CITY COUNCIL WORK SESSION
JUNE 4, 2012
6:00 P.M.
NEWBERG PUBLIC SAFETY BUILDING
401 EAST THIRD STREET

WORK SESSIONS ARE INTENDED FOR DISCUSSION. NO ACTION WILL BE TAKEN ON THE AGENDA ITEMS AND NO DECISIONS WILL BE MADE. NO ORAL OR WRITTEN TESTIMONY WILL BE HEARD OR RECEIVED FROM THE PUBLIC.

I. CALL MEETING TO ORDER

II. ROLL CALL

III. REVIEW OF COUNCIL AGENDA AND MEETING

Presentation from Operations Division on the proposed Stormwater Management Program.

IV. COUNCIL HOUSEKEEPING ITEMS

V. ADJOURNMENT

ACCOMMODATION OF PHYSICAL IMPAIRMENTS:
In order to accommodate persons with physical impairments, please notify the City Recorder's Office of any special physical accommodations you may need as far in advance of the meeting as possible and no later than 48 business hours prior to the meeting. To request these arrangements, please contact the city recorder at (503) 537-1283. For TTY service please dial 711.

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MEMORANDUM

PUBLIC WORKS DEPARTMENT

Operations Division

TO: **Newberg City Council**

FROM: **Sonja Johnson, Public Works Environmental Specialist**

SUBJECT: **Measures to Control Construction Site Runoff, Illicit Discharges into the Stormwater System, and Post-Construction Stormwater**

DATE: **June 4, 2012**

The June 4, 2012, work session will include a presentation on a proposed ordinance required by the City's Willamette River TMDL (Total Maximum Daily Load) Implementation Plan. The purpose of the work session is to present the history of the Plan, the municipal code language required by it, and the code review that has been completed to date. It is also an opportunity to answer questions and listen to your recommendations before the first reading of the ordinance on June 18, 2012.

Background

The primary force behind all TMDL Plans is Section 303(d) of the Clean Water Act. Under this authority the US Environmental Protection Agency ordered the Oregon Department of Environmental Quality (DEQ) to identify its rivers and streams that were not attaining water quality standards and determine the total maximum daily load that could be discharged and still maintain their water quality and beneficial uses.

In 2006, after EPA-approval of the TMDLs for the Willamette River, the DEQ sent a letter to the City stating that procedures and methods needed to be determined for controlling the temperature, bacteria, and mercury that was discharged into the Willamette River by Hess Creek, Chehalem Creek, and Springbrook Creek.

In 2008, the City and DEQ agreed on these methods and procedures. They are detailed in the City of Newberg's Willamette River TMDL Implementation Plan (the "Plan"). The City was given until 2013 to complete and implement the methods and procedures and has currently completed or implemented 50% of them.

The Plan includes tasks to adopt additional municipal code for controlling illicit discharges, construction site runoff, and post-construction stormwater. Reviews of the DEQ's Willamette River TMDL Plan, the City's Plan, and the municipal code of comparable cities provided the building blocks used by staff to create the initial version of the proposed municipal code.

On May 16, 2011, the City Council convened the Stormwater Ad-hoc Committee to review and refine the municipal code developed by staff. Using the requirements of the Plan, the Stormwater Ad-hoc Committee reviewed and refined the code every 2 weeks from May 26 to October 6 when they recommended the code to the Planning Commission.

A workshop for the Planning Commission was held on October 13, 2011, to discuss the reasons for the municipal code and to review the code. On November 10, 2011, the Planning Commission heard public testimony regarding the municipal code and refined it. On January 12, 2012, the Planning Commission heard further public testimony before recommending the municipal code to the City Council.

TMDL Implementation Plan and Municipal Code Requirements

The procedures and methods in the Plan reflect the DEQ's focus on reducing bacteria, mercury, and stream temperatures through the control of illicit discharges, erosion, and stormwater. Bacteria and mercury are controlled through the management of illicit discharges, stormwater, and construction site runoff. Stream temperatures are primarily controlled through protection of streambank vegetation and shading.

The municipal code required by the Plan provides legal authority and enforcement mechanisms for implementing the Plan's procedures and methods. Adoption and subsequent implementation of the code will result in the City meeting 85% of the Plan's tasks.

A. Illicit Discharge Detection and Elimination

An illicit discharge is any discharge to a stormwater system that is not composed entirely of stormwater. Our TMDL Implementation Plan requires the City to:

1. Prohibit non-stormwater discharges into the stormwater system.
   Under the proposed code, only stormwater is allowed in the system. Illicit connections and illegal dumping are prohibited.
2. Address specific discharge categories as either exempt or exempt with conditions.
3. Prohibit individual non-stormwater discharges if they affect water quality.
   Facilities must follow state spill notification procedures and prevention requirements.

B. Construction Site Runoff

Construction site practices in the Plan include review of construction site plans, city staff inspection of construction sites that are less than 1 acre, placement of erosion controls regardless of construction site size, and proper disposal of construction waste. The municipal code requires implementation of these measures.

The Plan also required the City to consider the adoption of DEQ's 1200-C permit program for construction sites larger than 1 acre. While the municipal code requires a

copy of the 1200-C permit for documentation purposes, the administration of the 1200-C permit program will remain with the DEQ.

C. Post-Construction Runoff

Post-construction runoff refers to the management of urban stormwater. The Plan requires the City to institute stormwater management practices and facilities that minimize or prevent water quality impacts. It also requires the City to conduct site plan reviews, include structural and non-structural facilities, and ensure adequate long-term operation and maintenance of stormwater facilities.

The proposed municipal code provides tiered requirements based on the amount of new impervious area created by a project. Projects that create less than 500 sq ft of additional impervious area are exempt from the municipal code. Projects on duplex or single family residential lots are also exempt if they are serviced by an existing stormwater facility.

To ensure long-term operation and maintenance of stormwater facilities, the owner of a stormwater facility is required to submit an annual report to the City attesting to the proper functioning, maintenance, and safety of the stormwater facility.

Summary

The City's Willamette River TMDL Implementation Plan requires the City to address mercury, bacteria, and stream temperatures in Chehalem Creek, Hess Creek, and Springbrook Creek. The Plan accomplishes this by minimizing illicit discharges, erosion, and stormwater volumes through best management practices and additional municipal code. The municipal code required by the Plan provides legal authority for the City to implement and enforce the methods and procedures agreed upon in the Plan.

The City's Willamette River TMDL Implementation Plan is in its 4th year of a 5-year cycle with a little over 50% of the tasks completed. With the adoption of municipal code, the City will have completed 85% of the tasks within the Plan.

