

Chapter 13.40**STORM SEWER UTILITY**

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13.40.010 Definitions.

A. "City" means the city of Philomath, a municipal corporation of the state of Oregon.

B. "City manager" means the person chosen by the Philomath city council to meet the requirements of Section 5.3 of the Philomath Charter or such person as may be designated by the city manager to act in his/her name and capacity.

C. "Clean Water Act" means the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and any subsequent amendments thereto.

D. "Developed property" shall mean any property which has been altered from its natural condition to now include buildings or other structures, private storm drainage facilities, mining, dredging, filling, grading, paving, excavation or drilling operations.

E. "Director" shall mean the city public works director or the person designated by the director.

F. "Discharger" means any person who discharges or causes to be discharged any pollutant into the stormwater system.

G. "Floodplain" means the relatively flat or lowland area adjoining a river, stream, watercourse, lake, or other water body that has been, or may be, inundated temporarily by floodwater.

H. "Impervious surfaces" are those surface areas which either prevent or retard saturation of water into the land surface and cause water to run off the land surface in greater quantities or at an increased rate of flow from that present under natural conditions preexistent to development. Examples of impervious surfaces include, but are not limited to, rooftops, concrete or asphalt sidewalks, walkways, patio areas, driveways, parking lots or storage areas and gravel, oil, macadam or other surfaces which similarly impact the natural saturation or runoff patterns which existed prior to development.

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

J. "Illegal discharge" means any direct or indirect nonstormwater discharge to the stormwater system, except as exempted by PMC 13.40.150.

K. "Illicit connection" is defined as either of the following:

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

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

L. "Nonpoint source" means causes of water pollution that are not associated with point sources. Examples include: fertilizer/pesticide runoff; sediment runoff from construction; materials from deicing activities (salt or sand). Nonpoint sources may enter a discrete conveyance system and become a point source.

M. "Nonstormwater discharge" means any discharge to the stormwater system that is not composed entirely of stormwater.

N. "Person" means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. The masculine gender shall include the feminine; the singular shall include the plural where indicated by the context.

O. "Point source" means any discernible, confined, and discrete conveyance, including but not limited to pipes, ditches, channels, tunnels, or conduits, from which pollutants are or may be discharged to a receiving water.

P. "Pollutant" means anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oils; automotive fluids; nonhazardous liquid and solid wastes and yard wastes; any liquid having a temperature that could have an adverse effect

on the receiving streams; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal bacteria and pathogens; dissolved and particulate metals; animal wastes; residues that result from constructing a building or a structure (including but not limited to sediments, slurries, and concrete rinsates); and noxious or offensive matter of any kind.

Q. "Pollution" means the human-made or human-induced alteration of the quality of waters by waste to a degree that unreasonably affects or has the potential to unreasonably affect the waters of the state.

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

S. "Runoff control" shall mean any measure approved by the director that eliminates stormwater runoff from land surfaces on which development exists.

T. "Stormwater systems" are defined as those natural or manmade facilities used to convey stormwater from public or private places to appropriate destinations with minimal adverse impact. Included in the storm sewer system are drainage ditches, culverts, manholes, pipes, detention ponds, streams, creeks, sumps, storage facilities, curbs, gutters, catchment basins, pump stations and any other facility necessary for the conveyance or treatment of stormwater.

U. "Stormwater" shall mean water from precipitation, surface or subterranean water from any source, drainage and nonseptic wastewater.

V. "Water or waters of the state" means any lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the state of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

W. “Watercourse” means a channel in which a flow of water occurs, either continuously or intermittently, and if the latter, with some degree of regularity. Watercourses may be either natural or artificial. [Ord. 753 § 1, 2009.]

13.40.015 Abbreviations.

“NPDES” means National Pollutant Discharge Elimination System. [Ord. 753 § 1, 2009.]

