rights under any easement, license or right arising from a public right-of-way.
  - b) Inspect records of the person relating to discharges to the city system upon request and at reasonable times.
2. Failure to permit entry or inspection may result in the following actions or consequences:
  - a) The city may at its sole option seek a search warrant from a court of competent jurisdiction.
  - b) If it is later determined that a violation of this chapter has occurred, the violation shall be assumed to have been occurring from the date of the city's original request and to have continued until discovered by the city. Each and every day shall be a separate violation. This presumption may be overcome by the



1217 presumed violator only by clear and convincing evidence that the violation began at a later date. (Ord.  
1218 2834 § 1, 2010)

1219  
1220 **13.45.050 Notification of spills.**

1221 Notwithstanding other requirements of law, as soon as any person responsible for a premises or  
1222 operation, or responsible for emergency response for a premises or operation, has information of any  
1223 known or suspected release of materials which are resulting or may result in illicit discharges or pollutants  
1224 discharging into stormwater, the storm drainage system, or waterbodies, said person shall take all  
1225 necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such  
1226 a release, said person shall immediately notify:

- 1227 1. Emergency response agencies (if necessary) ~~of the occurrence~~ via emergency dispatch services;
- 1228 and
- 1229 2. The city's ~~using the water quality~~ illicit Discharge hotline or the online spill reporting form. (Ord.  
1230 2834 § 1, 2010)

1231  
1232 **13.45.055 Violations.**

1233 ~~Implement provisions in LMC 13.40.150 for violations of this chapter. It shall be unlawful for any person to~~  
1234 ~~violate any provision of this chapter. Any person found to be in violation of any provision of this chapter~~  
1235 ~~shall be guilty of a misdemeanor. Each day's violation of the provisions of this chapter shall be deemed a~~  
1236 ~~separate offense.~~

1237 ~~Any person who, through an act of commission or omission, aids or abets in a violation shall be~~  
1238 ~~considered to have committed a violation of this chapter. The Director may take enforcement action, in~~  
1239 ~~whole or in part, against any violator. Each violator is jointly and severally liable for a violation of this~~  
1240 ~~chapter. The decisions whether to take enforcement action, what type of action to take, and which person~~  
1241 ~~to take action against, are decisions entirely within the Director's discretion.~~

1242 ~~Furthermore, any person who violates any provision of this chapter or any provision of any requirement~~  
1243 ~~issued pursuant to this chapter, may also be in violation of the Clean Water Act and may be subject to the~~  
1244 ~~sanctions of that act including civil and criminal penalties.~~

1245  
1246 **13.45.060 Enforcement.**

1247 The director shall have the authority to enforce any and all provisions of this chapter using the  
1248 enforcement approach outlined in LMC 13.40.160.

1249 ~~**A. Public Nuisance.** Any violation of any provision of this chapter is a threat to public health, safety, and~~  
1250 ~~welfare, and is declared and deemed a public nuisance, and is subject to the terms and provision of the~~  
1251 ~~Code Enforcement chapter of the Lynnwood Municipal Code (1.40).~~

1252 ~~**B. Escalating Enforcement.** When a violation of this chapter has been committed, the director may use~~  
1253 ~~an escalating method of progressive severity to gain compliance, however the director may take any~~  
1254 ~~enforcement action without regard to precedence, or any available legal recourse provided by law, to~~  
1255 ~~eliminate or end an emergency. Escalating enforcement actions shall be taken in the following order of~~  
1256 ~~precedence:~~

- 1257 ~~**6.—First Violation.** Written notice to cease and desist activity, notification of violation and warning,~~  
1258 ~~including education on preventing further illicit discharges;~~
- 1259 ~~**7.—Second Violation.** Written notice to cease and desist activity, and notice of violation and order of~~  
1260 ~~corrective action;~~
- 1261 ~~**8.—Third Violation.** Written notice to cease and desist activity, and citation for civil infraction shall be~~  
1262 ~~issued in accordance with the provisions of LMC 1.40.~~
- 1263 ~~**9.—Fourth Violation.** Written notice to cease and desist activity, citation for civil infraction, and order~~  
1264 ~~assessing civil penalties shall be issued in accordance with the provisions of LMC 1.40.~~
- 1265 ~~**10. Fifth Violation and thereafter.** Written notice to cease and desist activity, citation for civil~~  
1266 ~~infraction, and order assessing civil penalties shall be issued in accordance with the provisions of~~  
1267 ~~LMC 1.40, and pursuit of criminal charges.~~