Attachments:

A. Presentation
B. Proposed Municipal Code

Willamette River TMDL Implementation Plan

City Council Work Session

May 21, 2012

WHAT IS A TMDL AND WHY DO WE HAVE THEM?

Clean Water Act (1972)

TITLE III:
STANDARDS AND ENFORCEMENT

...the discharge of any pollutant by any person shall be unlawful…there shall be achieved ...effluent limitations for **point** sources...

CWA TITLE III: SECTION 303(d) WATER QUALITY STANDARDS AND IMPLEMENTATION PLANS

Each State shall identify those waters ... for which the (point source) limitations .... are not stringent enough to implement ... water quality standards...

Each State shall establish .... the **total maximum daily load (TMDL)** ... at a level necessary to implement … water quality standards…

Streams Affecting the Water Quality of the Willamette River

Tualatin Basin	Other Basins	Yamhill and Molalla Basins
TMDL Implementation Plan already required	Create a TMDL Implementation Plan	dditional sampling required

Hess Creek, Springbrook Creek, Chehalem Creek (City of Newberg)

Temperature, Mercury, Bacteria

WHAT IS THE DEQ's FOCUS?

Decrease Urban Bacteria by 84% to 90%

- "Urban runoff, rural residential runoff, failing septic systems, pet waste, wildlife waste and livestock waste all produce bacteria and are nonpoint sources"
- **DEQ Best Management Practices**
  - Reduce stormwater volume
  - Reduce illicit discharges

(Source: DEQ Willamette River TMDL Plan)

Decrease Mercury by 27%

- "…increases in soil erosion and resuspension of bed sediments combine to produce elevated total mercury concentrations."
- "Seasonal variations in methyl mercury concentrations are due to the influence of temperature, sunlight and other parameters"
- **DEQ Best Management Practices**
  - Decrease stormwater velocity and volume
  - Protect stream vegetation
  - Increase shading near streams

(Source: DEQ Willamette River TMDL Plan)

Reduce Stream Temperatures to 64°F

- "Increased impervious area within a watershed results in greater stormwater runoff… high streamflows can cause channel down cutting and lower seasonal water tables. Riparian vegetation, off channel habitats and cold water refugia may all be negatively affected"
- "(summer) flows are lower in small watersheds with substantial impervious area…This contributes to warmer stream temperatures and poorer water quality."

- **DEQ Best Management Practices**
  - Decrease stormwater volume and increase infiltration
  - Decrease stormwater velocity
  - Protect stream vegetation
  - Increase shade near streams

(Source: DEQ Willamette River TMDL Plan)

Recommended Actions for the Willamette River Watershed

- Decrease stormwater volume
- Decrease stormwater velocity
- Protect stream vegetation
- Increase shade
- Increase infiltration
- Prohibit illicit discharges

WHAT HAVE WE DONE SO FAR?

Education:

- Informational booths
- Website information
- Storm drain marking
- Classes and events
- Local watershed council support

Maintenance:

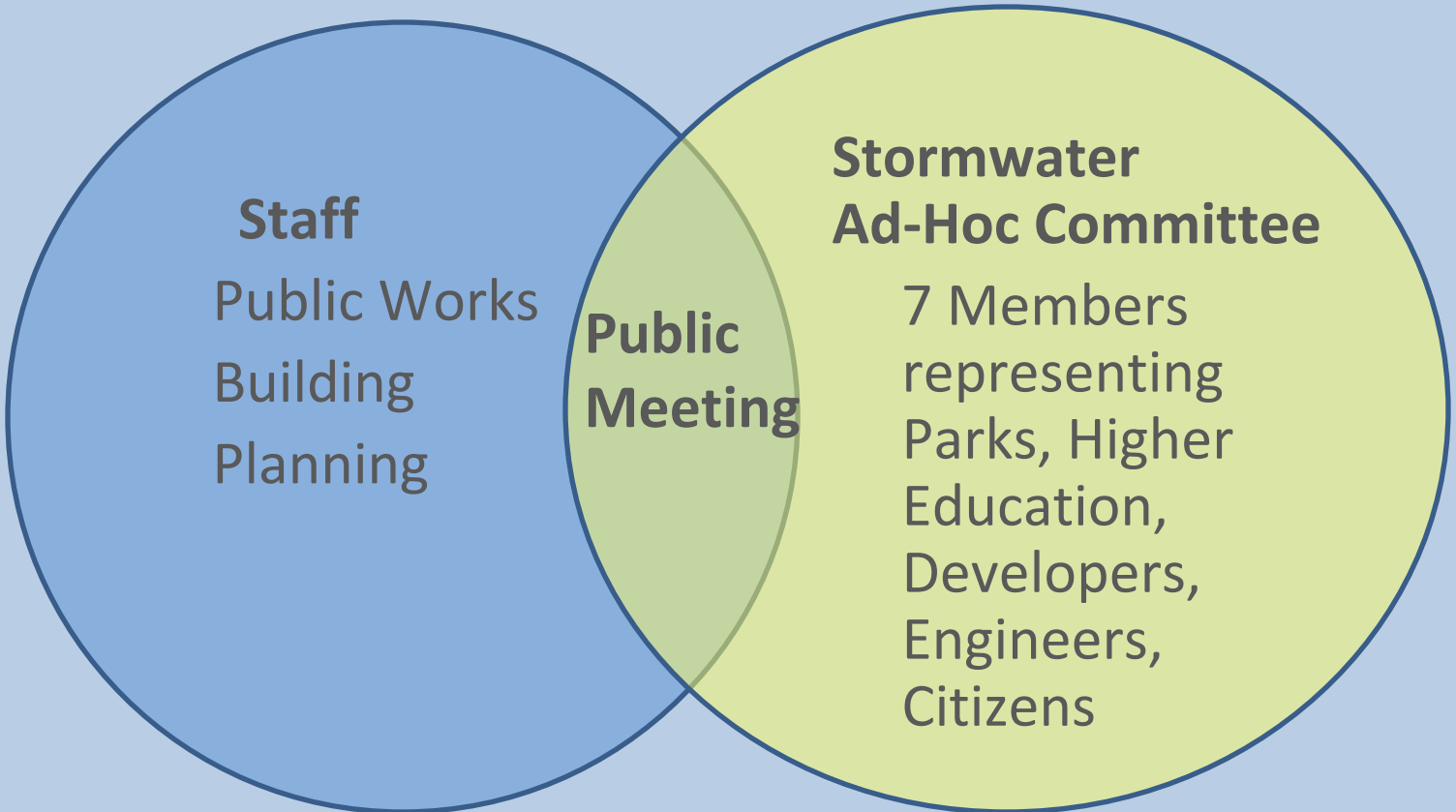
- Inspect and clean stormwater system
- Repair stormwater system
- Sweep streets

Prevention:

- Annual hazardous waste event
- Review of large developments
- Trees for streamside planting

Enforcement and Legal Authority:

May 16, 2011: City Council creates Stormwater Ad-Hoc Committee



May 26, 2011: Stormwater Ad-Hoc Committee begins bi-weekly meetings

Oct 6, 2011: Stormwater Ad-Hoc Committee formally recommends municipal code to the Planning Commission

Oct 13, 2011: Planning Commission workshop to learn about the TMDL Implementation Plan and the required code

November 10, 2011: Planning Commission hears public testimony and refines the municipal code

January 12, 2012: Planning Commission recommends the municipal code to the City Council

WHAT DOES OUR TDML IMPLEMENTATION PLAN REQUIRE?