13.40.020 Intent and purpose.

A. The intent and purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the city of Philomath through the formation of a storm sewer utility in order to protect and enhance the water quality and natural functions of watercourses and water bodies through the regulation of stormwater discharges; to set forth uniform requirements for direct and indirect contributors to the stormwater system; and to enable the city of Philomath to comply with applicable state and federal laws.

B. In order to fulfill its intent, the city, pursuant to the statutes of the state of Oregon and the powers granted in the charter of the city, the council declares its intent to acquire, own, construct, reconstruct, improve, equip, operate, maintain, and repair storm sewer systems within the city limits and outside the city limits when consistent with city policy, intergovernmental agreements, and in accordance with federal and state law. [Ord. 753 § 1, 2009.]

13.40.022 Applicability.

This chapter shall apply to all water entering the stormwater system generated on any developed and undeveloped lands unless explicitly exempted by PMC 13.40.150. [Ord. 753 § 1, 2009.]

13.40.024 Responsibility for administration.

The director shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon the director may be delegated in writing by the director to persons or entities acting in the beneficial interest of or in the employ of the city. [Ord. 753 § 1, 2009.]

13.40.030 Establishment of a storm sewer utility fee.

There is hereby established a storm sewer utility fee for each developed property within the corporate limits of the city. Such fee shall not be imposed in amounts greater than that which is necessary, in the judgment of the council, to provide sufficient funds to properly acquire, construct, equip, operate, maintain, extend and repair the city’s stormwater systems. Fees for users shall be based upon impervious surface area and individual mitigation efforts, if any. The council, by resolution, shall establish the amount and effective date of the fee and may, from time to time by resolution, change the amount of the fee. [Ord. 753 § 1, 2009.]

13.40.040 Use of storm sewer utility fee.

Storm sewer utility fees shall be used for the acquisition, construction, operation, maintenance, and repair (including renewal, replacement, and improvement) of the city’s storm sewer system. To the extent that the fees collected may not be sufficient to properly meet the expenses of the stormwater system, the cost of same may be paid from other city funds as may be determined by the council. The fees collected by virtue of this chapter shall not be used for general or other governmental purposes of the city except to pay for the equitable share of the cost of accounting, management, and other administrative costs attributable to the stormwater system. [Ord. 753 § 1, 2009.]

13.40.050 Calculation of storm sewer utility fee.

A. The amount of the monthly storm sewer utility fee shall be determined by resolution approved by the council based upon classifications of impervious surface area.

B. Whenever a property owner takes measures to eliminate stormwater runoff from an impervious surface, the director shall, upon written request, determine the percent of stormwater flow which has been eliminated. The director shall authorize a proportional reduction in the storm sewer utility fee for approved runoff control measures. If the property owner establishes, to the satisfaction of the director, that all runoff from a property is disposed of without utilizing public storm drainage facilities either directly or indirectly, there will be

no fees charged under the provisions of this chapter.

C. The storm sewer utility fee shall not be imposed for impervious surfaces for city-owned facilities or for a public street, road, or highway.

D. The person responsible for payment of the storm sewer utility fee may request in writing that the director confirm the calculation of impervious surfaces in the event of a dispute over the amount of the storm sewer utility fee. [Ord. 753 § 1, 2009.]

13.40.060 Billings and collection.

A. The storm sewer utility fee shall be billed and collected with the monthly city utility bill. The bill shall become due and payable at the same time as other city utility fees.

B. Partial payments on utility bills shall be allocated on a prorated basis to each utility balance due.

C. The person responsible for payment of the storm sewer utility fee shall be the person who uses the storm sewer services and, unless otherwise determined, shall be the same person as is responsible for payment of other city utilities. If there are no other city utilities, the person(s) having the right to occupy the property shall be responsible for the payment of the storm sewer utility fee.