1268  
1269 **13.45.065 Penalties.**

1270 ~~Implement the penalties in LMC 13.40.170 for violations of this chapter. When a violation of this chapter~~  
 1271 ~~has been committed, the following penalties may be assessed:~~  
 1272 **A. Corrective Actions.** ~~The director shall have the authority to require any and all of the following~~  
 1273 ~~corrective actions in order to gain compliance with this chapter:~~  
 1274 ~~1.—Cease and desist or stop work order;~~  
 1275 ~~2.—Elimination of illicit connection;~~  
 1276 ~~3.—Abatement of any and all contaminants;~~  
 1277 ~~4.—Implementation of source control or treatment BMPs;~~  
 1278 ~~5.—Restoration of affected property, waterway, or conveyance;~~  
 1279 ~~6.—Other actions deemed necessary by the Director.~~  
 1280 **B. Abatement by City**  
 1281 ~~1. City Action. If the violation has not been corrected pursuant to the requirements set forth in the notice~~  
 1282 ~~of corrective action, the city may enter upon the subject premises and is authorized to take any and all~~  
 1283 ~~measures necessary to abate the violation. It shall be unlawful for any person, owner, agent or person in~~  
 1284 ~~possession of any premises to refuse to allow the city or designated contractor to enter upon the~~  
 1285 ~~premises for the purposes set forth above and the city may pursue any lawful remedy at its disposal.~~  
 1286 ~~3. Recovering Cost of Abatement. Should a person be found in violation of this chapter, the city~~  
 1287 ~~shall be entitled to recover all abatement costs, personnel expenses, sampling and monitoring costs,~~  
 1288 ~~attorney's fees, court costs and other administrative expenses associated with enforcement hereof.~~  
 1289 **E. Civil Penalties.** ~~Any person found to be in violation of this chapter may be subject to civil penalties.~~  
 1290 ~~Civil penalties shall constitute a personal obligation of the person against whom the penalties were~~  
 1291 ~~imposed. An assessed civil penalty must be paid to the office of the Finance Director, City of Lynnwood.~~  
 1292 ~~The provisions of this section are in addition to, and not in lieu of any other penalty, sanction, or right of~~  
 1293 ~~action provided by the law.~~  
 1294 ~~1.—Daily Fines~~  
 1295 ~~These fines shall be cumulative, accrue daily until the required corrective action is taken, and be~~  
 1296 ~~assessed as follows:~~  
 1297 ~~a.—First day: \$100 for each violation~~  
 1298 ~~b.—Second day: \$200 for each violation~~  
 1299 ~~c.—Third day: \$300 for each violation~~  
 1300 ~~d.—Fourth day: \$400 for each violation~~  
 1301 ~~e.—Each additional day: \$500 for each violation~~  
 1302 ~~2.—Economic Benefit. The Director may assess a civil penalty equivalent to the economic benefit the~~  
 1303 ~~violator derives from the violation. The value of the assessed penalty shall be documented, and~~  
 1304 ~~shall be based on the greater of: the resulting increase in value of the property or business~~  
 1305 ~~received by the violator for not complying with this chapter; or the savings of construction or~~  
 1306 ~~retrofit costs realized by the violator for not complying with this chapter.~~  
 1307 ~~3.—Use of Collection Agency Authorized. The city in its sole and exclusive discretion, may retain a~~  
 1308 ~~collection agency to collect any and all fines assessed under this chapter. When a collection agency is~~  
 1309 ~~used, fines will be collected at a rate of 150 percent pursuant to RCW 19.16.500.~~  
 1310 **F. Criminal Penalties.** ~~Any person found to be in violation of this chapter may be subject to~~  
 1311 ~~criminal penalties, as prescribed by state law, RCW 90.48.140.~~  
 1312  
 1313 **13.45.070 Appeals.**  
 1314 ~~Implement provisions in LMC 13.40.180 for appeals related to this chapter. Any person who objects to a~~  
 1315 ~~final order of the city under this chapter may file an appeal to the hearing examiner. The person shall file~~  
 1316 ~~a written protest objecting to the order of the city with the city clerk within 14 days of the order. The city~~  
 1317 ~~shall process the appeal under Process VI, LMC 1.35.600.~~  
 1318  
 1319 **13.45.075 Severability.**  
 1320 ~~Implement provisions in LMC 13.40.190 for severability related to this chapter. If any paragraph, clause,~~  
 1321 ~~sentence, section or part of this chapter or the application thereof to any person or circumstances shall be~~  
 1322 ~~adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in~~  
 1323 ~~its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of~~

1324 ~~any part thereof to any other person or circumstances and to this end the provisions of each paragraph,~~  
1325 ~~clause, sentence, section or part of this chapter are hereby declared to be severable.~~  
1326

1327 **Section 3.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid  
1328 or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall  
1329 not affect the validity or constitutionality of any other section, sentence, clause or phrase of this  
1330 ordinance.

1331 **Section 4.** This ordinance or a summary thereof consisting of the title shall be published in the  
1332 official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

1333

1334 PASSED BY THE CITY COUNCIL, the 22<sup>nd</sup> day of May, 2023.

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APPROVED:

DocuSigned by:  
*Christine Frizzell* 5/24/2023  
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Christine Frizzell, Mayor

ATTEST/AUTHENTICATED:

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City Clerk

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City Attorney