ORDINANCE NO. 2012-2754

AN ORDINANCE REQUIRING MEASURES TO CONTROL CONSTRUCTION SITE RUNOFF, ILLICIT DISCHARGES INTO THE STORMWATER SYSTEM, AND POST-CONSTRUCTION STORMWATER

RECITALS:

1. The Oregon Department of Environmental Quality (DEQ) ordered the City of Newberg on October 17, 2006, to create a Willamette River Total Maximum Daily Load (TMDL) Implementation Plan, which was subsequently approved by the Oregon DEQ on October 17, 2008, and adopted by the City Council on December 1, 2008, through Resolution No. 2008-2820.

2. The Willamette River TMDL Implementation Plan requires the City to enact municipal code, which controls construction site runoff, illicit discharges, and post-construction stormwater.

3. On May 16, 2011, the City Council adopted Resolution No. 2011-2947 convening the Stormwater Ad-hoc Committee. From May 26, 2011, to October 6, 2011, the Stormwater Ad-hoc Committee reviewed and refined municipal code developed by staff.

4. On October 13, 2011, a Planning Commission workshop was held to discuss the requirements of the Willamette River TMDL Implementation Plan and the proposed municipal code. On November 10, 2011, a public hearing was held by the Planning Commission to refine the municipal code. On January 12, 2012, the Planning Commission adopted Planning Resolution No. 2012-296 recommending the proposed code to the City Council.

5. On June 4, 2012, a City Council work session was held to discuss the requirements of the Willamette River TMDL Implementation Plan and the proposed municipal code.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

The Newberg City Council does hereby adopt the new municipal code to fulfill the requirements of the Willamette River TMDL Implementation Plan, as attached in Exhibit "A", which is hereby adopted and by this reference incorporated.

- **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: July 18, 2012.

ADOPTED by the City Council of the City of Newberg, Oregon, this 18th day of June, 2012, by the following votes: **AYE: 7** **NAY: 0** **ABSENT: 0** **ABSTAIN: 0**

Norma I. Alley

Norma I. Alley, MMC, City Recorder

ATTEST by the Mayor this 21st day of June, 2012.

Bob Andrews

Bob Andrews, Mayor

Exhibit "A" to Ordinance No. 2012-2754

Chapter 13.25
STORMWATER MANAGEMENT

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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 13.25.280.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 13.25.280.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**.