

**ORDINANCE 3580**

**An Ordinance of the City Council of the City of Missoula, Montana, creating Chapter 13.27 of the Missoula Municipal Code titled, “Storm Water Utility, Rates, and Regulations” establishing a storm water utility, establishing rates for the same, outlining existing and new rules and regulations related to storm water pollution prevention and control, and repealing Missoula Municipal Code Section 13.04.080(C) and Chapter 15.65.**

**Be it ordained that Chapter 13.27 is hereby created as follows and Missoula Municipal Code Section 13.04.080(C) and Chapter 15.65 are hereby repealed.**

**CHAPTER 13.27  
STORM WATER UTILITY, RATES, AND REGULATIONS**

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**Article I. Storm Water Utility**

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**13.27.010 Storm Water Utility Established**

A city storm water utility is hereby established along with a rate schedule and adopted administrative rules and regulations for operation as well as specifications and design standards.

**13.27.020 Purpose and Intent**

The purpose and intent of this ordinance is to:

- A. Protect and enhance the water quality of the Clark Fork River, Bitterroot River, Rattlesnake Creek, Pattee Creek, Grant Creek, Miller Creek, water bodies, groundwater, and wetlands in a manner pursuant to and consistent with the Clean Water Act of 1972, and U.S. EPA and MDEQ storm water regulations.
- B. Create permitting, submittal, and design standards for erosion and sedimentation control, protection of the storm water system, flood mitigation, site grading, and protection of property.
- C. Minimize pollutants and non-storm water discharges to storm drains.
- D. Provide design, construction, operation, and maintenance criteria for permanent and temporary Best Management Practices (BMPs) for storm water management facilities that handle storm water runoff.
- E. Establish legal authority to conduct inspections, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with federal and state regulations.
- F. Establish legal authority to develop, implement, and enforce a program to reduce pollutants in storm water runoff from new development, redevelopment, and construction activities.
- G. Provide an equitable distribution of cost for the program as outlined in the storm water utility rate schedule, which will be established by City Council resolution following a public hearing.
- H. Provide for the regulation of contributors or dischargers to the City's storm water system through the development of a Storm Water Management Program.
- I. Regulate grading and drainage to protect natural resources from erosion and in accordance with the Storm Water Pollution Prevention Plan and air quality standards.
- J. Establish remedies and penalties for violations of this chapter.
- K. Ensure consistency with the requirements of the Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and the MPDES General Permit and any amendments, revisions, or re-issuance thereof.

**13.27.030 Definitions**

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context explicitly indicates a different meaning:

*“Administrative Rules of Montana (ARM)”* means the regulations, standards, or statements of applicability that implement, interpret, or set law or policy in Montana.

*“Authorized enforcement agent”* means the City Public Works Director or any individual or entity designated by the Public Works Director as an authorized enforcement agent.

*“Belowground installations”* means activity that causes sediment-laden water, concrete sawing wash water, wash water, drilling mud, or similar construction water with a high concentration of suspended solids pumped from an excavation or structure and shall be treated as sediment-laden runoff for erosion control purposes.

*“Best Management Practices (BMPs)”* means schedule of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state waters. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

*“Code of Federal Regulations (CFR)”* means the compilation of administrative laws governing federal regulatory agency practice and procedures.

*“Clean Water Act (CWA)”* means the Federal Water Pollution Control Act enacted by Public Law 92-500 as amended by Public Laws 95-217, 95-576, 96-483, and 97-117; and 33 USC 1251 et seq.

*“Construction activity”* means any work that results in land disturbance of any nature, which requires a building or other construction-related permit.

*“Design standards”* means the City standards and specifications prepared and updated by the Public Works Department or Development Services Department.

*“Developer”* means a person who creates a development or causes a development to be created.

*“Development”* means any construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure within the jurisdiction of the City as well as any manmade change or alteration to the landscape, including but not limited to mining, drilling, dredging, grading, paving, excavating, and filling.

*“Discharge”* means any introduction or addition of any substance into waterbodies of the MS4, waters of the state, or waters of the United States.

*“Discharger”* means any person who causes, allows, permits, or is otherwise responsible for a discharge, including, without limitation, any operator of a construction site or industrial facility.

*“Drainage”* means the natural and/or artificial draining, movement, or removal of water due to the following:

- a creek, stream, or river in normal or flood capacity or other natural body of water;
- natural rainfall, runoff, or storm water; or
- sheeting, which is melting snow and/or thawing ice on the surface of frozen ground.