ILLICIT DISCHARGE

Requirement:

Prohibit non-stormwater discharges into stormwater system

Proposed Code:

Non-stormwater discharges are prohibited unless specifically listed as exempted or conditionally exempted.

Requirement:

Address specific categories and other occasional non-stormwater discharges as prohibited, exempted, or conditionally exempted.

Proposed Code:

Specific categories listed by the Plan were either conditionally exempted or exempted.

Requirement:

Prohibit individual non-stormwater discharges if they contribute substantial amounts of pollutants

Proposed Code:

Facilities must follow state spill notification procedures and spill prevention plan requirements.

Requirement:

Provide enforcement mechanisms.

Proposed Code:

Code is enforced by notices of violation, suspending the ability for a facility to discharge to the stormwater system, summary abatement, and an appeal procedure.

CONSTRUCTION SITE RUNOFF (EROSION CONTROL)

Requirement:

Require erosion controls regardless of construction size. Reduce pollutants in any runoff that can drain to stormwater system or directly to surface waters via overland flow from construction activities.

Proposed Code:

All projects must provide erosion and sediment controls unless exempted.

Requirement:

Implement appropriate erosion control best management practices.

Proposed Code:

All projects must provide basic erosion and sediment controls unless exempted.

Requirement:

Prevent or control construction waste.

Proposed Code:

Construction waste must be disposed of properly

Requirement:

Review site plans and erosion control sheets. Discuss erosion control requirements at pre-application and pre-construction meetings.

Proposed Code:

Permit applications for sites less than 1 acre must include erosion and sediment control plans for review and approval by the city.

Requirement:

Inspect sites and enforce control measures.

Proposed Code:

Project personnel are required to inspect erosion controls weekly or after rain events. City staff are required to conduct inspections.

POST-CONSTRUCTION SITE RUNOFF (STORMWATER MANAGEMENT)

Requirement:

Minimize or prevent water quality impacts for projects that disturb one acre or more. Establish citizen committee to consider addressing impacts from projects that are smaller than one acre.

Proposed Code:

Projects disturbing over an acre must provide stormwater facilities. Other requirements are based on the amount of additional impervious area created by the project.

Requirement:

Conduct site plan reviews.

Proposed Code:

The applicant is required to submit facility plans to the city for review and approval.

Requirement:

Include structural and non-structural stormwater requirements

Proposed Code:

Code does not limit facility construction to a specific technique.

Requirement:

Ensure adequate long-term operation and maintenance of stormwater facilities.
Provide city inspections.

Proposed Code:

Stormwater facilities must be maintained by the owner according to an operations and maintenance plan created by the project applicant. The city has the right to inspect stormwater facilities.

Requirement:

Enforcement of municipal code

Proposed Code:

Enforcement includes stop work orders, notices of violation, and summary abatement to enforce the code.

TEMPERATURE

Requirement:

Increase shaded stream lengths and protect streambank vegetation.

Proposed Code:

Streambanks must be vegetated.

Chapter 13.25
STORMWATER MANAGEMENT

Sections:

Article I. General Provisions

Article II. Erosion Control

Article III. Illicit Discharge Detection and Elimination

Article IV. Stormwater Discharges

Article V. Enforcement and Penalties

Cross-references: Citizens' rate review committee, see NMC 2.15.120 et seq.; stormwater system, see NMC 13.20; system development charges, see NMC 13.05, Article I.

Article I. General Provisions

13.25.010 Interpretation

A. The provisions of this code shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.

B. Conflict with Public Provisions.

1. Public Provisions. The regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. Where any provision of this code imposes restriction different from those imposed by any other provision of this code or any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher standards shall control.

2. Private Provision. This code is not intended to abrogate any easement, covenant, or any other private agreement or restriction provided that, where the provisions of this code are more restrictive or impose higher standards or regulations than such easement, covenant or other private agreement or restriction, the requirements of this code shall govern. Where the provisions of the easement, covenant, or private agreement or restriction impose duties and obligations more restrictive or of a higher standard than this code, and such private provisions are not inconsistent with this code or determinations thereunder, then such private provisions shall be operative and supplemental to this code and determinations made thereunder.

13.25.020 Definition of terms.

"Applicant" means the owner or authorized agent acting on behalf of the owner.

"Channel morphology" means the stream channel type and the physical characteristics of the streambed.

"City" means the city of Newberg, Oregon.

"Common development plan" means all lands included within the boundary of a certified survey map or subdivision plat created for the purpose of development or sale of property where integrated, multiple, separate and distinct land developing activity may take place at different times by future owners.

"Demolition" means any act or process of wrecking or destroying a building or structure.

"DEQ" means the Oregon Department of Environmental Quality.

"Design standards manual" means the current version of the city of Newberg design standards manual and specifications.

"Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.

"Development" means residential, commercial, industrial, or institutional construction, alteration, or other improvement which alters the hydrologic characteristics of a property or properties.

"Director" means the city of Newberg's director of public works or their authorized representative.

"Easement" means areas located outside of dedicated right-of-way and which are granted to the city for special uses. Easements may also be granted to non-city entities such as franchise utility companies for their uses.

"Erosion" means the weathering of a surface as a result of the movement of wind, water, ice, snow, or land disturbance activities.

"Erosion and sediment control" means a structural or non-structural device that is implemented to prevent erosion and sedimentation.

"Erosion and sediment control (ESC) plan" means a plan submitted to the city with scaled drawings, and the methods and types of devices to be implemented during the project to prevent erosion and sedimentation.

"Excavation" means an act by which soil or rock is cut, dug, quarried, uncovered, removed, displaced, or relocated.

"Fill" means a deposit of soil or other earth material placed by artificial means.

"Grading" means any act by which soil is cleared, stripped, stockpiled, excavated, scarified, filled, or any combination thereof.

"Ground-disturbing project" means a project that includes activities that have the potential to create soil erosion from wind, precipitation, or ice creating sediment deposits in watercourses or land within the city including, but not limited to, demolition, clearing and grubbing, grading, excavating, transporting, and filling of land.