D. The finance director shall be responsible for the billing and collection of funds. [Ord. 753 § 1, 2009.]

13.40.070 Enforcement.

Any fee due which is not paid when due, together with interest at the maximum statutory rate from the due date, may be recovered in an action at law by the city. In addition to any other remedies or penalties provided by this chapter or any other city ordinance, failure of any person responsible to pay fees promptly when due shall subject the person responsible to discontinuance of any utility services provided by the city, and the city manager is empowered and directed to enforce this provision against such delinquent users. The employees of the city shall, at all reasonable times, have access to any improved property served by the city for inspection, repair, or the enforcement of the provisions of this chapter. [Ord. 753 § 1, 2009.]

13.40.080 Permits required.

Prior to commencing any work on a building storm drain or public stormwater system, all applicable permits from the city of Philomath and other agencies must be secured and all associated permit fees paid in full. The permits necessary may include, but are not limited to, a plumbing permit, a permit to construct public facilities, and an encroachment permit. The permit shall set forth at what point the connection is to be made, the location, size of facility, type of construction, and other details as the director or his/her designee may reasonably require. [Ord. 753 § 1, 2009.]

13.40.090 Approval of drawings.

Drawings for all public stormwater systems shall be approved by the director or his/her designee prior to construction. Unless otherwise approved by the director, such drawings shall conform to applicable stormwater system master plans as well as city of Philomath public works design standards. Such approval shall be required in addition to any other approval required by state law. [Ord. 753 § 1, 2009.]

13.40.100 Construction to conform to standards.

All public stormwater systems, whether publicly or privately constructed, shall conform to city of Philomath public works design standards requirements, materials, and workmanship. Failure to meet tests for performance and workmanship shall be grounds for refusal of acceptance by the city. Permits to connect to stormwater systems that have not been accepted will not be issued until the system has been approved and accepted. [Ord. 753 § 1, 2009.]

13.40.110 Inspection, approval of construction.

Reasonable notice and access shall be given to allow inspection of all work in connection with the construction or reconstruction of any public stormwater facilities. Use of the stormwater facilities will not be allowed until the building storm sewer and the public improvement receive final approval. [Ord. 753 § 1, 2009.]

13.40.120 Connection to stormwater mains.

Piped storm drain connections shall be made only to the single wye branch designated for use by the connecting property. If no wye is available, connection shall be made by tapping the stormwater main line in accordance with city of Philomath public works design standards and only after securing all necessary permits and paying all required permit fees. [Ord. 753 § 1, 2009.]

13.40.130 Extension of stormwater systems.

The following rules shall apply to all stormwater system extensions:

A. The minimum size of stormwater mains or other stormwater system components to be installed shall be in conformance with the most recent version of the city of Philomath public works design standards where a larger size is not needed to provide an adequate system, conform with the size of the existing system, meet future needs, or conform to the size specified by the city of Philomath's stormwater system facility plan.

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

C. All stormwater system extensions shall extend to the extreme property line of the development or lot. If the property has excess frontage on the right-of-way and only partial development is to occur, then some consideration may be given to shortening the initial extension, provided sufficient assurance is given to ensure the completion of the extension at the time other development occurs. Where systems are being extended into the interior of a property or development, the systems shall be extended through to the boundaries of the property at all such points as shall be needed to provide current or future service to adjacent properties. [Ord. 753 § 1, 2009.]

13.40.140 Tapping of manholes.

Tapping of building storm drains directly into manholes is prohibited except where shown in construction drawings that have been approved by the director or his/her designee. [Ord. 753 § 1, 2009.]

13.40.150 Illegal discharges.

No person shall cause any pollutant to be discharged to any waters of the state or cause any pollutant to be placed in a location where such pollutant is likely to escape or be carried into the stormwater system and by said stormwater systems into the waters of the state.

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

The prohibition shall not apply to any nonstorm discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the state of Oregon under the authority of the Federal Environmental Protection Agency; provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided the written approval has been granted by the city of Philomath for any discharge to the stormwater system. [Ord. 753 § 1, 2009.]