*“General Permit”* means an MPDES permit issued by the State of Montana under ARM 17.30.1341 that authorizes a category of discharges under the Act within a geographical area.

*“Grading”* means the mechanical movement of dirt, gravel, rock, sand, or soil to adjust the level or steepness (grade) of a construction site, development, parcel, or lot.

*“Illicit connection”* means any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4, including but not limited to any conveyances which allow any discharge, such as sewage, process wastewater, and wash water, to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether the drain or connection had been previously allowed, permitted, or approved by a government agency; or any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved or permitted by the city.

*“Illicit discharge”* means any discharge to an MS4 that is not composed entirely of storm water except discharges not identified as significant contributors of pollutants listed in the General Permit and allowable under the City’s MS4 program.

*“Impervious surface”* means a surface which prevents or retards the penetration of water into the ground, including but not limited to roofs, sidewalks, patios, driveways, parking lots, concrete and asphalt paving, gravel, compacted native surfaces and earthen materials, and oiled, macadam (asphalt), or other surfaces which similarly impede the natural infiltration of storm water.

*“Major modification”* means an alteration to an existing or planned storm water drainage facility that does one or more of the following: changes the volume, surface area, depth, capacity, inflow rates, outflow rates, or level of treatment by 5 percent or more; changes the treatment process; adds more than 1,000 square feet of impervious surface; or increases the tributary impervious drainage area to an individual drainage facility component by more than 10 percent.

*“Maximum extent practicable (MEP)”* means the technology based discharge standard for municipal separate storm sewer systems to reduce pollutants in the storm water discharges that was established by the Clean Water Act, §402(p). See ARM 17.30.1111(5).

*“Missoula Municipal Code (MMC)”* means the official code of the general ordinances of the City of Missoula.

*“Montana Department of Environmental Quality (MDEQ)”* means the Montana state agency responsible to protect the environment as guaranteed by the Montana State Constitution.

*“Montana Pollution Discharge Elimination System (MPDES) permit”* means an area-wide permit that is issued to a government agency or agencies for the discharge of pollutants from any point source into the waters of the state or United States.

*“Municipal separate storm sewer system (or MS4)”* means a conveyance or system of conveyance (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a public body (created under state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law, such as sewer district, irrigation district, flood control district, or drainage district, or similar entity that discharges to the waters of the United States and which are not part of a publicly owned treatment works (POTW) as defined in ARM Title 17, Chapter 30, Subchapter 13.

*“Non-storm water discharge”* means any discharge that is not entirely composed of storm water.

*“Notice of Violation (NOV)”* means a notice issued by City inspectors for failure to comply with submitted, approved, or issued SWPPP Permits.

*“Owner or operator”* means a person who owns, leases, operates, controls, or supervises an activity that may produce storm water runoff. For the purpose of permitting, an “owner or operator” means a person associated with a construction project who is designated as an eligible signatory, has operational control over the construction plans and specifications, or has day-to-day operational control at the project to ensure compliance with the SWPPP.

*“Permittee”* means the person or owner or operator to whom the Storm Water Pollution Prevention Plan (SWPPP) Permit is issued.

*“Person”* means any individual, firm, association, club, organization, corporation, partnership, business trust, company, or other entity that is recognized by law as the subject of rights or duties.

*“Point source”* means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, and vessel or other floating craft from which pollutants are or may be discharged, including but not limited to chemical mixing, loading, and storage sites and sites of agricultural chemical spills.

*“Pollutant”* means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water and as otherwise defined in 40 CFR 122.2. The terms “sewage,” “industrial waste,” and “other wastes” as defined in 75-5-103, MCA, are interpreted as having the same meaning as pollutant.

*“Redevelopment”* means a project that proposes to add, replace, and/or alter impervious surfaces affecting an existing drainage system, other than routine maintenance, resurfacing, or repair. A project which meets the criteria of a major modification as defined in this chapter shall be considered a redevelopment.

*“State waters”* means any body of water, irrigation system, or drainage system, either surface or underground.

*“Storm water”* means storm water runoff, snow melt runoff, and surface runoff and drainage.