"Hazardous materials" means any material or combination of materials which due to its quantity, concentration, or physical, chemical, or infectious characteristics may cause or contribute to a substantial hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

"Illicit discharge" means any direct or indirect non-stormwater discharge to the stormwater system except discharges regulated under a NPDES permit or exempted by this chapter.

"Illicit connections" means any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the stormwater system.

"Immediate threat" means a situation that the director determines would cause harm to the public, environment, or downstream stormwater facilities before the situation can be alleviated or repaired.

"Impervious" means the hard surface area that either prevents or greatly retards infiltration and causes water to run off the surface in greater quantities or at an increased rate of flow from that present in undeveloped conditions. Surfaces which would ordinarily be considered pervious are considered impervious if they do not allow natural infiltration of stormwater.

"Infiltration" means the passage or movement of water into the soil subsurface.

"Maintenance agreement" means an agreement between the city and a maintenance organization for private stormwater facilities detailing the operation and maintenance requirements of the facilities.

"Maintenance organization" means the person(s), company, or nonprofit organization(s) responsible for long-term operation and maintenance of stormwater facilities recorded in the maintenance agreement.

"National pollutant discharge elimination system (NPDES)" means the general, group, and individual storm water discharge permits which regulate facilities defined in federal NPDES regulations and regulated through the Oregon Department of Environmental Quality.

"Net impervious area" means the increase in impervious area on a property after a project is completed.

"Non-stormwater discharge" means any discharge to the stormwater system that is not composed entirely of stormwater.

"Pollution" means a contamination or other degradation of the physical, chemical, or biological properties of a watercourse; or a discharge into a watercourse that could create a public nuisance or contaminate a watercourse such that its beneficial use, aquatic habitat, public health or public safety is at risk.

"Project" means an activity that creates impervious areas.

"Project start" means the first ground-disturbing activity associated with a project including, but not limited to, preparatory activities such as clearing, grubbing, grading, excavating, and filling.

"Project summary" means a narrative that includes the project description, location, emergency contacts, and other information determined by the public works director such that the project can be located and a determination made regarding methods of stormwater management.

"Responsible party" means a person or entity holding fee title to a property, tenant, lessee, or a person or entity who is acting as an owner's representative including any person, company, nonprofit organization or other entity performing services that are contracted, subcontracted, or obligated by other agreement to meet the requirements of this code.

"Sediment" means soil or other surface material held in suspension in surface water or stormwater.

"Sedimentation" means the process or action of sediment being deposited as a result of decreased water volume or velocity.

"Sensitive resources" means any area that, due to the natural resources or lack of filtering capacity present, is significantly more susceptible to the negative impacts of sedimentation, erosion and stormwater. Examples include direct hydrologic connections to lakes, streams, wetlands, springs, seeps, or other water resources; conservation areas; highly erodible soils and steep slopes; riparian buffers; high water tables; minimal depth to bedrock; infiltration areas, significant natural areas and environmental corridors; areas of historical importance; or areas inhabited by endangered species.

"Site" means any property or combination of properties where a project is being proposed or completed.

"Slope" means the increase in elevation of a ground surface expressed as a ratio of horizontal distance to vertical distance.

"Soil" means natural deposits overlying bedrock.

"Stabilize" means when vegetation or surfacing material is in place and well-established providing an area with maximum erosion protection.

"Stabilization" means the use of vegetative or structural techniques to prevent soil movement.

"Stockpile" means storage of any soil, sand, gravel, clay, mud, debris, refuse, or any other material, organic or inorganic, in a concentrated area.

"Stop work order" means an order issued by the director which requires all project activity, except those specifically stated in the stop work order, to cease on the site.

"Stormwater" means water that originates as precipitation on a particular site, basin, or watershed and flows over land or impervious surfaces without percolating into the ground .

"Stormwater facility" means a location where stormwater collects to filter, retain, or detain stormwater for the purposes of water quality or quantity management. The facility may be structural or non-structural, has been designed and constructed according to city design standards, and has been required by the city.

"Stormwater facility operations and maintenance plan" means the required steps to be undertaken by an owner or maintenance organization to ensure proper functioning of a stormwater facility.

"Stormwater management" means techniques or structures intentionally used to temporarily or permanently reduce or minimize the adverse effects of stormwater velocities, volumes, and water quality on receiving watercourses. A series of techniques or structures constitute a stormwater system or treatment train.

"Stormwater system" means the combination of both artificial and natural systems of drains, ditches, canals, culverts, detention ponds, retention ponds, dams, and other water control facilities used for collecting and transporting stormwater.

"Street wash water" means water used to wash streets after emergency personnel actions or when the organization or person receives prior city approval to discharge as long as the area is previously cleaned using dry methods such as a sweeper or broom and the discharge to the stormwater system does not exceed federal or state water quality standards

"Structure" means anything constructed or built, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

"TMDL" means Total Maximum Daily Load.

"Visible And measurable erosion" means the deposition of soil, sand, dirt, dust, mud, rock, gravel, refuse, or any other organic or inorganic material exceeding a volume of one-half cubic foot into a public right-of-way or public property, or any component of the city's stormwater system either by direct deposit, dropping, discharge, or as a result of erosion; a flow of turbid or

sediment-laden water beyond the property of origin or into the city's stormwater system; or earth slides, mud flows, land slumping, slope failure, or other earth movement that leaves, or is likely to leave, the property of origin.

"Watercourse" means any natural or artificial stream, river, creek, ditch, channel, canal, conduit, culvert, drain, gully, ravine, swale, or wetlands in which water flows either continuously or intermittently. The width of the watercourse includes any adjacent area that is subject to inundation from overflow or floodwaters from the design storm.

"Wetlands" means transitional lands where the water table is usually at or near the land surface or the land is covered by shallow water. Wetlands:

1. Support, at least periodically, plants that thrive in saturated conditions;
2. Contain predominately undrained hydric soil; or
3. Are saturated or covered with shallow water at some time during the growing season of each year.

Article II. Erosion Control

13.25.030 Purpose and intent.

A. The purpose of these regulations is to protect, maintain, and enhance public health, public safety, and public welfare by establishing minimum requirements and procedures to control sources of windborne and waterborne erosion and the effects associated with sediment that results from erosion. The application of this code and provisions expressed herein are minimum requirements.