13.40.160 Illicit connections.

No person shall construct, use, maintain, or allow the continued existence of an illicit connection to the stormwater system. Existing illicit connections are expressly prohibited, without limitation, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. [Ord. 753 § 1, 2009.]

13.40.170 Waste disposal prohibitions.

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, maintained, or kept in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the stormwater system, or waters of the state, any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. [Ord. 753 § 1, 2009.]

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

Any person subject to an industrial or construction activity NPDES stormwater discharge permit

shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the director prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause. [Ord. 753 § 1, 2009.]

13.40.190 Notification of spills.

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

A. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the public works department immediately in person or by telephone. Notification of the emergency response agencies or the public works department does not relieve the discharger of their responsibility to also notify appropriate state and federal agencies. The public works director or his/her designee shall be permitted access to the property where the spill originated at any time he/she feels is appropriate to monitor and inspect the progress being made to eliminate the illegal discharge.

Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the city of Philomath public works director within five business days of the original notice. The notice shall include a detailed written statement submitted by the discharger describing the causes of the discharge, measures taken to mitigate the spill, and the measures taken to prevent any future occurrence.

If the discharge emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to

prevent its recurrence. Such records shall be retained for at least three years.

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

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

1. Disposable materials and supplies provided, consumed and expended specifically for the purpose of mitigating the incident for which reimbursement is being requested;

2. Compensation of the employees for the time devoted specifically to the incident;

3. Rental or leasing of equipment used specifically for the incident;

4. Replacement costs for equipment or property owned by the city that is contaminated or damaged beyond reuse or repair;

5. Decontamination of equipment that was used during the incident;

6. Special technical services required for the incident; and

7. Laboratory expenses for the purpose of analyzing samples taken during the incident. [Ord. 753 § 1, 2009.]

13.40.200 Requirement to eliminate illegal discharges.

The director may require, by written notice, that a person responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges. [Ord. 753 § 1, 2009.]

13.40.210 Requirement to eliminate illicit connections.

The director may require, by written notice, that a person responsible for an illicit connection to the stormwater system immediately, or by a specified date, comply with the requirements of this chapter to eliminate the connection, regardless of whether or not the connection or discharges to it had been

established or approved prior to the effective date of the ordinance codified in this chapter.

If, subsequent to eliminating a connection found to be in violation of this chapter, the responsible person can demonstrate that an illegal discharge will no longer occur, said person may request city approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense. [Ord. 753 § 1, 2009.]

13.40.220 Requirement to monitor and analyze.

The director may require, by written notice, that any person engaged in any activity and/or owning or operating any facility that may cause or contribute to stormwater pollution, illegal discharges, and/or nonstormwater discharges to the stormwater system or waters of the state, to undertake at said person's expense such monitoring and analyses and furnish such reports to the city of Philomath as deemed necessary to determine compliance with this chapter. [Ord. 753 § 1, 2009.]

13.40.230 Suspension of access.

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

If the violator fails to comply with a suspension order, the city of Philomath may take such steps as deemed necessary to prevent or minimize damage to the stormwater system, prevent or minimize danger to the environment, or to prevent or minimize danger to persons. [Ord. 753 § 1, 2009.]

13.40.240 Damage to the stormwater system.

When a discharge causes obstruction, damage, or other impairment to the stormwater system, the director may assess a charge against the discharger for the work required to clean or repair the facility. If the discharger fails to pay said charge, the costs to clean or repair the facility may be assessed against the property pursuant to PMC 13.40.280. [Ord. 753 § 1, 2009.]

13.40.250 Notice of violation.

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

A. The performance of monitoring, analyses, and reporting;

B. The elimination of illicit connections or illegal discharges;

C. That violating discharges, practices, or operations cease and desist; and

D. The implementation of source controls or treatment best management practices. [Ord. 753 § 1, 2009.]

13.40.260 Appeal.

Notwithstanding the provisions of PMC 13.40.290, any person receiving a notice of violation under PMC 13.40.250 may appeal the determination of the director. The appeal must be in writing and must be received by the city manager within seven days of receipt of the notice of violation. If requested in writing, a hearing on the appeal shall be scheduled before the city council of the city of Philomath within 30 days of the receipt of the appeal. Thereafter, the city council may render its decision based upon the record of the hearing on the notice of violation, grant an additional hearing to take additional evidence, or conduct a de novo hearing.