*“Storm water management”* means the process of collection, conveyance, storage, treatment, and disposal of storm water to ensure control of the magnitude and frequency of runoff and to minimize the hazards associated with flooding. Also includes implementing controls to reduce the discharge of pollutants, including management practices, control techniques and systems, and design and engineering methods.

*“Storm Water Management Plan (SWMP)”* means details of the on-site drainage system, structures, BMPs, concepts, and techniques that will be used to control storm water, including drawings, engineering calculations, computer analyses, maintenance and operations procedures, and all other supporting documentation for developments equal to or less than five acres.

*“Storm Water Pollution Prevention Plan (SWPPP)”* means a document developed to help identify sources of pollution potentially affecting the quality of storm water discharges associated with a facility or activity, and to ensure implementation of measures to minimize and control pollutants in storm water discharges associated with a person, facility, or activity.

*“Storm water system”* means the physical facilities, private and public, temporary or permanent, designed to treat, collect, and transport storm water, including but not limited to curbs, inlets, pipe, box culverts, swales, ditches, ponds, French drains, boulder pits, wattles, and silt fences. *“Storm water system”* in this chapter also includes the City’s flood control devices, such as levees, flood walls, and their appurtenances.

*“Storm water utility”* means a mechanism for planning, operating, maintaining, regulating, financing, and performing capital improvements to the storm water system. The storm water utility is funded from a user fee charged to properties within the service area.

*“Unit”* means real property or portions of property as identified and classified in the Montana Department of Revenue’s property tax records. For the purposes of this ordinance and its related documentation, a unit is either a single-family residential dwelling or a single commercial/industrial business.

*“United States Environmental Protection Agency (U.S. EPA)”* means the federal agency established to coordinate programs aimed at reducing pollution and protecting the environment.

*“Wetland”* means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support and that, under normal circumstances, does support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

**13.27.040 Authority**

- A. The Public Works Director shall have the authority to adopt administrative rules and regulations as well as specifications and design standards interpreting this chapter and governing the use, operation, and management of the storm water utility.
- B. The City shall create and maintain administrative rules and regulations that provide additional policy, criteria, and information for the proper implementation of the requirements of this chapter. Design and construction of storm water facilities shall meet the minimum water quality performance standards contained in the specifications and design standards.
- C. Activities regulated by this chapter may be subject to further regulation by administrative rules and regulations and/or specifications and design standards. No permit or approval issued pursuant to this chapter shall relieve a person of the responsibility to secure permits and approvals required for activities regulated by any other applicable law, rule, code, act, permit, or ordinance.

**13.27.050 Applicability**

This chapter shall apply to any activity that may potentially affect the City's MS4 or may introduce storm water pollutants into any private or public storm drain or any body of water within the City's MS4 jurisdiction. Exceptions include activities that are contained entirely on federal, state, or county lands and do not impact adjacent jurisdictions or MS4s.

Additionally, permanent and temporary storm water management controls and facilities constructed as part of any activities listed in this chapter that are located within the City's MS4 jurisdiction are also subject to this chapter.

#### **13.27.060 Storm Water Utility Service Area**

The storm water utility service area is inclusive of all lands annexed to the City and bounded by the incorporated city limits as the same may be adjusted by the City Council, with the exception of other MS4 permittees. The City reserves the right to plan for storm water system improvements outside the service area. The City may also construct storm water system improvements outside the service area when needed as an integral part of the storm water system located within the storm water utility service area, or as part of an agreement with an adjacent MS4 permittee.

#### **13.27.070 Operation Cost Determination**

The Public Works Director shall determine the total annual cost of operation and maintenance of the storm water system and shall develop operating plans for the system. The total annual cost of operation and maintenance of the storm water system shall include, but is not limited to, all costs related to the following:

- A. The acquisition by gift, purchase, or condemnation of real and personal property, and interests therein, necessary to manage storm water or to construct, operate, and maintain storm water systems;
- B. Costs of administration and implementation of the storm water utility, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency storm water management requirements;
- C. Costs related to planning, engineering and design, debt service and related financing expenses, construction costs for new storm water systems, and enlargement or improvement of existing storm water systems;
- D. Operation and maintenance of the storm water system;
- E. Monitoring, surveillance, and inspection of storm water systems;
- F. Water quality monitoring and water quality programs;
- G. Retrofitting developed areas for pollution control;
- H. Inspection and enforcement activities;
- I. Billing and administrative costs;

- J. Permitting;
- K. Staff;
- L. Equipment; and
- M. Other expenses related to the storm water utility.