B. The intent is to:

1. Minimize soil erosion;

2. Minimize flooding, sedimentation, and erosion of local watercourses;

3. Ensure proper maintenance and inspection of erosion and sediment controls;

4. Ensure proper storage of construction materials and staging and proper storage of debris on-site; and

5. Minimize effects of projects on downstream stormwater facilities and watercourses.

13.25.040 Scope.

A. No person shall undertake a ground-disturbing project without having provided erosion and sediment controls that address erosion caused by wind or rain unless exempted by **NMC 13.25.050**. In addition to complying with the requirements of this code, each site shall comply with the Newberg comprehensive plan, the Newberg development code, and any other applicable city of Newberg codes or plans.

B. These requirements apply to:

1. The person undertaking a ground-disturbing project, the implementer of the project, and the person's successors in interest;

2. Projects which require a permit; and

3. Projects or activities not requiring a permit but which have the potential to generate discharges that are in violation of water quality standards.

C. Projects which do not require a permit and which are not exempt from the requirements of these regulations shall:

1. Notify the city when the project starts;

2. Comply with the basic erosion and sediment requirements listed in **NMC 13.25.060;** and be

3. Subject to the enforcement actions and penalties of these regulations.

D. Projects which do not require a permit but which violate basic erosion and sediment control requirements shall be subject to the penalties section of this code.

13.25.050 Exemptions.

A. Agricultural activities that do not create a discharge of visible and measureable erosion to the stormwater system are exempt from these regulations unless identified by the city as having the potential to cause water-quality violations.

B. Activities that comply with the requirements of their DEQ 401 Water Quality Certificate are exempted from these regulations unless they are identified by the city as requiring special considerations as defined by the erosion and sediment control manual.

C. Activities that comply with the requirements of permits issued by the Department of State Lands or the Army Corps of Engineers are exempted from these regulations unless they are identified by the city as requiring special considerations as defined by the erosion and sediment control manual.

D. Emergency actions to alleviate an immediate threat to public health and safety or to public or private property are exempt from these regulations.

E. Activities that do not disturb more than 500 square feet of land are exempt from these regulations provided that they:

1. Are not located in a floodplain or the Newberg stream corridor overlay sub-district; or

2. Do not discharge stormwater offsite that exceeds the water-quality limits imposed by the city of Newberg's Willamette River TMDL Implementation Plan, DEQ, or US Environmental Protection Agency.

13.25.060 Erosion and sediment controls.

A. Approval of erosion and sediment controls for a project does not, by itself, transfer responsibility from the responsible party to the city.

B. The city shall be notified when the project starts as defined by this code.

C. Types of erosion controls that are approved for projects within city limits are described in the erosion and sediment control manual.

D. Prior to ground disturbance, the responsible party shall ensure that erosion and sediment controls are properly installed and functioning to:

1. Minimize sediment transport from the site through the use of construction entrances and exits;

2. Protect stormwater system inlets that are immediately downstream of the site;

3. Minimize dust and other windborne erosion;

4. Stabilize soil in disturbed areas; and

5. Protect onsite and offsite soil stockpiles during rain events or when dust is raised by gusting winds.

E. The responsible party shall ensure that the following basic procedures are followed:

1. Use of dry methods, such as a shovel or broom, to remove soil or construction debris left or tracked into the public right-of-way by the end of the working day;

2. Inspect erosion and sediment controls weekly and after rain events; and

3. Provide proper storage and disposal of construction materials and waste.

F. Additional erosion and sediment controls may be required by the city if the site:

1. Has slopes of 10% or more;

2. Disturbs property within 100 feet of sensitive resources, watercourses, or the Newberg stream corridor overlay sub-district;

3. Disturbs 10,000 square feet or more of land at any one time;

4. Is identified by the city as having easily erodible soil, current severe erosion, or could affect adjacent properties or watercourses due to stormwater quality, flooding,

erosion, or sedimentation;

5. Is identified by the city to potentially generate stormwater that would create a violation of DEQ water quality standards;

6. Is active between October 1 and April 30; or

7. Has any other condition specified in the ESC manual or design standards manual as warranting special consideration;

13.25.070 Erosion and Sediment Control (ESC) Plans.

A. For projects requiring a city, state, or federal permit:

1. The approved ESC plan shall be available onsite during active construction; and

2. Erosion and sediment controls shall be installed in accordance with the approved ESC plan or 1200-C permit prior to ground disturbance.

B. Applicants submitting permit applications or contract submittals shall, at the same time, submit either an ESC plan for review and approval by the city or a copy of the 1200-C documents submitted and approved by DEQ.

1. No permits shall be issued until the ESC plan is approved by the city or the applicant has provided a copy of the documents submitted to the DEQ for its 1200-C permit.

2. The ESC plan shall contain sufficient information to evaluate the proposed project's effect on adjacent and downstream public and private properties and on public health and safety.

3. Projects not subject to **NMC 13.25.070.C** shall provide an ESC plan developed by an erosion control professional that fulfills the requirements of the erosion and sediment control manual and the design standard manual.

C. Projects completed on a single lot, disturbing more than 500 square feet, and located on duplex or single family residential lots shall provide a basic ESC Plan to the city for review and approval that includes:

1. Scaled drawing of site with north arrow, legend, project location, onsite structures, and watercourses or other sensitive resources within 100 feet of the site;

2. Location and types of erosion controls;

3. Location of construction entrances, and exits and concrete washouts, and soil stockpiles;

4. Location of all trees with an 8-inch or larger DBH (diameter measured at breast height) within or adjacent to the site;

5. Grading plan and permit if required by the city;

6. Stormwater points of discharge;

7. Methods for re-vegetating the site after construction;

8. Storage locations and disposal methods for construction debris and toxic or hazardous materials used during the project;

9. Dust control methods;

10. Spill prevention and response procedures;

11. Inspection schedule;

12. Name and 24-hour emergency contact information for the person responsible for maintaining and inspecting erosion and sediment controls; and

13. Any other provisions required by the erosion and sediment control manual for small sites and projects.

13.25.080 Erosion and Sediment Control Plan Revisions.

A. The city may require a revision to the ESC plan due to a change in the site conditions and the ability of erosion and sediment measures to adequately control:

1. Stormwater volume and velocity;

2. Stormwater quality to receiving watercourses; or

3. Additional loading that compromises the integrity of downstream stormwater facilities.

B. The following situations, while not exhaustive, can trigger revisions to ESC plans:

1. Improper functioning of approved erosion and sediment controls;

2. A change in project schedules such that the project will be active more than 3 months later than originally scheduled;

3. Changes in the assumptions used for the soil type, topography, hydrologic, or hydraulic conditions based on actual conditions discovered during inspections or construction that will affect the proper functioning of previously-approved erosion and sediment controls;

4. Changes in location, excavation and fill volumes, or square footage of disturbed land that will affect the proper functioning of erosion and sediment controls onsite; or

5. Changes in construction or maintenance materials or chemicals that affect the proper functioning of erosion and sediment controls.