The city council, in consultation with the city attorney, shall establish rules and procedures for the conduct of the appeal in order to accord the discharger minimum due process. The burden of proof, on appeal, shall remain with the city by a preponderance of the evidence. The city council shall affirm, reverse, or modify the findings, conclusions, and requirements of the notice of violation and shall serve its decision, in writing, upon the discharger. The decision of the city council shall be final. [Ord. 753 § 1, 2009.]

13.40.270 Abatement by city.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or in the event of an appeal under PMC 13.40.260, within 10 days of the decision of the city council upholding the decision of the director, then the city or a contractor designated by the

director is authorized to enter upon the subject private property and take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the city or designated contractor to enter upon the premises for the purposes set forth above. [Ord. 753 § 1, 2009.]

13.40.280 Recovery of abatement costs.

A. Within 30 days after abatement of the condition by city, the director or his designee shall prepare a recap of all costs incurred to abate the condition, including administrative costs.

B. A summary of costs shall be mailed by registered or certified mail to the same person or persons to whom the notice of violation was sent per PMC 13.40.250, or their successors in title, and shall advise of the city's intent to assess said costs against the real property and shall further advise the owner/owners of their right to a hearing before the city council prior to assessment upon receipt by the director, within 15 days of the date of mailing, of a written request for a hearing.

C. If the costs of abatement are not paid to the city within 30 days from the date of the mailing of the summary of costs, said summary shall be presented to the city council and, if the council finds said costs to be reasonable, the council shall pass an ordinance directing that the amount of said costs be entered in the docket of city liens; and upon such entry being made, said costs shall constitute a lien upon the property in question.

D. The lien shall be enforced and shall bear interest at a rate to be determined by the council at the time of the ordinance referred to in subsection (C) of this section. The interest shall commence from the date of entry of the lien in the lien docket and shall have priority over all other liens and assessments to the maximum extent permitted by law. The costs of filing the lien shall be included in the total cost of the lien.

E. An error in the name of the property owner/owners/agents shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property. [Ord. 769 § 1, 2010; Ord. 753 § 1, 2009.]

13.40.290 Immediate abatement.

The director is authorized to require immediate abatement of any violation of this chapter that constitutes an immediate threat to the environment or the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the director, the city of Philomath is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the city of Philomath shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the city from seeking other and further relief authorized under this chapter. [Ord. 753 § 1, 2009.]

13.40.300 Penalties for violations.

A. Any person violating any of the provisions of this chapter shall upon conviction thereof be punished by a fine of not less than \$50.00 or more than \$250.00 for each offense. A separate offense shall be deemed committed on each day or part of each day during which a violation occurs or continues.

B. The city may commence an action for appropriate legal and/or equitable relief in the appropriate local court to enforce the penalty or remedy imposed by the city hereunder. [Ord. 753 § 1, 2009.]

13.40.310 Violations deemed a public nuisance.

In addition to the enforcement processes and penalties herein before provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter that is a threat to the environment, public health, safety, or welfare, and is declared and deemed a nuisance, may be summarily abated or restored by the city at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the city. [Ord. 753 § 1, 2009.]

13.40.320 Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause,

sentence, or paragraph of the chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter. [Ord. 753 § 1, 2009.]

13.40.330 Ultimate responsibility of the discharger.

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore 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 the waters of the state caused by said person. This chapter shall not create liability on the part of the city of Philomath, or any agent or employee thereof for any damages that result from any discharger's reliance on this chapter or any administrative decision lawfully made thereunder. [Ord. 753 § 1, 2009.]