**13.27.080 Storm Water Utility Service Fee**

A storm water utility service fee shall be charged to properties in the utility service area based upon a methodology and at a rate to be established by City Council resolution following a public hearing. A copy of the resolution shall be placed on file in the City Clerk's office and on the City's website. Any changes to the methodology or rates also shall be made by City Council resolution following a public hearing. The storm water utility service fee is to be used to pay for the costs necessary to fulfill the purpose and intent of this chapter, including but not limited to, all costs related to the City's activities under this chapter.

**13.27.090 Coordination with the Missoula Valley Water Quality District and Other Missoula Valley MS4 Agencies**

The City may coordinate storm water-related management activities with the Missoula Valley Water Quality District and other Missoula Valley MS4 agencies to make the best use of resources and finances for the purpose of meeting all Missoula MPDES Storm Water Permit discharge requirements. Coordination may include pooling resources, forming interlocal agreements, and entering into contractual agreements with other agencies where applicable.

**13.27.100 Ultimate Responsibility of Discharger**

The standards set forth in and promulgated pursuant to this chapter are minimum standards. This chapter does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into waters of the state caused by that person. This chapter shall not create liability on the part of the City or any City agent or employee for any damages that result from any discharger's reliance on this chapter or any administrative decision lawfully made pursuant to this chapter.

**13.27.110 Conflict of Law or Regulations**

This chapter shall not diminish nor supersede any of the laws and regulations governing the Missoula Valley Water Quality District. In the event any part of this chapter or referenced regulations in this chapter should overlap or conflict with Title 13, Chapter 26, MMC, the more stringent of the codes or regulations shall prevail.

**Article II. Discharge Prohibitions**

**Sections:**



**13.27.200 Prohibition of Illicit Discharges**

- A. Except as authorized by a separate MPDES permit, it shall be unlawful to discharge or cause to be discharged into the MS4 any discharge that is not composed entirely of storm water, including but not limited to discharges containing pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards or that could cause the City to be in violation of its MPDES permit.
  
- B. The commencement, conduct, or continuance of any discharge not composed entirely of storm water to the MS4 is prohibited except as follows:
  - 1. Discharges pursuant to an MPDES general permit for MS4s permit and discharges due to firefighting activities.
  
  - 2. Discharges from the following activities shall not be considered a source of pollutants to the MS4 and to state waters when properly managed and shall not be considered illicit discharges unless determined by the City to be significant contributors of pollutants to the MS4, or to cause a violation of the provisions of the Clean Water Act or this chapter based on quantity of flow, concentration of pollutants, proximity to a watercourse, or condition of a receiving water:
    - a. Irrigation water;
    - b. Irrigation ditch return flows;
    - c. Landscape irrigation;
    - d. Permitted diverted stream flows;
    - e. Rising ground waters;
    - f. Rising natural floodwaters;
    - g. Uncontaminated groundwater infiltration to separate storm sewers;
    - h. Uncontaminated pumped groundwater;
    - i. Discharges from potable water sources;
    - j. Foundation drains;
    - k. Air conditioning condensation;
    - l. Springs;

- m. Water from crawl space or basement pumps;
  - n. Footing drains;
  - o. Lawn watering (excluding overwatering);
  - p. Individual residential car washing;
  - q. Individual residential dechlorinated swimming pool and hot tub discharges;
  - r. Individual residential street washing;
  - s. Fire hydrant flushing;
  - t. Water line flushing;
  - u. Flows from riparian habitats and wetlands;
  - v. Uncontaminated water from irrigation system meter pits;
  - w. Flows from emergency firefighting activities;
  - x. Charity or other non-commercial car washes; and
  - y. Residential gardening or landscaping activities on areas less than 1,000 square feet.
3. Before applying the listed exceptions, the City shall make a determination on a case-by-case basis as to what is considered significant contributors of pollutants. In addition, the following non-storm water discharges need not be prohibited from entering the MS4, provided approved control measures to minimize the impacts from the sources are implemented:
- a. Municipally owned dechlorinated swimming pool discharges, municipal water tank draining, and water from street washing (including sidewalks and medians) that is conducted by City staff or under contract with the City.
  - b. The City may exempt, in writing, other non-storm water discharges which are not a significant source of pollutants to the City's MS4 or state waters.
- C. No person shall throw, deposit, leave, maintain, wash, rinse, or keep any substance that may cause or contribute to pollution or permit any such substance to be thrown, deposited, left, maintained, washed, or rinsed in or upon any public or private property, driveway, parking area, street, alley, sidewalk, catch basin, manhole, ditch, channel, pond, or any other component of the MS4 or state waters. Pollutants for this purpose include but are not limited to oil, solvents, antifreeze, flammables, septage, poisonous or infectious substances, garbage, soaps, acids, bases, and sediment. Wastes deposited in streets in a manner allowed by the City for the purpose of collection are exempted from this prohibition.