C. The person responsible for erosion and sediment controls on the project shall immediately install functioning interim erosion controls and submit a revised ESC plan within three (3) working days of receiving a notice of violation.

D. Revisions.

1. Revised plans shall provide an attached narrative with detailed specifications of any changes or additions to the current or proposed erosion and sediment controls.

2. The narrative accompanying the revised plan shall discuss the triggering situation, corrective action required, and a proposed solution that conforms to the requirements of the ESC manual.

E. The revised plan and erosion and sediment controls shall be immediately implemented upon the city's approval of the plan.

F. The applicant shall be responsible for any additional costs resulting from a revision to the original ESC plan.

13.25.090 Inspections.

A. City Inspections.

1. The city shall inspect the site for compliance with these regulations.

2. The responsible party shall provide copies of all inspection records for a project within twenty-four (24) hours of a request by the city.

3. During an emergency, the responsible party shall immediately provide the city with copies of all inspection records for a project.

4. The responsible party shall contact the city within 24 hours of placement of erosion and sediment controls.

B. Responsible Party Inspections.

1. The responsible party shall keep a maintenance and inspection log documenting the time and date of the inspection and any repairs, adjustments, maintenance, or replacements completed on the erosion and sediment controls.

2. During construction, inspections of erosion and sediment controls shall be conducted after a rain event or at least weekly during dry weather.

3. If a site will be inactive for more than 14 days, inspections shall be conducted every 2 weeks.

Article III. Illicit Discharge Detection and Elimination

13.25.100 Purpose and intent.

A. The purpose of these regulations is to:

1. Ensure public health and safety;

2. Enhance the water quality of watercourses; and

3. Maintain and protect the stormwater system.

B. The intent of these regulations is to:

1. Reduce pollution in stormwater discharges;

2. Prohibit illicit and illegal discharges into the stormwater system including ditches and culverts;

3. Prohibit illicit connections to the stormwater system; and

4. Establish legal authority to inspect, monitor, and enforce compliance with these regulations.

13.25.110 Scope.

A. These regulations apply to all discharges to the stormwater system or watercourses within the city limits that are not composed entirely of stormwater.

B. These standards are minimum standards and the city neither intends nor implies that compliance by any person with these requirements will ensure no contamination or pollution of watercourses.

13.25.120 General.

A. No person shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain, or discharge any material other than stormwater into the city's stormwater system, watercourses, or groundwater.

B. No person shall improperly store, handle, or apply any material that will cause or create, through its exposure to rainfall or stormwater, a discharge in violation of water-quality standards in the receiving watercourse.

13.25.130 Exempt Discharges.

A. The following discharges are allowed under this code unless the director determines that they are, were, or will be a significant source of pollution:

1. Diverted stream flows,

2. Rising groundwater;

3. Uncontaminated groundwater infiltration as defined by 40 CFR 35.2005(20);

4. Uncontaminated pumped groundwater;

5. Foundation or footing drains;

6. Air conditioning condensate;

7. Springs;

8. Water from crawl space pumps;

9. Flows from riparian habitats and wetlands;

10. Discharges from fire-fighting activities;

11. Discharges from irrigation, lawns, and gardens that do not violate water-quality regulations; and

12. Non-foaming discharges from residential vehicle washing by city residents or by non-profit organizations for fund-raising purposes.

13.25.140 Conditionally-exempt discharges.

The following discharges are allowed if they meet their respective restrictions and are not identified by the director as a significant pollution source:

A. De-chlorinated, pH-adjusted, and controlled discharges from hyper-chlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic testing that do not pose a threat of erosion to the receiving watercourse;

B. De-chlorinated, pH-adjusted, and controlled discharges from swimming pools, hot tubs, and spas that do not pose a threat of erosion to the receiving watercourse. This exemption does not include filter backwash;

C. Non-stormwater discharges regulated by a NPDES permit so long as the discharge complies with the permit limits and written approval has been granted by the director; and

D. Street wash water.

13.25.150 Illicit connections.

A. The existence of illicit connections to the stormwater system is prohibited and a violation of this code.

B. Illicit connections shall be disconnected from the stormwater system upon receipt of a written notice of violation.

13.25.160 Illegal dumping.

A. No person may cause or contribute to pollution of watercourses or the stormwater system.

B. No person may cause or contribute to stormwater system or watercourse blockages.

C. Materials deposited in proper waste receptacles for the purposes of collection are exempt from these requirements.

13.25.170 Riparian destabilization.

A. Any person owning property with either a watercourse running through or bounding the property lines shall keep and maintain that part of the watercourse within the property reasonably free of man-made trash, debris, and other obstacles that would pollute, contaminate, or impede the flow of the watercourse.

B. Any person with a watercourse bounding or running through their property shall maintain native stream bank vegetation or provide other stabilization measures to protect the watercourse from erosion or degradation while, at the same time, not adversely affecting downstream properties or stormwater facilities.

13.25.180 Discharges in violation of NPDES permit.

Any discharge that would result in or contribute to a violation of a NPDES permit either separately or in combination with other discharges is prohibited from discharge into the stormwater system or watercourses lying within the city limits.

13.25.190 Commercial and industrial discharges.

A. Commercial or industrial operations or businesses not covered by a NPDES permit shall follow proper disposal and spill prevention practices.

B. Direct discharges or sheet flow to the stormwater system or watercourses within city limits is expressly prohibited unless listed as exempt or conditionally exempt in these requirements.

13.25.200 Spill prevention plans.

Facilities that handle, store, or use hazardous or toxic substances in quantities that equal or exceed quantities listed in OAR Chapter 340-142-0050 or that are otherwise required by state or federal law to have a spill prevention plan shall provide a copy of the plan to the director.

13.25.210 Spill notification.

A. In the event of the release or the imminent threat of a release of a hazardous or toxic material, the person owning or having control over the material shall immediately implement the applicable spill plan or other contingency plan document prepared in compliance with these regulations.

B. If a spill plan or contingency plan is not implemented for any reason, the person owning or having control over the material shall immediately take the following actions:

1. Activate alarms or otherwise warn persons in the immediate area;

2. Undertake every reasonable method to stop the spill and contain the oil or hazardous material;

3. Call 911 if there is a medical emergency or public safety hazard; and

4. Arrange for properly trained and equipped personnel or contractor to stop any continuing release and manage the specific material spilled.

    a. Immediately hire a qualified contractor to respond and manage the spill if the necessary actions are beyond the ability of the responsible person's representatives on-site or the responsible person's own response services will be delayed in arriving at the spill site.

    b. If the person owning or having control over oil or hazardous material does not, or cannot, immediately arrange a response acceptable to the city, the city may dispatch a contractor and seek recovery of all costs incurred by the city resulting from this action.