- D. It shall be unlawful to store, handle, or apply any pollutant in a manner that will cause exposure to storm water, rainfall or runoff, and discharge to the MS4 and to state waters or waters of the United States.
- E. All other requirements and restrictions pertaining to illicit discharges to the MS4 or the storm water system shall comply with the requirements of this chapter, the Storm Water Specifications and Design Standards, and Chapter 13, Title 26, MMC.

**13.27.210 Prohibition of Illicit Connections**

- A. The construction, use, maintenance, or continued existence of illicit connections to the MS4 is prohibited. An owner or operator responsible for an illicit connection to the MS4 shall comply with the requirements of this chapter; Chapter 13, Title 4, MMC; and Chapter 13, Title 26, MMC.
- B. This prohibition expressly includes, without limitation, illicit connections made in the past regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- C. A person is in violation of this chapter if the person connects a line conveying sewage or other pollutant to the MS4 or allows an existing connection to continue.
- D. Illicit connections must be disconnected at the property owner’s expense, or the City shall arrange for the disconnection and charge the resulting costs to the property owner.
- E. Any drain or conveyance that has not been documented in plans, maps, or equivalent and which may be connected to the storm sewer system, shall be located by the owner or operator of that property upon receipt of written notice from the City. The notice will specify a reasonable time period to locate the drain or conveyance, identify the drain or conveyance as storm sewer, sanitary sewer, or other, and identify the outfall location or point of connection to the storm sewer system, sanitary sewer system, or other discharge point. Results of these investigations shall be documented and provided to the Public Works Director.

**Article III. Regulations and Requirements**

**Sections:**

- [13.27.300 Requirement to Control and Reduce Storm Water Pollutants](#)
- [13.27.310 Requirement to Monitor and Analyze](#)
- [13.27.320 Notification of Spills](#)
- [13.27.330 Discharge Pursuant to MPDES Permit](#)
- [13.27.340 Noncompliance with MPDES Permit](#)

**13.27.300 Requirement to Control and Reduce Storm Water Pollutants**

- A. The City’s Storm Water Management Plan and Storm Water Specifications and Design Standards outline appropriate BMPs to control the volume, rate, and potential of pollutants in storm water runoff from new development and redevelopment projects as may be appropriate to minimize the generation, transport, and discharge of pollutants.

- B. Any owner or operator engaged in activities or operations which will or may result in pollutants entering storm water, the MS4, or state waters shall implement BMPs to the maximum extent practicable to provide protection from discharge into the MS4. BMPs shall be provided and maintained at the owner or operator's expense. The Public Works Director shall have the authority to require the installation, operation, maintenance, and/or replacement of BMPs as well as the authority to order the removal of temporary BMPs.

**13.27.310 Requirement to Monitor and Analyze**

The City may require any owner or operator engaged in any activity or owning or operating any facility which may cause or contribute to storm water pollution, illicit discharges, or non-storm water discharges to the MS4 or state waters to undertake, at the owner or operator's expense, monitoring and analysis by a state-certified laboratory pursuant to the provisions of this chapter and furnish those reports to the Public Works Department as deemed necessary to determine compliance with this chapter as well as the Storm Water Specifications and Design Standards.

**13.27.320 Notification of Spills**

Notwithstanding other requirements of law, as soon as any owner or operator of a facility or operation has information of any known or suspected release of pollutants discharging into storm water, the MS4, or state waters from that facility, that person shall take all necessary steps to ensure the discovery, containment, and cleanup of the release. If a pollutant is released, the owner or operator shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911). If there is a release not requiring an emergency response, the owner or operator shall notify the City by calling the Public Works Department within 24 hours and providing a written notice thereto within five business days. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator shall make and keep an onsite written record of the circumstances of the discharge and the actions taken to prevent its recurrence. These records shall be retained for not less than five years.

**13.27.330 Discharge Pursuant to MPDES General Permit**

The prohibition of discharges shall not apply to any discharge regulated under an MPDES General Permit issued and administered by MDEQ, provided that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations. Compliance with an applicable MPDES General Permit governing discharges into the MS4 shall be considered compliance with this chapter.

**13.27.340 Noncompliance with MPDES General Permit**

Any discharge that would constitute a violation of an MPDES General Permit and any amendments, revisions, or re-issuance thereto, when either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the person causing or responsible for the discharge. The City is not liable for violations under another MPDES General Permit holder's jurisdiction.

All owners or operators shall comply with applicable federal and state laws, including those related to facility personnel, training, training records, training record maintenance, maintenance of notification procedures, and implementation of notification requirements for spill response, to ensure containment, cleanup, and immediate notification to the owner or operator of the MS4. Persons responsible for spills are to comply with applicable state and federal notification requirements to ensure containment, clean up, and immediate notification to the owner or operator of the MS4.

#### **Article IV. Construction Activity**

##### **Sections:**

- [13.27.400 Permits Required](#)
- [13.27.410 Permit–Application–Fee](#)
- [13.27.420 Permit Fee Exceptions](#)
- [13.27.430 Investigation Fees; Work Without a Permit](#)
- [13.27.440 Permit Fee Refunds](#)
- [13.27.450 Construction Submittals](#)
- [13.27.460 Construction Requirements](#)
- [13.27.470 Storm Water Facility Management Procedures for Developments](#)

##### **13.27.400 Permits Required**

- A. It shall be unlawful for any person, firm or corporation to commence grading associated with a building permit or zoning compliance permit on public or private property without first obtaining a Grading Permit from Development Services. Any new building which requires a building permit where grades are altered more than 3 feet, except single-family residences located on slopes less than 5 percent, shall require a Grading Permit. Any construction activities related to grading that meets the requirements of this chapter shall require a Grading Permit. The applicant for the permit shall provide plans of the proposed site development in conformance with Storm Water Specifications and Design Standards and receive approval for such plans prior to commencing any construction.
- B. Grading, Drainage, and Erosion Control Permits shall expire by limitation and become null and void if work authorized does not begin within 180 calendar days after date of issuance. Also, permits shall expire by limitation and become null and void if work authorized by the permit is suspended for more than 30 calendar days, except for weather-related delays. Issued Grading, Drainage, and Erosion Control Permits expire one year from date of issuance. Before work begins or resumes, the permittee shall obtain a new permit and pay a full permit fee. The Development Services Director or designee may grant a time extension on permits. Applicants shall give Development Services staff a minimum of two hours' notice before beginning grading operations and provide notice of completion of work under the permit.
- C. SWPPP Permits shall expire by limitation and become null and void if work authorized does not begin within 180 calendar days after date of issuance. Also, permits shall expire by limitation and become null and void if work authorized by the permit is suspended for more than 30 calendar days, except for weather-related delays. Issued SWPPP Permits expire one year from date of issuance. Before work begins or resumes, the permittee shall obtain a new permit and pay a full permit fee. The Development Services Director or designee may grant a time extension on permits.

Applicants shall give the Development Services staff a minimum of two hours' notice before beginning grading operations and provide notice of completion of work under the permit.

**13.27.410 Permit—Application—Fee**

- A. Permit fees are based on the average direct and indirect costs to provide plan checks, permit administration, field inspection, and record management. The fee for obtaining a permit shall be established or amended by City Council resolution after conducting a public hearing.
- B. Revenue from these fees shall be credited to the general fund.

**13.27.420 Permit Fee Exceptions**

- A. The Development Services Director may exempt any contractor doing work for the City from permit fees referred to in this chapter.
- B. Work performed by the City is exempt from permit fees.

**13.27.430 Investigation Fees; Work Without a Permit**

Whenever any work for which a permit is required by this ordinance has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this ordinance. The payment of such investigation fee shall not exempt any person from compliance with all provisions of this ordinance. SWPPP Permits shall also be subject to U.S. EPA, MDEQ, and/or county air quality standards, penalties, and fines, as applicable.

**13.27.440 Permit Fee Refunds**

Refunds or credits of permit fees shall only be given when permit errors or mistakes are caused by the City.