C. Immediately report the spill or release as required by OAR 340-142-0040.

13.25.220 Inspection authority.

A. Whenever the city has a reason to believe that there exists or potentially exists, in or upon any premises, any condition which constitutes a violation of this chapter, the city shall be permitted access to the property or facility to determine compliance. If the premises are unoccupied, the city may enter the property without permission if immediate abatement is required.

B. The city reserves the right to set up devices to conduct monitoring and sampling of discharges from the property or facility.

13.25.230 Suspension of discharge access.

A. The city may suspend the ability to discharge into the stormwater system or watercourses when it is necessary to stop:

    1. An actual or threatened discharge that presents or threatens to present a violation of water quality standards;

    2. Repeated violations by a facility or person; or

    3. A facility or person from continuing illicit discharges after they have been notified to cease and desist.

B. Resumption of a suspended discharge access without the prior approval of the director constitutes a separate and distinct violation of this code.

13.25.240 Remediation.

If the director determines that an illicit or illegal discharge or accidental spill has resulted in degradation or harm of the stormwater system or watercourses within the city limits, it reserves the right to require remediation of the degraded area, including watercourses, by the owner of the property or facility within a specified timeframe.

Article IV. Stormwater Management

13.25.250 Purpose and intent.

A. The purpose of these regulations is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the effects associated with increased stormwater from impervious areas in the city limits by requiring affected projects to control the volume and velocity of stormwater discharged from the site.

B. The intent of these regulations is to:

1. Encourage the preservation and use of the natural topography for receiving and conveying stormwater from a site;

2. Minimize local flooding, sedimentation, and stream channel erosion;

3. Maintain optimum temperatures for native fish and riparian habitat;

4. Protect stormwater facilities already existing downstream; and

5. Ensure that stormwater facilities are properly maintained with accurate records.

13.25.260 Scope.

A. These requirements apply to:

1. Projects or activities that ordinarily would be exempt but are part of a larger common development plan that meets the criteria. This is true even if the activities appear to be separate and distinct and take place at different times and on different schedules;

2. Projects or activities that are exempt but have the potential to discharge stormwater to watercourses which will degrade their beneficial use or cause a violation of water quality standards set by the city's Willamette River TMDL Implementation Plan; DEQ, or the US Environmental Protection Agency.

3. Projects that create a net impervious area of 500 square feet or more; or

4. Projects or activities that change the pre-project land contours such that 500 square feet or more of new drainage discharges into the stormwater system or watercourses within the city limits.

B. These requirements do not apply to:

1. Duplex and single family residential projects on single lots that are already serviced by a properly functioning stormwater facility; or

2. Emergency measures taken to alleviate an immediate threat to the public, environment, or downstream stormwater facilities.

13.25.270 Stormwater treatment.

A. Projects shall use techniques or create stormwater facilities that maintain the water quality and beneficial uses of the receiving watercourse.

B. The discharge rate and stormwater volume leaving a site shall conform with the requirements of the design standards manual and:

1. Not create or increase existing erosion or flooding problems of adjacent properties or areas downstream of the site; and

2. Maintain historic drainage properties of adjacent properties and watercourses.

C. Stormwater facilities that discharge to the city's wastewater system shall be considered an illegal discharge.

13.25.280 Facility Design.

A. Prior to an applicant receiving a permit for a project, the director shall determine the stormwater requirements of the project.

1. All projects which create 500 square feet or more of net impervious area that directly discharge to a watercourse or occur on properties with existing severe erosion problems may be required to provide engineered stormwater facilities that meet the requirements of this code and the design standards manual.

2. Projects disturbing 1 acre or more of land shall have stormwater facilities that are designed by a professional civil engineer and meet all of the requirements of this code and the design standards manual.

3. Projects disturbing less than 1 acre of land but creating 2,877 square feet or more of net impervious area shall provide a summary of the project, design flow calculations, and proposed methods for treating stormwater to the director for review and approval in accordance with requirements specified in the design standards manual. The submitted material shall be used by the director to determine whether the proposed stormwater facilities are subject to **NMC 13.35.04.A.2**.

4. Projects creating 500 square feet or more of net impervious area but less than 2,877 square feet of net impervious area shall provide a project summary and a scaled drawing showing the general stormwater flow direction to the director for review and approval in accordance with the requirements specified in the design standards

manual. The material shall be used by the director to determine whether stormwater facilities are required for the project and subject to **NMC 13.35.04.A.3**.

5. Projects on properties lying partially or completely within the 100-year floodplain or the Newberg stream corridor overlay sub-district are subject to additional requirements as specified in the design standards manual.

B. All stormwater facilities, structural and non-structural, shall have an emergency overflow or bypass that is designed to passively function and route excess floodwaters to an appropriate location that minimizes the effect of the overflow to adjacent properties.

13.25.290 Facility Responsibility.

A. The city shall operate and maintain public stormwater facilities.

B. Privately-owned stormwater facilities shall be operated and maintained by the owner or maintenance organization.

1. The city does not accept responsibility for the design, installation, operation, or maintenance of any stormwater facility unless an agreement specifying such responsibility is executed between the city and the owner or maintenance organization.

2. Approval of stormwater facilities, a project, or a maintenance agreement does not, by itself, transfer responsibility from the owner or maintenance organization to the city.

3. Failure to properly operate or maintain private stormwater facilities shall constitute a violation of this code.

13.25.300 Maintenance.

A. The applicant or maintenance organization shall enter into a maintenance agreement with the city that shall be binding on the applicant or maintenance organization and all subsequent owners of the properties served by the stormwater facilities.

B. The maintenance agreement shall be recorded in the deed records of Yamhill County, Oregon.

C. A facility operations and maintenance plan previously approved by the city shall be provided by the applicant to the maintenance organization, if different from the applicant, at project completion.

D. Privately-owned stormwater facilities shall be inspected and maintained in accordance with the facility operations and maintenance plan.

E. Annual reports shall be submitted to the city by the maintenance organization attesting to the proper functioning, maintenance, and safety of the stormwater facilities.

F. Annual reports shall include current 24-hour emergency contact information. When emergency contact information changes midyear, the director shall be notified by letter within fifteen (15) business days.

G. Stormwater facilities shall remain functionally unaltered unless prior approval has been obtained from the director.

H. The director may authorize the immediate repair of any stormwater facility that poses an immediate threat to public health and safety; public or private property adjacent to or downstream of the stormwater facility; or the water quality, riparian habitat, or channel morphology of the receiving watercourse.

13.25.310 Inspections.

A. Authorized city representatives may inspect stormwater facilities to determine compliance with the requirements of this code.