**13.27.450 Construction Submittals**

In addition to all other permits required in this chapter, all new developments and redevelopment projects will be required to provide a Storm Water Management Plan and all other submittals regarding storm water control and runoff in accordance with adopted rules and regulations and Storm Water Specifications and Design Standards.

**12.27.460 Construction Requirements**

General requirements shall be in accordance with adopted rules and regulations and Storm Water Specifications and Design Standards.

### **13.27.470 Storm Water Facility Management Procedures for Developments**

The developer, owner, or operator shall create, manage, and maintain storm water facilities in accordance with the Storm Water Specifications and Design Standards.

## **Article V. Inspection and Enforcement**

### **Sections:**

<a href="#">13.27.500</a>	<a href="#">Inspections</a>
<a href="#">13.27.510</a>	<a href="#">Sampling, Testing, and Monitoring</a>
<a href="#">13.27.520</a>	<a href="#">Violations</a>
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### **13.27.500 Inspections**

- A. The City will conduct all inspections of any construction activities within the MS4 area that require a SWPPP and will conduct them in accordance with adopted rules and regulations.
- B. Once construction activities are completed, the developer, owner, or operator shall conduct inspections of the storm water facilities and maintain records of such inspections in accordance with adopted rules and regulations.

### **13.27.510 Sampling, Testing, and Monitoring**

All sampling, testing, and monitoring conducted on any portion of the storm water system shall be conducted in accordance with adopted rules and regulations.

### **13.27.520 Violations**

- A. Whenever the City finds that a discharge of pollutants within the MS4 area is taking place or has occurred which will result in or has resulted in pollutants entering storm water, the MS4, or state waters, the City will do one or more of the following:

- 1. Issue a Notice of Violation (NOV)

The NOV issued will notify the owner or operator of the violation and will describe what needs to be done to correct the violation as well as the timeframe in which the correction is to be made. SWPPP violations shall result in the City issuing an NOV with the owner or operator being allowed 24 hours to correct the violation.

- 2. Require Corrective Action

The City will notify the responsible owner or operator in writing and give him or her the opportunity to remediate the affected property in accordance with the provisions of this chapter using a remediation plan approved by the Public Works Director or designee.

- a. An authorized enforcement agent may issue a stop work order pursuant to the remediation of a current violation or the potential of a violation of this chapter.
  - b. Owners or operators shall submit remediation plans to and have them approved by the Public Works Director before remediation begins. The plan shall include, but is not limited to, a remediation schedule, a course of action, a list of personnel performing remediation work, and a list of equipment to be used.
  - c. An authorized enforcement agent may enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety, as authorized in section 7-1-4124(16), MCA.
  - d. Failure to take corrective action shall result in suspension of the permit.
    - (1) A suspended permit shall be reinstated without additional fees if it is resolved within seven days.
    - (2) A suspended permit that is not resolved within seven days shall not be reinstated; the permittee shall re-apply and re-purchase permit and shall be subject to permit fees.
  - e. Failure to take corrective action shall result in a fine equal to the permit fee amount.
- B. The owner or operator shall take appropriate preventive action to ensure a violation does not recur.
- C. Whenever an authorized enforcement agent finds any potential pollutant—including but not limited to oil, earth dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, or waste—upon the sidewalk abutting or adjoining any parcel of land or upon any parcel of land that is in close proximity to any portion of the storm water system and may result in the pollutant entering the storm water system, an authorized enforcement agent may give notice to the owner or operator to remove and lawfully dispose of the material. The owner or operator shall undertake the activities described in the notice and within the time frames set forth therein. If the owner or operator fails to conduct the activities as described in the notice, the Public Works Director may cause the required activities to be performed and have the cost assessed and invoiced to the property owner, as set forth in this chapter and adopted rules and regulations.

#### **13.27.530 Enforcement and Penalties**

- A. If an owner or operator fails to take corrective actions on, or prior to, a required date on a reported or observed spill or the potential to release pollutants, including sediment, into the storm water system, the City, or a designated contractor, may remediate the affected property at the owner or



operator's expense if the owner or operator does not take corrective actions. The owner or operator shall reimburse the City for all expenditures pertaining to the corrective action.

- B. In addition to the penalties herein provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter that the Public Works Director or designee considers to be an immediate threat to the public health, safety, and welfare and the environment may be summarily abated and/or restored by the City, or a designated contractor, with the owner or operator responsible to pay the costs of any abatement and restoration.
- C. An authorized enforcement agent may enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety, as authorized in section 7-1-4124(16), MCA.
- D. Each day a violation continues shall constitute a new violation and any resultant fines.
- E. Failure to pay the costs to the City, or a designated contractor, as described in this chapter may result in the City placing a lien against the property. Continued non-payment may result in the City pursuing payment as outlined in 7-13-4309, MCA.
- F. Any person convicted of violating any of the provisions of this chapter, with the exception of a late payment of a storm water utility bill, may be charged with a misdemeanor. The maximum fine imposed shall be \$500 per day and no imprisonment shall be imposed.

#### **13.27.540 Violation of Federal Clean Water Act**

Any owner or operator who violates any provision of this chapter or any provision of any permit issued pursuant to this chapter; who discharges pollutants, waste, or wastewater so as to cause an illicit discharge into the MS4; or who violates any cease and desist order, prohibition, or effluent limitation also may be in violation of the Federal Clean Water Act and may be subject to the sanctions of that Act, including civil and criminal penalties.

#### **13.27.550 Concealment**

Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation of this chapter

#### **13.27.560 Civil Actions**

In addition to any other remedies provided in this chapter, any violation of this chapter may be enforced by civil action brought by the City. In any such action, the City may seek, and the court shall grant, as appropriate, any or all of the following remedies:

- A. A temporary and/or permanent injunction.
- B. Assessment of the owner or operator in violation for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation and for the reasonable costs of preparing and bringing legal action under this section.

- C. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation.
- D. Compensatory damages for loss or destruction to water quality, wildlife, fish, and aquatic life. Assessments under this section shall be paid to the City to be used exclusively for costs associated with monitoring and establishing storm water discharge control systems and/or implementing or enforcing the provisions of this chapter.
- E. Fines to be paid to the City for MPDES permit violations.

**13.27.570 Administrative Enforcement Powers**

The City will enforce the requirements under the state’s General Permit for storm water discharges associated with construction activity in whole or in part as determined by the authorized enforcement agent and in accordance with this chapter, adopted administrative rules and regulations, Storm Water Specifications and Design Standards, and Chapter 13, Title 26, MMC.

**13.27.580 Appeal**

Any person notified of non-compliance with this chapter or required to perform monitoring, analysis, reporting, and/or corrective action, who is aggrieved by the decision of the City’s authorized enforcement agent, may appeal such decision in writing to the Public Works Director within 10 business days following the effective date of the decision or written notice. Upon receipt of such request, the Public Works Director shall request a report and recommendation from the City’s authorized enforcement agent and shall set the matter for administrative hearing at the earliest practical date. At said hearing, the Public Works Director may hear additional evidence, and may revoke, affirm, or modify the authorized enforcement agent’s decision. The decision shall be final.

**13.27.590 Disclaimer of Liability**

- A. The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth here are minimum standards, and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the state or the United States.
- B. This chapter shall not create liability on the part of the City, any agent, or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

**EFFECTIVE DATE**

The provisions of the ordinance shall be effective in 30 days.

**SEVERABILITY**

If any selection, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this

ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words have been declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

**PASSED** by a vote of:

First reading and preliminary adoption on the 22<sup>nd</sup> day of August, 2016 by a vote of 11 ayes, Julie Armstrong, Emily Bentley, Michelle Cares, John DiBari, Annelise Hedahl, Jordan Hess, Gwen Jones, Marilyn Marler, Bryan von Lossberg, Harlan Wells, Jon Wilkins; 1 nay, Heidi West; 0 abstentions; and 0 absent.

Second and final reading and adoption on the 12<sup>th</sup> day of September, 2016, by a vote of 9 ayes, Julie Armstrong, Emily Bentley, John DiBari, Annelise Hedahl, Gwen Jones, Marilyn Marler, Bryan von Lossberg, Heidi West, Jon Wilkins; 2 nays, Michelle Cares, Harlan Wells; 0 abstentions; and 1 absent, Jordan Hess.

**APPROVED** by the Mayor this 12<sup>th</sup> day of September, 2016.

**ATTEST:**

/s/ Martha L. Rehbein

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Martha L. Rehbein  
City Clerk

**APPROVED:**

/s/ John Engen

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John Engen  
Mayor

(SEAL)