B. The maintenance organization shall allow authorized city representatives access to the stormwater facility for the purpose of inspection, sampling, records examination, or in the performance of any duty required to ensure compliance with this code.

C. The maintenance organization shall provide copies of records, reports, or other maintenance or operating documents requested by an authorized city representative during their inspection.

D. Entry shall be made during normal operating or business hours unless an emergency situation exists as determined by the director.

E. Authorized city representatives shall present appropriate credentials at the time of entry. If the property or facility is unoccupied, the authorized city representative shall make a reasonable effort to locate the owner or emergency contact on the maintenance agreement.

13.25.320 Variances.

A. The director may grant a variance from any requirement of this chapter if there are exceptional circumstances such that strict adherence will not fulfill the intent of this code. A written request for a variance shall be provided to the director which states the specific variance sought and reasons for granting the request.

B. In a variance request, the applicant shall include design flow calculations showing the effects, if any, that the variance will have on the:

1. Adjacent property drainage patterns;

2. Local flooding, sedimentation, and stream channel erosion;

3. Beneficial uses or water quality of the receiving watercourse; and

4. Proper functioning of downstream stormwater facilities, culverts, bridges, dams, and other structures.

C. A public comment period of 30 days, requested through standard public noticing procedures, shall follow a variance request by an applicant.

D. No variance granted by the director shall be construed as providing precedence for future projects or facilities by any applicant.

E. When the director grants a variance, the applicant shall satisfy the requirements of this code through one or more of the following options as determined by the city and which are commensurate with the volume and velocity of stormwater expected by the project:

1. Upgrading improperly functioning stormwater facilities downstream of the project;

2. Providing new stormwater facilities downstream of the project; and

3. Providing the city with a conservation easement within the watershed of the receiving watercourse.

Article V. Enforcement and Penalties

13.25.330 General.

A. The city may, for enforcement purposes, use any one of the following actions, a combination of them, or any other legal action depending on the severity of the violation:

1. Notice of violation;

2. Stop work order;

3. Summary abatement;

4. Refuse to issue a certificate of occupancy;

5. Modify, suspend, revoke, or withhold final approval of a city permit; or

6. Refer the issue to legal action.

B. Communication to one responsible party shall be regarded as communication to each responsible party for the purposes of this code.

C. In addition to any other sanctions, civil action or criminal prosecution may be brought against any person, company, or organization in violation of this code.

13.25.340 Concealment.

Causing, permitting, aiding, abetting, or concealing a violation of any provision of these requirements shall constitute a violation of these regulations.

13.25.350 Notice of violation.

A. The city may issue a notice of violation if a responsible party has violated or failed to meet a requirement of this chapter.

B. Failure to comply with a notice of violation is a separate violation of this chapter.

C. Failure to complete the actions required in the notice of violation within the deadline may result in a summary abatement action by the city.

13.25.360 Stop work order.

A. The city may issue a stop work order to allow proper remedial action or to deflect an immediate threat to public health or safety or the water quality of receiving watercourses.

B. The stop work order shall list the conditions under which work may resume. The responsible party shall contact the city for an inspection when the conditions for resuming work have been fulfilled.

C. It is a violation of these regulations for any person to remove, obscure, mutilate or otherwise damage a stop work order or prevent the city from posting one.

13.25.370 Summary abatement.

A. If the responsible party fails to fulfill the steps required in an enforcement action within the deadline prescribed by the city, the actions will be completed by the city and the owner shall be responsible for reimbursing the city for 150% of the cost of the investigation, repair, and remediation of the situation including labor, material, administrative, and legal expenses.

B. If the owner does not remit payment within 45 days of notification, the debt shall be declared as a special assessment against the property and shall constitute a lien by the city against the subject property.

C. Any relief obtained under this section shall not prevent the city from seeking other relief as allowed by law.

13.25.380 Appeal procedure.

A. Any person aggrieved by a decision or action of the director under this chapter may file a written request with the city manager for reconsideration within ten (10) calendar days of notification of the decision or action. The request for reconsideration shall clearly describe the:

1. Decision or action being appealed including the date of the decision or action;

2. Property location;

3. Facts and arguments supporting the request for reconsideration; and

4. Specific grounds on which the appeal is filed.

B. The city manager may establish such procedures as may be deemed necessary or proper to conduct the reconsideration process and shall make a determination regarding the appeal within ten (10) business days of the receipt of the request for reconsideration. The filing of a request for reconsideration by the city manager shall be a condition precedent to the right to appeal to the city council. The filing of an appeal shall not stay enforcement of an action by the director in emergency situations as previously defined in this chapter.

C. Any person aggrieved by the city manager's determination under this chapter may appeal to the city council within ten (10) days of notification of the city manager's decision. Written notification of the appeal shall be filed with the city council and the city manager along with a payment of fifty dollars ($50.00). The filing of a request for reconsideration by the city council shall set forth in reasonable detail the decision or action being appealed and the facts and arguments supporting the request for reversal or modification.

D. The city council shall conduct a hearing on the appeal according to established council procedures. The hearing shall be conducted at the earliest possible regularly scheduled city council meeting with final city council action being taken on the appeal within sixty (60) days after its initial filing.

13.35.390 Penalties.

A. General.

1. Tampering with or knowingly rendering nonfunctional any sediment or erosion control, monitoring device, or stormwater facility required under these regulations constitutes a separate and distinct violation of this code.

2. The following shall constitute a separate and distinct violation of this code**:**

   a. Disregarding or interfering with a stop work order;

   b. Failure to remediate or abate;

   c. Failure or refusal to reimburse the city for expenses incurred as a result of summary abatement; and

   d. Each day of continued violation.

3. Any relief obtained under this section shall not prevent the city from seeking other relief as allowed by law.

B. Falsifying Information.

1. Any person making false statements, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this code shall be in violation of this code.

2. In addition, the responsible party or their agent shall be subject to the provisions of 18 U.S.C. 1001 relating to fraud and false statements; and the provisions of Section 309(c) of the Clean Water Act, as amended, governing false statements, representation, or certification and responsible corporate officers.

C. Any person, firm, or corporation or any agent or employee of these entities violating the provisions of this code that pertain to federal or state law shall have committed a class 1 civil infraction.

D. Any person, firm, or corporation or any agent or employee of these entities violating the provisions of this code that pertain to municipal law and whose violations are not deemed a nuisance shall have committed a class 2 or class 1 civil infraction.

E. Any person, firm, or corporation or any agent or employee of these entities violating the provisions of this code that pertain to municipal law and whose violations are deemed a nuisance shall be punishable as a civil infraction ranging from a class 4 to a class 2.

F. Any violation of this code shall be processed in accordance with the procedures set forth in **NMC 2.30**.